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VIA EMAIL ONLY (prelim-report-udrp@icann.org)

ICANN Policy Department

Re: Verizon Comments on UDRP PDP

Verizon submits the following comments on ICANN's "Preliminary GNSO Issue Report on the Current State of the Uniform Dispute Resolution Policy."

While Verizon believes the UDRP would benefit from being strengthened in several ways, we oppose the idea of ICANN initiating a PDP on this topic. It is our understanding that a broad array of ICANN stakeholders across the board, including dispute resolution providers and the commercial domain name registrant community, oppose a PDP along with brand owners. Any decision to initiate a PDP will likely lead to a process (either at the outset, or incrementally), which risks weakening the UDRP. The UDRP, despite its high costs, remains the only practical and available remedy for brand owners today to fight cybersquatting outside the ambit of the Anti-Cybersquatting Consumer Protection Act.

Verizon, along with many other stakeholders, was deeply disappointed to learn of ICANN's decision to release hundreds of new gTLDs without adequate and effective rights protection mechanisms in place to address the frauds and abuses that are certain to arise in the new gTLD space. As we have noted previously, at a minimum, all trademark protection remedies must (1) be effective as a remedy, (2) be reasonably expedited, (3) be stringent enough to avoid gaming, (4) be based on actual costs (which avoids further monetization and extraction of unnecessary fees from trademark holders), (5) provide for increased certainty, and (6) result in making the trademark owner whole. Despite our repeated comments on all earlier versions of the DAG calling for effective, scalable and practical remedies, ICANN unfortunately chose to disregard the comments of our community.

In our prior comments we noted that the Uniform Rapid Suspension Mechanism is not rapid, is subject to an unnecessarily high burden of proof, creates uncertainty by permitting an excessively long period in which a defaulting registrant can seek de novo review and does not permit the transfer back of valuable domain names. Trademark owners will be forced into a perpetual monitoring situation as frozen domain names lapse and fall into the pool to be picked up by new cybersquatters. The Trademark Clearinghouse, as we noted, is not even a "remedy." This availability of a "sunrise option" only perpetuates defensive registrations and extortion of trademarks owners to pay unreasonably high fees. The Clearinghouse itself is of little value since only identical marks can be registered and most cybersquatted domain names involve variations on

or misspellings of trademarks. The Trademark Claims service is also not an adequate remedy since the service is similarly limited in scope and time, while cybersquatting activity knows no limits in variations of famous marks or in the time cybersquatters will prey on well known brands.

At a recent summit of the porn industry, responses to questions about trademark remedies from a representative of the .XXX registry only confirms the troubles that lie ahead for trademark owners both with respect to existing RPMs and the costs of using the URDP. See http://www.zdnet.com/blog/violetblue/the-future-of-vanity-tlds-porn-8217s-xxx-business-plan/522?tag=mantle_skin;content:

Liley offered little in his answers by way of assurance that any porn webmaster would not be able to come along and register domains; in fact, no points of vetting, rules or requirements were put forth. When Bernstein asked what the requirement for pretesting was, Liley responded with a glib referral to the sunrise period saying that "If you want to buy the domain the sunrise is in place for trademark owners and if you miss that, you miss your opportunity."

In a later answer he elaborated saying, "With our process we're allowing a sunrise process for big brands to get their brands." Liley told the summit that after a domain is grabbed [by someone else, not the rightful owner] it can be resolved via UDRP "for about $5,000. You can pay us $60-70 now, or chase it through the courts later."

All of this leads back to the importance of one ICANN remedy that has worked well despite the high costs – the UDRP. Although the use of the UDRP certainly does not scale to address the increased volumes of infringement in the new gTLDs, for over a decade the UDRP has remained a viable remedy. As WIPO's Director General, Francis Gurry, noted, the UDRP "offers a practical solution to the abusive registration of trademarks as domain names, a very real issue where the practical effect, legal status and desired outcome are normally not confined to any particular location." See http://www.wipo.int/pressroom/en/articles/2010/article_0007.html.

Verizon has successfully used the UDRP on numerous occasions to prevent cybersquatters from maintaining valuable domain name registrations that are identical to, variations on, or misspellings of our trademarks and also to prevent cybersquatters from diverting consumers away from the legitimate goods and services offered on Verizon's websites. The UDRP has also proven to be an invaluable tool to stop cybersquatters who point Verizon-related domain names to pornographic sites. Last year, by measuring the traffic generated by our domain name portfolio, which includes the domain names won back from cybersquatters, we had 33 million new visitors to Verizon's websites and over 300,000 confirmed sales.

We note that outside any PDP process, ICANN should concentrate on ensuring that registrars adhere to all UDRP-related policies and procedures. We have witnessed continuing problems where registrars (1) are in fact the cybersquatters; (2) misuse proxy services to permit cybersquatting; (3) fail to adhere to ICANN procedures to comply with the UDRP decisions, including inappropriately transferring domain names instead of locking them; and (4) encourage

registrants to file fraudulent and frivolous "appeals" in national courts to circumvent the UDRP and extract monetary payments from trademark owners for the transfer of cybersquatted domain names. ICANN must take steps to enforce registrar compliance in this area.

Verizon also supports the procedural improvement of a loser pays system for the UDRP. We had strongly supported such a remedy for the URS and were disappointed that ICANN's policies now inadvertently promote cybersquatting, by suggesting "loser pays" only for cybersquatters who register 26 or more domain names. A loser pays model would balance the high costs and inequities (trademark owners now bear all the burden of the costs for enforcing using this remedy) against those who have been found to be acting in bad faith. A loser pays model would discourage cybersquatting and insert a necessary deterrent element into the UDRP. Similarly, a loser pays model would discourage any overreaching claims by trademark owners, especially since the UDRP was intended to apply only to clear cut cases of cybersquatting.

Given the imminent launch of new gTLDs, it is particularly bad timing for ICANN to be attempting to open a process that will likely only further weaken the UDRP. This process would only garner further bad will for ICANN and place it at an increased risk of liability. If anything, ICANN should re-examine the harm to brand owners and consumers arising from new gTLDs and focus its efforts on broadening the inadequate rights protection measures remedies currently under discussion.

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