

Newsletter No. **20**

Swiss IP News We provide you with updates on new decisions, the relevant legislative process and other trends in the fields of intellectual property and unfair competition law from a Swiss perspective.

walderwyss attorneys at law



By **Michael Lysakowski**
MLaw, Attorney at Law
Associate
Phone: +41 58 658 52 48
michael.lysakowski@walderwyss.com



and **Markus Frick**
Dr. iur., LL.M., Attorney at Law
Partner
Phone: +41 58 658 56 27
markus.frick@walderwyss.com

Blockchain Domain Names and Risks Associated Therewith

Comparable with the importance of traditional domain names for today's Internet, with the rise of Web 3.0, blockchain domain names will become a vital aspect of the intellectual property strategy of businesses. We therefore looked at what blockchain domain names are, what purposes they serve, what risks are associated with them, and what obstacles exist for enforcing rights in blockchain domain names.

The Need for a Wallet in Web 3.0

The next stage of the Internet – Web 3.0 – requires a “wallet”, e.g. “MetaMask”, to enjoy its full functionality. In Web 3.0, your wallet ensures that you can manage, store, transfer, and receive your crypto assets. For this, each wallet has an address. These addresses are long, difficult-to-remember combinations of numbers and letters, and not very user-friendly. An address, for example, could look like this: “bc2qs607d6qeitdg7y5r2zbrvary0c5b”.

Transactions between two wallets require the correct reproduction of addresses. It is easy to produce number spins and incorrect entries. Thus, in practice, users copy-paste wallet addresses. However, there is a risk of malware that modifies cached addresses unnoticed. In other words, the alphanumeric wallet addresses are unpractical and pose a risk to a user's crypto assets. Blockchain domain names aim at mitigating these risks. They not only simplify the use of wallets but can serve as website addresses in Web 3.0 as well.

What is a Blockchain Domain Name and Which Purpose Does It Serve?

Blockchain and traditional domain names are both text strings that function as signposts to a location on the Internet. You can recognise blockchain domain names based on their extensions such as

“.crypto”, “.nft”, “.blockchain” or “.eth”. Traditional domain names utilize the centralised Domain Name System (“DNS”). In the DNS, the domain name is linked to an Internet Protocol (“IP”) address. The IP address is associated with the web server that hosts the website. If you search for the traditional domain in your browser, the DNS looks for the matching IP address and displays the hosted website.

In contrast to traditional domain names, blockchain domain names are non-fungible tokens (“NFTs”). They are distributed by blockchain domain name services, e.g. “Unstoppable Domains” or “ENS”. Whereas traditional domain names are leased, blockchain domain names are purchased. It is therefore possible to buy and hold blockchain domain names as assets and transfer them as NFTs to another wallet. Further, instead of utilizing the DNS, blockchain domain names link a Web 3.0 wallet address or a website hosted directly on a blockchain (usually the content of blockchain websites is stored on the InterPlanetary File System [“IPFS”] – a decentralised peer-to-peer Internet system). In doing so, these websites can work in a decentralised manner.

In summary, blockchain domain names replace and simplify the use of user-unfriendly alphanumeric wallet addresses and facilitate access to Web 3.0. Decentralisation ensures that no single entity controls the blockchain domains. Since

websites that are hosted directly on a blockchain are decentralised (and not provided by a single server as within the DNS), it is nearly impossible to block or censor such websites.

Reasons for and Risks Associated with Blockchain Domain Names

Blockchain domain names are not yet as popular as traditional domains. Not all wallets support blockchain domains and browsers still require add-ons to support them. Search engines are not designed to find blockchain domains. They are also a rather new phenomenon; thus, it is unknown which blockchain domain name providers will prevail.

Traditional domain names are distinctive signs and form the core of the Internet presence of a business. On the Internet, domain names are thus of crucial importance. The value of a sign, i.e., a trademark, is diminished if the corresponding domain name is not available. With the rise of Web 3.0, the demand for blockchain domain names will increase. They are a new form of distinctive signs and will become a vital aspect of the intellectual property strategy of businesses. It might be reasonable to consider a blockchain domain name strategy and obtain a suitable blockchain domain name, as long as it is available at a moderate price.

If a blockchain domain name is not secured in due time, there is a risk of cybersquatting. Third parties could register blockchain domains for trademarks to which they do not have any rights. Unauthorised third parties and cyber-criminals might operate a fake Web 3.0 website to benefit in Web 3.0 from goodwill associated with a company's business.

Enforcing Your Rights in Blockchain Domain Names

Swiss law neither explicitly regulates traditional nor blockchain domain names. This does not mean that domain

names exist in a legal vacuum. Traditional and blockchain domain names alike should be protected by unfair competition, name, trademark, or company law. However, due to the special nature of Web 3.0, enforcing rights in blockchain domain names is rather troublesome, and due to the decentralised setup of the blockchain several obstacles must be considered.

Blockchains are designed to be immutable. They have not been designed with the intent to implement legal remedies like injunctions. Once deployed on a blockchain, NFTs cannot be destroyed. In theory, this could be omitted by sending NFTs to inaccessible "null addresses". Nevertheless, the NFTs would remain visible on marketplaces. Moreover, the power to transfer an NFT to a null address lays only with the owner of the wallet associated with the NFT. There is no centralised entity that could enforce a court order.

Whereas bodies like SWITCH, EURid or ICANN govern traditional domain names, no such governance exists for blockchain domain names. Furthermore, for traditional domains, the Uniform Domain-Name Dispute-Resolution Policy is in place. The World Intellectual Property Organization offers a dispute resolution mechanism via the WIPO Arbitration and Mediation Center. For blockchain domain names, such instruments are not available. However, the providers of blockchain domain names seem to acknowledge these shortcomings. Some of the providers have issued lists of the names and marks of well-known companies and brands for purchase only by the rightful owners. However, only the providers determine which names and marks meet the criteria to be listed. There might also be disputes over who the rightful owner is.

Finally, it is unclear against whom legal action should be taken. The names and addresses of the owners of blockchain domain names are not publicly available.

It is not only unclear who the right party to sue is. Also, questions regarding jurisdiction remain unanswered. To what extent the blockchain domain name providers/marketplaces, the hosts of the IPFS, or the browser providers themselves could be targeted by enforcement actions is unclear. The nature of blockchain does not enable them to delete the infringing blockchain domain name once the NFT has been sold and transferred. There are thus numerous unanswered questions about the enforcement of rights in blockchain domain names. In any case, the first step should be sending a warning letter to start a dialogue to find a solution with the potential actors and inform them about a suspected infringement. How all the obstacles will be tackled by legal practice and the courts remains to be seen, as there is no case law yet.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

© Walder Wyss Ltd., Zurich, 2023