

**Rights Protection Mechanisms PDP Working Group
Actions & Notes ICANN66 Sessions 1, 2, and 3
02 and 03 November 2019**

Actions:

1. URS Sub Team Preliminary Recommendations:

OPERATIONAL FIX (Providers ST)

Providers should modify their operational rules in terms of automatically populating the Complaint Form using WHOIS/RDS data consistent with applicable ICANN Consensus Policies

ACTION: Staff will look at the recommendation and consider the work of the EPDP because it seems this recommendation is over taken by events.

POLICY RECOMMENDATION (Providers ST)

*Revised language (in form of a recommendation): The Providers Sub Team recommends that the URS Rules 3(b) be amended in light of GDPR and the permissible filing of a “Doe Complaint”. Specifically, the Providers Sub Team recommends that the URS Procedure para 3.3 be amended to allow the Complainant to update the Complainant within 2-3 days after the URS Provider disclosing the registrant data related to the disputed domain name. The Providers Sub Team also recommends that expert intermediaries should conduct outreach **and education efforts to increase the awareness on the concept of “Doe Complaint”, which is allowed under the Temporary Specification for gTLD Registration Data.***

ADNDRC should change its operational rules to comply with URS Procedure para 4.2, requiring that Notice of Complaint be transmitted to the Respondent, with translation in the predominant language of the Respondent, via email, fax, and postal mail

ACTION: Move to column 2, and capture in the form of a recommendation.

ACTION: Staff will check against the recommendations of EPDP on GDPR. The Temp Spec speaks to the Doe Complaint. Look at recommendation 23.

OPERATIONAL FIX (WG)

ICANN, Registries, Registrars, and Providers should have access to up-to-date contact information and for interaction

(Providers ST)

- *ICANN’s email addresses for Registry contacts should be kept up to date for use by Providers*
- *GDD, Providers, and Registries should jointly develop a uniform system for interaction between the Providers and the Registries regarding Registry notice requirements*

ACTION: Provide the context and decide if it is needed.

OPERATIONAL FIX

Guidance for URS Practitioners and Examiner on clear and convincing burden of proof

ACTION: Add back in “Recommends working with Providers, to hire Researchers and/or Academics who study URS decisions closely, perhaps with the help of volunteer Practitioners to create an “Overview for URS Decisions” (like the WIPO Overview on UDRP Cases)”.

(Providers ST)

- All Providers should provide similar types and forms of guidance to their Examiners
- Examiners should document their rationale in all issued Determinations; in particular, when an Examiner finds that a registrant has registered and used a domain in bad faith, supporting facts should be cited

(Documents ST; see also Section G)

- WG to consider recommending the development of an administrative checklist or basic template of minimum elements that should go into a Determination

ACTION: Staff should review the transcript from the meeting on 02 November and produce a revised version of the language for Sub Team Leader and WG consideration.

POLICY RECOMMENDATION *(Documents ST)*

The Documents ST suggests that the question of adequacy and scope of remedies be deliberated among the full WG

ACTION: Delete this recommendation.

2. Individual URS Survey Results:

ACTION: Co-Chairs and Liaison will discuss the suggested approach for the URS individual proposals.

Notes:

1. Review Agenda/Updates to Statements of Interest:

-- No updates provided.

2. Review Sunrise and Trademark Claims Preliminary Recommendations:

-- Reviewed the preliminary recommendations and questions for public comment to be included in the Initial Report. No discussion.

3. Review URS Sub Team Preliminary Recommendations:

OPERATIONAL FIX *(Providers ST)*

A URS Provider should check the websites of other URS and UDRP Providers to ensure that a disputed domain name is not already subject to an open/active URS/UDRP proceeding

-- Present both the recommendation as well as the question for public comment.

-- Question: Is there a prohibition to a name not being already subject to an open/active URS/UDRP proceeding? Answer: No.

- Suggest there is no need for this fix.
- URS providers do check. We will know when we request verification when one is already locked.
- Identify the rule as a reference to inform the WG's language. Ref: 3(g) of the rules.

OPERATIONAL FIX (Providers ST)

Providers should modify their operational rules in terms of automatically populating the Complaint Form using WHOIS/RDS data consistent with applicable ICANN Consensus Policies

New Language: The Providers Sub Team recommends that URS Providers comply with current and future ICANN Consensus Policies with regard to WHOIS/RDS and adjust their practice of using WHOIS/RDS data to automatically populate the Complaint Form.

- The provider has an online complaint generation program. The system populates the complaint. It's not done manually. The practice has not changed subsequent to GDPR.
- Change to "if the provider".
- Not sure what it means to "adjust their practice"?
- Saying that if you use registrant data you should use it according to consensus policy.
- Not sure what we are trying to address here.

ACTION: Staff will look at the recommendation and consider the work of the EPDP because it seems this recommendation is over taken by events.

OPERATIONAL FIX (Providers ST)

GDD, Providers, and Registries should jointly develop rules for the timely response by Registries to requests for non-public information from Providers

New Language: The Providers Sub Team recommends that Registries timely respond to URS Providers' requests for non-public information of disputed domain names that are subject to URS proceedings. The Providers Sub Team also recommends the Implementation Review Team consider ways in which ICANN Org work with Providers and Registries to address this implementation issue.

POLICY RECOMMENDATION (Providers ST)

*Revised language (in form of a recommendation): The Providers Sub Team recommends that the URS Rules 3(b) be amended in light of GDPR and the permissible filing of a "Doe Complaint". Specifically, the Providers Sub Team recommends that the URS Procedure para 3.3 be amended to allow the Complainant to update the Complainant within 2-3 days after the URS Provider disclosing the registrant data related to the disputed domain name. The Providers Sub Team also recommends that expert intermediaries should conduct outreach **and education efforts to increase the awareness on the concept of "Doe Complaint", which is allowed under the Temporary Specification for gTLD Registration Data.***

- What is the “expert intermediaries” supposed to cover? Who is doing what? This seems to be an overreach.
- The second "Complainant" should be "Complaint" and the following "disclosing" should be "discloses" and in the second paragraph "on" should be "of"
- Currently the URS Providers practice is to use the pared down Complaint information, but otherwise it would be the full WHOIS information, which might violate GDPR.
- Re: WG should informally communicate with the EPDP Team about this issue: European civil law systems do not recognize the common law concept of "Doe Complaint", and the concept is not well understood in Europe. This action seems to be overcome by events.

ADNDRC should change its operational rules to comply with URS Procedure para 4.2, requiring that Notice of Complaint be transmitted to the Respondent, with translation in the predominant language of the Respondent, via email, fax, and postal mail

- **ACTION: Move to column 2, and capture in the form of a recommendation.**
- **ACTION: Staff will check against the recommendations of EPDP on GDPR. The Temp Spec speaks to the Doe Complaint. Look at recommendation 23.**

POLICY RECOMMENDATION (Providers ST)

For “Doe Complaints”, Providers should first send notice to Respondents via the online registrant contact form, if available, and then by the required methods, as soon as relevant WHOIS data is forwarded by the Registry

New language: The Providers Sub Team recommends that a URS Provider first sends notice to the Respondent via its online registrant contact form, if available, and then by the required methods after the Registry has forwarded the relevant WHOIS/RDS data (including contact details of the registrant) to the URS Provider.

- Clean it up so that we don’t have two different waves. Wait to have one.

OPERATIONAL FIX (WG)

ICANN, Registries, Registrars, and Providers should have access to up-to-date contact information and for interaction

(Providers ST)

- *ICANN’s email addresses for Registry contacts should be kept up to date for use by Providers*
- *GDD, Providers, and Registries should jointly develop a uniform system for interaction between the Providers and the Registries regarding Registry notice requirements*

- As long as the URS operators have the updated information from ICANN then they all would be up to date.

- Do we need this? It’s not even possible to ensure that the contacts are up to date.

- **ACTION: Provide the context and decide if it is needed.**

Related question:

The Documents Sub Team recommends that public comment be sought on the following question: Have Registry Operators experienced any issues with respect to receiving notices from URS Providers? Were these notices sent through appropriate channels? Did the notices contain the correct information?

OPERATIONAL FIX

Guidance for URS Practitioners and Examiner on clear and convincing burden of proof

- Add back in “Recommends working with Providers, to hire Researchers and/or Academics who study URS decisions closely, perhaps with the help of volunteer Practitioners to create an “Overview for URS Decisions” (like the WIPO Overview on UDRP Cases)”.
- An overview might be beyond what is needed.
- Expand to URS “parties and examiners”.
- Don’t ask whether educational materials should be developed.
- Include panelists too.
- Seems not to be an operational fix, seems more substantive.
- Try to talk about “clear and convincing” without writing law – particularly re: implementation guidance.

(Providers ST)

- *All Providers should provide similar types and forms of guidance to their Examiners*
- *Examiners should document their rationale in all issued Determinations; in particular, when an Examiner finds that a registrant has registered and used a domain in bad faith, supporting facts should be cited*

(Documents ST; see also Section G)

- *WG to consider recommending the development of an administrative checklist or basic template of minimum elements that should go into a Determination*

- The third bullet would be covered in implementation details.
- Delete the action items.
- Rephrase the first bullet as a recommendation. What about content of guidance? This is too vague.
- Second bullet point goes to the issue of what the problem was. But it is a little general. Should say “briefly” or “in sufficient detail to grasp the rationale”.
- Should be a checklist of basic elements that should be included.
- Should be some uniform basic guidelines on what should be included in the rationale.
- Include a question of whether specific guidance should be developed.
- Need accepted language on “clear and convincing” evidence (“black letter law”).
- <comment>I would have thought rationale would logically include reference to facts. The problem that we were trying to address - if I recall correctly - is that some determinations did NOT have rationale at all. <comment> <comment> so in short, I think the first 2 bullets are fine<comment>
- First, the discussion was again based on a notion that there was a systematic problem. I went through all the decisions and there were only 7% of over 900 decisions that did not have

the rationale spelled out. That means that 93% had a rationale. there is no evidence that those which had a rationale were flawed and missing information. Consequently, I am very reluctant to have standards or guidance that becomes micro-management -- particularly if it is being done by people who do not file or handle URS cases and who are not Panelists. The Panelists in URS cases get paid very little. If you start imposing a number of guidelines etc you have to keep in mind the time that Panelists will have to take to render decisions. The issue I see is that many good Panelists will simply stop handling URS cases.

-- **ACTION: Staff should review the transcript from the meeting on 02 November and produce a revised version of the language for Sub Team Leader and WG consideration.**

POLICY RECOMMENDATION (Documents ST)

The Documents ST suggests that the question of adequacy and scope of remedies be deliberated among the full WG

ACTION: Delete this recommendation.

POLICY RECOMMENDATION (Providers ST):

URS Technical Requirements 3 and Registry Requirement 10 should be amended, and compliance efforts should be directed, to address problems with the implementation of the relief awarded following a URS decision; the implementation of a settlement (generally a domain transfer at the registrar level); and implementation of Complainant requests to extend a suspension

-- <comment> suspension does not involve transfer, so it's to do with "How can a Complainant who is not the Registrant extend a suspension?"<comment>

-- Because URS implementation is handled at the registry level, I believe the prevailing complainant is apprised as part of the URS decision implementation language which registry contact to communicate with to request the optional 1 year extension of the suspension period. If the registry is recalcitrant in taking the appropriate action there, I guess that would be an issue to raise to ICANN Compliance.

4. Timeline, Next Steps, & Initial Report: This will be a brief reminder of the timeline, next steps, and Initial Report structure:

-- Review of the timeline, next steps, and structure of the Initial Report. No discussion.

5. Reminder of TMCH Charter Questions Closed Discussions:

- Reminded the WG that the discussion on the questions are closed.
- The summary document has been sent to the WG.

6. Individual URS Survey Results:

-- Results are not a vote, but taking the temperature in the room.

- The WG could agree to include proposals for public comment in the main body of the report, or link to them in the wiki in an appendix, but anyone can comment on anything that is in the Initial Report, even if it isn't in the main body of the report.
- Where do we cut off the threshold? How do we decide what to include?
- Thought that we were looking for is whether there were proposals that had so little support that they could be eliminated, but it looks like there would not be many of those.
- The category of support for the URS proposals was "adequate support" as opposed to "wide support" for Sunrise and TM Claims proposals.
- If we can't make a decision then we shouldn't include them in the main report as proposals supported by the WG. They could be included in an appendix.
- Use it as a rough tool, as a sense of the room. It's not a poll, and it's not statistical.
- I didn't answer survey to say which I support as proposals, I voted for what I thought should go out for comment. So, a number that I supported I positively do not agree with being adopted as recommendations!
- So, publish all in the main report, publish all in an annex, or select among them.
- Need to include contextualization when putting out the proposals. Go through the proposals after we have the public comments.
- Could include levels of support from the earlier discussion – provided prior to Barcelona: "adequate support" and "limited support".
- Either put them all out or decide to review the proposals and see which ones have support.
- Would be more efficient to review the proposals after public comment if the WG can have a discussion on the proposals now to provide more context as to levels of support.
- Some proposals may have been overcome by events and are no longer valid.
- Could start the discussion with those that got the most "no" responses in the survey.

ACTION: Co-Chairs and Liaison will discuss the suggested approach for the URS individual proposals.