

AUSTRALIAN DOMAIN NAME LAW

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The expansion of the internet in the late 1990s brought forth an explosion of disputes between owners of trade marks (and related rights) and the registrants of domain names on the internet. These registrants, often described as cybersquatters, had taken advantage (in some cases) of the first come, first served policy for registering domain names to register domain names corresponding to well-known trade marks for various bad faith purposes. While some of those disputes could be addressed through commencing proceedings in a court of proper jurisdiction, the international nature of those disputes, the fact that domain name owners registering under a pseudonym could be difficult to identify, and the vast gap between the cost of traditional legal proceedings and the outcome generally obtained (transfer of the relevant domain name, after which the domain name holder could register a similar corresponding domain name and the process would start again), led to the introduction of the Uniform Domain Name Dispute Resolution Policy (UDRP), established in 1999 to provide a low-cost internationally enforceable dispute-resolution mechanism to resolve cybersquatting disputes.

The UDRP was a roaring success with several thousand cases being filed each year. In 2002 .au Domain Administration Ltd (auDA), the relevant body for the administration of Australian domain names (domain names ending in .au), adopted the .au Dispute Resolution Policy (auDRP). The auDRP is based on but not identical to the UDRP and allows a broader range of rights-holders to commence proceedings under the policy and makes it easier (than the UDRP) for a rights holder to succeed in finding that the domain name holder has been acting in bad faith. Since 2002 disputes between rights holders and domain name holders have been resolved under the UDRP (for .com and related domains), auDRP (for domains ending in .au), and less commonly through courts of law (generally but not exclusively when the registration and use of the domain name was part of a wider pattern of infringement or when the trade mark holder seeks remedies beyond those available under the UDRP or auDRP (which is limited to an order for transfer or cancellation of the domain name, to be enforced by the registrar for which the domain name is registered)).

Practitioners interested in the application of trade mark or consumer law to the domain names have access to many excellent texts, not least *Shanahan's Australian Law of Trade Marks and Passing Off*, and practitioners interested in UDRP disputes have access to various international texts. However there has long been a gap in the market for a comprehensive and readable text that covers the operation of the auDRP and the case law developed in decisions that have applied this policy. In 2014, auDA published on its website the auDRP Overview, a compendium of consensus views of panels on key legal and procedural issues under the auDRP, produced by Dr Andrew Christie at the University of Melbourne Law School, however the auDRP Overview, while an excellent resource, does not approach the level of completeness of a comprehensive and readable textbook.

Book reviews

This gap in the market has now been filled with the present book. Dr Roy, an academic and practitioner, has created a book that focuses specifically on the operation of the auDRP. It commences with a history of the auDRP, provides a brief discussion of the policy considerations and sets out the operation of the auDRP and auDRP Rules. The heart of the book is a detailed and complete exposition of the case law surrounding the three elements that rights holders need to prove under the auDRP to obtain an order for the transfer of the domain name, including noting when the position under the auDRP differs from the operation of the UDRP. When discussing particular issues under the auDRP, these chapters will (quite appropriately) often start with quotes from the auDRP Overview and then expand on the work of Dr Christie and explore these issues at a much greater level of detail. Helpfully the book also includes liberal extracts from past case law on the auDRP. This book also covers less common legal and procedural issues under the auDRP that may have only been explored in one or two judgments, a service that will be of great assistance to practitioners with particularly esoteric questions.

This work is complete, well-researched and operates on a level of detail otherwise unavailable in respect of the auDRP. While many practitioners may continue to rely on the auDRP Overview in respect of legal and procedural issues relating to the auDRP, a wise practitioner in this area would be well advised to have this work sitting on their shelf.

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