
PROPOSALS FOR LIMITED PROCEDURAL IMPROVEMENTS TO THE UDRP

Version 2.0



BY THE UDRP EXPLORATORY GROUP
<http://UDRP.group>

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Thank you for taking the time to review and consider the following proposals. The proposals presented here offer balanced, pragmatic solutions to pain points experienced by all stakeholders to the UDRP. These limited, focused procedural improvements each have the support of all Exploratory Group members and are intended to enhance the UDRP's efficacy and fairness while leaving the heart of the Policy and the jurisprudence unchanged. The aim is that all stakeholders will benefit from the adoption of these proposals.

These proposals are a work in progress. We invite your involvement to further develop these proposals with the aim of building a consensus for their adoption by ICANN and by the UDRP providers.

Over a year of effort by an exploratory group composed of both brand owner representatives and registrant representatives produced an initial Version 1.0 of the draft proposals. Feedback was solicited from many members of the UDRP community representing a diverse set of perspectives. Numerous helpful suggestions and comments were received which are incorporated into this Version 2.0 of the proposals.

These proposals as a whole aim to:

- Address pain points that affect both complainants and respondents so that all who participate in the UDRP system benefit;
- Improve the efficacy, fairness, and credibility of the UDRP and place it on a more stable foundation;
- Maintain the continuity of the UDRP as it has developed over the past 24 years;
- Leave the core of the Policy unchanged, focusing improvements on procedural matters; and
- Identify certain suggestions for revising the UDRP as “dead ends” that are unlikely to receive widespread support.

These proposals are not intended as a universal answer to all issues around the Policy. While the UDRP has been used successfully to resolve over 80,000 disputes and has proven to be an effective means for addressing some of the widespread problems of cybersquatting, the DNS has grown and evolved tremendously in the 24 years since the UDRP was introduced, in ways that the UDRP's original drafters could not have anticipated. While the core insight that an expedited procedure was needed to resolve cybersquatting disputes has stood the test of time, it became apparent that certain beneficial improvements could be made to UDRP procedures and practices.

We believe this constructive dialogue and engagement is a way forward to improving the UDRP without spending years in unproductive discussions. We hope you share these goals and will join this effort to improve the UDRP for the benefit of all.

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PRIMARY PROPOSALS

1 LIMITED APPELLATE REVIEW

PROBLEM

Occasionally there are questionable single-member UDRP decisions. Although the UDRP contemplates the possibility of an appeal by filing an action in a court of competent jurisdiction, the high cost of court actions and potential absence of subject matter jurisdiction in certain countries may make an appeal impractical.

PROPOSAL

1. It is proposed that an appeal procedure be created to assist in **rectifying errant single-panelist decisions**. This proposal would not replace the current appeal process, which requires the filing of an action in a court of mutual jurisdiction but would supplement the existing procedure as an alternative, efficient route of appeal.
2. Either non-prevailing party may initiate the appeal.
3. **Only a decision issued by a single-member panel is eligible for appeal.** Decisions issued by a three-member panel are not eligible for appeal under this procedure and would only be subject to the traditional appeal route of a court action.
4. The appeal must be commenced within ten (10) business days from the date of the decision that is being appealed.
5. Appeals shall be decided by a three-member panel.
6. Complainants or Respondents who lose a single-panelist hearing would be entitled to commence an appeal upon payment of a more-than-nominal filing fee. The fee would serve to both cover the costs of the administration of the appeal and of the three panelists. The appeal fee should be of a relatively significant amount to deter frivolous appeals. For point of reference, Nominet charges £ 3,000 as an appeal fee. Half the fee will be distributed to the party that prevails in the appeal.
7. Court proceedings for independent adjudication of the dispute would remain available to the parties; however, a party that elects to initiate the UDRP administrative appeal procedure would agree that the appeal decision is binding and final as to the appellant. The appellee, however, would retain the option to commence litigation to alter the outcome of the UDRP case or of the appellate panel.

8. An administrative review would involve a closed evidentiary record, such that only the evidence from the original hearing would be permitted. If the appellate panel finds that the Respondent has a meritorious explanation for its failure to respond to the original Complaint, the appellate panel may at its discretion accept a response and supporting evidence from the Respondent. The usual rules for replying to a Response would apply (e.g., additional submissions).
9. The same Provider that administered the UDRP shall administer the appeal. If, for any reason, that Provider is unable or unwilling to administer the appeal, the appellant may select another accredited Provider to administer the appeal.
10. A party may only appeal the outcome of the UDRP, not specific findings. The appellant by filing an appeal will seek to reverse the outcome of the UDRP, be it an order for transfer or for cancellation, or denial of transfer or denial of cancellation of a disputed domain name. Appeals of an individual element of the decision (e.g., Reverse Domain Name Hijacking (“RDNH”) or a finding as to legitimate interest) are not permitted. An appeal panel may reverse or vary the original UDRP decision as it sees fit.
11. **Administrative reviews shall be heard by three appellate panelists.**
 - a. Each party shall select one non-presiding (i.e., “wing”) panelist from the rosters of any accredited Provider to serve on the appellate panel.
 - b. The presiding panelist shall be appointed pursuant to a neutral or balanced method, an example of which is offered below in Procedural Improvement #4 (Neutral Selection of Presiding Panelist).
12. The administrative review procedure will involve:
 - a. A Notice of Administrative Review setting out the grounds for the requested review;
 - b. The submission of the original Complaint, Response, associated annexes, orders, and correspondence, and the original decision; and
 - c. Brief written submissions from the parties.

2

UDRP COMPANION AND ICANN FUNDING

PROBLEM

While the UDRP has developed much jurisprudence over the years, there remains a risk of inconsistency in application. Attempts have been made to offer interpretive guidance, most notably with the WIPO Overview, yet other Providers could, and have, developed guidance that does not necessarily align across the entire UDRP ecosystem. This creates the potential of inconsistent decisions across Providers and increases the potential of forum shopping. It is thus crucial that all Providers and stakeholders have some general agreement on what constitutes a “consensus” approach.

PROPOSAL

1. We propose that a small and balanced group of qualified experts, substantially representing the full range of UDRP participants, be established to review and update the WIPO Jurisprudential Overview to create a “Companion” that would provide a uniform approach to issues that frequently arise in the UDRP and that would **incorporate the viewpoints of, and be available to, all providers.** Inclusion of a view in the Companion should require consensus of the group of experts. Where consensus cannot be achieved on a given issue, the different views of the experts shall be set out.
2. It is expected that the Companion will serve as a guide for practitioners and panelists, subject to reasonable discretion and the evolution of the case law.
3. The Companion should be subject to review and updates at regular intervals.
4. The UDRP has served as a showcase policy for ICANN for 24 years, despite very little in the way of financial support from ICANN itself. We believe that it is ICANN’s responsibility to support the UDRP financially, and in particular through the creation and maintenance of the Companion. The DNS relies upon a well-functioning UDRP. A portion of funds derived from domain name registrations and from new gTLD registry applications should be directed to the UDRP in this manner for purposes of funding the creation of such a pan-Provider Companion.

3

ADDITIONAL NOTICE OF PROCEEDINGS

PROBLEM

Currently, notice of a dispute is issued by the Provider directly to the respondent. However, there have been some reported instances of a registrant not responding to or not recognizing the import of the Provider's notice, as the registrant is not familiar with the Provider or with the UDRP procedure. Indeed, this can result from the fact that Internet users are often advised not to open attachments from unknown senders.

PROPOSAL

Although the UDRP has been generally successful in providing notice of a dispute to respondents, the process can be easily improved with a small adjustment. We believe that it would increase effectiveness and would be prudent and manageable for **registrars to provide an additional form of notice to respondents.** After a registrar locks a disputed domain name once it is alerted to a Complaint by a Provider, a registrar would be required to provide notice of the proceeding to its own customer, namely the registrant/respondent. Registrants have a relationship with their registrar and will generally be familiar with and trusting of notices received by their registrar. Accordingly, when a registrant is notified by its registrar that a UDRP case has been commenced against it, the registrant will generally be more likely to read it and to trust that the notice is legitimate. Some registrars already provide this additional notice to their customers as a matter of good customer service. We propose that this practice become universal and mandatory across all registrars.

Registrars, however, would not be required to serve the Complaint. That function would still be left to the Provider. The registrar's actions would be limited to emailing its customer at all available email addresses (including the account holder address and not just the registrant's recorded Whois address) and providing notification to its customer that the disputed domain name has been locked and that they will have received or will shortly receive a Notice of Commencement of Proceedings from the Provider. Such registrar notices should also include links to online materials to be curated or created and published by ICANN, as recommended in Proposal #4 below, which are written in terms accessible to those who are not legal professionals, and which can serve to educate and instruct respondents on what the UDRP is and how to respond to a complaint.

4

EDUCATIONAL MATERIALS FOR PARTIES

PROBLEM

Not all parties and their representatives are familiar with the UDRP and its requirements. This has led to inadequate pleadings resulting in unfortunate dismissals or RDNH findings for Complainants and unfortunate defaults or transfers for Respondents.

PROPOSAL

We believe it may be possible to reduce the frequency of poorly-conceived or unsubstantiated pleadings by providing parties with **neutral and standardized educational materials covering the basic requirements of a UDRP complaint and response**. The educational materials would alert parties to the most common deficiencies in poorly drafted complaints and inadequate responses (e.g., the failure to submit proof of adequate and timely trademark rights; the need to support contentions with documentary evidence and not through unsubstantiated allegations; explanations of *bona fide* noncommercial fair use or valid legitimate interests, etc.). The materials would be made available in plain language for those who are not trained legal professionals or otherwise have little experience in this field.

This information would benefit meritorious complainants and their counsel who are unfamiliar with the UDRP by alerting them to potential pitfalls. It could also benefit both complainants and respondents by helping unwitting Complainants and their counsel avoid bringing Complaints that will not succeed and could possibly result in a finding of RDNH. Similarly, materials could help educate Respondents about trademark rights and clarify that registering a domain name that is available may not automatically provide rights to such a domain name.

Care must be taken with such materials so as not to deter lawful registration of domain names or discourage legitimate complaints. Dispute Providers could offer links to these educational materials at prominent points most likely to be seen by parties prior to submission of their pleadings, such as on their dispute home pages, facilities for online submission of complaints and responses, notice of commencement emails, and other locations.

5

EXPEDITED TRANSFER PROCEDURE (ETP)

PROBLEM

Certain well-known marks are subject to persistent and repeated clear-cut acts of cybersquatting, such as schemes to defraud consumers or to obtain personally identifying or login information of consumers. The UDRP has proven itself adept at addressing these types of matters, but because a UDRP proceeding can take up to 60 to 90 days, an act of fraud can continue to cause harm to consumers and a brand for an extended period of time. A faster and less expensive way of dealing with such types of repeat matters would benefit brand owners, consumers and the UDRP system as a whole.

PROPOSAL

Adopt an expedited transfer procedure with strict eligibility criteria to simplify and accelerate the procedure for **resolving disputes involving Complainants that have been subject to repeat cybersquatting** on one of their marks. Respondents retain the ability to opt out of the ETP procedure and to have the dispute handled under the UDRP.

The ETP is detailed in the attached Appendix A.

6

ENSURING THE CONTINUED SUCCESS OF THE UDRP

PROBLEM

Inconsistent application of administration procedures could undermine confidence in the UDRP. If, for example, a new Provider were to retain inexperienced Panelists as a cost-saving measure, the resulting drop in quality of decisions would harm all Providers. The damage to the credibility and efficacy of the UDRP ecosystem could be difficult or impossible to rectify.

PROPOSAL

The UDRP has performed admirably over the course of 24 years, with accredited Providers managing the procedure almost entirely on their own. The continued success of the UDRP process depends primarily on the continued dedication, integrity, and neutrality of the various accredited Providers. It is thus critical to ensure that all Providers enact and maintain internal procedures which accomplish the UDRP's objectives of reliable, transparent, and impartial outcomes.

We believe that the best opportunity to consider measures aimed at upholding these standards is the present. We therefore **propose that stakeholders and Providers review Provider procedures with the aim of identifying and adopting best practices across all Providers which will serve to ensure the continued efficacy, quality, and credibility of the UDRP.** Such an exercise would benefit Providers who strive to provide the best possible administrative services to stakeholders and would also benefit stakeholders who want to ensure the continued success of the UDRP.

7

ASSISTING COMPLAINANTS WITH GDPR RELATED CHALLENGES

PROBLEM

We recognize that the adoption of GDPR has created several challenges for Complainants arising from the inability to access current and complete historical Whois records.

PROPOSAL

Loss of Access to Reverse Whois information

Prior to GDPR, Complainants were able to identify many or all of the domain names associated with a single-registrant profile. This enabled Complainants to **more efficiently bring a proceeding in respect of multiple domain names against a single respondent.** While it is sometimes still possible to do that with other research methods, the current situation substantially limits Complainants' resources.

We considered whether it was advisable to revise the UDRP and associated rules to enable Complainants to access such registrant data, for example, by compelling registrars to disclose all domain names associated with a particular registrant. After examining and carefully considering this issue, the problems associated with this potential solution appeared to counsel against such a solution being adopted within the limited scope of an RPM working group. For example, the UDRP could be misused to obtain such data for competitive or other purposes and could be a breach of the registrant's confidentiality. As such, we do not recommend such a solution. Rather, **we recommend that whatever solution ICANN adopts to address issues arising from GDPR enable Complainants to obtain such data outside of the UDRP procedure itself.**

A possible policy approach explored which should be the subject of consideration by all concerned stakeholder groups within ICANN is whether Complainants may request a Reverse Whois report from the concerned registrar, to the extent available and subject to any applicable laws, upon achieving a final transfer order.

Failure to Disclose Whois

A related issue is that some registrars do not abide by the Temp Spec and fail to reveal a registrant's underlying Whois information in a timely manner or at all (i.e., apart from situations where the registrar is

given false information, or the registrant uses layers of proxy services). Although this failure may provide grounds for a complaint to ICANN Compliance, in practice this remedy is insufficient, because ICANN Compliance may be unable to address and rectify the situation promptly within the timeframe of the pending UDRP proceeding. Nevertheless, **we propose** that having regard for the expedited nature of the UDRP procedure, ICANN Compliance be made ready and available to immediately direct a registrar to comply with the Temp Spec upon demand from a Provider and to take enforcement measures promptly against a non-compliant registrar. However, this does not necessitate a revision to the UDRP or its associated Rules.

Inability to Contact Registrant

Prior to GDPR, Complainants were generally able to contact registrants to attempt to settle disputes informally (including an offer of settlement funds) before incurring the expense of a UDRP filing. Post-GDPR, the inability, in many cases, to substantively contact a registrant in pre-proceeding communications, such as issuing a demand letter or conveying a settlement offer, is prevented by some registrars by the manner in which they limit contact with undisclosed registrants. Although this issue does not require a revision to the UDRP or its associated Rules, **we recommend** that ICANN take steps to require registrars to provide potential Complainants with a means of sending a customized message of reasonable length to a registrant, even if the registrant remains undisclosed. Ideally this communication would be received by the registrant in a manner that indicates that it is being sent via the registrar's facilities. By enabling complainants to potentially resolve disputes prior to the initiation of formal UDRP proceedings may reduce costs, improve the efficiency of resolving disputes, reduce the burden placed on UDRP administrators and panelists, and allow registrants to avoid involvement in disputes, potential reputational damage and perhaps even benefit from the receipt of settlement funds.

RECOMMENDATIONS AGAINST ADOPTING CERTAIN PROPOSED REVISIONS TO THE UDRP

We recommend against adopting certain possible revisions to the UDRP. Such revisions may attempt to resolve known problems, but these revisions would themselves create more problems than they would solve, and therefore on balance we propose that such proposals not be pursued. We also do not believe that any of these possible revisions would achieve the necessary consensus support and, in the end, would simply waste valuable time in unproductive discussion. We view such revisions as dead-ends and recommend against them as further explained below.

1 RECOMMEND AGAINST ADOPTING PENALTIES FOR COMPLAINANTS OR RESPONDENTS

...bad actors can disguise themselves such that they are unreachable.

Given the wide disparity between the cost of domain name registration and of pursuing UDRP complaints, we recognize that there ought to be consequences for cybersquatting beyond a transfer order. However, in closely examining and considering this issue, we believe that there is **no readily practical solution for imposing penalties that would be collectable or meaningful**. No practical solution is apparent, as bad actors can disguise themselves such that they are unreachable.

For example, if a repeat cybersquatter were ordered to pay a fine, the likelihood of a complainant actually collecting it is very low. Moreover, creating a requirement that cybersquatters must pay a fine could also result in the converse requirement, namely complainants having to pay a fine if found guilty of RDNH — which would be generally collectable and thereby create a disparity for complainants.

Alternatively, if a bond were to be posted by a respondent as a prerequisite to defending a complaint, this would raise access-to-justice issues and present difficulties for the panel in addressing a case where the respondent did not pay the required bond. Furthermore, bonds would involve collecting, holding, and administering funds, an impractical or overly burdensome task for Providers or Registrars to undertake. Even an “evergreen” bond, i.e., one in place for a particular cybersquatter, regardless of the domain names, could be circumvented by using stolen credit cards or other means and would likely be unenforceable.

Prohibiting cybersquatters from registering additional domain names is also impractical, as cybersquatters could easily circumvent such prohibition by using different registrant profiles. Moreover, the prohibition would likely only apply to unlawful additional registrations, and there would be no readily practical means of determining which domain names the prohibition should apply to.

Having considered all the above issues, we do not believe that this is an avenue worth pursuing as part of an RPM working group. It is unfortunate that complainants bear the cost without contribution from cybersquatters. However, there is not a workable solution beyond the impractical use of higher registration costs, greater registrar involvement in takedown requests, or lower costs for researching, drafting, and filing UDRP complaints.

It is unfortunate that complainants bear the cost without contribution from cybersquatters.

One possibly ameliorative measure could be a **lower cost and faster procedure that is usable for obvious cases of cybersquatting, combined with a new “cancellation” remedy** wherein domain names that have been adjudged to be abusive are permanently subject to cancellation at the registry level, thus relieving successful complainants of the need to pay annual renewal fees for what is essentially a non-productive asset. We believe that this kind of procedure would greatly assist complainants who are repeated victims of cybersquatting and is more viable than the punitive measures discussed above.

2

RECOMMEND AGAINST ADOPTING FORMALIZED MEDIATION

...mandated mediation... would likely result only in additional expenditure and delay.

Formalized mediation, although attractive, is not practical for the UDRP. We recognize that mediation is an important and useful feature in litigation and arbitration. Nevertheless, we have closely examined the viability of including mediation as a formalized feature within the UDRP and have determined that on balance, it is not desirable or feasible.

While mandated mediation could, in some cases, result in a resolution of a pending UDRP Complaint, in most cases it would likely result only in additional expenditure and delay. Most cybersquatters would not participate in mediation, just as they do not participate in the dispute proceeding by failing to file a Response. On other occasions, it would just be an opportunity to hold up the proceedings in an attempt to obtain an unjustified payment from the Complainant. Most importantly, once complainants have already expended significant sums on legal and Provider fees for the investigation, preparation, and filing of the Complaint, they would not be motivated to incur this additional expense. Moreover, where mediation does take place in the context of domain disputes, such as New Zealand and the UK, the mediator is paid by the registry and there is no likelihood of that occurring with the UDRP. Finally, should mediation be desired upon the consent of both parties, it is currently available, through private means, where the proceedings are suspended for up to 45 days.

Accordingly, we believe that it is up to the parties to decide whether they want to try to resolve the case informally. The parties are currently able to seek a voluntary suspension of the proceeding in order to explore settlement, and experience shows that this is effective and far less costly.

3

RECOMMEND AGAINST SUBSTANTIVE POLICY CHANGES: FOR EXAMPLE, CHANGING “AND” TO “OR”

...these types of cases — where a good-faith registrant repurposes a domain name to use it in bad faith — are exceedingly rare.

We recognize that a domain name could be registered in good faith and then later repurposed to be used in bad faith, and that the UDRP does not address this contingency, as the Policy requires the conjunctive requirement of bad faith registration **and** bad faith use in par. 4(a)(iii). Nevertheless, after carefully examining and considering the issue, we believe that the UDRP should not be revised to eliminate the conjunctive requirement and allow for either bad faith registration **or** bad faith use.

First and foremost, these types of cases — where a good-faith registrant repurposes a domain name to use it in bad faith — are **exceedingly rare**. Therefore, even if such a revision to the UDRP were to be made, it would have relatively little effect on the vast majority of cybersquatting cases, which typically involve both bad-faith registration and bad-faith use.

Furthermore, if the UDRP were revised to encompass this relatively rare circumstance, it would represent a fundamental change in the Policy that would invite other equally drastic changes to the UDRP, and thereby either result in deadlock amongst stakeholders or destabilize the tried-and-tested UDRP, which has been overwhelmingly successful in its application over the course of 24 years.

We also considered that if such a significant revision to the core of the Policy were made, it would have a major impact on the established case law, which has developed and evolved over the UDRP’s 24-year history. Parties and panelists would no longer be able to rely upon much of the established jurisprudence, which is founded on the present formulation, and which has provided consistency and predictability.

Revising the Policy to enable transfer of a domain name that was registered in good faith but used in bad faith would necessarily involve great uncertainty in its application. Bad-faith use could be considered by some panelists to have occurred — even in connection with the good-faith registration of a so-called “generic” or dictionary-word domain name that long-predates the complainant’s recent trademark rights — merely where the registrant hasn’t used the domain name, where the registrant inadvertently permitted the appearance of pay-per-click (“PPC”) links, or the registrant offered the domain name for sale to the general public. Accordingly, such a revision would likely result in uncertain application and destabilization of the UDRP.

The UDRP was intended to address clear cases of cybersquatting which — by definition and by established jurisprudence — means registering a domain name exploit existing trademark rights. Attempting replacement of the word “and” would not be a productive use of time, as it would certainly result in deadlock amongst stakeholders and would encourage other controversial requests for many changes that ultimately would not enjoy consensus support (e.g., eliminating passive holding, clear RDNH penalties, and the like). Even if such a change were feasible, it would fundamentally shift the UDRP’s intended purpose from addressing cybersquatting per se, to targeting abusive use of domain names more generally. That is an area that does deserve attention, but it is best addressed through other means, such as through the courts or the development of ICANN DNS abuse policies. **The UDRP has achieved its marked success and effectiveness in dealing with cybersquatting through a delicate balance and long-term development of jurisprudence. It should not be destabilized only to address what ultimately is an outlier, extremely rare set of potential ‘good faith turned into bad faith’ cases.**

PROCEDURAL IMPROVEMENTS

The following are procedural proposals that we believe could remedy some of the recurring issues that practitioners face. These points are not listed in any ranking of importance.

1

CHOICE OF REGISTRAR UPON A TRANSFER OF A DOMAIN NAME

PROBLEM: A Complainant may not wish to receive the transfer of a disputed domain name at the current registrar (i.e., a “push” transfer), especially if the current registrar has limited functionality or is in a foreign language.

SOLUTION: Following a transfer order, require the registrar holding the disputed domain name to facilitate the transfer to the Complainant’s **registrar of choice** upon request. Implementation should ensure reasonable security and comfort of the registrar in facilitating these transfers.

2

ENSURING TRANSFER AFTER A SUCCESSFUL COMPLAINT

PROBLEM: If the losing Respondent files a court case in a court that is not the agreed-upon “mutual jurisdiction,” some registrars may not fulfill their obligation to transfer a disputed domain name following a successful complaint, using the justification that there is a court case pending “somewhere.”

SOLUTION: The **only permitted mutual jurisdiction is the one properly specified by the Complainant in the Complaint.** If the complainant prevails and the respondent does not file a challenge under section 4(k) of the Policy in the court of mutual jurisdiction within the permitted time period, the registrar of the disputed domain name **MUST** timely transfer the disputed domain name to the Complainant as the Complainant so directs, notwithstanding that the respondent may have filed a challenge in court in a location that is not the mutual jurisdiction specified in the Complaint.

3

CONSISTENT, CLEAR RULES FOR SUPPLEMENTAL FILINGS

PROBLEM: Unclear, inconsistent procedures burden both complainants and respondents, leading to the needless expenditure of time and funds in the preparation of supplemental filings that are often then rejected by the panel. Unclear procedures also raise issues of equity and timeliness. A panel, upon receipt of a late-filed, unsolicited supplemental pleading by a complainant, may not provide the respondent adequate, or any, time to prepare a responsive supplemental pleading. Addressing unsolicited supplemental filings may unduly delay resolution of the dispute.

SOLUTION: A party must **request and obtain permission** from the Panel **before** filing an additional submission of any kind. The Panel should allow sufficient time after the filing of the Response (for example, at least three (3) days), for such a request to be made prior to the Panel issuing its decision. The request shall be limited to 300 words and shall only include the grounds for the request. The Panel shall permit a supplemental filing by a complainant where there are new facts and/or legal issues in the response that could not have reasonably been anticipated. If permission is granted, the Panel should ensure that: a) the requester is permitted an appropriate length of time to file the supplemental filing (for example, five (5) days); and b) the other party is provided with a reasonable opportunity to respond, with an additional submission of its own, within an appropriate length of time (for example, five (5) days).

4

ADDITIONAL METHOD FOR SELECTION OF PRESIDING PANELIST

PROBLEM: In a three-member panel, the Presiding Panelist plays a critical role. The appearance of neutrality in selecting the Presiding Panelist is important for the credibility of the Policy. While the Providers have generally done a good job in selecting slates of presiding panelists in three-member panel cases, we note that there does not currently exist a consistent selection process or policy across the different Providers. There is also a concern that in the future a Provider, (perhaps a newly-appointed provider)

could adopt a process that is not perceived as neutral, which could undermine the credibility of the UDRP.

SOLUTION: The **standard, default, method** for the selection of the five candidates for presiding panelist **remains unchanged**, in which the Provider nominates candidates according to its regular procedures. An **alternate method** for the selection of the five candidates for presiding panelist is available to either party upon the payment of an additional fee, not to exceed half the fee charged by the Provider for a three-member panel. Notice of a party's choice to use the alternate method must be made at the time that the party elects to have the case heard by a three-member panel.

Under the **alternate method**, both parties follow the current procedure for the selection of the party-selected panelists (**"wings"**), with each party proposing three candidates for its party-selected panelist as is done currently. Once the wings are selected, **the wings choose two candidates apiece and another one jointly from the Provider's roster** of panelists. If they cannot agree on the joint selection, then the fifth candidate for presiding panelist shall be randomly selected from the last 10 unique panelists to have served as presiding panelist at the Provider. The parties then rank the five candidates, as they do now.

5

CLARIFYING THREE-MEMBER PANEL TIMELINES

PROBLEM: There is no clear, consistent timeframe by which a Complainant must pay an additional fee, if required, when the Respondent selects a three-member panel. A slow-paying Complainant can delay proceedings by a month or more, thus leaving the disputed domain name locked and the Respondent without recourse.

SOLUTION: Adopt a clear procedure and **time period by which a Complainant must make timely payment** of the additional fee when the Respondent selects a three-member panel.

6

COMPLAINANT WITHDRAWALS

PROBLEM: A Complainant may wish to withdraw its complaint after a response is filed, especially if the complaint was speculative and baseless and the Complainant fears an adverse decision. Yet the Respondent will have gone to the trouble and expense of filing a response. The Complainant may be subject to a finding of Reverse Domain Name Hijacking for filing an abusive complaint. The Respondent could be disadvantaged if the dispute is not resolved, such that the Complainant might withdraw the complaint and then refile it later.

SOLUTION: It shall be **up to the Panel, in its discretion, to determine if a Complainant shall be permitted to withdraw** its complaint without the consent of the Respondent, after a response having been filed.

7

ACCURACY AND PROVISION OF REGISTRATION DATA/ REGISTRAR VERIFICATION

PROBLEM 1: The Registrar Provided Registration Data (Registrar Verification) Can Be Unclear.

Registrars are required by the Temp Spec to convey the full Registration Data in respect of a disputed domain name to the UDRP provider (referred to hereinafter as the “Registrar Verification”). **Complainants and Panels are, however, sometimes misled by the Registrar Verification.** In addition, the registrar may inadvertently mischaracterize the date provided as part of the Registrar Verification. For example, a registrar may provide a “creation date”, a “registration date”, or a date when the domain name first moved to the concerned registrar, without clearly identifying what the provided date genuinely represents. This leads to confusion, for example, when a Complainant or Panelist may assume that a provided “creation date” is actually a “registration date”. In addition, the provided date may merely be the date that the Disputed Domain Name was transferred to the registrar, rather than being a date with any significance under the Policy. Accordingly, the data which is intended to be helpful and remedy the deficiency in available data due to GDPR can lead to

misapprehensions on the critical issue of the date of registration.

SOLUTION 1: Registrars should be required, when providing Registrar Verification, either (a) to simply provide an **exact copy of the full Whois record** without elaboration and leave it to the parties to evaluate what the provided data effectively means; or b) if providing more than a copy of the Whois data itself, i.e. answering questions posed by the Provider in relation to the Whois records, accurately identify what the data being provided represents. For instance, the registrar shall clarify whether the date being conveyed is in fact the date upon which, to the registrar's knowledge, the Respondent registered the domain name, or the date when the domain name was created, or the date when the registrar first received the domain name registration, or otherwise.

PROBLEM 2: The Respondent is Denied Access to Critical Evidence that is Entered into the Record and that is Only Available to the Panel and to the Complainant.

After a Complaint is filed, the critical information contained in the Registrar Verification, e.g., the identity of the Respondent and registration date of the disputed domain name, is officially conveyed by the registrar who in turn typically shares it with the Panel and the Complainant. The Complainant then typically uses the data to amend its Complaint to reflect the underlying registrant and sometimes to reflect the date of registration (subject to the limitations identified in Problem 1, above). This Registrar Verification is generally considered official and accurate since it is provided by the concerned registrar and is derived from the now-private Whois record.

Since **Respondents are not provided with this Registrar Verification, they do not have access to the full case file**, unlike the Complainant and the Panel. The Complainant and the Panel will be aware that the Registrar Verification, inter alia, identified the Respondent and provided a certain date regarding the disputed domain name and will generally rely upon this official record. However, since a Respondent is not furnished a copy of the Registrar Verification, it is unable to review it and correct it where appropriate.

For example, a Respondent will be unaware that the Registrar Verification specified an incorrectly-named party or incorrect registration date and will thereby be unable to challenge it beyond what is included in the Complaint itself, despite the Registrar Verification having formed part of the case file provided to the Complainant and Panelist only.

Furthermore, if the Registrar Verification, for example, discloses a registration date of 2017, a Complainant may rely upon that date and allege 2017 as the date of registration in the Complaint, based

upon the Registrar Verification that it received. A Respondent, however, may be entitled to challenge it by arguing that, for example, the 2017 date was merely the date upon which the Registrant moved the domain name to the current registrar, but the actual registration date was years earlier. Without having received the Registrar Verification itself, the Respondent may be unaware that the Complainant's allegations were based upon the Registration Date and, as a result, the Respondent would not know to challenge the official Registrar Verification itself.

Further, as has happened, a Panel may discredit a Respondent's response in the belief that the Respondent is willfully misrepresenting its date of registration of the Disputed Domain Name, if it conflicts with the date provided by the registrar. Because the Registrar Verification is not shared with the Respondent, the Respondent has no way of knowing that a date has been inaccurately submitted by the registrar as the registration date, when in fact it may be the date the domain name was transferred to the registrar or some other date. Sharing the Registrar Verification with a Respondent would easily remedy this issue.

SOLUTION 2: Registrar Verifications should be shared with both parties as part of the case file upon commencement of the proceeding. This will not prejudice the Complainant in any way but will provide the full and identical case record to both parties and thereby help avoid misapprehensions resulting from an incomplete or incorrect Registrar Verification.

8

RECONSIDERING THE TIMEFRAME TO PUBLISH DECISIONS

PROBLEM: We are aware of significant delays that occur between the Panel delivering its decision to a Provider and the Provider communicating and/or publishing the decision. Many of these delays may be beyond the control of the Provider or result from Providers making their best efforts to administer and communicate decisions. Nevertheless, **the Rules require Providers to communicate decisions within 3 business days (Rule 16(a))**, and there has been a lack of compliance.

SOLUTION: To promote compliance with this deadline, we propose that the **time frame be reconsidered**, based upon the reasonable needs of Providers and of the parties, and that whatever appropriate time frame is agreed upon be strictly abided by Providers, subject to exceptional circumstances.

9

IDENTIFYING DISSENTING PANELISTS

PROBLEM: If a dissenting panelist is not identified, it is unclear which panelist holds which views. This lack of transparency undercuts the ability of parties to make well-informed choices when selecting panelists for a three-member panel.

SOLUTION: **Dissenting panelists should be identified** in the decision by name.

10

MAKING DECISIONS ALSO AVAILABLE IN A MACHINE-READABLE FORMAT

PROBLEM: Previously, ICANN compiled and maintained a list of all decisions from all Providers. It ceased doing so in 2006. There is **no longer an official compilation of all cases across all Providers**. Moreover, since not all Providers issue cases in machine-readable format, they are not easily searchable. The lack of a central database for the over 80,000 UDRP decisions to date undermines the transparency of the UDRP and makes reviewing and analyzing decisions far more difficult.

SOLUTION: ICANN should **provide a centralized database of UDRP decisions in a standard, machine-readable format**. We recommend that ICANN undertake and fund this initiative to create a central database and work with Providers to develop a standard machine-readable format for all UDRP decisions.

Alternatively, Providers could make a version of their decisions available in a standard, machine readable format, such as in the JSON or a similar format, thereby making it practicable for the private sector to create a searchable central depository of all cases.

APPENDIX A

EXPEDITED TRANSFER PROCEDURE (ETP)

SUMMARY

Complementing the UDRP, the proposed Expedited Transfer Procedure (“ETP”) is a more streamlined, efficient transfer/suspension procedure for brand owners that are subject to persistent cybersquatting.

The ETP is intended and best suited for the clearest cases of cybersquatting, phishing, fraud, and comparable cases in which there is no conceivable good-faith registration and use. The ETP is not appropriate where a case may involve more complex issues, such as freedom of expression, resellers, nominative fair use, or the date on which the current registrant acquired the disputed domain name.

The requirement that a mark be enforced in five consecutive, successful UDRP complaints to be eligible to use the ETP is an essential element of the ETP to ensure that only marks that are subject to persistent cybersquatting and asserted by experienced representatives can avail themselves of this expedited procedure.

KEY BENEFITS

The Complaint consists primarily of “check the box” representations along with a short summary of the case. The evidentiary requirements are minimal and standardized. The matter is heard by a single Panelist unless the Respondent pays to convert the dispute to a three-member UDRP.

Time to decision is as little as 14 days.

ELIGIBILITY

- a. The trademark rights being asserted must be for a registered trademark (the “Mark”).
- b. A Complainant will need to establish eligibility to use the procedure by either establishing that:

- i. The Complainant has prevailed in its five most recent UDRP complaints in respect of the Mark (with no intervening ETP losses); or
- ii. The Complainant prevailed in its last ETP complaint in respect of the Mark.

COMPLAINT

- a. The Complaint consists of (1) a section in which the complainant makes a series of representations (the “Representation Section”); (2) a Statement of the Case, (3) Evidentiary Support, (4) Certification of accuracy and completeness.
- b. The Representation Sections consists of the following representations (check the box) all of which must be confirmed *to the best of the Complainant’s knowledge and belief*:
 - i. The Complainant currently has enforceable and registered rights in its Mark;
 - ii. The Complainant’s date of first use of the Mark predates the original creation date of the Disputed Domain Name as shown in the Whois record;
 - iii. The Respondent does not currently have, nor ever had, a legitimate right or interest to the Disputed Domain Name and the Complainant believes the Domain Name was registered and is being used in bad faith;
 - iv. The Disputed Domain Name is not used for a bona fide non-commercial purpose, including, without limitation, criticism, advocacy, educational purposes, or a fan site.
 - v. There is no reasonably conceivable good-faith commercial use of the Domain Name other than by the Complainant;
 - vi. There has never been a business relationship, either directly or indirectly, between the Complainant or Respondent or any principals thereof;
 - vii. The Disputed Domain Name either (a) meets the Telstra criteria for finding that passive holding is in bad faith, or (b) is specifically targeting the Complainant in bad faith. (To be further defined.)
- c. The Statement of the Case shall be limited to 1000 words. The Statement of the Case shall demonstrate that all three criteria for a successful UDRP complaint have been met.
- d. Evidentiary Support.
 - i. The Complainant shall attach at least one trademark

- registration in respect of the Mark;
- ii. Attach proof of the Domain Name's Creation Date (e.g., the Whois record);
 - iii. Identify prior cases that demonstrate Complainant's eligibility to use the ETP as per Section 1.b. above;
 - iv. If relying on 2.b.vii.b., Complainant's representation of targeted bad faith, provide evidence of such bad-faith use; and
 - v. Evidence of the fame of the asserted trademark.
- e. The Complaint may be filed against multiple domain names.
(Procedure to be determined.)

NOTICE

- a. Same procedure as UDRP except that; (a) the Registrar is also required to serve the Complaint on the registrant; and (b) the Registrar should where possible and to achieve the highest likelihood of adequate notice, serve the registrant using the account holder's contact details in addition to the registrant's Whois contact details. Boilerplate Notice of Complaint shall be in a number of the most widely spoken languages.

RESPONSE

- a. Upon receipt of a Notice of the Complaint, the Respondent shall have ten (10) calendar days to file a Response.
- b. The Respondent may request an automatic ten (10) calendar day extension of the deadline to file a response.
- c. The Response shall be limited to 1,000 words.
- d. The Respondent may convert the dispute to a three-member panel UDRP dispute at the current Provider by submitting one-half (1/2) of the fee for a three-member Panel at the current ETP Provider. The Complainant shall be responsible for the remaining portion of the three-member panel fee charged by the current Provider. The Complainant will have ten days to supplement or replace its ETP complaint with a UDRP complaint.

DECISION

- a. The evidentiary standard is “clear and convincing” (*a definition and examples of what this means may be added*).
- b. If the Respondent fails to submit a compliant Response, the Panelist shall have three (3) calendar days to issue a decision.
- c. If the Respondent submits a compliant Response, the Panel shall have five (5) calendar days to issue a decision.
- d. If the Panel finds for the Complainant, whether or not the Respondent filed a compliant response, the decision shall state that the Panel finds that the Complainant has demonstrated sufficient evidence in support of its representations. Further, the Panel shall provide a statement of the primary rationale for its decision of at least 200 words which is specific to and sets forth the facts of the case most relevant to the Panel’s decision.

PROVIDERS

- a. Providers shall publish the decision within 72 hours of receipt of the decision from the Panel.
- b. Providers shall assign panelists in a round-robin format from their roster accounting for availability and language proficiency.

REMEDIES

- a. Complainant shall have a choice of three remedies:
 - i. Transfer. The registrar will transfer the domain name to the Complainant.
 - ii. Cancellation. The registrar will delete the domain name and make it available for re-registration.
 - iii. Suspension. The registrar/registry will remove the name servers from the domain name for a period of ten years. After the ten-year period the Disputed Domain Name shall be cancelled. Neither the registry nor registrar shall assess any fees regarding the suspended domain name during the suspension period.
- b. Delayed transfer when Suspension Requested. If a suspension remedy is chosen, any time during the suspension period the Complainant can choose to convert the suspension to a transfer. Once the transfer occurs it will be treated as a new registration and registration and renewal fees will start accruing. The registrar or registry shall not change the price categorization of the domain name.

OUTCOMES

- a. If the Complainant prevails, the Panel will order the remedy requested by the Complainant.
- b. If the Respondent prevails, the Respondent shall retain possession of the Disputed Domain Name. Further, as specified in Section 1 above, the Complainant must requalify for ETP eligibility for the Mark by prevailing in five UDRP complaints relying on the mark filed subsequent to the denial of its ETP complaint. If after considering the submissions, the ETP panel finds that the circumstances are exceptional and warrant waiving the requirement to requalify for the ETP for the mark, the ETP panel shall make such a finding.
- c. If the Panel determines that the Complainant was abusive or misleading, the Panel shall make a finding of Reverse Domain Name Hijacking. Such a finding of RDNH shall result in the barring of that Complainant from using the ETP for a period of two years and such Complainant shall be barred from filing a UDRP on this disputed domain name.
- d. ETP decisions are subject to appeal. If an ETP complaint is denied, the Complainant is not precluded from filing a UDRP complaint on the Disputed Domain Name. If an ETP complaint is accepted, the Respondent may avail itself of the appellate procedure described in Proposal #1. The appeal of an accepted ETP complaint must be filed within ten (10) business days of the publication of the ETP decision.

MANDATORY REVIEW

- a. The ETP will be reviewed after three years. The review will determine whether the ETP will continue or should be terminated.

COMMENTARY AND NOTES

PREFATORY NOTES

The UDRP would be a more effective and efficient remedy for the most harmful forms of persistent cybersquatting if these instances could be identified and resolved in an expedited proceeding. There are vast differences between disputes that involve blatant fraud, phishing or other forms of evident abuse from those involving evidence-intensive disputes such as matters involving criticism, fair use, resellers or distributors, relevant registration dates and other more complicated matters. The purpose of the ETP is to address the former expeditiously and to leave the rest to the UDRP.

The requirement that the Complainant prevail in the previous five consecutive UDRP cases on the particular mark is an essential element of the ETP. This serves to distinguish those marks that are subject to persistent cybersquatting from other marks that may be new, non-distinctive, non-exclusive, or otherwise not suited for an expedited procedure.

Since the Respondent may lose rights to its disputed domain name in as little as 14 days, the reasonableness of enabling a Complainant to avail itself of the ETP requires that there is a very high likelihood that the complaint is meritorious and that the Complainant will prevail. The track record of prevailing in the five previous consecutive UDRP complaints qualifies the mark holder to use the ETP to protect its mark.

ELIGIBILITY

- 1.a. The mark relied upon must be a registered trademark. Common law rights are not eligible.
- 1.b. Initial eligibility for the ETP arises from prevailing in the five successive immediately preceding UDRP complaints with respect to the Mark. Once the Complainant begins filing ETP complaints, the Complainant remains eligible for the ETP so long as its ETP complaints are accepted. If Complainant files an ETP complaint that is denied, it will lose eligibility to file ETP complaints, subject to the exceptional 8(b) waiver. Complainant regains eligibility to file ETP complaints after prevailing in five successive immediately preceding UDRP complaints with respect to

the Mark that are filed after the date of the denial of the ETP complaint.

If the Complainant wishes to file a complaint that it believes is meritorious but is unsure whether it will prevail in an ETP complaint, the Complainant may elect to file the complaint as a standard UDRP complaint instead so that if its UDRP complaint is denied it does not lose its eligibility for the ETP and it will not be required to go through the process to regain ETP eligibility.

COMPLAINT

- 2.(b)(ii) **Creation date.** If the creation date of the Disputed Domain Name is before the date that the Complainant has enforceable rights in its mark, such that the Complainant is asserting that the Respondent is not the original registrant of the domain name and acquired the Disputed Domain Name at a later date from a third party, this raises a question of fact as to which date should be deemed the registration date. This may be a factually intensive dispute requiring the Panel to weigh competing evidence and may not be able to be determined with a high degree of confidence. As such, disputes about the the registration date, rather than the creation date, are not suitable to ETP resolution.
- 2.(b)(iv) **Non-commercial use.** The question of whether a non-commercial use is fair or pretextual is a factually intensive question and is not suited to the ETP.
- 2.(b)(v) **No reasonably conceivable good faith use.** The ETP is suited for Disputed Domain Names that on their face are targeting the Complainant's well-known mark. The ETP is not suited for valuable domain names that can be legitimately used by third-parties and that are similar to an asserted trademark. Domain names which are inherently non-distinctive on their face raise the evidentiary question as to whether the use (website, email, etc.) is primarily for the purpose of targeting the Complainant and, in the absence of clear evidence thereof, should not be considered suitable for the ETP.
- 2.(b)(vii) **Passive or targeted use.** Disputed domain names that are passively held are eligible for the ETP if they meet the five-part Telstra test, in particular "that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate" (<https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0003.html>). Otherwise, the Complainant should demonstrate

evidence that the Disputed Domain Name is being used specifically to target the Mark.

NOTICE

3.a. Effective notice is particularly important for the ETP, as the Respondent has a shortened period for an initial response and might lose possession of its domain name in as little as 14 days. A critical aspect of effective notice is for the Registrar to send the Complaint to the Respondent using the primary contact information that the Registrar has on file for the Respondent. This contact information is more likely to be accurate and up-to-date than the Whois contact information, which as it was originally available to the public may have been a less sensitive secondary email address. Also, the Respondent may not be familiar with the Provider's name and may distrust any unsolicited email with attachments as dangerous spam. The Respondent has a trusted, established relationship with its Registrar and will be more likely to pay attention to communications from its Registrar.

Multi-lingual boilerplate notice. Further, to help ensure that non-English speakers understand that a dispute has been filed against them and what their options are, a notice in a number of the most widely spoken languages (<https://blog.busuu.com/most-spoken-languages-in-the-world/>) alerting the respondent that its domain name is at risk of loss from a dispute and providing basic helpful information shall also be sent by the Provider and by the Registrar.

REMEDIES

7.a.iv The objective of the provision that the registrar or registry shall not change the price categorization of the disputed domain name is so that there is no price gouging of the Complainant that wishes to register the domain name following a period of suspension.....

If a third-party has a legitimate interest in and use for a suspended domain name, the third-party could reach an agreement with the Complainant to end the suspension and to register the disputed domain name and then to transfer it to the third-party according to whatever the agreed terms are.

OUTCOMES

- 8.b In exceptional circumstances, a Panel that denies an ETP complaint may nonetheless view the requirement that a Complainant requalify for the ETP to be inappropriate. Perhaps a fact came to light in the response that the Complainant could have had no reasonable expectation of knowing before filing the complaint or there has been misconduct on the part of a respondent. If deemed appropriate a Panel may waive the requirement to requalify for the ETP, though the expectation is that this waiver will be applied very sparingly and only in exceptional circumstances.

FILING FEES

While we expect that the streamlined nature of the ETP should enable Providers to offer filing fees that are lower than those for standard UDRP cases, they still should be at a level that adequately compensates the Providers and Panelist.

ABOUT US

ABOUT US

The UDRP Exploratory Group initiative arose out of a weekly call hosted by Gerald Levine during which recent UDRP decisions are reviewed, and practice issues discussed. Participants on the call include UDRP panelists, party representatives, dispute administrators, and others with an interest in the UDRP. The four initial drafters of the proposals were and are regular participants on these calls and have come to develop a high regard and respect for each other's knowledge and experience in the field of domain name disputes.

The four of us decided to try an experiment. Could a small group whose members are closely associated with two constituencies that normally face each other as adversaries in UDRP disputes, namely complainants and respondents, and whose priorities for making changes to the UDRP are similarly usually in opposition, be able to reach consensus on any meaningful proposals for improving the UDRP ecosystem?

Our objective was to develop a limited and focused package of proposals which could have a high likelihood of achieving consensus and, if adopted, would benefit both complainants and respondents.

In that spirit, discussions were begun, pain points were identified, and possible solutions discussed – at times vigorously. Each of the initial four founding members of the Exploratory Group had an effective veto over any proposals. Consequently, the Proposals presented here reflect the achievement of a unanimous consensus among all four initial diverse participants.

The Proposals are not intended to solve all issues concerning the UDRP. However, it is hoped that these Proposals, having been achieved through a hard-won interim consensus, can serve as the foundation for needed improvements to the UDRP and can receive consensus support from the various stakeholder communities.

Exploratory Group members recognize that to achieve meaningful improvements to the UDRP, the focus needs to be on limited, constructive, and non-controversial issues which are likely to achieve widespread support. Our hope is that the work of an expanded Exploratory Group could produce a package of proposals that, because they are already the product of a consensus approach among various stakeholders, would lay the groundwork for a Phase 2 of the RPM that need not be lengthy, fraught, or overly complex. The aim of the Exploratory Group initiative is to develop proposals for the ICANN community that offer a positive, efficient, and practical way forward towards making needed and beneficial improvements to UDRP procedures.

If you are expert, collegial, constructive, and prepared to work in a non-partisan manner for the benefit of all stakeholders, we heartily welcome you to the UDRP Exploratory Group and look forward to working with you to further develop the Proposals into future improvements to the UDRP ecosystem.

EXPLORATORY GROUP MEMBERS



STEVE LEVY

Steve Levy focuses on trademark domain name disputes and has personally researched, drafted, and filed over 600 domain name complaints. Steve is honored to also serve as a Panelist for a number of organizations that offer dispute resolution services under the Uniform Dispute Resolution Policy (UDRP) and other dispute policies. He is a frequent speaker on the topic of domain name disputes and is eager to encourage greater awareness of, and participation in this field by stakeholders and practitioners. Prior to his current roles, Mr. Levy led the global intellectual property practice team at the Home Depot, was an associate at the New York office of the Proskauer law firm, and was in-house counsel to Sony Corporation based in Tokyo, Japan.



GEORGES NAHITCHEVANSKY

Georges Nahitchevansky is a partner at Kilpatrick Townsend. Georges concentrates his practice in litigation and counseling on trademark, copyright and Internet matters across a broad spectrum of industries both in the U.S. and internationally. He has extensive experience in handling U.S. and worldwide trademark, copyright and Internet enforcement matters, including complex cross border and multi-jurisdictional disputes. Georges is a long serving panelist at WIPO and has helped resolve hundreds of domain name disputes under the Policy.



ZAK MUSCOVITCH

Since 1999, Zak has acted as counsel on behalf of both complainants and respondents in over 100 contested UDRP proceedings and other national domain dispute mechanisms. Zak was counsel in several of the earliest precedent-setting court cases in Canada involving the intersection of trademarks and domain names. Zak is General Counsel to the Internet Commerce Association (“ICA”), the Washington D.C. based trade association that has been the voice of domain name investors since 2006. The ICA along with INTA, co-hosted the first ever “Moot UDRP Hearing” in 2021. Zak was a guest speaker at WIPO’s 20th Anniversary of the UDRP in 2019 and is the author of numerous articles on domain name law, such as “A Guide to ICANN Procedure and Policy (2000). Zak has served as a consultant to the Canadian Internet Registration Authority on the Canadian Domain Name Dispute Resolution Policy and is active in Internet governance issues through his participation in ICANN’s Rights Protection Mechanisms Working Group (2020) and the Transfer Policy Working Group. Zak is accredited as a UDRP Panelist by the CIIDRC.



NAT COHEN

Nat has operated a domain name portfolio business, Telepathy, Inc., for 25 years. Through his personal experience as a respondent in numerous UDRP disputes, he developed an interest in the Policy and views about how it could be improved. For over a decade, he has been advocating for changes to the UDRP through numerous articles and speaking appearances. Nat has served as a Director of the Internet Commerce Association since 2010.