

19 April 2022

RrSG Response to the Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP)

The Registrar Stakeholder Group (RrSG) is pleased to comment on the Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP) (“PSR”). The RrSG appreciates the effort of the ICANN org team in preparing this comprehensive report.

Although the RrSG recognizes that there are some minor areas for improvement in the UDRP, it is the position of the RrSG that a full policy development process (PDP) is not necessary. The UDRP was adopted in 1999, and has been utilized for over 60,000 UDRP cases¹. The RrSG is not aware of any major issues with the UDRP, and is concerned that any updates could have unintended consequences resulting in a less effective UDRP. Additionally, not only is there a backlog of policy recommendations waiting for ICANN Board approval or implementation, but the RrSG is also aware of substantial community volunteer fatigue even for high-priority issues. Initiating another major PDP for a policy that is very effective overall would further delay other unimplemented initiatives that have been approved or are pending.

Notwithstanding this position, if the ICANN community identifies substantial issues that necessitate a PDP for the UDRP, then the RrSG will support such efforts. Below, the RrSG has identified several areas that should be addressed if the community feedback justifies proceeding with a PDP.²

First, the RrSG notes that there can be inconsistency between UDRP providers. There is no requirement that UDRP panelists follow precedent, especially across different providers. If a party loses a UDRP due to an inconsistent approach or incorrect application of the UDRP, the only recourse is court proceedings. In theory a UDRP provider can violate the UDRP, and there is no oversight or control by ICANN to reverse the violation. This can significantly prejudice the parties that utilize the UDRP. It would be desirable to have UDRP providers act in a more consistent manner, and if the providers violate the UDRP, then ICANN should be able to exercise proper oversight of the provider.

¹ This figure combines the 38,349 UDRP proceedings between 2013 and 2020 identified in the PSR and the annual proceeding totals reported by WIPO at <https://www.wipo.int/amc/en/domains/statistics/cases.jsp>

² The RrSG notes that Section 1.3 of the PSR refers to the impact on the UDRP by the General Data Protection Regulation (GDPR), the Temporary Specification for gTLD Registration Data (Temp Spec), and Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP Phase 1). EPDP Phase 1 currently is in implementation, and the implementation review team (IRT) should ensure continuity with existing requirements in the Temp Spec. If changes to the UDRP are required in light of implementing this policy, the RrSG believes it should be narrowly targeted to the impact of EPDP Phase 1 rather than a holistic PDP for the entire UDRP.

Second, the RrSG supports the Internet Commerce Association's (ICA) recommendation referenced on page 54 of the report that UDRP providers should have a single set of procedural rules to minimize forum shopping between providers. This will improve consistent application of the UDRP across all providers, and ensure that registrants are not harmed by being subject to supplemental rules that might be more onerous than those of other providers. The RrSG supports improvements to the UDRP that ensures a fair and consistent application of the UDRP across all providers.

Third, some (but not all) members of the RrSG note that section 4.3 of PSR deals with reverse domain name hijacking (RDNH) and considers that, if the PDP does proceed, further consideration by the working group is warranted as to whether the UDRP should be further strengthened against RDNH. Currently there are no monetary or other sanctions that panelists can impose in instances of RDNH. As trademark owners may often have greater financial resources than registrants, this lack of redress (other than losing a UDRP and the wasted attendant costs) may increase the risks to registrants. These risks include losing a UDRP that should actually have been a finding of RDNH, the costs of defending a spurious UDRP that is a clear case of RDNH, and the costs associated with filing a court proceeding a UDRP decision that should have been a finding of RDNH.

Fourth, the RrSG notes that the use of the term "abuse" throughout the report is confusing. Section 1.1 of the PSR clarifies that the intent of the UDRP was to combat "abusive registrations". However, the use of the word "abuse" throughout the PSR could easily conflate abusive registrations which are intended to be addressed by the UDRP (e.g. trademark infringement) and other types of DNS abuse (e.g. phishing) that should be addressed by other measures. We would recommend this terminology be clarified throughout the PSR.

Sincerely,

Ashley Heineman
RrSG Chair