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THE LAW OF SOCIAL MEDIA AND DOMAIN NAMES

Burshtein and Turco
Release No. 7, October 2026

This publication considers the commercial and legal realities of how trademarks and domain names are used and perceived on the Internet in the context of established trademark and related legal principles. It sets out the history of the technology underlying, and the legal issues relating to, the international domain name system. The publication analyzes whether a domain name is property or some other type of right, and it considers the WHOIS database directory of domain names. The text comprehensively deals with the acquisition and violation of trademark and related rights on the Internet. It also analyzes the many practices and techniques that have emerged on the Internet that, when effected in association with a trademark, trade name or individual name, pose fundamental challenges to the essence of trademark and related laws. These practices and techniques include references to trademarks which are typically the subject of national rights on websites which are available on a global basis.

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What's New in this Update:

This release features a new chapter: Chapter 40. Phishing and Scraping.

Highlights:

Chapter 40. Phishing and Scraping—II. Slamming—§ 40:24. Introduction—The following is an excerpt from this section—Domain name slamming is a deceptive advertising practice in which a domain name registrar or one of its agents solicits the customers of a competitor by way of a communication that looks like a renewal or expiration notice and attempts to confuse the registrant into switching registrars. The term slamming has been used in other contexts, such as in similar competitive practices among long distance telecommunication competitors. Another variation is pushing, namely a communication from a domain name registrar to a trademark owner falsely suggesting that another party is seeking to register domain names comprising the trademark and encouraging the trademark owner to register those domain names or offering keyword services. Foreign Affairs and International Trade Canada has issued a notice about pushing by Chinese registrars. ICANN has published warnings about domain name slamming.

Chapter 40. Phishing and Scraping—III. Scraping—C. Decisions—§ 40:46. Scraping and Artificial Intelligence—The following is an excerpt from this section—The advancement of artificial intelligence has led many organizations to scrape data available online. In *Clearview AI Inc. v. Alberta (Information and Privacy Commissioner)*, the Court of King's considered the legality of Clearview AI's facial recognition tool, which was developed through the "scraping" of billions of images and information – including personal information from individuals in Canada – from publicly available online sources such as social media platforms. In December 2021, the Information and Privacy Commissioner of Alberta order that Clearview cease, among other things, cease collecting, using and disclosing certain personal information (e.g., images and biometric data) collected from individuals in Alberta. Clearview brought an application to judicially review the Order and to challenge the constitutionality of certain aspects of Alberta's *Personal Information Protection Act*. The Court found that the certain provision of the Act violated the Canadian Charter of Rights and Freedoms. The judgment legitimizations data scraping and AI model training from publicly available information on the internet and potential protection of these types of automated processes under the *Canadian Charter of Rights and Freedoms*. The Canadian Legal Information Institute (CanLII), a non-profit founded by Federation of Law Societies of Canada on behalf of its 14-member law societies, operates a legal database. CanLII allows users to access its database of court decisions, legislation, and secondary sources for free, subject to users agreeing to their terms of use which prohibit bulk or systematic downloading. CanLII filed a lawsuit in the Supreme Court of British Columbia in late 2024 against *1345750 BC Ltd. et al*, including a company called Caseway AI Legal Ltd. The claim alleged that Caseway violated CanLII's terms of use by downloading content and data scraping CanLII's website without a licence or permission for commercial gain. In January 2026, the parties announced that they had reached a confidential settlement and operational agreement. There

are also cases pending in British Columbia and Ontario against AI companies related to web and data scraping. Specifically, a consortium of Canadian news organizations (including *Toronto Star*, *The Globe and Mail*, *CBC*, and *Postmedia*) sued OpenAI in late 2024 over unauthorized scraping for ChatGPT training.

