



September 17, 2009

Dear Mr. Jeffrey,

I am writing to you in light of the recent conclusion of the ICANN public consultation process on the WIPO eUDRP proposal. It is positive indeed to see that the proposal has received such strong support across a broad spectrum of stakeholders in the Domain Name System. Favorable comments have come for example from among UDRP users and providers, the ICANN constituency community, registries and registrars, and international associations such as the International Trademark Association (INTA), and the Internet Commerce Association. In view of this expressed support for the proposal, and very much in a collaborative spirit intended to facilitate timely consideration through an appropriate process, WIPO is also taking the occasion to share with ICANN a package of documents (as listed in the attached Index, and also discussed further below) which we hope may assist in this regard.

The WIPO Arbitration and Mediation Center has examined all of the submitted and publicly posted comments on the eUDRP proposal and wishes to extend its appreciation not only to ICANN for enabling the consultation process, but also to all of those who have invested their time and considered contributions to it. We have noted that although the overwhelming majority of commentators have backed the proposal unreservedly, there have been some who have done so on a principled basis subject to certain matters being addressed. There have also been a small number who appear to have reservations regarding the proposal possibly in light of a (mistaken) belief that the proposal may rely solely on email notification. That is of course not the case.

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./ As you know from our letter to you of December 30, 2008 (attached for ease of reference), at the core of the WIPO proposal is the concept of written notice, which requires a UDRP service provider to send hardcopy notification of the commencement of a UDRP proceeding (as distinct from the actual complaint itself) to the relevant post and facsimile contact information of the respondent.¹ The proposal further requires that the complete complaint including any annexes be notified to the respondent by email to all of its available and/or preferred email addresses.

In any event, with these considerations in mind, WIPO has carefully reviewed its proposal as set out in our letter of December 30, 2008 including the specifically proposed targeted UDRP Rules amendments attached thereto, and we have made a small number of further proposed revisions to the UDRP Rules in light of comments received. The proposed revisions to the UDRP Rules (both those as proposed in December and presently in light of the consultation) are explained in detail in the attached Explanatory Memorandum, and with the later proposed version also set out in the attached 'redline' version of the UDRP Rules (revised version 2.0). The further amendments included in this revised version of the Rules do not affect the essence of the proposal as set out in our original letter of December 30, 2008, and are being included here principally in a spirit of refinement, clarification and constructive engagement with those in the community who have taken the time to contribute on this important issue.

./ For illustrative purposes, we have attached a complementary 'redline' version of the WIPO Supplemental Rules which we would presently envisage moving forward with, as far as the topic of the present initiative is concerned, in the event that the WIPO eUDRP proposal and proposed UDRP Rules changes were to be adopted by the ICANN Board and promulgated on a uniform basis.

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¹ In addition to the observed 96% of cases in which WIPO has not received any bounce-back on WhoIs-listed, registrar-confirmed complaint notifications sent by email, it has also been observed that facsimile is a largely ineffective and superfluous tool for notification purposes. WIPO has observed that in 2008 – 2009 cases, for example, facsimile notifications (as evidenced by the relevant facsimile transmission records) appeared to have proved to be successful in no more than 11% of cases, and of these, all appeared to have also included a successful email notification. In this light, the requirement in the proposal for written notice to be sent by facsimile is still included largely in a spirit of abundance of caution, and in addition to the physical written notice, in order to address possible concerns held by an apparently small minority as to the efficacy of email in all cases.

Mr. John Jeffrey, Marina del Rey - September 17, 2009

As you know, the underlying case and rationale for our proposal was articulated in detail in our letter to you of December 30, 2008, which was publicly posted on the Center's and ICANN's website, and such case and rationale has not changed. In addition to the ICANN consultation process, the feedback that we have received at WIPO on the proposal from trademark owners, panelists, and users of our services and their filing counsel (both from a complainant and a respondent perspective) has been overwhelmingly positive. The most consistent comment that we have heard on the issue could be summarized as: 'the sooner the better.'

From WIPO's perspective, as you are aware we very much believe in a considered approach, and in our view the time is ripe indeed to take this proposal forward. Indeed, it is heartening to observe that among the comments submitted in the consultation process were a number calling for an approval process proportionate to the essentially procedural and highly targeted nature of the UDRP Rules amendments proposed by WIPO, and as you know, it is the preference and expectation of many that such changes be implemented on a timely and uniform basis at the level of the Rules. Such an approach also holds out the prospect of promoting additional consistency, predictability, and genuine provider competition on the basis of a level playing field within the parameters of the UDRP framework.

We very much hope that ICANN will find the WIPO eUDRP proposal, including our suggested 'redline' revisions to the UDRP Rules (revised version 2.0) to be reasonable, and that the latter is also found by ICANN to be appropriately responsive to pertinent comments and reactions received from the community during the ICANN consultation process.

We trust that ICANN will give the matter due consideration, with appropriate regard to the evident support across the community for rapid introduction of this timely and fundamentally uncontroversial procedural reform which WIPO first proposed in December of 2008.

Naturally, WIPO stands ready to provide any further information and assistance. We anticipate posting a copy of the present letter on our website.

With best regards,



Erik Wilbers
Director

WIPO Arbitration and Mediation Center



Index of Documents Provided by WIPO to ICANN to Assist Consideration of
the WIPO eUDRP Proposal (September 17, 2009)

No.	Document
1.	Explanatory Memorandum – Proposed Procedural Amendment to the UDRP Rules to Remove the Requirement for Paper Pleadings
2.	Proposed Amendments to the Rules for Uniform Domain Name Dispute Resolution Policy
3.	Envisaged Amendments to the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (if WIPO eUDRP proposal were to be adopted by ICANN)
4.	Letter of December 30, 2008 on WIPO eUDRP Initiative



**Explanatory Memorandum – WIPO Proposed Procedural Amendment to
the UDRP Rules to Remove the Requirement for Paper Pleadings
(September 17, 2009)**

The purpose of the accompanying set of targeted amendments to the Rules for Uniform Domain Name Dispute Resolution Policy (UDRP Rules) is to remove the requirement for paper pleadings from the UDRP process, while also preserving a “safety-valve” requirement for Written Notice to respondents. The detailed case for the WIPO proposal is set out in a [letter to ICANN](#) of December 30, 2008. Under the proposal, respondents would receive a complete copy of the complaint including any annexes in electronic form on formal notification of the complaint and commencement of administrative proceedings by the Provider. Respondent would also receive Written Notice in hardcopy of the filing of a Complaint and Commencement of Administrative Proceedings under the UDRP, such notice being sent by the Provider both to the postal address and to any facsimile number of the Respondent.

Both parties to a UDRP proceeding would be freed from the existing obligation under the Rules to file and ship (both to the Provider and to each other) hardcopies of the complaint and response. Rather, both would be entitled to file and to receive complete copies electronically. Providers would no longer be required to send hardcopy complaints on formal notification, but would be required to send Written Notice to respondents to applicable postal addresses and by facsimile, as well as forwarding the Respondent a complete copy of the complaint by email.

After informal consultation, ICANN on July 13, 2009 posted the WIPO eUDRP proposal for a [30-day public comment period until August 12, 2009](#). Comments submitted showed clear support overall. Some submitted comments also contained suggestions for refinement to the eUDRP proposal, which have been taken into consideration by WIPO.

- ./ The revised set of ‘redline’ UDRP Rules attached to this Explanatory Memorandum represent WIPO’s considered view of an appropriate set of targeted drafting changes to give effect to the eUDRP proposal. Further
- ./ attached for illustrative purposes is a revised set of the WIPO Supplemental Rules, which WIPO presently would envisage adopting, as far as the topic of the present initiative is concerned, in the event of the described amendments to the UDRP Rules being approved by ICANN.

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Explanatory Memorandum – WIPO Proposed Procedural Amendment to the
UDRP Rules to Remove the Requirement for Paper Pleadings
(September 17, 2009)

Set out below is an explanation by relevant paragraph number of the
WIPO-proposed amendment to the UDRP Rules.

Rules Paragraph 1

The definition of Supplemental Rules has been amended to clarify that matters such as file size and format modalities may appropriately be addressed through Provider Supplemental Rules. Provider guidance on such technical modalities is expected by WIPO to be a practical necessity in the context of an electronic-only filing model to ensure that the technical aspects of the system, including the notification process, operate predictably. Although some comments called for a minimization of Provider discretion at the level of the Supplemental Rules, it is neither desirable nor practicable to seek to address such technical matters at the level of the UDRP Rules. A degree of Provider flexibility at the operational level is necessary in order to take account of technological developments in areas such as format type and file compression. Such flexibility is already implicit in the existing definition of Supplemental Rules.

A definition of Written Notice has been added to clarify that the Provider's responsibility on notification includes sending written notification of the commencement of a UDRP proceeding to the respondent by post (and facsimile). This is intended to more directly address comments made in some submissions that appeared to point to the possibility of domain name registrants having defective or inaccurate email addresses, or using a spam filter. Such possibilities were addressed in the original WIPO eUDRP proposal through the (then as such undefined) concept of written notice as explained in the WIPO letter of December 30, 2008, and the operation of that concept with the communication provisions described in paragraph 2 of the Rules. The included definition of Written Notice simply clarifies the Provider's obligation in this regard.

Rules Paragraph 2

Paragraph 2(a) has been amended such that the Provider would be required to forward a copy of the complaint including any annexes to the Respondent in electronic form only. This in effect requires the Provider to forward a complete copy of the complaint to the Respondent electronically. The addition of the words "including any annexes" in paragraph 2(a)(iii), and in subsequent

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Explanatory Memorandum – WIPO Proposed Procedural Amendment to the UDRP Rules to Remove the Requirement for Paper Pleadings
(September 17, 2009)

paragraphs, is intended to highlight that the relevant copy of the pleadings would need to be sent to the recipient electronically in complete electronic form. As noted, although the Provider would not be required to forward a hardcopy of the complaint to the respondent by post or facsimile, the Provider would be required to forward Written Notice of same to the Respondent by these methods.

Paragraph 2(b) covers case-related communications except for the forwarding of the complaint electronically and the sending of Written Notice by the Provider. It has been amended such that any written communication shall be made electronically via the Internet, or by any reasonably requested preferred means stated by the Complainant or Respondent respectively. This reflects the current reality that, after notification of the complaint, communications in UDRP cases tend invariably to occur by email. For example, as stated by WIPO in its letter to ICANN of December 30, 2008, WIPO is presently observing the receipt of electronic communications from both complainants and respondents in all defended cases. To take account of the possibility that there may be a case in which this may be, for example, temporarily impracticable, a safety valve has been retained by which a party may reasonably nominate an alternate means of communication. It is not expected that this option would be frequently utilized, if ever. The proposed deletion of the second sentence in paragraph 2(d) is intended to take account of the current reality that the use of “plaintext” in case-related emails is today less common, and that most such emails would appear to comprise or incorporate at least some elements of formatted text, even if plaintext may be practicable.

The order of paragraph 2(f) has been modified to indicate that the primary form of communication under the proposed changes is envisaged to be via the Internet.

Paragraph 2(i) has been modified to emphasize that this paragraph would cover, *inter alia*, retention by the Provider of relevant records of Written Notice sent to the Respondent, whether by post or facsimile.

Rules Paragraph 3

Paragraph 3(b) has been modified to emphasize that the Complaint, including any annexes, shall be submitted to the Provider in complete form. In paragraph 3(b)(iii), after the phrase “material including hard copy”, the words

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Explanatory Memorandum – WIPO Proposed Procedural Amendment to the UDRP Rules to Remove the Requirement for Paper Pleadings
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“(where applicable)” have been inserted to indicate that, in many if not all cases, hard copy materials will as noted above no longer be relevant. Paragraph 3(xii) has been amended to expressly require that the Complainant’s statement in its complaint that it has sent or transmitted a copy of the complaint to the Respondent, extends to also include sending a copy of any complaint annexes to the Respondent.

In paragraph 3(b)(xiv), the requirement for a “signature” has been modified to specify that such signature should be in electronic form. WIPO believes that it would be implicit in any requirement that a complaint be submitted to a provider in any electronic form (*e.g.*, as a .PDF copy), when read in conjunction with a requirement for a signature on the complaint, that such “signature” would necessarily include a signature in such electronic format. However, having regard to a submitted comment on this issue, there may be value in clarifying expressly that the required “signature” should be in electronic format. (WIPO believes that the practical meaning of such requirement is clear on its face and does not additionally require express definition in paragraph 1 of the Rules. Furthermore, given the possibility of technological developments in this area, and also of the possibility of variations in interpretation across differing jurisdictions, it may be preferable to refrain from imposing specific national or regional definitions.)

Rules Paragraph 4

Paragraph 4(a) has been amended to reflect that the Provider, in notifying the Respondent of the complaint and commencement of administrative proceedings, will in any event send the complaint electronically to the Respondent. The amendments also expressly require the Provider to send any annexes thereto. (Under the current Rules, the Provider is only required to do so where these are available). As such, respondents could immediately commence response preparation on receipt of the full complaint via email on notification. Written Notice shall also be sent to the Respondent by the Provider as required under paragraph 2(a).

Rules Paragraph 5

Paragraph 5, which applies to the response, has been modified in parallel fashion to paragraph 3, which applies to the complaint. (The practical benefits and obligations that would accrue to parties in a UDRP proceeding as a result of the proposed amendments would apply to complainants and respondents alike.)

WIPO provisional draft amendments to the Rules for eUDRP
(September 17, 2009) Version 2.0



**Rules for Uniform Domain Name Dispute Resolution
Policy**

Policy Adopted: August 26, 1999

Implementation Documents Approved: [October 24, 1999]

Note: These rules are now in effect. See www.icann.org/udrp/udrp-schedule.htm for the implementation schedule.

**Rules for Uniform Domain Name Dispute Resolution
Policy**

(As Approved by ICANN on [October 24, 1999])

Administrative proceedings for the resolution of disputes under the Uniform Dispute Resolution Policy adopted by ICANN shall be governed by these Rules and also the Supplemental Rules of the Provider administering the proceedings, as posted on its web site.

1. Definitions

In these Rules:

Complainant means the party initiating a complaint concerning a domain-name registration.

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

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.

Panel means an administrative panel appointed by a Provider to decide a complaint concerning a domain-name registration.

Panelist means an individual appointed by a Provider to be a member of a Panel.

Party means a Complainant or a Respondent.

Policy means the [Uniform Domain Name Dispute Resolution Policy](#) that is incorporated by reference and made a part of the Registration Agreement.

Provider means a dispute-resolution service provider approved by ICANN. A list of such Providers appears at www.icann.org/udrp/approved-providers.htm.

Registrar means the entity with which the Respondent has registered a domain name that is the subject of a complaint.

Registration Agreement means the agreement between a Registrar and a domain-name holder.

Respondent means the holder of a domain-name registration against which a complaint is initiated.

Reverse Domain Name Hijacking means using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.

Supplemental Rules means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, [file size and format modalities](#), the means for communicating with the Provider and the Panel, and the form of cover sheets.

Written Notice means [hardcopy notification by the Provider to the Respondent of the commencement of an administrative proceeding under the Policy which shall inform the respondent that a complaint has been filed against it, and which shall state that the Provider has electronically transmitted the complaint including any annexes to the Respondent by the means specified herein. Written notice does not include a hardcopy of the complaint itself or of any annexes.](#)

2. Communications

(a) When forwarding a complaint including any annexes electronically to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending Written Notice of the complaint to all postal-mail and facsimile addresses (A) shown in the domain name's registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and (B) supplied by Registrar to the Provider for the registration's billing contact; and

(ii) sending the complaint ~~in electronic form (including any annexes to the extent available in that in electronic form)~~ by e-mail to:

(A) the e-mail addresses for those technical, administrative, and billing contacts;

(B) postmaster@<the contested domain name>; and

(C) if the domain name (or "www." followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain-names registered by multiple domain-name holders), any e-mail address shown or e-mail links on that web page; and

(iii) sending the complaint including any annexes to any e-mail address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other e-mail addresses provided to the Provider by Complainant under Paragraph 3(b)(v).

(b) Except as provided in Paragraph 2(a), any written communication to Complainant or Respondent provided for under these Rules shall be made electronically via the Internet (a record of its transmission being available), or by ~~the~~ any reasonably requested preferred means stated by the Complainant or Respondent, respectively (see Paragraphs 3(b)(iii) and 5(b)(iii)); ~~or in the absence of such specification~~

~~(i) by telecopy or facsimile transmission, with a confirmation of transmission; or~~

~~(ii) by postal or courier service, postage pre-paid and return receipt requested; or~~

~~(iii) electronically via the Internet, provided a record of its transmission is available.~~

(c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including where applicable number of copies) stated in the Provider's Supplemental Rules.

(d) Communications shall be made in the language prescribed in Paragraph 11. ~~E-mail communications may, if practicable, be sent in plaintext.~~

(e) Either Party may update its contact details by notifying the Provider and the Registrar.

(f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

(i) ~~if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or~~ if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or, where applicable

(ii) ~~if by postal or courier service, on the date marked on the receipt; or~~ if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or:

(iii) ~~if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.~~ if by postal or courier service, on the date marked on the receipt.

(g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(f).

(h) Any communication by

(i) a Panel to any Party shall be copied to the Provider and to the other Party;

(ii) the Provider to any Party shall be copied to the other Party; and

(iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.

(i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes. This includes the Provider in sending Written Notice to the Respondent by post and/or facsimile under Paragraph 2(a)(i).

(j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the notification. Further proceedings concerning the communication and any response shall be as directed by the Panel (or the Provider).

3. The Complaint

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider approved by ICANN. (Due to capacity constraints or for other reasons, a Provider's ability to accept complaints may be suspended at times. In that event, the Provider shall refuse the submission. The person or entity may submit the complaint to another Provider.)

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

(i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Complainant and of any representative authorized to act for the Complainant in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy (where applicable);

(iv) Designate whether Complainant elects to have the dispute decided by a single-member or a three-member Panel and, in the event Complainant elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);

(v) Provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a);

(vi) Specify the domain name(s) that is/are the subject of the complaint;

(vii) Identify the Registrar(s) with whom the domain name(s) is/are registered at the time the complaint is filed;

(viii) Specify the trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future.);

(ix) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular,

(1) the manner in which the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) why the Respondent (domain-name holder) should be considered as having no rights or legitimate interests in respect of the domain name(s) that is/are the subject of the complaint; and

(3) why the domain name(s) should be considered as having been registered and being used in bad faith

(The description should, for elements (2) and (3), discuss any aspects of Paragraphs 4(b) and 4(c) of the Policy that are applicable. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(x) Specify, in accordance with the Policy, the remedies sought;

(xi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(xii) State that a copy of the complaint including any annexes, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with Paragraph 2(b);

(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 in at least one specified Mutual Jurisdiction;

(xiv) Conclude with the following statement followed by the signature (in any electronic format) of the Complainant or its authorized representative:

“Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the dispute-resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.”

“Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under

applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.”; and

(xv) Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name(s) in dispute and any trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence.

(c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

4. Notification of Complaint

(a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall ~~forward~~ send the complaint including any annexes electronically to the Respondent and shall send Written Notice of the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by Paragraph 2(a), within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with Paragraph 19.

(b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.

(c) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) in connection with sending the ~~E~~complaint to the Respondent.

(d) The Provider shall immediately notify the Complainant, the Respondent, the concerned Registrar(s), and ICANN of the date of commencement of the administrative proceeding.

5. The Response

(a) Within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.

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

(i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain-name holder) to retain registration and use of the disputed domain name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Respondent (domain-name holder) and of any representative authorized to act for the Respondent in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Respondent in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy ([where applicable](#));

(iv) If Complainant has elected a single-member panel in the [complaint](#) (see [Paragraph 3\(b\)\(iv\)](#)), state whether Respondent elects instead to have the dispute decided by a three-member panel;

(v) If either Complainant or Respondent elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);

(vi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(vii) State that a copy of the response [including any annexes](#) has been sent or transmitted to the Complainant, in accordance with [Paragraph 2\(b\)](#); and

(viii) Conclude with the following statement followed by the signature ([in any electronic format](#)) of the Respondent or its authorized representative:

“Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.”; and

(ix) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

(c) If Complainant has elected to have the dispute decided by a single-member Panel and Respondent elects a three-member Panel, Respondent shall be required to pay one-half of the applicable fee for a three-member Panel as set forth in the Provider's Supplemental Rules. This payment shall be made together with the submission of the response to the Provider. In the event that the required payment is not made, the dispute shall be decided by a single-member Panel.

(d) At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

(e) If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

6. Appointment of the Panel and Timing of Decision

(a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

(b) If neither the Complainant nor the Respondent has elected a three-member Panel (Paragraphs 3(b)(iv) and 5(b)(iv)), the Provider shall appoint, within five (5) calendar days following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. The fees for a single-member Panel shall be paid entirely by the Complainant.

(c) If either the Complainant or the Respondent elects to have the dispute decided by a three-member Panel, the Provider shall appoint three Panelists in accordance with the procedures identified in Paragraph 6(e). The fees for a three-member Panel shall be paid in their entirety by the Complainant, except where the election for a three-member Panel was made by the Respondent, in which case the applicable fees shall be shared equally between the Parties.

(d) Unless it has already elected a three-member Panel, the Complainant shall submit to the Provider, within five (5) calendar days of communication of a response in which the Respondent elects a three-member Panel, the names and contact details of three candidates to serve as one of the Panelists. These candidates may be drawn from any ICANN-approved Provider's list of panelists.

(e) In the event that either the Complainant or the Respondent elects a three-member Panel, the Provider shall endeavor to appoint one Panelist from the list of candidates provided by each of the Complainant and the Respondent. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as they may specify to the Provider within five (5) calendar days of the Provider's submission of the five-candidate list to the Parties.

(f) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

7. Impartiality and Independence

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

8. Communication Between Parties and the Panel

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

9. Transmission of the File to the Panel

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three-member Panel.

10. General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

11. Language of Proceedings

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the

Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

12. Further Statements

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

13. In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

14. Default

(a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

15. Panel Decisions

(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

(b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to Paragraph 6.

(c) In the case of a three-member Panel, the Panel's decision shall be made by a majority.

(d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s).

(e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the

scope of Paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

16. Communication of Decision to Parties

(a) Within three (3) calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), and ICANN. The concerned Registrar(s) shall immediately communicate to each Party, the Provider, and ICANN the date for the implementation of the decision in accordance with the Policy.

(b) Except if the Panel determines otherwise (see Paragraph 4(j) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see Paragraph 15(e) of these Rules) shall be published.

17. Settlement or Other Grounds for Termination

(a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding.

(b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

18. Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the pendency of an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See Paragraph 8 above.

19. Fees

(a) The Complainant shall pay to the Provider an initial fixed fee, in accordance with the Provider's Supplemental Rules, within the time and in the amount required. A Respondent electing under Paragraph 5(b)(iv) to have the dispute decided by a three-member Panel, rather than the single-member Panel elected by the Complainant, shall

pay the Provider one-half the fixed fee for a three-member Panel. See Paragraph 5(c). In all other cases, the Complainant shall bear all of the Provider's fees, except as prescribed under Paragraph 19(d). Upon appointment of the Panel, the Provider shall refund the appropriate portion, if any, of the initial fee to the Complainant, as specified in the Provider's Supplemental Rules.

(b) No action shall be taken by the Provider on a complaint until it has received from Complainant the initial fee in accordance with Paragraph 19(a).

(c) If the Provider has not received the fee within ten (10) calendar days of receiving the complaint, the complaint shall be deemed withdrawn and the administrative proceeding terminated.

(d) In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

20. Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

21. Amendments

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written approval of ICANN.

Envisaged WIPO Revisions to the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (if WIPO eUDRP proposal were to be adopted by ICANN) (September 17, 2009)

World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy

(the WIPO "Supplemental Rules")

(In effect as of [~~December 1, 1999~~])

1. Scope
2. Definitions
3. Communications
4. Submission of Complaint and Annexes
5. Formalities Compliance Review
6. Appointment of Case Administrator
7. Submission of Response and Annexes
- ~~8~~7. Panelist Appointment Procedures
- ~~9~~8. Declaration
- ~~10~~9. Fees
- ~~11~~0. Word Limits
12. File Size and Format Modalities
- ~~13~~4. Amendments
- ~~14~~2. Exclusion of Liability

1. Scope

(a) **Relationship to Rules.** These Supplemental Rules are to be read and used in connection with the [Rules for Uniform Domain Name Dispute Resolution Policy](#), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on [~~October 24, 1999~~] (the "Rules").

(b) **Version of Supplemental Rules.** The version of these Supplemental Rules as in effect on the date of the submission of the complaint shall apply to the administrative proceeding commenced thereby.

2. Definitions

Any term defined in the Rules shall have the same meaning in these Supplemental Rules.

3. Communications

(a) **Modalities.** Subject to Paragraphs 3(b) and 5(b) of the Rules, except where otherwise agreed ~~beforehand~~ with the Center, any submission that may or is required to be made to the Center or to an Administrative Panel pursuant to these Rules, ~~may~~ shall be made either:

(i) by ~~telecopy or facsimile transmission~~, electronic mail (E-mail) ~~with a confirmation of transmission to domain.disputes@wipo.int~~; and/or

(ii) ~~by electronic mail (e-mail) using the address specified by the Center~~; or through the Center's Internet-based case filing and administration system.

~~(iii) where both parties agree, through the Center's Internet-based case filing and administration system.~~

~~(b) E-Mail Address. For the purposes of any communications by electronic mail to the Center, including those required under Paragraphs 3(b) and 5(b) of the Rules, the following address should be used: domain.disputes@wipo.int.~~

~~(c) Copies. When a paper submission is to be made to the Center by a Party, it shall be submitted in four (4) sets together with the original of such submission.~~

(~~b~~) **Archive.** The Center shall maintain an archive of all communications received or required to be made under the Rules.

4. Submission of Complaint and Annexes

(a) **Complaint Including Annexes.** The complaint including any annexes shall be submitted electronically in complete form (in accordance with paragraph 12(a) below).

(~~b~~) **Complaint Transmittal Coversheet.** In accordance with Paragraph 3(b)(xii) of the Rules, the Complainant shall be required to send or transmit its complaint under cover of the Complaint Transmittal Coversheet set out in Annex A hereto and posted on the Center's web site. Where available, the Complainant shall use the version that is in the same language(s) as the registration agreement(s) for the domain name(s) that is/are the subject of the complaint.

(~~c~~) **Registrar Notification.** The Complainant shall provide a copy of the complaint to the concerned Registrar(s) at the same time as it submits its complaint to the Center.

(~~d~~) **Complaint Notification Instructions.** In accordance with Paragraph 4(a) of the Rules, the Center shall forward the complaint electronically to the Respondent together

with the instructions set out in [Annex B](#) hereto and posted on the Center's website. In accordance with Paragraph 2(a)(i) of the Rules the Center shall also forward Written Notice of the complaint to the Respondent.

5. Formalities Compliance Review

(a) **Deficiency Notification.** The Center shall, within five (5) calendar days of receiving the complaint, review the complaint for compliance with the formal requirements of the Policy, Rules and Supplemental Rules and notify the Complainant and Respondent of any deficiencies therein.

(b) **Withdrawal.** If the Complainant fails to remedy any deficiencies identified by the Center within the time period provided for in Paragraph 4 of the Rules (i.e., five (5) calendar days), the Center shall notify the Complainant, the Respondent and the concerned Registrar(s) of the deemed withdrawal of the complaint.

(c) **Fee Refunds.** Unless the Complainant confirms its intention to re-submit a complaint to the Center following a deemed withdrawal, the Center shall refund the fee paid by the Complainant pursuant to Paragraph 19 of the Rules, less a processing fee as set forth in [Annex D](#).

6. Appointment of Case Administrator

(a) **Notification.** The Center shall advise the Parties of the name and contact details of a member of its staff who shall be the Case Administrator and who shall be responsible for all administrative matters relating to the dispute and communications to the Administrative Panel.

(b) **Responsibilities.** The Case Administrator may provide administrative assistance to the Administrative Panel or a Panelist, but shall have no authority to decide matters of a substantive nature concerning the dispute.

7. Submission of a Response

The response including any annexes shall be submitted electronically in complete form (in accordance with paragraph 12(b) below).

87. Panelist Appointment Procedures

(a) **Party Candidates.** Where a Party is required to submit the names of three (3) candidates for consideration for appointment by the Center as a Panelist (i.e., in accordance with paragraphs 3(b)(iv), 5(b)(v) and 6(d) of the Rules), that Party shall provide the names and contact details of its three candidates in the order of its preference. In appointing a Panelist, the Center shall, subject to availability, respect the order of preference indicated by a Party.

(b) Presiding Panelist

(i) The third Panelist appointed in accordance with Paragraph 6(e) of the Rules shall be the Presiding Panelist.

(ii) Where, under Paragraph 6(e) of the Rules, a Party fails to indicate its order of preference for the Presiding Panelist to the Center, the Center shall nevertheless proceed to appoint the Presiding Panelist.

(iii) Notwithstanding the procedure provided for in Paragraph 6(e) of the Rules, the Parties may jointly agree on the identity of the Presiding Panelist, in which case they shall notify the Center in writing of such agreement no later than five (5) calendar days after receiving the list of candidates provided for in Paragraph 6(e) [of the Rules](#).

(c) Respondent Default

Where the Respondent does not submit a response or does not submit the payment provided for in Paragraph 5(c) of the Rules by the deadline specified by the Center, the Center shall proceed to appoint the Administrative Panel, as follows:

(i) If the Complainant has designated a single member Administrative Panel, the Center shall appoint the Panelist from its published list;

(ii) If the Complainant has designated a three member Administrative Panel, the Center shall, subject to availability, appoint one Panelist from the names submitted by the Complainant and shall appoint the second Panelist and the Presiding Panelist from its published list.

28. Declaration

In accordance with Paragraph 7 of the Rules, prior to appointment as a Panelist, a candidate shall be required to submit to the Center a Declaration of Independence and Impartiality using the form set out in [Annex C](#) hereto and posted on the Center's website.

109. Fees

The applicable fees for the administrative procedure are specified in [Annex D](#) hereto and posted on the Center's website.

110. Word Limits

- (a) The word limit under Paragraph 3(b)(ix) of the Rules shall be 5,000 words.
- (b) The word limit under Paragraph 5(b)(i) of the Rules shall be 5,000 words.
- (c) For the purposes of Paragraph 15(e) of the Rules, there shall be no word limits.

12. File Size and Format Modalities

(a) The file size and format modalities under Paragraph 3(b) of the Rules shall be as set forth in Annex E hereto and posted on the Center's website.

(b) The file size and format modalities under Paragraph 5(b) of the Rules shall be set forth in Annex E hereto and posted on the Center's website.

131. Amendments

Subject to the Policy and Rules, the Center may amend these Supplemental Rules in its sole discretion.

142. Exclusion of Liability

Except in respect of deliberate wrongdoing, an Administrative Panel, the World Intellectual Property Organization and the Center shall not be liable to a party, a concerned registrar or ICANN for any act or omission in connection with the administrative proceeding.



December 30, 2008

Dear Mr. Jeffrey,

This coming year will see the tenth anniversary of the introduction by ICANN, in collaboration with the World Intellectual Property Organization (WIPO), of the Uniform Domain Name Dispute Resolution Policy (UDRP). Since its introduction in 1999 the UDRP has matured, the use of Internet-based communications has become ubiquitous, and global awareness of environmental challenges has evolved. WIPO believes that the time is now ripe to seriously consider moving towards an essentially paperless UDRP, which can be achieved in a manner that does not prejudice either Complainants or Respondents, and indeed produces actual benefits for both.

As a paperless UDRP goes, WIPO does not consider that Providers merely printing party pleadings in-house for physical distribution would offer a real or sustainable solution. With some limited but important exceptions to ensure that Respondents receive written notice of dispute commencement and of electronic availability of the Complaint at their physical address and via facsimile contact information, a more intuitive approach would be to remove paper from the UDRP process altogether. Such an approach, discussed in detail below, would explicitly remove the current requirement that parties file and Providers notify hard copy pleadings.

The present letter documents the reasons for this proposal and provides a possible model for its implementation on the level of the UDRP Rules, together with provisional draft amendments to the WIPO Supplemental Rules. If such implementation would appear to be impracticable for ICANN in the short term, this letter also describes an anticipated stand alone approach to modification of the WIPO Supplemental Rules including a number of additional safeguards designed to avoid any possible prejudice to either party.

/...

Mr. John Jeffrey
General Counsel, ICANN
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United States of America

By courier and email jeffrey@icann.org

The Case for Electronic Filing and Notification (eUDRP)

WIPO routinely publishes UDRP-related filing statistics.¹ For present purposes, WIPO has undertaken considerable additional statistical research based on UDRP pleadings filed with and notified by WIPO. These statistics provide compelling support for the present proposal to move towards a paperless UDRP process.

1. Green UDRP. ICANN, an organization dedicated to the management of the domain name space, could make a significant environmental contribution by removing the requirement for hard copy pleadings from the UDRP. The volume of paper consumed by the UDRP is considerable. For example, in 2008 at WIPO alone, hard copy UDRP Complaints and Responses received (including copies required) total well over a million pages. Over the lifespan of the UDRP, the total number of pages filed with WIPO alone is estimated at some ten million (roughly equivalent to over one thousand trees). It would be fitting to remove the need for voluminous quantities of paper from an expedited mechanism for the resolution of disputes concerning domain names, which by their very nature exist on-line. Indeed, to this end WIPO has already initiated electronic-only notification of Panel Decisions to parties and registrars.

2. Efficient UDRP. Significant time and cost savings would accrue to both Complainants and Respondents as a result of removing paper from the UDRP. Over the course of the UDRP's operation, the approximate number of paper pages received by WIPO from Complainants filing hard copy Complaints approaches ten million; and from Respondents over 300,000.² This suggests a significant opportunity to reduce paper and printing as well as shipping costs for parties. Providers would also likely benefit from (generally more modest) savings under the proposed amendments as a result of reduced package weight for written notice of proceedings commencement and electronic Complaint availability (as distinct from the actual hard copy Complaint itself) to the Respondent by courier.

3. Forward-looking UDRP. Presently over half of WIPO UDRP Complainants *sua sponte* already file a complete set of pleadings electronically³ (in addition to the required hard copies of the same). Similarly, roughly half of active UDRP

¹ See e.g. www.wipo.int/amc/en/domains/statistics.

² The overall average Response rate in all WIPO UDRP disputes has been approximately 30%; Response hard copies were received in about half of those cases; the average number of Response pages (i.e., including all annexes) was about one fourth of average Complaint size.

³ In 2008, approximately 52% of Complainants filing with WIPO filed a complete Complaint (i.e., including all annexes) electronically.

Respondents submit a complete Response (including all annexes) electronically.⁴ Overall, hard copies of Responses were received in only 14% of WIPO UDRP cases in 2008. Removing paper from the process represents the next logical step.

4. Effective UDRP. An overwhelming majority of Complaints notified by email appear to be successfully delivered. For example, of the roughly 2,000 Complaints WIPO notified to Respondents in 2008 (excluding messages to <postmaster@domainname>, which themselves appear to work in some 24% of cases), bounce-back messages were received by WIPO in no more than approximately 4% of cases. This suggests a 96% overall successful Complaint email delivery rate.

5. Modern UDRP. Active parties in UDRP proceedings appear to prefer communicating electronically. For example, in all of the UDRP proceedings administered by WIPO in 2008, communications were received by WIPO from the Complainant electronically. Similarly, WIPO received electronic communications from the Respondent in all defended cases in 2008. Even if there were a party preference in some cases to receive hard copies, these statistics suggest that this would hardly be a necessity, at least for the purpose of either party receiving effective notice of the commencement of UDRP proceedings. Indeed, email has generally proven to be a functional and widely-used method of communicating in UDRP cases. Email systems also afford parties instant possibilities to create and maintain electronic case files without the need for rights access systems. The reliability of email in the UDRP can be further enhanced through Provider stipulation of appropriate file size limits.

6. Expedited UDRP. Abolishing the requirement for hard copy pleadings is likely to enhance the overall timeliness of UDRP proceedings. Under the current Rules, a Provider may not conclude its administrative compliance obligations and notify case commencement without receipt of the Complaint in hard copy. In 2008 the average time that elapsed between WIPO's receipt of the electronic Complaint and its receipt of the hard copies was four days. For those cases in which provision of a complete hard copy of the Response is foreshadowed by the Respondent, there would also typically be a lapse of several days before receipt (in roughly half of defended cases in 2008, hard copies of the Response were provided). A delay in receipt of a Response in hard copy may also delay the Panel's review of the complete record. In any event, removing the current requirement for hard copy pleadings would enhance timely resolution of UDRP cases.

⁴ In 2008, approximately 57% of Respondents filing Responses with WIPO filed a complete Response (i.e., including all annexes) electronically.

Proposed Amendments

Included with this letter are two documents.

1. *UDRP Rules (eUDRP)*. The first document, an amended version of the UDRP Rules for ICANN's consideration, proposes a limited number of targeted amendments that WIPO believes can provide a fair basis for achieving the removal of paper pleadings from the UDRP process, without causing undue prejudice to either party (Annex 1). Notably, the proposed amendments do not free a Provider from a continuing obligation to provide written notice of the dispute to the Respondent. What the proposed amendments do is to remove the requirement for such written notification to include a hard copy of the Complaint as such (except as may be required in individual circumstances by the Provider). The idea would rather be to alert the Respondent to the existence of the dispute, to provide notice that the Complaint itself has been sent to the Respondent at all available email addresses, and to give the Respondent further opportunity to participate by nominating any preferred additional email addresses at which the Respondent would like the Complaint to be sent.

This concept of Complaint notice takes account of the possibility (although statistically remote) that the Respondent's publicly listed or otherwise available email address(es)⁵ may be incorrect or inactive – notwithstanding the obligation on domain name registrants to maintain current, accurate, and complete relevant information in the WhoIs database – by providing Respondents every reasonable opportunity to provide functional email addresses for notification purposes. The aforementioned possibility for Providers to regulate email file size would thereby work to promote actual receipt of Complaint by Respondents.

The proposed amendments free both the Complainant and the Respondent from an obligation under the Rules to file pleadings in hard copy. The amendments do retain some Provider discretion, under its Supplemental Rules, to allow for the provision of hard copies from a party in circumstances where these would be necessary, for example where it is genuinely not in a position to meet the electronic filing guidelines.

2. *WIPO Supplemental Rules (eUDRP)*. The second attached document is an amended version of the WIPO Supplemental Rules for the UDRP, which are included for illustrative purposes as an example of the types of complementary amendments that WIPO would envisage making to its Supplemental Rules in the event that ICANN were to adopt the above-proposed modifications to the UDRP

⁵ As given for example in the WhoIs database, or as may be indicated by the concerned registrar in any registrar verification reply to a Provider, or as may be provided by the Complainant in its Complaint, or as may be listed on any website appearing at the disputed domain name.

- ./ Rules (Annex 2). The envisaged WIPO amendments include a mechanism by which WIPO could prescribe appropriate limits on file sizes in accordance with practical published schedules, intended in part to minimize risk that unreasonably large file sizes may adversely affect success rates for electronic Complaint notification. For that same reason, WIPO's current general practice in notifying Complaints by email in principle is to communicate the Complaint and any annexes by separate emails.

Possible WIPO eSupplemental Rules (Stand Alone)

As noted, there is a strong case for ICANN eliminating paper from the UDRP process. WIPO believes that, if required, this goal also may be achievable within the framework and spirit of the UDRP Rules currently in effect. Practical steps could be taken via the WIPO Supplemental Rules that even without ICANN amendment of the UDRP Rules may achieve the removal of paper pleadings in a large majority of WIPO cases.

If WIPO were to independently take this initiative forward, we would envisage modifying our Supplemental Rules in a manner designed to avoid any possible prejudice to parties. In order to ensure consistency with the spirit of the current UDRP Rules, WIPO would thereby anticipate including a "safety valve," in which a Respondent would in principle be entitled to receive a copy of a Complaint in hard copy form if it so requested in reply to notification⁶ (in which scenario WIPO may then consider it expedient to examine the possibility of WIPO itself undertaking, within practical limits, the requisite printing as part of its standard filing fee). Obviously, such steps by WIPO as a Provider would in no way prevent ICANN from making modifications to the UDRP Rules at any time thereafter, perhaps drawing in part on Provider experience, subsequent to which Providers could then re-align their own Supplemental Rules.

In that spirit, should appropriate amendments to the UDRP Rules appear unlikely, WIPO currently envisages proceeding with a form of targeted "stand alone" amendments to its own Supplemental Rules to give effect primarily to the objectives outlined in this letter in the first half of 2009.

Next Steps

WIPO encourages ICANN to give serious consideration to removal of paper pleadings from the UDRP process by amending the UDRP Rules to the effect proposed herein. Especially considering the clear benefits of the present

⁶ Assuming an overall Response rate of some 30% of UDRP cases, in the unlikely event that Respondents were to request hard copies in all such cases, this would still potentially result in at least a 70% reduction in overall paper filings; and indeed this figure is likely to be higher given the concentration on a single address in such cases, as distinct from the potentially multiple notification addresses currently required.

Mr. John Jeffrey, Marina del Rey - December 30, 2008

initiative, WIPO hopes that it may be possible for the proposed modifications to the UDRP Rules to occur on a relatively streamlined basis. WIPO would, if requested, naturally stand ready to assist ICANN with any amendment process.

We have posted a copy of this letter on the WIPO website for public information at www.wipo.int/amc/en/domains/resources/icann/index.html.

Yours sincerely,

*Best wishes
for 2009*



Erik Wilbers
Acting Director

WIPO Arbitration and Mediation Center
Head, Domain Name Dispute Resolution Section

**WIPO provisional draft amendments to the Rules for eUDRP
(December 30, 2008)**

(Proposal explained at: www.wipo.int/amc/en/domains/resources/icann/index.html)



**Rules for Uniform Domain
Name Dispute Resolution
Policy**

Policy Adopted: August 26, 1999
Implementation Documents Approved: [October
24, 1999]

Note: These rules are now in effect. See www.icann.org/udrp/udrp-schedule.htm for the implementation schedule.

**Rules for Uniform Domain Name Dispute
Resolution Policy
(the "Rules")**

(As Approved by ICANN on [October 24, 1999])

Administrative proceedings for the resolution of disputes under the Uniform Dispute Resolution Policy adopted by ICANN shall be governed by these Rules and also the Supplemental Rules of the Provider administering the proceedings, as posted on its web site.

1. Definitions

In these Rules:

Complainant means the party initiating a complaint concerning a domain-name registration.

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

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.

Panel means an administrative panel appointed by a Provider to decide a complaint concerning a domain-name registration.

Panelist means an individual appointed by a Provider to be a member of a Panel.

Party means a Complainant or a Respondent.

Policy means the Uniform Domain Name Dispute Resolution Policy that is incorporated by reference and made a part of the Registration Agreement.

Provider means a dispute-resolution service provider approved by ICANN. A list of such Providers appears at www.icann.org/udrp/approved-providers.htm.

Registrar means the entity with which the Respondent has registered a domain name that is the subject of a complaint.

Registration Agreement means the agreement between a Registrar and a domain-name holder.

Respondent means the holder of a domain-name registration against which a complaint is initiated.

Reverse Domain Name Hijacking means using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.

Supplemental Rules means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets.

2. Communications

(a) ~~When forwarding a complaint to the Respondent, it~~ shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice of the complaint to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this

responsibility:

(i) sending written notice of the complaint to all postal-mail and facsimile addresses (A) shown in the domain name's registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and (B) supplied by Registrar to the Provider for the registration's billing contact; and

(ii) sending the complaint in electronic form (including any annexes ~~to the extent available in that form~~) by e-mail to:

(A) the e-mail addresses for those technical, administrative, and billing contacts;

(B) postmaster@<the contested domain name>; and

(C) if the domain name (or "www." followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain-names registered by multiple domain-name holders), any e-mail address shown or e-mail links on that web page; and

(iii) sending the complaint to any e-mail address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other e-mail addresses provided to the Provider by Complainant under Paragraph 3(b)(v).

(b) Except as provided in Paragraph 2(a), any written communication to Complainant or Respondent provided for under these Rules shall be made electronically via the Internet (a record of its transmission being available) by the preferred means stated by the Complainant or Respondent, respectively (see Paragraphs 3(b)(iii) and 5(b)(iii)); or, to the extent permitted by the Provider, in the absence of such specification

(i) by telecopy or facsimile transmission, with a confirmation of transmission; or

(ii) by postal or courier service, postage pre-paid and return receipt requested; ~~or~~

~~(iii) electronically via the Internet, provided a record of its transmission is available.~~

(c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including where applicable number of copies)

stated in the Provider's Supplemental Rules.

(d) Communications shall be made in the language prescribed in Paragraph 11. E-mail communications should, if practicable, be sent in plaintext.

(e) Either Party may update its contact details by notifying the Provider and the Registrar.

(f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

(i) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or, subject to Paragraph 2(b):

(ii) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or

(iii) if by postal or courier service, on the date marked on the receipt; ~~or~~

~~(iii) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.~~

(g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(f).

(h) Any communication by

(i) a Panel to any Party shall be copied to the Provider and to the other Party;

(ii) the Provider to any Party shall be copied to the other Party; and

(iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.

(i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes.

(j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the

notification. Further proceedings concerning the communication and any response shall be as directed by the Panel (or the Provider).

3. The Complaint

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider approved by ICANN. (Due to capacity constraints or for other reasons, a Provider's ability to accept complaints may be suspended at times. In that event, the Provider shall refuse the submission. The person or entity may submit the complaint to another Provider.)

(b) The complaint shall be submitted ~~in hard copy and (except to the extent not available for annexes)~~ in electronic form (including any annexes, by the means and in such manner as may be stated in the Provider's Supplemental Rules), and, to the extent permitted by the Provider, in hard copy, and shall:

(i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Complainant and of any representative authorized to act for the Complainant in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy (to the extent permitted by the Provider, and where available);

(iv) Designate whether Complainant elects to have the dispute decided by a single-member or a three-member Panel and, in the event Complainant elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);

(v) Provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a);

(vi) Specify the domain name(s) that is/are the subject of the complaint;

(vii) Identify the Registrar(s) with whom the domain name(s) is/are

registered at the time the complaint is filed;

(viii) Specify the trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future.);

(ix) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular,

(1) the manner in which the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) why the Respondent (domain-name holder) should be considered as having no rights or legitimate interests in respect of the domain name(s) that is/are the subject of the complaint; and

(3) why the domain name(s) should be considered as having been registered and being used in bad faith

(The description should, for elements (2) and (3), discuss any aspects of Paragraphs 4(b) and 4(c) of the Policy that are applicable. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(x) Specify, in accordance with the Policy, the remedies sought;

(xi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(xii) State that a copy of the complaint, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with Paragraph 2(b);

(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 in at least one specified Mutual Jurisdiction;

(xiv) Conclude with the following statement followed by the signature of the Complainant or its authorized representative:

"Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the dispute-resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents."

"Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(xv) Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name(s) in dispute and any trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence.

(c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

4. Notification of Complaint

(a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall **forward send written notice of** the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by Paragraph 2(a), within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with Paragraph 19.

(b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.

(c) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) in connection with **forwarding sending notice of** the **C**complaint to the Respondent.

(d) The Provider shall immediately notify the Complainant, the Respondent, the concerned Registrar(s), and ICANN of the date of commencement of the administrative proceeding.

5. The Response

(a) Within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.

(b) The response shall be submitted ~~in hard copy and (except to the extent not available for annexes)~~ in electronic form (including any annexes, by the means and in such manner as may be stated in the Provider's Supplemental Rules), and, to the extent permitted by the Provider, in hard copy, and shall:

(i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain-name holder) to retain registration and use of the disputed domain name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Respondent (domain-name holder) and of any representative authorized to act for the Respondent in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Respondent in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy (to the extent permitted by the Provider, and where available);

(iv) If Complainant has elected a single-member panel in the ~~C~~complaint (see Paragraph 3(b)(iv)), state whether Respondent elects instead to have the dispute decided by a three-member panel;

(v) If either Complainant or Respondent elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);

(vi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(vii) State that a copy of the response has been sent or transmitted to the

Complainant, in accordance with Paragraph 2(b); and

(viii) Conclude with the following statement followed by the signature of the Respondent or its authorized representative:

"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(ix) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

(c) If Complainant has elected to have the dispute decided by a single-member Panel and Respondent elects a three-member Panel, Respondent shall be required to pay one-half of the applicable fee for a three-member Panel as set forth in the Provider's Supplemental Rules. This payment shall be made together with the submission of the response to the Provider. In the event that the required payment is not made, the dispute shall be decided by a single-member Panel.

(d) At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

(e) If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

6. Appointment of the Panel and Timing of Decision

(a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

(b) If neither the Complainant nor the Respondent has elected a three-member Panel (Paragraphs 3(b)(iv) and 5(b)(iv)), the Provider shall appoint, within five (5) calendar days following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. The fees for a single-member Panel shall be paid entirely by the Complainant.

(c) If either the Complainant or the Respondent elects to have the dispute decided by a three-member Panel, the Provider shall appoint three Panelists

in accordance with the procedures identified in Paragraph 6(e). The fees for a three-member Panel shall be paid in their entirety by the Complainant, except where the election for a three-member Panel was made by the Respondent, in which case the applicable fees shall be shared equally between the Parties.

(d) Unless it has already elected a three-member Panel, the Complainant shall submit to the Provider, within five (5) calendar days of communication of a response in which the Respondent elects a three-member Panel, the names and contact details of three candidates to serve as one of the Panelists. These candidates may be drawn from any ICANN-approved Provider's list of panelists.

(e) In the event that either the Complainant or the Respondent elects a three-member Panel, the Provider shall endeavor to appoint one Panelist from the list of candidates provided by each of the Complainant and the Respondent. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as they may specify to the Provider within five (5) calendar days of the Provider's submission of the five-candidate list to the Parties.

(f) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

7. Impartiality and Independence

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

8. Communication Between Parties and the Panel

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the

Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

9. Transmission of the File to the Panel

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three-member Panel.

10. General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

11. Language of Proceedings

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

12. Further Statements

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

13. In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

14. Default

(a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

15. Panel Decisions

(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

(b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to Paragraph 6.

(c) In the case of a three-member Panel, the Panel's decision shall be made by a majority.

(d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s).

(e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the scope of Paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

16. Communication of Decision to Parties

(a) Within three (3) calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), and ICANN. The concerned Registrar(s) shall immediately communicate to each Party, the Provider, and ICANN the date for the implementation of the decision in accordance with the Policy.

(b) Except if the Panel determines otherwise (see Paragraph 4(j) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see Paragraph 15(e) of these Rules) shall be published.

17. Settlement or Other Grounds for Termination

(a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding.

(b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

18. Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the pendency of an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See Paragraph 8 above.

19. Fees

(a) The Complainant shall pay to the Provider an initial fixed fee, in accordance with the Provider's Supplemental Rules, within the time and in the amount required. A Respondent electing under Paragraph 5(b)(iv) to have the dispute decided by a three-member Panel, rather than the single-member Panel elected by the Complainant, shall pay the Provider one-half the fixed fee for a three-member Panel. See Paragraph 5(c). In all other

cases, the Complainant shall bear all of the Provider's fees, except as prescribed under Paragraph 19(d). Upon appointment of the Panel, the Provider shall refund the appropriate portion, if any, of the initial fee to the Complainant, as specified in the Provider's Supplemental Rules.

(b) No action shall be taken by the Provider on a complaint until it has received from Complainant the initial fee in accordance with Paragraph 19(a).

(c) If the Provider has not received the fee within ten (10) calendar days of receiving the complaint, the complaint shall be deemed withdrawn and the administrative proceeding terminated.

(d) In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

20. Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

21. Amendments

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written approval of ICANN.

Comments concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

Page Updated 05-Feb-2002

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WIPO provisional draft amendments to the WIPO Supplemental Rules for eUDRP (December 30, 2008)

(Explained at: www.wipo.int/amc/en/domains/resources/icann/index.html)

World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy

(the WIPO "Supplemental Rules")
(In effect as of [December 1, 1999])

1. Scope
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1. Scope

(a) **Relationship to Rules.** These Supplemental Rules are to be read and used in connection with the Rules for Uniform Domain Name Dispute Resolution Policy, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on [October 24, 1999] (the "Rules").

(b) **Version of Supplemental Rules.** The version of these Supplemental Rules as in effect on the date of the submission of the complaint shall apply to the administrative proceeding commenced thereby.

2. Definitions

Any term defined in the Rules shall have the same meaning in these Supplemental Rules.

3. Communications

(a) **Modalities.** ~~Subject to Paragraphs 3(b) and 5(b) of the Rules, e~~ Except where otherwise agreed ~~beforehand~~ with ~~or required by~~ the Center, any submission that may or is required to be made to the Center or to an Administrative Panel pursuant to these Rules, ~~shall~~ **may** be made: by electronic mail (e-mail) using the address specified by the Center.

~~(i) by telecopy or facsimile transmission, with a confirmation of transmission;~~

~~(ii) by electronic mail (e-mail) using the address specified by the Center; or~~

~~(iii) where both parties agree, through the Center's Internet-based case filing and administration system.~~

(b) **E-Mail Address.** For the purposes of any e-mail communications ~~by electronic mail~~ to the Center, including those required under Paragraphs 3(b) and 5(b) of the Rules, the following address should be used: domain.disputes@wipo.int.

~~(c) Copies.~~ ~~When a paper submission is to be made to the Center by a Party, it shall be submitted in four (4) sets together with the original of such submission.~~

~~(cd)~~ **Archive.** The Center shall maintain an archive of all communications received or required to be made under the Rules.

(d) Written notice. The requirement for written notice under Paragraph 2(a)(i) of the Rules shall be satisfied by the Center sending notification to the Respondent that a complaint has been filed against the Respondent, that the complaint (including any annexes) has been sent by the Center to the Respondent in electronic form to the e-mail addresses specified under Paragraph 2(a)(ii) of the Rules, and in accordance with Paragraph 2(a)(iii) of the Rules to any e-mail address that may have been provided to the Center thereunder.

4. Submission of Complaint

(a) **Complaint Transmittal Coversheet.** In accordance with Paragraph 3(b)(xii) of the Rules, the Complainant shall be required to ~~send or~~ transmit its complaint under cover of the Complaint Transmittal Coversheet set out in Annex A hereto and posted on the Center's web site. Where available, the Complainant shall use the version that is in the same language(s) as the registration agreement(s) for the domain name(s) that is/are the subject of the complaint.

(b) **Registrar Notification.** The Complainant shall provide a copy of the complaint in electronic form to the concerned Registrar(s) at the same time as it submits its complaint to the Center.

~~(c) Complaint Notification Instructions.~~ ~~In accordance with Paragraph 4(a) of the Rules, the Center shall forward the complaint to the Respondent together with the instructions set out in Annex B hereto and posted on the Center's website.~~

~~(d)~~ (c) Electronic Filing. In accordance with Paragraph 3(b) of the Rules, except as otherwise agreed with or required by the Center, the complaint shall be submitted in electronic form including any annexes, and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

5. Formalities Compliance Review

(a) **Deficiency Notification.** The Center shall, within five (5) calendar days of receiving the complaint, review the complaint for compliance with the formal requirements of the Policy, Rules and Supplemental Rules and notify the Complainant and Respondent of any deficiencies therein.

(b) **Withdrawal.** If the Complainant fails to remedy any deficiencies identified by the Center within the time period provided for in Paragraph 4 of the Rules (i.e., five (5) calendar days), the Center shall notify the Complainant, the Respondent and the concerned Registrar(s) of the deemed withdrawal of the complaint.

(c) **Fee Refunds.** Unless the Complainant confirms its intention to re-submit a complaint to the Center following a deemed withdrawal, the Center shall refund the fee paid by the Complainant pursuant to Paragraph 19 of the Rules, less a processing fee as set forth in Annex D.

6. Appointment of Case Administrator

(a) **Notification.** The Center shall advise the Parties of the name and contact details of a member of its staff who shall be the Case Administrator and who shall be responsible for all administrative matters relating to the dispute and communications to the Administrative Panel.

(b) **Responsibilities.** The Case Administrator may provide administrative assistance to the Administrative Panel or a Panelist, but shall have no authority to decide matters of a substantive nature concerning the dispute.

7. Submission of Response

Electronic Filing. In accordance with Paragraph 5(b) of the Rules, except as otherwise agreed with or required by the Center, the response shall be submitted in electronic form (including any annexes), and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

87. Panelist Appointment Procedures

(a) **Party Candidates.** Where a Party is required to submit the names of three (3) candidates for consideration for appointment by the Center as a Panelist (i.e., in accordance with paragraphs 3(b)(iv), 5(b)(v) and 6(d) of the Rules), that Party shall provide the names and contact details of its three candidates in the order of its preference. In appointing a Panelist, the Center shall, subject to availability, respect the order of preference indicated by a Party.

(b) Presiding Panelist

(i) The third Panelist appointed in accordance with Paragraph 6(e) of the Rules shall be the Presiding Panelist.

(ii) Where, under Paragraph 6(e) of the Rules, a Party fails to indicate its order of preference for the Presiding Panelist to the Center, the Center shall nevertheless proceed to appoint the Presiding Panelist.

(iii) Notwithstanding the procedure provided for in Paragraph 6(e) of the Rules, the Parties may jointly agree on the identity of the Presiding Panelist, in which case they shall notify the Center in writing of such agreement no later than five (5) calendar days after receiving the list of candidates provided for in Paragraph 6(e).

(c) Respondent Default

Where the Respondent does not submit a response or does not submit the payment provided for in Paragraph 5(c) of the Rules by the deadline specified by the Center, the Center shall proceed to appoint the Administrative Panel, as follows:

- (i) If the Complainant has designated a single member Administrative Panel, the Center shall appoint the Panelist from its published list;
- (ii) If the Complainant has designated a three member Administrative Panel, the Center shall, subject to availability, appoint one Panelist from the names submitted by the Complainant and shall appoint the second Panelist and the Presiding Panelist from its published list.

98. Declaration

In accordance with Paragraph 7 of the Rules, prior to appointment as a Panelist, a candidate shall be required to submit to the Center a Declaration of Independence and Impartiality using the form set out in Annex C hereto and posted on the Center's web site.

109. Fees

The applicable fees for the administrative procedure are specified in Annex D hereto and posted on the Center's web site.

110. Word Limits

- (a) The word limit under Paragraph 3(b)(ix) of the Rules shall be 5,000 words.
- (b) The word limit under Paragraph 5(b)(i) of the Rules shall be 5,000 words.
- (c) For the purposes of Paragraph 15(e) of the Rules, there shall be no word limits.

124. Amendments

Subject to the Policy and Rules, the Center may amend these Supplemental Rules in its sole discretion.

132. Exclusion of Liability

Except in respect of deliberate wrongdoing, an Administrative Panel, the World Intellectual Property Organization and the Center shall not be liable to a party, a concerned registrar or ICANN for any act or omission in connection with the administrative proceeding.