

Presentation from the Uniform Rapid Suspension (URS) Documents Sub Team

Status Update Presentation to the Working Group

Wednesday, 01 August 2018



Working Methodology & Current Status

◎ **Current Status:**

- Identified various data sources corresponding to the URS Topics Table agreed by the Working Group, including:
 - URS Data Staff Compilation Report (latest version 9 July 2018)
 - URS Practitioners Survey Results (latest version 12 June 2018)
 - URS Providers Survey Results (latest version 15 June 2018)
 - Staff Summary Table of De Novo Review cases
 - Staff Summary Table of Claims Denied/Respondent Prevailed cases

(See <https://community.icann.org/x/NgdpBQ> for all documents)
- Reviewed relevant results from each data source, including specific URS cases (Appeals, De Novo Review, Respondent Prevailed); and
- Developed specific potential recommendations for full Working Group consideration

Potential Recommendations (1 of 9 slides)

Section (Topic) A: The Complaint

- ⦿ Administrative Review – data (especially Providers' feedback) did not indicate need for additional policy work
- ⦿ Expanding standing to allow marks that were abusively registered but not confusingly similar – suggestion noted, but data (especially Practitioners' feedback) did not indicate need for additional policy work
- ⦿ Filing Period & Word Limitation for Complaints – Practitioners' feedback noted; any additional policy work should keep in mind that URS is intended to be a lightweight alternative to UDRP
- ⦿ Types of Marks – no data to show this is an issue; better addressed as part of Trademark Clearinghouse discussion

Action Item: staff to find out if decoding software is available that can be used to read the coded portion of a SMD file (or if the only way is to obtain private key from the TMCH)

Potential Recommendations (2 of 9 slides)

Section (Topic) B: Notice

- ⦿ Notice to Respondents – Providers' feedback may determine need for additional policy work (no specific issues identified by Practitioners)
- ⦿ Role of Registry Operators & Registrars – Providers' feedback indicates this generally works well though some operational/compliance issues noted

Action Item: Contact registry operators of the top 25 gTLDs where URS cases have occurred (noted in the URS Staff Compilation Data Report) about:

- Why some registry operators take a longer time to respond to inquiries
- Reported difficulty/delay in responding to verification and lock requests by some registry operators;
- Reported difficulty in some cases with implementing settlements involving a transfer at the registrar level
- Different registry email addresses from the contact noted in ICANN's repository; need for reminders concerning compliance with response & implementation issues

NOTE: Timing TBD depending on Sunrise/Claims survey issuance dates

Potential Recommendations (3 of 9 slides)

Section (Topic) C: The Response (Duration, Fees, Other Issues)

- General: Based on Practitioners' survey results & Sub Team review of cases where a Response was filed, no additional policy work seems to be needed
 - Of the 827 cases decided through end-2017:
 - 27% of the cases saw a Response filed to the Complaint
 - 23% of the cases saw a Response filed within the initial 14-day response period
 - 13% of the cases where a Response was filed resulted in the claim being denied

- Response Fee for 15+ Disputed Domains – Review of the 6 cases (all Default) did not indicate any basis for making policy conclusions, though this can be flagged for community input in the Phase 1 Initial Report

Potential Recommendations (4 of 9 slides)

Section (Topic) D: The Standard of Proof

- Change to the Clear & Convincing Standard: Review of Practitioners' survey results & 59 cases where Respondent prevailed indicate that the standard should not be changed
 - 28 cases saw a Response filed
 - Remaining 31 cases (no Response filed) saw Complainant's claim denied due to inability to satisfy one or more of the three prongs

- Creation of an Examiners' Guide –
 - Does not need to be a comprehensive substantive guide like the WIPO UDRP Overview or include rules about “hard” vs “easy” cases
 - Should be a checklist of all initial elements that must appear in any Determination (e.g. trademark(s) at issue, domains in dispute, all relevant dates (filing, Default, Appeal etc.), grounds/rationale for decision corresponding to the three prongs)

Potential Recommendations (5 of 9 slides)

Section (Topic) E: Defenses

- ⊙ No indication from data or Providers' & Practitioners' feedback that there is a substantive issue to be addressed
- ⊙ On delay/laches – No data to indicate that policy work is required
 - Search of FORUM database reveals no cases where “delay” or “laches” was an issue

Section (Topic) F: Remedies

- ⊙ Practitioners' feedback, disputed domain lifecycle (post-suspension), IRT/STI/CCT-RT/INTA Survey reports indicate that suspension remedy is working as intended
- ⊙ Full Working Group to deliberate broader question of whether any policy change is needed, taking into account other Sub Teams' reports
- ⊙ One possible addition (not affecting the suspension remedy) could be to disallow domains emerging from suspension (including 1-year extension) from being listed by drop-catch services

Potential Recommendations (6 of 9 slides)

Section (Topic) G: Appeals & Section (Topic) H: Overlapping Process Steps

- ⊙ Reviewed all 14 Appeals and 30 De Novo Review cases
 - Complainant prevailed in 12 out of 14 Appeals
 - Complainant prevailed in 24 out of 30 De Novo Review cases

- ⊙ Administrative Recommendations:
 - Create form/template for Determinations to ensure clarity, consistency and precision (e.g. nomenclature, use of terms, formatting)
 - Require that procedural history consistently indicate what happened previously (e.g. Default) and subsequently (e.g. Appeal)

- ⊙ Other Recommendations:
 - Sub Team noted that there are up to three instances where, for a defaulting Respondent, an examination of the merits of the case can occur (default, final (up to 1 year if extended), appeal); however, Complainant has no explicit opportunity to address a response filed for a de novo review – Working Group to deliberate this as a broader policy question

Potential Recommendations (7 of 9 slides)

Section (Topic) I: Costs

- On Response Fees: see Section C for recommendations
- On “loser pays” model: Full Working Group to determine if policy deliberations/recommendations are needed, based on feedback from Providers & Practitioners
 - Complainant prevailed in 12 out of 14 Appeals
 - Complainant prevailed in 24 out of 30 De Novo Review cases

Section (Topic) J: Language

- Recommendation: Develop guidance for Examiners to assist with deciding what language to use in the URS proceeding and Determination
 - Several cases noted possible difficulties with language for some Respondents (staff is currently reviewing these cases as coded by Professor Tushnet)
 - Determinations in all 14 Appeals and 29 out of 30 De Novo Reviews were issued in English
 - Providers’ feedback and related follow up by Providers’ Sub Team may identify other specific issues for policy/operational changes

Potential Recommendations (8 of 9 slides)

Section (Topic) K: Abuse of Process

- ⊙ No specific recommendation from Documents Sub Team based on available data
 - Providers' feedback has detailed information about current practices
 - No cases of abuse have been found (although Respondents have alleged that Complainants have engaged in abuse of process in some cases)

Section (Topic) L: Education & Training

- ⊙ Documents Sub Team supports idea of creating a multilingual, basic FAQ for Complainants and Respondents
- ⊙ Providers Sub Team may have additional suggestions

Potential Recommendations (9 of 9 slides)

Section (Topic) M: URS Providers

- ⦿ No specific recommendation from Documents Sub Team based on available data
- ⦿ Providers & Practitioners Sub Teams may have additional suggestions

Section (Topic) N: Alternative Processes to the URS

- ⦿ No specific recommendation from Documents Sub Team based on available data
 - Note that URS is already an alternative to the UDRP

Thank You and Questions