



CYBERLAW CLINIC

Harvard Law School | Berkman Center for Internet & Society

Andrew Sellars
Clinical Fellow, Cyberlaw Clinic
Direct Dial: 617-384-9128
Email: asellars@cyber.law.harvard.edu

Admitted to Practice: MA, NY

April 15, 2016

BY EMAIL (mmclure@web.com) and U.S. MAIL

Matthew McClure
Chief Legal Officer and Secretary
Web.com Group, Inc.
12808 Gran Bay Parkway West
Jacksonville, Florida 32258

Re: Domain Lock of France.com

Dear Mr. McClure,

I write on behalf of our client, France.com, Inc. Our client and its founder, Jean-Noel Frydman, have been customers of Web.com and its corporate predecessors for over twenty years. For reasons set forth below, France.com believes that Web.com has improperly locked its domain name due to a misunderstanding concerning a dispute in another country. We ask that you release the lock immediately so that our client may resume normal operation of its website.

By way of background, France.com, Inc. is an online travel agency directed at Americans interested in traveling to France. It owns the domain name “france.com,” which Mr. Frydman registered through Network Solutions in 1994, when “.com” domain names were first made generally available for commercial purposes. Mr. Frydman and France.com, Inc. have operated the website continuously since its registration, and recently renewed the registration through the year 2026. Over the past two decades, Mr. Frydman has grown the website into one of the most trustworthy and widely-recognized online destinations to book French travel. The site has won four awards from the Government of France’s office of tourism, Atout France, and Mr. Frydman served on Atout France’s U.S. Board of Advisors until September 2015. France.com, Inc. is a Florida company based in Miami.

Web.com appears to have locked the domain name due to a pending dispute that has recently arisen in France over the domain name — though it is quite important to note

that there is no order from that case that would require France.com, Inc. or any other party to lock the domain name, or for any party to presently transfer the domain. After a years-long cooperative relationship between the Government of France and our client, the country considered purchasing the domain name france.com for itself. When it became clear that the government could not afford to pay a fair price, the Government of France instead set out to expropriate the france.com domain name from our client under a completely novel legal theory, which, to our knowledge, has never been asserted by France before. The government petitioned the District Court of Paris under a claimed inherent sovereign right to the domain name.¹ The claims filed in France are highly dubious² and France.com, Inc. has appealed the French court's preliminary ruling in favor of the government. The order of the French court is presently stayed pending appeal.³ No similar action has been brought in the United States.

In the midst of this dispute, France.com, Inc. was informed that Web.com has placed a lock on the france.com domain. We are, frankly, mystified as to why this would be the case. Web.com is not a party to the lawsuit between France.com, Inc. and the French government; Web.com has not been ordered by the French courts to assist in this action; and, as far as our client is aware, counsel for the Government of France did not request that the domain be locked when it notified Web.com of the litigation.⁴ There is no applicable ICANN rule requiring Web.com to take action. Indeed, given the long history Web.com and its predecessors have in this space — and the other country-based “.com” domains it administers⁵ — Web.com is likely fully aware of how unusual the claim is that the Government of France has asserted in this case.

¹ As you likely know, this purported sovereign right to own a country's “.com” domain name does not exist as a matter of ICANN management of the domain system or any other related regulations, and in the 1990s countries were not permitted to register their “.com” equivalents. We also are not aware of any claim like this asserted by France in any other area of law. And critically, the government does not argue that France.com, Inc. has infringed on any intellectual property right by use of the domain name. Indeed, the wordmark FRANCE.COM is registered to France.com, Inc. in both the United States and the European Union. *See* FRANCE.COM, USPTO Registration No. 4,514,330 (United States); FRANCE.COM, EUIPO Registration No. 3,661,596 (European Union).

² This characterization may in fact be too generous. In a parliamentary proceeding, the French Secretary of State for Foreign Trade, Tourism Development acknowledged that France had no valid claim to the france.com domain name. *See 14ème legislature: Texte de la réponse* ASSEMBLÉE NATIONALE (Dec. 2, 2014), <http://questions.assemblee-nationale.fr/q14/14-60102QE.htm> (roughly translated, “[r]egarding the extension ‘.com,’ the absence of any comprehensive international legal framework for Internet domain names does not allow the French government to claim ownership rights for the domain name ‘france.com.’ In fact, an American company having registered ‘france.com’ in 1994 could not be compelled to cede it to the government of France, since the only applicable regulations for the generic domain name ‘.com’ defined in the beginning of the 1990s were those of ‘first come, first served.’”).

³ Cour d'appel [CA] [regional court of appeal] Paris, 2e ch., Dec. 29, 2015, RG n°15/24810 (Fr.). For the lower court opinion, *see* Tribunal de grande instance [TGI] [district court] Paris, Nov. 27, 2015, RG n°14/08237 (Fr.). We would be willing to provide a translation of the lower court opinion upon request.

⁴ Web.com was first notified of the litigation by counsel for the French government on April 15, 2015 by email. We would be happy to produce a copy of this correspondence upon request.

⁵ Based on WHOIS information, it appears that usa.com is registered under a Web.com subsidiary, and owned by the private company World Media Group. Most foreign nations do not own the rights to their

We understand that Web.com would be concerned about any court decision that may impact their operations in the United States,⁶ but even if the French courts issue a final order in favor of the Government of France overseas, the judgment will not take automatic effect in the United States. Indeed, were the government to attempt to enforce the French judgment through a United States court, there would be numerous grounds to challenge such enforcement. Under principles of comity, United States courts have the *option* to recognize such judgments, and historically do not when doing so would raise constitutional or public policy issues, as they certainly do here under either free speech or takings theory.⁷

The case in France may take over a year to resolve, and in the meantime our client's day-to-day operation of its website has been seriously hampered by the lock that Web.com has imposed, without any basis for doing so. (Mr. Frydman has attempted to explain and resolve this within the normal channels of Web.com's customer support, but has not been placed in contact with a person with sufficient authority to resolve this matter.) We hope that you will choose to respect your longstanding customer's rights and decades of business, rather than pander to a groundless foreign legal theory that would afford the Government of France more privileges in the United States than the United States government itself enjoys. France.com, Inc. deserves to retain the ability to administer its website during the pendency of these legal proceedings without the impediment of a lock on its domain.

We therefore request that you promptly unlock the france.com domain and allow my client to continue normal operation of the website. Of course, if you would like to discuss this matter further, please do not hesitate to contact me. I look forward to your timely response.

Sincerely,



Andrew F. Sellars
Clinical Fellow, Cyberlaw Clinic
Harvard Law School

second-level ".com" domains, including: Brazil, Canada, China, Denmark, Egypt, Germany, Greece, India, Japan, Mexico, and Turkey.

⁶ By our review, Web.com is an American company, without any significant assets in France that would subject it to French jurisdiction. And again, there is no French order currently commanding that any entity lock france.com.

⁷ See *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005) (affording First Amendment protections to domain names that do not cause public confusion); *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003) (holding that domain names are property subject to conversion statutes); *Horne v. Department of Agriculture*, 135 S. Ct. 2419 (2015) (holding that personal property deserves equal protection to real property under the Takings Clause); *Yahoo!, Inc. v. La ligue contre le racisme et l'antisemitisme*, 169 F. Supp. 2d 1181 (N.D. Cal. 2001) (declining to enforce French order imposing content-based regulations on web pages, which violated public policy and fundamental notions of fairness) (reversed on other grounds).