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**Comment On The  
INITIAL REPORT OF THE WIPO-ICA  
UDRP REVIEW PROJECT TEAM**

I appreciate the efforts of the review team in preparing the initial report of the WIPO-ICA UDRP review. My comments are as follows:

**TIER 1 - Unanimity of the Project Team**

Loser Pays, Costs, Damages

Agreed, this will be complicated and should not be implemented. Under INDRP, we have observed that costs are often awarded (*even when not required*), but they are practically unenforceable, possibly due to jurisdictional challenges or inaccurate WHOIS information. Even when both parties were within the same jurisdiction, the Respondent filed for an injunction, which resulted in an out-of-court settlement.

Foremost, how can we ensure that appointed Panelists are fair and unbiased when there is no transparency in the appointment process? The current system may not guarantee the selection of well-experienced and knowledgeable Panelists, those who understand not only

	<p>trademarks but also the perspectives of legitimate users, including domain name investors.</p> <p>For example, some panelists may award unnecessary costs against a respondent who did not appear, even when the respondent had a legitimate interest in the domain name. It has also been observed that some panelists do not even assess whether the keyword contained in the domain name is a dictionary word, which someone in another part of the world could independently come up with. The latter concept was discussed by a well-experienced Panelist, recently in <a href="#">NAF Claim Number: FA2410002119437</a>.</p>
Fee Payment Deadlines	<p>The payment deadline should be set; however, it should also be formalized to specify whether, if the Complainant fails to pay, the Respondent may cover the Complainant's portion of the payment to allow the proceedings to continue. This was upheld in WIPO Case No. <a href="#">D2023-0084</a>.</p>
Reviewing and Reinforcing ICANN's Role in Compliance	Agreed
Providing UDRP-related Information for Registrars	Agreed
Regulating Complaint Withdrawals	<p>Complaint withdrawal is generally not permitted after the Response has been filed, unless the Respondent consents. WIPO cases <a href="#">D2016-1349</a> and <a href="#">D2023-0084</a> address this issue in greater detail. However, panelist</p>

	discretion may also be considered in allowing the withdrawal of the Complaints.
Clarifying Registrar Verification Procedures	No Comments
Identifying Dissenting Panelists	Yes, this is necessary to promote greater fairness and transparency within the system. It will assist parties nominating a three-member panel in making more informed choices regarding panelists.
ICANN Contribution to the UDRP	Great Suggestion
Educational Materials	WIPO Overview is a good source, but there can be a combined overview for all the forums handling UDRP matters.
Mediation	Good Measure
Laches/Statute of Limitations	This could be recognized under certain conditions. For example, suppose it is proposed to change the 'and' to 'or' in the third clause of the Policy. In such a scenario, a complainant could wait for years before bringing a UDRP action once some evidence of bad faith use (such as a landing page with PPC ads) appears. This could be quite unfair to the domain name registrant.

Scope of UDRP	The scope should be restricted to cybersquatting only, as initially observed in the <a href="#">Final Report of the WIPO Internet Domain Name Process (April 30, 1999)</a> , given that the Panel does not have the tools and powers ordinarily available to courts, where witnesses can be examined under oath and full evidence can be taken.
Name Redaction	Agreed, Good Suggestion.
Registrars to Provide Additional Notice	<p>This requirement is necessary because, at times, the Registrant may miss important notices. For example, if a domain name was registered long ago and the WHOIS details were not regularly updated or in some cases spam filters may block email notifications from reaching the Registrant. In NAF Claim No. <a href="#">FA2301002030007</a>, the Respondent participated in the proceedings close to the response deadline because the 'commencement of proceedings' notice never reached the Registrant's inbox.</p> <p>Very well argued by Mr Steven M. Levy in his <a href="#">comment</a>, who was coincidentally Panelist in the above-cited NAF matter: <i>"The cost of losing a UDRP case is typically rather low for a complainant but it can be extraordinarily high for a respondent whose legitimate business may be decimated by the sudden and improper transfer of a domain name and the prospect of expensive litigation to recover their domain name after a transfer order."</i></p>
<b>TIER 2 - No Unanimity of the Project Team, But Consensus Potentially Achievable</b>	

Appeals Layer	This is indeed required and can help reduce the complexity that arises when the respondent is required to appeal within 10 working days in the jurisdiction chosen by the complainant, particularly when the respondent must file an appeal in the Registrar's jurisdiction. A few years back, one registrant had to fly to Mumbai, India from an EU country within a week of the decision, just to file for an injunction in the Registrar's jurisdiction, and there could be more such examples.
Changing "and" to "or"	The "And" clause serves its purpose, and there are rare circumstances where a domain name registered in good faith is later deliberately used in bad faith. Moreover, the "or" clause could be detrimental in situations where, for example, a parking page begins displaying ads, which is usually unintentional on the part of the Respondent.
Supplemental Filings	Certain formal rules regarding Supplement Filings should be revised to align with established UDRP precedents. Supplement Filings should be permitted only in exceptional circumstances, and no more than one Supplement Filing should be allowed. For example, in some cases, Complainants continue to submit supplementary filings without the Panel's consent, thereby burdening the Panelists with additional work in the UDRP summary proceedings.
Expedited or Summary Procedures	The URS Process can be expanded to cover older gTLDs as well.

Remedy: True Cancellation	No Comments
Panelist Appointment, Accreditation, and Quality	<p>Panelist appointments need regulation because the UDRP system fails if panelists are not properly qualified or lack comprehensive knowledge of domain name law. Panelists should be required to pass an exam and undergo mandatory training. Similar measures should be adopted by various organizations dealing with ccTLD as well.</p> <p>Currently, there is no transparency regarding how panelists from various jurisdictions are appointed at different UDRP forums. As a result, some highly experienced and knowledgeable individuals are excluded as panelists at certain UDRP forums but are often selected as part of a three-member panel by respondents.</p>
Codification of Case Law	Could be a good initiative
Free Speech	The current precedents are good enough as regards Free Speech.
Decision Format	Uniformity can help codification of Case Law.

*Disclaimer: The above comments are submitted in my personal capacity and do not represent the views of any organization with which I am affiliated in any manner.*

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