

Staff Report of Public Comment Proceeding

Application for New Uniform Domain Name Dispute Resolution Policy (UDRP) Dispute-Resolution Service Provider

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Public Comment Proceeding

Open Date: 16 November 2018

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Section I: General Overview and Next Steps

The purpose of this public comment was to solicit community feedback on the Canada International Internet Dispute Resolution Centre's (CIIDRC) proposal to serve as an approved dispute-resolution service provider for the Uniform Domain Name Dispute Resolution Policy (UDRP). ICANN org will consider community feedback in determining whether to approve CIIDRC as a new ICANN-approved UDRP dispute-resolution service provider.

Section II: Contributors

At the time this report was prepared, a total of sixteen (16) 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
Internet Commerce Association (ICA)	Zac Muscovitch	ICA
Canadian Internet Registration Authority (CIRA)	Alyssa Moore	CIRA
At-Large Advisory Committee (ALAC)	ALAC	ALAC
GNSO Business Constituency	Zak Muscovitch and Steve DelBianco	BC
Canadian International Internet Dispute Resolution Centre (CIIDRC)	Barry Penner, QC	CIIDRC

Individuals:

Name	Affiliation (if provided)	Initials
Mary Marg MacKinnon		MM
David L. Kreider	Independent Arbitrator	DK
David Wotherspoon	Arbitrator Panelist	DW
Robert B. Morton	Arbitrator Panelist	RM
Murray Smith		MS
Mel Simburg	Arbitrator Panelist	MSg

John Rogers	Arbitrator Panelist	JR
Richard Levin	Arbitrator Panelist	RL
Neil Brown	Arbitrator Panelist	NB
Maria Alejandra Lopez		ML
Claude Freeman	Arbitrator Panelist	CF

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer 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).

Of the sixteen submitted comments, all but two were in support of adding the applicant as a UDRP provider. Those in favor of approving the application mostly were identified as being affiliated with the applicant as arbitrators/panelists or organizations affiliated with the applicant (CIRA and the applicant, CIIDRC). In addition, the At-Large Advisory Committee (ALAC), offered support of approving the applicant.

Eight comments (David L. Kreider, David Wotherspoon, Robert B Morton, Mel Simburg, John Rogers, Richard Levin, Neil Brown, and Claude Freeman) were from individuals identifying themselves as current CIIDRC and potential arbitrators/panelists and supported the addition of CIIDRC as an approved UDRP provider.

Three comments (Mary Marg MacKinnon, Murray Smith, and Maria Alejandra Lopez) did not include a statement of affiliation but expressed support for the application.

The comments submitted against adding the applicant as an approved UDRP provider were received from the Internet Commerce Association (ICA) and the GNSO Business Constituency (BC). Both organizations indicate they did not have specific concerns about the merit of CIIDRC's application but took the view that establishment of uniform and enforceable standards for all dispute resolution service providers should occur before adding any new providers.

The ICA offered a general concern that there were not enough UDRP cases to support another effective DRP. CIIDRC offered statistics on increased gTLDs and noted that they were prepared to undertake that role.

Section IV: Analysis of Comments

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

The comments expressed a variety of views on the CIIDRC application.

One comment (CIRA) expressed support of the application and indicated, "On April 14, 2002, the British Columbia International Commercial Arbitration Centre (BCICAC) became one of two service providers to manage the CDRP. BCICAC is the parent organization of the applicant, the CIIDRC. BCICAC has been successfully managing .CA domain name disputes

for CIRA for the last sixteen years. During this time, CIRA has been happy with the quality of the services provided by BCICAC, and with their ability to handle proceedings in an expedited, orderly and fair manner.”

Numerous comments were received from arbitrators in favor of approving CIIDRC’s applications. The comments were centered around CIIDRC’s quality reputation. These included but are not limited to, “...their reputation in the arbitration circles in which I travel is quite good” (DL.) Other comments stated, “I wholly endorse” (DW), “add my full support” (RM), “The staff does an excellent job” (MSg), and “CIIDRC has the capability to handle proceeding under UDRP in an expedited, global, online context and in an orderly and fair manner” (JR).

Two comments (the ICA and GNSO Business Constituency) expressly opposed ICANN approving the CIIDRC application. These comments stated that ICANN should not approve any additional UDRP providers prior to establishing a uniform, enforceable arrangement with all existing UDRP providers. The ICA stated that “...there are numerous issues with DRPs which have arisen without an established oversight framework to address them.” These two comments did not express concerns about CIIDRC’s ability to perform dispute resolution duties effectively but took the position that ICANN should not be adding additional UDRP providers in the absence of clear and defined established and enforceable performance standards for dispute resolution providers (DRPs). The Business Constituency indicated that “The BC, therefore encourages ICANN to re-evaluate its approach to the DRPs and to immediately commence work on the establishment of appropriate standard mechanism for the administration of the UDRP.” Both the ICA and the BC listed numerous items they believed were missing from CIIDRC’s application.

One comment from the applicant, CIIDRC, was in favor of the application being approved and responded in detail to concerns noted in the ICA comment. The applicant indicated its willingness to participate in establishing and maintaining standards and good practices for all DRPs. CIIDRC commented, “As for additional points raised by the ICA regarding the CIIDRC application, we are grateful for the constructive feedback and will take these comments into serious consideration. In the meantime, we would like to respond to a number of specific comments made by the ICA.”

CIIDRC’s comment addressed various concerns noted in the ICA comment, as described below

The ICA noted concerns around training and education measures in a section titled “Part 3: Training and Education Measures.” CIIDRC responded that, “A blog on CIIDRC’s website would allow for discussion of current issues related to UDRP disputes, but it will be made clear that panelists are not permitted to discuss pending or ongoing cases.” CIIDRC also committed to participating in yearly conferences, and participation in “broad consultation” to discuss the merits of creating a handbook that applies across all DRPs. CIIDRC also commented that they are committed to work to improve the “effectiveness of the UDRP through development of policy and case law interpretation resources.”

CIIDRC stated they, “will provide statistics to the ICANN designated officer” and that, “Decisions will be published on the CIIDRC website” with search functions available by date,

domain name, complainant's name, respondent's name, and panelist's name. When reviewing the application, ICANN org will review whether the applicant's response will meet the Provider reporting requirements.

The ICA had noted that CIIDRC had undisclosed panelist profiles. CIIDRC's application to ICANN did provide panelist profiles with descriptions of their qualifications; however, the ICANN org did not post these profiles with the application due to the inclusion of personal data. CIIDRC posted the panelist profiles with its public comment submission. When reviewing the application, ICANN org will confirm that, if approved, the provider will maintain and publish a publicly available list of panelists.

The ICA commented on the brevity of CIIDRC's posted Code of Ethics and concerns about bias when panelists are also advocates for Complainants and Respondents. CIIDRC commented in response that new Rules for Panelists were effective January 1, 2019, which included more stringent ethical guidelines and suggesting that ICANN is situated to address the latter concern. When the ICANN org reviews the application, the Impartiality and Independence rules will be considered in addition to these comments.

CIIDRC responded to the ICA concerns on its fee procedure with details the rationale for its fee procedure and indicated it would "consider" accepting payments by credit cards. ICANN org will review the applicant's fee procedures and verify that they meet the fee requirement rules for Uniform Domain Name Dispute Resolution Policy established by the ICANN Board of Directors on 28 September 2013.

CIIDRC indicated that a complaints procedure would be "issued for public consultation in due course." CIIDRC also offered comments in response to the ICA's concerns around the Board of Directors, Supplemental Rules, including those involving panelist appointments, and written notices of complaints. ICANN org will review the rules for appointment of the panel, decision timing, and written notice of complaint to evaluate if the applicant meets the rules established by the ICANN Board of Directors.

As indicated in previous [correspondence](#), independent of processing the CIIDRC application, ICANN organization is performing an internal assessment of how the UDRP is administered, and this activity is ongoing.

ICANN org appreciates the participation of all commenters and is taking into account all feedback in determining the next steps for this UDRP provider application.