Conflicts, arisen between trademark owners and domain name holders with respect to operation of domain names in Internet and founding ways of resolving such conflicts according to UDRP procedure
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1. Introduction

1.1. The subject matter addressed

The extensive development of information technologies, and, in particular, very rapidly expanding use of the Internet had significant challenges, which aimed to adapt to the new demands that technology brings. Information and communication technology law is a relatively new area of the law and it comprises a great majority of the issues that still demand detailed examination.

Recent investigations have consistently shown that the well planned and well executed application of Information and Communication Technologies (ICTs) can yield significant and positive effects in co-related fields. ICT based systems and processes have been shown to increase the quality and quantity of services available to the public, raise the efficiency of public services, and render more transparent the process of government. They have been linked to strengthening of democratic governance, the effectiveness of governance institutions as well as having important implications for overall economic growth and quality and access to education.

One of the most challenging and important problem to be solved is fair and successful resolution of the disputes relating to domain names. The domain name may be identified as so-called “innovation in the information and communication technologies world”. Technically, a domain name is simply the address of an individual computer connected to the Internet. As Final report of the WIPO Internet Domain Name Process highlights, “a domain name is an IP address in a human-friendly form”. Therefore, when described human-friendly form corresponds to a company name or a trademark, it turns into important and valuable asset. Namely, as soon as domain name is associated with a trademark, it becomes a powerful commercial tool. Consequently, businesses emphasize the necessity to own a domain name that connects to its trademark.

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Before the introduction of Internet domain names, the prior role as certain *goods or services identifier* belonged to trademarks. Invention and impetuous evolution of the Internet lead to increased growth of conflicting issues concerning Network usage. Particularly, conflicts take place in the field of trademarks and domain names application. It is a quite complex task to find out who exactly connects to the Internet world and how and with what purposes uses the network. Therefore broad availability gives rise to the practice of registration trademarks as domain names. Trademark owners are keen to protect their legal rights. Consequently, all of the disputes which might occur regarding trademark registration and protection could be resolved within the jurisdiction of the trademark’s holder country.

Domain name disputes involve trademarks, accordingly, for the resolution of a relevant dispute courts have been governed by traditional legislation, namely trademark law, unfair competition, passing off and other similar practices. Unprecedented expansion of the Internet and, roughly speaking, incontrollable character of cyberspace caused difficulties with the application of traditional legislative means while deciding domain name disputes.

From the scope of the problems which deal with the *sui generis* international system for resolution of disputes between trademark owners and domain name holders, creation of an effective system was imperative for overcoming this kind of problems. In 1998 was founded the Internet Corporation for Assigned Names and Numbers (ICANN) which is internationally organized, non-profit corporation that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions. Correspondingly, in 1999 ICANN has introduced the Uniform Domain Name Dispute Resolution policy (UDRP) - absolutely new instrument for effective resolution of international disputes. Since 1999, the evolution of the UDRP had included an emphasis on defining as well as implementing the best methods and ways of reaching solution in the most disputable and challenge domain name issues. The number of registered domain names is steadily growing, and, in general, in years following the creation of UDRP, more than 7.000 cases have been already settled.

The aim of the present work is to provide feedback on the reasons which cause tensions between domain name holder and trademark owners and the means by which domain name

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2See <http://www.icann.org/tr/english.html>
disputes can be successfully resolved with the main focus on the UDRP. At the same time, the work reveals main flaws in the UDRP system and further considers what is meant by these shortcomings. In the present work, I will try to shed some light on both the consequences of the observed practice in implementing the UDRP and providing remedy for cybersquatting. Moreover, while finalizing major aspects of the UDRP evolution and operation, I will made an attempt to propose reform measures which, by my opinion, could increase efficiency of the UDRP system.

1.2. Structure of the thesis

Chapter 1 will make introduction to the main topic of consideration and provide brief information on the role of the Uniform Domain Name Dispute Resolution Policy as a fair model for the resolution of disputes between trademark holders and domain name owners.

Chapter 2 of the work will open with an analysis of domain name nature and main characteristics. In general, it cannot easily be traced who exactly connects to the Internet word and how and with what purposes uses the network, therefore broad availability gives rise to the illegal practice of registration trademarks as domain names. Everyone wants to appropriate domain name, one that helps a consumer find a specific web location easily, intuitively and quickly. Therefore, domain name by which a company, organization, or entrepreneur will be recognized by online users is a key issue. Consequently, as trade mark owners are keen to protect their legal rights, it is becoming obvious that question of ownership of domain names is very essential.

Chapter 3 will focus on the specific reasons of cybersquatting practice with the emphasis on domain name disputes. Moreover, this chapter will analyze legal mechanisms that have been employed to resolve a variety of conflicts between domain name holders and trade mark owners and contribution of ACPA to curb cybersquatting.
Chapter 4 will look at some of the more recent policies with intense focus on the Uniform Dispute Resolution Policy. The present work will attempt to prove, that while the strategies developed by courts become less relevant in the emerging commercial area of the Internet and growing commercial opportunities, traditional arbitration seems to start losing his actuality in comparison with priorities of new mechanisms for dispute resolution. Further, rules and practices of the UDRP system, as well as identification of strengths, weaknesses, opportunities and threats that may prejudice the goals of the UDRP will be assessed. In addition, this chapter will highlight some proposals for further improvement of the UDRP mechanism.
2.1. Rights and legitimate interest in a domain name

2.1.1. Domain name structure.

Institutional and technical evolution of the Internet reflected the extent to which domain name system was set up and managed. More and more users want their own cites, and each of them will require a distinct identifier. Therefore, a key issue is the name by which company, organization or entrepreneur will be recognized by online users. This name, or “domain”, is a customized electronic address which references an individual set of Internet Protocol (IP) numbers. The domain is the area of space of hierarchical names of the Internet network which is served by a set of domain names servers (DNS) and is centrally administered. The domain is identified by a domain name. The general definition of the term “domain name” can be described as a mean of defining IP (Internet Protocol) address to which it is ascribed. Technically, the domain name has the subordinated character under the relation to the so-called IP-address which possesses any information resource in the Internet.

The IP address is characterized as a sequence of numbers consisting of four bytes and it is the actual physical network address by which routing on the Internet takes place and which ensures that IP packages sent via the data network reach the host computer. The sequences of numbers are difficult and inconvenient to remember so that in order to offer appropriate and effective ways for easier identification of numeric address, domain name system was adopted.

The Domain Name System (DNS) is hierarchical system of domain names technically supported by DNS-servers which by means of special databases of domain names automatically create for them equivalents in the form of digital IP-addresses, and which serves as a source for placement of information resources on the Internet. From positions of Intellectual property right the IP-address has no any value, and from this point of view,

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3 According to Lee A. Bygrave, domain names are essentially translations of IP numbers/addresses into a more semantic or meaningful form

4 The domain name system was only introduced in 1984 and, from 1988, was further developed by the Internet Assigned Number Authority (IANA), which is the authority originally responsible for the oversight of IP address allocation, the coordination of the assignment of protocol parameters provided for in Internet technical standards, and the management of the domain name system, including the delegation of top-level domains and oversight of the root name server system. In 1998/1999 all the rights for domain name system management were delegated to ICANN, and since then, this function has been performed by ICANN.
carries out a secondary role in relation to the domain name. Given these estimates, it can be concluded that the DNS was presented in order to assist Internet users with easily remembered domain name, in other words, the domain name system was designed to make the Internet accessible to human beings.\(^5\)

From organizational point of view, every domain name consists of a number of levels (domain levels) separated from each other by dots. Domain name can have any number of levels (also known as sub-domains), but in practice there are always five or fewer.\(^6\) Structurally domain name consists of two or more parts; each of them is characterized by certain level: any domain consists of the top level domain (top-level domain – TDL) which comes from the right part, next is a second-level domain and etc. Top-level domains are classified into three types:

- generic top-level domains (gTDLs) point to special kind of activity of domain name owner, in particular, covers the following types: com - for the commercial organizations, net – for the subjects which primary activity is connected with information networks, gov – for governmental structures, org – for the noncommercial organizations, edu – for educational institutions, int – for the international organizations, mil – for military (power) structures and etc;

- country code top-level domains (ccTLD) which are defined by the country of the domain name registration. For instance, for Russia – «ru», for Germany – «de», for Italy – «it» and etc;

- sponsored top-level domains (sTLD) mean that the TLD is a specialized TLD that has a sponsor representing the particular community most affected by the TLD, and unsponsored TLDs (uTLDs).\(^7\)

The generic and sponsored TLDs may also be classified according to whether they are open to use by anyone, some are reserved for use only by specified groups or sectors. For example,

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\(^6\)See Bettinger, Torsten, *Domain Name Law and Practice, An International Handbook*, p.5

\(^7\)Thus, in 2002 ICANN has launched operation of seven TLDs, both sponsored and unsponsored. Four of them such as .biz, .info, .name, and .pro were unsponsored, and the other three, exactly .aero, .coop, and .museum were sponsored. Further, in 2003 ICANN has introduced of six new TLDs like .asia, .cat, .jobs, .mobi, .tel and .travel, that were sponsored.
.pro is restricted to licensed professional persons; .name is restricted to individual persons. Second-level (or lower-level, depending on the established parent hierarchy) domain names are often created based on the name of a company (e.g., microsoft.com), product or service (e.g., gmail.com). Below these levels, the next domain name component has been used to designate a particular host server.

The wider Internet community that takes part in the Internet Corporation for Assigned Names and Number policy development process has advocated for new gTLDs. The expansion will allow for more innovation, choice and change to the Internet’s addressing system, now constrained by only 21 generic top-level domain names. Based on proposals that were submitted to ICANN during specific application periods, new gTLDs have previously been established. ICANN has carried out two previous application rounds for new gTLDs – one in 2000 and another in 2004. The decision to introduce new gTLDs followed a detailed and lengthy consultation process with all constituencies of the global Internet community and was represented by a wide variety of stakeholders – governments, individuals, civil societies, business and intellectual property constituencies, and the technology community. The policy was completed by the Generic Names Supporting Organization (GNSO) in 2007, and adopted by ICANN’s Board in June, 2008. The launch is expected in 2010.

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8 See Bygrave, Lee and Jon Bing, Internet Governance, Infrastructure and Institutions, p.148
9 See <http://en.wikipedia.org/wiki/Domain_name>
10 See <http://www.icann.org/en/topics/new-gtlds/strategy-faq.htm>
11 See <http://www.icann.org/tlds/app-index.htm>(2000) and http://www.icann.org/tlds/std/03/04/03-04
2.1.2. Domain name as a mean of individualization

From the above, it is therefore important to note that the basic function of a domain name in the Internet is an addressing. But whether is it a unique function of a domain name? In my opinion, a domain name reflects much more extensive field of its involvement. Specifically, in this chapter I would like to attract attention to the necessity of recognition of a domain name as “goods and business identifier”.

The first paragraph of the Final report of the WIPO Internet Domain Name Process defines that: «Domain names are the human-friendly form of Internet addresses. While designed to serve the function of enabling users to locate computers in an easy manner, domain names have acquired a further significance as business identifiers and, as such, have come into conflict with the system of business identifiers that existed before the arrival of the Internet and that are protected by Intellectual property rights»\(^\text{13}\).

In order to clarify “domain name as business identifier” definition, it is necessary to figure out the reason why this kind of association. First of all, it is absolutely clear that domain names inseparably linked with trademarks. Trademarks\(^\text{14}\) as domain names are not only represented by businesses, also personal names can act as identifiers in the case when they have been used as trademarks. A trademark serves six purposes:

a) identifies the source of goods and services;
b) distinguishes the mark owner’s goods or services from those of others;
c) assists consumers in identifying goods and services from a particular source;
d) protects the consumer by preventing confusion or fraud;
e) protects the trademark owner’s goodwill and investment;
f) provides a continuous mechanism to accumulate and advertise progress in design, quality, and/or features.


\(^{14}\)A trademark is a distinctive word, phrase, symbol, or design, used individually or in combination by a manufacturer to identify and distinguish the origin of their good from those made by others.
Trademark provide its owner with a right to limit others from using the same or alike mark, and help customers to find the products and services they like and avoid similar ones that may be different in quality. Thus, trademarks guarantee shorthand means for consumers to identify the products or services of a particular manufacturer or business. Having outlined the main features of trademarks, it is important to note that realization of a trademark registration depends on the capacity of the latter to identify goods and services of a particular customer or enterprise.

In its turn, the problem of recognition of a domain name as a certain new mean of individualization, in addition to such traditional means as trademark, service mark and company name have been the subject of much analysis. In the area of academics, policy-makers, legal practitioners various opinions have been expressed on this point.

I completely agree with some authors who believe that «besides addressing functions on the Internet domain names carry out the functions similar to functions of trademarks». Charlotte Waelde, for example, in her statements suggests that many disputes concerning registration and use of domain names are directly connected with infringement of interests of legal owners of such Intellectual property objects, as company names and trademarks.

In considering approaches taken by many other researchers, they uphold the same opinion, believing that conflicts connected with domain names, almost always occur around widely known company names, trademarks, famous names and others means of natural and legal persons individualization. For instance, David Lindsey underlines that businesses began to use domain name as a means of identifying themselves and their products and since then, domain names have developed into an accepted and important form of identification, both on-line and off-line. And, nevertheless, some authors assume that a domain name may not be

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15 Namely, trademark owner gets presumption of ownership and, accordingly, the right to use this trademark
16 See <http://www.domainhandbook.com>
17 Id.
18 A service mark is the same as a trademark except that is associated with services, rather than goods
19 See Charlotte Waelde, Domain names and Trade mark - What is a name? available at <http://www.law.ed.ac.uk/it&law/ch4_main.htm>
20 Hence celebrity domain name disputes, such as juliaroberts.com, sting.com, and madonna.com
21 See Lindsey, David, International Domain Name Law, ICANN and the UDRP, p.95
connected generally with means of individualization of any concrete person or its production and can be independent mean of individualization.\textsuperscript{22}

Detailed examination by many authors of a domain name character allows to say that domain names, unlike the recognized in the civil legislation means of individualization, possesses a dual nature, that is they often carry out simultaneously two functions: individualize an information resource in the network and its owner. Thus, for instance, Gulliksen mentions in this respect that the dual nature of the domain name means that it is both a name and an address.\textsuperscript{23} Moreover, as it has been underlined in Panavision Int’l, L.P. v. Toeppen case, dual purpose of domain name marks the location of the site within cyberspace, much like a postal address in the real world, but it may also indicate to users some information as to the content of the site, and, in instances of well-known trade names or trademarks, may provide information as to the origin of the contents of the site.\textsuperscript{24}

In reality, it is quite hard to challenge the fact that successful for the commercial organization domain name turns today into a serious commercial active. Sometimes, even it is not less valuable, than a trademark or the company name. But it is of utmost importance to recognize that any list of the identifiers used by the commercial organizations in the activity is much wider than the list of means of an individualization of a legal person, its production, works and services protected by the Intellectual property law.

As pointed out by the WIPO Final Report: «Advertisements appearing in the media now routinely include a domain name address, along with other means of identification and communication, such as the corporate name, trademark and telephone and facsimile numbers».\textsuperscript{25} In other words, it must always be remembered that the sphere of domain names application is not limited only to the advancement of goods and services by the means of Internet. It is much wider. Thus, legal and physical persons register domain names, both for commercial, and for noncommercial reasons. Further, the Final report of the WIPO Internet

\textsuperscript{22} As Milton Mueller points out, domain names act as signs, identifiers, locators, and messages. As a form of public communication, the policies applied to disputes affect rights of free expression as well as intellectual property rights. In addition to freedom of expression issues, global dispute resolution raises questions about procedural fairness in the global arena, the role of noncommercial and fair uses in e-commerce, rights in personal names, rights accorded to place names, and the consistency of precedents.

\textsuperscript{23} See Gulliksen, Internet domain names and trademarks, p.21

\textsuperscript{24} Panavision Int’l, L.P. v. Toeppen, 141 F.3d 1316, 1327 n.8 (9th Cir. 1998)

Domain Name Process notices that «the purposes for which the Internet is now used encompass the full range of human activity: research, education, social communication, politics, entertainment and commerce»\(^{26}\). The same range of activities in full measure relates to the Domain Name System which appears today to be the basic address system in the Internet. In this respect domain name is identical to telephone number and post address which contain contact information for identification of any person or organization regardless of the purposes of their activity. Domain names are used like telephone numbers and addresses. They usually printed in small letters on business letterhead stationery, business cards or advertisements in the same way addresses and telephone numbers are presented. They provide information as to how to contact the entity, rather than as identifiers of a service.\(^{27}\)

Consequently, domain names turns into serious commercial asset, but nevertheless cannot be considered as method of individualization analogical to traditional trademarks or company names. Moreover, domain name has been added to the list of objects not possessing exclusive rights but widely used as such identifiers as telephone number and post address. Last circumstance once again underlines priority particularly of a domain name address function.

As we can conclude, domain name can serve for individualization of file information and indirectly for individualization of the person placing given information. This circumstance is the main feature of domain name - it simultaneously individualizes information and at the same times the subject’s right for such data. In relation to all above examined concerns the following question should be asked – to which extent concepts “a domain name” and “a trademark” correspond with each other?

\(^{26}\) Id.

2.1.3. The legal relationship about domain names on the Internet

First of all, I would like to clarify main points on correlation and divergence between domain names and trademarks. We cannot escape the differences between trademarks and domain names which sometimes cause confusion for both traders and the public.

It is important to point out that the great amounts of domain name conflicts seem to involve trademarks. Although, it is submitted that disputes may also arise when the registration or use of the domain name infringes any legally recognized rights, such as trademark rights, common law right in passing off, or any other rights. Thus, differences between domain names and trademarks lead to misbalance, which commonly can be characterized by the following factors: a) trademark law envisages that the same trademark may fall under the identical registration of the other trademark in the case of absence of likelihood of confusion; b) and, vice versa, the registration of the same TLD domain name is not aloud; c) another important aspect is that application of trademark rights is restricted and carried out within the territory of the government that grants this kind of rights.

From a legal point of view, there is no definite answer on the question what constitutes a domain name. In general, the rights over a domain name originate from either the registration agreement with the registrar or they derive from the ownership right referred to the domain name. Domain names are registered on a first-come, first-served basis which can be characterized as a service policy whereby the requests of customers or clients are attended to in the order that they arrived, without other biases or preferences.28

The main actors of domain name registration process are registry and registrars. Thus, in the light of Art.2 (a) of the EC Regulation29:

- the registry is the entity entrusted with the organization, administration and management of the TLD, including maintenance of the corresponding databases and the associated public enquiry services (WHOIS services), the operation of the domain

28 See <http://en.wikipedia.org/wiki/First-come,_first-served>
name register, the operation of the main server of the register for the TLD, and the dissemination of the TLD zone files.

Another important participant of the domain name registration process, namely registrar, according to the EC Regulation, is characterized as a person or entity that, via contract with the registry, provides domain name registration services to registrant.30

Within the scope of the present work it seems useful to examine the meaning and possible consequences of domain name recognition as independent mean of individualization and object of exclusive rights. Current legislation in the overwhelming majority of the countries states that application of means of individualization which appear to be object of exclusive rights can be carried out by the third parties only by the consent of the legal owner.

Hence, the recognition of a domain name as a new independent mean of individualization enables possibility of judicial protection of the infringed right for a domain name, in case of illegal use by persons lacking rights for it. But the domain name does not require such protection in the Internet. No one will be able to register and publicly exploit the domain name identical to the name already registered in the Internet. This could be explained by the unique system of hierarchy of the domain names. Originality of the domain name derives from the network necessity, and serves just as indication characterizing its protecting ability, as in a case with a trademark.

Theoretically, there is still a possibility of exploitation of the domain name in commercial purposes beyond the Internet, for example, in advertising, on blanks and etc. To be honest, the meaning of such infringement is not quite obvious. After all, having typed a domain name, the user in any case will get on a site of its lawful owner. In other words, such popularization of a domain name will lead to the growth in quantity of site visitors and, consequently, to the rise of commercial reimbursement for a domain name holder.

Therefore, exploitation of domain names would require the legal protection. From one side in respect of online businesses domain names possess economic value. From the other side,

domain names might be used in three different ways, which may bring serious risk for them. In particular, these imply the following categories:

a) cybersquatters who reside a name with the sole intention to get offer for it from a trademark holder;
b) activists who realize registration of confusingly similar versions of domain names, in order to hold sites that carry out propaganda against the company;
c) typo-squatters who register domain names which embody different variation of famous trademarks terms such as misspellings and apply them for websites to derive benefit from incautious Internet users.

Furthermore, if the domain name has become so popular that it is capable to implement functions of the recognized identifier beyond the global network, and his holder wishing that domain name to be engaged in commercial activity in real, not virtual world, domain name may be protected by means of existing legal norms on unfair competition. Domain name holder can take advantage of a traditional set of means of individualization as well, in other words, register the domain name as a trade mark, a service mark or to make it company name.

Legislative protection of exclusive rights for a trademark allows these means of individualization to become independent subject of transactions. At the same time, the right to a domain name in the Network is exclusively primary for technical reasons. This exclusiveness provided a domain name with capability to become object of purchase and sale regardless of its recognition or non-recognition in the legislation as a mean of individualization and object of exclusive rights. In spite of the fact that until recently transactions on purchase and sale of domain names have been formally forbidden by regulations of public organizations, trying to settle ethics of behavior in the Internet in the international or national scale, from the very beginning it was not possible to anyone to stop trade of most successful domains.

Thus, today there are no any serious preconditions to legislative reference of domain names to the means of individualization – objects of exclusive rights. Domain names usage the third parties in the Internet without any right on them is caused by technical features of the Global network, and is similar to impossibility of coexistence of several identical post addresses or
telephone numbers. For protection of the designation beyond the Internet, domain name holder should take advantage of the existing national legislation.

Regulation of domain name legal relationships which is broadly analyzed in “The trademark, service sign and names of places of good’s origin act”, brings us to a conclusion that “the legislator had directly indicated, that this act regulates the Internet activity by using domain names.” In evaluating these factors we might have to accept that first of all domain name’s legal relationships infringe interests of a trademarks and service name owners.

2.2. Domain name disputes

2.2.1. Cyberquatting

Wide explosion of the World Wide Web and its commercialization lead to the practice “cyberquatting” or as it is called in other way “cyber piracy” which officially means registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else.

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. Cybersquatters is, as a matter of fact, the figures, trying to lead parasitic existence in the Network. In the history of development of the Internet network there were many cases when cybersquatters registered well-known trademarks and other means of an individualization as domain names, and then, actually, they breached fundamental rights of a legal owner.

31 See “The Trademark, Service Sign and Names of Places of Good’s Origin Act” of September 23, 1992 № 3520-I, with the modifications and additions made by the “About the Modifications and Additions in the Trademark, Service Sign and Names of Places of Good’s Origin Act” of December 11, 2002 №166

32 See <http://en.wikipedia.org/wiki/Cybersquatting>

33 See <http://www.wipo.int/about-ip/en/studies/publications/domain_names.htm>

34 See, for instance, case People for the Ethical Treatment of Animals, Inc. v. Doughney, 263 F. 3d 359 (4th Cir. 2001). (peta.org): an organization entitled “People Eating Tasty Animals” obtained the peta.org domain name, much to the disgust of the better know People for the Ethical Treatment of Animals. The court held that defendant's use of “peta” in this
Due to Lee Bygrave and Jon Bing: “Cybersquatting differs from ordinary trademark infringement because cybersquatters do not use domain names to sell products or services. The purpose of cybersquatting is to extract a payment from the owner of the trademark.”

One more author, David Lindsey, in respect to this point gives the following explanations: “cybersquatting encompasses a variety of opportunistic practices relating to domain names that correspond to real world identifiers and that harm the interests of the rightful owners of real world identifiers, such as trademarks; moreover it also encompasses opportunistic practices involving unfairly trading on the goodwill or reputation of the owners of real world identifiers.” Another commentator, John D. Mercer, in this regard provides the following definition: "an illegal cybersquatters should be one who acquires a domain name for the sole purpose of obtaining money or other advantage from the trademark owner, with no intent or desire to use the domain name, except as an instrument toward this purpose.”

Accordingly, with reference to many commentators and researchers conclusions, it can be said that cybersquatting commonly is associated with a negative practice, giving birth to abusive registration and trafficking in domain names.

Factually, there does not exist special and separate law which controls and governs domain names. Probably, this can be explained by the absence of global consensus on the matter of domain names affiliation with the other intellectual property rights and thus, impossibility of falling under the protection guaranteed by specified law.

2.2.2. Anticybersquatting Consumer Protection Act

manner blurred the distinctive association of the mark with the animal rights organization and that the defendant's registration of the domain name "peta.org" was motivated by bad faith

35 See Lee Bygrave, Jon Bing, Internet governance, Infrastructure and institutions, p.82
36 See Lindsey, David, International Domain Name Law, ICANN and the UDRP, p.98
Cybersquatting as it was specified above has appeared in 1995-1996 in the USA for a designation of practice of registration of the domain name identical or confusingly similar to a trade mark of the third party for the purpose of the subsequent sale of a domain name to this person, and for the sum considerably exceeding expenses on registration.

In order to struggle against this phenomenon, ICANN in close cooperation with WIPO has passed the Law on protection of consumers from cybersquatting, namely the Anticybersquatting Consumer Protection Act (ACPA), including Lanham Act which has added section 43, devoted to the trademarks, and subchapter (d) «cyber piracy prevention» (cyber piracy prevention). Thus, new legislation assigned to fight against cybersquatting was designed with intention to “combat a new form of high tech fraud that is causing confusion and inconveniences for consumers and posting an enormous threat to a century of pre-Internet American business efforts.”

ACPA represents a complex of special legal rules for governing trademark infringement through domain names. In other words, the ACPA protects distinctive marks against registration of domain names which are identical or confusingly similar to a trademark or service mark in which the holder of the latter has rights. Moreover, it protects famous marks against dilution, which means that the capacity of an owner’s mark to identify and distinguish goods and services has been diminished. Consequently, anti-dilution role of ACPA lies in providing of consistent protection of trademark owner’s property rights and goodwill.

Anticybersquatting Consumer Protection Act has opened possibility for trademark holders to suit the person who «register, traffic or use» a domain name, under a condition that this

38 the Lanham Act of 1946, Title 15 of the United States Code is the federal statute that defines and governs the registration and rights of the four types of marks—trademarks, service marks, certification marks, and collective marks. Under § 1127 of the Lanham Act the intent of the Act is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations
40 See <http://legacy.lclark.edu/faculty/tomas/objects/TM_Class_22_Handout.pdf>
person «had bad-faith intent to profit». The ACPA contains the list of factors which indicate presence of person’s "bad-faith intent". The given list consisting of nine points, as well as in a case with UDRP, is not exclusive. These factors, in their turn, could be divided into two groups. Hence, the ACPA lists nine non-exclusive factors that courts may consider in determining whether bad faith intent to profit exists. Bad faith will not be found when the alleged infringer believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

Thus, first four factors, in case of their presence, testify in favor of conscientiousness of the owner of a domain name:

- the intellectual property rights of the trademark holder;

- the extent to which the domain name incorporates the trademark;

- the alleged cybersquatters prior use of the domain name in connection with a bona fide offering of any goods and services;

- the alleged squatter's bona fide, noncommercial or fair use of a mark in a site accessible under the domain name

Other five factors, in case of their presence at considered business, urged to become the proof of presence at that person of "bad-faith intention". These are:

- any intent to divert customers from the mark owner's online location or to harm the goodwill represented by the mark either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the site;

- any offer by the alleged squatter to transfer or sell the domain name to the mark owner for financial gain;

- any false and misleading contact information given when the alleged squatter registered the domain name;

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44 See <http://www.unc.edu/courses/2008spring/law/357c/001/WebTM/Domain%20Name%20Issues.html>
- any registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive;

- the extent to which the mark is incorporated in the squatter's domain name registration is or is not distinctive and famous

Additionally, there is an intense focus on such provisions of the ACPA as *in rem jurisdiction*, which means that trademark holder is able to bring civil action against domain name itself in the district where the domain name was registered if the domain name holder cannot be found. In *rem* provisions of the ACPA can be invoked only in the judicial district where the domain registrar, registry or other authority is located, not merely the state where the domain authority is located, which can have multiple juridical districts.

### 2.2.3. Application of the trademark law to domain name disputes

In relation to the responsibility of the decision-making panel to determine the law which is to be applied to domain name disputes, and practice of referring to national legal principles, it should be noticed that trademark law is ruled by well-defined provisions and principles. The underlying canon of trademark law is the protection of consumers by preventing confusion or deception. Trademark law also encourages the public benefits of competition and economic efficiency, as consumer’s loyalty is developed through the maintenance of consistent product quality, which is called “goodwill” associated with the trademark. At the same time, it is important to notice, that trademark law is characterized by the principle of territoriality, exactly “the protection of a trademark in a certain country depends exclusively on the law of that country, and that the effect of a trademark ownership by use or registration in a country do not reach beyond the borders of that country”.  

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46 15 U.S.C. § 1125(d)(2)
47 Torsten Bettinger by using as an example Hartog&Co. v. swix.com case, shows that the court ruled in the case that a trademark owner in an in rem action under ACPA need not show that the use of a domain name is likely to cause confusion. The trademark owner need only show that the domain name is “identical or confusingly similar”, which is clearly a lower standard. According to the court, traditional likelihood of confusion is inappropriate in construction and application of the ACPA. Bettinger, Torsten, Domain name law and practice, p.900
Trademark law lays down the following elements:

- the existence of senior trademark or service mark rights;
- commercial use of the name, and;
- that the use is likely to confuse consumers as to the source or origin of the goods or services being offered by the infringer.

Besides, trademark law generally protects commercial reputation, goodwill, and financial investment by granting the trademark owner the exclusive use of the trademark. However, rights in the trademark do not permit the owner to prevent others from using it if their use is unlikely to cause confusion, mistake, or deception among consumers as to the source of goods or services.

Despite the advent of so-called ‘world brands’, trademark law by nature is still principally territorial. There exist essentially three ways to obtain trademark rights – use, registration and reputation – and these methods must be applied country by country or region by region (e.g., the European Union).

For more concrete understanding of how trademark law operates and governs domain name disputes it is vital to reveal connection between trademark law and domain name disputes. It is quite reasonable to expect application of trademark law to domain names and guaranteeing protection of trademark owner’s exclusive right. Undoubtedly, in order to avoid domain name dispute it is better to prevent it through the effort to seek the domain name and register it in all competent registries. However, in spite of preventive measures, conflicts between trademark owner and domain name holder happen. In this case, we should find out the reason of inadequacy of international intellectual property law applied to domain names. It could be explained by geographically limited character of the trademark law and absence of absolute monopoly over the trademark for trademark owners. Therefore, trademark law seems not to satisfy all of the requirements of proper legislation for the most of domain name disputes.

Thus, the analysis of the current legislation in considered area shows that, as a whole, that existing legal arsenal as it has appeared for today quite enough for that the legal owner could protect the trademark from illegal use as a domain name. Moreover, the diligent owner of a

domain name could resist to unjustified expansion of a right protection of trademarks and other legislatively recognized means of individualization in the field of domain names application.
2.3. Role of the UDRP in resolving domain name disputes

2.3.1. Principal characteristics of the UDRP

In view of a global character of the Internet and the fact that trademark law could be applied only in the narrow context; traditional legal processes do not provide any longer effective and convenient litigation in resolving international disputes regarding Internet domain names.

Thus, with the purpose to overcome problems associated with the short-comings of national judicial systems, the Uniform Domain Name Dispute Resolution Policy was introduced in 1999 by ICANN by a private, California non-profit public benefit corporation ICANN, which acts as a self-governing institution for the Internet and defined as an international dispute resolution procedure which provides fast and efficient settlement of disputes between domain name owners and trademark holders. The main consideration in the design of the UDRP was to create a convenient, cost-effective and fast procedure to combat cybersquatting.

The current system of domain name governance, centered on ICAAN, developed from recommendations made in the 1998 National Telecommunication and Information Administration (NTIA) “Statement of Policy on the Management of Internet Domain Names and Addresses” final report (known as the “White Paper”) which was published by the United States Department of Commerce, calling upon WIPO to conduct a study and to develop recommendations for a uniform approach to resolving trademark/domain name disputes involving cyber piracy. On 30 April 1999 the Final Report of the WIPO Internet Domain Name Process was published and submitted to online administrative dispute resolution procedure, and the UDRP have acquired universal application for all ‘.com’, ‘.net’ and ‘.org’ registrations. The WIPO reports contained proposals on development and running

50 See para 1 of the UDRP: “This Uniform Domain Name Dispute Resolution Policy has been adopted by the Internet Corporation for Assigned Names and Numbers, is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you.”
51 As have been underlined in RFC 1591 on Domain name System structure and delegation: “In case of a dispute between domain names registrants as to the rights to a particular name, the registration authority shall have no role or responsibility other than to provide the contact information to both parties. The registration of a domain name does not have any trademark status. It is up to the requester to be sure he is not violating anyone else's trademark” available at http://www.faqs.org/rfcs/rfc1591.html
53 See Bettinger, Torsten, Domain name law and practice, An international handbook, p.940
of a uniform and mandatory policy for the resolution of domain name disputes and establishment legal foundation for a panel system operating in the framework of the UDRP54.

ICANN authorized dispute resolution provider of the complainant’s choice (hereafter, Provider). Presently, these are the National Arbitration Forum (NAF), the World Intellectual Property Organization (WIPO), the Asian Domain Name Dispute Resolution Centre (ADNDRC) and, since January 2008, the Czech Arbitration Court.55

The statistical information which can be gained from ICANN as well from other different sources56 proves that the results of using the Uniform Domain Name Dispute Resolution Policy in handling cases were assessed quite positively. The UDRP policy is targeted on domain name disputes resolution in a manner which makes this process cost to be effective, easy and quick. In comparison with court litigation, finding solution under the UDRP costs approximately $1,500 for a single-member panel and $4,000 for a three-member panel and takes between 47 days.57 In terms of uniform character of discussed policy, it lessens all kind of jurisdictional problems which can occur while resolving international issues. Thus, Mueller in his research named three main objectives of the UDRP: a) to eliminate variety and competition amongst the jurisdictions and rule sets applied to domain name-trademark conflicts; b) to reduce the cost of resolving disputes; c) to provide a cheap and quick way to resolve the easiest cases.58

As we can see, the UDRP system is deemed to be very logical, well-decided and effective. It has allowed becoming a basis for the resolution of more than 20 thousand domain name disputes. Therefore, the UDRP envisage measures for avoiding an abusive practice which might or might not have had yet consequences.

Provisions of the First WIPO Report define two main restrictions that ICANN places on the UDRP: a) application of this kind of procedure only to cases which involve abusive, bad-faith registrations; b) the UDRP only applies to abusive registrations of trademarks and service

55 Id.
56 See http://www.icann.org/udrp/proceedings-stat.htm
57 WIPO's UDRP site explains that “for resolution of a case involving one to five domain names, with a single panelist, the current cost is US $1,500, and for three panelists, the total cost makes US $5,000
58 See Mueller, Milton, Rough justice, An analysis of ICANN's Uniform Dispute Resolution Policy
marks as domain names.\textsuperscript{59} As it follows from the ICANN Second staff report on implementation documents for the UDRP\textsuperscript{60}, “except in cases involving abusive registrations made with bad-faith intent to profit commercially from others’ trademarks (e.g., cybersquatting and cyber piracy), the adopted policy leaves the resolution of disputes to the courts (or arbitrators where agreed by the parties) and calls for registrars not to disturb a registration until those courts decide”.

Even on the first stages of its implementation, the UDRP was supposed to be restricted and to be aimed at the most egregious types of cyberquatting, leaving other disputes to the courts. This was done because of the sensitivity of replacing national laws with the global law. The UDRP was not designed to be the ultimate arbiter of name rights on the global Internet or to replace courts.

In emphasizing the benefits of the UDRP, high priority is placed on the absence of any geographical boundaries. In other words, there is no necessity in identifying the placement of complainant or respondent, because dispute decision will be made by the UDRP independently of any national law. Another benefit of UDRP Arbitration is that, because it is based on ICANN’s policies instead of U.S. law, anyone can take advantage of the dispute resolution process.\textsuperscript{61}

As study by the Max-Planck-Institute points out, the UDRP is not "law" in the sense that the substantive rules applied in the assessment are derived from any specific national codification or case law, or that they are founded on an international agreement in the meaning of public international law.\textsuperscript{62}

\textsuperscript{59} See Bettinger, Torsten, \textit{Domain name law and practice}
\textsuperscript{61} See \url{http://www.unc.edu/courses/2008spring/law/357c001/WebTM/Domain%20Name%20Issues.html}
2.3.2. Procedural aspects of the UDRP

The UDRP as a procedure for the dispute resolution cannot be used to deal with conflicts between two trademark holders or between a trademark holder and a registrant who has rights or legitimate interests. In particular, the UDRP does not apply if the registrant has been known by the name or used it in connection with a bona fide offering of goods or services or for a legitimate non-commercial purpose. Moreover, the UDRPformulates substantive law which operates in resolution of domain name disputes. In addition, dealing of the cases concerning domain name registrations which have been made before the UDRP came into effect is realized within the UDRP procedure.

In the light of the fact that ICANN is taking responsibility for domain name system regulation, it imposes obligation on domain name registrar to adopt the UDRP as their dispute resolution procedure. The UDRP Policy requires from the registrars of domain name under dot-com-net to adopt it as their dispute resolution procedure before they will be accredited by ICANN, therefore anyone registering a domain name through an accredited registrar is contractually bound to commit to arbitration under the UDRP as an inescapable part of the registration contract. Since the complainant proves his rights in a trademark or in a service mark, the registration of a domain name takes place.

In determining whether the UDRP can be applied to only certain types of the generic top-level domains (TLDs), consideration should be given to the statistical evaluation which shows that about 70% of all domain name registrations are done as regards to the gTLDs. Additionally, the UDRP can be applied to the national ccTLD only if they have been adopted on a voluntary basis. Further, the UDRP has also served as a model for various other ccTLD registries to develop alternative dispute resolution procedures which are not administered by the WIPO Center, but by the ccTLD registries themselves or other organizations providing the infrastructure to process domain name conflicts in the ccTLD.

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63 See Hörnle, Julia, Cross-border Internet Dispute Resolution, p. 187
64 See Mueller, Milton, Rough justice, An analysis of ICANN’s Uniform Dispute Resolution Policy
Main legal documents which govern the realization of all proceedings under the UDRP are the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) and in addition to the general UDRP rules governing the filing and administration of a complaint. Each of the four ICANN-approved providers has its own Supplemental rules. The UDRP and its accompanying Rules are incorporated by reference in all registration agreements between registrants of gTLD and registrars approved by ICANN. According to the Rules, the UDRP procedure divided into several important stages:

(a) filing of a complaint with an ICANN-accredited dispute resolution service provider of the complainant’s choice;

(b) filing of a response by the person or entity against whom the complaint was made;

(c) appointment by the chosen dispute resolution service provider of an Administrative panel comprising one or three persons who will decide the dispute;

(d) issuance of the Administrative panel decision and the notification thereof to all relevant parties; and

(e) implementation of the Administrative panel decision by the registrar concerned, should there be a decision that the domain name in question be cancelled or transferred.

Pursuant to the first stage, it should be pointed out that simplicity of the complaint submission through the Internet instead of post services, which may require an exceptionally long time period, provides one step towards primarily designed model for easy dispute resolution proceeding. A copy of the complaint, together with the cover sheet as prescribed by the provider's supplemental rules, has been sent or transmitted to the respondent (domain name holder), in accordance with Rule para 2(b), which requires that in the absence of a stated preference by the party, written communication will be sent:

65 In 1999 ICANN approved implementation of the Rules for Uniform Domain Name Dispute Resolution Policy. In 2009 the Rules were replaced by the new version, and it comes into effect for all UDRP proceedings in which a complaint is submitted to a provider on or after 1 March 2010. The prior version of the Rules, applicable to all proceedings in which a complaint was submitted to a Provider on or before 28 February 2010.
(i) by telecopy or facsimile transmission, with a confirmation of transmission; or

(ii) by postal or courier service, postage prepaid and return-receipt requested; or

(iii) electronically via the Internet, provided a record of its transmission is available.  

At the same time, it is really hard to reveal whether the recipient has received the message or not, and this fact states not in the favor of usage of electronic post. Thus, if the message has gone to the wrong location, through some unknown technical error, the sender may or may not be notified of the occurred error.

Initiation of the proceeding depends on a reasoned application from the complainant which evidences that certain requirements in the UDRP Policy are met. The discussed procedure may be initiated exceptionally by trademark owners and domain name holder as a respondent is deprived of a corresponding ability to bring dispute before a resolution service provider.

Further, service provider chosen by the complainant designates panelist and entitled to do panelist publicly available. This helps to define professional experience of Administrative panel members and the degree of their qualification. However complainant together with respondent at their own convenience can have several options – whether to appoint a single-member panel or a three-member panel. In the favor of three-member panelist constitutes the fact that both complainant and respondent have a right to composite a list of wished members for the panelist. When only complainant involved, he has to cover all the costs, consequently with respondent’s sole decision on the nomination of panel members, costs are shared between two parties of the dispute resolution proceeding. Moreover, complainant and respondent bear responsibility for submitting a list of proposed three members which they wish to see in the panel. The provider selects two members from the lists proposed both by complainant and respondent, therefore selection of the last member depends on the provider. Nevertheless, there is some kind of disadvantage towards respondent’s involvement in selection of a three-member panel. It explains the fact that the complainant besides having chosen the provider and first member of the panel, gets to present three candidates for a

66 Rule 2(b)(i-iii).
second panel member. In contrast, the respondent who is eligible to nominate three candidates can not define if the candidates are competent enough.

In the course of twenty calendar days of the beginning of the UDRP proceeding, the respondent is obliged to respond to the allegations of the complaint. Besides, respondent must offer any bases for the domain name retention. At the same time, the respondent could be considered to have defaulted if he does not provide response within these twenty days. After the response of the respondent has been delivered to the complaint, the provider gets five days to organize appointment of a panel. Finally, a decision will be taken within fourteen days of the panel's appointment. Then the panel has three days to notify the parties of the decision. Unless the adversely affected domain name holder has filed suit in a court of mutual jurisdiction by this date, the registrar will implement the decision of the panel, canceling or transferring the domain name according to the remedy sought in the complaint.

While analyzing main moments of the UDRP’s proceeding we could not deny complexity in determining its legal nature. UDRP as a procedure is similar to arbitration in that a private adjudicator (a one- or three-member panel) produces a decision that is binding on the parties. But at the same time the procedure can not be considered as arbitration, within the fact that decisions produced by the panel are not final and do not lead to res judicata effect between the parties.

One more similarity between arbitration and the UDRP can be discovered in contractual regime of both procedures. The UDRP system is built on the chain of contracts and characterized as “contractually-mandated private system for the benefit of non-contracting parties”67, namely the domain name registrant agrees to submit disputes to the UDRP regime under the terms of the contract between the domain name registrar and the domain name registrant. Nevertheless, limitation of the principle of full legal hearing by extensive preclusive regulations distinguishes the UDRP not only from proceedings before the ordinary courts but also from classical arbitration. In contrast to arbitration, this system does not eliminate the possibility to address the case to ordinary national courts and is not compulsory for the parties of the dispute.

In procedural terms, a great deal of factors constitutes the advantages of the UDRP:

- it intends to provide quick and less expensive method of dispute resolution on domain name registration and use;
- discussed procedure more informal in comparison with ordinary court litigation;
- panel is represented by the decision-makers with professional experience in trademark law, e-commerce, domain name issue and etc.;
- the UDRP dispute is usually resolved within two months except exceptional circumstances;
- procedure envisages rather low costs which differ from the costs of international intellectual property law disputes;

Moreover, simplified implementation of the decisions serves as a crucial advantage over court proceedings. In comparison, national courts realize enforcement of decisions within the scope of the Council Regulation 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.  

68 Today the volume of protection of trademarks owners rights both in Internet, and beyond the Global network, is equally limited by certain classes of the goods and services. The establishment of protection of trademarks in the network «irrespective of the goods and the services offered on website» will lead to the priority of trademarks protection beyond the Internet.

2.3.3. Substantive provisions of the UDRP Policy and Rules

By drawing up rules governing dispute resolution, the main task was to create simplified procedure which would be applied only in relation to specified number of the domain name disputes. The UDRP policy was not intended to resolve all and any kind of dispute on infringement of intellectual property rights in the Internet, including domain names. First of all, the UDRP policy has been thought up not as a replacement of justice, but for the purpose of simplification of typical disputes resolution methods. Particularly, the UDRP provides basis for the regulation of relations between registrars, domain name holders and the third parties. In its turn, the UDRP Rules establish general norms and principles. Thus, in compliance with these norms and principles consideration of the domain name disputes is being carried out.

I would like to focus my attention on the most important positions of Policy of Procedure, which authorize domain disputes resolution in the Internet. Thus, commencement of the dispute according to the paragraph 4 (a) becomes possible when the complainant is able to prove presence of the below-mentioned facts:

(i) a domain name identical or confusingly similar to a trademark or service mark in which the complainant has rights;
(ii) an owner of the domain name (respondent) has no rights or legitimate interest in respect of the domain name;
(iv) a domain name has been registered and is being used in bad faith.69

In the case when one of abovementioned specified conditions is not met, the complainant risks to get refusal considering fulfillment of it requirements. As to the first condition, a domain name can consist of elements (symbols). Therefore, their certain combination can provide evidences on identity or high degree of similarity between a challenged domain names and, for instance, a trademark of the complainant. In this respect, it has been argued whether Art. 4 a (i) of the UDRP Policy should be reformulated or commentary added in a manner which makes clear that a finding of confusing similarity does not require the showing

69 UDRP, supra note 16, §4(a)
of an actual risk of confusion to the public. In order to better reflect the reality of the proceedings, it might also be pointed out that confusing similarity should be evaluated in the light of the case as a whole, as it seems that this is what happens in practice.

If in view of all the circumstances of the case, the Panel is of the opinion that the registrant has clearly acted in bad faith and without being able to rely on legitimate interests of his or her own, it is very unlikely that the case will be dismissed for lack of confusing similarity. This might happen even if it is obvious that a well informed consumer would hardly expect the site to be operated or sponsored by the right holder. On the other hand, the claim may be denied if the Panel decides that there is no bad faith involved.

Further, item 4 (c) of the Rules demonstrates that presence at least one of the below-mentioned circumstances means that respondent has rights or legitimate interests in a disputable domain name when:

(i) before any notice of the dispute, there was use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
(ii) the individual, business, or other organization registering the name has been commonly known by the domain name, even if there are no trademark or service mark rights; or
(iii) the registrant is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue for commercial gain.70

It is a common rule that in order to prevail in a domain name dispute under the UDRP, the complainant must prove that the disputed domain name "has been registered and is being used in bad faith." Thus, paragraph 4(b) of the Policy lists four circumstances as evidence of bad faith:

(i) the domain was registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for

70 UDRP, supra note 16, §4(c)
valuable consideration in excess of the domain name holder’s documented out-of-pocket costs directly related to the domain name;

(ii) the domain name holder has registered the domain name in order to prevent the owner of the trademark or service mark in the corresponding domain name, provided that the domain name holder has engaged in a pattern of such conduct;

(iii) the domain name holder has registered the domain name primarily for the purpose of disrupting the business of a competitor;

(iv) by using the domain name the domain name holder has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.71

While analyzing all of abovementioned circumstances, it is important to underline that “the delineation of evidence of bad faith is not intended to be exhaustive, and other types of evidence may be presented to the panel in the administrative dispute-resolution procedure”,72 consequently the list of circumstances that amounts to evidence of bad faith registration and use was intended to bear “non-exhaustive” character and leave space for other possible circumstances.73

Understanding of the logic underlying the UDRP is a key to its successful application. In overwhelming majority of cases when complainant has been refused satisfaction of its requirements, it has been done on one of three bases:

a) when dispute did not fall under the UDRP policy;

b) when it was possible to respondent to prove that registration or use of a domain name were not unfair;

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71 UDRP, supra note 16, §4(b)
73 David Lindsey makes exhaustive analysis of bad-faith element and corresponding circumstances, and broadly explains “totality of circumstances” approach. He highlights examples of the most challenging cases which applied discussed approach. For instance, in the Twentieth Century Fox Film Corporation v David A.Risser, dispute on bad faith registration and use of 21 domain names containing the complainants “fox” mark, the panel stated that “use in bad faith can be inferred from the totality of the circumstances even when the registrant has done nothing more than register the names”. Lindsey, David, International domain name law, ICANN and the UDRP, p.365
c) when it was not possible to complainant to prove that registration and use of a domain name were unfair.

2.3.4. Shortcomings of the UDRP.

As many researchers have noted, the UDRP as a relatively new policy has been object of much discussion and critical remarks concerning it cover not only organizational structure and procedural practice of the system, but also consider efficiency of the cases settled out of the courts in the scope of the UDRP. Although the bulk of given remarks and comments on the efficiency of the UDRP are generally positive, there are still many unresolved issues in the system that may cause serious obstacles. Basing on the miscellaneous facts and documents of renowned authors in discussed area, I would like to figure out and analyze the most important problems.

First of all, the UDRP applies only to limited variety of TLD, leaving about approximately 150 ccTLDs out of its influence. For the disputes over ccTLDs, World Intellectual Property Organization has launched its own ccTLD program which encompasses the following areas:

a) the design of appropriate domain name registration practices aimed at preventing friction between domain names and intellectual property rights;

b) the design of appropriate dispute resolution procedures, to complement traditional court litigation, aimed at resolving domain name disputes expeditiously and at moderate costs; and

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74 The International Trademark Association (INTA) has released two responses, one to Mueller’s study (UDRP-A Success Story: A Rebuttal to the Analysis and Conclusions of Professor Milton Meuller in “Rough Justice” (May 6, 2002)), at http://www.inta.org/downloads/tap_udrp_1paper2002.pdf, and one to Giest’s Study (The UDRP By All Accounts Works Efficiently: Rebuttal to the Analysis and Conclusions of Professor Michael Giest In “Fair.Com?” and in “Fundamentally Fair.com” (May 6, 2002)), at http://www.inta.org/downloads/tap_udrp_2paper2002.pdf). These responses criticize the studies’ conclusions, mostly relying on methodological reasons and mere supportive manifestations in favor of the UDRP. Nevertheless, both responses failed to rebut or to provide plausible alternative explanation to the striking statistical data.

75 If to take for instance, comparison to preciously been discussed the ACPA, the UDRP requires a showing of bad faith registration and bad faith use, while the ACPA requires only a bad faith registration or bad faith use, and bad faith is not a requirement under infringement or dilution law through its absence or presence is a relevant factor. While the UDRP proceedings are quick and inexpensive, relief is limited to transfer of the domain name only. Moreover, the UDRP decisions are also subject to de novo review in a court of competent jurisdiction.
c) the provision of dispute resolution services through the WIPO Arbitration and Mediation Center to any ccTLD administrator who wishes to retain it for that purpose.76

One more argument of prejudice against the UDRP system is the proved fact that the majority of the cases have been handled in favor of complainants, exactly trademark owners.77 In many science works on domain name dispute resolution, authors point out vulnerable and weak position of respondents in relation to complainants. After decision is reached, in most cases complainant seems satisfied when his complaints are fulfilled and, consequently, domain name is being transferred into the possession of the complainant, or it could be cancelled or changed. Therefore, in order to avoid consequences of disproportional settlement of the cases it would be effective to impose obligation for the selection of the service provider on the registrar.78 Further reduction of the complainant right to control election of the panel will help in achieving fairness of the process and increase confidence and trust in made decisions.

Since the UDRP has been designed as a non-binding process,79 it simultaneously demonstrates further privilege for a complainant. To be concrete, the complainant can bring the case for the court consideration if he is not successful in the process. It is often pointed out that the respondent will in most cases be a weaker party than the complainant; how would then, in practice, establishing a regime for calculating and attributing compensation make it fairer for the respondent? Wouldn’t be making it mandatory for the respondent to resort to courts to avoid complying with a compensation ruling, having to stand costly and long procedures? The complainant seems satisfied in most cases for having the domain abuse stopped, not feeling a desire to continue litigating, and the cybersquatters simply lose right to that specific domain name, without extra costs or losses and with nothing stopping him from registering different and legitimate new domains.

77 For instance the study conducted by the Max Planck Institute, suggests that providers hand judgments in favor of complainants to increase market share as complainants are more likely to recommend and use the same provider in the future. Further Milton Mueller suggested that the UDRP facilitates forum shopping that biases the results of the UDRP decisions. Mueller found that almost eighty percent of the all cases filed under the UDRP were decided in favor of complainants. Milton Mueller, Rough Justice, An Analysis of ICANN’s Uniform Dispute Resolution Policy supra note 125, available at http://www.acm.org/usacm/IG/roughjustice.pdf
78 Under Rules, supra note 94 at §19(a), the provider is funded by the fees it collects from the complainants in a single panelist decision, or fees that are evenly split between the parties in a three-panelist process. Therefore, the provider has strong grounds to act in favor of complainants
79 See UDRP, supra note 16, §4(k)
Additionally, the outcome of the process is especially mostly valuable for the respondent, because further cancellation or transfer of a domain name can cause severe losses for him. The given reasonable assessment of the Rules evidently reveals existing inconsistencies between the complainant and respondent positions in respect of corresponding rights and procedural aspects. This is also the case in relation to the respondent’s obligation to demonstrate specified reason of the willingness towards commencement of court litigation against trademark owner. At the same time, complainant is appreciated to turn to court without any need of characterizing legal cause of such action.

Because of the non-binding nature of the proceeding there is a most recent trend of commencing further disputes arisen over the same domain name. The Policy and the Rules are silent on guaranteeing prevention of subsequent complaints, although the results derived from the first made motivate decision seems to lessen the chances of success in a second or third process.

Further, the Rules refer to the concept of “mutual jurisdiction”, defining it as either “(a) the principal office of the registrar or (b) the domain name registrant address shown in the registrar’s Whois database.”80 The complainant entrusted to offer his chosen provision of “mutual jurisdiction”, but nevertheless, this does not restrict respondent from applying to anywhere else where he is enable to establish standing and where personal jurisdiction over the potential respondent can be obtained. As pointed out in the Section 4 (k) of the Policy: “The mandatory administrative proceeding requirements shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded.”81

A court of “competent jurisdiction” probably may be any court able to assert jurisdiction over the dispute and/or the parties. The definition of competent jurisdiction was not set in a clear manner and properly explained. In any case, the Final Report mentions in this respect: “In the WIPO Interim Report, it was recommended that the domain name applicant should be required, in the domain name registration agreement, to submit, without prejudice to other

80 See Rules, supra note 94, at §1
81 See UDRP, supra note 16, §4(k)
potentially applicable jurisdictions, to the jurisdiction of (i) the country of domicile of the applicant, and (ii) the country where the registration authority was located.”

Inconsistency in deciding cases within the UDRP procedure can occur particularly where there is no guideline on the choice of law. As the WIPO Final Report indicates that the applicable law should be settled by the panel according to traditional choice of law concepts, namely “in applying the definition of abusive registration, the panel of decision-makers shall, to the extent necessary, apply the law or rules of law that it determines to be appropriate in view of all circumstances.” In addition, under para 5(a) of the UDRP Rules application of national legal principles depends on a panel which decides a complainant in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The next issue that emerges is that the Policy does not implement an appeal mechanism of the panel’s decision nor a compensation system within its proceedings. Consequently, it means that when parties dissatisfied with the decision reached, they have to take their cases to the courts through its costly and time-consuming proceedings. But here comes the paradox – parties tried to avoid complex, long proceedings and wasted money still face with the difficulties while seeking for compensation and protection of their rights. For instance, small businesses can not afford to cover all the costs for the court proceedings. Thus, Milton Mueller in his studies reveals several critical factors in respect of appeal process. First of all, he thinks that it does not directly address the forum-shopping problem, unless it allowed the respondent to select the appeal venue.

Another his criticism of appeals is that it undermines the fundamental goal of the UDRP - to create a lightweight, fast, inexpensive method of dispute resolution to handle the most egregious cases of abusive registrations and accordingly, adding an appeal process would add to the expense and delay of resolving disputes through the UDRP, making it more like a global law and less like alternative dispute resolution. In his turn, Mueller proposes to have domain name registrars select the resolution service provider who would arbitrate disputes over the names they register. In the framework of the UDRP launching of appeal process.

82 WIPO Final Report, supra note 86, §144
83 Compagnie de Saint Gobain v. Com-Union Corp. (saint-gobain.net), D2000-0020
85 Rules, supra note 94, at §15(a)
86 See Mueller, Milton, Rough justice, An analysis of ICANN’s Uniform Dispute Resolution Policy
would be advantageous if the prices incorporated are reasonable and similar to the costs of initial proceedings.

As another author Julia Hornle thinks, the UDRP Rules do not expressly provide for a challenge of the panel by one of the parties before an independent third party on the grounds of lack of independence or partially.\(^7\) She underlines that clearly a provision allowing either party to challenge the appointment of a panelist before an independent third-party body (for instance, appeals body) even after a decision has been made, is necessary to render these provisions effective in preventing the appointment of biased panelists. Also, in her words, the providers can influence the outcome of decisions through the selection and allocation of panelists.

Even though panels have been given the power to declare against the complainant, practice shows respondents have rarely tried to have them exercise their powers and even more rarely have the respondents been successful against complainants. Panels seem to have so far been eager to accept the complainants’ account of the events and unfairly respondents often strive against some lack of open mind. This is not to say the system isn’t abstractly fair, but in practice the lack of clear guidelines on border cases and the unduly readiness to comply to the complainants’ will has undermined the process’ credibility.

The UDRP is only one amongst other alternative dispute resolution (hereafter ADRs) systems, and the national court systems remain available too. It seems, though, other ADRs are even more flawed and do not offer the UDRP’s advantages of swift, inexpensive and non-bureaucratic proceedings, nor its efficiency and transparent outcomes. Most importantly though it must be reminded the flaws often pointed to the UDRP system are common to other ARDs as well and even national court systems.

\(^7\) See Hornle, Julia, *Cross-border Internet dispute resolution*, 2009, p.190
4.5. Proposals on the improvement of the UDRP system

Having summarized all the provisions and regulations of the UDRP proceeding, I came to the conclusion that in spite of well-organized structure, this domain name dispute resolution system needs some amendments to be made. In this regard, the following moments, in my opinion, need closer consideration:

- It is recommended to formulate new official guidelines aimed at improvement the UDRP policy and to make clear specific issues that were differently construed among the panelists and consequently, caused conflicts between domain name holders and trademark owners. Thus, for instance, we would mention necessity to reconsider rules which prohibit complainant to apply the UDRP proceeding repeatedly in relation to the same domain name. Moreover, it is advisable to pay attention on the usage of negotiation and mediation procedures, in the case if the parties consent to apply them;

- Further, the UDRP system will operate more effectively if it envisages prolongation of time limits. Thus, art 5 (a) of the Rules contains provisions, which adjust unreasonably short period of time for respondent to acknowledge “within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.” It is important to add that one of the reasons for the high rate of defaults in the UDRP procedure is due to the short time they have to respond to the complaint. This becomes even more apparent from the fact that the 20 days period for response launches from the moment when a complaint is sent, not when it is received. The UDRP effectively gives a respondent only twenty days to do what would take several months in an ordinary lawsuit;

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88 Rules, supra note 94, at §5(a)
- Another major point of consideration is the lack of transparency in the panelists’ selection process. Even though it was agreed by Professor Michael Geist that in a three member panel case, the results were fairer than on those with a one member panel, with a drop of the winning percentage from a high of over 82% to 60%, the study still claimed the allocation of the panel was not transparent, and a special focus was made on the neutrality of NAF.⁸⁹

- Furthermore, there is a need for effectively functioning control over Reverse domain name highjaking (RDNH). The problem of reverse domain name highjacking has engaged the URDP in some criticism as well and made it questionable whether its terms are fair and equipped to dealing with situations where the domain holder becomes the “victim” of ill intentioned complainants who, alleging the abuse of a trademark or service mark, seek to press the domain holder to give up the domain name or risk severe economical compensation to the complainant. The only “penalty” for RDNH is that a decision reporting a bad faith complaint must be published.⁹⁰ Moreover, “in facilitating reverse domain name hijacking, the Uniform Policy allows panels to reach issues properly left to courts.”⁹¹

- Concerning the choice of law issues, in the case when the jurisdiction where the mark is protected and where defendant is a resident (or where personal jurisdiction can be otherwise obtained according to the regular domestic rules) is the same jurisdiction, then complainant should commence his suit there. On the contrary, if these two jurisdictions differ from each other, then complainant should bring his suit against the respondent in the country where the respondent resides (or where personal jurisdiction is otherwise available), unless complainant is able to establish minimum contacts of respondent with the member state where the mark is protected, upon such case complainant may alternatively sue there. Further, if neither of the above two rules apply, then complainant should sue where minimum contacts of the respondent with the member state’s jurisdiction exist. In the case, if complainant sues in a member

⁸⁹ See Michael Geist, Fairness and the ICANN UDRP. In: Internet Law & Business, Vol.3, No3.181
⁹⁰ See Blackman, supra note 80, at 233-34
⁹¹ Blackman, supra note 80, at 225
state where respondent is not a resident (and personal jurisdiction is not available), where the trademark is not protected, and where minimum contacts do not exist, then that member state should nevertheless adjudicate the dispute upon a satisfactory explanation of the reason for commencing the suit there and upon determination that the venue was not chosen in bad faith;

- In order to establish precedents and contribute to legal certainty, the appellate mechanism would be the best option. In the framework of the UDRP launching of appeal process would be advantageous if the prices incorporated are reasonable and similar to the costs of initial proceedings. Appellate mechanism will assist in reconsidering unsuccessful decisions taken within the UDRP procedure and will allow for advanced and more clearly formulated ones. At the same time, it is necessary to point out possible shortcomings if appeal procedure. Thus, such mechanism might advantage trademark owners; in addition, it might result in costs growth and cause delay of the UDRP proceedings. As Mueller does not support the implementation of an appeal process because “it undermines the fundamental goal of the UDRP - to create a lightweight, fast, inexpensive method of dispute resolution to handle the most egregious cases of abusive registrations”92. Moreover, as Mueller notices in this respect, “adding an appeal process would add to the expense and delay of resolving disputes through the UDRP, making it more like a global law and less like alternative dispute resolution.”93

On October 20, 2009 ICANN has approved new version of the Rules for Uniform Domain Name Dispute Resolution Policy. This will allow to for electronic-only filing of pleadings under the UDRP.94

92 See Mueller, Milton, Rough justice, An analysis of ICANN’s Uniform Dispute Resolution Policy
93 Id.
94 See <www.icann.org/.../udrp/uniform-rules.htm>
Conclusions

From an overview of the legal problems imposed by the Internet domain names, analysis of the background on the conflicts between trademark owners and domain name holders, and examination of the ICANN domain name dispute resolution policy, exactly, the UDRP policy we come to a conclusion that discussed dispute resolution procedure allows trade mark owners to fight efficiently and successfully cybersquatting. The key to successful implementation of the UDRP is in the time efficient solutions, low cost, swift enforceability and the quality of its human resources, that is, the of panelists who participate in the arbitrations.

Another of the changes it introduced and which certainly contributed for its popularization was the bridging of the language barrier by allowing cases to be handled in different languages and parties from all over the world to file cases in their own languages, online and without requiring the dispatching of heavy packages from one place to another! This secure online facility allows cases to be submitted quickly in one’s own language without any unnecessary delay, thus enhancing the accessibility of the proceedings.

The procedural rules, though not perfect, ensure that a fair chance is given to both parties to present their cases and due process and the adversarial principal procure to balance out any advantages a Party might have, ensuring even in regards to the choosing of the panelist or panelists that equal treatment and weight is given to the interests of both the complainant and the respondent. Furthermore, its process is transparent and its decisions are made available online, for public disclosure, just as its formation and reviewing process is open to comment not just by accredited institutions but the public as well.

Finally, it could be mentioned, that there is still room for changes, such as the introduction of an appellate mechanism, reducing the costs involved in opting for a three member panel, establishing effectively functioning RDNH control, etc.

In view of all revised circumstances, despite of the many benefits of the Uniform Domain Name Dispute Resolution procedure, certain issues still need more clarification. This is the
case in regard to the flaws of the UDRP system which sometimes results with an inappropriate settlement of the disputes between trademark owners and domain name holders. Nevertheless, the UDRP process remains its position as successful and authoritative instrument though with some inadequacies and complications of procedural aspects.
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Mairead Moore, Cybersquatting: Prevention better than cure? International Journal of Law and Information Technology Vol. 17 No. 2


**Legislation**

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)

WIPO Supplemental Rules for UDRP

“The Trademark, Service Sign and Names of Places of Good’s Origin Act” of September 23, 1992 № 3520-I, with the modifications and additions made by the “About the Modifications and Additions in the Trademark, Service Sign and Names of Places of Good’s Origin Act” of December 11, 2002 №166
Annex (abbreviations)

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<td>ICT</td>
<td>Information and Communication Technologies</td>
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<td>Internet Protocol</td>
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<td>Domain Name System</td>
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Annex (optional)

Uniform Domain Name Dispute Resolution Policy

(As Approved by ICANN on October 24, 1999)

1. Purpose. This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at http://www.icann.org/en/dndr/udrp/uniform-rules.htm, and the selected administrative-dispute-resolution service provider's supplemental rules.

2. Your Representations. By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

3. Cancellations, Transfers, and Changes. We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

a. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;

b. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or

c. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this
Policy or a later version of this Policy adopted by ICANN. (See Paragraph 4(i) and (k) below.)

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.


This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at www.icann.org/udrp/approved-providers.htm (each, a "Provider").

a. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.

b. Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint. When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

d. Selection of Provider. The complainant shall select the Provider from among those approved by ICANN by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).
e. **Initiation of Proceeding and Process and Appointment of Administrative Panel.** The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

f. **Consolidation.** In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN.

g. **Fees.** All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.

h. **Our Involvement in Administrative Proceedings.** We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.

i. **Remedies.** The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.

j. **Notification and Publication.** The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

k. **Availability of Court Proceedings.** The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be
canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

5. All Other Disputes and Litigation. All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

6. Our Involvement in Disputes. We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

7. Maintaining the Status Quo. We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8. Transfers During a Dispute.
a. Transfers of a Domain Name to a New Holder. You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.

b. Changing Registrars. You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

9. Policy Modifications. We reserve the right to modify this Policy at any time with the permission of ICANN. We will post our revised Policy at <URL> at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration.
Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules")

As approved by the ICANN Board of Directors on 30 October 2009.

These Rules are in effect for all UDRP proceedings in which a complaint is submitted to a provider on or after 1 March 2010. UDRP Providers may elect to adopt the notice procedures set forth in these Rules prior to 1 March 2010.

Administrative proceedings for the resolution of disputes under the Uniform Dispute Resolution Policy adopted by ICANN shall be governed by these Rules and also the Supplemental Rules of the Provider administering the proceedings, as posted on its web site. To the extent that the Supplemental Rules of any Provider conflict with these Rules, these Rules supersede.

1. Definitions

In these Rules:

Complainant means the party initiating a complaint concerning a domain-name registration.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

Mutual Jurisdiction means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain-name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time the complaint is submitted to the Provider.

Panel means an administrative panel appointed by a Provider to decide a complaint concerning a domain-name registration.

Panelist means an individual appointed by a Provider to be a member of a Panel.

Party means a Complainant or a Respondent.
**Policy** means the Uniform Domain Name Dispute Resolution Policy that is incorporated by reference and made a part of the Registration Agreement.

**Provider** means a dispute-resolution service provider approved by ICANN.

**Registrar** means the entity with which the Respondent has registered a domain name that is the subject of a complaint.

**Registration Agreement** means the agreement between a Registrar and a domain-name holder.

**Respondent** means the holder of a domain-name registration against which a complaint is initiated.

**Reverse Domain Name Hijacking** means using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.

**Supplemental Rules** means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, file size and format modalities, the means for communicating with the Provider and the Panel, and the form of cover sheets.

**Written Notice** means hardcopy notification by the Provider to the Respondent of the commencement of an administrative proceeding under the Policy which shall inform the respondent that a complaint has been filed against it, and which shall state that the Provider has electronically transmitted the complaint including any annexes to the Respondent by the means specified herein. Written notice does not include a hardcopy of the complaint itself or of any annexes.

2. **Communications**

(a) When forwarding a complaint, including any annexes, electronically to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:
(i) sending Written Notice of the complaint to all postal-mail and facsimile addresses (A) shown in the domain name's registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and (B) supplied by Registrar to the Provider for the registration's billing contact; and

(ii) sending the complaint, including any annexes, in electronic form by e-mail to:

(A) the e-mail addresses for those technical, administrative, and billing contacts;

(B) postmaster@<the contested domain name>; and

(C) if the domain name (or "www." followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain-names registered by multiple domain-name holders), any e-mail address shown or e-mail links on that web page; and

(iii) sending the complaint, including any annexes, to any e-mail address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other e-mail addresses provided to the Provider by Complainant under Paragraph 3(b)(v).

(b) Except as provided in Paragraph 2(a), any written communication to Complainant or Respondent provided for under these Rules shall be made electronically via the Internet (a record of its transmission being available), or by any reasonably requested preferred means stated by the Complainant or Respondent, respectively (see Paragraphs 3(b)(iii) and 5(b)(iii)).

(c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including, where applicable, the number of copies) stated in the Provider's Supplemental Rules.

(d) Communications shall be made in the language prescribed in Paragraph 11.

(e) Either Party may update its contact details by notifying the Provider and the Registrar.

(f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:
(i) if via the Internet, on the date that the communication was transmitted, provided that the
date of transmission is verifiable; or, where applicable

(ii) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation
of transmission; or:

(iii) if by postal or courier service, on the date marked on the receipt.

(g) Except as otherwise provided in these Rules, all time periods calculated under these Rules
to begin when a communication is made shall begin to run on the earliest date that the
communication is deemed to have been made in accordance with Paragraph 2(f).

(h) Any communication by

(i) a Panel to any Party shall be copied to the Provider and to the other Party;

(ii) the Provider to any Party shall be copied to the other Party; and

(iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.

(i) It shall be the responsibility of the sender to retain records of the fact and circumstances of
sending, which shall be available for inspection by affected parties and for reporting
purposes. This includes the Provider in sending Written Notice to the Respondent by post
and/or facsimile under Paragraph 2(a)(i).

(j) In the event a Party sending a communication receives notification of non-delivery of the
communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the
Provider) of the circumstances of the notification. Further proceedings concerning the
communication and any response shall be as directed by the Panel (or the Provider).

3. The Complaint

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint
in accordance with the Policy and these Rules to any Provider approved by ICANN. (Due to
capacity constraints or for other reasons, a Provider's ability to accept complaints may be
suspended at times. In that event, the Provider shall refuse the submission. The person or
entity may submit the complaint to another Provider.)
(b) The complaint including any annexes shall be submitted in electronic form and shall:

(i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Complainant and of any representative authorized to act for the Complainant in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy (where applicable);

(iv) Designate whether Complainant elects to have the dispute decided by a single-member or a three-member Panel and, in the event Complainant elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);

(v) Provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a);

(vi) Specify the domain name(s) that is/are the subject of the complaint;

(vii) Identify the Registrar(s) with whom the domain name(s) is/are registered at the time the complaint is filed;

(viii) Specify the trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future);
(ix) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular,

(1) the manner in which the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) why the Respondent (domain-name holder) should be considered as having no rights or legitimate interests in respect of the domain name(s) that is/are the subject of the complaint; and

(3) why the domain name(s) should be considered as having been registered and being used in bad faith

(The description should, for elements (2) and (3), discuss any aspects of Paragraphs 4(b) and 4(c) of the Policy that are applicable. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(x) Specify, in accordance with the Policy, the remedies sought;

(xi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(xii) State that a copy of the complaint, including any annexes, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with Paragraph 2(b);

(xiii) State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;

(xiv) Conclude with the following statement followed by the signature (in any electronic format) of the Complainant or its authorized representative:

"Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the dispute-resolution provider and
panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

"Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(xv) Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name(s) in dispute and any trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence.

(c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

4. Notification of Complaint

(a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall forward the complaint, including any annexes, electronically to the Respondent and shall send Written Notice of the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by Paragraph 2(a), within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with Paragraph 19.

(b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.

(c) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) in connection with sending the complaint to the Respondent.
(d) The Provider shall immediately notify the Complainant, the Respondent, the concerned Registrar(s), and ICANN of the date of commencement of the administrative proceeding.

5. The Response

(a) Within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.

(b) The response, including any annexes, shall be submitted in electronic form and shall:

(i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain-name holder) to retain registration and use of the disputed domain name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Respondent (domain-name holder) and of any representative authorized to act for the Respondent in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Respondent in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy (where applicable);

(iv) If Complainant has elected a single-member panel in the complaint (see Paragraph 3(b)(iv)), state whether Respondent elects instead to have the dispute decided by a three-member panel;

(v) If either Complainant or Respondent elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);

(vi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;
(vii) State that a copy of the response including any annexes has been sent or transmitted to the Complainant, in accordance with Paragraph 2(b); and

(viii) Conclude with the following statement followed by the signature (in any electronic format) of the Respondent or its authorized representative:

"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."); and

(ix) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

(c) If Complainant has elected to have the dispute decided by a single-member Panel and Respondent elects a three-member Panel, Respondent shall be required to pay one-half of the applicable fee for a three-member Panel as set forth in the Provider's Supplemental Rules. This payment shall be made together with the submission of the response to the Provider. In the event that the required payment is not made, the dispute shall be decided by a single-member Panel.

(d) At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

(e) If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

6. Appointment of the Panel and Timing of Decision

(a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

(b) If neither the Complainant nor the Respondent has elected a three-member Panel (Paragraphs 3(b)(iv) and 5(b)(iv)), the Provider shall appoint, within five (5) calendar days
following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. The fees for a single-member Panel shall be paid entirely by the Complainant.

(c) If either the Complainant or the Respondent elects to have the dispute decided by a three-member Panel, the Provider shall appoint three Panelists in accordance with the procedures identified in Paragraph 6(e). The fees for a three-member Panel shall be paid in their entirety by the Complainant, except where the election for a three-member Panel was made by the Respondent, in which case the applicable fees shall be shared equally between the Parties.

(d) Unless it has already elected a three-member Panel, the Complainant shall submit to the Provider, within five (5) calendar days of communication of a response in which the Respondent elects a three-member Panel, the names and contact details of three candidates to serve as one of the Panelists. These candidates may be drawn from any ICANN-approved Provider's list of panelists.

(e) In the event that either the Complainant or the Respondent elects a three-member Panel, the Provider shall endeavor to appoint one Panelist from the list of candidates provided by each of the Complainant and the Respondent. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as they may specify to the Provider within five (5) calendar days of the Provider's submission of the five-candidate list to the Parties.

(f) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

7. Impartiality and Independence

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's
impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

8. Communication Between Parties and the Panel

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

9. Transmission of the File to the Panel

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three-member Panel.

10. General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

11. Language of Proceedings
(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

12. Further Statements

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

13. In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

14. Default

(a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

15. Panel Decisions

(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.
(b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to Paragraph 6.

(c) In the case of a three-member Panel, the Panel's decision shall be made by a majority.

(d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s).

(e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the scope of Paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

16. Communication of Decision to Parties

(a) Within three (3) calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), and ICANN. The concerned Registrar(s) shall immediately communicate to each Party, the Provider, and ICANN the date for the implementation of the decision in accordance with the Policy.

(b) Except if the Panel determines otherwise (see Paragraph 4(j) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see Paragraph 15(e) of these Rules) shall be published.

17. Settlement or Other Grounds for Termination

(a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding.
(b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue
the administrative proceeding for any reason, the Panel shall terminate the administrative
proceeding, unless a Party raises justifiable grounds for objection within a period of time to
be determined by the Panel.

18. Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative
proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel
shall have the discretion to decide whether to suspend or terminate the administrative
proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the pendency of an
administrative proceeding in respect of a domain-name dispute that is the subject of the
complaint, it shall promptly notify the Panel and the Provider. See Paragraph 8 above.

19. Fees

(a) The Complainant shall pay to the Provider an initial fixed fee, in accordance with the
Provider's Supplemental Rules, within the time and in the amount required. A Respondent
electing under Paragraph 5(b)(iv) to have the dispute decided by a three-member Panel, rather
than the single-member Panel elected by the Complainant, shall pay the Provider one-half the
fixed fee for a three-member Panel. See Paragraph 5(c). In all other cases, the Complainant
shall bear all of the Provider's fees, except as prescribed under Paragraph 19(d). Upon
appointment of the Panel, the Provider shall refund the appropriate portion, if any, of the
initial fee to the Complainant, as specified in the Provider's Supplemental Rules.

(b) No action shall be taken by the Provider on a complaint until it has received from
Complainant the initial fee in accordance with Paragraph 19(a).

(c) If the Provider has not received the fee within ten (10) calendar days of receiving the
complaint, the complaint shall be deemed withdrawn and the administrative proceeding
terminated.
(d) In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

20. Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

21. Amendments

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written approval of ICANN.