

UDRP Review Is a Test of the MSM

ICANN's governance and policy development model was forged in a very different and more hospitable political and economic environment, and now being challenged and questioned in a far more hostile world.

How ICANN handles the long-deferred review of its "crown jewel" Consensus Policy, the Uniform Dispute Resolution Policy (UDRP), can either demonstrate that the multistakeholder model remains fit for purpose – or that flagging vigor and commitment within the ICANN community raise justifiable doubts regarding its continued efficacy.

Executive Summary

- ICANN's unique MSM, led by the private sector, reflects the fleeting political environment of its era of creation. ICANN's establishment was a radical and largely unprecedented experiment reflecting the neoliberal and globalist policy perspective of the Clinton Administration which nurtured its creation. ICANN and its critical mission must survive in the current era of populism, nationalism and digital sovereignty/multilateralism, increasing global political tensions, and a jaundiced view that the Internet and its technical leaders have not just failed to deliver on early idealistic aspirations but have actively undermined them. What is needed today is a clear demonstration that the MSM is still fit for purpose – and aiming for a comprehensive, thorough, and balanced UDRP review and revision that further improves and updates that seminal policy can provide that evidence.
- The adoption of the UDRP in 1999 baked trademark protection into the DNA of the DNS from ICANN's inception. The UDRP was ICANN's first consensus policy and remains its crown jewel. While ICANN continues to pursue new policy initiatives on "DNS abuse", the UDRP is and will likely remain the most effective and proactive anti-DNS abuse measure that ICANN will ever create, given the strong links between cybersquatting and multiple species on online fraud and abuse.
- ICANN committed to a UDRP review in 2011. But that UDRP review still awaits initiation nearly fifteen years later, after multiple deferrals. As ICANN 86 approaches in Seville, Council has taken no further action, much less started work on a revised charter for the Phase 2 UDRP PDP, and no firm date has been set for the start of that effort. The rationales provided for the continuing delay are not convincing, yet both the community and Org appear to regard the promised review as a distasteful burden to be resolved in as hasty a manner as possible.
- The WIPO-ICA UDRP Report is both worthwhile and helpful, but is in no way anchored within ICANN Bylaws. Any impulse within the ICANN community to accept the WIPO-ICA as a blueprint for UDRP reform, rather than a valuable

input to Council’s charter drafting effort, should be firmly rejected as it would rob the resulting recommendations of legitimacy and set a worrisome precedent by which discrete elements of the community could attempt to front run and unduly influence an upcoming PDP. The ICANN Bylaws make clear that Council has the lead role in any PDP and that, once initiated, the PDP WG must strictly adhere to the provisions contained in Bylaws Annex A: GNSO Policy Development Process. Any temptation to conduct a cursory review of the Report and then rubber stamp it as PDP recommendations would be illegitimate. While a valuable and useful document, taking that course would lack any procedural or substantive basis in the Bylaws, or sufficient ties to the GNSO or the broader ICANN community. While the WG can look to the Report for guidance, it cannot avoid the hard work of rolling up its sleeves and conducting its own thorough UDRP review.

- The most meaningful UDRP reform would be creation of an internal appeals process that provides decision review availability in jurisdictions that currently lack applicable law providing judicial appeal, and that ensures consistency of decision-making across all accredited providers.
- The ICANN community should embrace the UDRP crown jewel and use the reform effort to demonstrate the continued vitality and relevance of its MSM policymaking process.

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The MSM In Historic Context

As stated in the opening sentence of its Bylaws, ICANN’s mission is “is to ensure the stable and secure operation of the Internet’s unique identifier systems”.

ICANN commits to pursue that mission by employing “open, transparent and bottom-up, **multistakeholder policy development processes that are led by the private sector** (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities”. Further, in performance of that mission, ICANN must follow certain core values, including seeking and supporting “broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and **decision-making to ensure that the bottom-up, multistakeholder policy development process is used** to ascertain the global public interest and that those processes are accountable and transparent”.

These Bylaws reflect the unique, short, and now distant political and economic environment of the mid to late 1990s in which ICANN was established. The Cold War had recently ended, liberal democracy seemed globally ascendent, and politics had veered in a less ideological, more pragmatic direction. Some opinion leaders even proclaimed an “end to history” and a permanent triumph of liberal democracy and global free markets.

As we now know, history has not ended, at best it enjoyed a short pause. But that transitory perception encouraged the Clinton Administration, with its “triangulation” approach to political dealings, to be receptive to the suggestion that the Internet – first developed by the Department of Defense, and later administered by the Department of Commerce -- be spun away from the US government and allowed to evolve independent of traditional political control. Further, rather than transferring Internet operation to a UN body or another multilateral institution, ICANN would be led by the broadly defined private sector, with governments and other public authorities relegated to a strictly advisory role.

ICANN was thus a radical and largely unprecedented experiment reflecting the neoliberal and globalist policies of the Administration that nurtured its creation. Thirty years later, ICANN and its critical mission must survive in an environment of populism, nationalism and digital sovereignty, increasing global political tensions, and a jaundiced view that the Internet and its technical leaders have not just failed to deliver on early idealistic aspirations but have actively undermined them. A digital medium that promised to facilitate access to information and bring people together has instead fostered targeted disinformation and sowed division. This disappointing environment is not of ICANN’s doing, but ignoring it and the trust it has undermined would be perilous.

Further, trying to deny or obscure the globalist, neoliberal origins of ICANN would be inauthentic and fruitless. What is needed is a clear demonstration that the MSM is still fit for purpose – and aiming for a comprehensive, thorough, and balanced UDRP review and revision that further improves and updates the UDRP can provide that evidence.

The UDRP As Crown Jewel

Given that the domain name system (DNS) operates with names standing in for numerical IP addresses, and that almost every dictionary word in every major language is a trademark for something, ICANN’s architects recognized early on that providing a lower cost and faster alternative to litigation for the resolution of allegations of trademark infringement by a domain name was required to achieve necessary support for ICANN’s creation. That is why the UDRP was ICANN’s first Consensus Policy; one which, thanks

to the diligent focus of its creators, has stood the test of time and continues to demonstrate the worth of the MSM.

Trademark protection was thereby baked into the DNA of the DNS from its inception. That stands in stark contrast to alternative naming systems that have tried to challenge the DNS; especially blockchain domains, which feature rampant trademark infringement. While distributed public ledgers and domain name tokenization can provide some marginal benefits, an alternative naming system that fails to provide adequate IP protection will never be embraced by business, trusted by users, or tolerated by governments. Vigorous UDRP review can remind the world that the UDRP can only be applied within a centralized technical system where trusted intermediary registrars can facilitate arbitration decisions that deter bad actors, and result in domain transfer or extinguishment.

As of January 2026, the World Intellectual Property Organization (WIPO), the leading provider of UDRP arbitration services, had resolved more than 80,000 disputes, with more than 70,000 involving generic top-level domains (gTLDs), and more than 10,000 more at country code TLDs (ccTLDs) that utilize the UDRP or some close variant. That is just the tip of the iceberg, as many infringing domain names have been transferred simply because of receipt of a cease-and-desist letter threatening a UDRP filing.

The benefits of the UDRP are manifold:

- Trademark holders are provided with a swift and lower cost alternative to trademark litigation in national courts, not just saving time and money but avoiding thorny jurisdictional questions and standing issues.
- Domain registrants are provided with a fair and largely predictable system for contesting false accusations of cybersquatting that preserves their rights under applicable national law. They also remain free to use any dictionary word in a domain name so long that there is not an intent to divert traffic for commercial gain.
- Consumers are protected against cyber- and typo-squatted domain names that are often associated with dangerous or shoddy counterfeit goods, phishing, pharming, malware distribution, and other scams and frauds that are presently being supercharged by criminal employment of AI to spoof legitimate actors. While ICANN continues to pursue new policy initiatives on “DNS abuse”, the UDRP is and will likely remain the most effective anti-DNS abuse measure that ICANN will ever create.
- Contracted parties, especially registrars (given their direct registrant contacts, and their provision of web hosting and other domain support services), avoid the type of secondary infringement claims that plagued them prior to the UDRP’s

creation. As the general counsel of a leading DNS company once remarked to me, “If the UDRP did not exist we would have to create it”.

Given these multiple benefits, and a solid quarter century record of effective enforcement, two questions arise: Why has ICANN not done more to cite the UDRP as a stellar example of MSM success? And why has ICANN Org and the community deferred UDRP review for more than a decade, and still seem reluctant to do so in a fully engaged manner that takes what is already very good and makes it even better?

UDRP Deferral and Concerns

ICANN committed to a UDRP review in connection with the pending commencement of the initial 2012 round of the new gTLD program, to be initiated after completion of a review of the new rights protection mechanisms (RMNs) adopted for the program. On October 3, 2011, GNSO Council Resolution 20111215-1 noted receipt of a Final Issue Report on the current state of the UDRP, and resolved to request a new Issue Report on the current state of all rights protection mechanisms implemented for both existing and new gTLDs, including but not limited to, the UDRP and URS (Uniform Rapid Suspension, a new and more rapid arbitration process for new gTLDs).

ICANN subsequently approved all the Phase One RPM recommendations in January 2022. But the UDRP review still awaits initiation nearly fifteen years after that commitment was made.

The most recent deferral occurred on May 1, 2025, when the GNSO Council adopted a “Motion to Defer for a Further 6 Months the Next Steps of Phase Two of the Review of All Rights Protection Mechanisms (RPMs) in All New gTLDs Policy Development Process (PDP)”. That deferral Motion recounted earlier deferrals of this matter – an 18-month deferral adopted in February 2023, and a further 6-month extension adopted in October 2024. Then in January 2025, Council convened a small team to consider a further deferral, and three months later that Team suggested a further 6-month deferral until May 2025; with ICANN org supplying more data in the interim.

As ICANN 86 now approaches in Seville in June 2026, Council has taken no further action, much less started work on a revised charter for the Phase 2 UDRP PDP, and no firm date has been set for the start of that effort.

The ICANN community’s aversion to engaging in UDRP review was again demonstrated on April 28, 2026. At a session on “UDRP Review and Potential Issues” held at ICANN’s Contracted Party House (CPH) Summit in Manchester, UK, the sole speaker conceded that he had intended to moderate a panel discussion on the subject, but that not a single CPH representative was willing to engage in such a dialogue. Give the likelihood

that the Council will eventually run out of rationales for further deferrals and initiate a PDP, the manifold demonstrated benefits of the UDRP, the demonstrated benefits of the UDRP in curbing cybersquatting linked to DNS abuse, and the tens of \$millions in litigation fees avoided by CPs due to the shield provided by the UDRP, this aversion to engagement is hard to explain.

Based on my own soundings, there are several rationales for this reluctance within the ICANN community:

- *The Phase 1 review took too long and produced too little.* – As a former co-chair of the Phase 1 PDP, I know there are major differences between the new RPMs and the legacy UDRP.

First, PDP recommendations must be data-based, and the new RPMs were brand new and had been launched without an accompanying data collection mechanism. Therefore, the RPM review working group (WG) had to secure ICANN funding for after the fact data creation, and then that data had to be collected and analyzed. All this took time, and even then only produced anecdotal patterns rather than comprehensive statistics; yet this effort resulted in subsequently adopted consensus recommendations for RPM fine tuning as substantive and procedural defects in the RPMs were identified.

The UDRP, by contrast, has been in existence for more than a quarter century. The data from more than 80,000 WIPO cases – as well as thousands of decisions from other accredited UDRP providers – is readily available. UDRP review can also look for guidance to the “WIPO Jurisprudential Overview 3.0” reflecting the consensus views of WIPO panelists on key issues developed over more than a quarter century of arbitration practice.

There were also structural defects in the Phase 1 review, including an overbroad charter, a managerially difficult troika of co-chairs, and some internal disruptions. Based on that experience, the Council has become much more adept at framing focused, unitary chair PDPs given manageable tasks that can be timely completed in an atmosphere adhering to ICANN’s expected standards of behavior.

- *The UDRP might be rendered less effective for trademark owners.* – Often stated in conjunction with the “If it ain’t broke, don’t fix it” nostrum, this is both overwrought and beside the point. ICANN is committed to multiple regular reviews of its operations and policies. Yet the review of its most consequential consensus policy has been on hold for more than a decade. There is no known divisive matter involved that could roil the community; indeed, its current UDRP attitude is one of lethargy, not anarchy. The odds of a disruptive policy recommendation being adopted approaches zero, given the high consensus bar set for their adoption by a WG. And if one somehow emerged, multiple GNSO

entities would likely react in a way that activated the Governmental Advisory Committee (GAC) and ultimately led to Board rejection. The reality is that a serious but focused UDRP review will likely yield multiple meaningful improvements; while the UDRP is certainly not broken, it will benefit significantly from a fine tuning based on more than a quarter century of use and experience.

- *The community is overburdened and there are competing priorities.* – When asked what the drafters of the U.S. Constitution had produced, Benjamin Franklin replied, “A Republic, if you can keep it.”

Likewise, the private sector entities that comprise the ICANN community have an MSM, if they can keep it. As detailed earlier, ICANN is a unique technical governance organization rooted in a fleeting time and political philosophy. But it works, and any replacement would likely delegate private actors to the observer’s section and put governments in control of the DNS in perilous times.

Keeping the MSM entails demonstrating a commitment to its responsibilities, and seriously undertaking a long-promised UDRP policy review is one of them. Besides, the review offers the opportunity to showcase an ICANN success while improving upon it.

WIPO-ICA Report: Input, Not Blueprint

On December 2, 2025, after soliciting public comment on an initial draft, The World Intellectual Property Organization (WIPO), in conjunction with the Internet Commerce Association (ICA), a trade group representing domain name investors, issued the “FINAL REPORT OF THE WIPO-ICA UDRP REVIEW PROJECT TEAM”.¹ The Report is important because it stands as proof that there are multiple achievable ways in which the UDRP can be improved without doing harm to its underlying scope, principles and balance. Yet it cannot and should not be a blueprint for UDRP review, much less provide a template for its recommendations.

As referenced in a November 2024 WIPO announcement of the project’s initiation, WIPO had originally sought to lead such a review per a Governmental Advisory Committee request initiated per a previously unused provision of ICANN Bylaws:

Concerning a review of the UDRP, [the ICANN GAC \(Governmental Advisory Committee\) Hague Communiqué](#) (ICANN 74) noted that: “[t]he GAC received an update on the status of a planned review of the UDRP, and in particular notes reference to section 13.1 of the ICANN Bylaws which calls on and indeed encourages, the Board and constituent bodies to seek advice from relevant

¹ The author notes that he participated in the ICA’s founding and served as its initial Counsel, and its ICANN representative within the GNSO Council’s Business Constituency (BC), for more than a decade. He also served two terms representing the BC on GNSO Council during that period.

public bodies with existing expertise that resides outside of ICANN (notably the World Intellectual Property Organization—WIPO, as author and steward of the UDRP) to inform the policy process, and looks forward to further exploring this provision prior to any review of the UDRP.”

Such approach has also been called for in a letter to ICANN from MARQUES, the European association representing brand owners: “ICANN could request the World Intellectual Property Organization as the global leader, which was commissioned in 1998 to develop a solution which became the UDRP, to select and chair this independent expert group.”

However, the GAC never initiated such a request, and WIPO subsequently undertook the project in conjunction with ICA.

Therefore, while the project is both worthwhile and helpful, it is in no way anchored within ICANN Bylaws. Any impulse within the ICANN community to accept the WIPO-ICA as a blueprint for UDRP reform, rather than a valuable input to Council’s charter drafting effort and the WG deliberations, should be firmly rejected as it would rob the resulting recommendations of legitimacy, and set a worrisome precedent by which discrete elements of the community could attempt to front run and unduly influence an upcoming PDP. (Noting that both WIPO and ICA have made clear that they intend the report to be a constructive input and not the last word on any subject it addresses).

The ICANN Bylaws make clear that Council has the lead role in any PDP. As stated in Section 11.3(d) of the ICANN bylaws, “**The GNSO Council is responsible for managing the policy development process of the GNSO**”. Further, as noted in Section 11.3(i)(ii), a PDP within scope requires an affirmative vote of more than one-third (1/3) of each House (Contracted and Non-Contracted parties comprise those Houses) or more than two-thirds (2/3) of one House. Once initiated, the PDP WG must strictly adhere to the provisions contained in Bylaws Annex A: GNSO Policy Development Process.

In this regard, the weight granted to the Report’s recommendations stems primarily from the imprimatur of WIPO, the UN agency charged with global IP protection, and the leading and most highly regarded provider of UDRP arbitration services. But WIPO is not a member of the GNSO. Rather, it convenes within the GAC and serves as its primary advisor on IP policy and enforcement to its national government members. And, as conceded by WIPO, while a WG’s Initial Report must contain consensus recommendations of the ICANN community, some of the consulted experts comprising the Report’s Project Team are not active members of the ICANN community.

As for ICA, while it is a member of the BC, and while its members hold collective expertise in defending UDRP actions, its interests differ from those of business and

individual domain name registrants in that ICA members benefit from high secondary market domain name pricing, and other domain registrants do not. While that difference does not mean that ICA's views on UDRP reform are not in the interests of other registrants, its views on UDRP matters have and may still differ from those of other BC members, as well as members of the Intellectual Property Constituency (IPC). Once Council charters a UDRP PDP, WG members drawn from the GNSO may well reach different conclusions, or achieve consensus where the Project Team did not, regarding many issues it addressed.

While a UDRP review WG must reach its own policy recommendations, the Report does contain useful procedural suggestions. There should be no objection to the revised Charter directing the WG to bifurcate its work, after a reasonable period of preliminary discussion, between issues where early consensus appears likely, and those that raise more controversial or complex considerations likely to require extended discussion. Such a two-step approach could well benefit the WG by leaving more difficult issues for a time after initial success has been achieved and intergroup relationships have strengthened; and also benefit the community by implementing easy consensus recommendations sooner than would occur if the initial issues report had to wait upon resolution of all issues.

Any temptation to conduct a cursory review of the Report and then rubber stamp it as PDP recommendations would be illegitimate. While the Report is a valuable and useful document, taking that course would lack any procedural or substantive basis in the Bylaws or sufficient ties to the GNSO or the broader ICANN community. While the WG can look to the Report for guidance, it cannot avoid the hard work of rolling up its sleeves and conducting its own through UDRP review.

•Finally, as we previously observed, the UDRP review can rely upon a wealth of readily available case data. Therefore, to the extent available, any WG recommendations should be based on such data and appropriate analysis thereof. As an example, while the WIPO Project Team was unable to make a recommendation on the question of whether the UDRP's "bad faith registration and use" standard should be changed to "or", WIPO administers the UDRP-like DRPs of multiple ccTLDs who have adopted the "or" standard. Therefore, analysis of the outcomes of similar gTLD and ccTLD disputes involving bad faith use following good faith registration can provide the WG with a reliable database on which to base any recommendation it may make on this longstanding issue.

Concluding Thoughts

As this article is already lengthy, and as I have already made my views known on the proper role of the WIPO-ICA Report in further Council and WG activities relating to a UDRP review, I shall not comment on any of the issues addressed in the Report, much less others that may arise in the Review – with two narrow and related exceptions.

First, noting that the first word in UDRP is Uniform, there should be some mechanism to assure consistency of substantive analysis among the five separate UDRP providers currently accredited by ICANN, as well as any that may be approved in the future. The best way to ensure this would be for ICANN to require that the panelists for all providers adhere to the WIPO Overview 3.0 (and any successor versions) in their case analysis and decisions.

Taking this course would of course require that a party to a UDRP who believes that the panel decision materially departs from the Overview have some right of review and potential relief – an appeals process.

Second, that course is related to the long-discussed option of creating an internal UDRP appeals process, as an alternative to any available national court judicial appeal (which should of course remain an option), and as a relief valve for parties located in jurisdictions which lack a mechanism for appealing UDRP decisions.

While the WIPO-ICA Report should not be determinative on any matter it addresses, it does contain supportive language on this subject:

An appeals layer has been consistently raised from across stakeholder groups as a desired feature to be added to the existing UDRP. While the Final Report of the First WIPO Internet Domain Name Process recommended against the inclusion of a specific internal appeals layer, preferring recourse to national courts for a de novo review, experience has shown that this design element may be worth revisiting. Moreover, concerns have been raised that a number of jurisdictions' legal systems may not provide a cause of action under national law for cases to be heard following a UDRP decision.

In principle, the Project Team was in unanimous support for the idea of an appeals layer; there was however a range of views on the exact details.

...within the Project Team, the view was also widely endorsed that an appeals procedure would serve to enhance the UDRP by providing a relatively simple and low-cost mechanism for addressing the relatively occasional errant decision particularly by a single-member panel, and believe that despite the procedural questions to be addressed, it is worth pursuing.,.,

Recommendation: we believe that an appeals procedure can provide enhanced stability to the UDRP and on the whole appears to be a workable concept, but that a range of interrelated procedural issues would need to be worked out.

As a result, we would recommend that the concept of an appeals layer be considered in a dedicated work track in Phase 2 with special focus on convening a group with practical experience to consider the related parts.

Overall, adopting an Appeals process and linking it to decisional consistency with the WIPO Overview guidance would be a substantial improvement of benefit to all parties. Given the multiple issues to be considered, this matter would best be addressed in the second phase of a UDRP PDP.

Beyond those thoughts, the main message for the ICANN Community and Org is that there needs to be an attitude change regarding UDRP reform. Rather than being regarded as an unhappy task to be resolved with hasty short cuts, the UDRP should be seen as a tremendous success of the MSM, and its improvement as an opportunity to both spotlight and shine this crown jewel of the multistakeholder policy process.

In an inhospitable global environment, the best way to ensure ICANN's reputation, vitality and survival is for the private sector to embrace the UDRP and its reform -- and to do so in a manner that demonstrates that the Council-guided, private sector-led policymaking process remains relevant and effective in this third decade of the 21st century.