

## NOTES:

1. Welcome by Working Group co-chairs (J. Scott on the Documents Sub Team call)
2. Overview of scope of work (see Action Items from last week) and selection of Sub Team chair(s) (if desired)
  - Reviewing URS unified document to determine what data is required when reviewing issues identified.
  - What data we need and where do we get it
  - Share data gathering requirements with other two groups as necessary
3. Discussion – For Documents: Review the Consolidated URS Document (with the table of topics), and identify which topic will require additional data collection (the latest version of the consolidated document is available here: [https://community.icann.org/x/zxW8B\[community.icann.org\]](https://community.icann.org/x/zxW8B[community.icann.org]))

### Section A – The Complaint

- Staff unable to provide data relating to Standing, Grounds, Filing Period, and Admin Review. Perhaps the providers could produce some metrics about how many initial cases failed the Admin Review.
- Reference to chart produced by staff that delineates cases by outcomes and determinations; not useful for Section A, but may be useful for other sections.
- Agreement on how many cases were rejected in Admin Review; might be the only data point of the four items listed. Consistent data point.
- What about providers' experience qualitatively regarding 1, 2, and 3? But no hard data is available
- Question about Standing to File, critical element is a valid mark. Does proof need to be provided? <Answer> During Admin Review, no assumptions, required that there is evidence of a TM uploaded with Complaint. No judgement about whether it is valid or not.
- Of the 784 cases that Forum, appx. 280 or so had the SMD file attached as evidence. Remainder of cases provided TM Registration as evidence.
- Need to clarify subjective vs. objective uses around requests of the data. A qualitative assessment of the data does not make it subjective in all cases. Ex. is TM mentioned in decision or not?
- Three sources of Data for Section A
  - Administrative Review stats (Pass/Fail) from Providers
  - What type of mark was submitted in complaint?
    - Qualitative experiences from Practitioners as it relates to what they see in regards to Standing, Grounds, Filing Period [Need to further develop these questions]
      - Ex. need more detail and guidance – standing to file – whether we should expand standing to allow marks that were abusively registered but are not confusingly similar
    - Rebecca's Research - Whether word marks or TMCH registered marks or design marks were submitted?

### Section B – The Notice

- Staff does not have access to data. Perhaps the Providers might maintain logs of notice. It's clear that a response occurred for those cases where a response is documented. However, for those complaints where a response did not occur, it is only available at the provider, likely only through email logs, non-deliverable return notices etc. Likely difficult and will require Provider's interaction with their respective IT depts. Should this prove difficult, could a possible recommendation be made that more robust tracking of notices is required?
- Effectively looking at data to prove something we might not be able to determine; Procedures contain provisions about Provider discharge certain obligations with regards to notice. Data likely elusive; Possible bounce-back tracking, but unknown how that data is kept. Could be possible to create a qualitative question to providers and what is their process for logging this data.
- Could look at 14 appeals whether any of them contain an issue about notice.
- Response is counted as a formal response; some are not technically a formal response such as complaints. It would require further scrutiny
- What is process of response sent by providers to provide notice? Refer to Practitioners? What about cases where P&P?
- Two sources of Data for Section B
  - Qualitative experiences from Providers asking what their process is on sending notice and what procedures they have in place regarding non-deliverable messages [Need to further develop the question]
  - Qualitative experiences from Practitioners in what they have seen regarding issues of notice of the complaint

#### Section C – The Response

- Some 250 cases where a response (appx. 50%) occurred; 10 or so cases that contained 15 or more domains
- Under response of cases 4.1 upon completion of admin of review and w/in 24 hours of notice the domain should be locked and notice sent.
- Providers could have information on how that process works. Should we reach out to Registries regarding this process?
- One possible data point of response. Under appeals were there time extensions? Could be difficult area to identify strong metrics. In some cases a conscious decision by Registrant to not respond. Response fee on >15 domains is difficult to pin down when there's not clean Whois data available.
- Rebecca's research work will look at when the response occurred (w/in 14 days, w/6 months, extensions, etc); 827 cases, 518 did not have response, remaining 250 contained some sort of response; can take bucket approach, let's look at 14 Appeals only from response perspective as an example; cherry-pick these cases and extract meaning.
- Locking aspect is a key provision in between notice and response. Requires RyO to lock domain within 24 hours to prevent cyber-flight; glean from Providers if they received those in 24 hours; delay or push-back from RyOs; Ask RyO receiving requests through proper channels
- Four sources of Data for Section C
  - Review 250 cases where a response occurred in the aggregate to determine when the response occurred (likely Rebecca's research)
  - Review of cases where 15 or more domains are contained to determine any issue as it relates to Response Fee

- Qualitative experiences from Providers when communicating to the Registries about their experiences in getting the domain locked w/in 24 hours prior to notice (should this be migrated to Section B – Notice?)
- Qualitative experiences from Registries receiving notice from Providers; were these sent through appropriate channels? Did it contain the correct information?

#### Section D & E - Standard of Proof / Defenses

- Obtain qualitative data from Practitioners on standard of proof, perhaps based on interpretation, identify standards and evidence on standards.
- How do we identify the standard is interpreted? 58 cases that were denied. Was the standard properly employed? Hesitant to ask Practitioners on only a handful of evidence vs. the 250 or so that contain a response.
- Various degrees of standard of proof and acknowledge there will always be disagreement from it. Objection to looking at clear and convincing standard by Practitioners.
- Practitioners group could perhaps look at the clear and convincing standard of the "high-side" of evidentiary proof. Is this a barrier to cases being filed? Whether this has been applied for a few people find to be unclear. Is it a barrier or should standard be lowered is a worthwhile exercise.
- URS Procedures 5.7, 5.8 on bad-faith registration or bad-faith use, can look at the 58 or so cases denied and see if one of the seven listed in the procedure was used to prevail, or was some other defense used? Out of the review could other standards be added to the procedure?
- Need to review the full universe of cases. And why should the standard be lowered? This is a policy question. Should the standard be raised? Could a guide for practitioners be helpful to know a difference between easy vs. hard cases? No data to understand the qualitative assessment.
- Are complaints being denied that should have not been denied? Is the URS working in terms of how the standard is being applied properly? Some examination and an interpretative guide could be useful to provide guidance. What areas need guidance? We need to find out.
- Need to keep in mind what data and docs we need to answer these questions. Presume that clear and convincing standard needs guidance (best practices), an overview 3.0 for URS cases to provide consistency. Presume we're here to improve it.
- Early days of URS, might be similar to early days of UDRP. Might be premature and wait for more informed picture of how these are being applied.
- Didn't have the opportunity to conduct this sort of review in UDRP. Perhaps it will evolve.
- Three sources of Data for Section D & E
  - Qualitative experiences from Practitioners on how they thought standard of proof was applied (wasn't clear agreement on this)
  - Review 58 cases against URS Procedures 5.7 and 5.8 (bad faith vs. use) to determine how Respondent prevailed against the standard of proof and if not one of the seven identified, what proof was used
  - Possible recommendation – develop an examination guide for Examiners to understand distinctions between easy vs. hard cases

#### Section F - Remedies

- Scope of Remedies and Duration of suspension period to Practitioners
- Review of Implementation of Remedies to Providers

- Ex. two cases of “IBM” domain cycle (complainant prevailed, domain suspended, domain expired, picked up by brand under DPML). Looking at this in the aggregate might be helpful to these questions.
- What exemplars of easy cases vs. hard cases in formulating the URS? Compare what we have now to what the framers expected.
- Review the IRT and STI reports and review those elements of URS to look at in regards to Remedies
- Lifecycle of case to domain if the WG wants to review it
- Six sources of Data for Section F
  - Qualitative experiences of scope and duration of remedies from Practitioners (need to refine request)
  - Qualitative experiences of Providers on implementation of Remedies (need to refine request)
  - IRT/STI Reports to document baseline of those elements of URS in regards to remedies per current rules/procedures and current practice
  - Case/Domain lifecycle after suspension (WG &/or Rebecca’s research) across the cases where the complainant prevailed
  - INTA Studies related to remedies
  - CCT-RT report

#### Section G - Appeals

- Review of 14 cases - breadth of outcomes (split decision, two claim denied, 10 maintained suspension, complainant still prevailed): Review the 14 cases, develop some sort of poll to document the finding to extract finding and report on it.
- Is it possible to look at National Appeals of URS?
- Review appeals process to find out where they fall in regards to timing? Immediately or within a year? Question raised as to whether the timing perspective of the appeals process is working correctly as used to date.
- Which types of cases or normal review vs. denovo review being invoked; perhaps a simplified system.
- Two sources of Data for Section G
  - Review 14 cases that contained an appeal; review based on outcomes; review based on process and timing (create poll to document the review)
  - Review cases where a denovo review occurred

#### Final Thought:

Ok to say we "don't have access to data", but it is possible that the WG can recommend that data be captured in future.

#### 4. Next steps/next meeting

- 28 Feb at 18 UTC
- Staff to create notes of session and update URS compilation doc
- Review remaining elements of compilation doc