

August 28, 2012

Background

In March, 2010, [domain name lawyer](#), Zak Muscovitch, of DNattorney.com released a comprehensive study (the Original Study) on the concentration of appointments by the National Arbitration Forum (NAF) among a handful of arbitrators on its roster.

The NAF is a mandated Dispute Resolution Provider by the Internet Corporation for Assigned Names and Numbers (ICANN) to adjudicate domain name disputes between trademark owners and domain name owners involving allegations of cybersquatting. These proceedings are known as Uniform Dispute Resolution Policy disputes or “UDRP disputes” and usually argued by domain name attorneys on behalf of their clients. The NAF is one of four Dispute Resolution Providers mandated by ICANN and has a large market share of UDRP disputes. The overwhelming majority of UDRP disputes before the NAF are adjudicated by a single-member panel where an arbitrator is appointed by the NAF. There is a paid option for upgrading to a three-member panel, in which case each disputant can nominate an arbitrator of its choice, in addition to the one appointed by the NAF.

DNattorney.com undertook the Original Study in order to determine whether the appointments of single-member panels were random. Randomly selecting arbitrators would ensure fairness and a lack of arbitrariness in NAF decisions. The Original Study, which can be seen at <http://dnattorney.com/study>, culled case-related data from the NAF’s website. This data revealed that there was a significant concentration of appointments among 10 adjudicators, one of which presided in approximately 966 cases of the nearly 10,000 heard to date, representing close to 10 per cent of UDRP proceedings at the NAF.

Current Study

In July, 2012, DNattorney.com updated the Original Study by gathering data on the 10 most appointed panellists identified previously. Of those panellists, three are no longer on the NAF’s roster, leaving seven comparisons to be made in the Current Study.¹

The Current Study used data from the NAF’s website and searchable databases. All the data used was pulled on July 5, 2012. The total number of cases heard in the Current Study’s period was approximately 4,144. This number includes cases categorized as “Cancelled,” “Claim Denied,” “Split Decision,” and “Transferred,” meaning cases categorized as “Withdrawn” or “Pending” were not included in the Current Study. The Current Study did not distinguish between single-panel decisions and three-party panel decision but it is widely understood by domain name lawyers that the number of three-party panel decisions is a small fraction of disputes adjudicated by the NAF. For example, Paul Dorf, one of the panellists analyzed, was assigned to a total of 192 cases during the Current Study’s period of time, only two of which were three-party panels. In other words, of the total number of cases this panellist heard during the Current Study’s period, 99 per cent represented cases in which he was appointed by the NAF.

The Current Study broke down the overall number of UDRP disputes assigned to the panellists over the 10 year period comprising the Original Study by averages per year and per month. For

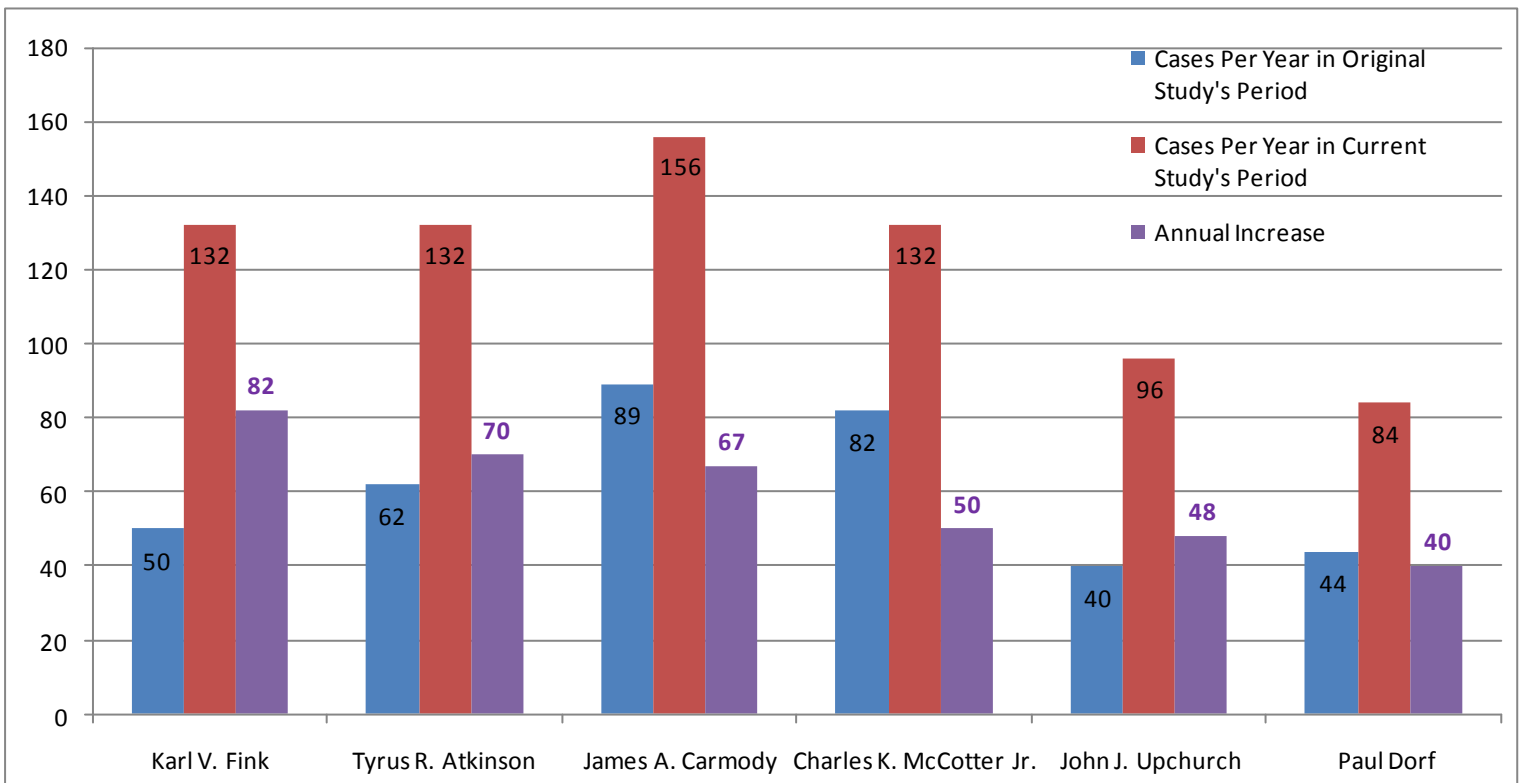
¹ Was reportedly deceased on July 5, 2012.

example, in the Original Study, Carolyn Marks Johnson was assigned to approximately 966 cases over an approximate 10 year period, which equates to nearly 97 disputes per year and nearly 8 disputes per month. The Current Study then placed those annual and monthly figures alongside annual and monthly figures for the same panellists over a 28 month period (the time since the last report was released).

Of the seven panellists comprising the Current Study, Carolyn Marks Johnson is the only one whose numbers stayed largely constant (increasing by one) – *every single other panellist was appointed to markedly more UDRP cases on average per year and per month as compared to the previous report.* This suggests that DNattorney.com’s Original Study did not impact the NAF’s practice of concentrating UDRP disputes among a handful of panellists.

Comparisons between Original Study and Current Study

- The new most appointed arbitrator by the NAF is James A. Carmody, who decided approximately 354, or 8.5 per cent of the 4,144 UDRP disputes in question during the Current Study’s period (March 5, 2010 – July 4, 2012).
- The arbitrator with the highest spike in UDRP disputes is Karl V. Fink, who went from an approximate average of 50 cases per year in the Original Study’s period to nearly 132 cases per year in the Current Study’s study period. This equates to an approximate 11 UDRP disputes per month.
- As mentioned, six of the seven arbitrators were appointed to markedly more UDRP disputes than they were in the Original Study’s period.



1. Karl V. Fink went from hearing an average of 50 UDRP disputes per year in the Original Study's period to an average of 132 UDRP disputes per year in the Current Study's period. This represents an increase of approximately 82 cases per year.
2. Tyrus R. Atkinson went from hearing an average of 62 UDRP disputes per year in the Original Study's period to an average of 132 UDRP disputes per year in the Current Study's period. This represents an increase of approximately 70 cases per year.
3. James A. Carmody went from hearing an average of 89 UDRP disputes per year in the Original Study's period to an average of 156 UDRP disputes per year in the Current Study's period. This represents an increase of approximately 67 cases per year.
4. Charles K. McCotter Jr. went from hearing an average of 82 UDRP disputes per year in the Original Study's period to an average of 132 UDRP disputes per year in the Current Study's period. This represents an increase of approximately 50 cases per year.
5. John J. Upchurch went from hearing an average of 48 UDRP disputes per year in the Original Study's period to an average of 96 UDRP disputes per year in the Current Study's period. This represents an increase of approximately 48 cases per year.
6. Paul Dorf² went from hearing an average of 44 UDRP disputes per year in the Original Study's period to an average of 84 UDRP disputes per year in the Current Study's period. This represents an increase of approximately 40 cases per year.

All of the panellists mentioned are from the United States. When the Current Report was undertaken, there were 136 panellists on the NAF's roster, 70 of whom were from the United States. There were 33 other countries represented on NAF's roster and NAF regularly adjudicates UDRP disputes between parties in various jurisdictions outside the United States. Notwithstanding the fact that over half of the UDRP's panellists are American, this data suggests that panellists from other countries are not being appointed to decide UDRP disputes at the same rate as the Americans.

For example, a highly regarded panellist from Australia has only been on 131 panels from September 6, 2005 – July 4, 2012, almost a 7 year period. To put this in context, James A. Carmody, an American, has been on 356 panels between March 5, 2010 and July 4, 2012, a 28 month period.

Total Number of Cases Where Panellists have been Appointed between Feb 4, 2000 and July 4, 2012*

Cancelled	44 Cases	Since 02/29/2000
Claim Denied	1,816 Cases	Since 03/09/2000
Split Decision	73 Cases	Since 05/18/2000
Transferred	13,066 Cases	Since 02/04/2000
TOTAL	14,999 Cases	

² *ibid*

* Tallies do not include cases categorized as “withdrawn” or “pending” in NAF’s Searchable Case database. When included, the total number of cases heard in this period is 17,311 (there have been 2078 cases “withdrawn” and there are 234 cases “pending.”) Tallies may include three person panel decisions.

Total Number of Cases Where Panellists have been Appointed between March 5, 2010 and July 4, 2012*

Cancelled	12 Cases	Since 03/10/2010
Claim Denied	377 Cases	Since 03/08/2010
Split Decision	24 Cases	Since 03/12/2010
Transferred	3,731 Cases	Since 03/05/2010
TOTAL	4,144 Cases	

* Tallies do not include cases categorized as “withdrawn” or “pending” in NAF’s Searchable Case database. Tallies may include three person panel decisions.

Number of Cases Each Panellist from Last Report has been Appointed to between March 5, 2010 and July 4, 2012* Arbitrators are listed in order of most appointed in the top ten in previous report

Carolyn Marks Johnson	Cancelled – 1 Claim Denied – 14 Split Decision – 1 Transferred – 206 TOTAL – 222 PERCENTAGE OF TOTAL CASES SINCE LAST STUDY* - 5.3	Since 03/10/2010 Since 10/11/2010 Since 11/02/2011 Since 03/12/2010
James A. Carmody	Cancelled – 0 Claim Denied – 26 Split Decision – 2 Transferred – 328 TOTAL – 356 PERCENTAGE OF TOTAL CASES SINCE LAST STUDY* - 8.5	Since 03/08/2010 Since 01/28/2011 Since 03/08/2010
Charles K. McCotter Jr.	Cancelled – 2 Claim Denied – 9 Split Decision – 1 Transferred – 287 TOTAL – 299 PERCENTAGE OF TOTAL CASES SINCE LAST STUDY* - 7.2	Since 12/02/2011 Since 04/07/2010 Since 03/22/2011 Since 03/11/2010
Ralph Yachnin	No Longer on Roster	No Longer on Roster
Tyrus R. Atkinson Jr.	Cancelled – 0 Claim Denied – 11	Since 06/01/2010

	Split Decision – 2 Transferred – 284 TOTAL – 297 PERCENTAGE OF TOTAL CASES SINCE LAST STUDY* - 7.1	Since 04/16/2010 Since 03/11/2010
Karl V. Fink	Cancelled – 0 Claim Denied – 21 Split Decision – 2 Transferred – 296 TOTAL – 319 PERCENTAGE OF TOTAL CASES SINCE LAST STUDY* - 7.6	Since 04/07/2010 Since 10/28/2010 Since 03/10/2010
John J. Upchurch	Cancelled – 1 Claim Denied – 18 Split Decision – 1 Transferred – 216 TOTAL – 236 PERCENTAGE OF TOTAL CASES SINCE LAST STUDY* - 5.6	Since 05/11/2012 Since 04/07/2010 Since 12/22/2011 Since 03/05/2010
Harold Kalina	No Longer on Roster	No Longer on Roster
Paul Dorf	Cancelled – 0 Claim Denied – 7 Split Decision – 1 Transferred – 184 TOTAL – 192 PERCENTAGE OF TOTAL CASES SINCE LAST STUDY* - 4.6	Since 06/30/2010 Since 12/28/2011 Since 03/12/2010
Louis E. Condon	No Longer on Roster	No Longer on Roster

* Tallies do not include cases categorized as “withdrawn” or “pending” in NAF’s Searchable Case database. Tallies may include three person panel decisions.

Comparisons between Previous Study and Current Study*

Panellist	Average Cases Assigned in Previous Study Previous Study Encompassed a 10 Year Period	Average Cases Assigned in Current Study Current Study encompassed a 28 Month Period
Carolyn Marks Johnson	Average Assigned Per Year: 97 Cases Average Assigned Per Month: 8 Cases	Average Assigned Per Year: 96 Cases Average Assigned Per Month: 8 Cases

James A. Carmody	Average Assigned Per Year: 89 Cases Average Assigned Per Month: 7 Cases	Average Assigned Per Year: 156 Cases Average Assigned Per Month: 13 Cases
Charles K. McCotter Jr.	Average Assigned Per Year: 82 Cases Average Assigned Per Month: 7 Cases	Average Assigned Per Year: 132 Cases Average Assigned Per Month: 11 Cases
Ralph Yachnin	Average Assigned Per Year: 72 Cases Average Assigned Per Month: 6 Cases	No Longer on Roster
Tyrus R. Atkinson Jr.	Average Assigned Per Year: 62 Cases Average Assigned Per Month: 5 Cases	Average Assigned Per Year: 132 Cases Average Assigned Per Month: 11 Cases
Karl V. Fink	Average Assigned Per Year: 50 Cases Average Assigned Per Month: 4 Cases	Average Assigned Per Year: 132 Cases Average Assigned Per Month: 11 Cases
John J. Upchurch	Average Assigned Per Year: 48 Cases Average Assigned Per Month: 4 Cases	Average Assigned Per Year: 96 Cases Average Assigned Per Month: 8 Cases
Harold Kalina	Average Assigned Per Year 46 Cases Average Assigned Per Month: 4 Cases	No Longer on Roster
Paul Dorf	Average Assigned Per Year: 44 Cases Average Assigned Per Month: 4 Cases	Average Assigned Per Year: 84 Cases Average Assigned Per Month: 7 Cases
Louis E. Condon	Average Assigned Per Year: 44 Cases Average Assigned Per Month: 4 Cases	No Longer on Roster

* Rounded to the nearest whole number.

Paul Dorf³ – Part of Three Person Panels between March 5, 2010 and July 4, 2012*

Case Number	Decision Reached	Placed on Panel By
1351489	Claim Denied	Nominated by Disputant
1422581	Claim Denied	Nominated by Disputant
TOTAL	2 of 192	

* Tallies do not include cases categorized as “withdrawn” or “pending” in NAF’s Searchable Case database.

The Current Study was conducted by Michael Ettetdgui, Student at Law, Osgoode Hall Law School.

³ *ibid*