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UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP)

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A. UDRP

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A. UDRP

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A regularly updated list of publications on the subject of Internet domain name dispute resolution and the Uniform Domain Name Dispute Resolution Policy in particular is available at <http://arbiter.wipo.int/center/bibliography/udrp.html>.

Links

Domain Name System Management

ICANN (Internet Corporation for Assigned Names and Numbers) <http://www.icann.org>

IANA (Internet Assigned Numbers Authority) <http://www.iana.org>.

Dispute Resolution Providers

(1) WIPO Arbitration and Mediation Center

WIPO UDRP Website: <http://arbiter.wipo.int/domains/>

WIPO UDRP Decisions: <http://arbiter.wipo.int/domains/cases/index.html>

WIPO UDRP Panelist List: <http://arbiter.wipo.int/domains/panel/panelists.html>

WIPO UDRP Schedule of Fees: <http://arbiter.wipo.int/domains/fees/index.html>

Guide to the UDRP and other domain name dispute resolution policies: <http://arbiter.wipo.int/center/publications/guide-en-web.pdf>

WIPO Case Statistics: <http://arbiter.wipo.int/domains/statistics/index.html>

WIPO ccTLD Database: <http://arbiter.wipo.int/domains/cctld/index.html>

(2) National Arbitration Forum (NAF)

NAF UDRP Website: <http://www.arbitration-forum.com/domains/index.asp>

NAF UDRP Decisions: <http://www.arbforum.com/domains/decisions.asp>

NAF UDRP Panelist List: <http://www.arbitration-forum.com/domains/panelists.asp>

NAF UDRP Schedule of Fees: <http://www.arbitration-forum.com/domains/UDRP/fees.asp>

(3) CPR Institute for Dispute Resolution (CPR)

CPR UDRP Website: <http://www.cpradr.org/>

CPR UDRP Decisions: http://www.cpradr.org/ICANN_Cases.htm

CPR List of UDRP Panelists: http://www.cpradr.org/spec/pan_domainname.htm

CPR UDRP Schedule of Fees: http://www.cpradr.org/ICANN_RulesAndFees.htm

(4) Asian Domain Name Dispute Resolution Centre (ADNDRC)

ADNDRC UDRP Website: <http://www.adndrc.org>

ADNDRC List of UDRP Panelists: http://www.adndrc.org/adndrc/hk_panelist.html

ADNDRC UDRP Schedule of Fees: http://www.adndrc.org/adndrc/hk_schedule_fees.html

Policy and Rules

Uniform Domain Name Dispute Resolution Policy: <http://www.icann.org/udrp/udrp-policy-24oct99.htm>

Rules for Uniform Domain Name Dispute Resolution Policy (UDRP Rules): <http://www.icann.org/udrp/udrp-rules-24oct99.htm>

WIPO Supplemental Rules for UDRP: <http://arbiter.wipo.int/domains/rules/supplemental.html>

NAF Supplemental Rules for UDRP: <http://www.arbitration-forum.com/domains/UDRP/rules.asp>

CPR Supplemental Rules for UDRP: http://www.cpradr.org/ICANN_RulesAndFees.htm

ADNDRC Domain Name Dispute Supplemental Rules: http://www.adndrc.org/adndrc/hk_supplemental_rules.html

Online Filing Forms

(1) *WIPO Arbitration and Mediation Center*

Complaint Online Filing Form: <http://arbiter.wipo.int/domains/complainant/form.html>

Response Online Filing Form: <http://arbiter.wipo.int/domains/respondent/form.html>

(2) *National Arbitration Forum (NAF)*

Complaint Online Filing Form: <http://www.arbforum.com/domains/UDRP/forms/complaint.rtf>

Response Online Filing Form: <http://www.arbforum.com/domains/UDRP/forms/modelresponseform.rtf>

Other filing forms for pending proceedings: <http://www.arbforum.com/domains/UDRP/forms.asp>

- Response Extension Request (Complainant Consents)
- Response Extension Request (No Complainant Consent)
- Complainant Pre-Response Request to Withdraw Complaint
- Joint Request to Withdraw Complaint
- Joint Request to Stay Administrative Proceeding
- Request to Remove Stay of Administrative Proceeding

(3) *Asian Domain Name Dispute Resolution Centre (ADNDRC)*

Complaint Online Filing Form: http://www.adndrc.org/adndrc/doc/complaint_hk.docss

Response Online Filing Form: http://www.adndrc.org/adndrc/doc/response_hk.doc

Searchable Databases and Indexes

ICANN title search (search for titles of all UDRP decisions)

ICANN full text searchable database: <http://www.icann.org/udrp/udrpdec.htm>

WIPO full text searchable database: <http://arbiter.wipo.int/domains/search/index.html>

Index of WIPO UDRP Panel decisions (useful index for searching for decisions in specific categories): <http://arbiter.wipo.int/cgi-bin/domains/search/legalindex>

Case Studies

UDRP Opinion Guide of the Berkman Center for Internet & Society at Harvard Law School: <http://cyber.law.harvard.edu/udrp/opinion/>

UDRP: A Study by the Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law, Munich in Cooperation with the Institute for Intellectual Property Law and Market Law, University of Stockholm: <http://www.intellecprop.mpg.de/Online-Publikationen/2002/UDRP-study-final-02.pdf>

I. Introduction and Principal Characteristics of the Procedure

Domain name disputes arise largely from the practice of “cybersquatting,” that is, the pre-emptive bad faith registration of trademarks by third parties as domain names. Cybersquatters exploit the first-come, first-served nature of the domain name registration system by registering names corresponding to trademarks with which they have no connection. As registration of a domain name is a relatively simple procedure, cybersquatters can register numerous variations of such names as domain names. As the holders of these registrations, cybersquatters often put the domain names up for auction, or offer them for sale directly to the company or person connected with the names, at prices far exceeding the cost of registration. Alternatively, they keep the registration and use the name of the person or business associated with that domain name to attract business to their own sites. **IIIA.01**

Despite the rapid growth of the Internet over the past decade as a place to do business, there was, until five years ago, no global uniform procedure for resolving disputes arising out of abusive domain name registrations. Prior to the establishment of the UDRP, trademark owners had to resort to litigation before the courts to reclaim domain names that had fallen victim to cybersquatting. In view of the complex questions of jurisdiction, applicable law and enforcement that arise when resorting to national judicial systems to resolve disputes arising in the global context of the domain name system, and the resulting delays and costs, traditional court litigation was considered an unsatisfactory solution to the problem. Arguments were presented in support of a reform of the domain name system to include a mechanism for allowing intellectual property owners to rectify abuses of rights in domain name registration in a more efficient manner. **IIIA.02**

In response to the growing concerns relating to intellectual property issues associated with domain names and the increasing number of abusive domain name registrations, the Internet Corporation for Assigned Names and Numbers (ICANN) adopted the Uniform Domain Name Dispute Resolution Policy (UDRP)² on 24 October 1999, thereby creating an administrative alternative resolution procedure for domain name disputes. **IIIA.03**

Unlike conventional arbitration proceedings, which are subject to a voluntary agreement on alternative dispute settlement between the parties concerned, the UDRP is a quasi-administrative procedure designed specifically for domain name conflicts. Domain name holders submit to its terms when they agree to **IIIA.04**

² The UDRP can be found at <http://www.icann.org/dndr/udrp/policy.htm>.

the domain name registration regulations of their chosen domain name registrar. The proceedings are deliberately not in the form of judicial proceedings, and instead waive both the holding of an in-person hearing and the independent collection of evidence. The principle of a full legal hearing is substantially limited by extensive preclusive regulations to ensure that the proceedings are handled efficiently. This distinguishes the UDRP not only from the proceedings before the ordinary courts but also from classical arbitration.

- IIIA.05** It is these procedural restrictions that also constitute the advantages of the proceedings. The UDRP procedure typically provides a faster and cheaper way of resolving a dispute regarding the registration and use of an Internet domain name. The procedure is considerably more informal than litigation and the decision-makers are experts in such areas as trademark law, domain name issues, electronic commerce, the Internet and dispute resolution. Practice shows that absent exceptional circumstances it takes on average no more than two months to resolve a UDRP dispute. The procedural costs are also low as compared with the costs usually incurred in international intellectual property law disputes.³
- IIIA.06** The decisive advantage over the ordinary courts is the simplified implementation of the decisions under the new proceedings. The international enforcement of civil decisions by the national courts is only possible within the framework of the Council Regulation (EC) No 44/2001 on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters for the countries of the EU, or on the basis of a number of bilateral treaties. Even within the scope of application of the European Judgments Regulation, interlocutory injunctions cannot be recognized if they have been rendered without hearing the parties. If an infringer of an intellectual property right in signs resident abroad is not willing to comply with a decision rendered against him, the injunction and cancellation orders must first of all be recognized and enforced in lengthy and expensive proceedings. In the case of domain name conflicts, there is also the risk that the domain name will be transferred to a third party during the dispute proceedings.
- IIIA.07** All these deficiencies in the proceedings before the national courts are overcome by the UDRP. The filing of UDRP proceedings imposes a “lock status” on the disputed domain name preventing it being transferred to a third party. In addition, unless the respondent files proceedings before the ordinary courts within the deadline set, the decision merely needs to be notified to the registrar, which is then required to implement the Administrative Panel finding.
- IIIA.08** As the large number of complaints filed with the dispute resolution providers

³ On the costs in detail see the overview in para IIIA.107.

II. Historic Background

after the coming into force of the UDRP on 1 December 1999 shows, the UDRP has established itself in legal practice as the most important alternative dispute resolution procedure for domain names.

II. Historical Background

As a reaction to the many domain registrations in bad faith at the start of commercial use of the Internet, there was soon a demand for an alternative dispute resolution procedure for domain name conflicts. The first attempt to develop solutions to deal with the global phenomenon of cyberpiracy took the form of a proposal by the Internet International Ad-Hoc Committee (IAHC), which included, among others, two trademark protection organizations (WIPO and INTA), three Internet organizations (IANA,⁴ ISOC⁵ and IAB), the ITU and one US federal authority (FNC). The proposal took the form of a Memorandum of Understanding (gTLD-MoU)⁶ with more than 220 signatories throughout the world. The plan called for an increase from three open generic top-level domains (gTLDs) “.com”, “.org”, “.net” to a new total of 10 shared registries, adding “.firm”, “.shop”, “.web”, “.arts”, “.rec”, “.info”, and “.nom”, along with an agreement to jurisdiction, a proposal for mediation and expedited arbitration. The actual registration activities (registrar function) were to be conducted by a total of 28 registrars, located in seven regions of the world. The umbrella organization of the registrars, CORE, was incorporated in Switzerland. Registration of domain names was to be preceded by a 60-day application procedure in order to give potential trademark holders the opportunity to assert their rights. Domain names which are identical or closely similar to “internationally known” signs, for which intellectual property rights existed, were to be held or used only by, or with the authorization of, the owner of such demonstrable intellectual property rights. **IIIA.9**

The gTLD-MoU failed in the face of criticism from both the US Government (which took the view that control over the DNS should remain in the United States) and the Internet community, which regarded the proposals as being focused too one-sidedly on the interests of the trademark industry.⁷ Consequently, in June 1998, in the course of the foundation of the Internet Corporation for Assigned Numbers and Names (ICANN) and the resulting transfer of the domain name system from US control to international structures, a “Statement of Policy on the Management of Internet Domain Names and Addresses” **IIIA.10**

⁴ IANA (Internet Assigned Numbers Authority) <http://www.iana.org>.

⁵ <http://www.isoc.org>.

⁶ <http://www.gtld-mou.org>.

⁷ For details on the IAHC gTLD-MOU and the foundation of ICANN see paras IA.13 ff.