

LAW AND POLICY FOR RESOLVING DOMAIN NAME DISPUTES IN HONG KONG – PRESENT AND FUTURE



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Domain name disputes, a by-product of the growth of the Internet and electronic commerce, are becoming more frequent in Hong Kong. The author considers how domain name disputes can be dealt with under Hong Kong law, having regard to legal developments on domain name dispute resolution in other jurisdictions. The author also considers the Uniform Dispute Resolution Policy (“UDRP”) adopted in 1999 by the Internet Corporation for Assigned Names and Numbers (“ICANN”), the international corporation responsible for international domain name policy. The author concludes that Hong Kong should adopt a UDRP-like dispute resolution procedure, as best suited to facilitate electronic commerce in Hong Kong.

Introduction

Domain name disputes are a by-product of the growth of the Internet and electronic commerce. Although domain name registration began in the United States in the early 1980s, few disputes ensued in the eighties as use of the Internet remained largely in the realm of academic circles. When the Internet and electronic commerce became popular in the mid-1990s, many commercial companies came to realise the marketing and sales potential of domain names. They flocked to register domain names and the demand for domain names spawned astronomically. As the registered number of domain names grows, domain name disputes occur much more frequently.

In contrast to Western countries such as the United States, Hong Kong was a latecomer to electronic commerce. In Hong Kong, it was not until the late 1990s that electronic commerce began to develop, and the business potential of domain names came to be appreciated. Thus, domain name disputes and related litigation were, until recently, virtually unknown in Hong Kong.

With the adoption of the Electronic Transactions Ordinance¹ and other initiatives taken by the government, however, electronic commerce is

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¹ Cap 553, Laws of Hong Kong. For a commentary on the *Electronic Transactions Ordinance*, see R. Wu, “Electronic Transactions Ordinance – building a legal framework for e-commerce in Hong Kong”, 2000(1) *The Journal of Information, Law and Technology*. Available at <http://www.law.warwick.ac.uk/jilt/001/wu.html>.

currently experiencing a period of rapid growth in Hong Kong. More people and companies began to register domain names to cater for the increasing volume of electronic commerce in Hong Kong. As of April 2000, the number of domain names registered in Hong Kong reached 37,000, with more than 2,000 applications being filed every month.²

As the number of registered domain names in Hong Kong grows, domain name disputes are also increasing. For example, many Hong Kong businessmen and companies began to discover their business names being registered as domain names by unrelated parties, and paid large sums to "reclaim" their domain names. In December 1999, Hutchison Whampoa, a large Hong Kong listed company, paid a sum of US\$2.5 million, together with stock options, for the domain name Tom.com.³ It was also rumoured that in August 2000 Pacific Cyberworks, a Hong Kong Internet company, paid not less than US\$1 million for the domain names of cyberworks.com and cyberworks.net.⁴ Moreover, it was discovered that at least six domain names similar to Pacific Century Cyberworks HKT were registered by individuals unrelated to either Pacific Century Cyberworks or HKT following the historic takeover of the latter in 2000.⁵ To protect its name, Pacific Century Cyberworks HKT registered a long list of domain names, which were different variations on its name.⁶ Since then, many companies in Hong Kong have followed the practice of Pacific Century Cyberworks to protect their names.

In other cases, individuals registered the names of famous Hong Kong companies as domain names, not for profit but for personal reasons. For example, a Hong Kong businessman claimed that his guests at a hotel wedding banquet suffered food poisoning. Determined to take revenge on the hotel owner Sun Hung Kai Properties, he registered the domain name www.sunhungkai.com and used it to operate a website to air his complaints.⁷

In recent years, litigation on domain names has increased in Hong Kong. In the case of *Sun Microsystem Inc v Lai Sun Hotels International Ltd*,⁸ the plaintiff was the world-renowned company in the field of information technology and registered owner of the domain name Sun.com, while the defendant was a Hong Kong property development company. When the defendant entered the field of media and entertainment and operated a website using the domain name www.eSun.com., the plaintiff applied for an injunction in the Hong Kong courts to restrain the defendant from using the domain name.

² "Domain-name rules inadequate: Net firms", *South China Morning Post*, 6 June 2000, at p 2.

³ Neil Taylor, "PCCW buys name Richard Li pays undisclosed amount to Texas firm for domain", *South China Morning Post*, 9 January 2001, at p 1.

⁴ *Ibid.*

⁵ Alex Lo, "Cyber-squatters' move", *South China Morning Post*, 29 May 2000, at p 5.

⁶ Alex Lo, "Cyber-squatters cash in on leading trade marks", *South China Morning Post*, 15 February 2000, at p 4.

⁷ *Ibid.*

⁸ [2000] 2 HKLRD 616-635.

The plaintiff argued that if the defendant was allowed to use the domain name to conduct business in the field of information technology, it could cause confusion because some people might think that the plaintiff was involved in some way. Deputy Judge Gill, however, rejected this argument. He found that the plaintiff fell short of establishing a blanket reputation, which was “reserved for products whose name, exceptionally, was so much a household one that a potential customer of something else altogether would still be misled as to its source if marketed under that name”.⁹ Thus, the learned judge concluded that a prospective customer of the defendant is most unlikely to be under the misapprehension that he is enjoying the benefit of the plaintiff’s production and dismissed the plaintiff’s application for injunction.¹⁰

As these cases exemplify, domain name disputes are becoming a problem in Hong Kong. It was therefore no coincidence that the Hong Kong government issued a Consultation Paper on the Review on Administration and Assignment of Internet Domain Names and Internet Protocol Address in Hong Kong (“the Consultation Paper”) in March 2000 to propose reforms for the domain name dispute resolution procedure in Hong Kong.¹¹ As one government official pointed out, the new domain name dispute resolution procedure is intended to simplify the legal process for resolving domain name disputes in Hong Kong, and dispenses with the court process and procedures.¹² The government proposal received immediate support from legal practitioners in Hong Kong, who pointed out that such a domain name dispute resolution procedure will be “an efficient means of settling domain-name disputes without the need for expensive litigation”.¹³

In March 2001, Hong Kong government officials revealed more details of the proposed domain name dispute resolution procedure. They proposed that under the new domain name dispute resolution procedure, the Hong Kong International Arbitration Centre will serve as the arbitrator. They also proposed adoption of the new domain name dispute resolution procedure by the middle of 2001.¹⁴

In the first part of this article, the question of how domain name disputes can be dealt with under current Hong Kong law will be considered. Problematic areas that are in need of reform will be identified. Reference will be made

⁹ *Ibid.*, at p 634.

¹⁰ *Ibid.*

¹¹ See Hong Kong Government, Consultation Paper on the Review on Administration and Assignment of Internet Domain Names and Internet Protocol Address in Hong Kong (“the Consultation Paper”). Available at http://www.info.gov.hk/digital21/eng/structure/con_paper.html.

¹² “Domain-name rules inadequate: Net firms”, *South China Morning Post*, 6 June 2000, at p 2.

¹³ Rob Deans, solicitor at Bird & Bird, Hong Kong, “Domain proposals welcome”, 11 July 2000, *South China Morning Post*, at p 5.

¹⁴ “The new Hong Kong domain name administration body will be established before November”, *Hong Kong Economic Journal*, 13 March 2001, at p 6.

to legal developments in domain name dispute resolution in other jurisdictions, such as the United Kingdom and the United States. Reference to these jurisdictions is helpful for two reasons. First, while the Hong Kong statutory law is similar, if not identical, to its UK counterpart, Hong Kong lags behind in its case law development because domain name disputes occurred much earlier and more frequently in the United Kingdom, and for that matter, in the United States. Second, as Halpern and Mehrotra pointed out, domain name disputes are becoming a global phenomenon and domain name dispute resolution cases are developing into a kind of "Internet Common Law".¹⁵ Thus, legal developments in domain name dispute resolution in other jurisdictions will inevitably affect Hong Kong policy-makers and courts as they formulate and interpret laws in this area. This is particularly so as the United Kingdom and the United States are widely recognised as countries with the most advanced domain name dispute resolution laws.

The second part of this article will consider the Uniform Dispute Resolution Policy ("UDRP") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the international corporation responsible for international domain name policy, in 1999. The suitability for Hong Kong of a domain name dispute resolution procedure akin to the UDRP will be considered, as well as the practical problems that need to be resolved before full implementation of such a procedure in Hong Kong can take place.

Resolving Domain Name Disputes in Hong Kong – Current Policy and Law

Domain names can be categorised by generic top-level domains (such as .com, .org) or country-code top-level domains (such as .hk). Under country-code top-level domains, the domain names can be further divided into second-level domain names by their generic description (eg .com.hk and .edu.hk). Currently, five categories of second-level domain names can be registered in Hong Kong.¹⁶ These include .com.hk, .org.hk, .net.hk, .edu.hk and .gov.hk.¹⁷ The Hong Kong Network Information Centre ("HKNIC") provides registration of such second-level domain names.¹⁸

¹⁵ Marcelo Halpern and Ajay K Mehrotra, "From international treaties to Internet norms: the evolution of international trade marks disputes in the Internet age", *University of Pennsylvania Journal of International Economic Law* p 523, at p 524.

¹⁶ For a discussion of top-level and second-level domain names, see the Consultation Paper (n 11 above), at paras 3 and 4.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, at para 9.

Under the present policy, an organisation is only qualified to apply for a domain name if it is registered with a Hong Kong public registry. For example, if an educational institution intends to apply for a domain name ending with .edu.hk, it must be an institution registered with the Education Department. Similarly, if a commercial company wants to apply for a domain name ending with .com.hk, it must be registered with the Company Registry.¹⁹

“First Come, First Served” Policy

The basic policy for domain name registration in Hong Kong is “first come, first served”. Before allocating a domain name, HKNIC will check whether any organisation has applied for the same domain name and whether any organisation has registered the domain name before. HKNIC, however, does not play the role of arbitrator if there is any legal dispute arising from the domain name registration. For example, if a trade mark owner disputes that a domain name holder infringes its legal rights, HKNIC will not intervene to judge whether the claim of the trade mark owner is justified.²⁰ Under its current dispute resolution policy, HKNIC is not responsible for resolving domain name disputes. Rather, Hong Kong courts will resolve all domain name disputes. Moreover, there is no established alternative dispute resolution policy, such as arbitration, for resolving domain name disputes in Hong Kong.

This policy of “first come, first served” was not invented by HKNIC. In fact, it has been widely adopted in other jurisdictions, such as the United Kingdom. The significance of this policy is best demonstrated by the English decision of *Pitman Training Limited el v Nominet UK*.²¹ In this case, the first defendant, Nominet UK (“Nominet”) was the registrar responsible for registration of domain names in the United Kingdom while the second defendant, Pearson Professional Limited (“Pearson”), owning Pitman Publishing, was engaged in the publishing business. The plaintiffs, Pitman Training Limited (“Pitman Training”) and its franchisee, PTC Oxford Limited (“PTC”), were engaged in the training business.

In the *Pitman* case, Pearson first applied to Nominet to register the domain name “pitman.co.uk” for its publishing business. Later, Nominet inadvertently allocated the domain name “pitman.co.uk” to PTC, which started to use it in its training business. When Pearson discovered the error, it demanded Nominet to rectify the problem and argued that the domain name “pitman.co.uk” should belong to Pearson by virtue of the “first come, first served” policy. When Nominet notified PTC that the domain name

¹⁹ *Ibid.*, para 11.

²⁰ *Ibid.*, para 12.

²¹ [1997] F S R 797 (Ch D).

“pitman.co.uk” should be transferred back to Pearson, PTC commenced legal proceedings. Sir Richard Scott, the Vice Chancellor, however, rejected all PTC claims.²²

The facts of the *Pitman* case were unique in that the domain name registrar mistakenly allotted a domain name to two different applicants. Nevertheless, it demonstrates that the applicant who applies first-in-time for a domain name can rely on the “first come, first served” policy to protect its rights in a domain name, even when the domain name is subsequently allotted to a second party by mistake.

Likelihood of confusion

In Hong Kong, there is no statutory law specifically enacted to deal with domain name disputes.²³ In the new Trade Marks Ordinance enacted in June 2000,²⁴ certain provisions are highly relevant to domain name disputes. To begin with, if a person uses a sign in the course of trade or business similar or identical to a registered trade mark in relation to goods or services identical or similar to the trade mark, *and* if his use of the sign is likely to cause confusion on the part of the public, he is liable for infringing the registered trade mark under the Ordinance.²⁵

This issue of “likelihood of confusion” was considered in the English case of *Avnet Inc v Isoact Ltd*.²⁶ In the *Avnet* case, the plaintiff was a distributor of electronic components and computer software that sold its products by catalogue. It registered its trade mark “Avnet” under class 35 of the UK Trade mark Act, which includes “advertising and promotional services, rental and leasing of advertising apparatus, hoardings, displays, screens and billboards, rental and leasing of electronic and computer-controlled advertising apparatus, displays, boards and screens”. The defendant, on the other hand, was an Internet Service Provider and used the domain name “avnet.co.uk”.

In the *Avnet* judgment, Jacob J noted that the plaintiff’s real concern was that there would be confusion over the word “avnet” on the Internet with “search engines and the like producing the wrong Avnet. A person looking for them might either give up or somehow get himself into some other sort of

²² For an analysis of the *Pitman* case, see Bina Cunningham, “Electronic Publishing – passing off” *Entertainment Law Review* 1997, 8(6), at E120–121, and Nigel Swycher, “Computers, Databases and Software” *European Intellectual Property Law Report* 1997 19(10), at D261–263.

²³ In contrast, the United States enacted the Anti-cyber-squatting Consumer Protection Act in 1999 to deal with “cyber-squatting” cases, the most common type of domain name disputes.

²⁴ Cap 559, Laws of Hong Kong. Under s 1 of the Ordinance, the new law shall come into effect on a day to be appointed by the Secretary for Commerce and Industry in the Government Gazette. At the time of writing this article, no date has been appointed by the Secretary for Commerce and Industry for operation of the Ordinance.

²⁵ *Ibid.*, s 18 (1) and (2).

²⁶ [1998] FSR 16 (Ch D).

muddle”.²⁷ Jacob J, however, disagreed as the customer “could see immediately that he is not getting an advertisement for semiconductor chips and the like, but things to do with aviation instead”. Jacob J also noted:

“It is a general problem of the Internet that it works on words alone and not a word’s relation to goods or services. So, whenever anyone searches for a word even if a searcher is looking for the word in one context, he will, or may find, Web pages or data in a wholly different context ... This may be an important matter for the courts to take into account in considering trade mark and like problems”.²⁸

The *Avnet* case highlights one fundamental conflict between the domain name system and trade mark law that constitutes an important source of domain name disputes. Under the Trade Marks Ordinance, two persons can *concurrently* use identical or similar trade marks for different classes of goods or services provided there is no confusion on the part of the public. For example, the plaintiff and defendant in the *Avnet* case can legitimately register and use the trade mark “Avnet” in different classes of goods or services under the trade mark law provided there is no confusion to the public. The scope and number of trade marks available for registration are large, reducing the number of potential disputes that arise from two companies competing for the same trade mark. In the case of domain names, however, only one domain name “avnet.co.uk” (or in Hong Kong, avnet.com.hk) is available to commercial companies, even though the companies may engage in completely different categories of commercial activities. When one commercial company registers the domain name “avnet.co.uk”, disputes will easily ensue, as other commercial companies may want to register and use the domain name.

Unjustified threats of trade mark infringement proceedings

Another provision in the Trade Marks Ordinance relevant to domain name disputes is on “justified threats of trade mark infringement proceedings”. Under the Ordinance, if a person threatens to bring an action against another person for infringement of a registered action in respect of any use other than application of that trade mark to goods or their packaging or supply of services under that trade mark, any person aggrieved by the threat may apply to court for a declaration that the threats are unjustifiable. The person aggrieved can also apply for an injunction against the continuance of the threats and claims for damages by reason of the threats.²⁹

²⁷ *Ibid.*, p 18.

²⁸ *Ibid.*

²⁹ Note 24 above, ss 26(1) and (2).

Such an unjustified threat of trade mark infringement proceedings was at issue in the English case of *Prince plc v Prince Sportswear Group Inc.*³⁰ In this case, the plaintiff (“Prince IT”) was a UK company engaged in the business of information technology services. It registered the domain name “prince.com” in the United States and operated a website under that domain name. The defendant (“Prince Sports”) was a famous US company engaged in the business of manufacturing tennis rackets and registered the trade mark PRINCE throughout the world, including both the United Kingdom and United States. When Prince Sports issued a letter, through its US attorney, to Prince IT alleging that the registration and use of “prince.com” constituted infringement of its trade mark rights to PRINCE, Prince IT commenced proceedings in an English court to seek a declaration and apply for relief under section 21 of the UK Trade Marks Act 1994.³¹

In the *Prince* judgment, Neuberger J held that a communication would constitute a threat under the Trade Marks Act “if it would have been read by the ordinary reader, in the position of the plaintiff, as constituting a threat by the defendant of proceedings for infringement of a United Kingdom registered trade mark”.³² Neuberger J also held that section 21 of the Trade Marks Act is concerned to “ensure that threats of infringement proceedings are not made casually or recklessly. Anyone who wishes to raise the possibility of infringement proceedings is, therefore, required to consider with care whether he has a case, and if he is to communicate with another, to take care in expressing himself”.³³ Accordingly, Neuberger J granted Prince IT a declaration and injunction pursuant to section 21 of the Trade Marks Act.³⁴

The *Prince* judgment is therefore significant in two respects. First, it clarifies the protection and relief available to the domain name holder under the Trade Marks Ordinance when a person holding a trade mark similar to the domain name issues unjustified threats. It therefore enables the domain name owner, to a certain extent, to protect its domain name acquired in good faith.

Second, it highlights the inherent conflict of a territory-based trade mark law system and domain names that are global in nature. As with many other laws, trade mark laws are country-specific or jurisdiction-specific. For example, one person can register a trade mark in one jurisdiction, say, Hong Kong, while another person can register the same trade mark in another jurisdiction, say, United Kingdom. Under a territory-based trade mark system, there

³⁰ [1998] F S R 21 (Ch D).

³¹ This is the English equivalent of s 26 of Trade Marks Ordinance.

³² Note 30 above, at p 29.

³³ *Ibid.*, at p 34.

³⁴ For a discussion of the *Prince* case, see David Osborne, “Domain Names, Registration & Dispute Resolution and Recent UK cases” *European Intellectual Property Review* 1997 19(11) at pp 644–650.

can be no conflict between the two persons in their trade mark rights so long as they confine their use of the trade mark to their own jurisdictions. Domain names, however, are global in nature. No matter which jurisdiction a domain name is registered, it can be accessed in all other jurisdictions. This brings the domain names into conflict, actual or potential, with trade marks registered in other countries or jurisdictions that are similar or identical to the domain names.

In fact, Halpern and Mehrota have criticised the existing territory-based trade mark law system that was based on an outdated business model and assumed that different geographical areas were distinct commercial markets. Built on such a business model, the trade mark law system was designed to give the trade mark holder legal protection only in the country or jurisdiction in which he conducted his business. This business model is, however, rendered obsolete with the emergence of the Internet and electronic commerce because most trade mark holders are doing business in the global market through the Internet.³⁵ As electronic commerce continues to flourish in Hong Kong, more and more companies will register domain names to facilitate their online businesses. Thus, such conflicts between the territory-based trade mark law system and domain names are bound to emerge in future unless Hong Kong reforms its trade mark law system.

Taking unfair advantage of reputable trade marks

Another provision in the Trade Marks Ordinance relevant to domain name disputes is on "taking unfair advantage of reputable trade marks". Under the Ordinance, a person is liable for infringing a registered trade mark if he *uses*, in the course of trade or business, a sign in relation to goods or services which are not identical or similar to those for which the trade mark is registered, if his use of the sign "without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark".³⁶

In other jurisdictions, similar provisions can be used as a useful weapon to combat cyber-squatting. Cyber-squatting means that a person registers the names of famous companies or individuals as domain names and attempts to sell them to their rightful owners for a profit. There are many cyber-squatting cases in other jurisdictions, such as the United Kingdom and United States.

In the United Kingdom, the most famous cyber-squatting case is *Marks & Spencer Plc v One in a Million Ltd and Others*.³⁷ In this case, the defendant

³⁵ See Halpern & Mehrota (n 15 above), at pp 530–531.

³⁶ Note 24 above, s 18(4).

³⁷ [1999] FSR 1.

("One in a Million") registered many names of famous companies as domain names, such as "ladbrokes.com", "sainsbury.com", "sainsburys.com", "marksandspencer.com", "markspencer.co.uk", "cellnet.net", "bt.org", "virgin.org", "britishtelecom.co.uk", "britishtelecom.net", and "britishtelecom.net" and "britishtelecom.com". One in a Million then sought to sell them to such companies as Marks & Spencer Plc, J Sainsbury Plc, Virgin Enterprises Ltd, British Telecommunications Plc, and Ladbrokes Plc. These companies commenced legal proceedings against One in a Million on various grounds, including, *inter alia*, trade mark infringement under section 10 (3) of the UK Trade Marks Act 1994.³⁸

In the *One in a Million* case, One in a Million argued that it had never used the domain names so section 10(3) of the UK Trade Marks Act could not be invoked. The English Court of Appeal, however, rejected this argument. In the Court of Appeal judgment, Aldous LJ held that:

"I am not satisfied that section 10(3) does require the use to be trade mark as use or confusing use, but I am prepared to assume it does. Upon that basis I am of the view that threats to infringe have been established. The appellants [One in a Million] seek to sell the domain names that are confusingly similar to registered trade marks. The trade marks indicate origin. That is the purpose for which they were registered. Further, they will be used in relation to the services provided by the registrant who trades in domain names.

Mr Wilson [counsel for One and a Million] also submitted that it had not been established that the contemplated use would take unfair advantage of or was detrimental to the distinctive character or reputation of the respondents' trade mark. He is wrong. The domain names were registered to take advantage of the distinctive character and reputation of the marks. That is unfair and detrimental".³⁹

It is interesting to note that similar reasoning was adopted in the case of *Panavision International, LP v Dennis Toeppen*,⁴⁰ a landmark decision on cyber-squatting in the United States. In the *Panavision* case, the defendant Dennis Toeppen ("Toeppen") was a cyber-squatter similar to One in a Million in the United Kingdom. Toeppen registered the domain name Panavision.com and

³⁸ The English equivalent of s 18(4) of *Trade Marks Ordinance*.

³⁹ Note 37 above, at p 25.

⁴⁰ 141 F3d 1316.

attempted to resell it to the plaintiff, Panavision. In the Court of Appeal judgment, Thomas Circuit J held that Toeppen's "commercial use" was his attempt to sell the trade mark itself.⁴¹

If Hong Kong courts follow the *One in a Million* decision, registration of famous trade marks owned by Hong Kong companies as domain names will be held as constituting trade mark infringement under section 18 (4) of Trade Marks Ordinance, as such act takes unfair advantage of the distinctive character or reputation of a trade mark that is similar or identical to the domain name. Moreover, such an act will be held as detrimental to the reputation of the trade mark as well.

Common law doctrine of passing off

Apart from the Trade Marks Ordinance, the other legal doctrine that can be employed in dealing with domain name disputes is the common law doctrine of passing off. For example, the plaintiffs in the *One in a Million* case claimed on two grounds. Apart from the ground of trade mark infringement, they also claimed on the ground of passing off under common law. In that case, *One in a Million* asserted that it registered domain names with a view to making profits either by selling them to the owners of the goodwill, using the blocking effect of the registration to obtain a good price, or, in some cases, selling them to collectors or to other persons who could have a legitimate reason for using them. Thus, *One in a Million* argued that its acts should not amount to passing off.

The English Court of Appeal, however, rejected such an argument. In delivering the Court of Appeal judgment, Aldous LJ gave the following reasons:

"... registration of a domain name by the appellants [ie *One in a Million*] such as 'marksandspencer' made a false representation that they are associated or connected with Marks & Spencer Plc... This amounts to a false representation which constituted passing off ... Further, registration of the domain name including the words Marks and Spencer is an erosion of the exclusive goodwill in the name which damages or is likely to damage Marks & Spencer Plc".⁴²

In the same judgment, Aldous LJ also developed the concept of "instruments of fraud" in describing the acts of passing off committed by *One in a Million*. The judge explained the concept as follows:

⁴¹ *Ibid.*, at p 1325.

⁴² Note 37 above, at p 23.

“The motive of the appellants [One in a Million] was to use the respondent’s goodwill, and to threaten to sell the domain name to another who might use it for passing off in order to obtain money from the respondents. The value of the names lay in the threat that they would be used in a fraudulent way. The registrations were made with the purpose of appropriating the respondents’ goodwill. They were instruments of fraud”.⁴³

Future Reform of Domain Name Dispute Resolution in Hong Kong

As mentioned above, the Hong Kong government issued the Consultation Paper in March 2000 to propose reforms of the domain name dispute resolution procedure.⁴⁴ In the Paper, it proposed two options for reforming the domain name dispute resolution procedure in Hong Kong. The first option was to establish a tribunal for resolving domain name disputes, while the second option was to adopt an alternative dispute resolution procedure akin to the one adopted by ICANN.⁴⁵ As the number of domain name disputes may be very small, the Consultation Paper pointed out that the first option may not be cost-effective.⁴⁶ The Hong Kong government therefore favoured the second option, namely, adopting a domain name dispute resolution procedure akin to the ICANN’s Uniform Domain Name Dispute Resolution Policy (“UDRP”).⁴⁷

Background of the UDRP

On 26 August 1999, the ICANN adopted the UDRP, which set out a framework for arbitration of domain name disputes. On 24 October 1999, the ICANN adopted a set of Rules for a Uniform Domain Name Dispute Resolution Policy (“the UDRP Rules”)⁴⁸ which set out the procedures for dispute resolution under the UDRP. The UDRP came into operation on 1 December 1999. Since that date, all ICANN accredited domain name registrars were obliged by their Registrar Accreditation Agreements with ICANN to abide by the terms and conditions of the UDRP. In other words, all domain names registered with the registrars accredited by the ICANN are subject to the UDRP. Since then, four arbitration centres have been accredited by the ICANN to arbitrate domain names disputes under the UDRP. These four centres are the WIPO Arbitration and Mediation Centre, the National Arbitration Forum, eResolution and the CPR Institute for Dispute Resolution.

⁴³ *Ibid.*, at p 24.

⁴⁴ Note 11 above.

⁴⁵ *Ibid.*, para. 48.

⁴⁶ *Ibid.*

⁴⁷ A full version of the UDRP is available at <http://www.icann.org/udrp/udrp-policy-24oct99.htm>.

⁴⁸ A full version of the UDRP Rules is available at http://www.icann.org/udrp/udrp_rules-24oct99.htm.

Under the UDRP, the substantive law for domain name dispute resolution is set out, including the concept of “abusive registration”. Abusive registration occurs when the following three criteria have been met. First, the domain name is identical or confusingly similar to a trade mark in which the complainant has a right. Second, the domain name holder has no rights or *legitimate interests* with respect to the domain name. Third, the domain name has been registered and used in *bad faith*.⁴⁹

The UDRP also lays down the factors that will be taken into account in assessing the element of bad faith. These include intent to profit from domain name speculation, intent to prevent the owner of a trade mark having the corresponding domain name, intent to dispute another’s business, and intent to pass off.⁵⁰ It also lays down the relevant factors that will be considered in assessing the legitimate interests of the domain name holders. These include bona fide use before notification of dispute, and non-commercial or fair use without intent to pass off or tarnish another’s reputation or mark.⁵¹

UDRP case law

Although the UDRP has been in force for only one year, a body of case law is gradually being built up. In the first case decided under the UDRP, *World Wrestling Entertainment Inc v Bosman*,⁵² the meaning of the term “use” in the UDRP was resolved. In that case, the respondent, Bosman, registered the domain name “worldwrestling.com” and then offered to sell the domain name to the World Wrestling Federation (“WWF”). WWF commenced proceedings on the basis that Bosman had registered a domain name identical to its trade mark and used the domain name without having any legitimate interest in it. Eventually, the panel ruled that Bosman’s offering the domain name to WWF revealed that his “primary purpose in registering the domain name was to sell, rent, or otherwise transfer it to the complainant for a valuable consideration in excess of [his] out of pocket expenses”.⁵³ On that basis, and on the authority of such US decisions as *Panavision International, LP v Denis Toeppen*⁵⁴ and *Intermatic Inc v Toeppen*,⁵⁵ the panel held that Bosman had “used” the domain name in bad faith and ordered the transfer of the domain name worldwrestling.com to the WWF.

⁴⁹ Para 4(a), the UDRP.

⁵⁰ Para 4(b), the UDRP.

⁵¹ Para 4(c), the UDRP.

⁵² Case No D99-0001. Available at <http://arbiter.wipo.int/domains/decisions/html/d99-0001.html>. For a discussion of the case, see Rachel Montagnon, “Computers – WIPO resolves dispute over ‘Worldwrestlingfederation.dom’ domain name – the first case to be decided under the new ICANN uniform domain name dispute policy”. *European Intellectual Property Review* 2000 22(3), at N37–38.

⁵³ Para 4(b), the UDRP.

⁵⁴ Note 40 above.

⁵⁵ 947 F. Supp. 1227 (N.D. Ill.1996).

In the case of *Telstra Corp Ltd v Nuclear Marshmallows*,⁵⁶ the panel further clarified the meaning of the term “use”. The complainant in this case (“Telstra”) was the largest telecommunications company in Australia and operated a website with the domain name “telstra.com”. The respondent, Nuclear marshmallows (“NM”), registered the domain name “telstra.org”. Unlike the *Bosman* case, NM did not offer to sell the domain name after registering the domain name. Eventually, the panel held that:

“The relevant issue is not whether the respondent is undertaking a positive action in bad faith in relation to the acted in bad faith but whether, in all circumstances of the case, it can be said that the respondent acting in bad faith. The distinction between undertaking a positive action in bad faith and acting in bad faith may seem a rather fine distinction, but it is an important one. The significance of the distinction is that *the concept of a domain name being used in bad faith is not limited to positive action, inaction is within the concept*. In other words, it is possible, in certain circumstances, for inactivity by the respondent to amount to the domain name being used in bad faith”.⁵⁷

In the *Telstra* case, the panel also pointed out that the circumstances set out for bad faith in the UDRP did not constitute an exhaustive list.⁵⁸ In this case, the panel held that the respondent’s passive holding of the domain name amounted to bad faith, based on a set of unique circumstances. These included: the good reputation and publicity of the complainant’s trade mark; no actual or contemplated good faith use by the respondent of the domain name; and the respondent concealing its true identity and giving false details in registering the domain name.⁵⁹ As the *Telstra* case clarified, the circumstances of bad faith stated in the UDRP Rules are not exhaustive. It has therefore become easier for trade mark owners to satisfy the bad faith requirement in the UDRP.

One interesting issue that arises under the UDRP is whether it protects the names of famous individuals in the same manner as it protects famous companies. This issue was brought up in the cases of *Julia Roberts v Russell Boyd*⁶⁰ and *Jeannette Winterson v Mark Hogarth*.⁶¹ In the *Julia Roberts* case, the complainant was the famous actress and the respondent registered the

⁵⁶ Case No D2000-0003. Available at <http://arbitrator.wipo.int/domains/decisions/html/d2000-0003.html>. For a discussion of the *Telstra* case, see D Kovacs, “WIPO: Computers & Databases – Domain Names – Bad Faith” in *European Intellectual Property Review* 2000, Vol 22 (6) at N89–90.

⁵⁷ *Ibid.*, at para 7.9.

⁵⁸ *Ibid.*, at para 7.10.

⁵⁹ *Ibid.*, at para 7.11.

⁶⁰ Case No D2000-0210. Available at <http://arbitrator.wipo.int/domains/decisions/d2000-0210.html>.

⁶¹ Case No D2000-0235. Available at <http://arbitrator.wipo.int/domains/decisions/html/d2000-0235.html>.

domain name “juliaroberts.com”. The complainant commenced proceedings under the UDRP on the grounds that the domain name was identical and confusingly similar to her own name. She also claimed that the respondent had no legitimate interest and registered the domain name in bad faith. Although the respondent argued that the complainant had no common law trade mark rights, the panel ruled that the respondent possessed trade mark rights to her own name.

In the *Jeannette Winterson* case, the complainant was a famous UK writer and the respondent registered the domain names jeannettewinterson.com, jeannettewinterson.net and jeannettewinterson.org. The panel ruled that the UDRP did not require the complainant’s trade mark to be registered by a government authority or agency.⁶² Relying on a previous UDRP decision of *Cedar Trade Associates Inc v Greg Ricks*,⁶³ the panel held that trade marks, where used in the UDRP, are “not to be construed by reference to the criteria of registrability under English law, but more broadly in terms of the *distinctive features of a person’s activities*”.⁶⁴

Other panels came to different rulings, such as the case of *Gordon Sumner, aka Sting v Urvan*.⁶⁵ In the *Sting* case, the complainant was the famous singer Sting, while the respondent (“Urvan”) was an amateur gamer. Urvan registered the domain name “www.sting.com” for sending e-mails and global Internet gaming services. The panel held that while a personality right might be protected under the UDRP, the panel considered that it was not intended to be made subject to the policy.⁶⁶ The panel also distinguished this case from the *Winterson* case in that the word “sting” is a common English word with a number of different meanings.⁶⁷

As the above cases exemplify, the UDRP has, in the short span of about one year, developed a body of case law through the innovative adoption of developments in case laws and statutory laws in different jurisdictions. The case law also illustrates the flexibility and dynamics of the UDRP to resolve domain name disputes, which are rapidly changing in terms of their nature and issues. As Halpern and Mehrotra point out, the UDRP demonstrates how law can function effectively in the Age of the Internet. They also praised the ability of the UDRP to adhere to Internet culture and to reflect the customs and common usage of the Internet.⁶⁸

⁶² *Ibid.*

⁶³ File No. 0002 000093633. In the *Cedar* case, the panel held that the complainant had common law trade mark rights in a trading name which it used for four years and invested considerable time and effort in establishing the trading name.

⁶⁴ Note 61 above, at para 6.12.

⁶⁵ Case No. D2000-0596.

⁶⁶ *Ibid.*, at paras 6.1 to 6.4.

⁶⁷ *Ibid.*, at para 6.5.

⁶⁸ See Halpern & Mehrotra (n 15 above), at p 560.

Merits and demerits of the UDRP

Although the UDRP has only been in force for about one year, a total of 3,323 proceedings have been commenced.⁶⁹ This figure demonstrates the popularity of the UDRP. There are many reasons for this popularity. To begin with, the UDRP is highly flexible. For example, there are no hearings in most cases.⁷⁰ In other words, the parties do not need to physically attend a court or tribunal. Communications in the arbitration proceedings are, in the absence of contrary specifications, through telecopy or facsimile, postal or courier services and the Internet.⁷¹ Therefore, the UDRP dispenses with many formal court processes and court documents. As Halpern and Mehrotra point out, the UDRP represents a new approach that “corresponds with the communication speed and economic efficiency of the Internet itself”.⁷²

Second, the costs of arbitration under the UDRP are much lower than litigation in courts. Smaller companies are in a disadvantaged position in the case of domain name court litigation, as they lack the financial means to fight a court battle against larger companies, even if they enjoy lawful rights to a domain name. Thus, the UDRP benefits small businessmen by providing a lower cost alternative procedure for asserting their domain name rights.⁷³

Moreover, many cyber-squatters have offered to sell their domain names to their rightful owners at a “nuisance value”, namely, a value lower than the legal costs of fighting a cyber-squatting lawsuit in court but at the same time, a value much higher than the costs of registering the domain name.⁷⁴ In the past, the rightful owners were inclined to pay the nuisance value for the domain names based on simple “cost-and-benefit” analysis. The UDRP gives economic incentives to the rightful owners to claim their domain names as the legal costs involved in claiming the domain name are reduced substantially.⁷⁵

Third, the UDRP saves time compared with court litigation. For example, the first case under the UDRP took only 43 days to get a panel decision.⁷⁶ The time factor is very important in domain name disputes. Once a domain

⁶⁹ See ICANN, “Statistical Summary of Proceedings under Uniform Domain Name Dispute Resolution Policy” as at 27 March 2001. Available at <http://www.icann.org/udrp/proceedings-stat.htm>.

⁷⁰ Rule 13, the UDRP Rules.

⁷¹ Rule 2, the UDRP Rules.

⁷² See Halpern & Mehrotra (n 15 above), at p 533.

⁷³ Jason M. Osborn, “Effective and complementary solutions to domain name disputes: ICANN’s Uniform Domain Name Dispute Resolution Policy and the Federal Anticybersquatting Consumer Protection Act of 1999”, 76 *Notre Dame Law Review*, p 209, at p 240.

⁷⁴ Luke A. Walker developed the concept of “nuisance value”. See Luke A. Walker, “ICANN’s Uniform Domain Name Dispute Resolution Policy”, 15 *Berkeley Technology Law Journal* p 289, at p 307.

⁷⁵ *Ibid.*

⁷⁶ The complaint was filed on 2 December 1999 and the panel gave its decision on 14 January 2000. See n 52 above.

name similar or identical to a trade mark is registered and used by a cyber-squatter, the lawful trade mark owner will start to suffer losses, in terms of potential customers and business opportunities. The longer the domain disputes last, the larger the losses the trade mark owner will incur. For instance, more and more customers will go to the “wrong” website, unable to contact the lawful trade mark owner. The same customers may also enter into online contracts with the cyber-squatter, instead of the trade mark holder. Moreover, the lawful trade mark holder may suffer loss of business goodwill as customers will attribute any unprofessional services or substandard products ordered through the “wrong” website to the lawful trade mark owners. Thus, the longer the domain name battle ensues, the more pressure is exerted on the trade mark owner to concede to the requests of the cyber-squatter, however unreasonable they are. For example, expediency may force the rightful trade mark owner to purchase the domain names at an unreasonably high price.⁷⁷

The UDRP, however, is not without limitations and problems. First, the policy is confined to dealing with “abusive registrations” of domain names and *not* to other types of domain name disputes. Thus, it does not apply to domain name disputes between two legitimate trade mark owners competing for the same domain name. For example, the parties in the *Prince* case could not use the UDRP to resolve ownership and use of the domain name *prince.com*. Similarly, the parties in the *Pitman* case could not use the UDRP to resolve which of them can use the domain name “pitman.co.uk”. Thus, the scope of the UDRP is rather restrictive.

Second, the UDRP is biased toward trade mark owners. In fact, of the 2,474 cases decided under the UDRP, 1,972 cases were decided in favour of the complainant, ie the trade mark owners. In these cases, the domain names registered were ordered to be transferred to the complainants or cancelled. On the other hand, only 483 cases were decided in favour of the respondents, ie domain name holders. In other words, trade mark owners won 79.7 per cent of the cases while domain name owners won only 19.5 per cent of the cases.⁷⁸ This empirically confirms the bias of the UDRP toward trade mark owners. In a recent report,⁷⁹ Milton Mueller even found that some panels interpreted the UDRP in ways that favour trade mark owners, rather than by adhering to the strict language of the UDRP.⁸⁰

⁷⁷ See Walker (n 74 above), at p 307.

⁷⁸ Note 69 above.

⁷⁹ Milton Mueller, “Rough Justice – An analysis of ICANN’s Uniform Dispute Resolution Policy”. Available at <http://dcc.syr.edu/report.htm>.

⁸⁰ *Ibid.*, at p 2.

Third, the UDRP is inadequate to deal with other kinds of domain name disputes. These other disputes, particularly “reverse domain name hijacking”, are becoming more important with the growth of electronic commerce. Reverse domain name hijacking refers to cases where a company or an individual, usually well established and with substantial financial means, attempts to take away a domain name from another company or individual by threatening to begin legal proceedings against the latter.⁸¹ One good example of reverse domain name hijacking is the *Prince* case mentioned above. Under the UDRP, if the complainant attempts reverse domain name hijacking, the panel can merely make a declaration that the complaint was brought in bad faith and constitutes an abuse of the administrative proceedings. The panel has no power to grant other legal remedies.⁸² This is obviously inadequate to protect the domain name owner. Therefore, Jason Osborn has called for an expansion of the scope of the UDRP to address the issue of reverse domain name hijacking.⁸³

Fourth, the UDRP is procedurally unfair to domain name holders. Under the UDRP, domain name holders are subject to a mandatory arbitration procedure but trade mark owners are not. In other words, it is mandatory for domain name owners to submit to the UDRP while trade mark holders can elect to proceed under the UDRP or trade mark law (eg the Trade Marks Ordinance in Hong Kong).

Fifth, remedies available to trade mark owners under the UDRP are limited. Under the UDRP, the complainant can only ask for either the cancellation or transfer of registration of the domain name to the complainant.⁸⁴ Thus, a trade mark owner cannot apply for, say, compensation or legal costs under the UDRP. If the trade mark owner commences court proceedings under trade mark law (eg the Trade Marks Ordinance in Hong Kong), however, he can apply for a wide range of relief including damages, injunctions and accounts.⁸⁵ He may also apply for an order for delivery and disposal of the infringing goods, materials or articles.⁸⁶ Thus, if a trade mark owner wants to pursue legal remedies other than cancellation and transfer of registration of the domain name, he will not commence proceedings under the UDRP, but will rather commence court proceedings under trade mark law.

⁸¹ In the UDRP Rules, “reverse domain name hijacking” is defined as “using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name”. See Rule 1, the UDRP Rules.

⁸² Rule 15 (e), the UDRP Rules.

⁸³ See Osborn (n 73 above), at p 245.

⁸⁴ Para 4 (j), the UDRP.

⁸⁵ Note 24 above, s 22.

⁸⁶ *Ibid.*, ss 23 and 25.

Suitability of a UDRP-like dispute resolution procedure for Hong Kong and problems of its full implementation in Hong Kong

Despite the shortcomings of the UDRP mentioned above, a UDRP-like domain name dispute resolution procedure would seem to be suitable for Hong Kong, for three reasons. First, adoption of such a procedure would have a deterrent effect on cyber-squatters in Hong Kong. UDRP case statistics confirm this experience. The number of proceedings under the UDRP peaked at 343 in August 2000 and has since declined to 250.⁸⁷ The deterrent effect of a UDRP-like dispute resolution procedure on cyber-squatting cases in Hong Kong should not be underestimated.

Second, at present, trade mark owners in Hong Kong can only resort to expensive court litigation to resolve domain name disputes. This deters many trade mark owners from asserting their lawful rights even when they discover that unrelated parties registered their trade marks as domain names. Adoption of a UDRP-like dispute resolution procedure will provide a cheaper legal procedure for trade mark owners in Hong Kong to assert their lawful rights. Moreover, trade mark owners in Hong Kong can elect to commence court proceedings under the Trade Marks Ordinance *and* proceedings under the dispute resolution procedure *concurrently* if a UDRP-like dispute resolution procedure is adopted in Hong Kong. The advantage for trade mark owners to take such a “combined” procedure is obvious. They can first rely on the UDRP-like dispute resolution procedure to “reclaim” the domain name in a speedy manner. Afterwards, they can rely on court proceedings to pursue other legal remedies under the Trade Marks Ordinance. In the US case of *Broadbridge Media, LLC v HyperCD.com*,⁸⁸ it was ruled that a trade mark owner may concurrently commence proceeding under the UDRP and court proceedings under US trade mark law. If Hong Kong courts follow the *Broadbridge* decision, it will be much easier for trade mark owners in Hong Kong to assert their lawful rights against the cyber-squatters.

From a wider perspective, adoption of a UDRP-like dispute resolution procedure also suits the economic needs of Hong Kong society. In recent years, the Hong Kong government has been keen on developing the territory into a regional centre of electronic commerce. The presence of cyber-squatters will affect consumer confidence to conduct online business, as consumers will not be able to know for certain whether the websites that they are accessing belong to the parties with which they want to do business. Moreover, if Hong Kong companies need to pay huge sums of money to cyber-squatters for their

⁸⁷ See Mueller (n 79 above), at p 6.

⁸⁸ 106 F. Supp.2d 505.

favourite domain names, they may pass the costs of obtaining the domain names to their online customers when they price their products and services. Finally, if a large number of domain names are held hostage by cyber-squatters, many Hong Kong companies may not be able to find suitable domain names for their online business. These will affect the future development and growth of electronic commerce in Hong Kong. Adoption of a UDRP-like dispute resolution procedure is therefore indispensable to curb the proliferation of cyber-squatters in Hong Kong, thereby reducing the entry barriers and transaction costs of electronic commerce. This will facilitate the sustained growth and long-term development of electronic commerce in Hong Kong.

Before full implementation of a UDRP-like dispute resolution procedure, however, Hong Kong needs to resolve two key issues. First, Hong Kong must select a dispute resolution body that is credible. As mentioned above, the Hong Kong International Arbitration Centre is likely to be the institution selected for such purpose.⁸⁹ This is compatible with the practice adopted in other countries. For example, the China International Economic and Trade Arbitration Commission was selected as the dispute resolution body to deal with domain name disputes in China.

Another issue that Hong Kong needs to resolve is the issue of substantive laws to be adopted by the dispute resolution body. If one looks at the experiences of other countries, it is vital that Hong Kong should “import” the UDRP as the substantial law used by the dispute resolution body. For example, in its new procedure for resolving domain name disputes adopted last November (“the Chinese procedure”), China largely “imported” the UDRP.⁹⁰ The Chinese procedure contains what might be termed “the trilogy of cyber-squatting”. That is, the domain name is “identical or confusingly similar” to a trade mark; the domain name holder has no legitimate interests in the domain name; and the domain name holder registered and uses the domain name in bad faith. This is in fact modelled on the UDRP.⁹¹ To observe international standards and practice, Hong Kong should also incorporate this trilogy of cyber-squatting as the substantive law used by its dispute resolution body. Beyond this trilogy, Hong Kong can always improve on those aspects of the UDRP that are inadequate. For example, it can include compensation as additional legal remedy available under the new dispute resolution procedure.

⁸⁹ Note 14 above.

⁹⁰ In November 2000, China adopted the Resolutions of Disputes Concerning Chinese-language Domain Names Procedures (Trial Implementations) (“the Chinese procedure”), which was largely modelled on the UDRP. For an English translation of the Chinese procedure, see *China Law and Practice*, December 2000 / January 2001, Vol 14, No 10, at pp 19–24. For an analysis of the Chinese procedure, see R. Wu, “New Rules for Resolving Chinese Domain Names Disputes”, 2001(1), *The Journal of Information, Law and Technology*. Available at <http://elj.warwick.ac.uk/jilt/01-1/wu.html>.

⁹¹ Rule 4 (a), the UDRP.

Conclusion

As electronic commerce continues to develop in Hong Kong, domain names will increasingly be an important asset of companies, both local and overseas, as they conduct online business. It is therefore essential for Hong Kong to develop a dispute resolution procedure to resolve domain name disputes that may arise from the competing interests of domain name owners and trade mark owners. Adoption of a UDRP-like dispute resolution procedure is a step in the right direction.

Moreover, adoption of a UDRP-like dispute resolution procedure is worthwhile whether or not domain name disputes pose practical problems for the development of electronic commerce in Hong Kong. Adopting a UDRP-like dispute resolution procedure demonstrates the determination and efforts of Hong Kong to observe international standards and practice in its information technology laws. This will serve the development of electronic commerce in Hong Kong by boosting the confidence of foreign businessmen in Hong Kong's legal protection of electronic commerce. In fact, more than 10 jurisdictions have adopted a UDRP-like dispute resolution procedure. The United Kingdom is also considering adopting similar dispute resolution procedure.⁹² As mentioned above, China adopted a UDRP-like dispute resolution procedure last year. Adoption of a UDRP-like dispute resolution procedure will undoubtedly strengthen the legal infrastructure for development of electronic commerce in Hong Kong.

On the other hand, Hong Kong should not focus solely on the competing business interests of domain name holders and trade mark holders in adopting such a dispute resolution procedure. Rather, it must give adequate consideration to the interests of Internet users in Hong Kong's non-commercial sectors. Policy makers should not forget that the procedure, while largely dealing with domain name disputes in the commercial sector, would also affect domain name holders in the non-commercial sectors. For example, if an Internet user in Hong Kong registers a domain name for non-commercial purposes in future, will it face a legal challenge under the new procedure if its domain name is, by coincidence, similar to the trade marks registered and owned by some commercial companies in Hong Kong? Moreover, will large Hong Kong companies use the new procedure to challenge domain names similar to their trade marks that are not even used for commercial purposes? Will a new procedure such as the one proposed affect the Hong Kong community's incentives to register domain names for non-commercial use, particularly, if the domain names they choose are very similar to trade marks registered and owned by established Hong Kong companies? Will the proce-

⁹² Dawn Osborne, "ICANN procedure proves a resounding success", *International Internet Law Review*, Issue 10, December 2000 / January 2001, pp 26-31, at p 26.

dure be beneficial if it affects the flow of information and the development of an "Information Society" in Hong Kong? These issues suggest that Hong Kong should give adequate consideration to the implications of adopting a UDRP-like dispute resolution procedure for Internet users at large. A good policy should balance the interests of different user groups in a society. Any new dispute resolution procedure adopted by Hong Kong policy-makers will reflect a domain name policy and, to a certain extent, an Internet policy for all of Hong Kong society. To this end, Hong Kong should adopt a balanced domain name dispute resolution procedure that emphasises the interests of both commercial and non-commercial sectors.