

Chapter XII

“Don’t Think but Look”

The Practice of the UDRP Manifests that it is Procedurally Unfair

Konstantinos Komaitis
University of Strathclyde, UK

ABSTRACT

Over the past decade, electronic commerce has expanded and has provided new ways of conducting businesses in a brand new environment. Lately u-commerce seems to be pioneering the field of electronic transactions. Where ‘u’ stands for ubiquitous, unison, unique and universal, u-commerce offers the opportunity to users to conduct business everywhere and at any given moment in time. The simplicity of u-commerce transactions makes the issue of domain names more relevant than ever before. This chapter examines the procedural unfairness of the Uniform Domain Name Dispute Resolution Policy (UDRP) in an effort to demonstrate that the ‘regulatory’ framework surrounding domain names does not respect their technological necessity.

INTRODUCTION

The Internet is responsible for a significant wave of change. It introduced new ways of human and business interaction, its email and instant messaging services have dominated and substituted traditional post and other means of communication whilst commercial notions and practices have taken new dimensions. Electronic commerce has provided us with the opportunity to open up to new markets and cultures; it has helped us to exchange

goods and services without the need to depend upon national or regional interests; it has allowed us to browse goods in a fast and often a more affordable way. The success of electronic commerce has attracted the attention of governments, which they currently invest money and resources to sustain and develop online transactions, but has also been responsible for technological advancements. The manifestation of these technological innovations can be found in the way commerce is currently translating business transactions.

Mobile commerce (m-commerce) has rejected the necessity of a computer and has allowed users to use their mobile telephony and the Internet to buy and sell goods. And, as if m-commerce was not enough, consumers and business are given the world of u-commerce.

U-commerce, like its predecessor m-commerce, is merely an extension of e-commerce. Where ‘U’ stands for **u**biquity, **u**niqueness, **u**niversality and **u**nison, this new form of commerce aims to provide new alternatives for B2C and B2B transactions, develop a more efficient way for conducting business and increase the levels of productivity (Schapp et al, 2001). Watson et al, define u-commerce as *“the use of ubiquitous networks to support personalised and uninterrupted communications and transactions between a firm and its various stakeholders to provide a level of value over, above, and beyond traditional commerce”* (Watson et al., 2002). The four “U” – the main value drivers behind u-commerce - allow user access at any time and from anywhere (ubiquity), provide users with unique identification schemes (uniqueness), determine that mobile devices are compatible with universal standards (universality), and cover the idea that there is *“integrated data across multiple applications so that users have a consistent view on the information-irrespective of the device used”* (Watson, 2000).

The implications of this technological progression provide a new meaning to globalisation and create a chain reaction for consumers and businesses. The ease of purchase and the multitude of options create more competitive markets and provide an incentive for more businesses to acquire an online presence. This online presence is currently materialised through the Domain Name System (DNS), which ensures that entrepreneurs, start-up businesses and established brands will be visible to consumers. Domain names constitute essential features of the Internet and they have established a user-friendly system, which allows the Internet to transform into a global village that

indulges the exchange of ideas, cultures, goods, services and information. With 101,214,524 registered domain names and sale revenues rising to \$72,132,458, the domain name market has become one of its own.

Domain Names are the alphanumeric text strings to the right of an “@” in an e-mail address or just after the two slashes in a World Wide Web address. By practice, domain names can be mapped to a thirty-two-bit number consisting of four octets (sets of eight binary digits) that specifies a network address and a host ID on a TCP/IP network (White Paper, 1998). They have been called the “human-friendly address of a computer” (WIPO, 1999). This potential “friendliness” is the source of many commercial and legal disputes, since businesses have come to realise their domain names as an important identifier, even a brand. These disputes concerning the conflicting rights of trade mark owners and domain name holders are regulated under the umbrella of the Internet Corporations for Assigned Names and Numbers (ICANN) Uniform Domain Name Dispute Resolution Policy (UDRP).

The UDRP is a self-regulated, market-oriented system that falls into the category of Alternative Dispute Resolution (ADR) prototypes and has been successful in resolving domain name disputes in an affordable and fast way. It is using the speed and easiness of the Internet to its advantage transforming the way disputes have been approached by other mechanisms of adjudication. Its creation constituted a direct order from the same White Paper (White Paper, 1998) that opened the Internet to commercial interests and created ICANN and addressed the concerns of the trade mark community concerning issues of abusive domain name registrations and cybersquatting.

The publication of the White Paper gave WIPO the opportunity to become actively involved and instigate the Domain Name Process. Rather than following the fairly modest framework illustrated in the White Paper, WIPO chose to create a system that would ultimately be highly dependent

12 more pages are available in the full version of this document, which may be purchased using the "Add to Cart" button on the publisher's webpage:

www.igi-global.com/chapter/don-thing-look/30508

Related Content

Trust and Long-Term Satisfaction within Asymmetric Business Relationships: A Study of Kuwaiti Telecommunications Sector

Khurram Sharif (2013). *Managing Customer Trust, Satisfaction, and Loyalty through Information Communication Technologies* (pp. 1-19).

www.irma-international.org/chapter/trust-long-term-satisfaction-within/74545

Technology-Supported Marketing for Sustainable Tourism in the Himalayas

Azizul Hassan (2020). *Handbook of Research on Innovations in Technology and Marketing for the Connected Consumer* (pp. 416-430).

www.irma-international.org/chapter/technology-supported-marketing-for-sustainable-tourism-in-the-himalayas/239513

The Impact of CEO Narcissism and Counterproductive Work Behaviors in Involvement of Middle Managers in the Strategy Process

Fakher Jaouaand Elsayed Sobhy Ahmed Mohamed (2021). *International Journal of Customer Relationship Marketing and Management* (pp. 67-86).

www.irma-international.org/article/the-impact-of-ceo-narcissism-and-counterproductive-work-behaviors-in-involvement-of-middle-managers-in-the-strategy-process/280108

Developing and Implementing a Model for Selecting Videos for City Marketing

Pi-Fang Hsu, Chia-Wen Tsaiand Sheng-Weng Doong (2012). *International Journal of Customer Relationship Marketing and Management* (pp. 50-64).

www.irma-international.org/article/developing-implementing-model-selecting-videos/74362

The Consequence of Customer Verbal Aggression: The Moderating Roles of Person-Organization Fit

Ching-Wen Yeh (2016). *International Journal of Customer Relationship Marketing and Management* (pp. 18-33).

www.irma-international.org/article/the-consequence-of-customer-verbal-aggression/159110