



April 16, 2008

Dear Dr. Twomey,

Further to previous contacts with you and ICANN staff, the World Intellectual Property Organization (WIPO) wishes to bring to the attention of the Internet Corporation for Assigned Names and Numbers (ICANN) certain registrar-related practices which are having a potentially adverse effect on the functioning of the ICANN-mandated Uniform Domain Name Dispute Resolution Policy (UDRP) and which reinforce the case for structural registrar supervision by ICANN.

WIPO's observation that an increasing number of registrars are displaying behavior that frustrates the intended functioning of the UDRP results from extensive engagement with registrars across some 12,000 UDRP cases filed with the WIPO Arbitration and Mediation Center covering more than 22,000 separate domain name registrations. WIPO's work on these cases and trends reflected therein have most recently been captured in the attached press release issued on March 27, 2008. This press release, at http://www.wipo.int/pressroom/en/articles/2008/article_0015.html, also addresses registrar issues previously raised in my letter to you of July 4, 2007.

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The incidence of registrar difficulties has become such that the WIPO Center's publicly accessible Legal Index (one of the most frequently used UDRP tools, irrespective of dispute resolution provider) now also includes a specific section on registrar issues raised in selected panel decisions; see <http://www.wipo.int/amc/en/domains/search/legalindex.jsp>.

Registrars and the UDRP

Registrars are in practical terms very much a linch-pin of the UDRP system. Their active compliance is an essential condition for fulfilling the purpose of this unique dispute resolution mechanism, and there are many instances of such positive collaboration. By contrast, where registrar behavior is suspect, it undermines confidence in the UDRP as a whole. Not only are registrars the source and repository of the registrant data necessary to commence and administer UDRP proceedings and in direct control of the status of disputed domain names, they are also the entities responsible for the implementation of independent panel decisions rendered under the UDRP.

Registrar behavior contrary to the spirit or letter of the UDRP not only negatively affects parties but the continued effective functioning of the UDRP itself. A functional UDRP enhances the stability of the domain name system (DNS) and helps to prevent court litigation involving stakeholders in that system.

ICANN Oversight

As noted in the United States Department of Commerce Statement on the Mid-Term Review of the Joint Agreement (JPA) Between NTIA and ICANN released on April 2, 2008, while ICANN has made significant progress in several key areas, most participants believe important work is still to be done to enhance institutional confidence *inter alia* through effective processes that increase contract compliance.

One of the key contracts in the DNS network concerns the obligations of registrars. In the context of the UDRP, WIPO encourages and monitors registrar compliance on a case by case basis and informs ICANN of unresolved instances of non-compliance, in the expectation of follow-up by ICANN. While such after-the-fact follow-up is a realistic part of the process, we believe that a more pre-emptive approach by the accrediting agency could help to prevent many of these instances in the first place. With due respect, the impression exists that ICANN's oversight capacity has not kept pace with the significant increase in its registrar accreditations. WIPO views this as a legitimate factor to be considered in formulating long-term ICANN registrar accreditation policy.

Issues of Registrar Non-Compliance

As noted, WIPO routinely apprises ICANN staff of registrar issues which we attempt to address in administering UDRP cases, or in reply to concerns expressed by parties. In the attached document, we consolidate many of these specific instances into a more general overview of the types of issues encountered thus far. These are:

- Registrar communication failure
 - Lack of response to registrar verification
 - Delay in reply
 - Incorrect or unclear reply
- Failure to timely lock disputed domain name
- Difficulty in ascertaining status of disputed domain name, including deletion / expiry issues
- Inconsistent practices regarding WhoIs privacy services
- Unexplained changes in registrant identity to reflect complainant
- Non-compliant mutual jurisdiction provisions
- Non-implementation of decisions
- Disputed domain name seemingly registered by registrar
- Outstanding uncertainty concerning registrar status

The attached overview explains each of these issues and includes reference to selected posted WIPO Panel decisions which either contain discussion relevant to the particular issue, or which have become affected by non-implementation or other post-notification issues.

By promoting awareness of these issues, this sobering account aims to assist establishment by ICANN of considered registrar accreditation and independent compliance policies that can pre-empt, clarify and resolve specific instances in future. A registrar's obligations under the UDRP, as also reflected in its Registration Agreement, form part of its contractual undertakings *vis-à-vis* ICANN.

To illustrate but two of the named issues, I wish to cite the findings of two independent Panels in recently decided UDRP cases:

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On registrars acting as registrants:

“[A] difficult issue in this case, is that the Registrar is simultaneously the Respondent. To the extent that the Respondent/Registrar has engaged in cybersquatting, this poses challenges to the integrity and workability of the Policy. It is a circumstance that creates a conflict, in that the entity responsible for enforcing the Policy in accordance with these proceedings (the Registrar) is also the entity against which the proceedings are brought (the Respondent). Further, this circumstance may create doubt around the validity of the registration agreement, through which the Policy is given effect. This is because it is not clear that a single entity (the Registrar) can validly make a registration agreement with itself.”

(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1834.html>)

On refusal to implement decisions:

“In these circumstances, any failure by the Registrar to comply with the decision of the Panel would be unjustified. It would likely involve the Registrar acting in deliberate breach of the terms of its Registration Agreement (and possibly also its Registrar Accreditation Agreement). Further, the actions of the Registrar in this case to date are such that the Panel has reluctantly reached the conclusion that the Registrar has embarked upon a deliberate policy of attempting to frustrate the proper operation of the Policy in this case. Indeed, it may at the date of this decision still intend to do so. The reasons for the Registrar’s actions in this case are unknown but were they allowed to continue unchecked, the consequences for the continued proper operation of the Policy would be profound and severe. In the circumstances, this is a matter which the Panel believes ICANN may wish to investigate further.”

(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1886.html>)

Conclusion

WIPO will continue working with any ICANN compliance staff, both as may be required to address registrar issues of concern in specific cases, and in the general interest of the overall functioning of the UDRP. We ask ICANN, both as the accrediting agency for registrars and as the mandating agency for the UDRP, to take proactive steps to inform its accredited registrars of their obligations under the UDRP, and to structurally monitor and enforce contractual compliance with these obligations. Unresolved compliance issues risk further increasing the occurrence of unnecessary court litigation impacting the DNS.

Dr. Paul Twomey, Marina del Rey - April 16, 2008

Finally, as these issues affect DNS stakeholders, and as the present letter follows up on my letter to you of July 4, 2007 posted under ICANN Correspondence, I would appreciate ICANN's posting in the same location of the present letter. The same posting would be useful for the letter which WIPO sent to ICANN on November 29, 2007 in further comment on the outstanding matter of dispute resolution provider supplemental rules at variance with ICANN's own UDRP framework.

Thank you for your attention to WIPO's concerns.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Francis Gurry', written in a cursive style.

Francis Gurry
Deputy Director General

Overview of Registrar Practices and Related Issues in UDRP Proceedings

Case-related communications providing additional information (which may not necessarily be clear in all cases from the published Decisions themselves) was sent separately by the Center to ICANN in relation to many of the below matters.

Issue 1: Registrar Communication Failure

In order to base a proceeding under the Uniform Domain Name Dispute Resolution Policy (*the UDRP*) on the most up to date information, the WIPO Arbitration and Mediation Center (*the Center*) – in addition to consulting the relevant WhoIs database – makes every attempt to contact the relevant registrar with a view to obtaining and where necessary confirming registrant and disputed domain name particulars.

Information is sought, *inter alia*, on the registrant of record, status of the disputed domain name (expiry, deletion issues), and language of the registration agreement, as these data may not always be correctly displayed or available on the public WhoIs database but are relevant (and indeed in many cases essential) for a dispute resolution provider in order to properly conduct a UDRP proceeding in accordance with the UDRP and UDRP Rules. For example, the billing address is typically not available in the publicly accessible WhoIs database, but is required under the UDRP Rules in order for the dispute resolution service provider to fulfill its administrative compliance and notification obligations. The language of the individual registration agreement is not always readily apparent, but is necessary to determine the appropriate language of proceedings.

While many registrars do cooperate with the Center's requests, the Center continues to experience difficulties with a number of registrars regarding replies received (or not) to its registrar verification requests. In such cases, either there is a total lack of reply, notably with regard to new registrars unfamiliar with the UDRP, or the reply is incomplete, or there is an important delay in forwarding the (entire and correct) reply which unduly delays a proceeding. Sometimes contact details for a registrar are simply not available or are incorrect.

Difficulties are in some instances compounded by what may be a multiplicity of registrar contact details (rather than for example a single consolidated email address) for dispute related issues, or in some cases responses which lack precision or clarity in language.

a) Lack of Response to Registrar Verification

In some cases, even though appropriately contacted, a registrar will not reply to the Center's inquiries. In such cases, after reasonable efforts have been undertaken to

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contact a registrar, the Center would reluctantly continue the proceeding based solely on the information provided in the complaint and in the public WhoIs database. The consequences for proceeding without the registrar's confirmation as to the locking and status of the disputed domain name may be that – and the Center has had examples of such situations – a disputed domain name is improperly deleted during the proceeding, or transferred to another registrant, and/or re-registered with another registrar.

See for example:

- D2007-0945, involving the registrar Compana
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0945.html>)
- D2007-0620, involving the registrar Threadwxchange.com, Inc. / eNom, Inc.
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0620.html>)

b) Delay in Reply

In accordance with the UDRP Rules, a Provider should proceed to notifying a complaint within three days of having received the required filing fee and having confirmed that the complaint is in compliance with the UDRP Rules and the Policy.

For the reasons explained above, the Center endeavors to obtain certain requested information from a registrar. However, UDRP proceedings are often delayed by uncooperative registrars who by not replying to inquiries can retard the effectiveness of the UDRP as a streamlined and time-effective alternative to court litigation.

See for example:

- D2007-0503, involving the registrar Nameview / Red Register, Inc.
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0503.html>)
- D2007-0849, Zigzagnames.com LLC, Burnsidedomains.com LLC, Domainsareforever.com LLC
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0849.html>)
- D2007-1190, involving the registrar Compana LLC doing business as BudgetNames.com
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1190.html>)
- D2007-1913, involving the registrar Compana LLC
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1913.html>)

c) Incorrect or Unclear Reply

In some instances, a registrar specifically confirms that a domain name remains locked during the administrative procedure. Yet, the Center has had cases where such confirmation was received by the Center, but the domain names were subsequently unlocked by such registrar, allowing registrant and registrar changes during a pending proceeding.

See for example:

- D2006-0830, involving the registrar eNom
(<http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0830.html>)
- D2007-1175, involving the registrar Moniker
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1175.html>)
- D2007-1377, involving two different verifications for the same domain name by the registrar Network Solutions LLC
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1377.html>)
- D2007-0806, involving the registrar Brandon Gray Internet Services Inc trading as Namejuice.com / Moniker Online Services Inc
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0806.html>)
- D2007-1190, involving the registrar Compana LLC doing business as BudgetNames.com
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1190.html>)

Issue 2: Failure to Timely Lock Disputed Domain Name

In accordance with paragraph 8 of the UDRP, transfer of a domain name to a new holder and changing registrars are prohibited “during a pending administrative proceeding”. In practice, registrars appear to lock disputed domain names either upon:

- 1) notice of a filed complaint given by a complainant;
- 2) receipt of the Center’s notice of a pending proceeding; or
- 3) the Center’s notification of complaint to the respondent, copied to the registrar.

WIPO would urge ICANN to advise registrars to lock domain names subject to UDRP proceedings at the earliest received notice. A failure to lock a domain name subject to

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a UDRP proceeding may cause complications, and thus delays. If a disputed domain name is not locked by the registrar at the earliest possible stage of the procedure, cyber-flight might occur, *i.e.* the registrant of record may change – in some scenarios multiple times – necessitating a complainant to amend its complaint.

The below cases are examples of situations where the procedure was delayed and complicated due to a registrar's failure to lock the disputed domain name at an early stage of the proceeding, thereby requiring the complainant to in some cases amend its complaint to refer to a 'moving target'.

- D2007-1913, involving the registrar Compana LLC (<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1913.html>)
- D2006-0883, involving the registrar Nameview (<http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0883.html>)
- D2007-0503, involving the registrar Nameview / Red Register, Inc. (<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0503.html>)
- D2006-0917, involving the registrar Capitoldomains, LLC (<http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0917.html>)
- D2007-0806, involving the registrar Brandon Gray Internet Services Inc. (<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0806.html>)

Issue 3: Difficulty Ascertaining Disputed Domain Name Status – Deletion / Expiry

The ICANN Expired Domain Deletion Policy (*the Expiry/Deletion Policy*) (<http://www.icann.org/registrars/eddp.htm>) provides a set of rules in relation to domain names that expire or are deleted during a pending UDRP proceeding. Due to the particular wording of the Expiry/Deletion Policy, registrars appear to interpret it in different ways. Some registrars – ideally – consider a procedure to be pending as of the date of being put on notice of the dispute (*e.g.* having received a complaint from the complainant, or having received the Center's registrar verification request). Other registrars however appear to consider a UDRP dispute to be pending only as at the date the complaint is formally notified to the respondent by the dispute resolution service provider. This can have the effect of increasing the risk of cyber-flight, particularly if the registrar itself fails to provide a timely response to the Center's request for registrar verification and the commencement of the proceedings is unnecessarily delayed.

In relation to deletion, an application of the latter (formal notification only) approach

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by a registrar may also allow a disputed domain name to be deleted by the registrant of record upon it receiving first notice of the dispute. Such a situation tends to frustrate the purpose of the proceedings – and also, understandably, the complainant, especially where the name is then ‘snapped-up’ by a third party. Further complexity may be introduced where, the complaint having been duly filed in compliance with the UDRP and UDRP Rules but the registrar subsequently having allowed the disputed domain name to be deleted, the complainant then experiences difficulty in having the domain name restored by the registrar pursuant to the Expiry/Deletion Policy because the registrar does not consider such domain name to be part of the already initiated UDRP proceeding.

A similar situation could occur where a registrar does not consider a disputed domain name to be subject to a UDRP proceeding for the purpose of the Expiry/Deletion Policy where such a domain name is set to expire after the complaint is filed with a dispute resolution service provider but before the proceeding has been formally commenced by such provider.

By way of example, deletion / expiry issues have arisen in the following UDRP matters filed with the Center:

- D2006-1566, involving the registrar Iserveyourdomain.com LLC
- D2007-0740, involving the registrar Dotster, Inc
- D2007-1152, involving the registrar OnlineNic, Inc. d/b/a China-Channel.com
- D2007-1153, involving the registrar OnlineNic, Inc. d/b/a China-Channel.com

As it was necessary, in most instances due to the expiry / deletion of the disputed domain name(s), for the above matters to be terminated prior to the rendering of a panel decision, these and many other similar instances are not documented by Panel decisions, but the Center has forwarded separately to ICANN case-related communications providing information in relation to a number of such matters.

Issue 4: Inconsistent Practices Regarding WhoIs Privacy Services

Registrars are also often the entities most directly engaged in the provision of privacy or proxy registration services, which were not contemplated at the time the UDRP was initially commenced, and which are now presenting a host of procedural and substantive challenges for parties, providers and panels under the UDRP.

As also noted most recently by WIPO in its Press Release of March 27, 2008, the increasing use of WhoIs privacy services is affecting the UDRP. As such services are now potentially available to most (if not all) domain name registrants, their

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appearance in cases filed with the Center is increasing. In some instances, respondents in UDRP proceedings have apparently found it opportune to shield their identities behind such services either anticipating or after formal commencement of the case.

As the UDRP and UDRP Rules do not include provisions dealing expressly with privacy services, and in the absence of specific direction from ICANN in relation to the manner in which such services affect the filing, administration, and determination of UDRP cases, the registrars, complainants, respondents, dispute resolution providers and panelists are left to deal with this issue, thus making a consistent approach difficult, and indeed leading parties and registrars to present multiple views on any approach that is adopted.

In UDRP proceedings, WhoIs privacy services typically have a direct impact on the identification of the respondent. A respondent is defined under the UDRP Rules as “the holder of a domain-name registration against which a complaint is initiated”. Currently, many (but by no means all) registrars providing such privacy services, while apparently refusing to disclose any “underlying holder” to prospective complainants, proceed to make such disclosure to the Center in response to its request for registrar verification. Some will also “lift” the shield in the publicly accessible WhoIs database upon receipt of the Center’s request for registrar verification and post the name of the “underlying holder” of the domain name. In view of the definition of respondent in the UDRP Rules, there is ground for legal uncertainty as to the entity to be considered as “the holder of a domain-name registration”, which also feeds into existing uncertainty in UDRP case law as to when exactly “a complaint is initiated”.

Thus far, registrars have adopted diverse approaches on whether to provide information to a dispute resolution service provider concerning a respondent using a WhoIs privacy shield. Where some registrars would disclose the shielded entity, some would not. Equally, different approaches have been taken *vis à vis* information disclosed on the public WhoIs database. For example, some registrars – while disclosing the identity behind the shield to the dispute resolution service provider – will not display that information in the publicly accessible WhoIs; whereas others – having made such disclosure to the provider – will then proceed to display such information in the publicly accessible WhoIs. Such differing registrar approaches greatly increase the difficulties for parties, providers and panels in seeking a consistent and predictable means of identifying the appropriate Respondent in UDRP cases.

The identification of the domain name holder may also affect the choice of mutual jurisdiction, *i.e.*, what is to be considered the location of the domain name holder: the given address for the WhoIs privacy shield, or the address of the underlying holder, or both?

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There are numerous other procedural and substantive challenges presented by the increasing use of privacy and proxy registration services, and a growing body of UDRP decisions illustrative of the complications these situations may cause.

See for example:

- D2007-0758
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0758.html>)
- D2006-1620
(<http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-1620.html>)
- D2006-0975
(<http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0975.html>)
- D2007-0407
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0407.html>)
- D2007-0827
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0827.html>)
- D2007-1438
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1438.html>)

Issue 5: Unexplained changes in registrant identity to reflect complainant

WIPO has observed that in certain cases (most commonly, but not exclusively, when a disputed domain name is registered through the registrar Nameview) the registrant's name and contact details in the WhoIs database appear to be changed to reflect those of the complainant (presumably upon notice of the complaint). This unusual reaction can in some cases result in the complainant obtaining actual control over the disputed domain name, but in others not. The Center's usual practice in such cases is to request the Complainant to confirm in writing whether or not the complainant has obtained actual control over the disputed domain name. If this is confirmed, the complaint is usually withdrawn by the complainant. If not, the Center would usually proceed with the case against the Respondent as indicated in the WhoIs at the time the Complaint was filed, in part for the obvious reason recently given by the independent panel in D2007-0997, that to "require the Complainant to amend its Complaint in a manner that meant that it was apparently directed to itself would be pointless."

In addition to potentially raising questions as to whether the relevant registrars (if responsible) may themselves be having an interest in such domain names, such practices, as was recently observed by one UDRP Panel (in D2007-1431):

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“...undoubtedly complicate and in some cases may frustrate proceedings (consistent with an objective of “cyberflying”). Questions of the proper-role of ICANN-accredited registrars aside, such modifications would also suggest an element of bad faith in relation to the persons in control of such domain names, whoever they may be.”

More generally, practices like the above (or by way of other example, such ‘russian doll’ as were described by the UDRP Panel in D2006-1620) are increasingly raising the burden not only for complainants in properly preparing a case but are also substantially increasing the Center's case administration duties.

See for example:

- D2007-1431
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1431.html>)
- D2007-1373
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1373.html>)
- D2007-0997
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0997.html>)

Issue 6: Non-compliant mutual jurisdiction provisions

A complainant is required to submit, with respect to any challenges to a UDRP decision cancelling or transferring a domain name, to the jurisdiction at: 1) the domain name holder’s address; or 2) at the principal office of the registrar. The second option is only available if “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”.

Accordingly, where a domain name holder has not submitted in the registration agreement to the jurisdiction of the location of the registrar, such a jurisdiction would not be applicable for the purposes of 4(k) of the UDRP Policy. The Center’s experience is that complainants opt on a regular basis for the jurisdiction at the location of the registrar. Thus, where contrary to ICANN provisions, there is no submission by the domain name holder and the complainant has “incorrectly” opted for the jurisdiction at the location of the registrar, such a circumstance would necessitate the dispute resolution service provider to request an amendment to be made to the complaint.

In order to avoid such requests for amendments to complaints and to avoid any legal uncertainties for a respondent to challenge a UDRP decision in an appropriate

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jurisdiction so as to freeze the implementation of the UDRP decision in accordance with paragraph 4(k) of the UDRP Policy, it is important that registrars fulfill the following provisions of the ICANN Registrar Accreditation Agreement (RAA):

“3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions:

[...]

3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder’s domicile and (2) where Registrar is located.”

In the context of filed cases, WIPO routinely examines (in different languages) registration agreements and observes regular instances in which accredited registrars do not appear to have the relevant RAA clause in their agreements.

Issue 7: Non-implementation of decisions

On a regular basis, complainants are reporting to the Center situations where UDRP decisions have not been implemented by a registrar even though appropriately notified of the decision and the 10 business day period having lapsed.

Further, some registrars tend to improperly complicate matters by, *e.g.*, requiring that the parties or the dispute resolution service provider submit a signed original version of the UDRP decision in order for the registrar to implement the decision, or by insisting that certain amendments have be made to the Complaint as a precondition for the registrar implementing the panel’s decision. The UDRP and UDRP Rules simply do not include such a requirement, see paragraph 16(a) of the UDRP Rules.

See for example:

- D2007-1886
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1886.html>)
- D2007-0026
(<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0026.html>)
- D2005-0748
(<http://www.wipo.int/amc/en/domains/decisions/html/2005/d2005-0748.html>)

- D2005-0565
(<http://www.wipo.int/amc/en/domains/decisions/html/2005/d2005-0565.html>)

The issue of implementation can become still more complex when combined with instances of the practices referred to *inter alia* in issue 5 above.

In this latter regard in particular, WIPO notes the observations made recently by the Panel in case D2007-1886 where the concerned registrar had previously indicated its reluctance to implement any decision rendered by the appointed Panel due to what the registrar perceived to be a procedural irregularity in the identification of the registrant in the filed Complaint, arising from the registrar's apparent insistence that the Complainant amend its Complaint to refer to itself (the Complainant) as the Respondent.

Issue 8: Disputed domain names seemingly registered by registrars

Registrars are of course in the business of registering domain names for registrants, but a clear conflict is created in terms of the UDRP where registrars themselves appear to become involved in speculative domain name registration. It raises questions not only about the proper role of registrars under the UDRP, but of what such involvement may mean for the functionality and integrity of the UDRP mechanism itself if left unchecked. The appearance of ICANN-accredited registrars as respondents in proceedings under the ICANN-mandated UDRP does little to enhance confidence in the integrity of the UDRP process overall, not to mention their accreditation.

In this regard, WIPO observes a growing number of UDRP cases that seem to involve registrars appearing as registrants of domain names incorporating trademarks of third parties, indicating that registrars may be involved in domain name speculation. Questions of consistency with the UDRP aside, this raises questions as to the applicability of Registrar Accreditation Agreement ("RAA") paragraph 3.7.9, which provides that "[the] Registrar shall abide by any ICANN adopted specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars."

Specific examples of cases apparently involving a registrar as registrant include the following:

- D2007-1697 (internal registrar email communication inadvertently addressed to the Center)
- D2006-1566 (domain name deleted the same day complaint was submitted, complaint withdrawn)
- D2007-1337 (complaint withdrawn)

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- D2007-0938 (complaint withdrawn)
- D2007-0842 (complaint withdrawn)
- D2007-1441 (registrar the domain name holder)

Further to the previous forwarding of this decision to Verisign and ICANN (as instructed by the independent Panel) the named Respondent's seeming relationship with the registrars DomainDoorman, LLC, Capitoldomains, LLC and BelgiumDomains, LLC, as found by the Panel in D2007-1834 (<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1834.html>), is also noteworthy as an example in this regard.

Issue 9: Outstanding Uncertainty Concerning Registrar Status

In an earlier phase, the long-standing problems surrounding the status of since de-accredited registrar RegisterFly.com illustrated the difficulties in filing, administering and enforcing cases involving domain names with a registrar whose status remained for a period unclarified.

WIPO has also previously forwarded to ICANN certain communications regarding the apparently uncertain status of the registrars DomainDoorman, LLC, Capitoldomains, LLC and BelgiumDomains, LLC, arising in part from the above-referred (and other) decisions involving these registrars.

In particular, WIPO has requested direction from ICANN on how to proceed in future cases filed involving these registrars in light of recent reports (as indicated in the cited decision) that BelgiumDomains LLC in particular may have been 'locked out' by Verisign. The reported effect of this is that the locked out Registrar cannot administer domain names registered by its customers.

Pending receipt of specific directions from ICANN on such registrars, WIPO has continued to accept and process complaints involving domain names registered with such registrars and to copy Verisign and ICANN on any panel decisions rendered and notified in such cases.