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**RE: Public Comments on Policy Status Report: Uniform Domain Name Dispute Resolution Policy (UDRP)**

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**Company: DataCube.com**

To: ICANN

I appreciate the chance to publicly comment on this policy.

**SUMMARY -**

The UDRP process was designed for black & white cases of trademark abuse. Most disputes seem to fall under this group.

As is, it works well for these types of clear-cut cases.

The problem occurs when you start dealing with more generic types of domains; domains with many potential uses that often have high value on the open market.

The value of these domains has risen dramatically since the UDRP policy was first created and the policy needs to be balanced to recognize both trademark holders **AND** registrant rights.

**UDRP Abuse -**

The current UDRP system can encourage dubious disputes, for valuable generic domains.

- 1.) Outside of an RDNH finding, there is no actual penalty for bringing a meritless dispute. Parties will often bring disputes because it is only upside in their view.

The upside is being awarded a domain worth many thousands (or even millions).

The downside is being found guilty of RDNH, which comes with no actual penalty.

- 2.) There have been some very poor UDRP decisions over the years, many of which were overturned by actual courts.

This is often because some panelists have decided to arbitrarily redefine the wording of the UDRP policy itself.

*This includes -*

- **Using "or" instead of "and" when it comes to bad faith.**
- **Making judgments based on asking price. Panelists are not appraisal services. Someone either has the right to own a domain or they do not. If they do, the asking price should not be relevant.**
- **Some panelists have incorrectly interpreted that offering generic domains for resale is "bad faith" in itself.**

## **UDRP Suggestions -**

- 1.) Outside of the most obvious black & white cases, there should be an initial bar to clear when it comes to a dispute involving a domain with an obvious generic use and/or significant value.

There should be an initial bar you have to pass before this type of UDRP even makes it to a panel, something like how anti-SLAPP laws work in actual courts.

- 2.) There should be an appeals process. There should be a way to look at (and correct) any egregious decisions where the UDRP language was incorrectly applied, or other issues are involved.
- 3.) There should be an actual penalty or punishment when it comes to blatant abuse of the UDRP system, specifically when it involves a frivolous dispute where there is an RDNH finding.
- 4.) URS should be discontinued. The low cost encourages abuse against legitimate domain name registrants.

Ideally it would not be used with any extension, but it should certainly never be applied to legacy extensions.

The UDRP process already provides a reasonable remedy for trademark holders. It is a much easier and cheaper process than actual courts.

There needs to be a balance between the rights of trademark holders and domain registrants, and URS tips that balance unfairly away from domain registrants.