

CIETAC Online ADR Practice

Domain Name Dispute Resolution System

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Introduction

The article intends to introduce and discuss CIETAC Online ADR practice its domain name dispute resolution system. For the purpose of the article, the nature of Online ADR (Section I) is examined first, then followed by the introduction of CIETAC Online ADR practice its domain name dispute resolution center and its business (Section II). In the third part of the article (Section III), the salient features of CIETAC domain name dispute resolution system is summarized in more details. Based on the foregoing examination, the author is further of the opinion that the CIETAC Online ADR concerning the domain name disputes has established a model for the arbitration of other intellectual property disputes in cyberspace (Section IV). The article ends with the Concluding Remarks

I. The Nature of Online ADR¹

1. The need and Possibility for Online ADR

Cyberspace is a very active and competitive place so that many people can apply their creative energies and imaginations in new ways. Therefore, cyberspace would not be a harmonious place where no disputes arise. Moreover, cyberspace is a place where the number of e-commerce transactions could only grow. Generally, it is may be said, where transactions and relationships go, disputes will also follow.

In cyberspace, many powerful tools are being developed for communicating, storing and processing information, and these activities are also the heart of dispute resolution. Therefore, it is completely possible for the Internet to become a kind of dispute resolution space and serve as a vehicle for resolving disputes so that the online or offline disputes can be resolved promptly on line.

In fact, along with extraordinarily rapid growth of online commerce and online transactions as well as heightened interest by traditional ADR organizations, online alternative dispute resolution (Online ADR) has become an industry as well as a process. On the other hand, ICANN and some national countries' online arbitration processes for domain name disputes have evidenced the ability to conduct Online ADR on a large scale.

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2. The Nature of Online ADR

Generally, we may say, the Online ADR is a kind of dispute resolution system that takes advantage of the Internet to apply technical resources and expertise.

Both arbitration and mediation involve a range of process that allows a neutral third party to work with parties in dispute. A large part of any third party's expertise consists of information management. In arbitration, there is a solid process to receive information, evaluate information and reach a judgement. In mediation, although the process is much more flexible, the decisions about which party to meet with first, what to say to each party and how to frame or reframe information provided to each party all involve attempts to manage the flow of information. As such, from the procedural point of view, the information management is the key thing of any dispute resolution system.

Online ADR borrows a framework from the existing models of arbitration and mediation and further applies technical resources and expertise that can be delivered over the Internet nowadays. What makes the Online ADR process efficient is that the traditional information exchange between human and human may occur between human and machine. The key thing that is crucial to the capabilities for us to interact online, both for delivering expertise and enhancing expertise, is software. Any dispute service provider who intends to provide Online ADR via the Internet must find or design the software that handles sophisticated levels of communications. Such software must meet the conditions that any third party or one of the disputants can use it effectively. Otherwise, the process may not work optimally.

Therefore, compared with the traditional ADR such as arbitration and mediation in which the neutral third party arbitrator or mediator works with the two disputants (three parties to the process), Online ADR further employs the fourth party, in terms of technology, to work with and assist the traditional third party. The fourth party does not replace the third party, but can display the third party in the sense that new skills, knowledge and strategies may be needed by the third party, and can assume responsibilities for various communications with the parties to the disputes. The manner in which the third party and the fourth party interact with each other will affect many parts of the Online ADR process.

II. The Establishment of CIETAC Online ADR

1. CIETAC Domain Name Dispute Resolution Center

The Domain Name Dispute Resolution Center of China International Economic and Trade Arbitration Commission (CIETAC) (hereafter referred to as CIETAC Domain Name Dispute Resolution Center) was established in 2000 with the approval of China Chamber of International Commerce (CCOIC)/China Council for the Promotion of International Trade (CCPIT). The Center devotes itself to providing online alternative dispute resolution (ADR) services in the areas of intellectual property and information technology. Currently, the Center is, by the entrustment of

the domestic and foreign domain name registries, responsible for the resolution of disputes between intellectual property and Internet domain names in cyberspace.

CIETAC Domain Name Dispute Resolution Center is composed of one Chairman and two Vice Chairman. The Chairman Meeting is the highest authority of the Center. The Center has a Secretariat for handling its day-to-day work under the leadership of the Secretary General. The Center has formulated its procedural rules for domain name dispute resolution, maintains the List of Panelists and implements a system whereby Panel of Neutrals is responsible for the resolution of disputes. Possessing the modernized working facilities and the scientific management system, the Center has established a dedicated web site. By utilizing the special software, the Center can deal with the matter concerning the domain name dispute resolution proceedings on line and provide with the parties “online arbitration services”.

2. Main Business of the Center

CIETAC Domain Name Dispute Resolution Center provides domain name dispute resolution services in the following ways:

As the provider appointed by China Internet Network Information Center (CNNIC), CIETAC Domain Name Dispute Resolution Center is providing dispute resolution services with regard to **.CN domain names** (including the former Chinese-character domain names managed and maintained by CNNIC). The .CN Domain Name Disputes are carried out under CNNIC Domain Name Dispute Resolution Policy (CNDRP) and the Rules for CNNIC Domain Name Dispute Resolution Policy (CNDRP Rules) as well as CIETAC Supplemental Rules to CNDRP (the CIETAC Supplemental Rules) issued by CNNIC and CIETAC on 30 September 2002 respectively.

The Center is also appointed to be as the sole provider of dispute resolution services in regards to **keywords** managed and maintained by CNNIC. The Resolution of Keyword Disputes is subject to CNNIC Keyword Dispute Resolution Policy (KWDRP) issued by CNNIC on 4 August 2001 and CIETAC Rules for CNNIC Keyword Dispute Resolution Policy (CIETAC KWDRP Rules) issued on 1 January 2002.

As the Beijing Office of Asian Domain Name Dispute Resolution Center (ADNDRC) which is one of the four domain name dispute resolution providers approved by the Internet Corporation for the Assignment of Names and Numbers (ICANN), CIETAC Domain Name Dispute Resolution Center is also providing domain name dispute resolution services in regard to **general top level domain names (gTLDs)** such as .com, .net and .org. Disputes in regard to gTLDs are carried out under the Uniform Domain Name Policy (UDRP) and the Rules for Uniform Domain Name Policy (UDRP Rules) issued by ICANN on 24 October 1999 as well as ADNDRC Supplemental Rules to UDRP (the ADNDRC Supplemental Rules) issued by ADNDRC on 28 February 2002.

III. The Salient Features of CIETAC Domain Name Dispute Resolution System

1. Quasi Mandatory Jurisdiction

Different from agreement by the parties for arbitration, CIETAC domain name dispute resolution system implements a kind of so-called quasi-mandatory jurisdiction between the court mandatory jurisdiction and arbitration agreement jurisdiction. The domain name registrant promised in his registration agreement with the registrars accredited by registries that, if his registered domain names infringe the third party's intellectual property in priority and the third party initiates the administrative proceedings to the provider as approved by registries, the domain name holder must participate in this proceedings. Therefore, it is in accordance with his contractual obligation that the domain name holder must accept the provider's jurisdiction.

2. Advanced Online Case Administration System

A fully web-based on-line case administration system has been developed by CIETAC and ADNDRC (Beijing Office) with technology powered and supported by Tradelink Electronic Commerce Ltd. of Hong Kong, which facilitates the handling of domain name dispute cases. Parties are urged to use the system as it will greatly enhance the management of the domain name dispute resolution process. The parties are encouraged to submit their complaint and response on line and the neutrals are to view and examine the case and render their decisions on line. The case administrator is required to manage the case and deal with the matters concerning the case proceedings on line.

3. Direct Enforcement by Registrars of the Decision

CIETAC domain name dispute resolution system is an essential part of the relevant registries' domain name management system. The registry by itself does not resolve the domain name disputes. The registry accredits the registrars to provide with the customers the domain name registration services and appoints the independent domain name dispute service providers to resolve the domain name disputes. The Decision rendered by the Panel of the provider shall be enforced by the accredited registrars in accordance with the Policy of the registries.

4. Scope of Procedure: Abusive Registration

The scope of procedure under the CIETAC domain name dispute resolution system is only limited to the abusive registration or use of the domain name. Anyone who has a complaint against the right of use shall seek other legal proceedings for resolution.

5. Scope of Decision: the Natural Status of the Domain Name

The kind of Decisions a Panel conducting the domain name dispute may render is limited. The decision is only limited to the change of the natural status of the disputed domain name. A Panel might decide in one of two ways: (a) that the Complaint is not justified, in which case the existing registered domain name holder shall be entitled to retain the disputed domain name; or (b) the Panel may decide that the Complaint is justified in which case the Panel will order that the domain name in dispute should be cancelled or transferred to the Party which brought the Complaint.

It should be noted that if a Panel finds that a Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding, the Panel is required to state in its Decision that this was the case.

A Panel may not make money award nor award relating to costs, including without limitation, lawyer's fees and costs.

6. Blocking of Transfers during the Pending Proceedings

During a pending administrative proceedings, the domain name holders are not allowed to transfers of a Domain Name to a New Holder or change the registrars.

7. Relationship with Court Proceedings: Availability of Court Proceedings

In accordance with the relevant registries' Policy, the administrative proceedings of CIETAC Domain Name Dispute Resolution Center shall not prevent either a Complainant or a domain name holder (the Respondent) from submitting the dispute to a court of competent jurisdiction before the administrative proceeding is commenced or after the administrative proceeding is concluded.

8. The Fees for Administrative Proceedings: Moderate Costs

The CIETAC domain name dispute resolution procedure is most cost-effective. For .CN domain name dispute or Keyword dispute, 3,000 Chinese yuan (USD400) for sole panelist and 6,000 Chinese yuan (USD700) for three panelists. For gTLDs under ADNDRC Beijing Office, 1,000 USD for sole panelist and 2,500 USD for three panelists.

IV. A Model for the Future²

With regard to international arbitration of intellectual property and Internet disputes, the current international practice is mainly focused on the resolution of Internet domain name disputes. In fact, the current Online ADR system for domain name disputes implemented by CIETAC has established a model for the arbitration of other trans-border intellectual property disputes in cyberspace. Next, we will discuss the point in more detail by taking CNNIC CNDRP as an example.

1. Structural Features of Current Domain Name Dispute Resolution (DNDR) System

The structural features of current DNDR system may be summarized as the following two points:

In the first place, the .CN domain name registry CNNIC applies the CNDRP uniformly to all potential .CN domain name holders (Respondents). Second, the Decisions of an effective remedy for successful Complainants of the Panels of the provider as approved by CNNIC can be executed

directly and automatically. As we can see later, these structural features of current DNDR system has established the essential basis for arbitration of other intellectual property disputes in cyberspace

2. The relationships between the various entities under DNDR system

The DNDR system is characterized by the following actors or entities: (i) CNNIC, (ii) Registrars, (iii) CNDRP, (iv) Dispute Resolution Service Providers (DRSPs), (v) Registrants (a sub-set of which are Respondents) and (vi) Trademark or service mark owners (a sub-set of which are Complainants)

The relationships between the various entities under DNDR system are as follows:

- (A) CNNIC accredits Registrars
- (B) CNNIC adopts CNDRP
- (C) CNNIC accredits Dispute Resolution Service Providers
- (D) Registrars imposes CNDRP on Registrants
- (E) the Complainants selected Dispute Resolution Service Provider
- (F) the Panelists appointed by Dispute Resolution Service Providers apply CNDRP in the specific case
- (G) CNNIC impose the Panelists' Decisions on Registrars
- (H) The Registrars execute Remedies against Respondents.

3. The DNDR System as a Model:

The current DNDR system is in fact a specific instance of a trans-border dispute resolution mechanism that has been incorporated into the Internet, as a regulated technical infrastructure in more general sense.

The key actors and elements of the DNDR system can be conceptualized, in more general terms, as follows:

- (i) CNNIC - Regulator
- (ii) Registrars - Administrators
- (iii) CNDRP-Code
- (iv) Dispute Resolution Service Providers (DRSPs)- Arbitrators
- (v) Registrants- Utilisers (a sub-set of which is Respondents)
- (vi) Trademark or Service Mark owners-IP right owners (a sub-set of which is Complainants)

In this model, the Regulator has the sole power to:

- (a) accredit Administrators to act on its behalf,
- (b) adopt the Code that is the basis for resolving disputes, and
- (c) accredit Arbitrators to apply the Code to particular disputes

Under this model, Administrators have the power, and are obliged, to:

- (a) impose the Code on Utilisers of the regulated infrastructure, and

(b) implement remedies against Utilisers as decided by Arbitrators.

The model provides to Arbitrators the responsibility for,

- (a) applying the Code to particular disputes, and
- (b) deciding the remedies to be implemented by Administrators.

The Code, which is the basis for resolving IP disputes in the regulated infrastructure, specifies:

- (a) the conduct of Utilisers which is prohibited,
- (b) the persons entitled to seek a remedy,
- (c) the remedies available against an infringing Utiliser

Utilisers of the Internet are required to submit to the Code, by virtue of the contractual relationship between them and the Administrators of the Internet. The Utilisers' obligation to submit is the precondition for the Administrators granting Utilisers access to the Internet.

IPR (or other rights) owners have the entitlement, but not the obligation, to institute complaints under the Code against alleged infringing Utilisers. Should they wish to do this, the IPR owner has the power to select a particular arbitrator from those Arbitrators accredited by the Regulator.

The diagram below shows the operation of this generalized system for resolving disputes within a regulated technical infrastructure (the Internet). It is a simple mapping of the specific DNDR system onto the generalized actors and entities described above.

- (A) Accreditation of Administrators by Regulator
- (B) Adoption of Code by Regulator
- (C) Accreditation of Arbitrators by Regulator
- (D) Imposition of Code on Utilisers by Administrators
- (E) Selection of Arbitrators by Complainants
- (F) Application of Code to complaints by Arbitrators
- (G) Imposition of Arbitrators' Decisions on Administrators
- (H) Execution of Remedies against Respondents by Administrators

Concluding Remarks

For E-commerce practitioners, Online ADR is attractive as it can be incorporated into their new ventures as part of an overall strategy to build trust among users. For online disputes, there may be no alternative to Online ADR and the process may grow fastest in that context. For Online ADR providers, the ability to deliver expertise over a network becomes an asset that can be employed for disputes occurring in and out of cyberspace. Over time, what is learned online will be applied wherever it can be of value.³ CIETAC Online ADR practice concerning domain name dispute has established a model for the online arbitration of other intellectual property disputes in cyberspace and also provided an example for the development of the conventional arbitration, which should be computerized to gradually achieve online arbitration.

¹ In this part of the article, the reference was mainly made to Ethan Katsh and Janet Rifkin, *ONLINE DISPUTE RESOLUTION-RESOLVING CONFLICTS IN CYBERSPACE* (Jossey-Bass, John Wiley & Sons, Inc., 2001), at pp. 1-16.

² In this part of the article, the reference was mainly made to the presentation entitled *The ICANN Domain Name Dispute Resolution System: A Model for Other Transborder Intellectual Property Disputes on the Internet?* prepared by Prof. Andrew Christie, University of Toronto of Canada , at International Conference on Dispute Resolution in Electronic Commerce organized by WIPO Arbitration and Mediation Center at Geneva of Switzerland on 6-7 November 2000.

³ See Ethan Katsh and Janet Rifkin, *ONLINE DISPUTE RESOLUTION-RESOLVING CONFLICTS IN CYBERSPACE* (Jossey-Bass, John Wiley & Sons, Inc., 2001), at p.5.