

## **Launching 'International Domain Name Law – ICANN and the UDRP (Uniform domain name Dispute Resolution Policy)' by David Lindsay 20.02.08**

I regret that Tony Staley wasn't able to launch the book today – I'd have liked to have been in the audience to enjoy his distinctive sense of humour in that impressive *basso profundo* voice of his. I ask the organizers to pass on my best wishes to Tony for a quick recovery from his knee operation.

The upside is that I have gained a free author's copy and been motivated to read this truly excellent book over the past two days.

I first met David Lindsay about 12 years ago, when he was a lecturer in Communications Law at Melbourne University. He was kind enough to give me some feedback on the Interconnect Model I was developing for Austel, the then telecommunications regulator. As a result I became aware of his interest in innovation and in applying jurisprudence to new fields of human activity.

Over the past six months I have enjoyed renewed contact with David since he joined the Editorial Board of the Telecommunications Journal of Australia (TJA) <http://publications.epress.monash.edu/loi/tja> and have become aware that he is pushing the boundaries of jurisprudence even further in his investigations of disputes in online virtual worlds such as Second Life.

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 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. This reveals David's talent as an historian.

It also reveals David'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 to a certain cultural frustration, as an engineer, at the lack of a diagram or two in the explanation of how the DNS works – but then I have grown accustomed to the legal culture in which no diagram or picture is ever seen as having the explanatory power of a thousand words!

Having said that, David's purely text-based explanation of how the DNS operates is impeccable.

I was impressed by the chapter dealing with the murky concept of Internet governance— a sufficiently cloudy topic to awaken deep suspicion of US government intentions in many other governments, which has led to a string of international conferences shedding more heat than light on this topic. David 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 and comprehensive 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 David 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, as trusted convenor of ICANN's most important constituency, the GNSO (General Name Support Organization). (I am proud to take credit for 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 into broadband networks, to become Melbourne IT's first Research Director and Chief Technology Officer. I congratulate Bruce on his election to the ICANN Board last year.)

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 full credit to Robert Elz, the first person to be delegated to manage the whole of the '.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 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 of making appropriately named, inclusive public areas available in cyberspace for Australian community organizations.

I am also pleased that auDA has maintained Melbourne IT's policies that only organizations 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 one 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), 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 organizations *and individuals* 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. I congratulate David on a masterly piece of scholarship, and I am delighted to formally launch this excellent book.

Peter Gerrand, Melbourne, 20 February 2008

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Peter Gerrand is a Professorial Fellow in telecommunications at the University of Melbourne, and from 1996 to 2000 was the founding CEO of Melbourne IT (and thereby administrator of the com.au domain). He was awarded ATUG's Charles Todd medal in 1998 for "outstanding contributions to the telecommunications industry" and an Australian Centenary Medal in 2003 for "for outstanding service to science and technology, particularly to public science policy". In recent years his interests have moved from e-commerce to e-culture, and he has published several research papers on linguistic and cultural diversity on the Internet. He holds engineering degrees from Melbourne and Monash, a Diploma in Spanish from Salamanca, and has recently submitted a PhD thesis on Internet sociolinguistics at La Trobe University.