

**Right Protection Mechanism (RPM) PDP Working Group  
10 March 2018**

**Action Items:**

**Sub Team on Providers:**

1. Communications: Add “Are providers coordinating abusive complaints across providers?”
2. Response:
  - a) “Has the Provider conducted a compliance check for a Respondent for factors beyond the two items stated in the provision?” Add the questions, “How do the providers review the complaint? What is their intake process?”
  - b) Ask “Who determines whether a response is non-compliant – the provider or examiner?”
3. Examiner:
  - a) “Has there been any circumstance that gave rise to justifiable doubt of the independence/impartiality of an examiner? If so, did the examiner disclose this?” Add “Did the examiner disclose this [to the provider] before and/or during the case proceeding? If no, what happened?”
  - b) Seem to be missing questions re: how examiners are selected, what training do they have, etc. Reference those questions captured in the notes on 21 February. Staff to check and add any missing questions.
  - c) Replace “Providers” with “Examiners” in the proposed question: “Have Providers gotten Responses alleging any abusive complaint? If so, how did Providers act in those cases?”
  - d) Add: “Does the respondent have the opportunity to point to a conflict of interest? How do respondents know of a conflict of interest in advance?” and “How the examiner confirms that it is impartial.”
4. General Powers of the Examiners: Add the following suggested questions for Providers in the consolidated document: “How examiners are selected? What background they have? What kind of training they have? How they determine the standard of proof in URS cases?”

**Sub Team on Documents:**

5. Abuse of Process: Staff to ensure the questions are balanced.

**Notes:**

General question: Who should do the gathering and who should it go back to? Do the Sub Teams want to consider as evaluators?

## 1. Sub Team on Providers:

### Communications:

- Question: “Is the deadline long enough?” doesn’t seem to be an objective question; more of a policy question to the WG.
- George Kirikos: <COMMENT>Perhaps an additional question might be: How will your notices be affected by GDPR? (if access to WHOIS is limited)</COMMENT>
- George Kirikos: These are questions for the providers, so we need to get info from them, if we're going to make any changes before May.
- We do not know the model for GDPR yet.
- George Kirikos: <COMMENT>An additional question might be: Are providers coordinating abusive complaints across providers? (since there could be abuse at multiple providers that cumulatively break the limit, but not individually) (since there's no central database of all URS decisions) </COMMENT>

### Response:

- “Have Providers gotten Responses alleging any abusive complaint? If so, how did Providers act in those cases? Have Providers gotten Responses alleging any abusive complaint? If so, how did Providers act in those cases?” The procedure that is not the provider – it’s in the response, not the provider. Examiner would consider whether the complaint was abusive.
- “Has the Provider conducted a compliance check for a Respondent for factors beyond the two items stated in the provision?” How do they review the complaint (the providers)? What is their intake process?
- Ask who determines whether a response is non-compliant – the provider or examiner?
- Georges Nahitchevansky: If we are looking at abusive complaints and coordination between providers should there not be a flip side for coordinating information about respondents who have been found to have acted in bad faith and engaged in abusive conduct
- George Kirikos: So, conceivably a complainant who is close to breaking that limit at a single provider could switch to a different provider, if providers are not sharing info with each other on cumulative abuses by complainants.

### Examiner:

- George Kirikos: <COMMENT>Do we know what the minimum qualifications are? If not, why not? (i.e. why publish the qualifications, if we aren't able to judge whether minimum qualifications are surpassed?)?</COMMENT>
- “Has there been any circumstance that gave rise to justifiable doubt of the independence/impartiality of an examiner? If so, did the examiner disclose this?” – What gives rise to questions about impartiality? Also, have there been any disclosures to the provider if something happens during the proceeding? “Did the examiner disclose this [to the provider] before and/or during the case proceeding? If no, what happened?”
- How does a complainant point out a conflict of interest with an examiner?
- Missing questions? How examiners are selected, what training do they have, etc. Captured in the notes on 21 February. **Action: Staff to check and add missing questions.**
- Do the complainants and respondents have the opportunity to know who the examiner is before selected? But the complainant wouldn't know. Might not know until the decision comes out.
- Add: “Does the respondent have the opportunity to point to a conflict of interest? The ability of respondents to know of a conflict of interest in advance?” Also ask how the examiner confirms that it is impartial.

### General Powers of the Examiner:

- “How many complaints have been dismissed on the basis of the wrong Respondent being named, where the domain was registered with a privacy/proxy service?” Does this question make sense? You don't know because there is a privacy/proxy service. Not sure how this would work. Could be “Has there ever been a situation where a wrong domain name owner got brought into the URS?”
- Add the following suggested questions for Providers in the consolidated document: “How examiners are selected? What background they have? What kind of training they have? How they determine the standard of proof in URS cases?”

### Language of Proceedings:

- “Is there any challenge in the URS proceedings caused by the linguistic deficiencies of the Examiners?” Need to rephrase this, “Has there been any challenge posed by linguistic differences between the examiner and others involved in the process?”

## 2. Sub Team on Documents:

### The Complaint – Data Sources:

George Kirikos: <COMMENT>Are we looking at patterns of abusive spam and/or phishing domains here, from the large anti-abuse organizations? (i.e. block lists??)</COMMENT> (that might be a source of data, for that first topic) For those looking to expand the types of domains that qualify for the URS. (i.e. "abusively registered, but not similar/identical")

### Costs – Data Sources:

- “From Practitioners – qualitative experiences on the average cost to prosecute and/or defend a URS proceeding”. Might be sensitive. Maybe anonymize the data? Ask in a way that doesn’t cause competitive issues. People will respond if done in the right way.

### Language – Data Sources:

- Registry has to follow certain steps – 3 of them. The first letter that goes to the registry is in English, the second letter to registrars with copies to registries was in the registrars language. Ask providers why they do it that way.
- George Kirikos: <COMMENT>We should be able to get this data based on distribution of (1) country of respondent (2) country of registrar for all complaints</COMMENT> Since there are so many Chinese registrants of new gTLDs, we have to do something here.
- George Kirikos: <COMMENT>Particularly data from default cases, if one assumes there's a correlation between default and lack of understanding of the complaint due to language issues</COMMENT>

### Abuse of Process:

- Think about the balance between behavior on both sides. Make sure the questions are objective. Action: Staff to ensure the questions are balanced.
- Rebecca’s research has columns for complainant and respondent. Look at how that gets rolled up.

### Alternative Processes:

- George Kirikos: <COMMENT>Should look at success metrics of alternate procedures, e.g. look at Academic Research for that last question.</COMMENT>