

Asked By	Question	Topic	ADNDRC Response	FORUM Response	MFSD Response
Phil Corwin	<p>Q to ADNDRC: The URS rules say that under communications that a - the provider has a responsibility to employ reasonably available means calculated to achieve actual notice to respondent and that achieving actual notice by sending notices to all email, post mail, and fax addresses shown in the domain name's registration data or the Whois databass, as well as to the technical contact and the administrative contacts.</p> <p>1. Do you feel your complying with that rule by employing only email? 2. If you receive notice that the email has not gone through, do you follow up by other means to try to assure that the respondent gets actual notice in sufficient time to be able to prepare a response if they wish to do so? 3. Since the other two providers are employing all those means and you're using only email, do you feel that you're in compliance with the rules?</p>	Communications	<p>We have basically accommodated this under Article 3 of the supplementary rules. In order to implement the URS procedure, everything shall be made electronically via the Internet in accordance with guidelines for URS submission. The system has been designed in a way that has ensured the compliance.</p> <p>If a proxy and privacy service is used by a particular respondent, and there's the possibility that the Center might not be able to identify the true identity of the respondent, the relevant office of Center would request the registry operator to identify the respondent. That is additional safeguard that we do in cases when a privacy or proxy service is involved.</p> <p>We have not received any complaint regarding not receiving notice so we have been in compliance with the URS requirements, although we have not implement additional procedures to try to notify the respondents.</p>		
Kathy Kleiman	How do you know what the language of the registration agreement is? How do you find that out and so, how do you know to whom you have to send a translated notice?	Communications	The language of registry document in URS proceeding is not as important as it is in UDRP proceedings. At times, we do have inquiries from - especially from the respondent side regarding language of the proceedings. As I mentioned in the initial introduction, we do not have a formal procedure of translating documents or communications to corresponding languages, but our case administrators are usually happy to answer questions parties might have sometimes.	With respect to translations, Registry Agreement doesn't govern what language it is, it's the physical location of the respondent. So we have whatever is in the Whois information or the information that we're able to get from the registrar. We use that information, and research whatever country it may be or region, province, to see what the dominant language is in that province or country or area. If we don't already have the translations we prepare those very quickly and get them sent in the appropriate language.	The language of the proceeding is not as in the UDRP governed by the language of the registration agreement in the URS. So the language is usually the predominant language of the registrant country. So we do the translation in that language. We do the translation of all email communications, the notice of complaint, the notice of default and we also provide response form in such language to the respondent.
David McAuley	Q to FORUM: Is the language translation for documents like notice or is the examiner's report in the other language? Does it affect how you pick an examiner?	Communications		We translate all of our template documents because if there is a response that comes in from that complaint in that region, then we appoint an examiner that speaks that language. So we will have all the documents prepared for that examiner in that language so that they can be issued in the correct language. And we do have many determinations on our Website that are in foreign languages.	
Justine Chew	With respect to Slide 7 -- Renee (FORUM) mentioned that in the case where there is a privacy shield, some registrars will provide respondent information...What happens if a registrar does not provide respondent information? What do MFSD and ADNDRC in similar circumstances?	Communications		If we don't receive that additional information from the registrar -- which is not typical that we would receive information from them, because the case moves so quickly -- we just proceed with the information that we have. That's really all that we can do.	Since the notice of lock is sent to the registry operator and registrar is copied usually, it's the registry operator that responds and if there is any privacy shield the registry doesn't have the information available for them, it's only the registrar who has the underlying information regarding the registrant. And if registrar is not communicating any information we just proceed as Forum said, using the information that is available in Whois.
Berry Cobb	Q to ADNDRC: You had mentioned that you don't have any cases or complaints that were submitted that failed the administrative review but you did also mention that two cases - or at least from my records you had two that were withdrawn, one was for a dotCom name and the other for a dotCN name. Can you just clarify you said no complaints submitted had failed the admin review?	Administrative Review	I did not consider those case withdrawn cases meaning that cases that have not been filed properly under URS; those are cases that had failed an administrative review. I take administrative review in more narrow way. There are cases, more than two actually. So if you have seen those cases on the Website that should give you the proper number.		
Justine Chew	Q to FORUM: In the 17 cases dismissed, what administrative deficiencies feature the most frequently? What factors can be identified on the part of the Complainants to explain these?	Administrative Review		Now I don't have in front of me exactly what each of those 17 entailed as far as the reason why they were dismissed, likely for nonpayment. But I certainly can check into that and circle back if it becomes a formal question.	

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Maxim Alzoba	Q to ADNDRC: Regarding ADNDRC procedure about identification of privacy proxy service used by someone. The registry doesn't have understanding if it was a real proxy privacy services or someone just added text saying that it is. The party which has some knowledge is registrar. Have you had any experience in asking registries about this or was it just designed process?	Administrative Review	Based on our experiences, because we have only administered 33 URS cases so far, so we have not had any experience in that particular regard so that is a design process. But based on our experiences dealing with the UDRP cases, this is more like additional safeguards to ensure that the respondent receives the notice so as long as some kind of information is correct there we are not very concerned with that in administering cases, because that is additional safeguard for communication to be conducted in a safe manner. But it is a design process.		
Kathy Kleiman	Do practitioners (practitioners being the attorneys who work with both the complainants and the respondents and the registrants) know who is the examiner? And do they have the opportunity to object on the basis of conflict of interest? So do practitioners know up front before the decision is made who the examiner is?	Examiners	In our practice prior to the appointment of any examiner, we do ask the examiner to declare in writing to parties and the Center any potential conflicts or potential impression, so we do ask the examiners to write that declaration of impartiality and independence as other providers. We also give the parties the opportunity to challenge each examiner.	They do. An email is sent out saying to both parties, indicating that an examiner has been appointed and then it's the responsibility of the party to go to the portal to get the identity of that examiner. And at the same time then they can check the resume on our Website and get more information on that particular name.	Yes, upon appointment and acceptance of the examiner, MFSD informs the parties by email and also the registry operator and the registrar are copied in this email of the name of the examiner. Also the date within, aside from exceptional circumstances, the examiner should render its determination. Any party may challenge the appointment of the examiner provided that the determination hasn't been already published so within the term before the determination is rendered by submitting a request of challenge in writing to MFSD specifying the reason within one business day from the receipt of the communication of the appointment. So far there was no such challenge of the examiner.
Justine Chew	Might there be circumstances where examiner bios are not published on your respective websites?	Examiners	We do have all our panelists' bios CV on the ADNDRC Website, and our case managers also from time to time remind our panelists to update their CV in a particular instance that we send out someone's CV, it hasn't been updated, for example for the past three years. We sometimes do ask them to provide us with the most updated CV before we proceed with the appointment.	Hopefully not, probably not. If we are notified if somebody is searching for a particular examiner name, then we get a notification for some reason that resume is not available. I had maybe one instance of that just recently because I'm updating, I'm currently updating the resumes and I had a misload so I was having somebody search them for me and then I was notified that we didn't have it on the Website, so I quickly fixed that.	From our side all the bios are published on the Website so we have 23 examiners and all the 23 bios are on the Website.
Justine Chew	How do the providers ensure that examiners actually provide the reasons of their respective determinations?	Examiners			
Phil Corwin	Q to FORUM: In your presentation you say that preference is given to examiners with IP or Internet law arbitration, and other domain name dispute experience. I note that the section 2B.3 of the memorandum of understanding entered into between ICANN and all the providers requires each examiner to ensure that each provider that each examiner has an understanding of global intellectual property issues as they relate to the Internet. So can you confirm that all your examiners do in fact have Internet IP background and expertise?	Examiners		Through the training that they're provided that they would have that. We do have, and for some of the US examiners we have judges so not necessarily all judges didn't have that as part of their practice, so but certainly they have had experience with intellectual property cases and through the training that they're provided with they have an adequate basis to decide domain name disputes.	

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Justine Chew	How do the providers ensure examiners comply with URS Rules 13(b): "The Examiner's Determination shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the Examiner".	Determinations	<p>Our approach to determination is very, very similar to the other two providers. We have a template for examiners and we do all have our past decisions made available online for examiners who would like to make special efforts and to any case. Within seven calendar days of receiving a determination, any party may actually send a notice to the Center, and any other parties request the examiner to correct any computational error, any clerical or typographical errors in the decision.</p> <p>And such corrections shall be given in writing to the parties and then become part of the determinations, although we have not dealt with this kind of situation where parties request a particular case in the determination. And also the Center adheres with their very strict publication rules, so within 24 hours upon receipt of that determination we make the decision available to the parties, registrant, the registry and we make it available on the Center's website.</p> <p>After receiving determinations from examiners, we do reach a decision and ensure that the determination complies with the rules. If it is found out or checked that a particular examiner's writing of decision does not meet the standards of URS, then there is usually an internal reference so that a particular examiner is really, really unlikely to be appointed in determining later URS proceedings. All that information usually is not going to be made available to the public.</p>	For Forum, we have a template for determinations through the portal. There are text boxes that are required to be filled out for the reasoning. Determinations are issued upon completion to the parties and are available on the Website immediately. And all of the decisions on the Website can be full text searched.	<p>Just that like Forum we have an online determinations form to which the examiner access through its account at the platform. And only in exceptional circumstances so if there is any technical problems with the platform, the determinations are filed by email to MFSD. And the examiners are provided with the instructions on the URS elements and how to conduct the examination of the URS proceeding by the references that can be found in the online determination form.</p> <p>So there are some boxes and for each box there are the references to the rules and the procedure of the URS. The determination shall need the requirements of the procedure of the rules and regarding the length of the determination there is not a limit, the examiner can determine itself as long as he deems appropriate. So there is no any length limit to the determination.</p> <p>When the determination is received by MFSD, it is transmitted to the registry, copied to the registrar with the specification of the remedy and the required actions so if the examiner decides the suspension, the registry is requested to suspend the domain name and if the examiner finds that the control of the domain name should be returned to the respondent such action is requested to the registry and it is also sent to the parties. And after that it is published at our Website.</p> <p>And after receiving the confirm from the registry that the suspension or returning the control to the respondent was carried out, we also do a check that in the Whois data such action is reflected.</p>
Justine Chew	Are appeal panel members always different from the examiner who decided the Complaint? Would it be the same for de novo reviews as opposed to de novo appeals? Or this is subject to parties' choice?	Appeal	I do not have anything to add here.	There is new appellate examiners are appointed for appeals. Now I think all the providers are going to maybe have some different thoughts on this, but since there isn't a lot of experience with appeals. The only choice that the party would have would be at three-member panel in an appeal - they would give us a list of three. They'll be given the list of three - we request a list of three from each party. We do our best to impanel one of the three from each party's list and then Forum appoints a chair for the URS appeals.	It's the same for MFSD.
Lori Schulman	<p>Q to MFSD: Do you have any insight as to why there are zero appeals?</p> <p>What the appeal rate was from the other providers, what the numbers are?</p>	Appeal	Same as MFSD, we also have not received any appeal of our cases. The reason could include that the parties are just very satisfied with the results of the examinations. Also they have alternative remedies that could be provided to them in court of competent jurisdiction. Another reason that is from the 33 cases that we have actually handled, only six parties have submitted responses, which basically means that probably a lot of respondents have just not given their consideration to the URS proceeding. The suspension of the domain name to them are probably not as serious as having the domain name transferred to the trademark owners. I guess those are some potential reasons that we have not received any appeal in our experiences.	Forum has had 14 appeals covering 16 domains. As far as the negative not why certain practitioners are not appealing, basically it comes down a client decision where it's just maybe not worth it for them to proceed any further.	I assume that the parties didn't have any reasons to appeal. They were satisfied with the outcome of the proceeding or since the URS doesn't preclude subsequent UDRP proceeding there is also the possibility to file a UDRP after the URS. I don't know really know the reason so we haven't been contacted neither by complainants nor by the respondents regarding the appeal proceeding.

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Phil Corwin	I note all the providers check if the complainant has any past findings of having brought abusive complaints. Has that central database of abusive complaints been established? Is that what you're checking against or just your own cases? And am I correct in understanding from your comments that to date there's been no finding in any URS case of abuse on the part of the complainant?	Abusive Complaints		<p>Forum is hosting the combined provider database. Each provider has login information to add any cases to the database. Only the providers that add information are able to edit any of that information, so another provider can't go in and take somebody out. So once they have entered something, should it happen, into the database, then only that provider that entered that can make any edits to it. So we've developed a system, at least amongst the three of us now, that we will inform the other providers the minute that we also get a finding of abuse case. So we'll have a couple of different methods but it certainly will be recorded per the rules in the database should we ever have one.</p> <p>We had one that was checked in our database as abusive but it actually wasn't, it was an error. So you may have seen that if you've ever looked, I think it was sometime in early 2016, that it was on and when I joined as director I reviewed that case and had it removed because it was an error.</p>	There was no finding of abuse in that case.
Zak Muscovitch	Are the providers integrating into their administrative review procedures a check of that repository of potential abusive cases or are they just entering the findings of an abusive case into the database? So in other words, are providers incorporating as a standard procedure to check that database every time a complaint is submitted?	Abusive Complaints	Answers in the slides		
Claudio di Gangi	If a domain is used to further a phishing attack, do their online filing systems accept evidence of email abuse, such as the email header?	Others	I agree what other providers' comments and I do not think I have anything to add on this particular point.	The evidence that Forum would consider would be the information is able to be attached to the complaint. Regarding the type of evidence that would be a permissible attachment as a follow up, that wouldn't be for us to decide, that would be for the examiners to decide. They could attach anything they wanted but the examiner would decide if it falls within the categories.	Regarding the type of evidence that would be a permissible attachment as a follow up, if it's attachable to the complaint it is, it can be accepted as proof.
Claudio di Gangi	If the WG were to recommend the URS apply to legacy gTLDs (as a consensus policy), can the providers easily scale their services accordingly or would they anticipate challenges doing so?	Others	So from the ADNDRC side, I definitely agree that there's not much technical issue for us to extend the current URS system to legacy domains. I would say that we would welcome such extension at ADNDRC because if the working group agreed to extend URS to make it applicable for legacy domains that would actually help us to expand our services provided under the URS.	The system itself would be easily scalable. We would have to certainly consider if we'd want to undertake that if it were applicable to legacy domains, with the fee structure that is provided. We're certainly not making any money off of the URS cases so and not that that's the primary concern what we were trying to do is give our filers a complete package of options. So that's to be determined at a later date.	MFSD has no technical problems to receive complaints also for other type of domain names, different from new gTLDs if URS becomes a consensus policy, so there is no such technical issue.

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George Kirikos	<p>Q to FORUM: According to:</p> <p>[A] https://fedsoc.org/commentary/publications/national-arbitration-forum-settlement-with-minnesota-attorney-general "On July 20, 2009, Minnesota Attorney General Lori Swanson announced that the country's largest arbitrator of credit-card and consumer-collection disputes would no longer handle consumer arbitrations.</p> <p>The National Arbitration Forum's decision to end its consumer-arbitration business resulted from a settlement it reached with the State of Minnesota less than a week after Attorney General Swanson sued the company in Ramsey County, Minnesota, accusing the company of violating Minnesota's consumer-fraud, deceptive-trade-practices, and false-advertising statutes."</p> <p>[B] https://www.creditcards.com/credit-card-news/minnesota-attorney-general-lawsuit-national-arbitration-forum-1282.php</p> <p>"The lawsuit claims the NAF, the largest arbitration company in the United States, violates state consumer fraud and deceptive trade laws by hiding its financial ties to collection agencies and credit card companies. The lawsuit also claims the company violates false advertising laws by misrepresenting themselves as a neutral organization. "</p> <p>My questions are:</p> <p>(1) In light of [A], how do NAF's business practices in handling domain name disputes differ from those in the consumer-arbitration business which it left, and how can domain name registrants be confident that the same abuses which were alleged in consumer arbitrations are not present in its domain name dispute business?</p> <p>(2) In light of [B], who are the beneficial owners of NAF, and do they have any ties to the trademark industry, law firms, or anyone else that might affect its neutrality? In other words, what is the "Statement of Interest" (SOI) for NAF itself as an organization?</p>	Others		<p>With respect to the topic of consumer arbitration, that is a political football in the United States certainly, and for the record, Forum voluntarily ceased doing consumer arbitrations. As far as how can domain name registrants be confident that those same abuses won't happen, alleged abuses won't happen here, well that's why we're here; that's why I'm here explaining our processes and how we do things. Everything is published, as far as determinations, examiner information is published, so I don't know how I can prove a negative that we don't have those abuses anymore.</p> <p>As far as the SOI for NAF, I can't tell you who the owners are, I don't know that they can tell you who I am so I don't know how they would have any influence on how I essentially run the business the domain name programs. It's not like owners are in my office on a daily basis. I don't even know who they are necessarily. And if there are any further questions as for their identity, I think I would definitely have to run that through staff counsel.</p>	