From: Mail, Arbiter
To: "Margie Milam";
Subject: ICANN UDRP Questionnaire
Date: Thursday, May 05, 2011 8:21:00 PM

Dear Ms. Milam,

Thank you for your below message of April 21, 2011 introducing an extensive Questionnaire as a lead-in to a possible ICANN process for UDRP revision.

WIPO believes in the UDRP. The resounding success of this live legal mechanism is rooted in substantive and procedural expert understanding. WIPO expects to be making a number of observations on the envisaged process and on the UDRP more generally at the upcoming ICANN webinar. Those observations also imply a position with respect to the ICANN Questionnaire.

In connection with the latter, one would assume that parties leading a drive towards UDRP revision are themselves motivated and informed by independent appreciation of the UDRP experience thus far, including the full scale of materially relevant publicly available data.

In this connection, having provided in 1999 the blueprint for the UDRP, WIPO makes freely available extensive resources to help to navigate and understand the 21,000 posted cases processed by WIPO on a non-profit basis since. The latest example of this is the second edition of WIPO's jurisprudential Overview. Other globally unique WIPO tools include the WIPO UDRP Legal Index, the WIPO Selection of UDRP Court Cases, and real-time statistics on WIPO UDRP cases and decisions. In addition, the WIPO Center is on record with numerous submissions and correspondence to ICANN, for example on registrar issues. WIPO also has contributed extensive suggestions and comments to ICANN on rights protection mechanisms for an expanded DNS, which as-yet unproven mechanisms must properly interact with the UDRP. Links to a selection of these resources are provided below.

Helpful as these resources may be for ICANN’s purposes, we submit that any effort to revise trademark owners’ principal rights-protection mechanism available in the DNS, in particular where such revision appears to target the UDRP’s very definition of cybersquatting, inevitably would have to begin by

examining on a more fundamental level the persisting business of cybersquatting itself, including the stakes for DNS intermediaries and authorities.

Please feel free to share with stakeholders the present WIPO reaction.

With best wishes,

Erik Wilbers
Director, WIPO Arbitration and Mediation Center

1. First WIPO Report

The blueprint of the current UDRP is in the First WIPO Report (www.wipo.int/amc/en/docs/report-final1.pdf). This Report expresses a coherent vision culminating from extensive international consultations and careful substantive reflection (www.wipo.int/amc/en/processes/process1/consultations/index.html).

In 2001, a Second WIPO Report (http://www.wipo.int/amc/en/processes/process2/report/html/report.html) explored policy options for other types of identifiers in the DNS.

In 2005, WIPO further produced a report (http://www.wipo.int/amc/en/domains/reports/newgtld-ip/index.html) analyzing the UDRP experience in the wider context of trademark protection in an expanded DNS.

2. Article on UDRP design elements *(available at request)*

The UDRP: Design Elements of an Effective ADR Mechanism, by Nicholas Smith and Erik Wilbers.

3. WIPO Jurisprudential "Overview 2.0"

www.wipo.int/amc/en/domains/search/overview2.0/

This second edition of the WIPO Overview published in March 2011 represents a major update and extension of the original version. A long

time in the making, this updated edition carefully and conservatively distills observed trends and developments from the more than 10,000 WIPO Panel decisions that have been rendered since the original edition of the WIPO Overview was first published in early 2005.

Drawing on the over 20,000 UDRP cases administered by the WIPO Center since the UDRP's introduction, it reflects a balanced statement of some 50 substantive and procedural issues now included. The WIPO Overview 2.0 cites over 380 decisions (formerly 100) from over 180 (formerly 80) different UDRP panelists.

A globally unique tool, the freely available WIPO Overview not only helps parties and panelists around the world, but may also serve as a timely reminder of the need to apply expert care in the development of ADR mechanisms for the DNS.

4. WIPO UDRP Legal Index

Like the WIPO UDRP jurisprudential Overview, the WIPO UDRP Legal Index (www.wipo.int/amc/en/domains/search/legalindex.jsp) is a globally unique reference tool, covering over 20,000 WIPO UDRP cases.

5. WIPO Domain Name Workshops and Panelist meetings

Every year since 2000, WIPO has held domain name dispute resolution Workshops and Panelists Meetings. Furthermore, in 2009, the Center held a conference: *WIPO Conference: 10 Years UDRP – What's Next?* (www.wipo.int/amc/en/events/workshops/2009/10yrs-udrp/index.html). WIPO's Workshops are attended by large numbers of DNS counsel and stakeholders from around the world. Set out below is the announcement for the 2011 WIPO Workshop:

"The WIPO Arbitration and Mediation Center plans to hold its annual *Advanced Workshop on Domain Name Dispute Resolution* [www.wipo.int/amc/en/events/workshops/2011/domainname/] in Geneva (Switzerland) Tuesday, October 11 and Wednesday, October 12, 2011.

The Advanced Workshop will focus mainly on the trends of UDRP decisions with regard to the most important substantive and procedural issues. Thus, in addition to those wishing to gain insight into the UDRP mechanism, this Advanced Workshop is of particular interest to those who have been or who

may become involved in UDRP proceedings. The 2011 Workshop will also cover evolving developments in WIPO Center practices and resources, as well as ICANN's plans for the launch of new gTLDs, topics of interest to parties to a domain dispute as well as trademark holders generally. The Advanced Workshop also represents an opportunity for registrars and ccTLD administrators to increase their knowledge of UDRP decisions.

The faculty will consist of experienced WIPO UDRP panelists, a trademark in-house counsel and senior legal staff of the Center. The Workshop will include practical break-out sessions, followed by discussion between participants and instructors."

6. WIPO Domain Name Dispute Resolution Statistics; WIPO Center 2011 Press Release

WIPO makes available online a wide range of UDRP-related real-time case statistics, at: www.wipo.int/amc/en/domains/statistics/

On March 31, 2011, WIPO issued the following press release that includes a domain name update: www.wipo.int/pressroom/en/articles/2011/article_0010.html

7. ccTLDs using the UDRP or variations thereof

Many countries have introduced domain name policies in their ccTLDs that are identical to or rooted in the UDRP. At www.wipo.int/amc/en/domains/cctld/, WIPO provides an overview of these policies and procedures.

8. Selected other WIPO initiatives and observations

- eUDRP: www.wipo.int/amc/en/docs/icann301208.pdf
- eUDRP follow-up letter: www.wipo.int/amc/en/docs/icann170909.pdf
- UDRP provider norms:
- http://www.wipo.int/export/sites/www/amc/en/docs/icann040707.pdf
- http://www.wipo.int/export/sites/www/amc/en/docs/icann291107.pdf
- April 2009 WIPO proposal for a UDRP complement "Expedited Suspension Mechanism": www.wipo.int/amc/en/docs/icann030409.pdf
- Other WIPO proposals and observations:
    - www.wipo.int/amc/en/domains/newgtld/
    - www.wipo.int/amc/en/domains/resources/icann/

9. Overview of UDRP cases addressed in court

This (www.wipo.int/amc/en/domains/challenged/index.html) is a selection of court orders and decisions in relation to specific UDRP cases that have come to the attention of the WIPO Center.

10. Registrar conduct in the UDRP

WIPO Center letters to ICANN discussing registrar conduct:

- Nameview: www.wipo.int/amc/en/docs/icann111209.pdf
- Lead Networks: www.wipo.int/amc/en/docs/icann090409.pdf
- 'General' registrar letter: www.wipo.int/amc/en/docs/icann160408.pdf
- 'General' registrar letter: www.wipo.int/amc/en/docs/icann010708.pdf

From among numerous UDRP decisions addressing registrar conduct, set out below is a sampling of cases cited in the above WIPO letters:

- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1843.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1886.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0945.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0620.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0503.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0849.html
- http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0830.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0407.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0827.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1438.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1431.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1373.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0997.html
- http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1886.html

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From: Margie Milam [mailto:Margie.Milam@icann.org]
Sent: jeudi, 21. avril 2011 21:48
To: Wilbers, Erik; Beckham, Brian; Roache-Turner, David
Subject: Questionnaire on the UDRP
Importance: High

Dear Erik, Brian and David,

As referenced in my prior email, I am pleased to forward to you a Questionnaire on the UDRP that is being sent to all ICANN approved UDRP providers. We kindly request that you consider participating in this Questionnaire, which was developed by Staff in consultation with a GNSO Council drafting team.

Should you have any questions regarding the Questionnaire or the upcoming Webinar, please do not hesitate to contact me by email or by telephone at +1 310 228 - 7990.

Sincerely,

Margie Milam
Senior Policy Counselor
ICANN

From: Margie Milam
Sent: Tuesday, April 19, 2011 4:37 PM
To: Wilbers, Erik (Erik.Wilbers@wipo.int); Beckham, Brian (Brian.Beckham@wipo.int)
Subject: Information on the GNSO Council's UDRP related activities
Importance: High

Dear Erik and Brian,

As you know, I am assisting the GNSO Council with its UDRP related activities. I would like to provide you with information regarding these activities, and encourage the participation of WIPO, as appropriate. WIPO's information and expertise as a provider of UDRP services would be an important resource as the GNSO embarks on these activities. Your participation is purely voluntary, but would be a valued contribution to these efforts.

Background

The UDRP was created in 1999. Since its adoption, the UDRP has not been reviewed or updated by the GNSO Council. Recently, the GNSO Council has requested from Staff an Issue Report on the current state of the UDRP. I am currently conducting the research and analysis necessary to deliver the Issue Report on the UDRP for the Council's consideration by the upcoming June Singapore Meeting. Once the Issue Report is published, the Council will decide whether to initiate a policy process to review the UDRP for improvements or modifications.

Invitation to Participate in the Webinar on the Current State of the UDRP

At the request of the GNSO Council, a webinar will be conducted by ICANN Staff to solicit information on the current state of the UDRP. This two hour webinar is to be held on May 10th at 1500 UTC.

We would like to encourage WIPO to send a participant to be one of the speakers in the Webinar to provide a brief overview (around 5 minutes) of the issues to be considered as Staff drafts the Issue Report on the UDRP. This could consist of a list of your top issues to address if a policy development process (PDP) is initiated, or any concerns that you have regarding the UDRP or its implementation. The format of the session is not meant to provide solutions, but merely to highlight issues that might be explored if a PDP is to be approved by the GNSO Council. Each of the ICANN approved UDRP providers will be similarly invited to share their observations.

The remainder of the Webinar will be focused on soliciting observations from other stakeholders with expertise in the UDRP. In this regard, we would also like to solicit recommendations from you for additional speakers for this Webinar. Specifically, we are seeking recommendations for one or two individuals from the following categories:

- UDRP panelists
- Attorneys (preferably one that regularly represents complainants, one that regularly represents respondents)
- Complainants
- Respondents

We would greatly appreciate receiving any contact information for your recommendations, if any, by the end of this week. These individuals will be contacted next week if they are selected to be a speaker for the Webinar.

Questionnaire on the UDRP

In preparation for the Webinar, Staff will be sending to you later this week a questionnaire that is designed to gather data regarding the UDRP. Once you receive it, please feel free to contact me if you have any questions or concerns about gathering the information. This questionnaire is not intended to require

significant research on your part, but merely to solicit information that may be easily gathered. If the data is too difficult to gather as requested, please reply by noting that in your response, or provide alternative information that may be more readily available.

Please do not hesitate to contact me if you have questions regarding any of this information or the questionnaire after it is delivered to you. I can be reached by email or by telephone 1 (310) 228 -7990.

I look forward to your response and kind assistance in this regard.

Best Regards,

Margie Milam
Senior Policy Counselor
ICANN