

Domain name policy going strong

Philip Argy reports on WIPO's recent celebrations of the 10 year old domain name dispute resolution policy, known as UDRP.

WIPO marked the 10th anniversary of the Uniform Domain Name Dispute Resolution Policy (UDRP) on 12 October with a conference in Geneva that brought together over 200 arbitrators, domain name owners and trade mark owners.

I was one of a number of LEADR members who attended and I also had the honour of presenting the session on [Technological Developments](#).

The conference sought to take stock of the UDRP experience and draw lessons with a view to informing other processes relating to the future of the Domain Name System (DNS) and –in the broader context – of intellectual property.

The event also celebrated the 16,000th WIPO judgement under the UDRP and its variants.

About the UDRP

The UDRP, a quick and cost effective dispute resolution procedure targeting cybersquatters, has met with great [demand](#) since its inception in December 1999. It was the brainchild of Francis Gurry, then the head of the World Intellectual Property Organisation's (WIPO) Arbitration and Mediation Centre and now WIPO's Director-General.

In conjunction with Erik Wilbers, who now heads the Centre, Gurry initiated a global consultative process through which consensus was reached without a treaty and before the Internet Corporation for Assigned Names and Numbers (ICANN) was even established.

The outcome was a dispute resolution mechanism, ultimately formally adopted by ICANN, which is contractually imported into the registration agreement for the majority of domain names on the planet including, most importantly, the generic top level domains .com, .net and .org (known as gTLDs) as well as their country code Top Level Domain counterparts in most countries (known as ccTLDs).

The UDRP has also been either adopted or adapted in numerous countries to significantly increase the coverage of the same basic model. It simply provides that if your domain name is confusingly similar to a trademark in which someone has rights, it will be taken from you if you are found by an administrative panel to have no legitimate rights or interest in it and if you registered and are using it in bad faith.

The proceedings are swift (elapsed time is usually less than six weeks) and inexpensive (around US\$1,500) compared to litigation. In Australia, I had the privilege of chairing the working group that drafted the auDRP, which is an adaptation of the UDRP with an extension for personal, corporate and tribal names, and with the bad faith requirement satisfied by either registration *or* use in bad faith.

LEADR is one of only three organisations appointed by the au Domain Administration (auDA) to administer auDRP disputes. (WIPO and IAMA are the other two.)

The conference was opened by Mr Gurry. (For his recorded message and the full Conference program and speaker list [click here >>](#))

The conference was both retrospective in reviewing the operation of the UDRP and prospective in terms of discussing future innovations to further streamline the processes and increase the efficiencies.

Of particular interest here was WIPO's [eUDRP initiative](#), proposed to ICANN in December 2008, to remove the requirement to submit and distribute paper copies of pleadings relating to the UDRP process.

Since the Geneva conference, this initiative has been approved. The result will be the elimination of vast quantities of paper involved in many UDRP cases and improved timeliness of UDRP proceedings without prejudicing either complainants or respondents.

Other presentations at the 10th anniversary WIPO conference covered three main themes, namely, the development of UDRP jurisprudence and practice, new dispute resolution mechanisms for ICANN's planned significant expansion of the Domain Name System (DNS), and the emergence generally of conflict between online "identities" and trademark rights as well as issues of accountability of intermediaries, such as Internet Registrars.

Several presenters focused on the defining features of the UDRP and how these have performed since 1999. They identified which of these features would lend themselves to the resolution of other types of disputes in relation to the digital or physical world. The WIPO Center shared a number of ideas which it is currently exploring to streamline the filing conduct and decision of WIPO UDRP cases, including a new 'fast track' initiative for undefended cases.

Some other options discussed include the opportunity for complainants to express "an intent to file", including to facilitate identification of respondents in cases involving privacy shields. They also discussed the possibility for respondents to express early consent to transfer, or to indicate an intent to participate in the UDRP proceedings through the filing of a response. Other WIPO concepts include form complaints in anticipated default cases, as well as panel decisions on a summary basis in obvious cases of this type, all subject to adequate safeguards for preserving party equality and respondent participation.

Participants also discussed the role information technology has played in the UDRP domain name dispute resolution process and identified likely areas of development in this area. In addition to the eUDRP Initiative, several presenters, including ICANN officials, brand owners, Internet experts and WIPO Center staff, addressed ICANN's initiative to introduce potentially large numbers of new generic Top Level Domains (New gTLDs).

This highly topical subject generated significant interest among participants, and covered WIPO's advice to safeguard the legitimate interests of trademark owners and other good faith DNS actors during this program's application (pre-delegation) and subsequent operational (post-delegation) phases.

Participants took advantage of open discussion periods to pose questions to presenters and share their concerns on these and other topics concerning the Internet, including the extent of potential registry duties to address trademark infringement in their name spaces. They raised questions as to how other uniform dispute resolution procedures might be developed and tailored to meet the evolving possibilities for online infringements of real and virtual world goods and services.

The success of the UDRP has also inspired the commencement of work on a Web Dispute Resolution Policy (WDRP) which would operate in the Social Networking space (Twitter, Facebook, MySpace, 434u, etc) to resolve disputes involving impersonation of others, intellectual property (copyright, trademark and trade secret) infringements, and similar issues. More details of this exciting initiative, the working committee for which I am chairing, can be found at <http://www.argystar.com/WDRP.html>

Philip Argy

Philip Argy is a LEADR Advanced Mediator, chairman of the [Technology Dispute Centre](#), and Principal of [ArgyStar.com](#)

Speakers' presentations from the WIPO 10 Years UDRP Conference are now available on the WIPO Center's website:

<http://www.wipo.int/amc/en/events/workshops/2009/10yrs-udrp/index.html>

With thanks to WIPO for additional material for this article.