

## *Imperatives of Private Arbitration in International Intellectual Property Disputes*

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The introduction of ICANN's new gTLD process in 2012 will put more pressure than ever on private methods of dispute resolution, both within the application process for the new gTLDs and within the second level domains of any new gTLDs granted by ICANN. Many of the people charged with resolving these disputes will have had prior experience as arbitrators of disputes in the pre-existing gTLDs under the auspices of the Uniform Domain Name Dispute Resolution Policy (UDRP). Many of the same balancing issues are likely to arise in the new gTLD process between protecting trademark interests against competing interests such as free speech, privacy, culturally and geographically significant terms, and personal names.

The UDRP was implemented in 1999. Despite its success in numbers of disputes resolved and cost and speed with which those disputes are resolved, the provisions of the UDRP and its practical operations have never been meaningfully reviewed. As intellectual property disputes become increasingly global, particularly in the Internet context, more pressure is put on private arbitration systems such as the UDRP and the new dispute resolution procedures to be implemented under the new gTLD process. This is unsurprising given the lack of other bodies with constitutional competence to resolve such disputes in a time and cost effective manner.

The authors argue that because of the increasing significance of private arbitration mechanisms in international intellectual property disputes, it is imperative that existing, and proposed new dispute resolution procedures be examined to ensure that they strike an appropriate balance of interests. These mechanisms should be developed and applied to take account of the importance of globally significant social values such as free speech, democracy, privacy, and effective commercial competition. We provide a close examination of the UDRP and compare it to the new Uniform Rapid Suspension

System (URS) to demonstrate opportunities that may have been missed to date in achieving appropriate balances of interests in the private arbitration context.