



Eminent domain name

When Netpreneur Gary Kremen jumped the digital gold rush and wangled rights to the domain name "sex.com" in May 1994, he envisioned online riches. The Stanford Business School grad started to sketch a business plan for an adult-oriented Web business, and the millions of hits (and dollars) that would come with it.

Instead, porn impresario Stephen Michael Cohen presides over a cyber fortune at sex.com, which boasts more than 10 million paid subscribers, at \$25 each, and is ground zero to a swarm of \$1 million banner ads from X-rated merchants.

In a federal court in San Diego on Feb. 3, attorneys for Kremen and Cohen faced off again in one of the Internet's longest and most lurid lawsuits. (A "protective order" issued during that session bars participants from speaking on the case.) Kremen claims in a 1998 complaint that Cohen stole the rights to sex.com in late 1995 with a forged letter and that domain-name registrar **Network Solutions** (nasdaq: **NSOL**) unwittingly let it happen. In the process, Kremen says he was cheated out of millions in e-commerce sales, setting into motion a series of suits and countersuits that read like a trashy Jackie Collins potboiler. Kremen is seeking millions in unspecified damages from Cohen and NSI. A jury trial is scheduled June 11 in U.S. District Court in San Jose.

"In the category of sex, lies and videotape, this case has it all--bankruptcy, fraud, pornography, forgery, offshore holdings, deep pockets, dirty tricks, depositions in six foreign cities and a bitter dispute over rights to a multimillion-dollar domain name," says Ellen Rony, coauthor of *The Domain Name Handbook*.

Internet experts estimate 86% of sex-related business on the Web passes through sex.com, making it a more valuable commodity than Business.com, which recently sold for \$7.5 million to eCompanies. "Sex.com is the most coveted domain name," says John Zehr, a former cybersquatter who sells generic Web addresses in Jackson, Miss. "Every day, millions of teenage boys punch in 'sex' as soon as they go online."

And millions eagerly pay for the right to leer at unsavory content. Kremen has likened Cohen to a land baron who inveigled his way into prime real estate with a fake deed--such are the vagaries of cybersquatting in the information age. "This is insane," Kremen, 36, of San Francisco, said in an earlier interview. "It is so sad I have to fight this. Cohen and NSI are trying to ruin my life. Grrr, this makes me angry."

Cohen scoffs at the accusation, characterizing Kremen as a lawsuit-happy "nut" who missed out on the sex.com boom. "The only thing I can tell you is there will be plenty of litigation against Kremen and others for defamation," Cohen snarled in a lengthy telephone interview from his office in Tijuana, Mexico, on Feb. 2. "I've never met [Kremen] or his attorney. But they sure came up with one a hell of a story."

Indeed, Charles Carreon, who is Kremen's third attorney on the case, details a Byzantine web of deceit, corporate indifference and greed.

Carreon claims Cohen--who served 18 months in Lompoc (Calif.) Federal Correctional Institution in 1993-95 for bankruptcy fraud, obstruction of justice and related charges, according to court records--finagled NSI into surrendering "sex.com" through the use of a forged letter from Kremen's company, Online Classifieds. Kremen says he didn't know of the Oct. 15, 1995, letter, and Cohen soon transferred the coveted Web address to Sporting Houses Management, a now-defunct Nevada company that eventually morphed into Ocean Fund International in British Virgin Islands, according to Carreon. Cohen, who is in his early 50s, purportedly splits time between the British Virgin Islands, Mexico and Nevada.

The far-flung enterprise repeatedly changed physical addresses, but its web address, Sex.com, and its content--a den of sordid, sexually explicit Web sites--remained the same. And from all accounts, it is the cornerstone of a smut empire that rakes in up to \$400 million a year.

Muddying matters is the role of NSI, the world's largest domain-name registrar with a market cap of \$9.3 billion. Carreon says the Herndon, Va., company, which has been roundly criticized in Internet circles for its reluctance to cede its monopolistic powers, unintentionally abetted Cohen with its refusal to protect domain names from "theft"

and "mistaken transfers." NSI policy imposed in July 1995 requires that disputing parties settle their differences.

"Why can't Network Solutions admit it made a mistake?" Kremen asks. "I've spent \$500,000 of my own money trying to correct their mistake."

"Cohen has devised a brilliant strategy. He stole sex.com and now is ripping off other porn businesses with trademark-infringement suits and stealing from customers by not delivering content," says Carreon, who was in San Diego to tape a video deposition of Cohen on Feb. 3. "He's a piece of work."

Cohen huffily dismisses Carreon's story as "scandalous series of inaccuracies." He calls Kremen a Johnny-come-lately opportunist, who staked his claim to "sex.com" more than a decade after Cohen had secured the trademark rights in 1979 as part of The French Connection electronic bulletin-board for "swingers" and "nudist camps." Further, he accuses Kremen, whom he has never met, of falsifying paperwork to incorporate Online Classifieds in a desperate effort to land the "sex.com" moniker. "The only one guilty of forgery is Gary Kremen, whoever he is," Cohen says.

Kremen denies the charge: "[Cohen] is a scoundrel attempting to obfuscate the issue," he says, pointing out that there was no dot-com in 1979, thereby deflating Cohen's claims to trademark rights to sex.com. (Cohen's attorney, Leonard DuBoff, did not return phone calls.)

NSI attorney Philip Sbarbaro and company spokeswoman Cheryl Regan declined to comment. But NSI officials assert in court testimony that domain names are not personal property and that Kremen waited four years to sue after applying for sex.com. In a motion filed last month, the domain-name registrar sought a summary judgment. U.S. District Court Judge James A. Ware is expected to issue a ruling in late February.

Mark the date as just the next stop in a wending legal battle that could extend into next year. Both camps are willing to fight over sex.com for a long time.

"Cohen has deep pockets (an estimated \$17 million in annual salary plus millions of dollars worth of stock options) and is willing to protect his property in court," Rony says. "But Gary has persistence and moral outrage." (Kremen said he planned to present sex.com as a "JoeyIn Elders/Dr. Ruth-like" site for advice.)

Like Cohen, Kremen also has ample financial resources: He sold Match.com, the online dating service he founded in 1995, for \$6 million to **Cendant** (nasdaq: **CD**). Cendant, in turn, hawked Match.com to **Ticketmaster** (nasdaq: **TMCS**) for \$50 million.

"This ugly mess could go on for years," muses Carreon.