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WASTING TIME IN CYBERSPACE: 
THE UDRP’S INEFFICIENT APPROACH TOWARD ARBITRATING INTERNET DOMAIN NAME DISPUTES

Chad D. Emerson†

I. INTRODUCTION

In 1999, a new option for resolving Internet domain name disputes was introduced with promises of reducing the time and expense incurred in domain name disputes.¹ Now, as the Uniform Domain Name Dispute Resolution Policy (UDRP)² celebrates its recent anniversary,³ many domain name disputes have not benefited from these promises.

Internet domain names are an increasingly important and valuable asset for many companies and individuals.⁴ So valuable, in fact, that some domain names have sold for hundreds of thousands of dollars,

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². Internet Corporation for Assigned Names and Numbers (“ICANN”), Uniform Domain Name Dispute Resolution Policy [hereinafter UDRP], at http://www.icann.org/dndr/udrp/policy.htm (last updated May 17, 2002). In addition to the UDRP itself, the UDRP contains procedural rules entitled Rules for the Uniform Domain Name Dispute Resolution. ICANN, Rules for Uniform Domain Name Dispute Resolution Policy [hereinafter Rules], at http://www.icann.org/dndr/udrp/uniform-rules.htm (last updated Feb. 5, 2002). Neither the UDRP nor the Rules contain any express provisions for appealing a UDRP decision.

³. See ICANN, Timeline for the Formulation and Implementation of the Uniform Domain-Name Dispute-Resolution Policy, at http://www.icann.org/udrp/udrpschedule.htm (last updated Feb. 5, 2002). The UDRP was adopted on August 26, 1999, and implementation documents were approved on October 24, 1999. Id.

Recognizing the value of domain names in today's society, the UDRP was created to protect the rights of trademark holders in securing domain names, while serving as a less expensive and time-consuming alternative for resolving disputes involving these assets.\(^5\)

Unfortunately, the UDRP has failed to reduce the time and expense involved in resolving many domain name disputes.\(^7\) This inefficiency is rooted in several factors, including the UDRP's inability to obtain judicial deference from U.S. courts,\(^8\) its inability to assert and maintain effective jurisdiction over participants to a UDRP action,\(^9\) and its initial decision to permit an unlimited number of pleadings and filings in each action.\(^10\) Combined, these problems have led to a stark reality: complainants in many contested domain name disputes should skip the UDRP and, instead, proceed directly to court.

This article will explore the birth and development of the UDRP and how that development resulted in a process that is void of the very benefits needed for the UDRP to serve as an efficient dispute resolution option.\(^11\) The article will analyze the provisions that hinder the UDRP's ability to act as an efficient alternative for resolving contested domain name disputes.\(^12\) It will explain how interpretation by U.S. courts has undercut the reliability (and thus efficiency) of UDRP decisions.\(^13\) This analysis will focus on a widely publicized domain name dispute between NetLearning, Inc. and Dan Parisi—one of the first UDRP decisions reviewed by a U.S. court.\(^14\) The case study will demonstrate in real terms how the UDRP failed to fulfill its promise of


\(^{6}\) See WIPO Final Report, supra note 1, ¶ 49; see also White Paper, supra note 1, at 31746.

\(^{7}\) See discussion infra Section III.

\(^{8}\) See, e.g., Barcelona.com, Inc. v. Excelentisimo Ayuntamiento De Barcelona, 330 F.3d 617, 626 (4th Cir. 2003) ("Moreover, we give the decision of the [UDRP] panelist no deference in deciding this action."); Retail Servs., Inc. v. Freebies Publ'g, 247 F. Supp. 2d 822, 827-28 (E.D. Va. 2003), aff'd, 364 F.3d 535 (4th Cir. 2004) (stating: "Decisions made by arbitration panels under the UDRP are not afforded deference by the district court."); see also Parisi v. NetLearning, Inc., 139 F. Supp. 2d 745, 752 (E.D. Va. 2001) (noting that "the UDRP itself calls for comprehensive, de novo adjudication of the disputants' rights").

\(^{9}\) See discussion infra Section III.A.

\(^{10}\) See discussion infra Section III.C.

\(^{11}\) See discussion infra Section II.

\(^{12}\) See discussion infra Section II.

\(^{13}\) See discussion infra Section III.B.

\(^{14}\) Several articles and essays regarding this dispute can be found at: http://www.udrplaw.net/UDRPappeals1.htm; http://www.clm.com/pubs/pub1166909_1.html; http://www.perkinscoie.com/casedigest/icd_results.cfm?keyword1=domain%20name&topic=Domain%20Names.
cost and time efficiency. The article will conclude by offering three proposed changes to the UDRP—changes that would enable it to accomplish its goals of providing an inexpensive and timely domain name dispute resolution mechanism.

The results are clear: for many contested domain name disputes, if aggrieved parties truly want to save time and money, they should proceed straight to court without stopping at the UDRP.

II. THE DEVELOPMENT OF THE UDRP AND ITS ULTIMATELY INEFFICIENT DESIGN

To fully understand why the UDRP is inefficient for many contested domain name disputes, one must first examine how it came to be. Doing so reveals that, in many respects, the efficiency of the UDRP for contested matters was probably doomed from the start.

Commentators generally agree that the Internet was created around 1969. It started as a system of U.S. Military and Department of Defense networked computers known as “ARPANET” (Advanced Research Projects Agency Network), which was first administered by the Department of Defense’s Advanced Research Projects Agency (DARPA). By the end of 1969, ARPANET consisted of four “host computers” and the “budding Internet was off the ground.”

During the following years, ARPANET added computers to its network while researchers completed a host-to-host protocol and other network software. The original plans called for limiting network access to individuals involved in defense, education, and research initiatives.

One of the next big benchmarks in Internet history occurred in 1972 when developers introduced “electronic mail.” Developers were motivated to create this “hot application” by a need for a device
that simplified communication and coordination.\textsuperscript{23} This initial (and fairly simple) e-mail technology was soon expanded by the creation of an e-mail program that could "list, selectively read, file, forward, and respond to messages."\textsuperscript{24} After this development, e-mail became the most prevalent network application in a decade and was a forerunner of World Wide Web activity because of its ability to facilitate "people-to-people' traffic."\textsuperscript{25} Quite simply, e-mail provided a new way for people to communicate.\textsuperscript{26}

In the early 1980s, DARPA ceased management of the Internet.\textsuperscript{27} When this occurred, the Internet strayed from its original military research initiatives, although some users continued to use it for non-military research and educational purposes.\textsuperscript{28} During this time, the National Science Foundation (NSF) was largely responsible for funding the Internet.\textsuperscript{29} By the early 1990s, administrators phased out ARPANET.\textsuperscript{30}

The 1980s also found developers introducing personal computers and workstations that, in turn, allowed the budding Internet to thrive.\textsuperscript{31} This led to the Internet's evolution from a primarily non-commercial research device to a more commercialized venture.\textsuperscript{32} During this time, personal and home computer use, as well as the Internet itself, increased exponentially.\textsuperscript{33} The primary engine for this change is traced to a World Wide Web application, which enabled Internet users to connect with networked computers through user-friendly graphical interfaces called web browsers.\textsuperscript{34}

Beginning in 1991, the NSF assumed responsibility for organizing and supporting the administration "of the non-military portion of the Internet infrastructure."\textsuperscript{35} To accomplish this, the NSF entered into an agreement with Network Solutions, Inc. (NSI) in 1992 to provide certain Internet-related services, including the registration of domain names.\textsuperscript{36} At that point, NSI managed much of the Internet domain name system, including key registration and coordination functions.\textsuperscript{37} One of NSI's responsibilities was to register domain names in the ge-
neric top-level domains (gTLDs). In addition, NSI compiled "a directory linking domain names with the internet protocol (IP) numbers of domain name servers."

In 1992, Congress gave the NSF authority for allowing commercial activity on the NSFNET. This authority, as well as the development of private and competitive networks, led to an increased commercialization of the Internet, especially through the development of commercial products that utilized the new Internet technology. Increased commercialization resulted in vendors using Internet technology in their products. These efforts, however, lacked technical and strategic information, which resulted in many seeing the entire effort as an irritation. Commercial vendors and Internet creators worked together in conferences, tutorials, meetings, workshops, and training sessions to implement a solution. Following these efforts, a new phase of commercialization occurred and the Internet developed into more of a "commodity service."

Another major milestone occurred in 1991, when Tim Berners-Lee directed the development of hypertext transfer protocol (HTTP) and hypertext markup language (HTML). The creation of HTTP and HTML "made the transferability and accessibility of information on the Internet easier and led to the creation of 'the World Wide Web.'" Congress followed this breakthrough development by granting the NSF statutory authority to commercialize NSFNET. These two events are often lauded as the crucial "events leading to the widespread commercial use of the Internet."

A. The Creation of the Internet Domain Name System

In order to send information from computer to computer, networked computers need to have "addresses" where they can locate information. Administrators solved this problem by creating a system for addressing each computer. This involved merging two distinct components: the domain name and its matching IP number.

38. Id.
39. Id.
40. Id.
41. Leiner et al., supra note 19.
42. Id.
43. Id.
44. Id.
45. Id.
46. Sandeen, supra note 17, at 505.
47. Id.
48. Id. at 505-06; Holger P. Hestermeyer, The Invalidity of ICANN's UDRP Under National Law, 3 MINN. INTELL. PROP. REV. 1, 7 (2002).
49. Sandeen, supra note 17, at 506.
50. Hestermeyer, supra note 48, at 6-7.
51. See id. at 7.
52. WIPO Final Report, supra note 1, ¶ 4.
The Domain Name System used addresses that included both alphabetical characters and numbers because of individual users' ability to "remember names better than numbers." Specifically, "[d]omain names are the alphanumeric text strings to the right of an '@' symbol in an e-mail address, or immediately following the two slashes in a World Wide Web address." On a simplistic level, domain names enable Internet applications to "talk to" servers on the Internet. The Domain Name System translates the alphanumeric web addresses into the numeric IP addresses that the network uses to allow a computer to access a certain web site. Domain names must be unique or Domain Name System servers (as currently designed) will not know the corresponding IP address to which to convert the domain name.

The foundation of the Domain Name System is a hierarchy of names. The top-level domains are normally "divided into two categories: the generic top-level domains (gTLDs) and the country code top-level domains (ccTLDs)." The gTLDs are also separated into two different types, those that are open and those that are restricted. Open gTLDs include .com, .net, and .org, and have no restrictions on who may register names in these domains. Restricted domains include .int, which is only used by international organizations; .gov, which is only used by United States federal government agencies; .edu, which is only used by colleges and universities; and .mil, which is only used by the U.S. Military. The country code top-level domains are derived from a two-letter country code—some of which are restricted and some of which are open.

The creators of the Domain Name System did not contemplate that these addresses would reflect trademarks. However, companies realized that their domain names could become very valuable resources in marketing their businesses. This resulted in business owners wanting to register their trademarks and trade names as their Internet address, rather than a random domain name that customers are less

53. Blackerby, supra note 17, at 121.
56. Blackerby, supra note 17, at 121.
57. Froomkin, supra note 54, at 619.
58. WIPO Final Report, supra note 1, ¶ 4.
59. Id.; see also White Paper, supra note 1, at 31742.
60. WIPO Final Report, supra note 1, ¶ 6.
61. Id.
62. Id.
63. Id., ¶ 7.
64. Hestermeyer, supra note 48, at 7.
65. Id.
likely to remember or associate with their business.66 Once Internet users realized that domain names could be a “brand,” businesses quickly concluded that trademark rights should apply to corresponding domain names in order to protect their interests.67

The Internet Society (ISOC) led the first comprehensive effort to restructure the Domain Name Administration.68 In January 1992, the ISOC consisted of people involved with the Internet Engineering Task Force (IETF), whose purpose was to support the engineering tasks of the Internet.69 ISOC recognized the international extent of the problem and the interests concerned, and formed an International Ad Hoc Committee (IAHC), which represented several agencies.70 The IAHC suggested that Administrative Domain Name Challenge Panels, administered by the World Intellectual Property Organization (WIPO), be formed to resolve domain name disputes.71 Under this system, registrars of domain names would be obligated to follow the decisions of the panel, but the decisions would not affect “the power of competent courts.”72

In February 1997, the IAHC contributed to a final report that addressed recommendations for the administration and management of gTLDs.73 On July 1, 1997, President William Jefferson Clinton instructed the Department of Commerce to privatize the Domain Name System to increase competition and assist international participation in the management of Domain Name System.74 Under this Framework for Global Electronic Commerce, domain names would receive intellectual property protection even though normal addresses do not.75 On July 2, 1997, the Department of Commerce issued a Request for Comments that sought input on the overall administrative framework of the Domain Name System, the creation of new top-level domains, domain name registrars’ policies, and trademark issues.76

B. The Green and White Papers: Two Defining Documents for Domain Name Rights

In January 1998, after receiving comments to the Department of Commerce’s July 1997 request, the National Telecommunications and Information Administration (NTIA), an agency of the Department of Commerce, issued A Proposal to Improve the Technical Management of In-
ternet Names and Addresses (the Green Paper). The Green Paper discussed issues such as the creation of a private U.S. corporation managed by a “globally and functionally representative Board of Directors.” The Green Paper stated that existing procedures for conflict resolution were “expensive and cumbersome” and insisted on a balance between the Internet community and trademark holders in which trademark holders received the same rights on the Internet as they do in the physical world.

The Green Paper also stressed that the proposed entity be incorporated under the laws of the United States. In support, the Green Paper looked to the United States’ significant experience with the Domain Name System. Even though the corporation would be incorporated in the United States, it would remain subject to the jurisdiction of other nations. The Green Paper suggested that this corporation be structured as a private, nonprofit entity charged with coordinating specific Domain Name System functions for the Internet as a whole. WIPO reiterated its desire that the process only encompass international protection of intellectual property rights, rather than serve as a comprehensive Internet governance structure.

The Green Paper also recommended that the domain name dispute resolution process be conducted online and that each domain name registry develop its own system with prescribed minimum standards. These systems should provide that, if a trademark holder objects to the registration of a domain name within a set time, the domain name registrar should temporarily suspend that registration from any use. In order to establish consistent and predictable locations in which to resolve disputes, the Green Paper suggested that all domain name registration contracts have a clause requiring registrants to consent to the jurisdiction of the country where the domain name registry is located or the country where the relevant “A” server is located.

Further comments and discussions about the Green Paper led to the publication of the Statement of Policy on the Management of Internet Names.

77. Id., ¶ 17.
78. Id.
80. Id.
81. White Paper, supra note 1, at 31744.
82. Id., at 31744-45.
83. Id., at 31745. Even though the Green Paper realized that incorporating under United States laws would cause dissent, it also realized the practical reality that, if the corporation were located elsewhere, similar objections to location would still arise. White Paper, supra note 1, at 31745.
84. Hestermeyer, supra note 48, at 13; White Paper, supra note 1, at 31744.
86. Id., at 13.
87. Id.
88. Id.
and Addresses (the White Paper) in June 1998. In this paper, the government agreed that trademark owners were victimized by some abusive domain name registration practices. “Cyber-pirates” were victimizing trademark owners by registering domain names similar, if not identical, to the owner’s trademark, and then selling the domain names to the trademark holder at a profit.

As with its predecessor, the White Paper proposed establishing a private, nonprofit U.S. corporation to generally govern the Internet. The White Paper suggested that WIPO create a procedure for welcoming trademark holders to the Internet community and develop proposals for uniform resolution of trademark domain name disputes.

The recommendations in the White Paper distinguished between situations that would not be covered by the proposed recommendations (such as domain name disputes between two trademark holders) and those that would be covered (such as domain name disputes between a trademark holder and someone who does not have a trademark). The conclusion was that this new domain name dispute system would focus only on situations that fell under the latter category.

C. The WIPO Report

Following the recommendations of the Green Paper and the White Paper, WIPO published an interim report in December 1998 that addressed domain name dispute resolution. The WIPO report recommended that, in domain name disputes, domain name registration agreements include a clause requiring registrants to submit to the jurisdiction of its country of domicile and the country where registration authority is located, if these countries are members of the Paris Convention or the Agreement on Trade-Related Aspects of Intellectual Property Rights.

The WIPO Report suggested that the uniform administrative dispute resolution mechanism be Internet-based. The report also provided that this process be modeled after Alternative Dispute Resolution (ADR) proceedings. This ADR-like proceeding would determine the rights of parties to domain name disputes involving

89. WIPO Final Report, supra note 1, ¶ 18; see also Hestermeyer, supra note 48, at 14.
90. Froomkin, supra note 54, at 622-23.
91. Id., at 623.
93. Id.
94. Froomkin, supra note 54, at 623.
95. Id.
96. Hestermeyer, supra note 48, at 17.
97. Id.
98. Id., at 18.
99. Id.
supposed violations of intellectual property rights. The WIPO Report further proposed that remedies be limited to canceling or transferring ownership of a domain name, and would not preclude litigation or a de novo review of the decision. Ultimately, decisions by a court of competent jurisdiction would prevail over a differing decision from an ADR determination.

D. The Creation of the UDRP

In July 1998, WIPO undertook an extensive international consultation termed "the WIPO Process" to make domain name recommendations to the Internet Corporation for Assigned Names and Numbers ("ICANN"). ICANN served as the nonprofit, private U.S. corporation established to manage the domain name system by approving policies and measures for handling domain name disputes as well as accrediting of domain name registrars. ICANN was also charged with adopting procedures and policies for handling domain name disputes via an administrative process. In April 1999, WIPO delivered its "Final Report" to ICANN.

Although WIPO's Final Report proposed an ADR process (the UDRP), it carefully provided that this process "should not deny access to litigation or have a mandatory value as precedent for national courts whose decisions prevail in case of conflict with outcomes of . . . ADR proceeding[s]." In addition, WIPO did not view this ADR process as equivalent to binding arbitration, instead providing that binding arbitration was only optional.

Throughout this process, the general consensus discussed the implications of using trademarks as domain names. The process recognized that consumers may be misled about the source of a product or services when a trademark is used as a domain name and the trademark owner did not consent to this use. If trademark owners could protect their rights only via expensive litigation, business owners would lack confidence in the Internet's ability to protect their trademarks and cyberspace might not function efficiently.

100. Id.
101. Id.
102. Id.
103. WIPO Final Report, supra note 1, at v.
105. Robertson, supra note 104, at 56.
106. See WIPO Final Report, supra note 1.
108. Id., at 18.
110. Id.
111. Id.
ICANN implemented the UDRP in August 1999.\textsuperscript{112} Composed of the UDRP Policy itself, as well as a set of procedural rules, the UDRP became the administrative process for handling disputes involving domain names.\textsuperscript{113} The UDRP's power was derived from ICANN's jurisdiction over the regulation of domain names.\textsuperscript{114} ICANN wielded this power because someone who acquires a domain name obtains the name from a registrar who received the right to offer names from an ICANN-approved domain name registry.\textsuperscript{115}

Under the UDRP, complainants can select a dispute administrator from among several administrators accredited by ICANN.\textsuperscript{116} The new policy provided that when a domain name is registered or an existing registration is renewed, the registering party "must agree to the UDRP in the registration agreement, otherwise they cannot register the domain name."\textsuperscript{117}

With this, the goal of providing a quick and inexpensive domain name dispute resolution option was born. Unfortunately, the promise of an especially efficient resolution for domain name disputes became more of a theory than a reality.

III. THE UDRPs OWN PROVISIONS PREVENT IT FROM SERVING AS AN EFFICIENT DOMAIN NAME DISPUTE MECHANISM

The UDRP's inability to efficiently resolve domain name disputes is primarily self-inflicted. In particular, several provisions in the UDRP Rules, as well as the UDRP Policy itself, have essentially gutted the UDRP's efficiency for resolving these disputes. This section will analyze three provisions that most obviously provoke this inefficiency and conclude with a case study that illustrates this point.

A. The UDRP Is Inefficient Because Its Own Provisions Undermine Its Professed Mandatory Nature

The UDRP plainly professes to require mandatory participation by a registrant, as signaled by the section heading "Mandatory Administrative Proceeding."\textsuperscript{118} Specifically, the UDRP provides: "[t]his paragraph sets forth the type of disputes for which you [the registrant] are required to submit to a mandatory administrative proceeding."\textsuperscript{119} Clearly, the UDRP is designed to convince domain name registrants that participation in the dispute resolution process is mandatory.

\textsuperscript{112} Robertson, \textit{supra} note 104, at 57.
\textsuperscript{113} Id.
\textsuperscript{114} Froomkin, \textit{supra} note 54, at 612.
\textsuperscript{115} Id.
\textsuperscript{116} Robertson, \textit{supra} note 104, at 57.
\textsuperscript{117} Id.
\textsuperscript{118} UDRP, \textit{supra} note 2, § 4.
\textsuperscript{119} Id. (emphasis added).
The UDRP's mandatory nature arises from the fact that the policy is part of the standard domain name registration contract between a domain registrar and the registrant. This means that any individual or entity that enters into a domain name registration contract (for a domain name within the scope of the UDRP) also, whether wittingly or not, agrees to be subject to the UDRP's terms.

The UDRP's mandatory participation requirement results solely from this contract, therefore, the UDRP can only be enforced against parties to contract. In other words, the UDRP cannot require prospective complainants to participate in the UDRP dispute resolution process because they are not a party to the domain name registration contract at issue.

The practical result is that, because a complainant is not a party to the contract but the domain name registrant is, a complainant who files a UDRP action can force a registrant to participate in a mandatory UDRP proceeding, but the registrant cannot do the same to the complainant. This represents the most obvious difference between traditional binding arbitration and the UDRP: in traditional arbitration, the contract mandating arbitration is between the disputing parties whereas, in the UDRP, one of the disputing parties is not even a party to the agreement that requires arbitration.

The fact that a prospective complainant is never a party to the domain name registration contract does not abrogate the alleged mandatory nature of the UDRP, even though the UDRP's mandatory nature is clearly and completely one-sided. Despite purporting to mandate participation by registrants, other provisions undermine mandatory participation by essentially relieving the domain name registrants from mandatory participation. This scenario reduces any real semblance of mandatory participation, which gravely affects the UDRP's ability to serve as a cost effective and time efficient alternative to traditional litigation. The following subsections explore the rationale behind the uniform decisions by U.S. courts to adopt a de novo standard of review for UDRP cases.

121. See id. Not all domain names are subject to the UDRP. See WIPO Final Report, supra note 1, ¶ 43. Instead, only gTLDs and those ccTLDs that voluntarily adopt the UDRP fall within the purview of the UDRP. Id., ¶ 43.
122. See Kur, supra note 121, at 12.
123. This primarily means that a domain name registrant's request for a finding that a complainant engaged in reverse cyber-squatting carries no substantive weight. See WIPO Final Report, supra note 1, ¶ 43. This is because the non-domain name registrant cannot be held accountable for such conduct since the non-domain name registrant is not a party to the domain name registration contract. See id., ¶ 43.
124. UDRP, supra note 2, §§ 4(k), 5.
125. See WIPO Final Report, supra note 1, ¶ 158.
1. A Domain Name Registrant’s Ability to Circumvent, or Even Completely Avoid, Mandatory Participation in the UDRP Undermines the Efficiency of the UDRP

The UDRP professes to be a mandatory proceeding for domain name registrants; however, at nearly any stage of a UDRP proceeding, a domain name registrant can simply opt out of participation. For example, the section entitled “Availability of Court Proceedings” reveals that participation by domain name registrants is not mandatory. Before a UDRP panel decision is implemented, the registrant can essentially short-circuit the UDRP proceeding by filing a court action.” Procedurally, this provision enables a domain name registrant to avoid the entire “mandatory” UDRP process by simply filing a court action (most likely a declaratory relief action) “before such mandatory administrative proceeding is commenced.” The registrant can easily avoid participation in the UDRP proceeding—even if the complainant has invested time and expense in preparing the UDRP complaint. Such a scenario hardly promotes the UDRP’s primary goal of efficiency. Instead, it discourages complainants from investing even the comparatively small amount of time and money needed to prepare and file a UDRP action.

Revising this section to eliminate the domain name registrant’s right to file a court action would eliminate this disincentive and establish a system that actually mandates participation by the domain name registrant in practice rather than just in name. As is, this provision undermines mandatory participation by the domain name registrant that, in turn, undermines the UDRP’s ability to serve as a cost and time efficient domain name dispute alternative.

Even more troubling, the UDRP’s language essentially empowers a domain name registrant to circumvent a UDRP action—even after the complaint is filed. Specifically, Section 18 contemplates the filing of legal proceedings not only before the complainant files a UDRP action but also during the UDRP action. As a result, a complainant can prepare a complaint, pay the UDRP filing fee, and prosecute an ac-

126. UDRP, supra note 2, § 4.
127. See id. §§ 4(k), 5.
128. Id. § 4(k). “The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you [the registrant] or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such a proceeding is concluded.” Id. (emphasis added).
129. Id.
130. Id. §§ 4(g), (k).
131. Id. § 4.
132. See Rules, supra note 2, § 18(a).
133. Id.
tion, only to have that time and expense wasted if the domain name registrant files a lawsuit before the UDRP panel issues its decision.

Under this scenario, a complainant would better serve his or her cause by filing a court action from the onset. Although, Section 18 provides a UDRP panel the discretion to “proceed to a decision” even if a lawsuit is filed, in practice, it makes little sense for a UDRP panel to do so. As discussed later, courts generally give no deference to UDRP panel decisions.

If the UDRP truly was a mandatory proceeding for domain name registrants, why would its drafters permit a domain name registrant to undermine the process by filing a lawsuit before or during the dispute? Clearly, a domain name registrant’s ability to pursue relief beyond the UDRP belies the claim of mandatory participation.

2. Post-Decision Rights That the UDRP Affords to Registrants Undermines the Efficiency of the UDRP

The registrant’s ability to circumvent mandatory participation by filing a court action reduces the UDRP’s ability to serve as a less expensive and time-consuming dispute resolution option. Those provisions could be termed the registrant’s “Pre-Decision” rights.

Unfortunately, the UDRP’s provisions also afford domain name registrants “Post-Decision” rights that further undermine the UDRP because a domain name registrant can, for all practical purposes, completely ignore a UDRP complaint filed against him or her. Even if the UDRP panel orders the transfer or cancellation of a domain name, the registrant need only file an independent court action within ten days of the panel’s decision to render the entire panel process moot and unenforceable. This presents a real credibility problem for the UDRP. Though the UDRP claims to be “mandatory”—and in fact provides for relief in the form of a domain name transfer or cancellation—there is little incentive for investing time or money in the UDRP action once it becomes clear that the registrant will contest the matter because the registrant can easily render the UDRP ruling useless by filing a court action within the prescribed time.

Even more damning is the fact that U.S. courts consistently refuse to defer to the UDRP process, even when the registrant actively participates in the UDRP action but later contests the UDRP’s ruling in

134. Id.
136. UDRP, supra note 2, § 4(k); see also WIPO Final Report, supra note 1, ¶ 158.
137. Id.
138. Id. § 3.
139. Id. § 4(k).
140. Id. § 4(k).
This leads to the second major inefficiency: courts generally review UDRP decisions de novo.

B. The UDRP Is Inefficient Because U.S. Courts Generally Do Not Afford UDRP Decisions Any Deference

One of the guiding principles in the Initial WIPO Report was the need for an expedited process designed to reduce the time and expense of domain name disputes: "[t]he procedure should permit the parties to resolve a dispute expeditiously and at a low cost." Because the Internet is a fast-changing medium, an expedited and inexpensive UDRP process would be an advantage over lengthy and expensive court litigation.

While recognizing the desirability of these traits, the Initial WIPO Report was equally committed to the proposition that parties be able to forgo the UDRP and seek relief in court. The report was convinced that "a party should be free to initiate litigation by filing a claim in a competent national court instead of initiating the administrative procedure." This resolve was based on "a natural level of discomfort in placing complete trust in a system which is new and which has the capacity to affect valued rights."

To accomplish this goal, the Initial WIPO Report suggested that the UDRP process be distinctly different from mandatory and binding arbitration. This suggestion was based on the fact that, in many countries, an agreement to submit to binding arbitration is essentially an agreement to abandon one's right to litigate a matter in court. Therefore, where the UDRP process is treated as a mandatory, binding arbitration process, it would preclude a party from later seeking court relief.

On one level, this suggestion makes sense: limiting a party's redress to a new and unproven dispute mechanism could lead to unsuspected prejudice if the new mechanism turned out to be flawed. However, the desire to treat the UDRP process as less than binding arbitration

142. WIPO Final Report, supra note 1, ¶ 150(i).
143. Id., ¶ 148.
144. Id., ¶ 150(iv).
145. Id.
146. Id., ¶ 133, (noting that "[t]here has been, in consequence, in some quarters, a reluctance to abandon all possibilities of resort to litigation as a result of the adoption of new procedures, at least in the first stage before experience of a new system").
147. Id., ¶ 150(iv).
148. Id., ¶ 138.
149. This suggestion allows the UDRP to avoid the thorny issue of forcing a non-domain name registrant to relinquish the right to litigate in court when the non-domain name registrant was not a party to the domain name registration contract that implements the UDRP.
ultimately works against the UDRP's goal of establishing a quick and inexpensive resolution mechanism.\textsuperscript{150} This occurs because a domain name registrant can simply ignore a UDRP action filed against it; even if the registrant is the most incorrigible of cyber-squatters, a registrant need only file a court action within ten days of the UDRP decision to render that decision essentially meaningless.\textsuperscript{151}

Worse still, this "appeal"\textsuperscript{152} exacerbates the inefficiencies because U.S. courts generally have not deferred to the findings or holdings of a UDRP panel.\textsuperscript{153} The issue was first addressed in Weber-Stephen Prods. Co. v. Armitage Hardware & Bldg. Supply, Inc.,\textsuperscript{154} where the court held:

\begin{quote}
[T]his Court is not bound by the outcome of the ICANN administrative proceedings. But at this time we decline to determine the precise standard by which we would review the panel’s decision, and what degree of deference (if any) we would give that decision. Neither the ICANN Policy nor its governing rules dictate to courts what weight should be given to a panel’s decision, and the WIPO e-mail message stating that "a court may give appropriate weight to the Administrative Panel’s decision" confirms the breadth of our discretion.\textsuperscript{155}
\end{quote}

The finding in Weber-Stephen that courts should not defer to UDRP decisions and, instead, review them de novo, began a trend followed by other federal courts. Courts have consistently stated that UDRP decisions should receive no deference.\textsuperscript{156} Recently, in Barcelona.com, Inc. v. Excelentíssimo Ayuntamiento De Barcelona,\textsuperscript{157} the Fourth Circuit Court of Appeals offered some of the strongest language to date against deference:

\begin{quote}
[I]ndeed the WIPO panelist’s decision is not even entitled to deference on the merits. A brief review of the scheme established by ICANN in adopting the UDRP and by Congress in enacting the ACPA informs our resolution of this issue.
\end{quote}

Moreover, any decision made by a panel under the UDRP is no more than an agreed-upon administration that is not...
given any deference under the ACPA. To the contrary, because a UDRP decision is susceptible of being grounded on principles foreign or hostile to American law, the ACPA authorizes reversing a panel decision if such a result is called for by application of the Lanham Act. . . .

. . . Moreover, we give the decision of the WIPO panelist no deference in deciding this action . . . .158

While possibly more direct than other courts, the Fourth Circuit’s refusal to defer comports with other U.S. court decisions. When courts reach such a uniform conclusion on a relatively new legal issue, it is often instructive to consider whether the reasoning supporting these conclusions is uniform or disjointed. U.S. courts have generally relied on two distinct, yet common, findings in concluding that UDRP decisions should receive no deference. The following subsections explore these rationales.

1. The UDRP Is Distinct from Arbitration Agreements Subject to the Federal Arbitration Act

In concluding that UDRP decisions should not be afforded deference, courts considered whether UDRP actions are analogous to binding arbitration proceedings. In doing so, the courts concluded that UDRP decisions, although similar to binding arbitration, are not equivalent.159

One of the first cases to consider this issue was Parisi v. NetLearning, Inc.160 In Parisi, the defendant NetLearning (who prevailed in a UDRP decision against Parisi that precipitated the lawsuit at issue) argued that the UDRP was arbitration within the scope of the Federal Arbitration Act (FAA).161 NetLearning based this argument on a provision in the FAA that defines the types of proceedings subject to the Act:

[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction,

158. Id. at 623, 626.
159. See Parisi, 159 F. Supp. 2d at 751-52. For that matter, even the UDRP panel is not sure how UDRP proceedings should be classified. See Hewlett-Packard Co. v. Jeff Burgar, Nat'l Arb. Forum 0002000093564 (Apr. 10, 2000) (Froomkin, Arb., dissenting) ("I agree with the majority that this panel, whether viewed as engaged in an international arbitration or an administrative procedure, has both the power and the duty to determine whether it has jurisdiction.").
or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.  

Based on this language, NetLearning argued:

[T]o be considered [an] arbitration provision, only three elements are required: (1) a contract; (2) which evidences a transaction involving commerce; (3) which is designed to settle a controversy by arbitration. In this case, a comparison of the UDRP and the Federal Arbitration Action clearly reveals that the UDRP satisfies these elements and, thus, constitutes an arbitration provision.  

NetLearning argued that Parisi’s agreement with a domain name registrar represented a contract; his payment of registration fees evidenced a commerce-based transaction; and, the presence of the UDRP within the domain name registration agreement was designed to settle a controversy in an arbitrable format.  

While recognizing that the UDRP represented a “contract-based scheme for addressing disputes between domain name registrants and third parties challenging the registration and use of their domain names,” the Parisi court concluded that the UDRP was not subject to the FAA. The court reasoned that the UDRP’s “unique contractual arrangement” was inconsistent with judicial review standards under the FAA. 

In reaching its decision, the Parisi court cited four factors that distinguished the UDRP from an arbitration agreement subject to the FAA. First, the court concluded that the UDRP’s provision for parallel UDRP and court litigation obviated the FAA’s provision for the staying of litigation during an arbitration proceeding. Second, the UDRP could not be considered compelled arbitration subject to the FAA because a UDRP complainant is not a party to the contract between the domain name registrant and the registrar. Third, the UDRP does not satisfy the FAA’s requirement that the parties to an arbitration agree that a court judgment shall be entered upon the ar-

164. Id. at 3.
165. Parisi, 139 F. Supp. 2d at 751.
166. Id.
167. Id. at 751-52.
168. Id. at 751.
169. Id.
2004] Wasting Time in Cyberspace 179

bitrator’s ruling. 170 Finally, the Parisi court noted that the UDRP neither contemplated nor fostered the deference normally contemplated for a binding arbitration: “[t]he UDRP’s contemplation of parallel litigation and abbreviated proceedings does not invite such deference.” 171

Based on these distinctions, the Parisi court concluded that, while analogous to an arbitration agreement, the UDRP nevertheless lacked certain traditional characteristics of binding arbitration, thereby removing the UDRP (and appeals of UDRP decisions) from governance under the FAA. 172

In Dluhos v. Strasberg, the Third Circuit Court of Appeals also considered whether a court’s review of a UDRP decision was subject to the FAA. 173 Similar to the result in Parisi, the Dluhos court answered no to that question. 174 In reasoning very similar to that of Parisi, the Dluhos court based its holding on the fact that the UDRP was never designed to replace court actions, but only to provide an alternative. 175 The Dluhos court concluded that treating a UDRP decision as a type of binding arbitration governed by the FAA would frustrate the UDRP’s original design. 176 The court compared this to trying to force a “square-peg UDRP proceeding into the round hole of the Federal Arbitration Act.” 177 The significance of these rulings (and the underlying reason why NetLearning offered this argument in the first place) is best appreciated by considering the effect of subjecting the UDRP to the FAA.

2. U.S. Courts Have Generally Afforded Great Deference to the Holdings of Arbitration Proceedings Subject to the Federal Arbitration Act

Similar to the goals of the UDRP, arbitration proceedings were established to create a dispute resolution mechanism for legal conflicts that was faster, less expensive, and less formal than ordinary court proceedings. 178 Because of this goal, courts are reticent to vacate or modify arbitration decisions. There is a presumption of upholding the

170. Id. at 752.
171. Id.
172. Id. at 753.
173. 321 F.3d 365 (3d Cir. 2003).
174. Id. at 372-73.
175. Id. at 371.
176. Id. at 372.
177. Id. at 372; see also Sallen v. Corinthians Licenciamentos LTDA, 273 F.3d 14, 26-27 (1st Cir. 2001).
178. 4 AM. JUR. 2D Alternative Disp. Resol. § 8 (2004); see also Apex Plumbing Supply, Inc. v. U.S. Supply Co., 142 F.3d 188, 193 (4th Cir. 1998) (stating “the purpose of having arbitration at all [is] the quick resolution of disputes and the avoidance of the expense and delay associated with litigation”).
arbitrator's decision—even though it is an extra-judicial creature—because the law favors the benefits of arbitration.\textsuperscript{179}

The FAA governs the vast majority of arbitrations.\textsuperscript{180} In doing so, it affords great deference to an arbitrator’s decision.\textsuperscript{181} Thus, arbitrators are given broad discretion and authority: “[A]ny doubts concerning the scope of arbitrable issues, as well as any doubts concerning the scope of the arbitrators’ remedial authority, are to be resolved in favor of the arbitrators’ authority as a matter of federal law and policy.”\textsuperscript{182}

To codify the policy decision of broad arbitrator discretion, the FAA narrowly restricts a court’s authority to overturn an arbitration decision.\textsuperscript{183} These limited circumstances include: 1) when an arbitration decision is obtained through “corruption, fraud, or undue means;” 2) when there is evidence of “partiality or corruption in the arbitrators, or either of them;” 3) when an arbitrator ignores reasonable requests to postpone an arbitration, when an arbitrator ignores “evidence pertinent and material to the controversy,” when an arbitrator engages in any other prejudicial “misbehavior;” or, lastly and most generally; 4) when “the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.”\textsuperscript{184}

The practical effect of broad deference is that a court cannot vacate an award—even if it disagrees with an arbitrator’s factual findings or legal conclusions—as long as the decision comports with the FAA.\textsuperscript{185} This approach enables binding arbitration to truly be binding in most instances. That, in turn, allows the majority of parties to obtain a resolution in a faster, less expensive, and less formal manner—all goals that arbitration shares with the \textit{UDRP} in name but not in practice.\textsuperscript{186}

Unfortunately, the \textit{UDRP} was not structured as a binding dispute resolution mechanism, so the FAA’s finality is absent in \textit{UDRP} proceedings.\textsuperscript{187} As a result, a complainant who enters a \textit{UDRP} proceeding lacks the certainty that his or her dispute will be resolved, as

\begin{itemize}
  \item \textsuperscript{179} Apex Plumbing, 142 F.3d at 193.
  \item \textsuperscript{181} See Apex Plumbing, 142 F.3d at 193 (finding that the “[r]eview of an arbitrator’s award is severely circumscribed”); Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 991 F.2d 141, 145 (4th Cir. 1993) (stating that “[g]reat deference is given to arbitration awards”).
  \item \textsuperscript{182} Peoples Sec., 991 F.2d at 147 (quoting Willoughby Roofing & Supply Co. v. Kajima Int’l, Inc., 598 F. Supp. 353, 358 (N.D. Ala. 1984)).
  \item \textsuperscript{183} See 9 U.S.C. § 10 (2000).
  \item \textsuperscript{184} Id.
  \item \textsuperscript{185} See Peoples Sec., 991 F.2d at 145.
  \item \textsuperscript{186} See \textit{supra} Part II.D.
  \item \textsuperscript{187} See \textit{supra} Part II.D.
\end{itemize}
compared with a complainant in a binding arbitration under the FAA.\(^{188}\)

One response to this reasoning is that a complainant who files a court action also lacks the finality of a binding arbitration because a court action also may be appealed. While true in one context, this argument misses the big picture. If a complainant in a domain name dispute proceeded directly to court and bypassed the \textit{UDRP}, that complainant would be one step closer to final appellate review—ultimately where true finality resides. In this respect, because courts have decided not to afford \textit{UDRP} decisions deference, it is essentially a non-binding proceeding. As the following section demonstrates, the reason courts have not deferred is that the \textit{UDRP}'s own provisions and history provides for de novo review.

3. The \textit{UDRP}'s "Legislative History" Suggests That Courts Should Use a De Novo Standard When Reviewing \textit{UDRP} Decisions

The conclusion by U.S. courts that \textit{UDRP} decisions should be reviewed de novo does not simply result from the court's own analysis of the \textit{UDRP}.\(^{189}\) Rather, the WIPO Final Report—which essentially amounts to the \textit{UDRP}'s "legislative history"—recommends de novo review.\(^{190}\) Unfortunately, neither the \textit{UDRP} nor its "legislative history" provides much specific insight into why the \textit{UDRP} drafters believed courts should not afford deference on review. The \textit{UDRP}'s discomfort with allowing its decisions to bind courts appears centered on the multi-national nature of \textit{UDRP} proceedings and the likely nuances among international legal systems.\(^{191}\) In particular, the WIPO Final Report explained:

The multijurisdictional and multifunctional nature of the Internet mean that, inevitably, many different interests in many different parts of the world will be concerned with any endeavor to formulate specific policies. Special care needs to be exercised to ensure that any policy developed for one interest or function does not impact unduly on, or interfere unduly with, other interests or functions.\(^{192}\)

Because the \textit{UDRP} aspires to resolve global disputes,\(^{193}\) adopting an American or even Westernized legal model \textit{carte blanche} is inappropriate. Nevertheless, the \textit{UDRP}'s Final Report found that arbitration has broad support worldwide as a method for resolving disputes.\(^{194}\) For example, the Final Report noted that more than 100 countries have

\(^{188}\) See supra Part III.A.
\(^{189}\) See WIPO Final Report, supra note 1, ¶ 150(iv).
\(^{190}\) Id.
\(^{191}\) Id., ¶ 150(v).
\(^{192}\) Id., ¶ 3.
\(^{193}\) See id., Preamble.
\(^{194}\) Id., ¶ 138.
embraced binding arbitration, either through their own laws or by becoming a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Thus, adopting a binding arbitration model clearly would not have placed the UDRP in the waters of unknown or untested legal thought or procedure. Nevertheless, even though binding arbitration is widely accepted, the UDRP drafters seemed determined to require de novo review and thus avoid a binding nature.

The WIPO Final Report did at least leave open some doors for another approach in the future. For example, the WIPO Final Report stated that nonbinding arbitration was appropriate “at least in the initial stage of the new management of the DNS,” the implication being that binding arbitration might be appropriate at a later stage. Moreover, the WIPO Final Report “hoped” its decisions would develop its own body of law so that UDRP participants would one day resist court review.

However, any chance for this “hope” to be realized is undercut by the UDRP’s stated fear of adopting a binding nature. As de novo court review is available, there is little incentive for a losing party to submit to the UDRP decision when a reviewing court is not bound by any of the UDRP’s factual findings or legal conclusions. The “hope” of a consistent and credible body of law is merely an altruistic reason to forgo a potentially better result upon court review.

No doubt the creators of the UDRP wanted it to serve as an efficient arbiter of domain name disputes. However, the UDRP’s own refusal to structure itself in the model of a binding arbitration proceeding undermines this goal. The fact that its legislative history argues against legal deference is just another example of the UDRP’s conflicting desires. Ultimately, this undercuts the UDRP’s ability to serve as an efficient dispute resolution mechanism for contested disputes.

C. The UDRP Is Inefficient Because It Permits the Possibility of an Unlimited Number of Supplemental Filings

As will be demonstrated in the following case study, drafters of the UDRP made a threshold decision that further damaged efforts to reduce time and cost. Specifically, the UDRP allowed dispute resolution providers total discretion on whether to permit supplemental plead-

195. Id.
196. Id.
197. Id.
198. See id., ¶ 153 (stating that “[i]t is to be hoped, however, that with experience and time, confidence will be built up in the credibility and consistency of decisions made under the procedure, so that the parties would resort less and less to litigation.”).
199. See id., ¶ 150(iv).
200. See id.
201. See, e.g., id., ¶ 150(i)-(ii).
ings beyond the *UDRP* complaint and answer. According to one staff report, the *UDRP* opted not to define standards for supplemental filings in order to accommodate language differences:

The posted rules of procedure provided for limits on the length of complaints and responses filed in the administrative dispute-resolution procedure. They also provided for length guidelines for decisions and dissenting opinions. However, the limits were left blank and comments invited. A few comments were received, but there was divergence in the lengths proposed by the commentators. Staff recommends that the limits and guidelines be established by each dispute-resolution provider’s supplemental rules.203

Ceding the decision to individual dispute resolution providers was rooted in the WIPO Final Report.204 Specifically, *UDRP* creators made a threshold decision to give dispute resolution providers broad discretion in administering *UDRP* actions, including discretion on the number of supplemental filings.205

In response, *UDRP* dispute resolution providers decided not to expressly limit the length or number of supplemental filings by parties to a *UDRP* action.206 Instead, *UDRP* complainants and respondents may file an unrestricted number of supplemental pleadings and, at least under the National Arbitration Forum’s (NAF) Supplemental Rules, supplemental pleadings may have an unlimited number of pages and exhibits, annexes, attachments, or the equivalent.207 Failing to restrain the number of additional pleadings creates an incentive for a zealous advocate to file unnecessary pleadings in the hope of

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205. *Annex V*, supra note 207, arts. 21, 23. In particular, article 21 provides that “[s]ubject to these Rules, the Panel may conduct the proceedings in such manner as it considers appropriate.” *Id.* at art. 21. Article 23 further provides that “[t]he Panel may, in its discretion, allow or require further statements from the Parties.” *Id.* at art. 23.


207. See *NAF’s Supplemental Rules*, supra note 209, R. 7.
getting the last word, and responding to the opposition's attempts to do the same.

One obvious side effect is that legal fees will increase with every additional pleading. Ultimately, the policy of unlimited supplemental pleadings often serves to increase legal fees for prosecuting or defending a UDRP claim, which directly contradicts the UDRP's purpose.

The potential for abuse is more than theoretical, as the following case study demonstrates. Indeed, this is just one lesson learned from the Parisi v. NetLearning matter—an excellent case demonstrating why the UDRP can be an inefficient option for domain name disputes.

IV. PARISI V. NETLEARNING: HOW THE UDRP FAILED ITS GOALS

Pointing out the UDRP's structural flaws is more instructive when illustrated by an actual dispute. This section provides an in-depth analysis of the domain name dispute between Dan Parisi and NetLearning, Inc.208 in order to demonstrate the UDRP's flaws.

A. The Somewhat Strange Events Which Led to the Parisi v. NetLearning Dispute

The origins of the dispute between Parisi and NetLearning seemed innocuous enough. On April 1, 1996, Parisi filed a federal "'intent to use' service mark application for the [service mark] 'Nedearning'."209 Approximately one month later, Parisi registered at least eighteen different domain names with Network Solutions, Inc. (NSI), including netlearning.com, for two-year terms at a cost of approximately fifty dollars per domain name.210 The registered domain names covered a range of areas, including sports-related and medical-related domain names.211 When Parisi registered these domain names, he admitted that he did not have any corporate, financing, or other business plans for these domain names, including the netlearning.com domain name.212

Notably, the May 1996 netlearning.com registration was not the only time Parisi registered the netlearning.com domain name. In July 1998, Parisi registered the netlearning.com domain name a second

210. See Deposition of Dan Parisi at 61, 67, dep. exs. 1, 3 (No. 00-1823-A) (on file with author).
211. See id. at 67, dep. ex. 3.
212. Id. at 78, 91-92. In fact, Parisi admitted that the netlearning.com domain name had never generated any revenue for him, had never had any advertisers, and was never a subscription-based website. Id. at 78-79.
time for thirty five dollars and a one-year term. In April 1999, Parisi registered netlearning.com a third time, again for thirty five dollars and a one-year term. In April 2000, Parisi registered netlearning.com a fourth time, yet again for thirty five dollars and a one-year term. Finally, in April 2001, Parisi registered the netlearning.com domain name a fifth time.

In April 1997, the United States Patent and Trademark Office (USPTO) sent Parisi an office action letter denying his NetLearning service mark application for a variety of reasons, including a likelihood of confusion with the existing registered mark LEARNNET. Parisi did not respond to the letter and, as a result, the USPTO classified the application as abandoned.

Around this same time, NetLearning, Inc., a Knoxville, Tennessee-based company that provides computer-based education products and services to hospitals, medical groups, and other health care professionals, contacted Parisi regarding a possible purchase of Parisi’s netlearning.com domain name. NetLearning inquired because it did business under the trade name NetLearning, Inc. and had begun to acquire customers and market goodwill with respect to that trade name. NetLearning believed obtaining the domain name would be fairly straightforward because “the domain name was not tied to any web server . . . and was not operating with an active web page.” Unfortunately for NetLearning, this would end up being a time-consuming and litigation-fee-incurring mistake.

After several discussions between the parties, Parisi advised NetLearning that he would not sell netlearning.com for less than

213. See id. at 69, dep. ex. 4.
214. See id. at 69-70, dep. ex. 5.
215. See id. at 70, dep. ex. 6.
216. See id. at 70 (Parisi could not recall specifically renewing in 2001, but believes that he always renewed his registration when required to keep it active).
217. See Plaintiff's Memorandum in Support of Motion for Summary Judgment and Judgment on the Pleadings at 3, ex. F, Parisi (No. 00-1823-A) (on file with author).
218. See id. at 3, ex. B (on file with author). Interestingly, in April 2000, NetLearning filed a federal service mark application for a design that also included the term “Netlearning” (appended with the slogan “The Ultimate Learning System”). Id. at 4, ex. G (on file with author). Following a United States Patent and Trademark Office (USPTO) letter initially denying its application, NetLearning made several modifications to its application, including disclaiming an exclusive use of the term “Netlearning” apart from the mark as shown. Id. at 5, ex. K (on file with author). In light of these changes, the USPTO approved NetLearning’s service mark application and registered it on the Principal Register (U.S. Registration No. 2487160). Id. at 5, ex. G (On file with author).
219. See Declaration of John Morris at ¶ 2, Parisi (No. 00-1823-A) (on file with author).
220. Id.
221. Id.
$25,000, despite the fact that this amount substantially exceeded Parisi's out-of-pocket expenses for the domain name, and netlearning.com was passively held by Parisi with no active web server or active web pages operating under that domain name.\(^{222}\) When NetLearning refused to pay this price, Parisi connected the netlearning.com domain name to an active server and re-directed that domain name to another domain name that he had registered, whitehouse.com.\(^{223}\) While it

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222. Id. at ¶¶ 2-3. The first e-mail between the parties occurred on May 7, 1997, when NetLearning's CEO John Morris wrote to Parisi: “I found your email address through InterNIC and saw that you have netlearning.com registered. I also noted that you do not have a WEB server tied to that Domain. Are you using the Domain? If you are or are not, please let me know. Thank you.” E-mail from John Morris, CEO, NetLearning, to Dan Parisi, President, Infolook, Inc. (May 7, 1997, 16:45 EST) (on file with author). On March 10, 1998, John Morris sent an e-mail to Parisi in which he offered “$500.00 for NetLearning and any associated trademarks, applications and domain names.” E-mail from John Morris, CEO, NetLearning, to Dan Parisi, President, Infolook, Inc. (March 10, 1998, 13:27 EST) (on file with author). NetLearning reiterated its desire to obtain this domain name in e-mails to Parisi dated June 29, 1998 and October 13, 1999, ultimately offering to pay Parisi $15,000 for the netlearning.com domain name. See E-mail from John Morris, CEO, NetLearning, to Dan Parisi, President, Infolook, Inc. (June 29, 1998, 15:19 EST); E-mail from John Morris, CEO, NetLearning, to Dan Parisi, President, Infolook, Inc. (Oct. 13, 1999, 13:53 EST). On March 11, 2000, Parisi wrote to John Morris indicating that he would accept no less than $25,000 for the domain name. E-mail from Dan Parisi, President, Infolook, Inc., to John Morris, CEO, NetLearning (March 11, 2000, 16:49:06 EST) (on file with author). There is no record of any further e-mails between the parties following Parisi's March 11, 2000 e-mail.

223. Declaration of John Morris at ¶ 3, Parisi (No. 00-1823-A). NetLearning has not been the only party angered by Parisi's use of the whitehouse.com domain name. In fact, both the National Fruit Product Company and the United States White House have requested that Parisi cease and desist his operation of the whitehouse.com domain name as a clearinghouse for adult content. The National Fruit Product Company demanded that Parisi transfer rights in the whitehouse.com domain name to it based upon its use of a “White House" labeled apple cider since 1913. See Charles Cooper, Porn Site Squeezed by Juice Maker, ZDNet News, at http://news.zdnet.com/2100-9595_22-515555.html (Aug. 26, 1999) (last visited Feb. 5, 2005). The National Fruit Product Company seemed especially concerned that their “wholesome, family products" would be tarnished if somehow associated with the whitehouse.com website content. Id.

Parisi's use of the whitehouse.com domain name also put him at odds with the White House in late 1997, when an attorney for then-President Bill Clinton sent Parisi a letter demanding that he cease and desist from his use of the whitehouse.com domain name as part of a deceptive scheme to lure internet users away from the website for the White House. See Letter from Charles F.C. Ruff, Counsel to President Clinton, to Dan Parisi, President, Infolook, Inc., available at http://news.com.com/2009-1023-207800.html?legacy=cnet (Dec.8, 1997) (last visited Feb. 5, 2005).

In addition to the whitehouse.com disputes, several organizations have opposed Parisi for his registration of various "sucks.com" domain names, including Netscape Communications. See, e.g., Netscapesucks.com Ordered to Cease and Desist, at http://www.activewin.com/articles/netscape/article_1.shtml (Dec. 1, 1998) (last visited Feb. 5, 2005).
might sound like the whitehouse.com web site was the online residence for the White House, in reality, it was an adult site, which contained numerous pornographic images and other pornographic content.224

Following Parisi's re-direction of the netlearning.com domain name to whitehouse.com, several existing and potential customers and investors of NetLearning attempted to access NetLearning's web site by entering the URL www.netlearning.com.225 Upon entering this URL, they were automatically re-directed to whitehouse.com and its pornographic content.226

Several NetLearning customers testified that the re-direction confused them as to whether NetLearning was affiliated with the whitehouse.com web site and its pornographic content.227 For example, Wayne Wood, the technical administrator for St. Mary's Hospital, a major customer of NetLearning, testified that when he typed in the URL netlearning.com "[t]he first picture that I [saw] was Hillary Clinton with black leather on. And then the second picture that I [saw] was [P]resident Clinton and Ross Perot in a hot tub with champagne with their shirts off."228

Mr. Wood was shocked and concerned that NetLearning was affiliated with this content.229 As liaison for the NetLearning program at St. Mary's Hospital, Wood further testified that he handled various complaints from nurses and other employees who also were re-directed to pornographic images after typing in netlearning.com.230

Similarly, Dr. Charles Lutz, an investor in NetLearning whose employer was also a customer, sought information regarding NetLearning by entering the URL with NetLearning's trade name.231 He, too, was automatically re-directed to the whitehouse.com website that contained, among other content, doctored images of a former first lady engaged in sexual conduct with a dog.232 These images caused Dr. Lutz concern about his continued investment in NetLearning and his


224. Declaration of John Morris at ¶ 4, Parisi (No. 00-1823-A).
225. Id. at ¶ 5.
226. Id.
227. See Deposition of Wayne Wood at 7-12, Parisi (No. 00-1823-A) (on file with author).
228. Id. at 8.
229. Id. at 10-11.
230. Id. at 12-14.
231. See Deposition of Charles Lutz, M.D. at 7, Parisi (No. 00-1823-A) (on file with author).
232. Id. at 7-8.
recommendation of NetLearning to his employer and other potential customers.\footnote{233}

Realizing that Parisi's conduct was starting to affect its customers and investors, NetLearning filed a complaint under the \textit{UDRP} against Parisi on August 21, 2000.\footnote{234} Filed with the National Arbitration Forum, NetLearning alleged that Parisi had no interests or legitimate rights in the netlearning.com domain name, and that he registered and used it in bad faith.\footnote{235}

On September 12, 2000, Parisi denied all allegations and accused NetLearning of reverse domain name hijacking.\footnote{236} Under the \textit{UDRP}'s intended design as an expedient method for resolving disputes, Parisi's response might have been the final word before the \textit{UDRP} panel issued its decision.\footnote{237}

However, the NAF's supplemental rules permitted an unlimited number of "supplemental" pleadings as long as they were filed within five calendar days of the respondent's response.\footnote{238} As a result, NetLearning filed a supplemental rebuttal statement on September

\footnote{233. \textit{Id.} at 8-11. Apparently, other clients and investors of NetLearning also encountered Parisi's re-direction of the netlearning.com domain name to the whitehouse.com website. They were similarly confused "as to the location of NetLearning, Inc.'s website and the type of information which NetLearning, Inc. may sponsor, endorse or be affiliated with." Affidavit of Walter Cromer, NetLearning, Inc., v. Parisi, No. FA0008000095471 (Oct. 16, 2000) (Merhige, Johnson \& Sorkin, Arbs.); Affidavit of Pamela Etheridge, NetLearning, Inc. (No. FA0008000095471) (on file with author).

234. \textit{See NetLearning's Domain Name Dispute Complaint Format 7, NetLearning, Inc.} (No. FA0008000095471) (on file with author).

235. \textit{Id.} at 5-10. This was hardly Parisi's first brush with litigation arising out of his registration and use of domain names. Prior to the NetLearning matter, Parisi was involved in lawsuits with Dow Jones \& Company, Inc. as well as EDGAROnline, Inc. over his registration of certain domain names. In the Dow Jones \& Company matter, Dow Jones sued Parisi over his use of the wallstreetjournal.com domain name that Dow Jones claimed violated its rights in the registered trademark "The Wall Street Journal." \textit{See} Dow Jones \& Co., Inc. v. WSJ Inc., No. 97-7690, 1998 WL 2370, at **1 (2d Cir. Jan. 6, 1998).

Parisi was also sued by EDGAROnline, a company that, among other things, compiles various corporate filings, who alleged that Parisi's registration of the edgaronline.com infringed on its service mark rights. \textit{See} Edgar Online, Inc. v. Parisi, 4 ILR (P \& F) 8 (1999).

236. \textit{See Dan Parisi's Response in Accordance with the Uniform Domain Name Dispute Resolution Policy, NetLearning, Inc.} (No. FA0008000095471) (on file with author).

237. \textit{See WIPO Final Report, supra note 1, at 49.}

238. \textit{See The National Arbitration Forum's Supplemental Rules to ICANN's Uniform Domain Name Dispute Resolution Policy (Effective on or before October 1, 2000)} [hereinafter \textit{NAF's Supplemental Rules Pre-October 2000}], R. 7, at http://www.arbforum.com/domains/UDRP/rules_100100.asp (last visited Feb. 9, 2005) (this version of \textit{NAF's} Supplemental Rules was in effect at the time of the filing of these complaints).}
17, 2000,\239 followed by a supplemental rebuttal response from Parisi on September 22, 2000.\240 On September 26, 2000, the dispute experienced a flurry of filings with NetLearning submitting a third pleading, styled NetLearning's Objection to Respondent's Petition for Consideration,\241 and Parisi submitted another pleading, this time styled Dan Parisi's Reply to NetLearning, Inc.'s Objection to Respondent's Petition for Consideration.\242 All in all, both parties filed six pleadings, totaling more than 100 pages in just over one month—hardly the markings of a dispute resolution procedure designed to minimize legal costs.\243

On October 17, 2000, a three-member UDRP panel\244 issued a 2-to-1 decision in favor of NetLearning.\245 The majority found that Parisi maintained no rights or legitimate interests in the netlearning.com domain name and he registered and used it in bad faith.\246 The panel looked at both Parisi's actions and inactions in ruling against him:

The record reflects that the Respondent linked the domain name to pornography sites or allowed the domain name to sit dormant. The fact is that the Respondent has not used the domain name in connection with a bona fide offering of goods and services, is not commonly known by the domain

239. See NetLearning Inc.'s Rebuttal Statement to Respondent's Uniform Domain Name Dispute Resolution Policy Response, NetLearning, Inc. (No. FA0008000095471) (on file with author).


241. See NetLearning's Objection to Respondent's Petition for Consideration (on file with author).


243. This is true even though the NAF charges parties $150.00 for each supplemental filing. See NAF's Supplemental Rules Pre-October 2000, supra note 241, at R. 7.

244. Originally, NetLearning requested a single member panel. See NetLearning, Inc.'s Domain Name Dispute Complaint Form, NetLearning, Inc. (NO. 0008000095471) (on file with author). The NAF charged a fee of $750.00 for a single member panel. See NAF's Supplemental Rules Pre-October 2000, supra note 241, R. 16. However, Parisi responded to NetLearning's complaint by requesting a three-member panel. See Response in Accordance With the Uniform Domain Name Dispute Resolution Policy at 10, NetLearning, Inc. (NO. 0008000095471) (on file with author). This increased the fee from $750.00 to $2,250.00. See NAF's Supplemental Rules Pre-October 2000, supra note 241, R. 16.


246. See id. at 4.
name, and has not used the domain name in connection with a noncommercial purpose.247

The majority also concluded that Parisi registered and used the domain name in bad faith:

A reasonable conclusion is that Respondent either intended for commercial gain either directly from the references to adult entertainment and/or pornographic material or as a bargaining tool in securing a higher price than had been offered by Complainant for the domain name in issue. However, it makes little difference as to Respondent’s specific motive in his deliberate efforts—in any event it encompassed both embarrassment and harm to the Complainant.

At the very least, it entailed the registration and use of the name in bad faith.248

The panel ordered Parisi to transfer the netlearning.com domain name to NetLearning, Inc.249 The dissenting member of the panel, David Sorkin, vigorously disagreed with the majority panel’s decision, going so far as to accuse NetLearning of engaging in bad faith conduct.250

At this point, if the UDRP were truly an expedited domain name dispute resolution mechanism, the UDRP panel’s decision would be binding, absent a finding of exceptional circumstances under which the FAA permits an arbitrator’s decision to be overturned.251 However, this was not the case. The panel’s decision was not the final word. Soon after the decision, Parisi filed a declaratory relief complaint seeking to overturn the panel’s order to transfer the domain name to NetLearning.252

Even the filing of this lawsuit was a curious event. Parisi filed his original declaratory relief action on October 26, 2000253—within the ten-day deadline for filing a lawsuit to stay implementation of a UDRP panel decision.254 However, Parisi filed this lawsuit in the United States District Court for the Southern District of New York.255 The

247. Id. at 4.
248. Id. at 5. While noting that Parisi claimed he never offered the netlearning.com name for sale to any third party, the majority panel “reject[ed] the accuracy” of that denial and, instead, found more persuasive the affidavit of NetLearning’s CFO, Jon Russell, that he had personally seen Parisi list the netlearning.com domain name for sale on a third party website. Id. at 4.
249. Id. at 5.
250. Id. at 7 (Sorkin, Arb., dissenting).
253. See id.
254. UDRP, supra note 2, § 4(k).
255. See Original Parisi Declaratory Relief Complaint, Parisi (No. 00-1832-A) (on file with author).
problem was that the UDRP allows a complainant to select the exclusive jurisdiction for actions arising out of the UDRP decision choosing between the location of the domain name registrar or the domain name registrant.\textsuperscript{256} NetLearning selected the court jurisdiction where the registrar (in this case Network Solutions, Inc.) was located, Northern Virginia.\textsuperscript{257}

As a result, Parisi had filed his action in the wrong court, thereby failing to comply with Section K, which stays implementation of a UDRP decision only when a lawsuit is filed in the \textit{proper} jurisdiction—with "proper" defined as the jurisdiction selected by the complainant.\textsuperscript{258} Apparently realizing his mistake, Parisi scurried to re-file the lawsuit, on the same date, in the United States District Court for the Eastern District of Virginia.\textsuperscript{259}

Even still, the matter continued to meet with curious developments in terms of wasted time and expense. For example, despite filing the lawsuit on October 30, 2000, Parisi did not serve NetLearning with a copy of the complaint until February 5, 2001.\textsuperscript{260} This dilatory service formed at least a partial basis for NetLearning's Motion to Dismiss Parisi's complaint on the grounds that Parisi's complaint was an untimely motion to vacate an arbitrator's award (the UDRP panel's decision) under the FAA, which has a three-month deadline for filing

\textsuperscript{256} See Domain Name Dispute Complaint Form, NetLearning, Inc. v. Parisi, No. FA0008000095471 (NAF Oct. 16, 2000) (Merhige, Johnson & Sorkin, Arbs.) (on file with author). The relevant portion of the complaint form reads:

\begin{quote}
2. Complainant submits to court jurisdiction in (one of the following must be checked):

- The location of the principal office of the Registrar where the domain name was registered.
- The location of the domain name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time the complaint was submitted to the Forum. \textit{Rule 3(b)(xiii)}
\end{quote}

\textit{Id.}

\textsuperscript{257} \textit{Id.} Parisi's counsel also apparently misunderstood UDRP Rule 3(b)(xiii), as his counsel transmitted a letter to the netlearning.com registrar with a copy of the complaint filed in the Southern District of New York as well as instructions not to transfer the domain name to NetLearning "pursuant to the relevant rules of the UDRP . . ." despite the fact that the "relevant rules" clearly called for the complaint to be filed in a court of competent jurisdiction located in Northern Virginia. \textit{See} Letter from Ari Goldberger, Attorney at Law, to Michael Johnson, Business Affairs Office, Network Solutions, Inc. (Oct. 26, 2000) (on file with author).

\textsuperscript{258} See UDRP, supra note 2, § 4(k); NetLearning's Domain Name Dispute Complaint Form, \textit{NetLearning, Inc.} (No. FA0008000095471) (NAF Oct. 16, 2000) (Merhige, Johnson & Sorkin, Arbs.) (on file with author); Parisi's Original Complaint, \textit{Parisi} (No. 00-1823-A) (filed in the United States District Court for the Southern District of New York).

\textsuperscript{259} See Second Parisi Declaratory Relief Complaint, \textit{Parisi} (No. 00-1823-A) (on file with author).

\textsuperscript{260} \textit{Parisi}, 139 F. Supp. 2d at 748 & n.6.
motions to vacate.\textsuperscript{261} The district court held that a \textit{UDRP} decision was not an arbitration decision subject to the FAA; therefore courts are not subject to the FAA's deferential limitations.\textsuperscript{262} Following the court's ruling, the parties proceeded to written and oral discovery, including Rule 26 Disclosures, a Rule 26(f) Planning Meeting and Report to Court, interrogatories, requests for production, and depositions of various witnesses and parties.\textsuperscript{263} Finally, in April 2002, nearly a year and a half after the October 2000 \textit{UDRP} decision, the case went to trial before Judge Leonie Brinkema.\textsuperscript{264}

During the dispute, one of Parisi's primary arguments was that he could not have "registered" netlearning.com in "bad faith" because NetLearning was not incorporated when Parisi first registered the domain name.\textsuperscript{265} In response, NetLearning argued that, because a domain name registration expires after a set period of time, each time a registrant renews its registration constitutes a new "registration,"\textsuperscript{266} so subsequent renewals are subject to the \textit{UDRP}'s prohibition against registering and using a domain name in bad faith.\textsuperscript{267}

This seemingly subtle point ultimately became very important because NetLearning argued that, while Parisi's original registration might not have been made in bad faith, his subsequent re-registrations (and re-direction to the whitehouse.com website) were made with the bad faith goal of disparaging NetLearning.\textsuperscript{268}

At the bench trial's conclusion, Judge Brinkema indicated that she was inclined to agree with NetLearning's argument that subsequent re-registrations could not be made in bad faith.\textsuperscript{269} However, before

\begin{itemize}
\item \textsuperscript{261} \textit{Id.} at 749; 9 U.S.C. § 12 (2000).
\item \textsuperscript{262} \textit{Id.} at 745-46, 753.
\item \textsuperscript{263} \textit{See, e.g.}, Deposition of Dan Parisi, \textit{Parisi} (No. 00-1823-A) (on file with author); Deposition of Wayne Wood, \textit{Parisi} (No. 00-1823-A) (on file with author); Plaintiff Dan Parisi's Objections and Responses to Defendant NetLearning's First Interrogatories and Document Requests, \textit{Parisi} (No. 00-1823-A) (on file with author).
\item \textsuperscript{264} \textit{See} Telephone Interview with Tony R. Dalton, Counsel for NetLearning, Woolf, McClane, Bright, Allen & Carpenter PLLC (Aug. 29, 2004). Interestingly, the court record reflects that counsel for the parties thought they had settled this matter in October 2001. \textit{See} NetLearning's Motion to Enforce Settlement Agreement at 2, \textit{Parisi} (No. 00-1823-A) (on file with author). However, the record further reflects that Parisi refused to settle in accordance with the terms his counsel had seemed to agree. \textit{Id.}
\item \textsuperscript{265} \textit{See} Plaintiff's Memorandum in Support of Motion for Summary Judgment and Judgment on the Pleadings at 1-2, \textit{Parisi} (No. 00-1823-A) (on file with author).
\item \textsuperscript{266} \textit{See} NetLearning's Response in Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment at 9-10, \textit{Parisi}, (No. 00-1823-A) (on file with author).
\item \textsuperscript{267} \textit{Id.} at 10.
\item \textsuperscript{268} \textit{Id.} at 9-11.
\item \textsuperscript{269} \textit{See} Telephone Interview with Tony R. Dalton, Counsel for NetLearning, Wolf, McClane, Bright, Allen & Carpenter PLLC (Aug. 29, 2004) (on file with author).
\end{itemize}
she could rule, Parisi and NetLearning abruptly settled their dispute and filed an Order of Dismissal on April 26, 2002. \(^{270}\) While the terms of the settlement were confidential, it is worth noting that NetLearning, Inc. is the current registrant for the netlearning.com domain name. \(^{271}\)

**B. Lessons To Be Learned From Parisi v. NetLearning**

Ultimately, the dispute between Parisi and NetLearning presents a clear example of how the UDRP can fail its most basic goals of reducing litigation time and expenses. While hindsight is almost always filled with clearer vision, even a cursory review reveals that NetLearning would have saved considerable time and expense if it had skipped the UDRP process and proceeded straight to court.

In many respects, the UDRP did little more than delay NetLearning. For example, although the UDRP seeks to reduce the amount of time and money spent in a dispute, that simply was not the case, as evidenced by the more than 100 pages of pleadings filed in this supposedly expedited process.

What allowed for the filing of such a large amount of documents (and, presumably, legal fees for preparing those documents) under a mechanism designed to reduce filing and their attendant legal fees? The answer is simple: the UDRP's decision to allow dispute resolution providers to establish their own supplemental rules. Take for instance the National Arbitration Forum's supplemental rules. The UDRP gives each provider the autonomy to address technical and procedural issues such as fees, word limits, and page limits. \(^{272}\) In fact, the UDRP's only limitation on supplemental rules is that they "shall not be inconsistent with the Policy." \(^{273}\)

The NAF's rules provide that a complaint and a response shall not exceed ten pages. \(^{274}\) The parties may also "submit additional written

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270. See Agreed Order of Compromise and Dismissal, Parisi (No. 00-1823-A) (on file with author).
272. See Rules, supra note 2, R 1.
273. Id.
274. See NAF's Supplemental Rules, supra note 209, ¶¶ 4-5. While the NAF has amended its supplemental rules since the NetLearning matter was filed in 2000, it has not changed the ten-page limits to complaints and responses. See NAF's Supplemental Rules Pre-October 2000, supra note 241, ¶¶ 4-5. Even with the ten-page limit, it is unclear from the NAF supplemental rules whether exhibits or appendices are included within this limit or if the limit only applies to the actual pleading. If it is the latter, then the NAF supplemental rules would appear to allow an unlimited number of exhibits and/or appendices to a complaint or response so long as the pleading itself did not exceed ten pages.
statements and documents” in support of the complaint or response within a five-day time period.\textsuperscript{275} However, the NAF’s supplemental rules do not place any page or word limit on the additional written statements nor, for that matter, do they limit the number of additional statements that parties may submit.\textsuperscript{276} The result is that, under the NAF’s rules, parties cannot exceed ten pages in their initial filings, but they are free to submit an unlimited number of pages of supplemental filings.\textsuperscript{277}

This obviously contradicts the UDRP’s goal of providing an inexpensive dispute resolution mechanism because, while the rules provide for an expedited time frame for resolving disputes,\textsuperscript{278} the rules do not prevent parties from submitting hundreds of pages of supplemental pleadings, likely expending thousands of additional dollars. That is exactly what happened in the dispute between NetLearning, Inc. and Parisi.\textsuperscript{279}

To avoid this, the UDRP could have simply limited the number of pleadings each party could file as well as the number of pages for these filings. Failing to do so allows for situations such as the Parisi and NetLearning dispute where litigating a UDRP action simply adds another layer of expense toward resolving a dispute.\textsuperscript{280}

Another example of inefficiency from the NetLearning-Parisi dispute is the total lack of deference the federal trial court afforded the UDRP panel’s factual findings or legal conclusions. The Parisi court specifically held that trial courts should review UDRP decisions de novo, basing this conclusion in part on the fact that “the UDRP itself” contemplates de novo review for UDRP decisions.\textsuperscript{281} This essentially eliminates the import of any legal conclusions or even factual findings made by the UDRP panel. The UDRP decision becomes nothing more than an extra-judicial viewpoint for a trial judge to potentially consider—with no more legal precedence than a journal or law review article.

As participation in the UDRP is contract-driven and, therefore, mandatory only for the domain name registrant, the UDRP cannot force an unwilling complainant to seek relief under the UDRP.\textsuperscript{282} However, once a complainant decides to pursue a UDRP action, the UDRP drafters could have easily constructed a process more like binding arbitration so that a panel decision, even if appealed in court, would receive deference, and winning or losing a UDRP decision

\textsuperscript{275} See NAF’s Supplemental Rules, supra note 209, § 7.
\textsuperscript{276} See id.
\textsuperscript{277} See id. §§ 4, 7.
\textsuperscript{278} See id. § 7.
\textsuperscript{279} See supra notes 241-46 and accompanying text.
\textsuperscript{280} See supra note 246 and accompanying text.
\textsuperscript{281} Parisi, 139 F. Supp. 2d at 752.
\textsuperscript{282} UDRP, supra note 2, §§ 1, 4.
would have at least some consequence. Instead, the UDRP is structured as a "mandatory administrative proceeding" that is meaningless in court. 283

If NetLearning had anticipated Parisi’s vigorous efforts to fight the transfer of the netlearning.com domain name, it would have made little sense for NetLearning to pursue a UDRP action. Going to court would have been more efficient because NetLearning could have saved the time and expense it incurred in litigating a UDRP action that ended up having no substantive or procedural legal value.

Ultimately, the dispute between NetLearning and Parisi over the netlearning.com domain name provides a clear, real-world example of the UDRPs problems. While some might respond that nobody can be certain when a party will contest a UDRP action, this reasoning is shortsighted. For matters in which negotiations have failed and parties have exchanged various demand-like letters (or sometimes both), it does not require a crystal ball to predict the opposition’s aggressive stance. This outcome can be gleaned easily from the parties’ posturing.

In these cases, despite its intentions of providing timely and inexpensive resolutions to domain name disputes, the UDRP provides neither because it allows for an unlimited number of supplemental pleadings, 284 yet provides no deference if appealed in court. 285 Instead, the dispute between NetLearning and Parisi demonstrates that, in a contested case, the UDRP may be nothing more than an expensive prologue.

V. PROPOSED SOLUTIONS

The UDRP was conceived with noble goals: providing timely and inexpensive resolutions to domain name disputes for an industry where timeliness is critical and the disputing parties are often individuals or small companies that lack the resources to pursue or defend a full-blown lawsuit. 286 However, the UDRP’s decision not to structure itself as binding arbitration has led to a mechanism that denies parties any real level of finality because U. S. courts have refused to afford UDRP decisions deference. 287

The UDRP further suffers from the fact that individual dispute resolution providers may adopt supplemental rules that essentially allow for unlimited pleadings. 288 As a result, prosecution or defense of a UDRP action could indeed end up an expensive endeavor. Together, these failures have resulted in a dispute resolution mechanism that, in

283. Id. § 4.
284. See NAF’s Supplemental Rules, supra note 209, § 7.
285. See supra Part III.B.
286. See Second Report, supra note 205, at ¶ 4.1(c).
287. See supra Part III.B.
288. See supra Part III.C.
contested matters, simply fails its intended purpose of quickly and inexpensively resolving domain name disputes. This leads to a final, important issue: Should the UDRP be revised to eliminate or reduce these inefficiencies and, if so, how?

As to the first question, the answer is obviously yes. The concept of providing fast and inexpensive dispute resolution should not be rejected out of hand—the need for quick resolution concerning Internet issues is paramount. Clearly, the UDRP is a very good idea. Unfortunately, as the concept developed, it lost its form so that today, for many domain name disputes, it can be more efficient to opt for a court-administered resolution.

However, this does not have to be the case. Several structural changes can be made to achieve the UDRP's goals. The final section of this article outlines two proposals.

A. Two Proposed UDRP Changes Designed to Enable the UDRP to Provide Quicker and Less Expensive Resolutions in Contested Domain Name Disputes

Because the underlying UDRP goals of reduced time and reduced expense in resolving disputes are beneficial, the UDRP is certainly worth trying to fix so that these goals can be realized in many contested cases. If implemented, the following two proposals would dramatically reduce the UDRP's existing inefficiencies providing these goals:

1. Restructure UDRP Proceedings as Binding Arbitrations Subject to the Federal Arbitration Act

As discussed above, many nations have embraced binding arbitration as a viable and acceptable mechanism for resolving disputes.289 Despite this, the UDRP drafters decided against binding arbitration.290 However, the WIPO Final Report indicated that after time passed and the UDRP developed, the structure should be reevaluated.291 That time is now.

Restructuring the UDRP as binding arbitration would provide its decisions with a deferential standard similar to the FAA.292 This would give decisions more weight and reliability because the FAA allows courts to overturn decisions only in narrow circumstances.293 Complainants would be encouraged to pursue relief through the UDRP because, if they prevail, the victory is not rendered useless simply by filing a de novo court action. Similarly, the restructure should elimi-
nate the provisions that afford parties "Pre-Decision" and "Post-Decision" rights to avoid litigating a UDRP action. Until these changes occur, U.S. courts will continue to refuse to afford UDRP decisions deference which, in turn, will prohibit the UDRP from obtaining the level of finality necessary to convince complainants not to bypass the UDRP and proceed straight to court.

2. Eliminate or Dramatically Reduce the Number and Length of Permitted Supplemental Pleadings

In addition to binding arbitration, the UDRP can eliminate or dramatically reduce the number of supplemental pleadings allowed and the length of those pleadings. This would help avoid a replay of the Parisi v. NetLearning, Inc. dispute. The UDRP does not have to allow an unlimited number of pleadings. Allowing for unlimited filings leads to abuse and provides a tempting opportunity for participants to try to get in the proverbial last word. This is a simple step and one that the UDRP should take immediately to reign in inefficiencies resulting from unlimited supplemental filings.

In the end, the UDRP's current structure fails to serve its stated purpose—at least for contested domain name disputes. As demonstrated by NetLearning, Inc. v. Parisi, complainants who expect a UDRP action to be contested are often better served in court because filing a UDRP action will likely increase costs and delay resolution. Whether the UDRP truly becomes an efficient option will likely be determined by whether it can reevaluate its approach and adopt more efficient provisions for all types of domain name disputes. Having passed its five-year anniversary, now is a prime time for such a reassessment.

294. See supra Part III.A.2.
295. See supra Part IV.B.
296. See supra Part III.B.