

Dear Andrew,

Thank you for the opportunity to provide you with some preliminary reaction on the subject of WIPO UDRP panel appointment statistics, on which we understand you are producing a compilation.

By way of background, we note that WIPO has previously drawn ICANN's and public attention on a number of occasions to certain practices of ICANN-accredited providers that may affect the overall credibility of the UDRP system. For example, on July 4, 2007 (<http://www.wipo.int/amc/en/docs/icann040707.pdf>) and November 29, 2007 (<http://www.wipo.int/amc/en/docs/icann291107.pdf>), WIPO wrote to ICANN citing numerous examples of *inter alia*, WIPO's increasing concern about the largely unchecked consequences of the often profit-driven competition for the provision of a consistent, predictable and equitable system of law in domain name cases. In concluding the latter communication, WIPO urged ICANN to adopt a deliberate provider policy, in full awareness of consequences for the credibility of the UDRP. More recently, WIPO again wrote to ICANN in March of this year (<http://www.wipo.int/amc/en/docs/icann260310rap.pdf>), *inter alia* alerting ICANN to the risks inherent in provider practices that violate the spirit, if not the letter of the UDRP, and calling on ICANN to recognize the consequences of its accreditation choices.

In this connection, we believe that the panel appointment practices now drawing attention have or should have been obvious since many years already, as are certain other questionable practices adopted by other providers.

As to WIPO's own panel appointment considerations, these are informed by a range of highly conservative, legally and ethically responsible factors, including: panel language capability; party and panel nationality; geographic diversity; panel availability; panel experience; jurisdictionally relevant expertise; where possible, prior cases involving parties at issue, and citation in pleadings to previous decisions; and lack of panel conflict as confirmed by declarations of independence and impartiality (WIPO's declaration document is publicly posted on the WIPO website).

In terms of the result of WIPO's panel appointment practices, publicly-available data show that over 90% of the approximately 450 listed WIPO panelists have been appointed to decide WIPO domain name matters. Furthermore, these appointments have covered all of the 56 listed countries of WIPO panelist residence. As you would be aware, none of the most frequently appointed WIPO panelists even remotely approach the remarkable NAF appointment shares now receiving attention. In apparently sharp contrast to the situation elsewhere, of the most frequently appointed WIPO panelists, the transfer rate is, as you would also know, well within the overall average for all UDRP panelists.

In the cases decided by the most frequently appointed WIPO panelists, the results primarily reflect the fact that these more experienced panelists tend to be appointed on cases that are *prima facie* contentious. Analysis of decided cases including overall transfer rate at WIPO of some 85% bears out the conclusion that WIPO results are not so much a case of any "inherent" bias towards one or other party overall, but rather reflect a responsible alignment of panel experience with appropriate disputes.

Panel appointment is but one respect in which WIPO's institutional integrity and non-profit, heavy investment in publicly-available UDRP resources (e.g., the UDRP Panel Overview, searchable Legal Index, Domain Name Workshops, Panelist Meetings, and Conferences) underpin WIPO's role as custodian of the UDRP since before its adoption.

Regards,

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