



April 19, 2022

Re: ICA Comment on Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP)

The Internet Commerce Association (“ICA”) is pleased to provide its comments on the Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP) (the “Status Report”), dated March 3, 2022.

ICA Members Have Been Deeply Involved In and Are Greatly Affected by the UDRP

ICA members include domain name investors, UDRP lawyers¹, secondary market participants, and related service providers.

Our members include many of the leading defenders of domain name registrants in the UDRP. Since 1999, ICA members have collectively defended against hundreds of meritless UDRP cases which have resulted in dismissal and/or a finding of Reverse Domain Name Hijacking against the Complainant. Our UDRP lawyer members have also represented aggrieved registrants who have been forced to go to court to overturn unjust UDRP decisions at tremendous cost.²

Most of our members are domain name registrants who have invested in some of the most valuable generic domain names ever registered and who nevertheless have been forced to defend themselves against covetous UDRP Complainants trying to unjustly seize valuable domain names for themselves. For example, one of our members, Telepathy Inc., has successfully faced 18 meritless UDRP complaints, five of which resulted in findings of Reverse Domain Name Hijacking against the complainants.³ In two instances, Telepathy Inc. had to go to court to seek compensation for being subjected to attempted Reverse Domain Name Hijacking by UDRP Complainants.⁴ One of the ICA’s founding members was forced to respond to 51 baseless

¹ Such as Jason Schaeffer and Ari Goldberger (Esquire), Gerald Levine (Levine Samuels LLP), Howard Neu (Law Offices of Howard M. Neu), Stevan Leiberman (Greenberg & Leiberman), Ankur Raheja (Cylaw Solutions), Jeff Neuman (JJN Solutions), and the undersigned (Zak Muscovitch, Muscovitch Law Firm).

² See for example: [“It Cost \\$480,843 to defend IMI.com”](#), Domain Name Wire, September 5, 2019.

³ See [UDRP.tools](#).

⁴ See for example, [“\\$50,000 Penalty for Filing Frivolous UDRP”](#), Domain Name Wire, July 22, 2015, and also see for example, [“Telepathy Sues After Getting RDNH Win”](#), Domain Name Wire, June 3, 2017.

UDRP complaints. It prevailed in 49 of these disputes with ten findings of Reverse Domain Name Hijacking. The two domain names that were erroneously ordered transferred were subsequently successfully challenged in court. These examples demonstrate the tremendous needless burden that the UDRP places on bona fide domain name investors who are constantly forced to devote significant resources of time and money to fend off attempts by covetous companies who misuse the UDRP to seize rightfully owned domain names.

Our members therefore have no choice but to take the UDRP very seriously as they are directly affected by it since when the UDRP is used unfairly, it can result in the unjust loss of their valuable domain name.

An Effective, Fair, and Legitimate UDRP Balances Intellectual Property and Registrant Rights

ICA members also take protection of intellectual property rights seriously. Protection of intellectual property rights are enshrined in the ICA's Code of Conduct. The ICA believes that both protection of intellectual property rights and the protection of domain name registrant rights are of equal importance. An effective, fair, and legitimate UDRP must balance both interests.

While the UDRP has been generally successful, there is nonetheless room for improvement. The UDRP was developed before domain name investing was widely recognized as a legitimate business. The UDRP and/or its interpretation frequently does not adequately recognize the rights of domain name investors leading to many troubling transfer decisions over the years. Until the UDRP is reformed to better protect the rights of registrants, our members' livelihoods rest on a shaky foundation.

The ICA Has Led the Way in Advocating for Improvements to the UDRP

The ICA has consistently advocated for improvements to the UDRP and has made a concerted effort to work with and to educate all participants about where the UDRP falls short and where it can be improved. For examples, the ICA has:

- Publishing deeply researched articles on CircleID such as:
 - 1) [“UDRP Panelists: Getting the Standard Right Where No Response is Filed”](https://circleid.com/posts/20190307_udrp_panelists_getting_standard_right_where_no_response_is_filed);⁵
 - 2) [“The Hidden Perils of Filing a Baseless UDRP Complaint”](https://circleid.com/posts/20181213_the_hidden_perils_of_filing_a_baseless_udrp_complaint);⁶
 - 3) [“A Re-Examination of the Defense of Laches after 18 Years of the UDRP”](https://circleid.com/posts/20180115_re_examination_of_the_defense_of_laches_after_18_years_of_the_udrp);⁷ and
 - 4) [“The Rise and Fall of the UDRP Theory of ‘Retroactive Bad Faith’](https://circleid.com/posts/20170507_rise_and_fall_of_udrp_theory_of_retroactive_bad_faith);⁸ among others.

⁵ https://circleid.com/posts/20190307_udrp_panelists_getting_standard_right_where_no_response_is_filed

⁶ https://circleid.com/posts/20181213_the_hidden_perils_of_filing_a_baseless_udrp_complaint

⁷ https://circleid.com/posts/20180115_re_examination_of_the_defense_of_laches_after_18_years_of_the_udrp

⁸ https://circleid.com/posts/20170507_rise_and_fall_of_udrp_theory_of_retroactive_bad_faith

- Publishing articles highlighting the flawed reasoning that leads to unjustified transfers in the hopes that doing so will deter panelists from adopting such approaches in future cases, as in [this article on the ADO.com decision](#)⁹ and [this one on the Devex.org decision](#)¹⁰.
- Recognizing leading voices on UDRP matters who speak on behalf of domain name registrants by bestowing the [ICA's Lonnie Borck Memorial Award](#) on Kathy Kleiman, one of the architects of the UDRP and a stalwart defender of domain name registrant rights, and upon John Berryhill, a UDRP pioneer and formidable domain name defense attorney.
- Submitting Comments to ICANN on policy proposals that concern domain name registrant rights and Rights Protection Mechanisms, [such as on the right to go to court](#)¹¹, [the need for contracts with dispute resolution providers](#)¹², and [the accreditation of dispute resolution providers](#)¹³.
- Convening Online Webinars on the UDRP and trademark issues for ICA Members and the Public [such as this one](#).¹⁴
- Filing an [Amicus Brief in the United States Supreme Court](#) in the Booking.com Case¹⁵.
- Participating in Weekly UDRP Discussions with Panelists and UDRP counsel, convened by Gerald Levine, ICA member and [author of Domain Name Arbitration](#).¹⁶
- Speaking at [WIPO's 20th Anniversary of the UDRP in Geneva](#).¹⁷
- [Hosting UDRP Dispute Resolution Providers](#)¹⁸ such as WIPO, The Forum, and the CAC at NamesCon and conducting symposia with them to exchange thoughts and developments in UDRP practice.

⁹ https://circleid.com/posts/20180301_ica_statement_on_adocom_udrp_decision_overreaching_panelists

¹⁰ https://circleid.com/posts/20171214_why_udrp_panelists_must_follow_the_policy_a_look_at_devex_dot_org

¹¹ <https://internetcommerce.us17.list-manage.com/track/click?u=54abf07bbc25521273988fc29&id=e45d0c879f&e=190f6d6129>

¹² <https://internetcommerce.us17.list-manage.com/track/click?u=54abf07bbc25521273988fc29&id=a52b147e77&e=190f6d6129>

¹³ <https://mm.icann.org/pipermail/comments-udrp-provider-16nov18/attachments/20181221/ecd5c87c/ICACommentonApplicationforNewUniformDomainNameDisputeResolutionPolicyUDRPDispute-ResolutionServiceProvider-0001.pdf>

¹⁴ <https://www.domainsherpa.com/ica-2019q1/>

¹⁵ <https://www.internetcommerce.org/uncategorized/internet-commerce-association-files-supreme-court-brief/>

¹⁶ <https://iPLEGALCORNER.com/legal-corner-press/>

¹⁷ <https://www.wipo.int/amc/en/events/workshops/2019/20yrs-udrp/program/>

¹⁸ <https://domaininvesting.com/ica-events-at-namescon/>

- Co-Hosting with the International Trademarks Association (INTA), [the first ever UDRP Moot Court Hearing](#) at NamesCon.¹⁹
- Presenting to [NARALO on the domain name secondary market](#) (starting at minute 10:00) to educate NARALO members on the positive role the secondary market plays in the domain name ecosystem.²⁰
- Publishing the [ICA Weekly UDRP Case Digest](#) distributed to hundreds of UDRP Panelists and practitioners every week, highlighting cases of interest and concern.²¹

The ICA also developed a preliminary slate of [reform proposals](#) four years ago in 2018 which focused on structural and procedural improvements.²² While some of the proposed reforms are no longer current or are not our current focus and priority, those original reform proposals nevertheless highlight numerous areas where attention could be given to the UDRP. We are pleased that ICANN took particular note of the 2018 proposals in its Status Report.

The Time for a Limited and Focused Review is Now

The time for commencing Phase 2 of the Review of All Rights Protections is now. The ICA believes that stakeholders are now poised to embark on a *limited and focused review* of the UDRP while the issues, considerations, and indeed the failures of Phase 1 remain front and center. A delay of Phase 2 would only serve to put stakeholders in an inferior position since the community's knowledge, experience, and lessons learned from Phase 1 will have deteriorated thereby making progress even more challenging than it would otherwise be. The long delay that stakeholders have already faced between Phase 1 and 2 is unfortunate, however it has provided stakeholders with time to reflect on Phase 1 and what Phase 2 could be. We believe that stakeholders are currently at the point where reasonable, expert participants can and will make Phase 2 a success, however if Phase 2 were to be delayed the environment may not be as conducive to a successful PDP as it is now.

Continuous Improvement: The UDRP can be Improved for All Stakeholders

Overall, the UDRP has been very successful. That is not to say that there is no room for improvement. After nearly 23 years since the UDRP was adopted on August 26, 1999, even a policy success should be reviewed.

The world and the domain name ecosystem have changed dramatically in the 23 years since the UDRP was developed. The goal of the upcoming review should be to ensure that the UDRP can serve as an effective policy for the next 23 or more years.

¹⁹ <https://www.internetcommerce.org/uncategorized/for-the-first-time-ever-a-live-udrp-hearing/>

²⁰ <https://domaininvesting.com/naralo-talk-the-secondary-market-in-domain-names/>

²¹ <https://www.internetcommerce.org/udrp-case-summaries/>

²² <https://www.internetcommerce.org/icas-udrp-reform-policy-platform-2018/>

Much has been learned from the way that the UDRP has operated since August 26, 1999 and this experience can and should be used to identify those limited and focused areas where the UDRP can be improved for current and future stakeholders. Indeed, the ICA believes that current stakeholders are obliged to undertake such a review to identify such areas of improvement.

ICANN should protect the UDRP by employing a *continuous improvement* approach in which stakeholder feedback from the UDRP can be used to improve the effectiveness of the UDRP for all concerned. If we do not take this opportunity we will not be acting as responsible stewards of the UDRP and will have failed to harness tremendous community experience to improve and protect the UDRP for all stakeholders.

The ICA strongly believes that improvements to the UDRP are not a “zero-sum game” in which improvements that benefit domain name registrants necessarily harm trademark owners or vice versa. There is ample opportunity to improve the UDRP for all concerned stakeholders. A more efficient process without unnecessary delays benefits trademark owners but does not necessarily harm registrants. Improved interpretative consistency and addressing procedural gaps would benefit legitimate registrants but would not harm the enforcement objectives of brand owners. All stakeholders are united in the goal to combat cybersquatting. There are numerous improvements that can be made to the UDRP that would benefit brand owners and respondents while improving the UDRP’s ability to combat the problem of cybersquatting - without destabilizing the successful procedure. These areas for improvement should be the focus of Phase 2.

The ICA is committed to working with all stakeholder groups to improve the UDRP. Phase 2 must not be a competitive, fraught, and lengthy exercise. Rather, by looking only towards improvements that are likely capable of earning consensus support, the UDRP can be successfully maintained and improved for all.

Envisioning Phase 2: Collaboratively Improving the UDRP for All Stakeholders While Doing No Harm

The ICA strongly believes that Phase 1 should not serve as a model for Phase 2. Phase 1 was lengthy, unproductive, inefficient, and an unpleasant experience for all concerned. Moreover, Phase 1 suffered from an overly broad approach to reviewing the URS. Perhaps the biggest problem with Phase 1 was that structurally it was inadvertently set up to encourage disagreements between interest groups rather than to facilitate collaboration, negotiation, and problem solving.

An effective Phase 2 should have the following features for it to be successful:

1. Participants should be experts. By experts, we mean individuals who have extensive personal and practical knowledge of the UDRP through direct personal involvement as parties, party representatives, panelists, policy makers, academics, authors, and dispute resolution providers.

2. Experts should not be drawn exclusively from the ranks of ICANN constituencies. While ICANN constituencies do have members with UDRP expertise, UDRP expertise is also found outside of these constituencies and accordingly experts should be invited to participate in Phase 2 based upon their qualifications and the interests that they represent.
3. There must be balance between participants who are primarily interested in trademark rights and primarily interested in registrant rights, and in either case such participants should not have a parochial outlook on the UDRP.
4. Participants must be prepared to problem solve and not just advocate for particular positions. This requires collegiality, compromise, and empathy to all stakeholder concerns. Phase 2 should not merely be a staging ground for ardent advocacy and maximalist positions.
5. The scope must be limited. The scope should be defined by experts who agree what is reasonably achievable through the Phase 2 process and this agreement should take place *before* Phase 2 is even commenced. Indeed, the scoping in this instance is inextricably linked to the review itself and should not be treated as a separate exercise. Scoping within the context of the UDRP is something that the experts must participate in. Indeed, arguably the scoping is the most crucial part of Phase 2 itself. This is the way of avoiding a repeat of Phase 1.

Through extensive discussions with UDRP experts representing both trademark interests and registrant interests, we have come to realize that reasonable experts can make short or at least shorter work out of Phase 2, and do so in a collaborative and constructive manner. The ICA is firmly committed towards participating in such constructive problem-solving in a manner which empathizes with the interests of all concerned stakeholders.

Phase 2 should take no longer than a year at most. A successful Phase 2 may be achievable within six months with a motivated team of experts that has completed the preparatory work of limiting the scope of the review beforehand.

The Status Report in General

The Status Report was generally well done. The ICA commends ICANN Staff for preparing the Report which laid out the policy landscape and canvassed some of the common themes that arise when examining the UDRP. Although we noted some issues with particular date, the ICA was pleased to see that fairness was identified as a primary concern along with efficiency.

The Temporary Specification

Although the lack of availability of registrant information continues to be a challenge for both Complainants and Respondents in the UDRP, the procedures in Appendix E to the Temporary Specification have generally worked satisfactorily. Perhaps some adjustment and refinements are required, however this feature of the UDRP is not likely to require a lot of attention in Phase 2.

In particular, the ICA has noted that some registrars may be harming UDRP Respondents by not being forthcoming with the Registration Data that they are required to provide pursuant to the Temp Spec. Instead, some registrars have merely provided the name and contact details for the registrar's Whois privacy service, thereby not confirming the actual ownership of the disputed domain name and prejudicing the Respondent who must then take steps to prove ownership when it should have been revealed by the registrar to begin with.

It should also be remarked that although UDRP Complainants clearly have an important interest in accessing Registration Data for UDRPs, Respondents do as well. Third party and Complainant Registration Data can often form a crucial part of the defense of a UDRP and accordingly, when it comes to provisions enabling access to Registration Data, such as via the proposed SSAD, Respondents should also have a means to access this important information.

UDRP Goal: Efficiency

We note that the Status Report states that the "overall trend line for complaints filed with UDRP Providers shows a slight upward trend, with an average growth rate of 6% per year since 2014". We agree that this is at most, a relatively "slight" upward trend.

Pursuant to the Verisign Domain Name Industry Brief of April 2014, "the fourth quarter of 2013 closed with a base of 271 million domain name registrations across all top-level domains.²³ By the end of 2020 (2013 was the beginning and 2020 was the end date of the Issue Report's observation period) according to the Verisign Domain Name Industry Brief, there were 366.3 million domain names registered across all TLDs. That is an increase of nearly 100 million domain names during the observation period. The corresponding period of 2013 to 2020 saw an increase in UDRP cases from 4,157 to 6,271 with an average growth rate of 6% per year, despite there being nearly 100 million more domain names registered by the end of the observation period.

What this demonstrates is that the number of UDRP disputes has experienced relatively modest incremental growth that is more or less commensurate with the number of registered domain names. There has been no substantial increase in UDRP disputes in relation to the number of domain names registered and there has been no unusual or unexpected increase within the context of how many domain names are registered. This is not to say that cybersquatting is not a significant problem or that the UDRP is not effective. Rather, it is to put the UDRP's relatively modest and incremental growth into the appropriate context so that the appropriate conclusions can be drawn. In terms of the numbers of total domain names registered, the number that are subject to a UDRP complaint each year is a relatively minuscule fraction.

What the Status Report's statistics do not convey however, is the substantial delays that parties often encounter from the time that a Complaint is filed to the decision. A review of the efficiency of the UDRP from that perspective is revealing. Parties, both Complainants and good faith Respondents, have an important interest in the quick adjudication of the dispute. Complainants

²³ https://www.verisign.com/en_US/domain-names/dnib/domain-name-industry-brief-reports/index.xhtml#2013

want quick resolution so that the cybersquatting is resolved. Good faith Respondents want quick resolution so that their valuable domain name is unlocked after having been locked during the pendency of the UDRP. A UDRP procedure can take anywhere from a minimum of about 25 days at best, to a maximum of several months at worst. Sometimes the delay is caused by certain UDRP Providers not adhering to the UDRP Rules. Pursuant to Rule 15 of the UDRP Rules, in the absence of exceptional circumstances, the Panel is required to forward its decision on the Complaint to the Provider within fourteen (14) days of its appointment. The Provider is then required pursuant to Rule 16(a) to communicate the full text of the decision to each party within three (3) business days. There are often lengthy delays, spanning weeks between the Panel's deadline and communication of the decision, where no exceptional circumstances exist. These delays are apparent when examining the filing data and decision date amongst other data which is publicly available in the decisions themselves.

Moreover, some UDRP Providers take inordinate amounts of time to collect fees and appoint a panel, particularly a three-person panel, with no UDRP Rule directly governing how long these procedures are supposed to take. This gap in the Rules sometimes contributes to parties waiting months for a UDRP decision through no fault of their own.

UDRP Goal: Fairness

The statistics provided by the Status Report do not adequately convey the UDRP's performance from a fairness perspective. Although the report cited that Complainants win about 78% of cases, in reality it is far higher – something around 90% to 95% after taking a closer look at the data. That is not the issue however. UDRP Complainants win - and should win - the vast majority of cases since the UDRP was intended to address clear cases of cybersquatting and typically there is no defense of such cases. Indeed, the Final Report of the WIPO Internet Domain Name Process, dated, April 30, 1999 specifically states that the application of the UDRP should be focused on “clear cases” of cybersquatting “often directed at famous and well-known marks”, rather than “any intellectual property dispute arising from the registrations of a domain name”.²⁴

The fairness issue is not really a product of how many cases Respondents win or lose. The fairness issue arises in numerous different ways. For example, it is unfair that panelists are nearly exclusively drawn from the ranks of Complainant counsel with little representation from Respondent counsel who are often denied accreditation by UDRP Providers. It is unfair that Complainants are able to exclusively select the Provider when that indirectly encourages Providers to cater to their customer - which is the Complainant. It is unfair that Providers get to select the candidates for three-member panels when Providers' rosters have little to no representation from Respondent-side counsel. It is unfair that the WIPO Consensus View, a document which WIPO admirably prepared at great expense and effort, did not include input from Respondent-side counsel and as a result is skewed in some areas in favor of Complainants.

The vast majority of UDRP disputes concern clear-cut cases of cybersquatting on virtually worthless domain names, and the minority of such cases – cases which typically result in defeat of the Complaint - involve highly valuable generic, descriptive, and brandable domain names.

²⁴ <https://www.wipo.int/amc/en/processes/process1/report/finalreport.html>

What this means in effect, is that domain names worth millions of dollars are treated in the exact same abbreviated fashion as clear-cut cybersquatting cases when the circumstances and stakes are vastly different and domain name investors are put to considerable cost, effort and risk in defending against meritless Complaints.

The UDRP was created to remedy what is ultimately an economic harm. Yet the UDRP itself inadvertently creates significant economic harm, particularly to the domain name secondary market. Evaluating the efficacy and fairness of the UDRP merely by counting decision outcomes is a poor metric. A single unjustified transfer of a high-value generic domain name as a result of a misguided decision by a UDRP panel may inflict far more economic harm than thousands of properly transferred, but low traffic typosquats.

We commend ICANN Staff for recognizing that Reverse Domain Name Hijacking has gone up. We note that pursuant to the statistics available at RDNH.com, there were approximately 48 UDRP cases across all UDRP Providers where RDNH was declared in 2021. There were approximately 37 RDNH cases in 2020. There were approximately 33 cases in 2019, 45 cases in 2018 and 45 cases in 2017, 37 cases in 2016, 31 cases in 2015, 25 cases in 2014, and 26 cases in 2013.²⁵

Clearly, RDNH has gone up over the years. This demonstrates two things. First, it demonstrates that more UDRP Panels are sanctioning bad faith Complainants, which is a good thing. Second, it demonstrates that good faith Respondents continue to be subjected to egregious bad faith Complaints and at an increasing rate. We also note that there are numerous UDRP cases where panelists failed to consider or failed to find RDNH where the circumstances clearly warranted it, thereby demonstrating that the number of actual RDNH cases is actually higher than the data shows.

While RDNH – even in its present form without any real bite – is an important tool in deterring hijacking attempts and providing a moral penalty, the real lesson here is that there ought to be a better way of weeding out or discouraging such Complaints to begin with. It is of little succor for a good faith Respondent to win a UDRP and to get an RDNH finding in its favor, compared to not having to defend against such a Complaint in the first place. Some attention needs to be paid to how such Complaints can be avoided altogether.

UDRP Goal: Addressing Abuse

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

Looking Ahead: Improving the UDRP

²⁵ RDNH data should be acquired from each Provider. We note that some UDRP Providers do not publish RDNH statistics despite providing detailed statistics on many other aspects of the UDRP. This is concerning as the failure to publish such data could be interpreted as an intentional effort to inexplicably de-emphasize the occurrences and importance of RDNH which remains of primary importance to good faith domain name registrants who have been victimized by abusive RDNH Complaints.

While on the whole the UDRP has performed admirably, particularly for trademark owners, one of the substantial concerns of domain name registrants and investors is consistency of decisions. Time and time again we see UDRP Panels go one way, and then the other, depending on the particular Panel's views and interpretation of the UDRP. This affects the predictability of the UDRP for both Complainants and Respondents. This remains one of the primary challenges for Phase 2 to address.

Another substantial challenge for Phase 2 to potentially address is oversight of the UDRP procedure. Currently, there is no actual oversight of Providers, Panelists, or the jurisprudence. It is a miracle that in 20+ years the system was able to perform as well as it has. Nevertheless, we cannot rest assured that at some point in the next 20+ years, a bad actor will intentionally or negligently harm the UDRP by failing to follow norms and conventions. For example, a new Provider could be accredited that performs horribly and issues decisions that turn established jurisprudence on its head. Or a rogue Panelist can issue decisions that ignore established consensus views. These contingencies should be considered in Phase 2 and provisions should be made for actual and active oversight of the UDRP by ICANN in conjunction with stakeholders.

At a fundamental level, the UDRP is a policy drafted a generation ago in the early days of the commercial internet in response to the problem of bad faith actors cybersquatting on famous marks. Consistent with the times and with the problem it was attempting to address, the language of the UDRP reflects a view that if a domain name is similar to a trademark and if the domain name owner is attempting to sell it at a profit, then that situation has all the indicia of bad faith cybersquatting. The domain name aftermarket became a significant industry shortly after the adoption of the UDRP. The basis of the domain name aftermarket is the buying and selling for a profit non-distinctive, inherently appealing domain names. As the domain names are based on inherently appealing words, such as caribou.com and ovation.com, these words are often registered as marks by multiple companies around the globe. The broad language of the UDRP in its attempt to describe cybersquatting, can also be read to describe legitimate domain name investing as well, and in fact is often used by covetous complainants in precisely this manner. Moreover, since the UDRP does not expressly recognize that investment in domain names is a legitimate business, domain name investors have constantly struggled in defending themselves against UDRP Complaints. Much progress has been made on this front in terms of panelists recognizing domain name investment, but the insecurity remains from the UDRP not expressly recognizing domain name investment and from the use of very broad language which can be wrongly harnessed and interpreted to cover legitimate domain name investing.

The lack of a consistent binding jurisprudence enables each of hundreds of accredited panelists to make independent and subjective determinations as to what constitutes bad faith. Moreover, UDRP cases are adjudged largely by representatives of brand owners who over time have adopted interpretations of the UDRP which tend to favor trademark interests and weaken protections for registrants. Efforts should be made to address this issue.

The ICA strongly believes that the UDRP can be an effective tool for combatting cybersquatting without undermining the rights of lawful participants in the domain name aftermarket. The ICA seeks improvements to the UDRP that to help prevent the domain name aftermarket from being inadvertently caught in the crossfire between brand owners and cybersquatters. Phase 2 needs to

address this ongoing issue and consider the lawful, robust and important secondary market which largely arose subsequent to the establishment of the UDRP.

We look forward to developing solutions to these and other issues with our fellow stakeholders in Phase 2.

Yours truly,
INTERNET COMMERCE ASSOCIATION

A handwritten signature in black ink, appearing to read "Z. Muscovitch".

Per:
Zak Muscovitch
General Counsel, ICA