

## 1. Procedural Issues

1. In how many URS proceedings have you served as: a) counsel for Complainant \_\_\_\_; b) counsel for Respondent \_\_\_\_; c) You or your company as Complainant \_\_\_\_; d) You or your company as Respondent \_\_\_\_?
2. If you served on behalf of or as Complainant, what triggered your decision to file a URS claim? \_\_\_\_\_
3. What generally was the factual basis for your claim?
4. If you served on behalf of or as Respondent, what defenses did you raise against the claim?
5. Leaving aside the final result was your overall experience with the procedures required to file or respond to a URS claim generally positive? Were the rules and procedures for filing or responding to a claim under the URS clear? Strongly Agree \_\_ Agree \_\_ Neutral Disagree Strongly Disagree
6. What, if any, material procedural problems did you encounter with the URS Process?
7. Notice: If you submitted a URS Complaint, what form of service of the notice did you use? a) Paper hard copy mailed via postal service; b) paper hard copy mailed via overnight courier or other expediting service with tracking; c) fax; d) electronic mail; or e) other, namely: \_\_\_\_\_
8. Did the notice provided under the URS through the method checked above reach the respondent with proof of delivery and review by the intended recipient?
9. Paragraph 6.4 of the URS Procedure provides that 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). Have you or a party adverse to you in a URS Proceeding ever sought de novo review under Paragraph 6.4.: a) within the initial 6 month period \_\_\_\_; or b) within a six month extension period? \_\_\_\_ From your experience with the Paragraph 6.4 URS Procedure is it effective if retained as currently written or should the procedure be modified?
10. Have you encountered any problems after a successful UDRP decision with the suspension or the extension of the suspension? If so, please describe the problem encountered. Can you recommend any correction or improvement?
11. Paragraph 12 of the URS Procedure provides that either party can seek a de novo appeal of the determination within 14 days. If you have filed an appeal or been required to respond to one, please provide: a) any observations, positive or negative about the appeal procedure. : and b) any modifications to the process for an appeal under Paragraph 12 that you would modify. \_\_\_\_\_

## 2. Substantive Issues

### 2.1 Burden of Proof and Remedies Provided under URS

1. Based on your experience as a URS practitioner, is the standard of "clear and convincing evidence" for the burden of proof in URS proceedings: a) too high ----; b) appropriate \_\_\_\_; c) unclear \_\_\_\_; d) in need of the following modification(s) \_\_\_\_\_
2. Should there be more guidance provided by definition or context example from hornbook law for practitioners regarding what facts sufficient to meet the "clear and convincing"

standard? Should this standard be modified? a) yes \_\_\_\_; b) no \_\_\_\_ Please explain your response.

3. In each of your cases, were each of the three required elements found by the panelist to have been met ?
4. In each of your cases, did any other aspects of the URS process prohibit or limit your ability to present your case in the manner you believe was required to prevail.?
5. If you filed a Complaint, what was your confidence level in the accuracy of the WHOIS data required to identify the respondent for your URS claim: a) high \_\_\_\_; b) low \_\_\_\_; c) don't know \_\_\_\_; unable to determine \_\_\_\_
6. Were you able to confirm that the WHOIS data for the respondent was sufficiently authentic to contact the registrant using their contact data provided in WHOIS?
7. In each of your cases, did you find the panelist findings in the decision adequate to understand the basis for their decision?
8. Given the nature of the URS as a summary and expedited proceeding, did you consider using past URS case precedent as an effective means to: a) guide the preparation of required pleadings submitted; Yes \_\_\_\_; No \_\_\_\_; and/or b) to cite in support of arguments raised to persuade the panelist of your position? Yes \_\_\_\_ No \_\_\_\_
9. Please explain why you chose to use or not use other URS decisions as precedent \_\_\_\_\_. If so, Did you rely upon or cite decisions from any other tribunals or proceedings as precedent?
10. Do you believe that there should be more guidance on the elements that need to be provided in the documents submitted to meet the standards for a URS decision?
11. In your opinion is the URS process as it exists today, sufficient for clearly abusive cases?
12. In your opinion, do you believe the relief provided by the URS (i.e. suspension) is adequate? Yes \_\_\_\_; No \_\_\_\_\_. If no, what would constitute adequate relief (e.g., transfer of domain name)? \_\_\_\_\_
13. Do you believe any additional remedies should be considered for: a) Complainant \_\_\_\_; or Respondent \_\_\_\_\_?
14. Have you encountered any problems with the relief awarded following a URS decision. Why or why not? If so, please describe the problem encountered.

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

1. 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?
2. Fees: Has the URS fee factored into your decision whether or not to file a URS case? In what way, if any, should the fee be changed? \_\_\_\_\_
3. Response Fee (for 15 or more domains): Has this response fee structure factored into deciding whether or not to file a URS case? In what way, if any, should the fee be changed? \_\_\_\_\_
4. Do the word limitations for URS proceeding need to be changed?
5. If you were a complainant in a URS proceeding or represented one.: How did learn of the URS as a rights protection mechanism?
6. If you were a respondent in a URS proceeding or are a registrant: How did you learn about the URS and your rights as a respondent?

**Commented [SA1]:** Perhaps Complainant only questions and Respondent only questions should be placed in separate sections or columns for efficiency or two separate questionnaires to avoid Respondents and counsel responding as complainants and vice versa?

**Commented [SA2]:** This requests work product and possibly confidential data on a specific case.

7. Do you believe the means available online for searching URS cases are sufficient to find the cases you needed at the time of your proceeding? Did you search cases from more than one dispute resolution service provider for URS proceeding? How can search be improved?

**Commented [SA3]:** Any ideas on the proponent and basis for this question?

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

1. If you were a complainant or represented one, do you believe the use of the SMD file from the TMCH is an effective basis to prove evidence of use?
2. Does suspension as the sole remedy affect your decision whether or not to use the URS as a rights protection mechanism?
3. Should there be an "Overview of Panel Views on Selected URS Questions" similar to WIPO's Overview of Panel Views on Selected UDRP Questions to help practitioners better understand the scope and use of existing URS decisions?
4. 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 the URS has improved over time, as more decisions have been issued?
5. If you have only filed one URS case, please explain: a) whether you have had the opportunity to file more and purposely declined? Yes \_\_\_ No \_\_\_; If Yes, without providing privileged or confidential information or attorney work product, please explain whether an aspect of the URS process was the basis for the decision not to file again.
6. What impact, if any, do you believe the GDPR [add a note explaining what GDPR stands for] that will take effect on 25 May 2018 will have on the claims and responses to claims under the URS?

**Commented [SA4]:** The original question seeks attorney work product; if its anonymous it still provides a guide. The better question probably would relate to whether use of a particular evidence submitted to show use was rejected or give little weight for some reason.