

Dispute Resolution Process Submission

From: Domainz Limited

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Domainz supports the implementation of a dispute resolution process for .nz domain names using the WIPO process.

The Uniform Dispute Resolution Policy (UDRP) has been in place for five years and has proven to be an efficient and effective method for resolving disputes regarding the bad faith, abusive registration of domain names that violate trademark rights.

Although there is a substantial cost to the complainant to lodge a dispute, it is a less expensive option than litigation. The fee also serves to discourage frivolous complaints from being lodged and means that complainants will usually attempt to resolve the matter directly with the registrant as a first step.

The UDRP does not preclude a complainant from taking the matter to court.

Au Domain Administration (auDA) introduced the au Dispute Resolution Policy, a modified version of the UDRP, in August 2002 and this has been working well dealing with disputes within the .au domain space.

In the auDRP, the first point that the complainant must prove is that the domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights. For the purpose of the policy, auDA has determined that a "name ... in which the complainant has rights" refers to:

- a) the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority; or
- b) the complainant's personal name.

Similar changes could be brought in for a nzDRP and thereby alleviate some of the concerns regarding the focus on trademarks in the UDRP model.

The UDRP offers complainants a choice of four dispute providers, that is, complainants are not required to use WIPO. The auDRP also provides a choice of four providers. It would be possible to do the same for NZ and have NZ-based providers for complainants who did not wish to use an overseas body for the arbitration.

The benefits of the UDRP model include:

- It is an established process and understood throughout the internet industry. Given that the .nz domain space policies are similar to those for gTld registrations, it is appropriate that the dispute policy should also

be similar. Forty-two other ccTLDs have also implemented the UDRP style process.

- The process is clear and neither the registrars, the registry nor the regulator get involved in the dispute other than to lock the name during the dispute and implement the decision.
- There is no cost to the DNC in facilitating the first stage dispute resolution, as with the Nominet model. In the UDRP model any first stage resolution is handled directly between the complainant and the registrant.

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