

○ PROTECTING GOOD NAMES IN CYBERSPACE

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Review of David Lindsay, *International Domain Name Law: ICANN and the UDRP*. (Hart Publishing: Oxford and Portland, Oregon, 2007, 512 pp. Hardback, RRP £95/€145/AUD206. ISBN 9781841135847)

This is one of the first comprehensive books to appear on the subject of international Domain Name law. While the prime target audience is undoubtedly legal practitioners and graduate students of intellectual property law, the book is also a valuable reference for anyone interested in the recent history of Internet governance, the domain name system or even seeking background guidance on the resolution of commercial disputes over domain names.

The Uniform Domain Name Dispute Resolution Policy (UDRP) is one of the Internet's lesser known secrets of its success: a cost-effective and time-efficient process for resolving commercial disputes over domain names, particularly where the disputants are registered in different countries and hence cannot resolve the dispute within a single national legal system (or often even in a common language) except at great expense to one of the disputants.

My first reaction to this book was that it is so well written. It has the most comprehensive account I have ever read of the histories of the Domain Name System (DNS), of ICANN and the marvellously effective UDRP – written with great academic rigour, with every assertion anchored down by footnotes to primary sources. Yet it remains highly readable, with great narrative flow, revealing the author's talent as an historian.

It also reveals David Lindsay's talent for being able to provide clear explanations of quite arcane concepts, such as technical aspects of the DNS or the jargon of domain name disputes: cybersquatting, typosquatting, bad faith registration, gripe sites and 'sucks'-type domain names, for example. I must admit however, as an engineer, to a certain cultural frustration at the lack of a diagram or two in the explanation of how the DNS works – but then I have grown accustomed to co-existing with a legal culture in which no diagram or picture is ever seen as having the explanatory power of a thousand well-chosen words! Having said that, Lindsay's purely text-based explanation of how the DNS operates is impeccable.

I was impressed by the chapter dealing with the concept of Internet governance – a sufficiently murky topic to awaken deep suspicion of US government intentions in many other governments, which has led to a string of international talkfests. Lindsay deals adroitly with this issue by first discussing the varying meanings of 'governance' in this context, and developing a detailed history of how the term 'governance' has evolved through the World Summits on the Information Society, to their successor the Internet Governance Forum. He then turns to the much more concrete topic of governance of the DNS. His positioning of the history of ICANN and its predecessors within the context of the governance of the DNS is quite masterly.

The last three-quarters of this book are devoted to a comprehensive explanation of the UDRP, with a careful analysis of the legal principles arising in deciding each of hundreds of examples of dispute resolution cases, whether invoking trademark law, issues of legal rights versus legal interests, or the extension of trademark law to deal with bad faith registration. On each topic he starts by teasing out the policy considerations before providing a history of the relevant legal

precedents, and then offering examples of arbitrated disputes under the UDRP in a seamless fashion.

This may be the area of the book of greatest practical value to legal practitioners and graduate law students, but it strikes me that the comprehensive explanations and histories of the DNS, of ICANN and of Internet governance in the first 95 pages of this book will find an audience in many scholars and interested individuals beyond the legal profession.

I also noted with interest the balanced international perspective of the book. It is always tempting for Australian authors to highlight Australian examples in order to compensate for our being so frequently internationally overlooked, but the author has resisted this. Hopefully his self-restraint will be rewarded by a greater international readership.

Nevertheless a careful reading of the book shows the key role in the ICANN/WIPO sphere of several Australians: Francis Gurry at WIPO, who had a key role in initiating the UDRP, and who has contributed a perceptive Foreword; Paul Twomey in two roles, as both the first convenor of ICANN's Government Advisory Committee and then as the third CEO and President of ICANN; of Neil Brown QC, a major contributor to the UDRP as a panellist in several DN dispute regimes; and of Bruce Tonkin, a trusted convenor of ICANN's most important constituency, the GNSO (General Name Support Organisation), who elected him to the ICANN Board last year. (I take pride in having enticed Bruce into the world of the DNS in 1999, when I recruited him from Monash University, where he was then a noted researcher of broadband networks, to become Melbourne IT's first Research Director and Chief Technology Officer.)

My final observation concerns the importance of this book in underpinning the UDRP and hence creating greater trust by the community in the Internet. In my four years of administering and improving com.au policies, from 1996 to 2000, the issue of trust and good reputation of the com.au brand was paramount. We should give credit to Robert Elz, the first person to be delegated to manage the whole '.au' domain, for developing eligibility policies to maintain integrity, trust and the good reputation of '.au'. While we had to evolve some of his more idiosyncratic policies to align them with trade mark law and the conventions used in business name registration in Australia, I respected the importance of his ultimate policy goals. Indeed I particularly supported his refusal to register geographic names under com.au as being an undesirable privatisation of the public commons. However I do recognise that auDA's introduction of Community Geographic domain names in 2004 more effectively satisfies the same policy objective by making appropriately named, inclusive public areas available in cyberspace for Australian community organisations.

I am also pleased that auDA has maintained Melbourne IT's policies that only organisations registered as operating in Australia are eligible for commercial domain names within com.au, and has generalised this principle to all subdomains of '.au', including the personal subdomain id.au, to maintain trust in the overall '.au' brand.

Before the UDRP was introduced, cybersquatting was a constant irritation, and dozens of examples were drawn to Melbourne IT's attention by aggrieved Australian businesses. In 1998 we became ourselves the target of a 'bad faith registration' when an overseas entrepreneur registered 'melbourne.it' within the Italian country code '.it'.

In those pre-UDRP days of cyber piracy we had to adopt pragmatic solutions. Mine, in this case, was to buy the 'melbourne.it' name for \$2,000: a relatively cheap and speedy solution, but it did rankle that we had to accept this form of mild extortion. The UDRP, initiated in 1999, is as cheap and almost as quick, but more importantly its existence acts as a deterrent to all but

the most brazen and foolish cybersquatters. Its track record of more than 20,000 adjudicated cases, all decided with non-appealable orders (although David's book reminds us that unsuccessful parties remain free to bring actions before domestic courts – an expensive route, rarely taken), is very impressive. To my mind it represents many useful bricks laid on the 'yellow brick road' of international law.

Legitimate businesses as well as community and cultural organisations have good reason to be grateful for the inexpensive UDRP to resolve and deter identity theft of their good names. In this troubled world, any process that can peacefully and cheaply resolve international disputes, and in a timely manner, is highly welcome. David Lindsay's comprehensive reference book will undoubtedly help educate many new potential legal practitioners in this area, and be a valuable reference in media studies. I congratulate him on a masterly piece of scholarship.