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OPTIONS FOR A *DE NOVO* ARBITRATION MECHANISM IN DOMAIN NAME DISPUTES INVOLVING COUNTRY NAMES

Document prepared by the Secretariat

Introduction

1. At its ninth session from November 11 to 15, 2002, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) recommended[1] amending the Uniform Domain Name Dispute Resolution Policy (UDRP) to provide protection for country names in the domain name system (DNS). As regards the details of such protection, delegations supported the following:

(i) protection should be extended to the long and short names of countries, as provided by the United Nations Terminology Bulletin;

(ii) the protection should be operative against the registration or use of a domain name which is identical or misleadingly similar to a country name, where the domain name holder has no right or legitimate interest in the name and the domain name is of a nature that is likely to mislead users into believing that there is an association between the domain name holder and the constitutional authorities of the country in question;

(iii) each country name should be protected in the official language(s) of the country concerned and in the six official languages of the United Nations; and

(iv) the protection should be extended to all future registrations of domain names in generic top-level domains (gTLDs).

2. At its tenth session from April 28 to May 2, 2003, the SCT continued its discussion on a number of outstanding issues. One of these issues related to the question of how the sovereign immunity of States could be safeguarded in the context of a possible review of a decision rendered by a panel under the UDRP. In this regard, the SCT requested the International Bureau to prepare "a short description of how a *de novo* arbitration mechanism might work."[2]

3. The present document contains such a description. After briefly describing arbitration as such, it sets out, by way of background, the way in which parties to a procedure under the UDRP can currently submit their dispute to a national court of justice for a *de novo* review. Any *de novo* arbitration mechanism for country name disputes will have to fulfill similar functions. The paper then summarizes, by way of comparison, the recommendations made by the member States of WIPO to introduce an arbitral *de novo* appeal mechanism for disputes involving another type of identifier, i.e. the names and acronyms of international intergovernmental organizations (IGOs). In order to enable member States to take an informed decision as to whether an arbitral *de novo* appeal mechanism should be recommended for disputes involving country names, the paper further provides an overview of options for structuring such a mechanism.

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1 Document SCT/9/8, paragraphs 6 to 11. Same decision recorded in document SCT/9/9, paragraph 149.

2 Document SCT/10/9 Prov., paragraph 47.

Arbitration

4. Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to an arbitrator or to a tribunal of several arbitrators who give a decision (an "award") on the dispute that is binding on the parties. Arbitration is also binding in the sense that no party can unilaterally withdraw from the proceedings or resort to court litigation once the parties decide to submit their disputes to arbitration. Hence, parties to an arbitration agreement are normally precluded from submitting disputes covered by the agreement to a national court of justice.

5. Arbitration can be "institutional" or "*ad hoc.*" In an institutional arbitration, an arbitral institution[3] provides a procedural and administrative framework for initiating and conducting arbitrations. The institution provides a pre-established set of procedural rules, organizes all case communications, facilitates the selection of arbitrator(s), administers all financial aspects of the arbitration, and provides assistance throughout the procedure. In an *ad hoc* arbitration, the parties also tend to adopt procedural rules, such as the UNCITRAL Arbitration Rules, but administer the proceedings themselves.

6. Since arbitration offers a neutral forum for deciding a dispute, neither party is forced to litigate in the other party's "home court," and a State party to the proceedings would not forfeit its immunity from other countries' jurisdiction. An additional advantage of arbitration is that arbitral awards are recognized and enforced, subject to a limited number of specific exceptions, in the more than 130 contracting States of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[4] No comparable international instrument exists with regard to court judgments whose recognition and enforcement still relies on national laws based on comity or, if available, on bilateral or regional agreements.

De Novo Review of Domain Name Disputes under the UDRP

7. Unlike arbitration, the UDRP does not restrict the parties' access to court litigation before, during, or after a UDRP procedure.[5] If a party initiates court proceedings following a decision rendered by a UDRP panel, the court seized with the dispute is not bound by the substantive and procedural rules of the UDRP, or the findings or decisions of the panel. Rather, the court follows its own procedural rules, determines the applicable substantive law in accordance with its private international law rules, and considers the whole dispute *de novo*, i.e., as if no UDRP procedure had taken place.[6] While the option of bringing the dispute before a competent court of justice is open to both parties, it is particularly important for a losing respondent, for whom the UDRP procedure initiated by the complainant was mandatory.

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[3] Some arbitral institutions focus on a particular country or region, while others, such as the WIPO Arbitration and Mediation Center, have an international character.

[4] A list of States party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is available on the web site of the WIPO Arbitration and Mediation Center at *http://arbiter.wipo.int/arbitration/ny-convention/parties.html*.

[5] Paragraph 4(k) UDRP; see the discussion of this issue in the Final Report of the First WIPO Internet Domain Name Process, paragraphs 133 to 134 and 137 to 140, 194 to 196, available at *http://wipo2.wipo.int/process1/report/index.html*.

[6] See the Final Report of the First WIPO Internet Domain Name Process, paragraph 196.

8. To facilitate a losing respondent's recourse to a national court of justice, the UDRP requires any complainant to submit, in the complaint, to the jurisdiction of the national courts either at the principal office of the registrar or at the domain name holder's address as shown in the relevant Whois database "with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name."[7] As a result of this submission, a losing respondent can initiate court litigation in the "mutual jurisdiction"[8] chosen by the complainant. The submission therefore provides the respondent with at least one convenient forum for challenging a decision rendered under the UDRP, without, however, excluding recourse to any other competent court of justice.

9. Even with this option, only very few domain name disputes are brought before a national court of justice once a decision under the UDRP has been rendered.[9] This is in large part because the UDRP is confined to clear instances of bad faith behavior. Still, for a losing respondent who had to submit to the UDRP in the domain name registration agreement, the possibility of initiating court litigation in at least one convenient forum is an important due process safeguard.

The Case of International Intergovernmental Organizations

10. In the context of the Second WIPO Internet Domain Name Process, WIPO member States have recommended that the UDRP should be modified to allow IGOs to file complaints in respect of the abusive registration of their protected names and acronyms.[10] It was recognized, however, that the requirement for a complainant to submit to the jurisdiction of certain national courts of justice could conflict with the privileges and immunities of IGOs.[11] A number of IGOs, including the United Nations, have indicated that they could not

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7 Paragraph 3(b)(xiii) UDRP Rules.

8 This term is defined in paragraph 1 of the UDRP Rules as follows: "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."

9 See the Selection of UDRP-related Court Cases on the web site of the WIPO Arbitration and Mediation Center, *http://arbiter.wipo.int/domains/challenged/index.html*.

10 Document WO/GA/28/3, paragraph 79.

11 The Convention on the Privileges and Immunities of the United Nations (adopted by the General Assembly of the United Nations on February 13, 1946) and the Convention on the Privileges and Immunities of the Specialized Agencies (adopted by resolution of the General Assembly on November 21, 1947) determine the special legal status of IGOs. They provide that such entities shall have the capacity to, *inter alia*, institute legal proceedings (Article I and Article II respectively) but shall enjoy immunity from every form of legal process, except insofar as the organization expressly waives such immunity (Article II and Article III respectively). The Conventions do require IGOs to make provisions for "appropriate modes of settlement" of disputes arising out of contracts or disputes of a private law character to which the IGO is a party (Article VIII and Article IX respectively).

participate in a dispute resolution process which, like the UDRP, would require the organization to submit to the jurisdiction of national courts.[12]

11. In order to strike a balance between the privileges and immunities of sovereign States on the one hand, and the right of a losing UDRP respondent to have the dispute reconsidered in a neutral forum on the other, WIPO member States also recommended to allow IGOs to submit to a special appeal procedure by way of *de novo* arbitration rather than to the jurisdiction of certain national courts of justice.[13] This recommendation is in line with the general legal practice of IGOs which routinely include arbitration clauses in their commercial contracts.[14]

De Novo Arbitration in Country Name Disputes

12. States are immune from jurisdiction of the courts of other countries. This is an inherent attribute of their sovereignty. Some WIPO member States have, therefore, suggested that, for the purpose of satisfying the "mutual jurisdiction" requirement under the UDRP, States should submit to a *de novo* arbitral appeal mechanism in country name disputes similar to the mechanism proposed for IGOs. Other delegations were, however, in favor of retaining the procedure as currently provided under the UDRP. In fact, a number of States, including Canada,[15] Germany,[16] the Netherlands[17], and New Zealand[18], have already filed complaints under the UDRP and, in that context, presumably waived their immunity for the limited purpose of providing a "mutual jurisdiction."

13. The following paragraphs set out options for structuring a *de novo* appeal mechanism should member States decide to recommend such a mechanism for UDRP disputes involving country names.

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12 The Recognition of Rights and the Use of Names in the Internet Domain Name System, Report of the Second WIPO Internet Domain Name Process, para. 157 (document SCT/S2/INF/4, para. 8, available at *http://wipo2.wipo.int/process2/report/index.html*).

13 Document WO/GA/28/7, paragraph 79.

14 Such arbitration clauses typically provide that any dispute arising out of or in connection with the contract in question is to be referred to and finally determined by arbitration in accordance with certain rules, such as the UNCITRAL Arbitration Rules. The clause would also determine the number of arbitrators (one or three), the place of arbitration, the language to be used in the arbitration, and the substantive law in accordance with which the dispute is to be decided.

15 WIPO Case No. D2001-0470.

16 WIPO Case No. D2001-1401; D2002-0110; D2002-0427; D2002-0599.

17 WIPO Case No. D2002-0248.

18 WIPO Case No. D2002-0754.

Functional Requirements

14. As stated earlier, any *de novo* arbitration mechanism therefore would have to fulfill similar functions as the possibility of referring a domain name dispute to a national court at a "mutual jurisdiction." A *de novo* arbitration therefore would need to have at least the following features:

- The parties should be able to restate their case completely anew. They should not be confined to claiming that the UDRP panel did not consider certain relevant facts or wrongly applied the UDRP, but should also be able to submit new evidence and new factual or legal arguments;

- In order to provide a meaningful "appeal," conducting a de novo arbitration should, as a general rule, not be more burdensome than conducting litigation in a court of mutual jurisdiction;

- The arbitral tribunal should consist of one or more neutral and independent decision makers, who should not be identical or related to the panelists who rendered the UDRP decision;

- Either party should be able to present its case in a complete manner. The arbitral tribunal should, for example, have the authority to allow for, or request, additional written submissions, and it should be possible to hold in-person hearings.[19]

The *status quo* of the domain name should be preserved. The UDRP decision ordering cancellation or transfer of the domain name should not be implemented, provided the *de novo* arbitration is initiated within a certain deadline, comparable to the ten days deadline of paragraph 4(k) UDRP. Furthermore, for the duration of any such arbitration, the lock on the domain name, which the registrar had placed on the domain name pursuant to the UDRP, should continue, thus preventing the domain name holder from transferring the domain name to another holder (see paragraph 8 UDRP).

Arbitration Agreement

15. Arbitration is based on party agreement. Any *de novo* arbitration mechanism for country name domain name disputes would be no exception. The necessary agreement could be concluded in a similar way as the choice of a "mutual jurisdiction" under the UDRP: the complainant (i.e., the State) would be required to submit, in a standardized clause, to *de novo* arbitration when filing the UDRP complaint.[20] A losing UDRP respondent could accept such

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[19] The UDRP allows in principle only one written submission by either party; paragraph 12 UDRP Rules allows the panel to request further submissions "in its sole discretion." Similarly, paragraph 13 UDRP Rules generally excludes 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."

[20] Compare paragraph 3(b)(xiii) UDRP Rules which requires a UDRP complainant to "submit, with respect to any challenges to a decision in the administrative proceeding canceling or

[Footnote continued on next page]

submission by initiating the arbitration. The scope of the submission would have to be clearly specified in the arbitration clause, i.e., challenges by the domain name holder of a decision by a UDRP panel to transfer or cancel a domain name corresponding to a country name.[21]

Relationship between De Novo *Arbitration and the UDRP*

16. As stated earlier, the requirement for UDRP complainants to submit to a "mutual jurisdiction" does not prevent either party from initiating court litigation elsewhere.[22] Similarly, a State's submission to *de novo* arbitration should not restrict either party's recourse to a national court of justice (even though, for a respondent, this option might be rather theoretical if the State successfully asserts immunity from jurisdiction). However, once the respondent has initiated a *de novo* arbitration procedure and thus concluded the arbitration agreement, the dispute would have to be finally determined by arbitration.

17. Furthermore, the arbitration clause should confirm that the arbitration is to be conducted completely independently from any prior administrative proceeding under the UDRP, that the parties can restate their case completely anew, and that the arbitral tribunal is not bound by any of the factual or legal findings of the UDRP panel.

Place of Arbitration

18. The place of arbitration links an arbitration proceeding to a particular jurisdiction by determining the applicable "arbitral law." The place of arbitration does not necessarily determine the physical place where hearings can be held.[23] If, for example, parties have agreed that the place of arbitration shall be Geneva, the arbitration is subject to Swiss arbitral law, but hearings can also be held elsewhere.

19. The arbitral law, which must be distinguished from the applicable substantive law under which the dispute is to be decided, supplements any arbitration rules chosen by the parties, and sets standards regarding issues such as arbitrability (i.e., whether a dispute is capable of being referred to arbitration), the scope of the tribunal's jurisdiction, and the form, validity and finality of arbitral awards.

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transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction."

[21] An additional question would be whether the option of submitting to a *de novo* arbitration mechanism (instead of a "mutual jurisdiction") should be limited to cases where a State bases its case on the recommended additional criteria set out in paragraph 1 of this paper, or whether it should also cover cases where the State instead relies on the currently existing UDRP criteria by claiming trademark rights in its name.

[22] See paragraph 4(k) UDRP: "The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded."

[23] See, for example, Article 39(b) of the WIPO Arbitration Rules and Article 33(b) of the WIPO Expedited Arbitration Rules: "(b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate." These Rules are available in various languages on the web site of the WIPO Arbitration and Mediation Center, *http://arbiter.wipo.int/arbitration/expedited-rules/index.html*.

20. In general, the place of arbitration is chosen by the parties, and, in the absence of such choice, by the administering arbitral institution (if any).[24] In country name domain name disputes, it would, however, seem unlikely that parties will always be able to agree on a particular place. Alternatively, the arbitration clause could provide that the place of arbitration is determined by reference to the place where the principal office of the administering institution is located. For example, the WIPO Arbitration and Mediation is based in Geneva, so that Swiss arbitral law would apply under such a clause. As another option, the place of arbitration could be determined like the "mutual jurisdiction" under the UDRP: the UDRP complainant (i.e. the State) could be given the choice between the respondent's address as indicated in the relevant Whois database, or the principal office of the domain name registrar as the place of any *de novo* arbitration initiated by the respondent.[25]

Applicable Law

21. Paragraph 15(a) of the UDRP Rules requires a panel to "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 it deems applicable." More specifically, the UDRP establishes an autonomous set of substantive criteria (Paragraph 4(a) UDRP), which circumscribe its substantive scope and determine when a complaint can be granted. In a *de novo* arbitration, there are essentially two options for determining the substantive criteria that should be applied to decide the dispute.

22. As in international arbitration generally,[26] the applicable law and principles may be determined by the parties or, failing party agreement, by the arbitral tribunal. In the latter case, the tribunal may either apply general principles of law or make a more specific choice. However, especially in an international context, such choice is not always obvious. If the tribunal chooses the substantive law of the UDRP complainant (i.e. the State) as the law determining the status of the country name, this law might not be perceived as taking sufficient account of legitimate defenses of the domain name holder. The "home law" of the domain name holder, on the other hand, might insufficiently recognize a right of the State to its name.

23. The issue of the applicable substantive law or principles of law could be simplified if the proposed substantive criteria for country name protection (set out in paragraph 1 of this paper) were also, in a standardized arbitration clause, made applicable to any subsequent

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[24] See, for example, Article 39(a) of the WIPO Arbitration Rules and Article 33(a) of the WIPO Expedited Arbitration Rules: "(a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by the Center, taking into consideration any observations of the parties and the circumstances of the arbitration."

[25] See paragraph 3(b)(xiii) UDRP Rules quoted above.

[26] See, for example, Article 59(a) of the WIPO Arbitration Rules and Article 53(a) of the WIPO Expedited Arbitration Rules: "The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized it to do so."

de novo arbitration. These criteria strike a balance between the right of States to their official names, and the right of domain name holders to use certain terms in good faith. This approach would, of course, narrow the scope of *de novo* review as compared to a judicial review in a court of "mutual jurisdiction" since such court is not bound to apply the UDRP criteria. On the other hand, the arbitration clause could authorize the tribunal to apply, in addition to the proposed substantive criteria, "any rules and principles of law it deems applicable."[27] Moreover, the arbitral tribunal's authority would not necessarily be limited to confirming or reversing the prior UDRP decision.

Institutional or Ad Hoc *Arbitration*

24. As stated earlier, conducting *de novo* arbitration should, as a general rule, be no more burdensome than conducting litigation in a court of "mutual jurisdiction." In this respect, institutional arbitration would seem to offer clear advantages over *ad hoc* arbitration since parties can rely on the support of an experienced arbitral institution which administers proceedings on the basis of established arbitration rules and fees. The institution will provide procedural advice, track deadlines, assist in selecting and appointing qualified arbitrators, and administer any financial aspects of the arbitration.

25. The administering institution must be determined in the arbitration clause. Since it appears unlikely that parties would be able to agree on a particular arbitral institution, the arbitration clause could leave the choice either to the complainant (i.e. the State), as the party submitting to arbitration when filing the UDRP complaint, or to the losing respondent, as the party initiating the arbitration. In either case, the choice of the parties could be restricted to a limited number of arbitral institutions, as is the case under the UDRP where only four dispute resolution providers have been accredited by ICANN. Another option would consist in excluding the parties' choice altogether by determining that all *de novo* arbitrations are administered by one particular institution.

Arbitration Rules

26. Each arbitral institution has developed its own arbitration rules which determine, in different degrees of detail, the structure of the arbitration procedure, including its initiation,[28] the establishment of the arbitral tribunal,[29] challenges to and replacement of arbitrators,[30] the submission of written pleadings by the parties,[31] the means of evidence,[32] hearings,[33] decision-making by the tribunal and the form and notification of awards.[34]

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27 Compare paragraph 15(a) UDRP Rules: "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."

28 See, for example, Articles 6 to 13 of the WIPO Arbitration Rules and the WIPO Expedited Arbitration Rules.

29 See, for example, Articles 14 to 23 of the WIPO Arbitration Rules and Articles 14 to 18 of the WIPO Expedited Arbitration Rules.

30 See, for example, Articles 24 to 36 of the WIPO Arbitration Rules and Articles 19 to 30 of the WIPO Expedited Arbitration Rules.

31 See, for example, Articles 41 to 44 of the WIPO Arbitration Rules and Articles 35 to 37 of the WIPO Expedited Arbitration Rules.

32 See, for example, Articles 48 to 52 of the WIPO Arbitration Rules and Articles 42 to 46 of the WIPO Expedited Arbitration Rules.

27. Such rules could in principle also be used for *de novo* arbitration procedures following a UDRP decision in a country name domain name dispute.[35] It could, for example, be provided that*de novo* arbitration procedures are always conducted under a single dedicated set of rules, regardless of whether one or more arbitral institution has been accredited. Alternatively, each competent institution could be authorized to use its own arbitration rules.

Arbitrators

28. As stated above, the arbitrator(s) deciding a *de novo* arbitration should not be identical or related to the panelist(s) who rendered the UDRP decision. This would have to be specified in the arbitration clause. For the rest, the choice of the arbitrator(s) could be left to the parties. Failing party agreement, the appointment procedure could then be determined in the arbitration rules under which the *de novo* arbitration is conducted. An additional option would be to limit the choice to a single roster of qualified "*de novo* appeal arbitrators" who are not otherwise involved in UDRP cases.

29. Regarding the number of arbitrators, several options exist. In line with the general approach in international arbitration, the number of arbitrators could be determined by agreement of the parties (which appears unlikely) or, in the absence of such agreement, by the arbitral institution (if any). It should be noted, however, that an arbitration which is conducted by a three-member tribunal tends to be more lengthy and costly. Alternatively, it could be provided that *de novo* arbitrations are always conducted by a sole arbitrator.[36] A third option would consist in allowing either party, as under the UDRP,[37] to opt for a three-member tribunal, with consequences for the apportionment of the costs of the arbitration.

Fees

30. In order to provide a meaningful appeal, the cost of a *de novo* arbitration should not be prohibitively high. In this context it should be noted that parties to an arbitration proceeding must pay for the services rendered both by the administering arbitral institution and, more significantly, the tribunal.

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33 See, for example, Articles 53 of the WIPO Arbitration Rules and Article 47 of the WIPO Expedited Arbitration Rules.

34 See, for example, Articles 61 and 62 of the WIPO Arbitration Rules and Articles 55 to 56 of the WIPO Expedited Arbitration Rules.

35 In fact, the WIPO Expedited Arbitration Rules are currently being used with minor adaptations for (first-instance) domain name disputes in the .ac, .pl and .sh country-code Top Level Domains (ccTLDs).

36 Compare, for example, Article 14(a) of the WIPO Expedited Arbitration Rules: "The Tribunal shall consist of a sole arbitrator, who shall be appointed by the parties."

37 See paragraph 6(c) UDRP Rules: "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."

31. Under the UDRP, the fees to be paid to the dispute resolution provider and to the panelists are determined on the basis of relatively moderate lump sums. Hence, the parties have certainty regarding the cost of the proceeding (except, of course, with regard to any attorneys fees they may incur). The standardization of fees is possible because UDRP disputes are fairly standardized, subject to limited timelines, and restricted to clearly defined cases of abusive behavior thus rendering panel workloads relatively predictable.

32. In a *de novo* arbitration, the situation would differ in several respects. In order to enable parties to make a complete factual and legal argument, the procedure must allow for various rounds of pleadings, the submission of new evidence, and one or more hearings. In addition, the task of the panel will necessarily be more complex than that of a previous UDRP panel. Even if the tribunal were restricted to reviewing the UDRP decision on the basis of the same substantive criteria (see paragraph 23 above), it will likely need to perform a more comprehensive legal and factual analysis. As a result, the workload for the arbitrators and, to a lesser extent, the arbitral institution is less predictable than in a UDRP procedure so that a *de novo* arbitration is likely to be more expensive.

33. Fees could either be determined on a basis of a single schedule of fees which would apply regardless of whether there is only one or more accredited arbitral institution. Alternatively, each accredited institution could, as under the UDRP, be authorized to apply its own schedule of fees.

Language of the Procedure

34. As far as the language of the procedure is concerned, it could be provided that the arbitration is to be conducted in the language of the domain name registration agreement, unless otherwise determined by the parties or the tribunal (or, before the tribunal's appointment, by the arbitral institution). This basically follows the language regime under the UDRP[38], with the effect that a *de novo* arbitration would be conducted in the same language as a prior UDRP procedure.

35. *The SCT is invited to take note of the contents of this document and consider whether a special appeal mechanism by way of* de novo *arbitration should be recommended for domain name disputes involving country names.*

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[38] See paragraph 11 UDRP Rules.