

# *Online Dispute Resolution Law & Practice in China*

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# DR Overview

- ▶ Judicial proceeding
  - Civil proceeding
- ▶ Alternative dispute resolution (ADR)
  - Arbitration
    - Med-Arbitral
  - Mediation
  - Other ADR
    - Domain names dispute resolution

# E-Court Initiative

- ▶ E-evidence
  - Admissibility
    - Civil Procedure Law
  - Weight
    - ▶ E-Signature Law
- ▶ Court hearing
- ▶ Publication of judicial decisions/orders online
  - Supreme People's Court Stipulations (2013)

# Arbitration

- ▶ Arbitration Law (1995)
  - Arbitration Commissions
    - Arbitration for international trade by China International Chamber of Commerce
  - Arbitration Agreements
    - An arbitration agreement shall include the arbitration clauses provided in the contract and any other *written form* of agreement concluded before or after the disputes providing for submission to arbitration.
  - Proceeding
    - An arbitration tribunal shall hold a tribunal session to hear an arbitration case.
  - Awards
    - The parties shall execute an arbitration award.
    - If one party fails to execute the award, the other party may apply to a people's court for enforcement in accordance with the relevant provisions of the Civil Procedure Law, and the court shall enforce the award.

# Online Arbitration

- ▶ Arbitration Commissions
  - China International Economic and Trade Arbitration Center (CIETAC) Online Arbitration Rules
- ▶ Arbitration Agreements
  - Supreme People's Court Judicial Interpretations (2006)
- ▶ Proceeding
- ▶ Awards

# Mediation online

- ▶ People's Mediation Law (2011)
  - People's mediation committee
  - Legal effect
    - Helping and promoting parties to voluntarily reach mediation agreements through consultation on the basis of equality through persuasion, guidance, and other methods to resolve disputes among people.
    - A written mediation agreement may be prepared once an agreement is reached through the mediation
- ▶ Sina Weibo Community people's mediation committee

# Domain Name System

- ▶ Domain name system (DNS) ICANN
  - Generic Top Level Domains (gTLDs)
    - .com, .org, .net– Open for all people and entities on a global basis
    - .edu, .gov, .mil, .int – Limited users
    - New TLDs (Nov. 16, 2000)–  
.biz, .info, .name, .pro, .museum, .aero, .coop, .travel,  
(.xxx), .asia, .mobi
    - IDNs
  - Country Code Top Level Domains (ccTLDs)
    - .ca, .jp, .us, .uk, .cn, .hk, .mo, etc.
- ▶ China's DNS CNNIC
  - Latin-script domain names under .CN
    - Category names by geographical regions and industry
    - .bj.cn; sh.cn, .com.cn, .net.cn
    - Opening up second-level domains
  - Chinese-character domain names
    - “中国”(.cn), “公司”(.cn), “网络”(.cn) “政务” “公益”

# *UDRP Overview*

- ▶ ICANN
- ▶ Uniform Domain Name Dispute Resolution Policy (UDRP)
  - October 1998: Policy and Rules
  - Service Providers: WIPO, NAF, ADNDRC, Czech Arbitration Court
- ▶ UDRP Review Task Force
- ▶ New gTLD program



# Applicable Disputes

- ▶ You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that
  - (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
  - (ii) you have no rights or legitimate interests in respect of the domain name; and
  - (iii) your domain name has been registered and is being used in bad faith.
- ▶ In the administrative proceeding, the complainant must prove that each of these three elements are present.

# Bad Faith

- ▶ For the purposes of [Paragraph 4\(a\)\(iii\)](#), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:
  - (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
  - (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
  - (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
  - (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

# Legitimate Interests

- ▶ When you receive a complaint, you should refer to [Paragraph 5](#) of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of [Paragraph 4\(a\)\(ii\)](#):
  - (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
  - (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
  - (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

# CNNIC DRP

- ▶ CNDRP & CNDRP Rules (Sept. 25, 2002; revised on March 17, 2006)
  - CN domain
  - Service providers: CIETAC & HKIAC
- ▶ Scope of proceeding: Chinese DNs and English DNs, trademark rights and other civil rights
- ▶ Basis of jurisdiction: CIDNR
- ▶ Successful complaint
  - Disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complaint has civil rights or interests (e.g. Complainant's registered trademark);
  - Disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
  - Disputed domain name holder has registered or is being used the domain name in bad faith

# 2006 Revision

- ▶ CNDRP revised (effective as of March 17, 2006)
- ▶ Three significant changes
  - The limitation period for domain name disputes has been clarified: ownership disputes must be commenced with the domain name dispute resolution organs within 2 years of registration of the domain name.
  - Explanation of the meaning of "bad-faith" has been provided. It will be necessary to show that the registration was made for the purpose of transferring (including selling or leasing) the domain name to the party who has a legal right to the name, and has lodged the complaint, or to a competitor of that party.
  - A list of defenses is provided.

Thank You!