



# GNSO Working Session RAP Recommendations

*Margie Milam*

*12 March 2011*



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# Issues Report Overview

## *Current State of the UDRP*



# GNSO Council Resolution

**RESOLVED**, the GNSO Council requests an Issues Report on the current state of the UDRP. This effort should consider-

- How the UDRP has addressed the problem of cybersquatting to date, and any insufficiencies/inequalities associated with the process.
- Whether the definition of cybersquatting inherent within the existing UDRP language needs to be reviewed or updated. The Issue Report should include suggestions for how a possible PDP on this issue might be managed.



# Issue Report Format - Bylaws, Annex A

## *Issue Report Covers*

- Description of the issue raised for consideration
- Identity of the party submitting the issue
- How that party is affected by the issue
- Support for the issue to initiate the PDP
- Staff recommendation as to whether the Council should initiate the PDP



# Issue Report Format

## *General Counsel Opinion*

- Is the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO
  - Within the scope of ICANN's mission statement
  - Broadly applicable to multiple situations or organizations
  - Likely to have lasting value or applicability, albeit with the need for occasional updates
- Whether the PDP will establish a guide or framework for future decision-making
- Whether the PDP implicates or affects an existing ICANN policy



# Primary Sources Reviewed to Identify Issues



- The UDRP-  
<http://www.icann.org/en/udrp/#udrp>
- RAP Final Report-  
<http://gns0.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf>
- Staff Issue Report 1 Aug 2003-  
<http://www.icann.org/en/gns0/issue-reports/udrp-review-report-01aug03.htm>
- ICANN Paris UDRP Workshop-  
<http://par.icann.org/en/node/102>
- WIPO Conference: 10 Years UDRP-  
What's Next-  
<http://www.wipo.int/amc/en/events/workshops/2009/10yrs-udrp/program/index.html>

# Current State of the UDRP



## *Widely Recognized as a Success*

- Over 30,000 complaints filed over last decade
- Four service providers approved by ICANN providing choice and competition
- Viable alternative to costly litigation involving parties from differing jurisdictions
- Served as a model for ccTLDs
- Significant service provider resources in education and publishing decisions

# Issues Regarding PDP Scope



- GNSO Council resolution unclear whether to address issue narrowly- i.e.- definition of cybersquatting or more broadly- to include process improvements and other aspects of the policy
- If broader, scope of issues raised by Community (as highlighted in this presentation) require extensive time and resources (volunteer and staff) to conduct PDP, compared to PDP with narrower focus



# Issues Identified By Community



Substantive Policy Issues	
Bad Faith “Use” Requirement ignored	Protection for Non-Registered Trademarks
Cybersquatting Definition Differs from National Laws	Guidelines for “Confusing Similarity”
Reverse Domain Name Hijacking	Clarification Whether Domain Name Holding is “Use”
Settlement Negotiations as Evidence of Bad Faith	Express Identification of Affirmative Defenses
Cancellation Remedy	Preliminary Intent to File

# Issues Identified By Community



Substantive Policy Issues	(Continued)
Issues Related to Proxy/Privacy Services	Abbreviated Filing of Form Complaints
Summary Default Decisions in Prima Facie cases	Privacy and Respondent Identity
No Transfer/Deletion Rule	WHOIS Status Codes
Service to Billing Address	Injunctive Relief Remedy
Reseller Issues	Renewal Remedy

# Issues Identified by Community



Process Issues	
No Ability to Appeal	Delaying Registrar Action Due to Appeal
Language of Proceedings	Notice Communications
Consent to Transfers	Settlement Suspension Periods
Consolidation of Multiple Disputes	Fast Track Process

# Issues Identified by Community



Process Issues	(Continued)
Complainant Generated Transfer Issues	Effect of Other Litigation
Registrar Obligations throughout Process	Moving domains into Separate Customer Accounts
Changing WHOIS upon receipt of Complaint	Registrar Education
Class Actions	

# Issues Identified by Community



Other Issues	
Forum Shopping	Too Time Consuming For Brand Holders
Unpredictability of Decisions	Lack of Deterrents For Abusive Complainants and Respondents
Inconsistency of Decisions With Similar Facts	No Service Provider Contracts with ICANN
Refiling Same Complaint/Respondents	No Centralized Searchable Decision Database
Too Expensive to Brand Holders	Process for Updating Supplemental Rules

# Possible Approaches to PDP



- GNSO to clarify resolution to provide guidance on intended scope of Issue Report
- Narrow focus to only aspects that require PDP- such as revisions to the policy itself
- Delay vote on PDP for sessions at June Meeting with UDRP experts, coupled with a public comment forum
- Break down issues into groups (such as was done with the IRTP PDP)
- Others?

# Questions

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Thank You

