

Public Comment Summary Report

Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP)

Open for Submissions Date:

Thursday, 03 March 2022

Closed for Submissions Date:

Tuesday, 19 April 2022

Summary Report Due Date:

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Category: Policy

Requester: Generic Names Supporting Organization (GNSO)

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Open Proceeding Link:

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022>

Outcome:

ICANN org received forty-four (44) submissions. The comments are categorized into two categories: general observations and specific issues concerning the overarching goals of the Uniform Domain Name Dispute Resolution Policy (UDRP). This Public Comment summary report includes ICANN org staff summary of the comments and observations on the topic. ICANN Org will update the Policy Status Report to include relevant information from Public Comments. The updated report will then be returned to the GNSO Council, who may then consider whether the report and the Public Comments provide sufficient information for assessment of the policy, or if further policy development work should be undertaken.

Section 1: What We Received Input On

During this Public Comment proceeding, ICANN org received 44 comments from organizations and groups, as well as individuals providing comments on the UDRP Policy Status Report. ICANN Org will consider the input received and update the Policy Status Report to include relevant information from public comments. ICANN Org values the opportunity to receive comments from the ICANN Community and thanks those who participated in this proceeding.

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
Registries Stakeholder Group	Registries Stakeholder Group	RySG
Telepathy, Inc.	Nat Cohen	T
Non-Commercial Stakeholder Group	Mesumbe Tomslin Samme-Nlar	NCSG
International Trademark Association	Lori Schulman	INTA
Hill & Associates	Richard Hill	HA
Hindustan Republican Army	Rajendra Dalvi	HRA
Leap of Faith Financial Services Inc.	George Kirikos	LFFS
Name Defend Services	Mona Pisser	NDS
Brazilian IP Association	Erika Silla	BIPA
European Commission	Katarina Barathova	EC
Adobe Inc.	J. Scott Evans	A
Internet Commerce Association	Zak Muscovitch	ICA
UNIFAB - Union des Fabricants	Rémi Mulemba	UNIFAB
Intellectual Property Constituency	Lori Schulman	IPC
ICANN Business Constituency	Business Constituency	BC
WIPO Arbitration and Mediation Center	Brian Beckham	WIPO
Italian delegation	Domenico Alfieri	ID
ARTICLE 19	Ephraim Percy Kenyanito	A19
Forum	Renee Fossen	F
Registrar Stakeholder Group	Zoe Bonython	RrSG
Vox Populi Registry Ltd. (.sucks)	Sheri Falcon	VP
Brahma University	Sarbajit Roy	BU
DataCube.com	Brad Mugford	DC
TipTopNames	Mikael Kervevan	TTN
oriGIn	Massimo Vittori	O
Federdoc	Federdoc Federdoc	F
ALG India Law Offices LLP	ALG India Law Offices LLP	ALG
RDAO	Chad folk	RDAO
India Against Corruption	Shyamal Bagchi	IAC

Individuals:

Name	Affiliation (if provided)	Initials
Francois Gand	UDRP vs Federal Trademark Registration and Business Use of Mark	FG
锦国 何		锦国 何
Ted Chang		TC

Munir Suboh		MS
Sara Maroun		SM
Dima Naber		DN
Lucas Gimeno		LG
Ganna Prokhorova		GP
Romana Busse		RB
Puneet Agarwal		PA
Andrew Allemann		AA
David Michaels	Business Owner	DM

Section 2a: Late Submissions

At its discretion, ICANN org accepted late submissions, which have been appended to this summary report. Please check Appendix section to see three late submissions in full.

Organizations and Groups:		
Name	Submitted by	Initials
Negotiator, Arbitrator and Accredited Mediator	Alan L Limbury	NMAS
Paris Bar	Marie-Emmanuelle HAAS	PB

Individuals:		
Name	Affiliation (if provided)	Initials
Karen Mills		KM

Section 3: Summary of Submissions

There were 44 submissions to the Public Comment proceeding. For the purpose of this summary, key themes from each of the comments are highlighted below. 41 comments that were received before the due date are available on the [Public Comment page](#). Three late submissions have been appended to this report.

General Comments

“The UDRP has functioned as an invaluable tool for handling cybersquatting disputes between trademark owners and domain registrants for over 20 years. The UDRP allows rights’ holders and registrants to resolve their dispute through a streamlined administrative procedure without engaging in expensive and time-consuming litigation. Crucially, the UDRP

has served to keep registries, registrars and ICANN from being brought into such disputes. The RySG supports the UDRP as a valuable tool for the community and has no further input for the UDRP Status Report.” (RySG)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/rysg-registries-stakeholder-group-15-04-2022>

“The UDRP has been extremely effective in meeting ICANN’s Goals. As recognized by the Report, the UDRP was adopted by ICANN in order to provide an efficient, quick, cost-effective and fair substitute to traditional litigation for clear cases of cybersquatting. Based on the experience of its members and the data summarized by the Report, INTA believes that the Policy has been effective at targeting straightforward cases of cybersquatting and that the UDRP has and continues to meet these goals overall. The information provided by the Report demonstrates that the scope of cybersquatting is massive and continues to thrive. Without the UDRP, trademark owners would have had to incur massively greater expenses to take action against bad faith registration and misuse of their trademarks as domain names. In addition, the damage to brand owners and to consumers from the use of abusive trademark registrations would have remained largely unabated and would undoubtedly be even greater than it is today without the deterrent effect of the UDRP. Although no system may ever be perfect, as discussed in the Report **any problems with the UDRP are outweighed by the benefits resulting from the availability of the UDRP and are not sufficient in number, absolutely or relatively, to warrant any major changes to the UDRP.** If a consensus exists that changes to the UDRP and its implementation should be considered, INTA believes some elements may be appropriate to address. However, INTA believes more pressing issues face ICANN that should be prioritized above consideration of changes to the UDRP.” (INTA) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/international-trademark-association-inta-18-04-2022>

“The UDRP procedure is gravely flawed when ICANN refuses to recognize federal trademarks and documented business use of these registered marks and allows cybersquatters to sit behind privacy walls which block their illegal activities and more importantly their dates of registration of infringed domains. As such, the UDRP process will not recognize their "3 out of 3" conditions for complainants to get or get back these domain names violating their federally-registered trademarks. This is a critical loophole which ICANN should resolve once and for all instead of feeding cybersquatters by allowing them to charge incredibly large amounts of money for the sale or transfer of these sites by individuals who obviously have zero regard for the hard work of innovators, have absolutely no interest in actual entrepreneurial innovation and more importantly the use of these federally-registered trademarks in business.” (Francois Gand) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/udrp-vs-federal-trademark-registration-and-business-use-of-mark-04-03-2022>

“From the registrant point of view, UDRP is fundamentally flawed because "your" generic-keyword dotcom domain name can be taken away, only because a corporation/lawyer matched his brand with a generic word from the dictionary that you happen to contain in your domain name.” (Lucas Gimeno) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/gimeno-lucas-15-04-2022>

“The current UDRP procedure itself should be maintained as is without any changes. However, the closely-related URS must be discontinued. Compared to legal courts, the much more simplified processes and lowered costs associated with UDRPs are already more than enough to benefit trademark holders while at the same time preventing excessive RDNH abuse. This is why the URS must be discontinued or at least have the fees increased to match UDRP fees. The excessively low cost of the URS encourages abuse and bullying against domain holders.” (Ted Chang)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/chang-ted-04-04-2022>

“The procedures are clear and fair. The ability to make cross examination of evidences, documents and memos by parties meets the standard due process fairness criteria. It is worth to introduce oral hearings and ability for arbitrator(s)-panels- to meet with parties, receive their arguments, hear their evidences and brief about the case and its grounds. This can be optional based on parties request and/or based on panels’ discretion. One of the key elements that UDRP system may want to readdress is the ability of parties to seek full details of parties holding domain names and method of their payments to allow tracing of funds and accounts. With the era of transparency, KYCs, AMLs and all other compliance policies, we see no reason for registrar to keep the parties details (i.e. registrant details and all their information) that trademark owners may find useful or important to pursue enforcement actions. The policy can introduce mandate to registrars to reveal such information based on final decision/resolution issued by panels to accept UDRP complaints in favor of trademark owners. The above may however be challenged by the possible for some owners of a domain name to hide their contact details via proxy services. It would be also recommended for the UDRP system to find a way around this to guarantee transparency in the existence of such technical loophole.” (Sara Maroun)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/maroun-sara-14-04-2022>

“The UDRP is due for an update. The UDRP as originally drafted has proven itself to be an effective tool for combatting cybersquatting. Yet the UDRP should be **updated to account for the changes to the DNS that have occurred in the over 20 years since it was adopted.** Further, the current version of the UDRP is a first release of a policy that has left several critical areas unaddressed for decades. The review is an opportunity for all stakeholders to preserve the essentials of the UDRP while exploring areas to improve the UDRP for the benefit of all who are affected by the policy. There are opportunities to reduce the burden and increase the efficacy of the UDRP for brand owners. There are opportunities to clarify the legitimate rights of good faith participants in the domain name secondary market. There are opportunities to address unfinished work in developing procedures to enhance the robustness, consistency, quality and fairness of the Policy. The upcoming review is a once-in-a-generation opportunity to improve the UDRP. It would be a shame to waste this opportunity.” (T)

Telepathy, Inc. <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/telepathy-inc-15-04-2022>

“Potential amendments to UDRP: (1) The development of technologies and a vast interconnection of the world entails the rapid spreading of English as a universal language. That

is why our suggestion is to supplement the Rules with the provision of English being the language of administrative proceedings as an alternative to the language of the Registration Agreement. (2) In disputes related to "old" domains the statute of limitations issue often arises. Normally, when respondents invoke the doctrine of laches the panels state that mere delay between the registration of a domain name and the filing of the complaint neither bars a complainant from filing such a case, nor from potentially prevailing on the merits. Apparently, trademark owners cannot reasonably be expected to permanently monitor for every instance of potential trademark abuse, nor to instantaneously enforce each such instance they may become aware of. Therefore, our suggestion is to add to the Rules the statement on the inapplicability of the statute of limitations to the complaints to avoid a feasible ambiguity." (Ganna Prokhorova) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/prokhorova-ganna-18-04-2022>

"As a universitum academic and member of the Open / Free Libre movements, I am disgusted at the sellout of ICANN to Commercial trademark holders and total failure of unfair UDRP to protect the non-commercial non-profit small domain holders against capitalist trademark accumulators and moneybag trademark hoarder grabbers who misuse UDRP against registrants from Global South **The UDRP was proposed by the US Department of Commerce. The present UDRP is therefore heavily biased in favor of the USA and against Registrants from the global south.**eg. a) A rich gringo corporate aggressor from the USA can easily spend \$300,000 in legal fees and WIPO fees whereas the domain holder peon like Dr Roy is compelled to be self represented because he and his socialist body working among the poor and under-privileged cannot afford the thousand of US dollars required to pay for a panelist of their own. Why does not ICANN have mandatory "countrywise purchasing power parity" based fees at every stage to eliminate this inequity and bias? **I suggest UDRP be amended to reflect global income disparities in the matter of fees** so that poor registrants are not squeezed out or discriminated against for their poverty b) Why are the UDRP proceedings not conducted in languages like Hindi and Bengali which are more spoken than many languages in the approved list? Was Dr. Roy discriminated when the Panelist rejected Hindi (the 3rd largest world language) and compelled him to respond in English? **I suggest UDRP be amended to allow proceedings in the language spoken by the domain Registrant** c) Only 10 days is allowed for filing a court case by the losing side. In poor countries with weak IP regimes there is a great shortage of lawyers who understand UDRP, The few which are there are too expensive to use. Maybe in USA cases can be filed in 10 days but in the global south it is not always possible especially when the loser is a non-commercial person. **Time for filing court case should be at least 21 days.**" (Romana Busse)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/busse-romana-18-04-2022>

"We reject the report in its entirety. It is irrevocably flawed and should be withdrawn. ICANN staff have squandered the time and resources that were allocated for this project. It should be redone in its entirety with all the missing elements mentioned in our submission taken into account, perhaps divided amongst multiple independent research groups outside of ICANN. ICANN staff simply don't have the research skills to do the job, given what we've seen to date." (LFFS)

Leap of Faith Financial Services Inc. - George Kirikos <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/leap-of-faith-financial-services-inc-19-04-2022>

“I support and adopt the views of NCSG and others like George Kirikos, Romana Busse and Col Rajendra Dalvi in their entirety, and equally demand that ICANN stop this farce of a public comment based on suppressed and manipulated data, and withdraw this report immediately. I concur that ICANN staff are incompetent and not up to the job. From what we see ICANN's entire system of public consultation is a sham and hollow formality to further the agenda of its organised mafia core sponsors. I fully support the views of Lucas Gimeno and adopt them in their entirety. The UDRP is being ruthlessly exploited by professional domain snatchers in the "gray area" identified by him where the trademark abuse is not obvious. Like him I suggest the present UDRP system is akin to an automated sheep shearing assembly line where poor and small registrants are shorn of their domains into which they have poured their life's work. **A small domain holder is helpless when a biased panelist mechanically copy pastes and cites previous UDRP decisions to snatch the domain away to justify his overly fat fee and earn brownie points.** I have gone into the aspects of FORUM SHOPPING, WHITE RACISM in ICANN, IMPERIALISM in ICANN, Corruption of UDRP providers and panelists, Overarching principle of enforcement of national laws, access to national courts, and consumer protection for domain registrants using e-commerce for domain registrations from the USA domain registrar monopolies, requirement of jurisdiction of domain holders address never being snatched away by anyone and many other things in my longer submission.” (BU)

Brahma University - Sarbajit Roy <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/brhma-university-19-04-2022>

“1. Proving the domain registrant’s bad faith should not be a mandatory requirement for a complaint under the UDRP. 2. Paragraph 4(c)(ii) of the UDRP should be revised to better safeguard the trademark owners’ rights. 3. The procedure pertaining to consolidation of complaints against multiple domain names under the UDRP should be further clarified.”

(ALG)

ALG India Law Offices LLP <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/llp-alg-india-law-offices-19-04-2022>

“Federdoc believes that the process of attribution of new generic Top-Level Domains (gTLDs) – as well as the system of traditional gTLDs and of country code ccTLDs should be fully compatible with the internationally accepted rules on Intellectual Property Rights (IPRs) and, therefore, take into account GIs as prior rights deserving protection in case of irregular use on the Internet Domain Names Environment. Moreover we believe that the ICANN process of attribution of new gTLDs has increased the challenges in terms of counterfeiting and misappropriation for GIs, therefore we believe that– in the context of the Internet governance debate – a thorough discussion on the most effective ways to ensure an effective protection for GIs in gTLDs should be undertaken at the global level. It is crucial to recall that GIs is mainly a system of small and medium sized enterprises, in the vast majority of cases small rural producers that play a crucial role in the sustainable development of their communities.” (F)

Federdoc Federdoc <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/federdoc-19-04-2022>

“After consulting our members on this topic, we can share that **even though the UDRP provides trademark holders with quite a quick and cost-effective mechanism for resolving domain names disputes, this system can be further developed and strengthened.** Indeed and **especially for geographical indications** - type of rights that are unfortunately not considered as prior IP rights before ICANN - where the use of usual IP rights protection mechanisms on the Internet (such as UDRP) remains limited. **That said, the UDRP process could be harmonized for all IP rights in order to ensure an effective protection of the latter on the Internet.**” (UNIFAB)

UNIFAB - Union des Fabricants - Rémi Mulemba <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/mulemba-remi-19-04-2022>

“In the Policy Status Report there is no mention of the protection of Geographical Indications (GIs), being GIs so far excluded from the UDRP. **The Italian delegation is of the opinion that ICANN should urgently consider to revise the process of attribution of new gTLDs in line with the international accepted rules on Intellectual Property Rights (IPRs), with a view to consider GIs as prior rights deserving protection in case of irregular use on the Internet Domain Names Environment, as it is currently the case for trademarks. Moreover, the protection of GIs should finally be included in the Uniform Dispute Resolution Policy (UDRP),** in order to allow a fast and cheap resolution of disputes around the attribution of top-level domain names and second level domain names considered in conflict with IPRs and GIs protection. This will encourage the activation of resolution mechanisms and will help to fight well known abuses, like cybersquatting, and to protect consumers from counterfeit products.

Therefore, on single amendment to the UDRP (point 4.a.i of the Policy) is needed as follows:

The domain name is identical or confusingly similar to a trademark, service mark or geographical indication in which the Complainant has rights.” (ID)

Italian delegation - Domenico Alfieri <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/italian-delegation-19-04-2022>

“My comment to **consider is that a UDRP can be filed on the basis of PGI’s (Protected geographical indications), in addition to trademarks.** It’s not about geographical names, it’s about protected geographical names, which are IP rights. I am involved in this issue, as a French Attorney.” (PB)

Paris Bar - Marie-Emmanuelle HAAS

“**As seen from the public comments submitted, there is some disagreement as to what changes, if any, should be addressed in Phase 2 with respect to the UDRP. Most stakeholders, however, would agree that overall the UDRP is successful.** FORUM looks forward to engaging with the community to promote consistency and confidence in the UDRP to build on that success in the years to come.” (FORUM)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/forum-19-04-2022>

“**UDRP mostly works but could use some refining. Many innocent domain owners are forced to defend cases that should not be brought. Of the cases I've read, many of the "bad" cases are situations in which the Complainant's trademark postdates the domain registrant's acquisition of the domain name.** Thus, they did not register the domain to target

the domain owner. **I recommend adding a checkbox on UDRP filings that states, "My trademark rights predate the Respondent's registration of the domain name."** This would get filers to think twice and would prevent a lot of reverse domain name hijacking cases from being filed. I would also like to comment on a calculation in the data that ICANN's staff pulled together. **The report frequently cites a Complainant win rate of 78%. This is calculated by taking the total wins divided by cases filed. But many cases are withdrawn or settled, so this number is distorted. If you look at the number of cases decided, 92% are in favor of Complainants. Most of the withdrawn cases are due to settlements in which the domain owner hands over the domain.** So the win rate is quite high for Complainants, and I think using any number less than 92% is misleading." (Andrew Allemann)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/allemann-andrew-19-04-2022>

"Although the RrSG recognizes that there are some minor areas for improvement in the UDRP, it is the position of the RrSG that a full policy development process (PDP) is not necessary. The UDRP was adopted in 1999, and has been utilized for over 60,000 UDRP cases¹. The RrSG is not aware of any major issues with the UDRP, and is concerned that any updates could have unintended consequences resulting in a less effective UDRP. Additionally, **not only is there a backlog of policy recommendations waiting for ICANN Board approval or implementation, but the RrSG is also aware of substantial community volunteer fatigue even for high-priority issues. Initiating another major PDP for a policy that is very effective overall would further delay other unimplemented initiatives that have been approved or are pending.** Notwithstanding this position, if the ICANN community identifies substantial issues that necessitate a PDP for the UDRP, then the RrSG will support such efforts. Below, the RrSG has identified several areas that should be addressed if the community feedback justifies proceeding with a PDP. **First, the RrSG notes that there can be inconsistency between UDRP providers. There is no requirement that UDRP panelists follow precedent, especially across different providers.** If a party loses a UDRP due to an inconsistent approach or incorrect application of the UDRP, the only recourse is court proceedings. In theory a UDRP provider can violate the UDRP, and there is no oversight or control by ICANN to reverse the violation. This can significantly prejudice the parties that utilize the UDRP. It would be **desirable to have UDRP providers act in a more consistent manner, and if the providers violate the UDRP, then ICANN should be able to exercise proper oversight of the provider.** Second, the RrSG supports the Internet Commerce Association's (ICA) recommendation referenced on page 54 of the report that UDRP providers should have a single set of procedural rules to minimize forum shopping between providers. This will improve consistent application of the UDRP across all providers, and ensure that registrants are not harmed by being subject to supplemental rules that might be more onerous than those of other providers. The RrSG supports improvements to the UDRP that ensures a fair and consistent application of the UDRP across all providers." (RrSG)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/rrsg-19-04-2022>

"Minor adjustments to UDRP intake forms should require that Complainants attest that their trademark rights arose prior to the creation date of the domain name in dispute, otherwise their filing of a complaint should be refused. There's a lack of due process of law for respondents to analyze a complaint, do research, gather evidence, prepare a response, prepare an affidavit, and submit their response, because 20 days is not enough time for most registrants. As a result,

most domain registrants don't respond. There should be an option to request a discovery period for respondents to cross-examine the affiant's on their evidence in the complaint. Complainants have been found to have made serious misrepresentations in their complaints, and have falsified their claims of prior use, such as in the visitqatar.com UDRP case.” (David Michaels) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/michaels-david-19-04-2022>

“I would like to see 2 changes to the UDRP: 1. **Change the requirement for bad faith registration and bad faith use to bad faith registration or bad faith use**, as has been adopted in relation to some ccTLDs, such as .uk and .au. 2. **Add the remedy of “burial” for as long as the successful Complainant retains trademark rights.** This will relieve trademark owners of the financial burden of constantly having to renew unwanted domain names because of their concern that cancellation can lead to further cybersquatting.” (NMAS)

Comments on “Efficiency: Does the UDRP provide trademark holders with a quick and cost-effective mechanism for resolving domain name disputes?”

“The UDRP system polices need to continue to be enhanced to include: 1) Domain names with clear infringement of other rights, such as copyrights, right of publicity and unfair competition resulted from bad faith conducts, ii) expedite the process of ruling in the UDRP complaints to ensure prompt remedies, iii) expand in the scope of panels to rule on other remedies claimed by the trademark owners, such as monetary remedies and compensations and refund of fees to the complainants, and iv) prompt enforcement of resolution and introduce to the policies (terms and conditions signed by registrars with ICANN) to limit the jurisdictions and choice of forums that are entitled to execute and/or hear appeals of decisions.” (Munir Suboh) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/suboh-munir-12-04-2022>

“The UDRP provides efficient mechanism to trademark owners to deal with domain name disputes. However, the system polices need to continue to be enhanced, updated and developed to include: 1) Domain names with clear infringement of other rights, such as copyrights, right of publicity and unfair competition resulted from bad faith conducts, ii) expedite the process of ruling in the UDRP complaints to ensure prompt remedies, iii) expand in the scope of panels to rule on other remedies claimed by the trademark owners, such as monetary remedies and compensations and refund of fees to the complainants, and iv) prompt enforcement of resolution and introduce to the policies (terms and conditions signed by registrars with ICANN) to limit the jurisdictions and choice of forums that are entitled to review, execute and/or hear appeals in relation to UDRP decisions.” (Dima Naber) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/dima-naber-14-04-2022>

“The tables provided in this section, while useful, are lacking critically important information - how does the number of UDRP complaints each year correlate to the overall number of gTLD domain names that exist in that year (new and existing registrations)/ Absent that information, the claim of rising UDRP filings falls flat. If the number of gTLD domain name registrations has soared, and the number of UDRP filings has remained relatively flat, then the percentage of UDRP filings has actually gone down, relatively speaking (which is the most adequate approach when thinking about policy changes). ICANN Org is very good at collecting metrics - let's please

add them to the charts and discussions provided in pages 35-44, and the future charts that will be presented to the Phase II WG.” (NCSG)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/ncsg-17-04-2022>

“Yes, under our associate’s view, the UDRP provides trademark holders with a quick and cost-effective mechanism.” (BIPA)

Brazilian IP Association - Erika Silla

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/silla-erika-19-04-2022>

“Yes. Among the remedies available to trademark holders to fight bad faith registrations, the UDRP has proved to be an effective administrative procedure.” (O)

oriGIn - Massimo Vittori <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/origin-19-04-2022>

“Yes. Prior to implementation of the UDRP, the only mechanism for addressing cybersquatting in the United States was bringing a trademark infringement lawsuit under the Lanham Act (the US Trademark Act). A trademark owner had to contact Network Solutions, Inc. (“NSI”) (at the time the sole registrar and registry) and get an affidavit from the customer services department attesting to NSI’s control of the disputed domain name. The plaintiff then had to deposit the domain name into the Federal Court under Rule 67 of the Federal Rules of Civil Procedure. This process, combined with the cost of preparing a complaint and gathering evidence, was time-consuming, expensive, and fraught with pitfalls. In response to the rise in cybersquatting and the lack of effective mechanisms for dealing with the problem, ICANN implemented the Uniform Dispute Resolution Policy and the Rule of Procedure for the UDRP in the Fall of 1999. By doing so, ICANN provided trademark owners with a mechanism that is easily one-tenth the cost of filing a federal lawsuit and provides a resolution to the dispute in less time than it would take to institute a full-blown lawsuit and serve initial discovery requests on the defendant/cybersquatter. In addition, the UDRP Rules of Procedure provide additional mechanisms to lock the domain name at the registrar to prevent cybersquatters from moving the domain name to avoid a trademark owner’s complaint. It is clear: the UDRP provides a quick and cost-effective mechanism for resolving domain name disputes.” (A)

Adobe Inc. - J. Scott Evans <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/adobe-inc-19-04-2022>

“We note that the Status Report states that the “overall trend line for complaints filed with UDRP Providers shows a slight upward trend, with an average growth rate of 6% per year since 2014”. We agree that this is at most, a relatively “slight” upward trend. Pursuant to the Verisign Domain Name Industry Brief of April 2014, “the fourth quarter of 2013 closed with a base of 271 million domain name registrations across all top-level domains. 23 By the end of 2020 (2013 was the beginning and 2020 was the end date of the Issue Report’s observation period) according to the Verisign Domain Name Industry Brief, there were 366.3 million domain names registered across all TLDs. That is an increase of nearly 100 million domain names during the observation period. The corresponding period of 2013 to 2020 saw an increase in UDRP cases from 4,157 to 6,271 with an average growth rate of 6% per year, despite there being nearly 100 million more domain

names registered by the end of the observation period. What this demonstrates is that the number of UDRP disputes has experienced relatively modest incremental growth that is more or less commensurate with the number of registered domain names. There has been no substantial increase in UDRP disputes in relation to the number of domain names registered and there has been no unusual or unexpected increase within the context of how many domain names are registered. This is not to say that cybersquatting is not a significant problem or that the UDRP is not effective. Rather, it is to put the UDRP's relatively modest and incremental growth into the appropriate context so that the appropriate conclusions can be drawn. In terms of the numbers of total domain names registered, the number that are subject to a UDRP complaint each year is a relatively minuscule fraction. **What the Status Report's statistics do not convey however, is the substantial delays that parties often encounter from the time that a Complaint is filed to the decision.** A review of the efficiency of the UDRP from that perspective is revealing. Parties, both Complainants and good faith Respondents, have an important interest in the quick adjudication of the dispute. Complainants want quick resolution so that the cybersquatting is resolved. Good faith Respondents want quick resolution so that their valuable domain name is unlocked after having been locked during the pendency of the UDRP. A UDRP procedure can take anywhere from a minimum of about 25 days at best, to a maximum of several months at worst. Sometimes the delay is caused by certain UDRP Providers not adhering to the UDRP Rules. Pursuant to Rule 15 of the UDRP Rules, in the absence of exceptional circumstances, the Panel is required to forward its decision on the Complaint to the Provider within fourteen (14) days of its appointment. The Provider is then required pursuant to Rule 16(a) to communicate the full text of the decision to each party within three (3) business days. There are often lengthy delays, spanning weeks between the Panel's deadline and communication of the decision, where no exceptional circumstances exist. These delays are apparent when examining the filing data and decision date amongst other data which is publicly available in the decisions themselves. Moreover, some UDRP Providers take inordinate amounts of time to collect fees and appoint a panel, particularly a three-person panel, with no UDRP Rule directly governing how long these procedures are supposed to take. This gap in the Rules sometimes contributes to parties waiting months for a UDRP decision through no fault of their own." (ICA)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/internet-commerce-association-19-04-2022>

"While the UDRP overall remains an incredibly valuable tool, the Temp Spec has reduced its efficiency because cross-domain correlation has become nearly impossible, as discussed above." (IPC) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/intellectual-property-constituency--19-04-2022>

Concerning Section 3.3 - Schedule of Fees, "The PSR discusses ACPA in this section. The new gTLD program reduced the efficacy of the ACPA by increasing the number of domains without a US nexus (in particular, new registries outside the US) and thus not subject to ACPA jurisdiction (i.e., where the registrant, registrar, and registry are all outside the US). This may have had some effect on UDRP filings and may be worth further examination. This is not strictly related to fees, but we mention it here because this is where the PSR mentions the ACPA. With respect to fees, we also note that certain providers offer refunds or partial refunds of filing fees in the event a dispute is settled and withdrawn prior to panel appointment or issuance of a decision. The IPC

supports this approach to fee refunds and would encourage all UDRP providers to adopt this approach.” (IPC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/intellectual-property-constituency-19-04-2022>

“The BC believes that the efficiency data in the Status Report does not tell the whole story. Currently, efficiency data appears limited to UDRP filing costs and the duration of UDRP cases. **ICANN’s focus on UDRP filing costs does not capture actual total costs to Complainants. It fails to take into account attorneys’ fees, private investigator fees, and/or online brand enforcement service fees.** ICANN may wish to poll Complainants and Complainant’s counsel and/or refer to the most recent AIPLA Report of the Economic Survey for better total UDRP cost estimates. In addition, the BC believes that to truly examine the efficiency of the UDRP as an abuse-mitigation remedy, ICANN should gather data on the total instances of cybersquatting overall, and not simply the number of instances escalated to a UDRP. The WIPO Process is instructive on this issue because it began by gathering input from trademark owners on the prevalence of cybersquatting.¹² By the same token, the data included in the Status Report does not adequately convey the costs and difficulties that lawful registrants face when meritless Complaints, even if a relatively small number, are brought. Some of the cases that are won by Respondents in the UDRP are cases involving highly valuable investment-grade domain names, such as dictionary words, acronyms, and descriptive terms. When it comes to efficiency, the data provided regarding duration of UDRP cases does not provide the full picture either. Parties - both Complainants and good faith Respondents - have an important interest in the quick adjudication of the dispute. Complainants want quick resolution so that the cybersquatting is resolved. Good faith Respondents want quick resolution so that their valuable domain name is unlocked after having been locked during the pendency of the UDRP. A UDRP procedure can take anywhere from one to three months. Any policy review should consider whether there is a way to expedite certain types of UDRP cases, perhaps for example those that are undefended and obvious, which could also release any bottlenecks for other defended and more complex cases.” (BC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/icann-business-constituency-19-04-2022>

Furthermore, the BC believes that “Case consolidation is critical to ensuring efficiency. The BC believes that a greater emphasis on case consolidation is integral to assuring the efficiency of the UDRP. The Status Report acknowledges the view that “the UDRP is inefficient ‘because complainants have no means of identifying all of the domain names owned by a single registrant, which leads to the need to file additional complaints and incur additional expenses.’” The BC fully supports this position. This is a serious concern for Complainants and a solution should be explored to address this problem. The WIPO Process clearly demonstrates that the UDRP was formulated in part to rely on consolidation through reverse Whois searches.¹³ As reverse Whois searches are no longer feasible in many instances, the BC believes that corresponding changes to the UDRP should be examined to maintain consolidation as a key driver of efficiency.” (BC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/icann-business-constituency-19-04-2022>

“On a policy level, there may be solutions to deal with certain (obvious) cases in a more expedited and cost-efficient manner while leaving the “main UDRP” for cases involving a reasoned defense.” (WIPO) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/wipo-arbitration-and-mediation-center-19-04-2022>

Comments on “Fairness: Does the UDRP allow all relevant rights and interests of the parties to be considered and ensure procedural fairness for all concerned parties?”

“The UDRP is not a fair system when both the complainant and the respondent have rights that need to be balanced between them, as happens when a domain investor asserts that they have a right to a domain name that has inherent value and is not targeted at the complainant. In these circumstances, that the UDRP is set up for, by and behalf of brand owners can lead to bias in favor of the complainant. The upcoming UDRP review should review the UDRP’s procedures to ensure that both parties to a UDRP receive a fair hearing.” (T)

Telepathy, Inc. <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/telepathy-inc-15-04-2022>

Concerning Section 4.2 - Selection of Panelists (pages 58-59), “We fully agree with and reinforce the necessity of a transparent process relating to panelist choice.” (NCSG) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/ncsg-17-04-2022>

Concerning Section 4.3 -Reverse Domain Name Hijacking (pages 60-62), “We suggest that some mechanism to discourage this practice be implemented, such as generating a presumption in future cases against those Complainants considered to have attempted RDNH. However, if the possibility of a financial penalty is instituted, it is crucial to implement an opportunity for the Complainant’s defense in cases where the RDNH attempt is not obvious and self-evident.” (NCSG)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/ncsg-17-04-2022>

“No. There are relevant prior rights holders which have been left out of the UDRP system given that the UDRP is only available for trademark holders. For instance, the Brazilian UDRP-equivalent, named “SISTEMA ADMINISTRATIVO DE CONFLITOS DE INTERNET RELATIVOS A NOMES DE DOMÍNIOS SOB “.BR” - DENOMINADO SACI-Adm” (“SACI-Adm”) (available at: <https://registro.br/dominio/saci-adm/regulamento/>) accepts as complainants the owners of other prior rights, in addition to trademark holders (either registered trademark owners or merely filed trademark application owners) such as the holders of trade names, civil names, family names, notorious pseudonyms or nicknames; singular or collective artistic names, or even prior domain name registrations that conflict with the disputed domain name(s). Another point to be taken into account is the registration and use requirements of paragraph 4(a)(iii) of the Policy which are conjunctive, and require that a complainant bears the burden of proof on each, leading to cases in which the complainant is able to prove only the use in bad faith but not necessarily the registration in bad faith. The UDRP should also be reviewed to foresee either the registration or

use in bad faith so as to endure fairness to all and efficiency against bad faith uses of domain name registrations, ensuring a safer Internet to all users.” (BIPA)

Brazilian IP Association - Erika Silla <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/silla-erika-19-04-2022>

“No. The UDRP is unfair as a curative mechanism to the extent that to activate its procedure, a party can rely exclusively on trademarks. The rights and interests of holders of another relevant category of Intellectual Property Rights (IPRs) which can be abused in the domain name environment – Geographical Indications (GIs) – are ignored by the UDRP. GIs represent an internationally accepted category of IPRs, protected via the WTO TRIPs, the WIPO Lisbon Agreement and its Geneva Act, hundreds of bilateral agreements as well as national laws. We estimate that at least 12,000 GIs are currently recognized in national jurisdictions, the large majority of which under independent systems of protection. GIs generate significant economic, social and environmental value for producers, transformers and distributors around the world (mainly small and medium sized enterprises, in the vast majority of cases small farmers).” (O oriGIn - Massimo Vittori <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/origin-19-04-2022>

“Fairness of the UDRP – non-recognition of geographical indications (GIs) rights In the age of the internet and increasing global commerce, the risk of falling victim to intellectual property (IP) infringements and other types of fraud has proliferated. As result, bad-faith domain names registrations containing or consisting of GIs names (e.g. cybersquatting) can constitute an infringement of GI rights. Geographical indications are IP rights recognised and protected by international treaties, including the Paris Convention, the TRIPS agreement, the Lisbon Agreement and the Geneva Act of Lisbon Agreement. A growing number of country-code top-level domain names (TLDs) systems, consider GIs as a valid title to activate alternative dispute resolution mechanisms concerning domain names registrations in conflict with IP rights. Better protection of GIs on the internet is one of the main objectives of the new EU proposal to review the geographical indications (GIs) system for wine, spirit drinks and agricultural products adopted by the European Commission on 31 March 2022 . The new legal framework will increase the protection of GIs on the internet, namely as regards sales via online platforms and the protection against bad faith registration and use of GIs in the domain name system. The ccTLDs registries established in the European Union will have to ensure that their alternative dispute resolution procedures recognise geographical indications as rights that may prevent a domain name from being registered or used in bad faith. The UDRP policy, which serves as an effective dispute resolution procedure for disputes concerning an alleged abusive registration of a domain names and is governed by ICANN went into effect 24 October 1999. Bad-faith registration of second-level domain names containing or consisting of GIs is a real issue, both in generic TLDs and country-code TLDs. In 2021, there was a record number of 5,128 cases of domain name disputes that were filed under the UDRP in the WIPO Arbitration and Mediation Center (+22% from 2020). The attribution of new gTLDs in 2012 has dramatically increased the problem for GIs (example of strings such as “.wine”, “.bio”, “.food”, “.pizza” and “.coffee”). Currently, protection of GIs is not reflected in the UDRP. GIs cannot be directly invoked as valid rights to prevent domain names from being registered in bad faith. To activate the UDRP procedure, a right holder has to rely on trade marks or service marks. This puts GIs into an unfair position. Therefore, extending curative rights mechanisms to GIs would guarantee legal

certainty, transparency, and tools to counter bad-faith domain name registrations. This extension would provide GI holders with the same rights as trade mark or service marks right holders currently have and it would make the UDRP a more fair and inclusive procedure. Inclusion of GIs would still preserve consistency and balance of the UDRP system. In light of the above, the European Commission believes that to make the UDRP a fairer procedure and fully compatible with protection of IP rights, the UDRP should include GIs as valid prior rights in the UDRP procedure.” (EC)

European Commission - Katarina Barathova <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/european-commission-19-04-2022>

“Yes. Under the UDRP, a panelist must fully consider the merits of the complaint even when the domain name holder fails to respond to the initial complaint. This mechanism ensures that all parties, even those who fail to defend their alleged rights in the domain name, receive fair consideration by the UDRP arbitrator. This mechanism is unprecedented in dispute resolution and Adobe believes that it allows all parties to receive a fair and equitable hearing. Since its inception, the UDRP has received criticism as biased towards the interest of trademark owners. Many of these critics point to the high number of disputes that are resolved in favor of trademark owners. However, the UDRP was designed with a very high burden of proof for the trademark owner. For this reason, in the majority of cases, a trademark owner that can successfully carry the burden of proof is successful. While it is true that there have been cases throughout the tenure of the UDRP where overzealous trademark owners have abused the system by bringing actions not suited to the UDRP, Adobe believes that such cases are far outweighed by the number of legitimate disputes that are resolved under the UDRP. Additionally, the UDRP allows for a finding of reverse domain name hijacking when the UDRP is used to recover domains where the domain holder can prove a legitimate interest in the disputed domain name.” (A)

Adobe Inc. - J. Scott Evans <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/adobe-inc-19-04-2022>

“The statistics provided by the Status Report do not adequately convey the UDRP’s performance from a fairness perspective. Although the report cited that Complainants win about 78% of cases, in reality it is far higher – something around 90% to 95% after taking a closer look at the data. That is not the issue however. UDRP Complainants win - and should win - the vast majority of cases since the UDRP was intended to address clear cases of cybersquatting and typically there is no defense of such cases. Indeed, the Final Report of the WIPO Internet Domain Name Process, dated, April 30, 1999 specifically states that the application of the UDRP should be focused on “clear cases” of cybersquatting “often directed at famous and well-known marks”, rather than “any intellectual property dispute arising from the registrations of a domain name”.²⁴ The fairness issue is not really a product of how many cases Respondents win or lose. The fairness issue arises in numerous different ways. For example, it is unfair that panelists are nearly exclusively drawn from the ranks of Complainant counsel with little representation from Respondent counsel who are often denied accreditation by UDRP Providers. It is unfair that Complainants are able to exclusively select the Provider when that indirectly encourages Providers to cater to their customer - which is the Complainant. It is unfair that Providers get to select the candidates for three-member panels when Providers’ rosters have little to no representation from Respondent-side counsel. It is unfair that the WIPO Consensus View, a document which WIPO admirably prepared at great expense and effort, did

not include input from Respondent-side counsel and as a result is skewed in some areas in favor of Complainants. The vast majority of UDRP disputes concern clear-cut cases of cybersquatting on virtually worthless domain names, and the minority of such cases – cases which typically result in defeat of the Complaint - involve highly valuable generic, descriptive, and brandable domain names. What this means in effect, is that domain names worth millions of dollars are treated in the exact same abbreviated fashion as clear-cut cybersquatting cases when the circumstances and stakes are vastly different and domain name investors are put to considerable cost, effort and risk in defending against meritless Complaints. The UDRP was created to remedy what is ultimately an economic harm. Yet the UDRP itself inadvertently creates significant economic harm, particularly to the domain name secondary market. Evaluating the efficacy and fairness of the UDRP merely by counting decision outcomes is a poor metric. A single unjustified transfer of a high-value generic domain name as a result of a misguided decision by a UDRP panel may inflict far more economic harm than thousands of properly transferred, but low traffic typosquats. We commend ICANN Staff for recognizing that Reverse Domain Name Hijacking has gone up. We note that pursuant to the statistics available at RDNH.com, there were approximately 48 UDRP cases across all UDRP Providers where RDNH was declared in 2021. There were approximately 37 RDNH cases in 2020. There were approximately 33 cases in 2019, 45 cases in 2018 and 45 cases in 2017, 37 cases in 2016, 31 cases in 2015, 25 cases in 2014, and 26 cases in 2013.²⁵ Clearly, RDNH has gone up over the years. This demonstrates two things. First, it demonstrates that more UDRP Panels are sanctioning bad faith Complainants, which is a good thing. Second, it demonstrates that good faith Respondents continue to be subjected to egregious bad faith Complaints and at an increasing rate. We also note that there are numerous UDRP cases where panelists failed to consider or failed to find RDNH where the circumstances clearly warranted it, thereby demonstrating that the number of actual RDNH cases is actually higher than the data shows. While RDNH – even in its present form without any real bite – is an important tool in deterring hijacking attempts and providing a moral penalty, the real lesson here is that there ought to be a better way of weeding out or discouraging such Complaints to begin with. It is of little succor for a good faith Respondent to win a UDRP and to get an RDNH finding in its favor, compared to not having to defend against such a Complaint in the first place. Some attention needs to be paid to how such Complaints can be avoided altogether.” (ICA)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/internet-commerce-association-19-04-2022>

“Most of the fairness-related criticisms levied by a vocal minority in the community that are recounted in the PSR are totally unfounded. There are clear fair use provisions in the UDRP (e.g., UDRP Section 4(c)(iii)). The PSR cites no evidence that UDRP response deadlines are unfair to registrants. The comments regarding “internet connectivity” are entirely misplaced, as this issue has nothing to do with the policy or ICANN’s role – moreover it completely overlooks that in order to obtain a domain name registration one must be connected to the Internet. The PSR should present a more balanced overview regarding the fairness of the UDRP and provide facts that clarify (and would clearly refute) these unfounded minority positions.” (IPC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/intellectual-property-constituency-19-04-2022>

Concerning Section 4.1 - Forum Shopping, “There is no evidence that certain providers are more favorable than others to complainants or respondents. In fact, the data shows that the rate of complainants prevailing is remarkably consistent across all providers. This section fails to note other valid reasons for choosing a certain provider over others, such as fee structure, location/time zone of the provider, etc. none of which have any bearing on substantive outcomes. The PSR also fails to note that respondents control mutual jurisdiction for appeals by their location and selection of registrar. Complainants generally pursue cases they believe are meritorious and they are likely to win such that the rate at which complainants prevail is not based on any kind of purported provider or panel bias. This is simply an unfounded claim, pressed by a vocal minority, and is unduly magnified by dedication of an entire section on the issue in the PSR. The PSR should present a more balanced and accurate picture regarding this issue.” (IPC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/intellectual-property-constituency-19-04-2022>

Concerning Section 4.2 - Selection of Panelists, “The PSR cites studies on panel bias from 2000-2002. Such studies are pretty limited in value given the significant number of UDRP cases since then. Further, the conclusion of these studies that 3-member panels favor respondents compared to 1-member panels also does not necessarily point to any bias or causative implications - other than the fact that more contentious or borderline cases are more likely to employ 3 member panels, as chosen by the parties, and thus the outcomes from these cases tend to be more evenly split compared to the general body of decisions where on the whole respondents choose not to defended obvious cases of cybersquatting, i.e., one would expect different case outcomes here. This does not reflect panel bias, and the PSR should present a more balanced picture regarding this issue. Panel decisions reflect consensus jurisprudence that is fair to both complainants and respondents, and outlier cases are rare and have been addressed by panelists and providers (e.g., the Octogen line of cases has been roundly rejected as is clearly spelled out in the WIPO Overview section 3.8); moreover, very few cases are ever appealed to court.” (IPC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/intellectual-property-constituency-19-04-2022>

Concerning Section 4.3 - RDNH, “This section presents views suggesting that the UDRP response period is too short. If the registration is legitimate, it should not be difficult to put together an adequate response and any supporting evidence within the 20-24 day response period. The filings do not need to meet high standards of court filings, and UDRP providers and panelists are generally very accommodating of layman / pro se responses. There is no evidence that providing more time for responses would change default rates or outcomes. The PSR should present a more balanced picture regarding this issue.” (IPC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/intellectual-property-constituency-19-04-2022>

“The UDRP is generally fair The BC believes that the UDRP policy itself has withstood the test of time. The UDRP provides adequate certain safeguards for both complainants and respondents, including clear fair use provisions and safe harbors, as addressed in Paragraphs

4(a)(ii) and 4(c) of the Policy. The BC also does not believe that the UDRP contains unfair or disproportionate deadlines. In terms of areas for continued review and improvement, additional stakeholder-driven guidance on the interpretation of the UDRP applicable across all Providers and panelists, similar to the WIPO Jurisprudential Overview, may be of assistance in enhancing consistency and predictability. Other means of addressing consistency and predictability may also be explored. Lack of forum shopping data. With respect to forum shopping, data in the Status Report confirms that Complainant success rates remain largely consistent amongst the various dispute resolution providers. Although there is no evidence demonstrating meaningfully different outcomes amongst Providers, the success of the UDRP over the course of 23 years should be protected by; a) formalizing the Provider accreditation process; and b) ensuring there are contractual arrangements in place with Providers, both policies which the BC has long championed.” (BC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/icann-business-constituency-19-04-2022>

“Unsurprisingly perhaps, the PSR does not attempt to deal with the underlying causes of the costs to brand owners of the monitoring and enforcement need occasioned by the practice of cybersquatting (made more complicated post-GDPR). In particular, the PSR fails to raise potential preventative tools at ICANN’s disposal (e.g., known best practices deployed in the .DK and .EU name spaces). The PSR moreover seems to gloss over the disproportionality of costs to brand owners of enforcing against an infringing domain name – which in the majority of UDRP cases, as a matter of intentional registrant choice, is not even defended. The suggestion in section 4.3 of financial penalties for instances of RDNH raises the fundamental question whether a loser-pays model should be applied generally.” (WIPO)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/wipo-arbitration-and-mediation-center-19-04-2022>

“Third, some (but not all) members of the RrSG note that section 4.3 of PSR deals with reverse domain name hijacking (RDNH) and considers that, if the PDP does proceed, further consideration by the working group is warranted as to whether the UDRP should be further strengthened against RDNH. Currently there are no monetary or other sanctions that panelists can impose in instances of RDNH. As trademark owners may often have greater financial resources than registrants, this lack of redress (other than losing a UDRP and the wasted attendant costs) may increase the risks to registrants. These risks include losing a UDRP that should actually have been a finding of RDNH, the costs of defending a spurious UDRP that is a clear case of RDNH, and the costs associated with filing a court proceeding a UDRP decision that should have been a finding of RDNH.” (RrSG) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/rrsg-19-04-2022>

“I have been a UDRP panelist since the inception of the scheme in 2000, am a panelist for NAF and WIPO, and was a panelist for eResolution. I am also a panelist for ADR.EU. I have been a panelist in over UDRP 800 cases and am currently handling over 100 cases/year, mostly default cases where there is obvious abuse, e.g. illegal activity such as fraud and/or phishing. At the beginning of the UDRP, my findings were roughly 50% in favor of Complainant, whereas now they are almost always in favor of Complainant, but this is because I am now mostly handling

very obvious default cases (no response). It seems to me that section 4 of the Status Report would be more useful if it broke down the outcome by whether or not there was a Response. That is, show the Complainant win percentages (page 55) separately for default cases versus cases in which there was a Response. I say this because practically all the default cases that I am seeing now are clear cases of abuse. In reply to the specific questions, in my experience: 2. The UDRP does allow all relevant rights and interests of the parties to be considered and ensure procedural fairness for all concerned parties.” (HA)

Hill & Associates - Richard Hill

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/hill-richard-14-04-2022>

“1) Compensation must be given to domain registrant when a reverse domain name hijacking by the complainant is proved. Penalty must be levied upon the complainant in this case. 2) Defendant must be given an option of rejecting the panelist / approving the panelist when a single member panelist is allocated for the udrp proceeding.” (Puneet Agarwal)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/agarwal-puneet-19-04-2022>

“URL's are a very important infrastructure piece to our society and its future. People and Companies recognize this and often take advantage of ICANN UDRP to try and "steal" these valuable assets costing legit owners significant out of pocket expenses. After 20 years, UDRP needs to evolve and upgrade before causing even more damage to legitimate URL owners from these bogus theft attempts. The lack of RDNH enforcement or penalties and lacking clearly defined rules of RDNH, ICANN has the opportunity to upgrade the system for the next 20 years and continue to play a critical role in society and keeping URLs impactful to our society.”

(RDAO)

Chad Folk <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/rdao-19-04-2022>

“The system only allows the arbitrator to order the domain name to be transferred, and has no facility to order any damages, nor even costs, to be awarded. It would seem that this is not entirely fair, seeing that this is the only avenue for resolution of such a dispute. Also it is probably not a sufficient disincentive for unethical people not to register domain names that they have not right to. Normally they do so for profit, so why have to pay damages when they err.?”
(Karen Mills)

Comments on “Addressing Abuse: Has the UDRP effectively addressed abusive registrations of domain names?”

“The UDRP current system does not effectively address abusive registrations of domain names but those should be resolved by the registrars before escalating to the UDRP action, especially the very clear ones that contradict with existing rights for well-known marks owners as well as holders of registered rights at countries of interest. ICANN may consider i) adding a condition to the registrars to respond to all abuse reports filed by trademark owners within 48 hours, ii) proposing checklists of documents and prerequisite to report any abuse report to the registrar, such as certificate of trademark registration(s) for complainants in relevant classes, iii) sanctioning the registrars that refuse or neglect such abuse reports or do not follow the review of documents as per the proposed checklist, iv) obliging registrars to address the abuse report

to the holder of the domain names and set a temporary lock on ownership transfer until the abuse report is finalized, v) obliging the registrar to reveal full details and background about the domain names registrants that proven to be abusive, vi) proposing and/or allow to registries to require undertaking/declaration of filing the abuse report based on genuine rights and case.” (Munir Suboh)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/suboh-munir-12-04-2022>

Concerning Section 5.2 - ICANN Contractual Compliance UDRP-Related Metrics, 2014 – 2020, “This third category of “Addressing Abuse” is not consistent with the original narrow language of the “alleged abusive registrations” which were the focus of the UDRP when drafted and adopted 20 years ago. This category title is far broader than the allegations of bad faith domain name registrations that is the matter at hand, and directly plays into the rough and tumble debate now taking place across the ICANN Community as to the scope, definition and treatment of many other types of activity, and the disagreement as to the definition and scope of “DNS Abuse.” (See, e.g., the recent DNS Abuse Panel at ICANN73.) It is critically important that ICANN Org and the Phase II WG not misuse or confuse these two terms – alleged abusive domain name registrations and other types of abuse issues – and therefore we strongly urge ICANN Org to rename this third prong in all future writings and ask as requested above, to “Addressing Bad Faith in Domain Name Registrations,” to avoid unintended associations and confusion. Furthermore, we believe this section lacks much-needed details and explanations. Examples (or the most common reported cases) of each category should be given for better understanding, especially about those considered “ICANN Issues”. These explanations are critical because this section is perhaps the most important to identify flaws or gaps in the UDRP system and its management.” (NCSG)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/ncsg-17-04-2022>

Concerning Section 5.3 - Education for Domain Name Registrants (pages 82-83), “Here, it is important to refer once again to the comments made above, on topic 2.6 (“Basic Stages of a UDRP Proceeding), since their possible flaws are intrinsically connected. The report mentions the project developed by NIC Chile related to “.cl” ccTLDs as good practice, something that also shows the lack of measures taken by ICANN itself. We believe ICANN should have its own project to help unaware good-faith Domain Name Registrants being abused for not knowing how to deal with the UDRP procedures or not having resources to pay for assistance. “5 Things every Domain Name Registrant (That’s You!) should know about ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension (URS) system” is a good starting point but still far from what is necessary to inform registrants adequately. A more comprehensive guide on how low-budget registrants can defend themselves should be elaborated, including majority interpretations affirmed in WIPO’s Jurisprudential Overview 3.0, translating it to the most spoken languages among gTLDs registrants under UDRP jurisdiction.” (NCSG)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/ncsg-17-04-2022>

“The current UDRP system can encourage dubious disputes, for valuable generic domains. 1.) Outside of an RDNH finding, there is no actual penalty for bringing a meritless dispute. Parties will often bring disputes because it is only upside in their view. The upside is being awarded a

domain worth many thousands (or even millions). The downside is being found guilty of RDNH, which comes with no actual penalty. 2.) There have been some very poor UDRP decisions over the years, many of which were overturned by actual courts. This is often because some panelists have decided to arbitrarily redefine the wording of the UDRP policy itself. This includes - Using "or" instead of "and" when it comes to bad faith. Making judgments based on asking price. Panelists are not appraisal services. Someone either has the right to own a domain or they do not. If they do, the asking price should not be relevant. Some panelists have incorrectly interpreted that offering generic domains for resale is "bad faith" in itself." (DC, NDS)

DataCube.com - Brad Mugford <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/mugford-brad-19-04-2022> & Name Defend Services - Mona Pisser, see: <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/name-defend-services-19-04-2022>

"Yes, but only in part, having left other prior rights holders without an equivalent tool to combat bad faith practices and uses of domain name registrations. These prior rights holders encompass the holders of trade names, civil names, family names, notorious pseudonyms or nicknames; singular or collective artistic names, or even prior domain name registrations that conflict with the disputed domain name(s)." (BIPA)

Brazilian IP Association - Erika Silla Erika Silla <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/silla-erika-19-04-2022>

"Several right holders rely exclusively on GIs (in other words, on geographical names protected under independent systems). Those rights and interests are excluded altogether from the UDRP. Some right holders, on top of GIs, for practical reasons rely on trademarks as well. Their objective is to protect their geographical names in the few jurisdictions around the world where an independent system of protection is not available. For those rights and interests, the UDRP procedure has not always proved to be effective. Often in the case law, while protected via a trademark, for such geographical names there are additional burdens which makes it impossible to prove the exploitation of their reputation. Some examples of the discrimination faced by GIs, even when protected via trademarks, in the WIPO Arbitration and Mediation Center case law, are the following: Case No. D2021-0690, Case No. D2018- 0168, Case No. D2017-0253 and Case No. D2017-0554." (O)

oriGIn - Massimo Vittori <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/origin-19-04-2022>

"Quite simply, no: the UDRP has not effectively addressed abuse registration of domain names. Since its implementation, ICANN has expanded the top-level domain name space on three separate occasions. This expansion has greatly increased the amount of "real estate" that trademark owners must monitor and police in order to protect their intellectual property. As we pointed out above, Adobe's UDRP filings have doubled in the last two years. Having said that, Adobe does believe that the UDRP offers trademark owners the best alternative dispute resolution mechanism for resolving these disputes. Conclusion In conclusion, the UDRP is the most effective and efficient tool currently available for resolving trademark and domain name conflicts. While it is not a perfect system, it is the best available. For this reason, Adobe strongly

urges ICANN to acknowledge this success and keep the UDRP and the Rules of Procedure in place as currently written.” (A)

Adobe Inc. - J. Scott Evans <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/adobe-inc-19-04-2022>

“Really, the goal of addressing abuse is largely a duplication of the discussion of “Efficiency” in the Status Report. Accordingly, we repeat and rely upon our above discussion of “Efficiency.” (ICA)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/internet-commerce-association-19-04-2022>

“The IPC notes that fraud and phishing - i.e., other forms of abuse other than mere cybersquatting but which also leverage trademark rights - have been on the rise and form a greater percentage of cases today than in 1999. The PSR should reflect some of these trends, as it demonstrates a greater urgency in resolving disputes than in a more traditional cybersquatting case where consumer harm is less immediate. This trend has led to a call from some that the UDRP could be improved to address these other categories of cases on a more expedited basis, since the typical cases take 60 to 90 days to resolve (i.e., the possibility of a more expedited proceeding within the UDRP for cases that fall into this category – perhaps drawing inspiration from the DMCA or by extending the URS to all remaining legacy gTLDs have yet to adopt it).” (IPC)

<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/intellectual-property-constituency-19-04-2022>

“The BC believes that the data pertaining to addressing abuse in the Status Report can be expanded and improved upon. Currently, data on addressing abuse within the Status Report appears limited to the total number of UDRP cases, the percentage breakdown of panel determinations, and the total number of UDRP-related complaints filed with ICANN contractual compliance. This data does not provide reviewers with a bigger picture understanding of how well the UDRP is mitigating the overall volume of domain-based abuse on the Internet. The BC therefore believes that the total number of reported cases of domain name abuse pertaining to cybersquatting relative to the total number UDRP cases should be examined, in order to determine what further improvements to the UDRP may be considered beneficial. Certain updates can help the UDRP better scale with and address abuse. The BC maintains its strong support for the UDRP and believes that maintaining the status quo subject to improvements which do not destabilize the UDRP is sufficient to allow the UDRP to remain an effective tool against cybersquatting.” (BC) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/icann-business-constituency-19-04-2022>

“We are concerned by the use of the term “abuse” across the report to refer to trademark and service mark infringement. The UDRP was created in 1999 with the goal of creating a dispute resolution procedure that deals with challenges limited to the intersection of domain names and intellectual property rights, with specification of “trademarks” and “service marks”. On the other hand, “abuse” is a vague term with no consistent definition in the context of ICANN and the

DNS. While ICANN’s Guide to Registrar Abuse Reporting Practices defines DNS abuse in such a way that includes, but is not limited to, trademark infringement issues, the 2019 Framework to Address Abuse has a more technical definition that does not include trademark infringement at all. By using a vague and overly broad term such as “abuse” – which implicates issues as far-reaching as botnets, malware, and phishing – the UDRP Report opens the door to expanding the scope of the UDRP beyond the clear and limited issue for which it was created. We thus recommend that the UDRP Report is redrafted to use a more specific and appropriate term, such as “trademark infringement and service mark infringement”, in place of “abuse”. We also take this opportunity to recommend more generally to ICANN and its board that any process to develop a working definition of DNS abuse must include a multi-stakeholder approach, through efforts such as meaningful public comments proceedings or consultations, that considers all positions on DNS abuse from across the ICANN Empowered Community.” (A19) ARTICLE 19 - Ephraim Percy Kenyanito <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/article-19-19-04-2022>

“The RrSG notes that the use of the term “abuse” throughout the report is confusing. Section 1.1 of the PSR clarifies that the intent of the UDRP was to combat “abusive registrations”. However, the use of the word “abuse” throughout the PSR could easily conflate abusive registrations which are intended to be addressed by the UDRP (e.g. trademark infringement) and other types of DNS abuse (e.g. phishing) that should be addressed by other measures. We would recommend this terminology be clarified throughout the PSR.” (RrSG) <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/rrsg-19-04-2022>

“It appears to me that the number of clearly abusive registrations may have increased. While the UDRP does effectively address abusive registrations of domain names, if the number of abusive registrations has increased, then perhaps there should be a study of the economic factors that may have been contributing to such an increase.” (HA)
Hill & Associates - Richard Hill
<https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/hill-richard-14-04-2022>

“The UDRP Report uses the term “abuse” to generally address issues relevant to the UDRP, including trademark and service mark infringements. Given its lack of clarity and specificity, ICANN should refrain from any use of the term “abuse” until there is a clear definition agreed by the ICANN community. ARTICLE 19, therefore, urges ICANN to consider the recommendations below, which would help align the ICANN Status ICANN Uniform Domain Name Dispute Resolution Policy (UDRP Report) more closely with international law and best practices.” (A19) ARTICLE 19 - Ephraim Percy Kenyanito <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022/submissions/article-19-19-04-2022>

Section 4: Analysis of Submissions

Overall, comments were mixed. Some favored certain aspects of the policy while others were against those same aspects. The key themes from each of the comments centered around the

overarching goals that the UDRP appears to provide. Some of the feedback received also specified suggested areas for improvement in the UDRP that may be considered beneficial, however, there was disagreement as to what changes, if any, should be addressed in the Phase 2 of the PDP with respect to the UDRP.

Some proposed amendments to the UDRP noted in the comments include:

- changing the requirement for bad faith registration and bad faith use to bad faith registration or bad faith use,
- allowing proceedings in the language spoken by the domain Registrant,
- eliminating proof of the domain registrant's bad faith as a mandatory requirement for a complaint under the UDRP, and
- expanding the scope of panels to rule on other remedies claimed by the trademark owners, such as monetary remedies and compensations and refund of fees to the complainants.

ICANN Org values the opportunity to receive comments from the ICANN Community and thanks those who participated in this proceeding. ICANN Org will consider the input received and update the Policy Status Report accordingly.

Section 5: Next Steps

ICANN Org will update the Policy Status Report to include relevant information from Public Comments. The updated report will then be returned to the GNSO Council, who may then consider whether the report and Public Comments provide sufficient information for assessment of the policy, or if further policy development work should be undertaken.

Section 6: Appendix

Three late submissions have been received via email. Please see them below:

- 1- From: Negotiator, Arbitrator, and Accredited Mediator, submitted by Alan L Limbury

"I would like to see 2 changes to the UDRP:

1. Change the requirement for bad faith registration and bad faith use to bad faith registration or bad faith use, as has been adopted in relation to some ccTLDs, such as .uk and .au.
2. Add the remedy of "burial" for as long as the successful Complainant retains trademark rights. This will relieve trademark owners of the financial burden of constantly having to renew unwanted domain names because of their concern that cancellation can lead to further cybersquatting.

Kind regards"

2- From: Karen Mills

“At first consideration, my only major input would be that the system only allows the arbitrator to order the domain name to be transferred, and has no facility to order any damages, nor even costs, to be awarded.

It would seem that this is not entirely fair, seeing that this is the only avenue for resolution of such a dispute. Also it is probably not a sufficient disincentive for unethical people not to register domain names that they have not right to. Normally they do so for profit, so why have to pay damages when they err.?

I hope that is helpful.
Thanks and Regards”

3- From: Paris Bar, submitted by Marie-Emmanuelle HAAS, Attorney at Law

“I would like to send a comment to consider that a UDRP can be filed on the basis of PGI’s (Protected geographical indications), in addition to trademarks.

It’s not about geographical names, it’s about protected geographical names, which are IP rights.

I am involved in this issue, as a French Attorney.

I informed the French organisation representing IP owners in France, called UNIFAB of this process: <https://www.unifab.com/en/>

Kind regards”