



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

October 12, 2009

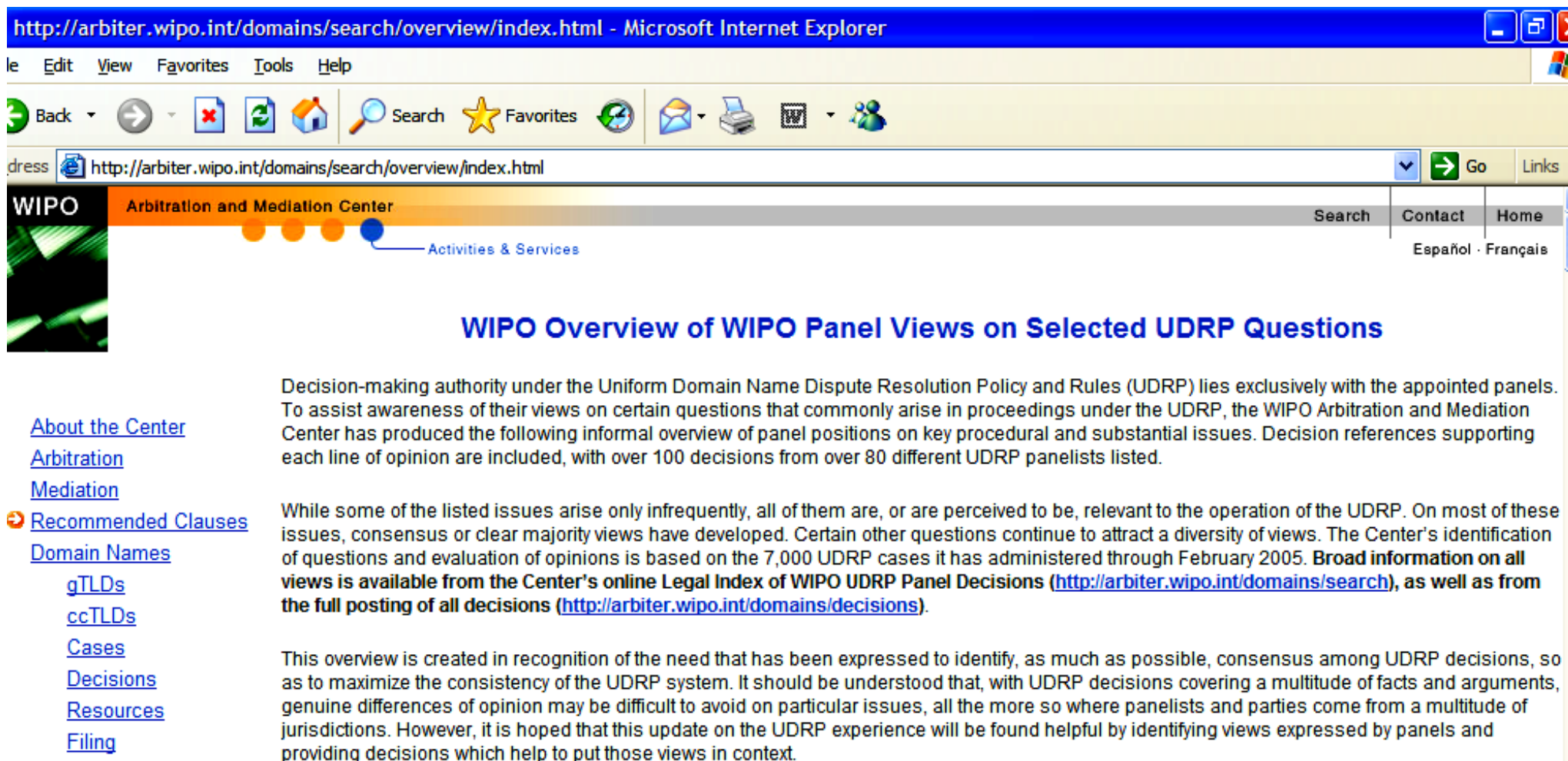
**Theme 1.2: Key Issues for WIPO Panelists – Forks in the Road –
Reflections on the UDRP and Beyond**

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



The Free Speech Fork – No Consensus (Yet?)



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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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No Consensus Has Emerged

2.4 Does a respondent using the domain name for a criticism site generate rights and legitimate interests?

View 1: The right to criticize does not extend to registering a domain name that is identical or confusingly similar to the owner's registered trademark or conveys an association with the mark.

View 2: Irrespective of whether the domain name as such connotes criticism, the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if the use is fair and non-commercial.

No Consensus Has Emerged

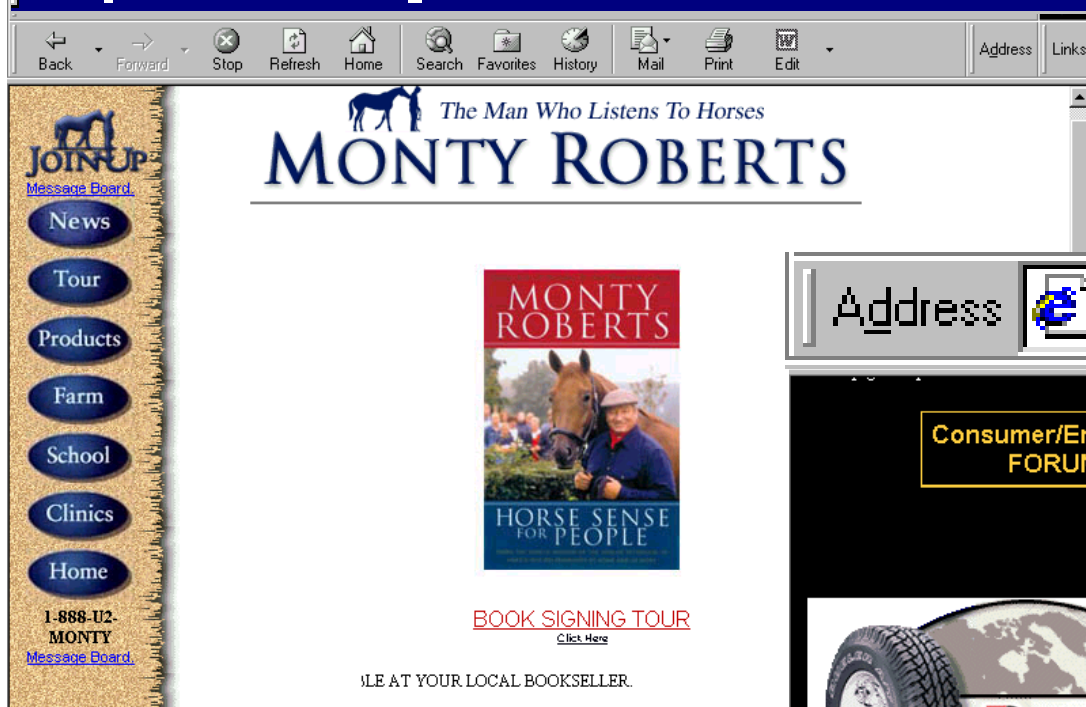
2.5 Can a fan site constitute a right or legitimate interest in the disputed domain name?

View 1: An active and clearly non-commercial fan site may have rights and legitimate interests in the domain name that includes the complainant's trademark. The site should be non-commercial and clearly distinctive from any official site.

View 2: Respondent does not have rights to express its view, even if positive, on an individual or entity by using a confusingly similar domain name, as the respondent is misrepresenting itself as being that individual or entity. In particular, where the domain name is identical to the trademark, the respondent, in its actions, prevents the trademark holder from exercising the rights to its mark and managing its presence on the Internet.

Criticism Sites

Monty Roberts - Creating A Better World For Horses And Humans.



Case No. D2000-0300

Case No. D2000-0190

Fan Sites

Address  http://www.patbenatar.com

Welcome to
PatBenatar
.com

Precious Times!
Late breaking news on appearances.

Pat Benatar is expected to be included in:
GO
Pat Benatar's Current Album

VH1 Classic's rebroadcast of *Headline Act!*
Find out more [here!](#)

Case No. D2004-0001

...WWW.GALATASARAY.COM...

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Address  http://web.archive.org/web/20010515221328/http://galatasaray.com/

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ANA SAYFA
FUTBOL
AVRUPA'DA GS
BASKETBOL
VOLEYBOL
KÜREK
DİĞER

CİMBOM TV

Canlı Yayın Videolar

Forum Tarihçe Sizden GS Üyelik

Multimedya GALATASARAY.COM

Hakkımızda E-mail

English

FIFA Oyun Kuvvetler Türkiye

Son Dakika 'de maç yaşağını kaldırdı / Kolombiyalı kaleci Mo 2 Ekim 2005, Pazar

HAYDİ TÜRKİYE

Türkiye-Makedonya
Milli Takımımız, Dünya Şampiyonası Eleme Grubu'ndaki yedinci maçını bu akşam Bursa Atatürk Stadı'nda Makedonya ile yapacak. Cumartesi günü Azerbaycan'ı 3-0 yenerek, grupta zirveye çıkan Ay - Yıldızlı ekibimiz, sahadan yine farklı galip ayrılarak liderliğini korumaya çalışacak. Saat 20.30'da başlayacak mücadelede Star TV naklen yayınlayacak. Maçı İtalyan Pasquale Rodomonti yönetecek. A Milli Takımımız, 78 yıllık tarihinde 354 maç yaptı. Bu karşılaşmalarda 112 galibiyet, 79 beraberlik elde eden milliler, 163 kez de yenildiler. Haberin ayrıntıları için [tıklayın...](#)

Tarafıtar Cansun dedi
Sitemizde yapılan "Kimi Başkan görmek istersiniz?" konulu ankette, kullanılan yaklaşık 22.500 oyun yüzde 66'sını alan Mehmet Cansun taraftarın desteğini arkasına aldı. Cansun 14 Temmuz'daki kongreye güçlü girmek ve 'Acaba başkanlık yapabilecek mi?' endişesi taşıyanları rahatlatmak amacıyla bomba etkisi yapacak transferler kovalıyor. Haberin ayrıntıları için [tıklayın...](#)

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Milli maç
Milli Takımımız, Dünya Şampiyonası Eleme Grubu'ndaki yedinci maçını bu akşam saat 20.30 Bursa Atatürk Stadı'nda Makedonya ile yapacak.

Galatasaray'da Kimi başkan görmek istersiniz?
 Faruk Süren yönetimi devam etsin
 Mehmet Cansun
 Özhan Canavdın

(13 items remaining) Downloading picture http://web.archive.org/web/20010606163403/http://galatasaray.com/indeximages/gunc

Case No. D2002-0726

Bridging the Divide

Address http://www.htja.org

See *HJTA's November Ballot Recommendations* [Click Here...](#)

Howard Jarvis TAXPAYERS ASSOCIATION

Dedicated to protecting Proposition 13 and promoting taxpayers' rights.

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CALIFORNIA COMMENTARY:
The Unholy Trinity of Special Interest Tax Increases
 This week's column by HJTA president Jon Coupal. [More...](#)

Why You Should Vote NO on L. A.'s Measure A [Click Here...](#)

Propositions 63, 67 and 72 would mean over \$8 billion in new taxes. Find out more at [NoNewTaxesCal.com](#).

Assemblyman Keith Richman floats 401(k)-like plan to ease the state's public employee pension pinch
 The dramatic proposal to put public employees into 401(k)-like pension plans could spark a movement for anti-tax groups waiting in the wings. The odds of the bill surviving the Legislature are a long shot, said HJTA president Jon Coupal. But the association is ready to go to the voters if lawmakers balk. [More \(Contra Costa Times\)...](#)

HJTA Sues Encinitas Over Clean-Water Fee
 The Howard Jarvis Taxpayers Association has sued the City of Encinitas, claiming that it has exceeded its authority, irreparably harmed residents and has violated the state Constitution by imposing a clean-water fee without a public vote. [More \(North County Times\)...](#)

10/26/2004

Address http://www.htja.com

McCauley vs. Howard Jarvis, et.al

Officers' Pay & Perks	The Treasurer-Kelly	Mailing List	Trevor Grimm
Miles Rubin	Taxing Times	The Court's Judgment	Los Angeles Times
Board of Directors	Tax Revolt Dead?	Paul McCauley	Roosevelt Fees
HJTA Overhead	Destroy the Records?	Comments	WANTED !
Fox in the Trenches	\$150 Million Dollars		

against the Howard Jarvis Taxpayers' Association (HJTA) to compel the organization to file \$2 million dollars of contributions it had received from us, the members. **The contributions exceeded \$2 million dollars since the beginning of HJTA.**

spending **\$2 million dollars of your money** to stop it in the courts. HJTA's fundraiser spent \$2 million dollars of your money to stop it in the courts. HJTA's fundraiser spent \$2 million dollars of your money to stop it in the courts. HJTA's fundraiser spent \$2 million dollars of your money to stop it in the courts.

Case No. D2004-0014

Bridging the Divide

- *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005)
- *TMI, Inc. v. Maxwell*, 368 F.3d 433 (5th Cir. 2004)
- *Taubman Co. v. Webfeats*, 319 F.3d 770 (6th Cir. 2003)
- *Lucas Nursery v. Grosse*, 359 F.3d 806 (6th Cir. 2004)
- *Nissan Motor v. Nissan Computer*, 378 F.3d 1002 (9th Cir. 2004)
- *Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672 (9th Cir. 2005)
- *Utah Lighthouse Ministry v. Foundation for Apologetic Info. and Research*, 527 F.3d 1045 (10th Cir. 2008)
- *Taylor Bldg. v. Benfield*, 507 F. Supp. 2d 832 (S.D. Ohio 2007)
- *Northland Ins. Co. v. Blaylock*, 115 F. Supp. 2d 1108 (D.C. Minn. 2000)
- *Bihari v. Gross*, 119 F. Supp. 2d 309 (S.D.N.Y. 2000)
- *Penn Warranty Corp. v. DiGiovanni*, 810 N.Y.S.2d 807 (N.Y. Sup. Ct. 2005)

Bridging the Divide

2.4 Does a respondent using the domain name for a criticism site generate rights and legitimate interests?

There is also some division between proceedings involving US parties and proceedings involving non-US parties, with few non-US panelists adopting the reasoning in View 2.

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Sermo.com, Corporate Self-Interest, and the Death of Free Speech



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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

Bridging the Divide



Case No. D2007-1947