The Who and What of Possession under Article 9 of the Uniform Commercial Code

Alan J Wilson, West Virginia University

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Abstract

The Uniform Commercial Code ("U.C.C.") is a uniform body of law governing commercial transactions in the states that have adopted its various provisions. Article 9 of the U.C.C. ("Article 9") governs secured transactions involving personal property as collateral. In a secured sales or loan transaction, a credit seller or lender is focused on acquiring a form of collateral as protection against default. In a secured transaction, the buyer or borrower, called a "debtor," agrees to give the credit seller or lender, called a "secured party," a security interest in property of the debtor and can also perfect that interest. Perfection gives the lender a higher degree of priority in the collateral over other creditors. Section 9-203 of the U.C.C. addresses the creation of security interests, while Sections 9-309 to 9-316 of the U.C.C. address perfection of security interests. Sections 9-203 and 9-3132 identify possession as one way to obtain a security interest and to perfect that security interest, respectively. Absent from the definitions in the U.C.C. is an express definition of possession. Courts resort to the common law to define possession. Because forms of collateral exist today that were not contemplated at the time the original U.C.C. was drafted, courts must apply the common law to modern forms of collateral by analogizing to established concepts. This paper will begin with an analysis of the historic underpinnings of the "possession" concept and will analyze current law to identify the contexts in which courts have found that possession is a substitute for a written security. Then, this paper will apply the common law definitions of possession in the context of domain names.

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2 Prior to the 2000 amendments to the U.C.C., U.C.C. § 9-305 (1977) addressed the perfection of a security interest without filing a financing statement (i.e. by possession).
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I. Introduction

The U.C.C. does not define the term possession, but the latest amendments to U.C.C. Article 9 include a comment that simply defines “possession” as having the meaning set forth in the common law.\(^3\) Some scholars assert that the drafters of the U.C.C. purposefully left possession undefined to allow courts flexibility in addressing the multitudes of contexts in which possession arises.\(^4\) As society advances and the different forms of collateral available to lenders expands, the common law notions of possession will be applied to new forms of collateral.

Possession has long been a feature of secured transactions both to provide lenders with security interests in collateral by acting as a substitute for the writing requirement, and as a substitute for a publicly filed financing statement to provide “public notoriety that protects third persons in their dealings with the debtor and his holdings. [Possession] alert[s] the world to the possibility of an encumbrance.”\(^5\) When the lender retains possession of the collateral, the lender also protects against uses and acts of the debtor that are contrary to the secured party’s interests. A lender secured by possession retains greater assurance that the collateral will not be damaged, sold, impaired, stolen, lost, or harmed by actions not undertaken by the lender. For collateral subject to Article 9 that need not remain in the possession of the debtor, possession by the lender provides lenders with ease and convenience for attaching and perfecting a security interest.

Different sections of Article 9 govern the attachment of a security interest and the perfection of that interest. Creating a security interest is governed by U.C.C. § 9-203. To perfect that security interest by possession, thereby acquiring priority over other security interests, requires the application of U.C.C. § 9-313. In the case of perfecting a security interest by possession, § 9-313 covers “negotiable documents, goods, instruments, money, or tangible chattel paper . . . ,” along with certificates of title.\(^6\) Possession of certificated securities is governed by U.C.C. § 8-301. For goods evidenced by a certificate of title, a security interest may be perfected by possessing the goods, rather than the title, only in cases provided for in U.C.C. § 9-316(b).

Because the definition of “possession” is governed by the common law, the definition can be viewed as having an adaptable meaning based on a history of precedential concepts. While companies push to eradicate certificated securities and replace them with electronic forms of

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\(^3\) See U.C.C. § 9-313 cmt. 3 (2000).
\(^6\) U.C.C. § 9-313(a)–(b) (2000).
collateral,\(^7\) thus removing a common form of collateral often secured by possession, new forms of collateral are being pledged in commercial transactions.\(^8\) As technology and society progress forward, the notions of physical possession of tangible goods, familiar to the original drafters of the U.C.C., may be less applicable in a technologically advanced society. However, applying the common law definition of “possession” to newer forms of collateral may still reach plausible results.

This Article will analyze the common law underpinnings of “possession” for purposes of U.C.C. §§ 9-203 and 9-313. This Article will analyze “possession” in terms of clearly tangible goods and intangible goods evidenced by a certificate, title, or other instrument. For each category of collateral, this Article will contextualize the requirements for attaching a security interest and then contextualize the requirements for perfecting an attached security interest, all by means of possession. This article will conclude by applying the common law meaning of possession to domain names in a hypothetical secured transaction.

II. Background/Uniform Commercial Code Provisions

The starting point for analysis is to step through the two key components of a secured transaction—attachment and perfection. In an ordinary secured transaction, one party seeks security for another party’s future performance.\(^9\) The secured party and the debtor reach an agreement that involves the debtor providing the secured party with collateral. Once the collateral is identified, the secured party generally has two objectives: (1) create a security interest in the collateral to establish the secured party’s rights in the collateral and (2) put the public on notice that the secured party has a lien against the collateral in order to perfect the secured party’s security interest. Possession is one route to satisfy each objective for certain forms of collateral. In the context of possession, the two objectives are often satisfied simultaneously. However, it is important to note that where a creditor seeks to perfect at the earliest possible date, a creditor may file a financing statement before a security interest is created in the collateral.

a. Creating a Security Interest in Collateral by Possession

Article 9 Section 203 of the U.C.C. governs the creation and enforceability of security interests. “A security interest attaches to collateral when it becomes enforceable against the

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\(^7\) See Matt Jarzemsky, *End Looming for Paper Certificates*, THE WALL ST. J., March 13, 2013 at C3 (describing the active efforts by the Depository Trust & Clearing Corp. to end issuance of certificated securities and to stop circulation of existing certificated securities).


\(^9\) This paper will refer to the secured party as a lender or creditor and will use the terms borrower and debtor for the party providing security.
debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.” A security interest is enforceable against the debtor if three requirements are met:

1. value has been given;
2. the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
3. one of the following conditions is met:
   A. the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
   B. the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor’s security agreement;
   C. the collateral is a certificated security . . . .

With respect to U.C.C. § 9-203, this paper focuses on § 9-203(b)(3)(B) which provides for creation of a security interest by possession pursuant to a security agreement. For clarity, Note 4 to § 9-203 distinguishes between the security agreement mentioned in § 9-203(b)(3)(A) and § 9-203(b)(3)(B). A secured party’s possession of the collateral in § 9-203(b)(3)(B) is a substitute for the written security agreement in § 9-203(b)(3)(A). By implication, the Uniform Commercial Code presumes that a secured party has a security interest in collateral of the debtor that is in the secured party’s possession. When the collateral is in the possession of a third party, as discussed in Section V., further analysis may be required to establish a secured party’s security interest by possession.

Many courts do not draw a distinction between possession for purposes of creating a security interest and for perfecting a security interest. Cases specifically applying § 9-203 first look to the common law definition of the term “possession.” Black’s Law Dictionary defines possession as “1. The fact of having or holding property in one’s power; the exercise of dominion over property. 2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material

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12 See also Commercial Credit Corp. v. National Credit Corp., 473 S.W.2d 881 (Ark. 1971).
13 See Kruse, Kruse & Miklosko, Inc. v. Beedy, 353 N.E.2d 514, 539 (Ind. Ct. App. 1976) (analyzing possession for perfection and stating that a bailee’s possession also gives rise to a security interest when the bailee receives notice of the creditor’s security interest); In re George B. Kerr, Inc., 25 B.R. 2, 7 (Bankr. D.S.C. 1981) (applying possession under U.C.C. § 9-305 identically to support the notion that possession under § 9-203 is satisfied when a bailee has possession and that no difference exists between the meaning of possession with respect to the two statutes), aff’d sub nom., Hodges v. First Nat'l Bank of S. Carolina, 696 F.2d 990 (4th Cir. 1982).
Beyond a basic definition, courts look to the objectives of the U.C.C. and the general objectives behind U.C.C. §§ 9-203 and 9-313 to determine if the facts surrounding a secured transaction satisfy those objectives.

b. Perfection of a Security Interest by Possession

Besides creating a security interest, a secured party also focuses on perfecting a security interest. Often, a secured party will file a financing statement before the secured party creates a security interest in order to establish a higher degree of priority. In the event that a secured party does not perfect by filing, a secured party can still perfect by possession under U.C.C. § 9-313, which also uses the term “possession” and does not define it. Although § 9-313 identifies specific collateral that can be perfected by possession, this section does distinguish possession for the purposes of perfection from possession for the purposes of creating a security interest under § 9-203.

Perfection by possession may be accomplished with respect to “negotiable documents, goods, instruments, money, . . . tangible chattel paper . . . ,” and certificates of title. Perfection occurs no earlier than when “the secured party takes possession,” or in the case of certificated securities, “when delivery of the certificated security occurs under Section 8-301 . . . .” Because the collateral is perfected by the secured party’s possession, a secured party is only perfected to the extent the secured party retains possession of the collateral.

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14 BLACK’S LAW DICTIONARY 1281 (9th Ed. 2009). Although Black’s Law Dictionary offers many alternative definitions surrounding possession, this author notes that possession is one of the most ambiguous to define. Id. (citing Frederick Pollock & Robert Samuel Wright, AN ESSAY ON POSSESSION IN THE COMMON LAW 1–2 (1888)).
16 U.C.C. § 9-313(a) (2000). For purposes of Article 9, “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.
18 U.C.C. § 9-313(b) (2000).
19 Id.
Without a definition of “possession,” U.C.C. § 9-313 requires additional interpretation. Courts have noted that the law before the U.C.C. required possession to be “‘unequivocal, absolute and notorious, so that third parties may be advised.’” Possession is a means of giving notice of rights in the goods. “[S]ince notice is the basis of perfection of security interests . . . , possession must be measured in part by its ability to give notice.” “If the possession is by someone other than the secured party, it needs to satisfy an objective standard; thus, it should be ‘of the type that a reasonable person would understand that the possession of the collateral by someone other than the borrower may mean that a third person claims a security interest in the property.” The creditor’s possession must “advise third parties that the debtor does not have unfettered use of, or control over, the collateral.” This exclusivity requirement is required for all forms of collateral in which a secured party may create and perfect a security interest by possession. This requirement is best illustrated, however, in cases involving intangible items evidenced by an instrument or some other item symbolizing the interest in that collateral. This distinction is further described in Section IV, supra.

c. Timing of Possession

Possession occurs at the exact time when the requirements of possession are satisfied. With respect to perfection by possession, a secured party’s security interest in collateral is perfected at the exact minute the secured party’s possession gives notice to other creditors or would give notice if other creditors looked for the collateral. When collateral is movable, a creditor’s presence on the debtor’s site where the collateral is located is insufficient to perfect the creditor’s security interest. If delivery of collateral to the creditor or to a third party is to occur when “defaults are not satisfied within thirty (30) days,” possession for perfection occurs on the...
date the collateral is delivered.\textsuperscript{27} Unless a security agreement explicitly postpones the attachment of a security interest until some condition or event occurs, the presumption is that a security interest is created when a security agreement regarding the debtor’s agreement to pledge collateral is reached.\textsuperscript{28}

For secured parties who failed to perfect their security interests, repossessing the collateral and holding the item in the secured party’s possession perfects the security interest.\textsuperscript{29} Repossession does not revert the clock and perfect the security interest as of the date the security interest was created. The secured party’s security interest is perfected at least as of the date the collateral was repossessed.\textsuperscript{30} In this situation, however, secured parties must be cognizant of voidable transfer laws in bankruptcy.\textsuperscript{31}

It must be noted that one may create a security interest by executing a signed writing describing the collateral and then perfecting that interest by possession. Sections 9-203 and 9-313 do not require possession for both creation of the security interest and perfection of the security interest. However, for perfection by possession under U.C.C. § 9-313, a secured party’s security interest is only perfected as long as the secured party has possession. If the secured party loses and then regains possession, the secured party is only perfected as of the later date when the secured party regains possession.\textsuperscript{32} The case of \textit{Tri-State Envelope of Maryland, Inc. v. Americans with Hart, Inc.}, provides an example of this section of the U.C.C.\textsuperscript{33} In this case, a secured party perfected its security interest in the payments from fund-raising events held by the debtor, a political committee.\textsuperscript{34} The secured party executed a signed writing describing the collateral, which was proceeds from the fundraising events. The secured party then took physical possession of the proceeds and held them in its bank account.\textsuperscript{35} To comply with election laws, the funds were debited and credited to the debtor’s account simultaneously.\textsuperscript{36} Because the funds were still maintained by the same bank and because the credit and debit to the debtor’s account occurred simultaneously, the secured party’s possession was uninterrupted. In the case where a secured party who perfected its security interest by possession then gives the debtor or an agent

\textsuperscript{27} See Smith v. Dean Vincent, Inc., 615 P.2d 1097, 1102 (Or. 1980) (analyzing the perfection by possession of stock certificates delivered to creditor thirty days after default by the debtor).
\textsuperscript{28} Id.
\textsuperscript{29} In re Shepler, 78 B.R. 217, 218 (Bankr. W.D. Wis. 1987) (bank that took security interest but failed to perfect because it filed the financing statement in the wrong county, but it did perfect by possession when it repossessed the office furniture subject to its security interest).
\textsuperscript{30} Raleigh Indus. Inc. v. Tassone, 74 Cal. App. 3d 692, 698 (1977) (analyzing the perfection of a security interest where a creditor took possession of the collateral after the security interest was created).
\textsuperscript{32} U.C.C. § 9-313(d) (2000).
\textsuperscript{34} Id.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
of the debtor possession of the collateral, the secured party’s security interest becomes unperfected.

III. Possession of Tangible Collateral

The simplest example of possession is best illustrated with tangible collateral. In the classic example, a debtor provides a secured party with the debtor’s diamond ring to keep as collateral for a loan the secured party contemporaneously gives to the debtor. The secured party keeps the ring in its physical possession until the debtor’s obligation is discharged or the debtor defaults on the obligation. Depending upon the form of collateral, however, the secured party’s physical possession may be insufficient to create a security interest or to perfect a security interest. U.C.C. § 9-313 expressly restricts the collateral that may be perfected by possession and adds further requirements for goods covered by a certificate of title and for certificated securities. Generally, a creditor’s possession of collateral pursuant to a security agreement must be sufficient to meet the creditor’s burden of establishing the security agreement. The requirements for perfecting a security interest are generally greater than that of creating a security agreement.

For perfecting a security interest in goods covered by a certificate of title, U.C.C. § 9-313(b) adds additional requirements. For goods covered by a certificate of title, state law controls the proper mechanism for noticing a lien. In the example of a vehicle, a secured party in possession of an automobile does not automatically have a perfected security interest in the vehicle. Perhaps the secured party did not provide new value or perhaps the secured party has the vehicle in its possession for a purpose other than security. In Parker v. Elkins Welding & Constr., Inc. (In re Elkins Welding & Constr. Inc.), a debtor delivered vehicles to a creditor. The court denied the creditor’s security interest because the debtor’s delivery of the vehicles alone did not evidence the creation of a security interest by possession. The creditor did not provide evidence to indicate that the delivery of the vehicle was pursuant to an oral or written security agreement. The court suggested that the debtor could have been delivering the vehicles so the creditor could sell them at auction pursuant to their agreement. However, absent a specific, identifiable intent, the creditor did not create a security interest.

As the parties in Parker readily admitted, failing to note the security interest on the document of title clearly stopped the creditor from perfecting its security interest. However, the court suggested that if the creditor provided evidence of a clearer intent between the parties to give the creditor a security interest, the court may have found that the creditor had a security interest.

37 U.C.C. § 9-313(b) (2000); see, e.g., W. Va. Code § 17A-4A-3 (requiring lienholder to indicate lien on document of title to vehicle).
38 42 U.C.C. Rep. Serv. 2d 597 (B.A.P. 10th Cir. 2000).
39 Id.
40 Id.
interest in the vehicle in the creditor’s possession.\textsuperscript{41} The outcome in \textit{Parker} could be different if the creditor was a car dealer and the debtor was a purchaser of a vehicle already under the creditor’s physical control. As a generalization, delivery may be insufficient where a creditor’s possession of an item is not clearly pursuant to a security agreement.

In the bill and hold method of sales, when a creditor holds items until receiving delivery instructions from a buyer, a creditor has possession of the goods which creates a perfected security interest.\textsuperscript{42} In the \textit{Parker} hypothetical, the creditor retaining possession of the vehicle until payment is made would likely create a security interest by possession, even though unperfected under U.C.C. § 9-313. The difference is mainly in the clarity of the parties’ intent. Absent a written security agreement, a creditor’s possession of an item is a substitute for the writing. In this case, the creditor in possession has the burden of demonstrating that its possession is pursuant to a security agreement.

\section*{IV. Possession of Intangible Good Evidenced by Instrument}

Courts and the U.C.C. have recognized forms of collateral that has intangible qualities yet is evidenced by some form of tangible property which may be secured by possession. Section 9-313 provides for perfection by possession of such items that are included in the category of “instruments, money, . . . tangible chattel paper . . . ., or certificated securities . . . .”\textsuperscript{43} The law of possession governing these forms of collateral is similar to the requirements for goods. The major difference, however, is that with respect to intangibles, the secured party must possess a tangible item that signals the secured party’s rights in the underlying collateral.\textsuperscript{44}

When a creditor takes possession of a negotiable document, instrument, money, or tangible chattel paper, courts require the element of “negotiability.” Looking to the definition of these terms, each has an element of negotiability.\textsuperscript{45} Absent an agreement to the contrary, the transfer of nonnegotiable notes does not perfect a security interest by possession.\textsuperscript{46} The transferee’s actual knowledge of a prior security interest is irrelevant in determining priority of notes where the secured party is not in “possession” because the notes were nonnegotiable and

\textsuperscript{41} Id. at n.1.
\textsuperscript{43} U.C.C. § 9-313(a) (2000).
\textsuperscript{44} This merger into a tangible item is similar to the requirements for conversion of an intangible under the Restatement Second of Torts § 242 which allows for a conversion cause of action in an intangible if the rights in the intangible have been merged into a document.
\textsuperscript{45} See U.C.C. § 9-102(a)(47) (2000) (“Instrument’ means a negotiable instrument”); U.C.C. § 9-102(a)(11), (79) (defining chattel paper and tangible chattel paper). “Negotiable document” and “money” are not expressly defined in the U.C.C. A negotiable document, by its name, implies that such document be negotiable. As for money, it is not a negotiable instrument but such terms by their nature are negotiable.
\textsuperscript{46} Grossmann v. Saunders, 376 S.E.2d 66, 72 (Va. 1989) (remanding for further fact finding where bank was in possession of nonnegotiable notes; nonnegotiable notes requires additional evidence to support the existence of an oral security agreement).
no agreement existed. Additional rules for perfecting a security interest in certificated securities by possession are found in U.C.C. § 8-301.

When looking at collateral that has less clarity around its legal status, the question of creating and perfecting a security interest becomes more challenging. As an example, horses are clearly a good under the U.C.C., but the instruments relating to horses are generally representative of an intangible. Secured parties taking security interests in horses must analyze the precedent in their jurisdiction regarding the ability to create and perfect a security interest in the specific collateral related to the horse (i.e. stallion service certificate, Jockey Club registration, etc.).

Software is sometimes reviewed under a similar analysis. Arguably, courts are still in debate about the tangibility of software and its proper classification under the U.C.C. However, in jurisdictions where software is classified as tangible property, courts have found the creation of a security interest where the creditor was in possession of a disk containing the software and where the creditor provided evidence that the disk was in its possession pursuant to a security agreement. In this scenario, the creditor’s physical control of the disk (a copy of the software) is sufficient to create a security interest, but insufficient to perfect the security interest because of the ability for the debtor to create additional copies. Perhaps if software were only stored on one medium incapable of being copied, the result would be different. Where collateral like software is secured by possession, the ability for duplicates fails to give interested third parties notice that the creditor has unequivocal, absolute, and notorious possession for perfection purposes.

V. Agency Concept of Possession

An understanding of “possession” requires a cursory understanding of the agency principles defined in the relevant U.C.C. sections. Predominantly, U.C.C. § 9-313(c) provides for perfection by possession when the collateral is in the possession of a person other than the debtor. Perfection occurs in this case when “(1) the person in possession authenticates a record

47 Id.
49 Id.
50 See Matter of Info. Exch., Inc., 98 B.R. 603, 604 (Bankr. N.D. Ga. 1989) (A creditor possessing a copy of debtor’s software on a tape was deemed to have an unperfected security interest where the creditor had possession of the tape pursuant to an oral security agreement. The court concluded that the debtor’s security interest in the software was not perfected without a filed financing statement. The creditor’s possession of the tape (a copy of the software) does not give third parties notice of a security interest when multiple copies may be made.).
51 In this software illustration, the different requirements for U.C.C. §§ 9-203 and 9-313 are best illustrated. These differences apply equally to traditional collateral (e.g., a diamond ring), but the illustration is not as readily apparent where possession of a diamond ring, so long as a security agreement exists, can both create and perfect the security interest.
52 For a discussion of agency concepts related to perfection by possession, see David A. Ebroon, Perfection by Possession in Article 9: Challenging the Arcane but Honored Rule, 69 Ind. L. Rev. 1193, 1196–1210 (1993–94).
acknowledging that it holds possession of the collateral for the secured party’s benefit; or (2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party’s benefit.”

When an agent is involved, for purposes of perfection, a secured party must establish the agent’s absolute dominion and control. Delivery is an essential element of possession. Where delivery is to an agent, the secured party must ensure that the agent is actually an agent of the secured party for purposes of the U.C.C. The debtor cannot be an agent of the creditor for purposes of perfecting a security interest by possession. An escrow agreement is ineffective to perfect by possession when the agreement specifically identifies the escrow agent as an agent for any one of the parties.

The actions and understanding of the agent are important. “[T]he debtor or a person controlled by him cannot qualify as such an agent for the secured party. . . . However, as stated by the Third Circuit . . . , it does not follow from Sec. 9-305, ‘that possession of the collateral must be by an individual under the sole dominion and control of the secured party . . . Rather, we believe that possession by a third party bailee, who is not controlled by the debtor, which adequately informs potential lenders of the possible existence of a perfected security interest satisfies the notice function underlying the ‘bailee with notice’ provision of Sec. 9-305.’” As an example, having the secured party’s nightwatchman oversee equipment (secured collateral) that was located on debtor’s property does not constitute perfection by possession. In this context, third parties are not on notice that the secured party had unequivocal, absolute, and notorious possession. Where agents of the lessor supervise dismantling and crating of equipment upon cancellation of the lease, the lessor has perfected its security interest by possession. His interest

54 In re Dolly Madison Indus., Inc. 351 F. Supp. 1038, 1042 (E.D. Pa. 1972) (neutral custody of stock certificates by an escrow agent did not create or perfect a security interest for the lender when a written security agreement provided for attachment upon a future default condition).
55 Huffman v. Wikle (In re Staff Mortgage & Inv. Corp.), 550 F.2d 1228, 1231 (9th Cir. 1977) (finding that a creditor did not perfect its security interest where debtor was the “agent” of creditor who had possession of the trust deeds); see also Rhode Island Hospital Trust Nat’l Bank v. Monzack (In re Lee), 35 U.C.C. Rep. Serv. 1000 (Bankr. D.R.I. 1983) (holding a seller who does not file a security interest in a boat with the Secretary of State does not perfect his security interest by possession when: 1) he allows the debtor to store the boat on the debtor’s wife’s cousin’s property in an attempt to sell it since placing the boat there does not adequately inform potential lenders of the possible existence of a perfected security interest in the boat, and 2) the debtor does not establish that his wife’s cousin is not “controlled by” him).
56 Huffman v. Wikle (In re Staff Mortgage & Inv. Corp.), 550 F.2d 1228, 1231 (9th Cir. 1977) (finding that a creditor did not perfect its security interest where the debtor was the “agent” of creditor who had possession of the trust deeds).
57 Stein v. Rand Const. Co., Inc., 400 F. Supp. 944, 948 (S.D.N.Y. 1975) (evidence indicated an unclear intent for the escrow agreement when the attorney/“escrow agent” performed legal services for both debtor and creditor).
58 In re King, 10 B.R. 685, 687 (E.D. Tenn. 1981).
is also perfected by the carrier issuing a nonnegotiable bill of lading naming him as consignee pursuant to U.C.C. § 9-304(3).

In terms of creating a security interest, goods physically held by a bailee can satisfy the possession requirement under U.C.C. § 9-203. Where goods are to be perfected by possession, a secured party is deemed to have possession from the time a bailee in possession receives notification of the secured party’s interest. This is the case where the goods were in the bailee’s possession prior to the formation of the security interest. In the context of goods in the possession of a common carrier, the law presumes a carrier has notification of a seller’s security interest (rights in the goods) when the shipper is aware of a collect on delivery (“C.O.D.”) requirement in a shipment contract.

In *In re Julien Co.*, a secured party was provided two nonnegotiable farmer’s trust receipts that represented 68,640 uncertificated warehouse receipts to uncertificated cotton that was physically held by a third-party bailee. The bailee was not under the control of the debtor. The court noted that neither party to the case provided authority that analyzed whether possession by a bailee could create a security interest. In its analysis, the court looked to § 9-305 which provided for perfection by possession when collateral was held by a bailee. Because the bailee issued the uncertificated warehouse receipts and because the bailee was not under the debtor’s control, the secured party had a security interest because the statute of frauds function and the control requirement of § 9-203 were satisfied.

Although U.C.C. § 9-305, cmt. 2 says collateral must not be in the possession of someone under the debtor’s control, in some situations, a bailee may be under the debtor’s control in one context not directly related to the possession of the collateral. As an example, an attorney of a debtor may be the bailee for collateral given to the creditor where the same attorney was also a

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61 See also Data General Corp. v. Still (*In re Ault*), 6 B.R. 58, 64 (E.D. Tenn. 1980) (analyzing a creditor’s security interest perfected when goods are in possession of third party carrier).
63 Kruse, Kruse & Miklosko, Inc. v. Beedy, 353 N.E.2d 514, 539 (Ind. Ct. App. 1976) (In this case, the court analyzed whether a secured party had a perfected security interest in stock certificates held by a third party. The court concluded that by giving notice to the third party bailee, the secured party’s interest was perfected.).
64 Id.
65 See Data General Corp. v. Still (*In re Ault*), 6 B.R. 58, 64 (E.D. Tenn. 1980) (citing Kremer v. Southern Express Co., 46 Tenn. 356 (1869)).
66 Id. at 424.
67 Id.
68 Id.
69 Id.
70 Id. at 425.
mutual trustee for the debtor and creditor pursuant to a settlement agreement.\textsuperscript{71} “With respect to there being an agreement and the creation of a security interest, the actions and conduct of the parties, their testimony before the [finder of fact], and the agreement as expressed in the Stipulation speak much louder than the protests of the [opponent].”\textsuperscript{72} The parties’ conduct must indicate that the escrow agent was neutral toward both parties with respect to the secured transaction.

VI. Modern Collateral—Domain Names

As technology and society advance, common law principles will be applied to new forms of collateral that were likely not on the minds of the original drafters of U.C.C. Article 9. Departing from the common law regarding tangible goods and interests that can be possessed by certificates, this paper next applies common law possession principles to a form of modern collateral—domain names. Although possession of a domain name may seem amorphous, some secured parties are currently collateralizing loans by taking “possession” of debtors’ domain names.\textsuperscript{73} With some domain names worth significant amounts of money, debtors could have an asset that could satisfy the demands of secured parties seeking collateral.\textsuperscript{74}

As for domain names as collateral, the analysis begins with “What is a Domain Name?” Is it a tangible good or an intangible good? If the domain name is an intangible good, then a secured party cannot perfect an interest under § 9-313 unless the intangible can be reduced to a document or other medium that represents the exclusive rights in the collateral. However, for creating a security interest under § 9-203, a creditor is less restricted in the type of collateral he may possess. Even if a secured party cannot perfect a security interest by possession, perhaps it can create a security interest for purposes of § 9-203.\textsuperscript{75} The following analysis will address these issues and will make an argument for creating and perfecting a security interest in a domain name by possession.\textsuperscript{76}

\textsuperscript{71} Barney v. Rigby Loan & Inv. Co., 344 F. Supp. 694, 697 (D. Idaho 1972) (claim by bankruptcy trustee that creditor did not have perfected security interest in collateral arising from a settlement agreement that was in possession of attorney for the debtor).

\textsuperscript{72} Id. at 697.


\textsuperscript{74} See In re Paige, 685 F.3d 1160, 1175 (10th Cir. 2012) (holding domain name was not “of inconsequential value to the estate”); In re Paige, 413 B.R. 882, 887 n.1 (Bankr. D. Utah 2009).

\textsuperscript{75} Unlike U.C.C. § 9-313, § 9-203 does not limit possession to goods, instruments, money, tangible chattel paper, or certificated securities.

\textsuperscript{76} Searches on commercial legal databases returned no results for cases litigating security interests in domain names by possession under U.C.C. Article 9.
a. Domain Name Definition

The term “domain name” refers to “[t]he words and characters that website owners designate for their registered Internet addresses.” A domain name has at least two levels which are categorized hierarchically. For example, www.google.com includes two levels. The “.com” portion is the top-level domain, and “google” is the second-level or enterprise-level domain. Each top-level domain is overseen by a single non-governmental entity. Verisign Global Registry Services oversees the “.com” domain. Verisign maintains a registry of all “.com” domain names and their owners. Anyone can search this registry by performing a WHOIS search on the Verisign website. This search reveals pertinent information about the domain name, such as the domain name’s registrar, registrant, server, status, updated date, creation date, expiration date, and contact information for the registrar and registrant.

Similar to a registry of real property maintained by the taxing authority at a local county courthouse, the WHOIS registry lists pertinent information for domain names. The WHOIS registry does not maintain a list of liens and encumbrances, but it does provide the name of the registrant and the registrant. The registrar is typically a commercial entity that coordinates linking the domain name to the registrant’s IP address. Companies seeking a domain name typically enter an agreement with a registrar and pay nominal service fees to the registrar for the purpose of technical assistance. Once the registration fee is paid, the “domain name registrant has exclusive control over the use of its domain name.”

b. Tangible or Intangible

Scholars and courts are in conflict over whether domain names are intangible property, tangible property, or contract rights. Much of the conflict is the practice by some courts to

77 BLACK’S LAW DICTIONARY 557 (9th Ed. 2009).
78 Id.
79 Daniel Hancock, You can Have it, But Can You Hold It?: Treating Domain Names as Tangible Property, 99 Ky. L.J. 185, 188 (2010).
81 For purposes of the analysis, infra, a lender and its contact information could be listed with the registrant, given that the registrant/borrower gives permission pursuant to the registrant’s agreement with the registrar.
82 By linking the domain name to an IP address, internet users are able to enter the URL, which includes the domain name, and be connected to a website. This process is facilitated by domain name servers (DNS) that operate as a phonebook that matches domain names to IP addresses. The domain name is the façade for an underlying IP address connection. See Managing Domain Name Servers: What is a Domain Name Server (DNS) and How Does it Work, NETWORK SOLUTIONS, http://www.networksolutions.com/support/what-is-a-domain-name-server-dns-and-how-does-it-work/ (last visited May 10, 2013).
84 See Hancock, supra note 79, at 194 (holding that the majority of jurisdictions view domain names as intangibles); Jay Prendergast, Kremen v. Cohen: the “Knotty” Saga of Sex.com, 45 Jurimetrics J. 75, 91 (2004) (asserting Kremen v. Cohen is a departure from the majority view that domain names are contract rights); Kremen v. Cohen, 337 F.3d
automatically classify “intangibles” as intellectual property rather than viewing the item under traditional property law. Recent scholarship and practice, however, indicate a possible change in the traditional analytical framework. In Utah, courts have concluded that domain names are tangible property for the purpose of conversion actions. The courts supported the assertion that domain names are tangible property by claiming that domain names “[1] have physical presence on a disk drive, [2] . . . can be perceived by the senses, and [3] it is possible for its owner to exclude others from it.” Although these arguments have critics, some critics agree with the conclusion that domain names are tangible property. By analyzing domain names under a more traditional property law analysis, in contrast to intellectual property law, the results may better align with the true nature of domain names.

One scholar, who argued in favor of treating domain names as tangible property, raised three arguments to buttress the position that domain names are tangible property: (1) domain names do not neatly align with the doctrine of intangible property as it has developed in equity, (2) the in rem provisions of Anticybersquatting Consumer Protection Act (“ACPA”) treat domain names as tangible property, and (3) consistent application of laws support treating domain names as tangible property. Although such arguments are a departure from the previous analysis of domain names, the law on domain names remains a newer discussion in the law that remains to be settled. As with other technological advances, courts analogize to precedent and continue to discern the true nature of newer forms of collateral. The recent decision by Utah to classify domain names as tangible property signals the possibility that another jurisdiction may consider and adopt this classification in future cases.

c. Creating and Perfecting a Security Interest

Assuming a jurisdiction treats domain names as tangible property, the technical process of creating and perfecting a security interest in this form of collateral must be analyzed. As this is a new area of the law, no cases have spoken directly on the issue of possessing domain names

1024 (9th Cir. 2002) (holding domain names to be intangibles); Network Solutions, Inc. v. Umbro Int’l, Inc., 529 S.E.2d 80 (Va. 2000) (holding domain names to be a product of contract for services).
85 See Moringiello, supra note 83, at 148–51 (analyzing the view taken by courts with respect to “intangibles” and suggesting that such “intangibles” are actually better classified as tangible items).
87 Hancock, supra note 84, at 200 (citing Margae, Inc. v. Clear Link Techs., LLC, 620 F. Supp. 2d 1284, 1288 (D. Utah 2009)).
88 Id. at 203.
89 See Moringiello, supra note 83, at 148–51.
91 Hancock, supra note 84, at 203–09.
under U.C.C. Article 9. Cases involving domain names primarily implicate intellectual property law principles or address alleged violations of the Federal Trade Commission Act.\footnote{See, e.g., \textit{Porsche Cars N. Am., Inc. v. Porsche.net}, 302 F.3d 248, 251 (4th Cir. 2002) (Porsche asserted a trademark dilution suit against 128 domain names not owned by Porsche); \textit{F.T.C. v. Zuccarini}, No. 01CV4854, 2001 WL 34131411 (E.D. Pa. Sept. 25, 2001) (granting a temporary restraining order against defendant for alleged violations of the FTC Act for "redirecting" and "obstructing" activities with respect to the plaintiff domain name owner’s domain name).}

For purposes of the following analysis, even if a jurisdiction does not treat domain names as tangible property, a creditor may be able to create a security interest by possession. As a general principle, U.C.C. § 9-313 does not provide for the perfection by possession for an intangible item that is not an instrument, money, or tangible chattel paper.\footnote{U.C.C. § 9-313(a) (2000); \textit{see Matter of Info. Exch., Inc.}, 98 B.R. 603, 604 (Bankr. N.D. Ga. 1989) (concluding that a creditor did not have a perfected security interest in software contained on a tape where the creditor did not file a financing statement); \textit{In re Sanelco}, 7 U.C.C. Rep. Serv. 65 (Bankr. M.D. Fla. 1969) (holding that the provisions of § 9-203 of the U.C.C. that allow for creating a security interest by possession do not apply to accounts receivable or contract rights because they are intangibles and cannot be "possessed.").} However, a creditor may be able to create a security interest in an intangible item through possession.\footnote{\textit{See Matter of Info. Exch., Inc.}, 98 B.R. 603, 604 (Bankr. N.D. Ga. 1989) (concluding that a creditor had an unperfected oral security interest in software contained on a tape delivered to the creditor).} With an oral agreement to evidence the parties’ intent, a creditor in possession of an intangible has created a security interest.\footnote{\textit{Id.}} As an illustration, a creditor creates a security interest by possession when a debtor, pursuant to an oral agreement, gives a creditor a tape containing software that serves as collateral to secure a debtor’s obligation.\footnote{\textit{Id.}} The creditor does not have a perfected security interest without filing a financing statement, but the creditor does create a security interest.\footnote{\textit{Id.}} For domain names, a creditor or escrow agent with possession of the access credentials to a domain name may be able to argue that a security interest was created by possession.

Prior to the 2009 Utah decisions suggesting that domain names are tangible property, most creditors taking domain names as security were instructed to (1) execute a written security agreement that describes the collateral (i.e. general intangibles), including trademarks and domain names; (2) file a UCC-1 financing statement that lists the general intangibles; and (3) file a notice of the security interest in any trademark with the United States Patent and Trademark

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Although this pre-2009 advice is certainly the safer approach to perfecting and creating a security interest in a domain name, the option of possession may be available. Creditors will likely invoke perfection of a security interest in a domain name by possession in cases where the creditor files a financing statement in the wrong jurisdiction or when the creditor fails to file a financing statement in the proper jurisdiction.

Much like money, which at one time could not be perfected by possession, domain names have characteristics similar to other collateral that may be perfected by possession. If we separate the domain name from the IP address that connects to the content on a webpage, we have a discrete resource with intrinsic value that is not necessarily based on the content of a particular webpage. In the physical sense, a creditor cannot touch a domain name or put a domain name in its vault, but a creditor may be able to argue that it possessed a domain name.

To begin the analysis, a creditor must first obtain a security interest in the domain name. The secured party must give value, the debtor must have rights in the collateral, and, for this analysis, the secured party must be in possession of the collateral. In order to perfect by possession, the collateral possessed must meet one of the delineated categories in U.C.C. § 9-313. Assuming the domain name is tangible property, the secured party’s possession of the domain name would be possession of a good.

1. The Secured Party Gives Value

Section 203(b)(1) of the U.C.C. requires that value be given as one requirement for enforcing a security interest. In a secured transaction with a domain name as collateral, secured parties will typically extend credit in exchange for a security interest in the debtor’s domain name. Arguably, traditional lenders’ reluctance to actively take security interests in domain names stems from the issues with valuing domain names. Domain names have a value, but

98 Christopher G. Dorman, Domain Names as Collateral for Loans, 239 N.Y.L.J 95 (May 9, 2008), available at http://www.phillipslytle.com/include/uploads/ARTICLE-2008-05-09-Dorman.pdf; see also Alexis Freeman, Thesis, Internet Domain Name Security Interests: Why Debtors Can Grant Them and Lenders Can Take Them in This New Type of Hybrid Property, 10 AM. BANKR. INST. L. REV. 853, 889 (2002) (concluding domain names are a general intangible for purposes of the U.C.C. and that written security interests are the only way to create and perfect a security interest); Jonathan C. Krisko, U.C.C. Revised Article 9: Can Domain Names Provide Security for New Economy Businesses?, 79 N.C.L. REV. 1178 (2001) (providing a synopsis of domain names and suggesting that new U.C.C. Article 9 may allow creditors to use domain names, a general intangible, as security for loans). Where the webpage content includes trademarked or copyrighted items, notice will need to be given to the U.S. Patent and Trademark office regardless of the method of creating and perfecting a security interest.

99 See In re Midas Coin Co., 264 F. Supp. 193 (E.D. Mo. 1967) (coins held for “numismatic purposes” are “goods” and not “money,” therefore, a lender may perfect its interest by possession without filing).

100 Hancock, supra note 79, at 204.

101 Note that the definition of “goods” under U.C.C. § 9-102(a)(44) does not expressly exclude “domain names.” The relevant definition does exclude “computer program[s] embedded in goods that consist solely of the medium in which the program is embedded.” However, a domain name is “[t]he words and characters that website owners designate for their registered Internet addresses.” BLACK’S LAW DICTIONARY 557 (9th ed. 2009). The operation of the DNS would be more akin to a computer program than the domain name itself.
determining that value can be difficult. The values for domain names can span across a broad spectrum. The amount offered by a willing buyer can be more accurate, but it requires a willing buyer to make such an offer. Even though the values of domain names vary across a broad spectrum, as technology advances, lenders may be better able to estimate the value of a domain name and be more willing to give loans secured by domain names. This progress may be inhibited by a limited market for domain names, given that some of the most valuable domain names are not frequently traded. However, much like other valuation estimates, a pricing model could be formulated to estimate a value for domain names despite limited market activity. For purposes of U.C.C. § 9-203(b)(1), this element is satisfied where the lender gives some value in exchange for the security interest in the domain name.

2. Rights in the Collateral

In lieu of executing a signed security agreement, the creditor and debtor could enter an oral security agreement with the creditor taking possession of the domain name. Under this approach, the debtor could give the registrar of the domain name permission to list the creditor as a primary contact for the domain name. The parties could then transfer the domain name’s access information to a third party escrow agent or to the creditor directly. In the event the debtor defaults, the creditor can approach the escrow agent and obtain the necessary information to access the domain name. By creating such an arrangement, the creditor can likely convince a court that it has a security interest in the domain name pursuant to a security agreement. The actions of the parties in the aforementioned scenario would likely satisfy a court that the debtor intended to give the creditor a security interest.

Because the domain name serves as the link to its owner’s IP address (e.g. the webpage), the domain name is separate from the content on the webpage. However, if a court were to argue that the domain name’s value is essentially tied to the contents of a page, even if indirectly, possession of the domain name likely satisfies the requirements of Article 9. The registrar provides the service by connecting the domain name to the domain name owner’s IP address, but the owner of the domain name has control of the domain name, or rights in the collateral. “[C]ontrol of the collateral” gives a debtor rights in the collateral. “[F]ormal title is not require[d] for a debtor to have sufficient ‘rights in the collateral’ to allow a security interest to attach.” One may have actual rights in the collateral if the actual owner gives authorization for

102 See, e.g., In re Paige, 413 B.R. 882, 893 (Bankr. D. Utah 2009) (estimating that the domain name “freecreditscore.com” was worth between $350,000 and $200 million; one litigant’s offer was $225,000), aff’d, 443 B.R. 878 (D. Utah 2011), aff’d in part, rev’d in part, 685 F.3d 1160 (10th Cir. 2012).
103 In a traditional lending context, most financial institutions would likely prefer to have domain names in the possession of a third-party escrow agent rather than keep the access credentials to the domain name at the financial institution.
105 Id.
the attachment of a security interest. Even if a court did not recognize the domain name holder as the actual owner, if a court were to view the registrar as the actual owner of the collateral, a debtor likely has rights in the collateral under the agreement the debtor has with the registrar. The debtor and secured party must be sure, however, that the registrar’s agreement with the debtor does not prohibit the debtor from using the domain name for security.

3. Possession – One and the Same for Creating and Perfecting a Security Interest?

The final requirement for creating a security interest, and the key requirement for perfecting that security interest is the element of possession. Even if the creditor has rights in the domain name, the debtor could still have the ability to access and modify the content on the webpages linked to the domain name. However, the debtor would have no access, power, or right to sell, exchange, or otherwise modify the domain name itself. The secured party would have rights in the domain name not the webpages. Assuming the creditor or an escrow agent had the exclusive access to the domain name, the creditor could argue that its rights in the collateral were exclusive and unequivocal, absolute, and notorious to claim that it also had a perfected security interest by possession.

With respect to domain names, the analysis is similar to that of an interest in software stored on a disk. The parties can likely create a security interest, but the creditor must meet the exclusivity requirements for perfection, as discussed in Section IV, infra. The arrangement with the third party escrow agent who held the exclusive access credentials to the domain name would likely be different from a creditor in possession of a disk that contains a copy of software. The debtor’s ability to alter webpages would likely not affect the exclusivity requirement.

To analogize to a security interest in a cash management account “in the possession of” a creditor’s agent, a security interest in a domain name is different. In the cash management account context where the debtor can change the investment mix in the account, the debtor still controls the collateral. The domain name is viewed separately from the content on the webpage. The debtor’s access to the webpage and the debtor’s ability to update the webpage would not impair the creditor’s control over the collateral, which is the domain name, not the webpage content. The domain name is merely the simplified IP address that directs a computer to the content associated with that IP address. Where the value of a domain name is not directly related to the content of a webpage, the creditor in possession of a domain name would be different from a bank account in which a debtor may adjust the investment mix. For domain

106 Id.
108 Hancock, supra note 79, at 204.
names valued primarily based on an associated trademark, the creditor would need to still file a notice of a security interest with the United States Patent and Trademark office. 109

To advance the analysis, would this action satisfy the possession requirement for perfection? Could a creditor argue that its possession of a domain name is “unequivocal, absolute and notorious, so that third parties may be advised”? 110 Arguably, yes. A creditor could argue that by placing the rights to the domain name, the access information, with a third party escrow agent who is not controlled by the debtor, the creditor has control over the access to the domain name. By listing the creditor as a contact person with the registrant associated with the domain name, interested third parties would be on notice that a security interest may exist in the domain name.

Without providing notice to the registrar to update the WHOIS listing to include the creditor as the owner or a contact person for the domain name, a creditor may have issues convincing a court that its possession is unequivocal, absolute, and notorious. A third party creditor interested in taking a security interest in the domain name is likely perform a WHOIS search. However, an interested party may not ask for the access credentials. If the interested party plans to perfect its interest by filing a financing statement, the interested party would likely not have a need for the access credentials; the potential creditor would basically need to describe the domain name itself and perhaps include the name of the registrar, in the financing statement.

d. Policy

Multiple areas of the law address or have yet to address domain names. In conversion actions, the Restatement of Torts requires that property be tangible or an intangible reduced to a document. 111 For sales and use taxes, goods must be tangible in order for a tax to apply. 112 The Uniform Commercial Code relies on common law principles to address certain undefined areas of the Code. Possession is one of those areas.

Arguably variances in state law regarding the tangibility of domain names could produce different results depending upon jurisdiction. This would be further complicated in the case of multistate lenders who would be required to track the property laws of every state in order to determine the availability of using possession to perfect a security interest. However, assuming most secured partys would perfect by filing a financing statement and would perhaps argue

109 See Christopher G. Dorman, Domain Names as Collateral for Loans, 239 N.Y.L.J 95 (May 9, 2008), available at http://www.phillipslytle.com/include/uploads/ARTICLE-2008-05-09-Dorman.pdf (describing the requirements to create a security interest in a domain name and the associated trademarks and copyrights).
perfection by possession in the event of an ineffective financing statement, state-by-state variances may be outweighed by the potential benefits to debtors seeking access to credit. Consequently, with one of the objectives of the U.C.C. being to provide predictability to commercial transactions, variances in the application of the U.C.C. as a result of jurisdictional differences would contradict that objective.

As society advances, so do forms of collateral. The common law principles underlying possession can still apply to domain names. However, the property law determination behind the tangibility of domain names raises another issue. Because U.C.C. § 9-313 uses the term “goods” which is defined as “tangible” property, courts must grapple with the classification of modern collateral. The Utah courts have analogized domain names to physical constructs and have formulated an argument that domain names are tangible property.\textsuperscript{114}

In order to prevent uneven application of the code based upon state property law determinations, drafters of the U.C.C. could propose a definition of domain names that chooses a classification for the purposes of uniformity when addressed under the U.C.C. Notwithstanding the fact that more courts have classified domain names as intangible property than tangible property, for the purposes of the U.C.C., classifying domain names as tangible goods would better comport with the scenarios under which collateral has been possessed for creating and perfecting a security interest.\textsuperscript{115}

Domain names are a finite resource which cannot be duplicated. If access to a domain name is controlled by one individual, a third party cannot access the domain name. Arguably provisions exist for resetting an owner’s access to a domain name. However, a similar process exists in the case of certificated securities. Going through the process of requesting a new stock certificate is much like obtaining new access credentials to a domain name. Several safeguards are in place to prevent persons from fraudulently obtaining access. The system is rigorous enough to satisfy the exclusivity requirement of the U.C.C. as laws against fraud also serve as a deterrent to deception.

In terms of the item possessed, the crucial element is the access information. Like the title to a vehicle, one cannot enter a transaction without credentials to access the domain name. Registering as a contact person with the domain name’s registrar is much akin to indicating a lien on a motor vehicle title. The registrar maintains domain name records, much like a property tax

\textsuperscript{113}See Huffman v. Wikle (In re Staff Mortgage & Inv. Corp.), 550 F.2d 1228, 1231 (9th Cir. 1977) (noting the “Uniform Commercial Code’s goal of uniformity”).


\textsuperscript{115}See Juliet M. Morigiello, False Categories in Commercial Law: The (Ir)relevance of (In)tangibility, 35 FLA. ST. U. L. REV. 119 (2007) (This article discussed the relationship between assets with intangible qualities and intellectual property law. The author argues that courts sometimes apply intellectual property law concepts automatically without first analyzing the issue under traditional property law concepts that are more applicable.).
department maintains records on automobiles owned in certain jurisdiction. This registration would serve to give notice to interested third parties and would be the most commercially reasonable means for giving such notice, outside the traditional financing statement.\footnote{A provision to the U.C.C. could be added to make this a mandatory requirement. Such a requirement could be akin to the special procedures required for filing a lien with the FAA when taking an aircraft as collateral.}

When pledging a domain name, a debtor still has ownership of the asset. The debtor may still access the webpages and update those pages.\footnote{See In re Paige, 443 B.R. 878, 902 (D. Utah 2011) (describing domain names as similar to webpages but as distinct from webpages), aff'd in part, rev'd in part, 685 F.3d 1160 (10th Cir. 2012).} However, the debtor’s inability to sale, exchange, or otherwise modify the rights in the domain name satisfy the “unequivocal, absolute, and notorious” element of perfection by possession. Only the creditor has the access rights (or an agent of the creditor), and the creditor is listed by the registrar as having rights in the collateral. An interested third party would likely conduct a WHOIS search before lending funds on the basis of a domain name as collateral. Like inspecting the tractors on a farmer’s property, a secured party extending credit on the basis of a domain name would likely search for financing statements and the WHOIS registry to verify the debtor’s rights in the collateral.

\textbf{VII. Conclusion}

The Uniform Commercial Code does not define the term “possession,” yet uses the term in multiple sections of the Code. In Article 9, “possession” can have different connotations with respect to a security interest versus the perfection of a security interest. The differences largely stem from the type of collateral. Section 9-313 is more restrictive in terms of the collateral that may be possessed for perfection. With a security interest, possession need only evidence the security agreement between the parties so as to establish a creditor’s rights in the collateral. With respect to perfection, possession connotes something more. The possession must be “unequivocal, absolute, and notorious” to indicate to a third party that the debtor does not have “unfettered use, or control over,” the collateral. To perfect, creditors must possess collateral in such a fashion that third parties are on notice that a creditor may have a security interest in the collateral.

Because the common law governing possession applies equally to modern forms of collateral, courts must look at the legal environment surrounding modern collateral and must analogize to collateral already analyzed at the common law. Although this paper does not attempt to analyze the limitless forms of secured transactions and the forms of collateral that may be used as security, this author has distinguished possession for purposes of U.C.C. § 9-203 and for purposes of U.C.C. § 9-313. Further this author has illustrated the possible application of common law precedent to the possession of a domain name under U.C.C. §§ 9-203 and 9-313. This application reveals that a colorable argument exists for creditors claiming a security interest and a perfected security interest by possession in a domain name. Future technological
innovations and future court decisions will continue to develop and clarify the law regarding domain names and other forms of electronic collateral.

Table of Authorities

a. Uniform Commercial Code Sections

§ 9-102 Definitions and Index of Definitions

(a) (44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(a) (47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(a) (30) “Document” means a document of title or a receipt of the type described in Section 7-201(2).

§ 9-203 Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites

(a) [Attachment.] A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
(b) [Enforceability.] Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given
(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;
(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; or
(D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

§ 9-313 When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing

(a) [Perfection by possession or delivery.] Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

(b) [Goods covered by certificate of title.] With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 9-316(d).

(c) [Collateral in possession of person other than debtor.] With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:
(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party’s benefit; or
(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) [Time of perfection by possession; continuation of perfection.] If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

b. Cases

Barney v. Rigby Loan & Inv. Co., 344 F. Supp. 694 (D. Idaho 1972) (An attorney for the debtor had possession of settlement money, collateral, pursuant to a settlement agreement between the debtor and creditor in which the attorney’s debtor was also the trustee. The court concluded that notwithstanding the trustee’s relationship with the debtor, the debtor and creditor were not precluded from mutually selecting the debtor’s attorney to be the trustee.).

Commercial Credit Corp. v. National Credit Corp., 473 S.W.2d 881 (Ark. 1971) (The purchaser of a security agreement subsequently took possession of a Buick Lesabre. The vehicle in the security agreement was described as a Buick Electra. Because the debtor surrendered the Buick upon default pursuant to the security agreement, the purchaser of a security agreement had a perfected security interest in the Buick by possession. No writing was necessary for the purchaser of the security agreement to perfect its security interest.).

Data General Corp. v. Still (In re Ault), 6 B.R. 58 (E.D. Tenn. 1980) (This case analyzed the Article 9 requirements to create and perfect a security interest. Where goods were in the physical possession of a common carrier that had instructions to collect on delivery, the common carrier had notice of the seller’s security interest.).

Grossmann v. Saunders, 376 S.E.2d 66 (Va. 1989) (Bank had physical possession of nonnegotiable instruments. Other creditors of debtor disputed the bank’s security interest in the notes. Where there was no written security agreement, the bank’s possession of nonnegotiable notes was not conclusive to establish a security interest. The court remanded for fact finding to determine the intent of the parties.).

Huffman v. Wikle (In re Staff Mortgage & Inv. Corp.), 550 F.2d 1228 (9th Cir. 1977) (Creditor did not perfect its security interest where the debtor was the “agent” of creditor who had possession of the trust deeds. Recording collateral notes with a local county recorder does not perfect a security interest in instruments; possession of such instruments is required to perfect a security interest.).
Equipment that was included in a security agreement was stored on mine property that was not owned by the secured party. The owner of the mine property agreed to “keep an eye on the equipment.” The court concluded this arrangement was insufficient to perfect a security interest by possession because there was no evidence that the secured party “exercised dominion or control over the equipment.”

Creditors claimed a security interest in soybeans pursuant to a conversation with the debtor leading the creditors to believe debtor promised the creditors payment from the proceeds of the 1984 and 1985 crop. The court found no security interest where the creditors’ testimony did not assert that debtor promised to transfer possession of the soybeans to the creditors. On their argument of possession, the creditors failed to establish, by clear and convincing evidence, that the debtor delivered the soybeans to the creditors. In this case, the debtor delivered soybeans to two grain elevators; only one was owned by the creditors. Because the debtor did not deviate from harvesting procedures followed in the past and because debtor did not expressly transfer possession of the soybeans to the creditors, the court found that the creditors had no security interest.

In this case, the debtor and creditor entered into a sales agreement that provided the creditor would have a security interest in stock certificates owned by the debtor. The agreement provided that the stock certificates were to be held by an escrow agent but that the creditor would not have an interest until a future default by the debtor. The court concluded that the escrow agent’s neutral custody of stock certificates did not create or perfect a security interest for the creditor at the time of the sales agreement because the security interest was to attach only upon the contingent future event.

In this case, the court analyzed the possession by third parties for purposes of U.C.C. § 9-203. The court determined that the principles for possession under § 9-305 identically support the notion that possession under § 9-203 is satisfied when a bailee has possession under the same circumstances when a bailee has possession for purposes of § 9-305.

In the context of possession by a third-party bailee, the court found the creditor had a perfected security interest by possession. In this case, the creditor had in its possession nonnegotiable farmers trust receipts, and the third-party bailee held the debtor’s cotton. Although possession by a bailee is not always sufficient, the bailee’s control of the cotton and the notice the bailee had of the creditor’s interest, as evidenced by the farmer’s trust receipt, satisfied the requirements for creating and perfecting a security interest.
In re King, 10 B.R. 685 (E.D. Tenn. 1981) (A dealer sold a trailer to the debtor and executed a written security agreement. The dealer assigned the security agreement to a bank; the bank did not perfect by indicating its lien on the certificate of title. The debtor neared default and voluntarily relinquished the trailer to the dealer with the titled indorsed in blank. The court held that the dealer’s possession of the title and trailer along with the debtor’s delivery instructions to sell the trailer perfected the dealer/bank’s security interest in the trailer by possession. The court concluded that the bank had a security interest in the trailer with priority over the judgment lien asserted by the bankruptcy trustee.).

In re Midas Coin Co., 264 F. Supp. 193 (E.D. Mo. 1967) (This case arose before “money” was added to U.C.C. § 9-305. The creditor had in its possession collectible coins as collateral. Under the version of § 9-305 existing at that time, money was excluded from the definition of goods and was not included in § 9-305. The court rationalized that in order to avoid absurd results, that there was a distinction between money held for “numismatic purposes” versus money as a “medium of exchange.” By making this distinction, the court found that the creditor had a perfected security interest by possession of the coins. This case illustrates a court’s ability to develop the common law of possession for purposes of the U.C.C.).

Jubber v. Search Mkt. Direct, Inc. (In re Paige), 413 B.R. 882 (Bankr. D. Utah 2009) (This case engages in a detailed discussion about domain names and the internet protocol system. In this bankruptcy case, the court analyzed the issue of who owned a domain name that was potential property of the debtor’s estate. The court concluded the debtor exercised dominion and control over the domain name by registering the domain, holding the access credentials, and by submitting testimony of former partners that the domain name belonged to the debtor. The debtor’s activities indicated that he “has the ability to direct the disposition of [the transferred property].” With respect to the conversion cause of action, the court holds that domain names are tangible personal property.).

In re Paige, 685 F.3d 1160 (10th Cir. 2012) (This case is an appeal involving three cases filed with the Utah Bankruptcy Court. Despite appealing several conclusions of the Bankruptcy Court, the Tenth Circuit Court did not overturn the Tenth Circuit’s holding with respect to the tangibility of domain names.).

In re Sanelco, 7 U.C.C. Rep. Serv. 65 (Bankr. M.D. Fla. 1969) (In this case, the court denied a creditor’s claimed security interest in accounts receivable where the debtor claimed a security interest by possession. The court concluded that the account receivable was an intangible, therefore, not securable by possession. Furthermore, the creditor’s financing statement duly filed with the Secretary of State of New Jersey does not satisfy the security agreement requirement.).
In re Shepler, 78 B.R. 217 (Bankr. W.D. Wis. 1987) (Creditor provided loan for office furniture and filed the financing statement in the county rather than with the Secretary of State. The court concluded that the creditor’s security interest was perfected on the date when the creditor took physical possession of the furniture upon the debtor’s default.).

Kruse, Kruse & Miklosko, Inc. v. Beedy, 353 N.E.2d 514 (1976) (In this case the court analyzed whether a secured party had a perfected security interest in stock certificates held by a third party. The court concluded that by giving notice to the third party bailee, the secured party’s interest was perfected.).

Manger v. Davis, 619 P.2d 687 (Utah 1980) (In this case involving a dispute over the validity of a creditor’s security interest, the court analyzes the perfection of a security interest for collateral in the possession of a third party bailee. In this case the owner/consignor of a diamond ring placed the ring with a consignee to sell. The consignee then pledged the ring as collateral for a transaction unrelated to the consignor. The court concluded that a creditor did not have a valid security interest, despite possession of the ring, because the consignee did not own the ring, therefore, the consignee did not have rights in the collateral.).

Margae, Inc. v. Clear Link Technologies, LLC, 620 F. Supp. 2d 1284 (D. Utah 2009) (In this case, the court analyzed the tangibility of web pages for the purposes of a conversion cause of action. Recognizing that Utah follows the Restatement of Torts 2d., the court noted that under the Restatement, only intangible property that could be reduced to a document qualified for a conversion action. The court concluded that the Restatement applied because web pages are tangible. “[A] web page has a physical presence on computer drive, causes tangible effects on computers, and can be perceived by the senses.” The court also found that the defendant took control of the webpages and deprived the plaintiff/owner of the website access to the webpages. The webpages’ owner’s conversion claim was successful.).

Matter of Info. Exch., Inc., 98 B.R. 603 (Bankr. N.D. Ga. 1989) (A creditor possessing a copy of debtor’s software on a tape was deemed to have an unperfected security interest where the creditor had possession of the tape pursuant to an oral security agreement. The court concluded that the debtor’s security interest in the software was not perfected without a filed financing statement. The creditor’s possession of the tape (a copy of the software) does not give third parties notice of a security interest when multiple copies may be made.).

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Van Kylen (In re Van Kylen), 98 B.R. 455 (Bankr. W.D. Wis. 1989) (A creditor bank had an assignment from the debtor of the debtor’s cash management account maintained by the creditor bank. The court concluded that the creditor bank did not have a perfected security interest by possession where the debtor still had the ability to adjust the investments in the cash management account. The debtor’s ability to control the
investment mix in an account maintained by the creditor investment broker was too closely aligned with the creditor to give the creditor complete possession for U.C.C. § 9-305.)

Raleigh Indus. Inc. v. Tassone, 74 Cal. App. 3d 692 (1977) (A creditor seller of a business did not file a financing statement for the goods listed in a security agreement entered to by a buyer/debtor at the time of sale. When the buyer defaulted, the creditor repossessed goods of the buyer. Where the creditor repossessed goods of the debtor, the creditor perfected its security interest in only the goods pursuant to the security agreement. Repossession of after-acquired goods not contemplated by a security agreement does not create or perfect a creditor’s security interest.).

Rhode Island Hospital Trust Nat’l Bank v. Monzack (In re Lee), 35 U.C.C. Rep. Serv. 1000 (Bankr. D.R.I. 1983) (In this case, a seller sold a boat without filing a financing statement. The court concluded that a seller who does not file a security interest in a boat with the Secretary of State does not perfect its security interest by possession when: 1) the seller allows the debtor to store the boat on the debtor’s wife’s cousin’s property in an attempt to sell it, and 2) the debtor does not establish that his wife’s cousin is not “controlled by” him. The court reasoned that placing the boat there does not adequately inform potential secured parties of the possible existence of a perfected security interest in the boat).

Smith v. Dean Vincent, Inc., 615 P.2d 1097 (Or. 1980) (In this case, stock was placed in escrow pursuant to an agreement that provided the stock was used to secure the debtor’s repayment obligation. Where the escrow agreement did not state that stock was to be deposited upon default by the debtor or that the creditor’s security interest attaches when the debtor defaults, the creditor’s security interest was perfected upon delivery of the stock certificates to the escrow agent.).

S. Cent. Bell Tel. Co. v. Barthelemy, 643 So. 2d 1240 (La. 1994) (In this assessment of sales taxes, the court concluded that software is tangible personal property. “[O]nce the “information” or “knowledge” is transformed into physical existence and recorded in physical form, it is corporeal property.”).

S. Cent. Utah Tel. Ass'n, Inc. v. Auditing Div. of Utah State Tax Comm’n, 951 P.2d 218 (Utah 1997) (For purposes of assessing sales tax on resale of computer software, the Supreme Court of Utah held that software is still tangible personal property after it is installed on a computer. The court noted, “Software is information recorded in a physical form which has a physical existence, takes up space on the tape, disc, or hard drive, makes physical things happen, and can be perceived by the senses. The purchaser of computer software neither desires nor receives mere knowledge but an arrangement of matter that will direct a computer to perform a particular function.”).
Stanley v. Fabricators, Inc., 459 P.2d 467 (Alaska 1969) ("Leases" that were actually security agreements due to a purchase option created a security interest that was perfected by repossession of the equipment where agents of the lessor supervised the crating and dismantling of the equipment on the lessee’s property.).

Stein v. Rand Const. Co., Inc., 400 F. Supp. 944 (S.D.N.Y. 1975) (In this case a subcontractor offered a certificate of deposit as security for future performance under a construction contract. The subcontractor delivered the certificate of deposit to an attorney who did work for both the subcontractor and the contract who claimed the security interest. Because the attorney had the power to act for both parties, the delivery of the certificate of deposit to the attorney does not perfect the secured party’s security interest. The court notes that although an escrow agent may be an agent for one of the parties in other contexts, in the escrow context for possession, the escrow agent may not be an agent for only one party.).

Tanbro Fabrics Corp. v. Deering Millikan, Inc., 385 N.Y.S.2d 260 (NY 1976) (A textile manufacturer sold goods on a bill and hold basis. The textile manufacturer obtained a security interest in its goods pursuant to a security agreement entered with buyers at the time of sale. The textile manufacturer had a perfected security interest by possession in sold goods still in the possession of the textile manufacturer.).

Transp. Equip. Co. v. Guar. State Bank, 518 F.2d 377 (10th Cir. 1975) (In this case, a seller of truck body kits entered buyer’s premises to repossess the body kits as a result of buyer’s default. When another creditor filed a financing statement covering the body kits on the same day as the seller repossessed the body kits, the court concluded that the presence of creditor’s agents on the debtor’s premises on the day of repossession were insufficient to perfect the seller’s security interest. The seller’s security interest was perfected in the afternoon when the seller’s agents began loading the collateral onto rental trucks to take the collateral away from debtor.).

Tri-State Envelope of Maryland, Inc. v. Americans With Hart, Inc., 688 F. Supp. 769 (D.D.C. 1988) (The creditor in this case claimed perfection by possession of collateral to a security agreement—proceeds from a fundraiser. The creditor had the funds in its possession, its bank account, for the entire time, except for one day when the funds were simultaneously credited and debited to the debtor’s account for compliance with election laws. The court concluded that where the accounts were with the same bank and the transaction at all times indicated that the creditor had possession of the funds; third parties were never not on notice of the creditor’s security interest.).

c. Law Reviews and Other Secondary Sources
18 Bus. L. Today 1 (2008) (This periodical featured the theme “weird collateral.” With this theme, various authors wrote articles discussing certain commercial law issues arising in collateral such as horses, domain names, and limited liability company member interests.)

Beverly A. Berneman, *Navigating the Bankruptcy Waters in a Domain Name Rowboat*, 3 J. Marshall Rev. Intell. Prop. L. 61 (2003) (This article addresses the difficulties of classifying domain names and attempts to offer answers for handing domain names owned by companies in bankruptcy. The author argues that in terms of the bankruptcy estate, domain names “occupy a hybrid position of a) property of the estate and b) the subject of an executor contract.”)

Christopher G. Dorman, *Domain Names as Collateral for Loans*, 239 N.Y.L.J 95 (May 9, 2008) (This article briefly analyzes the property classification of domain names. The author then concludes with a brief recommendation for guaranteeing a perfected security interest in a domain name. The author does not discuss perfection by possession; the author’s emphasis focuses on filing a financing statement and filing a notice with the United States Patent and Trademark Office.).


David Ebroon, *Perfection by Possession in Article 9: Challenging the Arcane but Honored Rule*, 69 Ind. L. Rev. 1193 (1993–94) (This article analyzed possession under Article 9 with a major emphasis on agency concepts and the ways in which possession is satisfied when the collateral is under the control of a third person.)

Alexis Freeman, Thesis, *Internet Domain Name Security Interests: Why Debtors Can Grant Them and Lenders Can Take Them in this New Type of Hybrid Property*, 10 Am. Bankr. Inst. L. Rev. 853 (Winter 2002) (This article focuses on the possibility of creating a security interest in domain names. Predating many of the later articles referenced, this was one of the first articles that addressed the use of domain names as collateral. Because this article predates the decisions that deemed domain names tangible property, the method of creating a security interest proffered by the author was the filing of financing statements.)

Daniel Hancock, *You Can Have It, But Can You Hold IT?: Treating Domain Names as Tangible Property*, 99 Ky. L.J. 185 (2010–2011) (This article analyzes the three ways in which courts have classified domain names: contract rights, intangible property, and tangible property. The author agrees with the tangible classification provided by Utah courts but agrees on different grounds than those provided by the Utah courts.)
Jonathan C. Krisko, *U.C.C. Revised Article 9: Can Domain Names Provide Security for New Economy Business?*, 79 N.C. L. Rev. 1178 (2001) (This article takes the position that many new businesses exist only in cyberspace and that their domain name is one of their biggest assets. The author concludes that domain names can be used as security for loans and that lenders may wish to review the registration agreements to ensure no restrictions exist that prevent the domain name from becoming property of a bankruptcy estate if such a condition arose. This article was written shortly after Article 9 of the U.C.C. was revised and was written before any court concluded that domain names were a form of tangible property.)

Mark A. Lemley, *Place and Cyberspace*, 91 Cal. L. Rev. 521 (2003) (This article discussed the proper analysis of cyberspace for purposes of analogizing to current laws. The author argues that the best analysis of cyberspace makes analogies to physical property but must recognize limitations of the analogy.)

*Managing Domain Name Servers: What is a Domain Name Server (DNS) and How Does it Work*, NETWORK SOLUTIONS, http://www.networksolutions.com/support/what-is-a-domain-name-server-dns-and-how-does-it-work/ (last visited May 10, 2013) (This website provides background information regarding the interplay between domain names and domain name servers. This website explains the role of domain names in the Internet.)

Juliet M. Moringiello, *False Categories in Commercial Law: The (Ir)relevance of (In)tangibility*, 35 Fla. St. U. L. Rev. 119 (2007) (This article discussed the relationship between assets with intangible qualities and intellectual property law. The author argues that courts sometimes apply intellectual property law concepts automatically without first analyzing the issue under traditional property law concepts that are more applicable.)

Bruce S. Nathan, *Bailment or Consignment*, NAT’L ASS’N OF CREDIT MGMT.: BUS. CREDIT (Nov./Dec. 2006), available at http://www.lowenstein.com/files/Publication/949adf56-4566-4cca-85ee-02bf167db25d/Presentation/PublicationAttachment/1b92788f-4cf6-4c24-893e-05141b806d57/Business%20Credit%20-%20BSN-%20-Nov%202006.pdf. (This article analyzes the differences between a bailment and a consignment. The article illustrates the differences through the case of *In re Citation Corporation*, where the Bankruptcy Court for the Northern District of Alabama concluded that the debtor’s “consignment agreement” was a bailment.)

Michael B. Thompson, *Those Calves are Mine: Toward a Uniform Commercial Code Definition of “Rights in the Collateral,”* 53 S.D. L. Rev. 74 (2008) (This article analyzes the element in U.C.C. § 9-203(b)(2) that the debtor have rights in the collateral. The author indicates that the debtor need not have full title in the collateral in order to satisfy § 9-203.).
UCC Article 9 Amendments Enacted in 26 States, UNIFORM LAW COMMISSION (May 22, 2012), http://www.uniformlaws.org/NewsDetail.aspx?title=UCC%20Article%209%20Amendments%20Enacted%20in%2026%20States (This news article discussed the highlights of the 2010 amendments to U.C.C. Article 9, including the number of states that have adopted the amendments.)