

Recommendation #4: Arbitral Review following a UDRP Proceeding

The EPDP team recommends that the following provisions be added to the UDRP to accommodate the possibility of binding arbitration to review an initial panel decision issued under the UDRP:

- i. When submitting its complaint, an IGO Complainant shall indicate that it agrees, in the event the registrant also agrees, to have the final determination of the outcome of the UDRP proceeding settled through binding arbitration.
- ii. In communicating a UDRP panel decision to the parties where the complainant is an IGO Complainant, the UDRP provider shall request that the registrant indicate whether it agrees that final review of the panel determination will be conducted via binding arbitration, subject to the registrant's right to initiate court proceedings prior to requesting arbitration. The request shall include information regarding the applicable arbitral rules. The arbitral rules shall be determined by the Implementation Review Team which, in making its determination, shall consider existing arbitral rules such as those of the International Centre for Dispute Resolution (ICDR), the World Intellectual Property Organization (WIPO), the United Nations Commission for International Trade Law (UNCITRAL) and the Permanent Court of Arbitration (PCA).
- iii. In accordance with Paragraph 4(k) of the UDRP, where both the IGO Complainant and the registrant have agreed to binding arbitration, the relevant registrar shall wait ten (10) business days (as observed in the location of its principal office) before implementing a UDRP panel decision rendered in the IGO Complainant's favor, and will stay implementation if, within that period, it receives official documentation that the registrant has initiated court proceedings or submitted a request for or notice of arbitration.
- iv. Where both the IGO Complainant and the registrant have agreed to binding arbitration, and the relevant registrar has received a request for or notice of arbitration, it shall continue to stay implementation of the UDRP panel decision until it receives official documentation concerning the outcome of an arbitration or other satisfactory evidence of a settlement or other final resolution of the dispute.
- v. Where both the IGO Complainant and the registrant have agreed to binding arbitration and the registrant initiates court proceedings, with the result that the court decides not to hear the merits of the case, the registrant may submit the dispute to binding arbitration within ten (10) business days from the court order declining to hear the merits of the case, by submitting a request for or notice of arbitration to the competent arbitral institution with a copy to the relevant registrar, UDRP provider and the IGO Complainant. If the registrant does not submit a request for or notice of arbitration to the competent arbitral institution (with a copy to the registrar, UDRP provider and the IGO Complainant) within ten (10) business days from the court order declining to hear the merits of the case, the original UDRP decision will be implemented by the registrar.

Recommendation #5: Arbitral Review following a URS Proceeding

The EPDP team recommends that the following provisions be added to the URS to accommodate the possibility of binding arbitration to review a Determination made under the URS:

- i. When submitting its complaint, an IGO Complainant shall indicate that it agrees, in the event the registrant also agrees, to have the final determination of the outcome of the URS proceeding settled through binding arbitration.
- ii. In communicating a URS Determination to the parties where the complainant is an IGO Complainant, the URS provider shall request that the registrant indicate whether it agrees that final review of the URS Determination will be conducted via binding arbitration, subject to the registrant's right to appeal the initial URS Determination under Section 12 of the URS and/or to initiate court proceedings, in each case prior to requesting arbitration. The request shall include information regarding the applicable arbitral rules. The arbitral rules shall be determined by the Implementation Review Team which, in making its determination, shall consider existing arbitral rules such as those of the International Centre for Dispute Resolution (ICDR), the World Intellectual Property Organization (WIPO), the United Nations Commission for International Trade Law (UNCITRAL) and the Permanent Court of Arbitration (PCA).
- iii. Where the registrant initiates court proceedings and the result is that the court decides not to hear the merits of the case, the registrant may submit the dispute to binding arbitration within ten (10) business days from the date of the court order declining to hear the merits of the case, by submitting a request for or notice of arbitration to the competent arbitral institution, with a copy to the URS provider and IGO Complainant. The relevant domain name(s) will remain suspended throughout the pendency of any such arbitration proceeding.
- iv. Where the registrant files an appeal under URS Section 12 and does not prevail in the appeal, it may submit the dispute to binding arbitration within ten (10) business days from the date of the appeal panel's decision, by submitting a request for or notice of arbitration to the competent arbitral institution, with a copy to the URS provider and the IGO Complainant. The relevant domain name(s) will remain suspended throughout the pendency of any such arbitration proceeding.