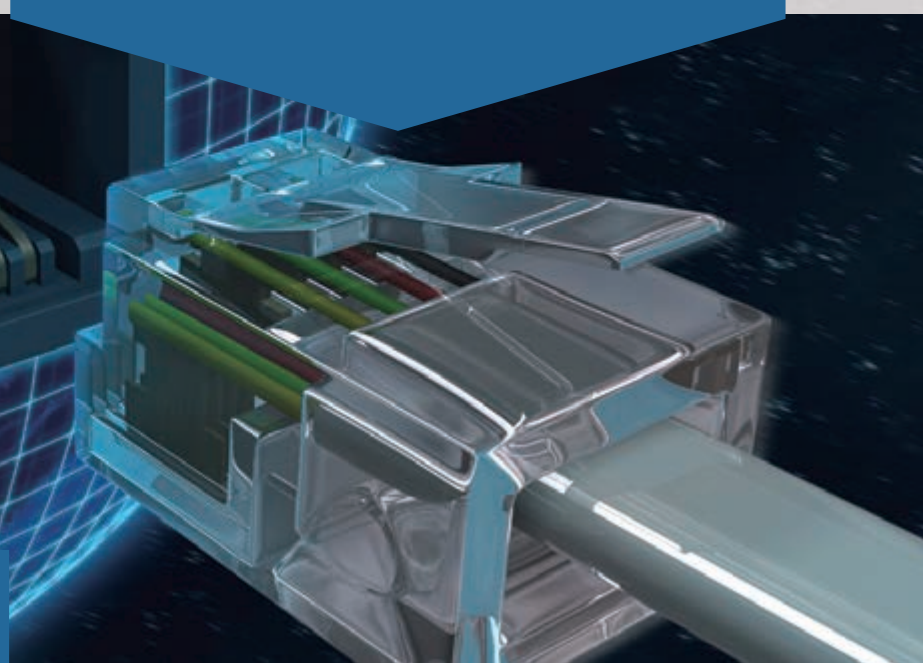




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1. Overview: South-East Asia and the Internet

Internet usage in South-East Asia has increased significantly over the past 10 years. The number of “netizens” varies in each country with Singapore (82%) being the most connected and Myanmar (2.1%) being the least connected (figures from 2014). Estimates for 2016 report remarkable increase in internet users for Cambodia, Indonesia, Myanmar which is consistent with rapid economic growth in these countries. The same ranking among the South-East Asian countries however remains the same, with Singapore and Myanmar having the highest and lowest percentage of penetration respectively. Based on these estimates, Myanmar has had the highest growth in Internet usage, posting a six-fold increase in internet users in two years.

The number of internet users in the South-East Asia region is expected to grow rapidly over the next decade, facilitated by an increasing availability of broadband technology, low cost mobile devices and ease access to wireless internet. Together with the growing trend towards online shopping and purchasing, the internet, therefore, is an attractive business and marketing platform for many European small and medium-sized enterprises (SMEs) working with or within the South-East Asia region.

The internet is an attractive business and marketing platform for many SMEs working with or within the South-East Asia region.

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South-East Asia Netizens	Country Code (TLD)	Internet Users (2003)	Internet Users (2014)	Estimated Internet Users (end 2015)*
Brunei	.bn	19.60%	68.77%	74.2%
Cambodia	.kh	0.26%	9.00%	31.8%
Indonesia	.id	2.39%	17.14%	30.5%
Laos	.la	0.33%	14.26%	14.3%
Malaysia	.my	34.97%	67.50%	67.5%
Myanmar	.mm	0.02%	2.10%	12.6%
Philippines	.ph	4.86%	39.69%	43.0%
Singapore	.sg	53.84%	82.00%	82.0%
Thailand	.th	9.30%	34.89%	55.9%
Vietnam	.vn	3.78%	48.31%	50.1%

Data source: ITU - International Telecommunication Union

(<http://www.itu.int/>)

Estimates taken from Internet World Stats

(<http://www.internetworldstats.com/stats3.htm>)

2. Domain name infringement and associated risks

Although the internet acts as a gateway for European SMEs, it is also an ideal platform for infringers to sell counterfeit products and commit fraud. The internet provides a low-cost method for reaching consumers around the world without revealing the identity or origin of operation, meaning that infringers can operate anonymously.

The classic form of domain name infringement is known as **'cybersquatting'**, whereby a person or entity with no legal rights to a particular domain name consciously (in bad-faith) registers a domain name identical or similar to a third party company name, product name, or trade mark. The cybersquatter is taking advantage of the **first-to-file principle that applies to domain name registrations** (i.e. the first person to file the domain name owns it, regardless of whether or not the brand belongs to them), and is seeking to sell the domain name to its rightful owner at an inflated price.

While cybersquatting continues to be a frequent occurrence, other factors also motivate infringers to register identical or similar domain names to those of third parties. In recent years, **'monetisation'** of domain names has become quite common. Typically, this refers to registering a domain name with misspellings, or typos of famous brands, or company names. The registrant or the **'domainer'** benefits from the traffic generated when people mistype a URL (web address) into a browser. If an internet user mistypes the URL - e.g. www.euroap.eu instead of www.europa.eu - the user reaches the website of www.euroap.eu, where the domainer can place a number of sponsored links. If the internet user then clicks on one of those exposed links, the registrant of the domain name receives a portion of the advertising revenue paid by the advertiser. This practice

of registering domain names with either legitimate attractive generic domains or infringing misspellings of brand names has increased to enormous proportions, and is a key factor in the growth of domain name registrations globally. This is known as **'typosquatting'**.

Cybersquatting and typosquatting may lead to consumer confusion or lost web traffic, as internet users may be directed to either fraudulent websites or your competitor's websites. It could even result in lost e-mails (as registrants of typosquatted domain names may also create e-mail addresses confusingly similar to your already established e-mail addresses) and in some cases can even lead to lawsuits from consumers against (genuine) IPR holders, as they believe they have purchased a product from an authentic source/website. In general, such online criminal activities could lead to brand dilution, increased risks, loss of business, and an eventual loss of reputation (and ultimately profit). The omnipresent nature of the internet means that even EU SMEs operating exclusively in their home markets cannot ignore the risks these activities may pose to their business.

The act of cybersquatting may be legally actionable, and in certain countries (such as the Philippines where specific legislation has been passed to address cybersquatting) may even be considered a criminal offense. Alternatively, cybersquatting may also be subject to intellectual property and brand protection measures, and therefore the consequent penalties where available, in the different countries in the region.

3. Registration requirements and different levels of threats in South-East Asia

The registration requirements for South-East Asia region domain names vary from being unrestricted to all users, to requiring local presence (registered company) and documents to prove company existence. (More details can be found in the below section 'How to register domains in the South-East Asia region').

Should a third party register your company name or trade mark as a domain name under an unrestricted country code (Top Level Domains - TLDs) such as .la (Laos), .ph or com.ph (the Philippines), and .vn or .com.vn (Vietnam), you could potentially face a number of online threats such as counterfeit sales, false affiliation, phishing, slamming, and traffic diversion (full definitions can be found in the section 'Glossary of terms').

The easier it is for third parties to infringe on your trade mark, the more strongly you are advised to register a specific domain name.

The easier it is for third parties to infringe on your trade mark, the more strongly you are advised to register a specific domain name, or even consider registering phonetically similar (i.e. registering "Goggle" domain name for Google search) or similarly sounding domain names, to enhance protection of your online intellectual property. For other TLDs such as com.mm (Myanmar), the registry requires so much proof - such as a contact person identity, proof of company registration, etc. - that the chances of that domain name being taken by a 3rd party are limited.

4. How to register domain names in South-East Asia

Below are a list of the most commonly used South-East Asia region domain name suffixes (Top Level Domains - TLDs) and their requirements. The prices vary from EUR 10 to EUR 130, for a 1 year registration period. Where ccTLD registrations require documents they are listed below.

Country	Top Level Domain (TLD)	Period (min) in years	Requirements
Brunei	.com.bn	1	The registrant must be a company or individual located in Brunei, or otherwise represented by a local company or individual <ul style="list-style-type: none"> • Documents required for domain registration: <ul style="list-style-type: none"> o Companies: Copy of a Brunei company registration and contact details of local administrator, including name, address, telephone number, e-mail o Individuals: Copy of identification and full Brunei address
Cambodia	.com.kh	1	The registrant must be a local company in Cambodia. <ul style="list-style-type: none"> • Documents required for domain registration: A copy of the trade mark license or certificate of the trade mark name issued by the Ministry of Commerce of Cambodia
Indonesia	.co.id	1	The registrant must be an Indonesian corporation. The corporation name must match the domain name OR an Indonesian trade mark, and the name must match the domain name exactly
Laos	.la	1	No restrictions
Malaysia	.com.my	1	The registrant, as a general rule should be an individual or company residing in Malaysia and must submit supporting documents to prove such presence. The submission of supporting documents may be excused in certain cases
Malaysia	.my	1	
Myanmar	.com.mm	1	The registrant must be a company or subsidiary company located in Myanmar. Documents required for domain registration: Business registration certificate, copy of a local ID card from the company's representative, and a recommendation letter authorizing the representative
Philippines	.com.ph	1	No restrictions nor trademark requirement
Philippines	.ph	1	No restrictions nor trademark requirement
Singapore	.com.sg	1	The registrant must be a company located in Singapore, or a company / corporation doing business with Singapore.
Singapore	.sg	1	
Singapore	.சிங்கப்பூர்	1	
Singapore	.新加坡	1	
Thailand	.co.th	1	The registrant must have a registered trade mark in Thailand matching the domain name exactly, or a business licence in Thailand. The domain name must also correspond exactly with the business licence name. Finally, for a foreign company with a representative office in Thailand, the domain name must also correspond directly to the company name
Vietnam	.com.vn	1	Local presence not required, but supporting documents may be required to be submitted
Vietnam	.vn	1	
Asia	.asia	1	No restrictions.

5. Choosing a registrar

Most registry authorities from the respective South-East Asia countries provide lists of accredited registrars or act themselves as official registrars for domain names. It is generally advisable to use accredited registrars whenever possible.

Country	Registration Authority/Official Registry
Brunei	BNNIC (Brunei Darussalam Network Information Centre Sdn Bhd) http://www.bnnic.bn/registrar This link lists the accredited Registrars
Cambodia	Telecommunication Regulator of Cambodia http://www.trc.gov.kh/online-services/ Online application available
Indonesia	Pengelola Nama Domain Internet Indonesia (PANDI) https://register.pandi.or.id/Index/index/lang/en This link lists the services provider for .id domain registrations
Laos	Lao National Internet Committee (LANIC), Ministry of Posts and Telecommunications Registration information not available
Malaysia	Malaysia Network Information Centre (MYNIC) http://www.mynic.my/en/instructions.php Online application, exclusive Registrar for .my
Myanmar	Network Information Centre (sub-office of Myanmar Ministry of Communications, Information and Technology, now renamed as the Ministry of Transport and Communications) http://www.nic.mm/reg.html This link lists the accredited Registrars
Philippines	dotPH http://www.dot.ph/services Official Registry, online application available
Singapore	Singapore Network Information Centre (SGNIC) https://www.sgnic.sg/list-of-registrars.html This link lists the accredited Registrars In addition, online applicants of trademarks have the option to reserve a domain name ending with “.com.sg” or “.sg” via the official trademark application portal www.ip2.sg .
Thailand	Thai Network Information Centre (THNIC) https://www.thnic.co.th/index.php?page=policy Official Registry, online application available
Vietnam	Vietnam Internet Network Information Centre (VNNIC) http://www.vnnic.vn/en/registrar This link lists the accredited Registrars
Asia	DotAsia Organisation Ltd. http://www.dot.asia/asia-registry/becoming-a-asia-accredited-registrar/ This link lists the accredited Registrars

6. Building a domain name strategy

It is recommended that you formulate and implement an online brand protection strategy that is aligned with your general IPR and business strategies. In building the best domain name strategy for your company, you may consider using the following questions as a guide and basis for discussion with your lawyer:

Domain Name Strategy

- What is the purpose of registering a domain name(s)?
Reasons might include:
 - o Protection of IP
 - o Increasing visibility (online marketing)
 - o Infrastructure (e-mails, websites, intranet)
 - o Security (risk mitigation – avoiding lost e-mails, lost traffic, etc.)
 - o Regulatory compliance (pharmacovigilance, product support, etc.)
 - o Customer feedback and relationship.

Domain Name Audit

- Which domain names do we want to register?
- How are these domain names being used or how will they be used by our company? (Web content, e-mails)
- Who is responsible for maintaining the domain names and websites? (in-house or third party).

Domain Name Policy

- Which domain names and keywords should we register?

Monitoring

- Which possibly infringing domain names are registered by third parties?
- Which websites are selling our products or infringing on our brand?



Enforcement

- Should we recover a third party domain name?
 - Anonymous purchase of the domain name.
 - Send 'Cease and Desist' letters threatening legal action.
 - File a domain name complaint.
- Should we attempt to remove an infringing website?
 - Send a 'take down' notification to the hosting provider or the domain name registrar.
- What kind of legal action should we take, if at all?

7. How can an infringing domain name be recovered?

Arbitration has been implemented for domain disputes in Laos, Malaysia, the Philippines, Singapore, and Vietnam, whereas there are no known arbitration for cases in Brunei, Cambodia, Indonesia, Myanmar, and Thailand to date.

The main criteria for proving the right to a domain name is:

- The disputed domain name is identical with, or confusingly similar to your company's name or mark in which the complainant has civil rights or interests.
- The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name.
- The disputed domain name holder has registered or has been using the domain name in bad-faith.

For more details about the local dispute resolution policies(DPR), please find the links to available arbitrations below:

Country	DRP	Link
Brunei	N/A	No domain name-specific arbitration process available
Cambodia	N/A	No domain name-specific arbitration process available
Indonesia	N/A	No domain name-specific arbitration process available
Laos	WIPO	http://www.wipo.int/amc/en/domains/cctld/la/index.html
Malaysia	MYDRP	http://www.mynic.my/documents/MYDRP_POLICY-2013.pdf
Myanmar	N/A	No domain name-specific arbitration process available
Philippines	WIPO	http://www.wipo.int/amc/en/domains/cctld/ph/index.html
Singapore	SDRP	http://mediation.com.sg/business-services/singapore-domain-name-dispute-resolution-services/
Thailand	N/A	No domain name-specific arbitration process available
Vietnam	VNNIC	http://www.vnnic.vn/en/dispute-resolution-policy?lang=en

8. SME case study

Background

A Swedish producer of internet games is a market leader in the development and promotion of online social networking games for teenagers. The company has millions of teenage internet users worldwide, including in South-East Asia.

In 2010, the company registered the names of their most popular games under .cn (China), .kr (Korea) and .jp (Japan), as those were considered the primary Asian markets for their games. It neglected to register its names in the ccTLDs of Vietnam (.vn and .com.vn), Singapore (.sg and com.sg), and Laos (.la).

In 2012, when the company in question realised that they had more than 100,000 users in these three countries in South-East Asia, they subsequently decided that they should register these ccTLDs and promote support services in local languages online, using the local domain suffixes. To their surprise, the domain names had already been registered to third parties.

The company did not have any trade mark registrations in any of the three countries, but had become a famous brand name for social media games for teens worldwide.

Advice

The Swedish company was informed that unlike other countries in the South-East Asia region, Laos, Singapore and Vietnam offer domain name dispute resolution through local arbitration centres. The company was advised to contact a local expert that could assist them in filing the domain name disputes.

The Swedish gaming producer had to prove, for each case, that:

- The domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights;
- The registrant does not have any rights or legitimate interests in the domain name; and
- The registrant registered the domain name and is using it in 'bad-faith'.

Outcome

In two of the cases, it was considered impossible to provide evidence that the domain names were registered and used in bad faith, as there was no content on the websites under these domain names. The company was therefore advised to contact the registrants directly to make them an offer for each domain name. In one of the cases the registrant agreed to sell the domain name for EUR 1,500, which is a typical price for domain names as it corresponds to the amount it costs to file a dispute at arbitration centres.

In the other case, the Swedish company never heard from the registrant, and therefore instead decided to register a longer version of their domain name, by adding the country name "Vietnam" to the domain name.

In the last case, the registrant was found to be displaying a website under the domain name, providing links to the Swedish online game, as well as to other competing online games. This was an evidence of use in bad-faith, and the Swedish company won the dispute, and had the domain name transferred to them. However, the costs of filing the disputes and the costs to the law firm in total amounted to more than EUR 4,000.

Lessons Learned

- Register your domain names in potential future markets in South-East Asia
- Domain names are based on First Come – First Filed
- A domain name registration is typically priced at EUR 50-100 per year, if one uses a larger European domain registrar
- Not all countries in the South-East Asia region offer Domain Name Arbitration
- The price of one domain name dispute typically equals the price of 10 domain names registered for five years



The price of one domain name dispute typically equals the price of 10 domain names registered for few years.

9. Take-away messages

It is recommended that foreign SMEs **actively promote their business in the South-East Asia region by using the local country code top-level domain names (ccTLDs). By defensively protecting domain names, monitoring for infringements, and enforcing their rights, foreign companies can prevent a significant amount of criminal online activities in the South-East Asia region at a reasonable cost.**

By defensively protecting domain names, monitoring for infringements, and enforcing their rights, foreign companies can prevent a significant amount of criminal online activities in the South-East Asia region at a reasonable cost.

You are welcome to contact the South-East Asia IPR SME Helpdesk for free advice about protecting your online IPR in South-East Asia.



10. Glossary of Terms

ccTLD: Country code top level domain. Example: .sg (Singapore)

Counterfeit sales: Sale of counterfeit products using your brand.

Cybersquatting: Registering domain names that are identical to your company's product or trade mark names, with the purpose of selling the domain names back to you (the rightful owner) at a premium price.

False affiliation: Criminals presenting themselves as authorised resellers.

Phishing: Attempting to acquire credit card information, usernames, and a password via electronic communication (fraudulent e-mails containing fake links). The term 'phishing' is a mix of 'password' and 'fishing'.

Slamming: Fraud whereby resellers of domain name registrars contact European companies, claiming that another client of theirs has requested the registration of domain names identical to your

trade mark or company name. Their objective is to encourage you to place a domain name registration using their company, and worst-case scenario would be having access to your credit card information. The advice is to simply ignore such e-mails.

Traffic diversion: In this context, traffic diversion means using a typosquatted domain name to redirect the traffic intended for your website.

Typosquatting: Registering domain names that are either visually similar to your domain name or are mistyped (one key off on the keyboard). Example: If Europe.eu is the domain name, europ.eu could be the typosquatted domain (visually similar); or if Europe.eu is the domain name, Euripe.eu could be the variant (the letter 'i' is next to the letter 'o' on the keyboard, making this a common typo). Omitting or doubling characters are also characteristics of typosquatting.

11. RELATED LINKS and Additional Information

- Visit the South-East Asia IPR SME Helpdesk website for further relevant information, such as how to deal with business partners in the South-East Asia region – www.ipr-hub.eu
- Visit the Helpdesk blog <http://www.yourIPinsider.eu> for related articles on IP in South-East Asia and China.
- International Telecommunications Union – <http://www.itu.int/>
- List of Accredited Registrars, DotAsia Organisation Ltd. – <http://www.dot.asia/asia-registry/becoming-a-asia-accredited-registrar/>
- WIPO Domain Name Dispute Resolution Service for ccTLDs – <http://www.wipo.int/amc/en/domains/ccTld/>

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For more information please contact the Helpdesk:

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For free, confidential, business-focused IPR advice within three working days

E-mail: question@southeastasia-iprhelpdesk.eu

The South-East Asia IPR SME Helpdesk provides free, business-focused advice relating to South-East Asia IPR to European Small and Medium Enterprises (SMEs).

Helpdesk Enquiry Service: Submit further questions to the Helpdesk via phone or email (question@southeastasia-iprhelpdesk.eu), or visit us in person and receive free and confidential first-line advice within three working days from a South-East Asia IP expert.

Training: The Helpdesk arranges training on South-East Asia IPR protection and enforcement across Europe and South-East Asia, tailored to the needs of SMEs.

Materials: Helpdesk business-focused guides and training materials on South-East Asia IPR issues are all downloadable from the online portal.

Online Services: Our multilingual online portal (www.ipr-hub.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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