

Responses & Notes Related to URS Provider Questions (04 May 2018)

Origin	Proposed Questions	ADNDRC Response	Forum Response	MFSD Response	Staff Notes
Communications					
URS Rule 2(c)	Please provide us with information regarding the means by which you communicate with complainants and respondents, including relevant provisions of your Supplemental Rules.	<p>All communications with URS Parties, Registries, and Registrars are conducted electronically (i.e., email); fax or letter types of postal mail are not provided.</p> <p>Privacy/Proxy As an additional safeguard and a design process, the relevant office of ADNDRC would request the Registry Operator to identify the true identity of the Respondent.</p> <p>Based on its experiences dealing with the UDRP cases, this method is an additional safeguards to ensure that the Respondent receives the notice, as long as some information is correct.</p> <p>Supplemental Rules: Article 3. Communications 1. Any submission that may or is required to be made to the Centre pursuant to the Procedure, the Rules, and the Supplemental Rules shall be made electronically via the Internet in accordance with the Guidelines for URS Submission (the "Guidelines") which can be found at https://www.adndrc.org/urs/guide. 2. Any communications to the Examiner by either Party shall be made through the Relevant Office of the Centre which the Complainant has selected to administer the proceedings. 3. Communication between the Examiner and the Parties shall be coordinated through the Case Administrator.</p>	<p>Registry Email sent with Complaint requesting verification and lock</p> <p>Registrar - Email sent attaching notice and Complaint</p> <p>Respondent (commencement of the case) - Email containing notice (translated if necessary) Complaint and link to online portal for filing Response - Notice sent by fax and mail</p> <p>Complainant All communications via email</p> <p>Other Methods Accept phone calls from any parties in the process to answer procedural questions if necessary. A case coordinator is assigned to each case and will reply either via email or phone call.</p> <p>Privacy/Proxy - Some Registrars will provide Respondent information – if so, the notice and Complaint are sent to the contact information provided by the Registrar - In the event that a Registrar cannot provide that information, which is not typical, Forum proceeds with the information that it has</p> <p>Supplemental Rules: 3. Communications All communications must be directed to the Forum and not to the Examiner.</p>	<p>Registries and Registrars - By e-mail to the e-mail address(es) made available by ICANN</p> <p>Complainant By e-mail to the e-mail address provided in the Complaint (Complainant itself or authorized representative)</p> <p>Respondent - Notice of Complaint and Notice of Default by e-mail, courier and fax (if any) to all email addresses, postal mail and facsimile addresses shown in Whois confirmed by the Registry and to any e-mail addresses provided by the Complainant in the Complaint - Other communications: by email</p> <p>Privacy/Proxy - If the Registrar is not communicating any underlying information regarding the Registrant, MFSD just proceeds using the information available in WHOIS.</p> <p>Supplemental Rules: 3. Submissions Complaint, Response, Appeal, Response to an Appeal, request of extension to file Response, request of challenge of the Examiner, request of termination, request of suspension or withdrawal or any other communications shall be submitted to MFSD (and not to the Examiner) through MFSD's online dispute management platform https://urs.mfsd.it by using the relevant online model form(s) or by sending the same (except for Complaint) by e-mail to urs@mfsd.it.</p> <p>Submissions shall be accompanied by the payment of the relevant filing fee as set out in paragraph 17 of these Supplemental Rules.</p> <p>Complaint, Response, Appeal, Response to an Appeal, request of extension to file Response, request of challenge of the Examiner, request of termination, request of suspension or withdrawal or any other communications shall contain all elements, attestations and statements specified in URS Procedure, URS Rule and these Supplemental Rules.</p> <p>Submitted Complaint shall not be amended at any time.</p> <p>Complaint shall respect the 500-word limit specified in paragraph 1.2.7 of the URS Procedure.</p> <p>Response shall respect the 2500-word limit set forth in paragraph 5.4 of URS Procedure.</p> <p>Parties shall annex adequate evidence to support their assertions and claims.</p> <p>The file formats of the annexes may be the following: .pdf; .doc; .smd (for Trademark Clearinghouse proof of use); .jpg; .tiff; .rtf; .xls; .htm/.html.</p> <p>No individual file may exceed 16MB and the overall files annexed by a party per dispute may not exceed 64MB.</p>	

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URS Rule 2(a)(i) URS Procedure 4.3 ADNDRC Supplemental Rule 3	(To ADNDRC) Please explain why ADNDRC rely solely on email as the mode for issuing a Notice Complaint? In your view, is this communications method in compliance with the URS Rule Clause 2(a)(i) and Procedure Clause 4.3?	ADNDRC has basically accommodated this under Article 3 of the supplemental 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.			
The Complaint					
URS Rule 3(a), 3(b)(i)-(x) Forum Supplemental Rule 4(b)	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).	No -- ADNDRC conducts Administrative Reviews in accordance with URS Rule 3. The Complainant is required to fill in necessary information as required by the online portal, for example, the name, address, basic contact information etc. The Provider then conducts the Administrative Review in accordance with URS Procedure and Rules. For any case that filed but is not in the scope of URS, the Provider will notify the submitting party to withdraw the case.	No -- A Complaint will not be accepted at the time of filing for a lack of any of required information per URS Rule 3	No	
URS Procedure 1.2.7	(To ADNDRC) Has any Complainant expressed any difficulty with regard to the 500-word limit set for the Complaint?		Yes -- Forum has received feedback on the word limitation from the Complainants. It is not enough.	No	
URS Rule 3(g)	(To ADNDRC and Forum) 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?			During the Administrative Review, the designated case manager would check whether the disputed domain name is part of an open and active URS or UDRP case.	
URS Rule 3(c), 3(d)	How many Complaints have you accepted that listed fifteen or more disputed domain names registered by the same Registrant?				Six (6) Complaints listed 15 or more disputed domains registered by the same Registrant; all cases were handled by Forum.
URS Rule 3(h) Forum Supplemental Rule 4(c)	(To Forum and MFSD) How many Complaints have been dismissed as a direct result of the incorrect domain name Registrant being named in the Complaint, regardless of whether the domain name(s) registered were subject to a privacy or proxy service? Are you able to determine whether the mistake was due to Complainant error, or a WHOIS inaccuracy? If so, please share with us your analysis.	ADNDRC has not had any experience in dealing with privacy/proxy service used by a Registrant.			
Fees					
URS Procedure 2.2	Among the Complaints you received that each listed 15 or more disputed domain names registered by the same Registrant, how many Respondents filed a Reponses and paid the required Response Fee?				Based on staff's collected data and Professor Rebecca Tushnet's research, there have been no Responses filed to the six (6) Complaints in question, meaning that no Response Fee for those cases was paid
Administrative Review					
URS Procedure 3.2	(To Forum) Has there been any issue with regard to meeting the two (2) business days requirement of conducting the Administrative Review?	No - the Administrative Review of all cases has been conducted within two business days after acknowledging receipt of the Complaint		No - MFSD carries out Administrative Review within two business days as requested by the rules	
URS Procedure 3.4	How many Complaints have been found non-compliant?	More than 2 cases Complaints contended for legacy TLDs (e.g., .com, .cn) to which URS does not apply. Many of these cases' determination was listed as "withdrawn" on the ADNDRC website (7 cases - as of 06 March 2018). They actually failed the Administrative Review and were dismissed as they were not URS applicable.	17 cases Cases likely dismissed for nonpayment; Forum would check the reasons if it becomes a formal question.	3 cases Complaints contended for domain names (.com) to which URS proceeding does not apply	
Notice of Complaint and Locking of Domain					
URS Rule 2(j)	(To Forum and MFSD) 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 has not received any Complaint regarding not receiving notice.			

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URS Technical Requirements - Registrar Requirement 2	Do you have a view on the meaning of "a normal domain name lifecycle" (this phrase is used in Registrar Requirement 2 in the URS Technical Requirements)?	n/a	n/a	n/a	The infographic of "a normal domain name lifecycle" is published on icann.org as a "fact": https://archive.icann.org/en/registrars/gtld-lifecycle.jpg . It may also be more appropriate to ask registries and registrars for views on this question.
The Response					
URS Rule 5(a) (iii), 5(f)	(To Forum and MFSD) Have your Examiners received any Responses alleging an abusive Complaint? If so, how did the Examiners act in determining the validity of the allegations in those cases? What decisions were rendered on that claim? Have your Examiners received any affirmative claims for relief from Respondents, for reasons beyond an allegation of an abusive Complaint? If so, what was the basis of the claim(s)?	ADNDRC/HKIAC has never got any Response alleging any abusive Complaint			
URS Procedure 5.3 URS Rule 5(e)	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)?				Staff's initial review of Professor Rebecca Tushnet's research data indicates that no requests for extension of time to respond have been made.
URS Rule 5(g)	(To Forum and MFSD) Who determines whether a Response is non-compliant – you or the appointed Examiner?	Beyond any superficial formatting and non-compliance issue that is up to the Provider to flag out, the Examiner reviews and determines whether a Response is non-compliant.			
URS Procedure 5.1, 5.2	What are the fees were associated with these any late Responses?	Supplemental Rule: Article 14. Fees Re-examination Fees (paid by Respondent, if applicable, non-refundable) - 1 to 5 domain names: US \$180 - 6 to 14 domain names: US \$200 - 15 to 29 domain names: US \$225 - 30 domain names or more: To be determined by the Relevant Office of ADNDRC	Supplemental Rule: 18. Fees (U.S. Dollars) Re-examination Fee (more than 30 days late) \$200 (paid by Respondent, non-refundable) Re-examination Extension Fee \$100 (paid by Respondent, non-refundable)	Supplemental Rule: 17. Fees and Payment Re-examination Fees (If applicable, non-refundable), paid by the Respondent who is natural person/sole proprietorship/public body/non-profit entity - 1-15 domain names: 175 Euros - 16-50 domain names: 200 Euros - 50 domain names or more: To be decided with MFSD Re-examination Fees (If applicable, non-refundable), paid by the Respondent who is partnership/corporation/public company/private limited/limited liability company - 1-15 domain names: 190 Euros - 16-50 domain names: 225 Euros - 50 domain names or more: To be decided with MFSD	
URS Procedure 5.4	(To ADNDRC and MFSD) 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?		Forum has received feedback on the word limitation from both the Complainants and Respondents. It is not enough.		
ICANN61 Presentation	What, if any, other anecdotal feedback have you received from Respondents regarding the URS Rule and Procedures or your administration of the same?	ADNDRC has six out of the 33 cases that Respondents have filed a Response. ADNDRC has not received their feedback after the proceeding is complete.	Forum has received relatively few Responses. Forum has received correspondence from Respondents where the Respondent ultimately did not file a Response as they did not know how to proceed. Forum would provide assistance and re-forward the email that contains the link to the portal. The correspondence with Respondents is not included in the file. There are general Complaints regarding online filing portal.	There is only one Response filed in the URS disputes handled by MFSD. It was submitted within the 14 day Response period. No other Respondent has contacted MFSD with any feedback, so MFSD has not received any questions either informally or by email.	
Examiner					

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URS Rule 6(a)	How do you select Examiners and determine that their backgrounds comport with the URS Rule and procedures?	ADNDRC as established a URS panel specifically dealing with URS cases. Selection preference is given to experiences in IP, arbitration, domain name disputes, IT, and other relevant areas of law. Most Examiners join the panel by applications, but ADNDRC also identifies experts and specialists in the area and invite them to apply.	Selection preference is given to Examiners with IP or internet law, arbitration and other domain name dispute experience. Most of the current URS Examiners have been empaneled since the beginning, or at least within the first six months, of the URS program; they have had at least several years of URS experience. Among the US Examiners, not all judges necessarily have Internet IP background and expertise as part of their practice, but they certainly have experience with intellectual property cases. Through the training that they're provided with, they would have an adequate basis to decide domain name disputes.	Examiners are selected among professionals of multiple jurisdictions, with different language skills, and experienced in cross-border IP disputes, ADR proceedings, and in particular domain disputes (gTLDs – UDRP, ccTLDs, .eu, etc.).	
	What, if any, training or guidance do you provide for the selected Examiners?	ADNDRC provides examination guidelines to URS Examiners. In addition to that, ADNDRC also organizes annual training programs to keep Examiners informed of recent case trends, new laws at point, and other relevant practice trends. ADNDRC has a lot of training materials available on its website for the Examiners.	All Examiners have received a descriptive PowerPoint Presentation and Webinar training with the Director. In-person domain name dispute training is offered annually.	MFSD organizes regular online (webinars) and face-to-face (workshops) training sessions for the Examiners. More information: https://urs.mfsd.it/news-events .	
	Have you maintained and made publicly available the list of your selected URS Examiners and their qualifications? (To ADNDRC and Forum) Why have the qualifications of some of your Examiners not been published?	Qualifications of 19 out of 180 Examiners are <u>not</u> publicly available (As of 22 Feb 2018) ADNDRC Examiners' Bio or CVs are on the ADNDRC website. Its case managers also from time to time remind Examiners to update their CVs. ADNDRC sometimes asks Examiners to provide the most updated CVs before proceeding with the appointment.	Qualifications of 2 out of 122 Examiners are <u>not</u> publicly available (As of 22 Feb 2018) Forum staff would conduct search for all CVs/Bio and notify the Director if any is missing.	Qualifications of all 23 Examiners are publicly available (As of 22 Feb 2018) All 23 Examiners' Bio are on the MFSD website.	https://community.icann.org/download/attachments/79436564/URS%20Rules%206a.pdf?version=1&modificationDate=1519357143000&api=v2
URS Rule 6(b) MoU 2b(v) Forum Supplemental Rules 10(a), 10(b), 10(c)	(To MFSD) What is your conflict of interest policy for Examiners? How do you make the Examiners aware of their obligation to be impartial and independent?	Supplemental Rule: Article 8. Impartiality and Independence of Examiner 1. The Examiner shall be and remain at all times wholly impartial and independent, and shall not act as advocate for any Party during the URS proceedings. 2. Prior to the appointment of any proposed Examiner, the Examiner shall declare in writing to the Parties and the Relevant Office of the Centre any circumstances which are likely to create an impression of bias or prevent a prompt resolution of the dispute between the Parties. If, at any stage during the URS proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Examiner, the Examiner shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Examiner. 3. Except by consent of the Parties, no person shall serve as an Examiner in any dispute in which that person has any interest, which, if a Party knew of it, might lead him/her to think that the Examiner might be biased.	Supplemental Rule: 10. Impartiality and Independence (b) A Examiner will be disqualified if circumstances exist that create a conflict of interest or cause the Examiner to be unfair and biased, including but not limited to the following: (i) The Examiner has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts; (ii) The Examiner has served as an attorney to any party or the Examiner has been associated with an attorney who has represented a party during that association; (iii) The Examiner, individually or as a fiduciary, or the Examiner's spouse or minor child residing in the Examiner's household, has a direct financial interest in a matter before the Examiner; (iv) The Examiner or the Examiner's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (1) Is a party to the proceeding, or an officer, director, or trustee of a Party; or (2) Is acting as a lawyer or representative in the proceeding.		
	(To MFSD) How do your Examiners confirm their impartiality and independence?	In accordance with ADNDRC Supplemental Rules, any appointed Examiner is required to disclose any ground giving rise to justifiable doubt of the independence/impartiality of an Examiner before the appointment, in writing to the Complaint intake ADNDRC office and the Parties.	Supplemental Rule: 10. Impartiality and Independence (a) All Forum Examiners will take an oath to be neutral and independent.		
	(To Forum and MFSD) 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?	If any ground is discovered that gives rise to justifiable doubt of the independence/impartiality of an Examiner after the appointment/during the case proceeding, the Examiner is required to disclose to the Complaint intake ADNDRC office and the parties immediately.			

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	Does the Respondent have the ability/opportunity to allege any conflict of interest/bias on the part of the Examiner assigned to its case? Can they do so in their Responses or by other means?	Yes -- Since ADNDRC requires its Examiners to disclose any potential conflict before the appointment, the Respondent has an opportunity to point to any potential conflict of interest and object to the appointment after an appointment is made. In that case, usually ADNDRC will switch to appoint another independent/impartial panelist.	Yes -- Forum sends out an email to both URS Parties, indicating that an Examiner has been appointed and it's the responsibility of the Party to go to the portal and check the resume of that Examiner on the Forum website. Supplemental Rule: 10. Impartiality and Independence (c) A party may challenge the selection of a Examiner, provided that a decision has not already been published, by filing with the Forum a written request stating the circumstances and specific reasons for the disqualification. (d) A request to challenge must be filed in writing with the Forum within one (1) Business Day of the date of receipt of the notice of the selection.	Yes -- Upon appointment and acceptance of an Examiner, MFSD informs the parties by email, copying the Registry Operator and the Registrar, the name of the Examiner. The email contains the date, aside from exceptional circumstances, when the Examiner should render its Determination. Any party may challenge the appointment of the Examiner, provided that the Determination hasn't been rendered, by submitting a written request of challenge to MFSD, specifying the reason and within one business day from the receipt of the communication of the appointment. So far there was no such challenge of the Examiner. Supplemental Rule: 9. Examiner Any Party may challenge the appointment of the Examiner, provided that the Determination has not been already published, by Submitting a request of challenge in writing to MFSD, specifying the reasons, within 1 Business Day from the receipt of communication of appointment.	
	(To Forum and MFSD) When a conflict of interest has been confirmed, what remedial actions have been taken? Is any Examiner who failed to disclose a proven conflict permitted to preside in subsequent cases?	After the disclose of the conflict of interest, the case proceeding is suspended. The case intake ADNDRC office will appoint another independent/impartial Examiner within 24 hours of the written disclosure. Supplemental Rule: Article 8. Impartiality and Independence of Examiner 4. Where an Examiner has been appointed but before rendering a Determination the appointed Examiner fails to act or refuses to act, the Relevant Office of the Centre may appoint a substitute Examiner upon request by the Parties or in its discretion.	Supplemental Rule: 10. Impartiality and Independence (e) Provided a Determination has not already been published by the selected Examiner, the Forum will promptly review the challenge and determine whether circumstances exist requiring Examiner disqualification in accord with this rule. The decision of the Forum is not subject to Appeal.	Supplemental Rule: 9. Examiner Upon submission MFSD shall immediately review the request of challenge and, at its sole discretion, shall decide whether to substitute the Examiner. In case of substitution of the Examiner, MFSD shall immediately appoint another Examiner to decide the dispute.	
Question from the RPM PDP WG	How large is the pool of URS Examiners?	180 Examiners (as of 03 May 2018)	122 Examiners (as of 03 May 2018)	23 Examiners (as of 03 May 2018)	
URS Procedure 7.3.	What procedures do you employ to rotate case assignments among your Examiners?	Assignment of Examiners depends on the nature of the dispute, the availability of the Examiner (particularly important for URS proceedings considering its rapid nature), identity of the Parties, and nationality of the Parties (e.g. if an American trademark owner files a Complaint against a Chinese domain name holder, ADNDRC will not appoint an Examiner from either the US or China, but an Examiner with a neutral nationality). Assignment also depends on Examiners' independence and impartiality, their past experiences working with either URS Party, and the relevant legal background.	Rotation with 4 cases assigned at a time, with exceptions made for Examiner's availability and language considerations.	MFSD adopts the principle of the rotation. Assignment of Examiners is based on a case by case analysis. Examiner's language skills (in accordance with the language of the Response) are the most important factor. Another consideration is the availability of the Examiner due to the strict time frame of the proceeding.	
Language					
Q from Documents Sub Team	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?	All communication with URS Parties, Registries, and Registrars are conducted in English. ADNDRC does not have a formal procedure of translating documents or communications to corresponding languages, but the case administrators are usually happy to answer questions from URS parties. At times, ADNDRC does receive inquiries, especially from the Respondent, regarding the language of the proceedings.	Forum checks WHOIS information and information from the Registrar to obtain the physical location of the Respondent. Based on that information, Forum researches what the dominant language is in Respondent's physical location in order to provide translations. Forum translate all template documents. If there is a Response that comes in from a given region, Forum appoints an Examiner that speaks the language of the Respondent. All the documents are prepared for that Examiner in the corresponding language. Many determinations on Forum website are in the non English languages of the Respondents.	Communications to the Respondent, including the Notice of Complaint, Notice of default, and all emails, are translated to the language of the Respondent, in addition to English.	

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URS Rule 4(b)	Do you utilize WHOIS data in order to determine the proper language to be used in transmitting the Notice of Complaint?	No	Yes – WHOIS as well as information obtained from Registrars.	Yes – The translated language is determined by checking the predominant language of the Registrant country.	
URS Rule 9(c)	Are all of your Examiners fluent in English?				Not all Examiners have indicated fluency in English in their CVs/Bio on Provider's website, although all CVs/Bio are written in English. https://community.icann.org/download/attachments/79436564/URS%20Rules%20Research%20-%20URS%20Rule%206%28a%29.pdf?version=1&modificationDate=1522688440690&api=v2
	Are all of your assigned Examiners fluent in the non-English language of the Respondents?				Professor Rebecca Tushnet's research data notes specific decisions published in languages other than English, as well as cases where it was specifically noted that an Examiner was fluent in other language(s). While this may not answer the question, it may be an interesting data point for the WG to review.
Default					
URS Rule 12(b) URS Procedure 6.2	With reference to URS Procedure 6.2, to your knowledge, has any Registrant changed content on their sites during the Default period, possibly to support an argument that there has been a legitimate use? If so, do you know how the matter was handled?				After a URS Provider receives a Response for a default determination, the Provider will inform the Registry operator to "roll back" per section 6.5 of URS Procedure. The RO needs to "roll back" the redirection of the nameserver so the domain name resolves as it did prior to the dispute. The RO must maintain the URS LOCK on the domain name. The URS Provider will inform the RO of the final determination which may require the RO to (1) suspend the domain name again; or (2) perform a full rollback, allowing the registrant to regain control.
URS Rule 12(d) URS Procedure 6.4	In what percentage of cases, if any, has the Respondent submitted an answer within six (6) months after a Default Determination?				Staff Note: We already have this information from the case review for both within 6 months and after 6 months. ACTION ITEM: Staff to check how the additional six months extension in URS Procedure 6.4 was originated, and what was changed between 2009 and 2013. (The definition of "extension" needs to be clarified – Extend what for six months? Why does a Registrant need an additional six months?)
Examiner Determination					
URS Rule 13(a)	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?				Professor Rebecca Tushnet's research includes data on the cases where Examiners invoked "other" substantive criteria beyond the URS Rules, Procedure, and Supplemental Rules.
URS Rules 8 (a), 8(c), 13(b), 13(c) Question from Documents Sub Team	How do your Examiners apply the "clear and convincing evidence" standard of proof required in URS cases?				Professor Rebecca Tushnet's research includes data on the case Determinations where Examiners did not provide details or invoked "other" substantive criteria.
URS Rule 13(b)	Among your Examiner's Determinations, how many did not provide the reasons on which the Determination is based but simply stated that the URS elements have been established?				Staff's initial review of Professor Rebecca Tushnet's research suggests that the numerical answer to this question can be derived from the data.
URS Rule 13(d)	How often has URS Rule 13(d) been invoked? What factors have been cited by Examiners in making that Determination?				There has been zero (0) findings of abusive Complaints, meaning that URS Rule 13(d) has not been invoked.
Determinations and Publication					

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URS Rule 15(a)	Have you published the full text of all URS Determinations issued by your Examiners?	Yes, in accordance with the URS Rule and Procedure. Examiners' have the discretion to publish only Final Determinations or Appeal Determinations, so some cases' Default or Final Determinations may not be published.	Yes, in accordance with the URS Rule and Procedure. Examiners' have the discretion to publish only Final Determinations or Appeal Determinations, so some cases' Default or Final Determinations may not be published.	Yes, in accordance with the URS Rule and Procedure. Examiners' have the discretion to publish only Final Determinations or Appeal Determinations, so some cases' Default or Final Determinations may not be published.	https://community.icann.org/download/attachments/79436564/URS%20Rules%20Research%20-%20URS%20Rule%2015%28a%29%28c%29%28d%29%28e%29.pdf?version=1&modificationDate=1520360041000&api=v2
URS Rule 15(c)	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?	No - No case has both Default and Final Determinations listed (As of 06 March 2018)	Yes - 1 case (As of 06 March 2018)	No - No case has both Default and Final Determinations listed (As of 06 March 2018)	https://community.icann.org/download/attachments/79436564/URS%20Rules%20Research%20-%20URS%20Rule%2015%28a%29%28c%29%28d%29%28e%29.pdf?version=1&modificationDate=1520360041000&api=v2
URS Rule 15(d)	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?	No - No case has both Default and Final Determinations listed (As of 06 March 2018)	Yes - 14 cases (As of 06 March 2018)	No - No case has both Default and Final Determinations listed (As of 06 March 2018)	
URS Rule 15(e)	What is your Examiners' practice with regard to the publication of an Appeal Determination?				Based on the staff data collected for the URS Documents Sub Team, there has been fourteen (14) Appeal cases, only one (1) of which saw the Examiner exercise the permitted discretion to publish only the Appeal Determination and not both the Appeal and initial Determinations (see URS Rule 15(e)).
URS Rule 15(f)	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?				Staff's initial review of Professor Rebecca Tushnet's research shows that data has been included that can answer Parts 1, 3 and 4 of this question.
Abusive Complaints					
MoU 2b(viii) URS Rule 18(e) URS Procedure 11.6	How have you complied with the obligation to establish and maintain a process to monitor URS abuse? Are you coordinating the listing of abusive Complaints with other Providers? How do you and the other Providers share information about abusive Complaints?	ADNDRC reminds its Examiners of the existence of the abusive Complaints rule and asks them to provide ADNDRC their findings for any abusive Complaints. Currently ADNDRC does not have a mechanism that will automatically flag abusive Complaints, who would be barred from utilizing URS. It is a part of the Administrative Review process to flag that. Upon a Determination of abusive Complaints, any of the four ADNDRC offices responsible for publishing the decision will notify the other three ADNDRC offices of the result. Information regarding abusive Complaints, if any, will also be shared among the Forum, MFSD and ADNDRC.	If an Examiner finds a Complaint abusive, the Examiner will electronically flag it and Forum staff will be notified immediately. Forum will review the Determination, inform the other Providers and add the decision to the abusive findings database shared by the Providers. The abusive Complaint determination will also be available on Forum's website and easily found by clicking the box entitled: URS finding of abuse, on Forum's decision search template: www.adrforum.com/SearchDecisions . Forum is hosting the combined abusive Complaint database. Each Provider has login information to add any cases to the database. Only the Provider that adds information is able to edit any of that information; the other Providers cannot go in and take somebody out. The system is developed to inform all Providers the minute that a finding of abuse case is registered in the database.	Publication of the Determination containing a finding that a Complaint is abusive or contains deliberate material falsehoods among the Abusive of Proceedings: https://urs.mfcd.it/urs-disputes . Emailing the Determination and case details to the other two Providers (Forum and ADNDRC). Submission to Forum's Abusive Filing Database. Supplemental Rule: 10. Notice of the Determination to the Parties, the Registry Operator and Registrar, Publication of the Decision; abusive Complaints In case of abusive Complaint, within 1 Business Day, MFSD will submit information of the abuse to the abuse case database accessible to all URS Service Providers.	https://community.icann.org/download/attachments/79436564/URS%20Rule%2018.pdf?version=1&modificationDate=1522699121668&api=v2
URS Rule 3(e), 18(a) URS Procedure 11.2, 11.3	Have your Examiners found any abusive Complaints?	No (As of 15 March 2018)	No (As of 15 March 2018) -- Forum had one case in early 2016 that was checked in the database as abusive; it was an error and removed.	No (As of 15 March 2018)	
URS Procedure 11.1, 11.4, 11.5	Have you imposed any penalty for an abusive Complaint? If so, what was it?	No (As of 15 March 2018)	No (As of 15 March 2018)	No (As of 15 March 2018)	
URS Rule 18(f)	Do you, as a standard procedure, verify the eligibility of the Complaint against the abuse case database for every URS case?	Providers would check it, but there is nothing to check at present.	Providers would check it, but there is nothing to check at present.	During the Administrative Review of the Complaint, the designated case manager would check whether the Complainant has exceeded its quota of abusive Complaints (i.e., Checklist #6 Has the Complainant exceeded its quota of abusive Complaints? – If YES – Dismissal). MFSD also checks the websites of the three Providers if there are any abusive cases regarding such Complainant.	
Appeal					

Responses & Notes Related to URS Provider Questions (04 May 2018)

Origin	Proposed Questions	ADNDRC Response	Forum Response	MFSD Response	Staff Notes
ICANN61 Presentation	What percentage of your administered cases have been appealed? Do you have any view as to why Appeals are infrequent?	<p>0 Appeals</p> <p>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.</p> <p>Among the 33 cases that ADNDRC has handled, only six parties have submitted Responses. This may be an indicator that a lot of Respondents have not given their consideration to the URS proceeding. The suspension of the domain name to them is probably not as serious as having the domain name transferred to the trademark owners.</p>	<p>14 Appeals covering 16 domains</p> <p>It comes down to a client decision -- it just may be not worth it for them to proceed any further.</p>	<p>0 Appeals</p> <p>Parties may not have any reasons to Appeal and may be satisfied with the outcome of the proceeding. Since the URS do not preclude subsequent UDRP proceeding, there is also the possibility to file a UDRP after the URS.</p> <p>MFSD has not been contacted by the Complainants or the Respondents regarding the Appeal proceeding.</p>	
URS Procedure 12	Has there been any instance in which the same Examiner selected for the Appeal Panel had made the initial Determination in the same case?	<p>The Appeal Panel members should be different from the Examiner who made Appealed Determination for the Complaint.</p> <p>Same rules as Forum.</p> <p>Supplemental Rule: Article 12. Appointment of Appeal Panel 2. The Relevant Office of the Centre shall appoint suitable individuals from the list of Examiners to form the Appeal Panel having regard to the factors listed in Article 7 of the Supplemental Rules. <u>The Relevant Office of the Centre will not re-appoint the Examiner whose Determination is being Appealed.</u></p>	<p>New appellate Examiners are appointed for Appeals. The only choice that the party would have would be at three-member panel in an Appeal - they each would give Forum a list of three Examiner candidates. Forum would do its best to impanel one of the three candidates from each Party's list and then Forum appoints a chair for the URS Appeals.</p> <p>Supplemental Rule: 16. URS Appeal Supplemental Rules And) Appeal Panel Appointment (i) If neither party has timely requested and paid for a three member Appeal Panel, the Forum shall select an Examiner from its list of qualified Examiners to hear the Appeal. <u>The Forum will not reappoint the Examiner who made the Determination being Appealed.</u> (ii) If either party has timely requested and paid for a three member Appeal Panel, each party shall select three Examiners from the Forum's list of qualified Examiners within the time allotted for the Appeal or Reply submissions as stated in the Rules. The Forum will make every effort to appoint one of the Examiners from each parties' list to the Panel, but if all three selections are unavailable, or there are insufficient Examiners who are fluent in the language needed, the Forum will make an appropriate selection. The Forum will appoint the presiding Examiner from its list of qualified Examiners. <u>None of the Examiners on the Appeal Panel may be the Examiner who made the Determination being Appealed.</u></p>	<p>The Appeal Panel members should be different from the Examiner who made Appealed Determination for the Complaint.</p> <p>Supplemental Rule: 16. Appeal If either party has requested and paid the fees for the three-member panel, each party shall indicate three Examiners from MFSD's list of Examiners within the time period allotted respectively for the Submission of Appeal and the Response to the Appeal. MFSD will appoint one Examiner per party, one chosen from the names indicated by the appellant, the other chosen from those indicated by the appellee. The third Examiner is appointed by MFSD choosing from the names shown in the list of candidates submitted by MFSD to the parties; selection from the parties' candidates is made by MFSD trying to reconcile within reason the each party's preferences. <u>None of the Examiners of the three member panel shall be the same that issued the Appealed Determination.</u></p>	
Forum Supplemental Rule 16(d)	(To Forum) How often/in what percentage of Appeals was a three-member Appeal Panel requested? Which party made the request?	n/a	Nine (9) out of fourteen (14) Appeal cases had three-member Appeal Panels (as of	n/a	
Others					
ICANN61 Presentation	If a domain name is used to further a phishing attack, does your online filing system accept evidence of email abuse, such as the email header?	Same Response as Forum and MFSD.	<p>Forum would consider the information/evidence that can be attached to the Complaint.</p> <p>Regarding the type of evidence that would be a permissible attachment as a follow up, that wouldn't be for Forum to decide. That would be for the Examiners to decide whether it falls within the categories.</p>	If it is attachable to the Complaint, it can be accepted as proof.	
ICANN61 Presentation	If the WG were to recommend the URS apply to legacy gTLDs (as a consensus policy), can you readily scale your services accordingly, or would anticipated challenges which will determine additional number of cases?	<p>There is not much technical issue for ADNDRC to extend the current URS system to legacy domains.</p> <p>ADNDRC would welcome such extension as that would help ADNDRC to expand its services provided under the URS.</p>	<p>The system itself would be easily scalable.</p> <p>Forum would have to certainly consider if it wants to undertake that, with the fee structure that is provided. Forum is certainly not making any money off of the URS cases. What Forum is trying to do is to give filers a complete package of options.</p>	If URS becomes a consensus policy, MFSD has no technical problems to receive Complaints also for other type of domain names, different from new gTLDs.	

Responses & Notes Related to URS Provider Questions (04 May 2018)

Origin	Proposed Questions	ADNDRC Response	Forum Response	MFSD Response	Staff Notes
ICANN61 Presentation	<p>(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>		<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; that's why Forum is here explaining our processes and how we do things. Everything is published, as far as Determinations, Examiner information, etc. 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>		