Uniform Domain-Name Dispute-Resolution Policy: Policy Status Report (UDRP PSR)

Presentation to GNSO Council

ICANN

25 August 2022

Agenda

1. **Background on the UDRP Status Report**

2. **Scope of the Policy Status Report**

3. **UDRP Status Report Overview**

4. **Public Comments on the UDRP PSR**

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UDRP PSR: Background

- Under the RPMs PDP [Charter](#), the GNSO Council is expected to initiate Phase 2 of the PDP to review the UDRP.

- The GNSO Council has indicated that, prior to launching the UDRP review, it may need to revise the PDP Charter to clarify the scope of the Phase 2 work.

- To ensure that the rechartering process focuses on specific issues and topics that could benefit from a comprehensive policy review, in July 2022 the GNSO Council [requested](#) that ICANN org provide the Council with a Policy Status Report (PSR) on the UDRP.

- On 3 March 2022, the draft UDRP PSR was published for public [comment](#).

- On 18 July 2022, ICANN org submitted the [revised](#) PSR (including relevant updates from the public input received) to the Council.

UDRP PSR: Scope

- **Review of policies and utility of a status report is anchored in the [Consensus Policy Implementation Framework](#): "*After there has been adequate time to generate data and metrics to evaluate implemented policy recommendations, GDS, Compliance and GNSO Policy Staff should provide a Policy Status Report (PSR) to the GNSO Council with sufficient data and metrics to assess the impact of the policy.*"**

- **As such, the purpose of the UDRP PSR is to provide an overview of the policy and to <u>support community assessment</u> of the effectiveness of the policy.**

- The PSR includes:
  - Brief history of the policy
  - Background on applicable processes and procedures
  - Publicly available data related to the policy
  - Overview of key substantive and procedural issues, and trends that have been observed
  - Other relevant information that may help inform community deliberations

UDRP PSR: Overview

- The UDRP Status Report provides an overview of the available data related to the UDRP and data points that may assist with a policy effort to assess the effectiveness of the UDRP in terms of:

  - **i) Efficiency**: Does the UDRP provide trademark holders with a quick and cost-effective mechanism for resolving domain name disputes within its scope?

  - **ii) Fairness**: Does the UDRP allow for consideration of all relevant rights and interests of the parties and ensure procedural fairness for all parties concerned?

  - **iii) Addressing abuse**: Has the UDRP effectively addressed abusive registrations of domain names?

* Note that the PSR does not draw conclusions about the effectiveness or fairness of the UDRP. Rather, it presents relevant data, issues raised, differing viewpoints, public comments and examples concerning each UDRP goal, which are intended to serve as input to UDRP-related review efforts and to support data-driven policy making.

UDRP PSR: Overview of Public Comments

- The UDRP Status Report was posted for [Public Comment](#) from 3 March 2022 to 19 April 2022.

- The Public Comment summary [report](#) was published on 3 May 2022.

- **44 comments were received**, including 31 submissions from organizations and community groups as well as from 13 submissions from individuals.

- The comments were categorized into two categories:

  - 1) General observations, and

  - 2) Specific issues and/or suggestions concerning the overarching goals of the UDRP.

General Comments on the UDRP PSR

- RySG: "The **UDRP has functioned as an invaluable tool** for handling cybersquatting disputes between trademark owners and domain registrants for over 20 years."

- INTA: "Although no system may ever be perfect, **any problems with the UDRP are outweighed by the benefits resulting from the availability of the UDRP** and are not sufficient in number, absolutely or relatively, to warrant any major changes to the UDRP."

- RrSG: "**Initiating another major PDP for a policy that is very effective overall would further delay other unimplemented initiatives** that have been approved or are pending."

- FORUM: "As seen from the public comments submitted, **there is some disagreement as to what changes, if any, should be addressed in Phase 2** with respect to the UDRP. **Most stakeholders, however, would agree that overall the UDRP is successful.**"

- Telepathy, Inc.: "**The UDRP is due for an update**. The UDRP as originally drafted has proven itself to be an effective tool for combatting cybersquatting. Yet the **UDRP should be updated to account for the changes to the DNS that have occurred in the over 20 years** since it was adopted."

UDRP PSR: Public Comment

UDRP Goal: Efficiency (12 comments received)

- **Compliance with timing requirements**: Commentators indicated issues with delays in receiving notice of UDRP decisions, sometimes caused by Providers not adhering to the UDRP Rules.

- **Refunds at settlement**: Some comments suggested encouraging all UDRP Providers to offer refunds or partial refunds of filing fees in the event a dispute is settled and withdrawn prior to panel appointment or issuance of a decision.

- **Case consolidation**: A few comments suggested that efficiency could be gained by greater emphasis on case consolidation. As reverse Whois searches are no longer feasible in many instances due to changes to applicable regulations such as GDPR, corresponding changes to the UDRP should be examined to maintain consolidation as a key driver of efficiency.

UDRP PSR: Public Comment

UDRP Goal: Fairness (19 comments received)

- **Costs**: Some commentators suggested that the UDRP is unfair in terms of costs to brand owners for monitoring and enforcing against an infringing domain name.

- **Provider oversight**: Some commentators suggested that there should be contractual arrangements in place with UDRP Providers to ensure that Providers act in a more consistent and fair manner. For instance, if Providers violate the UDRP, then ICANN should be able to exercise additional oversight of the Provider.

- **Reverse Domain Name Hijacking (RDNH)**: Some commentators suggested that there should be a mechanism to discourage the practice of RDNH, such as generating a presumption in future cases against those Complainants found to have attempted RDNH. In addition, registrants should be given compensation when there is a finding of RDNH.

UDRP PSR: Public Comment

UDRP Goal: Addressing Abuse (15 comments received)

- **Registrant resources**: Some comments suggested ICANN org should develop a more comprehensive guide on how registrants can defend themselves.

- **Expedited proceedings**: Some comments suggested the possibility of a more expedited proceeding within the UDRP to address fraud and phishing (i.e., other forms of abuse other than mere cybersquatting but which also leverage trademark rights).

UDRP PSR: Anticipated Next Steps

- Under the RPMs PDP [Charter](#), upon initiation by the GNSO Council, Phase 2 of the PDP will focus on reviewing the UDRP.

- The [Charter](#) does not specify the timing for launching or conducting Phase 2.

- The Council has [indicated](#) that the PDP Charter may require revisions to clarify the scope of the Phase 2 work.

- As such, to inform its review of the PDP Charter and the scope of Phase 2, the Council may take into consideration the UDRP Policy Status Report to determine next steps and possible timing for Phase 2.