Proposal for the Uniform Domain-Name Dispute-Resolution Policy (UDRP) Status Report

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Presentation to GNSO Council

23 September 2021

ICANN

Agenda

1. UDRP Overview

2. Proposed Outline for the UDRP Status Report

3. UDRP Data Available

4. Proposed Project Timeline

1. Overview of the UDRP

Overview of the UDRP

- The Uniform Domain Name Dispute Resolution Policy (the "Policy") is an ICANN consensus policy that went into effect on 24 October 1999.

- The UDRP was created to provide a quick, efficient and more cost-effective way to facilitate trademark protection at the second level of the DNS.

- Two documents are required for universal, uniform operation of the UDRP. The first is the Policy itself, setting out the scope of relief and the basis for mandatory administrative hearings that may be brought. The second document is the Rules for the UDRP, which provide the baseline procedural requirements that must be followed in a UDRP proceeding.

- Currently, there are **six** dispute resolution providers authorized by ICANN to conduct administrative proceedings under the UDRP:

  1. World Intellectual Property Organization (WIPO) approved in 1999
  2. National Arbitration Forum (NAF) approved in 1999
  3. Asian Domain Name Dispute Resolution Centre (ADNDRC) approved in 2001
  4. Czech Arbitration Court (CAC) approved in 2008
  5. Arab Center for Dispute Resolution (ACDR) approved in 2013
  6. Canada International Internet Dispute Resolution Centre (CIIDRC) approved in 2019

2. Proposed Outline for the UDRP Status Report

UDRP Policy Status Report Outline

1. Introduction

- Purpose of the UDRP Status Report
  - Help assess effectiveness of the UDRP in terms of its overarching goals as identified in the 2011 Final Issue Report:
    - **i)** Efficiency
    - **ii)** Fairness
    - **ii)** Addressing abuse
  - Share general data on case filings, decisions, etc.
  - Inform the RPM PDP Phase 2
  - Support/review of policies and status report is anchored in the Consensus Policy Implementation Framework

- UDRP post GDPR
  - Background on GDPR/Temp Spec
  - Impact of Temp Spec for gTLD Registration Data on the UDRP filing process

- Summary of findings
  - High level statistics of data collected for each UDRP goal

UDRP Policy Status Report Outline (cont'd)

2. UDRP Goal: Efficiency

- Assessment of whether the UDRP provides trademark holders with a quick and cost-effective mechanism for resolving domain name disputes.
    - Review of UDRP cases filed per year. Continued growth in UDRP filings worldwide helps demonstrates that the UDRP remains a popular/effective tool to combat cybersquatting.
    - Community views concerning effectiveness

- Analysis of case duration for the UDRP vs. traditional litigation

- Analysis of fees for the UDRP vs. traditional litigation

Any substantive/procedural issues and potential fixes concerning the efficiency of the UDRP as identified in the 2011 Final Issue Report on the current state of the UDRP will be subsumed within each goal section.

UDRP Policy Status Report Outline (cont'd)

3. UDRP Goal: Fairness

- Overview of whether the UDRP is impartial/fair for trademark holders and domain name registrants

- Forum shopping
  - Factors that may influence complainant selection of provider (e.g. filing fees, complainant's winning percentage/case outcome, etc.)
  - Analysis of complaint win percentage for each UDRP provider
  - Review of community concerns and potential fixes as identified in the 2011 Final Issue Report

- Process for selection of panelists by UDRP providers
  - Review of process, available data, community concerns and potential fixes, including those identified in the 2011 Final Issue Report on the current state of the UDRP

- Overview of Reverse Domain Name Hijacking (RDNH)
  - Analysis of abusive filings at WIPO, community concerns and potential fixes identified in the 2011 Final Issue Report

UDRP Policy Status Report Outline (cont'd)

4. UDRP Goal: Addressing Abuse

- Overview of Policy effectiveness in targeting straightforward cases of cybersquatting
    - Analysis of yearly panel decisions published by each provider on their website (e.g., transfer/cancellation rates, complaints rejected, split decisions)

- Summary of UDRP-related data from ICANN org departments
    - Analysis of ICANN Contractual Compliance data (e.g., UDRP-related notices and enforcements, complaints received/closed, out of scope UDRP complaints)
    - High-level summary of UDRP-related inquiries received by ICANN's Global Support Center (GSC)

- Education for domain name registrants
    - Overview of the .CL project that links law schools with users of the UDRP to help address cybersquatting and trademark infringement issues

Any substantive/procedural issues and potential fixes concerning the efficiency of the UDRP as identified in the 2011 Final Issue Report on the current state of the UDRP will be subsumed within each goal section.

3. Overview of UDRP Data Collected

UDRP Dataset Available

- UDRP data points that have previously been collected by ICANN Staff to inform other projects/review efforts include:

  - **Number of UDRP complaints filed and decisions rendered** (*source: UDRP Provider websites*)
    - Collected data on UDRP cases also includes case number, complaint/respondent name, disputed domains, commenced/decision date or year, and result (e.g., denied, cancelled, transferred)

  - **Administrative/panelist fees** under the UDRP (*source: UDRP Provider websites*)

  - **UDRP case length** (*source: National Arbitration Forum website*)

  - **Number of RDNH filings** (*source: DNDisputes.com; note that this data is only available for WIPO*)

  - **UDRP-related complaints** to ICANN (*sources: Contractual Compliance, GSC*)

4. Proposed Project Timeline

Timeline & Data Considerations

- The timeline for completion of this work is provided with the following caveats:

  - Input received on the proposed UDRP Report outline being presented.

  - UDRP data previously collected by ICANN Staff from Provider websites is for the 2013-2020 time period. *Note that the data collection process is entirely manual.*

  - As the UDRP has been in effect for over 20 years, case data prior to 2013 may be sought in order to support a more comprehensive review.

  - To ensure efficiency and accuracy of data, it may be beneficial to work with Providers to obtain any additional historical UDRP data.

  - Process and timing for additional data requested and to confirm accuracy of data collected may vary from Provider to Provider.

  - UDRP-related data previously provided by Compliance and GSC is for the 2013-2018 time period and thus this will also need to be updated.

Initial Target Timeline

#	Action	Date(s)
1	GNSO Council meeting	23 September
2	Begin data collection and report updating	Week of 4 October
3	Provide progress update to the GNSO Council	Week of 11 October
4	ICANN72 meeting	Week of 25 October
5	Finalize Draft Report and share with GNSO Council	Week of 18 October
6	Receive GNSO Council input	Week of 1 November
7	Submit Final Report to GNSO Council	Week of 8 November

Appendix

UDRP Policy Status Report Outline (cont'd)

- Proposed background & scope section of report includes:

  - A brief history of the UDRP

  - Overview of the RPM PDP on the Review of All RPMs in All gTLDs
    - Summary of RPM PDP Phase 1 work
    - Relevant URS final recs/operational fixes for consideration in Phase 2

  - Overview of required documents for operation (Policy and Rules)

  - Applicability of the UDRP via ICANN agreements

  - UDRP substantive elements (i.e. criteria for a Complaint to succeed)

  - UDRP procedural elements (e.g. mark requirements, burden of proof)

  - How it works: basic stages of a UDRP proceeding

  - Timeline of each ICANN-approved dispute resolution provider

  - Overview of the ICANN org approval process for UDRP providers