



11 December 2009

### **CAC Proposed Amendments to Supplemental Rules of UDRP**

Please accept the following comments in response to the publication the Czech Arbitration Court's (CAC) proposed amendments to the UDRP Supplemental Rules.<sup>1</sup> Go Daddy reserves the right to future comments on this issue, and our positions include, but are not necessarily limited to those expressed herein.

#### **1. Introduction**

- 1.1 Go Daddy strongly opposes the amendments proposed by CAC as they are currently written, and encourage the ICANN Board to reject these changes.
- 1.2 We are concerned that the various UDRP arbitration providers are diverging in their documentation requirements, critical dates, and evaluation standards.
- 1.3 The proposed Expedited Decision process, in conjunction with reduced filing fees, could significantly alter the balance between Complainant and Respondent rights.
- 1.4 It is our position that all of the proposed changes will, in effect, have a material change on the UDRP itself, and therefore the changes (or equivalent) must be subject to the PDP process as defined in the ICANN By-Laws.

#### **2. Preserving Uniformity**

- 2.1 The amendments proposed by CAC must be viewed in context with changes proposed or pending by other UDRP arbitration providers.
- 2.2 The adoption of dissimilar changes to administrative and/or supplemental rules, and according to different timetables, will create a chaotic UDRP environment.
  - 2.2.1 This will increase costs for registrars, and generate confusion among registrants unfamiliar with UDRP proceedings.
- 2.3 ICANN should preserve uniformity by ensuring that UDRP providers coordinate changes to administrative rules wherever possible.

#### **3. Proposed "Expedited Decision"**

- 3.1 Section 5A describes a proposed Expedited Decision process. If adopted, this could represent a material change in the proceedings, including potentially impacting the decision of UDRP cases.
- 3.2 There are several scenarios under this procedure that are not fully explored within the Proposal. We believe the most appropriate forum to discuss these issues, and propose any expedited process, is the formal PDP process.
- 3.3 By creating additional complexity and urgency in the process, the Expedited Decision process will significantly alter the balance between Complainant and Respondent rights. There is a risk that knowledgeable and resourceful Complainants will exploit this new mechanism to acquire names via UDRP that they might otherwise lose.

3.4 Finally, there is concern that the reduced filing fees could foster automated and/or bulk UDRP filings. This has the potential to make any benefits derived from the proposed Expedited Decision process temporary.

#### **4. Proposed Changes are material to the UDRP**

4.1 UDRP providers should only be permitted to change UDRP rules that are administrative in nature.

4.2 The rule amendments contained in the CAC proposal have the potential to be deterministic in the outcome of UDRP cases. Therefore, they exceed mere administrative changes and have a material impact on the policy.

4.3 Allowing these changes to proceed will set a hazardous precedent for policy development and implementation, in which stakeholders would modify administrative rules rather than the policy itself.

4.4 Ultimately, they could lead to an environment comprised of several competing variants of the UDRP, and confidence in ICANN consensus policy is undermined.

#### **Conclusion**

Once again, we urge the ICANN Board to reject the UDRP Supplemental rule changes as proposed by the CAC. Discussions within the community are underway to examine the interests of brand holders and how the UDRP might be improved for new and existing gTLDs. Some of these may result in an issues report, best practices for providers, and perhaps future revisions to the UDRP. These methods, despite their shortcomings, are the prudent way to ensure that all stakeholder interests and policy implications are considered before adopting any changes.

Sincerely,  
GoDaddy.com, Inc.



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#### References:

1. <http://www.icann.org/en/announcements/announcement-2-11nov09-en.htm>