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The Great Language Land Grab

By BEN ZIMMER

When tech companies engage in legal squabbles about who gets to use our everyday words, what are ordinary speakers of the language to make of it all?

Microsoft is suing Apple, and Apple is suing Amazon, all over the right to use a simple two-word phrase: "app store." Apple got there first, introducing its App Store in July 2008 as a marketplace for mobile applications. In January, Microsoft disputed Apple's trademark claim, arguing that "app store" had already become a generic expression. And last week, Amazon announced its own "Appstore" for Google's Android devices, prompting an infringement suit from Apple.

It's not the first time the tech industry has claimed commonplace language as its own.

Facebook has been notorious in this regard, filing trademarks on an array of common four-letter words: "like," "wall," "poke" and, naturally, "face" and "book." Last year, two small Internet start-ups, the travel site Placebook and the educational site Teachbook, learned the danger of using "book" for online services when Facebook's lawyers came calling. (Placebook renamed itself, while Teachbook continues to fight it out.)

Microsoft, of course, has long been playing this game by fiercely upholding prosaic brand names like Windows, Office and Word. The Linux-based operating system Lindows, for instance, agreed to change its name (to Linspire) in 2004 after years of wrangling over whether "Windows" was generic. Now, in the "app store" dispute, the shoe is on the other foot, with Microsoft taking the role of language loosener.

According to Christopher Johnson, a branding expert who runs the Web site the Name Inspector, "there's a land grab going on" in the information economy, as "companies are trying to snatch up pieces of our cultural commons." He lays much of the blame on the increasing scarcity of available names, whether for trademarks, domain names or Twitter handles.

Laurel Sutton, co-founder of the branding company Catchword, said she believed that the United States Patent and Trademark Office is "about five Internet years behind the times" in

its willingness to allow companies like Apple to stake claims to generic words and phrases. "All kinds of stuff gets approved that probably shouldn't have," Ms. Sutton said. If Apple's trademark is upheld, she reasons, it won't harm the bottom lines of Microsoft and Amazon — but smaller companies could be hurt. "This type of appropriation of language is only going to continue unless the U.S.P.T.O. realizes the potential for damage," she warned.

For what it's worth, the facts in the "app store" cases don't look terribly promising for Steve Jobs and his fellow Cupertino visionaries. "App" has been used by the computing crowd since at least 1985 as a short form of "application." And as Microsoft lawyers were happy to point out in the January filing, Mr. Jobs himself has used "app store" in a generic manner. In a conference call with analysts last October, he was quoted as saying that "Amazon, Verizon and Vodafone have all announced that they are creating their own app stores for Android." Blithely pluralizing "app store" like that is no way to protect a trademark that is supposed to be distinctive.

Though I don't have a dog in this fight, Microsoft also quoted me in its brief, since as chairman of the American Dialect Society's new-words committee I was responsible for making the announcement that "app" had been selected as the society's 2010 word of the year. That ended up being another quiver in Microsoft's bow, demonstrating how widespread the terms "app" and "app store" have become.

No matter the outcome of this dispute, you don't have to worry that Apple's lawyers will pound on your door with a cease-and-desist order if you mention that you want to download Angry Birds from an "app store" lacking the Apple seal of approval. "This is not something that the general public needs to get bent out of shape about," said Jessica Stone Levy, a Denver-based trademark lawyer. "This is really corporate maneuvering."

The greater concern among Silicon Valley observers is the vast amount of time and money that these companies are spending in trademark proceedings that may amount to little more than gamesmanship. Rather than fighting over little words, the innovators of the Information Age could be busy, well, innovating.

Techman: What's good for AT&T could be bad for consumers

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Two things happened in the world of tech last week that caught TechMan's attention -- one good and one bad.

Let's save the good for last.

Last Sunday, AT&T Wireless announced that it had agreed to buy T-Mobile's U.S. cell phone business from Deutsche Telekom for \$39 billion.

If the deal is approved by U.S. regulators, it will be good for AT&T, which has been staggering under increasing data demand due to brisk sales of the iPhone and a boom in smartphone data use. By acquiring T-Mobile and its spectrum, AT&T can immediately expand its data network capacity without having to wait for the U.S. government to auction more rights to the airwaves.

It also can quickly increase its coverage by acquiring T-Mobile's existing cell towers rather than having to build its own, a slow process made even slower by the fact that the residents of many areas don't want cell towers in their backyards.

AT&T has been known for spotty coverage, especially in New York and San Francisco, both places where it is very hard to get real estate for new towers.

AT&T also would be picking up all of T-Mobile's existing customers, giving the combined company about 125 million subscribers in the U.S and making it the No. 1 carrier. The next biggest would be Verizon with 94 million and a distant third would be Sprint with about 50 million.

Loser in the deal is the average Joe paying the outrageous fees that carriers charge in this country. In other words, Mr. and Mrs. Consumer, the people who so often seem to get the shaft when corporate dinosaurs mate.

Why? Because the deal will further concentrate an already highly concentrated industry. Right now the average person has five choices of cellular carriers. That falls to four once T-Mobile is absorbed.

Now let's go back to poor little Sprint sitting there in third place nationally. One reason AT&T chose T-Mobile is that they both have the same type of network -- GSM. Verizon has a different type -- CDMA -- the same as Sprint.

All of the sudden, Verizon finds itself lagging AT&T in customers and there sits Sprint with 50 million customers and a CDMA network. It doesn't take that much of a leap to see Verizon gobbling up Sprint.

Then we would have one less option.

Sprint aside, AT&T buying T-Mobile means less choice for the consumer -- less choice in phones, less choice in plan pricing, less choice in service.

T-Mobile is known for offering low-cost plans; AT&T is not. Which do you think will survive?

Then there is the matter of competition encouraging innovation.

Said Sprint CEO Dan Hesse of the possible AT&T acquisition: "If that transaction is allowed to proceed, 79 percent of market share would be in the top two companies. I am concerned it would stifle innovation."

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The good news this week is that there is more competition in selling apps for phones and tablets.

Amazon.com announced it is opening its own online store to sell apps that run on Google's Android operating system.

Google has a different approach to apps than Apple, which requires that you buy all your apps for its devices from the Apple store. You can buy apps that run on Android from the Android Market, but you also can buy them elsewhere, such as Amazon.com.

By the way, as soon as Amazon announced its app store, Apple sued, claiming that it violates the trademark Apple has applied for on the words "app store." Give me a break.

So if you can buy Google apps in various places, why is Amazon selling them a boon for consumers?

One reason is a difference between the way Apple and Android app stores are run. To put an app for sale on its store, Apple must approve it first.

Google, on the other hand, allows pretty much free rein for putting apps in its store. This leads to dishonest people hiding malware in apps. In fact, Google recently had to pull 58 apps from its store because they contained malicious code.

Amazon has said it will vet the apps that it sells, much as Apple does. That is good for the consumer.

Will competition mean lower prices for apps? Probably not, because prices are set by the app developers. But Amazon could make deals with developers for lower prices.

The Amazon Appstore also will have a handy feature that will allow you to try out an app before buying.

So lets give a thumbs up to more choice, not less.

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