When Sex Sells: Expanding the Tort of Conversion to Encompass Domain Names

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WHEN "SEX" SELLS: EXPANDING THE TORT OF CONVERSION TO ENCOMPASS DOMAIN NAMES

I. INTRODUCTION

When someone forgets the street that his favorite Italian restaurant is on, all he has to do is flip open the phonebook. Immediately at his fingertips is the restaurant’s phone number and address. Equipped with this information, he can drive over to the precise location and indulge in the meal about which he dreamt.

What if once he arrived there the restaurant was gone? In its place stands an entirely different-looking Mexican restaurant. In fact, if not for the address on the facade he would have driven right by, finding the new restaurant unrecognizable—different architecture, different owners, and completely different cuisine. The original owner screams on the sidewalk that the new owners have transformed his property without his consent while he was on vacation. The realtor tries to calm him by explaining that the new owners provided her with documents showing the original owner transferred his rights.

On October 15, 1995, this exact scenario occurred, not on a city street, but instead on the information superhighway. 1 Gary Kremen’s potential female advice site, 2 intended to provide information pertaining to sexually transmitted diseases, underage pregnancy, and health, 3 was developed instead by Stephen Cohen into a site dedicated to pornography. 4 Although Kremen registered the domain name “sex.com” with the proper authorities on May 9, 1994, Cohen managed to transfer the name for his own use via a fraudulent letter. 5 While Kremen did subsequently bring suit and reacquire the rights to the domain name, Judge James Ware of the United States District Court for the Northern District of California refused

to extend the tort of conversion to encompass domain names.\textsuperscript{6} Thus, property continued to break its tangible bounds via the new era of the Internet, but tort law did not.

This Comment will examine the development of Internet domain names and their place in American property jurisprudence. In addition, it will discuss the origins of the tort of conversion, as well as the seemingly stagnant state of the doctrine. Furthermore, this Comment will address conversion as applied to domain name disputes and explore a possible resolution. Part II lays a foundation by providing a basic background description of domain name components using the background facts of \textit{Kremen v. Cohen}\textsuperscript{7} to illustrate the type of dispute that arises with domain names. Part III traces the tort of conversion from its origins, through its expansion, to its current stagnant condition. The conversion doctrine and the Internet finally cross paths in Part IV in an analysis of the legal opinion generated in \textit{Kremen}. In an attempt to plausibly expand the modern doctrine, despite the \textit{Kremen} court’s unwillingness to do so, Part V analogizes and distinguishes domain names from other intangible property in the case law. Finally, Part VI concludes that the holding in \textit{Kremen} was incorrect because the doctrine of conversion must recognize domain names as property in order to protect the future of business on the Internet.

\textbf{II. BACKGROUND DEVELOPMENT OF DOMAIN NAMES AND DISPUTES OVER THEM}

\textit{A. What's in a Domain Name?}

A domain name begins “as an Internet Protocol (IP) address”\textsuperscript{8} consisting of four sequences of numbers separated by periods.\textsuperscript{9} Because an IP address is typically complicated to remember, it is subsequently replaced by a domain name such as yahoo.com.\textsuperscript{10}

Using yahoo.com as an example, this domain name can be broken down into three components. “Yahoo” would be the second-level domain


\textsuperscript{7} 99 F. Supp. 2d at 1168.

\textsuperscript{8} Neil Batavia, Comment, \textit{That Which We Call a Domain by Any Other Name Would Smell as Sweet: The Overbroad Protection of Trademark Law as It Applies to Domain Names on the Internet}, 53 S.C. L. REV. 461, 463 (2002); see also Kenton K. Yee, \textit{Location.Location.Location: Internet Addresses as Evolving Property}, 6 S. CAL. INTERDISC. L.J. 201, 204–05 (1997).

\textsuperscript{9} See Batavia, \textit{supra} note 8, at 463.

\textsuperscript{10} Id.
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(SLD), "." would be the root, and "com" would be the top-level domain (TLD). The Domain Name Service then organizes the components so that any computer user can retrieve any registered domain name. Originally, in order to register it with an organization such as Network Solutions, Inc., the domain name only had to be previously unregistered and unique.

Because the original requirements to register were lax, disputes pertaining to domain names ensued. Few potential registrants examined whether their name "would infringe any preexisting trademark" before racing to register it. The most infamous dispute developed when an individual registered the domain name MCDONALDS.COM. Obviously, McDonald's Corp. felt this name was extremely valuable to its corporate development. However, in order to obtain the rights to the domain name, McDonald's Corp. was forced to make a charitable contribution to the individual who registered it first.

A similar dispute arose when a former employee of MTV Networks registered the domain name MTV.COM. The employee then created a website offering music news and information in a similar manner to MTV Networks services. Ultimately, MTV Networks recovered the domain name after a settlement agreement between the two parties.

The simple registration process led to various domain name...
infringement problems. In response, Internic, the Internet Network Information Center, created the Domain Name Dispute Policy. Under its policy the registration guidelines provided:

To register a domain name with Internic under this Policy, a potential registrant must: (i) select a suitable name not already registered by somebody else; (ii) arrange to have two operational computers—a main one and a backup—actively connected to the Internet to “host” or answer to the domain name; (iii) pay Internic an annual fee of $50, the first two years ($100) due at registration; and (iv) sign a Domain Name Dispute Policy agreement with Internic.

The annual fee described above varies depending on the commercial registration service one utilizes. For example, a low cost provider would charge a $60 setup fee and $30 monthly service charge, while a high cost provider would offer registration in all the industrialized countries for a charge of $7,000. In addition, any violation of the policy could lead to the deregistration of the violator’s domain name. This deregistration would in turn mean that any new applicant could register the cancelled domain name as his own.

Despite this policy, the rise of both the Internet and e-commerce compelled individuals from around the world to register domain names. Businessmen sought to take advantage of this untapped consumer resource. However, while the number of permutations of letters to form words in the English language is unimaginable, entrepreneurs only covet the most recognizable and generic words. For example, the ease at which a consumer could track down a name such as dog.com in order to find dog information makes this domain name far more attractive than xzybn.com providing the same information.

Also, some of the methods employed to satisfy demand for a specific word only confused the situation further. The distinction between dog.net

20. See Yee, supra note 8, at 206. The registrar for geographical TLDs is known as the Internet Information Center, or Internic. Lisa Katz Jones, Trademark.com: Trademark Law in Cyberspace, 37 ALTA. L. REV. 991, 995 (1999). In the United States, Network Solutions has a contract with the National Science Foundation to operate Internic. Id.

21. See Yee, supra note 8, at 206.

22. Id.

23. Id.

24. See Keller, supra note 14, at 311.

25. Yee, supra note 8, at 206.

26. See generally id. at 207–08 (listing examples that demonstrate the popularity of common words as domain names).

27. See Keller, supra note 14, at 319.
and dog.com would rarely come to the mind of the average computer user, let alone distinguish the two as different website entrances. Some businesses were capable of compromise. Wired Magazine managed to convince Women's Wire to change its domain name from wire.net to wwire.net. Some unwilling to compromise resorted to intentional theft of domain names by committing fraud. The question soon arose—how would the legal system remedy these situations?

B. Everybody Wants "Sex:" The Dispute over the Domain Name Sex.com

On May 9, 1994, Gary Kremen, representing Online Classified, Inc., registered sex.com as a domain name for the first time. Network Solutions, Inc. granted the domain name to Kremen, as there was neither a prior nor conflicting registrant. Kremen’s intent for this domain name was to link those interested to an informative website discussing “sexually transmitted disease education, underage pregnancy, and women’s health.” However, before Kremen could create the website content, Stephen Cohen obtained the rights over the domain name and began constructing adult-themed businesses.

Realizing the possible value of sex.com, Cohen sent a forged letter to Network Solutions stating that Online Classified, Inc. was relinquishing sex.com and all rights therein. The letter, however, was not signed by Cohen, but by Sharon Dimmick, the alleged president of Online Classified, Inc. Assuming that both the signature and company letterhead on which the letter was written were authentic, Network Solutions made the domain name available once again for registration. Cohen immediately used this opportunity to register the domain name under his own company.

28. See id.
29. Id.
31. Id. at 1170.
32. See Batavia, supra note 8, at 464–65. (discussing the process of registering a domain name with Network Solutions, Inc.).
34. Id. at *3–*4.
36. Id.
37. Id.
38. Id.
Kremen subsequently received notice from Network Solutions that it had cancelled his registration. After investigating the matter and concluding that Cohen's letter was a forgery, Kremen brought suit against multiple defendants, including Network Solutions and Stephen Cohen. Specifically, Kremen alleged both "conspiracy to convert property and . . . conversion of bailee" against Network Solutions. Unfortunately for Kremen, Judge Ware dismissed both causes of action pursuant to Network Solutions' motion for summary judgment.

III. THE ORIGINS AND DEVELOPMENT OF THE TORT OF CONVERSION

A. The Historical Development of Conversion

The tort of conversion arose out the common law's writ of trover. "Trover" is the French word for "finding." Essentially, the courts created conversion to cover instances where trespass to chattels and detinue failed to compensate the plaintiff. First, trespass to chattels was inapplicable to the finding of lost goods. Thus, trespass required that the tortfeasor take the goods of another without consent. Second, detinue was inappropriate for the situation of found goods. Detinue required an agreement between the two parties, which created a bailment relationship.

As a result, individuals were now able to employ trover to recover their goods. Specifically, one was now able to argue that the tortfeasor found his lost good and refused to return it upon request. The claimant only needed to prove that he had a superior title to the tortfeasor. Eventually, courts no longer limited the tort to instances of lost and found goods. Reaching its modern form of conversion, trover only required that

41. Id. at 1170–71.
42. Id. at 1174–75.
43. RICHARD A. EPSTEIN, TORTS § 1.12.2 (1st ed. 1999).
44. Id.
45. See id. Trespass to chattels is the intentional dispossession of, use of, or intermeddling with the chattel of another. RESTATEMENT (SECOND) OF TORTS § 217 (1965).
46. See EPSTEIN, supra note 43.
47. See id.
48. See id.
49. See id.
50. See id.
51. See id.
52. See EPSTEIN, supra note 43.
the tortfeasor "treated someone else's property as his own, regardless of how he came by it."\textsuperscript{53}

\textbf{B. The Modern Black Letter Law: Elements of Conversion}

The \textit{Restatement of Torts} defines conversion as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other full value of the chattel."\textsuperscript{54} Black's Law Dictionary defines conversion as:

\begin{quote}
\begin{itemize}
  \item The act of changing from one form to another; the process of being exchanged . . . The wrongful possession or disposition of another's property as if it were one's own; an act or series of acts of willful interference, without lawful justification, with an item of property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property.\textsuperscript{55}
\end{itemize}
\end{quote}

Inherent in this definition are individual elements: intent, act, and possession or ownership.\textsuperscript{56}

Conversion requires the intent to claim an ownership in the goods.\textsuperscript{57} However, one committing the tort need neither have bad intentions nor intentions of taking property from another.\textsuperscript{58} Rather, tort law classifies conversion as a strict liability tort.\textsuperscript{59} Therefore, a tortfeasor's good faith belief that he owns a piece of property is wholly irrelevant to the intent element of conversion.\textsuperscript{60} Simply put, a tortfeasor intends to convert a piece of property if his possession or "claim of ownership is inconsistent with the original owner's,"\textsuperscript{61} As such, intent often requires little more than a showing of the original owner's possession or right of ownership and the act of depriving the owner of that right.\textsuperscript{62}

The act element of the tort must be "some affirmative claim of ownership . . . or some act inconsistent with [the original owner's] title."\textsuperscript{63}

\begin{flushright}
\textsuperscript{53} \textit{Id.}
\textsuperscript{54} \textit{Epstein, supra} note 43, § 1.12.1.
\textsuperscript{55} \textit{Black's Law Dictionary} 144 (2d Pocket ed. 2001).
\textsuperscript{56} \textit{See Epstein, supra} note 43, § 1.12.1.
\textsuperscript{57} \textit{Id.}
\textsuperscript{58} \textit{Id.}
\textsuperscript{59} \textit{Id.}
\textsuperscript{60} \textit{See id.}
\textsuperscript{61} \textit{Id.}
\textsuperscript{63} \textit{Epstein, supra} note 43, § 1.12.1.
\end{flushright}
Some courts refer to it as a wrongful act or a disposition of a property interest. Either way, the act requirement ensures that one's negligent destruction of another's property will not result in conversion. The tortfeasor must represent himself as would a reasonable owner or as a possessor of the property.

Finally, the original owner must prove that he had the right of ownership or possession over the property. The owner or possessor can establish this element in a variety of ways. For example, the owner could provide a receipt or deed as evidence. In addition, the mere location of the item on the alleged owner's property could suffice. Furthermore, the owner must not have previously relinquished possession or ownership or consented to the tortfeasor's possession of the property.

One of the earliest actions for conversion best demonstrates the elements of the tort. In *Maye v. Yappen*, the California Supreme Court set forth the strict liability nature of conversion. There, the plaintiffs and defendants owned adjoining mines. The defendants crossed onto the plaintiffs' land and mined a portion of that land.

The defendants argued that they were not liable for mining the plaintiffs' gold because they neither maliciously nor intentionally committed the act. According to the defendants, the plaintiffs allowed them to continue mining because they were nowhere near the dividing line. Relying on the plaintiffs' statement, the defendants continued mining in good faith ignorance of the actual division. However, a later survey by the defendants' surveyor revealed that the defendants had crossed the line. The defendants asserted estoppel based on the plaintiffs' assurances of the property line. The California Supreme Court rejected
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this argument. It found instead that both parties were ignorant of the actual dividing line. Due to these findings, the court determined that two of the jury instructions given at trial were erroneous. They were as follows:

If the jury believe from the evidence that the defendants were ignorant of the boundary lines between the plaintiffs and defendants, and in such ignorance, if they entered upon the ground of the plaintiffs in good faith, believing it to be their own, and were induced to do so by the acts and representations of plaintiffs themselves, then they will find for the defendants.... If the jury believe, from the testimony, that defendants entered upon plaintiffs' ground in good faith, believing it to be their own ground, and were misled into so doing by the acts or declarations of plaintiffs, then if the plaintiffs recover at all, they can only recover the net sums taken from plaintiffs' ground, over and above the expense of extracting it.

As a result, the court held that, even if the defendants' mining were accidental, they were still liable for conversion. Additionally, the court required the defendants to pay the plaintiffs' damages equivalent to "the value of the gold-bearing earth at the time it was separated from the surrounding soil and became a chattel."

Because of the precise measurements of gold that the plaintiffs presented as evidence at trial, Maye v. Yappen was an easy case for the newly-developed doctrine of conversion. The gold and soil were both tangible. There existed a precise market value for both types of property. However, how would the legal system apply this precedent to intangible property?

79. Id.
80. Id.
81. Id. at 312.
82. Id. at 309-10.
83. See Maye, 23 Cal. at 308.
84. Id. at 311.
85. See id.
86. See id. at 310.
87. See id. at 310-11.
C. The Tort of Conversion as Applied to Intangible Property

Historically, the tort of conversion did not include "wrongful interference with intangible personal property." However, with the ever-growing importance of and dependence on intangible property, such as stocks and bonds, the law began to recognize a cause of action for conversion of specific types of this property. This modern recognition comes with an incredibly clear-cut limitation. In order for a court to entertain an argument for conversion, the intangible property must be "merged with, or reflected in, something tangible."

Take for example a savings account. The account itself is intangible. It is comprised of nothing more than numbers. Nevertheless, because this account is memorialized in a bank passbook, it can be the subject of a claim for conversion. There is a tangible representation of the existence of the account in the black ink dollar figure on the passbook page.

The same, though, is not true for many other valuable pieces of intangible property. Thus far courts have been unwilling to allow an action for conversion to lie in regards to the "goodwill of a business, trade secrets, or a newspaper or laundry route." The judicial standard of a tangible representation of the intangible property seems unforgiving. Some argue that the reluctance of the courts to recognize that conversion can encompass other intangible property is inappropriate. One author suggested that "where ideas are formulated with labor and inventive genius, as in the case of literary works or scientific researches, they are protected. Where they constitute instruments of fair and effective commercial competition, those who develop them may gather their fruits under the protection of the law." Nevertheless, no court had entertained a cause of action for conversion where the property at issue was a domain name. Despite the odds, the owner of a domain name would again battle for the expansion of the tort in Kremen.

89. See id.
90. Id.
91. Id.
92. See id.
93. Id.
95. Id.
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IV. LEGAL TREATMENT OF KREMEN V. COHEN

Returning to the facts of Kremen, plaintiff Gary Kremen alleged multiple causes of action against defendant Network Solutions. Conversion was one of these causes of action. Claiming Network Solutions committed this tort, Kremen argued that as the registrar of the domain name “sex.com,” Network Solutions “wrongfully assigned the property rights to Sex.com to [co-defendant Stephen] Cohen.” Network Solutions, on the other hand, defended against the claim arguing that “a domain name... is a form of intangible property that cannot be the basis of a conversion claim.” As such, Network Solutions moved for summary judgment on all six causes of action, including conversion.

The court began its analysis of conversion by setting forth its elements. Under California law, Kremen, the plaintiff, was required to prove the following: first, that he had either ownership or right to possession of the property at the time of the alleged conversion; second, that Network Solutions’ conversion was by a wrongful act or disposition of property rights; and finally, damages. Following a black letter legal introduction, the court discussed the manner by which California jurisprudence dealt with conversion.

The history of tort law reveals that conversion generally only applies to the wrongful act or disposition of property rights in tangible property.

98. Id. at 1170–71.
99. Id. at 1171.
100. Roemer, supra note 2, at 4.
101. Id.
102. Kremen, 99 F. Supp. 2d at 1170. The six causes of action were breach of contract, breach of intended third-party beneficiary contract, breach of fiduciary duty, negligent misrepresentation, conspiracy to convert property, and conversion of bailee. Id. at 1170–71. The breach of contract cause of action failed because Kremen could not prove the existence of a contract. Id. at 1172. The breach of intended third-party beneficiary contract cause of action failed because Kremen did not tender sufficient evidence to create an issue of triable fact pertaining to third-party beneficiary status granted under the Cooperative Agreement. Id. The breach of fiduciary duty cause of action failed because the relationship between Network Solutions and Kremen was so remote that there was no fiduciary duty of trust and confidence. Id. at 1175. The negligent misrepresentation cause of action failed because Kremen did not offer any evidence of a misrepresentation. Id. Finally, the conversion of bailee cause of action failed because the registration of domain names does not make Network Solutions a bailee. Kremen, 99 F. Supp. At 1175.
103. Id. at 1172.
104. Id.
105. See id. at 1172–73.
106. Id. at 1172.
However, the *Kremen* court did note that, in limited circumstances, California jurisprudence had expanded the tort to include intangible property.\(^{107}\) Specifically, any intangible property alleged to be converted must have been "represented by documents, such as a [sic] bonds, notes, bills of exchange, stock certificates, and warehouse receipts."\(^{108}\) However, California courts have declined to consider "[i]ntangible property such as 'goodwill of business, trade secrets, a newspaper route, or a laundry list of customers..."\(^{109}\)

Having laid the groundwork for its analysis, the court entertained Network Solutions’ argument that a domain name is insufficient intangible property to be the basis for a conversion claim.\(^{110}\) Judge Ware followed current California law precisely: he wasted no time deciding that there was "simply no evidence establishing that a domain name, including sex.com, [was] ‘merged in or identified with’ a document or other tangible object."\(^{111}\) Falling outside previous acceptable intangible property like bonds and notes, the domain would not suffice as property to sustain an action for conversion.\(^{112}\)

Ware examined two cases in deciding that the domain name was insufficient intangible property.\(^{113}\) First, he examined *Lockheed Martin Corp. v. Network Solutions, Inc.*\(^{114}\) In that case, Lockheed Martin sued Network Solutions for trademark infringement of the service mark "Skunk Works."\(^{115}\) "Skunk Works" was Lockheed Martin’s aircraft design and construction laboratory.\(^{116}\) Lockheed Martin argued that Network Solutions allowed others to register variations of the phrase "Skunk Works," such as skunkworks.net and theskunkworks.com.\(^{117}\) Lockheed Martin claimed that these third-party domain names both diluted and infringed its domain name.\(^{118}\) However, Network Solutions was not found liable.\(^{119}\) The Ninth Circuit reached this holding by determining that Network Solutions did not provide a product, but instead provided a

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107. *Id.* at 1172–73.
109. *Id.* (quoting 5 WITKIN, SUMMARY OF CALIFORNIA LAW, Torts § 613 (9th ed. 1988)).
110. *Id.* at 1173.
111. *Id.*
112. *See id.*
113. *Id.* at 1173 n.2.
114. 194 F.3d 980 (9th Cir. 1999).
115. *Id.* at 980.
116. *Id.* at 982.
117. *Id.* at 983.
118. *Id.*
119. *Id.* at 987.
The Kremen court distinguished the “sex.com” dispute based on this holding. Lockheed Martin was inapplicable because it was concerned with Network Solutions’ “role, rather than the proper classification of a domain name.”

Second, Ware addressed the case of Network Solutions, Inc. v. Umbro International, Inc. That matter was a garnishment proceeding in which a creditor sought to garnish multiple domain names from a debtor. However, the Virginia Supreme Court held in the debtor’s favor because domain names were not garnishable. The Virginia Supreme Court reached this holding because the right to use a given domain name “is inextricably bound to the domain name services that [Network Solutions] provides.”

Despite the holding of Umbro International, the Kremen court clearly felt the two cases could be distinguished. Judge Ware felt that the specifics of a garnishment proceeding were far different from a conversion action. In addition, the domain names in Umbro International were registered pursuant to a contract with Network Solutions, unlike the domain names at issue in Kremen. Furthermore, Ware agreed with the dissent in Umbro International, which stated that “the right to use domain names ‘exists separate and apart from [Network Solutions’] various services that make the domain names operational Internet addresses.’”

After discussing case law relied on by both parties, Ware addressed three policy concerns regarding his reluctance to expand the tort of conversion to encompass Internet domain names. First, tort law characterizes conversion as a strict liability tort. As a strict liability tort, the alleged tortfeasor’s intent and knowledge are irrelevant for finding liability. Strict liability was far too severe in the Court’s opinion. If

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120. Lockheed Martin, 194 F.3d at 984–85.
122. Id.
123. See id.; 529 S.E.2d 80 (Va. 2000).
124. Umbro Int’l, 529 S.E.2d at 80.
125. Id. at 86.
126. Id.
127. See Kremen, 99 F. Supp. 2d at 1173 n.2.
128. See id.
129. Id.
130. Id.
131. See id. at 1173.
132. Id.
134. See id. at 1174.
conversion covered domain names, Network Solutions and all other domain name registrars would be vulnerable to suit "every time a third party fraudulently obtained the transfer of a domain name."\textsuperscript{135} Ware believed that the repercussions of such prospective liability would be a multitude of regulations and fee increases.\textsuperscript{136} In addition, these repercussions might impede the entire process of domain name registration.\textsuperscript{137}

Second, Ware felt that expansion of the law of conversion would result in a "slippery slope."\textsuperscript{138} In other words, Ware did not want to remove the entire concept of tangibility from the requirements of conversion.\textsuperscript{139} He would rather force plaintiffs like Kremen to seek alternative remedies to protect their domain names.\textsuperscript{140} However, the opinion did not mention any of these remedies until its final policy concern.\textsuperscript{141}

Finally, the court further discussed the notion that other remedies were better fashioned for the domain name dispute.\textsuperscript{142} However, the court did not specify these remedies, leaving those matters for future consideration by Congress.\textsuperscript{143} Following the court's discussion of this policy concern, the court granted summary judgment in favor of Network Solutions for the conversion cause of action.\textsuperscript{144}

V. DIFFERENT "SEX" POSITIONS: EXPANDING THE TORT OF CONVERSION BASED ON AMERICAN INTELLECTUAL PROPERTY JURISPRUDENCE

A. The Intangible Bundle of Rights for Intangible Property

The \textit{Kremen} court's reasoning in considering the expansion of the tort of conversion was faulty. The initial step in expanding the tort of conversion to encompass domain names is determining that a domain name is property. Property was originally—and still is sometimes narrowly—

\textsuperscript{135} Id.
\textsuperscript{136} Id.
\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{139} See \textit{Kremen}, 99 F. Supp. 2d at 1174.
\textsuperscript{140} See id. (quoting W. PAGE KEETON, PROSSER & KEETON ON THE LAW OF TORTS § 15 (5th ed. 1984)).
\textsuperscript{141} See id.
\textsuperscript{142} See id.
\textsuperscript{143} See id.
\textsuperscript{144} See id.
conceptualized as a "fixed, tangible object." The common law developed the notion of property as a "bundle of rights." This notion suggests that a domain name could be considered property "because a holder [of the domain name in question] has the right to use it, exclude others from using it, and transfer it to another entity." Thus, the rights a holder has in a domain name equate with the rights a business has in an advertising sign.

The use, sale, and transfer of domain names already occur in practice. Use, which is the backbone of this Comment, is the "application . . . employment [or enjoyment] of something." Regarding transfer, Network Solutions specifically "requires the domain name holder to complete a Registrant Name Change Agreement." Finally, although no domain name has officially been sold yet, many are currently being advertised for sale by registrants.

Although the Kremen court was unwilling to adopt this view, precedent suggested that domain names are property as well. The matter of Umbro International espoused this very conclusion. There, Umbro International argued that the domain name is a form of property because Network Solutions provides a registrant with "the exclusive right to use a unique domain name for a specified period of time." Network Solutions, on the other hand, contended that a registrant is only entitled to the exclusive right to use the domain name as a translation of the Internet Provider (IP) address for Internet surfers. Network Solutions characterized the right as contractual; therefore, a domain name was not property. Unfortunately, Judge Kinser had a better memory than Network Solutions. He reminded them that they had conceded during oral argument "that the right to use a domain name is a form of intangible personal property." Ultimately, the court did determine that the

146. *Id.*
147. *Id.*
148. *Id.*
149. See, e.g., *Id.* at 303.
150. BLACK'S LAW DICTIONARY 1540 (7th ed. 1999).
152. *Id.* at 306.
154. *Id.*
155. See *id.* at 85.
156. See *id.*
157. *Id.* at 86.
registrant’s right was more related to a contractual service.\textsuperscript{158} However, this determination was strictly contingent upon the court’s interpretation of the requirements of a specific Virginia garnishment law (not conversion).\textsuperscript{159} This specificity avoided characterizing domain names as a type of property, and diminished Network Solutions’ concession pertaining to such.\textsuperscript{160}

\textbf{B. Conversion of Intellectual Property Precedent}

Exploration of precedent dealing with the conversion of intellectual property further exemplifies why the \textit{Kremen} court wrongly decided not to expand the tort of conversion to encompass domain names. The Nebraska Court of Appeals in the case of \textit{Mundy v. Decker} first recognized that these cases involved "an old remedy, conversion, and a new factual situation possible only in the computer era."\textsuperscript{161} In \textit{Mundy}, a former secretary deleted the entire contents of her employer’s Word Perfect directory contained on an office computer hard drive.\textsuperscript{162} The secretary intentionally destroyed the files on her last day of work before she was fired.\textsuperscript{163} The Nebraska Court of Appeals reversed and remanded the trial court’s verdict, believing that the employer had stated a claim for conversion.\textsuperscript{164}

The facts of \textit{Mundy}, which are strikingly similar to the facts of \textit{Kremen}, clearly support the extension of conversion to domain names. In \textit{Mundy}, the secretary destroyed the Word Perfect version of her employer’s documents.\textsuperscript{165} Although the documents had been saved onto floppy disks as well as produced as multiple hard copies, the Nebraska Court of Appeals recognized the essential efficiency that the Word Perfect form provided.\textsuperscript{166} Like a domain name, a Word Perfect form of a document allows quick and easy retrieval of information stored on the computer.\textsuperscript{167} The Nebraska Court of Appeals stated that the existence of tangible forms of the documents was “meaningless on the question of whether there had been a conversion of the directory’s files.”\textsuperscript{168} The only concern was that the

\begin{itemize}
\item \textsuperscript{158} See id.
\item \textsuperscript{159} See Umbro Int’l, 529 S.E.2d at 86.
\item \textsuperscript{160} See id. at 88.
\item \textsuperscript{162} Id. at *10.
\item \textsuperscript{163} Id. at *3.
\item \textsuperscript{164} Id. at *18.
\item \textsuperscript{165} Id. at *3.
\item \textsuperscript{166} Id. at *2–*4.
\item \textsuperscript{167} Mundy, 1999 Neb. App. LEXIS 3, at *2–*3.
\item \textsuperscript{168} Id. at *14.
\end{itemize}
secretary altered the employer's property, just as Cohen did to Kremen's property, thus, exercising "dominion over it."169

One California court expressed greater concern for the intangible property of information than it did for the tangible property that housed it in *Ananda Church of Self-Realization v. Massachusetts Bay Insurance Co.*170 There, the defendant removed "documents from the trash can of the claimant's attorney" that pertained to suits in which the plaintiff was involved, seeking indemnification from the defendants.171 Subsequently, the plaintiff brought an action for conversion.172 The court denied the conversion claim because "[b]y placing [the documents] into the garbage, the owner renounces the key incidents of ownership—title, possession, and the right to control."173

Separately, the court examined a specific property damage provision of the insurance policy that Massachusetts Bay Insurance Co. provided to the Ananda Church of Self-Realization.174 This provision led the court to find that the loss of the documents did not satisfy the policy's requirements to hold the defendant liable for conversion.175 Of particular interest, the court stated that the true value of the property was the ability to exploit the information within the documents.176 Thus, the tangibility requirement of conversion hinged on the specific insurance policy term, not the specific characteristics of the documents or the information contained within them.177

The alleged conversion of a telephone number is probably most similar to that of a domain name. A court considered this very situation in the case of *Rotstein v. Cable & Wireless, Inc.*178 There, the defendant company provided the plaintiff consumer with telephone numbers for his own personal and business uses.179 Subsequently, the plaintiff began working at a job where his employer agreed to pay the plaintiff's business-related phone bills that were sent directly to the defendant.180 Unfortunately, shortly after a year at his new job, the plaintiff's services

169. *Id.* at *10.
171. *Id.* at 372.
172. *See id.* at 370.
173. *Id.* at 376.
174. *See id.* at 377–78.
175. *See id.* at 378.
176. *See Ananda,* 116 Cal. Rptr. 2d at 378.
177. *Id.*
179. *Id.*
180. *Id.*
were no longer required.\textsuperscript{181}

Although the plaintiff no longer worked at the job location, the defendant continued to direct the plaintiff's calls to the company's corporate offices.\textsuperscript{182} The defendant persisted in this conduct despite the plaintiff's request that the defendant route the calls to the plaintiff's home.\textsuperscript{183} The defendant asserted that the company "was its customer, not the [plaintiff]."\textsuperscript{184}

The plaintiff brought suit alleging several causes of action, including conversion of the telephone number.\textsuperscript{185} The defendant demurred, and the court sustained the defendant's motion.\textsuperscript{186} The plaintiff appealed; however, the appellate court rejected the plaintiff's arguments, holding that the facts did not support an action for conversion.\textsuperscript{187}

In reaching this holding, the court relied on the fact that "[a] telephone number itself is not tangible property."\textsuperscript{188} The court did consider that various tangible items, such as a bill, might raise the issue of intangible property merging into tangible property.\textsuperscript{189} However, this consideration was not sufficient to satisfy the requirements of conversion.\textsuperscript{190} While tangible documents did reflect the phone number, these documents did "not represent an intangible property interest of value."\textsuperscript{191} In other words, theft of these documents did not cause the owner to lose his phone number.\textsuperscript{192}

The court also stated that any missed telephone calls were not a proper basis for liability based on conversion.\textsuperscript{193} The key to reaching this conclusion was that the court could not calculate or approximate a value for these calls.\textsuperscript{194}

\textit{Rotstein} does not place an obstacle in Gary Kremen's quest to expand conversion law. The initial similarity between the two cases arises because a domain name is a means of connecting to a location, just like a telephone number. In addition, Kremen obtained his domain name via both

\begin{thebibliography}{99}
\bibitem{181} Id.
\bibitem{182} Id.
\bibitem{183} Id.
\bibitem{184} \textit{Rotstein}, 2002 WL 691458, at *1.
\bibitem{185} See \textit{id}.
\bibitem{186} See \textit{id}. at *2.
\bibitem{187} See \textit{id}. at *2, *5.
\bibitem{188} \textit{Id}. at *6.
\bibitem{189} \textit{Id}.
\bibitem{191} Id.
\bibitem{192} See \textit{id}.
\bibitem{193} Id.
\bibitem{194} See \textit{id}.
\end{thebibliography}
“electronic and registered mail to Network Solutions, Inc. . . .”¹⁹⁵ Thus, there was a tangible representation of his intangible intellectual property, like the telephone number in Rotstein.¹⁹⁶ Unlike the tangible representation in Rotstein, the theft of Kremen’s registered or electronic mail would rob him of “an intangible property interest of value.”¹⁹⁷ The theft would prevent the domain name registration from occurring. In addition, the thief would hold the name in his hands, as well as the opportunity to register it. Furthermore, people could still contact Rotstein even without using a phone number. They could send him a letter or simply speak to him in person. Kremen, on the other hand, lost the only method for people to reach his business. People had no means of accessing Kremen’s website via their internet browsers.

Arguably, this scenario for the plaintiff in Rotstein presents the same result of inaccessibility to one’s business by different means employed by Stephen Cohen. Essentially, Cohen’s fraudulent letter of Kremen’s relinquishment of the domain name destroyed the property interest Kremen originally created by registering the name. Since Kremen had yet to develop the content of his proposed website, these registration documents may have been the only representation of the valuable commodity of “sex.com.”

Another significant difference between Rotstein and Kremen is that Kremen’s commodity could be valued,¹⁹⁸ unlike the telephone number in Rotstein.¹⁹⁹ As such, Kremen may avoid the concern the Rotstein court raised about telephone numbers being an improper basis for liability in considering the expansion of the tort of conversion.²⁰⁰ Furthermore, a domain name owner cannot regain the value of his property simply upon its return, unlike a telephone number. Stephen Cohen’s creation of an adult content site attaches both a stigma and reputation to the site. Few web surfers previously looking for Kremen’s health conscious site would ever return. The majority of hits would most likely be previous viewers of Cohen’s site returning for more. Therefore, a domain name satisfies all the points set forth in Rotstein in favor of expanding conversion, while steering clear from the issues that kept the Rotstein court from doing such.

¹⁹⁷. Id.
¹⁹⁸. Xuan-Thao N. Nguyen, Cyberproperty and Judicial Dissonance: The Trouble with Domain Name Classification, GEO. MASON L. REV. 183, 184 (2001) (citation omitted).
²⁰⁰. See id. at *5–*6
C. Addressing the Policy Concerns of Kremen

The Kremen court cited, without developing, expanding, or responding to, the precise policy arguments previously raised in Moore v. Regents of the University of California.\(^{201}\) There, plaintiff John Moore similarly brought a cause of action for conversion against The Regents of the University of California, as well as several other defendants.\(^{202}\) However, intellectual property was not at issue. Instead, Moore claimed that the defendants converted his own cells and the rights to them.\(^{203}\)

Moore suffered from hairy-cell leukemia and, as a result, sought treatment at the University of California Medical Center at Los Angeles.\(^{204}\) The doctors at the facility, also named defendants, first diagnosed Moore based on samples of "blood, bone marrow aspirate, and other bodily substances . . ."\(^{205}\) Simultaneously, the doctors were considering the vast economic gains in certain specific types of blood and blood characteristics.\(^{206}\)

During Moore's treatment, one doctor determined that he should extract Moore’s spleen.\(^{207}\) The doctor convinced Moore that this operation was essential to the preservation of Moore’s health.\(^{208}\) As a result, Moore consented to the operation.\(^{209}\)

Following the operation, one of the doctors excised pieces of the spleen in the interest of research, rather than Moore’s diagnosis and treatment.\(^{210}\) The doctors never brought this to the attention of Moore.\(^{211}\)

Moore’s supposed treatment continued at the medical facility.\(^{212}\) The same doctors sampled more blood, sperm, and other bodily substances under the guise of treatment, while continuing to seek a profitable patent.\(^{213}\) Subsequently, the doctors created a patentable cell line based on the research of Moore and his cells.\(^{214}\) Experts in the field valued the cell line

\(^{201}\) 793 P.2d 479 (Cal. 1990).
\(^{202}\) Id. at 480.
\(^{203}\) Id. at 487.
\(^{204}\) Id. at 480.
\(^{205}\) Id. at 481.
\(^{206}\) Id. at 481.
\(^{207}\) Moore, 793 P.2d at 481.
\(^{208}\) Id.
\(^{209}\) Id.
\(^{210}\) Id.
\(^{211}\) Id.
\(^{212}\) Id.
\(^{213}\) Moore, 793 P.2d at 481–82.
\(^{214}\) Id.
at an estimated $3.01 billion dollars. In fact, the doctors profitted from an agreement with Genetics Institute for the "exclusive access to the materials and research performed on the cell line and products derived from it."  

Moore argued that the doctors committed conversion because he owned his cells and the right to decide how a doctor would use them. In addition, Moore did not consent to the doctors' research; the doctors never informed Moore of their intent. Moore alleged that he had an interest in the profitable developments from his cells.

The court, however, failed to agree with Moore. Like the Kremen court, the court in Moore was hesitant to expand the tort of conversion. Similarly, the Moore court raised the same concern as the Kremen court, that expanding the tort would impose an affirmative duty upon those wishing to use the property to determine whether an owner consensually relinquished his property rights. Additionally, the Moore court, like that in Kremen, expressed that its hesitance correlated with the complexity of the involved policies—topics possibly more suitable for legislative determination.

While the decision in Moore ultimately rested on entirely different property issues and statutes, the court set forth the identical policy concerns that the Kremen court relied on years later. However, unlike the opinion in Kremen, the Moore opinion addressed these policy concerns in a dissent by Justice Broussard. While Justice Broussard spoke directly to the issue of human tissues and cells, the principles he developed are applicable to domain names as well.

First, Broussard attacked the majority's position that the expansion of the tort of conversion would cause a chilling effect on medical research. The Kremen court similarly opined that if the tort of conversion were expanded to include conversion of a domain name, the threat of litigation

215. Id. at 482.
216. Id.
217. Id. at 487.
218. Id.
219. Moore, 793 P.2d at 487.
220. Id. at 497.
221. Id. at 487.
222. Id. at 487 & n.16
223. Id. at 488; Kremen, 99 F. Supp. 2d at 1173.
224. See Moore, 793 P.2d at 488–93. See discussion supra Part IV.
225. Moore, 793 P.2d at 504–06 (Broussard, J. concurring and dissenting).
226. Id.
227. Id. at 504.
would slow the entire process of registration to a grinding pace. Domain name registrants would have to locate acceptable domain names and spend increasing amounts of money and time, like the researchers, just to comply with regulations and find an original domain name.

Broussard dismantled this first policy argument, stating that granting summary judgment against a plaintiff who alleges conversion is unjustified treatment of direct interference or misappropriation with the “right to control the use” of his property. According to Broussard, the argument is valid only towards those who obtain materials from a proper cell bank.

Similarly, the Kremen court failed to distinguish between those that obtain their domain name through appropriate registration rather than inappropriate interference.

As a result, an alternative remedy may not always be available to a given plaintiff. In Moore, the alternative remedy of breach of fiduciary duty would not necessarily give the plaintiff a remedy in all situations. For example, that remedy would only be available against the first party to have access to the materials. However, if a subsequent party then stole the materials from the first party, the original owner and donee to the first party would be left without a breach of fiduciary duty cause of action. Thus, the original owner would need a conversion cause of action or he would be left without any remedy.

The analysis in Kremen possesses similar flaws. Here the alternative to conversion, as a cause of action, would be trademark infringement. However, trademark law does not necessarily protect the rights to a domain name. The United States Patent and Trademark Office sets the scope of trademark protections. According to the United States Patent and Trademark Office, “a domain name cannot be registered as a trademark if it functions as ‘merely an informational indication of the domain name

228. See Kremen, 99 F. Supp. 2d at 1174.
229. Id.
230. Moore, 793 P.2d at 504 (Broussard, J., concurring and dissenting).
231. Id.
232. See id.
233. See id.
234. See id.
235. See id.
236. See Moore, 793 P.2d at 504 (Broussard, J., concurring and dissenting).
238. See id.
239. See id.
address used to access a website.'240 This guideline would leave the
domain names of greatest potential worth without trademark rights.241 This
vulnerability results because generic terms are the most valuable
commodities, as domain names, on the Internet.242 For example, websites
that contain generic terms, like sex.com, are the easiest to remember for the
Internet user, and, thus, are highly coveted.243 Unfortunately, the United
States Patent and Trademark Office refuses to allow potential registrants of
these generic names to register them as trademarks.244 Therefore, a future
plaintiff who suffers interference with his domain name (and his rights)
will be without access to a trademark infringement cause of action.

Broussard further argued that the policy, which involves the fear of
chilling the activities of researchers, is unrealistic.245 In Broussard's eyes,
researchers can alleviate their fears simply by going to authorized cell
repositories.246 These repositories only house materials that are removed
subject to patient consent.247 Thus, an action for conversion will not lie
against researchers using the repositories' services.248

The regulations likely to come as a result of the expansion of
conversion to include domain names would lead to an identical result of
greater scrutinizing of domain name registration through a different route.
Faced with the fear of conversion liability, registration organizations like
Network Solutions would take greater care when officiating the registration
process. This increased care would translate to an increase in properly
registered domain names. In addition, increased care would provide for
increased proper domain name relinquishment. If a new registrant sought a
specific name, a more organized system would make sure that the name
had no prior owners. To acquire this certainty, the previous owner should
be contacted to confirm he relinquished a previously registered name—a
gross oversight by Network Solutions in Kremen. Network Solutions is the
party with the greatest resources to take on the task of organizing and
overseeing the domain names. The expansion of the conversion doctrine
would not only place the burden of such tasks upon the proper party, but
also motivate Network Solutions with enough incentive to carry the burden.

240. Id.
241. Id.
242. Id.
243. See Begun, supra note 237, at 7.
244. See id.
245. Moore, 793 P.2d at 504 (Broussard, J., concurring and dissenting).
246. Id. at 504–05.
247. Id. at 504.
248. Id.
Broussard’s second point of contention was that, although some parties may face liability for conversion, they will still have sufficient reasons to continue conducting research. Specifically, the prospect of financial rewards for innovative research will prompt scientists to continue their experiments and tests. Further, since the real value is in the scientists’ work product, not the patient’s bodily substances, a patient will only have access to diminished and limited damages. This result follows from the tort law principle that “a ‘subsequent innocent converter’ does not forfeit the proceeds of his own creative efforts, but rather ‘is entitled to the benefit of any work or labor that he has expended on the [property] . . . .”

Broussard’s criticism is even more compelling when applied to the facts of *Kremen*. Because the website was valued at an estimated $100 million, it is unlikely that potential registrants will be deterred. However, a domain name is analogous to the undeveloped bodily substances of a patient. As such, a court cannot approximate the value of the domain name until the website has content. For example, the $100 million approximation in *Kremen* followed as a result of the 25,000,000 hits a day that the X-rated website operated by Cohen received. Therefore, had Cohen committed the alleged conversion in good-faith, Kremen would not have been entitled to the full $100 million. Instead, Cohen would have kept the returns from his creation. Following this reasoning, only those who willfully convert a domain name will lose their profits in order to deter others from the same culpable conduct.

Justice Mosk’s dissent in *Moore* rounds out the critique of the policy arguments. First, Mosk criticized the argument that any decision about expanding the tort of conversion should be left in the proper hands of the Legislature. He pointed out that the common law created the tort of conversion. Mosk also reminded the majority that one of the greatest aspects of the common law is its ability to adapt to changing societal demands. Tort precedent contains numerous examples of such change.

249. *Id.* at 505.
250. *Id.*
252. *Id.* (quoting 1 HARPER ET. AL., THE LAW OF TORTS § 234, at 234 (2d ed. 1986)).
253. See *Sex.com Site Awarded*, supra note 4.
254. See *Begun*, supra note 237, at 7.
255. See *Sex.com Awarded*, supra note 4.
256. See *id*.
258. *See id*.
259. *Id*.
and expansion.\textsuperscript{260}

\textit{Kremen} and domain names in general could not be any better indicators of changing societal demands. The Internet continues to grow and attract both entrepreneurs and consumers. Many people flock to cyber dressing rooms, bookstores, and libraries in search of products and information instead of the tangible storefronts so coveted by the judicial system. The common law can, and should, follow the people to protect their venturing into new avenues, even super-highways. It must provide the incentive for proper business and economic growth, as well as consumer interest, while deterring those eager to employ culpable conduct for their own gain.

\textbf{D. Even Ninth Circuit and Supreme Court Judges Want "Sex"—Sex.com, That Is}

The United States Court of Appeals for the Ninth Circuit attempted to address the challenging and important questions that Judge Ware left unanswered. The Ninth Circuit heard Gary Kremen’s appeal.\textsuperscript{261} However, the Ninth Circuit posed only questions, not answers, in its decision to order the matter certified to the Supreme Court of California.\textsuperscript{262} The questions offered up to the Supreme Court of California were as follows:

\begin{itemize}
  \item Is an Internet domain name within the scope of property subject to the tort of conversion? (a) For the tort of conversion to apply to intangible property, is it necessary that the intangible property be merged with a document or other tangible medium? (b) If the answer to Question (a) is “yes,” does the tort of conversion apply to an Internet domain name, or, more specifically, is an Internet domain name merged with a document or other tangible medium?\textsuperscript{263}
\end{itemize}

The Ninth Circuit chose to certify the question because of the value that an answer could have on both precedent and public policy.\textsuperscript{264} California has yet to answer these questions under its state conversion laws.\textsuperscript{265} Further, the Internet is the means by which all members of varying social and economic classes may access the world in order to exercise their First Amendment rights. With the ever-growing number of domain names

\begin{itemize}
  \item 260. See id.
  \item 261. Kremen v. Cohen, 314 F.3d 1127 (9th Cir. 2003).
  \item 262. See id. at 1129.
  \item 263. Id. at 1130.
  \item 264. See id. at 1132–36.
  \item 265. Id.
\end{itemize}
and the importance of the Internet as a means of communication and business, those questions can wait no longer to be answered. While Judge Kozinski did correctly point out in his dissent that certifying the question will tax the California Supreme Court’s already sparse resources of time and money, Kozinski incorrectly believes that “[c]yberspace will not implode if the supreme court confronts the majority’s questions at some point in the future . . . .” Carefully making the “lawyerly” choice to use the word implosion does make the result seem unlikely; however, the results of exponential increases in culpable conduct, such as that engaged in by Cohen, as well as exponential increases in suits to remedy this conduct, hardly seem to spare administrative costs or Internet development. In essence, the choice would subsidize Network Solutions by allowing it to expend absolutely no resources to better its registration system. Network Solutions must be held accountable in order for it to recognize its responsibility to protect all domain name registrants. Network Solutions has yet to take on this role, as evidenced by its decision to tell Cohen to contact Kremen, rather than contacting Kremen itself, thus creating the entire problem. In addition, Kremen should hardly be expected to be left to seek recourse from Cohen, a virtual fugitive from justice.

Kozinski does state that the Ninth Circuit can answer these questions, which would still leave the Supreme Court of California with the option to overrule. Nevertheless, that point seems to undermine Kozinski’s judicial resource argument. Essentially, two different courts would then exhaust their resources while handling the same question. Furthermore, the delay created by Kozinski’s dual resource expenditure could also lead to more litigation by other parties. The time has come for the judicial system to embrace the same technology consumers and businessmen have utilized for years.

266. Id.
267. See Kremen, 314 F.3d at 1136.
268. Id.
269. See id. at 1137 n.2.
270. See generally id. at 1142–45 (discussing the alternatives to certifying the question for Supreme Court hearing).
VI. Conclusion

The Kremen court improperly decided to preserve the common law limitations on the types of property protected by conversion law. The established elements of the tort of conversion do not reflect the seemingly never-ending advancements in technology in recent years. The Rotstein court best explained this idea when it stated, "[a]s society became technologically more advanced, the value of intangible property rights became apparent and consequently subject to theft."\textsuperscript{271}

The current limits on tort protection do not address the concerns of either entrepreneurs or consumers. First, the limitations are incompatible with the modern entrepreneur's aggressive investment in the Internet. Large corporations and mom-and-pop stores alike seek daily to expand their clientele by making their businesses and products accessible on the Internet. Without the legal protection of conversion, "[e]ven if [an entrepreneur] is successful in regaining control of the domain name, there is nothing to prevent another person from hijacking the site using the same procedure."\textsuperscript{272} Second, unrecognized conversions of domain names potentially hurt consumers as well.\textsuperscript{273} Consumers have shown a strong interest in e-business.\textsuperscript{274} However, the only way to satisfy their interest is via domain names.\textsuperscript{275} One cannot physically drive to these cyberstores on the Information Super Highway.\textsuperscript{276}

The California Supreme Court now has the opportunity to provide registration organizations with the incentive to run an efficient and secure registration process. Similarly, expanding the protections afforded to potential registrants will provide them with incentive to delve into the Internet. Finally, the expansion will provide individuals like Stephen Cohen with sufficient disincentive to engage in domain name theft and fraudulent conduct. These are the desired results, as it is the wrongdoers like Cohen who should suffer. Furthermore, parties like Network Solutions, Inc., who sit in the best position to stop these incidents from occurring, must be held accountable so that they take advantage of their

\textsuperscript{272} NSI Wins Another One, 5 CYBERSPACE LAW. 27, July/Aug. 2000, LEXIS, News & Business, News, News Group File, All.
\textsuperscript{273} Id.
\textsuperscript{274} Id.
\textsuperscript{275} See generally Yee, supra note 8, at 206–07 (recognizing that although domain names have the potential to make or break a business, competition for domain names is cutthroat).
\textsuperscript{276} See generally id. at 203 (comparing domain names to real estate addresses).
position. As such, the California Supreme Court must expand the tort of conversion to include domain names within the protections afforded to other forms of intangible property.

Eric Kohm*

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