



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

**October 12, 2009**

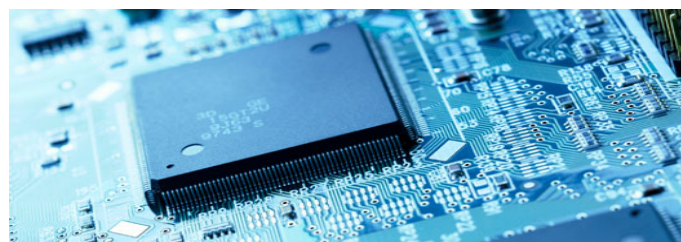
**Theme 1.6: Technology in Domain Name Disputes and the WIPO  
eUDRP Initiative**

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# WIPO and Technology (1)

- ▶ In WIPO's experience administering on-line dispute mechanisms such as the UDRP, technology helps to condense timelines and nullify distance.
- ▶ It can also save participants money, while reducing use of carbon-based delivery systems (paper and fuel).
- ▶ Email is a good example. It provides a rapid communication vehicle which has proved truly integral to the UDRP's success to date - although at present the UDRP Rules continue to assume filing and notification of hardcopy pleadings.



## WIPO and Technology (2)

- ▶ Since the UDRP was introduced 10 years ago:
  - ▶ access to the Internet and email has been enhanced by cheaper computers, and handheld devices like Blackberrys or iPhones;
  - ▶ registration of a domain name continues to require an email address for inclusion the Whois; and
  - ▶ email and document digitization tools have developed and become ubiquitous – the use of the two in combination today is commonplace.





## WIPO and Technology (3)

- ▶ In terms of the WIPO Center's UDRP and domain name dispute services, we also use a customized Case Management database to help assign, administer and co-ordinate procedural phases in domain name disputes - a practical necessity with 40-odd DN cases per week!
- ▶ In WIPO's non-DN cases, we also offer a secure on-line platform (ECAF) which has proved highly successful as a filing system for arbitrations.
- ▶ However, in WIPO's present assessment, email continues to be the on-line technology of choice for domain name disputes - *especially* when the complexities of party identity and the proliferation of privacy services today are considered.

## WIPO and Technology (4)



- ▶ Reasons include:
  - ▶ simplicity and reliability
    - » email is known and tested platform;
  - ▶ Level playing field
    - » email addresses are publicly available, and an email can be sent to anyone with an email address
    - » complex, time-consuming, and potentially exclusionary processes for determination of access rights are avoided;
  - ▶ email is already integrated into the DN registration system
    - » via contact information required in the WhoIs;
  - ▶ unlike arbitrations, pleadings in UDRP cases are relatively 'light'; and
  - ▶ with today's email capacity - and available means for efficiently digitizing pleadings and evidence - email is more than ever feasible as technological basis for the UDRP.

# The WIPO Digital Case Experience (1)

- Party pleadings and case file transmissions (eTCF)



Complaint with  
Annexes

3 MB



Response with  
Annexes

3 MB



Electronic Case File

7.5 MB

- WIPO decisions – signed and notified digitally



**WIPO Arbitration and Mediation Center**

ADMINISTRATIVE PANEL DECISION

**The iFranchise Group v. Jay Bean / MDNH, Inc. / Moniker Privacy Services [23658]**

Case No. D2007-1438



## Evolving Filing Trends



- ▶ **WIPO party filing trends – ↑ digital**
- ▶ In 2009 WIPO observed approximately **62%** of complainants filing their complaints in complete electronic form – including all annexes (*in addition* to the hardcopies presently required under the Rules).
- ▶ In the approximately **20%** of cases overall in 2009 in which a response was filed, some **62.5%** of respondents filed their response in complete electronic form including all annexes.
- ▶ This is up from the 52% for complainants and 57% for respondents reported by WIPO in its eUDRP letter to ICANN of December 2008 (<http://www.wipo.int/export/sites/www/amc/en/docs/icann301208.pdf>).



## The Evolving Case Experience

- ▶ In other words, WIPO is today seeing more than 60% of contested WIPO cases in which both parties filed their pleadings in *complete* digital form - making the filed hardcopies and notification thereof redundant.
- ▶ In addition, WIPO continues to observe an approximate 96% successful complaint delivery rate by email – *and* where one or both parties do communicate in WIPO proceedings, 100% use by both of email as the principal communication medium.





# The WIPO eUDRP Initiative (1)

- ▶ **WIPO eUDRP Initiative (Rules 2.0)**  
(<http://www.wipo.int/export/sites/www/amc/en/docs/icann170909.pdf>)
- ▶ Paperless pleadings - with the safety valve of ‘written notice’.
- ▶ Enables all UDRP parties to file *solely* in electronic form.
- ▶ Ensures *all* pleading annexes are available to both parties electronically (Rules currently provide only for “where available”).
- ▶ Provides for notification of complaints and any annexes by email – to all Whols, registrar-confirmed, and party provided email addresses.

## The WIPO eUDRP Initiative (2)

- ▶ Importantly, also requires UDRP Providers to send a hard copy letter and fax to respondent advising them of the UDRP proceeding (written notice) but *without* paper pleadings.
- ▶ Written Notice (as newly defined in the WIPO proposal) designed to address possibility of a registrant's required Whois email address being inaccurate or out of date, or that a so-called 'spam filter' may be in use.
- ▶ But essentially a 'safety valve' - noting WIPO's experience of high email delivery rates (some 96%), and low effectiveness of fax as a reliable delivery mechanism (some 11% in 09, with email delivery successful in all such cases in any event).

## The WIPO eUDRP Initiative (3)

- ▶ ICANN-held public consultation (on the initial WIPO eUDRP proposal of Dec 08) concluded in mid-Aug 09. Comments received are posted on ICANN's website at (<http://www.icann.org/en/announcements/announcement-13jul09-en.htm>).
- ▶ WIPO's assessment: clear support, uncontroversial procedural reform.
- ▶ Minor revisions and explanatory memorandum for the WIPO's proposed Rules changes responding to the consultation were forwarded by WIPO to ICANN on Sept 17, 09. (<http://www.wipo.int/export/sites/www/amc/en/docs/icann170909.pdf>)
- ▶ WIPO's strong hope is for ICANN approval and uniform implementation in the Rules as soon as possible.