

Consolidated Questions to URS Providers (16 April 2018)

Communications

1. 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?
2. Do you conform to the communications timeline in accordance with URS Rules 2(g)?
 - *URS Rules 2(g): Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Rule 2(f).*
 - *URS Rules 2(f): Except as otherwise provided in these Rules, or decided by an Examiner, all communications provided for under these Rules shall be deemed to have been made: (i) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or, where applicable; (ii) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or (iii) if by postal or courier service, on the date marked on the receipt.*
3. Do you receive notifications from Registry Operators via email regarding the completion of URS actions on a domain name?
4. Do you received notification via email from Registry Operators if a URS Locked or URS Suspended domain name has been either deleted or purged?
5. Have you received information from ICANN with regard to the point of contact of the Back End Registry Operator (BERO) appointed by Registry Operators?

The Complaint

1. Do you accept Complaints that don't contain all the elements required in the URS Rules 3(b)? Please provide your online forms for complaint filing and identify any deviation from Form 3(b).
2. Do you ask for any additional information beyond what is required in the URS Rules? If so, please provide the relevant provision of your Supplemental Rules.
3. A) (To FORUM) How does the FORUM handle the submission (through its online complaint filing site) of a relevant SMD proof of use from the TMCH which is expressly provided for in the URS Rules Clause 3(b)(v)?

B) (To ADNDRC) Does ADNDRC's electronic complaint form (Form C_URS) also allow the uploading of .smd files in the same manner as MFSD?

In answering this question please note the following:

- *An SMD is typically a file with the extension .smd and such format is not expressly provided for under the FORUM's Annex A. By comparison, MFSD's Supplementary Rules Clause 3 expressly specifies acceptance of .smd file as an annex.*
 - *URS Rules 3(b)(v) states: Specify the trademark(s) or service mark(s) on which the complaint is based and the goods or services with which the mark is used including evidence of use – which can be a declaration and a specimen of current use in commerce - submitted directly or by including a relevant SMD (Signed Mark Data) from the Trademark Clearinghouse.*
4. 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 was registered and is being used in bad faith? Here is the relevant text:
- *URS Procedure 1.2.6.3: that the domain was registered and is being used in bad faith. A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:*
 - a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or*
 - b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or*
 - c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or*
 - d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.*
5. (To ADNDRC) Has any Complainant expressed any difficulty with regard to the 500 words limit set for the Complaint?
6. (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?
7. Do you check to determine whether a domain name subject to a URS Complaint is also involved in an active court case in the event that a Respondent does not provide a Response? If so, how do you find this information?
8. Have you accepted any Complaints that multiple related companies brought against a single domain name Registrant?
9. Have you accepted any Complaints that were filed against multiple related Registrants in the same filing?

10. How many Complaints have you accepted that listed fifteen or more disputed domain names registered by the same Registrant?
11. (To FORUM and MFSD) How many Complaints have been dismissed as a direct result of the incorrect domain name Registrant being named in a 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.

Fees

1. 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?
2. Among the Complaints you received that each listed fifteen or more disputed domain names registered by the same Registrant, how many Respondents filed a Responses and paid the required Response Fee?
3. Have you received feedback on whether your fees structure has been a major deterrent to the filing of Complaints or Responses?

Administrative Review

1. (To FORUM) Has there been any issue with regard to meeting the two (2) business days requirement of conducting the Administrative Review?

Notice of Complaint and Locking of Domain

1. Please provide feedback regarding your experiences in getting the disputed domain name(s) locked. In particular, have you experienced any difficulties having the URS Lock activated within 24 hours after sending the request to Registry Operators?
2. Is there a way to know whether a Registrant has actually received the hard and electronic copy of the Notice of Complaint from you? Do you utilize any means to confirm receipt?
3. Have you received any notification of delayed communications to the Registrant?
4. (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 notification of non-delivery?
5. Are you following the URS Rules 4(c)? If yes, which of the two cited methods do you use?
 - *URS Rules 4(c): The electronic copy of the Notice of Complaint may be provided via email or an emailed link to an online platform requiring users to create an account.*
6. 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)?

- *Registrar Requirement 2: Registrar MUST follow the normal domain name lifecycle for a URS Locked domain name. If the domain name registrant elects to renew, elected to auto-renew or restore the domain name registration, Registrar MAY accept such renewal and/or restoration (if the Registry Operator implements RGP).*

The Response

1. (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?
2. Is this statement contained in the URS Rules 5(a)(v) included in your Respondent forms?
 - *URS Rules 5(v): Conclude with the following statement followed by the signature (in any electronic format) of the Respondent or its authorized representative:*

"Respondent agrees that its claims and remedies concerning the dispute, or the dispute resolution, shall be solely against the Complainant and waives all such claims and remedies against (a) the Provider and Examiner, except in the case of deliberate wrongdoing, (b) the Registrar, (c) the Registry Operator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents. Respondent certifies that the information contained in this Response is, to the best of Respondent's knowledge, complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.";
3. Have you received any request for 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 request were received after Default (14 Calendar Days), or after Determination (no more than 30 Calendar Days)?
4. What have your Examiners considered as "exceptional cases" per URS Rules 5(e)?
 - *URS Rules 5(e): At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider. Requests for an extension of time shall comply with the Provider's Supplemental Rules.*
5. Have you received any affirmative claims for relief by the Respondent for reasons beyond an allegation of abusive Complaint? If you have, what was the basis of the claim(s)?
6. Have you conducted a compliance check for a Respondent for factors beyond the two items stated URS Rules 5(g)?

- *URS Rules 5(g): The Provider's compliance check for a Response shall at least consist of: (1) ascertaining the Response has been filed in a language acceptable under the Rules for that case; and (2) checking for payment of required fees.*
7. (To FORUM and MFSD) Who determines whether a Response is non-compliant – you or the appointed Examiner?
 8. How many/what percentage of Responses have been determined to be non-compliant?
 9. How many Responses were filed but were not accompanied by payment of any required fees?
 10. Can you identify any case in which the Response was determined non-compliant for reasons other than the non-payment of the fee? If any, what was the reason(s)?
 11. Do you believe the deadline for filing Responses is long enough? Please provide your rationale. If not, what time period would you support, keeping in mind that the URS is supposed to operate with rapidity?
 12. Have you received any late Responses?
 13. (To ADNDRC and MFSD) A) Has any Respondent expressed any difficulty with regard to the 2,500 words 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?
 14. Have your Examiners received Responses that contain facts that sought to refute the claim of bad faith registration by setting out circumstances other than those included in URS Procedure 5.7? Were such facts persuasive and, if so, should additional grounds be added to Procedure 5.7?

○ *URS Procedure 5.7: The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.*
 15. What percentage of URS cases were brought against Registrants determined to be domain investors (holding a portfolio of domain names for traffic monetization and/or resale)?
 16. (To FORUM) What is the purpose of FORUM Supplemental Rules 5(d)(ii)? In any cases in which this Rule has been employed:
A) Has any other named Respondent sought to be separated out from the case?

B) Have any Registrants asked to be dismissed from the case on the basis of not having registered or being in control of the domain? If so, have your Examiners granted or denied such requests?

- *FORUM Supplemental Rules 5(d): Multiple Respondents.*
(ii) If you are named in a case that contains domain names not registered or controlled by you, you may request that the Examiner dismiss the case as to any domain names not owned by you. It is up to the Examiner's discretion to make a factual finding as to whether or not the evidence supports your claim.

Stay of the Administrative Proceeding

1. 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?
2. Have you received any requests for a Stay after the appointment of the Examiner? If so, how was this handled?

Examiner

1. What factors should we consider in regard to evaluation of your processes and practices pertaining to Examiners' selection and training?
2. (To ADNDRC and FORUM) Why haven't the qualifications of some of your Examiners been published?
3. (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?
4. (To MFSD) How do your Examiners confirm their impartiality and independence?
5. Can you provide a copy of any oath taken by the Examiners to affirm that they will be neutral and independent? Is the oath signed by the Examiners?
6. Do you undertake any independent inquiries to adequately satisfy yourself that your Examiners will be impartiality and independence? Or do you rely solely upon the oath or declaration made by each Examiner?
7. (To FORUM and MFSD) Has any of your Examiner voluntarily disclose 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?
8. Has there been any incidence of allegations of partiality or non-independence or bias of an Examiner being raised by any party to an URS proceeding either during the initial determination process, or as ground for a review or Appeal? If so, how was the conflict of interest subsequently evaluated?

9. (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?
10. (To FORUM) Why do you have a requirement that any request to challenge the selection of an Examiner must be filed within one (1) Business Day under FORUM Supplemental Rules 10(d)? Has any party filed a challenge after the end of the required time period? Have Respondents alleged any difficulties in meeting this deadline for filing a challenge?
 - *FORUM Supplemental Rules 10(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.*
11. (To ADNDRC) Has ADNDRC experienced any instance where an Examiner refused or failed to act per your Supplemental Rules 8.4? What motivated ADNDRC to adopt Rule 8.4?
 - *ADNDRC Supplemental Rules 8.4: 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.*

Language

1. Do you think it would be feasible to mandate sending Registry and Registrar notices in the same language(s)?
 - *Background: The URS Documents Sub Team has noted that the current practice seems to be that Registry notices are sent in English while Registrar notices are sent in English as well as (where applicable) the language of the affected registrant.*
2. Are all of your Examiners fluent in English?
3. Are all of your assigned Examiners fluent in the non-English language of the Respondents?
4. 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?

Further Statement

1. Have you acted in conformance with URS Rules 10 by not allowing an Examiner to request further statements or documents from either of the Parties?
 - *URS Rules 10: In order to ensure expedience of the proceeding, the Examiner may not request further statements or documents from either of the Parties.*

In-Person Hearings

1. Has the lack of in-person hearings been raised as an issue by any party to a case?

Withdrawal

1. (To FORUM) Do you have any explanation of the seemingly inconsistency between the use of the phrase “without prejudice” in 12(a), versus “with or without prejudice” used in 12(b) of the FORUM Supplemental Rules?
 - *FORUM Supplemental Rules 12(a): Prior to the first issued Determination, the Complainant may withdraw the Complaint without prejudice. A withdrawal request must be Submitted to the FORUM via the online portal. Upon the FORUM’s receipt of the withdrawal request, the Complaint will be withdrawn without prejudice and the administrative proceeding will be terminated.*
 - *FORUM Supplemental Rules 12(b): Prior to the first issued Determination, the Complaint may be withdrawn pursuant to a joint request made by both parties. A withdrawal request must be Submitted to the FORUM via the online portal, must be consented to by both parties, and may request dismissal either with or without prejudice.*

Default

1. With reference to URS Procedure 6.2, please provide any information you have regarding whether the Registry Operator, in locking a domain, also have the technical capability to prevent the Registrant from changing the content on its site? Or does the Notice of Default sent by the Provider to the Registrant (and also to the Complainant) stating that the Registrant is prohibited from doing so, evidence an inability of the Registry Operator to directly enforce that prohibition?
 - *URS Procedure 6.2: In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.*
2. In what percentage of cases, if any, has the Respondent submitted an answer within six (6) months after a Default Determination?
3. Has any of your Examiners drawn inferences per URS Rules 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?
 - *URS Rules 12(f): If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules, the URS Procedure or*

the Provider's Supplemental Rules, the Examiner shall draw such inferences therefrom as it considers appropriate.

Examiner Determination

1. To your knowledge, has any Examiner rendered his/her Determination based upon wordmark factors actors beyond the three elements enumerated in URS Procedure 8.1.2?
 - *URS Procedure 8.1: The standards that the qualified Examiner shall apply when rendering its Determination are whether: 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed;*
2. Do you know of any situation in which the nominal registrant changed after the Complaint was filed? If so, how was it handled?
3. Has any of your Examiner invoked standards beyond the URS Rules and Procedures, and your Supplemental Rules?
4. 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?
5. 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?
6. How do your Examiners apply the “clear and convincing evidence” standard of proof required in URS cases?
7. 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.
8. Among your Examiner's Determinations, how many do not provide the reasons on which the Determination is based but simply state that the URS elements have been established?
9. How often has URS Rules 13(d) invoked? What factors have been cited by Examiners in making that determination?
 - *URS Rules 13(d): If after considering the submissions the Examiner finds that the Complaint was brought in bad faith or was brought primarily to harass the domain name holder, the Examiner shall declare in its Determination that the Complaint was brought in bad faith and constitutes an abuse of the URS proceeding.*

Remedies

1. Please provide feedback regarding any difficulties encountered in implementation of the suspension remedy.
2. How many/what percentage of successful Complainants have requested extension of the registration period for one additional year?
3. Do you know of any cases in which the Registry Operators refused to offer the option for URS Complainant to extend a URS Suspended domain name's registration for an additional year?
4. During the one additional year of URS Suspension available to the successful Complainant, the domain name must remain registered to the original Registrant. Should the registration information be altered in such circumstances?
5. To implement the URS Procedure 10.3 / Registry Requirement 10 (Technical Requirements), there seem to be eligibility restrictions for TLDs. Why the inconsistency?
 - *URS Procedure 10.3: There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.*
 - *Registry Requirement 10: In cases where a URS Complainant (as defined in the URS Rules) has prevailed, Registry Operator MUST offer the option for the URS Complainant to extend a URS Suspended domain name's registration for an additional year (if allowed by the maximum registration policies of the TLD), provided, however, that the URS Suspended domain name MUST remain registered to the registrant who was the registrant at the time of URS Suspension. Registry Operator MAY collect the Registrar renewal fee if the URS Complainant elects to renew the URS Suspended domain name with the sponsoring Registrar.*

Determinations and Publication

1. What is your Examiners' practice with regard to the publication of an Appeal Determination?
2. Do you agree with the policy embodied in the URS Rules 15(f)?
 - *URS Rules 15(f): Determinations related to the same domain names and/or parties, but not part of the same case, need not be linked in any way on the Provider's website.*
3. Has any Determination 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?
4. (To FORUM) What is the purpose of FORUM Supplemental Rules 15(b)? Has any party requested to include or exclude certain information from a publicly available Determination? If so, how did the FORUM act on such request?

- *FORUM Supplemental Rules 15(b): All requests pursuant regarding what information a party wants included or excluded from a publicly available Determination must be made in a timely, compliant Complaint or Response.*

Settlement or Other Grounds for Termination

1. How many “unnecessary or impossible” incidents, per URS Rules 16(b), have been recorded by you?
 - *URS Rules 16(b): If, before the Examiner’s Determination is made, it becomes unnecessary or impossible to continue the URS proceeding for any reason, the Examiner shall terminate the proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Examiner.*

Effect of Court Proceedings

1. How often, if ever, was a related legal proceeding initiated prior to or during a URS proceeding? What was the effect on the URS proceeding?

Appeal

1. How do you implement URS Rules 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?
 - *URS Rules 19(b): Appellant shall have a limited right to introduce new admissible evidence that is material to the Determination subject to payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.*
2. (To FORUM) How often/in what percentage of Appeals was a three-member Appeal Panel requested? Which party made the request?
3. (To FORUM) In appointing Examiners to the three-member Appeal Panel, did you encounter any difficulties appointing Examiners from each party’s list to the Panel?

Exclusion of Liability

1. Have you or any of your Examiners been sued in regard to the issuance of a URS Determination?

Others

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

2. Do you have any difficulties complying with the URS technical requirements (e.g., utilizing PGP Keys, etc.)?
3. Has ICANN ever requested any information or data from you since entering into your MoU?
4. Do you maintain any regular communications with ICANN?
5. (To FORUM) Did any Party submit an individual file in excess 10MB? Did any Party submit electronic case documents in excess of 10MB, in the aggregate, per domain name?
6. Do you think it would be feasible to add a requirement that Respondents who abuse the process should be sanctioned? What would be an indication of Respondent abuse, beyond bad faith registration and use of a domain name?