

## AIM Comments on the WIPO-ICA UDRP Review Project

AIM, the European Brands Association, commends WIPO and the ICA for this initiative. The UDRP is globally recognised as the most efficient and practical brand protection tool in the Domain Name System, and as ICANN's most successful consensus policy. Any potential review must therefore be conducted with the utmost care.

### 1. Process

While full supporters of, and active participants in, ICANN's multistakeholder model, given the key importance of the UDRP to all domain name registrants in their constant battle to protect the Internet's users from nefarious and deceptive use of trade marks, any review of the UDRP must be based on factual, knowledge-based assessment of its operation in practice.

As such we would strongly support the GNSO Council accepting the Final Report from this global, expert Project Team and its SMEs, all users of the system, as a key input to any eventual review of the UDRP, in line with Section 13.1. of the ICANN bylaws *"to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN"*. Not only would this be the most efficient use of resources - as recently as May 2025, the GNSO Council again deferred the expected review of the UDRP in part due to the need to prioritise its workload - but it would also prevent duplication of effort while ensuring that any improvements are founded on practical, hands-on experience.

The Policy Development Process within ICANN has suffered in recent years from imprecise working group charters and thus objectives, resulting in overly complex and lengthy processes. We therefore welcome the Initial Report's methodology of highlighting those areas of the UDRP upon which there appears to be consensus that change may be useful, and just as importantly achievable, or not needed. We also fully agree that issues which may prove more contentious or complex should be dealt with at a later stage, and/or deferred to a specialised work track, so as to avoid the destabilisation of the entire review.

However, we must stress that any attempt to weaken the UDRP's provisions and effects must be avoided at all costs.

### 2. Overarching Principles

We strongly support the Report's approach, especially the fundamental importance of recognising that *"there is no pressing need or desire to undertake a wholesale revision of its overarching trademark-based framework"*. Change for the sake of change must be avoided, given there is widespread agreement by all

DNS stakeholders that the UDRP is needed, relied upon globally and works. We agree that in the current market realities some minor improvements may be appropriate, but in any review of the policy, *“the practical experience-based views of panelists, counsel, parties, and providers should be the primary basis for any such recommendations”*. The UDRP is a practical tool, and any amendment must be expert-led; this is not a theoretical exercise about potential edge eventualities.

### 3. Recommendations

Our initial reactions to the proposed recommendations are:

#### a) Loser Pays, Costs, Damages

We do not agree with the recommendation.

There is no financial deterrent to a bad actor under the current system, but a substantial resource outlay for the preparation and submission of the complaint by the affected TM owner and then the ongoing fees associated with maintaining a domain name that they never actually use (as while cancellation may be an available remedy, in many cases the TM owner simply cannot risk the name re-entering circulation, especially if their brand names are well-known to vulnerable Internet user communities). This can result not only in multinationals needing to triage which cases they have the resources to pursue, but can also serve as a block to individual or smaller registrants attempting to enforce their rights and thus protect Internet users.

Loser pays models are common in TM cases, for example before the EUIPO, where we are unaware of any respondent defending a case purely because of the risk of a potential costs award. Parties are also well used to taking arbitration decisions to their national civil courts for enforcement if necessary.

While appreciating that this recommendation will need deeper discussion, we propose that it be handled in the “Phase 2(b)” track.

#### b) Fee Payment Deadlines

Non-controversial; agree.

#### c) Reviewing and Reinforcing ICANN’s Role in Compliance

#### d) Providing UDRP-related Information for Registrars

Strongly agree.

#### e) Regulating Complaint Withdrawals

#### f) Clarifying Registrar Verification Procedures

Non-controversial; agree.

#### g) Identifying Dissenting Panellists

While we have no strong views, could this not open the door to accusations of bias and “panellist shopping”?

#### h) ICANN Contribution to the UDRP

Strongly agree.

#### i) Educational Materials

#### j) Mediation

**k) Laches/Statute of Limitations**

Non-controversial; agree.

**l) Scope of UDRP**

Strongly agree. While there would indeed be some merit in a UDRP-type system being employed for other IP enforcement reasons, and nothing prevents that from being offered voluntarily by certain providers (e.g. in relation to EU ccTLDs), bringing this discussion into Phase 2 of the RPMs PDP would risk thoroughly derailing the process. If there is appetite for such a debate, a separate work track could indeed be established.

**m) Name Redaction****n) Registrars to Provide Additional Notice**

Non-controversial; agree.

**o) Appeals Layer**

We agree that this should be within the “Phase 2(b)” track, although we note that given the extremely small number of cases that will be affected in reality, this should include a cost-benefit consideration of amending the entire system for “*an occasional outlier case*”, while opening the door to spurious appeals brought in bad faith if the amendment were poorly crafted. We strongly support the need for this concept to “*be undertaken by a narrow group with experience in the UDRP and court litigation*”.

**p) Changing “and” to “or”****q) Supplemental Filings****r) Expedited or Summary Procedures****s) Remedy: True Cancellation**

We agree that these concepts should be discussed in the “Phase 2(b)” track.

**t) Panellist Appointment, Accreditation, and Quality**

No strong views.

**u) Codification of Case Law**

We agree that if there is appetite to discuss this, it should be outside of the ICANN PDP.

**v) Free Speech**

We support the recommendation that the current language is sufficient but also agree that if there is appetite for discussion, this should be within the “Phase 2(b)” track. We also stress that any such discussion must include all parts of the ICANN community, in particular brand holders.

**w) Decision Format**

No strong views.

We trust that the above is of use. Please do not hesitate to contact us should you require any clarifications.

**AIM, 25<sup>th</sup> June 2025**