

## BOOK REVIEW

### INTERNATIONAL DOMAIN NAME LAW ICANN AND THE UDRP

By David Lindsay,

Oxford: Hart Publishing, 2007, 512 pp, £95.00, ISBN 1841135844/9781841135847

The book is 500 pages long, but the law it is less than ten years old. Although this law is still in its infancy, it is already very big: it is a law that is transnational by nature, and has gathered a large audience since it was conceived. “ICANN and International Domain Law” is the title of this book.

The [ICANN](#) (Internet Corporation for Assigned Names and Numbers) was officially born on November 6, 1998. It is the non-profit organisation that supervises the domain names. ICANN coordinates the allocation and assignment of these unique identifiers on the internet. UDRP (Uniform Domain Name Dispute Resolution Policy) law is a bit younger. The ICANN Board approved on October 24, 1999 the implementation of this dispute resolution policy related to domain names. The first UDRP case was filed in December 1999- for the name *worldwrestlingfederation.com*- before the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) (which was the first dispute resolution provider to be approved by the ICANN – its [decision D1999-0001 of January 14, 2000](#) remains one of the most cited cases today).

Nine years is a short time, but a very long period when one remembers how quickly the internet has evolved during that time. We went from low-speed to broadband connections; from text to Flash; from ugly personal pages to blogs; and from html forums to web 2.0 platforms. One thing has not changed however: how internet users directly access websites or use e-mail services. Domain names are essential to the effective functioning of the internet and thus a legal study of domain names law remains relevant, even when a majority of internet users use search tools rather than direct navigation.

This is the first reason why this book by David Lindsay is of great interest. The author has taken-on a comprehensive study of a field, so chaotic, it is hard to seize. After having set up the scene (100 pages to introduce the reader to the domain name system and its governance) the author dedicates the most significant part of his work to the theory and practice of UDRP rules.

He first examines the procedural rules of the policy. One could argue that one chapter is insufficient for such a task: there are more and more seasoned complainants and respondents who raise procedural questions during UDRP proceedings – a trend that also reflects how fights over domain names have hardened since the implementation

of this procedure (which is partly due to the value domain names gained during this period). Several procedural issues could have been raised in this chapter: for example, issues that question whether UDRP law can be contrary to superior norms – such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides the right to a fair trial (this is the opinion of Alexandre Cruquenaire in *Le Règlement Extrajudiciaire des Litiges Relatifs aux Noms de Domaine*, Cahiers du Centre de Recherches Informatique et Droit, Vol. 21, Brussels, 2002). But the author announced on the cover that this book is on domain name law, which means focusing on paragraph 4(a) of the rules which set out three criteria that determine abusive and bad-faith registration of domain names.

The UDRP was designed to fight against such registrations. There have been more than ten thousand cases in which panels have found that the conditions of article 4(a) were met (on November 27, 2008 ICANN made an inventory of 18,754 proceedings- see its [Search Index of Proceedings Under the UDRP](#)- and it is estimated that more than 80 % of the cases are won by complainants). The author has dissected hundreds of UDRP decisions so that the reader can understand the legal reasoning of the panels and how they have fleshed out the words used in article 4(a) (notwithstanding the fact that they are not supposed to operate as authoritative precedent).

No issue is left aside. Lindsay's exegetic approach will, in particular, be of great interest to practitioners who would like to have an immediate, accurate and in-depth understanding of a part of this provision. Unwittingly, the author carefully crafts what could also be described as a treaty on UDRP paragraph 4(a).

However, the book reviews decisions of the WIPO's Arbitration and Mediation Center more than decisions coming from the National Arbitration Forum. Although these two dispute resolution centres handle between 95 to 100 % of UDRP cases, the author emphasises the former's views. Even though it would have been impossible to review all the published UDRP decisions, it would nevertheless have been interesting to know whether the outcome would have been the same if the study had been based on a more balanced sample of decisions.

Another disappointment was that all the analysed decisions are English language decisions. Once again, one cannot criticise the author for not reviewing drafts in other languages as an exhaustive review of all UDRP decisions would be insurmountable. Nevertheless, it would be interesting to investigate the potential for the language of the domain name and/or the website for which it is used to influence the assessment of the likelihood of confusion (for example, the *accorsucks.com* case- WIPO D2001-0007, March 13, 2001- which was drafted in French had a significant effect on subsequent *-sucks.com* cases. Although in previous cases English-speaking panels found that the addition of the word "sucks" to a trademark is unlikely to create confusion, this French-speaking panel ruled that non-anglophone internet users can be led to think that such a domain name refers to the brand they know).

UDRP has given birth to a transnational jurisprudence, for which a pure legal approach cannot explain everything. Ideally, the culture of the panels (i.e. what is their background, their language, do they come from a civil law or a common law system, etc.) should be taken into account to highlight some of the differences that may exist in the interpretation of article 4(a). Thus, a sociological study of UDRP still has to be undertaken. But this is not the kind of work David Lindsay chose to write about. He offers an impressive study, which shows, in counterpoint, that UDRP needs to be updated.

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