

ADR IN CCTLDS --THE PROSPECTIVE OF CNNIC

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Geneva, September 20, 2001

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Overview (1)

- Increasing intellectual property conflicts in the country code domains;
- Needing alternative dispute resolution procedure, to complement existing dispute resolution systems, and to resolve domain name disputes expeditiously and economically.

Overview (2)

- ADR procedures in CCTLDs
 - CNDRP, CNNIC, published on November 1, 2000, effective since January 1, 2001;
 - TWDRP, TWNIC, published on March 8, 2001, effective since April 8, 2001;
 - JPDRP, JPNIC, published on July 19, 2000, effective since October 19, 2000.
- International Initiative
 - DRP Working Group, APTLD
 - CCTLDs interested in ADR procedure, such as KR, VN
 - APTLD DRP Seminar (pending), L.A., November 10, 2001

Unification v. Localization

- CCTLDs operating in different legal, economic and cultural background;
- Impossible: one unified ADR for all CCTLDs;
- Possible: consensus on a flexible frame built around the basic elements critical from an IP prospective.

Localization of the UDRP (1)

- Scope of Procedure
 - CNDRP: conflicts with trademarks protected under Chinese laws;
 - TWDRP: conflicts with trademarks, service marks, personal names, business names or other identifiers;
 - JPDRP: conflicts with any mark such as a trademark or service mark.

Localization of the UDRP (2)

- Mutual Jurisdiction
 - CNDRP: Intermediary Court where the Respondent resides;
 - JPDRP: Tokyo District Court, or the District Court where the Respondent resides

Localization of the UDRP (3)

- Disputes Service Providers
 - CNDRP: “Domain Name Dispute Settlement Center of CIETAC” (China International Economic and Trade Arbitration Center)
 - TWDRP: “Technology Law Center of Information Industry Promotion Association” and “Taipei Lawyer Association”;
 - JPDRP: exclusively conducted via Japanese service provider, “Japan Intellectual Property Arbitration Center”.

Localization of the UDRP (4)

- Panelists
 - Local legal experts
- Language of the Procedure
 - CNDRP: Chinese
 - TWDRP: Chinese
 - JPDRP: Japanese

CCTLD Best Practices (1)

- Valuable framework for evaluating and promoting the practices of various ADR systems in CCTLDs;
- “CCTLD Best Practices for the Prevention and Resolution of Intellectual Property Disputes”, WIPO, June 1, 2001
- Minimum Requirements for ADR procedures.

CCTLD Best Practices (2)

- Taking the example of CDRP
 - Mandatory character based on registration agreements;
 - Decisions based on all facts and circumstances;
 - Blocking of transfers pending the proceedings;
 - Direct enforcement by CNNIC's registrars;
 - Quick Results: 14 days from the deadline of filing the defense;
 - Moderate Costs: 3,000 Chinese yuan (US\$400) for sole panelist; 6,000 Chinese yuan (US\$700) for three-member panel;
 - Relationship with CNNIC: dispute service provider independent of CNNIC;
 - Relationship with court proceedings: no replacing court proceeding;
 - Scope of procedure: abusive registration.

Developments of CNDRP

- “Chinese Domain Name Dispute Resolution Policy”, Jan. 1, 2001
- “Procedure Rules of Chinese Domain Name Dispute Resolution Policy”, Jan. 1, 2001
- Domain Name Dispute Settlement Center of China International Economic and Trade Arbitration Commission, Jan. 1, 2001
- Up to August 27, 2001, 10 cases filed, 6 decided, 4 withdrawn by the complainants.

Applicable Disputes under CNDRP

- Conflict between a trademark and a domain name in Chinese language
- Conditions of a complaint:
 - Complainant has trademarks protected under Chinese laws;
 - The domain name is identical or confusingly similar to the trademark;
 - The domain name registrant or the others closely related to the registrant does not have trademark right, or any other legitimate right or interest;
 - The registrant has bad faith in registration and/or use of the domain name;
 - The domain name has adverse affects to complainant's business.

Modification of CND RP (1)

- Modifying the CN Domain Name Registration Policy
 - Openness for individuals;
 - Openness for foreigners (individuals or organizations) without subsidiary or liaison office in China;
 - Openness of second-level domain name, for example: “haier.cn”
- More disputes in the open TLDs

Modification of CNDRP (2)

- Problems of the CNDRP

- Too limited Coverage

- Limited to Chinese domain names, excluding English domain names managed by CNNIC;
 - Limited to trademark rights (under Chinese laws, only the owners of registered trademarks enjoy exclusive trademark rights), excluding personal names, business names and other business identifiers.

- Inaccurate or unreasonable expressions

- Such as “adverse affects ” or “the others closely related to the registrant ”

Draft of Modified CNDRP

- Interim Draft in August 2001
- Taking into account of the experience of UDRP and Chinese practices
- Major changes:
 - Conditions of Complaints
 - Bad faith evidence
 - Respondents' defenses

Conditions of Complaints (Draft)

- Complainant enjoys rights or legitimate interests under Chinese laws;
- The domain name is identical or confusingly similar to complainant's mark;
- The domain name registrant does not have any legitimate right or interest;
- The registrant has bad faith in registration and/or use of the domain name.

Evidence of Bad Faith (Draft)

- Registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name for acquiring unjustified interests;
- Registered the domain name in order to prevent to the complainant from reflecting the mark in a corresponding domain name, provided that the registrant have engaged in a pattern of such conduct;
- Registered or acquired the domain name for the purpose of tarnishing the reputation or disrupting the business of the complainant's mark, or creating confusion with the complainant's mark so as to mislead the public;
- Other circumstances showing the registrant's bad faith.

Respondents' Defenses (Draft)

- Unlike UDRP, the Draft does not list the defenses may be raised by the domain name registrant, but provides a general rule:
 - The panel may, based on its evaluation of all evidence presented, decide whether the registrant has right or legitimate interest to register and/or use the domain name.

Thank You !

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