

Report of Public Comments

Title:	Revised Proposal of the ACDR to Serve as a UDRP Dispute Resolution Service Provider		
Publication Date:			
Prepared By:	Elizabeth Le		
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Staff Contact:	Samantha Eisner, Senior Counsel	Email:	samantha.eisner@icann.org
Section I: General Overview and Next Steps			
<p>The Arab Center for Domain Name Dispute Resolution's (ACDR) initial proposal (Original ACDR Proposal) to serve as an approved dispute resolution service provider under the UDRP was posted for public comment in September 2010. The proposal was submitted pursuant to the process specified at http://www.icann.org/en/dndr/udrp/provider-approval-process.htm. The ACDR is jointly established by the Arab Intellectual Property Mediation and Arbitration Society (AIPMAS) and the Arab Society for Intellectual Property (ASIP), with headquarters in Amman, Jordan and additional offices in other Arab Countries. Both the AIPMAS (established in 1987) and ASIP promote the activities of the Arab Center of Mediation and Arbitration, established in 2003, active in resolving conflicts related to intellectual property through international arbitrators. If approved, the ACDR would be the first Approved UDRP Dispute Resolution Service Provider headquartered in an Arab state. Following the initial public comment period, the ACDR revised its proposal in light of the comments received. The summary and analysis of comments to the Original ACDR Proposal is available at http://forum.icann.org/lists/acdr-proposal/msg00007.html. This comment forum provided an opportunity to review a revised proposal submitted by the ACDR (Revised ACDR Proposal). The Revised ACDR Proposal took into account many of the comments previously received.</p> <p>Next Steps: ICANN Staff will provide the ACDR with a copy of this summary and analysis so that the ACDR may determine whether it wishes to revise any portion of the Revised ACDR Proposal. If a revised proposal is received, it will be reviewed to determine if further public comment is advisable prior to presentation to the Board for consideration. Staff will also evaluate further recommendations to the Board on proceeding with the revised proposal.</p>			
Section II: Contributors			

At the time this report was prepared, a total of nine (9) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Leap of Faith Financial Services Inc.	George Kirikos	GK
Intellectual Property Constituency	Kristina Rosette	KR
Internet Commerce Association	Philip S. Corwin	PC
INTA Internet Committee	Kathryne Badura	KB
Business Constituency	Steve DelBianco	SB

Individuals:

Name	Affiliation (if provided)	Initials
Nat Cohen	Telepathy, Inc. Riptide LLC	NC
Konstantinos Zournas		KZ
Morgan Linton	Linton Investments LLC	ML
H.S.A.J.M.		HSAJM

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Summary of Substantive Comments

George Kirikos, on behalf of Leap of Faith Financial Services, Inc. renewed his objections previously submitted for the Original ACDR Proposal, that ICANN should not approve another UDRP provider until broader reforms have been adopted. Mr. Kirikos suggested such reforms include third-party beneficiary rights, thereby increasing accountability; fundamental changes to the rules to enhance due process protections for registrants; and a formal review of the UDRP that brings all providers under a standard contract with ICANN. He expressed concerns that approving the ACDR proposal without first putting broader reforms in place would simply encourage more forum shopping by complainants. Mr. Kirikos suggested that a "quick fix" solution to forum shopping would be to allow domain name registrants to pre-select the UDRP Providers, which would reduce the current "race to the bottom" amongst providers attempting to attract complainants to their forum, and instead would incentivize providers to consider the needs of registrants/respondents. He also suggested that making the response time for a UDRP be a function of the age of the domain name, to create a more level playing field between complainants and respondents, and publishing UDRP decisions in a

machine-readable XML format to reduce the costs of and thereby encourage further academic studies. <http://forum.icann.org/lists/comments-acdr-proposal-01mar13/msg00000.html>.

Nat Cohen stated that the problem of forum shopping must be resolved before accrediting new UDRP providers. Mr. Cohen stated that because intellectual property rights are treated differently in different parts of the world, a uniform standard across UDRP providers is needed to ensure the integrity necessary for the successful application of the UDRP. He noted that there is no review of panelist decisions currently in place and no process to harmonize differences in application of the UDRP between panelists. According to Mr. Cohen, this "lack of uniformity" undermines the ownership rights of domain holders subject to the UDRP and creates great uncertainty in operating a business on the Internet. He also noted that the UDRP is increasingly subject to abuse. Mr. Cohen suggested that a partial solution to "forum shopping" would be for Complainants and Respondents to participate equally in choosing the UDRP provider. He also suggested placing all UDRP providers under a standardized contract to ensure that no differences in supplemental procedures or other processes - such as panelist selection - make a one UDRP provider more appealing than others. Mr. Cohen also indicated his support of the comments posted by Mr. Kirikos (as summarized above).

Kristina Rosette on behalf of the Intellectual Property Constituency (IPC) submitted the IPC's approval of revised ACDR proposal and its recommendation that ICANN approve the ACDR as the new UDRP Provider, subject to one adjustment. The IPC noted that the revised ACDR proposal addresses all but the one concern previously raised by the IPC's 28 October 2010 comment for the Original ACDR Proposal. The remaining issue of concern relates to the reconciliation of Supplemental Rules 3 and 4(c) with UDRP Rules 3(b) and 5(b). On this issue, the IPC recommended that the ACDR amend Supplemental Rule to mirror UDRP 2(f). The IPC noted that Supplemental Rule 4(c) requires no change, but only if Supplemental Rule 3 is amended to apply to communications but not filings or transmissions of documents such as complaints and responses. With the exception of this remaining issue, which the IPC believes can be easily resolved, the IPC is satisfied with the Revised ACDR Proposal and encourages the ICANN Board to approve the ACDR as a new UDRP provider. <http://forum.icann.org/lists/comments-acdr-proposal-01mar13/msg00002.html>

Philip Corwin on behalf of the Internet Commerce Association (ICA) opposed the Revised ACDR Proposal. ICA expressed its continuing objection to the accreditation of the ACDR or any other potential UDRP provider until ICANN adopts an enforceable mechanism to assure uniform disposition of UDRP cases. ICA stated that a major concern for its members is the potential for forum shopping at the expense of registrant rights in the absence of such a mechanism. ICA noted that it previously objected to the Original ACDR Proposal because that proposal did not contain a "standard contract or uniform and enforceable agreement with all providers of UDRP services or even the initiation of a process leading to one", and that the same deficiencies still exist in the Revised ACDR Proposal. ICA stated that the Revised ACDR Proposal "continues to raise questions about the qualifications and preparatory training of proposed panelists and the overall commitment to administering UDRP cases in as fashion that is consistent with established practices." ICA noted that separate from the ACDR proposal, ICANN has been undertaking a process to review its relationships with UDRP providers. ICA stated that it previously sent a letter to ICANN CEO Fadi Chahade and Board Chairman Steve Crocker on 26 February 2013 requesting that the Board: (1) defer action on this matter until the next

scheduled meeting; and (2) publish the pending ACDR proposal for community review and comment. The ICA stated that it is ICANN's responsibility to establish an enforceable mechanism that can achieve uniformity of the rules applied by all UDR providers. The ICA also expressed concerns about the list of neutrals and the reference to "different approaches to IP" which would lead to divergent practices and forum shopping. <http://forum.icann.org/lists/comments-acdr-proposal-01mar13/msg00003.html>

Morgan Linton of Linton Investments LLC expressed concerns that establishing more UDRP providers will encourage forum shopping and provide an unfair edge to complainants. He stated that it is "important that domain owners are able to defend complaints in a balanced environment and by adding more UDRP providers this continues to shift the leverage towards the Complainant." Mr. Linton noted that adding additional UDRP providers, more definitions of "bad faith" could be created making more opportunities for domain holders to lose domain names that were not registered in "bad faith" as defined by other UDRP providers. <http://forum.icann.org/lists/comments-acdr-proposal-01mar13/msg00005.html>

Kathryne Badura, on behalf of the INTA Internet Committee, supported the IPC's position and recommended that the ACDR be approved by ICANN to serve as a new UDRP provider. The INTA Internet Committee agreed with the IPC that Supplemental Rules 3 and 4(c) of the revised ACDR Proposal are inconsistent with UDRP Rules 3(b) and 5(b). The Committee recommended that the ACDR amend its Supplemental Rule 3 to mirror UDRP Rule 2(f). Supplemental Rule 4(c) requires no change if Supplemental Rule 3 is amended to apply only to communications and not filings or transmissions of documents such as Complaints and Responses. The INTA Internet Committee stated that adding the ACDR will create "further geographic and cultural diversity to domain name dispute resolution as well as a forum that can more readily address the needs of a significant population and provide support for the anticipated delegation of Arabic Internationalized Domain Names (IDNs)." <http://forum.icann.org/lists/comments-acdr-proposal-01mar13/msg00006.html>

Steve DelBianco, on behalf of the Business Constituency (BC), provided its qualified endorsement to the ACDR's Revised Proposal. The BC acknowledged that the ACDR has submitted an impressive proposal and that there is a need and legitimacy of regional UDRP providers as the DNS expands to encompass new gTLDs and IDNs across the globe. However, the BC expressed concerns for the absence of "a standard mechanism for establishing uniform rules and procedures and flexible means of delineating and enforcing arbitration provider responsibilities". According to the BC, such administrative standards should be in place and applicable to all UDRP providers no later than the time that the ACDR would initiate UDRP adjudication activities following Board approval within nine months after the Board addresses the present application. The BC opined that the uniform and enforceable standards developed for all UDRP should address at least the following matters:

1. Initial training of UDRP panelists in UDRP case precedents, with a focus on the WIPO Overview 2.0, and regular continuing education.
2. Adequate provider oversight of panelists' decisions, including safeguards to ensure that impartiality by panelists, and procedures to address decision and/or actions that may

unreasonably deviate from past precedents including disciplinary procedures in appropriate circumstances.

3. Procedures to ensure that cases are assigned on a random and dispersed basis among all of a provider's listed panelists.
4. Safeguards to ensure that a UDRP provider's Supplemental Rules do not undermine or conflict with the UDRP, and ensure consistency in the deadlines and response time to supplemental filings.
5. Addressing the issues related to forum shopping.

The BC's comment is available at <http://forum.icann.org/lists/comments-acdr-proposal-01mar13/msg00007.html>

H.S.A.J.M. expressed his or her opposition to the appointment of ACDR as a dispute resolution center for domain name property. It is H.S.A.J.M.'s opinion that "a citizen of a state in the Arab World" that, based on the current political climate of the "Arab World" (including Egypt, Syria, Libya, Bahrain, and Jordan), ICANN management should not approve UDRP provider in the region. H.S.A.J.M. stated that there are profound differences between the Arab World vs. the Free World in interpreting the meaning of "bad faith", noting that basic rights such as free speech are often frowned upon in the Arab World and considered "bad faith". H.S.A.J.M. questioned ICANN's decision to allow arbitration to take place in "a restrictive environment, where there's a very high risk of property being seized for political reasons and/or to silence free speech". <http://forum.icann.org/lists/comments-acdr-proposal-01mar13/msg00008.html>

Summary of Non-Substantive/Procedural Comments

Konstantinos Zournas asked if the comment period could be extended by one week.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

The commenters were of varied opinions on the ACDR's proposal: Five commenters (George Kirikos, Nat Cohen, the ICA, Linton Investments LLC, and H.S.A.J.M.) were expressly against the Revised ACDR Proposal. Four of the five objectors stated that ICANN should not approve *any* additional UDRP providers prior to establishing a uniform, enforceable arrangement with all existing UDRP providers. These commenters are concerned that, absent a uniform policy in place before accrediting new UDRP providers, forum shopping by complainants will occur. These four commenters, however, did not express concerns with the specifics of the ACDR proposal, and only addressed the broader UDRP provider issue. The fifth objector expressed specific concerns accrediting a provider in the geographic

location given the political climate of the “Arab World”.

Three commenters (the IPC, INTA Internet Committee, and the BC) recommended conditional approval of the Revised ACDR Proposal, subject to the condition that the ACDR amend its Supplemental Rule 3 to mirror UDRP Rule 2(f) because the current Supplemental Rules 3 and 4(c) are inconsistent with UDRP Rules 3(b) and 5(b). It was noted that Supplemental Rule 4(c) requires no change if Supplemental Rule 3 is amended to apply only to communications and not filings or transmissions of documents such as Complaints and Responses.

ICANN is providing the ACDR with a copy of this summary and analysis so that the ACDR may determine how to respond and whether it wishes to revise any portion of its proposal. When a revised proposal is received, the proposal will be reviewed to determine if further public comment is advisable prior to presentation to the Board for consideration.

Separate from the ACDR proposal, ICANN has been undertaking a process to review its relationships with UDRP providers, and that review is ongoing.