

Tucows Public Comment: WIPO-ICA UDRP Review Report

Tucows appreciates the work of the WIPO-ICA Project Team and welcomes the opportunity to comment on their UDRP Review Report.

The Uniform Domain Name Dispute Resolution Policy (UDRP) is an important protection for domain owners, offering a predictable process for addressing trademark disputes in registered domain names. Review and consideration of potential areas of improvement for this Policy is reasonable, noting that any input from this Project Team may offer a basis for consideration while further work should occur within the ICANN process.

Areas of Agreement

Tucows supports the input in the following sections, and has no further comments:

- Loser Pays
- Fee Payment Deadlines
- Regulating Complaint Withdrawals
- Reviewing and Reinforcing ICANN's Role in Compliance
- Educational Materials
- Laches/Statute of Limitations
- Scope of UDRP
- Appeals Layer
- Supplemental Filings
- Panelist Appointment, Accreditation, and Quality
- Codification of Case Law

Agree, with further input

- Providing UDRP-related Information for Registrars
 - The recommendation's goal in expanding the knowledge base related to UDRP handling is admirable; this work must be done in cooperation with registrars to ensure that all relevant issues are addressed, not only those seen from the registrant/filer perspective. Many UDRP filers and registrants do not follow UDRP procedures or the instructions provided by a registrar for domain delivery, causing or increasing the mentioned delays.

- Clarifying Registrar Verification Procedures
 - Agree that defining the exact data required to be provided by the provider is a good step.
 - Disagree that the registration data should be shared with both parties, as it may reveal Personal Data to parties without legitimate legal basis to process that data. This could open up the UDRP process to being abusively used as a way to obtain Personal Data inappropriately, something we already see.
- Educational Materials
 - Similar to the UDRP-related information for registrars, we agree with providing further educational materials but suggest that registrars should be involved in this process, as they have valuable insights into the operational side of the UDRP. Further, we expect that this should already exist on the providers' sites, as they get paid for processing UDRPs and it is in their interests to reduce "poorly-conceived or unsubstantiated pleadings by providing parties".
- Name Redaction
 - We support redaction of party names where appropriate and the creation of best practices on the topic. These best practices should consider global privacy laws and ensure that Personal Data is protected wherever possible, including by redacting respondent data as a matter of course rather than as an exception. It should also consider corporate filers so that data can be adequately gathered regarding the use and potential misuse of the UDRP process.
- Mediation
 - This seems like an attempt to get ccTLDs to use the UDRP framework instead of their own mediation procedures, offering UDRP providers new sources of income. Due to the nature of ccTLD registration and management requirements, this could cause serious procedural issues for affected registrars. WIPO can already offer their services to ccTLDs.
- Expedited or Summary Procedures
 - We note that this may create issues for registrars and their obligations to deliver domains after a decision; we are concerned about potential adverse effects on registrants responding within shorter timeframes.
 - Most panels only release complainant information when a panel is convened. In 'fast track' cases, this may mean a decision is made and a registrar must then deliver the domain to the complainant without being given the complainant information necessary to do so. This also creates further workload on the registrar in order to

comply with a decision.

- Decision Format
 - We agree that the decision format should be formalized and standardized. A clear decision must be provided, along with full details of the disposition of the domain. If the registrar is to deliver the domain to another party, the full contact details of the receiving party must be provided. This is not currently included in most decisions but rather tends to be provided to the registrar via notice of commencement; in cases of settlements or other resolutions occurring before commencement, the registrar is not necessarily aware of the appropriate parties and how to adequately dispose of the domain. These operational gaps should be considered in any updates to the decision format.
- Free Speech
 - We note that trademark ownership does not mean control of what people are allowed to say about the trademark.

Areas of Disagreement

- ICANN Contribution to the UDRP
 - This seems like a way to gather revenue for the panel and its providers, without consideration of relieving registrar costs stemming from managing domains during the UDRP (locks, verification requests, expiration verifications) and providing support to decision winners to deliver a domain (verification of winning party requests, updating Whois data, account creations, auth code generation, etc).
- Registrars to Provide Additional Notice
 - The UDRP has been widely successful over the years without need for such a requirement. Such a notification is unnecessary as the registrar already provides the panel with the registrant's contact information through the verification process. This may lead to unexpected sharing of Personal Data with parties not named in the UDRP, which may be a violation of various privacy laws, including the GDPR.
 - Registrars are rightly not permitted to discuss a UDRP case with any party outside the panel/provider, in order to ensure that respondents don't abscond with the domain to another registrar or take other action to avoid the UDRP. This prevents sending any additional notice.
 - We further note that the recommendation states there was no Unanimous Agreement to this, yet it is listed in the 'Unanimous Agreement' section of the report.

- Changing “and” to “or”
 - Currently, showing bad faith in both registration and use are required for a successful UDRP. The Report identifies edge cases where UDRP was not considered appropriate because one or the other was not present and, therefore, seeks to remove the requirement for proving both. This is not appropriate. Rather than changing the rules to accommodate the few edge cases, it is better to accept that there are going to be edge cases for which UDRP is not appropriate. Allowing bad faith in *either* registration or use vastly expands the power of the UDRP.
- Remedy: True Cancellation
 - This is badly named and is instead a proposal to fully block the domain from being delegated; we are not convinced of the benefit of this proposal. Further, any such decision must be handled by the registry for that TLD, as individual registrars can only block a domain from their own system and not from other registrars’ systems. Registrars should be informed of the decision so they are aware of the block.
- Identifying Dissenting Panelists
 - This may not be an area of full disagreement but there was some confusion around how this information would be used when selecting panelists for future proceedings. Any selection process should be neutral and ensure that panelists are not working on cases for which they have a specific interest in the outcome nor working for firms on similar cases.

Tucows again thanks the WIPO-ICA Project Team and looks forward to continuing this conversation within the ICANN context.