



**ADR mechanisms for Internet domain name  
disputes: a model to be generalized?**

**Jacques de Werra**

“Is the answer to accept as the natural order  
that Google is going to act as adjudicator  
and simply figure out ways to provide the  
search engine with greater context?”

Nancy Scola, Designing ‘the right to be forgotten’

Washington Post, August 4, 2014

# Who shall decide if Google does not remove the URL?

## FAQ Google:

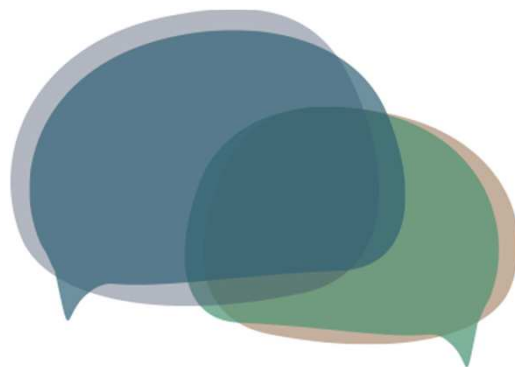
**“What happens if an individual disagrees with your [i.e. Google’s] decision?”**

If we decide not to remove a URL from our search results, an individual may request that a local data protection authority review our decision”.

## **Who *could* decide if Google removes the URL?**

“Where a request to be removed from search engines is granted, any person is entitled to know about such cases and appeal the decision before the courts to ensure that the public interest in the information is preserved”

Draft Declaration of Internet Rights, Study Committee on Internet Rights and Duties of Italy’s Chamber of Deputies  
(October 2014)



# The Advisory Council to Google on the Right to be Forgotten

Report of February 6, 2015

## **What adjudication process?**

« Establish a public mediation model, in which an independent arbitration body assesses removal requests. Several experts suggested this to be modeled on the process for resolving domain name disputes »

(Appendix to the Report: «Alternative ideas and technical proposals we heard for an adjudication process»)



# Someone on Twitter is engaging in abusive or harassing behavior.

Please fill out all the fields below so we can review your report.

These actions are...

- Directed at me (e.g. @mention, name, nickname or pseudonym)
- Directed at someone I legally represent (e.g. a client or my child)
- Directed at others (e.g. a friend or group)

What are you reporting?

- Offensive, disrespectful or in disagreement with my opinion

**How to address the challenges  
of M.O.M.J. ?**

**Massive Online Micro-Justice**



**What can we learn from Internet  
domain name disputes ?**

# Uniform Domain Name Dispute Resolution

## Policy (UDRP)

- Designed for clear cut «cybersquatting» cases  
  
(of gTLDs)
- Fast
- Cheap
- Alternative to court litigation (≠ unusual)

# UDRP

- Submission to the UDRP imposed to the domain name holder (by contract)
- Formal proceedings
- Right to be heard / due process (language etc.)
- Cases decided by independent experts
- Managed by independent ADR institutions
- (Growing) body of uniform *global* case law

# UDRP

- Limited remedies (transfer / cancellation)
- Transparency of the decisions (online)
- Sanctions against abusive claims (« Reverse Domain Name Hijacking »)
- Self-enforceability of the decisions subject to the right to challenge them before selected courts (choice of court)

## Is the UDRP « transplantable »?

- Victims / claimants: trademark owners / privacy / reputation (« property rights »)
- Infringers / defendants: owners of the domain name / persons posting content online (« free speech »)
- Intermediaries: registrars of the domain names / search engines / online platforms platforms

## Is the UDRP « transplantable »?

- Submission to the UDRP of *all* domain name holders (freedom of contract ? / *choice* to submit to ADR ?)
- Transfer / cancellation of domain names => restriction of free speech
- Balance between property rights and opposing « rights or legitimate interests »

# Is the UDRP « transplantable » to requests for content removal (e.g. RTBF) ?

- Request to delist/remove content submitted to the platform (with agreement to submit to subsequent dispute resolution mechanism)

=> Clear cut cases decided by the requested platform

=> Not clear cut cases submitted to ADR / neutrals

# Is the UDRP « transplantable » to requests for content removal (RTBF) ?

- Challenge of the decision of the platform / the neutral before a pre-selected institution (choice of court / DPA (?))
- Can third parties intervene in the proceedings (e.g. content publishers in RTBF cases) - subject to obligations of confidentiality (imposed by contract ?)- ?



# Is the UDRP « transplantable » to requests for content removal (RTBF) ?

- Costs of the proceedings ?

UDRP = the victim/trademark owner

(transplantable ?)

« [...] we think that it would be worthwhile for search engines to consider jointly funding an arbitration board » (Report Advisory Council to Google)

# UDRP as a model for other Internet-related disputes ?

- Need to develop standardized best practices for Massive Online Micro Justice (MOMJ):  
« Different search engines should collaborate to standardize the removal process and provide a single, efficient and effective interface for data subjects requesting removals » (Report Advisory Council to Google)

# Conclusion

- Importance of legal innovation
- Need to learn lessons from / build upon experience (no reinventing the wheel / the Internet syndrom)

**Thank you for your attention**