



**COMMENTS FROM THE INTELLECTUAL PROPERTY CONSTITUENCY ON THE
ARAB CENTER FOR DOMAIN NAME DISPUTE RESOLUTION
PROPOSAL TO BECOME A NEW UDRP PROVIDER**

October 28, 2010

INTRODUCTION

These comments are being submitted on behalf of the Intellectual Property Constituency (“IPC”) in response to the ICANN Board of Director’s request for public comments on the Arab Center for Domain Name Dispute Resolution (“ACDR”) proposal to become a new UDRP provider, posted at <http://www.icann.org/en/udrp/proposals/acdr-proposal-16sep10-en.pdf>. The IPC wishes to thank the ICANN Board for this opportunity to express its comments on this matter.

RECOMMENDATION

The Arab Center for Domain Name Dispute Resolution’s willingness to become a UDRP provider would add geographic and cultural diversity to domain name dispute resolution at large.

A large part of the World speaks Arabic, and the addition of a UDRP provider with Arabic expertise is a welcome development. The ACDR’s proposal is particularly timely given the rise of Internationalized Domain Names (“IDNs”) – especially Arabic IDNs from Egypt, Jordan, Palestine, Qatar, Saudi Arabia, Syria, Tunisia, and the United Arab Emirates. Accordingly, the IPC wishes to thank the ACDR for its timely proposal.

However, any enthusiasm for the ACDR’s proposal must be tempered by the desire to ensure a predictable and equitable system of domain name dispute resolution – as opposed to any profit-driven “race to the bottom” between UDRP providers.

Subject to the revisions and suggestions set forth below, the IPC recommends that ICANN approve the ACDR’s proposal to become a UDRP provider. If the ACDR does not adopt all of the revisions and suggestions set forth in this comment, the IPC encourages ICANN to



open a further round of public comments, after which ICANN may delay the launch of ACDR's UDRP services until ICANN has properly considered additional comments.

PROPOSAL

In its proposal, the Arab Center for Domain Name Dispute Resolution acknowledged that “the exchange of paper pleadings is one of the obstacles that hinder the achievement of expedited UDRP.” Accordingly, it announced its interest “in having all UDRP proceedings to be held totally online with no physical exchange of paper documents.” The IPC finds these statements curious in light of the mandatory eUDRP amendments to the UDRP Rules that became effective on March 1, 2010, providing for paperless submissions. Accordingly, the IPC questions whether ACDR's proposal “demonstrate[s] that [the] applicant understands the working of the policy and uniform rules” as required by ICANN's Approval Process for Dispute Resolution Providers.

The proposal also asserts that “[t]he ACDR would like to have its fees similar to current UDRP providers.” However, the provisions of the ACDR's proposal pertaining to additional fees do not comport with those of other UDRP providers.

	ACDR Proposal	WIPO	NAF	CAC	ADNDRC
<i>Deadline Extension Fee.</i>	\$200 USD. Both Parties. Ten-Day Time Limit.	No Fee. Panel Discretion on Time Limit or Agreement of the Parties.	\$100 USD. Respondent Only. Twenty-Day Time Limit.	No Fee. Panel Discretion on Time Limit.	No Fee.
<i>Additional Written Statement Filing Fee.</i>	\$300 USD Both Parties.	No Fee.	\$400 USD. Both Parties.	No Fee.	No Fee.
<i>Other Additional Fees.</i>	None.	None.	Complainant pays fee for instance where seemingly multiple registrants are aliases of one another.	Complainant pays fee if Response is filed. Complainant pays fee for “complex” proceedings.	\$150 USD. Fee for any Complaint Deficiencies.

In order to match other current UDRP providers, the IPC believes that the ACDR should eliminate its proposed \$200 USD fee for any deadline extension, or at least match the National Arbitration Forum by only charging such fees to respondents seeking extensions.

In addition, the IPC believes that ACDR should eliminate its proposed \$300 USD fee for filing additional written statements, to comport with the practice of most other UDRP providers.

UDRP Complainants already face an uneven economic burden in domain name dispute resolution. It costs anywhere from \$3.00 to \$50.00 USD to register an infringing domain name, but \$1,000 to \$1,500 USD to file a UDRP – not including associated legal fees. Accordingly, the ACDR should attempt to minimize, not add, fees for Complainants.

The IPC also recommends that the ACDR supplement its proposal to quantify its “administrative capacity in terms of numbers of proceedings initiated on a monthly basis” as required by ICANN’s Approval Process for Dispute Resolution Providers. In addition, instead of simply asserting that there will be a flat limitation of 5,000 proceedings during the ACDR’s “start-up period,” the ACDR should clarify how long its anticipated “start-up period” will be, and its monthly capacity during that period.

The ACDR states that its vision is to encourage the “strong protection of Intellectual Property” in the region. It also notes that the ACDR is a joint undertaking by the ASIP and AIPMAS, whose respective aims are “promoting and reinforcing the system of Intellectual Property in Jordan” and “upgrading and unifying the Arab legislations in the field of Intellectual Property.” These are certainly legitimate and laudable goals. The IPC recommends that additional language be added to also emphasize the ACDR’s commitment to impartiality and fairness in the administration of the UDRP process.

Finally, although the ACDR provides a detailed historical synopsis, the IPC also recommends that the ACDR elaborate on its “background” and “track record of competently handling the aspects of ADR proceedings” as required by ICANN’s Approval Process for Dispute Resolution Providers.

PROPOSED SUPPLEMENTAL RULES

Proposed Supplemental Rule 1(a) references the now-obsolete Rules for the Uniform Domain Name Dispute Resolution Policy approved by ICANN on October 30, 2009. Proposed Supplemental Rule 1(a) should reference the latest version of the rules that became effective on March 1, 2010.

Proposed Supplemental Rule 1(f) purports to define the term “writing.” However, it does not define the term as much as it creates a rule that “data messages” may qualify as writings

under certain circumstances. This wording is vague and its purpose is unclear. The ACDR's proposed Supplemental Rules do not otherwise use the word "writing." The Policy and the Rules only require a "writing" for (i) a domain transferee's agreement to be bound by an arbitrator's decision, and (ii) an arbitrator's decision. The IPC recommends that this paragraph be amended to clarify its purpose, or that it be removed.

Proposed Supplemental Rule 3 and 4(c) appear to be inconsistent with Rules 3(b) and 5(b), which require that the Complaint and Response be submitted electronically (not by fax or mail). The IPC recommends that these proposed Supplemental Rules be amended for consistency with the Rules, or that they be removed.

Proposed Supplemental Rule 5(e) purports to define the commencement date as the date that the ACDR sends the Complaint to the respondent(s). However, Rule 4(c) already defines the commencement date as the date that the Provider "completes its responsibilities under Paragraph 2(a)" of the Rules. Proposed Supplemental Rule 5(e) appears to be inconsistent with the Rules and should therefore be clarified or removed.

Proposed Supplemental Rule 11(b) contemplates the appointment of a "Presiding Panelist" to "coordinate and preside the panel." This paragraph should be amended to clarify the role and duties of a Presiding Panelist (see, for example, National Arbitration Forum's Supplemental Rule 9(b)).

The IPC's comments on the additional fees proposed in paragraphs 9 and 10 of the ACDR's Supplemental Rules are discussed above.

CONCLUSION

Again, the Intellectual Property Constituency wishes to thank the Arab Center for Domain Name Dispute Resolution for its thoughtful proposal. As noted above, the IPC believes there are several issues that must be more fully explored before ICANN permits the ACDR to begin offering services as a UDRP provider. However, the IPC believes that the remaining issues are by no means insurmountable, and that ICANN should ultimately approve the ACDR's proposal, subject to the revisions and recommendations set forth in these comments.