

**FINAL CODE BOOK**  
**AN EMPIRICAL ANALYSIS OF FAIR USE**  
**UNDER THE UNIFORM DOMAIN-NAME DISPUTE-RESOLUTION POLICY**  
**DOMAIN-NAME STUDY**

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**I. GENERAL INFORMATION: DATA SELECTION**

*A. Sample*

Beginning the second week in September 2010,<sup>1</sup> I began downloading decisions resolving domain-name disputes under the Uniform Domain-Name Dispute-Resolution Policy (UDRP)<sup>2</sup> from the World Intellectual Property Organization’s (WIPO) website.<sup>3</sup> Specifically, I collected cases that discuss the fair use provision of the UDRP: § 4(c)(iii).<sup>4</sup> The collected cases spanned the entire duration of the UDRP’s existence as of the collection date (January 1999 through September 2010).

WIPO provides researchers with two primary means of locating and searching decisions.<sup>5</sup> The first is an “Index of WIPO UDRP Panel Decisions,” or the “Index,” which contains a non-exhaustive set of full-text UDRP decisions.<sup>6</sup> According to Leandro Emilio Toscano—an employee at WIPO—WIPO selects cases to include in the Index “because they are representative of the manner in which panels (or a proportion of panels) have approached the issue described in the category in which the decision is included.”<sup>7</sup> The Index allows users to search by categories created and listed by WIPO. A researcher, for example, may select to search cases including “Associations and Institutions.”<sup>8</sup> If the searcher so chooses, she can separate these organizations by type: “Religious,” “Sports,” and “Others.”<sup>9</sup> Unfortunately, WIPO does not define these categories on its website, and WIPO did not respond to my request for the protocols.<sup>10</sup> Therefore, I did not use the Index to locate or extract cases.

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<sup>1</sup> The collection process actually entailed locating the correct database more than collecting the cases. Eventually, I located the entire database from which I was able to locate decisions.

<sup>2</sup> *Uniform Domain Name Dispute Resolution Policy*, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, <http://www.icann.org/dndr/udrp/policy.htm> (last modified September 6, 2011) [hereinafter *UDRP*]. The UDRP also contains rules of procedure. *Rules for Uniform Domain Name Dispute Resolution Policy*, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, <http://www.icann.org/dndr/udrp/uniform-rules.htm> (last modified September 6, 2011) [hereinafter *UDRP Rules*].

<sup>3</sup> WORLD INTELLECTUAL PROPERTY ORGANIZATION, <http://www.wipo.int/portal/index.html.en> (last visited Jan. 1, 2012).

<sup>4</sup> *UDRP*, *supra* note 2, § 4(c)(iii).

<sup>5</sup> Other search options are available, but these two methods provide the most expansive search methods. See *Search WIPO Cases and WIPO Panel Decisions*, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, <http://www.wipo.int/amc/en/domains/search/> (last visited Jan. 1, 2012).

<sup>6</sup> *Index of WIPO UDRP Panel Decisions*, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, <http://www.wipo.int/amc/en/domains/search/legalindex.jsp> (last visited Jan. 1, 2012).

<sup>7</sup> E-mail from Leandro Emilio Toscano, WIPO Arbitration & Mediation Center, to David A. Simon, LL.M. Candidate, Harvard Law Sch. (Sept. 17, 2010, 1:24 EST) (on file with author).

<sup>8</sup> See *Index of WIPO UDRP Panel Decisions*, *supra* note 6.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

The second means of locating decisions is the WIPO Database (“WIPO Database” or “Database”), which contains all WIPO decisions issued since the organization began deciding UDRP disputes (in all languages).<sup>11</sup> Since I gathered my data—and perhaps in response to my complaints about the database’s search function—WIPO has changed the search interface for the Database. The Database’s search engine allows the user to search using keyword terms. It also enables searches using suggestive and mandatory terms, allowing the user to specify which terms “should” or “must” be included.<sup>12</sup>

Because this database includes all cases decided by WIPO, it was suitable to search for § 4(c)(iii) cases. I searched the database using only one search term “4(c)(iii),” indicating that the search results (i.e., the decisions) “must” contain this phrase.<sup>13</sup> The search revealed 2688 non-unique results from 1999 through 2010.<sup>14</sup> The WIPO database allowed the viewer to see only 500 results (i.e., decisions), but did allow one to search within the results. (After I suggested to WIPO that this limitation hinders research, WIPO agreed to make all results viewable to users.)<sup>15</sup> To that end, I searched one year periods beginning on January 1 and ending December 31 of each year. I searched each year from 1999–2011 this way and segmented the results so I could view the case numbers. I then copied and pasted each “set” of results (i.e., the results for a year period) into an Excel spreadsheet.<sup>16</sup>

After compiling the sets of search results, simple addition revealed that the total number of cases pulled from the search results (2688) was equal to the total number of cases in the original search results (2688). I placed all the decision numbers (D[year]-[case]) in correct form, meaning each had a four-digit suffix/case number (e.g., D2008-0002).<sup>17</sup> Then I used the “remove duplicate” function in Excel to eliminate duplicate decisions. The total remaining values were 1415.<sup>18</sup> Of these 1415 cases, I used a random number generator<sup>19</sup> to produce 500 random numbers that I sorted numerically. After I extracted these cases from the original database of 1415 decisions, I used Excel’s “=rand()” function to randomly order the already randomly sampled decisions. This provided me with a list of 500 randomly sampled decisions in random

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<sup>11</sup> *Search WIPO Cases and WIPO Panel Decisions*, supra note 5.

<sup>12</sup> The exact rules governing syntax and punctuation for running searches can be found on WIPO’s website. *Ultrasseek: Searching*, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, <http://www.wipo.int/search/help/index.html> (last visited Jan. 1, 2012).

<sup>13</sup> I collected cases using a search on September 24, 2010. I have not updated cases since then.

<sup>14</sup> “Non-unique” results are those which contain duplicate decisions.

<sup>15</sup> After communication with WIPO, the organization has agreed to enable viewing of all results. E-mail from Leandro Emilio Toscano, WIPO Arbitration & Mediation Center, to David A. Simon, LL.M. Candidate, Harvard Law Sch. (Sept. 27, 2010, 1:24 EST) (on file with author).

<sup>16</sup> The totals for each year: 1999–2000 (0), 2000–2001 (54), 2001–2002 (119), 2002–2003, (102), 2003–2004 (434), 2004–2005 (166), 2005–2006 (237), 2006–2007 (291), 2007–2008 (360), 2008–2009 (398), 2009–2010 (328), 2010–2011 (199).

<sup>17</sup> Some results were duplicated but were not in the same format. The result D2008-320, for example, also was present at D2008-0320. Because these results should be counted only once, the duplicate was deleted.

<sup>18</sup> Originally the results revealed 1416 cases, but, as noted, one case was a duplicate that Excel did not catch.

<sup>19</sup> I used the random number generator at [www.randomizer.org](http://www.randomizer.org).

order. The sample was then reduced to 499 after one duplicate value was discovered after manual review.<sup>20</sup>

### B. Basic Coding and Sorting

In the last week in September 2010, I began coding cases. I piloted my coding with 25 randomly sampled cases. For cases displayed in another language, I used GoogleTranslate to translate the decision into English. From these cases, it became apparent that my search term captured cases in which 4(c)(iii) was not discussed substantively at all.<sup>21</sup> This occurred either when a respondent defaulted and the panel gave short treatment to the issues in general, or when the respondent did not raise the 4(c)(iii) defense. These decisions, of course, still must have found that the complainant met its burden and proved the nonexistence of 4(c)(iii). But, in some cases, the panel did not even mention 4(c)(iii). Thus, I excluded cases where issue was neither raised nor discussed. I did, however, record data from decisions in which the 4(c)(iii) discussion was limited to a single line finding that the use was not a legitimate, noncommercial, fair one. I recorded these decisions in my Excel spreadsheet, marking them as “Not Relevant – delete.”

Because my pilot sample (25) was too small to tell me anything interesting, I needed to sample more cases. I decided to code the entire set of 499 randomly sampled decisions. Because this sample also did not reveal enough data, I pulled an additional 500 cases from the remaining 916 (1415 - 500 = 916). To eliminate the cases I already had checked, I imported my list of (500) cases into a spreadsheet containing all 1415 cases.<sup>22</sup> I then used MACROS code to delete both duplicate values.<sup>23</sup> Next, I randomized the cases using the random function in Excel.

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<sup>20</sup> Recall that the 1415 has been adjusted to reflect this duplicate value’s deletion.

<sup>21</sup> Thomas Sabo GmbH & Co. Schmuckhandel KG v. na no, No. D2009-1519 (WIPO Jan 5, 2010), available at <http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-1519.html>.

<sup>22</sup> The original total, 1416, was reduced to 1415 after one case was discovered to be a duplicate (it had a “period” instead of a dash) (Case No. D2006-0250).

<sup>23</sup> Here is the code I ran:

```
Sub Delete_Duplicates()
Dim r As Long
Dim r2 As Long
Dim CurrentVal As String
Dim Unique As Boolean
For r = 1 To Range("A65536").End(xlUp).Row
    CurrentVal = Range("A" & r).Value
    Unique = True
    For r2 = r + 1 To Range("A65536").End(xlUp).Row
        If Range("A" & r2).Value = CurrentVal Then
            Unique = False
            Range("A" & r2).EntireRow.Delete
            r2 = r2 - 1
        End If
    Next r2
    If Unique = False Then
        Range("A" & r).EntireRow.Delete
        r = r - 1
    End If
Next r
End Sub
```

I then sampled the first 500 of these cases, downloading the decisions from WIPO's website and putting them in two Word files, each containing 250 decisions. (I did not collect the last 416 (= 916 - 500).) Each was saved as a separate Word document (i.e., each Word document contained 250 decisions). This brought my total random sample up to 999 decisions (out of a total of 1415).

During the sampling and review process I had to code decisions. Coding required me to identify first those decisions where the complaint was denied or dismissed. At first, I used a "control+F" keystroke to search for four terms: denied, denies, dismissed, dismisses. After reviewing the cases in the step described below, however, it became apparent that such a search missed a few decisions. I captured these decisions by examining every decision's result individually. This ensured that I captured cases where the decision didn't use the words dismissed, denied, or some variant thereof.

Of the cases which the respondent won, I had to eliminate those where the respondent won on grounds other than fair use.<sup>24</sup> This required me to examine each case in which the respondent succeeded in defeating the complaint. Out of these cases, I coded only those where the respondent succeeded in defeating the complaint under § 4(c)(iii).

After identifying and coding all of the cases where the respondent won on fair use grounds, I had only half the data I needed: I need to compare the decisions where the respondent won on fair use grounds to another group of cases. The natural group to which they could be compared was one in which the respondent *lost* on fair use grounds. When a respondent loses, however, they *always lose on fair use grounds*. The reason is because, to succeed, a complainant must disprove all potential UDRP defenses.

Although this fact precluded a comparison of identical decisions with opposite results, I still was able to identify a set of comparable cases. The closest match to cases in which the respondent won on fair use grounds was cases where the respondent lost and the panel explicitly discussed the issue of a fair use defense under § 4(c)(iii). In the next few paragraphs, I explain the process of selecting fair use cases (this also appears in the text of the article).

I manually reviewed all 999 randomly sampled cases to determine whether they were relevant. Relevant decisions included two kinds of cases. First, I identified cases where the respondent succeeded in defending the complaint on fair use grounds. I identified these cases easily because the panel(s) would discuss why the domain name constituted a noncommercial

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<sup>24</sup> If the respondent succeeded in proving a fair use defense as well as another defense under the UDRP, I coded the decision. The reason is because the decision still qualifies as one in which the respondent won on fair use grounds.

fair use.<sup>25</sup> Put simply, a respondent who succeeds on a fair use defense defeats the complaint; i.e., the respondent “wins.”<sup>26</sup> I identified 40 of these decisions.

Second, I identified cases where, although the respondent lost, the panel discussed fair use in the decision. Nearly every case I examined, however, mentioned § 4(c)(iii) in some way. Often, for example, decisions would summarily find no fair use defense or would cite the relevant provision but never discuss it. Therefore, I had to narrow the cases to those in which the panel substantively addressed the fair use defense.

Generally, I excluded decisions finding no fair use because the website was commercial. I kept cases in which the panel decided the case on commerciality grounds but noted that the site may have been for a legitimate purpose, such as criticism.<sup>27</sup> Because these cases specifically addressed whether a use was fair and legitimate, they were relevant. I excluded cases in which the panel decided summarily that the respondent used the domain name commercially. Including these cases would have skewed the results because these cases encompass nearly every case where a respondent lost.

When the respondent lost and its domain name did not display a live website, I included only those cases where the respondent asserted that it was planning on making a fair use. I included these cases for consistency, as some respondent fair use victories occurred when the respondent had not yet developed a website. Like the aforementioned commerciality cases, I included these cases because they substantively addressed the issue of fair use. For the opposite reason, I excluded cases in which the panel summarily rejected the respondent’s fair use defense. These cases did not discuss fair use substantively.

Occasionally, a decision would defer the fair use discussion to the section on bad faith—one of three elements the complainant must show to win a UDRP complaint.<sup>28</sup> I included these decisions and classified them as “other” unless the bad faith discussion turned specifically on the nature of the site (i.e., criticism, a fan site, information site, and personal use). If the bad faith discussion turned on the nature of the site, I classified it as one of the existing categories. I included these decisions because the primary issue—regardless of where in the decision the panel resolved it—was whether the respondent made a fair use of the domain name. Because the fair use inquiry sometimes rolled into the bad faith question, it made sense to include cases where this overlap occurred.

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<sup>25</sup> For respondent wins, the decision must have resolved *the fair use issue* in the respondent’s favor. I did not count decisions that punted on the fair use question but dismissed the complaint on other grounds. *E.g.*, Kendall v. Mayer, No. D2000-0868 (WIPO Oct. 26, 2000), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0868.html>. These decisions did not resolve fair use issues.

<sup>26</sup> If the respondent succeeded in proving a fair use defense as well as another defense under the UDRP, I coded the decision. The reason is that the decision still qualifies as one in which the respondent won on fair use grounds.

<sup>27</sup> *E.g.*, Pfizer Inc. v. e2e Tech LLC, No. D2007-0099 (WIPO April 6, 2007), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0099.html>.

<sup>28</sup> *UDRP*, *supra* note 2, § 4(a)(iii) (requiring the complainant to show that—in addition to the domain name being confusingly similar to the trademark and the respondent not having rights or legitimate interests in the domain name—that the “domain name has been registered and is being used in bad faith”).

I also eliminated cases in which, although the panel discussed fair use to some degree, fair use was not really disputed. So, for example, I excluded cases where, even though the panel discussed the fair use defense, the website that the domain name displayed was simply a pornographic one.<sup>29</sup> I excluded these cases because they did not substantively implicate the fair use defense.

I also excluded decisions where the respondent operated a website that offered only advertisements or the domain name displayed a “parked” website containing links to other vendors or websites. I excluded these cases because they generally could not qualify as either noncommercial or fair,<sup>30</sup> and, as a result, the respondent could not and would not assert such a defense. In general, panels tended to resolve these cases summarily in favor of the complainant. Figure 1 below visually depicts how I extracted and sorted results.

I finished coding these 999 cases the week of November 1, 2010. Below, I describe my coding protocols.

## II. GENERAL CODING INFORMATION

Because the study is measuring whether nationalities of the complainant(s), respondent(s), or panelist(s) had an effect on the success of the § 4(c)(iii) defense, those variables were coded accordingly. Additionally, the protocols listed also sought to capture other factors that could influence the outcome of decision. These include whether the defense was completely successful or if the WIPO panel ordered some of the domain names transferred, cancelled, or suspended; whether the respondent defaulted; and whether the entire underlying mark (or only part of it) was used in the disputed domain name. As noted above, the cases coded were those dealing explicitly with § 4(c)(iii). In some decisions, the panel’s discussion of fair use would overlap with its discussion of bad faith. The cases were not used unless the discussion of fair use was decided but turned on a discussion of bad faith.<sup>31</sup>

## III. GENERAL VARIABLES

### *UniqueID*

text, numerical (1, 2, 3, . . . 148).

This variable indicates the order in which the WIPO decisions appear in the spreadsheet. This makes the spreadsheet easier to manipulate. I assigned this number based on the order in which the search results were given after random sampling.

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<sup>29</sup> *E.g.*, Microsoft Corp. v. Horner, No. D2002-0029 (WIPO Feb. 27, 2002), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2002/d2002-0029.html>.

<sup>30</sup> *But see* CP Masters B.V. v. RareNames, No. D2009-1673 (WIPO Feb. 11, 2010), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-1673.html> (finding not unfair the registration of a domain name “speculatively, to either generate click-through revenue and be part of the portfolio of domain names in which the Respondent deals” because no bad faith existed).

<sup>31</sup> *E.g.*, FMR Corp. v. Native Am. Warrior Soc’y, No. D2004-0978 (WIPO Jan. 20, 2005), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2004/d2004-0978.html> (discussing gripe sites at length but deferring a discussion on the site’s legitimacy until bad faith, and dismissing the complaint only as to two domain names).

*WipoNo*

text, numerical

This variable indicates the decision number of a dispute resolved by WIPO under the UDRP. Decision numbers consist of the format D[year]-[number] (e.g., D2001-0796).

#### IV. COMPLAINANT, RESPONDENT, & PANELIST VARIABLES

Because nationality was the central focus of this study, I coded for panel, respondent, and complainant nationality. I coded the nationality of each arbiter using WIPO's website, which lists its arbitrators by country.<sup>32</sup> I coded the nationality of respondents and complainants using the decision itself, which indicated from where the parties hailed. I also coded other variables that were important to the study, including whether the panel cited U.S. law, foreign law, or neither, and whether the respondent won in whole or part.

##### A. Respondent Variables

*USARes*

Number (0 = not U.S., 1 = U.S.)

This variable indicates whether the respondent is from the United States or some other country. To determine the country of residence or location, I looked to the country specified by the WIPO decision. WIPO decisions always state where the respondents are from in the opening part of the opinion.

*NationRes*

text

This textual (nominal) variable indicates the country that the decision states the respondent is from. The list of countries is contained in Appendix A.

*Note:* If there were multiple respondents and they all had different nationalities, I noted that in the respondent field. No notation means that all respondents were from the same country. Where the respondent was neither a person nor an entity, the country of the domain name's administrative contact was used to determine nationality.<sup>33</sup> Where there were two respondents of different nationalities, I used the non-U.S. designation for country. Thus, if one respondent was from Canada and one from the United States, I would code it as Canada.<sup>34</sup> I coded this way to avoid my results skewing in the direction of U.S. panels. But, where there were three respondents, two of whom shared a country would that country be coded. Where the text of the

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<sup>32</sup> *WIPO Domain Name Panelists*, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, <http://www.wipo.int/amc/en/domains/panel/panelists.html> (last visited Jan. 1, 2012).

<sup>33</sup> For an example see, *Asia Pac. Breweries Ltd. v. Kwan*, No. D2003-0920 (WIPO Jan. 20, 2004) ("The Respondent 'Nil' is not a person or other legal entity – the domain name is owned by the person named by the Registrar as the administrative contact, namely Mr. Chris Kwan of Sandakan, Sabah, Malaysia. The person named as the technical contact for the domain name, Kwan Khai Hee, appears to be the same person as Chris Kwan, although Kwan Khai Hee's address provided by the Registrar is an address in New South Wales, Australia.")

<sup>34</sup> *Wal-Mart Stores, Inc. v. Cann*, No. D2000-0830 (WIPO Oct. 11, 2000), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0830.html>.

decision was ambiguous, I used the name that succeeded the description of where the respondent was from.<sup>35</sup>

### B. Complainant Variables

#### *USAPet*

Number (0 = U.S., 1 = other)

This variable indicates whether the complainant is from the United States or some other country. To determine the country of residence or location, I looked to the country specified by the WIPO decision. WIPO decisions always state where the complainants are from in the opening part of the opinion.

#### *NationPet*

text (country code)

This variable indicates the complainant's specific country of residence or location as specified by the WIPO decision. The decisions always indicate the full country name of the complainants.

### C. Panelist Variables

#### *USAArb (USAArb1, USAArb2, USAArb3)*

Number (0 = non-U.S., 1 = U.S.)

This numerical variable codes for the panelists' nationality, with each panelists' nationality determined as U.S. or non-U.S. and recorded individually: *USAArb1*, *USAArb2*, *USAArb3*. I also determined the nationality of the panelists by looking at the information WIPO displays on its website.<sup>36</sup> For one-member panels, the coding of this variable is obvious. For three-member panels, I coded them in the following way: For a panel to be "from" a particular country, such as the U.S., there needed to be at least two panelists from that country. Thus, if the panel contained arbitrators from three different countries, they were counted as a non-U.S. panel.

#### *NationArb1, NationArb2, NationArb3*

text (nation provided by WIPO database)

This nominal variable codes for the country from which the individual panelist hails, as reported by WIPO online.<sup>37</sup> Each individual panelist was given a separate field to designate from which country they originate: *NationArb1*, *NationArb2*, *NationArb3*.

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<sup>35</sup> Wal-Mart Stores, Inc. v. MacLeod, No. D2000-0662 (WIPO Sept. 19, 2000), available at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0662.html>. In this case, the decision stated: "The Respondent is Richard MacLeod d/b/a For Sale, 21 Simpson Avenue, Toronto, ON M8Z1C9, United States of America." Here, I counted the respondent as from the United States.

<sup>36</sup> *WIPO Domain Name Panelists*, supra note 32.

<sup>37</sup> *Id.* Some panelists were not listed on WIPO's website. I confirmed these panelists' identities using the internet. E.g., *Arbitral Appointments*, MHWANG.COM, <http://www.mhwang.com/arbapp1.htm> (last visited Jan. 2, 2012) (Michael Huang, S.C., Singapore); *Attorneys at law Borenius Ltd.*, LEGAL500.COM, <http://www.legal500.com/firms/10853-attorneys-at-law-borenius-ltd/offices/11059-helsinki/lawyers/46172> (last

### *SizeArb*

Number (1 = 1-member panel, 3 = 3-member panel)

This variable measures the size of the panel, either one- or three-member.

### *NameArb1, NameArb2, NameArb3*

Text (name provided by WIPO decision)

This variable identifies the name of each panelist as indicated on the WIPO website. This means that an individual panelist's name will be present in a separate field: *NameArb1*, *NameArb2*, *NameArb3*.

## **V. TYPE OF SITE VARIABLES**

As noted above, after selecting all 148 cases substantively discussing the fair use defense, I coded them for a variety of variables. One variable was subject-matter: each case fell into a category that designated the type of site displayed upon entering the domain name. I coded them into five categories: criticism, fan site, informational, personal, and other.

### *Category*

Number (0 = criticism, 1 = fan site, 2 = information site, 3 = personal, 4 = other)

#### *Criticism* (0 = website is a criticism site)

This variable means that, upon visiting the domain name criticized, the website displayed the trademark owner to some degree or criticized a third party.<sup>38</sup> It included sites that were discussed as or argued to be “parodies.”<sup>39</sup> It does not mean that the site was devoted entirely to criticism; it could include links to third parties.<sup>40</sup> This also does not include websites that, although used for criticism at one point, did not serve that function at the

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visited Jan. 2, 2012) (Kristiina Harenko, Finland); *McCotter, Ashton & Smith, P.A.: Attorneys*, Charle K. McCotter, Jr., WWW.NEWBERNJUSTICE.COM, <http://www.newbernjustice.com/Firm%20Info/Lawyers/1404827.aspx> (last visited Jan. 2, 2012) (Charles K. McCotter, Jr., United States, who is listed as “The Honorable” and “(Ret.)” in UDRP disputes); *Terra Law, Attorneys: G. Gervaise Davis III*, TERRA-LAW.COM, <http://www.terra-law.com/Attorneys/G-G-Davis-Iii.shtml> (last visited Jan. 2, 2012) (G. Gervaise Davis III, United States); *UDRP Panelists*, UDRPINFO.COM, <http://www.udrpinfo.com/panl.php> (last visited Jan. 2, 2012) (select “Tootal, Christopher” from the drop-down menu labeled “Select from the list to view a panelist profile;” then click “View”) (Christopher Tootal, U.K.); *WIPO Arbitration and Mediation Center: List of Mediators and Arbitrators, Biographical Data*, YLIOPPILAS.INFO, <http://www.freewebs.com/hyy/nitter.pdf> (last visited Jan. 2, 2012) (Peter G. Nitter, Norway); *WIPO Arbitration and Mediation Center: WIPO List of Neutrals, Biographical Data*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, <http://www.wipo.int/amc/en/domains/panel/profiles/fogo-jamesg.pdf> (last visited Jan. 2, 2012) (James Gordon Fogo, Canada); *WIPO Arbitration and Mediation Center: WIPO List of Neutrals, Biographical Data*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, <http://www.wipo.int/amc/en/domains/panel/profiles/lger-jacquesa.pdf> (last visited Jan. 2, 2012) (Jaques A. Léger, Q.C., Canada).

<sup>38</sup> NV Brouwerij L. Huyghe v. Naomi Hendriks, No. DNU2007-0003 (WIPO Nov. 2, 2007), available at <http://www.wipo.int/amc/en/domains/decisions/html/2007/dnu2007-0003.html>.

<sup>39</sup> Union Square P’ship, Inc. v. unionsquarepartnership.com Private Registrant, No. D2008-1234 (WIPO Oct. 22, 2008), available at <http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1234.html>.

<sup>40</sup> Darren Entwistle, Telus corp. v. Finian Comm’n, No. D2009-0961 (WIPO Sept. 1, 2009), available at <http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0961.html>.

time the proceedings commenced<sup>41</sup>—these were included in the “commercial” category. This also excludes sites the primary purpose of which is to provide information about a potentially dangerous product; such sites may have a critical effect, but are not aimed primarily at criticism.<sup>42</sup>

*FanSite* (1 = website is a fansite)

This variable means that the respondent created a website to express (generally) positive opinions about a person, company, or companies. This includes positive reviews of restaurants, products,<sup>43</sup> or people.<sup>44</sup>

*Information* (2 = website is an information site)

This variable means that the site offers information about a place, product, service, etc. It includes websites that may derive a commercial benefit from links.<sup>45</sup> This also includes websites that display information about the person whose initials are contained in the domain name.<sup>46</sup> It may also include nonprofit organizations that do not sell a product but whose website provides information about itself.<sup>47</sup> In cases where the respondent asserted both a commercial and informational purpose, and the panel found the purpose commercial, the decision was not counted as an informational website.<sup>48</sup>

*Personal* (3 = website is a personal site)

This variable means that the site displayed at the domain name is one used by an individual for personal use. This includes uses such as personal email and sharing personal photographs.

*Other* (4 = website that is not 0, 1, 2, or 3)

This variable means that the website displayed at the domain name could not be classified as a criticism site, a fan site, an informational site, or a personal site.

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<sup>41</sup> *E.g.*, Grupo Costamex, SA de C.V. v. Smith, No. D2009-0062 (WIPO Mar. 25, 2009), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0062.html>.

<sup>42</sup> Pfizer Inc. v. Robichaux, D2003-0399 (WIPO July 16, 2003), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2003/d2003-0399.html>.

<sup>43</sup> *E.g.*, Dr. Ing. h.c.F. Porsche v. Kohler, No. DME2008-0002 (WIPO Oct. 24, 2008), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2008/dme2008-0002.html> (purporting to set up Porsche.me as a “fan site” about Porsche).

<sup>44</sup> *E.g.*, Société Anonyme de La Colline Champel v. Angelini, No. D2005-1059 (WIPO Dec. 5, 2005), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2005/d2005-1059.html>.

<sup>45</sup> *E.g.*, Excmo. Cabildo Insular de Tenerife v. Jupiter Web Servs. Ltd., No. D2003-0525 (WIPO Sept. 9, 2003), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2003/d2003-0525.html>.

<sup>46</sup> *E.g.*, Hoffmann-La Roche Inc. v. One Star Global, No. D2006-1032 (WIPO Oct. 18, 2006), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-1032.html>.

<sup>47</sup> *E.g.*, Primus Telecomm. Grp., Inc. v. SullivanFamily, No. D2006-1165 (WIPO Dec. 5, 2006), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-1165.html>.

<sup>48</sup> *E.g.*, Asia Pac. Breweries Ltd. v. Kwan, No. D2003-0920 (WIPO Jan. 20, 2004), *available at* <http://www.worldlii.org/int/other/GENDND/2004/50.html>.

## VI. OTHER VARIABLES

In addition to the type of website that a domain name displayed, I coded whether and what law each panel cited. I also coded for whether a use had been made of the domain name, and, if so, whether such uses made were commercial in nature.

### *CommercialUse*

Number (0 = no commercial use, 1 = commercial use)

This variable means that the panel discussed and considered important the concept of commercial use. This also means that, in cases where the respondent lost, the issue of commerciality was decisive. Additionally, this includes cases where the panel may not explicitly have stated commercial use, but noted that a “nonused” webpage contained third party links or clickthrough advertising but no content.<sup>49</sup> It also includes cases where the panel found that the sole purpose of registration was to sell the domain name.<sup>50</sup>

### *Nonuse*

Number (0 = no nonuse, 1 = nonuse)

This variable means that the domain name did not display an active website, or that the website displayed at the domain name address was either “under construction” or was not yet fully developed. A site was considered “nonuse” if it was not in operation at the time the complaint was filed. Thus, where the site owner changed the content after receiving the complaint—for example, from click through ads to political commentary<sup>51</sup>—or after receiving a cease and desist letter,<sup>52</sup> the decision was counted as nonuse. This also includes websites that simply displayed “parked” pages containing third party links. This did not include cases where the domain name resolved to another webpage containing information that the respondent claimed justified the fair use.<sup>53</sup>

### *UsLaw*

Number (0 = no U.S. law cited, 1 = U.S. law cited)

This variable means that the panel cited or discussed (but did not necessarily apply) a U.S. law, U.S. legal principle (and explicitly so identified),<sup>54</sup> or U.S. judicial decision anywhere in its discussion. This includes the following kind of cases: cases where the discussion or citation occurred in the parenthetical of a citation to another WIPO

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<sup>49</sup> *E.g.*, eBay Inc. v. rl e enters., No. D2008-1068 (WIPO Oct. 9, 2008), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1068.html>.

<sup>50</sup> *E.g.*, Wal-mart Stores, Inc., No. D2000-0662.

<sup>51</sup> Altria Grp. v. Cheng, No. D2009-1764 (WIPO Mar. 4, 2010), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-1764.html>.

<sup>52</sup> Vivendi Universal v. Sallen, No. D2001-1121 (WIPO Nov. 7, 2001), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2001/d2001-1121.html>.

<sup>53</sup> Volkswagen v. MapleOne Solutions, No. D2003-0326 (WIPO June 16, 2003), *available at* <http://www.worldlii.org/int/other/GENDND/2003/611.html>.

<sup>54</sup> In Covance, Inc. v. The Covance Campaign, No. D2004-0206 (WIPO April 30, 2004), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2004/d2004-0206.html>, the panel explicitly mentioned “U.S. legal principles,” which would have been sufficient to code for this variable. The panel also, however, explicitly mentioned the U.S. Constitution, which also is sufficient to satisfy this variable.

decision<sup>55</sup> and cases where the panel discusses but rejects a form of U.S. trademark liability in its 4(c)(iii) discussion. This variable does not include the following cases: cases that reference only U.S. registrations or trademarks; cases that cite other WIPO decisions that may have used U.S. law but do not so explicitly indicate in any way; cases where the panel references a settlement agreement entered into by the respondent;<sup>56</sup> and cases where the only the parties cited cases in their arguments but the panel cited none (i.e., the variable includes only citations in the Discussion and Findings section of the opinion).<sup>57</sup>

### *USLawApplied*

Number (0 = no U.S. law applied, 1 = U.S. law applied)

This variable means that the panel discussed *and* applied U.S. law *in the rights and legitimate interest section*. It does not include cases where panelists applied U.S. law in likelihood of confusion analyses. It does include, though, cases where the bad faith element contained a discussion of U.S. law that was related to the fair use argument.

### *OtherLaw*

Number (0 = no foreign law cited, 1 = foreign law cited)

This variable means that the panel cited or discussed (but need not have applied) the law of another country anywhere in the decision. This includes cases that have parenthetical citations to the law of another country and references to international law, such as the Declaration of Human Rights;<sup>58</sup> cases where a discussion of another country's law was relegated to the "Bad Faith" section but actually pertains to fair use;<sup>59</sup> cases where the panel discussed foreign law but did not apply it;<sup>60</sup> and cases where the panel made blanket statements that it can be guided by the principles of another country's law.<sup>61</sup> This

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<sup>55</sup> Bosley Med. Grp. v. Kremer, No. D2000-1647 (WIPO Feb. 28, 2001), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1647.html> (citing First Amendment concerns in the parenthetical of two other UDRP decisions).

<sup>56</sup> United Servs. Auto. Ass'n v. Ang Wa Ass'n, No. D2004-0535 (WIPO Sept. 29, 2004), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2004/d2004-0535.html>.

<sup>57</sup> Wal-Mart Stores, Inc., No. D2000-0662.

<sup>58</sup> Consejería de Sanidad de la Comunidad de Madrid v. Llanes, No. D2008-1400 (WIPO Nov. 20, 2008), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1400.html>.

<sup>59</sup> Canonais, S.L. v. Díaz Ros, No. D2000-0592 (WIPO Oct. 2, 2000), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0592.html>.

<sup>60</sup> Ryanair Ltd. v. Coulston, No. D2006-1194 (WIPO Dec. 12, 2006), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-1194.html> (dismissing European Union trademark law, which complainant had cited in support of its argument).

<sup>61</sup> 1066 Housing Ass'n Ltd. v. Morgan, No. D2007-1461 (WIPO Jan. 18, 2008), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1461.html> ("However, in this case it is clear that the relevant jurisdiction, in respect of which rights are claimed, is England and Wales."); Metro Bilbao, S.A. v. Fernández, No. D2000-0467 (WIPO Aug. 31, 2000) (when discussing confusion, the panel stated that, "[i]n this case, both parties are headquartered and located in Spain, so the Panel is authorized to illustrate the merits of the issue, to be guided by relevant legislation and its implementation by the Spanish courts. Regarding the first, the Panel has had an eye on the Law 32/1988 of November 10, 1988, Marks, as shown on the site of the SPTO <http://www.oepm.es/internet/ley32/ley32.htm>, visited by the Panel"); *id.* (discussing law in the fair use section).

does not include cases where the panel discussed a foreign trademark registration, or cases where the *parties* cited cases in their arguments but the panel cited none.

### *NoLaw*

Number (0 = law cited, 1 = no law cited)

This variable means that the panel did not cite any law whatsoever. This variable contains no new information, but allows for better sorting purposes. This variable was “0” when panels cited either U.S. or foreign law. Thus, this variable and the *WIPORules* variable (below) are not mutually exclusive: where “no law” was applied, panels may have applied WIPO Rules.

### *WIPORules*

Number (0 = no WIPO Rule cited, 1 = WIPO Rule cited)

This means that the decision referenced the “WIPO Overview of WIPO Panel Views on Selected UDRP Questions,” which constitutes a form of WIPO sui generis law. But here I refer only to the criticism and fan site rules of WIPO. Generally, if the panel did not apply a country’s law or the WIPO Rules, sui generis UDRP law can be assumed to have been applied.<sup>62</sup>

## **VII. UDRP DISPUTE OUTCOME VARIABLES**

Because the study is focused on the outcome of the case, the variables below focus on the types of outcomes that result when a § 4(c)(iii) defense is asserted. It may be, for example, that § 4(c)(iii) defenses are more likely to result in transfer than cancellation. This would reflect a desire to reduce the size of the market rather than control it. It also may be that successful § 4(c)(iii) defenses are only partial—meaning that some marks are canceled or transferred while others are not. Such a view could reveal a compromise position (by panelists) that seeks to balance the interests of each party.

The case outcome will ask whether the respondent or defendant “won.” A “win” is defined for the respondent as a successful assertion of a § 4(c)(iii) defense. If successful, the complaint is dismissed because the complainant is required to show that the respondent does not

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<sup>62</sup> *Crupo Costamex, SA de C.V. v. Smith*, No. D2009-0062 (WIPO Mar. 25, 2009), available at <http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0062.html> (“Accordingly, the Panel is not disposed to apply either the law of the United States of America (the country of domicile of the Respondents and the registrar) or the law of Mexico (the Complainant’s country of domicile), in deciding whether the Respondents’ website as it stood on June 12, 2008, constituted a use of the Domain Name falling within paragraph 4(c)(iii) of the Policy. Nor is the Panel attracted to the idea, proposed in the *Sermo, Inc.* case, that conflicts of laws provisions should be applied to assist in the selection of some particular national law by which to judge the concepts of “fair” and “legitimate” in paragraph 4(c)(iii) of the Policy. The interpretation of a standard-form contract (i.e., that between a domain name registrant and the domain name registrar), the relevant terms of which are mandated by the Policy and have been designed to operate in a cross-border environment, should not differ in accordance with the location or nationalities of the parties, the registrar, or the panel, and nor should it depend on the location of the relevant website.”).

have any rights or legitimate interests. Thus, since this study examines only cases involving respondents asserting § 4(c)(iii) defenses, a complaint that is “dismissed” is counted as a victory.

The dismissal of a complaint, however, does not entirely end the question. Sometimes, complaints are dismissed, but other domain names at issue do not satisfy a defense. When this happens, the complaint is dismissed but one or a series of domain names are still canceled, transferred, or something else, according to UDRP § 3. This section states that the registrar will “cancel, transfer or otherwise make changes to domain name registrations” if the complaint wins as to any domain name.

Thus, because multiple domain names may have been at issue, a respondent could win the dispute *and* lose the fair use defense in the same case. Thus, I coded whether the respondent won as to all domain names (a “whole win”) or as to less than all the domain names at issue (a “partial win”). I also recorded whether the respondent “lost” on the fair use defense (and typically, but not always, on all defenses). For a detailed description of how the variables were coded, see the variables below.

#### A. *Success of Defense, Result*

##### *ResWin*

Number (0 = respondent loses, 1 = respondent wins)

This variable indicates whether a respondent was successful, in whole or in part, in asserting a § 4(c)(iii) defense. A “0” means that the respondent’s 4(c)(iii) defense failed on all counts and that the panel took some action with the domain name(s). A “1” means that the respondent prevailed on its § 4(c)(iii) defense as to at least one domain name. Respondents who won on only some of the domain names (see *PartWin*, below) were counted as “wins” in this category.

##### *FairUse*

Number (0 = no fair use, 1 = fair use)

This variable means that the panel found that at least one of the domain names at issue satisfied § 4(c)(iii) of the UDRP and, thus, was a fair use. This also means that the respondent “won” on at least one of the domain names. It does not mean that the respondent won as to all domain names at issue. That is what the *PartWin* variable specifies.

##### *PartWin*

Number (0 = partial win, 1 = whole win)

This variable represents whether the panel found that the § 4(c)(iii) defense applied to all the domain names or only some of them. A “whole win” represents a § 4(c)(iii) defense as to all domain names at issue. A “partial win” represents the panel’s decision that some of the domain names violated the UDRP.

##### *Default*

Number (0 = no default, 1 = default)

This variable indicates whether the respondent answered the complaint as specified by UDRP Rules.<sup>63</sup> This means that, if the respondent did not answer, she is in default and the panel decides the dispute on the complaint alone.<sup>64</sup> Defaults included informal replies that the panel did not deem to be a response and could not reasonably be seen as constituting a substantive reply.<sup>65</sup> Defaults, however, did not include (i.e., no default) where the respondent sent emails to the panel, which the panel attempted to construe as a response.<sup>66</sup>

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<sup>63</sup> Under the UDRP Rules, the respondent has twenty days to answer the complaint. *UDRP Rules, supra* note 2, § 5(a). If the respondent fails to answer, the panel decides the dispute on the complaint. *Id.* § 5(e).

<sup>64</sup> *Id.* § 5(e).

<sup>65</sup> *Southcorp Ltd. v. Frontier Direct Pty Ltd*, No. D2004-0949 (WIPO Jan 19, 2005), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2004/d2004-0949.html> (refusing to find the respondent's email message of one line a response to the complaint).

<sup>66</sup> *Justice for Children v. R neetso*, No. D2004-0175 (WIPO June 4, 2004), *available at* <http://www.wipo.int/amc/en/domains/decisions/html/2004/d2004-0175.html>.

## APPENDIX A COUNTRY NAMES

Country Name (A – C)	Country Name (D – I)	Country Name (J – N)
AFGHANISTAN	DENMARK	JAMAICA
ALAND ISLANDS	DJIBOUTI	JAPAN
ALBANIA	DOMINICA	JERSEY
ALGERIA	DOMINICAN REPUBLIC	JORDAN
AMERICAN SOMOA	ECUADOR	KAZAKHSTAN
ANDORRA	EGYPT	KENYA
ANGOLA	EL SALVADOR	KIRIBATI
ANGUILLA	EQUATORIAL GUINEA	KOREA, DEMOCRATIC PEOPLE'S REPUBLIC OF
ANTIGUA AND BARBUDA	ERITREA	KOREA, REPUBLIC OF
ARGENTINA	ESTONIA	KOSOVO
ARMENIA	ETHIOPA	KUWAIT
ARUBA	FALKLAND ISLANDS (MALVINAS)	KYRGYZSTAN
AUSTRALIA	FAROE ISLANDS	LAO PEOPLE'S DEMOCRATIC REPUBLIC
AUSTRIA	FIJI	LATVIA
AZERBAIJAN	FINLAND	LEBANON
BAHAMAS	FRANCE	LESOTHO
BAHRAIN	FRENCH GUIANA	LIBERIA
BANGLADESH	FRENCH POLYNESIA	LIBYAN ARAB JAMAHIRIYA
BARBADOS	GABON	LIECHTENSTEIN
BELARUS	GAMBIA	LITHUANIA
BELGIUM	GEORGIA	LUXEMBOURG
BELIZE	GERMANY	MACAO
BENIN	GHANA	MACEDONIA, THE FORMER YUGOSLAV REPUBLIC OF
BERMUDA	GIBRALTAR	MADAGASCAR
BHUTAN	GREECE	MALAWI
BOLIVIA	GREENLAND	MALAYSIA
BOSNIA AND HERZEGOVINA	GRENADA	MALDIVES
BOTSWANA	GUADELOUPE	MALI
BRAZIL	GUAM	MALTA
BRUNEI DARUSSALAM	GUATEMALA	MARSHALL ISLANDS
BULGARIA	GUERNSEY	MARTINIQUE
BURKINA FASO	GUINEA	MAURITANIA
BURUNDI	GUINEA-BISSAU	MAURITIUS
CAMBODIA	GUYANA	MAYOTTE
CAMEROON	HAITI	MEXICO
CANADA	HOLY SEE (VATICAN CITY STATE)	MICRONESIA, FEDERATED STATES OF
CAPE VERDE	HONDURAS	MOLDOVA, REPUBLIC OF
CAYMAN ISLANDS	HONG KONG	MONACO
CENTRAL AFRICAN REPUBLIC	HUNGARY	MONGOLIA

CHAD	ICELAND	MONTENEGRO
CHILE	INDIA	MONTSERRAAT
CHINA	INDONESIA	MOROCCO
COLOMBIA	IRAN, ISLAMIC REPUBLIC OF	MOZAMBIQUE
COMOROS	IRAQ	MYANMAR
CONGO	IRELAND	NAMIBIA
CONGO, THE DEMOCRATIC REPUBLIC OF THE	ISLE OF MAN	NAURU
COOK ISLANDS	ISRAEL	NEPAL
COSTA RICA	ITALY	NETHERLANDS
COTE D'IVOIRE		NETHERLANDS ANTILLES
CROATIA		NEW CALEDONIA
CUBA		NEW ZEALAND
CYPRUS		NICARAGUA
CZECH REPUBLIC		NIGER
		NIGERIA
		NIUE
		NORFOLK ISLAND
		NORTHERN MARIANA ISLANDS
		NORWAY

**Country Name (O – S)**

**Country Name (T – Z)**

OMAN	TAIWAN, PROVINCE OF CHINA
PAKISTAN	TAJIKISTAN
PALAU	TANZANIA, UNITED REPUBLIC OF
PALESTINIAN TERRITORY, OCCUPIED	THAILAND
PANAMA	TIMOR-LESTE
PAPUA NEW GUINEA	TOGO
PARAGUAY	TOKELAU
PERU	TONGA
PHILIPPINES	TRINIDAD AND TOBAGO
PITCAIRN	TUNISIA
POLAND	TURKEY
PORTUGAL	TURKMENISTAN
PUERTO RICO	TURKS AND CAICOS ISLANDS
QATAR	TUVALU
REUNION	UGANDA
ROMANIA	UKRAINE
RUSSIAN FEDERATION	UNITED ARAB EMIRATES
RWANDA	UNITED KINGDOM
SAINT BARTHELEMY	UNITED KINGDOM – “United Kingdom of Great Britain and Northern Ireland” [except where otherwise noted, as in cases where just the United Kingdom was listed without reference to Ireland. This will be denoted by a parenthetical (no Ireland).]
SAINT KITTS AND NEVIS	UNITED STATES
SAINT MARTIN	UNKNOWN
SAINT HELENA	URUGUAY
SAINT LUCIA	UZBEKISTAN
SAINT PIERRE AND MIQUELON	VANUATU

SAINT VINCENT AND THE GRENADINES  
SAMOA  
SAN MARINO  
SAO TOME AND PRINCIPE  
SAUDI ARABIA  
SENEGAL  
SERBIA  
SEYCHELLES  
SIERRA LEONE  
SINGAPORE  
SLOVAKIA  
SLOVENIA  
SOLOMAN ISLANDS  
SOMALIA  
SOUTH AFRICA  
SPAIN  
SRI LANKA  
SUDAN  
SURINAME  
SVALBARD AND JAN MAYEN  
SWAZILAND  
SWEDEN  
SWITZERLAND  
SYRIAN ARAB REPUBLIC  
VENEZUELA, BOLIVARIAN  
REPUBLIC OF  
VIET NAM  
VIRGIN ISLANDS, BRITISH  
VIRGIN ISLANDS, U.S.  
WALLIS AND FUTUNA  
WESTERN SAHARA  
YEMEN  
ZAMBIA  
ZIMBABWE

**APPENDIX B**  
**PANELIST BY COUNTRY**

For a list of the panelists by country see *WIPO Domain Name Panelists*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, <http://www.wipo.int/amc/en/domains/panel/panelists.jsp> (last visited September 30, 2010).

UniquelD	WipoNo	USAPet	NationPet	SizeArb	USARes	NationRes	USAArb	USAArb1	USAArb2	USAArb3	NationArb1	NationArb2	NationArb3	ResWin	PartWin	FairUse	Category	NameArb1	NameArb2	NameArb3	Default	Comme	Nonuse	UsLaw	UsLawApplie	OtherLaw	OtherLaw	WIPORule:		
1	D2007-0973	0	Germany	1	1	United States	0	0			United Kingdom			0	0	0	0	Information	Barker, James A.			0	0	1	0	0	0	1		
2	D2008-0989	0	Australia	1	0	Australia	0	0			Australia			0	0	0	0	Criticism	Swinson, John			1	0	0	0	0	0	1		
3	D2006-0159	1	United States	1	1	United States	1	1			United States			1	0	0	0	Criticism	Albert, Michael A.			1	0	1	1	0	0	0		
4	D2006-1134	1	United States	1	0	Canada	0	0			China			0	0	0	0	Information	Xue, Hong			0	0	0	0	0	0	0		
5	D2000-0592	0	Spain	1	0	Spain	0	0			Italy			0	0	0	0	Criticism	Bianchi, Roberto A.			0	0	0	0	0	1	0		
6	D2000-1741	1	United States	1	0	Mexico	0	0			Australia			0	0	0	0	Criticism	Hunter, Dan			1	0	0	0	0	0	0		
7	D2004-0535	1	United States	1	0	France	0	0			Canada			0	0	0	0	Criticism	Léger Q.C., Jacques A.			0	0	0	0	0	0	0		
8	D2008-1374	0	Australia	3	0	Australia	0	0	0	0	United Kingdom	Australia	Denmark	0	0	0	0	Criticism	Cairns, David J.A.	Christie, Andre Prehn, Lone		0	0	0	1	0	0	0	1	
9	DNU2007-0003	0	Belgium	1	0	Belgium	0	0			Australia			0	0	0	0	Criticism	Caenegaem, William van			0	0	0	0	0	0	0		
10	D2002-0051	0	Canada	3	0	United States	0	0	1	0	New Zealand	United States	Canada	0	0	0	0	Information	Barker, Sir Ian	Davis III, G. Ge Fogo, J.G.		0	1	0	0	0	0	0	0	
11	D2007-1844	0	United Kingdom	1	1	United States	0	0			New Zealand			0	0	0	0	Criticism	Payne, Alistair			0	0	0	0	0	0	0		
12	D2004-0658	0	Canada	1	0	United Kingdom	1	1			United States			0	0	0	0	Other	Towns, William R.			1	0	0	0	0	0	0		
13	D2005-1109	1	United States	1	1	United States	1	1			United States			0	0	0	0	Fan Site	Towns, William R.			0	0	0	0	0	0	0		
14	D2008-1234	1	United States	1	14	United States	1	1			United States			0	0	0	0	Criticism	Lyon, Richard			1	0	0	1	0	0	0	1	
15	D2008-1650	1	United States	1	1	United States	0	0			New Zealand			0	0	0	0	Criticism	Smith, Warwick			0	0	0	0	0	0	0		
16	D2006-0957	0	Spain	1	0	Korea	1	1			United States			0	0	0	0	Information	Kim, Grant L.			0	1	1	0	0	0	0		
17	D2000-1134	1	United States	1	0	Argentina	0	0			Canada			0	0	0	0	Fan Site	Hughes, Richard			1	0	1	0	0	0	0		
18	D2007-1151	1	United States	1	18	United States	1	1			United States			0	0	0	0	Criticism	Towns, William R.			1	0	0	0	0	0	0		
19	D2009-0961	0	Canada	1	0	Canada	0	0			Canada			0	0	0	0	Criticism	Pibus, Christopher J.			0	0	0	0	0	0	0		
20	D2000-0467	0	Spain	1	0	Spain	0	0			Italy			0	0	0	0	Criticism	Bianchi, Roberto A.			0	0	0	0	0	1	0		
21	D2005-1026	1	United States	1	1	United States	1	1			United States			0	0	0	0	Personal	Towns, William R.			0	0	0	0	0	0	0		
22	DME2008-0002	0	Germany	1	22	Brazil	0	0			New Zealand			0	0	0	0	Fan Site	Payne, Alistair			0	1	1	0	0	0	0		
23	D2009-0062	0	Mexico	1	1	United States	0	0			New Zealand			0	0	0	0	Criticism	Smith, Warwick			1	0	0	1	0	0	0	1	
24	D2000-1571	0	Canada	1	1	United States	0	0			United Kingdom			0	0	0	0	Criticism	Limbury, Alan L			0	0	0	1	0	0	0	0	
25	D2003-1007	1	United States	1	1	United States	1	1			United States			0	0	0	0	Information	Abbott, Frederick M.			0	0	1	0	0	0	0	0	
26	D2004-0814	0	Finland	1	26	Indonesia	0	0			Australia			0	0	0	0	Information	Swinson, John			1	0	0	0	0	0	0	0	
27	D2009-0695	1	United States	1	0	Netherlands (and Sw	0	0			United Kingdom			0	0	0	0	Criticism	Trotman, Clive N.A.			1	0	0	0	0	0	0	0	
28	D2007-1461	0	United Kingdom	1	0	United Kingdom	0	0			United Kingdom			0	0	0	0	Criticism	Harris, Matthew			0	0	0	1	0	0	0	0	1
29	D2006-0516	1	United States	3	1	United States	1	1	1	1	United States	United States	United State	0	0	0	0	Other	Towns, William R.	Lyon, Richard (Kim, Grant L.		1	0	0	0	0	1	0	0	1
30	D2000-1072	1	United States	1	30	United States	0	0			United Kingdom			0	0	0	0	Criticism	Plant, David W.			0	1	0	0	0	0	0	0	
31	D2001-0079	0	Germany	1	0	Austria	0	0			Switzerland			0	0	0	0	Information	Troller, Kamen			0	0	0	0	0	0	0	0	
32	D2003-0335	1	United States	1	1	United States	1	1			United States			0	0	0	0	Criticism	Foster, Dennis A.			1	0	0	0	0	0	0	0	
33	D2009-0929	0	Denmark	1	0	Japan	0	0			Canada			0	0	0	0	Fan Site	Oghigian, Haig			1	0	0	0	0	0	0	0	
34	D2002-0424	0	Canada	3	1	United States	1	0	1	1	Australia	United States	United State	0	0	0	0	Information	Swinson, John	Been, Carol An Sellers, Sandra		0	0	0	0	0	0	0	0	
35	D2007-0325	0	Australia	1	1	Australia	0	0			Australia			0	0	0	0	Criticism	Limbury, Alan L			1	0	0	0	0	0	0	0	
36	D2010-0209	0	United Kingdom	1	0	United Kingdom	0	0			United Kingdom			0	0	0	0	Criticism	Perkins, David			0	0	0	0	0	0	0	0	1
37	D2003-0603	0	United Kingdom	3	1	United States	0	0	0	1	Canada	United Kingdo	United State	0	0	0	0	Criticism	Carson, Ross	Perkins, David Page, Richard \		0	0	0	0	0	0	0	0	0
38	D2008-1068	1	United States	3	1	United States	1	1	1	0	United States	United States	United Kingd	0	0	0	0	Information	Samuels, Jeffery M.	O'Con0r, Bruce Harris, Gordon		0	1	1	0	0	0	0	0	0
39	D2005-0932	0	United Kingdom	1	0	United Kingdom	0	0			United Kingdom			0	0	0	0	Other	Turner, Jonathan			0	0	1	0	0	0	0	0	
40	D2001-0637 & D21	0	Switzerland	1	1	United States	0	0			New Zealand			0	0	0	0	Criticism	Barker, Sir Ian			0	0	0	0	0	0	0	0	
41	D2007-1020	0	United Kingdom	1	0	United Kingdom	0	0			United Kingdom			0	0	0	0	Fan Site	Davies, Isabel			0	0	1	0	0	0	0	0	0
42	D2006-0841	1	United States	1	1	United States	1	1			United States			0	0	0	0	Personal	Foster, Dennis A.			0	1	1	0	0	0	0	0	0
43	D2006-1469	0	Spain	1	0	West Indies (Saint Ki	0	0			Italy			0	0	0	0	Criticism	Bianchi, Roberto A.			1	0	0	0	0	0	0	0	0
44	D2009-1273	1	United States	1	1	United States	1	1			United States			0	0	0	0	Fan Site	Towns, William R.			0	0	0	1	0	0	0	0	0
45	D2009-0881	1	United States	1	0	Italy	0	0			United Kingdom			0	0	0	0	Information	Taylor, David			0	1	1	0	0	0	0	0	0
46	D2005-0908	1	United States	1	1	United States	1	1			United States			0	0	0	0	Information	Foster, Dennis A.			0	0	1	0	0	0	0	0	0
47	D2006-0560	1	United States	3	0	Canada	1	1	1	1	United States	United States	United State	0	0	0	0	Fan Site	Abbott, Frederick M.	Abel, Sally M. Sorkin, David		0	0	0	1	0	0	0	0	0
48	D2000-0501	1	United States	1	1	United States	1	1			United States			0	0	0	0	Criticism	Page, Richard W.			0	0	0	1	0	0	0	0	0
49	DCC2007-0002	0	Mexico	1	0	Mexico	0	0			Argentina			0	0	0	0	Information	O'Farrell, Miguel B.			0	0	0	0	0	0	0	0	0
50	D2009-0036	1	United States	1	1	United States	1	1			United States			0	0	0	0	Information	Page, Richard W.			0	0	0	1	0	0	0	0	0
51	D2007-0426	1	United States	1	1	United States	1	1			United States			0	0	0	0	Criticism	Franklin, Sandra J.			1	0	0	0	0	0	0	0	0
52	D2000-1698	0	United Kingdom	1	0	Canada	0	0			Australia			0	0	0	0	Information	Limbury, Alan L			0	0	0	1	0	0	0	0	0
53	D2001-1029	0	United Kingdom	1	0	United Kingdom	0	0			United Kingdom			0	0	0	0	Information	Tootal, Christopher			0	0	1	0	0	0	0	0	0
54	D2006-1166	0	United Kingdom	1	0	Canada	1	1			United States			0	0	0	0	Other	O'Con0r, Bruce E.			1	0	1	0	0	0	0	0	0
55	D2003-0248	1	United States	3	1	United States	0	0	?	0	New Zealand	?	Finland	0	0	0	0	Criticism	Smith, Warwick	McCotter Jr., CHarenko, Kristi		1	0	0	1	0	0	0	0	0
56	D2007-0128	1	United States	1	1	United States	1	1			United States			0	1	0	0	Information	Towns, William R.			0	0	0	1	0	0	0	0	0
57	D2002-0208	1	United States	1	1	United States	0	0			United Kingdom			0	0	0	0	Information	Trotman, Clive N.A.			0	0	0	0	0	0	0	0	0
58	D2001-1202	0	Spain	1	58	Spain	0	0			Spain			0	0	0	0	Information	Munta0la, Mario A. Sol			0	0	0	0	0	0	0	0	0
59	D2009-1478	1	United States	1	1	United States	1	1			United States			0	0	0	0	Information	Foster, Dennis A.			0	1	0	0	0	0	0	0	0
60	D2006-0462	0	Germany	1	0	Panama	0	0			Switzerland			0	0	0	0	Criticism	Imhoos, Christophe			1	0	0	0	0	0	0	0	0
61	D2003-0802	0	Switzerland	3	0	Italy	0	0	0	0	Sweden	Netherlands	United Kingd	0	0	0	0	Information	Janson, Anders	Buning, Madel Hwang, Micha		0	0	0	0	0	0	0	0	0
62	D2007-0674	0	Germany	1	1	United States	0	0			Australia			0	0	0	0	Criticism	Brown, Neil Anthony			0	0	1	0	0	0	0	0	0
63	D2004-0988	1	United States	1	1	United States	1	1			United States			0	0	0	0	Criticism	Towns, William R.			0	0	0	1	0	0	0		

81	D2004-1061	0 United Kingdom	1	0 United Kingdom	0	0	0	United Kingdom	0	0	0 Criticism	Lambert, John (listed as John but I think Jane)	1	0	0	0	0	1	0	0						
82	D2004-0299	0 Indonesia	3	0 United Kingdom	0	0	0 ?	Italy	New Zealand ?	0	0	0 Criticism	Mondini, Andrea	Barker, Ian	Wallance, Ann	0	0	0	0	0	0	1	0	1	0	
83	D2008-0821	0 Signapore	1	0 United Kingdom	1	1		United States		0	0	0 Personal	Towns, William R.			0	0	1	0	0	0	0	0	1	1	
84	D2004-0288	0 New Zealand	1	0 New Zealand	0	0		New Zealand		0	0	0 Information	Barker, Sir Ian			0	0	1	0	0	0	1	0	0	0	
85	D2007-0099	1 United States	1	1 United States	1	1		United States		0	0	0 Criticism	Fox, Angela			1	1	0	0	0	0	0	1	0	0	
86	D2007-1389	1 United States	1	1 United States	1	1		United States		0	0	0 Other	Towns, William R.			0	1	0	0	0	0	0	1	0	0	
87	D2008-2008	1 United States	1	1 United States	1	1		United States		0	0	0 Information	Michaelson, Peter L.			0	0	0	0	0	0	0	1	0	0	
88	D2005-0636	1 United States	1	1 United States	1	1		United States		0	0	0 Other	Michaelson, Peter L.			0	0	0	1	0	0	0	0	0	0	
89	D2004-0325	1 United States	1	0 Canada	0	0		Australia		0	0	0 Personal	Argy, Philip			0	0	0	0	0	0	0	1	0	0	
90	D2000-0321	1 United States	1	1 United States	1	1		United States		0	0	0 Information	Foster, Dennis A.			0	0	1	0	0	0	0	1	0	0	
91	D2001-1121	0 France	3	1 United States	0	0	0	1 United Kingdom	New Zealand	United State	0	0	0 Criticism	Limbury, Alan L	Barker, Sir Ian	Sorkin, David	0	0	1	1	0	0	0	0	0	0
92	D2007-0185	1 United States	1	1 United States	1	1		United States		0	0	0 Information	Towns, William R.			0	0	1	0	0	0	0	1	1	1	
93	D2000-0034	0 Switzerland	1	0 Korea	0	0		Australia		0	0	0 Information	Christie, Andrew F.			0	0	0	0	0	0	0	1	0	0	
94	D2009-0183	0 France	1	0 Bahamas	1	1		United States		0	0	0 Criticism	Lyon, Richard			1	0	0	0	0	0	0	1	1	1	
95	D2000-1772	1 United States	1	1 United States	1	1		United States		0	0	0 Fan Site	Bernstein, David			0	0	1	1	0	0	0	0	0	0	
96	D2002-0127	0 Australia	1	1 United States	0	0		Finland		0	0	0 Information	Harenko, Kristiina			1	0	0	0	0	0	0	1	0	0	
97	D2006-1066	0 United Kingdom	1	0 United Kingdom	0	0		Australia		0	0	0 Criticism	Barker, James A.			0	0	0	0	0	0	1	0	1	1	
98	D2007-0789	1 United States	1	1 United States	1	1		United States		0	0	0 Information	Franklin, Sandra J.			0	0	1	0	0	0	0	1	0	0	
99	D2005-1240	0 France	1	0 China	0	0		Singapore		0	0	0 Information	Tan, Richard			1	0	0	0	0	0	0	1	0	0	
100	D2000-0662	1 United States	1	1 United States	1	1		United States		0	0	0 Criticism	Bernstein, David			0	1	1	0	0	0	0	1	0	0	
101	D2003-0095	0 Germany	1	1 United States	0	0		Nigeria		0	0	0 Personal	Ohiku, Uwa			0	1	1	0	1	0	0	0	0	0	
102	D2000-0830	1 United States	1	1 United States	1	1		United States		0	0	0 Criticism	Abbott, Frederick M.			1	0	1	1	0	0	0	0	0	0	
103	D2000-1000	1 United States	1	1 United States	1	1		United States		0	0	0 Fan Site	Abbott, Frederick M.			0	0	1	1	0	0	0	0	0	0	
104	D2005-1059	0 Switzerland	1	1 United States	0	0		Australia		1	0	1 Fan Site	Terry, John			0	0	0	0	0	0	0	1	0	0	
105	D2009-1673	0 Netherlands	1	1 United States	0	0		Australia		1	0	1 Other	Barker, James A.			0	0	1	0	0	0	0	1	1	1	
106	D2007-0221	1 United States	3	0 United Kingdom	0	0	1	0 Australia	United States	United Kingd	1	0	1 Fan Site	Swinson, John	Bernstein, Dav	Lothian, Andre	0	0	0	0	0	0	1	1	1	
107	D2008-1177	1 United States	1	0 France	1	1		United States		1	0	1 Criticism	Blackmer, Scott W.			0	0	0	0	0	0	0	1	0	0	
108	D2009-1295	0 Canada	1	1 United States	0	0		Australia		1	0	1 Criticism	Weston, Nicholas			0	0	0	1	0	1	0	1	0	1	
109	D2009-0724	0 United Kingdom	1	1 United States	0	0		Australia		1	0	1 Criticism	Swinson, John			0	0	0	0	0	0	0	1	1	1	
110	D2008-0987	0 Germany	1	1 United States	0	0		Australia		1	0	1 Criticism	Rothnie, Warwick A.			0	0	0	0	0	0	0	1	1	1	
111	D2000-1712	1 United States	3	1 United States	0	0	1	0 Ireland	United States	Italy	1	0	1 Personal	Bridgeman, James	Samuels, Jeffre	Hill, Richard	0	0	0	1	0	0	0	0	0	
112	D2006-1525	0 Germany	1	1 United States	1	1		United States		1	0	1 Personal	Towns, William R.			0	0	0	0	0	0	0	1	0	0	
113	D2008-1756	0 Italy	1	1 United States	0	0		United Kingdom		1	0	1 Criticism	Trotman, Clive N.A.			0	0	0	0	0	0	0	1	0	0	
114	D2003-0525	0 Spain	1	0 United Kingdom	1	1		United States		1	0	1 Information	Abbott, Frederick M.			0	1	1	1	0	0	0	0	0	0	
115	D2004-0789	1 United States	1	1 United States	1	1		United States		1	0	1 Personal	Lyon, Richard			0	0	0	0	0	0	0	1	0	0	
116	D2004-0001	1 United States	1	1 United States	1	1		United States		1	0	1 Fan Site	Abbott, Frederick M.			0	0	0	0	0	0	0	1	0	0	
117	D2005-0674	1 United States	1	0 United Kingdom	0	0		Canada		1	0	1 Criticism	Gervais, Daniel J.			0	0	0	1	0	0	0	0	0	0	
118	D2006-0655	0 Brazil	1	1 United States	0	0		Canada		1	0	1 Personal	Pibus, Christopher J.			0	0	0	0	0	0	0	1	0	0	
119	D2006-0551	1 United States	1	1 United States	1	1		United States		1	0	1 Information	Lyon, Richard			0	0	0	0	0	0	0	1	1	1	
120	D2002-0184	1 United States	3	1 United States	1	1	1	0 United States	United States	United Kingd	1	0	1 Criticism	Donahay, Scott M.	Cabell, Diane	Willoughby, To	0	0	0	1	1	0	0	0	0	0
121	D2004-0206	1 United States	1	0 United Kingdom	0	0		Australia		1	0	1 Criticism	Payne, Alistair			0	0	0	1	0	0	0	0	0	0	
122	D2008-0316	1 United States	1	1 United States	1	1		United States		1	0	1 Information	Lyon, Richard			1	0	0	1	0	0	0	0	0	0	
123	D2006-1165	0 Australia	1	0 Australia	0	0		Australia		1	0	1 Information	Payne, Alistair			0	0	0	0	0	0	0	1	0	0	
124	D2002-0616	0 Israel	3	0 Canada	0	0	0	1 United Kingdom	Israel	United State	1	0	1 Information	Limbury, Alan L	Ophir, Michael	Donahay, M. Si	1	0	0	0	0	0	1	0	0	
125	D2010-0424	0 Russia	1	0 Russia	0	0		Russia		1	0	1 Information	Savelieva, Irina V.			0	0	0	0	0	0	0	1	0	0	
126	D2003-0024	1 United States	1	1 United States	1	1		United States		1	0	1 Criticism	Bernstein, David			1	0	0	1	1	0	0	0	0	0	
127	D2000-0067	0 United Kingdom	1	1 United States	1	1		United States		1	0	1 Personal	Thompson, Roderick			0	0	1	0	0	0	0	1	0	0	
128	D2000-0859	1 United States	3	1 United States	1	1	1	1 United States	United States	United State	1	0	1 Criticism	Lackert, Clark W.	Abbott, Freder	Haviland, Dana	0	0	0	0	0	0	1	0	0	
129	D2001-0505	0 United Kingdom	1	0 Netherlands (and Sw	1	1		United States		1	0	1 Criticism	Bernstein, David			0	0	0	0	0	0	0	1	0	0	
130	D2006-1190	0 Switzerland	1	1 United States	0	0		Australia		1	0	1 Information	Rothnie, Warwick A.			0	0	0	0	0	0	0	1	0	0	
131	D2008-1400	0 Spain	1	0 Spain	0	0		Spain		1	0	1 Criticism	More0-Torres, Manuel			0	0	0	0	0	0	0	0	1	1	
132	D2004-0175	1 United States	1	1 United States	1	1		United States		0	0	0 Criticism	Lyon, Richard			0	0	0	1	1	0	0	0	0	0	
133	D2010-0893	0 Switzerland	1	0 China	0	0		Australia		0	0	0 Other	Wilson, Ross			0	1	0	1	1	0	0	0	0	0	
134	D2003-0498	0 Turkey	1	1 United States	0	0		Canada		0	0	0 Criticism	Gervais, Daniel J.			0	0	1	1	1	0	0	0	0	0	
135	D2001-0784	1 United States	3	1 United States	1	1		United States	United States	United State	0	0	0 Fan Site	Page, Richard W.	Birch, Terrell	CMichaelson, Pe	0	0	0	1	1	0	0	0	0	
136	D2003-0326	0 Canada	1	0 Canada	0	0		Canada		0	0	0 Criticism	Gervais, Daniel J.			0	1	0	1	1	1	0	0	0	0	
137	D2000-0477	1 United States	1	0 Canada	1	1		United States		0	0	0 Other	Abbott, Frederick M.			0	1	1	1	1	0	0	0	0	0	
138	D2007-0070	1 United States	1	1 United States	1	1		United States		1	0	1 Criticism	Bernstein, David			1	0	0	1	1	0	0	0	0	0	
139	D2007-1597	1 United States	1	1 United States	1	1		United States		1	0	1 Criticism	Lyon, Richard			0	0	0	1	1	0	0	1	0	1	
140	D2004-0978	1 United States	1	1 United States	1	1		United States		1	1	1 Criticism	King, D. Brian			0	1	0	1	1	0	0	0	0	0	
141	D2003-0399	1 United States	1	1 United States	1	1		United States		1	0	1 Information	Abbott, Frederick M.			0	0	0	1	1	0	0	0	0	0	
142	D2008-0736	1 United States	1	1 United States	1	1		United States		1	0	1 Criticism	Michaelson, Peter L.			0	0	0	1	1	0	0	0	0	0	
143	D2006-1627	1 United States	3	1 United States	1	1	1	1 United States	United States	United State	1	1	1 Criticism	Lyon, Richard	Bernstein, Dav	Franklin, Sandr	1	0	0	1	1	0	0	1	1	
144	D2000-1647	1 United States	1	1 United States	1	1		United States		1	0	1 Information	Haviland, Dana			0	0	1	1	1	0	0	0	0	0	
145	D2006-1194	0 Ireland	1	0 United Kingdom (0 Ir	1	1		United States		1	0	1 Criticism	Bernstein, David			0	0	0	1	1	0	0	0	1	1	
146	D2004-1032	1 United States	1	1 United States	1	1		United States		1	0	1 Information	Abbott, Frederick M.			0	0	0	1	1	0	0	0	0	0	
147	D2000-0190	1 United States	1	1 United States	1	1		United States		1	0	1 Criticism	Dana Haviland			0	0	0	1	1	0	0	0	0	0	
148	D2001-0810	1 United States	1	1 United States	1	1		United States		1	0	1 Other	Samuels, Jeffery M.			0	0	0	1	1	0	0	0	0	0	