

Annex 1: Proposal for amendments to the UDRP

This annex presents, in the form of revision marks, suggested changes to the UDRP in order to implement the recommendations transmitted to ICANN by the World Intellectual Property Organization (WIPO) on 21 February 2003. The WIPO recommendations are available at: <http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>

The definition of "international intergovernmental organization" (IGO) which appears below has been supplied by the United Nations Office of Legal Affairs, Treaty Section, which is the UN office that specializes in questions related to intergovernmental organizations.

The arbitration clause in case of a dispute involving an IGO is deliberately tailored to give the non-IGO party an environment as close as possible to a domestic court environment. As an exception to that principle, if the country of residence of the non-IGO party has not ratified the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards, then the place of arbitration should not be in that country, since, if it were, it would prove difficult to enforce the award; in this case the place of arbitration should be Geneva, Switzerland, since that is widely accepted as a neutral arbitration venue.

It is suggested that IGOs be allowed to use arbitration for all disputes, not just those brought under the new provisions proposed by WIPO. This suggestion goes beyond what was proposed by WIPO. If it is not accepted, then the square brackets in the definition of "Mutual Jurisdiction" should be lifted (deleted).

Only the affected portions of the Policy and Rules of Procedure are reproduced below, together with the proposed changes. The full text of the current Policy and Rules of Procedure can be found at:

<http://www.icann.org/dndr/udrp/policy.htm>

and

<http://www.icann.org/dndr/udrp/uniform-rules.htm>

Uniform Domain Name Dispute Resolution Policy

4. Mandatory Administrative Proceeding.

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at www.icann.org/udrp/approved-providers.htm (each, a "Provider").

a. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

Or in the event that an international intergovernmental organization (IGO) asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(iv) the registration or use, as a domain name, of the name or abbreviation of the IGO that has been communicated under Article 6ter of the Paris Convention is of a nature:

(a) to suggest to the public that a connection exists between the domain name holder and the IGO; or

(b) to mislead the public as to the existence of a connection between the domain name holder and the IGO; or

(v) on the ground that the registration or use, as a domain name, of a name or abbreviation protected under an international treaty violates the terms of that treaty.

Or in the event that the government of a country recognized by the United Nation asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(vi) your domain name is identical or confusingly similar to either the long or short name of the country, as provided by the United Nations Terminology Bulletin, in either any of the official language(s) of the country concerned or in any of the six official languages of the United Nations; and

(vii) you have no rights or legitimate interests in respect of the domain name; and

(viii) the domain name is of a nature that is likely to mislead users into believing that there is an association between the

domain name holder and the constitutional authorities of the country in question; and

(ix) you registered the domain name after 21 February 2003.

In the administrative proceeding, the complainant must prove that each of elements (i) (ii) and (iii); or (iv)(a) or (iv)(b) or (v); or (vi), (vii), (viii) and (ix) these three elements are present, as applicable.

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k. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court or arbitration panel of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court or secretariat of the arbitration institution) that you have commenced a lawsuit or arbitration against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit or arbitration claim has been dismissed or withdrawn; or (iii) a copy of an order from such court or arbitration panel dismissing your lawsuit or arbitration claim or ordering that you do not have the right to continue to use your domain name.

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Rules for Uniform Domain Name Dispute Resolution Policy

1. Definitions

In these Rules:

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Government means a body with juridical personality established by a country that is a member of the United Nations by an act, however characterized, creating enforceable rights and obligations and governed by public law. A party asserting to be a government shall assert that it has, under applicable national law, the authority and power to act as a party under the UDRP and to represent the country in any proceeding under the UDRP or arising out of or in conjunction with the UDRP.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

International Intergovernmental Organization (IGO) means an organization with international juridical personality established by international agreement, however characterized, creating enforceable rights and obligations and governed by international law. It includes organizations created by international treaties.

Mutual Jurisdiction means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain-name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time the complaint is submitted to the Provider. Except that if the complainant is [made under 4.a(iv) or 4.a(v) of the Policy by] an international intergovernmental organization (IGO) then mutual jurisdiction means an arbitration court constituted under the rules of either the American Arbitration Association International Rules, the International Chamber of Commerce, the London Court of International Arbitration, or the World Intellectual Property Organization Arbitration Centre.

If one party is not an IGO, then:

- a) That party may choose the arbitral institution from the above; if no choice is made the institution shall be the World Intellectual Property Organization Arbitration Centre.
- b) The place of arbitration shall be the residence of the party that is not an IGO, except that if that residence is in a country that has not ratified the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards, then the place of arbitration shall be Geneva, Switzerland.
- c) The law applying to the dispute shall be the national law of that party.
- d) That party may choose whether there are one or three arbitrators; if no choice is made there shall be one arbitrator.
- e) All arbitrators shall be nationals of the country of residence of that party;

If both parties are IGOs, then the place of arbitration shall be Geneva, Switzerland, there shall be three arbitrators, and the institution shall be the World Intellectual Property Organization Arbitration Centre.

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3. The Complaint

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(b) The complaint shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:

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(xiii) State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts or arbitral tribunal in at least one specified Mutual Jurisdiction;

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