

## Australian Domain Name Law (1st ed)

By A Roy | Thomson Reuters | 2016



This is the first published textbook on Australian domain name law. In July 2014 Andrew Christie, assisted by others, published via auDA (.au Domain Administration Ltd) the first edition of an online resource called the auDRP Overview (with a full title auDA Overview of Panel Views on Selected auDRP Questions) whose stated intention is to be regularly updated. This valuable document is in the nature of a digest of approximately 330 published domain name determinations between 1 August 2002 (the beginning of the Australian Dispute Resolution Policy or auDRP) and 15 July 2014 and a synthesis of interpretative principle drawn from those determinations. Its format is based on the UDRP Overview produced by WIPO in relation to the Uniform Dispute Resolution Policy administered by the Internet Corporation for Assigned Names and Numbers (ICANN). The Australian determinations draw on published UDRP determinations when there is similarity of text or principle.

The author of the current text

acknowledges at [1.50] that the auDRP Overview was published halfway through the writing of the current text and 'has been incorporated fully in this book as it has been adopted by auDA as representing the consensus view on auDRP panel opinions.' The author points out that the auDRP Overview does not consider in detail the cited determinations and that the current text seeks to undertake that expanded treatment. Although both Overviews are not precedentially binding, the author cites international text writing that fairness and consistency will in practice conform determinations to consensus views, and also to previously-expressed majority views unless there is compelling reason to depart from a majority view. This approach is also consistent with the rationale of the auDRP Overview.

In Chapter 1 the author outlines the concept of domain names and their administration at international or country level depending on the level of the domain name. The genesis of the international and Australian dispute resolution policies, their rationale and operation, is briefly described. Chapter 2 provides detailed description of the auDRP with appropriate reference to the auDRP Overview and a discussion of the rationale for the elements of the auDRP. Chapter 3 does the same for the Rules that govern determination of a dispute.

The remaining chapters 4 to 6 provide detailed analysis of each component required to be demonstrated to entitle a complainant to relief in a determination, as found in auDRP Schedule 1 clause 4a–c: the domain name is identical or confusingly similar to a name or mark in which the complainant has rights; no rights or legitimate interests in respect

of the domain name in the current registrant; registration or subsequent use of the domain name in bad faith. A similar format is followed, being a statement of the aspect of one of those components that is being analysed, the position stated in the auDRP Overview on that aspect (if there is a consensus position), and expansion of the cases mentioned in the Overview in conjunction with other authority and principle, including where appropriate from UDRP material and other parts of relevant IP law such as trademarks. The textual differences between auDRP and UDRP are stated and analysed. The approach is largely descriptive rather than critically evaluative, often letting the determinations speak in their own words in substantial extracts or paraphrase. There is a very useful compilation in appendices of the Policies and Rules that are discussed in the text.

The text provides comprehensive treatment of its topic in a fluent and clear style, with detailed footnoting and a largely comprehensive index. It will be approachable for the early reader in the topic while being a valuable resource for detailed consideration and reference by experienced practitioners and determiners, complementary to the Overviews.

The author acknowledges that the text does not deal with Australian court decisions on domain names. If these increase, their impact on the extra-curial determination framework may require treatment in subsequent editions.

**Reviewed by Gregory Burton SC**