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

NCSG Comments

April 17, 2022

About NCSG

NCSG represents the interests of non-commercial domain name registrants and end-users in formulating Domain Name System policy within the Generic Names Supporting Organization (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

About this Public Comment Proceeding

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

Brief Background and General Comment

The report is elaborated on three main questions connected to the goals of the UDRP: (i) efficiency ("does the UDRP provide trademark holders with a quick and cost-effective mechanism for resolving domain name disputes?"); (ii) fairness ("does the UDRP allow all relevant rights and interests of the parties to be considered and ensure procedural fairness for all concerned parties?"); (iii) addressing abuse ("has the UDRP effectively addressed abusive registrations of domain names?").

On page 4, NCSG objects to the title/name that ICANN Org has given to the third category for evaluation of the UDRP and asks that it be revised. While the first two categories,

"Efficiency" and "Fairness," make sense to us, the third category, "Addressing Abuse", is not consistent with the original narrow language of the "alleged abusive registrations" which were the focus of the UDRP when drafted and adopted 20 years ago. The current wording, Addressing Abuse, is far too broad and plays into the rough and tumble debate now taking place across the ICANN Community on the scope, definition and treatment of "DNS Abuse." It is important not to confuse the two terms – alleged abusive domain name registrations and other abuse issues and redefine this third prong of the upcoming UDRP evaluation to not cause unintended associations or confusion.

NCSG requests that ICANN Org and the GNSO Council replace the term "Addressing Abuse" with something narrower and more directly applicable to the domain name registration concerns being address by the UDRP – and we suggest "Addressing Bad Faith in Domain Name Registrations," or something similar, as the appropriate title. Again, we fear the current "addressing abuse" title is too broad and likely to be misinterpreted in other policy debates – and our proposed new term is far narrower and closer to the goals of the UDRP. We thank ICANN Org for its close attention to this recommendation and request.

After this third prong is appropriately renamed, we note that it should be recast to address the possible abuse by both parties, complainant as well as registrant, in a UDRP proceeding: it is essential to note that item (iii) is either incomplete or lacking clarity. It should also mention abuse committed by intellectual property rights holders, as this is an explicit goal of the system. One can easily see this concern in the policy when observing the "Reverse Domain Name Hijacking" definition found in section 1 of the UDRP Rules.

This is especially relevant considering information provided about "Fairness" in section 1.4 (UDRP PSR Summary of Findings) of the Policy Status Report (page 11), mentioning that since 2013 Reverse Domain Name Hijacking has been on the rise.

Information provided about "Addressing Alleged Bad Faith in Domain Name Registrations" [formerly "Addressing Abuse"] right below this section, i.e., "average annual growth rate of 7% for decisions in favor of Complainants"[1], is not necessarily a good performance indicator. This growth may be a sign of more bias among Panels, considering that abuse may be committed by Complainants, something that the previous paragraphs point out is increasingly happening. Therefore, the first item of "UDRP Goal: Addressing Abuse" should be explained more clearly.

We note that the text on page 14 is somewhat misleading. While the ICANN Board adopted a version of the UDRP at the August 1999 meeting in Santiago, the Community and the public shared wide concerns about the fairness and balance of the rules offered by WIPO. The Board listened to these concerns and wrapped them into its resolution - and conditioned adoption of the UDRP on resolving these concerns. Thus "implementation," while used at the time, was a misnomer. The Board created a representative "drafting group," including the NCDHC (predecessor to NCUC and NCSG), which wrote significant changes that better balanced fairness and due process in the new UDRP policy, including

[1] There seems to be a contradiction in the Report. While this section affirms that decisions favorable to complainants are increasing, page 55 points out that there was a decrease in Complainant win rates from 2006 to the average between 2013-2020.

- adding the whole of 4(c) "How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint,"
- adding "Parity of Appeal,"
- offering a finding not only for bad faith by registrants, but a corresponding one for bad faith by complainants (resulting in the inclusion of "Reverse Domain Name Hijacking"), and
- better notice, among other changes. All of this work, and these changes, went beyond mere implementation to actual UDRP policy changes which were then "added to the registrars policy statement," http://archive.icann.org/en/udrp/staff-report-29sept99.htm It would be useful for further writings of ICANN Org to reflect more nuanced history of the early UDRP.

Specific Comments

1 Introduction

1.3 Impact of the Temporary Specification for gTLD Registration Data on the UDRP Policy (pages 8-10)

We note that the current discussion of the Temporary Spec on UDRP Policy does not reflect the extensive research, discussion and debate of the Phase I Rights Protections Mechanisms PDP Working Group. Clearly these groups must build on the work of each other, and thus, we ask that the Phase II WG, in its evaluation of the Temporary Specification for gTLD Registration Data, be told of the URS Final Recommendation #2 adopted by the Phase I WG, and adopted by the GNSO Council and ICANN Board.

Specifically, the Phase I WG should be given the whole of URS Recommendation #2, and its rationale, including:

> "URS Final Recommendation #2
>
> "The Working Group recommends that URS Rule 15(a) be amended to clarify that, where a Complaint has been updated with registration data provided to the Complainant by the URS Provider, URS Panelists have the discretion to decide whether to publish or redact such data in the Determination. The Working Group further recommends that each URS party has the right to request that Panelists consider redacting registration data elements from publication as part of the Determination."[2]
>
> "The Working Group noted that, prior to the EPDP, the standard practice had been for URS Providers to publish the party names in URS Determinations. According to

[2] Phase 1 Final Report on the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process, 10-11, https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-proposed-24nov20-en.pdf

> FORUM, registration data published in the URS Determination usually consists of a Respondent's name, city, state, and country/territory. The Working Group agreed that the decision to publish or withhold registration data in Determinations should not hinge on whether a Respondent prevails or loses. Some members emphasized that publishing such registration data, in particular the party names, in the URS Determination is a matter of public record for accountability and transparency purposes."[1]
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> * * * * *
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> "However, the Working Group also agreed that there may be exceptional circumstances for redacting the registration data, including party names (e.g., identity theft, use of the information of a minor, revelation of a political dissident, etc.). The Working Group believed that either URS party should be able to raise the specific reason for the Panelists to consider and request publication or redaction of registration data, but it is ultimately up to the Panelist to decide whether publication or redaction is appropriate. The Working Group's recommended action is consistent with Purpose 6-PA5, which states that "any request to redact a party's name from a decision should normally be submitted for the panel's consideration". The Working Group's recommended action is also consistent with WIPO's practice for UDRP decisions, where in a number of UDRP cases, Respondents' names are redacted in the published Determinations at a Panelist's discretion."

We note that content legal in one country, e.g., LGBTQ advocacy, is illegal and subject to the death penalty in other countries. Privacy and data protection laws are often designed to protect human rights, free speech and freedom of expression. Disclosure of the identity of a registrant, even in a UDRP decision, could create danger for that registrant and liability for the Provider and ICANN. These considerations, which arose in detail in the URS discussion in Phase I, should be carefully flagged, shared and considered in Phase II. We asked that future reports of ICANN Org to the GNSO Council and Community share all of the materials above and flag this issue, and the work of the Phase I PDP for the Phase II participants.

1.4 UDRP PSR Summary of Findings (page 11)

The URS Goal of "Efficiency" is missing a statistical metric needed for full and fair evaluation: how do the number of UDRP complaints filed each year map to the total number of registered domain names in gTLDs in that year? These are very important metrics, and we truly cannot tell if relative numbers of UDRP complaints are going up or down until we correlate them with the total numbers of gTLD domain names that exist in a given year, e.g., 7,052,350 in July 1999 and 108,686,057 in July 2009, for example.[3]

We ask that ICANN Org provide this data to the Phase II WG at the very outset of its work, as part of its Summary issues, and modify its charts to show this correlation for evaluation by future WG members.

[3] History of gTLD domain name growth, http://zooknic.com/Domains/counts.html

2 Background and Scope

On page 13 of the status report provides background information that is misleading, and probably incorrect. Because it involves a UDRP Provider, we think it is important for the facts to be clear and accurate. The status report states: "The initial idea for a uniform policy was proposed by the World Intellectual Property Organization," but that is not right. *The initial idea of a uniform policy was proposed by the US Department of Commerce, in its Statement of Policy commonly called "The White Paper," in June 10, 1998, which established the goal and then asked WIPO to work out the details - policy details then edited and expanded on by the Community.*

Specifically, the Department of Commerce wrote in the White Paper:

> "The U.S. Government will seek international support to call upon the World Intellectual Property Organization (WIPO) to initiate a balanced and transparent process, which includes the participation of trademark holders and members of the Internet community who are not trademark holders, to (1) *develop recommendations for a uniform approach to resolving trademark/domain name disputes involving cyberpiracy* (as opposed to conflicts between trademark holders with legitimate competing rights), (2) recommend a process for protecting famous trademarks in the generic top level domains, and (3) evaluate the effects, based on studies conducted by independent organizations, such as the National Research Council of the National Academy of Sciences, of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders."[4] [emphasis added]

WIPO did not initiate the work, but did continue it.

Background and Scope - continued (page 13)

In the last sentence, the status report states: "WIPO recommended that all registrants, in their registrations agreements, agree to this administrative procedure in cases of abusive registrations." Let's be fair about this: an accusation and a UDRP decision against a domain name are two different things. Therefore, we request that all references regarding the UDRP be changed from "abusive registrations" to "*alleged abusive registrations*," in all future ICANN Org writings to make clear that in the UDRP, as in all legal and arbitration proceedings, there is no upfront presumption of guilt.

2.1 Review of All RPMs in All gTLDs PDP (page 15)

It would be worth noting in future discussions that the order of Phase I and Phase II - the review of Rights Protection Mechanisms was not clear, but controversial at the time it was decided. *A number of stakeholders felt we should review the UDRP first and the additional rights protection mechanisms for New gTLDs later.* They shared that the UDRP is ICANN's

[4] White Paper, Federal Register, Vol. 63, No. 111, Wednesday, June 10, 1998, p. 31747 [emphasis added].

oldest consensus policy and thus well overdue for a review, and also that it serves as the foundation for the other RPMs, and should be reviewed first to check the foundation before reviewing the structure built atop it. But those expressing these concerns were told that there was a need to rapidly roll-out new rounds of New gTLDs, so the newer RPMs required review prior to the UDRP work. In the interest of completeness of the historical record, these concerns voiced by stakeholders about the order of review should be preserved and noted.

2.2 UDRP Policy and Rules

About Supplemental Rules (page 17): We argue that it would be fruitful if the Report clearly stated that Supplemental Rules should not favor either party in the dispute compared to UDRP Policy or Rules, to preserve balance and consistency. This clarification would be aligned with the Internet Commerce Association recommendations on avoiding forum shopping issues (page 54). If there is no consensus about this interpretation of "consistency", the Report should at least detail the meaning of this concept.

Further to avoid delay in the Phase II WG, ICANN Org should gather and provide to the WG the newest versions of supplemental rules adopted by each UDRP Provider, and the WG should evaluate questions, including:

- Whether the supplemental rules advance the goals of Efficiency and Fairness for all parties?
- Whether the diversity of supplemental rules creates any concerns?
- Should the supplemental rules be more standardized in the interest of fairness, efficiency and avoiding forum shopping?

2.3 Applicability of the UDRP (page 18-19)

As we leave the introduction and move into substantive discussion, nowhere have we seen the issue of lack of jurisdiction raised - and this issue was a critical part of the original UDRP discussion and evaluation. The problem was clear: sometimes in the legal system the trademark owner had no access to court. This situation could take place when the trademark holder weas in a different country from the registrant, registrar and registry.

Accordingly, the early ICANNers were asked to come up with a solution - and did. But the quid pro quo is that the remedies of the UDRP are limited to transfer or cancellation, should the trademark holder win, but not other types of remedies and fees because the registrant is being deprived of due process, including the protections that would normally be accorded by his/her/its home court.

2.4 UDRP Substantive Elements

About registrant legitimate interests (pages 20-21): We suggest the Report could be more detailed here and provide a better understanding of legitimate interest cases, including those

found in WIPO Jurisprudential Overview 3.0. For example, the last paragraphs of this section seem misplaced or inaccurate. Many UDRP panels have found that registrants have every right to hold a domain name based on a generic or dictionary word. We note that the footnoted reference to the policy in the status report seems incorrect – as the UDRP policy certainly does not say that registrants cannot hold domain names based on generic and dictionary words. Hence, this section should be restated in any further text to be more fairly balanced and more accurate.

Should the ICANN Org report on this subject discuss the registration of generic and dictionary words, and/or the passive holding of generic words or phrases, we ask that it provide examples of actual UDRP decisions on both sides: those in which the complainants have won and those in which the registrants have won (and note that through the work of skilled counsel on both sides, there are many decisions to choose from to illustrate the spectrum).

About registering domain names in bad faith (page 21): We believe it should be clearly stated here that the list of Paragraph 4(b) is not exhaustive, and Panels can consider as bad faith other situations not explicitly pointed out in the Rules on a case-to-case basis. However, it should also be stated that bad faith is always dependent on substantial proof or presumptions arisen from certain behaviors determined in the Rules. An interesting piece of data here would be to know how many UDRP procedures happen against repeated respondents, to understand if they represent a big chunk of new cases and if any new measure should be implemented to facilitate Complainants request against this specific group of respondents.

2.5 UDRP Procedural Elements (page 22)

We submit that discussion of UDRP Procedural Elements and the inclusion of "Precedent" as the title of the first subsection at the top of page 22 and, by implication, part of the UDRP is patently incorrect and shows a problem in the UDRP implementation as revealed by this writing. ***The UDRP, as recommended by the Community and accepted by the Board, expressly provided that decisions would not to become precedent****.* This limitation reflected the real concern by both trademark holder and domain name registrant representatives that the UDRP Providers and their Panels did not have the checks, balances and accountability of court, and therefore, Panelists should not be making binding precedents. As noted accurately by this law school writer in 2002, "Under the UDRP, Panels are allowed to use prior decisions to guide them in resolving disputes, but these decisions do not serve as binding precedent. Thus Panels expressly are not bound by previous decisions, regardless of similarity."[5]

Rather than assuming that emergence of UDRP precedents is good, ICANN Org should absolutely flag this issue as an inconsistency with adopted policy and ask the Phase II WG to closely evaluate and review. This type of quasi-arbitration process, with Panelists who are often Complainants at other moments, has little of the due process and impartiality of a

[5] Patrick Kelley, Emerging Patterns in Arbitration Under the Uniform Domain Name Dispute-Resolution Policy, Berkeley Technology Law Journal, Vol. 17, No. 1, Annual Review of Law and Technology (2002), pp. 181-204, 192.

traditional judicial process. While decisions made be valuable for their solid writing and reasoning, it is their persuasive value and not their precedential value that is allowed in the UDRP process. Absent an appellate mechanism in the UDRP, more Panelists drawn more impartially from the pool of excellent Registrant attorneys, as well as Trademark attorneys, and consensus agreement of the Phase II WG AND the Community, we stay with the status quo: that UDRP decisions do not have the binding force of precedent. annot make this element of the UDRP for truly it has never existed as one.

About Proxy and Privacy Services (page 23): We take issue with the direction of ICANN Org to the Providers that "[o]nce the Provider receives the Registered Name Holder and contact details from the Registrar, the Provider should add the information to the existing complaint." ⇒ to the extent that this amendment automatically results in publication of this private and protected registrant information (as it does in some URS systems), this is a problem to be flagged for the new WG.

We note that the publication could be life-threatening to the registrant or family, and that absence of review and evaluation of the privacy concerns, legal protections, equities of publishing the data (e.g., a persecuted political minority group) may outweigh any direction that ICANN Org may have given to the Providers on this issue. Like the Phase I WG with the URS, the Phase II WG must closely review this issue - without any assumptions as Proxy and Privacy Services did not exist in 1999 - and make decisions consistent with law and to prevent unnecessary risks to registrants and liability to Providers.

About Settlement (page 24): In providing useful data to the Phase II WG at its outset, we ask ICANN to gather information from each Provider about its settlements, including actual numbers and percentages of proceeding that terminate midway due to agreed settlement on this matter - and any other information that the Provider can provide. How often is settlement reached? Are there actors that would encourage it to happen more?

About Panelists (page 24): In further providing useful data to the Phase II WG at the outset of its work, we ask ICANN Org to ask the Providers for significant information about their Panelists, including a) when the parties know the Panelists and raise conflict of interest issues b) what information is available to the Parties so that they know about the Panelists, their firms and their own clients so that conflict of interest issues can be identified in the usual way.

Further, after 20+ years, there is extensive evidence of Panel selection and appointment. Each Provider should be able to provide a list of its top 40 Panelists and how often (and in what years) they have been appointed; their track record of decisions (for complainants or registrants) both as single Panelists and part of the three-Panelist panels. Also, what is their background, and how often do they as individual attorneys, and their firms, come before the same Provider attorneys representing their own UDRP matters. We assume that Providers will be very transparent in their provision of this information so critical for the evaluation of fairness and impartiality of the Panelists by the Phase II WG members.

2.6 Basic Stages of a UDRP Proceeding (page 26-28)

When the timeframes listed on these pages were created, they were guesswork. *Would the registrant receive the notice, understand the notice and be able to respond to the notice in 20 days?* We (the ICANN Community) were not certain. But after 20+ years, the Providers have and would undoubtedly share critical information with the ICANN Community at the outset of the Phase II WG work including: a) Numbers and percentages of Respondents who respond in the 20 period; b) numbers and percentages of Respondents who contact the Provider and ask for the four day extension; c) numbers and percentages of Respondents who ask for the extension and then have the time/ability to complete the response (vs. those who do not); d) numbers and percentages of Respondents who contact the Provider after the response period has expired with a desire to participate in the proceeding, but are now unable to do that.

Are these time periods fair? Are Registrants receiving the Notices? Do they understand the Notices? The IP Community is very good about training its well-educated attorneys about UDRP proceedings, but in all these years, have the Providers been able to successfully reach the noncommercial organizations and individuals engaged in noncommercial speech using their domain names who may have excellent defenses to a UDRP proceeding - if they only received timely notice (not bounced by spam filters and other blocking mechanisms) and fair and neutral guidance on how to respond.

Why are the default rates so high? When these rates cover cases of legitimate interest and good faith, and what can be done to lower them? This will be a matter of fundamental questions and concerns in the UDRP evaluation, and we used ICANN Org and the Providers to prepare detailed data early for the questions to come.

<u>Approved Dispute Resolution Service Providers (page 29-31)</u>

To avoid confusion on readers, specially outside the U.S., we believe it would be fruitful to mention the existence of national dispute resolution service providers based on the UDRP and in charge of ccTLDs domain names (such as SACI-Adm for ".br"), and then explain why these systems are not listed here - stating why they are from a different nature than those listed in Section 2.7, since .cl is cited at the end of the Report. This is easy to understand by those familiar with the system and ccTLD jurisdictions, but maybe not so much to outsiders.

<u>3 UDRP Goal: Efficiency (pages 35-44)</u>

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

and discussions provided in pages 35-44, and the future charts that will be presented to the Phase II WG.

4 UDRP Goal: Fairness

4.2 Selection of Panelists (pages 58-59)

We fully agree with and reinforce the necessity of a transparent process relating to panelist choice.

4.3 Reverse Domain Name Hijacking (pages 60-62)

We suggest that some mechanism to discourage this practice be implemented, such as generating a presumption in future cases against those Complainants considered to have attempted RDNH. However, if the possibility of a financial penalty is instituted, it is crucial to implement an opportunity for the Complainant's defense in cases where the RDNH attempt is not obvious and self-evident.

5 UDRP Goal: Addressing abuse

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

As noted above, this third category of “Addressing Abuse” is not consistent with the original narrow language of the “alleged abusive registrations” which were the focus of the UDRP when drafted and adopted 20 years ago. This category title is far broader than the allegations of bad faith domain name registrations that is the matter at hand, and directly plays into the rough and tumble debate now taking place across the ICANN Community as to the scope, definition and treatment of many other types of activity, and the disagreement as to the definition and scope of “DNS Abuse.” (See, e.g., the recent DNS Abuse Panel at ICANN73.)

It is critically important that ICANN Org and the Phase II WG not misuse or confuse these two terms – alleged abusive domain name registrations and other types of abuse issues – and therefore we strongly urge ICANN Org to rename this third prong in all future writings and ask as requested above, to “Addressing Bad Faith in Domain Name Registrations,” to avoid unintended associations and confusion.

Furthermore, we believe this section lacks much-needed details and explanations. Examples (or the most common reported cases) of each category should be given for better understanding, especially about those considered “ICANN Issues”. These explanations are critical because this section is perhaps the most important to identify flaws or gaps in the UDRP system and its management.

5.3 Education for Domain Name Registrants (pages 82-83)

Here, it is important to refer once again to the comments made above, on topic 2.6 ("Basic Stages of a UDRP Proceeding), since their possible flaws are intrinsically connected.

The report mentions the project developed by NIC Chile related to ".cl" ccTLDs as good practice, something that also shows the lack of measures taken by ICANN itself. We believe ICANN should have its own project to help unaware good-faith Domain Name Registrants being abused for not knowing how to deal with the UDRP procedures or not having resources to pay for assistance. "5 Things every Domain Name Registrant (That's You!) should know about ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension (URS) system" is a good starting point but still far from what is necessary to inform registrants adequately. A more comprehensive guide on how low-budget registrants can defend themselves should be elaborated, including majority interpretations affirmed in WIPO's Jurisprudential Overview 3.0, translating it to the most spoken languages among gTLDs registrants under UDRP jurisdiction.

A few final thoughts and concerns

As we think about the research that it would be useful for the Phase II WG to have as it begins its work - an important recommendation of the Phase I WG - we note that two types of studies, in addition to the ones discussed above, will increase efficiency and save time on critically important issues for the new WG:

a) On the question of Default - we are concerned that the protection intended for the defaulting registrants - including small organizations and individuals around the world who may never have heard of the UDRP, may not speak the language or for other reasons not understand the notices, or not receive the notices until after the very tight response time, among other factors - are not presumed to lose the UDRP proceeding.

   As everyone knows, the UDRP rules require a full and complete evaluation of the Complainant and the trademark holder must prove each and every one of the three elements of the UDRP complaint in order to prevail in the proceeding. This was a critical part of the policy adopted in 1999, and the balance struck by all of the stakeholders.

   Is this requirement being practiced or breached? A comprehensive discussion of default decisions - across all Providers, and with Registrants of many regions and operating in many languages - is critical to the future Phase II WG evaluation.

b) Appeal - should the UDRP have an appeal similar to the URS? For the evaluation of this important issue, ICANN Org can engage, or cause a contractor to carefully conduct advanced research on what happens to UDRP decisions that are suspended due to a concurrent court proceeding, or to a later court case. Even if the Provider does not have full information, there is a lot to be collected and collaged for the future Phase II WG, including:

i) UDRP decisions for a court proceeding, including location, court, decision and outcome;

ii) UDRP decisions taken to court, including location, court, decision and outcome;

iii) Inclusion of full decisions to see if the courts are following the call of review of UDRP decision de novo, or treating them as a review of traditional arbitration decision;

iv) Any further appeals that the Providers know about or that research tools can show us (did these case go up to appeal and, if so, how far and what were the decisions and outcome);

v) What concerns have the Providers, ICANN Org and others heard about the inability of parties from certain countries to bring UDRP decisions to their courts for review?

vi) and similar related de novo and judicial review type of questions that ICANN Org, the contractor, and well-experienced group of Trademark and Registrant attorneys can help develop in this subject.

Conclusion

Overall, we thank everyone involved in producing such a comprehensive report, and look forward to even more fairness and balance, and metrics about registrant notice, response, request for time, etc, in the next reports. As we have already declared in previous Reports related to intellectual property rights protection system (legislative, regulatory, etc.), based on state-of-the-art scholarship and reports about this thematic worldwide, questions related to balance need always to be asked when enforcing these rights.

In other words, are the rights holders protected while all the other interests involved are also being respected? Is there enough protection of the public interest, future rights holders, free speech, freedom of expression, fair use, and the rights of all to use dictionary words, generic words, common acronyms, and phrases, as well as their first and last names, when national or international legal rules do not already guarantee them?

Is due process protected in the actual ability of registrants to respond to the UDRP complaints that trademark holders, with complete choice of timing and forum, may bring? Are the balances that we, the early ICANN Community, created in theory and on paper with the UDRP - the world's first all-virtual dispute forum- working out in practice?

Besides those related to increasing the Report's clarity, almost all topics of this Public Comment can be traced back to this central idea and avoiding the system becoming increasingly one-sided, which should also be the cornerstone of any new policy or policy change related to the UDRP and similar mechanisms. Better effective measures should be developed against known or repeated offenders without harming good-faith registrants who are subject to the procedure.