



**Comment on Application for  
New Uniform Domain Name  
Dispute Resolution Policy  
 (“UDRP”) Dispute-resolution  
Service Provider**

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**Business Constituency Submission**

**GNSO//CSG//BC**

## Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants. As defined in our Charter, the mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

## BC Comment

The Business Constituency is pleased to submit its Comment herein, on the [Application for New Uniform Domain Name Dispute Resolution Policy \(“UDRP”\) Dispute-resolution Service Provider](#), by Canada International Internet Dispute Resolution Centre (“CIIDRC”)<sup>1</sup>.

The last application to become a Dispute Resolution Provider (“DRP”) was made by the Arab Center for Dispute Resolution (“ACDR”) in 2013. The ACDR became the seventh DRP to be “accredited” by ICANN since the UDRP was established in 1999. There are however, currently only five remaining DRPs, since two have stopped providing services:

**eResolution**, originally an accredited Canadian provider, shut down its dispute resolution services in 2001 due to losing market share to other DRPs which it claimed benefitted from forum shopping<sup>2</sup>; and

the CPR Institute, which stopped provided UDRP services in 2006<sup>3</sup>.

In response to the ACDR application in 2013, [the BC provided its “qualified endorsement” to the ACDR’s application](#)<sup>4</sup>, but “urge[d] the ICANN Board to instruct ICANN staff to expeditiously develop improved standards for the approval of UDRP providers, as well as uniform and enforceable standards governing the administration of UDRP cases by providers”.

That BC position built upon a Jul-2011 BC comment on Preliminary GNSO Issue Report on the Current State of the UDRP, where we noted our prior Oct-2010 advice:

*The BC strongly advocates that ICANN must first implement a standard mechanism with any and all UDRP arbitration providers that defines and constrains their authority and powers, and establishes regular and standardized review by ICANN with flexible and effective means of enforcement. The ultimate sanction of cancelling accreditation is an extreme sanction that ICANN has demonstrated a reluctance to initiate in other contexts...<sup>5</sup>*

The ACDR application was five years ago, and despite the BC’s strong recommendations, ICANN has to-date, failed to establish any uniform and enforceable standards governing the administration of the UDRP by DRPs, and is now considering the further expansion of DRPs.

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<sup>1</sup> See ICANN public comment page at <https://www.icann.org/public-comments/udrp-provider-2018-11-16-en>

<sup>2</sup> See [“eResolution Quits Domain Arbitration”](#), *The Register*, 4-Dec-2001.

<sup>3</sup> See <https://www.cpradr.org/resource-center/icann-decisions>

<sup>4</sup> Apr-2013 BC comment, at <https://www.bizconst.org/assets/docs/positions-statements/bc-comment-on-acdr-proposal-as-udrp-provider-2.pdf>

<sup>5</sup> Jul-2011 BC comment on Preliminary GNSO Issue Report on the Current State of the UDRP, at [https://www.bizconst.org/assets/docs/positions-statements/bc\\_on\\_udrp\\_issues\\_report\\_july\\_2011.pdf](https://www.bizconst.org/assets/docs/positions-statements/bc_on_udrp_issues_report_july_2011.pdf)

The BC submits that the establishment of uniform and enforceable standards governing DRPs must be prioritized by ICANN, and that ICANN should seriously consider whether it is advisable to allow any further accreditations until a mechanism is in place.

That is not to say that the CIIDRC's application is without merit. It clearly is a good application by a qualified potential provider, and accordingly the BC once again provides its "qualified endorsement" of the CIIDRC application, subject however, to the prioritization of the establishment of uniform and enforceable standards for all DRPs.

Indeed, ICANN itself appeared to be prepared to reconsider its approach back in 2013 after the accreditation of the ACDR. On December 29, 2013, Akram Atallah [wrote to the BC](#) in response to the BC's concerns, and expressly stated therein, that "if ICANN were to see a great expansion of UDRP providers in the future, or if there were increasing need to take corrective action against UDRP providers, the development of a formal contractual regime may indeed become more advantageous than the system that exists today"<sup>6</sup>.

Although the expansion to a sixth DRP is not in and of itself a "great" expansion but rather an incremental one, if ICANN is contemplating accrediting additional DRPs in the future, ICANN must establish uniform and enforceable standards or it will have enabled a potential balkanization across multiple providers, without any meaningful oversight or standardized compliance mechanism. It is therefore preferable to establish the required mechanism sooner rather than after a potential issue becomes intractable, so as to ensure the continued success and reputation of the UDRP program.

Furthermore, the Rights Protection Mechanisms Working Group is well underway and currently scheduled to complete its work in 2019. As part of [its Charter](#), the Working Group is examining the effectiveness of the UDRP and this necessarily includes a consideration of standards for Dispute Resolution Providers.

It is therefore concerning that ICANN would consider an expansion of DRPs before the Working Group's work is complete. ICANN will learn a great deal from the in-depth examination that the Working Group is undertaking, and this will surely inform ICANN as to the nature and scope of issues surrounding the administration of the UDRP. If changes are subsequently recommended by the Working Group, ICANN may very well be compelled to finally establish uniform and enforceable standards for DRPs, and therefore there is reason to reconsider whether now is the best time to accredit a new DRP, rather than await the outcome of the RPM Working Group's review.

In his Dec-2013, Mr. Atallah noted that the absence of formal contracts alleviates ICANN's obligation of "following contractual obligations, including potential notice and cure requirements", and thereby enables "ICANN to take swifter corrective action."

However, the BC believes that specific, clear, uniform standards are at the foundation of all good business relationships – including ICANN's other relationships with third parties. This protects both the DRPs and all ICANN stakeholders and must be considered a "best practice", if not compulsory.

The BC therefore believes that there is no sound basis for continuing to maintain that the absence of such mechanisms is somehow a good thing or appropriate in regard to the UDRP. The businesses that are members of the BC use and rely upon such mechanisms in their successful business and know that they are appropriate for all service provider relationships.

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<sup>6</sup> Dec-2013 letter from Akram Atallah to the BC, at <https://www.icann.org/en/system/files/correspondence/atallah-to-cooper-19dec13-en.pdf>

Moreover, the absence of such mechanisms (which would otherwise likely include usual “notice and cure requirements”), exposes ICANN to potential liability should it at any point wish to revoke an accreditation from a DRP. Surely a DRP would rely upon the absence of fair terms which would normally be included in a contract or similar mechanism, in order to resist such purported revocation.

The BC therefore encourages ICANN to re-evaluate its approach to DRPs and to immediately commence work on the establishment of appropriate standard mechanisms for the administration of the UDRP.

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This comment was co-drafted by Zak Muscovitch and edited by Steve DelBianco.

It was approved in accord with our Charter.