LIST OF TOPICS FOR REVIEW OF THE UNIFORM RAPID SUSPENSION SYSTEM (URS)

Discussion Draft prepared by ICANN staff for RPM Working Group use – updated 13 December 2017

Introductory Note:
During the Working Group call on 30 November, a majority of attendees supported the idea that, instead of a detailed list of refined Charter questions, a shorter list of specific topics (based on the existing Charter questions and any new suggestions adopted) should be developed. A standard set of high-level questions will then be applied to each topic on the list. This approach was agreed to be similar to that which had been adopted for other RPMs, e.g. the Trademark Claims Charter questions.

The suggested standard set of high-level questions (some of which, e.g. Question 1 and/or 5, may need to be modified for certain topics) were:

> *1) Has it been used?*
> *2) What was the original purpose and is it being fulfilled?*
> *3) Bearing in mind the original purpose, have there been any unintended consequences?*
> *4) What changes could better align the mechanism with the original purpose/facilitate it to carry out its purpose?*
> *5) How many managed to prevail?*

Status of this Document:
On the 6 December Working Group call, it was agreed that compiling the current draft documents into a single document would make them easier to work with. The current document (dated 13 December) represents that compilation. No edits have been made to any of the documents, and all text remain DISCUSSION DRAFTS only. As such, nothing in this document should be viewed as authoritative text or as Working Group consensus on the retention of any of the suggested topics or questions.

Part One contains the list of suggested review topics, derived from all the URS Charter questions and additional suggestions received; Part Two contains the table that cross-references the suggested topics with the Charter questions and suggestions; and Part Three contains the statement from the Working Group co-chairs on URS review.

PART ONE: DRAFT LIST OF SUGGESTED URS REVIEW TOPICS

The following is a draft of a possible list of specific topics related to URS review; for context, please refer to the accompanying table in Part Two that cross-references the suggested topics to their original Charter questions:

THE COMPLAINT:
1. Standing to file
2. Grounds for complaint

THE RESPONSE:
1. Duration of reply period

    2. Response fee

STANDARD OF PROOF:
    1. Standard of proof

DEFENSES:
    1. Scope of defenses

REMEDIES:
    1. Scope of remedies
    2. Duration of suspension period

APPEAL:
    1. Appeal process

POTENTIALLY OVERLAPPING PROCESS STEPS:
    1. Potential overlap concerning duration of respondent appeal, review and extended reply periods along the URS process timeline

COST:
    1. Cost allocation model

LANGUAGE:
    1. Language issues, including current requirements for complaint, response, determination

ABUSE OF PROCESS:
    1. Misuse of the process, including by trademark owners, registrants and "repeat offenders"
    2. Forum shopping
    3. Other documented abuses

EDUCATION & TRAINING:
    1. Responsibility for education and training of complainants, registrants, registries and registrars

URS PROVIDERS:
    1. Evaluation of URS providers and their respective processes

ALTERNATIVE(S) TO THE URS:
    1. Possible alternative(s) to the URS, e.g. summary procedure in the UDRP

Note for Additional Reference:
The following questions, drawn from the general section of the PDP Charter, were also included in the original table of Charter questions circulated to the Working Group:

- Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use)?

- Will, and if so to what extent, changes to one RPM will need to be offset by concomitant changes to the others?

- Do the RPMs collectively fulfil the objectives for their creation… In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?

- Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?

- Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

PART TWO: ACCOMPANYING TABLE OF URS CHARTER QUESTIONS

The table below supplements the suggested topics listed in Part One (above). This table expands on that list of topics, and cross-references them to the specific Charter questions and additional suggestions from which the topic suggestions were drawn.

Suggested Topic	Original Charter Question	Suggested New Questions up to/at ICANN60	Origin of Charter Question
A. THE COMPLAINT:			
1. Standing to file 2. Grounds for filing		Should the first element be modified to include names that are abusively registered but that may not be confusingly similar or identical?	
B. THE RESPONSE:			
1. Duration of reply period	Should the ability for defaulting respondents in URS cases to file a reply for an extended period (e.g. up to one year) after the default notice, or even after a default determination is issued (in which case the complaint could be reviewed anew) be changed? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 6.4		Comments on Draft RPM Staff Paper (Feb 2015); question in PDP Preliminary

			Issue Report (Oct 2015)
2. Response fee	Should the Response Fee applicable to complainants listing 15 or more disputed domain names by the same registrant be eliminated? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 2.2.		Comments on Draft RPM Staff Paper; question in PDP Preliminary Issue Report
C. STANDARD OF PROOF:			
1. Standard of proof	Is the URS' 'clear and convincing' standard of proof appropriate? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 8.2		Comments on Draft RPM Staff Paper; question in PDP Preliminary Issue Report
D. DEFENSES:			
1. Scope of defenses	Are the expanded defenses of the URS being used and if so, how, when, and by whom?		Comments on Preliminary Issue Report
E. REMEDIES:			
1. Scope of remedies	Should the URS allow for additional remedies such as a perpetual block or other remedy, e.g. transfer or a "right of first refusal" to register the domain name in question? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 10.		Comments on Draft RPM Staff Paper; question in PDP Preliminary Issue Report
2. Duration of suspension period	Is the current length of suspension (to the balance of the registration period) sufficient? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 10.2.		Comments on Preliminary Issue Report
F. APPEAL:			
1. Appeal process	How can the appeals process of the URS be expanded and improved?		A comment on

	See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 12.		Preliminary Issue Report
G. POTENTIALLY OVERLAPPING PROCESS STEPS:			
1. **Potential overlap concerning duration of respondent appeal, review and extended reply periods along the URS process timeline**		Superfluous overlap between: -- A respondent's right to *de novo* appeal within fourteen days from a determination (Section 12.1); versus -- A respondent's right to *de novo* review within six months from a notice of default (Section 6.4); versus -- A respondent's right to request a seven-day extension to respond during the response period, after default, or not more than thirty days from a determination. (Section 5.3) See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf.	
H. COST:			
1. **Cost allocation model**	Is the cost allocation model for the URS appropriate and justifiable? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Sections 1.1.2, 2.2, 5.2, and 12.2. Should there be a loser pays model? If so, how can that be enforced if the respondent does not respond? How can costs be lowered so end users can easily access RPMs? (General Charter question)		Comments on Draft RPM Staff Paper; question in Preliminary Issue Report
I. LANGUAGE:			
1. **Language issues, including current requirements for complaint, response, determination**	What evidence is there of problems with the use of the English-only requirement of the URS, especially given its application to IDN New gTLDs? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 4.2.		A comment to the Preliminary Issue Report

	Are there any barriers that can prevent an end user to access any or all RPMs? (General Charter question) Do the RPMs work for registrants and trademark holders in other scripts/languages, and should any of them be further "internationalized" (such as in terms of service providers, languages served)? (General Charter question)		
J. ABUSE OF PROCESS:			
1. **Misuse of the process, including by trademark owners, registrants and "repeat offenders"** 2. **Forum shopping** 3. **Other documented abuses**	What sanctions should be allowed for misuse of the URS by the trademark owner? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 11.4 and 11.6. Is there a need to develop express provisions to deal with 'repeat offenders' as well as a definition of what qualifies as 'repeat offences'? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 11.4 and 11.6. Have there been abuses of the RPMs that can be documented and how can these be addressed? (General Charter question)	[Should URS also include provisions for] registrants who might be abusively registering domains? To what extent is the forum shopping of URS providers?" and "Whether the current practice of the complainant choosing the URS provider or the respondent to reduce forum shopping?" Or "is there a problem with the existing rules that results in forum shopping?	A comment on the Preliminary Issue Report Question in Preliminary Issue Report
K. EDUCATION & TRAINING:			
1. **Responsibility for education and training of complainants, registrants, registry operators and registrars**	Has ICANN done its job in training registrants in the new rights and defenses of the URS? Are the Providers training both the Complainants and the Respondents, and their communities and representatives, fairly and equally in these new procedures? Are the Providers training both the Complainants and the Respondents, and their communities and representatives, fairly and equally in these new procedures?	Has ICANN done a good job of training complainants concerning what the remedies are under the URS? Under URS the registry operator is required to suspend the domain name, however registry operators do not control the DNS and so it's really complicated, so how can a registry operator learn how this works?	All Charter questions suggested by a commentator on the Preliminary Issue Report

L. URS PROVIDERS:			
1. Evaluation of URS providers and their respective processes	Are the processes being adopted by Providers of URS services fair and reasonable? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 7. Are the Providers' procedures fair and equitable for all stakeholders and participants? What changes need to be made to ensure that procedures adopted by Providers are consistent with the ICANN policies and are fair and balanced? Are Providers exceeding the scope of their authority in any of the procedures they are adopting? What remedies exist, or should exist, to allow questions about new policies by the Providers offering URS services, and how can they be expeditiously and fairly created? Is ICANN reaching out properly and sufficiently to the multi-stakeholder community when such procedures are being evaluated by ICANN at the Providers' request? Is this an open and transparent process? Are the Providers consulting with all stakeholders and participants in the evaluation, adoption and review of these new procedures?	What are the backgrounds of the URS providers and what are their preparations? Should the URS be doing something similar to the UDRP?	All Charter questions suggested by a commentator on the Preliminary Issue Report
M. ALTERNATIVE PROCESSES:			
1. Possible alternative(s) to the URS, e.g. summary procedure in the UDRP		A more general question is whether there should be some kind of alternative to the URS – such as a summary procedure in the UDRP?	

OTHER GENERAL CHARTER QUESTIONS:
- Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use)?

- Will, and if so to what extent, changes to one RPM will need to be offset by concomitant changes to the others?

- Do the RPMs collectively fulfil the objectives for their creation… In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?

- Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?

- Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

PART THREE: CO-CHAIRS' STATEMENT ON URS REVIEW

November 30, 2017
RPM Working Group Co-Chairs' Joint Statement Regarding URS Review

The Co-Chairs have reviewed the general and specific WG Charter questions for the URS and note that among them are several overarching inquiries:
- Do the RPMs collectively fulfil the objectives for their creation, namely "to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks? In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?", and
- "Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?"

These are among the major questions to be dealt with toward the conclusion of Phase One of our work. The Objectives and Goals portion of the Charter also states, "the PDP Working Group is expected to consider, at the appropriate stage of its work, the overarching issue as to whether or not all the RPMs collectively fulfill the purposes for which they were created, or whether additional policy recommendations are needed, including to clarify and unify the policy goals". We also note that the Charter's URS-specific questions deal with discrete features of this RPM – such as post-default registrant reply; the clear and convincing evidentiary standard; potential treatment of "repeat offenders" and abusive complainants; potential remedies in addition to suspension; use of expanded defenses; etc.

Finally, Additional Charter questions raise such general questions as "Are the processes being adopted by Providers of UDRP, URS, and TMCH services fair and reasonable?", and "Are Providers exceeding the scope of their authority in any of the procedures they are adopting?" But such general questions do not specifically address whether the three accredited URS providers are acting in compliance with the URS Procedure[1] and Rules[2], and with the Memo of

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[1] https://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf
[2] https://newgtlds.icann.org/en/applicants/urs/rules-04mar13-en.pdf

Understanding[3] (MOU) entered into between ICANN and the three providers, as well as whether ICANN has undertaken any contractual compliance efforts to assure adherence to the MOU.

Whether the providers are acting in accordance with the relevant URS requirements will be an important factor to be considered when we deal with the overarching Consensus Policy question. It will also help ensure that our discussion of other URS questions is data and fact focused, and fully informed regarding the basic elements of this RPM. And such a review would be consistent with our prior work on the TMCH, in which we reviewed the criteria for marks eligible for registration in order to assure that Deloitte and IBM were administering the TMCH in a manner that adhered to those standards.

The Co-Chairs therefore propose, for WG review and discussion, that in addition to or as focused substitutes for the above and other relevant Charter questions -- however they are reconciled or reframed by the WG -- we should address these specific questions:
- Have the accredited URS providers administered this RPM in a manner that is consistent with the applicable Procedure, Rules, and MOU?
- Has ICANN engaged in any active oversight of URS providers to ensure MOU compliance; and has it received any complaints about URS administration and, if so, how has it dealt with them?
- Have URS decisions been limited to cases meeting the "clear and convincing evidence" standard, and been properly explained? (Note: This will require a qualitative review of a statistically significant percentage of URS decisions.)
- As ICANN staff has developed data indicating that a small percentage of URS decisions have been appealed, what has been the result of such appeals? (Note: The Charter already contains the question, "How can the appeals process of the URS be expanded and improved?", and we believe that addressing that question requires an understanding of how the appeals process has actually operated to date.)

Again, the Co-Chairs believe that this proposed review of the administration of the URS by the accredited providers, to assure compliance with the existing rules, procedures, and MOU obligations, is both consistent with our prior review of the TMCH and is of fundamental importance for addressing the question of whether this RPM should be made available for complaints regarding domains at legacy gTLDs through adoption as Consensus Policy.
And, finally, as it will be some time before we have received and analyzed the survey questions regarding Sunrise Registrations and Trademark Claims Notices, we believe the proposed questions can be addressed without any further extension of our current timeline.
We look forward to discussing these proposed questions with WG members.

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[3] https://www.icann.org/en/system/files/files/naf-urs-20feb13-en.pdf (NAF version)