Comments of the Czech Arbitration Court (CAC) on WIPO proposal to amend the UDRP Rules in order to implement electronic-only UDRP procedure (eUDRP)

The CAC fully supports the WIPO proposal to amend UDRP Rules and provide for eUDRP. The CAC started to propose eUDRP more than two years ago and so obviously we welcome and support WIPO current initiative. We have no comments to the concrete proposed language of WIPO’s draft amendment of the UDRP Rules.

In addition to the WIPO proposed language, we suggest to add language regarding authentication of the electronic Complaints and Responses. At the moment UDRP Rules require in Paragraphs 3 (b) (xiv) and 5 (b) (viii) that the hardcopy Complaint or Response is signed. The reason for this requirement is the need to authenticate hardcopies of these two principle UDRP documents.

A hand-written signature authenticates a hard copy document in three respects[[1]](#footnote-2):

1. It provides evidence of the identity of the person who signed the document, on the assumption that hand-written signatures are unique to each signatory. If a hand-written signature is alleged to be a forgery, expert examination of the signature can provide an assessment of how likely it is that the signature was forged.

It is relevant to note that, unless the signature is already known to the recipient of the document, the recipient is in fact relying on the sender’s self-certification of his or her identity. If the person who is asserted to have sent the document denies that he or she did so, the signature provides a mechanism for checking that matter at a later date.

1. It provides evidence that the signatory agrees to and intends to be bound by the content of the document. This evidence derives from the law’s assumption that all signatories are aware of the convention that signing a document shows their agreement to it.
2. It provides evidence that the document has not been altered since it was signed, on the basis that alteration of the text would be detectable as it would make physical changes to the hard copy. This evidence is weaker in the case of multi-page documents unless each page is signed.

eUDRP should contain similar authentication requirement for electronic-only Complaints and Responses, fulfilling similar functions as handwritten signatures do in relation to hardcopy documents. There are many methods of authentication of electronic-only documents and they are constantly developing. We believe the UDRP Providers should have a right and be responsible for selecting the authentication method they feel as the most appropriate. So the amendment of the UDRP Rules should remain only on a general level.

Therefore, as a supplement to what WIPO proposes, we suggest the following additional modifications of the UDRP Rules:

**Proposed additional amendments of the UDRP Rules**

In Definitions, we propose to add a new definition of an Electronic Signature:

**Electronic Signature** means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.[[2]](#footnote-3)

We suggest to modify the first sentence of Paragraph 3 (b) (xiv) of the UDRP Rules as follows:

(xiv) Conclude with the following statement followed by the Electronic Signature of the Complainant or its authorized representative: …….

We suggest to modify the first sentence of Paragraph 5 (b) (viii) of the UDRP Rules as follows:

(viii) Conclude with the following statement followed by the Electronic Signature of the Respondent or its authorized representative: …….

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On behalf of the CAC

1. Quoted from Prof. Chris Reed’s report on the CAC Pilot project approved by ICANN in May 2009 [↑](#footnote-ref-2)
2. This is how electronic signatures are defined in EC Directive 1999/93/EC on Electronic Signatures [↑](#footnote-ref-3)