



**Via Email: Correspondence@icann.org
and board@icann.org**
Via Facsimile: +1 310 823 8649

October 9, 2018

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California
90094-2536, USA

Attn: Board of Directors

Dear Mesdames and Messieurs:

Re: ICANN Budgeting and Domain Name Dispute Resolution

I write to you on behalf of members of the Internet Commerce Association. Founded in 2006, the Internet Commerce Association (the “ICA”) is a non-profit trade organization representing the thriving industry that has developed around the independent value of domain names in this Internet Age, including domain name investors, domain name secondary marketplaces, domain name brokers, escrow service companies, registries, and related service providers. The ICA’s mission is to assist with the development of domain name related policy. ICA members own a substantial percentage of all existing Internet domains and provide crucial domain name-related services to millions of Internet users.

It may come as a surprise to you that since 1999, ICANN has been responsible for over 60,000 domain name disputes under the Uniform Domain Name Dispute Resolution Policy (“UDRP”). These UDRP disputes have been brought by trademark owners against domain name registrants and concern claims of cybersquatting. Many of these UDRP complaints have been denied, with many of those resulting in a finding of “Reverse Domain Name Hijacking” against the trademark owner; i.e. using the UDRP in bad faith to deprive a domain name registrant of his or her domain name.

What may be even more surprising to you, and is certainly surprising to us, is that there is a total absence of any ICANN oversight over the UDRP. There is no ICANN staff person or office

whose mandate it to exclusively oversee and administer the UDRP. There is no regular review of the UDRP program. There is no complaints procedure. There are not even any actual contracts with the existing UDRP dispute resolution service providers. Moreover, over the course of the last 20 years, numerous issues have arisen without any established oversight framework to address them. Such issues include but are not limited to;

- a) UDRP Dispute Resolution Providers (“DRP’s”) “franchising out” their accreditation without authorization or approval of ICANN;
- b) DRP’s failing to publish decisions;
- c) DRP’s selecting panelists based upon unfair and unknown criteria and only selecting panelists from trademark stakeholder groups;
- d) UDRP panelists making up their own self-serving and un-approved interpretations of the UDRP Policy which amount to unhindered new policy making;
- e) UDRP panelists who are trademark attorneys serving as counsel to complainants and contemporaneously in judgment as panelists;
- f) UDRP panelists being found to have brought UDRP complaints in bad faith as counsel (RDNH) yet being permitted to continue as panelists;
- g) Difficulties in getting refunds from DRP’s;
- h) DRP’s making up their own purported “supplementary rules” including additional new fees, without any approval of ICANN or of stakeholders;
- i) DRP’s being “accredited” without any contract with ICANN in place;
- j) DRP’s who fail to or refuse to transparently disclose their ownership thereby bringing the UDRP into disrepute;
- k) DRP’s who appoint favored panelists over and over again, to the exclusion of all others, thereby tainting the procedure and tilting outcomes in favor of trademark owners;
- l) Allowing trademark owners to shop around between DRP’s for the most sympathetic and/or biased DRP’s, and as a result creating a “race to the bottom” for DRP’s to cater to trademark owners; and
- m) DRP’s failing to provide any mechanism for disciplining or removing panelists who don’t take their responsibilities seriously or who make errant and outrageous decisions.

ICANN has a responsibility to oversee the UDRP program and accordingly, must budget for this. We understand that you are currently engaged in your budgeting process and in our view your budget should include an appropriate allocation for a staff person or persons, to oversee the

UDRP program. This “commissioner” or “office”, would be in charge of overseeing the program, and inter alia be responsible for such crucial matters such as; a) contracting with dispute resolution service providers; maintaining and enforcing compliance of dispute resolution service providers; maintaining and enforcing standards applicable to panelists; setting fees and procedures; responding to and investigating complaints; and taking overall responsibility for an “orphaned” program that has been permitted to operate without any particular attention or budget whatsoever.

In our respectful view, the fact that the UDRP has continued to operate without any meaningful oversight by ICANN is a serious problem which should be rectified immediately. We recognize that a review is underway by the RPM Working Group, however this is Working Group’s work is years away from completion and in any event is not empowered to allocate an appropriate budget for ICANN’s ongoing UDRP program. This task is up to you and should be acted upon now.

Yours truly,
INTERNET COMMERCE ASSOCIATION

A handwritten signature in black ink, appearing to read "Z. Muscovitch".

Per:
Zak Muscovitch
General Counsel, ICA