Workshop on the Current State of the UDRP

Overview & Analysis of the Preliminary Issue Report



22 June 2011

Moderators:

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Background & Current Approach





- Issue Report Requested by the GNSO Council on 3 Feb 2011
- Webinar 10 May heard from experts on the current state of the UDRP
- Questionnaire to UDRP providers submitted facts for Issue Report
- Preliminary Issue Report published for public comment
- Final Issue Report to be released after Singapore
- GNSO Council to vote on whether to initiate a PDP on the UDRP

Current State of the UDRP





Widely Recognized as a Success

- Over 30,000 complaints filed over last decade
- Four service providers approved by ICANN providing choice and competition
- Viable alternative to costly litigation involving parties from differing jurisdictions
- Served as a model for ccTLDs
- Significant service provider resources in education and publishing decisions

Community Opinion of the UDRP





- The UDRP is cost effective, as compared to traditional litigation
- The UDRP is flexible and fair to respondentsrarely challenged in court
- The UDRP is predictable and transparent
- The UDRP is unfair to brand holders, who spend million\$ on cybersquatting
- Although not perfect, more harm than good can result from a PDP
- If the UDRP is to be reviewed at all, focus on process improvements
- Consensus a PDP could undermine the effectiveness of the UDRP

Staff Recommendation





- Given the Community view that the UDRP should not be tampered with, Staff recommends against initiating a PDP
- If the GNSO Council believes that the UDRP should be reviewed:
 - Staff suggests convening a team of experts
 - Experts to focus on process recommendations only
 - PDP could be initiated later if there is a continued desire to review the policy





Policy Issues

- Bad Faith Requirement
 - "Or" instead of "And"
- Missing Safe Harbors
 - Policy should reference free speech and fair use
- No Appeals
 - Policy should include an appeals process

Early Mediation	Might consider option for early mediation in the process	
Panel Appointment	Timeline to appoint panel could be more	
Timeline	flexible; five days too short	
Verification Process	No requirement to provide information to providers	
	Registrars sometimes provide false	
	information in response to a request for	
	information	
Electronic	Although e-filing has addressed some of	
Communications	this, issues remain, such as where emails	
	are too large, and as a result, respondent	
	does not receive the communication	



	Registrar	More guidance to Registrars on what needs to
	Obligations	be done in UDRP proceedings would be helpful
	Lock Down of	No requirement to lock names in period between
	Domain	filing complaint and commencement of
		proceedings
	Meaning of	Unclear what is meant by "Status Quo"; No
	Status Quo	explanation of "Legal Lock" mechanisms and
		when they go into effect or when they should be
		removed
	Multiple UDRPs	Complainant has no way of identifying all
	against single	domains registered by the respondent at the
	Respondent	Registrar to be covered by one complaint so
١		often multiple complaints are filed against a
		single respondent



Process Issues

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	before commencement lead to unnecessary	
	deficiencies and amendments	
	WHOIS contact data often updated even after	
	receipt of notice of proceedings	
Billing Contact	2A-1 of the Rules assume that billing data of	
Data Not	registrant is to be provided, but this is not being	
Provided	done	
Privacy/Proxy	Need to address privacy and proxy registrations	
Registrations	or require complaining party to amend complaint	
	once infringing party identified	
Identity of	When privacy/proxies are in the WHOIS, the	
Respondent	rules are not clear who is the correct respondent	
	and the proper jurisdiction for the case;	
V	difficulties in identifying proper respondent leads	
	to delays and amendments to the complaint	

WHOIS Updates WHOIS record modifications after filing but



	Copy of	Registrars are not required to receive a copy of the	
	Complaint	Complaint	
	Timing of	Complainant must send copy to respondent before	
	Complaint	the provider has accepted case and name has been	
	Copies	locked, allowing for changes in the domain name	
	Language of	Timing of determination is procedurally impossible	
	Proceedings	to occur before the proceedings commence	
		Difficulties identifying panelists in certain languages	
	Forum	Rules should address forum shopping, should	
	Shopping	consider panel appointment rules, such as rotating	
٨		panelists, and address bias issues; more	
N		transparency needed on appointment by providers	
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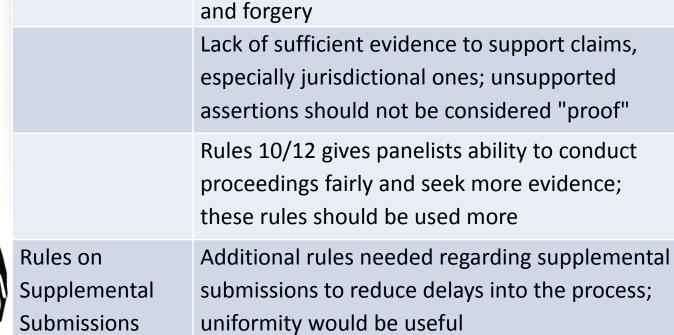
Dropping names from Respondents in Complaint	Rules unclear and confusing to respondents
Contact Data of the Parties	Registrars are not provided with the contact information for the disputing parties and are therefore unable to lock down the domain name or send communications to the parties
Stays/Case Suspensions	No guidance on what a Registrar is to do if a claim is stayed or suspended
Timing of Response	Respondents should be given more time to respond to Complaint
Default	Should examine why defaults occur, and whether they are tied to language issues for foreign respondents



Laches

Evidence

Process Issues



Laches should be considered in UDRP cases.

Rules written in 1999, need to be updated to

location, and to reduce document manipulation

address changing content based on user



	Reverse Domain Name	A finding of reverse domain name
	Hijacking	hijacking is rarely found, and panelists
		should be encouraged to make this
		finding when appropriate
	Uniform Procedures for	No specified timeframe for
	Transfers	implementing transfers
		Delays often experienced in
		implementation of decisions by
		Registrars
	Registry Notice to	Registries do not communicate to
	Registrars	Registrars when a decision has been
		implemented at the Registry level
	Registry Role In	Registry involvement in implementation
1	Implementation	may be appropriate



ICANN Compliance Activity	ICANN Contractual Compliance Department rarely intervenes when Registrars not cooperating
UDRP Cases as Precedence	No clear authority for treating prior cases as "precedence"
Review of Bad Cases	No mechanism to review bad decisions or to hold panelists accountable
Uniform application of rules by providers	Review of provider interpretation of rules may be advisable to make them more uniform
Uniform File/Decision formats	Providers use different formats may be beneficial to make uniform



	Prevailing Party Cooperation	Need method to solicit contact data from prevailing party
		Prevailing party cooperation needed to effect transfer to new Registrar; No timeline specified for prevailing party actions
	Registrar Cooperation	Registrars should be required to actively cooperate with UDRP proceedings
N	Conflicts of law	No explanation on what a Registrar should do when a UDRP decision conflicts with an injunctive order issued by a court of local jurisdiction
	Appeals	Respondent controls jurisdiction of appeals



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Deadlines and Timings

Process Issues

Deddines and minings	needed for setting deadlines
	Timing for decisions often too short to allow for meaningful review of the evidence
Penalties for abusive filings	Should consider penalties for trademark holders that abuse the UDRP system
Sanctions for Rule Violations	No penalties for violations of the Rules
ICANN Contracts with Providers	Might be beneficial to have ICANN enter into formal contracts with Providers

In a global world, more specificity







Additional Information



- The UDRP-http://www.icann.org/en/udrp/#udrp
- Review archive of the Webinar on the Current State of the UDRP: http://icann.adobeconnect.com/p22471828/
- Participate in the public comment forum on the Preliminary Issue Report- until 15 July 2011

http://icann.org/en/announcements/announcement-2-27may11-en.htm



Panel- Discussion of Preliminary Issue Report

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One World

One Internet
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Questions



Thank You

