COALITION FOR ONLINE ACCOUNTABILITY

Comments of Coalition for Online Accountability

July 15, 2011

The Coalition for Online Accountability (COA) submits the following statement in response to the Preliminary Issue Report on the Current State of the Uniform Dispute Resolution Policy (UDRP). See http://www.icann.org/en/public-comment/prelim-report-udrp-27may11-en.htm

COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners. These are the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company.   COA has been an active participant in a wide range of ICANN policy development activities, both on its own account and as a member of the Intellectual Property Constituency (IPC).

COA supports the recommendation of the ICANN staff that a policy development process (PDP) on the UDRP not be initiated at this time. See Report, page 3. Although the UDRP dates from ICANN's earliest days, it has withstood the test of time and showed itself to be a flexible, consistent, fair, and reasonably efficient mechanism for addressing clear cases of cybersquatting. Based on the comments at the forum during the ICANN Singapore meeting, as well as during the webinar held in May, this view appears to be widely shared within the ICANN community.

It is true that few if any ICANN policies have stood as long as the UDRP without undergoing a formal review. But to depend upon this as a reason for supporting a PDP now is to elevate form over substance. The recent report of the PDP work team documented that the average life span of the typical PDP is 350-550 days. PDP-WT Final Report, http://gnso.icann.org/issues/pdp-wt-final-report-final-31may11-en.pdf , at page 31. The tens of thousands of hours that ICANN participants would need to devote to a PDP on the UDRP is not a wise use of finite human resources.

The impending launch of the new gTLD process will make further demands on the time and energy of many ICANN participants, and thus the timing of any review would be especially unpropitious now. Indeed, ICANN's draft Communications Plan describes the new gTLD

launch as something that will "fundamentally change the Internet as we know it." See
http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf, at
1. One of the few constants between the current world of 21 gTLDs and the soon-to-be world of
321, 521, or 1,021 gTLDs is the UDRP, which will apply to every single one of them. It is hard
to see how re-opening the UDRP through a formal policy development process at this time
would add anything to the security, stability or reliability of the domain name system; indeed,
just the opposite could be the result.

Additionally, much of the controversy surrounding the new Uniform Rapid Suspension
(URS) process that all new gTLDs will be required to implement turned on how the URS would
interface with the UDRP. Changes to the UDRP while the URS is being introduced could have
unanticipated consequences on the latter. The better course would be to review the UDRP and
URS simultaneously, after there has been adequate experience with the new procedure to
evaluate how the two relate to each other in practice. Thus, any UDRP review should be
deferred to that time.

Of course the implementation of the UDRP is not perfect, and there are steps that can be
taken to improve it that do not require a PDP. COA urges that these be explored. For example,
ICANN's contract compliance efforts, to ensure that registrars and registries are fulfilling their
crucial obligations under the UDRP, should be stepped up. In addition, a drafting team convened
by the GNSO Council recommended last year that a high priority be accorded to revisions to the
Registrar Accreditation Agreement (RAA) that would improve implementation of the UDRP.
For example, the drafting team, which included representatives of registries and registrars,
recommended that, "where WHOIS data is inaccurate or incomplete such that an 'amendment' of
UDRP petitions is required, the registrar [be required under the RAA to] supply ICANN with a
copy of the accurate WHOIS information along with an explanation why the published
information was inaccurate or incomplete at the time a petitioner submits a UDRP petition." The
drafting team also recommended an RAA revision establishing "firm and enforceable deadlines
for registrars (a) to respond to dispute resolution provider's requests for information in
connection with registrar verification processes at the inception of a UDRP proceeding; and (b)
to provide for transfer of the domain name to the petitioner pursuant to standard and (preferably)
simplified processes." **Final Report on Proposals for Improvements to the Registrar
Accreditation Agreement**, at pp. 92-93 (matrix items 15.1 and 15.3). At the San Francisco
ICANN meeting last March, the registries and registrars blocked any action on the drafting
team's recommendations, which were broadly supported by all non-contracted parties.
Overcoming this roadblock would be a far more judicious use of ICANN staff and volunteer
resources than convening an unnecessary and ill-timed PDP review of the UDRP. Other
examples could be provided of how ICANN could build upon one of its premier policy successes
– the UDRP – other than by opening up a policy development process.

Respectfully submitted,

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