
ICANN Domain Name Disputes Suggest Tactics for Future Cases

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The results of the first several months of decisions under ICANN's Uniform Dispute Resolution Policy (UDRP) provide some insight in determining whether and how to bring disputes about Internet domain names under ICANN's policy. The lessons to be learned affect a wide variety of issues, such as:

- the number of neutral arbitrators on the panel;
- the precedential value of earlier UDRP decisions;
- the possibility that a defending party's settlement offer can be used as evidence of bad faith in registering a domain name; and
- the type of relief requested.

The World Intellectual Property Organization (WIPO) is one of three arbitration organizations currently certified by ICANN to hear cases under the UDRP, and has heard the majority of those cases to date. Through the end of April, 2000, approximately 300 UDRP proceedings were filed through the WIPO, and approximately 100 have been decided. In about 60% of the decisions, the complaining party prevailed, and the Internet domain name was transferred or canceled. About 21% of the decided cases were resolved by settlement, and the complaint was denied in the remainder (about 19%). Of course, these apparent success figures are substantially skewed because in roughly 40% of the cases, the defending party did not appear to defend itself.

Certain neutral arbitrators are already developing reputations as being more likely to have a broad view of ICANN's policy and to be more lenient to complainants, while others are known to be more strict in their interpretations and more likely to favor defendants. Because parties normally have little control over the selection of arbitrators, unless a panel of three is selected, many practitioners are recommending that their clients choose a three-member arbitrator panel to ensure that they have some say in the selection of the neutral arbitrator. However, some cases involving three arbitrators have resulted in divided panels with dissenting opinions, which may make it easier to challenge a decision in court. (See our [June 2, 2000 Internet Alert](#) on the Weber-Stephen dispute.)

UDRP decisions may have precedential value in future cases. Approximately 25% of the decisions rendered to date refer back to prior UDRP decisions, but the vast majority of decisions do not rely -

at least explicitly - on previous decisions under the UDRP.

Past settlement offers may affect the outcome of UDRP proceedings. In U.S. courts, negotiations regarding possible settlement are usually inadmissible. However, several decisions under the UDRP have concluded that, in making the determination of bad faith, settlement offers by the defending party may be used as evidence of bad faith where the defending party offers to resolve the dispute by transferring ownership of the disputed domain name in exchange for a cash payment. Even good faith users of a domain name who become defendants in a UDRP proceeding must therefore proceed very carefully before offering any settlement with a cash component, lest any given set of neutral arbitrators conclude that the settlement offer is evidence of "bad faith".

Finally, parties should carefully review their filings in any UDRP proceeding to ensure that appropriate relief is requested. Papers that seek "transfer or cancellation" may result merely in cancellation of the defendant's domain name, returning it to general availability where it may be acquired by another third party within days or hours.

No doubt additional lessons will be learned over the next few months, as more UDRP decisions are decided. Since these dispute resolution procedures are still in their infancy, both claimants and defending parties should consider current trends in UDRP decisions before initiating a new UDRP domain name dispute or responding to one initiated against them.

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