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Financial Services Inc.**

April 19, 2022

ICANN Generic Names Supporting Organization (GNSO)

Subject: Call for Public Comments on Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP)

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Dear ICANN GNSO,

This submission is in response to the call for public comments on "Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP)" as per the notice at:

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

I also attach our October 23, 2021 54-page submission to the GNSO as a separate PDF, for completeness (a few sections reference the UDRP and the Notice of Objection system proposal previously submitted to the IGO ePDP, expanding on material previously submitted to the RPM PDP working group). It was originally submitted at:

<https://www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-curative-rights-protections-igos-14-09-2021/submissions/kirikos-george-24-10-2021>

Sincerely,

George Kirikos

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1. INTRODUCTION

Leap of Faith Financial Services Inc. is a privately held company based in Toronto, Canada. It is the owner of approximately 500 domain names, including school.com, math.com, leap.com, seeds.com, and options.com. This portfolio is worth many millions of dollars. As such, we have a direct interest in any changes to the UDRP, to the extent that those changes harm domain name registrants' rights to due process and our rights under national law in our national courts (in Ontario, Canada).

We have long been defenders of domain name registrants' fundamental rights in ICANN policymaking, and make our comments in that same spirit in this response to the Policy Status Report.

It's important to note that we are not cybersquatters. We **despise** cybersquatting, and applaud efforts to hold those bad actors fully accountable, especially in the courts (as Verizon did with iREIT¹, for example). We have advocated for **balanced policies** which target actual cybersquatters while ensuring that those falsely accused of cybersquatting are fully protected.

This is not some theoretical debate. We personally faced a UDRP over a valuable short dictionary word dot-com (Pupa.com), despite registering it in good faith. Instead of waiting for the outcome of the UDRP (which eventually decided to defer to the courts), we exercised our right to go to court in Ontario, Canada, and our position was fully vindicated, with costs awarded against the defendant (an Italian cosmetics company).²

We are sympathetic to trademark holders who are targeting actual cybersquatters. However, we must ensure that the rights of innocent domain name registrants who are falsely accused of cybersquatting are fully protected.

1 [Verizon hits tiny iREIT with cybersquatting suit](https://www.bizjournals.com/houston/stories/2007/04/23/story4.html), April 22, 2007,

<https://www.bizjournals.com/houston/stories/2007/04/23/story4.html>

2 [Ontario Court Rules In Favor Of George Kirikos On Pupa.com & Awards \\$4,500 In Fees](https://www.thedomains.com/2013/04/08/ontario-court-rules-in-favor-of-george-kirikos-on-pupa-com-awards-4500-in-fees/), April 8, 2013,

<https://www.thedomains.com/2013/04/08/ontario-court-rules-in-favor-of-george-kirikos-on-pupa-com-awards-4500-in-fees/> ; [Canadian court orders company pay costs over wrongful domain claim](https://domainnamewire.com/2013/04/08/canadian-court-orders-company-pay-costs-over-wrongful-domain-claim/), April 8, 2013,

<https://domainnamewire.com/2013/04/08/canadian-court-orders-company-pay-costs-over-wrongful-domain-claim/>

2. POLICY STATUS REPORT IS REplete WITH INCORRECT STATEMENTS

Unfortunately, the long-awaited Policy Status Report prepared by ICANN staff for the benefit of the community is **replete with incorrect statements**. As such, the report is **not a useful contribution to the policy debate, but instead detracts from it**.

For example, the top of page 11 of the report notes that the “observation period” was **2013 to 2020**, and claims in footnote 11 on the same page that **“Note that the observation period is determined by the availability of data.”**

This is a completely false statement by ICANN staff, and is disrespectful to the ICANN community. The UDRP began in 1999, and all the decisions are public. It is not correct for ICANN staff to claim that the data isn’t available. At FORUM/NAF, they can be found via the search page³. At WIPO they’re all available⁴. At eResolution, they’re available via Disputes.org (although occasionally the website’s down, so Archive.org⁵ might be better). They’re also available via 3rd-party analysis sites like UDRPSearch.com and UDRP.tools (e.g. search for “crew.com”, an early bad decision).

Indeed, ICANN staff **knows** that this data is available, because UDRP case outcomes used to even be hosted on the ICANN website!⁶

Why does this matter? This is the first time that the UDRP is being formally reviewed since its inception, and it’s critical that **all** of the data be reviewed, not a **staff-selected subset**. By manipulating the base year, for example, false conclusions can be arrived at regarding ‘trends’. We can see plainly that there were **fewer** UDRP cases at WIPO in 2013 than there were in 2012, for example. By dropping 2012 from the dataset, ICANN staff can manipulate any stated “trends” of increasing complaints. Furthermore, without the data from 1999 to 2012, we can’t determine the impact of new gTLDs relative to the period before their launch - this is one of the reasons the UDRP review was delayed for so long, to study the impact of new gTLDs. Also, some of that early data is relevant to the topic of forum shopping, as

3 See: <https://www.adrforum.com/domain-dispute/search-decisions>

4 See: <https://www.wipo.int/amc/en/domains/casesx/all.html>

5 See: <https://web.archive.org/web/20220303005112/http://www.disputes.org/index.htm>

6 See: <https://web.archive.org/web/20080217002918/http://www.icann.org/udrp/> and <https://web.archive.org/web/20080228012238/http://www.icann.org/udrp/proceedings/date-index.html> and <https://web.archive.org/web/20080216234902/http://www.icann.org/udrp/proceedings-stat.htm> for examples via Archive.org

noted by Professor Michael Geist⁷. Indeed, eResolution shut down, perhaps because registrants were winning too often if they used that provider, and so complainants were reluctant to initiate complaints with them.

Producing a report that is predicated on a **false statement** concerning data availability should be **disqualifying** in itself. **The entire report should be tossed out on that basis alone.**

Not only did ICANN staff make false statements to the public about data availability, some of the data that they did publish is **plainly wrong!** For example, chart 5 on page 44, referenced from page 38, supposedly represents the total gTLD domain name registrations, compared with the UDRP complaints. In 2020, it claims there were more than 400 million gTLD domain names, and in 2013 there were 300 million gTLD domain names. This is obviously wrong. ICANN might be incorrectly including ccTLD registrations, to arrive at these huge numbers (which would not be appropriate, given that ICANN only develops policies for gTLDs). ICANN posts monthly registry reports where it can obtain accurate numbers. For example, the monthly reports for dot-com are here⁸. Dot-com had 114,359,327 registrations at the end of December 2013, and there's no way all the other gTLDs (like .net/org/etc) amounted to 186 million domains in 2013. At the end of 2021, there were 341.7 million domain name registrations across all TLDs, according to the Verisign Domain Name Industry Brief.⁹ That 341.7 million figure includes most (but not all) ccTLDs, thus the value for gTLDs is even lower (and would never have been as high as 400 million in 2020). ICANN staff do not even provide a citation for their data source, which one would expect in a scholarly endeavour worthy of peer review.

Footnote 58 was used to misleadingly justify only using FORUM in the calculation of case lengths, even though the procedural history is embedded in each WIPO decision.

Footnote 59 states the number of court cases following a UDRP is 84, which doesn't match the number of cases (I count 48) on the current page.

The above are simply **samples** of the data integrity issues with this report. The data is not accurate, not complete and not consistent. As we are not paid to enumerate every example, we will simply summarize that the report is **replete** with errors, and as such should be withdrawn. [Using the "three strikes" rule, 3 examples should be sufficient, yet we provided 4 examples

7 See: <http://aix1.uottawa.ca/~geist/fairupdate.pdf>

8 See: <https://www.icann.org/resources/pages/com-2014-03-04-en>

9 See: https://www.verisign.com/en_US/domain-names/dnib/index.xhtml

above.] It should not be the job of the public to perform and redo (on an unpaid basis and with limited time and resources) the work that was assigned to paid ICANN staff. If ICANN staff are unwilling or unable to do the work properly, they should be terminated and either be replaced with those who can do it, or ICANN can outsource the work to external contractors (for example university professors with research staff).

Furthermore, we have long advocated¹⁰ that all UDRP decisions be published/tagged in standard XML formats, which would have made it possible for the community to have more easily done some of the research themselves, rather than rely on ICANN staff to do it. Now that ICANN staff have demonstrated that they are incapable of doing the work properly themselves, this standardization effort should be prioritized, using the resources from ICANN's "Open Data Initiative" (which has been a failure to date; for example, a mere 412 total downloads at the time of this submissions of their **most popular** dataset).

3. ICANN'S SUPERFICIAL REVIEW OF POLICY ISSUES

While the ICANN staff report amounts to 88 pages, much of it is "fluff", and not "new research." The length was indeed padded by relatively low value data on topics like ICANN complaints, which will have little to no impact on policy outcomes. Much of the report is simply copying and pasting very old material, rather than producing anything new. While "recycling" is good for the environment, it's not good for serious ICANN policymaking.

ICANN staff did not appear to attempt to gather a **comprehensive** list of academic articles concerning the UDRP, for example, which they could have done using Google Scholar and other academic databases like ProQuest. That should have been a starting point for any serious academic, but it appears few at ICANN have any experience with the high standards of academic research¹¹.

They did not appear to attempt to gather a **comprehensive** list of articles from popular industry blogs and forums (e.g. CircleID, DomainNameWire.com, FreeSpeech.com, DomainInvesting.com, DNJournal.com, NamePros.com, TheDomains.com, OnlineDomain.com all the blogs listed on Domaining.com and the various ones in the trademark community) that have written about the UDRP for the past two decades. There have even been books written about the UDRP, e.g. by Gerald Levine

10 See, for example, <https://gns0.icann.org/mailing-lists/archives/ga-200709/msg02391.html> among many examples.

11 The author of this submission has published multiple peer-reviewed articles in finance journals.

and others. There should be a list of hundreds, if not thousands of articles that should be carefully read and digested, to properly and systematically review the UDRP. This was just not done.

For example, had a search of the term "UDRP" been done at CircleID, they would have found over 100 matches at that one site alone.¹² Important articles that were not cited in the report such as the articles about laches¹³, and lack of cause of action¹⁴, would have been cited, but they were not. The second article underscored that "The unwillingness of U.K. courts to review UDRP decisions is a **serious problem** for domain name registrants." To the ICANN staff that prepared this report, that kind of issue did not merit being mentioned. These are not examples that are meant to be exhaustive --- there are simply too many articles for us to highlight in this submission. **To submit an exhaustive and comprehensive list would be preposterous, as it would mean doing all of the work that ICANN staff should have done, but on an unpaid basis with less time and fewer resources.**

Furthermore, primary data collection did not occur with respect to court cases involving the UDRP. The WIPO list is far from complete, as was noted¹⁵ during the RPM PDP Phase 1 work. Indeed, WIPO even removed cases from that list¹⁶, to perpetuate their own pro-complainant agenda. ICANN staff could have performed a comprehensive search using JudyRecords.com, for example (which has recently disabled that search temporarily, due to a privacy issue). And there are other legal databases of cases, both in the USA¹⁷ and abroad. With ICANN's resources, they can certainly afford to search commercial legal databases that better index those harder-to-find cases. Alternatively, ICANN staff could have obtained more complete lists of cases directly from the largest domain name registrars (who need proof of court case filings to stop a UDRP decision from being carried out).

No mass surveys of actual complainants and respondents in the UDRP were attempted, to gauge the actual experience of parties to the policy. While there have been very limited (and not statistically significant) surveys of some of the lawyers involved in UDRPs in the past, the actual parties (domain owners) have never been properly surveyed by ICANN. Contact data exists from the registrars and/or the UDRP providers, or could have

12 There are even more matches (presumably capturing comments) if one does a Google search of:

site:circleid.com UDRP

13 See:

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

14 See: https://circleid.com/posts/20180103_the_udrp_and_judicial_review

15 See: <https://mm.icann.org/pipermail/gnso-rpm-wg/2018-April/002940.html>

16 See: <https://mm.icann.org/pipermail/gnso-rpm-wg/2018-June/003148.html> and

<https://mm.icann.org/pipermail/gnso-rpm-wg/2018-May/003059.html>

17 See partial list at bottom of: <https://www.judyrecords.com/info>

been the subject of outreach in an open process (with verification performed at the time of the survey).

ICANN staff did not attempt to make any comparison with other ADR systems, for e.g. the US "Copyright Alternative In Small Claims Enforcement Act" (CASE)¹⁸ which has an explicit "opt-out" procedure (which should be adopted by the UDRP). Nor did international comparisons take place, for example the CIRA (dot-ca) CDRP or Nominet's (dot-uk) DRS. These are all basics that one would expect in a policy review, but ICANN staff didn't undertake to do this basic research for the community's benefit.

ICANN staff appear to concede the need for further research, yet failed in their task to perform that research. For example, on page 59 they state:

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

Did they do that "additional analysis"? Of course not! They simply engage in some "hand waving" exercise, to hope that readers didn't notice. That "additional analysis" was missing throughout the entire report, of course. Indeed, they should highlight (perhaps in red text) everything that they did which was "new", to show how little they actually did in this report.

In other words, the ICANN staff who prepared this report appeared to not have an open mind at the start. They did not do a wide scan for available articles that were critical of the UDRP. Instead, they started from a **biased position** that the UDRP was hunky-dory, and **did not go out of their way to look for any evidence that would undermine their desired predetermined outcome.**

4. ADDITIONAL TOPICS FOR REVIEW

With the limited time available to prepare our public comments (ideally, we would be permitted to actually be in the working group reviewing this topic, but are **unfairly banned**¹⁹ from participating), here is a **sample** of some of the topics that should be reviewed (not listed in order of importance):

18 See: https://en.wikipedia.org/wiki/CASE_Act

19 See: <https://freespeech.com/2019/04/05/update-my-participation-rights-have-now-been-eliminated-at-icann-working-groups/>

- **Explicit Opt-out provision for the UDRP**: modelled on the US CASE Act²⁰
- **Limitation Period for complaints**: different and distinct from laches mentioned above, a limitation period modelled on classic "statute of limitations" would force the policy to focus on actual clear-cut cases, which are usually registered and used maliciously within a short time period after registration. The UDRP should not be used to target domains that are 6+ years past their creation date. Just like it's harder to challenge trademarks after they become "incontestable", domain disputes using this streamlined procedure should not be used for longstanding registrations.
- **Optional "Legal Contact" within WHOIS**: To reduce the risk of defaults, and improve actual notice to registrants, domain owners should have the option of adding a separate legal contact within WHOIS (which may or may not be displayed in the public WHOIS), who can receive complaints (separate from billing, technical and admin issues).
- **Time to Respond To Complaints Expanded, Based on Age of Domain**: Registrants should receive longer periods to respond to complaints, as 20 days is insufficient. The same should be done for appeals to courts (allow more than 10 days, upon filing of a security bond or other instrument). Furthermore, more time should be given depending on the age of the domain (e.g. 3 extra days for each year the domain name has aged, since its creation date).
- **"Registered In Bad Faith" Date To Be Explicitly Be The Creation Date**: Consistent with the court's reasoning in the GOPETS v. Hise case²¹, define explicitly that the "registered in bad faith" date be the creation date of the domain (not the change of ownership dates)
- **Explicitly Permit Transfers Of Ownership Within Related Entities Which Don't Reset Any UDRP Date Tests**: If the GOPETS v. Hise precedent is not adopted, then as an alternative, and for greater certainty, companies and families (individuals) should be explicitly permitted to transfer ownership of domains to related entities **without** affecting the "registered in bad faith" test date. While some panelists may interpret it this way, it should be made explicit, for corporate and estate planning purposes, and to protect against rogue panelists. Just as trademark, copyright and other intangible asset owners are permitted to assign their rights without losing seniority of their rights, domain name owners should have the same rights, explicitly protected.
- **Formal Mediation Step**: There should be a formal mediation step, like the DRS.

20 See: <https://www.copyright.gov/about/small-claims/>

21 See: <http://cdn.ca9.uscourts.gov/datastore/opinions/2011/09/22/08-56110.pdf>

- **Ensure Access To the Courts for Full De Novo Review On The Merits**: This was the subject of 3 separate proposals²² in Phase 1 of the RPM PDP, but they were blocked from public comment and consideration. David Maher published an article²³ on CircleID about the problem. **Furthermore, our substantial (54 page) submission²⁴ to the IGO ePDP (attached as a separate PDF to this comment) went into much more detail on the history, and the "Notice of Objection" system proposal. This solution simultaneously solves both the IGO issue and the "lack of cause of action" issue, as fully documented in that separate PDF (especially the first 21 pages).** This is arguably the **most important topic** that needs addressing, given it is actually harming registrants' access to judicial review in various jurisdictions like the UK and Australia.
- **Merging URS and UDRP Into a Single Procedure**: the URS should be entirely eliminated, and instead the UDRP should be improved to focus on the actual clearcut cases. This would reduce costs, and furthermore allow serious disputes to be handled by the courts (e.g. via the opt-out mechanism discussed above, or by security bonds or other mechanisms to "white-list" good faith registrants, etc.)
- **Greater Oversight For UDRP Providers and Panelists**: The current "accredit and forget it" system needs to end, so that rogue panelists and providers can be held accountable. Providers should have formal contracts with ICANN, with third party beneficiaries so that registrants can hold them accountable if ICANN fails to act. FORUM/NAF in particular has a controversial track record, having been forced out of consumer arbitrations.²⁵ As the Wikipedia article notes:

Consumer advocacy groups and attorneys frequently claim that the National Arbitration Forum is the most biased against consumers of the major arbitration organizations.

In its June 16, 2008 cover story, Business Week published an in-depth look at credit collection arbitrations at NAF. The story describes how NAF markets itself to collection lawyers and then works with them in ways that raise questions about its impartiality.[10]

- 22 See: <https://community.icann.org/download/attachments/93126760/URS-Proposal-18.pdf?version=1&modificationDate=1537972999000&api=v2> and <https://community.icann.org/download/attachments/93126760/URS-Proposal-19.pdf?version=1&modificationDate=1537972999000&api=v2> and <https://community.icann.org/download/attachments/93126760/URS-Proposal-20.pdf?version=1&modificationDate=1537972999000&api=v2>
- 23 See: https://circleid.com/posts/20180103_the_udrp_and_judicial_review/
- 24 See page 1 of this submission for links.
- 25 See: [https://en.wikipedia.org/wiki/Forum_\(alternative_dispute_resolution\)#Controversy](https://en.wikipedia.org/wiki/Forum_(alternative_dispute_resolution)#Controversy)

Public Citizen study

In 2007, non-profit consumer advocacy group Public Citizen criticized the National Arbitration Forum, including its fee schedule and alleged bias.[11]

According to a July 2008 Navigant analysis of the Public Citizen data,[12] 26,665 arbitrations out of a total of 33,948 arbitrations were either heard or dismissed (i.e. excluding settlements). According to the analysis, of these 26,665 arbitrations, consumer parties were reported to have prevailed outright or had the case against them dismissed in 8,558 cases (32.1%). In an additional 4,376 cases (16.4%), the arbitrator did not award the full amount demanded by the business.

In March 2010,[13] a study of the National Arbitration Forum's record of panelist appointments for domain name disputes was published.[14] It raised concern that a small handful of the NAF's roster panelists were appointed to hear disproportionately many cases. In one instance, a single panelist was appointed to hear 949 cases, or about 10% of all NAF domain name dispute cases ever heard. In August 2012, the study was updated and it showed a continued concentration of panelist appointments wherein seven NAF-selected panelists were appointed to hear nearly half of all cases.[15]

Legislation and lawsuits against NAF

City of San Francisco lawsuit

In March 2008, the City of San Francisco filed a lawsuit against the National Arbitration Forum on behalf of its citizens, accusing the arbitrator of unfairly favoring credit card companies in disputes with their customers.[1] The city alleged that the NAF was practicing unethically and wrongly with such specific concerns as ignoring evidence, inflating awards and declining hearing requests by consumers. [16] The lawsuit said that between January 2003 and March 2007, consumers won 0.2% of the 18,075 arbitration cases in California that were not dropped, settled or otherwise dismissed.[1]

Businessweek's allegations of bias

In June 2008, Businessweek made broad claims of NAF's bias in favor of consumer creditors and hidden conflict of interest. According to the article, NAF markets itself to consumer credit providers, collection agencies and law firms.[17]

Minnesota Attorney General lawsuit

On July 14, 2009, the Minnesota Attorney General Lori Swanson brought a lawsuit against the National Arbitration Forum for consumer fraud, deceptive trade and false

statements in advertising.[18] Key to their complaint was allegations that the NAF had deliberately hidden its ties to the businesses it represented and actively encouraged their naming as mandatory arbitrators in contracts.[19] The National Arbitration Forum countered that its arbitrators were independent practitioners, which ensured that its arbitration was impartial.[20] However, citing legal costs, the National Arbitration Forum agreed the week after the filing to stop accepting consumer debt collection cases for arbitration.[21][22] According to the Minnesota Attorney General, the National Arbitration Forum's settlement with the State of Minnesota required the company to stop handling current consumer arbitrations and to not process or administer new consumer arbitrations after July 24, 2009.[23]

For years, National Arbitration Forum ("NAF") falsely held itself out as an independent provider of neutral arbitration services in consumer debt matters, unaffiliated with any person or entities within or outside the collection industry. However, NAF has been investigated by Minnesota local and state prosecutors for working alongside Mann Bracken authorizing illegitimate arbitration awards against consumers, deceiving the courts and the public. Both NAF and Mann Bracken concealed their relationship and the financial relationship with their common group owner known as Accretive.[24]

Despite this horrible track record, ICANN has not investigated FORUM/NAF to ensure that domain name registrants are protected. Similarly, panelists need to be held accountable.²⁶

5. ONE SIZE DOES NOT FIT ALL

The UDRP does not have all the safeguards and due process protections present in the rules of national courts. They are like an "online small claims court".

Who in 1999, when the original policies were being developed, would have thought that domain names could be worth USD \$30 million, for example, as per the Voice.com domain name transaction?²⁷ One would not expect that the same rules/procedures would apply to disputes involving a \$100 domain name compared with a domain name worth \$100,000 or \$10 million. It is time to recognize this reality, and adjust the rules accordingly, to either explicitly permit "opt-out" for high value domain names, or to have far greater safeguards for those disputes. Many trademark practitioners wish to "game" the procedure to target those high value domains, to engage in reverse domain name hijacking attempts, for economic benefits of

26 See: <https://domainnamewire.com/2009/12/28/2009-domain-dunce-award-panelist-andrew-f-christie/>

27 [MicroStrategy Sells Voice.com Domain Name for \\$30 Million](https://www.businesswire.com/news/home/20190618005248/en/MicroStrategy-Sells-Voice.com-Domain-Name-for-30-Million), Businesswire.com press release, June 18, 2019, <https://www.businesswire.com/news/home/20190618005248/en/MicroStrategy-Sells-Voice.com-Domain-Name-for-30-Million>

"upgrading" their domain name, rather than to actually target abusive domain name registrations. This gaming needs to be eliminated. We also need to recognize that an incorrect decision involving a high value domain name (e.g. ADO.com case²⁸) has far greater consequences than an incorrect decision involving a low value domain name (e.g. a typo domain with little traffic). These high value disputes should be reserved for the courts, unless **both** parties desire alternatives to the courts.

It's 2022, not 1999. Back when the UDRP was being developed in the late 1990s, there was a fear that cybersquatting cases would overwhelm the legal system. Similar fears were raised at the launch of the new gTLDs program (which led to the URS). However, we now know that those fears were overblown. Cybersquatting has long been in decline as a fraction of all registered domain names. And the number of times that cases ever get escalated to the courts has not skyrocketed over those years. The internet is no longer "shiny and new", and courts are more than capable of handling domain name disputes. The internet has matured, and the courts have also improved in the past 20 years, and are familiar with domain names. Thus, the need for alternate dispute resolution mechanisms that are specialized to a "new emerging technology" is just not there anymore (except perhaps in the view of those whose livelihood depends on diverting cases from the courts to ADR).

6. OPPOSED TO INTA AND OTHER TRADEMARK MAXIMALIST POSITIONS

We oppose the submission of INTA (which was already submitted by the time we prepared our comments). INTA members seek to engage in reverse domain name hijacking against domains that **predate** and are more senior than trademarks. Their focus is on taking away domain names that have seniority over more recent trademarks, by changing the "and" to "or" in the bad faith registration/use test. This is unacceptable, and would increase court cases that would seek to overturn outcomes from this absurd policy proposal. Furthermore, by shortening the response time as they propose, this would increase the number of default cases, further tilting things in the favour of complainants (who already win a very high proportion of cases).

While we have not yet seen the comments of the Intellectual Property Constituency, you can safely assume that we oppose anything they have to say, given their long track record of trademark maximalism and history of extremist proposals (as seen by their members in phase 1 of the RPM PDP).

28 See: https://circleid.com/posts/20180301_ica_statement_on_adocom_udrp_decision_overreaching_panelists

7. FINAL THOUGHTS

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