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# SWISS REVIEW OF INTERNATIONAL AND EUROPEAN LAW

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Schweizerische Zeitschrift  
für internationales und europäisches Recht  
Revue suisse de droit international et européen

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# Alternative Dispute Resolution in Cyberspace: The Need to Adopt Global ADR Mechanisms for Addressing the Challenges of Massive Online Micro-Justice

Jacques de Werra\*

This paper discusses the potential of alternative dispute resolution mechanisms for solving Internet-related disputes and for addressing the challenges of Massive Online Micro-Justice, i.e. an online justice system that aims at solving a massive amount of micro Internet-related disputes affecting citizens and companies alike around the globe that are presently submitted to online platforms and decided by them. In particular, this paper discusses the challenges faced by online platforms to deal with the myriad of micro cases they are confronted with on a daily basis by reference to the massive (and ever-growing) amount of removal requests which have been submitted to Google following the (highly mediatised) confirmation by the Court of Justice of the European Union of the Right to Be De-indexed (better known under a misnomer, i.e. the Right to Be Forgotten). On this basis, this paper pleads for the development of global policies governing online alternative dispute resolution mechanisms which is critical to avoid fragmentation and which is necessary to maintain equitable access to justice in cyberspace. In this respect, this paper discusses the use of the Uniform Domain Name Dispute Resolution Policy (UDRP) as a possible source of guidance for such global dispute resolution mechanism.

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## I. Introduction

Solving global Internet-related disputes before national or regional courts has not proved to be the best approach already because it can contribute to increase the much debated (and criticised) phenomenon of Internet fragmentation.<sup>1</sup> For this reason,

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1 On this issue, see the recent white paper prepared in the framework of the World Economic Forum's Future of the Internet Initiative (FII), Internet Fragmentation: An Overview, authored by WILLIAM J. DRAKE, VINTON G. CERF & WOLFGANG KLEINWÄCHTER (January 2016), <<https://www.weforum.org/reports/internet-fragmentation-an-overview>>.

online alternative dispute resolution (ADR) mechanisms have been viewed as valuable processes for solving global Internet-related disputes.

This is particularly the case for disputes affecting consumers for which a number of national or regional regulators have taken steps in order to make available cheap (or even free) online alternative dispute resolution mechanisms for solving disputes that consumers have with professional traders in the online environment. This is what has been adopted in the European Union,<sup>2</sup> where the regulatory framework provides for the establishment of a European Online Dispute Resolution platform (ODR platform) which has just been set up.<sup>3</sup>

It is however critical to realize that Internet-related disputes are not only about dissatisfied consumers or traders. Many Internet-related disputes are indeed about individuals (and companies) who complain about the online behavior of third parties (individuals or companies) on grounds that such behavior would allegedly negatively affect them and against which they wish to act and obtain redress (frequently by requesting the removal of the relevant online content). There is consequently a need to go beyond the development of regulatory and IT tools<sup>4</sup> that are designed to address *only* consumer cyberdisputes and to protect *only* the *financial* interests of cyberconsumers against traders<sup>5</sup> and to develop tools that shall protect more fundamentally the *societal* interests of *citizens* who are embroiled in cyberdisputes.

However, in spite of the frequency of these disputes, there is as of today no global and uniform dispute resolution mechanism that has been made available across online platforms and online service providers. Each platform and online operator has its own system and method for handling these disputes.

This does not mean that this issue has remained unexplored: several remarkable projects and initiatives have been launched in order to create more transparency with respect to the multitudes of decisions which are made by online platforms in all these

2 See the dedicated website: <[http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/non-judicial\\_redress/adr-odr/index\\_en.htm](http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/adr-odr/index_en.htm)>; the EU has adopted various instruments on this topic, including the Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>>) and Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>>) and Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes (<<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R1051&from=EN>>).

3 <<http://ec.europa.eu/odr>>.

4 See e.g. <<http://ec.europa.eu/odr>>.

5 And traders against consumers.

disputes. Reference can be made in this respect to the Lumen initiative coordinated by the Berkman Klein Center for Internet & Society<sup>6</sup>, to the Internet & Jurisdiction Project<sup>7</sup> and to the recent Ranking Digital Rights<sup>8</sup> project. Quite interestingly, the Ranking Digital Rights project identifies among its recommendations the need to «establish effective grievance and remedy mechanisms»<sup>9</sup>. However, these initiatives and projects have generally focused on the way(s) private requests (particularly for content removal) are presently processed by online platforms and the way(s) they could be streamlined.<sup>10</sup> They do not necessarily formulate procedural tools that shall ensure a global level playing field for online dispute resolution mechanisms that shall offer an adequate level of transparency, efficiency and fairness.<sup>11</sup> This is essentially what this paper wishes to explore by discussing how tools could be developed in order to address the challenges of what I have called «Massive Online Micro-Justice (MOMJ)». This term – initially coined at a conference on Jurisdiction in the Internet Era organized by the University of Geneva and the Geneva Internet Platform in Geneva in November 2014<sup>12</sup> – aims at capturing the need to develop tools for render-

- 6 <<https://cyber.law.harvard.edu/research/chillingeffects>> (the previous name of the project was Chilling Effects): «Lumen collects and studies online content removal requests, providing transparency and supporting analysis of the Web's takedown <ecology>, in terms of who sends requests, why, and to what ends. Lumen seeks to facilitate research about different kinds of complaints and requests for removal – legitimate and questionable – that are being sent to Internet publishers, platforms, and service providers and, ultimately, to educate the public about the dynamics of this aspect of online participatory culture»; see the Lumen database at: <<https://www.lumendatabase.org/>>.
- 7 <[www.internetjurisdiction.net/](http://www.internetjurisdiction.net/)>; see the most recent report of BERTRAND DE LA CHAPPELLE & PAUL FEHLINGER, «Jurisdiction on the Internet – From Legal Arms Race to Transnational Cooperation» (April 2016), <<http://www.internetjurisdiction.net/jurisdiction-on-the-internet-global-commission-on-internet-governance/>>.
- 8 <<https://rankingdigitalrights.org/>>.
- 9 <<https://rankingdigitalrights.org/index2015/recommendations/>>: «Grievance mechanisms and remedy processes should be more prominently available to users. Companies should more clearly indicate that they accept concerns related to potential or actual violations of freedom of expression and privacy as part of these processes. Beyond this, disclosure pertaining to how complaints are processed, along with reporting on complaints and outcomes, would add considerable support to stakeholder perception that the mechanisms follow strong procedural principles and that the company takes its grievance and remedy mechanisms seriously.»
- 10 This paper will not discuss requests made to online platforms by governmental agencies or bodies, which raise different (though partly comparable) issues; on this question, see LIZ WOOLERY, RYAN BUDISH & KEVIN BANKSTON, *The Transparency Reporting Toolkit: Best Practices for Reporting on U.S. Government Requests for User Information* (March 2016), <[https://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Final\\_Transparency.pdf](https://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Final_Transparency.pdf)>.
- 11 Some (remarkable) reports make innovative policy proposals but generally do so on the basis of local regulations (specifically the US DMCA), see the excellent paper of JENNIFER M. URBAN, JOE KARAGANIS & BRIANNA L. SCHOFIELD, *Notice and Takedown in Everyday Practice* (March 2016), <<http://ssrn.com/abstract=2755628>>.
- 12 <<http://gipplatform.org/sites/default/files/Jurisdiction-summary.pdf>>.

ing justice online in a multitude of micro cases, i.e. in a way that can efficiently address the myriads of cases that the online platforms have to face on a daily basis.

Even though this issue is not new, it has come into (intensive) light following the highly mediated decision of the Court of Justice of the European Union in the *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González* of 13 May 2014<sup>13</sup>, which has triggered a flow of academic (and political) reactions and discussions<sup>14</sup> and that shall be presented *infra* (see *infra* Section II.A).

It would however be wrong (and unduly restrictive) to conceive this issue as relating only to the so-called «right to be forgotten» – more precisely referred to as a «right to be de-indexed» –.<sup>15</sup> This is evidenced by the newly adopted US – EU Privacy Shield framework which also provides for sophisticated multi-tiered dispute resolution mechanisms, including arbitration.<sup>16</sup> This is further confirmed by the recent Internet Governance Strategy 2016–2019 of the Council of Europe<sup>17</sup> (under the title: «Democracy, human rights and the rule of law in the digital world») which also confirms the importance of effective dispute resolution mechanisms and remedies for protecting Internet users (with respect to their human rights). This document indeed provides that the Council of Europe will (particularly) focus on «promoting the setting up of a network of national institutions to guide Internet users who seek redress and remedies when their human rights have been restricted or violated based on the Council of Europe Guide to human rights of Internet users»<sup>18</sup>. It further provides among the planned activities under the title «Effective remedies

13 <[http://curia.europa.eu/juris/document/document\\_print.jsf?doclang=EN&docid=152065](http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065)>.

14 Including from the perspective of conflict of laws, see e.g. MICHEL REYMOND, *Hammering Square Pegs into Round Holes: the Geographical Scope of Application of the EU Right to be Delisted*, (manuscript on file with the author).

15 Final Report of the Advisory Council to Google on the Right to be Forgotten, 6 February 2015 (<[http://docs.dpaq.de/8527-report\\_of\\_the\\_advisory\\_committee\\_to\\_google\\_on\\_the\\_right\\_to\\_be\\_forgotten.pdf](http://docs.dpaq.de/8527-report_of_the_advisory_committee_to_google_on_the_right_to_be_forgotten.pdf)>), p. 3-4: «In fact, the Ruling does not establish a general Right to be Forgotten. [...] Throughout this report, we shall refer to the process of removing links in search results based on queries for an individual's name as «delisting». Once delisted, the information is still available at the source site, but its accessibility to the general public is reduced because search queries against the data subject's name will not return a link to the source publication. Those with the resources to do more extensive searches or research will still be able to find the information, since only the link to the information has been removed, not the information itself».

16 The different texts are available at: <[https://www.commerce.gov/sites/commerce.gov/files/media/files/2016/eu\\_us\\_privacy\\_shield\\_full\\_text.pdf](https://www.commerce.gov/sites/commerce.gov/files/media/files/2016/eu_us_privacy_shield_full_text.pdf)>; see also the dedicated website (on the EU side): <[http://ec.europa.eu/justice/newsroom/data-protection/news/160229\\_en.htm](http://ec.europa.eu/justice/newsroom/data-protection/news/160229_en.htm)> (European Commission unveils EU-U.S. Privacy Shield, 29 February 2016); unfortunately, because of space constraints, the sophisticated mechanisms that are provided for under the Privacy Shield Program cannot be presented and discussed in this paper, in spite of their high interest and relevance.

17 Doc. CM(2016)10-final of 30 March 2016, <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c1b60](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c1b60)>.

18 Para. 13(a).

online» to support «the implementation of the Council of Europe Guide on human rights for Internet users by promoting the setting-up of a network of national institutions in line with the work of the European Committee on Legal Co-operation (CDCJ) on the effectiveness of online dispute resolution mechanisms having regard to Articles 6 and 13 of the European Convention on Human Rights»<sup>19</sup>. Interestingly (and perhaps surprisingly), this project seems to adopt a national approach by fostering national projects (by contrast to more global and transnational approaches).

These non-exhaustive examples confirm in any event the growing awareness about the need to develop efficient online remedies for the benefit of individuals in the online environment.

## II. Reality and Challenges of Massive Online Micro-Justice

The challenges of Massive Online Micro-Justice are a reality as evidenced by the massive amounts of requests which were submitted further to the confirmation by the Court of Justice of the European Union (CJUE) of the right to be de-indexed (see *infra* II.A). The question is whether the Uniform Domain Name Dispute Resolution Policy (UDRP) as a dispute resolution mechanism adopted for Internet domain name trademark related disputes could serve as model for Massive Online Micro Justice.

### A. The Right to Be De-indexed

In essence (and without entering into the complexities and intricacies of the ruling of the CJUE and of its multifaceted consequences), the ruling requires from Google (and from other platforms which would be in the same position) to remove from its databases<sup>20</sup> the relevant content and to decide whether the request for de-indexation is justified or not in the circumstances of the case. This requires an assessment by Google of the respective legal position and interest of the parties at issue as well as of the public at large, given that the decision to de-index content can have an impact on

19 See the Appendix of planned activities to date (at the bottom of the page: <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c1b60](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c1b60)>).

20 This paper will not discuss the geographic scope of the obligation to delist/de-index content from the search engine depending on the extension of the domain name at issue (i.e. google.fr vs google.com, etc.); in this respect, the French data protection authority (CNIL) declined on 22 September 2015, an informal appeal by Google against the order to extend the «right to be de-indexed» to «other geographical extensions or on google.com». The CNIL ruled that Google must extend delisting to all domain names of the search engine, including google.com or face possible sanctions proceedings. Its ruling was based on the argument that «in accordance with the CJEU judgement, [...] in order to be effective, delisting must be carried out on all extensions of the search engine», as it could otherwise be easily circumvented; see <<http://www.cnil.fr/english/news-and-events/news/article/right-to-delisting-google-informal-appeal-rejected/>>.



third parties, and on society as a whole because it basically leads to less accessible content which may potentially have public relevance. Because this exercise of balancing rights and interests is complex and delicate, it would seem reasonable to consider that this mission should ultimately be entrusted to an independent judicial or quasi-judicial body that shall decide quickly and in a uniform manner on the massive amount of requests for de-indexation that have been submitted to Google by individuals (as of this writing, more than four hundred thousand requests have been submitted).<sup>21</sup>

As reflected by various voices, «[m]any people have questioned whether it is appropriate for a corporation to take on what may be otherwise considered a judicial role»,<sup>22</sup> thus, «[i]s 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?»<sup>23</sup>

This vibrantly illustrates the concept of Massive Online Micro-Justice in which a myriad of small individual cases are submitted, managed and decided online,<sup>24</sup> are relatively simple by themselves (in terms of factual background and amount of factual data of the case) but still raise potentially important and complex legal issues (in terms of balancing of conflicting rights) for which justice must be rendered. As of today, Google has had to manage this process on its own without any detailed and binding guidance from national, regional or international governmental bodies.<sup>25</sup> Google has wisely set up a process of consultations and taken measures to make this transparent and inclusive, including by setting up the Advisory Council to Google on the Right to Be Forgotten<sup>26</sup> which conducted hearings in various places and issued a final report.<sup>27</sup>

Google's removal request process requires the requester to identify his/her country of residence, personal information, a list of the URLs to be removed along with a short description of each one, and attachment of legal identification.<sup>28</sup> On its dedicated website, Google indicates that: «When you make such a request, we will balance the privacy rights of the individual with the public's interest to know and the

21 <<https://www.google.com/transparencyreport/removals/europeprivacy/>>.

22 Final Report of the Advisory Council to Google on the Right to be Forgotten, supra n. 15, p. 18.

23 Nancy Scola, «Designing <the right to be forgotten>», Washington Post, 4 August 2014, <<https://www.washingtonpost.com/news/the-switch/wp/2014/08/04/designing-the-right-to-be-forgotten/>>.

24 I.e. without any hearing or other physical interaction between the parties and stakeholders.

25 Reference can however be made to the Guidelines on the implementation of the Court of Justice of the European Union judgment on «Google Spain and inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González» c-131/121 of the Article 29 Working Party (Art. 29 WP) of 26 November 2014; <[http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225\\_en.pdf](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf)>; private companies have also been active in order to offer various services in connection with the implementation of the ruling, see e.g. <[www.reputationvip.com](http://www.reputationvip.com)> and <<https://forget.me/>>.

26 <<https://www.google.com/intl/en/advisorycouncil/>>.

27 Final Report of the Advisory Council to Google on the Right to be Forgotten, supra n. 15.

28 <[https://support.google.com/legal/contact/lr\\_eudpa?product=websearch&chl=en](https://support.google.com/legal/contact/lr_eudpa?product=websearch&chl=en)>.

right to distribute information. When evaluating your request, we will look at whether the results include outdated information about you, as well as whether there's a public interest in the information – for example, we may decline to remove certain information about financial scams, professional malpractice, criminal convictions, or public conduct of government officials.»<sup>29</sup>

This process is thus characterized by a centralization in the initial step, i.e. the relevant platform (here, Google) gets to decide on the request for de-indexation. Subsequently, however, the claimant, in case of a refusal by Google to de-index, must take the case to its national Data Protection Authority (DPA), thereby leading to a geographic fragmentation of the process.

National DPAs have indeed the power to make decisions regarding the removal from Google result lists: «If we [i.e. Google] decide not to remove a URL from our search results, an individual may request that a local data protection authority review our decision.»<sup>30</sup> There also appears to be a certain degree of uncertainty as to whether this power of DPAs truly and efficiently protects the interests of the stakeholders.<sup>31</sup> In addition, it seems that very few cases have been brought to DPAs further to Google's decisions<sup>32</sup> which cannot necessarily be viewed as a positive sign of efficiency and fairness of the decision-making process. This is essentially what results from an open letter sent by a group of Internet scholars to Google one year after the CJUE decision.<sup>33</sup>

29 <[https://support.google.com/legal/contact/lr\\_eudpa?product=websearch&hl=en](https://support.google.com/legal/contact/lr_eudpa?product=websearch&hl=en)>.

30 FAQ Google (<<https://www.google.com/transparencyreport/removals/europeprivacy/faq/?hl=en>>); see also Final Report of the Advisory Council to Google on the Right to be Forgotten, supra n. 15, p. 4: « If Google decides not to delist a link, the data subject can challenge this decision before the competent Data Protection Authority or Court».

31 PETER TEFFER, «Europeans give Google final say on <right to be forgotten>», 8 October 2015, <<https://euobserver.com/investigations/130590>>: «The Data Protection Authorities methods and powers vary across the EU. [...] Some DPAs pointed out that they do not have jurisdiction over the matter because Google has no office in their country. [...] Some DPAs pointed out that they do not have jurisdiction over the matter because Google has no office in their country. In most cases, Google complied with the DPA's request to remove links from its search results, but not all DPAs have the power to order removals.»

32 See the references and data cited by TEFFER, supra n. 31; see also the cases for the Netherlands: <<http://www.cms-lawnow.com/ealerts/2015/04/court-of-appeals-clarifies-the-right-to-be-forgotten-by-search-engines-in-the-netherlands-web-only>>; for the UK, see the case <<https://ico.org.uk/media/action-weve-taken/enforcement-notices/1560072/google-inc-enforcement-notice-102015.pdf>> ordering Google to remove nine search results brought up by entering an individual's name. Google has so far responded constructively, and the links are no longer visible on the European versions of their search engine. However [the ICO] consider[s] that they should go a step further, and make the links no longer visible to anyone directly accessing any Google search services from within the UK; see also <<https://iconewsblog.wordpress.com/2015/11/02/has-the-search-result-ruling-stopped-the-internet-working/>>.

33 Open Letter to Google from 80 Internet Scholars, 13 May 2015 (<<https://medium.com/@ellgood/open-letter-to-google-from-80-internet-scholars-release-rtbf-compliance-data-cbfc6d59f1bd#roxeit75>>): «As of now, only about 1% of requesters denied delisting are appealing those decisions to national Data Protection Authorities. [...] In the remainder of cases, the entire process is silent and opaque, with very little public process or understanding of delisting.»

This example of the right to be de-indexed raises intriguing questions on the way to render Massive Online Micro-Justice: how can a certain control be exercised on who gets to decide in the first place on requests to remove from search engines databases or to take down online content? Can the requests be (initially) screened, processed and decided(?) essentially or even exclusively by computers/artificial intelligence mechanisms<sup>34</sup>? The recent Communication of the EU Commission on online platforms reflects the concern for transparency, fairness and non-discrimination which arises when content is «filtered via algorithms»<sup>35</sup>.

On what predictable, fair, transparent and non-discriminatory criteria shall the decisions be based? Transparency has logically been identified a key component of the process<sup>36</sup> for which improvements have been called for<sup>37</sup>, specifically because «the public should be able to find out how digital platforms exercise their tremendous power over readily accessible information».<sup>38</sup> It is clear in this respect that measures should be taken in order to move from *quantitative* transparency (i.e. how many cases are decided and what is the outcome of these cases?) to *qualitative* transparency (i.e. how are these cases decided and on the basis of what substantive criteria?). Qualitative transparency is however not sufficient because what is ultimately needed is the

34 Interestingly, courts are starting to accept that computer algorithms can help in managing massive online requests for content take down, see the statement made in the US copyright DMCA case *Lenz v. Universal Music Corp.* Nos. 13-16106, 13-16107, U.S. App. LEXIS 16308 (9th Cir. 2015) (<<http://cdn.ca9.uscourts.gov/datastore/opinions/2015/09/14/13-16106.pdf>>): «We note [...] that the implementation of computer algorithms appears to be a valid and good faith middle ground for processing a plethora of content while still meeting the DMCA's requirements to somehow consider fair use».

35 Communication from the European Commission Online Platforms and the Digital Single Market Opportunities and Challenges for Europe (May 25, 2016), p. 9 (noting the need to «further encourage all types of online platforms to take more effective voluntary action to safeguard key societal values, in order to effectively fight hate speech and ensure non-discrimination, or to ensure transparent, fair and non-discriminatory access to information in the context of democratic processes, *especially where this information is filtered via algorithms*, or manipulated through opaque moderation processes» (italics added).

36 Final Report of the Advisory Council to Google on the Right to be Forgotten, supra n. 15, p. 21: «The issue of transparency concerns four related but distinguished aspects: (1) transparency toward the public about the completeness of a name search; (2) transparency toward the public about individual decisions; (3) transparency toward the public about anonymized statistics and general policy of the search engine; and (4) transparency toward a data subject about reasons for denying his or her request.»

37 See by analogy URBAN, KARAGANIS & SCHOFIELD, supra n. 11 (about the US DMCA notice and take down system for copyright infringement), p. 131: «The opacity surrounding notice and takedown should be addressed more fully than current OSP <transparency report> efforts – as valuable as they are – can provide. Takedown is a strong remedy, with no public oversight in all but the tiny proportion of cases that are disputed and make it into court.»

38 Open Letter to Google from 80 Internet Scholars, 13 May 2015 (<<https://medium.com/@ellgood/open-letter-to-google-from-80-internet-scholars-release-rtbf-compliance-data-cbfc6d59f1bd#.roxeitt75>>): «[I]mplementation of the ruling should be much more transparent for at least two reasons: 1. the public should be able to find out how digital platforms exercise their tremendous power over readily accessible information; and implementation of the ruling will affect the future of the RTBF in Europe and elsewhere, [...]»

establishment of global standards that provide legal guidance to the platforms and to the online ecosystem on the way to manage the challenges of Massive Online Micro-Justice. In this respect, it has been suggested that alternative dispute resolution mechanisms could be used to decide on these issues, and that the dispute resolution mechanisms for domain name disputes could serve as a model. In the final report of the Advisory Council to Google, several proposals were mentioned (under the title: «proposals we heard for an adjudication process») including the proposal to «establish a public mediation model, in which an independent arbitration body assesses removal requests»<sup>39</sup> whereby it was reflected that «several experts suggested this to be modeled on the process for resolving domain name disputes»<sup>40</sup>. Reference was thus implicitly made to the UDRP that shall thus be presented here.

## B. UDRP as a Model for Rendering Massive Online Micro-Justice?

### 1. Features of the UDRP

One of the best examples of a successful online ADR system is the UDRP, which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 26 August 1999.<sup>41</sup> ICANN is a «California Nonprofit Public-Benefit Corporation»<sup>42</sup>. It is not a public state agency despite its contractual relationships with the United States (U.S.) government.<sup>43</sup> It is worth noting that the UDRP was based on policy recommendations, which were prepared under the aegis of the World Intellectual Property Organization (WIPO).<sup>44</sup> The UDRP has solved quite a phenomenal number of cybersquatting disputes (i.e. several thousand) since its adoption.<sup>45</sup> In addition to the intrinsic quality of the UDRP's design features,<sup>46</sup> its success results par-

39 It must be noted that this sentence seems to confuse mediation (which does not lead to a binding decision) and arbitration (which leads to a binding decision/award).

40 Final Report of the Advisory Council to Google on the Right to be Forgotten, *supra* n. 15, p. 36.

41 See Internet Corp. for Assigned Names and Numbers, Uniform Domain Name Dispute Resolution Policy (October 1999), <<http://www.icann.org/dndr/udrp/policy.htm>> (hereafter UDRP).

42 ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers (July 2014), <<http://www.icann.org/en/general/bylaws.htm>> (hereafter ICANN).

43 The independence of ICANN was reflected in «the Affirmation of Commitments» between the U.S. Department of Commerce and ICANN dated 30 September 2009. See ICANN, The Affirmation of Commitments – What it Means, (September 2009), <<http://www.icann.org/en/announcements/announcement-30sep09-en.htm#affirmation>>; it must be noted that ICANN is in a complex multistake holder process of transition of certain functions (IANA Stewardship transition) that is still underway at the time of writing of this paper, see <<https://www.icann.org/en/stewardship>>.

44 World Intellectual Prop. Org., WIPO Internet Domain Name Process (1999), <<http://www.wipo.int/amc/en/processes/process1/report/finalreport.html>> (hereafter WIPO).

45 See WIPO, Total Number of Cases Per Year (2015), <<http://www.wipo.int/amc/en/domains/statistics/cases.jsp>>.

46 See NICHOLAS SMITH & ERIK WILBERS, «The UDRP: Design Elements of an Effective ADR Mechanism», 15 *Am. Rev. Int'l Arb.* 215 (2004), p. 217–18.

ticularly from the obligation imposed on all domain name registrars for *generic Top Level Domains* (gTLDs) to be accredited with ICANN, whereby such accreditation obligates the registrars to contractually require their clients, who register domain names, to submit to the UDRP.<sup>47</sup> The same obligation applies in cases where the registrars enter into agreements with third party re-sellers who ultimately contract with end-customers.<sup>48</sup> Consequently, the submission of disputes to the UDRP is imposed on all internet domain name holders of gTLDs in a hierarchical way, starting from ICANN (top) to the holder of a given domain name (bottom). In other words, a chain of mutual contractual obligations imposes the submission to ADR/the UDRP.

Even if the merits of a complaint under the UDRP depend on the complainant's ability to demonstrate the ownership or control over a trademark<sup>49</sup> based on regulations of the country or region where the trademark is registered or protected,<sup>50</sup> the UDRP can generally be characterized by its delocalized and global nature, both in terms of geography and of legal system. In other words, the UDRP applies regardless of the geographic localization of the parties in dispute, specifically the domicile of the owner of the disputed domain name. The UDRP is also legally delocalized and essentially independent from any legal system because the substantive elements, on which the UDRP is based and decisions are rendered, are independent from any national or regional regulation,<sup>51</sup> except for the existence and control of a trademark by the com-

47 See ICANN, Registrar Accreditation Agreement (August 2012), <<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm#3>> (hereafter Registrar Accreditation Agreement) («During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until different policies and procedures are established by ICANN ... under Section 4, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy identified on ICANN's ... website (<[www.icann.org/general/consensus-policies.htm](http://www.icann.org/general/consensus-policies.htm)>).»).

48 See id. Art. 3.12 («If Registrar enters into an agreement with a reseller of Registrar Services to provide Registrar Services (<Reseller>), such agreement must include at least the following provisions...»); see also id. Art. 3.12.2 («Any registration agreement used by reseller shall include all registration agreement provisions and notices required by the ICANN ... Registrar Accreditation Agreement and any ICANN ... Consensus Policies, and shall identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC Whois lookup service.»).

49 UDRP, supra n. 41, Art. 4a(i) («[Y]our domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.»).

50 Unregistered trademarks may suffice under certain exceptional circumstances. See WIPO, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, <<http://www.wipo.int/amc/en/domains/search/overview2.0/index.html>>.

51 It being noted that this independence may sometimes be problematic, particularly when the parties in dispute are located in the same country; decisions nevertheless refrain from importing national law into the UDRP. See Case No. D2004-0206, Covance, Inc. v. Covance Campaign, Administrative Panel Decision (WIPO 30 April 2004), <<http://www.wipo.int/amc/en/domains/decisions/html/2004/d2004-0206.html>> («As a matter of principle, this Panel would not have thought that it was appropriate to import unique national legal principles into the interpretation of paragraph 4(c) of the Policy. This is so even if the effect of doing so is desirable in aligning decisions under the Policy with those emerging from the relevant courts and thus avoiding instances of forum shopping.»); see also Case No. D2007-1461, 1066

plainant. The substantive criteria of a decision by the UDRP essentially relates to the good or bad faith registration and the use of the relevant domain name by its holder.<sup>52</sup> Consequently, the UDRP creates a corpus of autonomous rules for internet-related trademark disputes that can be compared to a type of *lex electronica*.<sup>53</sup> This could be an interesting feature that could be transplanted into other areas for solving Massive Online Micro-Justice disputes.

The adjudicatory power of the independent experts who are appointed to decide a dispute under the UDRP is narrow in its scope; the decision can only grant the transfer or cancellation of the relevant domain name, or, alternatively, reject the UDRP complaint.<sup>54</sup> The UDRP also provides for the automatic enforcement of decisions that order a transfer or cancellation of the disputed domain name by notifying the registrar. This can only be avoided if the respondent, the holder of the relevant domain name, notifies the dispute resolution entity within ten business days of a lawsuit in the relevant jurisdiction.<sup>55</sup> The party may notify the dispute resolution entity by filing appropriate evidence such as a copy of a complaint file-stamped by the clerk of the court.<sup>56</sup>

The UDRP consequently institutes and provides an autonomous dispute resolution mechanism for victims of unauthorized domain name registrations that they consider to be an infringement of their trademark. It is essential to note that the UDRP is not imposed on victims who retain the option to resolve their disputes

Housing Ass'n, Ltd. v. Mr. D. Morgan, Administrative Panel Decision (WIPO 18 January 2008), <<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1461.html>> («This Panel would suggest that there is no real justification for such a local laws approach either in the Policy or the Rules and that such approach should be avoided wherever possible. It risks the UDRP fragmenting into a series of different systems, where the outcome to each case would depend upon where exactly the parties happened to reside. That way chaos lies.»).

52 UDRP, supra n. 41, Art. 4(b) & (c).

53 See GRALF-PETER CALLIESS, «Reflexive Transnational Law: The Privatisation of Civil Law and the Civilisation of Private Law», 23 *Zeitschrift für Rechtssoziologie* (2002), p. 185-216, <<http://ssrn.com/abstract=531063>> (evidencing the structural and conceptual differences between the UDRP and *lex mercatoria*, which applies in the international business context).

54 UDRP, supra n. 41, Art. 4(i) («The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.»).

55 UDRP, supra n. 41, Art. 4(k). (The complaint must «[s]tate that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction.»); ICANN, Rules for Uniform Domain Name Dispute Resolution Policy, Art. 3(b)(xiii), <<http://www.icann.org/en/help/dndr/udrp/rules>>: «Mutual Jurisdiction means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain-name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time the complaint is submitted to the Provider.»; Id. Art. 1.

56 UDRP, supra n. 41, Art. 4(k).

through domestic courts or other dispute resolution bodies. Such victims may have an interest in utilizing domestic courts or other dispute resolution systems rather than the UDRP if they wish to claim remedies that are not available under the UDRP,<sup>57</sup> such as damages resulting from online trademark infringement activities.

In contrast, even if the UDRP provides that parties can litigate their disputes in other fora,<sup>58</sup> the holders of disputed domain names – defendants in UDRP proceedings – are *contractually obligated* to submit to the UDRP if the UDRP is initiated against them by a third party trademark owner. The contractual obligation derives from the general terms and conditions of the domain name registrar. The registrar is, in turn, obligated to implement the UDRP based on its accreditation agreement with ICANN.<sup>59</sup> This is quite interesting given that the UDRP ultimately derives from a contract: i.e. the obligation of the domain name holders to submit to the UDRP results from the agreement that they had to accept in order to register their disputed domain name.

The UDRP interestingly institutes an *asymmetrical dispute resolution system* as it is mandatory for domain names holders to be subject to the UDRP, but it is only optional for complainants – victims of cybersquatting activities. The complainants instead can litigate their claims on other grounds such as a breach of contract, and/or an unfair competition claim in other fora. The UDRP is also *asymmetrical* because it can only be initiated by one category of stakeholders: the alleged victims of unauthorized registration of domain names. A domain name holder cannot initiate the UDRP proceedings to confirm the legitimacy of his or her entitlement to the relevant domain name.

## 2. UDRP as a Model for Other ADR Systems for Domain Name Disputes

It is hardly disputed that the UDRP has been extremely successful and that it probably is, as of today, the most accomplished example of an affordable efficient global online alternative dispute resolution system for intellectual property disputes, and perhaps for all categories of Internet-related disputes.<sup>60</sup> Therefore, it is not a surprise

57 Id. Art. 4(i).

58 See id. Art. 4(k). («The mandatory administrative proceeding requirements ... shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded.»).

59 See Registrar Accreditation Agreement, *supra* n. 47, Art. 3.8.

60 It must, however, be noted that the UDRP has sometimes been criticized as being too protective of the interests of trademark owners. See MICHAEL GEIST, «Fair.com?: An Examination of the Allegations of Systemic Unfairness in the ICANN UDRP», 27 *Brook. J. Int'l L.* 903 (2002) (providing the solution to the forum shopping and bias issues); MICHAEL GEIST, «Fundamentally Fair.com? An Update on Bias Allegations and the ICANN UDRP», <<http://aix1.uottawa.ca/%7Egeist/fairupdate.pdf>> (providing a statistical update and reinforcing the solution provided previously).

that the UDRP has been used as a model for designing dispute resolution mechanisms that involve domain names with national or regional extensions such as country code Top Level Domain Names (ccTLDs).

This is what was done for the policy relating to disputes about «.eu» domain names in the EU (the EU Policy). The EU Policy, which applies to «.eu» domain names, is essentially based on a 2004 European Commission Regulation that established public policy rules concerning the implementation and functions of the «.eu» Top Level Domain and the principles governing registration.<sup>61</sup> The regulation states that «[t]he Registry should provide for an ADR procedure which takes into account the international best practices in this area and in particular the relevant World Intellectual Property Organization (WIPO) recommendations, to ensure that speculative and abusive registrations are avoided as far as possible»<sup>62</sup>. Furthermore, it provides that «ADR should respect a minimum of uniform procedural rules, similar to the ones set out in the Uniform Dispute Resolution Policy adopted by the Internet Corporation of Assigned Names and Numbers (ICANN)»<sup>63</sup>. These references show that the ADR process must follow «the international best practices» and that the UDRP, as an element of these best practices, provided a valuable guidance in defining the procedural rules that have been adopted under the EU Policy.

Even if the UDRP is nothing more than a private regulation imposed by contract, the explicit reference in the EU Policy to the UDRP as a model for dispute resolution services constitutes tangible evidence of the UDRP's influence on legislators and regulators. Thus, these regulations show the process of incorporation (*réception*) of *private best practice standards*, as reflected in the UDRP, into *public regulations*. The UDRP itself essentially reflects the recommendations from a report that was drafted under the aegis of the WIPO, thereby evidencing the close interactions between private best practices and public regulations.

Although the substantive legal standards of decisions rendered under the UDRP are different from those under the EU Policy, the influence of the UDRP is important and covers both the procedural and the substantive aspects of the EU Policy, which targets «speculative and abusive» domain name registrations.<sup>64</sup> It can thus be considered that the UDRP has shaped the EU Policy from both procedural and sub-

61 See Commission Regulation 874/2004 of 28 April 2004 Laying Down Public Policy Rules Concerning the Implementation and Functions of the .eu Top Level Domain and the Principles Governing Registration, 2004 O.J. (L 162) 40 (EC), <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0874:20051011:EN:PDF>>; see also Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the Implementation of the .eu Top Level Domain, Art. 1, 2002 O.J. (L 113) 5 (implementing the «.eu» country code Top Level Domain within the community); see also ADR Rules and Supplemental Rules, ADR.eu, <[http://eu.adr.eu/adr/adr\\_rules/index.php](http://eu.adr.eu/adr/adr_rules/index.php)>, for «.eu» domain name dispute rules that implemented the ADR system.

62 Commission Regulation 874/2004, supra n. 61, recital 16, 2004 O.J. (L 162) 41, 42 (EC).

63 Id. Recital 17.

64 Commission Regulation 874/2004, supra n. 61, Art. 21, 2004 O.J. (L 162) 44 (EC).



stantive perspectives. These domain name dispute resolution systems also follow an asymmetric model similar to the UDRP as they are mandatory for the domain name holders, but optional on the victim-claimants.<sup>65</sup> Similar to proceedings under the UDRP, these domain name dispute proceedings should not be considered as arbitral proceedings.<sup>66</sup> The decisions rendered under the domain name dispute proceedings are not enforceable in the same way as arbitral awards are, and these proceedings are not mandatory for the claimants. In addition, contrary to the principle of confidentiality that generally applies to ordinary (commercial) arbitration proceedings, the decisions rendered under these policies are published as a matter of principle.<sup>67</sup>

### 3. UDRP as a Model for Other Online ADR Systems Beyond Domain Name Disputes?

As reflected in the final report of the Advisory Council to Google on the Right to Be Forgotten<sup>68</sup>, the UDRP could serve as a model for other Internet-related disputes, potentially those connected to the right to be de-indexed.

Many of its features appear of high relevance and interest, including its global reach and delocalized status (i.e. the decision-making process is not dependent from local laws and local authorities), its speed and (low) cost, its adjudicatory nature (decisions are made by independent experts on the basis of pre-established factors), its mandatory nature (because it is imposed on the platforms but still preserves the right of the parties to go before a national court in certain circumstances and in certain jurisdictions), its procedural standards and safeguards for preserving due process and procedural fairness (including the availability of standard forms, deadlines, high expertise and experience of the entities managing the cases (specifically the WIPO Arbitration and Mediation Center)), and its transparency (the decisions are to be published online).

All these features appear of high relevance in the sense that they could be used to shape other ADR mechanisms for solving other types of Internet-related disputes.

Let us imagine for a second that a decision about the cancellation (or transfer) of a domain name that would be requested by a third party (let us take a trademark owner complaining about the fact that the domain name infringes on his trademark) would be made by the private company with which such domain name has been registered (i.e. the registrar) instead by being made by an independent expert panel ap-

65 See *id.*, 48 («Participation in the ADR procedure shall be compulsory for the holder of a domain name and the Registry.»).

66 See PHILIPPE GILLIÉRON, *La procédure de résolution en ligne des conflits relatifs aux noms de domaine*, Lausanne 2002, para. 46.

67 The publication of the decisions is made on the website of the WIPO Arbitration and Mediation Center (and on the websites of the other providers of domain names dispute resolution services), see e.g. <<http://www.wipo.int/amc/en/domains/decisions.html>>.

68 Final Report of the Advisory Council to Google on the Right to be Forgotten, *supra* n. 15, p. 36.

pointed under and bound by the UDRP rules? Would that be acceptable? There is no need to think for a long time to realize that this would not be acceptable because the registrar would then have the (potentially arbitrary) power to cancel domain names and thus indirectly to take down content without being submitted to any procedural or substantive rules for doing so. This is however what happens for many other Internet-related disputes for which the relevant platforms (as this is the case for the right to be De-Indexed) must decide on the requests of content removal without being submitted to any policy guidance.

While it should of course not be neglected that the UDRP system was designed to combat cybersquatting activities and thus does not necessarily imply a subtle balancing of rights by the experts making decisions in many UDRP cases, experience shows that many UDRP cases still do raise complex legal issues, particularly in terms of freedom of expression on grounds that the defendants would (allegedly) be using the disputed domain name for free speech purposes. These cases show that the legitimacy of the UDRP has not been disputed because of the power given to the independent experts to decide on these (potentially thorny) issues.

What could thus be conceived is a dispute resolution system which could transplant certain successful features of the UDRP into other areas, particularly for requests for de-indexation. Under such a system, a request to delist/remove content could be submitted to the platform and the decisions would be made – in the first instance – by the platforms. The decisions could then be challenged before an independent ADR body, whereby the process could be governed by procedural and substantive standards which could be transplanted from the UDRP and which would particularly cover the appointment of independent experts (and the involvement of experienced dispute resolution bodies), standard rules of procedure, forms and deadlines, that shall duly preserve the right to be heard/due process and shall also govern the participation of the platform and of third parties (e.g. those having posted the content online).

The process should also define the content of global substantive rules on the basis of which the independent experts shall make their decisions. Victims/claimants should not be forced to bring their case to the independent dispute resolution bodies but rather have the right to bring it before national courts or other decision bodies (e.g. national DPAs). The platforms should however be bound to submit to ADR if the victim/claimant initiates such proceedings (similarly to the obligation of domain name holders to submit to the UDRP if a trademark owner/claimant initiates UDRP proceedings).

One aspect of particular relevance regards the cost of the proceedings as to which the idea was expressed that platforms could jointly fund «an arbitration board» (as reflected in the Advisory Council to Google in which it was expressed that it is «[...] worthwhile for search engines to consider jointly funding an arbitration board»<sup>69</sup>).

69 Final Report of the Advisory Council to Google on the Right to be Forgotten, *supra* n. 15, p. 34.

Interestingly, this is a feature that is also reflected in the US – EU Privacy Shield mechanism which provides for arbitration proceedings to be set up and conducted before the «Privacy Shield Panel»<sup>70</sup>.

### III. The Need to Establish Global Procedural and Substantive Standards for Massive Online Micro-Justice

In view of the growing importance of the Internet for citizens at the global level, the right to access the Internet has logically become of key importance globally.<sup>71</sup> Independently from the Internet, the right of equal access to justice has long been established and its importance has been emphasized in the UN's Sustainable Development Goals (SDGs) which provide (in Goal 16: peace and justice) that the goals shall include to «promote the rule of law at the national and international levels and ensure equal access to justice for all» and to «develop effective, accountable and transparent institutions at all levels» as well as to «ensure responsive, inclusive, participatory and representative decision-making at all levels»<sup>72</sup>. Now, a new challenge is to ensure that citizens have globally an equal right to access to justice for Internet-related disputes. The online environment requires revisiting the traditional approach to justice in the sense that access to national courts for litigating Internet-related disputes cannot necessarily be viewed as the most adequate and satisfactory option (as demonstrated by the success of the UDRP which has helped to solve thousands of disputes which otherwise would have had to be brought before national courts). This is why ADR mechanisms can play a significant role in helping to address the challenges of Massive Online Micro-Justice.

70 See Annex 2 (Arbitral Model), Sec. H Costs, <[https://www.commerce.gov/sites/commerce.gov/files/media/files/2016/eu\\_us\\_privacy\\_shield\\_full\\_text.pdf.pdf](https://www.commerce.gov/sites/commerce.gov/files/media/files/2016/eu_us_privacy_shield_full_text.pdf.pdf)>: «Arbitrators should take reasonable steps to minimize the costs or fees of the arbitrations. Subject to applicable law, the Department of Commerce will facilitate the establishment of a fund, into which Privacy Shield organisations will be required to pay an annual contribution, based in part on the size of the organisation, which will cover the arbitral cost, including arbitrator fees, up to maximum amounts (<caps>), in consultation with the European Commission. The fund will be managed by a third party, which will report regularly on the operations of the fund. At the annual review, the Department of Commerce and European Commission will review the operation of the fund, including the need to adjust the amount of the contributions or of the caps, and will consider, among other things, the number of arbitrations and the costs and timing of the arbitrations, with the mutual understanding that there will be no excessive financial burden imposed on Privacy Shield organisations. Attorney's fees are not covered by this provision or any fund under this provision.»

71 See e.g. Brazilian Marco Civil da Internet, Art. 4, Section I: «The discipline of Internet use in Brazil has the following goals: – to promote every person's right to access the Internet; Art. 7: Access to the Internet is essential to the exercise of citizenship and users are assured of the following rights: [...]»; <[https://docs.google.com/document/d/1kJYQx-1\\_BVa9-3FZX23Vk9IfbH9x6E9uQfFT4e4V9I/pub](https://docs.google.com/document/d/1kJYQx-1_BVa9-3FZX23Vk9IfbH9x6E9uQfFT4e4V9I/pub)>; See Italian Dichiarazione dei diritti di Internet, Art. 2 (Right to Internet Access), <[http://www.camera.it/application/xmanager/projects/leg17/commissione\\_internet/testo\\_definitivo\\_inglese.pdf](http://www.camera.it/application/xmanager/projects/leg17/commissione_internet/testo_definitivo_inglese.pdf)>.

72 <<http://www.un.org/sustainabledevelopment/peace-justice/>>.

The development of ADR tools for Massive Online Micro-Justice should also be approached in the broader perspective of the activities and obligations of online platforms. In view of their importance, there can be no doubt that the services offered by online platforms are critical in today's connected economy and society.<sup>73</sup> For this reason, an enabling environment should be created in order to foster and promote their activities and power of innovation. Online platforms should thus be protected against excessive risks of liability, which is why so-called «safe harbor» regulations have been adopted.<sup>74</sup> These safe harbor regulations however do not specify precisely the procedures that must be followed by the platforms so that there are still major differences between online platforms, which in turn leads to a damaging fragmentation of the market.<sup>75</sup>

There is consequently a need to conceive a new safe harbor regime that shall include guidance on the ADR mechanisms that should be adopted by the online platforms in order to benefit from the safe harbor regime. In other words, the safe harbor regime should be expanded in order to include «safe ADR harbor rules».

The development of such safe ADR harbor regime must obviously be made with the support and participation of the online platforms that could thus adopt voluntary measures that shall however be guided by regulatory principles.<sup>76</sup>

There is no doubt that the globality of the Internet is one of its most promising and positive features. For this reason, there is no doubt that Internet fragmentation should be avoided. The development of global policies governing online ADR mechanisms could contribute to that end by offering the relevant stakeholders a uniform

73 See the Communication from the European Commission Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, supra n. 35, p. 2 («Online platforms have dramatically changed the digital economy over the last two decades and occupy a central position in the digital society. They play a pivotal role in the digital value chains that underpin future economic growth in the EU, and are thus critical to the effective functioning of the Digital Single Market»).

74 As done in the EU under the e-commerce Directive (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), art. 12–15).

75 See the Communication of the EU Commission Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, supra n. 35, p. 9: «Finally, there is a need to monitor and improve effective procedures for notice-and-action to ensure the coherence and efficiency of the intermediary liability regime, in a context where there is a risk of fragmentation and incoherence stemming from the multiplicity of reporting mechanisms designed by the platforms themselves or by Member States.»

76 This is the approach that seems to be privileged by the EU Commission in the Communication of the EU Commission Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, supra n. 35, p. 9; the compliance with voluntary measures by the online platforms should make it possible for the platforms to be protected under the safe harbor rules (if not, voluntary measures would be useless); for a discussion of this issue (under copyright law), see JACQUES DE WERRA, *Défis du droit d'auteur dans un monde connecté*, sic! 2014, p. 194 at 199–200 (<<http://archive-ouverte.unige.ch/unige:36864>>).

method for solving their Internet-related disputes by reaching a certain level of *legal interoperability*<sup>77</sup>. The UDRP example (and the other domain name dispute resolution mechanisms which have been developed based on the model of the UDRP) is of high value because it shows that even in a legal area (i.e. trademark law, whereby this applies more generally to the broader field of intellectual property law) which is traditionally anchored in the principle of territoriality, there are ways to overcome this hurdle and to design global ADR mechanisms and to impose such mechanism on the market (by making them mandatory under certain circumstances, as was done for the UDRP that was imposed on all registrants and holders of certain categories of domain names).

The development of truly *global* policies governing online ADR mechanisms is needed in view of the fragmented solutions which are presently burgeoning on the market, as reflected by the ADR/ arbitration mechanism which has been set up under the framework of the US – EU Privacy Shield. This recent example evidences the multifaceted aspects of fragmentation in that the US – EU Privacy Shield only offers a *locally limited* solution (i.e. it applies *only* between the USA and EU) and in that it offers only a *substantially* limited solution (i.e. it applies *only* to disputes about personal data). This fragmentation should be avoided. It is thus required to establish a «one stop shop» for solving Internet-related disputes, which is critical for facilitating global Internet transactions (as was done under the new General Data Protection Regulation which also provides for a «one stop shop»<sup>78</sup>).

It is therefore time to think about and shape a global and uniform dispute resolution mechanism that shall define equitable global procedural and substantive legal standards that shall help solve the challenges of Massive Online Micro-Justice.

77 See LA CHAPELLE&FEHLINGER, *supra* n. 7 and ROLF H. WEBER, Legal Interoperability as a Tool for Combatting Fragmentation (2014), <<https://www.cigionline.org/publications/legal-interoperability-tool-combatting-fragmentation>>.

78 Under which organisations with operations in more than one EU Member State will be regulated by the Data Protection Authority in the Member State where it has its «main establishment», so that that such organisations will generally only have to deal with one single supervisory authority.