

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Dispute Settlement

World Intellectual Property Organization

4.2 Domain Name Dispute Resolution



NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

This module has been prepared by Mr. Torsten Bettinger at the request of the United Nations Conference on Trade and Development (UNCTAD). The views and opinions expressed in this module are those of the author and not necessarily those of the United Nations, WTO, WIPO, ICSID, UNCITRAL or the Advisory Centre on WTO Law.

The designations employed and the presentation of the material do not imply an expression of any opinion whatsoever on the part of the United Nations concerning the legal status of any country, territory, city or areas or of its authorities, or concerning the delimitations of its frontiers or boundaries. In quotations from the official documents and the jurisprudence of international organizations and tribunals countries are designated as reported.

The United Nations holds copyright to this document. The course is also available in electronic format on the UNCTAD website (www.unctad.org). Copies may be downloaded free of charge on the understanding that they will be used for teaching or study and not for a commercial purpose. Appropriate acknowledgement of the source is requested.

UNCTAD/EDM/Misc.232/Add.35

Copyright © United Nations and
World Intellectual Property Organization, 2003
All rights reserved

TABLE OF CONTENTS

Note	ii
What You Will Learn	1
Objectives	3
1. Domain Names and the Domain Name System	5
1.1 <i>The development of the domain name system</i>	5
1.2 <i>How does the domain name system work?</i>	5
1.3 <i>The structure of a domain name</i>	5
1.4 <i>Generic top-level domains (gTLDs)</i>	6
1.5 <i>New gTLDs</i>	6
1.6 <i>Country code top-level domains (ccTLDs)</i>	7
1.7 <i>Second-level domains</i>	7
1.8 <i>Third and fourth-level domains</i>	7
1.9 <i>The growth in domain name registrations</i>	8
2. Need for an Alternative Dispute Resolution Procedure	9
2.1 <i>The conflict between domain names and intellectual property rights in signs</i>	9
2.2 <i>The phenomenon of cybersquatting</i>	9
2.3 <i>Limitations of court litigation in combating cybersquatting</i>	9
3. Creation of the Uniform Domain Name Dispute Resolution Policy (UDRP)	11
3.1 <i>Origins</i>	11
3.2 <i>Final Report of the WIPO Internet Domain Name Process</i>	11
3.3 <i>Adoption of the UDRP</i>	12
3.4 <i>Entry into effect of the UDRP</i>	12
3.5 <i>Experience of the WIPO Center</i>	13
4. Principal Characteristics and Scope of the UDRP	15
4.1 <i>Which disputes are covered?</i>	15
4.2 <i>Which top-level domains are governed?</i>	15
4.3 <i>What are the major advantages?</i>	16
4.4 <i>How does the UDRP become binding on the domain name registrant?</i>	16
4.5 <i>What remedies are available?</i>	17
5. Overview of the UDRP Procedure	19
5.1 <i>Legal framework</i>	19
5.2 <i>Stages in the procedure</i>	19
5.3 <i>UDRP procedural flowchart</i>	20
6. Procedural Issues	23
6.1 <i>Does a party's submission have to be prepared and submitted by a lawyer?</i>	23
6.2 <i>Which party carries the burden of proof and what is the standard of proof?</i>	23
6.3 <i>Are in-person hearings provided for?</i>	23
6.4 <i>Is the UDRP proceeding confidential?</i>	23

7. UDRP Complaint	25
7.1 <i>Where can a Complaint be submitted?</i>	25
7.2 <i>Is there a standard format in which a Complaint should be submitted?</i>	25
7.3 <i>In what language should the Complaint be submitted?</i>	25
7.4 <i>What information should be included in the Complaint?</i>	26
7.5 <i>Can a Complaint include more than one domain name?</i>	26
7.6 <i>Where can one access information on the registrant of a domain name?</i>	27
8. UDRP Response	29
8.1 <i>Is there a standard format in which a Response should be submitted?</i>	29
8.2 <i>What information should be included in the Response?</i>	29
8.3 <i>How many days does a Respondent have to file a Response?</i>	29
8.4 <i>How can a Respondent demonstrate rights to or legitimate interests in the domain name that is the subject of the Complaint?</i>	29
8.5 <i>What happens if the Respondent fails to submit a Response or submits its Response after the deadline?</i>	30
9. UDRP Fees	31
9.1 <i>How are the dispute resolution service provider's fees for a domain name dispute calculated?</i>	31
10. Role of the UDRP Dispute Resolution Service Provider	33
10.1 <i>Procedural involvement</i>	33
10.2 <i>Impartiality</i>	33
11. Role of the UDRP Administrative Panel	35
11.1 <i>What is an Administrative Panel?</i>	35
11.2 <i>Who are the Panelists?</i>	35
11.3 <i>When is the Administrative Panel appointed?</i>	35
11.4 <i>How is the Administrative Panel appointed?</i>	35
11.5 <i>Appointment considerations</i>	36
12. Administrative Panel Decision	37
12.1 <i>What decisions can the Administrative Panel take?</i>	37
12.2 <i>What is a finding of "reverse domain name hijacking"?</i>	37
12.3 <i>How long does it take to get the Administrative Panel decision?</i>	37
12.4 <i>How is the Administrative Panel decision implemented?</i>	37
12.5 <i>Is the Administrative Panel decision subject to appeal?</i>	38
12.6 <i>Are Administrative Panel decisions available to the public?</i>	38
12.7 <i>Consistency of decisions</i>	38
13. Relationship between the UDRP and Court Proceedings	39
13.1 <i>What happens if a national court case is initiated during the UDRP proceeding?</i>	39
13.2 <i>What happens if a losing domain name registrant files a lawsuit after the Administrative Panel decision has been rendered?</i>	39
13.3 <i>What is meant by "mutual jurisdiction"?</i>	40

14. UDRP Decision Criteria and Application by Administrative Panels	41
14.1 What must the Complainant prove under Paragraph 4(a) of the UDRP?	41
14.2 Complainant has rights in a trademark or service mark (UDRP, Paragraph 4(a)(i))	41
14.3 Domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights(UDRP, Paragraph 4(a)(i))	42
14.4 Domain name registrant has no rights or legitimate interests in the domain name (UDRP, Paragraph 4(a)(ii))	42
14.5 Domain name has been registered and is being used in bad faith (UDRP, Paragraph 4(a)(iii))	43
15. New Developments	45
15.1 “Internationalized” domain names	45
15.2 Dispute resolution in the new gTLDs	45
15.3 Second WIPO Internet Domain Name Process	45
16. Test Your Understanding	47
17. Resources	49
17.1 WIPO Center’s web site and publications	49
18. Annexes	51
A. WIPO Model Complaint	51
B. Index of WIPO UDRP Panel Decisions	61

WHAT YOU WILL LEARN

The WIPO Arbitration and Mediation Center (the WIPO Center) is the leading dispute resolution service provider in relation to the alleged abusive registration and use of domain names. From December 1999 through April 2003, the WIPO Center handled over 20,000 domain name cases covering some 25,000 domain names, with new cases being received each day. Approximately 5,000 of these cases were governed by the Uniform Domain Name Dispute Resolution Policy (UDRP), which is the principal policy for addressing this type of dispute on an international level.

This module gives an overview of the procedural rules and the substantive criteria of this dispute settlement procedure.

Section 1 introduces the policy and technical background that produced the UDRP. It also explains how the domain name system works and how domain names are registered.

Sections 2 and *3* describe the history and the objectives of the UDRP and the role of the World Intellectual Property Organization (WIPO) leading to the adoption of the UDRP.

Section 4 highlights the principal characteristics and the scope of the UDRP and outlines its principal advantages in comparison to conventional litigation in national courts.

Section 5 presents the various stages in the UDRP procedure and the timeframe of a case.

Section 6 outlines basic procedural issues for parties to a UDRP proceeding.

Sections 7 and *8* contain details concerning the legal aspects of filing or defending a domain name case under the UDRP.

Section 9 provides information on fees for the UDRP procedure.

Section 10 describes the role of the dispute resolution service provider.

Section 11 examines the appointment procedure and role of the Administrative Panels that decide disputes under the UDRP.

Section 12 describes the remedies that are available under the UDRP and the timeframe for the decision-making process. It also explains how the Administrative Panel decision is implemented.

Section 13 discusses the effect of court proceedings relating to the domain name disputed in the UDRP procedure, and what happens if a party files a

lawsuit after a UDRP Panel decision has been rendered.

Section 14 gives an insight into how the UDRP decision criteria have been interpreted by Panels.

Section 15 describes recent developments in the area of domain names and domain name dispute resolution, including “internationalized” domain names, registry-specific dispute resolution policies for new generic top-level domains (gTLDs) and the Second WIPO Internet Domain Name Process.

Section 16 comprises a series of self-assessment questions to reinforce the reader’s comprehension of the module.

Section 17 contains a selection of filing resources and further readings on the UDRP.

Annexes provide the Model Complaint and the Index of WIPO UDRP Panel Decisions made available by the WIPO Center as part of its case facilities.

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_10572

