



# **Preliminary GNSO Issue Report on the Current State of the UDRP**

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**Commercial & Business Users  
Constituency Submission**

**GNSO//CSG//BC**

## Submission:

### Factual Background:

In May 2010 the Registration Abuse Polices Working Group (RAPWG) completed their Final Report which identified a number of recommendations for consideration by the GNSO Council. Included in the Final Report was the recommendation for the initiation of an Issues Report to investigate the Current State of the UDRP (Uniform Dispute Resolution Policy). Specifically, the following items were to be addressed in the recommended Issues Report:

- How the UDRP has addressed the problem of cybersquatting to date, and any insufficiencies/inequalities associated with the process.
- Whether the definition of cybersquatting inherent within the existing UDRP language needs to be reviewed or updated.

The BC supported the recommendation to proceed with the Issues Report but made no comment on a PDP.

Subsequently, the BC welcomed the Issue Report itself. BC members who reviewed the Report, and who participated in the related Webinar, or read the transcript noted the usefulness of the Report and associated Webinar.

The Issues Report is based upon feedback and information solicited from UDRP experts and providers via the Webinar and questionnaire. Generally speaking, feedback during the Webinar; questionnaire and supported in the Public session conducted during Singapore ICANN 41, supports a consensus view that although the UDRP is not perfect, the UDRP should not be subjected to a PDP process. The reasons stated for this were twofold; firstly, opening up the policy to a PDP may ultimately undermine it, causing more harm than good. Secondly, following the ICANN Board decision to launch new gTLDs, there will be the introduction of untested RPMs that are designed to complement the UDRP, the only existing mechanism available to rights-holders.

The Issues Report recommends against a Policy Development Process (PDP) on the UDRP be initiated at this time. ICANN Staff also concluded that many of the issues that were raised are related to process rather than policy.

ICANN staff also recommended that in lieu of commencing a PDP that the GNSO council could consider convening a small group of experts to produce recommendations to improve the process or implementation of UDRP policy. Staff suggests that these improvements could be adopted without the necessity of undertaking a full PDP. ICANN Staff notes that this approach is consistent with ICANN's best practice where electronic filing rules were adopted by the ICANN Board in 2009.

### Position

1. The position of the BC is that there should not be a PDP on the UDRP.

Some BC members are concerned that ICANN may commence a PDP despite the UDRP being the only tried and tested rights protection mechanism in place prior to implementing the new gTLDs

The BC supports the Issues Report recommendation to consider certain implementation issues might be addressed via administrative improvements or standardization of procedures, without conducting a PDP and supports the call to convene a select group of experts to focus on process improvements of greatest importance.

To support the work of such a group of experts (assuming that the selection of experts is transparent), the BC proposes that any recommendations from the group of experts be posted for the larger ICANN community and any comments that are relevant to the expert group's recommendations be considered.

In particular, the BC believes that process improvements surrounding the following issues warrant further investigation and development:

- Registry and registrar obligations relative to domains subject to UDRP
- Clarification of domain locking, renewal and transfer procedures for domains subject to UDRP
- Standardized procedures for the un-masking of proxy registration to reveal ownership

2. Recognizing that it is essential to maintain independence from third party dispute providers to preserve integrity, ICANN should develop standardized accreditation processes and agreements for all UDRP providers, eventually recognizing them as Contracted Parties. In this regard, the BC notes that in October 2010 it took a position regarding the accreditation of new UDRP providers that read in part:

*The BC strongly advocates that ICANN must first implement a standard mechanism with any and all UDRP arbitration providers that defines and constrains their authority and powers, and establishes regular and standardized review by ICANN with flexible and effective means of enforcement. The ultimate sanction of cancelling accreditation is an extreme sanction that ICANN has demonstrated a reluctance to initiate in other contexts...*

*In the future, business interests may well be investing substantial amounts in...new gTLDs, for both defensive, new branding, and other purposes. In this type of environment it is even more important that all UDRP providers be subject to uniform and enforceable responsibilities, as that is the only means of furthering the goal that UDRP decisions are consistent within and among UDRP providers, and that the UDRP remains an expedited and lower cost remediation for addressing cybersquatting.*

*The BC notes that the issue of whether UDRP providers should be under a standard mechanism with ICANN is almost entirely separable from the question of whether the UDRP evaluation standards for determining the existence of cybersquatting should be reformed. There is no need to debate the substantive elements of the UDRP in order to address the fundamental issue of whether UDRP providers should be under a standard mechanism.*

Consistent with that prior position statement, the BC urges that any expert group selected to give further consideration of improvements in the UDRP consider the development of such a standard mechanism that addresses appropriate issues, as such a mechanism can be readily confined to procedural and administrative matters and would further the above stated goal of recognizing UDRP providers as Contracted Parties.

## Constituency Support:

**Rapporteur for this Discussion Draft:** Elisa Cooper

### **Support and participation of BC Members:**

This document was posted to BC members for review and comment on 23-Jun-2011.

23-Jun-2011 - Phil Corwin, Virtualaw, stated that no UDRP providers should be accredited until ICANN develops a standard agreement. He also recommended that the broader ICANN community (in addition to Staff recommendations for a team of experts) should be involved in some meaningful way in the development of process improvements.

23-Jun-2011 – Support from Philip Sheppard, AIM.

23-Jun-2011 – Martin Sutton, HSBC to provide comments upon return from Singapore.

23-Jun-2011 – Marilyn Cade, to provide comments in her personal capacity.

29-Jun-2011 – Document updated to reflect Phil Corwin's comments.

29-Jun-2011 – Significant edits by Marilyn Cade to more clearly state BC opposition to a PDP.

30-Jun-2011 – Incorporation of comments by Mikey O'Conner regarding the transparency of selection of experts and the need for UDRP providers to be considered "Contracted Parties".

30-Jun-2011 – Martin Sutton, HSBC amended some of the wording to emphasize the point that the UDRP is the only (stable and reliable) RPM currently in place and the new RPMs are expected to complement this.

1-Jul-2011 – Support provided by Chris Chaplow, Andalucia.com.

5-Jul-2011 – Comments submitted to first version of document by John Berard.

5-Jul-2011 – Edits by Sarah Deutsch, Verizon to emphasize the underlying principle that dispute resolution providers be considered independent entities making independent decisions, even if subject to high level agreements, accreditation, etc with ICANN.

6-July-2011 – All changes accepted.

7-Jul-2011 – Edits submitted by Philip Sheppard to clarify and streamline comments.

7-Jul-2011 – All changes accepted.

7-Jul-2011 – Edits submitted by Phil Corwin that quote relevant provisions of the October 2010 BC position on accreditation of new UDRP providers and then urges that any expert group selected to give further consideration to this matter consider the development of a standard mechanism between ICANN and UDRP providers, as such an document would not delve into substantive matters and would be consistent with the BC's overall policy objectives.

7-Jul-2011 – Edits from Steve DelBianco incorporated to remove redundancy of bullets 4 and 5 under item 1.

7-Jul-2011 – All changes accepted.