

**I C A N N**  
**POLICY FORUM**

**62**

**PANAMA CITY**

25–28 June 2018

**Rights Protection Mechanisms (RPMS)  
Policy Development Process  
JUNE 2018**

# Working Session of the Uniform Rapid Suspension (URS) Providers Sub Team



Thursday, 28 June 2018

# Agenda

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1

Status Update

2

Review Questions  
with Divergent  
Responses

# Status Update



Click [HERE](#) to Review the Full Responses from URS Providers

# Questions with Divergent Responses

## also including

- questions with incomplete responses
- follow-up questions

# Row 4 – Communications

Please provide us with information regarding the means by which you communicate with complainants and respondents, including relevant provisions of your Supplemental Rules.

## ADNDRC

electronically only, fax or letter types of postal mail are not provided

## FORUM

electronically, fax, postal mail, phone calls

## MFSD

electronically, fax, postal mail

# Row 6 – Communications

What percentage, if any, of communications to Complainants and Registrants are done in ways other than electronically/via the Internet? What alternative means are utilized?

ADNDRC	FORUM	MFSD
100% electronically	email (vast majority), U.S. mail, fax, phone	communications to Complainants 100% email, communications to Respondents 100% email, Notice of Complaint and Notice of Default are sent to Respondents via email, courier (except for P.O. Box addresses), registered letter with return receipt, or fax

# Row 7 – Communications

Which of the two cited methods in URS Rule 2(a) do you use to deliver the Notice of Complaint, including both the hard and electronic copy? What mechanism(s) do you have in place in either method to track actual delivery to or receipt by the Respondent? Do you utilize any means to confirm receipt?

## ADNDRC

only delivers the Notice of Complaint electronically

**Question:** Why you do not deliver the Notice of Complaint in hard copy?

## FORUM

sends the Notice of Complaint utilizing U.S. Mail, sends Complaints and annexes via email, does not confirm receipt but saves a log of rejected emails, failed faxes, and returned mail

## MFSD

sends the electronic copy of the Notice of Complaint as well as a hard copy via courier (except for P.O. Box addresses), or registered letter with return receipt, or fax; provides details of the method tracking; only sends the electronic copy of the Complaint and its annexures



# Row 10 – Communications

Do you receive notification via email from Registry Operators: A) If a URS Locked or URS Suspended domain name has been either deleted or purged? B) If the registration of a URS Locked or URS Suspended domain name has expired? C) If a URS Suspended domain name has been renewed for an additional year?

**ADNDRC**

yes to all questions

**FORUM**

pending response

**MFSD**

no to all questions

# Row 11 – Communications

Do you receive information from ICANN with regard to the point of contact of the Back End Registry Operator appointed by a Registry Operator?

ADNDRC	FORUM	MFSD
no	yes	yes

# Row 12 – Communications

Have you experienced difficulties in communicating with Registry Operators in respect of their role in any part of a URS proceeding? If yes, please elaborate.

## ADNDRC

takes some ROs longer time to respond to inquiries

## FORUM

difficulty and delay in getting responses to verification and lock requests from some Registries; difficulty in getting the Registry and Registrar to implement a settlement which involves a transfer at the Registrar level

## MFSD

some RO's email addresses are different from the contact present in ICANN's repository; sent reminders to ROs & submitted reports to ICANN for the lack of response/implementation

# Row 14 – The Complaint

Do you accept Complaints that do not contain all the elements required in URS Rule 3(b)? Please provide your online forms for Complaint filing and identify any deviation from URS Rule 3(b).

ADNDRC	FORUM	MFSD
<p>yes</p> <p><b>Questions:</b></p> <ol style="list-style-type: none"><li>1. What do you mean by yes?</li><li>2. In light of GDPR, do you accept URS Complaints if Complainant does not provide the contact details of the Respondent (“Doe Complaint”)?</li></ol>	<p>no</p> <p><b>Questions:</b></p> <ol style="list-style-type: none"><li>1. In light of GDPR, do you accept URS Complaints if Complainant does not provide the contact details of the Respondent (“Doe Complaint”)?</li></ol>	<p>no (accepts “Doe Complaint” starting from 25 May 2018)</p>

# Row 17 – The Complaint

What other circumstances – not included in the non-exclusive list in the URS Procedure 1.2.6.3 – have led your Examiners to determine that the domain name was registered and was being used in bad faith? Have there been cases where your Examiners have not expressly cited a circumstance as the basis of their finding of demonstrable bad faith registration and use?

ADNDRC	FORUM	MFSD
no	<u>pending response</u>	<b>yes</b> to “other circumstances”; <b>no</b> cases where Examiners have not expressly cited a circumstance as the basis of their finding of demonstrable bad faith registration and use

# Row 18 – The Complaint

Has any Complainant expressed any difficulty with regard to the 500-word limit set for the Complaint?

ADNDRC	FORUM	MFSD
no	yes  <b>Questions:</b> What is your suggested word limit?	no

# Row 19 – The Complaint

Do you check to determine whether a domain that is cited in a new URS Complaint is already subject to an open and active URS or UDRP proceeding? If so, how do you find this information?

## ADNDRC

yes, conducts cross-checks

**Question:** How do you conduct cross-checks? Please elaborate.

## FORUM

relies heavily upon info from Complaint, but conducts searches if there is a suspicion

**Question:** What triggers such suspicion?

## MFSD

yes, conducts manual online research at the URS and UDRP Providers' websites

# Row 21 – The Complaint

Have you accepted any Complaints that multiple related companies brought against a single domain name Registrant?

ADNDRC	FORUM	MFSD
yes (no elaboration on the number of such Complaints)	yes (21 cases)	no



# Row 22 – The Complaint

Have you accepted any Complaints that were filed against multiple related Registrants in the same filing?

ADNDRC	FORUM	MFSD
yes (no elaboration on the number of such Complaints)	yes (5 cases)	no

# Row 23 – The Complaint

How many Complaints have you accepted that listed fifteen or more disputed domain names registered by the same Registrant?

ADNDRC	FORUM	MFSD
no	yes (6 cases - 16, 474, 85, 31, 202, and 32 domain names)	no

# Row 26 – Fees

Do you have any opinion regarding the design and feasibility of a “loser pays” model that could levy additional costs against a losing party to a URS?

**ADNDRC**

not against

**FORUM**

against

**MFSD**

against

# Row 28 – Fees

Have you received feedback on whether your fees structure has been a major deterrent to the filing of Complaints or Responses?

ADNDRC	FORUM	MFSD
no	no	no; MFSD provided thoughtful comments with regard to the difficulties of filing “Doe Complaints”, as well as other factors deterrent to filling Complaints; MFSD also offered suggestions for procedural amendments to resolve some of the issues facing the Doe Complaints

# Row 31 – Administrative Review

How many Complaints have been found non-compliant?

ADNDRC	FORUM	MFSD
more than 2 cases	17 cases	3 cases

# Row 35 – Notice of Complaint & Locking of Domain

Have you received any notification of non-delivery of communications? If Respondents did not receive notifications on the first attempt, how could they know of the Complaint? What steps do you take if you receive notifications of non-delivery?

ADNDRC	FORUM	MFSD
no	yes (returned pieces of mail on 151 URS cases; out of those 151 cases, a response was received in 29 of them.	yes (no elaboration on the number of such notifications)

# Row 40 – The Response

Have you received any requests for an extension of time to respond? A) If yes, how many/what percentage of the Respondents asked for an extension of time? B) How many of these requests were received after Default (14 Calendar Days), or after Determination (no more than 30 Calendar Days)?

ADNDRC	FORUM	MFSD
no	A) yes (36 cases) B) <u>pending response</u>	no

# Row 41 – The Response

Have you ever extended the period of time for the filing of a Response by a Respondent under exceptional cases per URS Rule 5(e)? If yes, what have you considered as "exceptional cases" in those instances?

ADNDRC	FORUM	MFSD
n/a	yes (liberally grants extensions to Respondents if a reason is provide)	n/a



# Row 42 – The Response

Have you conducted a compliance check for a Respondent for factors beyond the two items stated in URS Rule 5(g)?

ADNDRC	FORUM	MFSD
no	yes	yes

# Row 43 – The Response

Who determines whether a Response is non-compliant – you or the appointed Examiner?

ADNDRC	FORUM	MFSD
ADNDRC only flags the “superficial formatting and non-compliance issue”; the appointed Examiners screen the other non-compliance issues	FORUM screens all response compliance issues	MFSD only screens non-payment issue, and flags other non-compliance issues for the Examiner to consider

# Row 49 – The Response

What are the fees were associated with these any late Responses?

ADNDRC	FORUM	MFSD
<p><b>paid by Respondent, non-refundable</b></p> <p>1 to 5 domain names: \$180</p> <p>6 to 14 domain names: \$200</p> <p>15 to 29 domain names: \$225</p> <p>30 domain names or more - to be determined by the Relevant Office of ADNDRC</p>	<p><b>paid by Respondent, non-refundable</b></p> <p>re-examination fee, more than 30 days late: \$200</p> <p>re-examination extension fee: \$100</p>	<p><b>paid by Respondent, non-refundable</b></p> <p>natural person/sole proprietorship/public body/non-profit entity:</p> <p>1-15 domain names: €175</p> <p>16-50 domain names: €200</p> <p>50 domain names or more: to be decided with MFSD</p> <p>partnership/corporation/public company/private limited/limited liability company:</p> <p>1-15 domain names: €190</p> <p>16-50 domain names: €225</p> <p>50 domain names or more – to be decided with MFSD</p>

# Row 50 – The Response

A) Has any Respondent expressed any difficulty with regard to the 2,500-word limit set for the Response? B) Do you believe that the balance of the word limits for the Complaint (500 words) and the Response (2,500 words) is reasonable? If not, what adjusted balance would you suggest?

ADNDRC	FORUM	MFSD
A) no B) no answer	A) yes (not long enough for both Respondents and Complaints) B) no answer	A) no B) yes

# Row 53 – The Response

What, if any, other anecdotal feedback have you received from Respondents regarding the URS Rule and Procedures or your administration of the same?

ADNDRC	FORUM	MFSD
no feedback	Respondents did not know how to proceed and needed FORUM's assistance; general complaints regarding online filing portal	no feedback

# Row 55 – Stay of Administrative Proceeding

Have you received any joint requests for a Stay of the Administrative Proceeding? If yes, how many cases were reinstated or otherwise dismissed upon expiration of the Stay?

ADNDRC	FORUM	MFSD
no	yes (58 cases; 36/58 cases were ultimately joined by the other party and an Order staying the proceeding was issued)	no

# Row 56 – Stay of Administrative Proceeding

Have you received any requests for a Stay after the appointment of the Examiner? If so, how was this handled?

ADNDRC	FORUM	MFSD
no	yes (the request for a stay is Ordered by the Examiner in those instances)	no

# Row 60 – Examiner

What factors should we consider in regard to evaluating your processes and practices pertaining to Examiners' selection and training?

ADNDRC	FORUM	MFSD
“panel selection and training processes must be flexible and not rigorous”, no elaboration on detailed factors	dispute resolution experience, language skills, experience in IP/domain name disputes, willingness to get paid less, availability, fast turnaround, UDRP Panelists	language skills, experience in IP/domain name disputes/ADR proceedings, UDRP Panelists/TLD Panelists, Examiners at the other two Providers, appointment, education/training opportunities



# Row 62 – Examiner

Why have the qualifications of some of your Examiners not been published?

## ADNDRC

qualifications will be published “subject to examiner’s consent on how much information can be made publicly available”

## FORUM

“there may be very brief moments when a current Examiner’s qualifications are not available because they are being updated”

## MFSD

qualifications of all Examiners are published

# Row 63 – Examiner

What is your conflict of interest policy for Examiners? How do you make the Examiners aware of their obligation to be impartial and independent?

## ADNDRC

if the Parties consent, a person may serve as an Examiner even if he/she has any interest in the dispute

## FORUM

no indication of exception

## MFSD

no indication of exception

# Row 65 – Examiner

Can you provide a copy of any oath taken by your Examiners to affirm that they will be neutral and independent? Is the oath signed by the Examiners?

ADNDRC	FORUM	MFSD
email	Neutral's Oath form	email & confirmation on Determination form

# Row 67 – Examiner

Has any of your Examiners voluntarily disclosed any conflict of interest? If not, then what action was taken upon discovery of any conflict? If a conflict was disclosed, did the Examiner do this before and/or during the case proceeding?

ADNDRC	FORUM	MFSD
no direct answer	yes (case coordinator notes the conflict of interest, case is then reassigned to the next Examiner in the rotation); no instance of a conflict presenting itself after an Examiner has accepted a case	Yes (before appointment, MFSD requests Examiner to disclose possible conflict of interest); no instance of a conflict presenting itself after an Examiner has accepted a case

# Row 73 – Examiner

How large is the pool of URS Examiners?

<b>ADNDRC</b>	<b>FORUM</b>	<b>MFSD</b>
180 Examiners (as of 03 May 2018)	122 Examiners (as of 03 May 2018)	23 Examiners (as of 03 May 2018)

# Row 74 – Examiner

What procedures do you employ to rotate case assignments among your Examiners?

## ADNDRC

assignment depends on nature of the disputes, availability, identity of the Parties, nationality of the Parties, Examiners' independence and impartiality, their past experience working with URS Parties, legal background

## FORUM

rotation with 4 cases assigned at a time, exception made for availability and language considerations

## MFSD

adopts the principle of the rotation; assignment depends on language skills, availability

# Row 75 – Examiner

Has any Examiner ever been removed from the pool of Examiners for any reason? If so, why? What behaviors would disqualify/bar an Examiner from future cases?

## ADNDRC

no (answers are not complete)

## FORUM

no; e.g., failing to comply with deadlines, failure to understand the Policy and Rules, or repeatedly not being available to take a case due to schedule or conflicts of interest

## MFSD

no; e.g., non-compliance with the deadlines of the URS proceeding, repeated non-availability to being appointed as Examiner, non-declaration of conflict of interest, repeated non-participation at trainings, rendering Determinations contrary to the policies and rules or with insufficient and illogical reasoning

# Row 76 – Examiner

Do you permit one to continue being an Examiner if one represented a Complainant in a URS or UDRP proceeding where there was finding of Reverse Domain Name Hijacking?

ADNDRC	FORUM	MFSD
will not permit such Examiner to continue presiding in a URS case	n/a (did not provide complete response)	n/a (no monitoring of UDRP proceedings with finding of RDNH; evaluate on a case by case basis should that happen)



# Row 77 – Examiner

A) What steps, if any, do you take to ensure that your Examiners have demonstrable relevant legal background? B) What steps, if any, do you take to ensure that your Examiners have a diversity of relevant experience (e.g., have experience representing Respondents as well as Complainants)? If so, please explain.

ADNDRC	FORUM	MFSD
review resumes & speak to them	<u>pending response</u>	“open, transparent and non-discriminatory” selection process, “engage with various stakeholders of the Internet community, including domain owners' associations, and encourage professionals having language skills and thorough experience in domain name disputes to send us their CVs and requests of accreditation”

# Row 79 – Language

Have you experienced any difficulties or issues with the current URS language requirements? What steps have you taken to comply with and implement the current requirements?

## ADNDRC

all communications is only conducted in English; does receive inquiries, especially from the Respondent, regarding the language of the proceedings

## FORUM

provides translation and appoints Examiners that speak the language of the Respondent

## MFSD

provides translation and appoints Examiners that speak the language of the Respondent

# Row 80 – Language

Do you utilize WHOIS data in order to determine the proper language to be used in transmitting the Notice of Complaint?

ADNDRC	FORUM	MFSD
no	yes (WHOIS as well as information obtained from Registrars)	yes

# Row 81 – Language

Do you think it would be feasible to mandate sending Registry and Registrar notices in the same language(s)?

ADNDRC	FORUM	MFSD
no	no	no direct answer

# Row 84 – Language

Can you provide any information as to whether, and in how many instances, it has been demonstrated that a Respondent had the capability of understanding English in addition to their primary language?

ADNDRC	FORUM	MFSD
no elaboration on any instance	<u>pending response</u>	Dispute no. F52833A5, D5C230DE, D70B9442, 6DDAB859, 800AA499, 30AF44A1, 369B0FE1, 804D64F0, 12835AFC

# Row 92 – Default

Has any of your Examiners drawn inferences per URS Rule 12(f) when a party is not in compliance with URS Rules, Procedures, and Supplemental Rules, in the absence of exceptional circumstances? If so, what inferences were made?

ADNDRC	FORUM	MFSD
no	<u>pending response</u>	yes (e.g. Dispute no. 8422F178 e-leclerc.paris; Dispute no. 429EC571 reinhausen.international)

# Row 95 – Examiner Determination

Noting that URS Rule 13(a) provides that an Examiner may “make a Determination ...in accordance with ...any rules and principles of law that it deems applicable”, are you aware of instances where an Examiner has invoked substantive criteria beyond those articulated in the URS Rules, Procedure, and Supplemental Rules?

ADNDRC	FORUM	MFSD
references past UDRP/URS cases in addition to URS Rules and Procedures	<u>pending response</u>	no

# Row 97 – Examiner Determination

How do you compel your Examiners to comply with your templates in writing their Determinations or guidelines? Do you intervene in an administrative capacity to ensure your Examiners provide the most comprehensive written Determinations they possibly can? How do you strive to standardize the completeness or quality of your Examiners' written Determinations beyond the use of your online Determination template or form?

## ADNDRC

“routinely go through Examiners decisions to ensure standards of decisions, and will note down Examiners who we think have not adhered with the standards or qualities of URS awards, and will not appoint them”

## FORUM

does not intervene “unless there is a Determination or series of Determinations by the same Examiner that are in some way questionable”

## MFSD

“Examiners were encouraged by MFSD to refer to WIPO Overview of WIPO Panels Views on Selected UDRP Questions, Third Edition (WIPO Jurisprudential Overview 3.0)”; “adopts the best practice of well-known international Dispute Resolution Providers (e.g. WIPO and CAC), known also as ex-post quality check”; “the only sanction applicable by MFSD...is the de-accreditation and de-listing of an Examiner”; monitors case law and education of Examiners



# Row 98 – Examiner Determination

The URS Documents Sub Team has suggested that a Guide for URS Examiners be developed, to assist them with understanding the distinction between clear-cut and more difficult cases. Do you agree? If so, who should develop this guide – ICANN, each Provider separately, or should all Providers collaborate to develop a uniform guide?

## ADNDRC

yes, collaboration with the other providers and ICANN

## FORUM

not necessarily, but if needed, collaboration with the other providers

## MFSD

not necessarily, but if needed, collaboration with the other providers

# Row 99 – Examiner Determination

How do your Examiners apply the “clear and convincing evidence” standard of proof required in URS cases?

ADNDRC	FORUM	MFSD
no elaboration on how Examiners apply the “clear and convincing evidence”	<u>pending response</u>	“Section VII of our online Determination form...requires the Examiners to reassume the position and defenses of the Parties (A and B), the procedural findings (C), the findings of facts (D), the reasoning with reference to the three URS requirements (paragraph 1.2.6 of the URS Procedure), providing them with instructions and guidelines on the URS elements and defenses”

# Row 100 – Examiner Determination

How do you ensure that Examiners actually provide some explanation of the facts and reasoning in support of their Determinations? If you do not do so, please explain why.

ADNDRC	FORUM	MFSD
provides Examiners online Guidelines which requires them to provide some explanations of facts and reasoning in support of their Determinations	<u>pending response</u>	“Section VII of our online Determination form...requires the Examiners to reassume the position and defenses of the Parties (A and B), the procedural findings (C), the findings of facts (D), the reasoning with reference to the three URS requirements (paragraph 1.2.6 of the URS Procedure), providing them with instructions and guidelines on the URS elements and defenses”

# Row 103 – Examiner Determination

(A) Do you supply the Examiners with information, analysis, or research concerning a Complaint or Response that is not to be found within the Complaint or Response itself? If so, please explain. (B) Do you provide drafts or exemplars to the Examiners? If so, please explain.

ADNDRC	FORUM	MFSD
A) no B) no	A) no B) no (case caption is the only item that is automatically generated in the decision template)	A) provides information regarding the case management (procedural matters) B) Determination form is partially filled (e.g., identification of Parties, domain name, Registry Operator and Registrar, procedural history and Examiner's name) captured automatically by the online dispute management system); Examiners are encouraged to refer to WIPO Overview of WIPO Panels Views on Selected UDRP Questions, Third Edition (WIPO Jurisprudential Overview 3.0) and to cite URS and UDRP case law they retain significant for the decision of the dispute

# Row 105 – Remedies

Please provide feedback regarding any difficulties encountered in the implementation of the suspension remedy.

ADNDRC	FORUM	MFSD
n/a	delay in the activation of the URS suspension or non-implementation of URS suspension	delay in the activation of the URS suspension or non-implementation of URS suspension

# Row 106 – Remedies

Are you aware of any instances where a successful Complainant has requested the extension of the registration period of the URS Suspended domain name for one additional year? If so, do you know if any of them encountered difficulties extending the registration period of a URS Suspended domain name for the additional year? If so, do you know how the matter was handled?

ADNDRC	FORUM	MFSD
no	yes, the roles of Registry and Registrar may not have been understood by one or the other in the process	yes, but no further information if extension was obtained

# Row 111 – Determinations and Publication

Have any of your Examiners issued both the Default and Final Determinations, when the Final Determination changed the case outcome from that of the Default Determination?

ADNDRC	FORUM	MFSD
no	yes (1 case as of 06 March 2018)	no

# Row 112 – Determinations and Publication

Have any of your Examiners decided to publish both the Default and Final Determinations, when the Final Determination upheld the Default Determination outcome for the same case?

ADNDRC	FORUM	MFSD
no	yes (14 cases as of 06 March 2018)	no



# Row 115 – Determinations and Publication

Has any Determination that your Examiners have issued concerned the same domain name(s) at issue in a prior case? If so, have you linked the cases? Has any Final Determination been made by the same Examiner who made the initial Default Determination in the same case? If so, how many times has this occurred?

## ADNDRC

no (answers are not complete)

## FORUM

yes; does not link cases; most of the Final Determinations were made by the same Examiner as the Default Determination, unless a Response was received in a language that the Examiner did not speak after the Default Determination.

## MFSD

no (answers are not complete)

# Row 128 – Appeal

What percentage of your administered cases have been appealed? Do you have any view as to why Appeals are infrequent?

ADNDRC	FORUM	MFSD
0 Appeals	14 Appeals covering 16 domains	0 Appeals

# Row 129 – Appeal

How do you implement URS Rule 19(b)? Do you conduct an administrative check on the data of any additional evidence sought to be introduced? How do you determine that the Appellant in seeking to introduce new evidence, is in fact, providing evidence that is material to the Determination and clearly pre-dates the filing of the Complaint?

ADNDRC	FORUM	MFSD
yes, but has not experienced any such instance	<u>pending response</u>	provided details of its administrative review in the event that the Appellant may introduce new admissible evidence

# Row 136 – Other

Have you undertaken any internal reviews of your Supplemental Rules? If yes, how often? Have you discerned a need to tighten or provide greater clarity to your Supplemental Rules?

ADNDRC	FORUM	MFSD
yes; does do not discern a need to tighten or provide greater clarity to our Supplemental Rules.	yes; changed fees for multiple domain names	yes; changed schedule of fees

# Row 137 – Other

Do you have any difficulties complying with the URS technical requirements (e.g., utilizing PGP Keys, etc.)?

ADNDRC	FORUM	MFSD
yes (migrating to a new website)	no	no

# Row 138 – Other

Do you maintain any regular communications with ICANN? If yes, did ICANN request any information or data from you via such communications? What other areas of the URS do such communications touch on? Please provide details.

ADNDRC	FORUM	MFSD
yes (no details with regard to the information/data in the communications with ICANN)	yes; standing request for monthly statistics; registry contact information when requesting verification and domain name locks; verify SMD files originating with the TMCH; impact of masked WHOIS information in the wake of GDPR	yes; statics on URS disputes; data of abusive complaints case and practice on handling abusive proceedings database; change in fees, office address, E&O policy; technical issues; issues related to GDPR and the Temporary Specification

**Thank You**