Rough Justice

An Analysis of ICANN's Uniform Dispute Resolution Policy

Dr. Milton Mueller V2.1

Executive Summary

ICANN's [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) is an international dispute resolution procedure that enables trademark holders to challenge the registrant of an Internet domain name, bring the name to binding arbitration and, if the challenge is successful, gain control of the name. The policy was defined in October 1999 and the first case was decided in December 1999.

This report uses quantitative and qualitative data to assess the results of ICANN's uniform domain name dispute resolution policy. The paper is derived from an ongoing database development project that records objective information about the UDRP cases in order to facilitate empirical social-scientific analysis. The UDRP database is a project of the Syracuse University School of Information Studies' Convergence Center, directed by Dr. Milton Mueller, Associate Professor. A grant providing support for initial data input was received from the Ford Foundation's funding of the Association for Computing Machinery's Internet Governance Project.[1] This report is based on complete information about the first 500 cases and partial information about the first 1200 cases.

Surveying the landscape

As of November 1, 2000, roughly a year after it was adopted, the UDRP has been applied in 2166 proceedings involving 3938 domain names. This report provides a wide range of descriptive statistical data about the results of UDRP implementation, using a database that records objective information about the UDRP cases in order to facilitate social-scientific analysis. Among the findings:

- The number of cases filed per month peaked at 343 in August and has since declined to about 250.

- There are significant variations in the dispute resolution service providers' tendency to rule for the complainant or the defendant, speed of decision making, and national origin of the complainants that take cases to them.

- For every domain name registration dispute, approximately 3,500 new names are registered.

- Disputed domain names are registered, on average, a year and three months before being challenged. Many names are challenged only two weeks after registration; the oldest challenged domain name was registered in 1989.

- One third of all cases are defaults; complainants win 98% of those cases.

Forum shopping and complainant bias

ICANN allows the challenger to select the dispute resolution service provider. There is statistical evidence that selection of dispute resolution service providers by challengers leads to forum shopping that biases the results. There are major differences among arbitration providers in the ratio of successful to unsuccessful challenges. In terms of decision outcomes, WIPO and NAF are the most complainant-friendly providers and eResolutions is the most defendant friendly. Both NAF and WIPO tend to interpret the UDRP in ways that favor trademark holders over other Internet users, whereas eResolutions decisions tend to adhere more closely to the strict language of the policy.

WIPO and NAF attract the largest number of complaints (61% and 31%, respectively); eResolutions attracts the lowest share of cases (7%). While multiple factors account for this difference in market share, the report discovers a statistically significant correlation between eResolution's low market share and its greater likelihood of finding for the defendant. Other factors, notably the complainant's country of origin, also affect market share strongly.

To remedy the bias inherent in complainant forum shopping, ICANN should modify the UDRP to allow domain name *registrars* to select the dispute resolution provider(s) who will handle disputes over names they register. The incentives of registrars are more balanced because end users have a choice of which registrar to use. Registrar selection compares favorably to other possible remedies, such as random assignment of cases to dispute resolution service providers, an appeals process, or modification of the language of the policy.

The language of the policy

On the whole, the UDRP criteria for resolving domain name disputes have proven to be robust and fair. If applied properly, the policy serves as an effective remedy against abusive registrations while preventing overreaching by trademark holders. Although a significant number of bad decisions have come out of the process, the worst of them clearly violate or ignore one or more of the UDRP's decision criteria. The language of the UDRP is sound.

1. Disputes over domain name assignment

Six years and counting

Battles between domain name registrants and trademark holders over rights to names have been raging for six years. A symbolic first shot was fired in 1994 when writer Joshua Quittner registered *mcdonalds.com* and publicly teased the corporation about it in an article in <u>Wired</u> Magazine.[2]

Quittner's journalistic coup dramatized a profoundly important economic characteristic of the domain name system. The value of specific names can be extraordinarily high, yet domain names in dot com, net and org are assigned on a first-come, first-served basis for a low price. In effect, any name is available for whoever gets there first, whether they are ordinary words, celebrity names, brand names, place names, or any combination thereof.

Open, inexpensive registration greatly facilitated the growth of the Internet and the freedom and creativity of its applications. But it also generated many disputes over who had the right to use specific names. The conflicts posed an institutional problem because existing rules and regulations pertaining to the use and registration of identifiers were limited to national jurisdictions. Even when it was applicable, trademark law was bounded by language, branch of industry, and other factors that could not be easily applied to Internet domain names.

The fantastic success of the World Wide Web after 1994 magnified the problem, as Web browsers relied on domain names to locate sites and search engines displayed them as links. Encouraged by reports of the resale of catchy domain names for six-figure sums, businesses began to register many names and develop a secondary market.

Abuses developed. A few bold speculators openly registered trademarked names and sought to sell them to the trademark owners. Occasionally businesses registered the names of their competitors to preempt their use or divert traffic. Later, so-called "oops!" domains proliferated as people registered multiple variations – sometimes as many as twenty or thirty -- of the names of popular companies, products or Internet sites in order to snag the attention of people who mistyped or misspelled Internet addresses. The economic incentive for such practices came from payments received from advertisers for hits on web sites. In the worst cases, the pirated names resolved to pornography sites. Collectively, these practices inspired a new term: *cybersquatting*.

The flip side of cybersquatting was a practice nearly as frequent and equally as onerous: *reverse domain name hijacking*. Reverse hijackings occurred as corporations used their legal and financial muscle to evict legitimate domain name holders from valuable registrations they wanted. Generic names that happened to match trademarks – *prince*, *clue*, *pike*, *compassion* – were

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[2] http://www.wirednews.com/wired/archive/2.10/mcdonalds.html

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subjected to systematic legal onslaughts. Even individuals who attempted to use their own personal surnames or nicknames as email addresses were threatened.[3] While it was still a monopoly from 1995 to 1999, Network Solutions unilaterally imposed a dispute resolution procedure on its customers that allowed trademark holders to suspend a domain name merely because it matched a trademark. Trademark counsels in major firms began to use automated text-searching tools to locate and challenge any domain name that contained a trademarked character string, regardless of how distinctive the term was, how it was being used or how remote the possibility of confusion. Domain names that criticized businesses, such as *lucentsucks.com*, were not exempt from such assaults.[4]

Thus, conflicts over domain names are not a simple matter of wronged intellectual property holders versus sleazy cybersquatters. It is a complex social negotiation over the control of words and their function as messages, identifiers and locators in a globally networked space. As Mark Lemley wrote, "it is important that trademarks not be transformed from rights against unfair competition to rights to control language."[5] 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.

ICANN and the UDRP

The Internet Corporation for Assigned Names and Numbers (ICANN) was created by the US Department of Commerce in 1998. One of ICANN's first substantive acts was the adoption of a uniform dispute resolution policy (UDRP) in October 1999. It is widely acknowledged to be a unique experiment in the globalization and privatization of intellectual property protection. It attempts to substitute uniform global rules for what was once a largely territorial system of rights and dispute resolution. The rules were defined and implemented not by governments, but by a private, California non-profit public benefit corporation, ICANN, which purportedly acts as a self-governing institution for the Internet.[6]

The UDRP had three main objectives. One was to create global uniformity; i.e., to eliminate variety and competition amongst the jurisdictions and rule sets applied to domain name - trademark conflicts. The other was to reduce the cost of resolving disputes. Illegitimate cybersquatting was so inexpensive to initiate that much of it went unchallenged. By the same token, many legitimate registrants, if challenged in the courts, could not afford to defend their interests. Third, because of the sensitivity of replacing national laws with global law, the UDRP was intended to be highly restricted in applicability. It was supposed to be aimed at the most egregious types of cybersquatting, leaving other disputes to the courts. The

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[3] A computer consultant with the surname Prince, who had registered prince.com, was sued by the sports equipment manufacturer and spent nearly $300,000 to defend his name. See also HQM, Ltd. & Hatfield, Inc. v. Hatfield, 1999 U.S. Dist. LEXIS 18598 (D. Md. Dec. 2, 1999).

[4] Lucent Technologies, Inc. v. Lucentsucks.com 95 F.Supp.2d 528, 54 U.S.P.Q.2d 1653 E.D.Va. May 03, 2000

[5] Mark A. Lemley, "The Modern Lanham Act and the Death of Common Sense." 108 Yale Law J 1687 (1999).

[6] Some features of the UDRP drew on the outcome of an international domain name proceeding convened by the World Intellectual Property Organization, a UN-based international treaty organization. Professor M. Froomkin has aptly dubbed the UDRP a product of "semi-private international rulemaking." "Semi-private International Rulemaking: Lessons Learned from the WIPO Domain Name Process." Unpublished ms. See web site http://www.law.tm/

UDRP was not designed to be the ultimate arbiter of name rights on the global Internet or to replace courts. It was designed to provide a cheap and quick way to resolve the easiest cases.

In order to achieve uniformity and lower transaction costs, ICANN has leveraged the centralized and monopolistic nature of access to the domain name root. No business can sell names registrations in the dot com, net, and org domains without being accredited by ICANN. All registrars of domain names under dot com, net, and org must adopt the UDRP as their dispute resolution procedure before they will be accredited by ICANN.[7] In turn, 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.

The scope of the UDRP is still limited to domain names registered in the so-called "generic" top-level domains operated by the Network Solutions registry (.com, .net, and .org). These domains constitute about 65 percent of all registrations worldwide. There are 245 other top-level domains known as country codes to which the UDRP has yet to be fully extended. Some country code administrators have voluntarily adopted it.[8] The new generic top-level domains introduced by ICANN next year also will be subject to the UDRP. All in all, about 70 percent of the world's domain name registrations now fall under the jurisdiction of the UDRP. The percentage will probably increase in the future as new top-level domains are introduced by ICANN.

The UDRP thus represents a policy trade-off. Making challenges to domain names cheaper and easier lowers the threshold for eliminating abusive registrations. But it also lowers the threshold for reverse domain name hijacking. The results of this experiment, therefore, need to be monitored carefully. Both the advocates of stronger protection for trademark rights in the domain name space and their critics have expressed concerns about the results. 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.

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[7] Section II(K) of ICANN's Registrar accreditation agreement, see http://www.icann.org/nsi/icann-raa-04nov99.htm
[8] Five country-code registries have voluntarily adopted the ICANN UDRP as the basis for dispute resolution under their top-level domain: .GT (Guatemala), .NU (Nuie), .TT (Trinidad and Tobago), .TV (Tuvalu), and .WS (Western Samoa). Only .GT and .TT are true "country codes," the others are country code TLDs that are operated and marketed globally as "quasi-generic" TLDs.

2. Sizing the Problem

One of the most interesting features of the UDRP is that it allows us to know how many trademark-related domain name disputes there really are. Before its implementation, business lobbyists asserted that the problem was large and growing but that most conflicts were invisible because of the perceived inadequacy of existing legal remedies.

The UDRP statistics prove that there was a large latent demand for dispute resolution that courts could not feasibly serve. The 2,166 UDRP proceedings greatly exceed the 30 or so cases filed under the so-called Anti-cybersquatiting Consumer Protection Act (ACPA). On the other hand, the statistics also prove that trademark-domain name disputes are a very small portion of the overall domain name marketplace, and that the problem is not growing. The number of disputes is at best holding steady and may already be declining. It also reveals that a tiny number of malfeasors account for a significant share of the problem.

Number of proceedings per month

The number of complaints filed with all service providers rose steadily from January to May 2000 as trademark holders became familiar with the UDRP. From June to July the number of proceedings reached a plateau around 300 per month. Cases peaked in August at 343 and declined to approximately 250 in September and October. It is too early to know whether this will prove to be a sustained downward trend or whether cases will level off around 250 per month.

Chart 1: UDRP proceedings per month, January – October 2000
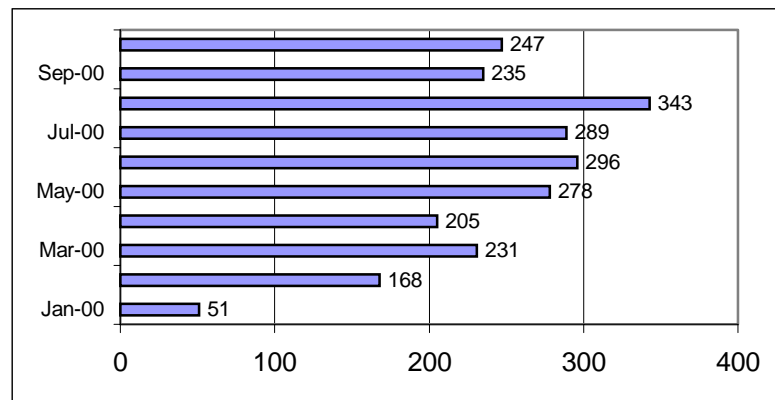
UDRP proceedings average 1.7 names per case (see next section). Assuming about 300 proceedings per month from April to July 2000, we can estimate that

there were about 510 domain names disputed per month. From April to July of 2000, in contrast, the total number of new com, net, and org domain names registered each month increased by a million and a half. April-May registrations grew at 1.44 million a month and the pace increased to 1.82 million per month in July.[9] Disputed names thus constituted somewhere between 0.00035 and 0.00028 of the total number of new registrations. In other words, for every registered name that causes a dispute, there are now about 3,500 new ones registered that do not.

As we discuss below, the rules and precedents used to resolve conflicts over names have important implications for freedom of expression and intellectual property rights. But the significance of the precedents and rights established by the UDRP should not be confused with the *scale* of the problem. Despite the massive amounts of publicity received by some major cases, abusive registration is a minor aspect of the DNS. Unrealistic notions about the true scope of the problem can result in bad law and bad policy.

How many names per proceeding?

The vast majority of UDRP proceedings – 79 percent – involve only one domain name. Another 14 percent involve two domain names. At the other end of the distribution tail there is a small number of proceedings – 24 altogether – that involve a large number of names. (We arbitrarily define "large" as six or more names.) For the 1200 cases in our database, the mean number of names per proceeding is 1.70.

Table 1: Domain names per proceeding

Number of Domain names contested	Number of UDRP proceedings	(%)
1	982	79%
2	169	14%
3	37	3%
4	22	2%
5	13	1%
6 – 244	24	2%

The 24 large proceedings account for 463 domain names – a hefty 22% of all the names challenged in the first 1200 UDRP cases. One monster case involved a "typo-squatter" who registered 244 variations on the name of the Swedish telecommunication company Telia. Other large cases involved typo-squatters on variations of Yahoo! and AOL. These results suggest that a very small number of systematic cybersquatters – literally a dozen or two – account for a significant part of the problem. Almost all of these cases involve registrations that were made from 1997 to late 1999, before the UDRP was implemented. If the UDRP is a successful deterrent, cases like these will not recur, and the number of disputed names will drop even further.

[9] Source: zone files for dot com, courtesy of Richard Sexton, VRX.

The registration date of the disputed names is a critical item in the UDRP database. Keeping track of the registration dates helps to monitor the impact of the UDRP on cybersquatting and reverse domain name hijacking, and can aid in predicting whether disputes will grow or decline in the future.

If most UDRP cases challenge domain name registrations that have been held for a long time, it indicates that there are many unresolved disputes in the world and that the legal status of domain name registrations generally is less stable than it ought to be. If the UDRP is being used as a tool of systematic reverse hijacking, one would also expect to see a large number of challenges to long-registered names. On the other hand, if most UDRP cases are challenging newly or recently registered names, it suggests that most existing registrations are secure and disputes center on newer name selections that are perceived as threatening to pre-existing trademark rights.

Chart 3 shows a frequency distribution of the year of the disputed domain name registrations for a sample of 801 cases. Most (56%) of the disputed names were relatively new, having been registered in 1999 or 2000. Slightly more than 37%, however, were registered in 1998 and 1997, and 6.6% were registered before 1997.

Chart 3: Frequency distribution of the registration date of disputed domain names (N = 801)
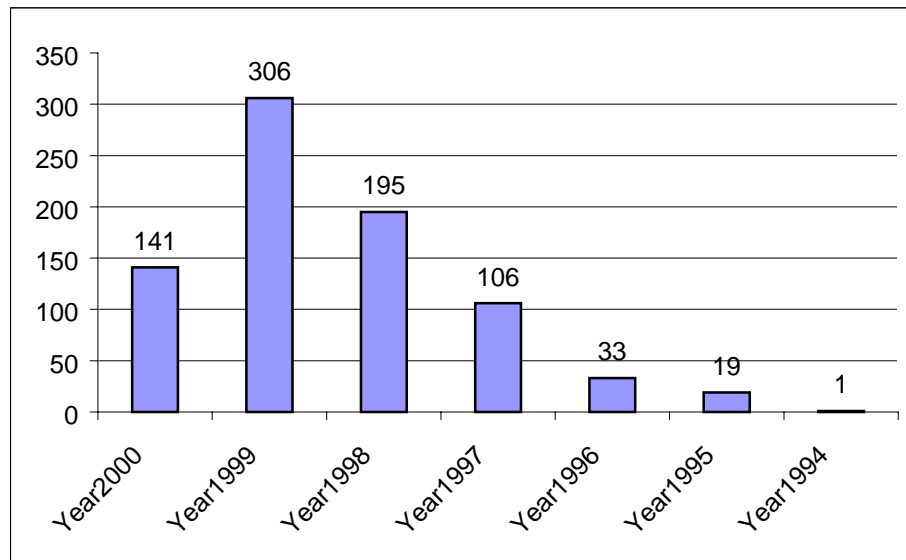
If one looks at the time span between the date a name was registered and the date a UDRP proceeding commenced, the data show no clear trend. The average UDRP challenge occurs 477 days after the name was registered -- about a year and three months. The shortest challenge came only 8 days after the name was registered. The longest came 11 years afterwards.

Surprisingly, the time lag has neither declined nor increased after six months. A downward trend would indicate that a backlog of past disputes was being cleared up, allowing one to infer that the number of UDRP disputes would drop in the future. An upward trend would indicate that there is a large number of latent disputes. The number seems to be staying at about the same level.

Table 2: Time elapsed between domain name registration and UDRP challenge

Month (Year 2000)	Average Days since registration
January	430
February	498
March	455
April	420
May	514
June	498
Average across all cases (Dec-June)	477

3. Outcomes

Who wins and who loses?

Clearly, challengers are the big winners under the UDRP. Aggregate statistics show that when decisions are made, complainants succeed in winning or canceling the contested domain name(s) 80% of the time. Respondents win only 19.5% of the time. The remaining 0.5% of these cases involve split decisions in which some names are transferred to the complainant and some are retained by the respondent. About 17 percent of all cases brought into the UDRP are terminated, settled, or dismissed without a decision.

Table 3: Decision outcomes (N = 1170)

Decision Option	Number	Percent
Complaint Dismissed	191	*19.6%*
Name Cancelled	16	*01.6%*
Name Transfer	764	*78.4%*
Split	4	*0.4%*
Terminated / Withdrawn / Settled	195	*16.7%**

* Of total cases

Like all aggregate statistics, these figures hide as much as they reveal. Outcomes vary significantly depending on which dispute resolution service provider is making the decision, how long the name has been registered, and whether or not the respondent defaults (i.e., fails to respond to the complaint).

Service Provider Outcome Variation

ICANN has accredited four independent arbitration services to handle UDRP cases.

1) The World Intellectual Property Organization (WIPO), Geneva

2) The National Arbitration Forum (NAF), Minneapolis, USA

3) The Disputes.org/eResolutions Consortium (eRes), Canada

4) CPR Institute, USA

Only three of these dispute resolution service providers (RSPs) have enough of a case record to examine statistically: WIPO, NAF, and eResolutions

A statistical approach seems necessary when discussing outcomes. RSP's do not know how their panelists will rule in any given case. RSP's influence the outcome indirectly, through their selection of panelists and procedures, and in the way cases are assigned to panelists. As an example of the latter, the author of this report is a panelist for WIPO, but never has been assigned a case by WIPO. The author has been used as a panelist only when a respondent specifically requested his presence on a three-person panel. WIPO also tends to assign panelists who share the language, culture, or country of the complainant.

An especially telling example of the probabilistic nature of the outcomes is provided by three NAF cases involving the same two disputants. An irate customer of a car dealer named Quirk registered *quirkautos.com, quirknissan.com* and six other names of that ilk after a bad experience with the Quirk dealership. The domain names resolve to a web site with warnings and critical information about the car dealership. The Quirk business challenged all eight registrations and selected NAF as the RSP. However, the complaints took the form of three separate cases involving three different arbitrators. In two of the cases, the arbitrators transferred the names to the complainant, concluding that the respondent displayed bad faith. In the third case, the arbitrator upheld the respondent, stating that the use of the domain names as a supplement to legitimate criticism was protected expression under the first amendment to the US constitution.

The outcome ratios of WIPO and NAF are highly similar, except that fewer NAF cases are terminated or settled. NAF does not refund fees for terminations. As Table 2 below shows, both providers award challenged names to the trademark holder about 80 percent of the time when a decision is rendered. Complainants who bring their cases to eResolutions, on the other hand, lose almost 40% of the time. These differences in outcome ratios are statistically significant at the .005 level.

Table 4: Outcome by dispute resolution service provider (N = 934)

	WIPO		NAF		E-Resolutions		All	
Respondent wins	82	16.6%	62	17.5%	36	41.9%	180	19.3%
Complainant wins	333	67.5%	254	71.5%	38	44.2%	625	66.9%
Terminated/settled	78	15.8%	39	11.0%	12	14.0%	129	13.8%
Total	493		355		86		934	

Respondent Defaults

Many respondents fail to defend their names in the "court" of the UDRP. Among the first 478 cases, the default rate is a surprisingly large 34 percent. With defaults running at a little over one third of all cases, eliminating uncontested cases bumps up the respondent win rate a bit and further accentuates differences among the providers. WIPO pulls away from NAF as the RSP most likely to transfer a name when a decision is rendered in contested cases.

In United States courts, a default by a defendant does not result in an automatic loss -- plaintiffs still must prove their allegations. Not surprisingly, respondents who fail to mount a defense rarely win. But it is typical, and noteworthy, that they are more likely to win at eResolutions than elsewhere.

Table 5: Outcomes in contested vs. default cases (N = 478)

5a. Contested by Respondent (66%)		
Respondent Wins	80 (25%)	11 eRes (39%)
		36 NAF (26%)
		33 WIPO (22%)
Respondent Loses	162 (51%)	12 eRes (43%)
		70 NAF (50%)
		80 WIPO (54%)
Terminated Settled	74 (23%)	5 eRes (18%)
		33 NAF (24%)
		36 WIPO (24%)

5b. Respondent defaults (34%)		
Respondent Wins	4 (2%)	2 eRes (22%)
		1 NAF (1%)
		1 WIPO (1%)
Respondent Loses	158 (98%)	7 eRes (78%)
		73 NAF (99%)
		78 WIPO (99%)
Terminated Settled	0 (0%)	0 eRes
		0 NAF
		0 WIPO

The high default rate can be interpreted in two opposing ways. Either the UDRP procedure moves too fast for ordinary domain name registrants to receive notice or to defend themselves adequately, or many of the challenged names were abandoned by registrants who saw little point in defending them. We tend toward the latter interpretation, without ruling out the possibility that a significant minority of cases fall into the former category. We found a small number of cases with late responses, but many panelists accepted late submissions or delayed the proceedings to obtain a response.

Older names are more likely to win

Outcomes also vary significantly depending on how long ago the name was registered. In the table below, names registered before 1997 fare better in UDRP challenges than names registered in 1997 and afterwards. The difference is statistically significant at the .005 level. See Table 6 below.

Table 6: Decision outcomes for older and newer registrations (all RSPs)

Registration date	Respondent win	Complainant win	Settle / Terminate
Before 1997	21 (40%)	23 (44%)	8 (15%)
1997 and after	277 (16%)	1203 (72%)	201 (12%)

The oldest domain name registration to be challenged under the UDRP so far is *magic.com*, which was registered in 1989. The case illustrates the risks of domain name hijacking created by the UDRP. The domain name holder registered what he thought was a fun generic term a long time ago. Years later, a software company trademarked the term for their products.[10] The respondent had to spend over $1000 to defend his interest in the name by selecting a 3-person panel. Fortunately, the WIPO panel dismissed the complaint.

While the stronger retention rate of older domains reflects positively on the fairness of the UDRP process, the overall ratio is still just under 50/50. The ability of trademark holders to challenge names that predate their own trademark use or registration raises disturbing issues. Any application of the policy that unnecessarily threatens the stability of legitimate name ownership should be strongly discouraged, because there are large switching costs involved in changing domain names. The investment a user makes in publicizing and circulating their online identity is an unrecoverable cost. It is inimical to Internet stability -- one of ICANN's prime directives -- to encourage challenges to long-held and -used domain names.

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[10] Under the old NSI dispute resolution policy, the name could have been suspended merely because it matched a trademark.

4. Forum Shopping and Bias

Variations in market share and what explains it

Under the UDRP rules, it is the complainant – that is, someone (usually a trademark holder) who believes that his or her rights are being violated by a particular domain name registration – who initiates the dispute and chooses the dispute resolution service provider to handle the case. The payment for the service -- typically around $1,500 per case -- also comes primarily from the complainant.[11] Thus, complainants are the economic drivers of this marketplace and are potentially in a position to "forum shop" for the dispute resolution service provider (RSP) they think will be most sympathetic to their claims. Does the ability of complainants to choose a dispute resolution service provider bias the results?

This section performs a statistical analysis to shed light on that question. It utilizes data from the first 621 cases with decisions from December 1999 to June 2000.[12] We analyze the market share of the first three RSPs and see whether market share is correlated with decision outcomes and other variables.

Chart 4: Cumulative market share across all cases
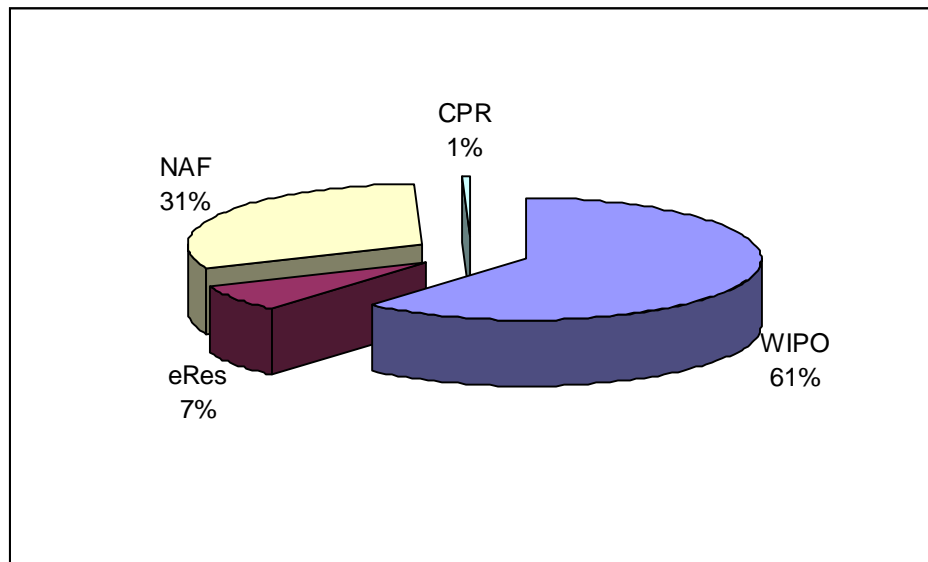
The number of cases brought to the three RSPs is not evenly distributed. WIPO dominates the service, garnering 61% of the available cases. Chart 4 above shows the cumulative share of all cases to the end of October 2000. Market concentration increased over the summer of 2000. Table 7 provides a month-by-

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[11] If a defendant requests a three-person arbitration panel the defendant must share some of the costs of the larger panel. But the election of a larger panel can be done only after the complainant has initiated the dispute and selected the RSP.

[12] Actually we examined the first 700 cases, but 79 of them were terminated, settled, or dismissed without a decision. No information about decision, complainant country of origin, or time of decision is available for these cases.

month breakdown of the share of the three RSPs. (December, January and February statistics have been combined because of the small number of cases in those months.) There is some fluctuation from month to month, but a pattern is clear. WIPO's share steadily grew until August, when a price increase produced a slight shift back to NAF. eResolution's share has always been the smallest, and may be declining slightly.

Table 7: Market share over time

Market share	Jan-Feb	March	April	May	June	July	Aug	Sept	Oct
WIPO	48%	58%	58%	63%	61%	65%	66%	63%	66%
Eresolutions	10%	4%	9%	8%	9%	7%	7%	8%	4%
NAF	43%	38%	33%	29%	29%	27%	26%	28%	27%

If the selection of a RSP is not random, what factors account for the differences? In looking for explanations, we must limit our attention to those that would affect the complainant's choice, because under ICANN's procedure complainants control the selection. Complainants are interested in minimizing their costs, maximizing their control of their intellectual property, and in obtaining valuable resources. Based on the complainant's self-interest, we can propose four possible factors that might explain the differences in market share.

- One is the price of the service, the fees that complainants must pay to resolve a dispute. All else being equal, one would expect lower-priced providers to have a larger market share.

- Another is a significant difference in the likelihood of various decision outcomes. Some RSPs may be, on average, more complainant-friendly than others. The *complainant loss rate* at an RSP is thus a relevant variable.

- A third explanation is the international reputation of the RSP and/or the arbitrators in their pool. Thus, we look at complainants' *country of origin*.

- Another possible factor might be the speed with which the service providers make decisions. A complainant would obviously prefer a quicker decision to a slower one.

Price differences

There are price differences among the three RSPs (see Appendix 1). The CPR Institute's much higher price is probably a factor in the low number of cases it receives. But price can be dismissed as a strong explanatory factor in determining case share in the first 621 decisions. The RSP with the lowest market share, eResolutions/Disputes.org, also had the lowest fees. eResolution charged US$750 for cases involving one or two domain names, and US$900 for cases involving 3-5 domain names during the study period. As noted before, 93% of all cases involve either one or two domain names. NAF's rates started at $750 for one domain name, and went up in a nearly linear fashion as additional domain names were added. During the period of study, WIPO charged $1000 for a complaint with 1 to 5 domain names, and $1500 for cases involving 6-10 names. That made it cheaper than NAF for 3, 4, and 5-domain cases, but identical in two-

name cases and more expensive for the 79% of the cases where only one domain name was challenged. Thus, prices are almost inversely related to market share. (On August 15, 2000, WIPO implemented a major price increase. As the database becomes more complete we will investigate the impact of price on market share.)

Outcome differences

As noted before, the RSP with the highest market share, WIPO, also has the lowest failure probability for complainants in the period studied. The RSP with the lowest market share has a failure rate for complainants that is more than double that of its two competitors. The choice of an RSP does affect the probability of a favorable outcome for a complainant – at least if one is choosing between eResolutions and NAF or WIPO. Table 8 displays the data for the 621 cases:

Table 8: Complainant loss rate of the three service providers

RSP	Outcome (cases with decisions only)		
	Complainant loses	**Complainant wins**	**Total**
E-Resolutions	24 (49%)	25 (51%)	49
NAF	49 (19%)	203 (81%)	252
WIPO	57 (18%)	263 (82%)	320
Totals	130 (21%)	491 (79%)	621 cases

But is outcome the only factor affecting complainant choice? The next sections examine complainant country of origin and the time it takes to decide a case as alternative explanations.

Complainant country of origin

Clearly, WIPO is a larger, more well-known organization in the international arena. NAF is a United States-based organization and most of its arbitrators are retired US judges. EResolutions is Canadian. These factors show up as important influences in the distribution of cases among RSPs. Notably, complainants from outside the US tend to select WIPO.

Table 9: Distribution of complainant country of origin

RSP	Complainant Country of Origin		Total
	United States	**Non-US**	
E-Resolutions	31 (63%)	18 (37%)	49
NAF	232 (92%)	20 (8%)	252
WIPO	191 (60%)	129 (40%)	320
Totals	454 (73%)	167 (27%)	621 cases

Although non-US complainants make up only 27% of the market, more than three-fourths of them (77%) take their cases to WIPO. NAF, on the other hand, got 92% of its complaints from US-based companies. Of those outside the US, three were from North American neighbors (Canada, Puerto Rico, and Mexico). This factor could explain much of the market share difference between NAF and WIPO. WIPO, however, did attract 42 percent of all US-based complainants, whereas eResolutions attracted only 6.8 percent.

Like WIPO, eResolutions has an extensive pool of international arbitrators, but the majority of its non-US complaints came from Canada. Interestingly, even in a global dispute resolution system national preferences play a significant role in the selection of arbitrators.

Quick decisions

Fast, reliable service could be a factor in a complainant's choice of a provider. Our data show that time differences do exist. On average, it takes eResolutions 55 days to make a decision, WIPO 45 days, and NAF 37 days. The average over all RSPs is 43 days. Delay may account for part of eResolution's lagging share, but it cannot explain the difference between WIPO and NAF market share. Table 10 below turns decision time into a binary variable, showing how often it takes RSPs to settle a case in less than 40 days or in 40 days or more.

Time to decide is not entirely independent of outcome. RSPs who prepare more lengthy decisions, take more time to weigh evidence, and make allowances for respondents to prepare responses will take longer.

Table 10: Decision times

RSP	Decision time		Total
	40 days or more	**Below 40 days**	
E-Resolutions	39 (80%)	10 (20%)	49 (mean = 55 days)
NAF	76 (30%)	176 (70%)	252 (mean = 37 days)
WIPO	182 (57%)	138 (43%)	320 (mean = 45 days)
Totals	297 (48%)	324 (52%)	621 cases

Analyzing the results

Chi-square tests show that all three variables (outcome, complainant country of origin, and time to decide) are related in some way to RSP market share with greater than .001 confidence. A nominal regression (multinomial logistic regression) was run to examine the strength of these factors. (See Appendix 2 at the end of the document for the complete results.)

For eResolutions, both complainant loss and decision time positively correlate in predicting whether it will handle a case. Decision outcome is the strongest of the three factors. Complainant country of origin is not a statistically significant factor, and decision time is a significant but weaker factor. The nominal regression is used here as a reality check to ensure that the correlation between eResolution's low market share and its greater likelihood of dismissing complaints is meaningful. We are satisfied that it is.

For WIPO and NAF, complainant country of origin is the strongest predictor of which case will go to which provider. This is because WIPO's share of cases originating from outside the US is so dominant, and NAF's case load is derived almost entirely from the US. Given that WIPO and NAF together account for 92% of the cases, and that their complainant loss rate is very similar, the statistical effect of complainant country of origin is overwhelming. But this result is not inconsistent with the view that complainants prefer dispute resolution service providers who are more likely to find in their favor. It simply shows that when the outcome rate is similar complainants can choose based on other criteria. If the complainant loss rate of WIPO and NAF diverges in the future, or if new RSPs develop a more extensive record, we can obtain more robust results on this item.

In conclusion, the data show that complainant loss rate, though not the only factor correlated with the choice of a provider, is a highly significant one. The low market share of eResolutions is particularly interesting now that we know that price does have an impact on RSP selection, because eResolutions has always had one of the lowest prices. This has important implications for the fairness of ICANN's procedure. In effect, it proves that forum shopping does exist to some degree. Moreover, the effects of forum shopping would be magnified in the future as the

records of the various service providers become more widely known and service providers become more competitive.

Remedies for forum shopping

This section discusses possible remedies for the problem of forum shopping and tentatively recommends one as the best option.

Random selection

Cases could be assigned to RSPs randomly. Any method that assigns cases to RSPs randomly or administratively has several drawbacks, however. Effectively, the caseload of a RSP becomes detached from its price and performance. A RSP could be inefficient and slow and still receive an allotted number of cases. When this happens, as it often does in monopolistic industries, some regulatory oversight authority must fill the gap left by the absence of economic incentives. Of course, ICANN could attempt to regulate prices and set standards for performance, and withdraw accreditation from RSPs who fell below a certain performance thresholds. But that would make ICANN even bigger and more like a regulatory agency than most of us want it to be. Someone would have to pay for that increase in size, and the most likely source of funding would be the disputants themselves. Also, ICANN or someone else would have to take charge of administering the case assignment process.

Appeals

Some have proposed an appeals process to remedy bad decisions made by arbitrators. One obvious problem with an appeals process is that it does not directly address the forum-shopping problem, unless of course it allowed the respondent to select the appeal venue. That would seem to impose an additional layer of forum shopping on the process. Another 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. 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 fact, if losing respondents can afford to use national courts, there is already a narrow appeals option available to them. Complainants, of course, can always take their case to court, either before or after a UDRP case.

Registrar selection

A better solution is to have domain name registrars select the RSP who would arbitrate disputes over the names they register. Registrars are the businesses that provide retail account maintenance and registration services for domain names, such as Register.com, Melbourne IT, or Tucows. These firms already are directly involved in the dispute process, as it is they who must provide key information about the registration and must cancel or transfer a registration in the event of a complainant victory. ICANN would still need to accredit RSPs to ensure

that they were impartial. However, registrars would contract with any accredited RSP -- or multiple providers -- to handle the disputes raised by their registrations.

This option seems best suited to the self-regulatory, private-sector model of Internet governance. The most positive feature of this method is that it gives customers who care about domain name disputes a choice. Registrar service is a competitive industry, affording consumers and complainants alike plenty of service providers to choose from. There will always be differences in outcome among RSPs. Under the current proposal, complainant selection amplifies those differences and selects exclusively for complainant bias. Registrars, on the other hand, have more balanced incentives. They are in the business of registering names, and therefore do not want to eliminate or take away registrations without good cause. By the same token, many of their key customers will be the very trademark holders who may bring disputes to their selected RSP. Alienating them would also be bad for business.

Under a registrar selection regime, ICANN would still set the fundamental parameters of fairness through its accreditation process, but the registrar's choice of a provider would allow some variation within those parameters. A customer who was unhappy with a registrar's choice of a RSP could port his domain name to another registrar.

5. Interpreting and applying the UDRP

Room for variation and its implications for forum shopping

This section examines the substantive language of the UDRP and how differences in panelist interpretations of the policy can result in different name transfer rates. In some cases, differences in outcome are created when panelists ignore critical aspects of the policy, or stretch the defined criteria so broadly that they become almost meaningless. Of course, one would expect some level of random variation among individual judges based on their views of trademark laws and varying interpretations of the facts. The existence of persistent and statistically significant difference in name transfer rates across RSPs, however, must be attributed to behavioral features of the RSPs themselves. These variations become a matter of policy concern because the power of complainants to select RSPs will tend to punish those with lower name transfer rates and reward those with higher name transfer rates.

In defining the basic criteria for challenging a name, ICANN adopted the following three elements:

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

4(a) ii The registrant has no rights or legitimate interests in respect of the domain name; and

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

Note the logical "and" which joins the three elements. According to the policy, *all three* elements must be proved by the complainant before the name can be transferred or cancelled. For example, under a strict reading of the policy a registrant may have no demonstrable rights or legitimate interest in the name, and the name may have been registered and used in bad faith, but if it is not "identical or confusingly similar" to a trademark it should not be transferred.

The definition of "bad faith" is crucial in the policy. Recognizing this, the policy attempts to specify four criteria complainants can use to indicate bad faith, and three criteria respondents can use to prove that they did not register the name in bad faith. The following are indications of bad faith:

4(b) i Evidence that respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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

4(b) ii The domain name was registered in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or

4(b) iii the domain name was registered primarily for the purpose of disrupting the business of a competitor; or

4(b) iv using the domain name has intentionally attempted to attract, for commercial gain, Internet users to a 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 the web site or location or of a product or service on the web site or location.

These factors were specified to be "without limitation," however, leaving panelists plenty of room to hold that virtually any form of behavior that they don't like constitutes bad faith. On the other hand, a respondent can demonstrate a right or legitimate interest in a name by showing that:

4(c) 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
4(c) 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
4(c) 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.

The reason WIPO and NAF have higher name transfer rates is that many of their panelists (not all – we are dealing with a statistical phenomenon) first form conclusions about whether a registrant is a cybersquatter of some sort. If they believe that the registrant is a bad actor, they tend to stretch the UDRP definitions to cover the a particular facts of the case, in many cases coming up with highly imaginative definitions of "use," "identical or confusingly similar," or other policy criteria. In some of the worst decisions, the panelists appear to ignore both the language and the intent of the policy and set themselves up as judges of who has a more meritorious claim on a name. The eResolutions panelists, on the other hand (in a statistical sense) tend to adopt a more literal reading of the policy.

Both WIPO and NAF have upheld respondents in numerous instances. In some cases, they have rebuffed trademark owners who tried to assert control of generic terms (*allocation.com*, *shack.com*). Both groups contain many conscientious panelists who try hard to apply the policy in a fair manner. Nevertheless, NAF and WIPO panels have a demonstrable tendency to expand the strict language of the policy when they conclude that a registrant is a bad actor.

Table 11 below presents a selection of cases that, in the author's reading, stray from a strict interpretation of the policy. The list is illustrative rather than exhaustive, although it does highlight some of the worst decisions.

Table 11: RBDs (Really Bad Decisions)

Name	Proceeding	UDRP principle violated
Crew.com	WIPO D2000-0054	4(a)iii - Ruling goes beyond ICANN policy, attempting to make secondary markets in generic domain names illegal if the generic term happens to be trademarked. Faced with the absence of any real bad faith, the panelists concocted a "preclusion" doctrine that holds that prior registration of a name constitutes bad faith under 4(b)ii of the policy because it prevents the trademark holder from having the name. Since domain name registrations are by definition exclusive, this could be used to justify bad faith for any name a trademark holder wants.
Bodacious-tatas.com	WIPO D2000-0479	4(a)i - The trademark involved was "Tata & Sons." The panelist stretched the definition of "confusingly similar" well beyond the breaking point.
Esquire.com	NAF FA0093763	4(b)i, 4(a)ii - Bad faith finding based on holding that respondent registered name intending to sell it to complainant, despite absence of any evidence of an offer and despite fact that the domain was sold in 1997 to a different party with a bona fide business plan to use the name for email addresses.
Guinness-beer-really-sucks.com	WIPO D2000-0996	4(a)i - Bad faith and no rights were proved, but the panelist's finding that the domain name was "confusingly similar" to the trademark "Guinness" is insupportable.
Barcelona.com	WIPO D2000-0505	4(a)ii, 4(a)iii - Respondent used name for bona fide offering of services but panelist asserted that "some rights are better or more legitimate than others." Panelist also adopted bizarre "preclusion" concept advanced in crew.com to manufacture a bad faith finding.
Tonsil.com	WIPO D2000-0376	4(b)i - A generic term trademarked by a German company that already had the country-code version of the name. Panelist's decision seems to have been driven mainly by his irritation with the respondent's behavior. Took 4(b)i to new heights of absurdity by holding that failure to respond to an offer to buy the name for $100 proved that a higher price was demanded.
Traditions.com	NAF FA0094388 (In post-udrp litigation)	4(a)iii - Another ruling that completely ignored the bad faith requirement of the policy in order to take away a generic domain name from a domain reseller and give it to a trademark holder

Free expression and domain names

Free expression and fair use have always been important legal boundaries on trademark protection. The Internet is a forum for discussion, commentary and information exchange as well as commerce. Domain names, like book titles or file names, are simply semantically meaningful pointers to information. This could be web sites, mailboxes, or other resources on the Internet. They are addresses, not necessarily identifiers of source or origin. Indeed, the number of registered domain names vastly exceeds the number of trademarked names.

Although they can reflect a trademark, and while specific names, through commercial use, can acquire the status of a trademark, domain names themselves must not be automatically equated with trademarks. Such an equation poses a threat to free expression on the Internet, because it can prevent critics from labeling their criticism in the most effective and intuitive way, and can

make it more difficult for potential audiences to find it. On the other hand, there are people who want domain names to be vested with such an official, highly regulated status.

On this question the UDRP precedents are mixed. Many panelists have upheld more liberal, less trademark-centric uses of domain names, but others have equated them with trademarks and have given claimants rather extraordinary rights. Table 12 provides an overview of some relevant cases.

Table 12: Some cases affecting the domain name - free expression nexus

Domain name(s)	Case ID	Summary
Quirkmotors.com et al	NAF FA0094964	Complaint dismissed. Use of a company name as address of a site criticizing the business is fair use protected by free speech rights
Quirknissan.com Quirkvolkswagen.com Quirkmazda.com	NAF FA0094959 NAF FA0094963	Transfer. Use of a company name to run a criticism site is not a legitimate fair use
Saint-gobain.net	WIPO D2000-0020	Transfer. Name was registered by a shareholders group to voice opinions about Saint-Gobain company management. Paenlist ruled they should have used a name not identical to the company's.
Skipkendall.com	WIPO D2000-0868	Complaint dismissed. Use of a professional golfer's name for a site criticizing his personal conduct upheld.
Csa-canada.com Csa-international.net	WIPO D2000-0071	Transfer. Use of a standards organization's name as a domain to post critical information ruled to be abusive under 4(b)iii. Respondent's status as a commercial organization seeking accreditation from CSA hurt its fair use claim.
Lobobasketball.com Lobofootball.com	NAF FA0094306 (In post-UDRP litigation)	Transfer. An extensive, popular web site that provides independent and often critical commentary on University of New Mexico sports programs. Uses domain name to refer to its subject matter; no attempt to exploit confusion about source or origin.
Bridgestone-firestone.net	WIPO D2000-0190	Complaint dismissed. An extremely well-reasoned decision that rejects the Saint-gobain.net precedent and carefully distinguishes between legitimate fair use of domain names for criticism and illegitimate uses.

Reverse domain name hijacking (RDNH)

A significant number of complainants have attempted to use the UDRP to acquire property rights over generic terms or to seize valuable names from legitimate owners. The UDRP rules contain an option allowing panelists to brand a complainant a "reverse domain name hijacker" if they find that a complaint has been brought in bad faith. Table 12 below lists some of these cases. Although the record of respondent success in these cases is quite high (82%) -- a good sign -- panelists have been extremely reluctant to make RDNH findings. In several cases, panelists have cited the lack of clear criteria in the ICANN policy to guide a finding (see e.g. Strick.com, NAF 94801). Panelists at WIPO and NAF seem much more confident about discerning bad faith among registrants than among complainants.

Table 13: Known cases when Respondent alleged Reverse Domain Name Hijacking (not complete)

Name	Proceeding #	Decision outcome	RDNH claim
Crew.com	WIPO D2000-0054	Name transfer (dissent)	Denied (upheld by dissent)
Petwarehouse.com	WIPO D2000-0105	Respondent wins	Denied
Libro.com	WIPO D2000-0186	Respondent wins	Ignored
Webergrill.com et al	WIPO D2000-0187	Respondent wins	Denied
e-radio.com	WIPO D2000-0175	Respondent wins	Denied
Domina.net	WIPO D2000-0272	Respondent wins	Ignored
Nadca.org	WIPO D2000-0295	Name transfer	Denied
Interactivetv.com	WIPOD2000-0358	Respondent wins	Denied
Herohonda.com	WIPO D2000-0365	Name transfer	Denied
Tonsil.com	WIPO D2000-0376	Name transfer	Denied
Whoswho.com	WIPO D2000-0443	Respondent wins	Denied
Videonet.com	WIPO D2000-0487	Respondent wins	Ignored
Barcelona.com	WIPO D2000-0505	Name transfer	Denied
K2R.com	WIPO D2000-0622	Respondent wins	Upheld (dissent)
Magic.com	WIPO D2000-0746	Respondent wins	No claim made
Craftwork.com	NAF FA0092531	Respondent wins	Ignored
Strick.com	NAF FA0094801	Respondent wins	Not denied
Dogs.com	NAF FA0093681	Respondent wins	Denied
Bosco.com	NAF FA0094828	Respondent wins	Denied
Rockcity.com	NAF FA0094906	Respondent wins	Denied
Jewelry.com	NAF FA0095242	Respondent wins	Denied
Arrowheadcapital.com	NAF FA0094920	Split	Ignored
Hso.com	ERes AF-0152	Respondent wins	Denied
Shopzone.com	ERes AF-0122	Respondent wins	Denied
Smokymountainknife.com	ERes AF-0230	Name Transfer	Denied
Qtrade.com	ERes AF-0169	Respondent wins	Upheld
smartdesign.com	WIPO D2000-0993	Respondent wins	Upheld
safaricasino.com	EResAF-0288	Respondent wins	Upheld

Conclusion

The UDRP embodies a critical trade-off between Internet stakeholders. Trademark holders and other interests with pre-existing rights in names need fast and inexpensive ways to challenge and eliminate abusive domain name registrations. Other Internet users, however, need to be able to register, use and trade identifiers rapidly, creatively and effectively. Start-ups need to be able to establish a presence and an identity. It is wrong to make challenges to domain name registrations too easy, and it is unwise to tilt dispute resolution criteria too far toward protection of existing trademarks. In the long run, attempts to use the UDRP to broaden the scope of trademark coverage can only increase the number and intensity of disputes, and thereby undermine the security of users. Predictable decisions, consistent and narrow application of UDRP criteria to clearly abusive cases are the best ways to maintain secure and stable rights in domain names.

For all those reasons, ICANN needs to ensure that its globally uniform dispute resolution system is applied fairly and narrowly. The best way to ensure fairness is to ensure that the dispute resolution service providers have the strongest possible incentive to apply the UDRP correctly. The UDRP policy itself is well defined. Unfortunately, complainant selection of the dispute providers has a tendency to reward providers who deliver name transfers. After only one year of operation, there is a statistically significant correlation between market share and the tendency to take away domain names from respondents. This aspect of the UDRP needs to be addressed. The report suggested registrar selection of RSPs as an alternative.

Appendix 1: Prices of Resolution Service Providers

Single Panelist

	Number of Domain Names							
	1	2	3	4	5	6	7 to 9	10
ERES	750	750	900	900	900	1300	1300	1500
NAF	750	1000	1250	1400	1550	1700	TBD	TBD
WIPO	1500	1500	1500	1500	1500	2000	2000	2000

3-member panel

	Number of Domain Names							
	1	2	3	4	5	6	7 to 9	10
ERES	2200	2200	2300	2300	2300	3200	3200	3500
NAF	2250	3000	3750	4350	4950	5550	TBD	TBD
WIPO	3000	3000	3000	3000	3000	4000	4000	4000

Refund for terminations			Based in:					
CPR	Yes		US					
ERES	No indication		Canada					
NAF	No		US					
WIPO	Yes		Geneva					

Appendix 2: Statistical Results, Nominal regression

Model Fitting Information

Model	-2 Log Likelihood	Chi-Square	df	Sig.
Intercept Only	234.314			
Final	69.211	165.103	6	.000

Pseudo R-Square

Cox and Snell	.233
Nagelkerke	.279

Likelihood Ratio Tests

Effect	-2 Log Likelihood of Reduced Model	Chi-Square	df	Sig.
Intercept	69.211	.000	0	.
Decisions	87.602	18.391	2	.000
Country of Origin	151.824	82.614	2	.000
Days	125.769	56.558	2	.000

The chi-square statistic is the difference in -2 log-likelihoods between the final model and a reduced model. The reduced model is formed by omitting an effect from the final model. The null hypothesis is that all parameters of that effect are 0.

Parameter Estimates

RSP		B	Std. Error	Wald	df	Signif	Exp(B)	95% Confidence Interval for Exp(B) Lower Bound	Upper Bound
ERES	Intercept	-2.944	.374	61.931	1	.000			
	COMPLAINT LOSE	1.415	.324	19.063	1	.000	4.118	2.182	7.775
	WIN	0	.	.	0	.	.	.	.
	Non US	-.152	.330	.212	1	.645	.859	.450	1.640
	US	0	.	.	0	.	.	.	.
	ABOVE 40 DAYS	.975	.378	6.660	1	.010	2.650	1.264	5.557
	BELOW 40 DAYS	0	.	.	0	.	.	.	.
NAF	Intercept	.659	.137	23.086	1	.000			
	COMPLAINT LOSE	.203	.240	.722	1	.396	1.226	.766	1.960
	WIN	0	.	.	0	.	.	.	.
	Non US	-2.078	.265	61.302	1	.000	.125	7.438E-02	.211
	US	0	.	.	0	.	.	.	.
	ABOVE 40 DAYS	-1.151	.190	36.580	1	.000	.316	.218	.459
	BELOW 40 DAYS	0	.	.	0	.	.	.	.

a This parameter is set to zero because it is redundant.

Appendix 3: Known ACPA cases

Amberson Holdings LLC v. Westside Story Newspaper 110 F.Supp.2d 332 D.N.J. Aug 22, 2000

America Online, Inc. v. Huang 106 F.Supp.2d 848, 55 U.S.P.Q.2d 1560 E.D.Va. Jul 13, 2000 (3 names)

Banco Inverlat, S.A. v. www.inverlat.com 112 F.Supp.2d 521 E.D.Va. Sep 08, 2000

Bargain Bid LLC v. uBid, Inc. 2000 WL 978706 E.D.N.Y. Jan 03, 2000

BroadBridge Media, L.L.C. v. Hypercd.com 106 F.Supp.2d 505, 55 U.S.P.Q.2d 1426 S.D.N.Y. Jul 07, 2000

Caesars World, Inc. v. Caesars-Palace.Com 112 F.Supp.2d 505 E.D.Va. Aug 25, 2000 (in rem)

Cello Holdings, L.L.C. v. Lawrence-Dahl Companies 89 F.Supp.2d 464, 54 U.S.P.Q.2d 1645 S.D.N.Y. Mar 06, 2000

Deleo v. Zconnexx Corp. 2000 WL 1610668 W.D.N.Y. Oct 25, 2000

Dostana Enterprises LLC v. Federal Express Corp. 2000 WL 1170134 S.D.N.Y. Aug 16, 2000

Electronics Boutique Holdings Corp. v. Zuccarini 2000 WL 1622760 E.D.Pa. Oct 30, 2000 (5 domain names)

Greenpoint Financial Corp. v. Sperry & Hutchinson Co., Inc. --- F.Supp.2d ----, 2000 WL 1370835 S.D.N.Y. Sep 19, 2000

Harrods Ltd. v. Sixty Internet Domain Names 110 F.Supp.2d 420 E.D.Va. Aug 15, 2000 (in rem against 60 domain names)

Heathmount A.E. Corp v. Technodome.Com 106 F.Supp.2d 860, 55 U.S.P.Q.2d 1735 E.D.Va. Jul 24, 2000 (in rem against 2 names)

Lucent Technologies, Inc. v. Lucentsucks.Com 95 F.Supp.2d 528, 54 U.S.P.Q.2d 1653 E.D.Va. May 03, 2000

Mattel, Inc. v. Internet Dimensions Inc.2000 WL 973745, 55 U.S.P.Q.2d 1620 S.D.N.Y. Jul 13, 2000

McRae's, Inc. v. Hussain 105 F.Supp.2d 594 S.D.Miss. Jun 30, 2000 (2 names)

Morrison & Foerster, LLP v. Wick 94 F.Supp.2d 1125 D.Colo. Apr 19, 2000 (4 names)

Northland Ins. Companies v. Blaylock 115 F.Supp.2d 1108 D.Minn. Sep 25, 2000

People for Ethical Treatment of Animals, Inc. v. Doughney 113 F.Supp.2d 915 E.D.Va. Jun 12, 2000 (on appeal)

Peterson's Publishing v. Blue Gravity Communications (Teen Magazine) --CV-78 (D.N.J. Jan 6, 2000).

Porsche Cars North America, Inc. v. Spencer 2000 WL 641209, 55 U.S.P.Q.2d 1026 E.D.Cal. May 18, 2000 (involved over 12 domain names)

Quokka Sports, Inc. v. Cup Intern. Ltd. 99 F.Supp.2d 1105 N.D.Cal. Dec 13, 1999 (2 domain names?)

Shields v. Zuccarini 2000 WL 1053884 E.D.Pa. Jul 18, 2000 and Shields v. Zuccarini 2000 WL 1056400 E.D.Pa. Jun 05, 2000 (5 names)

Sporty's Farm L.L.C. v. Sportsman's Market, Inc. 202 F.3d 489, 53 U.S.P.Q.2d 1570 2nd Cir.(Conn.) Feb 02, 2000. Certiorari Denied by Sporty's Farm L.L.C. v. Sportsman's Market, Inc., 120 S.Ct. 2719,

147 L.Ed.2d 984, 68 USLW 3713, 68 USLW 3788, 68 USLW 3789 (U.S. Jun 26, 2000) (NO. 99-1752)

United Greeks, Inc. v. Klein 2000 WL 554196 N.D.N.Y. May 02, 2000 (involves 5 domain names)

Virtual Works, Inc. v. Network Solutions, Inc. 106 F.Supp.2d 845, 54 U.S.P.Q.2d 1126 E.D.Va. Feb 24, 2000 and Virtual Works, Inc. v. Network Solutions, Inc. 1999 WL 1074122 E.D.Va. Nov 23, 1999

Yahoo, Inc. v. Wu, --00-CV-0002 (statutory damages) (N.D.N.Y. May 1, 2000).