

The Legal Nature of Domain Names under the Civil Law and Jurisprudence - A Comparative Study-

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Abstract

Domain names are fertile ground for conflicting rights, because of their importance on the internet. Due to the roles that domain names play, a big competition between companies and institutions has arisen to get a domain name of their own, hence why a complex economic and service environment has emerged.

With this situation, developing a special legal system, which establishes a new idea, has become essential. The idea is that domain names are like intangible assets, for their economic value and the possibility of possessing them and because they represent an autonomous right of a special nature that can be subject to the right to property contained in the civil code.

Keywords: Domain Name; Identification marks ; The Right of Property.

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1. Introduction

The internet is a global network that has crossed all barriers, and its rapid development created several international and national legal problems. This is due to some legislations' control on this service, which, in turn, has affected the establishment of a legal system for everything related to it. Among the most important elements of the internet are domain names, which are one of the most significant tools. The network can only be entered through the domain name, which belongs to the websites' owners who have registered these names via national service providers or international entities based on rules and basics implemented by these entities. Among these rules, there is the principle of "prior tempore, potior jure" in registration, which has caused several conflicts in the intellectual property field.

Domain names have a special nature, provisions regulating their way of functioning in terms of registration and entities that register these names, as well as goals that these domain names achieve, in addition to many practical and legal problems that manifested after applying the registration procedures. This, as a result, led to the doctrine and jurisprudence division on the legal system of domain names. Questions were raised on the feasibility of applying legal protection systems granted to industrial and commercial property rights, or that the domain name is an autonomous right that legal systems cannot be applied on, due to its unique advantages over the dominant legal ideas. In fact, the domain name is a legal idea that has its own subjectivity, and this is reflected in how it gives its owner a contractual right, based on the nature of the behavior that results in the creation of a domain name property through a contract concluded between the domain name owner and the registration center. In addition to the economic value that it possesses, and that is sometimes considered the main value in attracting customers and the pillar of the company's or institution's reputation. Based on this, the domain name has become a true economic value and is now seen as an asset capable of possession, and this is what established the idea of domain names being subject to the right to property contained in the civil code.

2. Definition of Domain Names

Given the importance of domain names and the position they have acquired in the virtual and real world, as any new element, domain names have attracted the attention of doctrine (part one) and legislation (part two) with the aim of developing a comprehensive definition of them:

2.1. The Doctrinal Definition of Domain Names

The definition of domain names gave rise to a great controversy among the doctrine that led to having varied definitions because of the different vision that jurists rely on while defining the domain name (غنام، 2007، صفحة 9). Therefore, the doctrine was divided between those who took the technical aspect of this name, those who relied on its formation, and those who were interested in its function:

Among the definitions based on the technical nature of the domain name, we find that some jurists defined it as: “a mere conversion or transfer of a group of numbers into letters that form a term that goes along the project or organization name” (غنام، 2007، صفحة 10)¹. Others said that it is “the translation of numbers through certain letters that allow the circulation of information on the internet” (Beaurain & Jez, 2001, p. 20). Supporters of this opinion focus on the technical operation of the transformation of the domain name from letter strings to number strings that enable the transmission of information on the internet. In addition to considering the domain name a mere literal string equivalent to the Internet Protocol Address (IP), which facilitates the remembrance and memorization of these addresses for the internet user.

While the other aspect of the doctrine is based on the formation of the domain name and defines it as “a sign that takes the image of a string of numbers and a string of letters merging. This sign is in charge of detecting

¹ - شريف محمد غنام، المرجع السابق، ص10.

the location of the computer, website, or internet page and it consists of three sections:

1. The first section determines the nature of the entity to be contacted, which is (<http://www.>).
2. The second section represents second-level domains and is denoted by the symbol (SLD), which determines the chosen name.
3. The third section represents high-level domains and is denoted by the symbol (TLD), which determines the classified server, such as: (.com), (.org) (Gola, 2002, p. 54)

Others defined the domain name based on the function it performs. Some defined it as “alternatives to the postal address established to identify a specific person through the Information Network”, while another one defined it as “merely an address for entities, organizations, projects and people that can be reached through it” (غنام، 2007، صفحة 14).

Then, another aspect of doctrine emerged and tried to combine all these concepts and use them to define the domain name. Thus, it defined it as “a group of letters and numbers, or phrases that are used to refer to an address or a computer website used by a natural or legal person on the internet, in order to identify this site and distinguish it from other sites” (هادي، 2005، صفحة 146). The latter definitions came to comprise domain names in general, as they covered the technical and structural aspects, as well as the functions they performed.

2.2 The Legislative Definition of Domain Names

In Act No. (M/17) related to anti-cybercrime, the Saudi legislator defined domain names in the definitions section as: “A Saudi domain name is any Arab or Latin domain name that is within the Saudi top-level domains”. It seems that the Saudi legislator’s definition of the domain name is broadly descriptive and does not cover any aspect of the domain name.

The Syrian legislator also defined it in the definitions section of Act No. (04) related to the e-signature and the Syrian network services, dated: February

25, 2009, as: “a set of alphanumeric symbols with a memorable significance, corresponding to the address of a site on the internet. This name consists of a set of ordinal fields, each two successive fields are separated by a special symbol, which is the dot”. Besides, the Syrian legislator has also brought a definition based on the technical and structural aspects of the domain name, without going into issues that serve the topic.

Like any other legislation, the Algerian legislation does not possess sufficient information on this topic. With reference to most of the public and private laws that deal with such issues, we find them mostly empty from domain names regulations. The Algerian legislator was content with including one text to define the domain name. This was through Act No. (18-05), dated: May 16, 2018, related to e-commerce, specifically the text of Article Six of it. The latter defined it as: “A string of letters and/or of measured numbers registered in the National Center of Domain Names, and which enables the identification and access to the website”. The Algerian legislator presented a simple and short text based on the function of the domain name, despite the novelty of the Act issued in this regard, which was supposed to consider the position that domain names lately take in the legal arena, as hopes were greater for this new Act.

3. Domain Names are Assets in Commercial Articles

The right to property contained in Article (674) of the Algerian civil code No. (75-58) dated: September 26t, 1975, as amended and supplemented, is granted, as it was stated in the text of the above Article that: “Property is the right to enjoy and dispose of things, provided that they are not used in a manner prohibited by law or regulation”. In the same context, Article (544) of the French civil code states that the owner has the power to dispose of his property, in an absolute manner. This means that the right to property grants its owner the exclusive right to use the thing, exploit it and dispose of it on a permanent basis, all within the limits of the law (السنهوري، 2000، صفحة 493). Therefore, it is in the interest of the domain name owner to take advantage of the possibility of claiming it. In order to make this happen, a set of conditions in the domain name must be met to make it

the center of this right in rem, and this will be clarified through the following:

3.1 Domain Names are Intangible Assets in Commerce

Due to the widespread use of the internet and its expansion, domain names have become an absolute necessity for companies and individuals to expand and develop their commerce. It has also become a significant economic value, with the role that domain names perform, which made it acknowledged that they represent an enriching factor to their owner, without neglecting the market-traded financial value. This, in turn, established the idea of considering domain names as an economic value that is regarded as an asset in the legal sense of the word.

The doctrine and jurisprudence have several times contributed to supporting this idea. Since domain names are considered assets, it is certain that they are a special type of asset (part one), and this is what allows them to be included in the rights to property (part two). Domain names also, as any other asset, must enter the field of commerce in order to become capable of possession (part three).

3.1.1 The Domain Name is an Intangible Asset

Since the property is a right in rem, it must be based on a specific asset. Assets, in a physical sense, are defined as something tangible. However, according to the legal sense, immaterial things can be defined as assets as long as they carry value and when the law takes into account the protection requirements resulting for their owner. As one side of doctrine considers that “when the value is useful and rare in the economic sense of the word, it becomes an asset, and when society -through law- responds to the additional preoccupations of reservation and marketing for the immediate owner (Loiseau, 2001, p. 141), the domain name inevitably creates value, while its owner will benefit from legal protection. Thus, the domain name can be considered as an asset, and since it is intangible, then it must be a matter of intangible asset (حسين، 2006، صفحة 208).

The value of the domain name for companies is particularly evident when they are exclusively active on the internet. In this case, the domain name plays the role of the commercial name and the well-known brand and is almost exclusively registered as a trademark. All the intangible elements that are usually dispersed in a company based in the form of a business are concentrated in it. Thus, the domain name is here essential as the only identifier and point of contact with customers, whether it is related to trade or advertising (العطيات، 2011، صفحة 95).

As for other companies, the domain name is a way of extending their activities on the internet, since the latter enables, for instance, to develop the activity of e-commerce, and therefore, the domain name, in this case, possesses an identifier value, in addition to being a source of wealth thanks to the commercial transactions on the internet and the turnover that can be achieved (العطيات، 2011، صفحة 95).

Even the creditors of domain name owners have realized the value of the latter as they now prefer to include them in their pledged collateral. The domain name can therefore be considered real collateral (Boulanger, 2002), which is the case in the United Kingdom on (.uk) domains.

Jurisprudence has also become aware of the value of domain names and is providing them with the necessary protection because they carry a value that must be preserved to their owner. Paris Court of Appeal ruled on October 18, 2000, that “due to the commercial value of the domain name, especially to companies, it must be protected from the attacks to be subjected to” (CAParis, 2000). In another ruling, Nanterre’s trial court ruled that “the domain name can be waived or granted” (TGINanterre, Jurisprudence : Marques, 2000), which was an explicit acknowledgement of the possibility of domain names transformation into a subject of exchange (Manara, observations à propos de TGI Nanterre 20 mars 2000, 2000, p. 287). This is considered a consolidation and recognition of the economic value of domain names (BETTINGER, WILLOUGHBY, & ABEL, 2005, p. 873).

These arguments altogether prove that domain names carry a value that must be legally protected. Consequently, domain names are considered intangible assets that the right to property must be applied to and their owners must get the advantage of their benefits.

3.1.2 The Right to Property of Domain Names as Intangible Assets

Unlike personal right, the right to property is considered an intangible right that is necessarily related to a given asset. We have already seen that the domain name is an intangible asset. Therefore, the permanent debate on the possibility of applying the right to property on intangible assets re-appeared, and here is where the two theories contradict each other.

The first theory considers the right to property related to the thing, i.e., material goods only. This opinion can be justified by the fact that the theory dates back to the era of Roman law when material things had considerable value unlike intangible things. As a result, the law of that era aimed at preserving this value through granting material things an absolute and exclusive right. However, it is not the case nowadays, as tendencies have flipped and some tangible things carry more value than estates and movables (Albrechtson, 2005, p. 31).

This makes the idea of expanding the right to property domain to include intangible assets an urgent necessity that the law must respond to, and this is to avoid conflicts that the law may fall into. Then how can we accept the idea of recognizing proofs of debt that are a support for an intangible asset, which is the debt (Albrechtson, 2005, p. 31). This means that if the domain name can be contained in the right to property, if it had an intangible asset representing it. Domain names have this feature because they have a Domain Name System (DNS) index, in the (whois) card more precisely, which contains all the information related to the possession and management of the domain name. Yet it is important to note here that the rights to property related to intangible assets in the United States of America are subject to the condition of attaching it to a material support. On the occasion of the (tft.com) case, an American court has casually

indicated -although the rule was not particularly about this point- that this material support can be a (whois) card.

A strong basis for recognizing the right to property on the domain name can be found in the second theory, which is completely contradictory to the first theory. This theory extends the right to property to include intangible assets and is supported by the jurists Josserand and Rouast (Albrechtson, 2005, p. 32).

Among the criticisms leveled by the jurists of the first theory is that it resembles between the right to property and the thing, while the thing in law does not possess the nature of the right. Moreover, like all legal authorities, the right to property cannot be material because it has a moral and immaterial character. Therefore, they cannot be merged into one thing, and once the right to property and its object are distinguished, there will be no obstacle to the application of these essential characteristics - real, absolute and objectionable to all- to intangible assets (MAZEAUD, MAZEAUD, & CHABAS, 1994, p. 19).

Supposing that the right to property included an intangible asset, it would not then need to be established by the law and thus “whenever something useful and possessable appears, and that it can be traded in little or a lot of commerce, it objectively turns into an asset and ought to be regarded as such” (Zenati & Revet, 1997).

However, some doctrines deny the condition of exploitation in the domain name under the pretext that its usefulness depends on exploiting it and that the absence of this condition results in the preclusion of the domain name value, which, in turn, leads to its exit from the application of the right to property field (Loiseau, 2001, pp. 145–146). Yet what this doctrinal opinion did not take into account is that the domain name does not derive its value from its exploitation, but rather increases as a result of it. Many domain names have been registered and have not yet been exploited for a single reason, which is protecting them and taking a precautionary measure to confront a bad person that might register the domain name aimed to be protected.

In this regard, the continuity feature of the right to property conflicts with considering the use as a protection condition when the possession of the domain name was not carried out in circumstances that harm the rights of other parties. Since the report of the owner not to use a good that belongs to him, is in itself an exercise of his right to property. As property does not imply a duty to use, but rather a right to use, a domain name, which is considered an intangible asset, cannot be actually acquired unless it is traded in commerce.

3.2 Domain Names are Assets in Commercial Articles

It seems that the domain name, except when it is illegal, can be traded in a de facto commerce (first), and on this basis, the doctrinal opinion that calls for the classification of domain names as a common resource and therefore its inability to be subject to the right to property, can be refuted (second).

3.2.1 The Existence of a De Facto Commerce

Given the value of domain names, their owners perform several contractual operations without questioning the ability to possess the domain name because the answer seemed evident to them. They act as the owner disposes of his asset, which makes it common for domain names owners to enter into contracts aimed at transferring their own domain names or sharing their use with others. These contracts are divided into two: domain names transfer contracts and domain names sharing contracts. (Albrechtson, 2005, p. 33)

While the issue of determining whether the domain name is subject to the right to property is still controversial, it must be recognized that domain names actually get transferred from one owner to another. The transfer operation is done through a negotiated contract between the parties involved or auction.

When two parties agree on arranging the transfer of a domain name, they are usually described -as it is the case in all sales contracts- as the assigner and the assignee. This contract has all the necessary elements stipulated by law, such as determining the thing and the price. Through this

contract, the current domain name owner agrees to give up this name in exchange for a negotiated sum of money, and this way, all the elements of the sale are combined. (Albrechtson, 2005, p. 33)

The development of selling domain names in public auctions shows the economic value of these names. The market for used domain names is so important that some websites have directed their activities entirely towards this speculation on the value of domain names.

Domain name owners usually have the exclusive right to use them, but they may decide to share this right. This type of decision can be expressed through a partnership contract that takes the form of a domain name license, a coexistence agreement or the setting up of a common homepage. In the case of a domain name license, the domain name owner allows the licensee to use the domain name, but the former remains in control of the latter. (Albrechtson, 2005, p. 33)

These contractual transactions reveal the existence of a market for domain names, which are considered intangible assets that are sold and bought at a price determined by the supply and demand, and that is subject to the influence of the scarcity criterion. All familiar components of any market can be found here. To face the reality, the obstacle of those opposing domain names possession is invoked, which is that domain names aren't intangible assets in commerce.

3.2.2 The Domain Name Association with Common Resources

The concept of public resource is associated with the concept of common properties or the so-called (*res communis*). Therefore, common properties are not capable of possession because their use must be available to everyone. Indeed, these properties are subject to Article (682) of the Algerian civil code which states that things that are out of dealing by their nature are those that no one can monopolize their possession, while those that are outside by law can be the subject of financial right as permitted by law.

While institutions and companies have a keen interest in considering the domain names they register as possessable assets. For their part, public authorities are doing their best to counter the pressures of companies by considering domain names a common resource, which results in the exclusion of possessing any property rights.

The frequent talk about common resources when it comes to domain names is because managing the domain name system (DNS) affects the sovereignty of the state. First-level geographic domains represent a common resource that countries want to dominate. Some are generalizing the aforementioned definition on domain names that must be granted respecting the public interest, but the control of the first-level management and domain names must not be confused. For instance (Gola, 2002, pp. 68–70), ICANN has defined the Domain Name System (DNS) as a common resource. Thus, it is not about the direct protection of domain names, but rather the protection of the domain name management system to regulate access to the internet. Therefore, no right to property would be able to cover the structure of this system as neither ICANN nor the entities that manage generic or geographic first-level domains can own these domains (Kaufman, 2001, p. 32).

It can be said that Domain Name System (DNS) and first-level domains are considered a public resource, which enable countries to determine the conditions for granting domain names according to conformity with respect of public interest. As a result, the possession of domain names would not cause any harm to this goal because the country has the power to set conditions for obtaining the property (Kaufman, 2001, p. 31).

Moreover, banning the possession of domain names does not seem necessary, because the latter is only an intangible element in the structure of the Domain Name System (DNS). Indeed, the domain name is not believed to be a public resource. In France, for instance, the Law of Trusts in the Digital Economy issued on January 21, 2003, considered the Domain Name System (DNS) a public resource, while denying this feature of the domain

name (A.Renard, 2001), yet no law has ever dealt with this issue to this day (Kaufman, 2001, p. 32).

However, no matter how domain names were defined as a public resource, possessing part of this resource remains a possibility. In this case, the domain name given to a specific person becomes a possessable part of the public resource represented by the domain name entirely, or domain names also become a possessable part of the first-level domain because the latter is what led to its apparition (BATTISTI, 2002).

Whenever a distinction between the Domain Name System (DNS) and the domain name is made, we will support Gautier Kaufman's opinion that the Domain Name System (DNS) is a structure that can be considered a public resource and thus, becomes unpossessable. While the domain name is the possessable intangible element of this structure, in contrast to the concept of common property "res communis" (Law, 2014), where the domain name represents "the res nullius" (Law, 2014) or those capable of possession. That is, capable of possession by laying hands and can then apply the famous principle prior tempore, potior jure, which means "first-come-first-served" (Kaufman, 2001, p. 32).

4. The Recognition of the Domain Name Right to Property

The law has not explicitly recognized the domain name right to property. However, there are indicators of it, especially if a separation is made between the Domain Name System (DNS), which is considered a common public resource, and domain names, which are an element of this public resource that can be considered res nullius (subsection one), as some doctrines and jurisprudence have endorsed (subsection two).

4.1 The Domain Name is a Res Nullius Protected by Jurisprudence

Since the domain name is res nullius, it can be subject to the prior tempore, potior jure principle until it is possessed (part one), and jurisprudence seems to agree with such an adaptation (part two).

4.1.1 The Application of Prior Tempore, Potior Jure Principle on the Domain Name

Since the domain name is *res nullius*, it is possessed by laying hands. As a result, the first to exercise authority over the domain name, becomes its owner, which is expressed by the principle of prior tempore, potior jure.

On the other hand, the application of this principle to domain names allows the reward of the domain names legal system with the technical rule that governs their grant: the “first-come-first-served” rule, which is the rule applied by ICANN and the national entities for the management of domain names. Even Algeria followed the same path, as stated in the text of Article 7 of the Naming Charter that “domain name requests are processed in the order they arrive at the center of domain names. Algeria.” This is also recognized by European Commission Law No. (874-2004) dated: April 28, 2004 related to the principles of domain names registration with the extension “eu.”.

Therefore, the domain name belongs to *res nullius* for the one who first lays his hand on the network, i.e., for the one who requests its registration. The process of laying one’s hand is not effective, unless the registration of the domain name in the Domain Name System (DNS) database from the registration service provider. It is also possible to later relinquish the domain name and thus, the latter becomes relinquished property and their rights to property (*res derelictae*) can be possessed by anyone (Kaufman, 2001, p. 33).

This principle also allows to settle conflicts related to domain names. Therefore, settling disputes between two plaintiffs who both have a legitimate interest in attributing the domain name to their own interest, gives the principle of prior tempore, potior jure a legal basis for the reservation of a domain name exclusively in favor of the first plaintiff.

At that time, if the second plaintiff registers a domain name similar to the first plaintiff domain name, the risk of confusion concept will allow an assessment of the existence and extent of the damage inflicted on the rights of the second owner. This way, the competition law will not penalize the registration of a domain name identical to another, unless it causes a

misunderstanding among internet users that visit the site. If domain name owners were not competing, the concept of intrusion will allow the punishment of the name that confuses or misleads the customers. Therefore, the hypotheses of electronic piracy would be justified, and resorting to the law of property may allow us to avoid the disadvantages of the Uniform Domain-Name Dispute-Resolution Policy (UDRP) procedure (Kaufman, 2001, p. 38).

The latter procedure is applied until the defendant is punished for registering and using the disputed domain name in bad faith, as it would have been possible for hackers, who do not use the domain name they acquired, to escape punishment. To avoid that, experts have resorted to using the concept of negative use, which can constitute bad faith use. Although use is a term that implies an action, isn't non-exploitation considered non-use?

It is easy to avoid resorting to the weak concept of passive use thanks to the right to property, by relying on the concepts of fraud and abuse. Thus, the registration of a specific domain name to prevent someone else from acquiring it, can constitute arbitrary, as the right to property is not supposed to harm others. Besides that, the registration of a domain name that imitates a brand of someone else to benefit from it thanks to commercial links for instance, can be considered a fraudulent registration which infringes others' rights (Kaufman, 2001, p. 34).

Then, the domain name is a possessable intangible asset, and on the other hand, it seems that recognizing the owner's right to use the domain name came implicitly, through the registration contract, the opinion of jurisprudence and the European legislation. This compels us to recognize that the domain name -although intangible- is subject to the right to property which makes the owner of the name directly related to the thing, according to the previously explained Josserand theory.

Although this opinion has been subject to criticism, it seems to be a valid opinion because the definition of possessable assets can apply to all domain names independent of their extensions- whether they were similar

or local, or through the nature of their use- whether they were commercial or not- and on the other hand, jurisprudence seems to endorse this opinion.

4.1.2 Jurisprudence Supporting the Definition of Possessable Asset

If jurisprudence nowadays tends to define the domain name as a possessable intangible asset, judicial rulings have taken into consideration the exclusive right of the domain name owner and confirmed that the domain name is subject to the right to property. This was somewhat an explicit recognition according to several rulings (Manara, observations à propos de TGI Nanterre 20 mars 2000, 2000, p. 287). The trial court of Nanterre issued a ruling, on March 20, 2000, which infers the existence of a right to property based on the domain name, as the court acknowledged that “the domain name is a brand that can be waived or granted” (TGINanterre, Jurisprudence : Marques, 2000).

In the same vein, the Nîmes Court of Appeal indicated in its decision on June 13, 2002, that “the domain name owner is under no obligation to transfer the property” (CANîmes, 2002). This implicitly proves the existence of a right to property related to domain names.

While on other occasions, the right to property related to the domain name has been more explicitly recognized. We can cite the decision of the Commercial Court of Marseille issued on October 26, 2000 in the case of “marketing en ligne”, where one of its founders registered the domain names (www.marketingenligne.com) and (www.marketing-enligne.com) before its creation. However, after the co-founder stopped working on that company, he sued the latter before the Commercial Court of Marseille to prevent the company from using the aforementioned domain names. The court ruled in his favor that “the employee is considered the owner of both domain names because he had registered them before the company’s creation”. (Manara, Une société peut-elle utiliser le nom de domaine créé par un ancien associé, 2001, pp. 546-547)

Thus, by extrapolating and presenting the position of jurisprudence related to domain names, we find that it recognizes that the domain name is

an intangible asset that can be subject to the right to property. However, this is not the case with law, which leads us to dig deeper to find some indicators that support the idea of the domain name being subject to the right to property.

4.2 The Indirect Recognition of Domain Names by Administrative Doctrine and Collective Law

Despite all the findings of doctrine and jurisprudence in establishing a legal idea that creates a special nature for the domain name, disputes remained concerning the law non-adoption of similar ideas. Yet this has not prevented further research in some laws and legislations to conclude that the domain name is an intangible asset, which accepts to be under the law of property. This can happen in both the administrative doctrine (part one) and the collective law (part two) in France.

4.2.1 Administrative Doctrine

The domain name value is of great importance to companies, as it represents a fundamental value that allows companies to make big profits (Kaufman, 2001, p. 108). These profits deriving from using the domain name can be taxed, and this is the case for France, where we find the French Tax Regulation No. (4 C-4-03 n° 84) issued on May 9, 2009 explaining how to deal with taxation with a domain name, and this is a clear recognition of the French Law of the existence of a property right related to the domain name.

Indeed, extrapolating the third chapter of the regulation related to creating, possessing and registering a given domain name shows that the expenses dedicated to the possession and registration of the domain name must be theoretically registered within the company's assets. Thus, the tax administration considers the domain name a moral confirmation of the movable, that must be registered within the company's assets in exchange for the price of its creation or possession (Kaufman, 2001, p. 108).

Once it is acknowledged that the domain name is a moral confirmation of a movable that must be registered within the company

assets, it is considered a recognition of the possibility of being regarded as a subject of the right to property. Indeed, assets cannot be included in the company's balance sheet assets unless the company owned them or benefited from at least one of the rights subordinated to the right to property. (Cozian, 2004, pp. 82-83)

It seems that French and foreign jurisprudence support this opinion. Concerning France, the Paris Court of Appeal issued a decision on October 18, 2000, which considers the domain name a moral value to the company. While in German, Essen's Trial Court ruled on September 22, 1999 that the domain name can be subject to possessory pledge as it represents - which many creditors sought after- an interesting guarantee due to the sometimes very high value of domain names. Also, this implies that the debtor giving the domain name as a possessory pledge is its owner. (Albrechtson, 2005, p. 41)

4.2.2 Collective Law

Despite the fact that there is no law in Algeria recognizing the existence of a domain name right to property, French Law also does not have any law regulating that. Yet the French legislation is known for integrating the collective law, which is exactly what the collective law implicitly acknowledges -which is binding and is directly applied in French law-, that there is a property right to the domain name (Kaufman, 2001, p. 109).

Indeed, there is the European Commission Law No. (2004- 874) issued on April 28, 2004 relating specifically to the applicable principle in the field of the registration of domain names for the (eu.) domain. This law is limited as it only concerns the European Union extension, i.e., (eu.), and cannot, in any way, be applied on the French first-level domains. However, it is an interesting decision that could lead to finding a legal system to be applied on domain names, and in order for this to happen, the right to property seems particularly appropriate for that.

In its second Article, this law explains that the domain name is “given for the sake of exploitation” and thus, the domain name owner can have the right to use the name. This right, which is the right of use, is one of the rights that are subordinate to the right to property. However, once again, if the domain name owner has the right to use it, then this name has a right to property whether its owner benefited from it or not. (Albrechtson, 2005, p. 41)

Through the extrapolation of doctrinal opinions and various legislative texts to indicate the legal nature of domain names, we conclude that the domain name is an independent right of a special nature that can be subject to the right to property. This is the right opinion that may lead to the establishment of a special legal system for domain names away from contradictions that may arise if we attach the domain name to an element similar to it.

5. Conclusion:

Considering that domain names have become a new and independent legal system away from the concepts established by law, especially with the legal limbo that most of national legislations, international entities, doctrines and jurisprudence are suffering from, it has become important to provide protection for domain names and their owners. This will only be achieved by recognizing that domain names are considered intangible assets, which can be included in the rights to property that can be possessed. Hereunder are the results and recommendations of this study:

First: The development in the use of domain names have made them a major focus of research by doctrine and jurisprudence, which is due to the impact of the domain name on its owner and others.

Second: The domain name has an economic value that makes it possess the status of an asset, but a special asset, i.e., intangible asset.

Third: Domain names system and domain names are two different terms. The first term represents the overall structure, while domain names represent one element of this system.

Fourth: The application of the right to property on domain names greatly reduces the number of disputes and gives optimal solutions to guarantee the right of the owner and others.

Fifth: A legislative intervention in Algeria is suggested to determine the legal system for domain names and not leave the matter as mere terms and conditions.

Sixth: Coordination between all the actors in the domain name field in order to regulate it and solve the existing problems.

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