



The Intellectual Property Constituency (“IPC”) submits this comment in response to the ICANN Board of Directors’ request for public comments on the Arab Center for Domain Name Dispute Resolution’s (“ACDR”) Revised Proposal to Serve as a New UDRP Dispute Resolution Provider (“Revised ACDR Proposal”), posted at <http://www.icann.org/en/news/public-comment/acdr-proposal-01mar13-en.htm>. The IPC thanks the ICANN Board for this opportunity to express its comments on the Revised ACDR Proposal.

Recommendation

As noted in the IPC’s October 28, 2010 comment on the September 2010 ACDR Proposal (“Original ACDR Proposal”), the ACDR’s willingness to serve as a UDRP provider would add geographic and cultural diversity to domain name dispute resolution at large. In addition, because a large part of the world speaks Arabic, and because of the recent move towards introducing IDN TLDs in Arabic, the Original ACDR Proposal was (and remains) timely and addresses a significant underlying need.

However, the IPC’s October 28, 2010 comment noted several issues that the IPC believed should have been addressed in the Original ACDR Proposal. With the exception of the Supplemental Rule issue noted below, the Revised ACDR Proposal appears to have resolved the IPC’s concerns. Accordingly, subject to the remaining adjustment described below, the IPC recommends that ICANN approve the ACDR as a new UDRP Provider.

The IPC recommends that ACDR amend its Supplemental Rule 3 to mirror UDRP Rule 2(f). Supplemental Rule 4(c) requires no change, but only if Supplemental Rule 3 is amended to apply only to communications and not filings or transmissions of documents such as complaints and responses. The IPC makes this recommendation because the Revised ACDR Proposal does not reconcile Supplemental Rules 3 and 4(c) with UDRP Rules 3(b) and 5(b). The IPC noted in its comments on the Original ACDR Proposal that UDRP Rules 3(b) and 5(b) require that the Complaint and Response are submitted electronically, but both the Original ACDR Proposal and the Revised ACDR Proposal suggest that a Complaint and Response can be transmitted by mail or fax. Although the IPC’s recommended language modification appears to be quite minor, Supplemental Rules 3 and 4(c) could generate a great deal of confusion in the future. With the exception of this recommendation, which the IPC believes can be addressed with relative ease, the IPC is satisfied with the Revised ACDR Proposal.

Revised ACDR Proposal

The Revised ACDR Proposal appears to address all of the concerns raised in the IPC's October 28, 2010 comment. In that comment, the IPC proposed the following adjustments to the Original ACDR Proposal:

1. Incorporate mandatory eUDRP amendments to UDRP rules and demonstrate understanding of how the UDRP policy and uniform rules operate.
2. Modify "Deadline Extension Fee" and "Additional Written Statement Filing Fee" to comport with other UDRP provider fee structures.
3. Quantify the ACDR's administrative capacity in terms of numbers of proceedings initiated on a monthly basis and add clarification as to how long its anticipated start-up period will be and its monthly capacity during that period.
4. Add language to emphasize the ACDR's commitment to impartiality and fairness in administering the UDRP process.
5. Include details elaborating on the "background" and "track record of competently handling aspects of ADR proceedings," as required by ICANN's Approval Process for Dispute Resolution Providers.

After reviewing the Revised ACDR Proposal, the IPC is generally satisfied with the ACDR's revisions. The Revised ACDR Proposal eliminates the language that previously could have been interpreted as suggesting that the ACDR might not have been familiar with the UDRP process and rules. In addition, the Revised ACDR Proposal now has a fee structure identical to some or all other UDRP Providers.

The Revised ACDR Proposal eliminates the \$300 Additional Written Statement Filing Fee altogether and reduces the Deadline Extension Fee from \$200 to \$100. The Revised ACDR Proposal's 10-day extension limit, however, is much shorter than the National Arbitration Forum's 20-day time limit, although the fees are identical. Given that WIPO and the Czech Arbitration Court (CAC) allow for panel discretion on the extension time limit – which could include limits less than 10 days – the IPC does not anticipate the shorter extension period as presenting a significant issue.

The Revised ACDR Proposal now includes information regarding the ACDR's six to eight month start-up period as well as a requested start-up limitation of 50 proceedings per month. It also includes additional information, such as required panelist declarations of independence and impartiality, to emphasize the ACDR's commitment to impartiality and fairness in administering the UDRP process. Finally, the Revised ACDR Proposal now incorporates the Arab Society for Intellectual Property (ASIP), the Arab Intellectual Property, Mediation, and Arbitration Society (AIPMAS) and the Arab Center for Mediation and Arbitration in Intellectual Property's background in handling ADR

proceedings, specifically dealing with domain name disputes. As illustrated above, the IPC believes the language of the Revised ACDR Proposal is now consistent with other UDRP providers' previously approved proposals.

Supplemental Rules

Much like the Revised Proposal, many of the IPC's comments relating to the Supplemental Rules accompanying the Original ACDR Proposal. In its October 2010 comment on that proposal, the IPC recommended that the ACDR:

1. Update Supplemental Rule 1(a) and all other supplemental rules to reference the latest version of the UDRP Rules.
2. Simplify or eliminate Supplemental Rule 1(f), which attempts to define the word "writing," but does so vaguely and with an unclear purpose.
3. Clarify how the commencement date for a proceeding is marked – primarily resolve the inconsistency created by Supplemental Rules 5(e) and 4(c).
4. Further define what the role and duties of a Presiding Panelist are in Supplemental Rule 11(b) (particularly to be modeled after NAF Supplemental Rule 9).
5. Resolve the inconsistency between Supplemental Rule 3, 4(c) and UDRP Rule 3(b) and 5(b).

The Revised Proposal addresses all but the last point, which is the subject of our recommendation on page 1. Supplemental Rule 1(a) now incorporates by reference the latest version of the UDRP Rules in stating that the term "rules" includes the UDRP Policy as approved by ICANN as well as its updates. Similarly, Supplemental Rule 1(f) no longer defines "writings," and the language included in the original subsection (f) has been deleted altogether. In addition, Supplemental Rule 4(c) no longer contradicts Supplemental Rule 5(e), which states that the commencement date is marked by ACDR's transmission of documents to the Respondent. Supplemental Rule 11(b) now uses the text of UDRP Rule 6(e). These changes either incorporate the IPC's previous suggestions and/or are consistent with proposals from previously approved UDRP Providers.

Conclusion

The Intellectual Property Constituency thanks the ICANN Board for this opportunity to express its views on the Revised ACDR Proposal. As noted above, provided that the recommended change to Supplemental Rule 3 is made, the IPC fully supports the Revised ACDR Proposal and encourages the ICANN Board to approve the ACDR as a new UDRP provider.