

WIPO Conference: 10 Years UDRP – What's Next?

October 12, 2009

Theme 1.1: The UDRP - Design Elements, the Changing Domain Name Industry, and the Evolution of Precedent and Procedural Practice – The Road Thus Far

The Evolution of Precedent (Consensus)

David H. Bernstein
Debevoise & Plimpton LLP
New York, NY USA



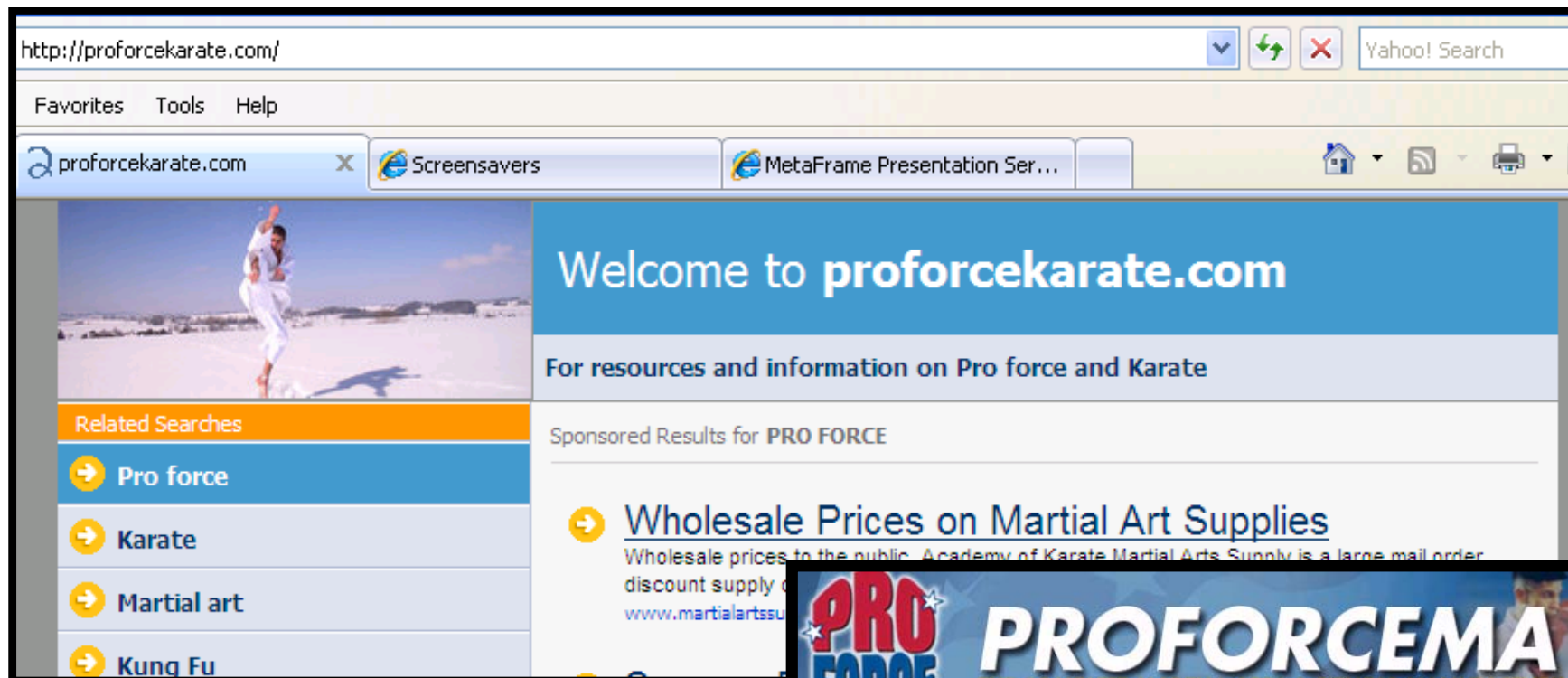
The UDRP Legal Structure

- **Policy and Rules Promulgated by ICANN**
 - ▶ Rendered Effective by Registration Contract
- **No Legally Binding Substantive Law**
 - ▶ Rules state “Panel shall decide a complaint . . . in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”
 - ▶ Policy provides general principles and non-exclusive examples for legitimate interest and bad faith factors
 - ▶ WIPO Report provides information on drafters’ intent
- **No Mechanism for Resolving Conflicts Amongst Panels**
 - ▶ No appellate panel or authority
 - ▶ No revisions by ICANN to Policy or Rules
 - ▶ Decisions can be challenged in national courts
 - ▶ Decisions published, which helps support consensus

Benefits of the Consensus System

- **Provides Predictability to the Parties**
- **Avoids Panelist and Forum Shopping**
 - ▶ ADR Provider Can Neutrally Appoint Panelists
- **Encourages Efficiency**
 - ▶ Facilitates Use of Single-Member Panels
 - ▶ Panels Can Benefit From Decisions of Other Panels
- **Allows Flexibility for UDRP to Evolve to Address:**
 - ▶ Specific Practices Not Listed in Policy's Examples
 - ▶ Developments in Business Practices
 - ▶ Changes in Technology
 - ▶ Differences in National Laws
- **In General, Promotes Stability and Legitimacy of UDRP**

Evolution: PPC Landing Pages



Case No. D2007-1415

Evolution: Privacy Registrations



The screenshot shows a Windows Internet Explorer browser window displaying the WWF website. The address bar shows the URL: http://wwf.com/parking.php?domain=wwf.com&s=c79e4f9dc6ea4bf42f8a&conf_id=0&a_id=0&. The page content includes a search bar, a search button, and several links to WWF-related content: [WWE OFFICIAL SHOP](#) (100s of WWE products available at WWFs only Official European Store [WWEeuroshop.com](#)), [WWF SMACKDOWN FOR PS2](#) (Shop for WWF Smackdown and more at [Surprise.com](#)), [UN JOUR SUR TERRE](#) (Découvrez la plus belle des histoires au cinéma ! [www.UnJourSurTerre-lefilm.com](#)), [WWF](#) (Looking for Wwf? Here are top sites. Go Now! [readyshop.biz/Wwf](#)), and [COLIMA VISUAL SDK F. DIVA](#) (New development environment for Dialogics Diva under WWF (.NET) [www.VisualSDK.com](#)).

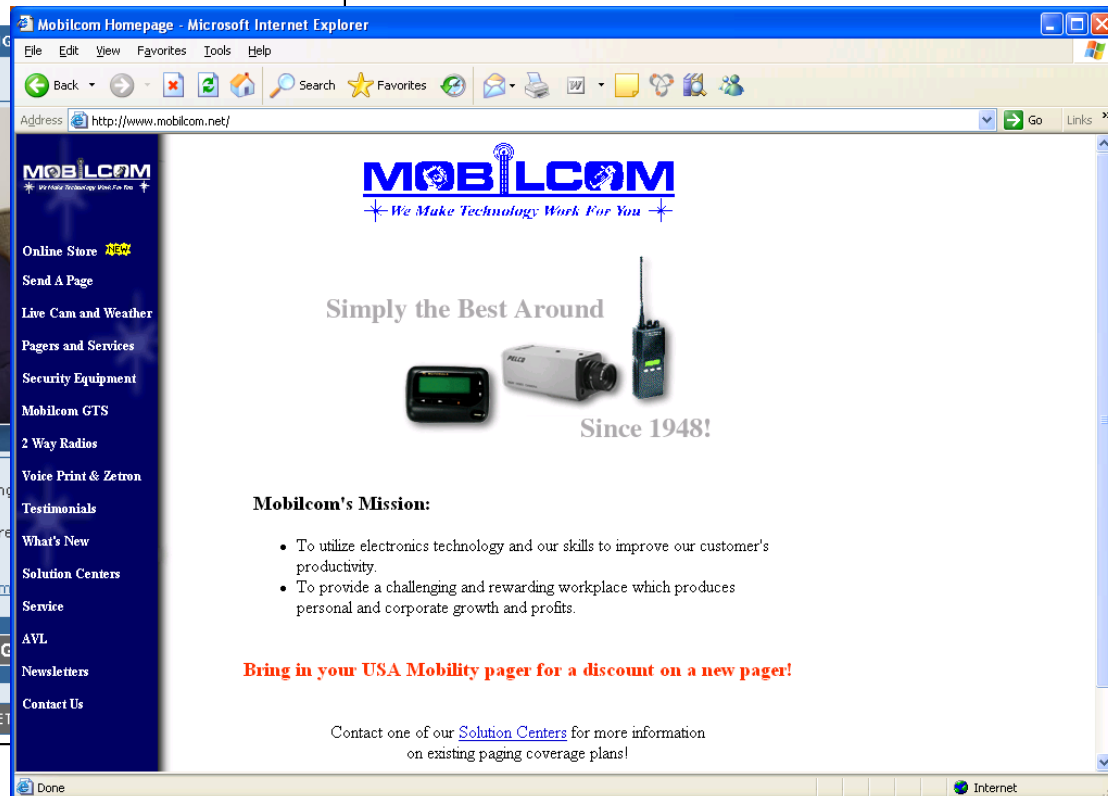
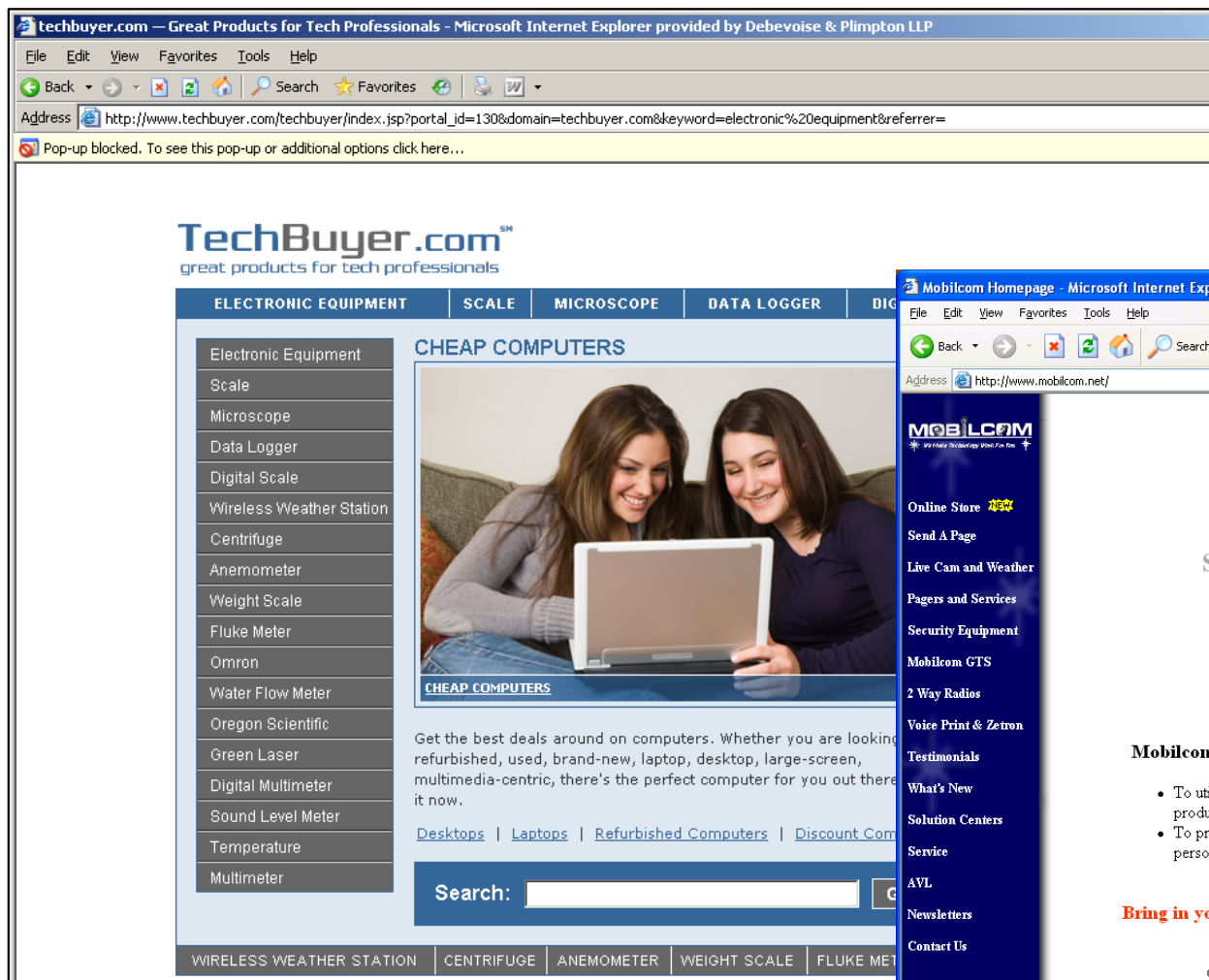
Overlaid on the right side of the browser window is a WHOIS domain registration window. The window title is "WHOIS domain registration". The address bar shows the URL: <http://www.netw>. The search bar contains the text "WHOI...". The results show:

Domain Name: **WWF.COM**

Registrant [494976]:
Moniker Privacy Services
20 SW 27th Ave.
Suite 201
Pompano Beach
FL
33069
US

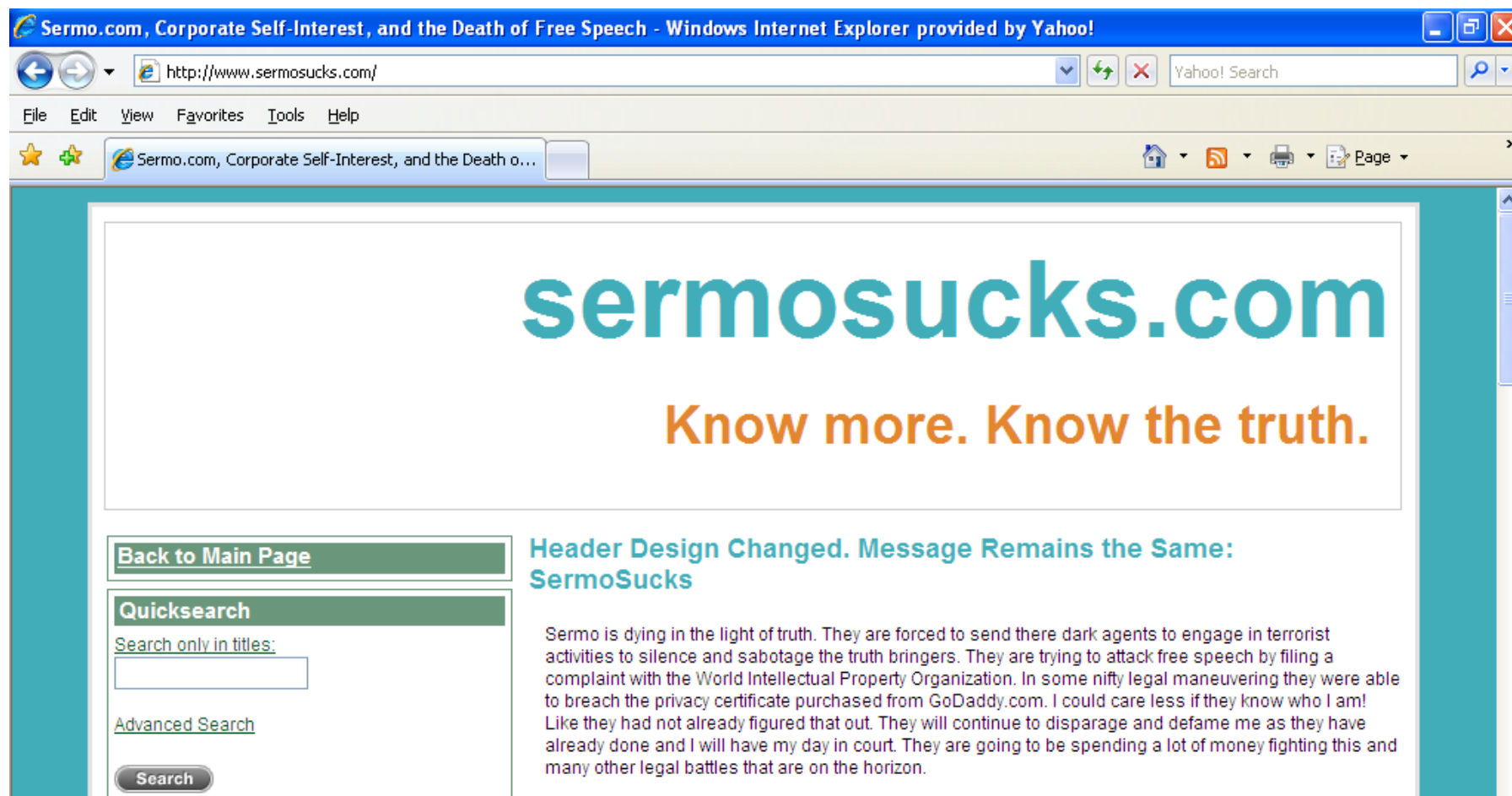
Case No. D2006-0975

Evolution: Automated Domain Name Registration



Case No. D2005-1304

Evolution: Free Speech Issues



Sermo.com, Corporate Self-Interest, and the Death of Free Speech - Windows Internet Explorer provided by Yahoo!

http://www.sermosucks.com/

File Edit View Favorites Tools Help

Sermo.com, Corporate Self-Interest, and the Death o...

sermosucks.com

Know more. Know the truth.

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Quicksearch

Search only in titles:

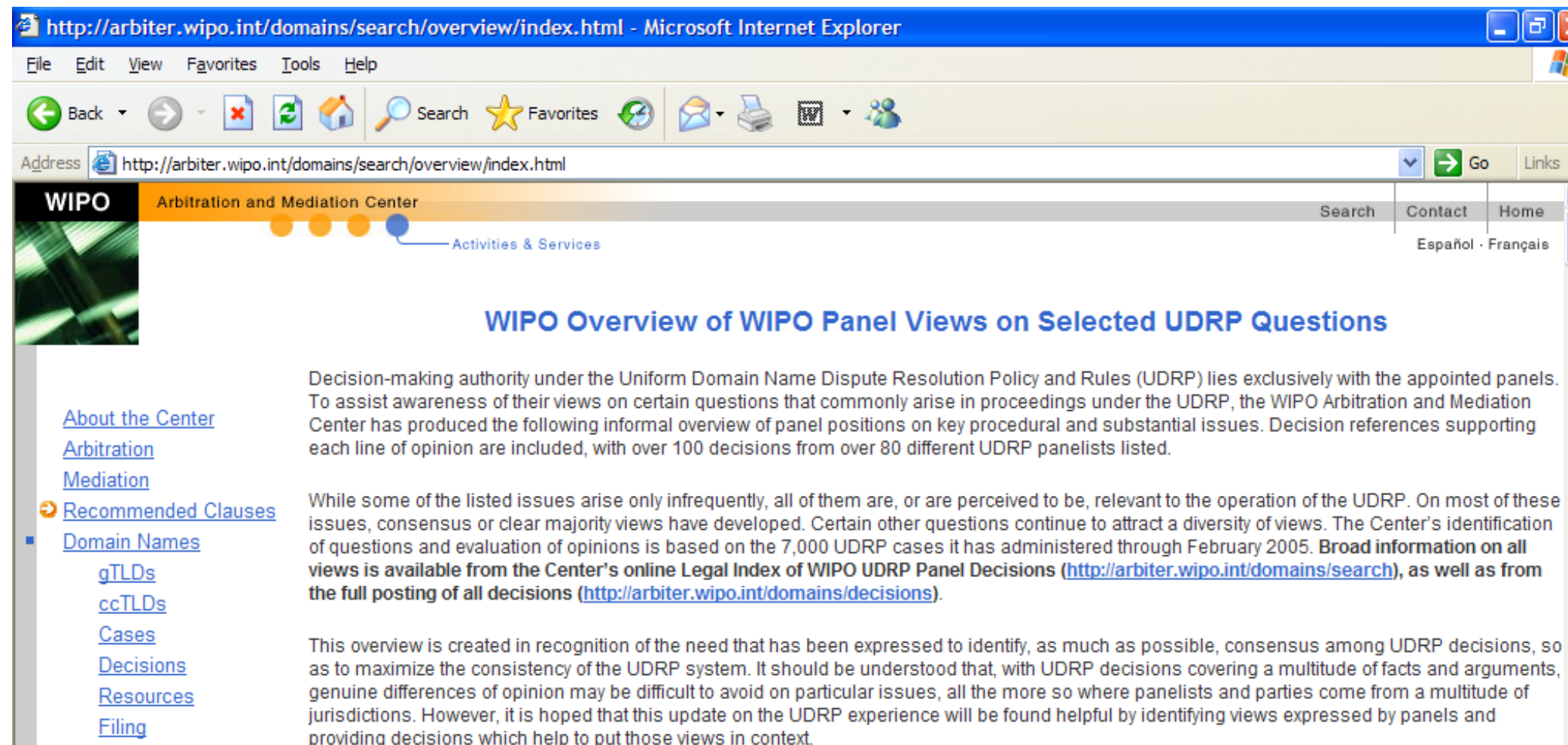
[Advanced Search](#)

Header Design Changed. Message Remains the Same: SermoSucks

Sermo is dying in the light of truth. They are forced to send there dark agents to engage in terrorist activities to silence and sabotage the truth bringers. They are trying to attack free speech by filing a complaint with the World Intellectual Property Organization. In some nifty legal maneuvering they were able to breach the privacy certificate purchased from GoDaddy.com. I could care less if they know who I am! Like they had not already figured that out. They will continue to disparage and defame me as they have already done and I will have my day in court. They are going to be spending a lot of money fighting this and many other legal battles that are on the horizon.

Case No. D2008-0647

The WIPO Decision Overview



http://arbiter.wipo.int/domains/search/overview/index.html - Microsoft Internet Explorer

File Edit View Favorites Tools Help

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Address http://arbiter.wipo.int/domains/search/overview/index.html Go Links

WIPO Arbitration and Mediation Center

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WIPO Overview of WIPO Panel Views on Selected UDRP Questions

Decision-making authority under the Uniform Domain Name Dispute Resolution Policy and Rules (UDRP) lies exclusively with the appointed panels. To assist awareness of their views on certain questions that commonly arise in proceedings under the UDRP, the WIPO Arbitration and Mediation Center has produced the following informal overview of panel positions on key procedural and substantial issues. Decision references supporting each line of opinion are included, with over 100 decisions from over 80 different UDRP panelists listed.

While some of the listed issues arise only infrequently, all of them are, or are perceived to be, relevant to the operation of the UDRP. On most of these issues, consensus or clear majority views have developed. Certain other questions continue to attract a diversity of views. The Center's identification of questions and evaluation of opinions is based on the 7,000 UDRP cases it has administered through February 2005. **Broad information on all views is available from the Center's online Legal Index of WIPO UDRP Panel Decisions (<http://arbiter.wipo.int/domains/search>), as well as from the full posting of all decisions (<http://arbiter.wipo.int/domains/decisions>).**

This overview is created in recognition of the need that has been expressed to identify, as much as possible, consensus among UDRP decisions, so as to maximize the consistency of the UDRP system. It should be understood that, with UDRP decisions covering a multitude of facts and arguments, genuine differences of opinion may be difficult to avoid on particular issues, all the more so where panelists and parties come from a multitude of jurisdictions. However, it is hoped that this update on the UDRP experience will be found helpful by identifying views expressed by panels and providing decisions which help to put those views in context.

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The WIPO Decision Overview

4.1 What deference should be owed to past UDRP decisions dealing with similar factual matters and legal issues?

Consensus view: The UDRP does not operate on a strict doctrine of precedent. However panels consider it desirable that their decisions are consistent with prior panel decisions dealing with similar fact situations. This ensures that the UDRP system operates in a fair, effective and predictable manner for all parties.