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Igor Motsnyi, Republic of Serbia

UDRP panelist at the CAC and the ADNDRC, URS examiner at MFSD, partner and founder at “Motsnyi IP”. I am a member of IPC at ICANN, ECTA and ITechLaw. I have over 23 years of practical experience in IP, trademarks and domain names.

I also represent parties in UDRP disputes.

Disclaimer

These comments are submitted in my personal capacity and do not reflect any views of the IPC, ECTA and ITechLaw or any UDRP or URS providers I am a panelist at.

These comments solely reflect personal views of Igor Motsnyi.

Overall conclusion:

I support a balanced approach taken by WIPO and the ICA in their report (“Report”) and I commend the efforts of both organizations.

I agree with the Report’s conclusion that *“The UDRP has demonstrated itself to overall be an effective and successful procedure for resolving clear cases of cybersquatting. Any perceived faults or inadequacies of the UDRP do not warrant a wholesale revision of the Policy”*.

I generally support the recommendations in the Report and I will focus on some specific recommendations below.

Comments on Tier 1 topics

I would like to highlight the following “Tier 1” topics

- Fee Payment Deadlines

I support this recommendation. A reasonable but fixed length of time for complainants to pay any additional required filing fees in three-member panel cases should be provided as well as consequences for failure to comply with such a deadline.

- Reviewing and Reinforcing ICANN’s Role in Compliance

I support this recommendation. It is important to maintain that the UDRP is complied with by the registrars and ICANN should take appropriate measures against non-compliant registrars.

- Providing UDRP-related Information for Registrars

I support this recommendation, in particular the preparation of a FAQ document for registrars.

- Identifying Dissenting Panelists

I support this recommendation. It is important in the interests of all parties as well as for educational purposes to identify a dissenting panelist if there is a dissent.

- ICANN Contribution to the UDRP

I support this recommendation. In addition to the recommendation in the Report I suggest that ICANN could play a role in preserving UDRP legacy and history, e.g. by maintaining a database of all decisions, including decisions of past providers. This will avoid a situation with “e-Resolution” decisions that are now only available through <https://web.archive.org/> as the actual website is no longer available.

- Educational Materials

I support this recommendation. I note that some providers already have links to educational materials on their websites. ICANN should consider providing some UDRP related educational materials on its website.

- Registrars to Provide Additional Notice

I support the recommendation to make it “*universal and mandatory across all registrars*”. In my view and experience, this will increase the chances that good faith registrants will respond to complaints.

Comments on Tier 2 topics

- Appeals Layer

I support further examination of this recommendation. Introducing an appeals layer in UDRP may help both complainants and respondents, however there are questions that need to be answered.

This recommendation deserves further examination and additional work by all stakeholders.

- Expedited or Summary Procedures

I support further examination of this recommendation. While the UDRP is efficient in fighting cybersquatting, it can still take between 60-90 days and in some instances of abusive domain name registration and use, faster actions are needed.

Out of four (4) scenarios in the Report, I support the following two: i) a fast-track available for trademarks that are repeatedly targeted and ii) procedures for time-sensitive fraud-related issues.

This recommendation deserves further attention and examination. I would also suggest considering a possibility of changing the URS in such a way that the URS can become such expedited procedure discussed in the Report (instead of creating a new policy): e.g. by making it applicable to .com and by adding a new remedy – “True Cancellation” while maintaining the “Clear and Convincing” standard to make sure that the procedure will not be abused by complainants.

- Remedy: True Cancellation

I support further examination of this issue. This remedy is beneficial to IP owners, yet the Report correctly identifies one of the issues that needs to be considered: lifting a cancellation due to potential third-party good faith use.

- Free Speech

I agree with the Report that there is no need to change Policy language in relation to free speech. The UDRP recognizes “legitimate non-commercial use” as a legitimate interest in 4 c. (iii).

Yet in some instances there is uncertainty as to whether a panel should look at the domain name composition only and disregard the content (strict impersonation approach) or consider both the domain name composition and website content (more holistic approach).

While free speech does not arise in UDRP disputes often, it is an important issue and deserves careful consideration. The UDRP can be used to stifle criticism of political, human rights and other activists/persons who are not cybersquatters. It is important to provide adequate protection to freedom of expression, especially in the current times of wars, conflicts and political instability.

I support further discussion on the application of the Policy in free speech and criticism cases.

I also support the application of a more holistic approach to free speech and criticism cases (taking into account both a domain name composition and website content) irrespective of nationalities of the parties.