

The National Arbitration Forum's Domain Name Dispute Resolution Program

ODR Lessons from the UDRP



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CLAIMS REENGINEERED

UDRP Background



- Uniform Domain Name Dispute Resolution Policy
 - Effective November 1999
 - National Arbitration Forum (FORUM) became an Approved Provider in December 1999 and accepted its first case in January 2000
 - Purpose is to resolve disputes between trademark owners and domain name registrants over registered domain names
 - Hearing is administrative and is not considered “arbitration” under any treaties or the Federal Arbitration Act
 - Process is free from any jurisdictional or location-based constraints with respect to both time/place/manner of the hearing and substantive law

FORUM UDRP Statistics



- From January 2000-May 2008:
 - Over 10,000 complaints handled
 - Over 8,000 decisions issued
 - Over 2,000 cases withdrawn (most due to settlement)

Average time to decision=50 days

- Other case handling statistics
 - Number of languages handled in (to date): 8
 - Number of rulesets (UDRP-related) the FORUM administers: 9

FORUM UDRP Procedures



- UDRP requirements:
 - Electronic copies of all case documents (except annexes)
 - Hard copies of complaints and responses
 - Service (by Provider) to email, fax, postal mail
 - Parties can choose “preferred communication” but this rule is misunderstood as, if documents are available electronically, that is the only way they will be sent (except annexes)
 - FORUM allows parties to “web file” their complaints and responses
 - Case coordinators offer guidance for web site, forms, and procedures but do not answer legal or substantive questions

Positive aspects of the UDRP



- Email-based communication allows for real-time exchange of documents; in fact most questions are answered via email
- Requiring electronic documents makes implementation of true online processing easier:
 - Web filing
 - Electronic document manipulation
 - Panel portal
 - Party portal
- Avoids jurisdictional problems (contract-based)
 - Even substantive legal issues are not jurisdiction-bound

Negative aspects of the UDRP



- Written before proliferation of online document transfer
- Written before email was ubiquitous
 - Hard copy requirement
 - Fax requirement
- Procedures rigidly defined; frustrates Providers' use of updated methods to achieve substantially similar results
- Didn't contemplate new technologies:
 - Cyberflight
 - Privacy shields
 - Fraudulent Whois
 - Domain Tasting

Practical Recommendations for ODR from the UDRP perspective



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- Utilize document repository platforms—they are easier to manage than email
- Dispute resolution does not have to be “in person” to be effective
- Offer a “live person” to answer procedural questions and guide the users through the process
- Modify procedures as technology changes—one solution might be to separate the substance of the dispute resolution program from the procedural application thereof



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Thank You

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An Authorized Administrator for the National Arbitration Forum