

CHRISTIE: WHY I BACK OCTOGEN

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Fionn O'Raghallaigh, London

Last week a UDRP decision was the first three-person panel to back the so-called Octogen line, which challenges the literal interpretation of bad faith use and registration. One of the panel, Andrew F Christie, spoke to Managing Internet IP

Christie was an early advocate of the logic set out by Scott Donahey in the [Octogen cases](#). He followed Donahey in the *Ville de Paris v Jeff Walter* UDRP case.

Octogen and *Ville de Paris* have grabbed the attention of the wider internet community, despite only affecting a small number of cases. Christie attributes this to their "sexy" and easy to understand nature. "It was so clear cut," he says. "You either agreed with *Octogen* or you didn't."

Many have cried foul at the development. Domainers, for example, advocate that the UDRP is a static document, to be interpreted in one way. Christie disputes this.

"I think we have reread the policy and looked at it more thoughtfully now because of the way the domain name industry has evolved," says Christie.

"Practices are occurring now that require panellists to look more closely at the issues than they had in the past," he adds.

But other respected panellists such as Tony Willoughby, Alan Limbury and Richard Willoughby have all rejected *Octogen*, primarily on the basis that the bad faith use and registration limb of the Policy is a binary concept.

Christie begs to differ. "A simple straightforward reading of paragraph 4 leads you to that outcome [such as in *jappy.com*]," reckons the Australian.

"Separately a reading of paragraph 2 confirms that outcome," he says in response to questions about some panellists focusing on paragraph 2, which essentially includes the line: I will not knowingly use the domain name illegally in the future.

"Even if you then engage in does 'and' mean 'and', and what's unitary and what's binary, even if you go that far, what interpretation principles say is that you can't assume it's a binary concept. You have to look at the context and look at principle and the Policy."

The fact that some ccTLDs have adopted similar policies to the UDRP but changed the 'and' to 'or' in the bad faith test is just down to the registries wanting absolute certainty about how their policies are interpreted, says Christie.

"As it happens, other domain spaces when they wrote their policies didn't want any debate or dispute, they wanted it to be clearly understood," he says. "They looked at the UDRP and said 'well that's not written as clearly as it could be' ... The UDRP doesn't have that, but I say when looked at more closely and thoughtfully it is clear what the UDRP does do."

While Christie was one of the original followers of *Octogen*, he is unable to say whether more panellists will follow Doug Clark and David Perkins, the other panellists in *Jappy*, and endorse it.

"I would be surprised if, when the situation comes up again, a somewhat more reflective and detailed consideration isn't given to the issue," he says. "I would hope that is the case, because that is what the three panellists in *jappy.com* are saying.

"I hope it makes other panellists think you can't just dismiss this by making a whole load of assumptions and not saying what those assumptions are, and in any event those assumptions not necessarily being correct. I don't know how it will play out but I would expect future panel decisions look at it closely and not take views that are somewhat simplistic."

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