

LIST OF TOPICS FOR REVIEW OF THE UNIFORM RAPID SUSPENSION SYSTEM (URS)

Discussion Draft prepared by ICANN staff for RPM Working Group use – updated [9 July 2018](#)

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Introductory Note:

During the Working Group call on 30 November 2017, a majority of attendees supported the idea that, instead of a detailed list of refined Charter questions, a shorter list of specific topics (based on the existing Charter questions and any new suggestions adopted) should be developed. A standard set of high-level questions will then be applied to each topic on the list. This approach was agreed to be similar to that which had been adopted for other RPMs, e.g. the Trademark Claims Charter questions.

The suggested standard set of high-level questions (some of which, e.g. Question 1 and/or 5, may need to be modified for certain topics) were:

- 1) Has it been used? Why or why not?*
- 2) What was the original purpose and is it being fulfilled?*
- 3) Bearing in mind the original purpose, have there been any unintended consequences?*
- 4) What changes could better align the mechanism with the original purpose/facilitate it to carry out its purpose?*
- 5) What was the ultimate outcome?*

Status of this Document:

On the 6 December 2017 Working Group call, it was agreed that compiling the current draft documents into a single document would make them easier to work with. The current document (dated 13 December) represents that compilation. No edits have been made to any of the documents, and all text remain DISCUSSION DRAFTS only. As such, nothing in this document should be viewed as authoritative text or as Working Group consensus on the retention of any of the suggested topics or questions.

Part One contains the list of suggested review topics, derived from all the URS Charter questions and additional suggestions received; Part Two contains the table that cross-references the suggested topics with the Charter questions and suggestions; and Part Three contains the statement from the Working Group co-chairs on URS review.

PART ONE: DRAFT LIST OF SUGGESTED URS REVIEW TOPICS

The following is a draft of a possible list of specific topics related to URS review; for context, please refer to the accompanying table in Part Two that cross-references the suggested topics to their original Charter questions:

A. THE COMPLAINT:

1. Standing to file
2. Grounds for complaint
3. Limited filing period
4. Administrative review

B. THE NOTICE OF COMPLAINT:

1. Receipt by Registrant
2. Effect on Registry Operator

- C. THE RESPONSE:
 - 1. Duration of response period
 - 2. Response fee
 - 3. Other Issues (e.g. default procedures)
- D. STANDARD OF PROOF:
 - 1. Standard of proof
- E. DEFENSES:
 - 1. Scope of defenses
 - 2. Unreasonable delay in filing complaint
- F. REMEDIES:
 - 1. Scope of remedies
 - 2. Duration of suspension period
 - 3. Review of implementation of current remedies
- G. APPEAL:
 - 1. Appeal process
- H. POTENTIALLY OVERLAPPING PROCESS STEPS:
 - 1. Potential overlap concerning duration of respondent appeal, review and extended reply periods along the URS process timeline
- I. COST:
 - 1. Cost allocation model
- J. LANGUAGE:
 - 1. Language issues, including current requirements for complaint, notice of complaint, response, determination
- K. ABUSE OF PROCESS:
 - 1. Misuse of the process, including by trademark owners, registrants and “repeat offenders”
 - 2. Forum shopping
 - 3. Other documented abuses
- L. EDUCATION & TRAINING:
 - 1. Responsibility for education and training of complainants, registrants, registries and registrars
- M. URS PROVIDERS:

1. Evaluation of URS providers and their respective processes

N. ALTERNATIVE(S) TO THE URS:

1. Possible alternative(s) to the URS, e.g. summary procedure in the UDRP

Note for Additional Reference:

The following questions, drawn from the general section of the PDP Charter, were also included in the original table of Charter questions circulated to the Working Group:

- Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use)?
- Will, and if so to what extent, changes to one RPM will need to be offset by concomitant changes to the others?
- Do the RPMs collectively fulfil the objectives for their creation... In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?
- Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?
- Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

PART TWO: ACCOMPANYING TABLE OF URS CHARTER QUESTIONS

The table below supplements the suggested topics listed in Part One (above). This table expands on that list of topics, and cross-references them to the specific Charter questions and additional suggestions from which the topic suggestions were drawn.

| Suggested Topic | Original Charter Question | Suggested New Questions as of ICANN60 and those added at the meetings on 03 January 2018 and on 10 January 2018 | Origin of Charter Question | Data Sources ¹ |
|--|---------------------------|--|----------------------------|---|
| A. THE COMPLAINT: | | | | |
| <ol style="list-style-type: none"> 1. Standing to file 2. Grounds for filing 3. Limited filing period 4. Administrative review | | <p>Should the first element be modified to include names that are abusively registered but that may not be confusingly similar or identical?</p> <p>New sub-question #3 added from the 03 January 2018 WG meeting</p> <p>New suggested topic from the 10 January 2018 WG meeting: "The administrative review of the complaint"</p> | | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> • <u>Three sources of Data for Section A</u> <ul style="list-style-type: none"> ○ From Providers - Administrative Review stats (Pass/Fail), <ul style="list-style-type: none"> ▪ Responses & Notes - URS Provider Questions: p.11, Rows 30,31 - 22 Cases (FORUM w/ 17); p.5-6, Row 14, 16 ○ From Practitioners – qualitative experiences about what they are seeing |

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¹ Note from the Documents Sub Team – in performing the various case reviews suggested in this column, the Sub Team intends to create and use a single template to ensure consistency and uniformity of review.

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| | | | | <p>in regards to Standing, Grounds, Filing Period</p> <ul style="list-style-type: none"> ▪ Consider providing more specific guidance e.g. that WG may be asked to consider whether to expand standing to allow marks that were abusively registered but are not confusingly similar ▪ <u>Standing (Evidence) & Grounds: URS Practitioners Survey Summary Results: p.21-22, 28, 29</u> ▪ <u>Filing Period: URS Practitioners Survey Summary Results: p.27 - 8 of 14 responses agree timeframes are appropriate</u> ▪ <u>Word limitation: URS Practitioners Survey Summary Results: p.26</u> <p>○ Rebecca's research – should show what types of marks are the subject of Complaints</p> |
| B. THE NOTICE: | | | | |
| <p>1. Receipt by Registrant</p> <p>2. Effect on Registry Operator</p> | N/A | New topics from the 03 January 2018 WG meeting concerning registry operator obligations, whether registrants receive the notices, and why or why not | | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> • <u>Two sources of Data for Section B</u> <ul style="list-style-type: none"> ○ From Providers – information about what their process is on sending notice and what procedures they have in place regarding non-deliverable messages <ul style="list-style-type: none"> ▪ <u>Responses & Notes - URS Provider Questions: Comms Process: p.1-3, Rows 1-8</u> ▪ <u>Registry Operator: Responses & Notes - URS Provider Questions: Comms w/ RyOs: p.3-4, Rows 9-12 – Some difficulties experienced; P.11.</u> |

Commented [BC1]: Not yet performed; Columns V – AB contain a TM analysis; concerns as to scope for WG. Still needed?

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| | | | | <p>Row 33 – Duration in locking of domain within 24 hours</p> <ul style="list-style-type: none"> ○ From Practitioners - qualitative experiences about what they have seen regarding issues with notice of Complaints <ul style="list-style-type: none"> ▪ URS Practitioners Survey Summary Results: p.5-6 – Of the Practitioners representing Respondents who responded, no issues identified |
| C. THE RESPONSE: | | | | |
| <p>1. Duration of response period 2. Other issues relating to Responses (other than issues relating to Defenses), e.g. Default procedures</p> | <p>Should the ability for defaulting respondents in URS cases to file a reply for an extended period (e.g. up to one year) after the default notice, or even after a default determination is issued (in which case the complaint could be reviewed anew) be changed? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 6.4</p> | <p>New topic #2 suggested on 3 Jan 2018 WG call New topic suggested on 10 Jan 2018 WG call: “Default procedures”.</p> | <p>Comments on Draft RPM Staff Paper (Feb 2015); question in PDP Preliminary Issue Report (Oct 2015)</p> | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> • Four sources of Data for Section C <ul style="list-style-type: none"> ○ URS Documents Sub Team to review 250 cases where a response occurred in the aggregate to determine when the response occurred (likely also captured in Rebecca’s research) <ul style="list-style-type: none"> ▪ Staff compilation report - URS data: p. 16, TABLE 11: URS Case Response Analysis ▪ Of the 827 cases decided through end-2017: <ul style="list-style-type: none"> ▪ 27% of the cases saw a Response filed to the Complaint ▪ 23% of the cases saw a Response filed within the 14-day period specified in the URS procedure and rules ▪ 13% of the cases with a Response resulted in the claim being denied ○ URS Documents Sub Team to review cases where 15 or more domains are contained to determine any issue as it relates to Response Fee <ul style="list-style-type: none"> ▪ No responses occurred: |
| <p>3. Response fee</p> | <p>Should the Response Fee applicable to complainants listing 15 or more disputed domain names by the same registrant be eliminated? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 2.2.</p> | | <p>Comments on Draft RPM Staff Paper; question in PDP Preliminary Issue Report</p> | |

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| | | | | <ul style="list-style-type: none"> ▪ 1703352- 474 - Ashley Furniture - Suspended/Default ▪ 1731038- 202 - Cialis - Suspended/Default ▪ 1713119- 85 - Moncler - Suspended/Default ▪ 1757790- 32 - Moncler - Suspended/Default ▪ 1714210- 31 - Moncler - Suspended/Default ▪ 1661093- 16 - WhatsApp - Suspended/Default ▪ Responses & Notes - URS Provider Questions: p.9, Row 27 ○ From Providers - qualitative experiences when communicating to Registries about getting the domain locked within 24 hours prior to issuance of notice <ul style="list-style-type: none"> ▪ See Registry Operator: Responses & Notes under The Notice (Section B) above ○ From Registries - qualitative experiences about receiving notices from Providers; were these sent through appropriate channels? Did they contain the correct information? |
| D. STANDARD OF PROOF: | | | | |
| 1. Standard of proof | Is the URS' 'clear and convincing' standard of proof appropriate? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf , Section 8.2 | | Comments on Draft RPM Staff Paper; question in PDP Preliminary Issue Report | From URS Document Sub-Team: <ul style="list-style-type: none"> • <u>Three sources of Data for Sections D & E</u> <ul style="list-style-type: none"> ○ From Practitioners - qualitative experiences on how they thought standard of proof was applied (Note - not clear agreement on this among Sub Team) <ul style="list-style-type: none"> ▪ URS Practitioners Survey Summary Results: <ul style="list-style-type: none"> ● URS used for clear cut |

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| | | | | <p>cases: p.14 - 11 of 14 agree</p> <ul style="list-style-type: none"> Guidance on clear and convincing: p.17 – split result Current standard of proof appropriate: p.18 – 7 agreed it is appropriate; 4 said it was too high Should standard be modified: p.19,20 – 9 say no; 3 say it should be <p>o URS Documents Sub Team to review 58 cases where a Respondent prevailed, in particular in relation to grounds/defenses mentioned in URS Procedures Sections 5.7 and 5.8 (bad faith vs. use) to determine how Respondent prevailed, and if not under one of the grounds/defenses mentioned, then what was the specific reason(s) and what proof was provided</p> <ul style="list-style-type: none"> Staff compilation report - URS data: p. 17-21, TABLE 12: Analysis of URS Cases where the Claim was Denied: <ul style="list-style-type: none"> 31 of 59 cases did not have a response and were denied based on not satisfying one or more of the three prongs Rebecca's Coding Spreadsheet, tab - "Response Argument Analysis" <ul style="list-style-type: none"> Suggestion for a possible WG recommendation – develop an examination guide for Examiners to understand distinctions between easy vs. |
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| | | | | hard cases |
| E. DEFENSES: | | | | |
| 1. Scope of defenses | Are the expanded defenses of the URS being used and if so, how, when, and by whom? | | Comments on Preliminary Issue Report | From URS Document Sub-Team: <u>see notes under Section D</u> |
| 2. Unreasonable delay in filing a complaint (i.e. laches) | | Added at meeting on 03 January 2018: "Questions TBD" | | |
| F. REMEDIES: | | | | |
| 1. Scope of remedies | Should the URS allow for additional remedies such as a perpetual block or other remedy, e.g. transfer or a "right of first refusal" to register the domain name in question? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf , Section 10. | Suggested on 10 Jan 2018 WG call: Suggested new remedies for consideration: <ul style="list-style-type: none"> "The respondent and complainant could negotiate a purchase of the domain during the suspension." "Renewal by complainant" | Comments on Draft RPM Staff Paper; question in PDP Preliminary Issue Report | From URS Document Sub-Team: <ul style="list-style-type: none"> <u>Six sources of Data for Section F</u> <ul style="list-style-type: none"> ○ <u>From Providers - qualitative experiences relating to the scope and duration of current remedies</u> <ul style="list-style-type: none"> ▪ <u>Responses & Notes - URS Provider Questions: p.25, Rows 105-108</u> ○ <u>From Providers - qualitative experiences on implementation of current remedies</u> <ul style="list-style-type: none"> ▪ <u>Responses & Notes - URS Provider Questions: p.25, Rows 105-108</u> ○ <u>URS Documents Sub Team to review IRT & STI Reports, to document origin and development of remedies</u> ○ <u>URS Documents Sub Team to review domain lifecycle after a suspension for those cases where the complainant prevailed (may be shown through Rebecca's research)</u> <ul style="list-style-type: none"> ▪ <u>Staff compilation report - URS data: p. 11-13, TABLES 8&9: Analysis of URS Cases where the Claim was Denied</u> ▪ <u>Rebecca's Coding Spreadsheet,</u> |
| 2. Duration of suspension period | Is the current length of suspension (to the balance of the registration period) sufficient? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf , Section 10.2. | | Comments on Preliminary Issue Report | |
| 3. Review of implementation of current remedies | | Suggested new topic on 10 Jan 2018 WG call: "Are the current remedies being implemented properly?" | | |

Commented [MW5]: Question from ICANN61: who should develop this guide, e.g. each provider to produce its own, or all providers to contribute to a single guide? This can be a question to ask the providers' views on (ACTION: add to list of questions for providers).

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Responses & Notes - URS Provider Questions: p.22, Row 96
Responses & Notes - URS Provider Questions: p.23, Row 98

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| | | | | <ul style="list-style-type: none"> ▪ tab - "Denied Claims Anlysis" Staff compilation report - URS data: p. 14-15, TABLE 10: Multiple URS Cases Against the Same Domain ○ URS Documents Sub Team to review the INTA Survey for any relevant information related to remedies ○ URS Documents Sub Team to review relevant sections of the CCT-RT report |
| G. APPEAL: | | | | |
| 1. Appeal process | <p>How can the appeals process of the URS be expanded and improved? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 12.</p> | <p>New refinement of standard high-level questions for this topic suggested on 10 Jan 2018 WG call: "Should there be any modification of the appeals process? Has the appeals process been used? Have there been any unintended consequences?"</p> <p>Note captured on 10 Jan 2018 WG call to differentiate between different types of appeal:</p> <ul style="list-style-type: none"> • Internal appeal from initial determination; • Internal process of de novo review (following default determination); • External "appeal" via filing court proceedings. | A comment on Preliminary Issue Report | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> • <u>Three sources of Data for Section G</u> <ul style="list-style-type: none"> ○ URS Documents Sub Team to review the 14 cases that contained an appeal-consider outcomes, process and timing <ul style="list-style-type: none"> ▪ Staff compilation report - URS data: p. 22-23; TABLE 13: Analysis of URS Cases where an Appeal was filed ▪ ** See appeals v0.2.xls for full analysis ○ URS Documents Sub Team to review cases where a de novo review occurred <ul style="list-style-type: none"> ▪ Staff compilation report - URS data: p. 16, TABLE 11: URS Case Response Analysis: 30 of 827 cases had a response w/in 6 months but after the 14 day response, of those 30 cases the claims were denied in 6 ○ Responses & Notes - URS Provider Questions: p.28-29, Rows 128-132 ○ URS Practitioners Survey Summary Results: p.7-9 - 3 of 14 who completed the survey and filed an appeal as a Complainant, all said they had a "positive" experience w/ the process |

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| H. POTENTIALLY OVERLAPPING PROCESS STEPS: | | | |
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| <p>1. Potential overlap concerning duration of respondent appeal, review and extended reply periods along the URS process timeline</p> | | <p>Superfluous overlap between: -- A respondent's right to <i>de novo</i> appeal within fourteen days from a determination (Section 12.1); versus -- A respondent's right to <i>de novo</i> review within six months from a notice of default (Section 6.4); versus -- A respondent's right to request a seven-day extension to respond during the response period, after default, or not more than thirty days from a determination. (Section 5.3) See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf.</p> <p>Note captured on 10 Jan 2018 WG call re: both the appeal in the URS and "the appeal" in external courts.</p> | |
| I. COST: | | | |
| <p>1. Cost allocation model</p> | <p>Is the cost allocation model for the URS appropriate and justifiable? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Sections 1.1.2, 2.2, 5.2, and 12.2.</p> <p>Should there be a loser pays model? If so, how can that be enforced if the respondent does not respond?</p> <p>How can costs be lowered so end users can easily access RPMs? (General Charter</p> | <p>Note captured on 10 Jan 2018 WG call that the Response Fee is a topic under Section C (above).</p> | <p>Comments on Draft RPM Staff Paper; question in Preliminary Issue Report</p> |
| <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> Refer to Section C notes regarding review of cases where a Response was filed; Rebecca's research will code the 250 or so cases to determine if a response occurred within the first 14 days, 6 months, or after. | | | |
| <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> Three sources of data for Section I: <ul style="list-style-type: none"> From Practitioners - qualitative experiences on the average cost to prosecute and/or defend a URS proceeding From Providers – feedback on what filing fees were received <ul style="list-style-type: none"> Responses & Notes - URS Provider Questions: p.9,10, Rows 26-28 URS Documents Sub Team to review INTA survey for any results relating to fees and costs <p>(NOTE: feedback should help WG consideration of a "loser pays" model)</p> | | | |

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Commented [MW18]: Comment from ICANN61: consider asking this question in such a way that practitioners do not feel they are being asked to divulge confidential information or data that gives them a competitive advantage (ACTION: make a note of this in the questions to practitioners).

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| | question) | | | |
| J. LANGUAGE: | | | | |
| 1. Language issues, including current requirements for complaint, notice of complaint, response, determination | <p>What evidence is there of problems with the use of the English-only requirement of the URS, especially given its application to IDN New gTLDs? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 4.2.</p> <p>Are there any barriers that can prevent an end user to access any or all RPMs? (General Charter question)</p> <p>Do the RPMs work for registrants and trademark holders in other scripts/languages, and should any of them be further “internationalized” (such as in terms of service providers, languages served)? (General Charter question)</p> | Potential language issues concerning lack of obligation to translate complaint from English, and whether registrants understand notices of complaints sent to them, noted on 20 Dec 2017 & 3 Jan 2018 WG calls. | A comment to the Preliminary Issue Report | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> • Two sources of data for Section J: <ul style="list-style-type: none"> ○ From Providers – information on their experiences and any feedback received regarding the language used in notices, responses, and examinations; feedback also on procedures and experiences with translations if possible <ul style="list-style-type: none"> ▪ Responses & Notes - URS Provider Questions: p.18-20, Rows 79-84 ○ From Practitioners, who may also be Examiners – feedback on their experiences, including from those who are Examiners as to when and on what basis do they decide to issue a decision in a language other than English • Note: FORUM provides ICANN with reports of language; need to investigate method and repository of data • Suggestion from ICANN61 for full WG consideration as a potential recommendation: <u>that providers use the same language(s) for notices sent to both a registry operator and a registrar with respect to the same complaint (NOTE: the current practice seems to be that the original notice to a registry is in English, while that to a registrar may be both in English as well as the language of the registrant (e.g. Russian)). ACTION: add to list of provider questions for provider feedback on feasibility of this suggestion.</u> • Suggestion from ICANN61 for addition to the <u>list of provider questions: how many instances have they had situations where it was demonstrated that a respondent had the</u> |

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| | | | | capability of speaking English and understanding English? |
| K. ABUSE OF PROCESS: | | | | |
| 1. Misuse of the process, including by trademark owners, registrants and “repeat offenders” 2. Forum shopping 3. Other documented abuses | <p>What sanctions should be allowed for misuse of the URS by the trademark owner? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 11.4 and 11.6.</p> <p>Is there a need to develop express provisions to deal with ‘repeat offenders’ as well as a definition of what qualifies as ‘repeat offences’? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 11.4 and 11.6.</p> <p>Have there been abuses of the RPMs that can be documented and how can these be addressed? (General Charter question)</p> | <p>[Should URS also include provisions for] registrants who might be abusively registering domains?</p> <p>To what extent is the forum shopping of URS providers?" and "Whether the current practice of the complainant choosing the URS provider or the respondent to reduce forum shopping?" Or "is there a problem with the existing rules that results in forum shopping?"</p> | <p>A comment on the Preliminary Issue Report</p> <p>Question in Preliminary Issue Report</p> | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> No data collection likely needed at the moment (there is an abuse case database that all Providers are required to submit cases where abuse was found; none have been found to date) However, WG may revisit this question depending results of the URS Documents Sub Team review of the 58 cases where the Respondent prevailed, and the 14 Appeal cases (NOTE from ICANN61: this needs to be balanced, so if Rebecca’s/Sub Team’s research shows misuse by respondents, that should be included in the final analysis. ACTION: add to list of questions for providers and practitioners – do they think it advisable to include a sanction for abusive respondents?) Responses & Notes - URS Provider Questions: p.27, Rows 122-126 |
| L. EDUCATION & TRAINING: | | | | |
| 1. Responsibility for education and training of complainants, registrants, registry operators and registrars | <p>Has ICANN done its job in training registrants in the new rights and defenses of the URS?</p> <p>Are the Providers training both the Complainants and the Respondents, and their</p> | <p>Suggestions up to ICANN60:</p> <ul style="list-style-type: none"> Has ICANN done a good job of training complainants concerning what the remedies are under the URS? Under URS the registry operator is required to suspend the domain name, | <p>All Charter questions suggested by a commentator on the Preliminary Issue Report</p> | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> Two sources of data for Section L <ul style="list-style-type: none"> URS Documents Sub Team to review Provider, Registrar, and ICANN websites to see what information is currently provided From Providers – seek information about what training they currently provide <ul style="list-style-type: none"> Responses & Notes - URS Provider |

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| | communities and representatives, fairly and equally in these new procedures? | however registry operators do not control the DNS and so it's really complicated, so how can a registry operator learn how this works? | | <p><u>Questions: p.22, Row 96</u></p> <ul style="list-style-type: none"> o <u>Responses & Notes - URS Provider Questions: p.14-18, Row 58-77 may offer additional information</u> |
| M. URS PROVIDERS: | | | | |
| 1. Evaluation of URS providers and their respective processes (including training of panelists) | <p>Are the processes being adopted by Providers of URS services fair and reasonable? See http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf, Section 7.</p> <p>Are the Providers' procedures fair and equitable for all stakeholders and participants?</p> <p>What changes need to be made to ensure that procedures adopted by Providers are consistent with the ICANN policies and are fair and balanced?</p> <p>Are Providers exceeding the scope of their authority in any of the procedures they are adopting?</p> <p>What remedies exist, or should exist, to allow questions about new policies by the Providers offering URS services, and how can they be expeditiously and fairly created?</p> | <p>What are the backgrounds of the URS providers and what are their preparations? Should the URS be doing something similar to the UDRP?</p> <p>Suggested additional questions on 10 Jan 2018 WG call: "What is the oversight, if any, of the URS providers? Who are the panelists accountable to? Who has oversight on the panelists?"</p> <p>Suggested edits 30 and 31 January and discussed on 01 February:</p> <ul style="list-style-type: none"> • Have the accredited URS providers administered this RPM in a manner that is consistent with the applicable Procedure, Rules, and MOU? • Has ICANN engaged in any active oversight of URS providers to ensure MOU compliance; and has it received any complaints about URS administration and, if so, how has it dealt with them? • Have URS decisions been limited to cases meeting the "clear and convincing evidence" standard, and been properly explained? (Note: This will require a qualitative | All Charter questions suggested by a commentator on the Preliminary Issue Report | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> • Two sources of data for Section L <ul style="list-style-type: none"> o URS Documents Sub Team to review Provider, Registrar, and ICANN websites to see what information is provided today • From Providers - seek feedback as to whether and how evaluations of Providers and their processes should be conducted <ul style="list-style-type: none"> o <u>Responses & Notes - URS Provider Questions: p.29, Row 136</u> |

Commented [BC27]: Not yet started

Commented [MW28R27]: Noted as a Staff Action Item previously.

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|---|--|--|--|--|
| | <p>Is ICANN reaching out properly and sufficiently to the multi-stakeholder community when such procedures are being evaluated by ICANN at the Providers' request? Is this an open and transparent process?</p> <p>Are the Providers consulting with all stakeholders and participants in the evaluation, adoption and review of these new procedures?</p> | <p>review of a statistically significant percentage of URS decisions.)</p> <ul style="list-style-type: none"> As ICANN staff has developed data indicating that a small percentage of URS decisions have been appealed, what has been the result of such appeals? (Note: The Charter already contains the question, "How can the appeals process of the URS be expanded and improved?", and we believe that addressing that question requires an understanding of how the appeals process has actually operated to date.) | | |
| N. ALTERNATIVE PROCESSES: | | | | |
| <p>1. Possible alternative(s) to the URS, e.g. summary procedure in the UDRP</p> | | <p>A more general question is whether there should be some kind of alternative to the URS – such as a summary procedure in the UDRP?</p> <p>Suggested topic on 10 Jan 2018 WG call: Mediation.</p> | | <p>From URS Document Sub-Team:</p> <ul style="list-style-type: none"> None; likely more a policy question <p>Suggestion from ICANN61: Can look at success metrics of alternate procedures, e.g. academic research on alternative processes.</p> |

Commented [Office25]: Per Susan Payne: I propose that bullet 3 be amended, including the deletion of the Co-Chairs Note, to read: "How have the URS providers ensured that the "clear and convincing evidence" standard has been applied?" See: Susan's email on 17 Jan 2018 at: <http://mm.icann.org/pipermail/gnso-rpm-wg/2018-January/002699.html>

Commented [MOU26]: -- Instead, some alternative questions can be asked:

- What instructions have the URS providers given to the panelists?
- What did the URS providers advise the panelists?
- Does the URS providers have minimal standards for panelists for decision making?
- Have the minimal standards been met?
- What are the URS providers' procedures? Have the URS providers done their work?
- How have the URS providers ensured that the "clear and convincing evidence" standard has been applied?
- How do the URS providers police the existing rules for the panelists?
- What does "clear and convincing evidence" mean?

OTHER GENERAL CHARTER QUESTIONS:

- Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use)?
- Will, and if so to what extent, changes to one RPM will need to be offset by concomitant changes to the others?
- Do the RPMs collectively fulfil the objectives for their creation... In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?
- Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?
- Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

PART THREE: CO-CHAIRS' STATEMENT ON URS REVIEW

November 30, 2017

RPM Working Group Co-Chairs' Joint Statement Regarding URS Review

The Co-Chairs have reviewed the general and specific WG Charter questions for the URS and note that among them are several overarching inquiries:

- Do the RPMs collectively fulfill the objectives for their creation, namely “to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks? In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?”, and
- “Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?”

These are among the major questions to be dealt with toward the conclusion of Phase One of our work. The Objectives and Goals portion of the Charter also states, “the PDP Working Group is expected to consider, at the appropriate stage of its work, the overarching issue as to whether or not all the RPMs collectively fulfill the purposes for which they were created, or whether additional policy recommendations are needed, including to clarify and unify the policy goals”.

We also note that the Charter’s URS-specific questions deal with discrete features of this RPM – such as post-default registrant reply; the clear and convincing evidentiary standard; potential treatment of “repeat offenders” and abusive complainants; potential remedies in addition to suspension; use of expanded defenses; etc.

Finally, Additional Charter questions raise such general questions as “Are the processes being adopted by Providers of UDRP, URS, and TMCH services fair and reasonable?”, and “Are Providers exceeding the scope of their authority in any of the procedures they are adopting?” But such general questions do not specifically address whether the three accredited URS providers are acting in compliance with the URS Procedure² and Rules³, and with the Memo of Understanding⁴ (MOU) entered into between ICANN and the three providers, as well as whether ICANN has undertaken any contractual compliance efforts to assure adherence to the MOU.

Whether the providers are acting in accordance with the relevant URS requirements will be an important factor to be considered when we deal with the overarching Consensus Policy question. It will also help ensure that our discussion of other URS questions is data and fact focused, and fully informed regarding the basic elements of this RPM. And such a review would be consistent with our prior work on the TMCH, in which we reviewed the criteria for marks eligible for registration in order to assure that Deloitte and IBM were administering the TMCH in a manner that adhered to those standards.

The Co-Chairs therefore propose, for WG review and discussion, that in addition to **or as focused substitutes for** the above and other relevant Charter questions -- however they are reconciled or reframed by the WG -- we should address these specific questions:

Again, the Co-Chairs believe that this proposed review of the administration of the URS by the accredited providers, to assure compliance with the existing rules, procedures, and MOU obligations, is both consistent with our prior review of the TMCH and is of fundamental importance for addressing the question of whether this RPM should be made available for complaints regarding domains at legacy gTLDs through adoption as Consensus Policy.

² <https://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf>

³ <https://newgtlds.icann.org/en/applicants/urs/rules-04mar13-en.pdf>

⁴ <https://www.icann.org/en/system/files/files/naf-urs-20feb13-en.pdf> (NAF version)

Commented [MOU29]: At 01 February meeting WG members suggested removing “or as focused substitutes for”

Commented [MW30]: Note from 10 Jan 2018 WG call: Can/are some/all of these be subsumed into the topics table in Part 2?

And, finally, as it will be some time before we have received and analyzed the survey questions regarding Sunrise Registrations and Trademark Claims Notices, we believe the proposed questions can be addressed without any further extension of our current timeline.
We look forward to discussing these proposed questions with WG members.

Document prepared by RPM Working Group Co-Chairs:
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