

SUMMARY REPORT FROM THE URS DOCUMENTS SUB TEAM – 17 APRIL 2018

I. Status of Work

Following ICANN61, where the URS Documents Sub Team first presented its progress report to the full Working Group, the Sub Team has subsequently:

- Sent finalized lists of additional suggested questions for experienced URS practitioners and the three URS providers to the URS Practitioners and URS Providers Sub Teams, respectively. The URS Documents Sub Team thus considers this aspect of its work complete.
- Undertaken an analysis of the 14 cases (involving 16 domain names) for which an appeal was filed under the URS. A summary of the Sub Team's findings is included below, and the Excel spreadsheet that was compiled by ICANN staff and used by the Sub Team is attached to this report. The URS Documents Sub Team:
 - does not believe additional work on these 14 appeals cases is needed unless the full Working Group requests that further analysis be done on specific aspects of these cases;
 - wishes to report that, from its assessment of these cases, it appeared that overall the URS was functioning as intended, and no clear problems were identified; and
 - would like to suggest to the URS Providers Sub Team that they consider including a question to the providers about whether procedural anomalies or mistakes have been raised by any party following the issuance of a Determination (one example that was noted during the URS Documents Sub Team's discussion was the resolution of a domain name to particular Name Servers following issuance of a Determination).
- Discussed whether it should proceed with analysis of the next set of URS cases it had identified previously as possibly meriting review, i.e. the 58 cases where the respondent prevailed. The URS Documents Sub Team notes that Professor Rebecca Tushnet is presently conducting research inter alia covering this category of cases as well as others noted by the Sub Team (e.g. those cases where a response requested a de novo review, and the 250 cases where a response was filed). In particular noting its above assessment that overall the URS appears to be functioning as intended, the URS Documents Sub Team wishes to consult with the full Working Group on the advisability of and need to proceed with this analysis.
- Noted an observation by the representative of a URS provider (FORUM) that providers had encountered some difficulties in communications with registries. The URS Documents Sub Team notes that the Providers Sub Team has included some questions that may cover this issue on its current list of questions to the three providers.

Other remaining tasks:

- ICANN staff will begin reviewing:
 - (1) ICANN's, selected registrars' and the three URS providers' websites and (when received) the providers' responses to the URS Providers Sub Team survey, to document what information is currently available on the training and guidance given to examiners;

- (2) the original reports from the IRT and STI teams, to trace the origin of the suspension remedy; and
- (3) the results from the INTA survey, to document feedback regarding fees, costs and remedies.

The URS Documents Sub Team anticipates that this work will be done by staff while the surveys from the URS Practitioners and Providers Sub Team are being issued.

- Two suggestions have been made for possible policy recommendations:
 - (1) That the full Working Group consider a recommendation for the development of an Examiners' Guide to the URS (either by ICANN or the providers), in particular as to the core elements which should be reflected in all URS determinations (e.g., domain name at issue, parties, complainant's mark, website use, inapplicability of respondent defenses, etc.); and
 - (2) That the full Working Group consider a recommendation that providers be required to use the same language(s) for notices sent to both a registry operator and a registrar with respect to the same complaint (note that this does not appear to be the current practice where the language of the registration agreement is not English).

The URS Documents Sub Team anticipates that the full Working Group will take up discussion of these suggestions at the appropriate time following completion of all three Sub Teams' work.

II. Summary of Findings on the 14 Appeal Cases

- Out of 14 appeals, 7 were related to the .email gTLD
 - In 6 of these 7 cases, the respondent was yoyo.email.
 - Of the 6 yoyo.email appeals, only 1 saw the Respondent prevail on appeal (for the domain "stuartweitzman.email" – the losing complainant subsequently filed a UDRP proceeding and won on a preponderance of the evidence standard, with the result that the domain was ordered to be transferred).
 - The only .email case not related to yoyo.email was for "grey.email" (here, the Respondent was i-content Ltd and prevailed on appeal; the appeal panel found that the Complainant had not satisfied the clear and convincing standard in relation to the requirements of legitimate interests and bad faith).
- In total, out of 14 appeal cases, the Complainant ultimately prevailed in 12 of them; there were only 2 where the Respondent prevailed (the "stuartweitzman.email" and the "grey.email" cases)
- Out of 14 appeal cases, 9 were heard by 3-member appeal panels.
- The following numbers show the final disposition of all the domains that were in dispute (16 domains in 14 appeals) following the appeal:
 - 1 in control of Respondent (the outcome of the "grey.email" case)

- 7 in control of Complainant (owned or via brand protection)
 - 3 Reserved by Registry or protected under DPML
 - 2 available for registration
 - 3 resolve to suspension page
- Out of 14 appeals, there were 8 initial cases where the Complainant first prevailed which were later appealed by the Respondent
 - 7 out of these 8 appeals resulted in the Complainant prevailing (the 8th being the “stuartweitzman.email” case noted above)
 - Out of 14 appeals, there were 6 initial cases where the Respondent first prevailed which were later appealed by the Complainant
 - 5 out of these 6 appeals resulted in the Complainant prevailing (the 6th being the grey.email case)

As depicted in table form:

Type of Appeal		Result	Comments
Complainant first prevailed, Respondent appealed	8	Complainant ultimately prevailed: 7	Respondent (yoyo.email) prevailed in “stuartweitzman.email” appeal
Respondent first prevailed, Complainant appealed	6	Complainant ultimately prevailed: 5	Respondent (i-content ltd) prevailed in “grey.email” appeal
TOTAL	14	12 (Complainant prevailed)	2 (Respondent prevailed)