

Questions for URS Practitioners

From the Practitioners Data Subteam of RPM WG

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

Procedural Issues:

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

Substantive Issues:

Burden of Proof and Remedies Provided under URS;

- The burden of proof is "clear and convincing evidence."

Formatted: Font: Bold

Commented [1]: I have added an introductory note to give background and perspective, and perhaps avoid concerns about abuse of information provided. Unless responses are blind (with a control to ensure the response is a true practitioner) it will still be easy to connect the opinion with a particular decision. I think critiquing the decision or panelist should not be our role here or the role of the practitioners. Only to determine how much of the problem is due to the rules and procedures.

Formatted: Font: Bold

Deleted: you

Deleted: D

Commented [2]: It would be useful to have some background on experience, even though the list is to be curated, this will allow us to corroborate the experience we believe a given practitioner has and allow the response to be stand alone and to be put in perspective.

Deleted: was

Deleted: they are bringing

Deleted:

Deleted:

Deleted: they

Deleted: with the process

Deleted: ,

Deleted: Apart from looking at remedies and effectiveness -- look at

Deleted: ,

Do you believe this is an understandable standard?

Should this standard be modified? If so, why? If not, why not?

In any of your cases, did it appear that the panelist did not consider all required criteria, or did not address certain aspects of the URS which it was required to do?

In any of your cases, did the panelist appear to be unsure of the test or application of the standards?

-- Should there be more guidance for practitioners and/or providers regarding what satisfies the "clear and convincing" standard?

-- As a practitioner, how confident were you in each case that the WHOIS data necessary for filing your URS claim was accurate and/or authentic?

-- What impact, if any, do you believe the GDPR [add a note explaining what GDPR stand for] that will take effect on 25 May 2018 will have on the URS?

In each of your cases, did you find the decisions adequate to understand the basis of the ruling?

Did you consider using past URS cases as precedent in your submission? If so, were you able to effectively use past URS cases as precedent? Were some decisions unusable due to their brevity or lack of discussion of the rationale for the decision? If so, did you find another case or cases to use as precedent?

Do you believe that there should be more guidance on the elements that need to appear in a decision?

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

-- Under URS Rules, proof of use can be submitted with the complaint, or an .SMD file can be submitted to demonstrate that proof of use was submitted to and accepted by the TMCH. Do you believe that this is adequate proof of use for a URS case? If not, what would you recommend and why?

-- Fees: How do brand owners and practitioners feel about the URS fee? Do you believe, the fee is too high or too low? Does the fee structure work for the URS? How do the fee factor into deciding, whether or not to file a URS case?

-- Response fee for multiple filing.

Were the word limits adequate?

-- How do brand owners and practitioners get to know about the existence of URS? How do they make a decision about whether should they propose a URS or just let it go?

-- How do registrants know about the responses to the URS and the affirmative defenses? Question about URS awareness generally and how it is disseminated to brand owners and others, and the effectiveness of that.

Did any of the decisions in your cases include unintelligible or meaningless language (i.e., "gibberish")?

Are there effective means available online for searching cases? In your experience, is this true of all providers? How can search be improved?

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

Deleted: is it clear,

Deleted: does it need to

Deleted: Bad faith, and/or discussion.

Deleted: Are you aware of

Deleted: where

Deleted: on

Commented [5]: This question needs to be clarified. Is it about the "clear and convincing" standard or is it ... [1]

Commented [6]: What test? This needs to be more ... [2]

Deleted: Are you aware of

Deleted: where

Deleted: ed

Commented [7]: Which standards? This needs to be ... [3]

Deleted: meets

Deleted: This might get into training for providers, for ... [4]

Deleted: were you

Deleted: If for Respondent, were

Deleted: s or

Deleted: w

Deleted: -- is it a good basis for

Deleted: of the mark

Deleted: , including categories of goods and services

Deleted: they

Deleted: Ask about whether

Deleted: Whether or not

Deleted: s

Deleted: and

Deleted: does it

Deleted: a brand protector

Deleted: .

Commented [9]: What does this mean? How can this ... [5]

Deleted: lengths

Deleted: find out

Commented [10]: Someone want to turn this into one ... [6]

Deleted: Are you aware of

Deleted: which contained

Deleted: Was

Deleted: an

Deleted: online

Deleted: from

Commented [11]: What does this mean? What is a ... [7]

-- Evidence of Use: If representing Complainant, do you use the .SMD file from the TMCH, a printout from an active web site, or something else? Why did you choose one type of evidence over another?

-- Whether and when do you choose to use the URS? If not, why do you bypass the URS?

-- What do you think about the suspension for the duration of the registration? Should there be an extended time of the suspension? How does suspension as the sole remedy affect your decision whether or not to use the URS as a protection mechanism?

-- Whether or not there should be something analogous for the URS that gives more certainty to the structure. Should there be an "Overview of URS" similar to WIPO's Overview of Panel Views on Selected UDRP Questions?

As drafted and currently interpreted, do you feel that the URS is a reliable mechanism such that parties can reasonably rely upon a uniform application and interpretation of the Policy? If not, why not, and how can this be improved upon? Do you believe this has improved over time, as more decisions have been issued?

- Deleted: D
- Deleted: they
- Deleted: or
- Deleted: s
- Deleted: they
- Deleted: ? use
- Deleted: for
- Deleted: of use
- Deleted: the
- Deleted: one, for establishing the claim
- Deleted: or not a practitioner is
- Deleted: ing
- Deleted: and i
- Deleted: are they
- Deleted: ing
- Deleted: they
- Deleted: Whether to have
- Deleted: .
- Deleted: The
- Deleted: may also apply to the
- Deleted: .
- Commented [12]: Not sure what this means.
- Deleted: we have
- Deleted: analogous
- Deleted: URS
- Deleted: reviews

Page 1: [1] Commented [5] Greg Shatan 3/6/18 9:51:00 PM

This question needs to be clarified. Is it about the "clear and convincing" standard or is it about the 3 pronged criteria for a URS case generally? If it's not about c&c it should be moved out of the middle of that discussion. "certain [required] aspects of the URS" is also unclear -- I think we need to show by example or citation what this means, and where it is "required."

Page 1: [2] Commented [6] Greg Shatan 3/6/18 9:53:00 PM

What test? This needs to be more precise.

Page 1: [3] Commented [7] Greg Shatan 3/6/18 9:54:00 PM

Which standards? This needs to be more precise.

Page 1: [4] Deleted Greg Shatan 3/6/18 9:36:00 PM

This might get into training for providers, for the larger group.

Page 1: [5] Commented [9] Greg Shatan 3/6/18 10:19:00 PM

What does this mean? How can this be turned into a question?

Page 1: [6] Commented [10] Greg Shatan 3/6/18 10:21:00 PM

Someone want to turn this into one or more questions?

Page 1: [7] Commented [11] Greg Shatan 3/6/18 10:30:00 PM

What does this mean? What is a "non-URS practitioner" and why are we asking questions of them? Is this the only section addressed to such people?