

Questions for URS Practitioners

From the Practitioners Data Subteam of RPM WG

Introductory Note: The purpose of the following questions is to elicit useful information from those counsel who have filed or responded to a claim under ICANN’s Uniform Rapid Suspension System (“URS”) for use by the ICANN Rights Protection Mechanisms Working Group. The RPM WG has been tasked with reviewing the URS to determine what changes, if any, should be recommended to ICANN to improve the URS as an RPM. The purpose here is not to relitigate or critique any decision, attorney work product or stakeholder position, but to generally learn from those who have experienced the process through your observations from personal knowledge of the URS’ perceived benefits and burdens and any compelling bases for change.

1. Procedural Issues

1. Since its inception, in how many URS proceedings have you been involved?
2. In each proceeding, did you serve as counsel for Complainant or Respondent?
3. If for Complainant, what triggered your decision to file a URS claim? What was the factual basis for your claim?
4. If for Respondent, what were your defenses to the claim?
5. As an overview, and leaving aside the result for the moment, in filing or responding to a URS claim, was your overall experience with the process generally positive? Were the rules and procedures for filing or responding to a claim under the URS clear? Did you encounter any material procedural problems?
6. Notice: Did you find that the notice provided under the URS is getting through to the registrant? If yes, what type of notice is getting through? Hard copy, email, fax, etc.?
7. Do you have any comments or observations as a practitioner about the ability to refile after 6 months following a default? -- Have you refiled after a default or been involved in one?
8. Do you have any comment as a practitioner about the appeals process provided under Paragraph 6.4 of the URS Procedure, where a losing registrant who fails to file a response can seek de novo review for up to six months (plus an additional six-month extension), and under Paragraph 12 either party can seek a de novo appeal of the determination within 14 days. Have you filed an appeal or been involved in one?
9. Do you have any comment about the extension mechanisms noted above that are provided for appeals under the URS?

2. Substantive Issues

2.1 Burden of Proof and Remedies Provided under URS

1. The burden of proof is “clear and convincing evidence.”

2. Do you believe this is an understandable standard?
3. Should this standard be modified? If so, why? If not, why not?
4. In any of your cases, did it appear that the panelist did not consider each of the three required elements?
5. In any of your cases, did it appear that the panelist did not address certain aspects of the URS which it was required to do?
6. In any of your cases, did the panelist appear to be unsure of the test or application of the standards?
7. Should there be more guidance for practitioners and/or providers regarding what satisfies the "clear and convincing" standard?
8. As a practitioner, how confident were you in each case that the WHOIS data necessary for filing your URS claim was accurate and/or authentic?
9. In each of your cases, did you find the decisions adequate to understand the basis of the ruling?
10. Did you consider using past URS cases as precedent in your submission? If so, were you able to effectively use past URS cases as precedent? Were some decisions unusable due to their brevity or lack of discussion of the rationale for the decision? If so, did you find another case or cases to use as precedent?
11. Do you believe that there should be more guidance on the elements that need to appear in a decision?
12. Are you finding that the URS is being used for the types of cases for which it was intended -- clearly abusive cases?
13. For those who are practitioners, do you believe the relief provided by the URS (i.e. suspension) is adequate, and, if not, what would you like to see as the relief (e.g., transfer of domain name)?
14. Have you encountered any problems with the relief awarded following a URS decision. Why or why not? If so, please describe the problem encountered.
15. Is it valuable for the URS to follow the UDRP elements?
16. Do you believe that the remedy provided by the URS is adequate? If not, what remedy would you propose?

2.2 Practical Issues (filing mechanics, word limitations, etc.):

1. Under URS Rules, proof of use can be submitted with the complaint, or an .SMD file can be submitted to demonstrate that proof of use was submitted to and accepted by the TMCH. Do you believe that this is adequate proof of use for a URS case? If not, what would you recommend and why?
2. Fees: As a brand owner or practitioner representing brand owners, how do you feel about the URS fee? Do you believe the fee is too high or too low? Does the fee structure work for the URS? How does the fee factor into deciding whether or not to file a URS case? As a respondent or practitioner, please answer the first three questions
3. Response Fee (for 15 or more domains): As a brand owner or practitioner representing brand owners, how do you feel about the response fee for 15 or more domains? Do you

believe the fee is too high or too low? Does the fee structure work for the URS? How does the fee factor into deciding whether or not to file a URS case? As a respondent or practitioner, please answer the first three questions.

4. Have you found the word limits to be adequate?
5. If you are a brand owner or practitioner: How did you get to know about the existence of URS? How do they make a decision about whether should they propose a URS or just let it go?
6. If you are a registrant: How did you learn about the responses to the URS and the affirmative defenses?
7. Did any of the decisions in your cases include unintelligible or meaningless language (i.e., "gibberish")?
8. Are there effective means available online for searching cases? In your experience, is this true of all providers? How can search be improved?

2.3 Tactics and Approaches (Both URS and non-URS practitioners):

1. Evidence of Use: If representing Complainant, do you use the .SMD file from the TMCH, a printout from an active web site, or something else? Why did you choose one type of evidence over another?
2. Whether and when do you choose to use the URS? If not, why do you bypass the URS?
3. What do you think about the suspension for the duration of the registration? Should there be an extended time of the suspension? How does suspension as the sole remedy affect your decision whether or not to use the URS as a protection mechanism?
4. Should there be an "Overview of URS" similar to WIPO's Overview of Panel Views on Selected UDRP Questions?
5. As drafted and currently interpreted, do you feel that the URS is a reliable mechanism such that parties can reasonably rely upon a uniform application and interpretation of the Policy? If not, why not, and how can this be improved upon? Do you believe this has improved over time, as more decisions have been issued?
6. For those who have only filed one URS case, was there a reason why you didn't file any more? (e.g. procedural limitation, lack of claims, etc.)
7. Have you encountered any problems after a successful UDRP decision with the suspension or the extension of the suspension? If so, please describe the problem encountered. Can you recommend any correction or improvement?
8. What impact, if any, do you believe the GDPR [add a note explaining what GDPR stand for] that will take effect on 25 May 2018 will have on the URS?