A Puzzle

- Domain names are heavily regulated. Search keywords aren’t. Why?

- Commonalities
  - Both systems match database entries
  - Navigational aids for searchers
    - Prime location creates substantial value
    - Omnibox
    - Wildcarding
  - Administration by private organizations
Domain Name-Specific Regulations (US)

- **Federal Laws**
  - Anti-Cybersquatting Consumer Protection Act
    - Trademark protection (15 USC § 1125(d)(1))
    - In rem jurisdiction (15 USC § 1125(d)(2))
    - Personal name protection (15 USC § 8131)
    - Domain name registrar/registry immunization (15 USC § 1114(2)(D))
  - Fraudulent Online Identity Sanctions Act
    - Enhanced IP remedies (15 USC § 1117(e); 17 USC § 504(c)(3); 18 USC § 3559)
  - Truth in Domain Names Act (18 USC § 2252B)
    - Misleading domain names leading to obscenity/porn
  - Dot Kids Implementation and Efficiency Act of 2002
  - Proposed: Combating Online Infringement and Counterfeits Act (COICA)

- **State Laws (selected)**
  - State anti-cybersquatting laws (including CA, HI, LA, NY, UT)
  - State anti-political cyberfraud law (CA Elec. Code §18320-23)
  - State anti-spam/anti-phishing laws
  - Sex offender registrations (tied to violations of 18 USC § 2252B) (including IA, MD)
  - Proposed: NY S953 restricting domain name sales to terrorists

- **Private regulations**
  - Ex ante: allocation controlled by centralized bodies with complex governance structures
  - Ex post: UDRP
Keyword-Specific Regulations (US)

- **State law**
  - Alaska 45.45.792 to 798

- **Search engine private ordering**
  - Yahoo and MSN allow TM owners to block competitive keyword buys
  - Google allows TM owners to block TM references in ad copy
Contemplating the Dichotomy

- **Distinguishing attributes**
  - Domain names also are part of email addresses
  - Domain names are “property”
    - Domain names aren’t easily shared
    - Domain names allocated on first-come/first-served basis for fixed price

- **Legislation codifies time-limited assumptions about technology**

- **Possible regulatory implications**
  - Option #1: Regulate search keywords like domain names?
  - Option #2: Deregulate domain names?