Comments to the Initial Report of the WIPO-ICA UDRP Review Project Team

We are a group of academics and civil liberties attorneys specializing in intellectual property, free speech, fair use and fair dealing, unfair competition, and domain names, and we have many concerns about this Report and the process for writing and presenting it. We do not question the good faith of its drafters. Rather, we are concerned that the Report reflects the existing worldview of trademark owners, rather than contributing evidence-based recommendations for change.

Overall, our concerns include: Lack of data, lack of structural separation, and bypassing of clear free speech concerns in certain recommendations provided.

Overall, the WIPO-ICA Report raises many concerns that we discuss in greater detail below.

[1] We Expected Data.

After 25 years and over 64,000 UDRP cases brought to WIPO for domain names in the generic top level domain (gTLDs), we expected data: substantive, clear, neutral and statistically valid data. After all, as the first ICANN-approved UDRP dispute provider, WIPO holds this data from the very first UDRP dispute in December 1999 to current ones in June 2025. Further, *as part of the Uniform Rapid Suspension system review, the ICANN Community reviewed each and every URS case*, which was a vital part of the process and balanced recommendations. The justification for revisiting the UDRP is to improve it based on experience, not expectations or anecdotes.

Yet, this WIPO-ICA Report defaults to the old method of anecdotal evidence: Interviews with the "usual suspects" of well-known people who spend a considerable part of their lives thinking about the UDRP. That is not the case with most UDRP respondents. What we do not see is interviews with any of the tens of thousands of Registrants thrown in the UDRP process before an organization they have never heard of (WIPO (or another provider)), with a set of rules they have never read (the UDRP), often with notices in languages they cannot read, and with the expectation they "Respond" in very particular format in which they have never been trained, within a timeframe that does not allow them to research and learn.

WIPO has full and complete records of each of its UDRP cases, including the registrants who tried to reach out for guidance via email, tried to respond informally, and then defaulted. Many traces of these attempts are recorded in existing UDRP decisions. Yet, we see not a single interview or moment of the Project Team's time dedicated to this outreach. Not a single registrant, successful or not, was reached, and no interviews capture registrants' sense of loss over their domain names and the associated websites, emails, listservs, commercial services, and noncommercial information shared in their communities, countries, regions and across the world.

A helpful report could analyze defaults, characteristics of losses where the registrants responded, and the effects of registrants having representation on outcomes. It could look for evidence of the effects of WIPO's workshops for training trademark attorneys around the world—and consider whether and how similar guidance for registrants would improve outcomes. Given that statistics published by Doug Isenberg, frequent WIPO UDRP panelist and complainant attorney, show that registrants lost at least 95% of the time in every quarter of 2024, there is not much room for false negatives—but substantial risk of false positives.

We note the ease with which the term "cybersquatter" is shared and assumed, and the counterexample of Chile. ***In Chile, NIC Chile (running the country code .CL) created fairer rules and procedures for its UDRP to ensure that both sides in a UDRP proceeding can find representation*– and under this system, represented registrants in 2024 won over 60% of their UDRP cases.[1] Further, across all .CL UDRP cases, registrants successfully defended their domain names 25% of the time resulting in many Chilean small businesses, entrepreneurs, non-profit organizations, and individuals keeping their .CL domain names at a much higher rate than the gTLD UDRP registrants and continuing their regular activities.**

Attempts at reform should include studying procedures like NIC Chile's to give every participant in the process, not just trademark owners, access to information and to fair rules.

[2] Lack of Structural Separation

WIPO is a leading organizer and presenter of this report. We remember that in 1998, the US Department of Commerce asked WIPO, then with a small arbitration group, to recommend domain name dispute rules to then be evaluated by the infant ICANN Community, and WIPO did so.

But later, in 1999, WIPO became the first ICANN-approved generic top level domain (gTLD) domain name dispute providers, and changed its role from rule-maker to dispute forum. This changes the place of WIPO in the process – as a forum convener, not a rule creator. We appreciate that WIPO reached out to some critics of the system (including some commenters here). But this is still a report from a major provider, which means that it is difficult—if not impossible—for WIPO to ask hard questions about core structures and to make comparisons to other existing (NIC Chile) and possible systems.

[3] Free Speech and Privacy are never secondary to the efficacy of the UDRP.

We note that key proposals of this report significantly threaten free speech, and the project team's recommendations are made without any real analysis of the harmful impact of the rules on domain name registrants in the diversity of their roles as key Internet speakers.

Revealing Dissenting Panelists: For example, after only four sentences of discussion, the WIPO-ICA Report recommends that "the Rules be amended to require that all dissenting panelists [in a three-Panelist decision] be identified in all decisions."

But why? Where is the data identifying the scope of the issue and substantive analysis of the three-panelist decisions in which the Panelists are identified and in which they are not identified? If a panelist, given the nature of the complainant or the parties, or the very pro-trademark-claimant method of choosing panelists, chooses to make a decision, particularly a minority decision, by affixing a clear explanation, but not their name to it, there must be reasons for that decisions, and rationales to be explored. Given that the Report doesn't propose other Panel transparency measures, it is hard to avoid the conclusion that this one is designed to allow identification (and avoidance) of Panelists who push back against expansionist conclusions.

Name Redaction: While this section provides a little more explanation, three short paragraphs, its key rallying call is more disclosure of registrant names to the complainant and the public, thus stripping privacy and opening up the registrant to unnecessary problems and unwarranted harassment.

For the cost of a UDRP filing, currently $1500 for a single-panelist at WIPO, the report recommends that rules and ethics protecting privacy, anonymity and free speech be thrown aside. The identity of a person or party speaking, critiquing, or criticizing can be revealed to the complainant, even if the registrant is fully protected under their national laws and rights of free expression and privacy, including the right to anonymity and pseudonymity.

Further, this push to publish the names of registrants "for the efficacy of the UDRP" belies the extensive work in data protection and privacy over the last 25 years, and the clear knowledge that personal data, including domain name registration data, will be targeted by governments, law enforcement, and groups targeting political unpopular groups and services (e.g., the education of girls, family planning clinics, and LGBTQ+ communities). At a time when governments around the world are using private data sources to surveil and harass disfavored groups, this would be a step backwards.

Yet, because WIPO in the past chose, on its own authority, to publish guidance calling for the (a) disclosure of registrant names and details to the complainant and (b) publication of registrants' names in UDRP decisions – and labeled its own internal policies "discretionary best practices" (without review by the ICANN Community through its multistakeholder processes) -- the WIPO-ICA Report and Project Team now recommend that ICANN adopt these rules without close evaluation.

This section of the report further asserts that "efficacy of the UDRP" outweighs all other considerations – including what we have learned of persecution and privacy on the Internet in the last 25 years. We disagree.

Finally, we note that the WIPO-ICA report allows a narrow exception for a registrant requesting redaction and providing justification – but ignores its own experience about how few registrants respond to UDRP proceedings and how the case for their privacy may very well be made on the face of their websites.

[4] Really, this is a Report of the Intellectual Property Constituency to ICANN

On close review of the Project Team, we should candidly call this report what it is – a set of good faith recommendations based on interviews by accomplished trademark attorneys, nearly all of whom are members or founders of the Intellectual Property Constituency (IPC) of ICANN.

In the interest of full transparency and disclosure to the ICANN Community, we strongly request that WIPO and ICA, in the final version of this report, list the current and historic ICANN constituency affiliations of the Project Team members alongside their names. This information will serve as useful and valuable input to the ICANN Community and GNSO Council as it assesses this report.

We further note that the close affiliation of the Brian Beckham, Head of WIPO's Internet Dispute Resolution Section, and ICANN's Intellectual Property Constituency was on full display on April 23, 2025, as panelist after panelist identified themselves as members of the IPC and called on audience members and those listening virtually to join the IPC.

"It seemed like a pep rally for the IPC," noted one remote listener (using the American phrase for an event meant to get fans excited and to encourage their team to win).

Changes to the UDRP should be evidence-based and grounded in the experience of all participants.

Respectfully submitted,

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[1] NIC Chile and NIC Chile Research Labs, *REPORTE CLÍNICAS JURÍDICAS 2018–2024*, https://nic.cl/controversias/archivos/reporte-clinicas-2018-2024.pdf