# UDRP Pilot Project

The Czech Arbitration Court (CAC) proposes that it  runs two pilot projects (Pilot) related to its implementation of UDRP. During the Pilot, the following proposed new UDRP-related services will be tested:

1. Simplified way of sending signed hardcopies of Complaints and/or Responses to the Provider (Par. 3(b), Par. 5(b) of the Rules)

This Pilot aims at exploring  and testing the legal and practical implications of **a service enabling the Parties to submit signed hardcopies of their Complaints and/or Responses in a substantially simplified way**.

After the Complainant and/or Respondent file their submissions electronically on the CAC's on-line platform, the platform will generate, on request of the filing party, an on-line case file containing the filed submission(s) with their contents locked to prevent any potential hampering. At the same time, the platform will generate a document signature page listing all the documents filed by the filing Party and the statement according to Par. 3(b)(xiv) or Par. 5(b)(viii) of the Rules.

The filing Party will be asked to confirm on the signature page that the contents of the documents locked in the on-line case file correspond to the documents filed by the filing Party. The filing Party will check the on-line case file, then print the confirmation, sign and post it to the CAC's Service Center (Service Center) by registered mail, using a prescribed number of copies according to the Rules. After receiving the signed hardcopy of the signature page, the Service Center will print the whole submission and deliver it in a prescribed number of counterparts together with the signature pages to the responsible person at the CAC. CAC will continue administering the UDRP proceeding according to the Rules. Detailed step-by-step description of this procedure forms Annex 1 below.

2. Service of delivery of signed hardcopies (Par. 3(b), Par. 5(b) of the Rules)

This Pilot also aims at exploring and testing the legal and practical implications of a new **service related to electronic UDRP, consisting of printing and delivering signed electronic documents (this service is also referred to as the Fast-Track)**. If a document, which under UDRP must be filed in an electronic form and as a signed hardcopy (i.e. Complaint and Response), is filed and signed electronically using a secure process which authenticates the electronic document and its sender in a similar way as handwritten signatures authenticate hardcopy documents (Strong Authentication), the Service Center will provide, on request from the filing Party and on its behalf, a service of delivery of the respective filing to the CAC.

The service of delivery will consist of: (i) printing the signed electronic filing; (ii) signing one counterpart of printed documents on behalf of the filing party (the original); and (iii) preparing a prescribed number of copies and delivering the printed documents to the responsible person at the CAC.

The detailed step-by-step description of this procedure forms Annex 2 below. The description of the Strong Authentication process is contained in Annex 3 below. A report by Prof. Chris Reed comparing hardcopy documents with handwritten signatures and hardcopies of documents signed electronically using Strong Authentication is included in Annex 4 below.

## 3. Timing and organization of the Pilot

The Pilot is planned for this autumn/winter of 2008. It would run for up to 3 months. During the Pilot interested parties may be able to file their Complaints and/or Responses using the new proposed services and in the traditional way. It is proposed that during the Pilot the new proposed services are provided by the CAC's Service Center. The Service Center may be a department of the CAC or it may be a separate legal entity located at the CAC's premises. The Service Center would provide its piloted services on behalf of the filing parties – Complainants or Respondents under a service agreement and would charge them a service fee. The CAC would refer to the Service Center on its on-line platform.

**The Pilot aims to discuss and review various legal and operational aspects of the new proposed services.**

Annex 1

| **I. Registration of a user on the on-line platform (without regard to the subsequent form of communication selected)** | | |
|---|---|---|
| | User | On-line platform |
| 1 | Access to www.adr.eu | |
| 2 | Complete Registration Form including:<br>- Name<br>- Address<br>- E-mail<br>- Username (login)<br>- Password | Secured communication using SSL (Secured Service Layer) protocol initiated<br>(https are used for security reasons to protect personal data contained in the registration form) |
| 3 | | User account opened |
| 4 | It is now possible to log on the platform using a:<br>Username<br>Password<br>Now the user can  access the Service Center and contract on-line for the piloted service(s). | |

| **II. Simplified filing of signed hardcopies** | | |
|---|---|---|
| | User | On-line platform |
| 1 | Access to the on-line platform on www.adr.eu | SSL communication initiated |
| 2 | Logging on using a:<br>Username<br>Password | |

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|---|---|---|
| 3 | User accepts on-line General Terms and Conditions (GTC) of the Service Center and opts for the service of simplified filings of signed hardcopies |  |
| 4 | User files its documents on the platform (in PDF, jpg and other formats) | Filed documents appear in the electronic case file, generated on the platform |
| 5 |  | Platform generates a User Signature Form containing the date and time of filing, list of documents filed together with a hash function of the filed documents (SHA-1/SHA-2) and the statement according to Par. 3(b)(xiv) or Par. 5(b)(viii) of the Rules. The documents are locked on the on-line platform. In addition, the form requests the user to confirm that the content of the documents locked in the electronic case file on the platform corresponds to the documents filed by the user. |
| 6 | User verifies the integrity of the documents filed (by comparing the contents or by checking that the hash function generated on the User Signature Form corresponds with the hash function of the documents contained in the electronic case file on the platform). |  |
| 7 | User prints the User Signature Form, signs it without modifying it and mails it, in a prescribed number of copies, by registered mail to the postal address of the Service Center (same as the CAC's address). |  |
| 8 |  | Service Center reviews the delivered User Signature Form. If it is OK (not modified and signed), Service Center will print the whole submission and deliver it in a prescribed number of copies together with the signature pages to the responsible person at the CAC. |
| 9 |  | Case Administrator confirms on the on-line platform that the CAC received the filed documents in an electronic form and in signed hardcopies. |

Annex 2

| I. Registration of a user on the on-line platform<br>(without regard to the subsequent form of communication selected) | | |
|---|---|---|
| | user | On-line platform |
| 1 | Access to www.adr.eu | |
| 2 | Complete Registration Form including:<br>- Name<br>- Address<br>- E-mail<br>- Username (login)<br>- Password. | SSL communication initiated<br>(https are used for security reasons to protect personal data contained in the registration form). |
| 3 | | User account opened |
| 4 | It is now possible to log on the platform using a:<br>Username<br>Password | |

| II. Service of delivery of signed hardcopies (using Secure Authentication)<br>(Description of the Secure Authentication process is included in Annex 3 below) | | |
|---|---|---|
| | User | On-line Platform |
| 1 | User logs on the platform using a<br>Username and Password | SSL communication initiated |
| 2 | User accepts on-line General Terms and Conditions (GTC) of the Service Center and opts for the service of delivery of signed hardcopies | |
| 3 | User selects E-UDRP – Strong Authentication – Generation of a Personal Authentication Card (PAC). | A form for the PAC generation will appear on the platform. |

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|---|---|---|
| 4 | User will confirm by double-clicking on the applicable form that he wishes Service Center to generate his PAC<br>This process is suited mainly for persons involved in multiple UDRP proceedings as Complainants or Respondents or their representatives. The description of the Secure Authentication Process is contained in Annex 3 below. |  |
| 5 |  | Service Center generates and prints the User‘s PAC; its copy is attached to the User‘s Account at the Service Center’s section of the on-line platform. |
| 6 |  | Service Center mails the PAC Card by registered mail with advise of delivery (which requires a hand-written signature from the recipient) to the User‘s address, indicated on the Registration Form. In the accompanying letter, Service Center accepts the appointment as the User‘s agent for the service of delivery. |
| 7 |  | If Service Center‘s letter addressed to the User is returned as undelivered, the PAC is destroyed together with its copy attached to the User’s Account on the platform (and the PAC cannot be used again). |
| 8 | User must activate his PAC after receiving it. He logs on the platform with his Username and Password. | SSL communication is initiated |
| 9 |  | Platform generates a User Authentication Request (4 fields of the PAC selected at random) |
| 10 | User responds to the User Authentication Request by filing the contents of the 4 selected fields of his PAC on the platform |  |
| 11 |  | If the User’s response is correct, his PAC is validated for the first time and he can start |

| | | |
|---|---|---|
| | | filing his Complaint and/or Response on the on-line platform – see part III. below. |
| 12 | In place of a signature on the digital Complaint and/or Response forms, the User will include a digital image of his signature. | |
| 13 | | If the User's response to the User Authentication Request is incorrect, new User Authentication Request is generated with 4 new fields of the PAC to file. The User has 5 attempts to authenticate his PAC, after which the platform terminates the PAC activation and recommends the User to start the activation process again. User is advised by email to change his Password. |

**III. Service of delivery of signed hardcopies (using Secure Authentication) – cont.**

**Filing Complaint and/or Response only electronically**

| | User | On-line Platform |
|---|---|---|
| 1 | Log on the on-line platform using a Username and Password | SSL communication initiated |
| 2 | User files documents in different formats (PDF, jpg etc.) to the on-line platform). | |
| 3 | | Platform generates a User Acceptance Form containing the date and time of filing and list of documents filed together with a hash function of the filed documents (SHA-1/SHA-2). The documents are locked on the on-line platform. In addition, the form requests the user to confirm that the content of the documents that are locked in the electronic case file on the platform corresponds with the documents filed by the User. The form will also request the user to confirm the online agency agreement with the Service Center. |

| | | |
|---|---|---|
| 4 | User verifies the integrity of the documents filed (by comparing the contents or by checking that the hash function generated on the User Acceptance Form corresponds with the hash function of the documents contained in the electronic case file on the platform). | |
| 5 | User accepts the User Acceptance Form by double-clicking. | Platform generates a User Authentication Request |
| 6 | User responds to the User Authentication Request | |
| 7 | | User Acceptance Form, being confirmed by the User, appears in the electronic Case File  and on User's account of Service Center's section of the platform. |
| 8 | | Service Center will immediately print the whole submission, sign one counterpart on behalf of the filing party (the original), prepare a prescribed number of copies and deliver the counterparts to the responsible person at the CAC. |
| 9 | | Case Administrator confirms on the on-line platform that the CAC received the filed documents in an electronic form and in signed hardcopies. |

Annex 3

## STRONG AUTHENTICATION

Definition:

"*Secure Authentication* means a method of authenticating electronic communications and/or documents filed in electronic form via the on-line platform of the Provider. It is a secure process which not only establishes the identity of the Party (or its authorized representative) communicating and/or filing documents via the Provider's on-line platform but also provides strong evidence that the integrity of the communications or documents sent has been preserved and that the Party approves of and intends to be bound by its content."

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### Concept

### ***Strong Authentication***

The following is a specification of the Strong Authentication process.

### Strong Authentication (of two factors)

A two-factor method of Strong Authentication will be applied. The two factors are 1) the knowledge of a password (something known, the single factor) and 2) providing the correct answer to a question (which is possible to do only when possessing a shared secret– the grid or "PAC Card," the second factor).

This allows for a good balance between security and usability.

An example of the grid is shown below:

| UDRP | A | B | C | D | E | F | G | H | I | J | K | L | M | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 9 | 4 | 6 | 4 | 1 | 8 | 4 | 1 | 4 | 7 | 4 | 7 | 9 |
| 2 | 7 | 1 | 6 | 8 | 5 | 0 | 0 | 3 | 6 | 8 | 5 | 1 | 9 | 8 |
| 3 | 9 | 5 | 8 | 7 | 3 | 2 | 1 | 2 | 7 | 2 | 3 | 6 | 3 | 5 |
| 4 | 1 | 7 | 9 | 0 | 2 | 6 | 4 | 7 | 9 | 1 | 5 | 2 | 4 | 1 |
| 5 | 5 | 2 | 6 | 5 | 9 | 7 | 3 | 0 | 8 | 3 | 2 | 8 | 3 | 6 |

The format of the grid (or PAC Card) is very flexible. Its contents could be numeric, alphanumeric, etc. What is important is that each user has a unique, randomly generated grid that he will use for the second factor of authentication.

The authentication question is associated with the specific user account, based on the first step of authentication – username and password.

In the example above, the user is called upon by the on-line platform to supply the correct answer using certain grid coordinates—for example B5, C3, M4, D3 and G1. The user would respond with the grid cell contents that correspond to the coordinates asked. In this example, the user would enter the grid locations for location

B5, C3, M4, D3 and G1. - “2”, “8”, “4”, “7”, and “8.” For each subsequent login, a different random quiz would be generated and the user would be prompted for the appropriate response. Thus, the user has a second factor for authentication with a one-time challenge and response mechanism, designed to be resistant to fraudulent impersonation.

The application of the Strong Authentication method contains other process mechanisms safeguarding the security of the system.

Namely:

1. A trustworthy handover of the PAC Card and the initialization password. An interested Party will receive his username when registering on-line. Then, his PAC Card and initialization password will be sent separately (by registered mail or express courier, with confirmation of delivery) to the addresses he indicated during his on-line registration.

2. Once the Party logs in for the first time, his card is initialized. Then, he requests a password for further logins, using Strong Authentication; the new login password is sent to him via the on-line platform.

3. It is possible to change a Party’s data (including the login password) only after Strong Authentication; the new login password is sent to him via the on-line platform.

4. The card will have an expiration date after which it is no longer valid.

5. If the card is lost or damaged, or if there is the suspicion that it has been or will be copied, the Party is obligated to inform the CAC of the matter immediately, whereupon the card is blocked and a new card will be sent to him. Access to the account will be possible only after initializing the new card.

**Supplemental Processes**

Under the Strong Authentication process, additional measures will be implemented helping to ensure all the properties demanded for Secure Authentication.

1) Familiarization/request

The Party is demonstrably familiarized with the whole process of Strong Authentication and the conditions of its application.

2) Acceptance (INTEGRITY)

The documents filed electronically through the Strong Authentication will be posted on the on-line platform, together with their hash function. The receipt by the CAC of every document filed by a Party using Strong Authentication will be automatically acknowledged by e-mail (*i.e.*, a communication channel other than the on-line platform), requesting the Party to check his documents stored on the on-line platform and to confirm, using Strong Authentication through the on-line platform, whether:

- the documents stored conforms fully with those he submitted (verification of integrity);
- he approves of the contents of the document; and
- he intends to be bound by the document.

If the Party does not submit his verification within 48 hours of notification, the electronic submission will be considered as withdrawn and nullified.

3) SSL Communication

(IDENTIFICATION + IRRECUSABLE OPERATION + CONFIDENCE)

After the Party logs in to the on-line platform (in accordance with the steps described above), all communication will take place with the aid of SSL.

Annex 4

# CAC UDRP pilot project

**Report by Chris Reed**
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This Report has been prepared for the Czech Arbitration Court (“CAC”). The views expressed are those of Professor Reed in his personal capacity.

The purpose of the Report is to provide an opinion on the legal compliance of the proposals in the pilot project with the formal requirements of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) and with general legal principles applicable to dispute resolution and evidence in such proceedings.

## 1 Simplified submission of hard copies of Complaints and Responses

Under the Rules, Complaints and Responses are required to be submitted to the Provider in hard copy form as well as in electronic form (paras 3(b), 5(b)), together with a declaration in the prescribed wording signed by the Complainant/Respondent or its authorised representative (paras 3(b)(xiv), 5(b)(viii)). These are the only requirements of form with which such submissions must comply.

The pilot project proposes that compliance with these rules should be achieved by electronic transmission of the relevant documents making up the Complaint or Response to a Service Center to be established by CAC. The Complainant/Respondent will check the accuracy of these documents online, and when satisfied will ask the Service Center to lock the document file and generate a signature page. That signature page will declare that each submitted document is accurate and contain the declaration required by para. 3(b)(xiv) or 5(b)(viii) as appropriate.

The Complainant/Respondent will then print out the signature page in the required number of copies, sign them, and send the signed copies to the Service Center. When they are received, the Service Center will print out the locked document file in the appropriate number of copies, attach to each set a signed signature page, and submit the whole to the Provider on behalf of the Complainant/Respondent.

In my opinion, submission of Complaints or Responses in this way will comply with the formal requirements of the Rules. The Service Center will as a matter of fact be the Complainant’s/Respondent’s agent for the purposes of printing out the documents and submitting them to the Provider, and for the avoidance of doubt could formally be appointed as such by an online agreement when the Complainant/Respondent first submits documents to the Service Center online. The signature page containing the prescribed declaration will actually have been signed by the Complainant/Respondent, and there is no requirement under the Rules for any other document to be signed. Thus the requirements of the Rules for submission to be in the form of hard copy accompanied by a signed declaration will have been met.

# 2 Secure online filing and hard copy delivery

The proposal here is to accept online filing of document under Strong Authentication (as described in Annex 3 of the pilot project document), and then for the Service Center to print off, certify, sign and deliver hard copy.

In my opinion, the submission of documents electronically using Strong Authentication provides authentication evidence that is at least as strong as that provided by documents signed with a hand-written signature, as explained in sections 2.1 and 2.2 below.

Electronic submission is, however, incapable of meeting the requirement of the Rules that the appropriate declaration is delivered as signed hard copy. This would be overcome by the Service Center signing the hard copy as the authorised representative of the Complainant/Respondent. This *would* comply with the Rules if the Service Center were properly authorised to act as such a representative. Authority to sign in this capacity would be conferred by the online agreement referred to in section 1. In all the common law jurisdictions of which I am aware, such an online agreement would confer on the Service Center the necessary authority to sign as agent. I am not, however, able to state with certainty that the laws of other jurisdictions would necessarily allow authority to be conferred by means of an online agreement. This issue could easily be resolved by making the online agreement subject to the law of the jurisdiction in which the Service Center is established, which would be a natural choice of law for such an agreement, provided that the applicable law permits authority to act in this way to be conferred via an online agreement. On the assumption that the Service Center would be established in the Czech Republic, the relevant law would be Czech law. I am informed by the CAC that Czech law permits authority to be conferred in this way.

## 2.1 The limits of hand-written signatures

A hand-written signature authenticates a hard copy document in three respects:

1. It provides evidence of the identity of the person who signed the document, on the assumption that hand-written signatures are unique to each signatory. If a hand-written signature is alleged to be a forgery, expert examination of the signature can provide an assessment of how likely it is that the signature was forged.

   It is relevant to note that, unless the signature is already known to the recipient of the document, the recipient is in fact relying on the sender's self-certification of his or her identity. If the person who is asserted to have sent the document denies that he or she did so, the signature provides a mechanism for checking that matter at a later date.

2. It provides evidence that the signatory agrees to and intends to be bound by the content of the document. This evidence derives from the law's assumption that all signatories are aware of the convention that signing a document shows their agreement to it and intention to be bound by it.

3. It provides evidence that the document has not been altered since it was signed, on the basis that alteration of the text would be detectable as it would make physical changes to the hard copy. This evidence is weaker in the case of multi-page documents unless each page is signed.

It is important to note that a hand-written signature does not prove any of these matters conclusively. However, it provides sufficiently good evidence such that the hand-written signature has been accepted for hundreds of years by courts, public bodies and private individuals as an appropriate authentication method for documents.

## 2.2 Strong Authentication

Strong authentication meets the most common legislative requirements to constitute an electronic signature[1] because it provides the necessary evidence of the identity of the signatory, intention to be bound and non-alteration of the document. It further provides evidence which is functionally equivalent to, or in some cases stronger than, the evidence provided by a hand-written signature.

The concept of Strong Authentication in the pilot project is based on well-known concepts of strong authentication in computer security. It is standard practice to achieve strong authentication by requiring the communicating party to provide two different pieces of authentication of different types: in this case these are the user password (something known) and the one-time password generated via the PAC card (something possessed). The PAC card is functionally equivalent to the electronic tokens commonly used for applications such as electronic banking, and if produced in a secure manner is capable of producing an equally secure one-time password.

Strong Authentication as proposed would produce the following evidence:

1. Evidence of identity will be derived from the combination of the self-identification of the document sender when registering, coupled with receipt of the PAC card by a secure method at the registered address. Because the secure delivery method for the PAC card requires a hand-written signature from the recipient, that hand-written signature will be further evidence of identity.

   If, as is likely in many cases, the party to UDRP proceedings is an organisation rather than an individual, the signature on receipt of the PAC card may not be that of the individual who is conducting the proceedings. However, the combination of delivery to the organisation's address with the hand-written signature of a person authorised by the organisation to sign for deliveries will be strong evidence that the organisation is the originator of communications using Strong Authentication. The legal question in these cases is whether the organisation is responsible for the communication, not whether a particular individual

[1] For example, it meets the requirements of the US Electronic Signatures in Global and National Commerce Act 2000 section 106(5) through being a "process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record". It also complies with Article 2(1) of the EU Directive 1999/93/EC on a Community framework for electronic signatures, which defines an electronic signature as "data in electronic form which are attached to or logically associated with [the document to be signed] and which serve as a method of authentication".

can be identified, and Strong Authentication provides good evidence of the identity of that organisation.

Just the same as for hand-written signatures, as explained in section 2.1 above, Strong Authentication does not establish the identity of the communicating party in advance, but provides an equivalent method to confirm that party's identity in the event of later dispute. It might be possible to derive evidence in advance by making a check from third party sources that the registered address corresponds to the individual or organisation identified during registration – such evidence might come from e.g. trade or telephone directories. However, a system to collect such evidence would be difficult to implement across national boundaries, and is not necessary if the aim is to provide equivalent identification to that provided by hand-written signatures.

2. Evidence that the communicating party agrees to and intends to be bound by the content of the document is derived from the process which requires the communicating party to log in to the online platform and confirm the accuracy of the documents previously uploaded. This is an express confirmation of these matters by the signatory, and is thus stronger evidence than the implied confirmation provided by signing a document with a hand-written signature. Most countries' laws permit in some circumstances a signatory to deny that a hand-written signature procured by e.g. deception was a valid demonstration of agreement or intention to be bound.

3. The confirmation process also provides evidence that the document has not been altered since it was uploaded, or that the correct document was uploaded, or that the upload was not made by some other person. The communicating party is stating expressly that he or she has checked the document content. Even if this statement is untrue, and no check was in fact carried out, the law in common law countries would estop the communicating party from denying that the check was made. I am not competent to comment on the laws of other countries, but would expect that similar legal principles would apply.

   Requiring the confirmation in a two-stage process via separate SSL sessions is a useful precaution against interception by hacking, and is thus stronger evidence on these points than would be derived from the single-stage process of applying a hand-written signature.

## 2.3 Conclusions on Strong Authentication

From the analysis above, I have formed the opinion that Strong Authentication provides authentication evidence that is equivalent to or better than that provided by documents signed with a hand-written signature. Evidence of identity is at least as strong in the case of private individuals, because the individual is required to give a hand-written receipt for the PAC card, and rather stronger in the case of organisations. Evidence of agreement and intention to be bound, and that the document is unaltered, is distinctly stronger in the case of Strong Authentication.

If the technical and operational procedures adopted for Strong Authentication comply with standard practices in the computer security field, my view is that Strong Authentication is functionally equivalent to, or even better than, hand-written signatures for the purpose of authenticating documents. I also take the view that it amounts to an electronic signature for the purposes of most e-signature laws, including the EU Directive which would be applicable to the CAC and the Service Center.

# 3 Status of the Service Center

The pilot project document states:

> The Service Center may be a department of the CAC or it may be a separate legal entity located at the CAC‘s premises.

This is a decision to be taken once the results of the pilot project are known.

If the favoured option is that the Service Center should be a department of the CAC, a number of potential issues will need to be considered. These issues would not arise if the Service Center were established as a separate legal entity.

a. **Liability.** There is a potential for liability claims by a Complainant/Respondent if the Service Center fails to submit the documents as authenticated (e.g. submitting an earlier version of some document because of system error). This liability would need to be defined and controlled by the agreement between the Complainant/Respondent and the Service Center. The question whether the potential for liability claims creates a reputational risk for the CAC in its role as Provider also needs to be considered.

b. **Due Process.** The potential for liability claims discussed in the previous paragraph gives the CAC a theoretical incentive to allow the amendment of incorrect submissions rather than rejecting them, where a rejection might give rise to a liability claim. Such a potential conflict of interest might be contrary to the accepted principles of due process. Amendments to the constitution of the CAC, or appropriate language in the agreements between the CAC and the Complainant/Respondent, would need to be considered in order to address this issue.

c. **Rules compliance.** Paras 3(b) and 5(b) of the Rules require the documents to be submitted to the Provider in hard copy. If the Service Center is a department of the Provider, it might be arguable that printing out of hard copy by the Service Center and submission to a different CAC department is not a proper submission, because the documents will never have been received by CAC in hard copy as required by the Rules. This is not to say that such an objection would be valid, but thought needs to be given as to whether this issue needs to be resolved, and if so whether it can be addressed via the terms of the agreements between the CAC and the Complainant/Respondent.

**Professor Chris Reed, 18 June 2008**