

# **Uniform Domain Name Dispute Resolution Policy (UDRP) Status Report**

Policy Status Report

Prepared by ICANN Org for the Consideration of the GNSO  
Council

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# 1 Introduction

This Policy Status Report (PSR) provides an overview of the Uniform Domain Name Dispute Resolution Policy (UDRP) to support the assessment of the effectiveness of the UDRP in meeting its intended purposes. The PSR includes background on the UDRP processes and procedures, publicly available and general data on UDRP complaints and decisions, and brief analyses. By collating this data, the PSR is intended to serve as input to UDRP-related review efforts and to support data-driven policy making, such as the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs Policy Development Process (PDP).

The [Consensus Policy Implementation Framework](#) provides in **Stage 5, Support and Review**, that after there has been adequate time to generate data and metrics to evaluate implemented policy recommendations, Global Domains and Strategy (GDS), Compliance and Generic Names Supporting Organization (GNSO) Policy Staff should provide a PSR to the GNSO Council with sufficient data and metrics to assess the impact of the policy. Unless a data collection and reporting timeframe is specifically recommended by a Policy Development Process Working Group, generally the PSR should be provided within 3 to 5 years from the policy's effective date. The PSR may serve as the basis for further review and/or revisions to the policy recommendations if deemed appropriate.”

## 1.1 Purpose of the UDRP

The Uniform Domain Name Dispute Resolution Policy (the "Policy") is an ICANN consensus policy that went into effect on 24 October 1999.<sup>1</sup> The adopted policy establishes an administrative dispute-resolution procedure for "abusive registrations", (for example, cybersquatting).<sup>2</sup> While ICANN staff did not identify any explicit statement of policy goals, based on a review of UDRP-related documents, community feedback and discussions, the overarching goals of the UDRP appear to be to provide:

- (1) An expedient, less expensive and fair substitute to traditional litigation for cybersquatting cases;
- (2) A uniform administrative dispute-resolution procedure for domain name disputes in all gTLDs;
- (3) Effectiveness in addressing clear-cut types of cybersquatting, thereby ensuring a more secure Internet.<sup>3</sup>

Under the policy, "most types of trademark-based domain-name disputes must be resolved by agreement, court action, or arbitration before a Registrar will cancel, suspend, or transfer a domain name. Disputes alleged to arise from abusive registrations of domain names (for example, cybersquatting) may be addressed by expedited administrative proceedings that the holder of trademark rights initiates by filing a complaint with an approved dispute-resolution service provider."<sup>4</sup>

With this in mind, this report is organized to help the GNSO to assess the effectiveness of the UDRP in terms of the overarching goals of the UDRP:

1. **Efficiency:** Does the UDRP provide trademark holders with a quick and cost-effective mechanism for resolving domain name disputes?
2. **Fairness:** Does the UDRP allow all relevant rights and interests of the parties to be considered and ensure procedural fairness for all concerned parties?
3. **Addressing Abuse:** Has the UDRP effectively addressed abusive registrations of domain names?

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<sup>1</sup> The UDRP is posted at <http://www.icann.org/en/udrp/udrp-policy-24oct99.htm>

<sup>2</sup> See ICANN (25 October 1999), *Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy*, <https://archive.icann.org/en/udrp/udrp-second-staff-report-24oct99.htm>

<sup>3</sup> See WIPO (30 April 1999), *Final Report of the WIPO Internet Domain Name Process*, <https://www.wipo.int/amc/en/processes/process1/report/finalreport.html>

<sup>4</sup> ICANN, "Uniform Domain Name Dispute Resolution Policy," <https://www.icann.org/resources/pages/help/dndr/udrp-en>

Note that the data presented herein—both quantitative and qualitative—represent proxy measures for assessing the effectiveness of the UDRP in terms of these goals. This report will be published for Public Comment, and the input received will be integrated into this report in order to provide additional insight for the GNSO in considering whether and how the UDRP has helped achieve the goals enumerated above.

## 1.2 Overview of the UDRP

The UDRP procedures and rules were developed with extensive input from a broad range of organizations and groups including international institutions, businesses, governments, and consumers. In terms of domain name disputes concerning the registration and use of legally protected trademarks, the UDRP is considered the longest standing alternative dispute resolution procedure. The introduction of the UDRP was considered innovative because the domain name dispute resolution process is conducted primarily online and rarely does it involve live hearings by the disputing parties. The following definitions might be helpful when reading this report:

- **Complainant:** the party initiating a complaint concerning a domain-name registration;
- **Registrant:** an individual or entity who registers a domain name;
- **Respondent:** the registrant or holder of a domain-name registration against which a complaint is initiated.<sup>5</sup>

There are various stages in a UDRP administrative proceeding. First, the Complainant prepares and electronically files a complaint with an ICANN approved dispute resolution provider against the Respondent, i.e., the registrant of the domain name. Next, the provider will acknowledge receipt of the complaint and submit a "verification request" to the Registrar to confirm the accuracy of information about the domain name and the Respondent. The verification request also includes a request to Lock<sup>6</sup> the domain name. If the complaint is in compliance with the Policy and Rules, the provider then notifies the Respondent of the complaint.

The Respondent has twenty (20) days from the date of commencement of a UDRP proceeding to file a response. If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint. Once the Provider receives a response, or the due date for a response has passed, the panelists are appointed. Panelists will usually decide the dispute

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<sup>5</sup> Note that the Registrant and Respondent are often the same. For details of the Policy, see ICANN, "Uniform Domain Name Dispute Resolution Policy," <https://www.icann.org/resources/pages/policy-2012-02-25-en>

<sup>6</sup> Per the UDRP Rules, Lock means a set of measures that a registrar applies to a domain name, which prevents at a minimum any modification to the registrant and registrar information by the Respondent, but does not affect the resolution of the domain name or the renewal of the domain name. For more information on locking of a domain name subject to UDRP proceedings, see: <https://www.icann.org/en/announcements/details/policy-implementation-update-17-11-2014-en>

within fourteen (14) days. The decision is then sent to the Provider. Within three (3) business days of receiving the decision from the Provider, the Registrar must communicate to the parties the date of the implementation of that decision if the domain name is to be transferred or the registration canceled.

Unless evidence of a court filing is presented from a party, decisions are implemented within ten (10) calendar days from the date of determination. If a lawsuit is filed in a court to challenge the determination, the Lock is maintained while the challenge takes place. The decision and date of its implementation is published on the Provider's website. In the event of a determination against the Complainant, no changes are made to the domain name registration data, thus maintaining the status quo (i.e., the situation as at the date the complaint was filed.)

## 1.3 Impact of the Temporary Specification for gTLD Registration Data on the UDRP Policy

Before the adoption of the [Temporary Specification for gTLD Registration Data](#) (see Section 1.3 below), for a complaint to be considered administratively compliant with the UDRP Policy and Rules, the person or entity initiating an administrative proceeding by submitting a complaint in electronic form was required to provide:

- (1) “The name of the Respondent (i.e. relevant information available from Whois) and all other information (including any postal and e-mail addresses and telephone and telefax numbers) known to the Complainant regarding how to contact Respondent, or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a).”<sup>7</sup>

In May 2018, the European Union’s General Data Protection [Regulation](#) (GDPR) went into effect. This resulted in temporary changes to the UDRP, as a registrant’s registration data are no longer available in registration data directory services for a significant number of registrations affected by the regulation. On 17 May 2018, the ICANN Board [approved](#) the Temporary Specification for gTLD Registration Data (“Temp Spec”), which became effective 25 May 2018. “[Appendix E: Uniform Domain Name Dispute Resolution Policy](#)” in the Temp Spec contains supplemental requirements for the Rules for UDRP.<sup>8</sup> For Complainants filing a complaint on or after 25 May 2018, the Temp Spec states:

- (1) Complainant’s complaint will not be deemed defective for failure to provide the name of the Respondent (Registered Name Holder) and all other relevant contact information required by Section 3 of the UDRP Rules if such contact information of the Respondent is not available in registration data publicly available in RDDS or not otherwise known to Complainant. In such an event, Complainant may file a “Doe” complaint and the Provider shall provide the relevant contact details of the Registered Name Holder after being presented with a “Doe” complaint.

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<sup>7</sup> UDRP Rules section 3(b) describes the required elements for submission of a complaint under the UDRP. For details of the Rules, see ICANN, “Uniform Domain Name Dispute Resolution Rules,” <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en/#2a>

<sup>8</sup> ICANN, “Temporary Specification for gTLD Registration Data: Appendix E,” <https://www.icann.org/resources/pages/gtld-registration-data-specs-en/#appendixE>



- (2) Furthermore, the Registrar must provide the UDRP Provider with the full Registration Data for each of the specified domain names, upon the UDRP Provider notifying the Registrar of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN.

While availability of personal data regarding registrants was limited under the Temp Spec, attributes regarding the registration itself, such as the registrar contact information, remain available. Users with a legitimate and proportionate purpose for accessing non-public Personal Data associated with a registration may request such access by contacting the Registrar listed in the public WHOIS or the gTLD's Registry Operator listed in the IANA WHOIS Service. Users can also contact the Registrant or Administrative and Technical contacts for a domain name registration through an anonymized email or web form included in the public WHOIS record.

In light of the Temp Spec, the UDRP-filing process has been facilitated in the following ways:

- (1) The Provider should not reject a complaint if it lacks the contact details fields that were previously required in a complaint: the process should still allow a Complainant to file a case. As the Provider will have access to the contact details from the Registrar, the Temp Spec provides that Providers should fill in the information if it is missing from the complaint.
- (2) Once the Provider receives the Registered Name Holder and contact details from the Registrar, the Provider should "provide" it in the complaint, meaning add the information to the existing complaint. If the Registrar does not provide the required information, the Provider is able to report the issue via ICANN's Contractual Compliance channels for investigation.
- (3) UDRP Providers may choose to relay the Registrar-provided Whois data to Complainants in pending UDRP proceedings and the Complainant is invited to amend its complaint to reflect the registrant information received from the Registrar (much like cases filed today against privacy/proxy services named as Respondents).

The Temp Spec, which expired in May 2019, was reviewed as part of the GNSO’s “Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data”. Part 4 of the EPDP charter focuses specifically on the UDRP, and poses the following question:<sup>9</sup>

- (1) Should Temporary Specification language be confirmed, or are additional adjustments needed?

The GNSO Council [adopted](#) the [Final Report](#) on 4 March 2019 and the Board resolved to [adopt](#) the recommendations, with some exceptions, on 15 May 2019. The EPDP Phase 1 recommendations that were approved by the GNSO Council and adopted by the ICANN Board in 2019 included Recommendation #21 that suggested that the RPM PDP Working Group consider whether existing UDRP requirements needed updating, to clarify that a Complainant must only be required to insert the publicly-available RDDS data for the domain name(s) at issue in its initial complaint, and if a Complainant should be given the opportunity to update its complaint upon receiving updated data. The EPDP work also included Recommendation #23 and Recommendation #27 that suggested updates be made to existing procedures and rules impacted by the GDPR.<sup>10</sup>

Following the Board’s adoption of most of the EPDP’s Phase 1 recommendations, an [Interim Registration Data Consensus Policy for gTLDs](#) was implemented that requires gTLD Registry Operators and ICANN-accredited Registrars to continue to implement measures that are consistent with the Temporary Specification on an interim basis, pending the full implementation of the final Registration Data Policy.

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<sup>9</sup> ICANN GNSO, *Temporary Specification for gTLD Registration Data Expedited Policy Development Process Team*, <https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>, p. 7.

<sup>10</sup> EPDP Recommendation #21: Requests the GNSO Council to instruct the RPMs PDP Working Group to consider whether to update existing requirements to clarify that a Complainant must only be required to insert the publicly available RDDS data for the domain name(s) at issue in its initial complaint, and whether the Complainant may be given the opportunity to file an amended complaint upon receiving updated RDDS data. EPDP Recommendation #23: Defines requirements for URS/UDRP to ensure the procedures continue to function given other EPDP recommendations. EPDP Recommendation #27: Recommends that updates be made to existing policies to ensure consistency with the EPDP recommendations.

## 1.4 UDRP PSR Summary of Findings

### UDRP Goal: Efficiency

- On average, approximately **900 complaints per year were filed** with each UDRP Provider during the observation period (2013 – 2020).<sup>11</sup>
- Total UDRP cases filed during the observation period ranged from 4,157 cases in 2013 to 6,271 in 2020, with a **total of 38,349 UDRP complaints involving 67,318 domain names filed** with UDRP Providers during the observation period (2013 – 2020).
- **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.

### UDRP Goal: Fairness

- Complainants **succeeded in obtaining the disputed domain name in about 78% of cases**, on average, across all dispute resolution Providers during the observation period (2013 – 2020).<sup>12</sup>
- Since 2013, **Reverse Domain Name Hijacking (RDNH)** cases have been on the rise with **2018 being a record-setting year** for abusive filings related to RDNH involving a total of **917 Complainants** for the 2013 – 2020 observation period, which is 2% of all UDRP cases.

### UDRP Goal: Addressing Abuse

- From January 2013 to December 2020, over **32,000 UDRP decisions have been rendered** by panels.<sup>13</sup> UDRP results for the 2013 – 2020 observation period shows an average annual growth rate of 300 complaints per year across all UDRP Providers and an **average annual growth rate of 7% for decisions in favor of Complainants**.

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<sup>11</sup> Note that the observation period is determined by the availability of data.

<sup>12</sup> This calculation was made by dividing the total number of transfer or cancellation decisions (complaint accepted) by the total number of cases filed during the 2013 - 2020 observation period. This was based on data collected from the Provider websites.

<sup>13</sup> Note descriptive statistics only included cases in which the domain name (s) were transferred or cancelled, where the claim was denied, and where the panel returned a split verdict during the observation period. Cases that were withdrawn, terminated or are pending are not included as part of UDRP decisions rendered. This was based on data collected from the Provider websites.

- In general, the number of **UDRP-related tickets** received by ICANN has slightly gone up between 2014 to 2019. On average, Contractual Compliance **received** approximately **200 UDRP-related tickets per year**.
- ICANN's Global Support Center (GSC) received **8,056 UDRP-related inquiries** between 2014 and 2020. Around **61% of these inquiries involved issues related to a trademark holder alleging cybersquatting** or IP infringing domain name registrations.

Note that this report provides additional details regarding the numbers presented above, which may help future policy efforts in assessing the UDRP based on its stated goals of efficiency, fairness, and addressing abuse.

## 2 Background and Scope

The need for an effective dispute resolution mechanism for domain names emerged with the expansion of the web in the late 1990s. Because domain names were inexpensive and easy to obtain, cybersquatting became an issue as individuals began registering desirable domain names resembling popular trademarks with the hopes of selling them for a profit.<sup>14</sup>

The UDRP, created in 1999, was the result of an extensive international process of consultations concerning the form and scope of a dispute resolution procedure. The goal of this process was to develop and make recommendations to ICANN on questions arising out of the interface between domain names and intellectual property rights. These questions concerned not only dispute resolution, but also domain name registration practices, limitations on registration of famous and well-known names, and addition of new gTLDs.<sup>15</sup> As part of this process, the international community discussed the implications of using trademarks as domain names and the risk of consumer confusion associated with the source of a product or service when trademarks are used as domain names without consent of trademark holders.<sup>16</sup>

The initial idea for a uniform policy was proposed by the World Intellectual Property Organization (WIPO), in recommendations called for in the US [White Paper](#) on the Management of Internet Domain Names published in April 1999. WIPO presented its final report to ICANN, dealing with registration practices, dispute resolution, famous names, and gTLD expansion. WIPO's proposal also included suggested text for a uniform, mandatory ICANN domain name dispute policy for resolution of cybersquatting disputes and suggested rules for an administrative procedure to resolve those disputes. Furthermore, the WIPO final report recommended that ICANN establish an administrative procedure for the cancellation or transfer of domain names found to have been abusively registered in violation of another's trademark rights. WIPO recommended that all registrants, in their registration agreements, agree to this administrative procedure in cases of abusive registrations.<sup>17</sup>

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<sup>14</sup> Emerson, Chad D. (2004) "Wasting Time in Cyberspace: The UDRP's Inefficient Approach toward Arbitrating Internet Domain Name Disputes," University of Baltimore Law Review: Vol. 34: Iss. 2, Article 2. Available at:

<https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1767&context=ublr>

<sup>15</sup> See ICANN (24 August 1999), *ICANN Staff Report: Uniform Dispute Resolution Policy for gTLD Registrar*, <https://archive.icann.org/en/meetings/santiago/udrp-staff-report.htm>

<sup>16</sup> WIPO, *Final Report of the WIPO Internet Domain Name Process*, (1999).

<sup>17</sup> ICANN, *ICANN Staff Report: Uniform Dispute Resolution Policy for gTLD Registrar*, (1999).

At the ICANN Board meetings on 25 and 27 May 1999, a portion of the public forum was devoted to discussion with the Internet community of the various aspects of the WIPO report. At that public forum, ICANN staff gave its analysis of the WIPO report and recommended that dispute resolution issues be referred to the Domain Name Supporting Organization (DNSO).<sup>18</sup> The DNSO considered WIPO's recommendations, and the DNSO Names Council ultimately forwarded consensus position recommendations to the Board on a uniform dispute resolution policy.<sup>19</sup> At its meetings on 25 and 26 August 1999 in Santiago, Chile, the ICANN Board [adopted](#) the UDRP Policy, based on the recommendations contained in the Report of the WIPO Internet Domain Name Process, as well as comments submitted by registrars and other interested parties.

The Board then directed ICANN's President to convene a representative working group to draft plans for the implementation of the policy as adopted by the Board. Public [comments](#) were solicited on whether these documents faithfully implemented the policy adopted.<sup>20</sup> On 24 October 1999, the ICANN Board adopted a set of Rules for the Uniform Domain Name Dispute Resolution Policy (the UDRP Rules) setting out the procedures and other administrative requirements for each stage of the dispute resolution procedure. Starting on 1 December 1999, Complainants were able to file cases with dispute-resolution providers for disputes alleging the bad faith registration of domain names.

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<sup>18</sup> The precursor to today's GNSO. <https://archive.icann.org/en/dns/dns1.htm>

<sup>19</sup> See ICANN (29 September 1999), *Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy*, <https://archive.icann.org/en/udrp/staff-report-29sept99.htm>

<sup>20</sup> Ibid.

## 2.1 Review All RPMs in All gTLDs PDP

As a result of the [New gTLD Program](#), several new RPMs were developed to mitigate potential risks and costs to trademark holders that could arise from the expansion of the gTLD namespace. Prior to the launch of the New gTLD Program, on 3 October 2011 ICANN organization published a UDRP Final Issue [Report](#) that had been requested by the GNSO, on the current state of the UDRP. The staff-recommended course of action in the UDRP Final Issue Report was that a PDP on the UDRP “be delayed until after the New gTLD Uniform Rapid Suspension System (URS) has been in operation for at least eighteen months. Doing so would allow the policy process to be informed by data regarding the effectiveness of the URS, which was modeled on the UDRP, to address the problem of cybersquatting.”<sup>21</sup>

In February 2016, the GNSO passed a [motion](#) initiating a two-phased PDP to review all RPMs in all gTLDs in two phases: [Phase 1](#) of the PDP, which has been completed, focused on a review of all the RPMs that were developed for the 2012 New gTLD Program round. When launched, [Phase 2](#) will focus on a review of the UDRP. Specifically, the RPM Working Group was tasked with determining whether modifications to the existing RPMs (including but not limited to the UDRP) are needed and, if so, what they should be. As described in its approved [charter](#), in addition to an assessment of the effectiveness of each RPM, “by the completion of its work, the Working Group is expected to have also considered the overarching issue as to whether all the RPMs collectively fulfill the purposes for which they were created, or whether additional policy recommendations are needed, including to clarify and unify the policy.”<sup>22</sup> During Phase Two, the Working Group will consider [suggestions](#) that have been made to date by the community regarding improvements or modifications to the UDRP.

On 24 November 2020, the Working Group delivered its RPM PDP Phase 1 [Final Report](#) to the GNSO Council for its consideration. The Final Report contains 35 recommendations, nine of which recommend that the status quo (e.g., the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program round) should be maintained, as well as 16 recommendations for new policies or procedures, and 10 recommendations to modify existing operational practices to improve the effectiveness of the RPMs. All of the recommendations, apart from one

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<sup>21</sup> In 2011, Staff published an Issue Report on the UDRP at the request of the GNSO Council. See ICANN (3 October 2011), “Final GNSO Issue Report on The Current State of the Uniform Domain Name Dispute Resolution Policy,”

[https://gnso.icann.org/sites/default/files/filefield\\_27051/udrp-final-issue-report-03oct11-en.pdf](https://gnso.icann.org/sites/default/files/filefield_27051/udrp-final-issue-report-03oct11-en.pdf)

<sup>22</sup> See ICANN (15 March 2016), “Charter For Proposed PDP To Review All Rights Protection Mechanisms in All gTLDs,”

[https://gnso.icann.org/sites/default/files/filefield\\_48755/rpm-charter-15mar16-en.pdf](https://gnso.icann.org/sites/default/files/filefield_48755/rpm-charter-15mar16-en.pdf)

(e.g., TMCH Final Recommendation #1), received full consensus support from the Working Group. Seven PDP WG members submitted a joint Minority Statement on this recommendation (Annex D of the Final Report).

On 19 March 2021, the GNSO Council submitted its Bylaws-mandated [Recommendations Report](#) to the ICANN Board of Directors, recommending adoption of all the final recommendations by the ICANN Board. The GNSO Council also requested that the ICANN org convene an Implementation Review Team (IRT) to work on the implementation of these recommendations, as is the regular practice and in accordance with the IRT Principles & Guidelines approved in 2016. On 7 April 2021, the Final Report was published for [Public Comment](#) to inform Board action on the report, in accordance with Bylaw requirements. The summary of [community input](#) received on the final report highlights a variety of viewpoints. On 16 January 2022, the ICANN Board [adopted](#) all thirty-five (35) final Phase 1 PDP recommendations as documented in the PDP Working Group's Phase 1 Final Report.



## 2.2 UDRP Policy and Rules

The three primary sets of requirements for operation of the UDRP, which Registrants agree to when they enter into their registration agreement with the registrar for registration of their domain name are:

- (1) **The UDRP Policy (the “Policy”).** The Policy is available at: <http://www.icann.org/en/dndr/udrp/policy.htm>. The Policy sets out the scope of relief and legal framework for the resolution of disputes between a domain name registrant and a third party (i.e., a party other than the registrar) over the abusive registration and use of an Internet domain name.
- (2) **The Rules for the UDRP (the “Rules”).** All dispute resolution providers follow these rules set out by ICANN, which are available at: <http://www.icann.org/en/dndr/udrp/uniform-rules.htm>. The Rules provide the baseline procedural requirements that must be followed for each stage of a dispute resolution administrative proceeding, such as required notice to a Respondent, time for filing a response, and standard practice for appointing the administrative panel for a UDRP proceeding.
- (3) **Supplemental Rules.** A list of current Providers and their supplemental rules is available at: <http://www.icann.org/dndr/udrp/approved-Providers.htm>. Each approved UDRP Provider is also responsible for maintaining its own set of supplemental rules, defined as “the rules adopted by the Provider administering a proceeding to supplement these Rules.” Supplemental Rules must not be inconsistent with the UDRP Policy or Rules and cover such topics as fees, word, page limits and guidelines, file size and format modalities, the means for communicating with the Provider and the Panel, and the form of cover sheets.<sup>23</sup> As part of the approval process, potential Providers must provide ICANN with a copy of their proposed supplemental rules, which are reviewed to confirm that there is no conflict with the Rules and the Policy, and also to confirm that the potential Provider has an understanding of the Policy.

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<sup>23</sup> For details of the Rules, see ICANN, “Uniform Domain Name Dispute Resolution Rules,” <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en/#2a>

## 2.3 Applicability of the UDRP

All ICANN-accredited registrars have agreed to abide by and implement the UDRP for those domain names registered through their services. Any person or entity wishing to register a domain name via an ICANN-accredited registrar is required to consent to the terms and conditions of the UDRP Policy.

The UDRP is applicable to names registered in gTLDs as imposed through the Registrar Accreditation Agreement (RAA).<sup>24</sup> RAA Section 3.8 states:

“3.8 Domain-Name Dispute Resolution. During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until different policies and procedures are established by ICANN under Section 4, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy identified on ICANN's website ([icann.org/general/consensus-policies.htm](https://icann.org/general/consensus-policies.htm)).”

The obligations to comply with the UDRP flow through to the registered name holders under the [RAA](#), which requires each Registrar to include provisions concerning domain name registrations in the agreement it enters with registered name holders. In addition to the RAA requirement that a registered name holder represent that to the best of its knowledge, the registration or use of the domain name does not infringe on the legal rights of others, Section 3.7.7.10 of the RAA requires registered name holders to submit to mandatory administrative proceedings to resolve disputes under the UDRP:

“3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder's domicile and (2) where Registrar is located.”

The requirement for submission to mandatory administrative proceedings does not mean that registered name holders cannot also have judicial proceedings filed against them for the same or similar conduct. Similar to the jurisdictional requirements set out in the RAA, the requirement to

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<sup>24</sup> The RAA is posted at: <https://www.icann.org/resources/pages/registrars/registrars-en>

submit to a mandatory administrative proceeding means that the registered name holder cannot dispute the UDRP provider's ability to hear a dispute that is otherwise properly brought under the UDRP. In addition, the registered name holder must also agree that its registration is subject to "suspension, cancellation, or transfer" under Section 3.7.7.11 of the RAA, which states that:

“3.7.7.11 The Registered Name Holder shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN adopted specification or policy, or pursuant to any Registrar or registry procedure not inconsistent with an ICANN adopted specification or policy, (1) to correct mistakes by Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.”

## 2.4 UDRP Substantive Elements

For a UDRP complaint to succeed, the Complainant must establish that the following three criteria are met:

- (i) **The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;**

The first element of the UDRP has been called "a standing requirement" by the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Jurisprudential Overview 3.0"\)](#). In the administrative proceeding, the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and that the disputed domain name is identical or confusingly similar to the trademark. According to WIPO Jurisprudential Overview 3.0, "while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."<sup>25</sup>

- (ii) **The registrant of the domain name has no rights or legitimate interests in respect of the domain name;**

Where the Complainant has demonstrated that the Respondent lacks rights or legitimate interests, the burden of proof on this element shifts to the Respondent to provide relevant evidence to establish rights or legitimate interests in the domain name. If the Respondent does not provide satisfactory evidence, the Complainant is typically deemed to have satisfied the second element. Paragraph 4(c) of the UDRP lists several (non-exclusive) examples of registrant rights or legitimate interests, including using the domain name in connection with a bona fide offering of goods or services, the registrant being commonly known by the disputed domain name, and legitimate non-commercial or fair use.<sup>26</sup> However, UDRP panels have recognized the difficulties in proving a negative with respect to registrant rights or legitimate interests. In the case of domain names based on the generic or dictionary meaning of a word or phrase, in order to find rights or legitimate interests, the domain name would need to be used in connection with the relied-upon meaning.<sup>27</sup> For example, a Respondent may be found to have a right or legitimate interest to

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<sup>25</sup> WIPO, "WIPO Overview of WIPO Panel Views on Selected Udrp Questions, Third Edition ('Wipo Jurisprudential Overview 3.0')", <http://www.wipo.int/amc/en/domains/search/overview3.0/>.

<sup>26</sup> See Paragraph 4(c) of the Policy: <https://www.icann.org/resources/pages/policy-2012-02-25-en#4b>

<sup>27</sup> Ibid.

register a domain named "apple" if it uses it for apples, but not if the site is used to sell computers, MP3, or for some other inappropriate purpose that involves trying to mislead consumers.

**(iii) The domain name has been registered and is being used in bad faith.**

Bad faith under the UDRP occurs when a Respondent is found to be taking unfair advantage or abusing a Complainant's mark. Paragraph 4(b) of the UDRP lists several inclusive examples of bad faith, such as indications that the domain name has been registered for the purpose of selling it to the Complainant or their competitor, or used for attracting visitors to the registrant's site for commercial gain by creating a likelihood of confusion with a Complainant's trademark.<sup>28</sup> In certain circumstances, "use" of a domain name has been interpreted by Panels to include passive holding of a domain name and in other cases, registrants will be deemed responsible for third party or "automatically" generated material (e.g. pay-per-click advertising found to be targeting Complainant trademark value) appearing on a website of a disputed domain name, unless registrants can show that they have taken steps to have such material removed.<sup>29</sup>

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<sup>28</sup> See Paragraph 4(b) of the Policy: <https://www.icann.org/resources/pages/policy-2012-02-25-en#4b>

<sup>29</sup> WIPO, "WIPO [Overview](#) of WIPO Panel Views on Selected Udrp Questions, Third Edition ('Wipo Jurisprudential Overview 3.0')".

## 2.5 UDRP Procedural Elements

**Precedent.** In UDRP cases, panelists aim for a high degree of predictability and consistency which can be achieved through consensus or precedent. As articulated in the WIPO Overview 2.0, paragraph 4.1, “panels consider it desirable that their decisions are consistent with prior panel decisions dealing with similar fact situations. This ensures that the UDRP system operates in a fair, effective and predictable manner for all parties, while responding to the continuing evolution of the domain name system.”<sup>30</sup>

**Supplemental Filing.** The UDRP Rules give the Panel sole discretion to request further statements and determine the admissibility of evidence, which may include an unsolicited filing. Such filings are presented to the panel for determination as to admissibility, and assessment of need for any further procedural steps. Most panels that have permitted unsolicited filings usually require proof of "exceptional" circumstances as to why the information was not provided with the complaint or response. If the supplemental filing is accepted from one party, the panel normally gives the other party a chance to file a reply to the supplemental filing.<sup>31</sup>

**Language of Proceeding.** The language of the proceeding is the language of the Registration Agreement of the party that registered the disputed domain name, unless both parties agree otherwise, or the panel determines otherwise under paragraph 11 of the UDRP Rules. In some cases, where the Respondent can understand the language of the complaint, a Provider may accept the language of the complaint even if it is different from the language of the Registration Agreement. Similarly, a response in a language different from that of the Complainant may also be accepted for practical reasons. Such acceptance, however, is subject to the panel's authority to determine the appropriate language of the proceeding on appointment.<sup>32</sup>

**Appeals and Refiling.** The UDRP does not have a built-in appeals process since it was designed as a simple, expedient and cost-effective alternative to court options for clear cases of cybersquatting. Unless evidence of a court filing is presented, decisions are implemented within 10 days from the date of determination. In limited circumstances, a panel may accept a refiled UDRP case involving an unsuccessful UDRP

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<sup>30</sup> WIPO, “WIPO [Overview](#) of WIPO Panel Views on Selected UDRP Questions, Second Edition (‘WIPO Jurisprudential Overview 2.0’).”

<sup>31</sup> Isenberg, Doug. “The Impact of Reverse Domain Name Hijacking on Supplemental Filings in UDRP Cases.” *CircleID*, 17 August 2016, [https://circleid.com/posts/20160817\\_impact\\_of\\_reverse\\_domain\\_hijacking\\_on\\_supplemental\\_filings\\_in\\_udrp/](https://circleid.com/posts/20160817_impact_of_reverse_domain_hijacking_on_supplemental_filings_in_udrp/).

<sup>32</sup> Note that ICANN org is not aware of any data reported from Providers on languages used in UDRP proceedings.

Complainant of first instance. These circumstances include when the Complainant establishes that relevant new actions have taken place since the original decision, a breach of natural justice, or that the original case involved some other serious misconduct.<sup>33</sup>

**Standard of Proof.** The proof standard generally refers to which party bears the responsibility for producing legally sufficient evidence as to each element of either a complaint or a response. As such, even if a Respondent fails to reply to a complaint, the Complainant may still lose the case if it has failed to present evidence to sustain its burden. The general standard of proof for the UDRP is “balance of probabilities” or “preponderance of the evidence”; some panels have also expressed this as an “on balance” standard.<sup>34</sup> According to WIPO Jurisprudential Overview 3.0, “under this standard, a party should demonstrate to a panel’s satisfaction that it is more likely than not that a claimed fact is true.” In other words, it is up to the Complainant to demonstrate that it has rights of trademark in a mark. If the Complainant produces evidence sufficient to show that the Respondent has no “legitimate interests” in a domain, it is then up to the Respondent to present evidence that the Respondent has such legitimate interests.

**Privacy and Proxy Services.** Concerning cases filed against a privacy or proxy service where the privacy or proxy service is listed as the registrant, once the complaint is filed, per “[Appendix E: Uniform Domain Name Dispute Resolution Policy](#)” of the Temp Spec, ICANN-accredited Registrars must provide the UDRP Provider with the full Registration Data for each of the specified domain names, upon the UDRP Provider notifying the Registrar of the existence of a complaint. Once the Provider receives the Registered Name Holder and contact details from the Registrar, the Provider should add the information to the existing complaint. Alternatively, the Provider may choose to relay the Registrar-provided Whois data to the Complainant and the Complainant is invited to amend its complaint to reflect the registrant information received from the Registrar.<sup>35</sup>

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<sup>33</sup> WIPO, “WIPO [Overview](#) of WIPO Panel Views on Selected UDRP Questions, Third Edition (‘WIPO Jurisprudential Overview 3.0’).”

<sup>34</sup> Ibid.

<sup>35</sup> The following process issues have been raised by the community with regard to privacy proxy registrations, which are summarized in Annex 2 of the [Final Issue Report](#) on the current state of the UDRP: “1) A PDP on the UDRP needs to address privacy and proxy registrations or require complaining party to amend complaint once infringing party identified; 2) Standardize procedures for the unmasking of proxy registration to reveal ownership; and 3) when privacy/proxies are in the WHOIS, the rules are not clear who is the correct respondent and the proper jurisdiction for the case; difficulties in identifying proper respondent leads to delays and amendments to the complaint.”

**Settlement.** If, before the Panel's decision, the Parties agree on a settlement, a UDRP proceeding may be terminated at the request of the parties. Where a suspension request for the purpose of exploring possible settlement options is submitted to the Provider by the parties, a notification would normally be issued to the parties and Registrar informing them of the suspension. When the Parties reach a settlement and provide a standard settlement form to the Provider, the Provider informs the Registrar, copying the Parties, of the outcome of the settlement and notes that the domain name should be unlocked only for the purpose of any transfer of the domain name from the registrant to the Complainant under the terms of any agreed settlement between the parties. If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceedings for any reason, the panel would normally order the proceedings terminated in accordance with paragraph 17 of the UDRP Rules.<sup>36</sup>

**Consolidation.** Under the UDRP Rules, a "complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder."<sup>37</sup> However, panels have the discretion to decide whether a UDRP complaint filed by multiple Complainants may be brought against (one or more) Respondents. In considering whether it is appropriate to include multiple domain names in a single complaint, UDRP panels often consider the following: whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties.<sup>38</sup> In order for such filing to be accepted, it would typically need to be accompanied by a request for consolidation which establishes that the relevant criteria have been met.

**Panelists.** The UDRP includes provision for single-member and three-member panel types, depending on the election of the parties. If the Complainant has elected a single-member panel in the complaint, and the Respondent does not opt for a three-member panel, the cost of the panel is borne by the Complainant, and the Provider will appoint a single member panel from its published list of panelists. Either party may opt for a three-member panel, which is more expensive than a single-member panel. Each parties' share of the UDRP filing fee depends upon whether the Complainant or the Respondent elects a three-member panel. If the Complainant chooses a three-member panel when it files the UDRP complaint, then the Complainant must pay the entire fee. However, if the Respondent opts for a three-member panel, the fees are shared equally between the Complainant and Respondent. In a three-member panel UDRP proceeding, the parties can express a preference for the

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<sup>36</sup> See Paragraph 17 of the UDRP Rules: <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>

<sup>37</sup> See Paragraph 3(c) of the UDRP Rules: <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>

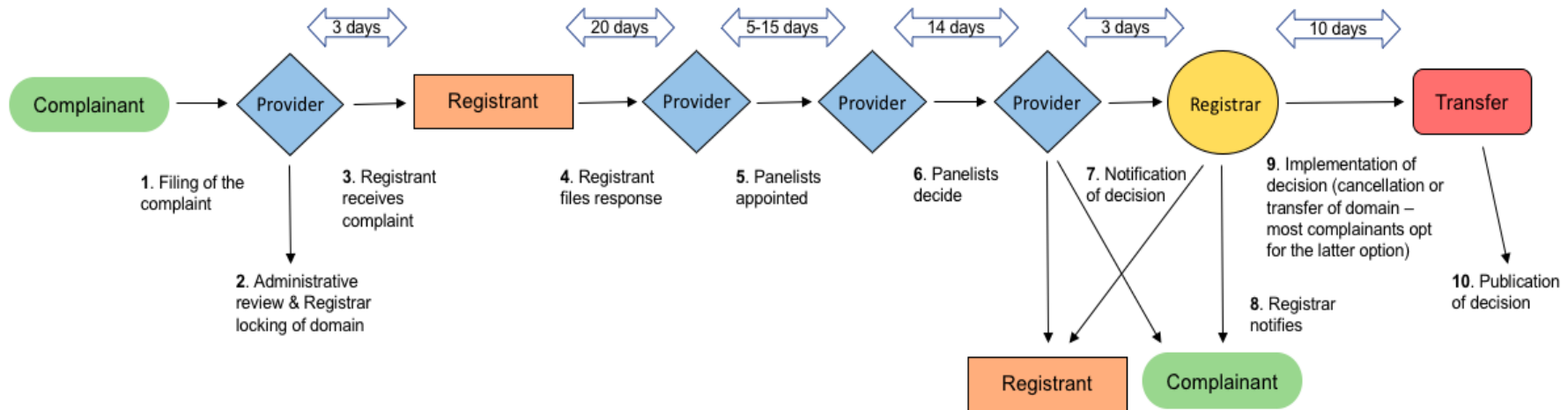
<sup>38</sup> Isenberg, Doug. "WIPO's UDRP 'Overview' Gets Bigger (and Better)." *GigaLaw*, 8 July 2017, <https://giga.law/blog/2017/5/24/wipos-udrp-overview-gets-bigger-and-better>.



panelists. The Rules allow each party an opportunity to identify "three candidates to serve as one of the Panelists," which the Provider will endeavor to appoint. These candidates may be drawn from any ICANN-approved Provider's list of panelists. The Provider then supplies a list of five names for presiding panelist, which the parties then rank, and the provider then appoints the presiding panelist from that list.

## 2.6 Basic Stages of a UDRP Proceeding

There are various stages in a UDRP administrative procedure. The flowchart below is based on the UDRP Rules and represents the basic stages of a proceeding resulting in a decision in favor of the Complainant. In the event of a determination not in favor of the Complainant, no changes are made to the domain name registration data, thus maintaining the status quo.<sup>39</sup>



- (1) The Complainant prepares and electronically submits a complaint to an ICANN approved dispute resolution provider. The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name registrant.<sup>40</sup>

<sup>39</sup> As identified in the process issues raised by the community in Annex 2 of the [Final Issue Report](#), it is “unclear what is meant by ‘Status Quo’”. There is no explanation of the ‘Legal Lock’ mechanisms and when they go into effect or when they should be removed.”

<sup>40</sup> As mentioned previously in Section 1.3 of this report, in light of the Temp Spec the Provider should accept a complaint that doesn’t name the Respondent (i.e., “Doe” complaint). Once the Provider receives the Registered Name Holder and contact details from the Registrar, the Provider should add the information to the existing complaint. Alternatively, the Provider may choose to relay the Registrar-provided Whois data to the Complainant and the Complainant is invited to amend its complaint to reflect the registrant information received from the Registrar.

- (2) The Provider acknowledges receipt of a complaint within **one (1) day** of filing; submits a "verification request" to the Registrar to confirm the accuracy of information about the domain name and the Registrant. The verification request also includes a request to Lock the domain name. Within **two (2) business days** of receiving the Provider's verification request, the Registrar confirms the information requested and Lock of the domain, and the Provider reviews the complaint for administrative compliance with the Policy and Rules.<sup>41</sup>
- (3) If in compliance, the Provider will forward the complaint to the Respondent and Registrar within **three (3) calendar days**. If the Provider finds the complaint administratively deficient, it shall promptly notify the Complainant and Respondent of the nature of the deficiencies identified. The Complainant will then have **five (5) calendar days** to correct any deficiencies and allow supplemental findings before formal notification to the registrant. The commencement date of the dispute begins once the Provider forwards on the complaint.
- (4) The Respondent has **twenty (20) days** from the date of commencement to file a response. A Respondent is automatically entitled to a **four (4) calendar day** extension upon request. If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.
- (5) Once the Provider receives a response, or the due date for a response has passed, the panelists are appointed. In one-panelist cases this happens within five **(5) calendar days**, in three-panelist cases, this can take up to **fifteen (15) calendar days**.<sup>42</sup>
- (6) Panelists will usually decide the dispute within **fourteen (14) days**. The decision is then sent to the Provider.
- (7) The Provider has **three (3) business days** to send the decision to the parties, including the Registrar.
- (8) Within **three (3) business days** of receiving the decision from the Provider, the Registrar must communicate to the parties the date of the implementation of that decision if the domain name is to be transferred or the registration cancelled.

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<sup>41</sup> There is no requirement to lock a domain name in the period between filing a complaint and commencement of a proceeding, which has been cited as a process issue by the community in Annex 2 of the Final Issue Report on the current state of the UDRP.

<sup>42</sup> As identified in process issues raised by the community in Annex 2 of the [Final Issue Report](#), the "timeline to appoint a panel could be more flexible; five days is too short."

(9) Unless evidence of a court filing is presented from a party, decisions are implemented within **ten (10) calendar days** from the date of determination. If a lawsuit is filed in a court to challenge the determination, the status quo is maintained while the challenge takes place.

(10) Decision and date of its implementation is published on the Provider's website.

## 2.7 Approved Dispute Resolution Service Providers

Under the UDRP, Complainants can select a dispute provider from among several administrators appointed by ICANN. There are currently six ICANN-approved dispute resolution Providers authorized to conduct administrative proceedings:

1. **World Intellectual Property Organization (WIPO) Arbitration and Mediation Center** based in Geneva, Switzerland is a division of WIPO that was established in 1994 to offer dispute resolution options. The parent body, the United International Bureau for the Protection of Intellectual Property, and its successors have been in existence since 1893. WIPO was created in 1967, and in 1974 became a specialized agency of the United Nations, with a mandate to administer intellectual property matters recognized by the member states of the United Nations.<sup>43</sup>

- **29 November 1999:** WIPO became the first dispute-resolution Provider approved by ICANN for arbitrating UDRP cases.
- **9 December 1999:** the first proceeding, *World Wrestling Federation Entertainment, Inc. v. Michael Bosman*, was heard by WIPO.<sup>44</sup>

2. **FORUM** was founded in 1986, and is based in Minneapolis, Minnesota in the US. It has been an arbitration forum for banks, insurance companies, and computer makers. The panelists are located around the world and typically specialize in trademark or domain name law. The panelists are attorneys or retired judges.<sup>45</sup>

- **23 December 1999:** National Arbitration Forum (NAF) was approved by ICANN for UDRP cases.
- **January 2000:** FORUM accepted its first case in January 2000.<sup>46</sup>

3. **Asian Domain Name Dispute Resolution Centre (ADNDRC)** is a joint undertaking between the China International Economic and Trade Arbitration Commission (CIETAC), established in 1956, and the Hong Kong International Arbitration Centre (HKIAC), established in 1985 to

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<sup>43</sup> WIPO, "Inside WIPO", <https://www.wipo.int/about-wipo/en/>.

<sup>44</sup> ICANN, "Timeline for the Formulation and Implementation of the Uniform Domain-Name Dispute-Resolution Policy," <https://www.icann.org/resources/pages/schedule-2012-02-25-en>

<sup>45</sup> FORUM, "About The Forum," <https://www.adrforum.com/about>.

<sup>46</sup> See Forthright, *The National Arbitration Forum's Domain Name Dispute Resolution Program: ODR Lessons from the UDRP*, June 2008, <https://archive.icann.org/en/meetings/odrforum2008/files/odrforum2008/forthright-odr-lessons-jun08.pdf>.

assist disputing parties solve disputes by arbitration and by other means of dispute resolution. In 2006, the Korean Internet Address Dispute Resolution Committee (KIDRC) joined the ADNDRC and started to operate as the Seoul Office. In 2009, the ADNDRC announced the opening of its Kuala Lumpur Office operated by the Asian International Arbitration Centre (AIAC). According to the ADNDRC website, the panel of arbitrators are specialists in trade, economics, law and science.<sup>47</sup>

- **3 December 2001:** ICANN org approved ADNDRC for UDRP cases.
- **28 February 2002:** ADNDRC began accepting UDRP complaints through the first offices of its centers in Beijing and Hong Kong.<sup>48</sup>
- **2006:** the Korean Internet Address Dispute Resolution Committee (KIDRC) joined the ADNDRC and started to operate as the Seoul Office.
- **2009:** the ADNDRC announced the opening of its Kuala Lumpur Office operated by the Asian International Arbitration centre (AIAC).<sup>49</sup>

4. **Czech Arbitration Court (CAC)** is based in Prague and attached to the Czech Chamber of Commerce and Czech Agrarian Chamber. Established in 1949, CAC's services include mainly the resolution of domestic and international commercial disputes.<sup>50</sup>

- **23 January 2008:** the ICANN Board [approved](#) the application of CAC to become a UDRP Provider.

5. **Arab Center for Dispute Resolution (ACDR)** is based in Amman, Jordan and focuses on the MEAC (Middle East and Adjoining Countries). The ACDR is jointly established by the Arab Intellectual Property Mediation and Arbitration Society (AIPMAS) and the Arab Society for Intellectual Property (ASIP).<sup>51</sup>

- **18 May 2013:** ICANN Board [approved](#) the application of ACDR to become a UDRP Provider.<sup>52</sup>

6. **Canada International Internet Dispute Resolution Centre (CIIDRC)** is a division of the British Columbia International Commercial Arbitration Centre (BCICAC), which was established by the government of the Province of British Columbia with the support of the Federal

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<sup>47</sup> ADNDRC, "History of ADNDRC", <https://www.adndrc.org/mten/AboutUs.php?st=2>

<sup>48</sup> See ICANN (3 December 2001), "ICANN Announces New Dispute Resolution Provider in the Asia Pacific Region," <https://www.icann.org/news/announcement-2001-12-03-en>.

<sup>49</sup> ADNDRC, "[History](#) of ADNDRC".

<sup>50</sup> CAC, "About the Czech Arbitration Court", [https://eu.adr.eu/about\\_us/court/index.php](https://eu.adr.eu/about_us/court/index.php).

<sup>51</sup> ACDR, Introduction: Arab Center for Dispute Resolution", [http://acdr.aipmas.org/page.aspx?page\\_key=Introduction](http://acdr.aipmas.org/page.aspx?page_key=Introduction).

<sup>52</sup> ACDR, "[Introduction](#): Arab Center for Dispute Resolution."

Government of Canada in 1986. BCICAC operates under the BCICAC Foundation which is managed by a Board of Directors consisting of business leaders, lawyers, academics, and a former Supreme Court of British Columbia Judge.

- **3 May 2019:** ICANN Board [approved](#) the application of CIIDRC to become a UDRP Provider.<sup>53</sup>
- **November 2019:** CIIDRC began accepting UDRP complaints.

The following organizations were formerly approved dispute-resolution service providers under ICANN's UDRP:

1. **eResolution (eRes)**, a North-American-based Provider, was one of the domain name dispute arbitrators approved by ICANN.

- **16 October 2000:** eRes was approved by ICANN for UDRP arbitration cases.
- **30 November 2001:** eRes ceased operations for economic reasons.<sup>54</sup>

2. **Conflict Prevention and Resolution (CPR) Institute for Dispute Resolution** was established in 1977 and is an independent nonprofit organization that helps global businesses prevent and resolve commercial disputes effectively and efficiently. CPR is made up of hundreds of general counsel of global corporations and partners of major law firms.<sup>55</sup>

- **15 May 2000:** ICANN org announced that the CPR has been designated an approved Provider under the UDRP for domain name disputes.
- **22 May 2000:** CPR began accepting UDRP complaints.
- **January 2007:** CPR withdrew from providing services under the UDRP.

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<sup>53</sup> ICANN Board Resolution 2019.05.03.12, "Approval of the CIIDRC as a Provider of Uniform Domain-Name Dispute-Resolution Policy (UDRP) Service," (2019), <https://features.icann.org/approval-ciidrc-provider-uniform-domain-name-dispute-resolution-policy-udrp-service>.

<sup>54</sup> ICANN, "ICANN [Announces](#) New Dispute Resolution Provider in the Asia Pacific Region," (3 December 2001).

<sup>55</sup> See ICANN (15 May 2000), "ICANN Announces CPR Institute as New Dispute Resolution Provider," <https://www.icann.org/news/icann-pr-2000-05-15-en>

## 2.8 Approval Process for UDRP Providers

Dispute resolution service provider applications are received on a relatively infrequent basis (a total of eight applications have been submitted since the UDRP was created in 1999) and review of applications involves one or more staff reports of public comments<sup>56</sup>, coordination and collaboration within ICANN org, and teleconferences with potential providers. The following steps are part of the [approval process](#) undertaken by ICANN org with previous UDRP providers:

1. Potential provider submits an application to ICANN org by email and by postal mail.
2. ICANN org examines the application to determine that the applicant has demonstrated its ability to handle proceedings.
3. To assist in the review and evaluation of how potential providers may meet these qualifications, ICANN org publishes the proposal to serve as an approved dispute-resolution service provider for the UDRP for Public Comment.
4. ICANN org considers community feedback in determining whether to approve the organization as a new UDRP dispute-resolution service provider.
5. ICANN org provides the potential provider with a copy of the Public Comment summary and analysis so that the potential Provider may determine whether it wishes to revise any portion of the proposal.
6. If a revised proposal is received, it will be reviewed by ICANN org to determine whether further public input is advisable before a decision is made with respect to the UDRP Provider application.

Applications for organizations seeking approval as UDRP service providers should contain the following factors:

- a. An overview of the applicant's capabilities and background in providing alternative dispute-resolution (ADR) services, including a description of the applicant's track record of handling the clerical aspects of expedited ADR proceedings.

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<sup>56</sup> For example, see the Public Comment page for CIIDRC's application for new UDRP Service Provider: <https://www.icann.org/en/public-comment/proceeding/application-for-new-uniform-domain-name-dispute-resolution-policy-udrp-dispute-resolution-service-provider-16-11-2018>



- b. A list of the names and qualifications of the panelists the applicant proposes to include on its published list and a description of the screening requirements applicant has used in selecting panelists to be included on its list.
- c. A description of training and educational measures the applicant proposes to employ for listed panelists with respect to domain-name disputes, the UDRP Policy, and the UDRP Rules.
- d. A commitment by the applicant not to prevent or discourage any of its listed panelists from serving as panelists for domain-name disputes administered by other approved Providers.
- e. A copy of the applicant's proposed supplemental rules (including fee schedule).
- f. Documentation of applicant's proposed internal operating procedures. If requested, ICANN will hold this documentation in confidence.
- g. A proposed schedule for applicant's implementation of its program for administering proceedings under the policy, including a statement of applicant's administrative capacity in terms of number of proceedings initiated on a monthly basis.
- h. A statement of any requested limitations on the number of proceedings that applicant handles, either during a start-up period or on a permanent basis.
- i. A description of how the applicant proposes to administer proceedings, including its interactions with parties, registrars, ICANN, and other approved providers.
- j. Description of how the applicant intends to publish decisions of panels in proceedings it administers and a commitment to provide ICANN with copies of all portions of decisions of panels not published.

In general, ICANN examines the applications to determine whether the applicant has demonstrated its ability to handle proceedings in an expedited, global, online context and in an orderly and fair manner. Attributes that are especially important include:

- A. Applicant should have a track record in competently handling the clerical aspects of ADR proceedings. ICANN considers proper review of pleadings for administrative compliance and reliable and well-documented distribution of documents to the parties and panels to be essential capabilities for Providers. In the absence of a well-established track record in handling the clerical function, a detailed plan for providing those abilities ordinarily must be submitted.
- B. Applicant should propose a list of highly qualified neutrals who have agreed to serve as panelists. Applicant's list should include at least twenty persons. Applicants are expected thoroughly to train the listed neutrals concerning the policy, the uniform rules, the technology of

domain names, and the basic legal principles applicable to domain-name disputes. Accordingly, excessively long lists of neutrals are discouraged. The applicant should either present a list of panelists from multiple countries or, if the applicant initially presents a single-country list, propose a plan to expand its list to become multinational.

- C. Applicant's supplemental rules and internal procedures should demonstrate that applicant understands the workings of the policy and uniform rules.

As part of the approval process, potential providers must provide ICANN with a copy of their proposed supplemental rules, which are reviewed to confirm that there is no conflict with the Rules and the Policy, and also to confirm that the potential provider has an understanding of the policy. Once approved, providers are responsible for retaining, screening, and training qualified panelists to make determinations on cases filed.<sup>57</sup>

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<sup>57</sup> ICANN, "Information Concerning Approval Process for Dispute-Resolution Service Providers", <https://www.icann.org/resources/pages/Provider-approval-process-2012-02-25-en>.

### 3 UDRP Goal: Efficiency

As stated in Section 1.1 above, the UDRP was developed to create an efficient process for handling domain name disputes. With this in mind, this section of the report is intended to help the GNSO assess the effectiveness of the UDRP by presenting UDRP data as it relates to the UDRP's overarching goal of efficiency in providing trademark holders with a quick and cost-effective mechanism for resolving domain name disputes.

The following statistics used in this section to assess the cost and time efficiency of the UDRP in dealing with disputes involving abusive registrations of domain names reflect the following data points: UDRP filings with Providers, panelist and administrative fees for UDRP complaints, as well as the duration of UDRP proceedings.<sup>58</sup> The availability and use of the UDRP does not preclude bringing a matter to a court process; however, there is no unified source from which we can derive the number of court cases.<sup>59</sup> Indeed, the UDRP was not designed to operate as a court and is conducted entirely online.

As evidenced by the caseload of proceedings during the observation period, which ranged from 2013, when the first new gTLD delegations occurred, to December 2020, the data, looked at holistically, points to thousands of cybersquatting disputes resolved outside of the courts, with outcomes apparently rarely successfully challenged in court.<sup>60</sup> It is important to note that this does not make a UDRP decision more valid as not all parties may have the resources to appeal to a court of law if unsatisfied with the outcome.

Some in the trademark community, however, hold the view that the UDRP is inefficient “because complainants have no means of identifying all of the domain names owned by a single respondent, which leads to the need to file additional complaints and incur additional expenses.” In

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<sup>58</sup> Note that data on case duration is based solely on UDRP cases filed at FORUM, which is currently the only UDRP service provider that publishes readily accessible commencement and decision dates.

<sup>59</sup> WIPO lists 84 select court cases known to have been issued following a UDRP decision. Given that a range of case-specific factors may impact court orders recording party settlements following a UDRP case, such cases are generally not listed here. See: <https://www.wipo.int/amc/en/domains/challenged>

<sup>60</sup> The responses to the UDRP Questionnaire sent to providers to help inform the UDRP [Final Issue Report](#), indicate that very few UDRP decisions are appealed to the knowledge of the Providers (one case, or .1% from the ADNDRC, “fewer than five” per year from the Forum, 0 from the CAC). It is noted, however, that Providers may not receive notice of all appeals or challenges in court.

addition, some in the trademark community have noted the “difficulties of identifying the proper respondent often leads to unnecessary costs to both providers and complainants.”<sup>61</sup> However, others in the trademark community recognize the UDRP “as one of ICANN’s defining accomplishments from its formative years. While not perfect, the UDRP has successfully offered parties a far less expensive alternative to costly litigation for resolving international disputes involving domain name cybersquatting.”<sup>62</sup>

Although the data demonstrates that the UDRP provides a quick and cost-effective mechanism for challenging domain names registered in bad faith and reduces the monetary benefit for cybersquatters, over time, the number of UDRP filings has increased at an average rate of 6% per year beginning in 2014.<sup>63</sup> While registrations for the .com TLD remain the most frequently disputed domains (see Table 1 below), the introduction of over 1,000 new gTLDs into the Internet in 2012 may have contributed to the increase in UDRP complaints filed against registrants.<sup>64</sup>

Table 1: Number of Disputed Domains Categorized by TLD (top 30), January 2013 – December 2020

TLD	Domains
1. com	48275
2. net	4890
3. org	3778
4. info	1497
5. xyz	833
6. online	585

<sup>61</sup> See ICANN, “Final GNSO Issue [Report](#) on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).

<sup>62</sup> Ibid.

<sup>63</sup> Percentage difference was calculated using yearly data in Table 1, Section 3.1.

<sup>64</sup> The total number of UDRP cases filed with WIPO in 2001 was 1,506 as compared to 1,841 in 2000. See Ned Branthover, “UDRP – A Success Story: A Rebuttal to the Analysis and Conclusions of Professor Mueller in “Rough Justice” (2002),

<https://www.inta.org/Advocacy/Documents/INTAUDRPSuccesscontraMueller.pdf> and Isenberg, Doug. “.Site Domain Names Eclipse .XYZ in Dispute Proceedings.” *GigaLaw*, 23 August 2017, <https://giga.law/blog/2017/8/23/dot-site-domains-eclipse>.

<b>7. co</b>	505
<b>8. biz</b>	441
<b>9. top</b>	368
<b>10. club</b>	362
<b>11. site</b>	296
<b>12. store</b>	266
<b>13. asia</b>	266
<b>14. shop</b>	210
<b>15. website</b>	197
<b>16. cc</b>	177
<b>17. email</b>	152
<b>18. mobi</b>	151
<b>19. pro</b>	145
<b>20. app</b>	133
<b>21. vip</b>	108
<b>22. tech</b>	105
<b>23. tv</b>	93
<b>24. space</b>	87
<b>25. me</b>	87
<b>26. life</b>	84
<b>27. pw</b>	77
<b>28. cloud</b>	76
<b>29. win</b>	72
<b>30. wang</b>	65

## 3.1 Published Case Filings, UDRP Provider Websites, 2013 – 2020

The charts and tables in the following pages illustrate UDRP filing trends from 2013 to 2020. The statistics show the amount of cases filed, which include at least one or multiple domain names, by each Provider by year. It is based on published data collected from the six UDRP Provider websites. From January 2013 to December 2020, over 38,000 UDRP cases have been processed, or almost 4,800 cases on average per year under the UDRP. Each UDRP Provider receives around 900 complaints on average per year, over half of which were handled by WIPO, the largest UDRP Provider, followed by Forum (see Table 2 and Chart 1 below).<sup>65</sup>

Furthermore, the number of UDRP complaints filed per year has steadily increased since 2014, with 2020 being a record-setting year for domain name disputes filed (see Chart 2 and Chart 3 below), however, compared to the total number of domain names registered in gTLDs in each year, the number of disputes filed has remained fairly low (see Chart 5 below). Except for ADNDRC, case filings with each Provider have also increased every year (see Chart 4 below). The continuing growth in UDRP filings worldwide demonstrates that the UDRP remains a popular and effective tool, and indicates that the UDRP is sufficiently efficient to be a good option for trademark holders to combat cybersquatting.

Table 2: UDRP Complaints Handled by Each Provider by Year, January 2013 – December 2020

	ADNDRC <sup>66</sup>	FORUM	WIPO	CAC	ACDR	CIIDRC <sup>67</sup>	Total	Average
2013	183	1597	2272	105	0	N/A	4157	831
2014	226	1433	2303	110	0	N/A	4072	814
2015	245	1410	2393	150	0	N/A	4198	840
2016	249	1320	2653	151	1	N/A	4374	875
2017	221	1465	2603	331	4	N/A	4624	925

<sup>65</sup> Total UDRP cases exclude ccTLD only cases.

<sup>66</sup> ADNDRC notes that they are unable to confirm the total number of cases for 2013 and 2015. The “Total” reflects all years including 2013 and 2015. The data comes from the Hong Kong, Beijing, Kuala Lumpur and Seoul offices of ADNDRC except for 2017-2020, which comes from all of the offices mentioned except for the Seoul office.

<sup>67</sup> Note: CIIDRC began accepting UDRP complaints in 2019.

<b>2018</b>	217	1636	2952	364	0	0	<b>5169</b>	1034
<b>2019</b>	187	1646	3216	428	4	3	<b>5484</b>	914
<b>2020</b>	189	1926	3561	564	0	31	<b>6271</b>	1045
<b>Total</b>	<b>1717</b>	<b>12433</b>	<b>21953</b>	<b>2203</b>	<b>9</b>	<b>34</b>	<b>38349</b>	910
<b>Average</b>	215	1554	2744	275	1	17		

Chart 1: UDRP Complaints Filed, January 2013 – December 2020

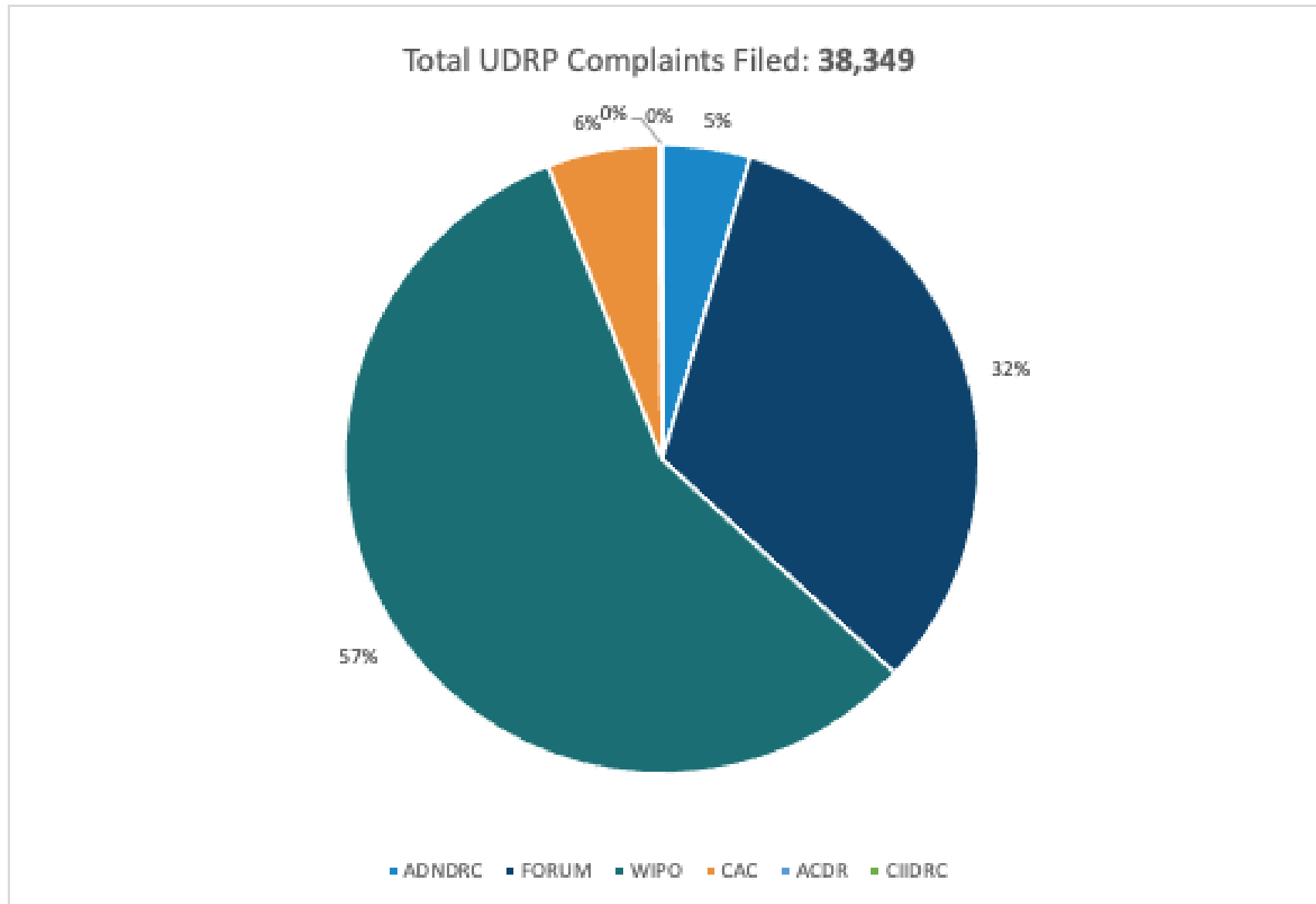




Chart 2: UDRP Complaints Filed by Year (All Providers), January 2013 – December 2020

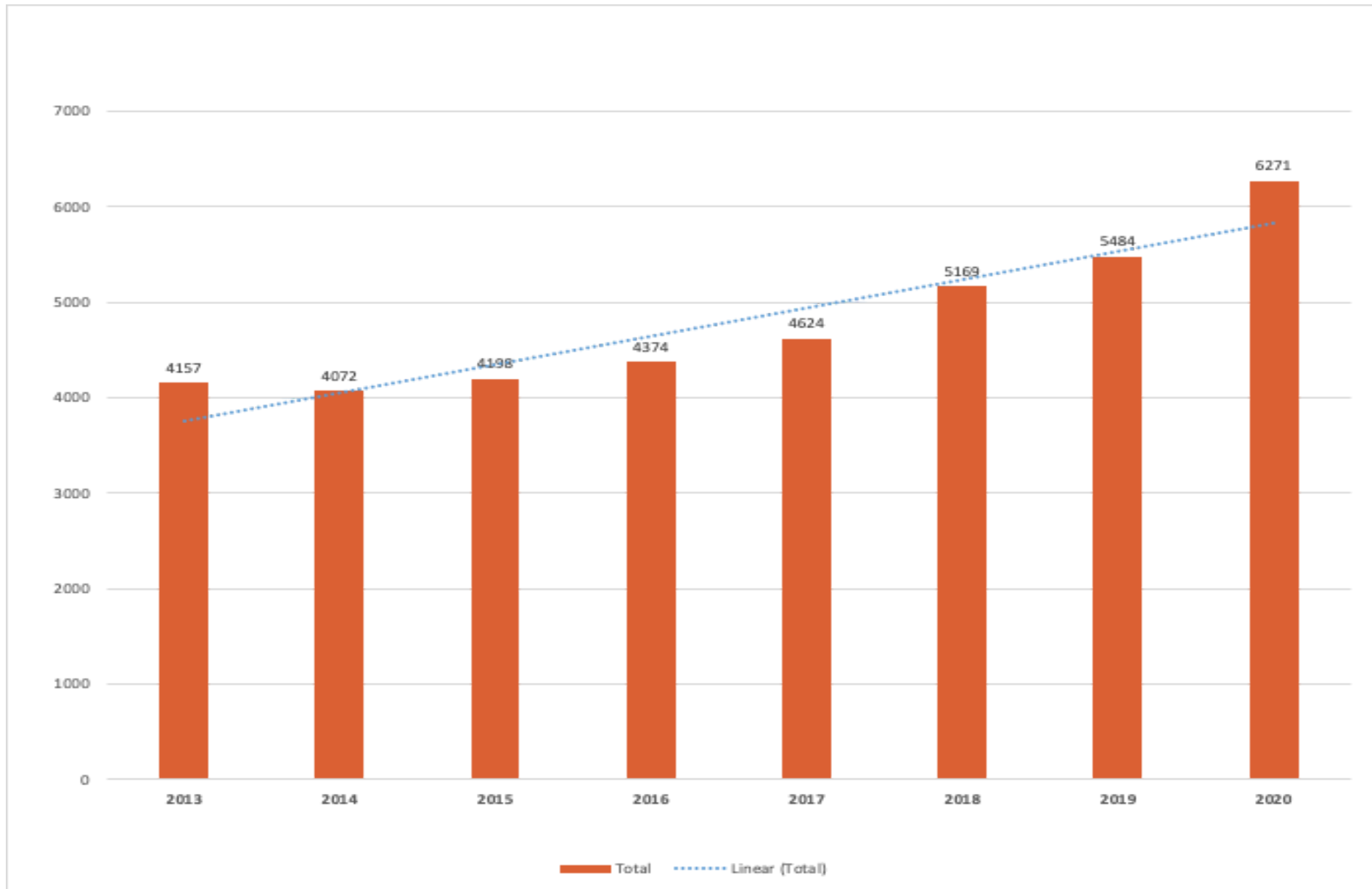


Chart 3: UDRP Complaints Filed with Each Provider by Year, January 2013 – December 2020

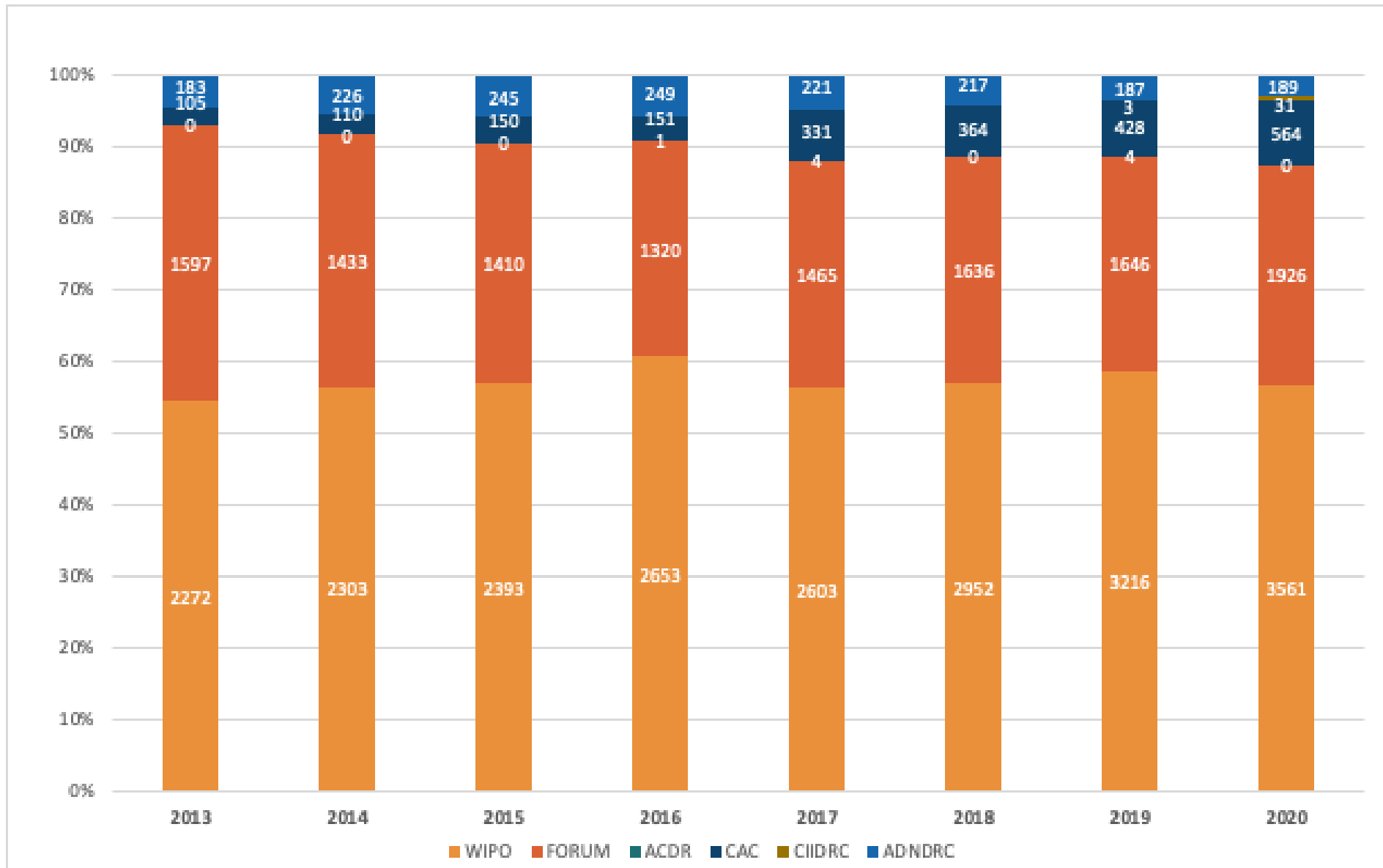


Chart 4: UDRP Filing Rates by Year (All Providers), January 2013 – December 2020

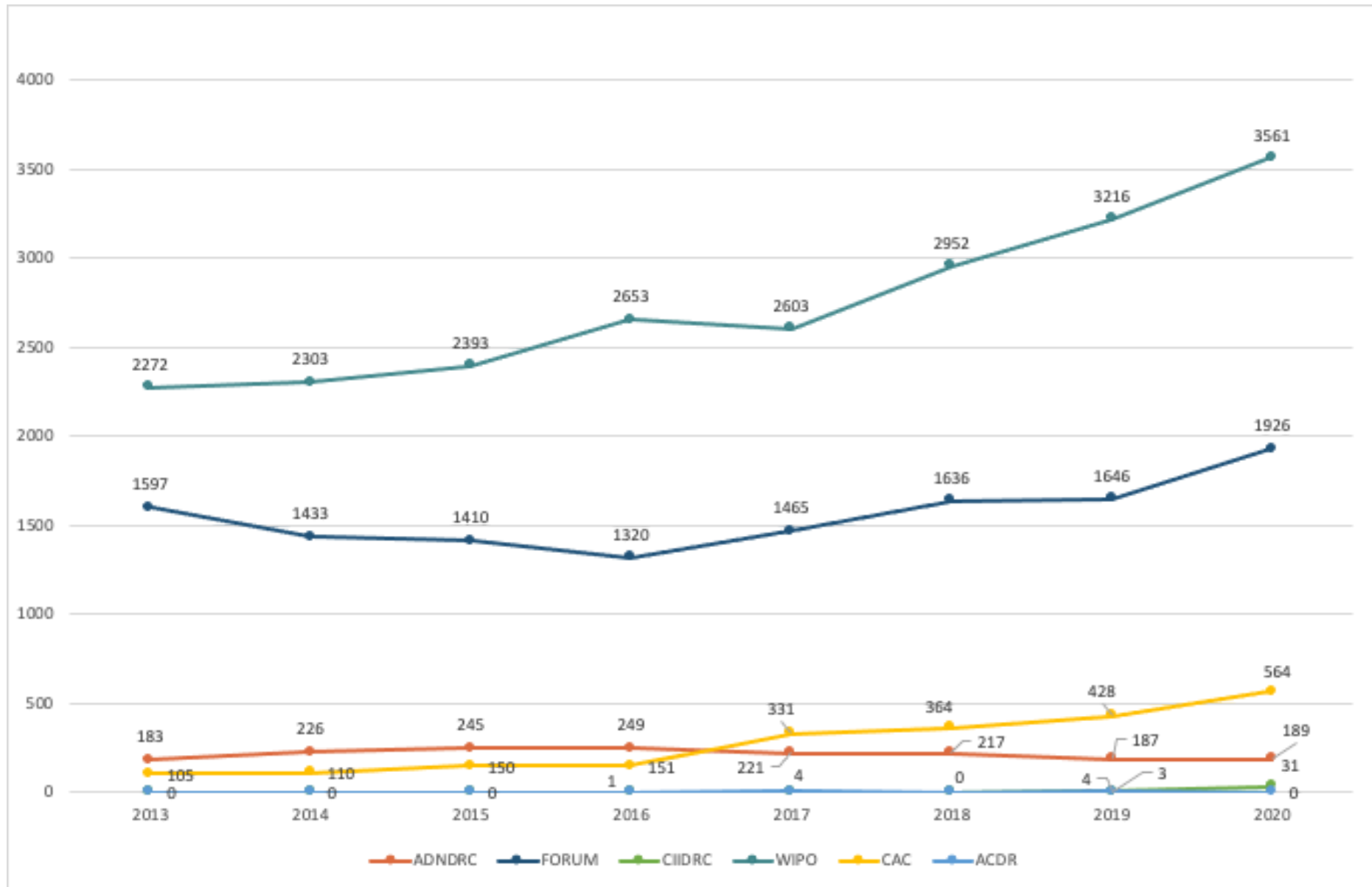
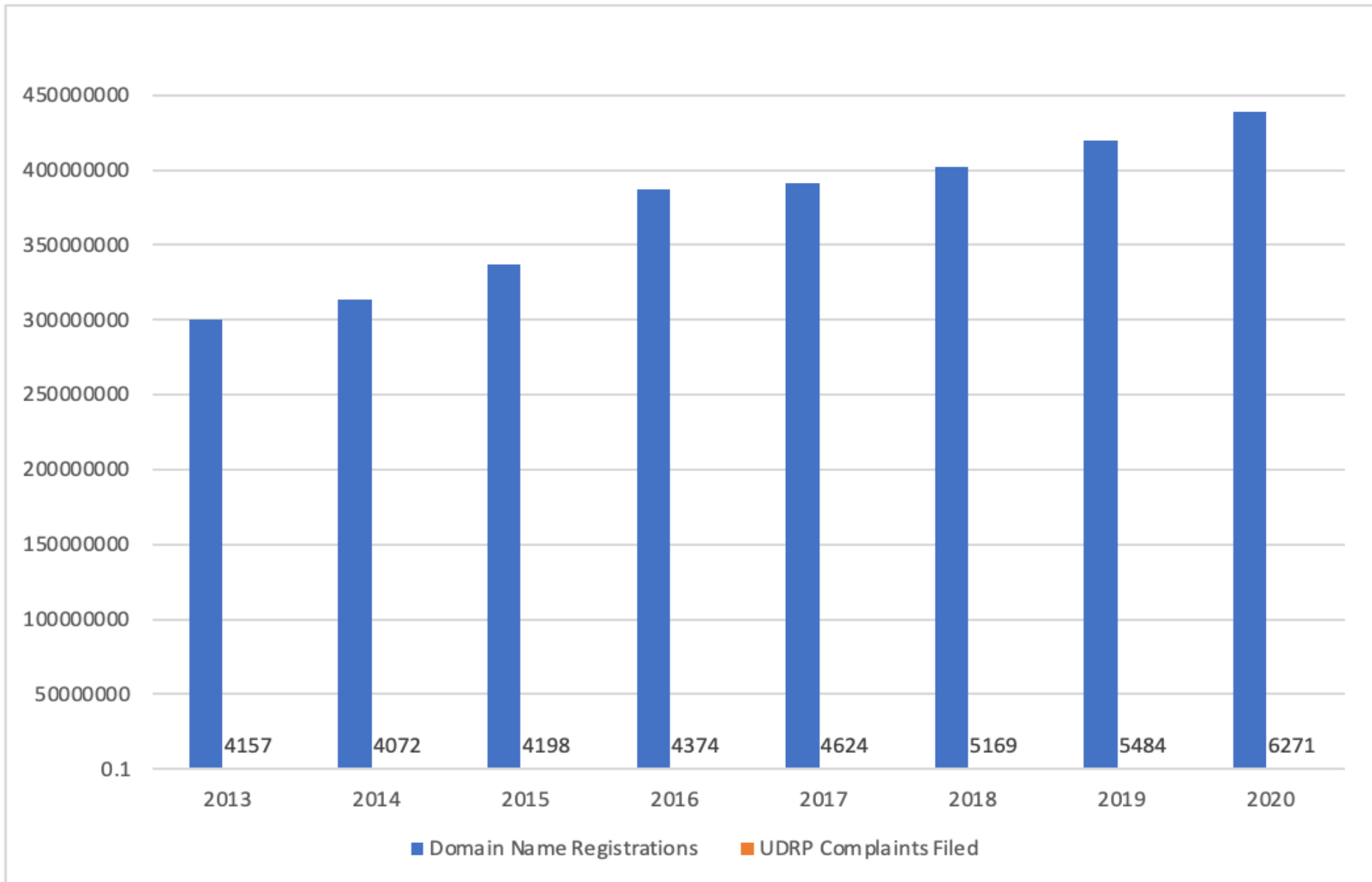


Chart 5: UDRP Complaints Filed (All Providers) vs. Domain Name Registrations (Total gTLDs), January 2013 – December 2020



## 3.2 Case Duration, National Arbitration Forum (FORUM) Website, 2013 – 2020

As stated in the 2011 Final Issue [Report](#) on the UDRP, “the UDRP is widely recognized by many in the Internet community as effective because it is much faster than traditional litigation.”<sup>68</sup> Although the UDRP Policy and Rules set forth timeframes for various stages of a UDRP case that service providers must abide by, there are numerous factors that can alter the timing of a UDRP proceeding. According to WIPO, the UDRP procedure for a single member Panel typically runs over a 60-day period, with the procedure for a three-member Panel running over a 75-day period.<sup>69</sup> Factors such as supplemental filings from parties, accuracy of information provided, and panel sizes, as well as the supplemental rules and practices of each provider may slightly shorten or extend the timing of a proceeding.

As reported in the FORUM Questionnaire response included in the Final Issue Report on the current state of the UDRP, “from January 2002 (our data is less detailed extending farther back), time to decision from filing averaged 50 days, and from commencement averaged 42 days. Since January 2010, our time to decision from filing is averaging 46 days and from commencement averages 38 days, with some cases concluding in a decision in as little as 10-15 days.”<sup>70</sup> (Note that data in this section is based solely on UDRP cases filed at FORUM, which is currently the only UDRP service provider that publishes readily accessible commencement and decision dates.)

Based on more recent data collected from FORUM’s website (see Chart 6 below), the time from case commencement to decision has continued to decrease. During the 2013 – 2020 observation period the duration averaged 32 days, with a median of 30 days and most cases being decided between 26 to 30 days. The data shown in Chart 6 below concerning case resolution times indicates the efficiency of the UDRP as an expedient alternative to Internet domain name litigation in court, which can last anywhere from six months to three years.<sup>71</sup>

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<sup>68</sup> See comments of David Taylor, on behalf of Hogan Lovells, John Berryhill, and Phil Corwin, on behalf of the Internet Commerce Association, summarized in the Public Comment Forum for the Preliminary Issue Report on the Current State of the UDRP:

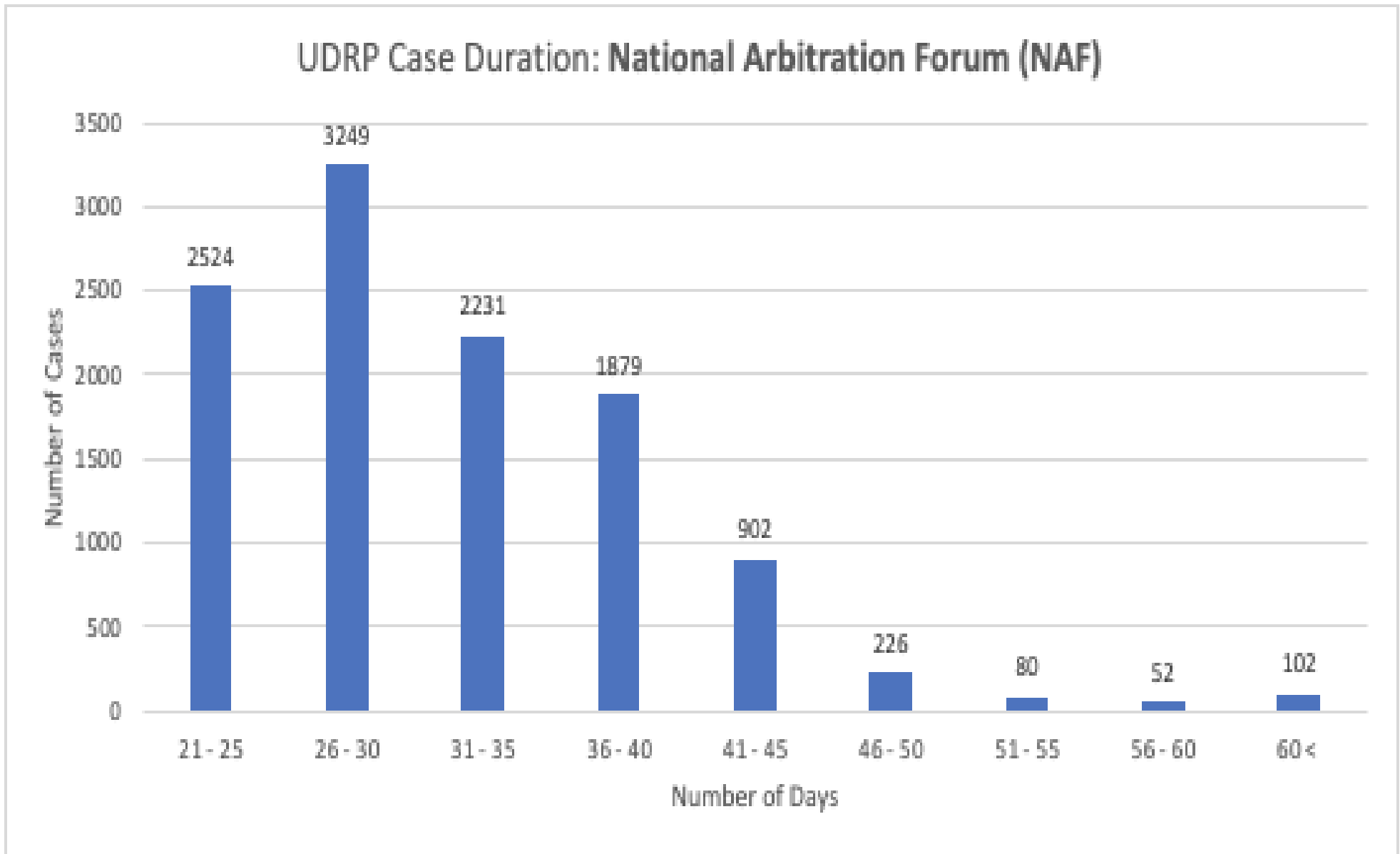
<https://www.icann.org/en/announcements/details/preliminary-issue-report-on-the-current-state-of-the-udrp-27-5-2011-en>

<sup>69</sup> WIPO Arbitration and Mediation Center, [The Uniform Domain Name Dispute Resolution Policy and WIPO](#), (August 2011).

<sup>70</sup> See ICANN, “Final GNSO Issue [Report](#) on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).

<sup>71</sup> Abrams, Andrew M. “Defeating Cybersquatters.” *Lexology*, Fish & Richardson, 31 December 2009, <https://www.lexology.com/library/detail.aspx?q=8be5d83e-b152-4cbb-b08e-2705723caf83>.

Chart 6: UDRP Case Length, National Arbitration Forum (FORUM), January 2013 – December 2020



### 3.3 Published Schedule of Fees, UDRP Provider Websites, 2013 – 2020

The UDRP also offers parties a less expensive alternative to litigation for resolving disputes involving domain name cybersquatting and trademark infringement. As mentioned in Section 2.5 above, the fees for a single member Panel are paid entirely by the Complainant. Either party may opt for a three-member panel. If the Complainant opts for a three-member panel, the fees will be paid in their entirety by the Complainant as the initiating party of the dispute. In the event that the Respondent opts for a three-member panel, the applicable fees are shared equally between the parties.<sup>72</sup>

Under the UDRP Rules for appointment of three-member panels, each party may nominate three preferred co-panelists, which the Provider will endeavor to appoint from the list of candidates provided by each of the Complainant and the Respondent. These candidates may be chosen from the relevant ICANN-approved Provider's list of panelists. If it is unable to do so as some Panelists may not be available, the Provider will make an appropriate appointment from its list of Panelists. According to WIPO's website, before making a panelist appointment, the Center checks with each potential panelist whether they are able to commit to the time required to conduct a case within the required deadlines.<sup>73</sup> The Provider then supplies a list of five names for presiding panelist, which the parties then rank, and the Provider then appoints the third panelist from that list of five candidates submitted by the Provider to the Parties, in a manner which reasonably balances the preferences of both parties.

Each Provider follows unique procedures (although all procedures must be consistent with the Policy and the Rules) and has its own fee structure. Under the UDRP, payment of the appropriate filing fee for a complaint is a precondition for the Provider commencing work on it. The cost to a Complainant for a UDRP proceeding is approximately US \$1,000-\$5,000 depending on the panel size and the number of disputed domains (see Table 3 below). The UDRP also allows Respondents not represented by counsel to defend themselves without incurring significant expenses.

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<sup>72</sup> For details of the Policy, see ICANN, "Uniform Domain Name Dispute Resolution Policy," <https://www.icann.org/resources/pages/policy-2012-02-25-en>.

<sup>73</sup> WIPO, "WIPO Domain Name Panelists", <https://www.wipo.int/amc/en/domains/panel.html>.

In contrast, a domain name dispute under the Anticybersquatting Consumer Protection Act (ACPA), which is a United States law intended to give trademark holders legal remedies against defendants who obtain domain names in bad faith that are identical or confusingly similar to a trademark, can cost anywhere from US \$20,000 for a very brief ACPA lawsuit all the way up to a million dollars depending on the complexity of the domain name dispute and the number of domain names involved. These fees are intended to cover communication between the parties, legal court filings, meetings with counsel or judges, and preparation for in court hearings.<sup>74</sup>

Under the ACPA, a successful plaintiff can be awarded up to \$100,000 dollars in statutory damages for acts of cybersquatting, however, attorney fees and costs of going to trial can sometimes be more than the courts awarded damages.<sup>75</sup> Unlike the ACPA, the UDRP provides only two remedies: cancellation of the domain name or transfer of the domain name registration to the Complainant.<sup>76</sup> Also, because ACPA is a United States law, a trademark holder must file the legal claim in a United States federal court and the party must have substantial ties to the United States in order to bring a lawsuit in a United States court. In contrast, the UDRP is a global policy whose dispute resolution providers are available to parties internationally, which can be a valuable alternative as not every country has specific domain name laws like the United States.<sup>77</sup>

As shown in Table 3 below, the price differential between the services offered by the Providers range from approximately USD1000 to USD5000. The information below demonstrates that the fees associated with UDRP are lower than what would be needed for a court proceeding thus highlighting the cost efficiency of the UDRP as a more affordable alternative to ordinary court cases. For example, the filing fee for a UDRP single member panel case involving between 1-2, 3-5 or 1-5 disputed domain names is on average approximately US \$1,400. This comprises a processing fee for the Provider's Center, and to the Panel in the event of appointment and decision. Note that while filing fees are only part of the resources needed, the time and investment associated with going through a court proceeding is generally higher than a UDRP proceeding.

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<sup>74</sup> Eufemio, Anthony. "Anticybersquatting Consumer Protection Act vs. UDRP." *Revision Legal*, 30 April 2021, <https://revisionlegal.com/internet-law/cybersquatting-lawyer/anti-cybersquatting-consumer-protection-act-vs-udrp/>. Note that other domestic laws may exist but researching these is beyond the scope of this document.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> "Internet Domain Names – Part 2: ACPA and UDRP." *CREATE Legal*, 24 December 2012, <http://www.create-legal.com/932/internet-domain-names-part-2-acpa-and-udrp>. Although useful to include for comparison purposes, statistics on filing volumes under ACPA or similar laws against cybersquatting in other nations across the globe are difficult to locate as courts typically do not publish this information.



Table 3: Schedule of Fees under the UDRP (All Providers)

	Number of Domain Names Included in the Complaint	Panelist Fees			Administrative Fees		Total Fees	
		Single Panelist	Three Panelists		Single Panelist	Three Panelists	Single Panelist	Three Panelists
			Presiding Panelist	Each Co-Panelist				
<b>ADNDRC</b>	1 to 2	US\$700	US\$1,000	US\$600	US\$600	US\$1,300	US\$2,800	
	3 to 5	US\$900	US\$1,200	US\$700	US\$700	US\$1,600	US\$3,300	
	6 to 9	US\$1,100	US\$1,400	US\$800	US\$800	US\$1,900	US\$3,800	
	10 or more	To be decided in consultation with ADNDRC						
<b>FORUM</b>	1 to 2	US\$1,300	US\$2,600		N/A		N/A	
	3 to 5	US\$1,450	US\$2,900		N/A		N/A	
	6 to 10	US\$1,800	US\$3,600		N/A		N/A	
	11 to 15	US\$2,250	US\$4,500		N/A		N/A	
	16 or more	To be decided in consultation with FORUM						
<b>WIPO</b>	1 to 5	US\$1,000	US\$1,500	US\$750	US\$500	US\$1,000	US\$4,000	
	6 to 10	US\$1,300	US\$1,750	US\$1,000	US\$700	US\$1,250	US\$5,000	
	More than 10	To be decided in consultation with WIPO						
<b>CAC</b>	1 to 5	US\$454	US\$1,135	US\$568	US\$454	US\$681	US\$2,950	
	6 to 10	US\$681	US\$1,362	US\$681	US\$568	US\$908	US\$3,632	
	11 to 20	US\$965	US\$1,590	US\$795	US\$681	US\$1,135	US\$4,313	
	21 to 30	US\$965	US\$1,816	US\$908	US\$795	US\$1,362	US\$4,994	
	31 to 40	US\$1,250	US\$2,043	US\$1,021	US\$908	US\$1,590	US\$2,157	US\$5,675

<b>ACDR</b>	41 to 50	US\$1,250	US\$2,270	US\$1,135	US\$1,021	US\$1,816	US\$2,270	US\$6,356
	51 or more	To be decided in consultation with CAC						
	1 to 2	US\$1,000	US\$1,000	US\$500	US\$500	US\$600	US\$1,500	US\$2,600
	3 to 5	US\$1,100	US\$1,300	US\$700	US\$600	US\$1,000	US\$1,700	US\$3,700
	6 to 10	US\$1,200	US\$1,400	US\$1,000	US\$900	US\$1,100	US\$2,100	US\$4,500
	11 to 15	US\$1,500	US\$1,500	US\$1,200	US\$1,200	US\$1,300	US\$2,700	US\$5,200
	16 or more	To be decided in consultation with ACDR						
	<b>CIIDRC</b>	1 to 3	US\$1,050	US\$2,520		N/A		N/A
4 to 7		US\$1,260	US\$2,835		N/A		N/A	
8 or more		To be decided in consultation with CIIDRC						

## 4 UDRP Goal: Fairness

According to the recommendations in the Final Report of the WIPO Internet Domain Name Process published in 1999 concerning the design of an administrative procedure:

- (i) The procedure should allow all relevant rights and interests of the parties to be considered and ensure procedural fairness for all concerned parties.
- (ii) The procedure should be uniform or consistent across all open gTLDs. If different procedures were available in different domains, there might be a danger of some domains, where procedures are weaker or do not lead to binding, enforceable decisions, becoming havens for abusive registrations. Uniform or consistent procedures, however, do not necessarily mean that the dispute-resolution service provider must be the same for all procedures.
- (iii) While it is desirable that the use of the administrative procedure should lead to the construction of a body of consistent principles that may provide guidance for the future, the determinations of the procedure should not have (and cannot have) the effect of binding precedent in national courts. It would be up to the courts of each country to determine what weight they wish to attach to determinations made under the procedure.<sup>78</sup>

The UDRP Rules include provisions that are intended to ensure due process and fairness for all parties involved so that each party has an equal opportunity to present its case. For instance, if supplemental filings are accepted from one side, the panel normally gives the other party a chance to file a reply to the supplemental filing. The UDRP Rules also call for Panels to treat parties fairly and follow applicable administrative requirements. Furthermore, decisions are not made on a straight-default basis, which occurs when a Respondent does not file its Response by the applicable deadline. When a default occurs, the UDRP proceeding continues towards a decision, and the Panel is allowed to consider the Respondent's default in reaching its decision. For a Complainant to prevail, it must prove that each of the three elements (see Section 2.3 above) are present.<sup>79</sup>

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<sup>78</sup> WIPO, *Final Report of the WIPO Internet Domain Name Process*, (1999).

<sup>79</sup> Per the UDRP, "For a UDRP complaint to succeed, the Complainant must establish that the following three criteria are met: (1) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the registrant of the domain

However, it was highlighted in the summary of policy issues raised by the community in Annex 2 of the Final Issue Report on the current state of the UDRP, that the UDRP does not have an “appeals of the UDRP process in the policy itself and provides for only two options: appeal of decision or trial de novo”, meaning parties who wish to challenge a UDRP decision may request that a court hears the merits of a case anew.<sup>80</sup> Furthermore, some in the trademark community hold the view that the UDRP is unfair to rights holders because “UDRP proceedings cost brand owners millions of dollars a year and they cost the cybersquatter almost nothing.” In addition, some in the trademark community see unfairness in that the “conjunctive bad faith requirements allow gaming” and that the “respondent controls the jurisdiction of any appeals, thereby increasing costs to rights holders.”<sup>81</sup>

Others in the community state that a close look at the UDRP and its rules demonstrates the fundamental unfairness of the mechanism. Examples of the unfairness of the UDRP cited by these members of the community include “the lack of clear fair use provisions and safe harbors; the unreasonably disproportionate deadlines that exist for the complainant and the respondent; the bias that takes place even at the time of the center selection; and, the UDRP has failed to account for registrants and users located in countries, where Internet connectivity is still at its infancy.”<sup>82</sup>

In reviewing UDRP-related documents, community feedback and discussions, community concerns as to the fundamental fairness of the system appear to also focus on issues related to forum shopping, panel selection, and a practice known as Reverse Domain Name Hijacking (RDNH).<sup>83</sup> These issues are discussed in more detail in the following sections of this report.

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name has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith.”

<sup>80</sup> ICANN, “Final GNSO Issue [Report](#) on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).

<sup>81</sup> Ibid.

<sup>82</sup> See ICANN (27 May 2011), Preliminary Issue Report on the Current State of the UDRP, <https://itp.cdn.icann.org/en/files/generic-names-supporting-organization-council-gnso-council/report-comments-prelim-report-udrp-31aug11-en.pdf>

<sup>83</sup> Ibid.

## 4.1 Forum Shopping

At present, UDRP Complainants are given full discretion as to the choice of Provider. As such, a concern that has been raised in the community is the potential for “forum shopping,” or that UDRP Complainants will seek out providers that they believe will provide a better result.<sup>84</sup> Some critics contend that forum shopping biases outcomes and that the UDRP provides trademark holders with a significant advantage over domain name registrants as they are able to opt for the service provider that they feel will be most sympathetic to their claim.<sup>85</sup> In addition, “because the trademark owner is generally the complainant and usually pays the fee, the inference is that providers have an economic incentive to favor trademark holders.”<sup>86</sup> It is important to note, however, that other factors may also influence forum selection, such as filing fees, reputation of the organization, and the time for the Provider to issue a decision.<sup>87</sup>

Having more than one approved Provider and allowing Providers to create their own supplemental rules (e.g. FORUM allows supplementary complaints and responses subject to an additional fee) is also seen as an issue that may enable forum shopping as well as have the effect of making the UDRP unfair to disputing parties and may lead to inconsistent decisions.<sup>88</sup> As summarized in Annex 2 of the Final Issue Report, “the UDRP Rules should address forum shopping, should consider panel appointment rules, such as rotating panelists, and address bias issues; more transparency is also needed on appointment by providers.”<sup>89</sup>

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<sup>84</sup> ICANN, “UDRP Providers and Uniformity of Process - Status Report,” July 2013, <https://www.icann.org/en/system/files/files/uniformity-process-19jul13-en.pdf>.

<sup>85</sup> Colby B. Springer, Master of the Domain (Name): A History of Domain Name Litigation and the Emergence of the Anticybersquatting Consumer Protection Act and Uniform Dispute Resolution Policy, 17 Santa Clara High Tech. L.J. 315 (2000). Available at: <http://digitalcommons.law.scu.edu/chtlj/vol17/iss2/5>

<sup>86</sup> Kornfeld, Dori. “Evaluating the Uniform Domain Name Dispute Resolution Policy.” Berkman Center Student Affiliates, 31 Oct. 2000, <https://cyber.harvard.edu/icann/pressingissues2000/briefingbook/udrp-review.html>

<sup>87</sup> Ned Branthover, “UDRP – A Success Story: A Rebuttal to the Analysis and Conclusions of Professor Mueller in “Rough Justice” (2002).

<sup>88</sup> Internet Commerce Association, *UDRP Reform Policy Platform 2018: Accountability, Uniformity, Predictability, Balance*, Version 1.1, February 2018, <https://www.internetcommerce.org/wp-content/uploads/2014/05/ICA-Policy-Platform-Feb-2018-V-1.1.pdf>

<sup>89</sup> ICANN, “Final GNSO Issue [Report](#) on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).

With regard to forum shopping, the Internet Commerce Association (ICA) proposed in a 2018 report that having a single set of procedural rules govern all UDRP proceedings would enable users of the UDRP to take the same procedural steps in each case, regardless of the Provider involved, thus increasing the ease of use and predictability of the UDRP.<sup>90</sup>

In addition, ICA suggested that UDRP providers “adopt Supplementary Rules which cover topics such as fees, word and page limits, and file size, forms of cover sheets, etc. Word length should be uniform so as not to enable one DRP to allow substantially longer or shorter pleadings than another DRP, as this substantially affects the nature and efficacy of the proceeding. File sizes should be uniform as each DRP is equipped to handle standard file sizes. Cover pages should be uniform as there is no reason to vary from a standardized approach. Uniform Supplementary Rules would enable UDRP practitioners, parties, and panelists to take the same procedural steps in each case, regardless of the DRP involved, thereby increasing the ease of use of the UDRP.”<sup>91</sup>

In order to address forum shopping, the ICA also recommended that ICANN establish a standard contract or similar enforceable agreements with all UDRP Providers in order to discourage providers from selecting panelists who may have a bias toward Complainants and to ensure that a Provider’s Supplemental Rules are uniform and not tweaked in an attempt to grow their market share of UDRP filings through the encouragement of forum shopping.<sup>92</sup>

However, provision of contracts will not stop Complainants from filing UDRP disputes with their preferred providers.<sup>93</sup> The UDRP was designed to allow for multiple choice of UDRP providers. One of the expected benefits of the diversity in UDRP providers is to offer further choice in terms of language and geography to all who may invoke the UDRP. ICANN org published a status [report](#) in 2013 after considering concerns raised regarding forum shopping. At that time, ICANN determined that as long as UDRP Providers adhere to the standards set forth in the UDRP, it is appropriate to leave the choice to a Complainant as to which UDRP Provider he or she wishes to use.<sup>94</sup>

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<sup>90</sup> Internet Commerce Association, UDRP Reform Policy [Platform](#) 2018: Accountability, Uniformity, Predictability, Balance, (February 2018).

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> ICANN, “UDRP Providers and Uniformity of Process - Status [Report](#),” (July 2013).

<sup>94</sup> Ibid.

In addition, another differentiating factor between UDRP providers is the Complainant success rate in obtaining the disputed domain name. According to a statistical analysis of UDRP decisions conducted in 2006, trademark holders succeeded in obtaining the disputed domain name in about 82% of cases, on average. Across all dispute resolution providers, WIPO's share of the UDRP caseload is 55.9%, FORUM's is 42.5%, CPR's is 0.9% and ADNDRC holds 0.7% of the caseload share. This corresponds to Complainant win percentages of 66.3% (WIPO), 74.5% (FORUM), 54.2% (CPR) and 54.1% (ADNDRC).<sup>95</sup> It is important to note, however, that the landscape of Internet domain names has changed since 2006 with the release of new gTLDs, thus more recent data may paint a somewhat different picture.

It is conceivable that other factors like reputation, rather than potential bias toward Complainants, may influence a Complainant's choice of provider. While the group of UDRP providers has changed since 2006 as CAC and ACDR have started to operate while CPR withdrew from providing services under the UDRP, the majority of cases today are still heard by WIPO and FORUM. During the 2013 - 2020 observation period, WIPO and FORUM, the first Providers to be approved by ICANN for UDRP arbitration cases, continued to have a significant share of the UDRP caseload with 57% (WIPO) and 32% (FORUM), followed by CAC with 6%, ADNDRC with 4%, CIIDRC with 34 cases and ACDR with only nine cases.

ICANN org's analysis of UDRP Provider website data for the 2013 - 2020 observation period shows that Complainant win rates decreased to 78%, on average, across all dispute resolution providers, compared to 82% in 2006.<sup>96</sup> Furthermore, the Complainant win percentages shown in Chart 7 below, are 75% (WIPO), 83% (FORUM), 78% (CAC), 84% (ADNDRC), 67% (ACDR), and 56% (CIIDRC). While the analysis of UDRP decisions conducted in 2006 seems to show that a Provider's popularity and caseload share may almost be directly related to their likelihood of awarding a decision in favor of the Complainant, data during the 2013 - 2020 observation period shows a higher winning percentage for Providers with a lower share of the caseload than WIPO.

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<sup>95</sup> Ignoring any pending cases, the analysis of UDRP decisions conducted in 2006, counts the number of decisions in which the domain name(s) were transferred or cancelled, and the cases where the claim was denied, as well as those cases that were withdrawn or where the panel returned a split verdict. See Hörnle, Julia. *Cross-Border Internet Dispute Resolution*. illustrated ed., Cambridge University Press, 2009, [https://www.google.com/books/edition/Cross\\_border\\_Internet\\_Dispute\\_Resolution/UCLn7z8Mjp0C?hl=en&gbpv=1&bsq=complainant%20win%20rates](https://www.google.com/books/edition/Cross_border_Internet_Dispute_Resolution/UCLn7z8Mjp0C?hl=en&gbpv=1&bsq=complainant%20win%20rates).

<sup>96</sup> This analysis is based on data collected from the Provider websites for the 2013 -2020 observation period. This calculation was made by dividing the number of decisions in which the domain name(s) were transferred or cancelled by the total number of cases filed with UDRP Provider.

Since the UDRP targets clear cases of cybersquatting, this could also help explain the relatively high winning percentage for Complainants. It is also important to note that 70% of cases, according to a 2008 letter from WIPO to ICANN, are decided on a default basis, where no response is filed by the registrant.<sup>97</sup> When Respondents default, the Panel must rely on the Complainant's evidence to make its decision. If a Complainant is to prevail, however, it must prove that each of the three elements (see Section 2.3 above) are present.<sup>98</sup>

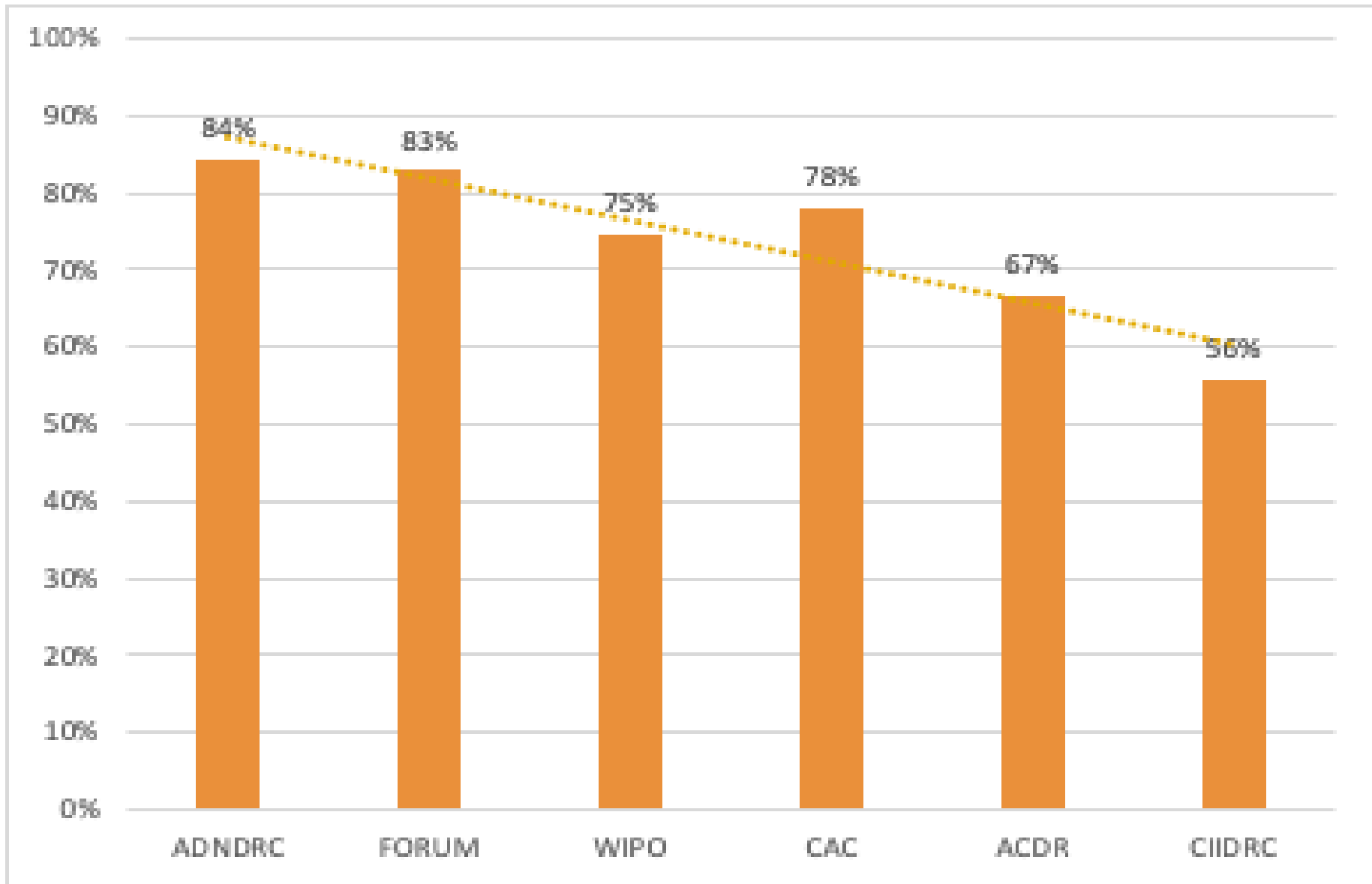
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<sup>97</sup> Letter to Mr. John Jeffrey, ICANN General Counsel and Secretary, 30 December 2008, <https://www.icann.org/en/system/files/files/wilbers-to-jeffrey-08oct08-en.pdf>

<sup>98</sup> Per the UDRP, "For a complaint to succeed, the Complainant must establish that the following three criteria are met: (1) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the registrant of the domain name has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith."



Chart 7: Complainant Win Percentages by Each Provider, January 2013 – December 2020



## 4.2 Selection of Panelists

Paragraph 6 of the UDRP Rules requires that each provider maintains a list of approved panelists along with a resume of each at its website. WIPO, for example, describes its list of panelists as follows: “To help parties to a domain name dispute select appropriately qualified panelists, WIPO has established a list of persons who have agreed to serve on WIPO Domain Name Administrative Panels. WIPO panelists come from different regions of the world and are well-reputed for their impartiality, sound judgement and experience as decision-makers, as well as their substantive experience in the areas of intellectual property law, electronic commerce and the Internet. Each panelist's professional profile has been made available.”<sup>99</sup>

Paragraph 10 of the UDRP Rules outlines the powers of the panelists in a UDRP dispute. Although they are referred to as “powers,” rules 10(b) and 10(c) specifically lay out obligations for the panelists to be impartial and fair for trademark holders and domain registrants alike:

- (a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.
- (b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.
- (c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.
- (d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.
- (e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and Rules.

Nevertheless, some studies have pointed out a potential bias within the case allocation practices of ICANN-accredited dispute resolution providers.<sup>100</sup> A 2001 study, which was updated in 2002, argued that three-member panel decisions favor the Respondent over single member panels for decisions where the Respondent has filed a response. While Complainants win 68% of the time in non-default cases involving

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<sup>99</sup> Note that this is an illustrative example of what one Provider looks for in selecting panelists. See WIPO, “WIPO Domain Name [Panelists](#).”

<sup>100</sup> See Geist, Michael, *Fundamentally Fair.com? An Update on Bias Allegations and the ICANN UDRP*.

single-person panels, that number decreases to 46% for three-member panel cases.<sup>101</sup> According to the study, “since arbitration providers assign panelists for all single panel cases (unlike three-member panel cases where participants largely determine panel composition), they have the power to influence case outcome based on their case allocation practices.”<sup>102</sup>

Although limited, a subsequent 2016 article on GigaLaw.com seems to support the 2001 analysis noting that “three-member panel decisions are significantly more likely to favor domain name registrants (respondents) than single-member panel decisions.”<sup>103</sup> However, the 2016 article on GigaLaw.com also points out that “the discrepancy is not necessarily always a result of having three panelists decide the case but instead may indicate something about the types of cases in which a party is likely to elect a three-member panel.”<sup>104</sup>

While the differing results between single and three-member panels may have contributed to the perception that the UDRP is biased, given the passage of time since the 2001 study and the 2016 article on GigaLaw.com, as well as the rapidly changing domain name landscape, additional analysis would be needed on the selection of panelists and the cases handled by both types of panels. As also identified in the process issues raised by the community in Annex 2 of the Final Issue Report, “best practices or guidelines to providers should be established to ensure a more uniform and transparent process of panelist choice.”<sup>105</sup>

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<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Isenberg, Doug. “8 Facts About 3-Member Panels in UDRP Cases 8 Facts About 3-Member Panels in UDRP Cases.” GigaLaw, 26 October 2016. <https://giga.law/blog/2016/10/26/8-facts-about-three-member-panels-in-udrp-cases>.

<sup>104</sup> Ibid.

<sup>105</sup> See ICANN, “Final GNSO Issue Report on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).

## 4.3 Reverse Domain Name Hijacking

The UDRP Rules include provisions to address Reverse Domain Name Hijacking (RDNH). RDNH is a bad faith attempt by a trademark holder to deprive a domain name registrant of a domain name.<sup>106</sup> According to Paragraph 15(e) of the Policy, “if after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at RDNH or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”<sup>107</sup> In other words, a domain name registrant can allege in its response that a Complainant engaged in RDNH, and if a panel finds that the Complainant brought a frivolous claim, they will rule in the Respondent’s favor and make a finding of RDNH.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, provides some insight into the circumstances in which panels have found RDNH:

*“To establish RDNH, a respondent would typically need to show knowledge on the part of the complainant of the complainant’s lack of relevant trademark rights, or of the respondent’s rights or legitimate interests in, or lack of bad faith concerning, the disputed domain name. Evidence of harassment or similar conduct by the complainant in the face of such knowledge (e.g., in previously brought proceedings found by competent authorities to be groundless, or through repeated cease and desist communications) may also constitute a basis for a finding of abuse of process against a complainant filing under the UDRP in such circumstances.”<sup>108</sup>*

UDRP panels have cited various factors when making a determination of RDNH. These include:

- o The Complainant in fact knew or clearly should have known at the time that it filed the complaint that it could not prove one of the essential elements required by the UDRP
- o The Complainant failed to notify the panel that the complaint was a refile of an earlier decided complaint or otherwise misled the panel.

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<sup>106</sup> ICANN, “Uniform Domain Name Dispute Resolution [Rules](#),” (11 March 2015).

<sup>107</sup> *Ibid.*

<sup>108</sup> WIPO, “WIPO [Overview](#) of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 2.0”).”

- o A Respondent's use of a domain name could not, under any fair interpretation of the reasonably available facts, have constituted bad faith.
- o The Complainant knew that the Respondent used the disputed domain name as part of a bona fide business for which the Respondent obtained a domain name prior to the Complainant having relevant trademark rights.
- o The Complainant attempts to misrepresent material facts to the panel, or fails to disclose material facts.
- o The Complaint is used as a Plan "B" option to acquire a domain after commercial negotiations have failed.
- o The disputed domain name was registered prior to any trademark use by the Complainant.
- o The Complainant attempted to deceive the Respondent in communications that preceded the filing of the complaint.<sup>109</sup>

UDRP panelists cannot issue monetary or other sanctions against the Complainant for bringing a complaint in bad faith. If a domain name registrant seeks any of these remedies, it will need to go to court.<sup>110</sup> The UDRP has come under criticism for not using a consistent standard when it comes to RDNH findings. Critics of the UDRP, particularly well-known domainers,<sup>111</sup> note that large corporations have the time and legal resources to obtain a desirable domain name via the UDRP, and a chance to win the UDRP outweighs the consequences of a possible RDNH finding.<sup>112</sup>

Some domainers believe that if there was a potential financial penalty involved, it might make it less likely for a reverse domain name hijacker to file a UDRP. On the other hand, however, domain name registrants who receive a UDRP complaint may not be adequately prepared to defend a UDRP complaint. Under the UDRP, registrants have less than one month to gather the evidence and resources needed to support their defense

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<sup>109</sup> WIPO, "WIPO [Overview](#) of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0")" and "Reverse Domain Name Hijacking Information." *RDNH.com*, <https://www.rdnh.com/>.

<sup>110</sup> WIPO, *Final Report of the WIPO Internet Domain Name Process*, (1999).

<sup>111</sup> A domainer is a subset of domain name registrants and is defined by Vissers et al. as an individual or a company that owns a large portfolio of domains not being used to set up companies, but with the intent to monetize them for profit. See Thomas Vissers, Wouter Joosen, Nick Nikiforakis, "Parking Sensors: Analyzing and Detecting Parked Domains," (paper presented at ISOC Network and Distributed System Security Symposium (NDSS), San Diego, USA, 8-11 February 2015). [https://www.securitee.org/files/parking-sensors\\_ndss2015.pdf](https://www.securitee.org/files/parking-sensors_ndss2015.pdf)

<sup>112</sup> "Reverse Domain Name Hijacking: UDRP Reform Is Needed." *Hartzer Consulting*, 11 August 2019, <https://www.hartzer.com/reverse-domain-name-hijacking-why-udrp-reform-is-needed/>.

and protect a domain name registration. As highlighted in the summary of issues raised by the community in Annex 2 of the Final Issue Report on the current state of the UDRP “Respondents should be given more time to respond to Complaint.”<sup>113</sup>

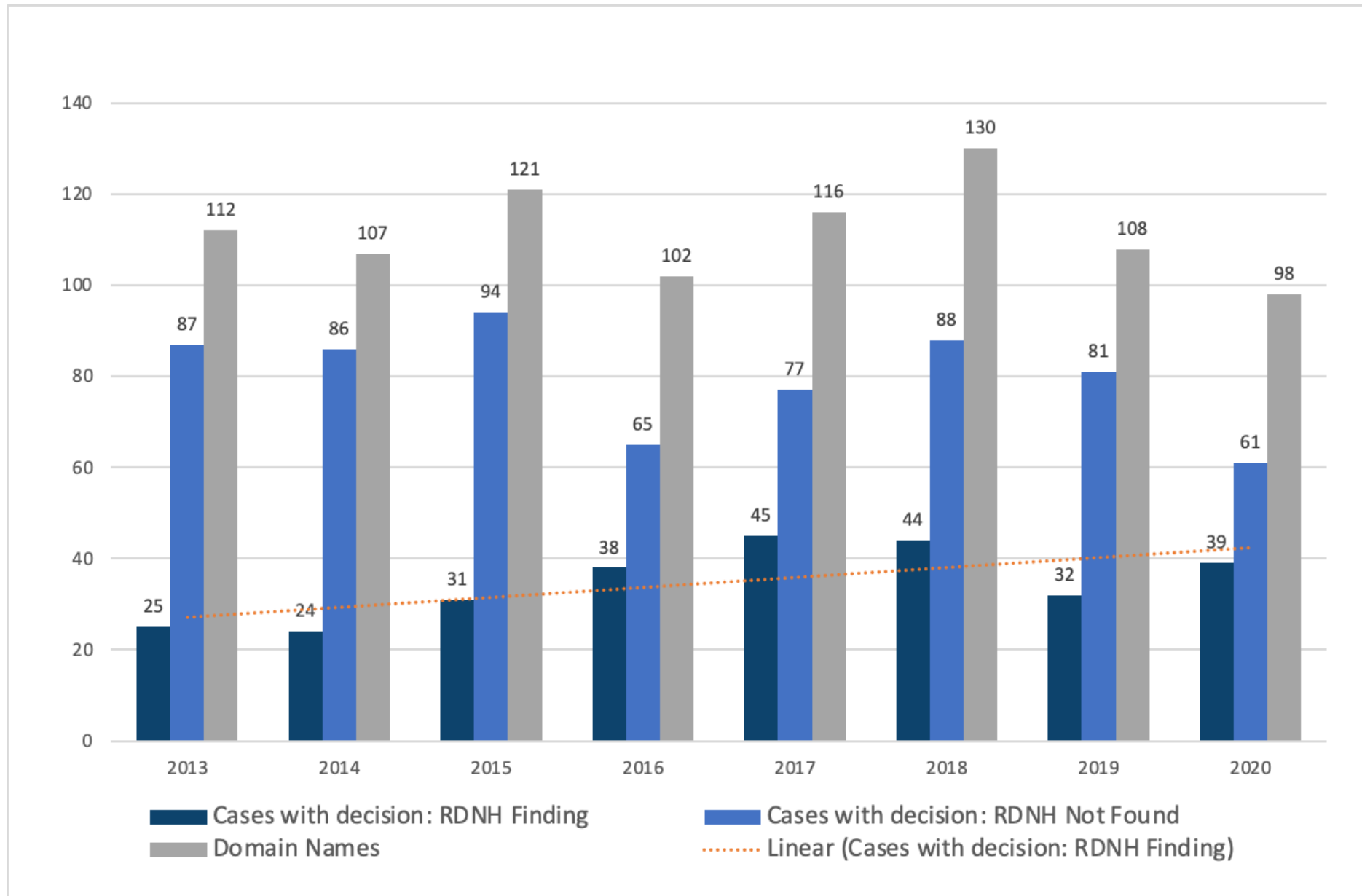
As shown in Chart 8 below, RDNH cases have been on the rise with 2018 being a record-setting year for abusive filings related to RDNH involving a total of 917 complaints and 894 domain names for the 2013 – 2020 observation period. To curb RDNH, financial penalties involved with RDNH findings have been suggested as well as additional guidance to domain name registrants regarding what constitutes a violation and what does not.<sup>114</sup>

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<sup>113</sup> ICANN, “Final GNSO Issue [Report](#) on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).

<sup>114</sup> “Reverse Domain Name Hijacking: UDRP [Reform](#) Is Needed.” *Hartzer Consulting*, (11 August 2019).

Chart 8: Reverse Domain Name Hijacking by Year (All Providers), UDRP Filings, January 2013 – December 2020



## 5 UDRP Goal: Addressing Abuse

Since its adoption, the UDRP has proven to be an effective tool in addressing abusive registrations.<sup>115</sup> As mentioned previously, the initial WIPO [proposals](#) included the establishment of a uniform, mandatory domain name dispute policy for resolution of cybersquatting disputes and a system of panels to arbitrate them. The system that emerged – the UDRP – was designed to be a simple mechanism for clear-cut cases of bad faith registrations.

Given that Complainants have a high success rate under the UDRP, particularly in a default setting, but are required to prove all three elements set out in Paragraph 4(a) of the UDRP even for a default determination, it is plausible that cases are brought to panels by entities that can adduce sufficient evidence to meet the three-part test. Furthermore, this may also indicate that the Policy is effective at targeting straightforward cases of cybersquatting and thus achieving its intended purpose of successfully addressing abusive domain name registrations.

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<sup>115</sup> ICANN, “Final GNSO Issue [Report](#) on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).



## 5.1 Published Panel Decisions, UDRP Provider Websites, 2013 – 2020

The charts and table in the following pages illustrate UDRP decision trends from 2013 to 2020. The statistics show the number of UDRP decisions, which include at least one or multiple domain names, by each Provider by year.<sup>116</sup> It is based on published data collected from six UDRP Provider websites.

From January 2013 to December 2020, there were over 32,000 UDRP decisions, or 4,033 per year, over half of which were decided by WIPO (see Chart 9, Chart 10 and Chart 11 below).<sup>117</sup> Out of the 32,000 decisions issued by UDRP Providers between January 2013 to December 2020, WIPO panels decided on average 2,218 cases per year compared to around 1,390 decisions for FORUM, followed by an average of 229 decisions per year for CAC, and 192 decisions for ADNDRC (see Table 4 for more descriptive statistics).

From January 2013 to December 2020, a total of almost 30,000 decisions issued by panels, or 78% of UDRP cases filed by Complainants, involved a transfer or cancellation of the domain name (see Table 5). WIPO panels issued a total of 16,407 decisions against registrants during the 2013 – 2020 observation period, compared to 10,312 for FORUM, 1,719 for CAC, 1,448 for ADNDRC, 19 for CIIDRC and only 6 for ACDR (see Table 5 and Charts 12 and 13).

As shown in Table 6 below, there has been a steady increase since 2013 in the total number of decisions issued by all UDRP providers in favor of Complainants pursuant to the UDRP. Except for ADNDRC and FORUM, transfer or cancellation rates for each UDRP Provider have also increased every year (see Chart 13 below). Some proponents of the procedure predict that as the number of strong cybersquatting cases decreases, the default rate will also decrease and Respondents will experience greater success.<sup>118</sup> While this report does not include evidence

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<sup>116</sup> This section includes UDRP provider decisions for WIPO, FORUM, ADNDRC, CAC, and ACDR from January 2013 to December 2020. CIIDRC began accepting UDRP complaints in November 2019 and includes data until December 2020.

<sup>117</sup> Note: Statistics for Tables 4-6 and Charts 8-10 only include cases in which the domain name (s) were transferred or cancelled, where the claim was denied, and where the panel returned a split verdict during the observation period. Cases that were withdrawn, terminated or are pending are not included as part of UDRP panel decisions rendered. This was based on data collected from the Provider websites for the 2013 – 2020 observation period.

<sup>118</sup> White, John G. "ICANN's Uniform Domain Name Dispute Resolution Policy in Action." *Berkeley Technology Law Journal*, vol. 16, no. 1, Temporary Publisher, 2001, pp. 229–49, [https://www.jstor.org/stable/24119922?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/24119922?seq=1#page_scan_tab_contents).

to support or reject this trend, UDRP case results for the 2013 – 2020 observation period show an average annual growth rate of 7% for decisions in favor of Complainants.

Table 4: UDRP Decisions Rendered by Each Provider by Year (Complaint Accepted, Complaint Rejected, Split Decision), January 2013 – December 2020

	ADNDRC	FORUM	WIPO	CAC	ACDR	CIIDRC <sup>119</sup>	Total	Average
2013	152	1283	1846	62	0	N/A	3343	669
2014	214	1275	1867	81	0	N/A	3437	687
2015	221	1243	1899	114	0	N/A	3477	695
2016	214	1156	2196	132	1	N/A	3699	740
2017	199	1370	2176	265	4	N/A	4014	803
2018	201	1535	2469	317	0	N/A	4522	904
2019	178	1517	2677	371	4	3	4750	949
2020	153	1741	2611	493	0	22	5020	837
<b>Total</b>	<b>1532</b>	<b>11120</b>	<b>17741</b>	<b>1835</b>	<b>9</b>	<b>25</b>	<b>32262</b>	669
<b>Average</b>	192	1390	2218	229	1	13		

Table 5: UDRP Decisions Rendered by Each Provider, January 2013 – December 2020

	ADNDRC	FORUM	WIPO	CAC	ACDR	CIIDRC	Total	Average
<b>Complaint Rejected</b>	81	775	1282	105	3	6	2252	375
<b>Split Decision</b>	3	33	52	11	0	0	99	17

<sup>119</sup> Note: CIIDRC began accepting UDRP complaints in 2019.

<b>Transfer/Cancelled</b>	1448	10312	16407	1719	6	19	<b>29911</b>	4985
<b>Total</b>	<b>1532</b>	<b>11120</b>	<b>17741</b>	<b>1835</b>	<b>9</b>	<b>25</b>	<b>32262</b>	5377

Table 6: UDRP Decisions Rendered by Year (All Providers), January 2013 – December 2020

	<b>Transfer/Cancelled</b>	<b>Complaint Rejected</b>	<b>Split Decision</b>	<b>Total</b>
<b>2013</b>	3029	302	12	<b>3343</b>
<b>2014</b>	3111	312	14	<b>3437</b>
<b>2015</b>	3160	305	12	<b>3477</b>
<b>2016</b>	3402	288	9	<b>3699</b>
<b>2017</b>	3745	259	10	<b>4014</b>
<b>2018</b>	4222	290	10	<b>4522</b>
<b>2019</b>	4446	290	14	<b>4750</b>
<b>2020</b>	4796	206	18	<b>5020</b>
<b>Total</b>	<b>29911</b>	<b>2252</b>	<b>99</b>	<b>32262</b>
<b>Average</b>	3739	282	12	

Chart 9: UDRP Decisions Issued by Administrative Panels (Complaint Accepted, Complaint Rejected, Split Decision), January 2013 – December 2020

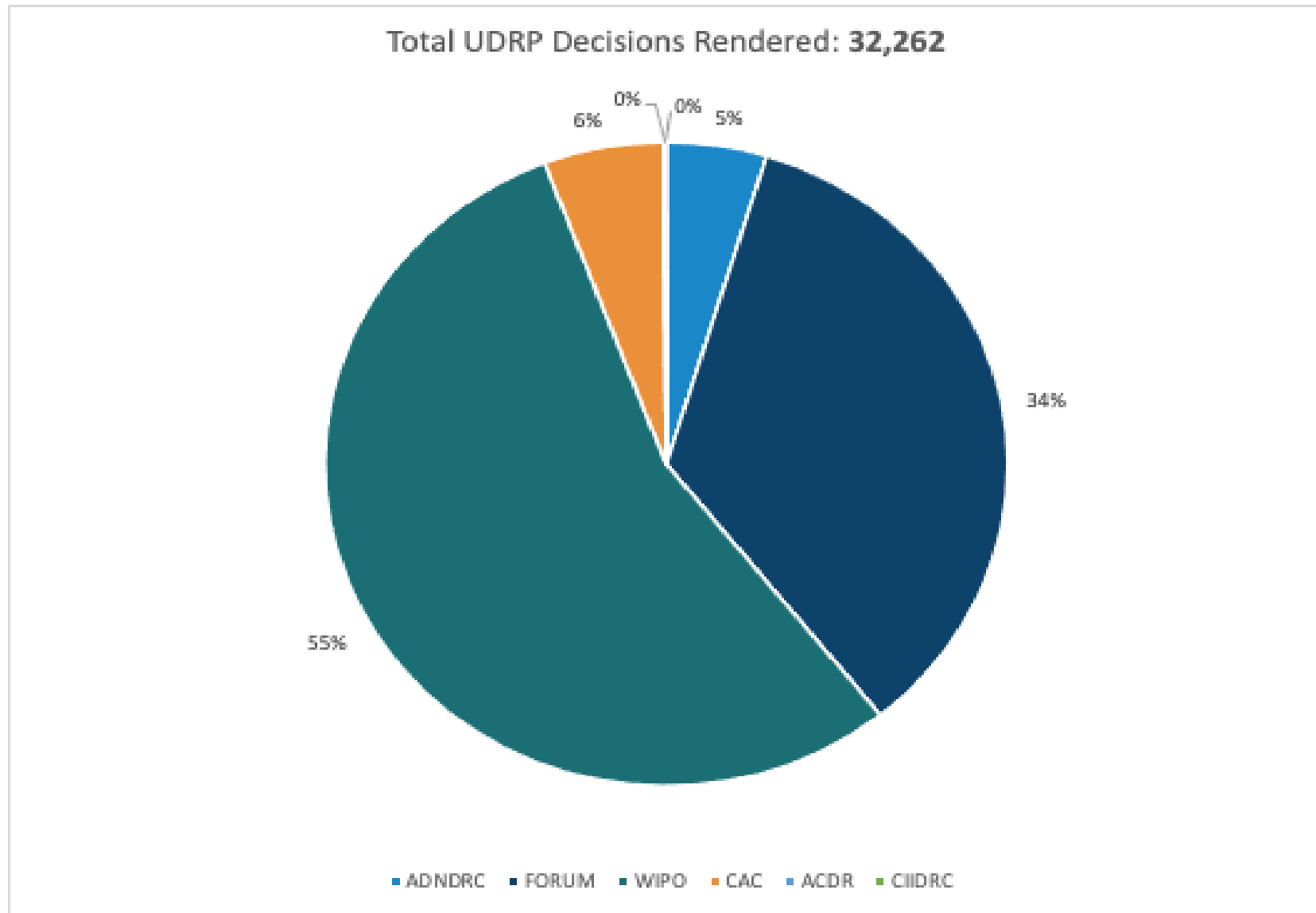


Chart 10: UDRP Decisions Issued by Year (All Providers), January 2013 – December 2020

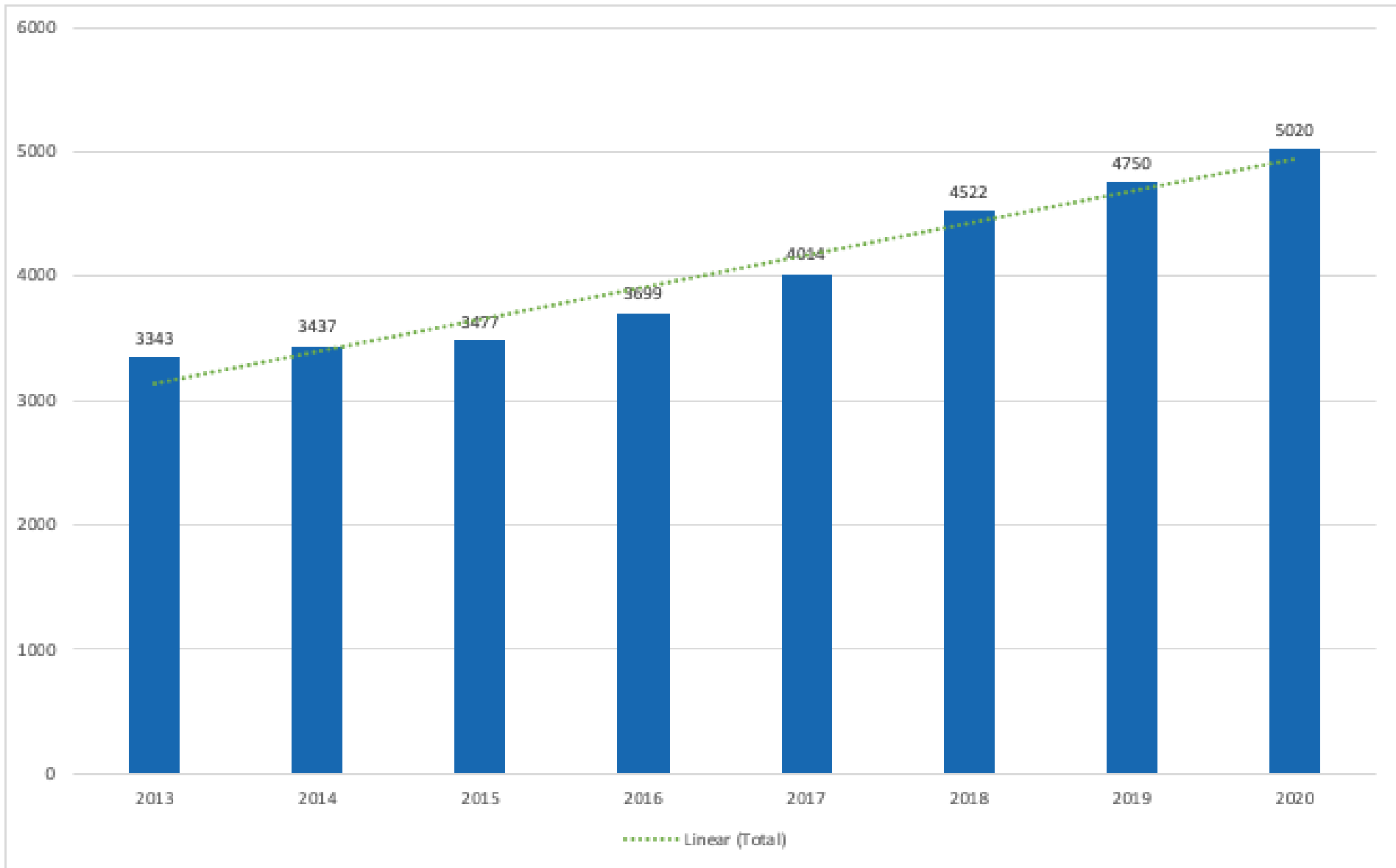


Chart 11: UDRP Decisions Issued by Each Provider by Year, January 2013 – December 2020

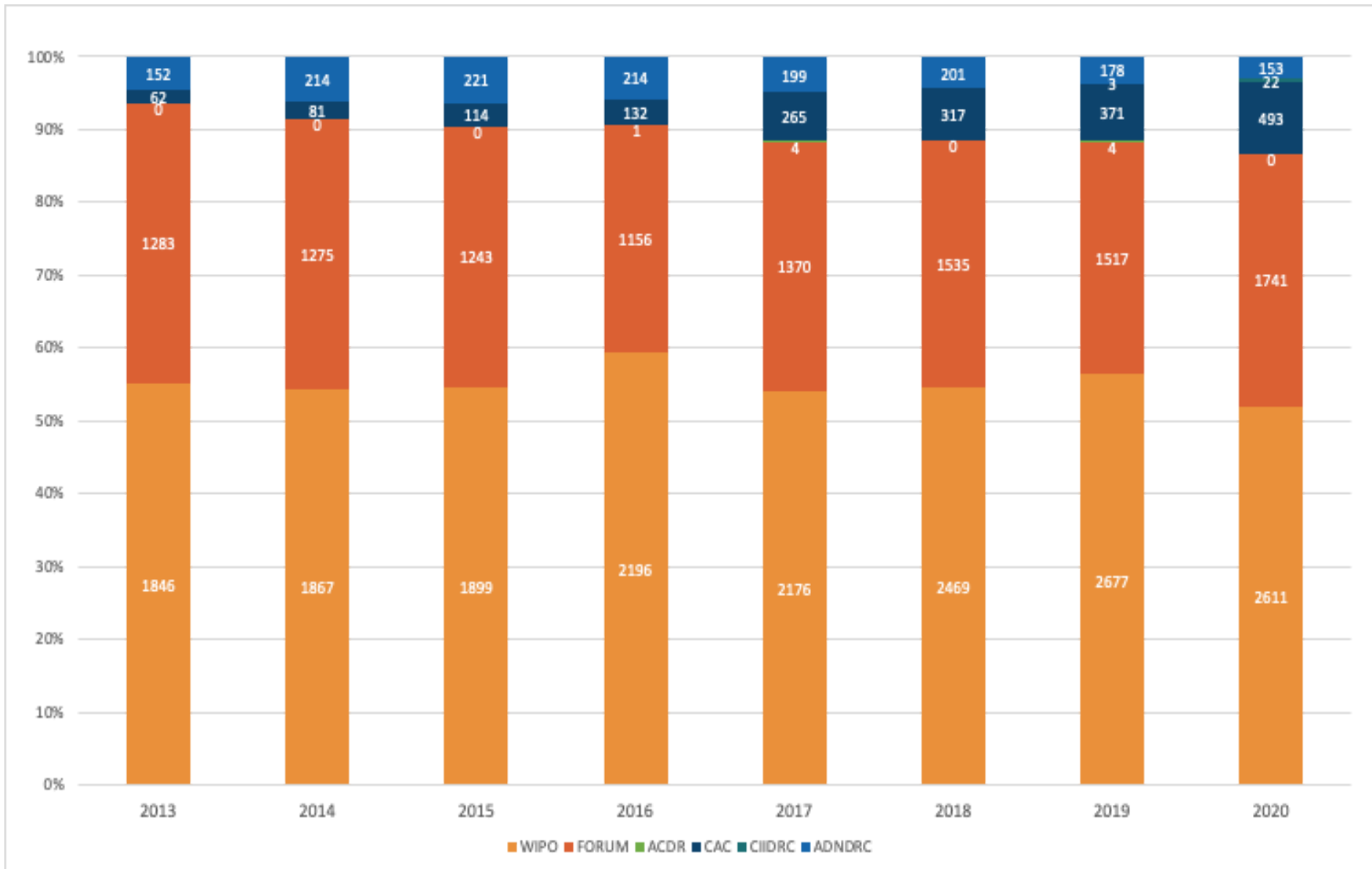


Chart 12: UDRP Transfer/Cancellations by Each Provider, UDRP Decisions, January 2013 – December 2020

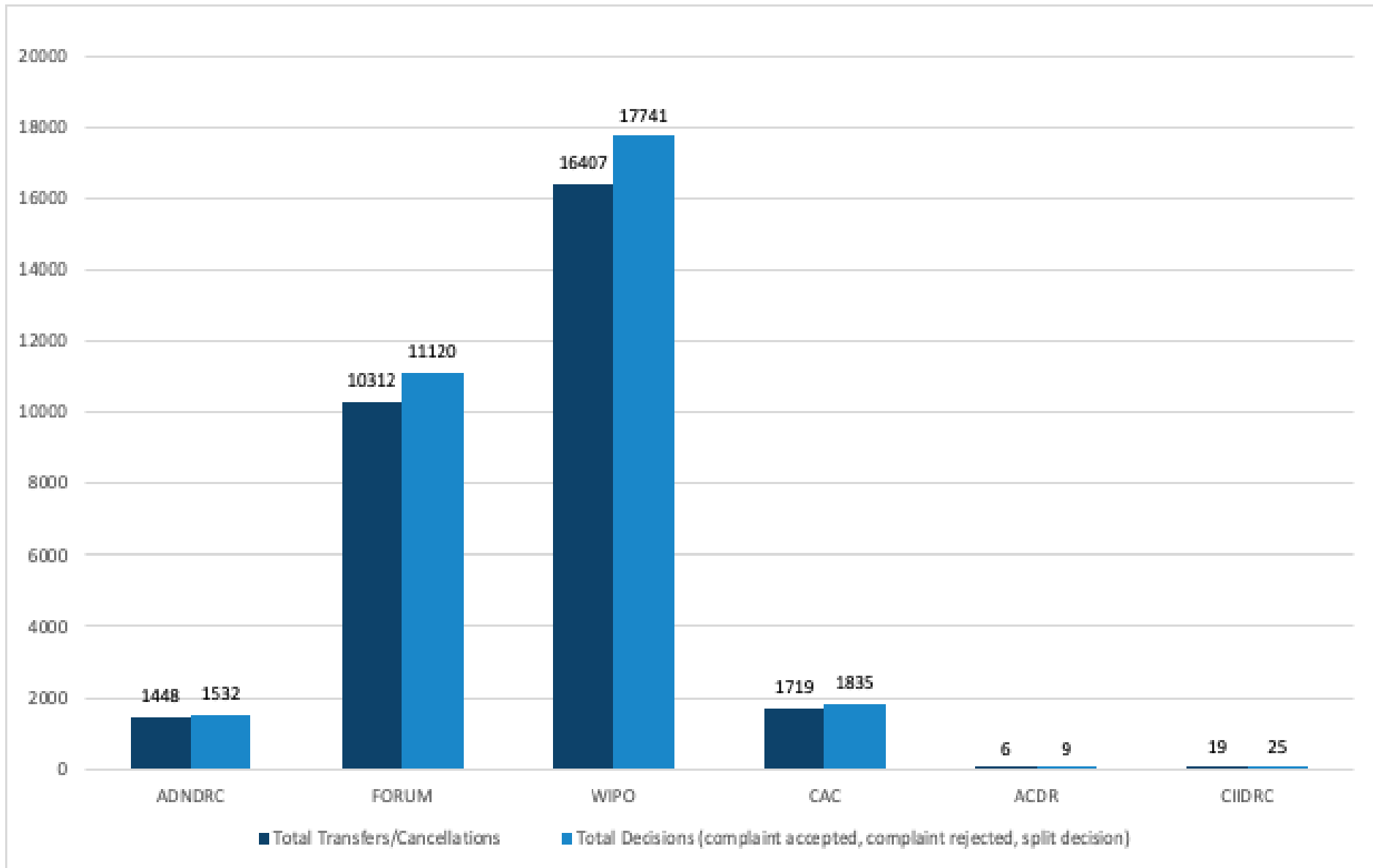
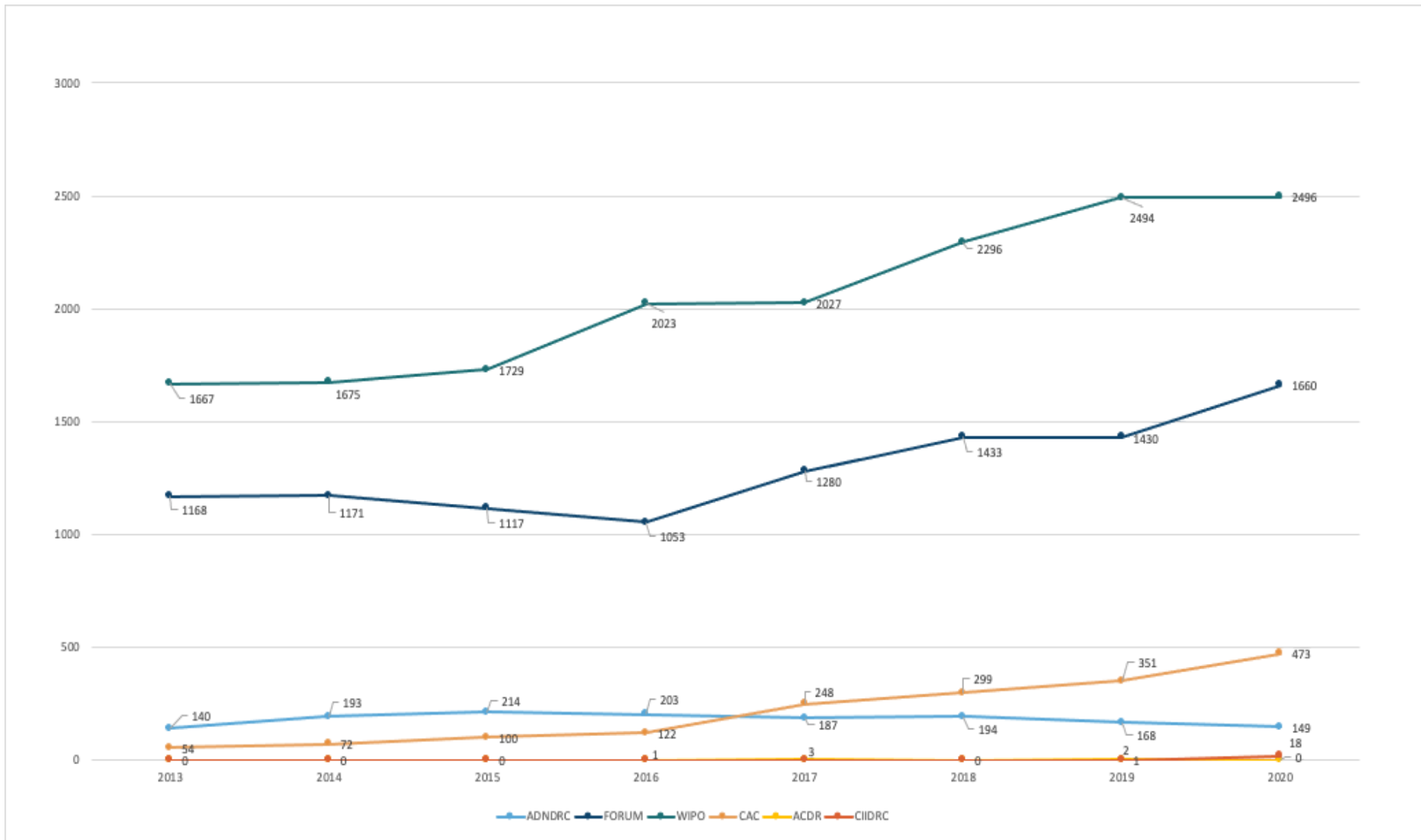


Chart 13: UDRP Transfer/Cancellation Rates by Year (All Providers), January 2013 – December 2020





## 5.2 ICANN Contractual Compliance UDRP-Related Metrics, 2014 – 2020

The following tables and charts present UDRP-related data from ICANN org’s Contractual Compliance function. In general, the number of complaints, including UDRP-related tickets, has gone up between 2014 and 2019 (see Table 7).<sup>120</sup> Contractual Compliance received an average of 203 tickets per year (see Table 7), with a slight upward trend in the amount of complaints evident in Chart 13. Table 7 and Table 8 show that Contractual Compliance receives and closes approximately 15 UDRP-related complaints per month on average. UDRP complaints account for less than 1% of all complaints received by Contractual Compliance.

ICANN’s Global Support Center (GSC) has also received UDRP-related inquiries: since 2014, GSC has received 8,056 inquiries concerning the UDRP. Around 61% of these inquiries involved issues of cybersquatting or trademark infringing domain name registrations.<sup>121</sup> Other themes identified include inquiries about registrar non-compliance with the UDRP and registrants unsatisfied with a UDRP outcome. Only a very small percentage of UDRP-related inquiries relate to questions of provider non-compliance with the UDRP Rules or Policy.

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<sup>120</sup> Note: the first ICANN Contractual Compliance monthly dashboard report was published July 2014.

<sup>121</sup> It should be noted that not all inquiries received by GSC translate to complaints handled by Contractual Compliance.

Table 7: UDRP-Related Notices and Enforcements, 2016 - 2020

The table below presents the total number of UDRP complaints as they go through the informal and [formal resolution](#) processes, from ticket receipt to closure. Note that the sum of breaches, suspensions, and terminations is low compared to the number of received complaint tickets, and almost half move to the “1<sup>st</sup> Inquiry/Notice” stage, indicating that about 1/2 of tickets are resolved before the issue is escalated.<sup>122</sup>

Year	Received Tickets	1 <sup>st</sup> Inquiry/Notice	2 <sup>nd</sup> Inquiry/Notice	3 <sup>rd</sup> Inquiry/Notice	Sum of Breaches	Sum of Suspensions	Sum of Terminations
2016	219	122	56	29	2	0	0
2017	213	85	47	11	0	0	0
2018	230	88	45	13	0	0	0
2019	240	59	25	8	0	0	0
2020	176	58	24	4	0	0	0
<b>Total</b>	<b>1078</b>	<b>412</b>	<b>197</b>	<b>65</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Average</b>	216	82	39	13	0	0	0

<sup>122</sup> Note that data on volume of notices sent to registrars prior to 2016 is not available on the ICANN Contractual Compliance dashboard. As such, data on the volume of tickets received in 2014 and 2015 is not included in this table.

Chart 13: UDRP-Related Notices and Enforcements, Tickets Received Thru 3<sup>rd</sup> Inquiry/Notice, January 2016 – December 2020

The chart below provides a graphical representation of the above:

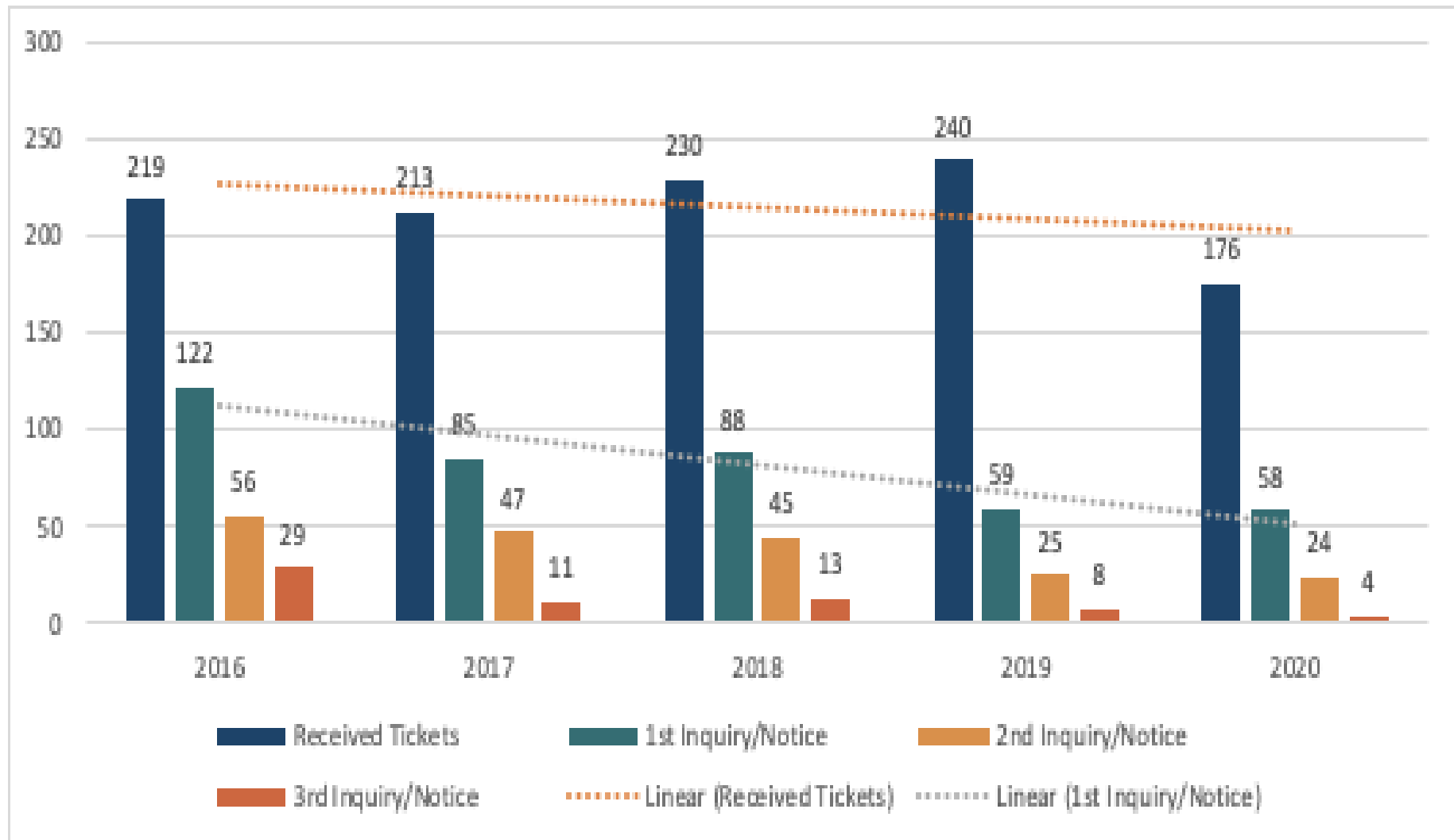


Table 8: UDRP-Related Complaints Received, Month – Year, July 2014 – December 2020

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Total	Avg.	Median	Max.	Min.
<b>2014</b>	-	-	-	-	-	-	24	15	19	14	21	16	<b>134</b>	19	19	25	14
<b>2015</b>	20	10	15	14	22	22	20	28	16	12	15	16	<b>210</b>	18	16	28	10
<b>2016</b>	12	24	23	15	17	19	16	21	18	12	28	14	<b>219</b>	18	18	28	12
<b>2017</b>	26	17	26	12	24	17	12	20	14	10	13	22	<b>213</b>	18	17	26	10
<b>2018</b>	11	21	22	15	19	24	23	22	19	14	18	22	<b>230</b>	19	20	24	11
<b>2019</b>	31	16	23	18	16	11	18	14	20	22	27	24	<b>240</b>	20	19	31	11
<b>2020</b>	26	20	21	14	15	19	19	5	9	6	9	13	<b>176</b>	15	15	26	5

Table 9: UDRP-Related Complaints Closed Before 1st Inquiry/Notice, Month – Year, February 2015 – December 2020<sup>123</sup>

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Total	Avg.	Median	Max.	Min.
<b>2015</b>	-	9	9	9	16	17	19	10	12	4	8	3	<b>116</b>	11	9	19	3
<b>2016</b>	7	10	18	3	6	9	6	8	8	3	13	7	<b>98</b>	8	8	18	3
<b>2017</b>	13	13	8	6	19	8	6	10	11	8	9	12	<b>123</b>	10	10	19	6
<b>2018</b>	13	7	15	8	10	13	15	15	9	8	13	4	<b>130</b>	11	12	15	4
<b>2019</b>	28	8	13	12	4	12	10	19	8	9	22	15	<b>160</b>	13	12	28	4
<b>2020</b>	9	11	6	3	4	45	6	17	6	9	10	1	<b>127</b>	11	8	45	1

**Closed Registrar Transfer Complaints by Closure Code: Quarter 4 2017 – Quarter 4 2020**

<sup>123</sup> Note that tickets closed in a given month may have been received in prior months.

Table 9 through 12 below present the number of closed complaints for registrars by closure code. When a complaint is closed, a description is selected that best describes the resolution of the complaint. The codes are categorized into four groups: “Resolved,” “Out of Scope,” “ICANN Issue,” and “Other”:

- **Resolved:** the reporter's complaint has been resolved or the contracted party has reviewed the complaint, responded to ICANN and/or demonstrated compliance.
- **Out of Scope:** the complaint cannot be addressed by ICANN because it is invalid or out of scope of ICANN's agreements/policies; or does not meet the minimum threshold for processing.
- **ICANN Issue:** the complaint should not have been sent to the contracted party due to ICANN error; or an internal ICANN process needs to be completed before the Compliance process can continue.
- **Other:** complaints previously closed that have been reopened and are currently active.

Note that this form of complaint categorization was integrated into Contractual Compliance reporting in October 2017.<sup>124</sup> Therefore, reporting of this type prior to this date is not available.

The metrics below show that from Q4 2017 to Q4 2020, out of the 649 complaints received during this time period, Contractual Compliance resolved a total of 215 complaints related to registrar non-compliance with the UDRP. During this time period, the top closure code for approximately 48% of complaints related to the complaint being out of scope because the Complainant, or person who submitted the ticket, did not provide the requested information.

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<sup>124</sup> For more about the Q3 2017 report, see ICANN, “ICANN Contractual Compliance 2017 Quarterly Reports,” <https://features.icann.org/compliance/dashboard/2017/q4/Registrar-resolved-codes>. For the Q1 2018 report, see “ICANN Contractual Compliance 2018 Quarterly Reports,” <https://features.icann.org/compliance/dashboard/2018/q1/Registrar-resolved-codes>.

Table 10: Registrar Closed UDRP Complaints Summary and Details by Category

Closure Code Category	# of UDRP Complaints												
	Q4 2017	Q1 2018	Q2 2018	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020
Resolved	13	24	19	21	27	21	12	3	7	17	25	17	9
Out of Scope	27	24	35	38	31	48	36	37	37	25	48	27	20
ICANN Issue	0	0	0	1	0	0	0	0	0	0	0	0	0
<b>Registrar Closed Complaints Total</b>	<b>40</b>	<b>48</b>	<b>54</b>	<b>60</b>	<b>58</b>	<b>69</b>	<b>48</b>	<b>40</b>	<b>44</b>	<b>42</b>	<b>73</b>	<b>44</b>	<b>29</b>

Table 11: Resolved UDRP Complaints

Closure Code Category	# of UDRP Complaints												
	Q4 2017	Q1 2018	Q2 2018	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020
The registrar demonstrated compliance with the Uniform Domain Name Dispute Resolution Policy (UDRP) requirements.	5	8	7	9	15	4	1	1	1	3	5	1	4
The registrar demonstrated compliance.		2		1					1	1			1
The registrar locked a domain subject to a Uniform Domain Name Dispute Resolution Policy (UDRP) proceeding.	5	10	11	8	6	8	6		3	3	13	8	2
The registrar verified the domain with the Uniform	2	2	=1	1	3		2		1	5			

Domain Name Dispute Resolution Policy (UDRP) provider.													
The Uniform Domain Name Dispute Resolution Policy (UDRP) decision cannot be implemented due to an intervening lawsuit.		1								1			
<b>Resolved Category Total</b>	<b>13</b>	<b>24</b>	<b>19</b>	<b>21</b>	<b>27</b>	<b>21</b>	<b>12</b>	<b>3</b>	<b>7</b>	<b>17</b>	<b>25</b>	<b>17</b>	<b>9</b>

Table 12: Out of Scope UDRP Complaints

Closure Code Description	# of UDRP Complaints												
	Q4 2017	Q1 2018	Q2 2018	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020
The complaint is out of scope because customer service issues are outside of ICANN's contractual authority.	1	1									5		
The complaint is out of scope because ICANN is not a registrar.	2												
The complaint is out of scope because it is a duplicate of a closed complaint.	1		1			5				1	1		
The complaint is out of scope because it is a duplicate of an open complaint.	2	3	3	6	6	6	3	3	6	1	6	2	2
The complaint is out of scope because it is about a private dispute that does not implicate		1		6	1	9	4		3	8	12	8	

ICANN's contractual authority.													
The complaint is out of scope because it is incomplete or broad.		1		1		1		1					
The complaint is out of scope because it is regarding a country-code top-level domain.	4	4	1	3	4	2	6	5	6		1	2	
<b>The complaint is out of scope because the Complainant did not provide the requested information.</b>	5	8	12	15	14	20	20	28	21	15	20	14	18
The complaint is out of scope because there is no Uniform Domain Name Dispute Resolution Policy (UDRP) proceeding.	12	6	18	7	6	4	3						
The complaint is out of scope because it is about an illegal activity that is outside of ICANN's contractual authority.						1					3		
The complaint is out of scope because ICANN does not process complaints regarding website content.													
The complaint is out of scope because the domain is expired.									1				
The complaint is out of scope because the domain is not registered.												1	
<b>Out of Scope Category Total</b>	<b>27</b>	<b>24</b>	<b>35</b>	<b>38</b>	<b>31</b>	<b>48</b>	<b>36</b>	<b>37</b>	<b>37</b>	<b>25</b>	<b>48</b>	<b>27</b>	<b>20</b>



Table 13: ICANN Issue/Error UDRP Complaints<sup>125</sup>

Closure Code Description	# of UDRP Complaints												
	Q4 2017	Q1 2018	Q2 2018	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020
The matter has been withdrawn due to an ICANN issue.				1									
<b>ICANN Issue Category Total</b>				1									

<sup>125</sup> This table presents the number of complaints that should not have been sent to the contracted party due to ICANN error; or internal ICANN process needs to be completed before the Compliance process can continue.

## 5.3 Education for Domain Name Registrants

This section discusses the importance of continuing to work towards educating users of the UDRP, particularly domain name registrants who may not be as familiar with the UDRP process, and provides an overview of a project that aims to assist and help educate registrants about their rights and responsibilities under the UDRP.<sup>126</sup>

If the UDRP is to successfully address cybersquatting, trademark infringement, or RDNH, it may be important to display consistent standards to provide guidance to domain name registrants. Providers like [WIPO](#), [ADNDRC](#) and [FORUM](#) publish flowcharts and step-by-step guides on their website to help trademark holders as well as registrants prepare a complaint or response. In addition to general UDRP [information](#) and related documents that are readily available on [icann.org](#), ICANN org also published [material](#) specifically tailored for registrants who may be less familiar than trademark holders with the UDRP procedures or the means by which they can defend their rights.

However, as noted in 2011 when the Final Issue Report on the current state of the UDRP was issued, some in the ICANN community urged “ICANN to do a better job of translating the UDRP related website content in order to facilitate understanding of the UDRP among non-English speakers around the world” and that the “the UDRP needs to be translated in multiple languages and posted on the ICANN website.”<sup>127</sup> As also identified in process issues raised by the community in Annex 2 of the [Final Issue Report](#), “ICANN should provide education about UDRP, best practices and how to participate in the process to providers, panelists, registrants.”

In an effort to address the knowledge gap between registrants and trademark holders, due in part to the disparities in educational materials that appear to exist online, and to assist end users that may lack the financial resources to pay for legal advice, NIC Chile, the operator for .CL, the country code top-level domain for Chile, launched a project that links law schools and users involved in domain name disputes to help educate them of their rights and defend their interests in the arbitration process free of charge.<sup>128</sup>

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<sup>126</sup> Note: The initiative discussed in this section is included as an example related to the UDRP goal of addressing abuse in order to support the GNSO’s assessment of the UDRP.

<sup>127</sup> ICANN, “Final GNSO Issue [Report](#) on The Current State of the Uniform Domain Name Dispute Resolution Policy,” (3 October 2011).

<sup>128</sup> ICANN Annual General Meeting, “A success story: Legal assistance for domain name end users in Latin America – ICANN63,” 24 October 2018, <https://63.schedule.icann.org/meetings/G6QJoHvni5cbRAGoA>.

When a complaint is filed against a domain name registrant in .CL, the online dispute resolution system, which is based on the Chilean Local Dispute Resolution Policy (LDRP), also notifies the registrant about various pro bono legal assistance options that are available to them. If the registrant decides to use this service, the system informs them of the law schools that can help them with their dispute.<sup>129</sup>

Overall, the founders of the project have seen a more level playing field for both for the parties involved and positive results in the LAC region, which they say should be replicated in other countries as well. Furthermore, engaging academia and encouraging the participation of law students may result in a higher level of interest in the Internet and in domain names in general, as well as more professional activities and operations created in this industry.<sup>130</sup>

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<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

# 6 Appendices

## 6.1 Sample of GSC UDRP-Related Inquiries

The below represents a sample of UDRP-related inquiries received by GSC. The observation period runs from June 2014 to December 2020. They represent the most commonly received UDRP-related inquiries out of the 8,056 inquiries received concerning the UDRP during this time period. They have been edited slightly for clarity, generalization, and anonymity.

Many of the inquiries below focus on issues of cybersquatting or trademark infringing domain name registrations. A number of them were referred to Contractual Compliance.

- 1) Registrant wants to **transfer their UDRP case to a different UDRP Provider** because they believe the current dispute resolution Provider will solve the dispute **unfairly** and the Chinese government will influence the outcome of the case.
- 2) Organization notified ICANN of their recently submitted **application to serve as an approved dispute-resolution service provider** for the UDRP.
- 3) Website owner says their **website content has been copied** and believes they are a victim of website content **copyright infringement**.
- 4) Website owner believes they are a victim of **cybersquatting**.
- 5) Legal counsel wants more **information on whether it is appropriate to use the UDRP** to resolve their trademark infringement issue.
- 6) Website owner believes they are a victim of **typosquatting** and believes the **Registrar is to blame** for allowing registration of typo squatted domains.
- 7) Individual wants more **information on how to file a UDRP complaint**.

- 8) Registrant **disagrees with UDRP outcome** and would like to **appeal** decision.
- 9) Website owner says their **website content has been copied** and wants assistance on how to address their problem.
- 10) Trademark holder says a **website infringing on their trademark** is selling their products without their permission.
- 11) Website owner believes they are a **victim on trademark infringement** and would like more **information on how to file a UDRP case**.
- 12) Trademark holder wants more information on **how to obtain a domain name** that is **registered to someone else**.
- 13) Website owner says they are a victim on **domain name hijacking** and wants help recovering domain names.
- 14) Company with a UDRP outcome in their favor (decided in favor of the Complainant) wants assistance on how to deal with a **Registrar failing to comply with the UDRP decision** by not **unlocking** the **domain name** and providing the **authorization code** for transfer of the domain.
- 15) Registrant recently registered a domain name and wants to know if it is a **protected trademark** and whether they will face a **trademark infringement suit** down the line.
- 16) Trademark holder obtained revocation of a registered infringing trademark and would like more information on **how to cancel the associated domain name via the UDRP**.
- 17) **Registrant received a UDRP complaint** and wants more information on the UDRP and **how to file a response**.

- 18) Potential registrant believes they are a **victim of cybersquatting** because someone registered their personal name as a domain name and wants more information on how to file a UDRP complaint.
- 19) Legal counsel says **Registrar is failing to comply with its obligations** as they have **not implemented a UDRP decision** in favor of their client (decided in favor of the Complainant).
- 20) Team of panelists request more information on **how to submit an application** to serve as an approved dispute-resolution service provider **for the UDRP**.
- 21) Individual believes they are a **victim of copyright infringement**.
- 22) Registrar has been notified that a complaint has been filed and wants more information on whether they should contact the registrant before **locking the domain name** pursuant a UDRP proceeding.
- 23) Business owners believes a website is being used in **bad faith**.
- 24) Trademark holder believes they are a **victim of cybersquatting** and **trademark infringement**.
- 25) Registrant received a UDRP complaint and wants more information on **how to prevail under the UDRP**.
- 26) Trademark holder wants more information on **how to file a UDRP complaint against a domain name infringing** on their trademark.
- 27) Company wants **more information on which UDRP Provider** to **submit a complaint** with.
- 28) Legal counsel wants more information on **how to file a UDRP complaint** against a domain name infringing on their client's trademark.

29) Legal counsel says both the Registrar and UDRP Provider failed to give their client proper **notice** regarding the **administrative panel decision and its implementation** and plan to file a case in court regarding the incident.

