

27 June 2025

# Comment on the Initial Report of the WIPO-ICA UDRP Review Project Team

## Introduction

The Intellectual Property Constituency (IPC) is one of the stakeholder groups and constituencies of the Generic Names Supporting Organization (GNSO) of the Internet Corporation for Assigned Names and Numbers (ICANN) charged with the responsibility of advising the ICANN Board, Organization, and other stakeholders on policy issues relating to the management of the domain name system (DNS), particularly on matters pertaining to intellectual property and consumer protection. The IPC represents the views and interests of owners of intellectual property worldwide, with a particular emphasis on trademark, copyright, and related intellectual property rights and their impact on and interaction with the DNS.

We also represent the interests and concerns of consumers who depend on strong intellectual property protections as an essential element of consumer confidence, consumer trust and consumer protection. Our members include individuals, companies, law firms, and intellectual property organizations from around the world.

In the [Initial Report of the WIPO-ICA UDRP Review Project Team](#) (the “Initial Report”) published on April 17, 2025, the World Intellectual Property Organization (WIPO) along with Internet Commerce Association (ICA) and a highly qualified and knowledgeable group of 16 Uniform Domain-Name Dispute-Resolution Policy (“UDRP”) experts and 28 subject matter experts carefully examined the current UDRP and its overall framework and presented comments on potential improvements. The comments are broken down into two categories, namely those where consensus appears to exist (“Unanimous Support”) and those where there is no consensus but where further work may be undertaken to attempt to bridge disagreements amongst stakeholders (“Consensus Achievable with Further Exploration”).

Created in 1999, the UDRP has been and remains a crucial mechanism for brand owners to protect their intellectual property in the digital age. Over the past two decades, rapid technological advancements have introduced new and complex methods of trademark infringement, significantly increasing the demand for effective dispute resolution. The UDRP still offers a reliable, cost-effective and efficient avenue for brand owners to enforce their rights in the ever-expanding online space.

The Initial Report stems from a comprehensive review of the current UDRP process. This review was conducted by experienced professionals with extensive, hands-on knowledge of the UDRP's strengths and weaknesses. The group of experts represents diverse professional backgrounds, ensuring a balanced and thorough assessment, even when facing differing perspectives on key issues.

## **Suggested Next Steps within ICANN**

The IPC holds the opinion that the Initial Report includes many important recommendations that should be incorporated into the UDRP. Once WIPO issues its Final Report, the IPC believes that ICANN should treat the report as Expert Advice under Section 13.1 of its Bylaws, and/or as expert input into the forthcoming PDP - something which is envisaged and encouraged by both the GNSO's PDP Manual and its Working Group Guidelines. Specifically, ICANN should listen to the feedback developed by the WIPO expert group and implement reasonable changes to ensure the efficiency and effectiveness of the UDRP.

Notably, since 16 experts of the Project Team came to unanimous agreement on 14 critical issues, ICANN should carefully consider implementing these suggestions. A governing organization should actively listen to the feedback of those parties in the Internet community that regularly use a certain policy and who can best determine its deficiencies. This applies even more in cases such as the one at hand where there is a rare and cohesive consensus among representatives of different parts of the community. Such consensus signals a high level of credibility, insight, and professional judgment that should under no circumstances be ignored. Disregarding unified expert feedback risks undermining trust, missing critical improvements, and appearing disconnected from informed perspectives. Embracing the recommendations not only enhances decision-making but also demonstrates a commitment to transparency, responsiveness, and evidence-based governance.

The IPC shares the Project Team's opinion that the UDRP should not be made subject to a wholesale revision as it has demonstrated itself over more than 25 years to be a reliable mechanism for quickly, consistently, effectively and predictably resolving clear cases of cybersquatting. The IPC also urges bearing in mind during any adjustment effort that any amendment to the existing policy framework always bears the risk of destabilizing what has proven to be reliable in the past. This applies especially for any efforts of opening up the UDRP for non-trademark-based cases.

In light of the above, the IPC recommends that the Project Team's policy amendment recommendations be taken into consideration carefully during the GNSO's Phase 2 Policy Development Process (PDP) on the Review of Rights Protection Mechanisms. In addition, those recommendations by the Project Team not relating to policy amendments itself but to flanking measures such as the provision of additional training material, education, etc. should be easily implementable and reviewed by a separate, non-policy working group.

## **Specific Comments on the UDRP**

### **Tier 1 Recommendations - Unanimous Support**

### Loser Pays, Costs, Damages

The IPC partially agrees with this recommendation. The report correctly identifies that brand owners face significant enforcement costs in "whack-a-mole" scenarios, and that a loser pays system would be difficult to implement in the current system. Brand owners benefit more from the current predictable fee structure (perhaps supplemented by ICANN) than from an uncertain cost recovery mechanism. The IPC recommends that additional work be undertaken to examine how a cost recovery mechanism could be created.

### Fee Payment Deadlines

The IPC agrees with this recommendation. Establishing fixed timeframes for additional fee payments in three-member panel cases provides certainty and prevents delays that could harm brand owners' enforcement efforts. This administrative improvement supports efficient case processing.

### Reviewing and Reinforcing ICANN's Role in Compliance

The IPC strongly agrees with this recommendation. Transparency should be consistent across all providers. Brand owners too often encounter compliance issues where registrars fail to properly lock domains or implement UDRP decisions. The report's recommendation for ICANN to "review and reinforce its role in ensuring specifically-delineated timely compliance of registrars" directly addresses a significant pain point for brand owners. Enhanced registrar training and clearer obligations would reduce enforcement friction.

### Providing UDRP-related Information for Registrars

The IPC agrees with this recommendation. The proposed FAQ document and optional "UDRP Bootcamp" webinar would help prevent the delays and issues brand owners face when registrars are unfamiliar with UDRP procedures. Better-informed registrars mean smoother enforcement processes and fewer cases where domain names are improperly handled during proceedings.

### Regulating Complaint Withdrawals

The IPC agrees with this recommendation. Uniform procedures across all providers for complaint withdrawals provide predictability for brand owners and prevent forum shopping based on withdrawal policies. This standardization benefits the overall integrity of the system. The providers are encouraged to adopt the WIPO system that allows for a partial refund of filing fees in the event of a complaint withdrawal prior to the involvement of a panelist.

### Clarifying Registrar Verification Procedures

The IPC agrees with further exploration of this recommendation with additional enhancements. The report identifies important issues where registrar verification can be unclear and inconsistently distributed, which impacts brand owners' ability to build strong enforcement cases. The recommendation that "complete and unredacted underlying registration data for the disputed domain name" be provided to both parties and panels is crucial for brand owners to establish patterns of cybersquatting and verify registrant information.

However, this recommendation should be strengthened. The report notes that "section 3.7.7.3 of the ICANN RAA specifies the liability of the publicly-named registrant (the 'Registered Name Holder')" when proper disclosure frameworks are absent. There should be specific penalties implemented for registrants (even if they are privacy/proxy services) who are found to be repeat cybersquatters while holding domain names under the protections of RAA Section 3.7.7.3. These penalties could include enhanced liability, mandatory disclosure requirements, or restrictions on future registrations for parties with established patterns of bad faith registration and use.

#### Identifying Dissenting Panelists

The IPC agrees with this recommendation. Brand owners benefit from transparency in panelist decision-making, as it allows for more informed panelist selection in three-member panel cases. Knowing which panelists dissented and their reasoning helps brand owners make strategic decisions in future cases.

#### ICANN Contribution to the UDRP

The IPC strongly agrees with this recommendation. The report notes that "millions of dollars are spent annually on UDRP filing fees - mostly by complainants" while ICANN benefits from the system's stability. A small subsidy from registration fees could significantly reduce enforcement costs for brand owners, particularly SMEs and non-profits. Even a modest contribution like "one penny per registration or renewal" could generate substantial support for the system.

We note that ICANN awarded grants totalling \$500,000 in 2025 under its Grant Program for "Assistance for Domain Name Holders in ICANN's Uniform Dispute Resolution Policy Procedures." Yet there are many potential complainants, such as non-profit organizations, that are unable to bring UDRPs due to the cost. The IPC supports the creation of a similar award or funding mechanism to subsidize these costs to enable non-profit organizations seeking to bring UDRPs.

#### Educational Materials

The IPC agrees with this recommendation. Educational materials would benefit complainants by reducing poorly-conceived complaints that waste resources and potentially result in RDNH findings. The materials would also help educate potential infringers about trademark rights, potentially reducing cybersquatting incidents.

#### Mediation

The IPC agrees with this recommendation. The report correctly concludes that mandatory mediation should not be adopted due to high default rates and potential for abuse. However, allowing individual providers to offer voluntary mediation gives brand owners additional options for resolution when both parties are genuinely interested in settlement.

#### Laches/Statute of Limitations

The IPC agrees with this recommendation. The report correctly identifies that the current approach, where panels can consider delay as a factual element, provides sufficient protection

without creating arbitrary time bars that could benefit cybersquatters. Brand owners should not be penalized by rigid limitation periods when dealing with ongoing infringement.

### Scope of UDRP

The IPC agrees with this recommendation. While expansion of consumer and public protection beyond trademark-based cybersquatting to cover other DNS abuse is supported by the IPC, the report wisely recommends against it to avoid complicating the Phase 2 Review. The UDRP's effectiveness stems from its focused scope, and expansion could destabilize the system. The IPC agrees that other work tracks should address an expansion of DNS abuse protections and remedies.

### Name Redaction

The IPC agrees with this recommendation. The current discretionary approach allows panels to protect innocent registrants while maintaining transparency needed for brand owners to identify patterns of cybersquatting. The recommendation for providers to publish best practices on redaction provides helpful guidance without rigid rules.

### Registrars to Provide Additional Notice

The IPC agrees with further exploration of this recommendation with additional enhancements. Enhanced notice procedures increase the likelihood that legitimate registrants will respond to proceedings, which ultimately benefits brand owners by ensuring decisions are made on the merits rather than by default. This supports the integrity of the process while maintaining due process protections. Further, if a Registrar sends an email to the registrant, this email should also require the registrant to update their contact information, and if no response is received, the registrar should follow the terms of its registration agreement relating to inaccurate registration data.

## **Tier 2 Recommendations - Consensus Potentially Achievable**

### Appeals Layer

The IPC partially disagrees with this recommendation. The IPC believes that an appeals mechanism could be abused by respondents and introduces a significant amount of complexity. The report identifies some benefits, including "providing a means of allowing the parties to challenge what they believe may be an incorrect decision while also saving significant time and cost in comparison to courts." This seems to be a solution in search of a problem. Moreover, the complex procedural issues require careful consideration to avoid creating a system that could be abused to delay enforcement. The IPC agrees that this should be an issue in the Phase 2 review of the UDRP. The IPC does not believe that further policy work needs to be undertaken on an appeals mechanism.

### Changing "and" to "or"

The IPC supports further exploration of this recommendation. The report identifies scenarios like former licensees or employees continuing to use domain names after relationship termination - situations brand owners regularly encounter. However, the recommendation for "express

safeguards" to limit application only to specified scenarios is crucial to prevent abuse against legitimate domain owners. The IPC believes that this issue should not be taken up in the Phase 2 review of the UDRP and agrees that a separate workstream would be appropriate.

#### Supplemental Filings

The IPC partially agrees with this recommendation. Inconsistent supplemental rules are confusing and there is no rationale for the inconsistency. Unregulated supplemental filings can increase costs and delays for brand owners. Codifying existing case law standards would provide predictability and potentially reduce frivolous supplemental filings that force brand owners to respond unnecessarily. This does not seem to be too complex an issue, and the IPC believes that this could be taken up in the Phase 2 review of the UDRP.

#### Expedited or Summary Procedures

The IPC strongly supports this recommendation. Brand owners face "disproportionate enforcement burdens" and "increased volume of fraud-based cases." The report's consideration of various expedited procedures, including fast-track options for repeatedly targeted trademarks and procedures for time-sensitive fraud issues, directly addresses critical brand owner needs. Certain highly abusive domain names, such as those used for impersonation, phishing, fraud, or other types of similar domain name abuse require expedited remedies to stop the abuse during the pendency of the UDRP. Recognizing that this is a complex issue, the IPC believes that this issue should not be taken up in the Phase 2 review of the UDRP and agrees that a separate workstream would be appropriate.

#### Remedy: True Cancellation

The IPC strongly supports this recommendation. The current system forces brand owners to pay ongoing registration fees "merely to keep the domain name out of the hands of cybersquatters." True cancellation would eliminate this ongoing financial burden while ensuring domains determined to be cybersquatting are permanently removed from circulation. The proposed mechanism for third-party challenges addresses legitimate coexistence concerns. Recognizing that this is a complex issue, the IPC believes that this issue should not be taken up in the Phase 2 review of the UDRP and agrees that a separate workstream would be appropriate.

#### Panelist Appointment, Accreditation, and Quality

The IPC supports further consideration. Brand owners and registrants benefit from consistent, high-quality panelist decisions. Standardized accreditation, continuing education requirements, and performance review processes would enhance decision quality and consistency across providers. Recognizing that this is a complex issue, the IPC believes that this issue should not be taken up in the Phase 2 review of the UDRP and agrees that a separate workstream would be appropriate.

#### Codification of Case Law

The IPC supports this recommendation. Binding codification of established jurisprudence would provide greater predictability for brand owners and ensure consistent application across all

providers. This would reduce forum shopping and provide clearer guidance for case preparation.

### Free Speech

The IPC disagrees with this recommendation. The report correctly notes that legitimate free speech is already protected through noncommercial fair use provisions, while the current framework allows panels to distinguish between genuine criticism and cybersquatting pretexts. Moreover, mere registration and use of a domain name itself is not a free speech issue. One must look at the content of the website to make such a determination. No further work is needed on this issue.

### Decision Format

The IPC agrees with this recommendation. Uniform, readable decision formats benefit the practitioners, panelists, and the public by making decisions easier to analyze and use in future proceedings. Standardized formatting also supports the development of consistent jurisprudence.

### **Conclusion**

The IPC strongly supports the efforts jointly undertaken by WIPO and the ICA to assist ICANN in spotting issues in the current policy framework and finding reasonable solutions during the Phase 2 Review. The insights and suggestions provided in the Initial Report can be extremely fruitful for enhancing the current framework to the benefit of all parties involved in UDRP proceedings.

However, as mentioned, the UDRP should not be made subject to a wholesale revision as it has demonstrated itself to be a reliable mechanism and any substantive amendment would bear the risk of destabilizing this status quo. The IPC recommends that the Initial Report be taken into consideration carefully during the GNSO's Phase 2 Policy Development Process (PDP) on the Review of Rights Protection Mechanisms. In addition, those recommendations by the Project Team not relating to policy amendments itself but to flanking measures such as the provision of additional training material, education, etc. should be reviewed by a separate working group.

We look forward to continuing to engage on these important issues.