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ICANN UNIFORM DISPUTE RESOLUTION POLICY—A MODEL OF INTERNATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT

by Clayton Nylander¹

I. INTRODUCTION

During the nineteenth century, the social and economic development of major countries within Europe and North America compelled these nations to utilize laws and courts to protect the intangible rights of their creative geniuses. Property rights for the works of inventors, authors, composers, and publishers became increasingly important to provide a marketable incentive for these people to continue their creative works. The value of exclusive ownership was realized as intellectual property rights began to blossom. Although some countries still do not recognize the value of intellectual property protection, others have flourished because of the economic incentives provided by exclusive property rights.

Intellectual property (IP) describes the legal property rights of intangible information and ideas in their expressed form.² The purpose of intellectual property is to provide exclusive ownership in the commercialization of a product or idea. The great economic incentive for the owner to obtain and create intellectual property is the right to exclude the use or reproduction of a product or service.

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2 Karla C. Shippey, *INTERNATIONAL INTELLECTUAL PROPERTY RIGHTS 1* (World Trade Press) (2002).

The potential profitability in obtaining intellectual property rights has led to a growing demand for these rights in an international context. Useful intellectual property is often imported into a country for that country's benefit. Additionally, the available profitability of marketing intellectual property internationally produces an incentive for many countries to generate competitive ideas and products. The lure of international markets has been the catalyst for the creation of large amounts of intellectual property in recent years. Thus, the global diffusion of international intellectual property has increased dramatically.

The rise of international intellectual property mandates effective methods of regulation and enforcement. As this enforcement is paramount in maintaining the economic incentive of intellectual property, it has emerged as a controversial issue with global proportions. The Uniform Dispute Resolution Policy (UDRP) was created to resolve the international conflict involving the distribution and possession of Internet domain names. This paper first seeks to discuss the current problems originating from international intellectual property regulation, and then discuss how many of these same problems arise in the regulation of Internet domain names. The discussion will then describe how these problems with Internet domain names prompted the creation of the UDRP as well as describe some of the leading opposition for the UDRP. Finally, this paper will discuss the components of the policy that make it effective, and end with suggestions and recommendations on how to overcome some of the problems inherent in its application and structure. The purpose of this paper is to contend that the Uniform Dispute Resolution Policy, as a means of regulating the use of Internet domain names, displays many components of effective application, structure, and regulation to effectively resolve Internet domain names and, with the proper modification, can serve as a model regulatory policy to overcome many of the pitfalls that currently plague international IP law.

II. CURRENT PROBLEMS WITH INTERNATIONAL INTELLECTUAL PROPERTY LAW

The international community faces several problems that prevent effective enforcement of international intellectual property laws. In the current international context, IP rights established in one country “vanish abruptly and completely at the national border.”³ The vast difference of international IP laws across the globe is a primary contributor to the lack of harmonized international IP enforcement. Most countries make no concessions to recognize the IP laws of any country but their own. As clarified by G. Gregory Letterman, the IP rights provided to an IP possessor seeking legal protection internationally are predicated upon the allowances specifically provided by each jurisdiction where IP protection is sought.⁴

IP laws often vary by country because the existence and enforcement of such laws present varying degrees of benefits to different countries. This disparity becomes vividly apparent in the context of developing countries and their deliberate avoidance of IP regulation. The struggle between those who seek enforcement of IP laws and those who do not has developed a chasm between the developed and underdeveloped countries of the world. Countries such as China, India, and South Korea have deliberately avoided IP law regulation because of the economic benefits that they derive from this illicit activity.⁵ The developed countries are crying for stiffer regulation as the under-developed countries continue to enjoy the benefits of infringement. A worldwide conflict of interests has developed.⁶ The current structure and regulation of IP laws, however, does little to resolve this issue.

3 G. Gregory Letterman, *Basics of International Intellectual Property Law* 12 (Transnational Publishers, Inc. 2001) (2001).

4 *Id.* at 16.

5 Mary Kopczynski, *Robin Hood Versus the Bullies: Software Piracies and Developing Counties*, 33 *Rutgers Computer & Tech. L.J.* 299, 307 (2007) (discussing the benefits of avoiding IP regulation to under-developed countries).

6 *Id.* at 301.

Experts cite multiple reasons to explain why developing countries choose not to enforce intellectual property rights. A lack of resources is one particular obstacle for IP enforcement. Resources such as time and money are required for the litigation of IP infringement, yet such resources are often lacking in developing countries. A proposed violation of an IP right in one country could cause years of investigation as well as astronomical amounts of litigation fees. Many governments deem such use of time and money as a poor allocation of resources. As a result, in some countries, IP infringement flourishes. India, for example, has left major IP infringement issues, such as software piracy, unrestrained because effective enforcement exists as “a mandate disproportionate to its resources.”⁷

Additionally, the lack of cost-benefit trade-offs further reduces incentive for developing countries to enforce intellectual property laws. Because intellectual property in a developed country often comes from a more developed nation, the regulation for that IP is often instigated by the developed country. Thus, the majority of IP enforcement taking place in a country such as India exists to directly benefit the foreign owners of the intellectual property. The protection of domestic industries is yet another reason why developing countries fail to enforce IP laws. Jobs created by engaging in IP infringing activities typically employ more and create a larger economic return for the country than the more specialized jobs associated with IP enforcement. Countries would not want to divert precious resources away from an illicit activity, such as piracy, to the less profitable activity of intellectual property enforcement. Some developing countries even cite the “Robin Hood” mentality, that of stealing from the rich to help the poor, in order to rationalize their own lack of intellectual property enforcement.⁸ In short, different countries continue to produce differing IP laws that lack the congruence necessary for widespread use, and the resulting problems have only escalated in recent years.

The problems described above affect all areas of intellectual property, including Internet domain names. Although the enforce-

7 *Id.* at 315.

8 *Id.* at 301.

ment of Internet domain names described below is not divided precisely between developed and under-developed countries, the issue of Internet domain name enforcement contains many of the same regulatory difficulties described above. Many domain name users seek to free-ride and enjoy the benefits of established trademarks. No central regulatory agency has existed in the past to ensure the proper regulation of Internet domain names. The remainder of this paper will examine the problems concerning Internet domain names and how the UDRP, within the scope of proper application, has effectively solved many of the regulatory issues plaguing international intellectual property law.

III. CURRENT PROBLEMS WITH INTERNET DOMAIN NAMES

A. Cybersquatting

The growing issue of Internet domain name disputes manifests many of the problems faced by international intellectual property. Domain names are a type of trademark that were originally created to allow Internet users to locate computers and people in a convenient manner. In recent years, however, the use of domain names has increased in significance as they are used to identify commercial businesses, many of which already possess identifying trademarks protected by existing intellectual property rights. The presence of domain name disputes often arises from cases of cybersquatting, the strategy of an individual or company registering certain trademarks as private domain names. As described by the World Intellectual Property Organization (WIPO), cybersquatters exploit the easiness of domain name registration by reserving domain names of unrelated businesses or celebrities for personal gain. As owners of such domain name registration, cybersquatters often attempt to sell their domain name rights to their corresponding businesses at prices high above typical registration. As an alternative, cybersquatters may maintain their domain name rights to use the company's trademark to at-

tract business of their own.⁹ Original trademark holders often take legal action to have the disputed domain name transferred from the respondent or registrant (the party seeking to control the contended domain name) to the complainant (the original trademark holder).

B. Trademark Law and Internet Domain Names

Until the mid-nineties, trademark law did little to combat the problems derived from cybersquatting. Trademark laws are typically created by national jurisdictions and are typically organized around regional and geographical borders. The Internet, however, is “defiantly ignorant” of these borders.¹⁰ According to the Lanham Act, which contains the United States’ statutes on trademark law, trademark infringement requires “commercial use in commerce” of the trademark by the accused infringer.¹¹ Courts have varied in their interpretation of what constitutes “commercial use.” Courts often rule that a cybersquatter using another entity’s trademark as their own domain name is illegal due to trademark infringement or dilution. (Dilution refers to the reduction of the value of a trademark when an outside party abuses the trademark.) The landmark case of *Panavision International v. Toeppen*¹² found that selling a registered domain name to the original trademark owner of the name for a profit is considered commercial use under the Federal Trademark

9 World Intellectual Property Organization, <http://www.wipo.int/amc/en/center/faq/domains.html#5> (last visited Nov. 23, 2006).

10 A. Michael Froomkin, ICANN’s Uniform Dispute Resolution Policy—Causes and (Partial) Cures, 67 *Brooklyn Law Review*, 608, 608 (2002) (discussing the regulation of Internet trademark law).

11 Mark A. Lemley, The Modern Lanham Act and the Death of Common Sense, 108 *Yale L.J.* 1687, 1702 (1999) (discussing the meaning of “commercial use in commerce”).

12 *Panavision International, LP, v. Toeppen* 141 F.3d 1316, 1316–1327 (9th Cir. 1998). See also Michael A. Froomkin, Wrong Turn in Cyberspace: Using ICANN to Route Around the APA and The Constitution, 50, *Duke L.J.* 17, 60-61 (2000).

Dilution Act.¹³ Courts found that Princeton Review's registering the domain name kaplan.com, its primary competitor, was primarily for commercial profit, and thus illegal.¹⁴ Other cases' decisions have not been as unambiguous. Some courts have ruled that "reserving" a domain name by merely registering it does not constitute trademark infringement, given the registrant makes no use of the name.¹⁵ The growth of cybersquatting on the Internet during the middle to late nineties revealed that existing trademark laws could not be easily applied to this new breed of trademark infringement cases.

C. The Need to Combat Cybersquatting

Domain name conflicts between the registrant and the original trademark holder have been raging for over a decade. The first case to highlight the issue occurred in 1994 when Joshua Quittner seized the domain name mcdonalds.com and then publicized the issue in an article in Wired Magazine.¹⁶ Quittner's move quickly exposed the potential rewards available to registrants who can procure an extremely valuable domain name at minimal cost and inconvenience. Domain names are available on a first-come, first-serve basis.¹⁷ In order to use a domain name, an organization may obtain the right to a certain domain name for a certain period. An entity simply must contact any one of a number of registrars, who then officially register the domain name for the registrant. The entity may renew its use of the domain name after the designated period of time comes to an end.¹⁸ This convenient and inexpensive application process, coupled

13 Federal Trademark Dilution Act, 15 U.S.C. § 1125 (2000).

14 Lemley, *supra* note 11.

15 See *Juno Online Service v. Juno Lighting, Inc.* 979 FSupp 684 (1997).

16 See <http://www.wirednews.com/wired/archive/2.10/mcdonalds.html>.

17 Milton Mueller, *Rough Justice: An Analysis of ICANN's Uniform Dispute Resolution Policy 3-4* (Syracuse University School of Information Studies 2000) (2000).

18 Jeff Lenning, *Protect Your Domain Name*, 48 *Orange County Lawyer* 18, 18. (Sept. 2006) (discussing process of registering internet domain names).

with the lure of the resale of attractive domain names at six-figure values, led to a surge in registered domain names during the middle and late nineties.¹⁹

Abuses began to develop. Companies began to register the domain names of their competitors in order to re-direct Internet traffic to their own business. So-called “oops” domain names propagated where slight variations of popular company, service, and celebrity names (up to twenty or thirty of them) were registered in order to draw the attention of unsuspecting Internet users who misspelled their targeted site.²⁰ As the popularity and widespread use of the Internet increased, so did the resulting incidences of cybersquatting. WIPO claims that the stimulation of business, the difficulty in discovering the true user of a trademark, and the principle of freedom of expression all contribute to the recent increase in improper domain name registration. Additionally, the growing value of Internet business has increased the profitability of owning business trademarks online.²¹

A negative by-product of cybersquatting developed as original trademark owners began to use “their legal and financial muscle to evict legitimate domain name holders from valuable registrations” that the registrant not only wanted but had a justifiable right in owning.²² This phenomenon, dubbed reverse domain name hijacking, illustrates how the complainants, the alleged trademark owner, often receive undue power, while little protection is given to the domain name registrar. Often the “legally untutored or resource poor” registrants are forced to surrender domain names to the frivolous claims of the trademark holders.²³ A computer consulting company, whose owner’s surname was Prince, legally registered prince.com, but the sports equipment manufacturer later sued Mr. Prince for rights to the

19 Mueller, *supra* note 17, at 3.

20 *Id.*

21 World Intellectual Property Organization, <http://www.wipo.int/amc/en/center/faq/domains.html#5> (last visited Nov. 29, 2006).

22 Mueller, *supra* note 17.

23 Froomkin, *supra* note 10, at 692–693.

domain name. The registrant ended up spending over three hundred thousand dollars in order to protect the domain name.²⁴

The resulting situation involving disputes over Internet domain names is complex, with no clear victim or culprit.²⁵ Trademark disputes across the Internet are not similar to standard trademark infringement against which current intellectual property laws fight. The development of Internet domain name disputes required a form of regulation that existing trademark law did not satisfy. The need for a new means of regulation was larger than ever before.

IV. THE CREATION OF THE UNIFORM DISPUTE RESOLUTION POLICY

WIPO is one of multiple specialized agencies created by the UN with the intention of promoting “the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization.”²⁶ In 1998, the U.S. Department of Commerce issued the Statement of Policy on Management of Internet Names in which it called upon WIPO to initiate a balanced and transparent process, which includes the participation of trademark holders and members of the Internet community who are not trademark holders, to

(1) develop recommendations for a uniform approach to resolving trademark/domain name disputes involving cyberpiracy (as opposed to conflicts between trademark holders with legitimate competing rights), (2) recommend a process for protecting famous trademarks in the generic top level domains, and (3) evaluate the effects, based on studies conducted by independent organizations . . . of adding new gTLDs [generic top level domains] and related dis-

24 Mueller, *supra* note 17, at 4.

25 *Id.* at 14.

26 A. Michael Froomkin, Semi-Private International Rulemaking: Lessons Learned from the WIPO Domain Name Process, see <http://personal.law.miami.edu/~froomkin/articles/TPRC99.pdf> (last visited Dec 12, 2007).

pute resolution procedures on trademark and intellectual property holders.²⁷

WIPO began investigating the growing issue of domain names and trademark usage on the Internet.²⁸ Following their investigation, WIPO recommended instituting a policy that would affect all Internet domain name registrars, controlling dispute resolution of Internet domain space. WIPO gave the Internet Corporation for Assigned Names and Numbers (ICANN), created by the U.S. Government to provide technical management of the Internet's infrastructure, the responsibility to create a policy that would satisfy the criteria and recommendations set forth by WIPO. They sought to create a regulatory regime for domain name protection to optimize trademark protection. Subsequent subcommittees were formed which thereafter submitted a proposed policy to the ICANN board as a consensus recommendation. In October 1999, the ICANN board approved the implementation of the Uniform Dispute Resolution Policy (UDRP).²⁹ ICANN's Uniform Dispute Resolution Policy requires every registrant on the Internet to agree to arbitration provided by ICANN's arbitration providers that should there be any possible trademark dispute between an existing trademark holder and the registrant.³⁰

The overall purpose of the UDRP is to resolve conflicts resulting from the misuse of trademarks within Internet domain spaces. Under the UDRP, a complainant may file a case that specifies the disputed domain name, the holder of domain name rights, the registrar of the domain name, and the grounds for the complaint. ICANN specified the following three criteria that must be met in order to challenge a domain name:

27 *Id.*

28 ICANN, <http://www.icann.org/udrp/udrp-schedule.htm> (last visited Nov. 20, 2006).

29 ICANN, <http://www.icann.org/udrp/udrp-schedule.htm> (last visited Nov. 20, 2006).

30 Michael A. Froomkin, *Wrong Turn in Cyberspace: Using ICANN To Route Around the APA and the Constitution*, 50, *Duke LJ*, 17, 25 (2000).

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

The registrant has no rights or legitimate interests in respect of the domain name; and

The domain name has been registered and is being used in bad faith.³¹

All three of the above conditions must be met before the case is ruled in favor of the complainant.³² After a decision is made, the domain name is either transferred, canceled, or the complaint is denied.³³ ICANN further defined the term “bad faith”, establishing the criteria for the complainant to indicate bad faith as well as the criteria needed for respondent to establish that no bad faith was used in the registration of the name. Despite the stipulated criteria, enough latitude exists in the language of the UDRP to allow drastically different interpretations of the cases, depending on the dispute resolution provider.³⁴

In cases involving the UDRP, ICANN utilizes four organizations to act as arbitrators to resolve disputes. These major dispute resolution service providers are: the World Intellectual Property Organization (WIPO), based in Switzerland; the National Arbitration Forum (NAF), from the U.S.; eResolution, from Canada; and the CPR Institute for Dispute Resolution (CPRADR), also based in the U.S.³⁵ These arbitration panels utilize diversified arbitrators from across the globe. Diversified panels reduce the probability of national bias, as well as to improve the international scope of the UDRP’s enforcement.

31 Mueller, *supra* note 17, at 21.

32 *Id.*

33 World Intellectual Property Organization, <http://www.wipo.int/amc/en/center/faq/domains.html#2> (last visited Nov. 20, 2006).

34 Mueller, *supra* note 17, at 21.

35 *Id.* at 10.

V. OPPOSITION TO THE UDRP

Despite the apparent benefits of the UDRP, opponents to the policy claim several reasons to explain its ineffectiveness. ICANN currently allows the complainant to choose the dispute resolution service provider. Evidence shows that the selection of a service provider by the complainant can often lead to “forum shopping” which can bias the decision. Statistically, WIPO and NAF have a record of ruling in favor of the trademark holders. Not surprisingly, WIPO and NAF attract the largest number of cases (61 percent and 31 percent respectively) by complainants. eResolution, which typically rules in favor of the defendant, typically attracts only 7 percent of cases.³⁶ The bias from selecting a favorable service provider is compounded, opponents argue, by the policy’s current inability to challenge an arbitrator if believed to be biased or to have a conflict of interest. Currently, arbitrators are expected to reveal any possible conflicts of interest. If the arbitrator is truly biased, however, efforts will be made to skew the degree of conflict. Therefore, regulation must exist to effectively determine the existence of an intolerable conflict of interests. For example, if the arbitrator is a member of a firm, and that firm maintains a position on a disputed arbitration law, speculation would surface if the arbitrator is allowed to decide a case involving a similar law.³⁷ Because the current policy lacks such stipulations, UDRP opponents have demanded an effective means to eliminate the possibility of biased arbitrators.

Another argument made by UDRP opponents involves the arbitrators’ negligence to legitimate ownership of domains. Kieren McCarthy explains that in order for a complainant to reclaim a domain name from the registrant, the complainant must show the arbitrators that the registrant “has no rights or legitimate interests” in the name. UDRP opponents claim that large amounts of arbitrators have a history in trademark law.³⁸ Arbitrators’ background in trademark law

36 *Id.* at 2.

37 Froomkin, *supra* note 10, at 638.

38 See Kieren McCarthy, *The Registrar*, (Oct. 4, 2001), http://www.theregister.co.uk/2001/10/04/what_the_hell_is_udrp/.

often translates into a bias toward major trademark owners. This bias, challengers claim, often causes even legitimate domain names to be judged unfairly. Such arbitrator bias has been manifested in the numerous sucks.com cases, having the form [company]sucks.com. Many claim this to be a fair use of a domain name. However, WIPO determined that such sites violated the UDRP because of their damaging effects to the company and its trademark.³⁹

VI. EFFECTIVENESS OF THE UDRP

A. Application

Notwithstanding the minor flaws inherent in the application of this policy, the UDRP has unfolded to be an effective example of international intellectual property regulation. One of the applications of the UDRP that contributes to its success is its use of arbitration panels. Typically used as the cost-effective alternative to litigation, arbitration is particularly useful in settling disputes that involve the private rights of two parties. According to WIPO, arbitration can be useful in dealing with highly technical areas and an arbitrator with a technical background is often used. Additionally, arbitration is often more time efficient than court litigation. IP cases brought before the arbitration of WIPO are normally resolved within two months.⁴⁰ The average time it takes to settle a case when brought before one of the four dispute resolution providers is forty-three days.⁴¹ Traditional litigation, however, would mandate years for the same resolution. The cost of arbitration is also consistently lower than the typical costs of courtroom cases. The fees involved with using such an arbitration panel equate to a fraction of those involved with litigation. WIPO describes that cases involving multiple patent names often only require

39 McCarthy, *supra* note 38.

40 World Intellectual Property Organization, <http://www.wipo.int/amc/en/center/faq/domains.html#2> (last visited Dec. 3, 2006).

41 Mueller, *supra* note 17, at 17.

a few thousand dollars of fees.⁴² The U.S. Department of Commerce commended the UDRP as being “an efficient, inexpensive procedure for the resolution of disputes.”⁴³ Such time and cost efficiency in filing domain name disputes has helped battle the high volume of domain name dispute cases in recent years.

Yet another unique advantage presented by the UDRP is the focused nature of its application. Often the international application of IP laws is unfeasible, because of the inability of a single policy to apply appropriately to the multitude of situations in each tried case. A regulatory body cannot create a policy that accommodates all possible circumstances. The UDRP, however, narrows the scope of its application in order to provide feasible application. As explained by ICANN laws, the UDRP can only be applied to .com, .net, and .org top-level domain names.⁴⁴ Kieren McCarthy of The Register explains that only the misuse of registered trademarks recognized by WIPO can merit an investigation. The policy only applies to trademark holders contending with non-trademark holders. The UDRP purposefully avoids cases involving the use of personal names, the names of places, and the names of drugs and governmental organizations.⁴⁵ Narrowing the scope of the UDRP’s application prevents vain investigation of unregistered trademarks. The focused function of the UDRP allows it to hurdle over the application problems that burden most existing international IP law.

B. Structure

In addition to its application, certain structural components of the UDRP add to its effectiveness. The diversified and objective arbitrators used by ICANN are a structural advantage of the UDRP. Currently, an expert panelist or group of panelists is chosen to re-

42 World Intellectual Property Organization, <http://www.wipo.int/amc/en/center/faq/domains.html#2> (last visited Dec. 2, 2006).

43 Froomkin, *supra* note 10, at 609.

44 ICANN, <http://www.icann.org/udrp/udrp-second-staff-report-24cot99.htm>, (last visited Dec. 3, 2006).

45 McCarthy, *supra* note 38.

view the debated domain name. As outlined by WIPO policy, the specific circumstances of each case, such as the nationality and languages of the parties dictate the selection of these panels. Although opponents argue the inherent bias of many arbitrators, these panelists are chosen from a roster of qualified independent individuals. Furthermore, arbitrator bias is avoided by having a large selection of arbitrators from whom/which to choose. The panelists must also disclose to WIPO adequate information to show the absence of a conflict of interest in the case and all other facts that would affect their appointment to the case.⁴⁶ Through the selection and use of neutral panelists, ICANN thus minimizes the problem of biased arbitrators. Limiting this problem is yet another building block that has allowed the UDRP to rise above the difficulty of international intellectual property law.

Another structural advantage of the UDRP is the ease by which arbitration can occur. The rules established by ICANN stipulate that for cases involving cybersquatting, the consent of both parties is not mandated for an investigation to take place. So long as the arguing party provides the necessary evidence and documentation, arbitration can begin to investigate the possibility of domain name misuse. On the other hand, if a domain name is transferred or canceled, the owner of the domain name is given a period of time to demand further investigation of the case.⁴⁷ In order to aid registrars who are legally uninformed, the arbitrators are required to clearly stipulate in a letter the domain holder's rights and options for re-investigation.⁴⁸ Thus, the delineated rights of the parties involved in the dispute provide an uncomplicated arbitration method to allow justice to be served. The simplicity of the arbitration process is yet another factor that contributes to the efficient implementation of the UDRP.

46 World Intellectual Property Organization, <http://www.wipo.int/amc/en/center/faq/domains.html#2> (last visited Dec. 2, 2006).

47 ICANN, <http://www.icann.org/udrp/udrp-second-staff-report-24oct99.htm> (last visited Nov. 20, 2006).

48 Telephone interview with Jim Belshe, Attorney, Workman Nydegger Law Firm, in Salt Lake City, UT (Dec. 5, 2006).

Additionally, although opponents argue that reverse domain name hijacking and excessive complaints against existing domain name holders are harmful, the structure of the UDRP mandates that there is no default judgment during decision-making. Belshe explains that in typical court litigation, default judgment refers to judgment that benefits the plaintiff when the defendant has not acted according to court orders. This type of judgment does not exist with the UDRP. In other words, inaction by the domain name holder does not guarantee success for the complainant.⁴⁹ For example, a complainant may file a case to retrieve a certain domain name. Under UDRP rules, the complainant does not need the consent of the domain name holder to file the case. Typical law states that inaction by the defendant, regardless of whether the defendant was informed, could result in a ruling in favor of the plaintiff. The UDRP, however, in order to prevent any unfair action taken against an unsuspecting domain name holder, allows the arbitration panel to cause a complainant to lose the case if the panel deems his/her evidence insufficient. This lack of default judgment allows the UDRP to better protect legally uninformed domain name owners. The unique structure and content of the UDRP eliminate many of the obstacles that encumber internet domain name rights.

C. Regulation

The regulation and enforcement of the UDRP is yet another ingenious component that has contributed to the success of this policy. ICANN specifies that, according to the UDRP, all registrars of domain spaces must register under the contract mandated by ICANN. A domain space cannot be granted unless the registrar agrees to the contractual agreement implemented by ICANN and WIPO.⁵⁰ This contractual agreement thus regulates the distribution of Internet domain names. Any registrar of a .com, .net, and .org domain name is required to adopt the UDRP as the procedure of their domain

49 Belshe, *supra* note 48.

50 ICANN, <http://www.icann.org/dndr/udrp/policy.htm> (last visited Nov. 23, 2006).

name dispute resolution procedure if they are to be recognized by ICANN.⁵¹ All involved parties, regardless of location, are thus required to abide by the laws established by ICANN and WIPO. Any breaching of the contract will cause the involved parties to be subject to the consequences set forth in the contract.

Most IP laws fall short of providing international protection because of the difficulty in harmonizing the IP laws of individual countries. The effectiveness of the UDRP, however, is not restricted to a single country. Many governments across the globe are lauding the success of the UDRP, claiming to support its principles. Over twenty countries require it in the registration of their domestic country-code top-level domains. Additionally, the Free Trade Area of the Americas (FTAA) has recently selected UDRP as the dispute resolution provider of all of its signature states.⁵² The ability of WIPO to regulate and enforce domain name registrars across the globe overcomes the obstacle of national borders and provides the UDRP an international scope unprecedented by previous international IP laws.

VII. CONCLUSION AND RECOMMENDATIONS

The Uniform Dispute Resolution Policy has helped to regulate the large increase in Internet domain name disputes in recent years. The success of UDRP does not imply that it is free of imperfections. Many problems have arisen from the current rule that allows the complainant to choose the dispute resolution provider. As discussed previously, forum shopping often occurs, and can create a bias in the decision making process. Complainants will obviously choose the provider that statistically rules in favor of new domain name holders. There are several potential remedies to this bias. Some feel that the respondent should be required to pre-select a dispute resolution provider at the time of registering the domain name. Feeling that this solution only shifts the bias in the opposite direction, others have proposed that both parties agree to a single provider, where a third party or even a lottery could decide on a provider if the complain-

51 Mueller, *supra* note 17, at 5.

52 Froomkin, *supra* note 10, at 609–610.

ant and registrant cannot reach an agreement. Although such an arrangement is still not free from problems, both parties' involvement in the selection process greatly reduces the provider's tendency to be biased.⁵³

Another component of the UDRP that stands in need of reform is its ability to withstand reverse domain name hijacking (RDNH). Critics claim that the policy is "one-sided" and that action should be taken to protect registrants from being "victims of frivolous complaints."⁵⁴ A. Michael Froomkin, an advocate of UDRP reform, has advocated the institution of a "surety bond," of approximately five thousand dollars, to be awarded to the registrant from the complainant if the arbitration panel finds reverse domain name hijacking.⁵⁵ This bond could prevent complainants from anxiously seeking to force a feeble registrant into surrendering his/her domain name.

The UDRP is a sound policy to better reform Internet domain name disputes as a type of international intellectual property infringement. The above-mentioned reforms to the policy will improve the effectiveness of the policy. Given these minor changes, the UDRP embodies the necessary application, structure, and regulation to remove the web of difficulties that currently hinder international intellectual property law. The UDRP's ability to utilize arbitration panels as a time and cost efficient means of law enforcement has been pivotal to its success. The international success of the UDRP is also possible due to the focused scope of its application. The use of unbiased arbitrators and the ease of the arbitration process also add to the policy's effectiveness. ICANN's international application of the UDRP to all Internet domain name registrars overcomes the obstacle of differing international IP laws. The unmatched effectiveness of the UDRP has established a model and precedent that future international intellectual property law can follow.

53 Froomkin, *supra* note 10, at 691.

54 *Id.* at 693.

55 *Id.* at 693–694.