**Adobe Comments on UDRP**

Adobe Inc. (“Adobe”) submits the following comments in response to the request for public comment posted by ICANN on March 3, 2022 at <https://www.icann.org/en/public-comment/proceeding/policy-status-report-uniform-domain-name-dispute-resolution-policy-udrp-03-03-2022>.[[1]](#footnote-1)

Adobe is a global leader in digital experience and digital media solutions, offering products and services that allow creative professionals to create, deploy, and optimize digital content. Adobe prides itself on providing its users, who range from emerging artists to global brands, with the tools they need to design and deliver exceptional digital experiences. Among its products, are Adobe Photoshop, Adobe Illustrator, Adobe Acrobat, and Adobe Premiere Pro.

In 2020, the Adobe brand value (ranked 27th), increased 41% compared to that of 2019, to USD $18.206 million, and has been named one of the Top Growing Brands for the fifth year in a row. The Adobe brand is recognized as a leading international brand. Adobe is listed among the Top 100 Best Global Brands in reports published by Interbrand in 2020 (#27), 2019 (#39), 2018 (#51), 2017 (#56), 2016 (#63), 2015 (#68), 2014 (#77), 2013 (#79), 2012 (#78), (2011 (#80), 2010 (#88) and 2009 (#95), based on brand value. Adobe is No. 47 on Fortune’s Most Admired Companies List, and #3 in the computer software category, No. 35 on Fortune’s 100 Best Companies to Work For, No. 29 on Fortune’s Future 50 List, No. 26 on Fortune’s 100 Fastest-Growing Companies, Shantanu Narayen ranked No. 8 in Fortune’s Businessperson of the Year, and Adobe is a Blue Ribbon Company for 2021 (making 7 of Fortune’s 10 most rigorous annual rankings). Adobe is ranked No. 39 in Glassdoor’s Best Places to Work 2020.[[2]](#footnote-2)

In addition, Adobe’s PHOTOSHOP product is among its flagship products. PHOTOSHOP software maintains a reputation for delivering the world’s most advanced digital imaging. At present, over 90% of creative professionals have PHOTOSHOP installed on their desktop.[[3]](#footnote-3) The PHOTOSHOP product has achieved widespread recognition internationally and is considered the operating system of digital photography, and the world’s standard image editing program. [[4]](#footnote-4)

Given their notoriety, the Adobe and Photoshop brands are often the target of cybersquatting. In the last 5 years, Adobe filed approximately 40 separate UDRP actions to recover abusive domain registrations. Prior to 2019, Adobe averaged approximately 5 UDRP actions a year. However, since 2019, that number doubled, and Adobe is now filing an average of 10 UDRP actions per year due to increased abuse of its world-famous brands.

As you can see, Adobe relies heavily on the UDRP to protect its brands. Adobe can say unequivocally that the UDRP is the most efficient and cost-effective tool to resolve cybersquatting abuse.

**Does the UDRP provide trademark holders with a quick and cost-effective mechanism for resolving domain name disputes?**

***Yes.***

Prior to implementation of the UDRP, the only mechanism for addressing cybersquatting in the United States was bringing a trademark infringement lawsuit under the Lanham Act (the US Trademark Act).[[5]](#footnote-5) A trademark owner had to contact Network Solutions, Inc. (“NSI”) (at the time the sole registrar and registry) and get an affidavit from the customer services department attesting to NSI’s control of the disputed domain name. The plaintiff then had to deposit the domain name into the Federal Court under Rule 67 of the Federal Rules of Civil Procedure. This process, combined with the cost of preparing a complaint and gathering evidence, was time- consuming, expensive, and fraught with pitfalls.[[6]](#footnote-6)

In response to the rise in cybersquatting and the lack of effective mechanisms for dealing with the problem, ICANN implemented the Uniform Dispute Resolution Policy and the Rule of Procedure for the UDRP in the Fall of 1999. By doing so, ICANN provided trademark owners with a mechanism that is easily one-tenth the cost of filing a federal lawsuit and provides a resolution to the dispute in less time than it would take to institute a full-blown lawsuit and serve initial discovery requests on the defendant/cybersquatter. In addition, the UDRP Rules of Procedure provide additional mechanisms to lock the domain name at the registrar to prevent cybersquatters from moving the domain name to avoid a trademark owner’s complaint.

***It is clear: the UDRP provides a quick and cost-effective mechanism for resolving domain name disputes.***

**Does the UDRP allow all relevant rights and interests of the parties to be considered and ensure procedural fairness for all concerned parties?**

***Yes.***

Under the UDRP, a panelist must fully consider the merits of the complaint even when the domain name holder fails to respond to the initial complaint. This mechanism ensures that all parties, even those who fail to defend their alleged rights in the domain name, receive fair consideration by the UDRP arbitrator. This mechanism is unprecedented in dispute resolution and Adobe believes that it allows all parties to receive a fair and equitable hearing.

Since its inception, the UDRP has received criticism as biased towards the interest of trademark owners. Many of these critics point to the high number of disputes that are resolved in favor of trademark owners. However, the UDRP was designed with a very high burden of proof for the trademark owner. For this reason, in the majority of cases, a trademark owner that can successfully carry the burden of proof is successful. While it is true that there have been cases throughout the tenure of the UDRP where overzealous trademark owners have abused the system by bringing actions not suited to the UDRP, Adobe believes that such cases are far outweighed by the number of legitimate disputes that are resolved under the UDRP. Additionally, the UDRP allows for a finding of reverse domain name hijacking when the UDRP is used to recover domains where the domain holder can prove a legitimate interest in the disputed domain name.

**Has the UDRP effectively addressed abusive registrations of domain names?**

***Quite simply, no: the UDRP has not effectively addressed abuse registration of domain names.***

Since its implementation, ICANN has expanded the top-level domain name space on three separate occasions. This expansion has greatly increased the amount of “real estate” that trademark owners must monitor and police in order to protect their intellectual property. As we pointed out above, Adobe’s UDRP filings have doubled in the last two years. Having said that, Adobe does believe that the UDRP offers trademark owners the best alternative dispute resolution mechanism for resolving these disputes.

**Conclusion**

In conclusion, the UDRP is the most effective and efficient tool currently available for resolving trademark and domain name conflicts. While it is not a perfect system, it is the best available. For this reason, Adobe strongly urges ICANN to acknowledge this success and keep the UDRP and the Rules of Procedure in place as currently written.

1. Adobe’s comments were prepared by J. Scott Evans, Director – IP & Advertising Law. In the spirit of full disclosure, Adobe notes that J. Scott served on the five-member drafting committee that refined the UDRP and the Rules of Procedure in 1999. Other members of that committee were Rita Rodin, Kathy Kleiman, Michael Froomkin, and Steve Metalitz. J. Scott served as President of the Intellectual Property Constituency from 2003 to 2005 and again from 2009 to 2011. J. Scott also served on the Implementation Recommendation Committee at ICANN in 2009. Finally, J. Scott served as the 2015 President of the International Trademark Association. [↑](#footnote-ref-1)
2. *"Interbrand Best Global Brands "at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:989b14c1-d598-4c3a-8779-afdb57692e94*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:989b14c1-d598-4c3a-8779-afdb57692e94)

   *"Fortune's World’s Most Admired Companies 2020" at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b6e38555-fdac-4942-a650-07442e4b54fd*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b6e38555-fdac-4942-a650-07442e4b54fd)

   *"Fortune's Future 50" at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b6b1e33a-6f33-4235-a3eb-a06759b856a0*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b6b1e33a-6f33-4235-a3eb-a06759b856a0)

   *"Fortune's 100 Best Companies to Work For" at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6e9bd15f-e2d2-4906-a3c2-f3837e8ca5de*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6e9bd15f-e2d2-4906-a3c2-f3837e8ca5de)

   *"Fortune Shantanu Narayen \_ Businessperson of the Year" at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e7135388-dbea-458d-8ee9-cf4a4f1a4cf3*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e7135388-dbea-458d-8ee9-cf4a4f1a4cf3)

   *"Fortune 100 Fastest Growing Companies 2020f" at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:06e11920-5a1c-457f-83e0-fb904988fc17*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:06e11920-5a1c-457f-83e0-fb904988fc17)

   *"Fortune’s Blue Ribbon Companies" at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:56e4778b-612c-43b0-b85c-d266527bb38a*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:56e4778b-612c-43b0-b85c-d266527bb38a)

   *"Best Places to Work Glassdoor" at:* [*https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:27f54a50-0750-4b98-91fd-541a7b48ce53*](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:27f54a50-0750-4b98-91fd-541a7b48ce53) [↑](#footnote-ref-2)
3. See, <https://www.adobe.com/about-adobe/fast-facts.html> [↑](#footnote-ref-3)
4. See, *e.g.*, “*Photoshop Endlich Erwachsen*,” ProfiFoto May 2008, page 21; “*The Birth of a Killer Application: 10 Years of Photoshop,”* PEI Photo>Electronic Imaging, February 2000, page 16; “*Photoshop Celebrates 20 Years*,” Macworld, March 2010, page 74; *“Adobe’s Photoshop, popular among amateurs and professionals alike, turns 20,”* The Mercury News, February 14, 2010; and “*Photoshop 1.0 source code now a museum artifact,”* CNET.COM, February 14, 2013. For the 25th anniversary of PHOTOSHOP (February 19, 2015), a video homage to the product was created by Adobe that was distributed worldwide via several media channels. The video aired on television February 22, 2015 during the American 87th Academy Awards show, a show widely considered to be the most prestigious cinema awards ceremony in the world, telecast in over 100 countries and with a viewership of 30 million during its airing. The video, now available on the internet to all at https://www.youtube.com/user/AdobeSystems *25 Years of Photoshop – Dream On*, has had over 2 million views to date. [↑](#footnote-ref-4)
5. The scenario discussed pre-dates enactment of the Anti-Cybersquatting Consumer Protection Act which was not enacted until the Fall of 1999. [↑](#footnote-ref-5)
6. Rule 67 of the Federal Rules of Civil Procedure is not a process typically used in Federal Court. For this reason, trademark owners were tasked with convincing the Clerk of the Federal Courts to accept the affidavit as the “property” at issue in the dispute. This was an expensive and time-consuming exercise. [↑](#footnote-ref-6)