



The Internet Corporation for Assigned Names and Numbers

December 19, 2013

Ms. Elisa Cooper
Chair, ICANN Business Constituency

Dear Elisa,

I write in response to the Business Constituency's 18 September 2013 note regarding the "UDRP Providers and Uniformity of Process – Status Report" (Status Report) document.

The Status Report was produced as part of the Board's consideration of the Arab Center for Dispute Resolution's application to serve as an approved dispute resolution provider under the UDRP, which was approved on 18 May 2013. See <http://www.icann.org/en/groups/board/documents/resolutions-18may13-en.htm#1.d>. The decision on the ACDR's application was taken only after further public comment was received and analyzed, including the inputs from the BC. In its rationale for the resolution, the Board noted "the Board also requested that staff report to the community on how ICANN's earlier consideration of UDRP provider uniformity issues was concluded. As a result, a briefing paper has been prepared and will be publicly posted." The Status Report is that briefing paper. In fact, a draft of the Status Report was presented to the Board in advance of its decision on the ACDR application and included in the Board Briefing Materials posted with the minutes of 18 May 2013. See <http://www.icann.org/en/groups/board/documents/briefing-materials-3-2-18may13-en.pdf>, at page 65-68. The Status Report was never intended to be a document similar to a GNSO Issue Report, for which public comment is necessary, as was suggested in your letter.

In response to the questions raised in your letter:

Question 1 – Contracting with UDRP Providers: Entering into formal contracts with the UDRP providers carries with it the formality of following all contractual obligations, including potential notice and cure requirements, as opposed to ICANN's ability today to take swifter corrective action. The UDRP system to date has operated quite well without having formal contractual tools, and with very few (if any) substantiated reports of provider misconduct that require corrective action. While a contract could be developed that would allow for flexibility in corrective action or graduated penalties, the actual experience with UDRP providers to date does not necessitate the formal contractual development for which the BC seems to be calling. If ICANN were to see a great expansion of UDRP providers in the future, or if there were increasing need to take corrective action against UDRP providers, the development of a formal contractual regime may indeed become more advantageous than the system that exists today.

Question 2 – URS as Implementation of Policy Recommendations: The UDRP was developed through a formal policy development process. The Uniform Rapid Suspension System (URS) was developed as part of the implementation of the GNSO's 2007 Policy Recommendations regarding the



introduction of new gTLDs. ICANN agrees with the BC on this point. However – unlike the UDRP – the rules and procedures of the URS were not developed through a PDP. The Status Report was referencing the status of the URS itself – and not the policy recommendations underpinning the development of the URS – when indicating that the URS is not policy based.

Questions 3 and 4 – Timing of Publication/Availability of Public Comment: Because of the stated purpose of the Status Report, which was to provide an update on ICANN’s review of its relationships with UDRP providers, the document was never contemplated for public comment. Further, because of the informational status of the Status Report, and the fact that no discussion of the Status Report was anticipated at the Durban meeting, the timing of the posting of the Status Report was not considered to be linked to the Durban meeting. As seen through efforts such as the BC’s letter, the ICANN community always has the ability to raise concerns on this issue.

Question 5 – Impact on Future Policy Development Work: As the BC points out in its letter, the GNSO’s future work is expected to include an issue report on the UDRP 18 months after the delegation of new gTLDs. Issues relating to the UDRP provider approval process have long been contemplated as a topic for the policy development process, and were in fact included in the 2011 Final Issue Report on the Current State of the UDRP. See gnso.icann.org/issues/udrp/udrp-final-issue-report-03oct11-en.pdf. Policy recommendations regarding ICANN’s relationship with UDRP Providers could be an outcome of that PDP (or one in the future). As with all PDP recommendations, ICANN would follow the Bylaws in how those recommendations are considered and implemented.

The Status Report could be considered as an input into the future PDP Working Group discussions if the Working Group wished to do so.

As discussed above, the timing of the publication of the Status Report was not intended to cause any confusion or supplant any future community discussion on the issue of ICANN’s relationships with UDRP providers. Instead, the Status Report represented the completion of ongoing work within ICANN. Thank you for reaching out for clarification on this document.

Best Regards,

A handwritten signature in blue ink, appearing to read "Akram Atallah", written in a cursive style.

Akram Atallah
President, Global Domains Division