#1

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Wednesday, September 05, 2018 8:08:31 PM
Last Modified:	Wednesday, September 05, 2018 8:25:31 PM
Time Spent:	00:17:00

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Kristine Dorrain

Q2 What type of URS recommendation are you proposing?

Operational
Fix

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

URS Paragraph 6 says:
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.

Option 1: Amend to delete "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." and move this text to the section in the policy that indicates how bad faith may be proven (i.e. these behaviors may be used by the Examiner to find bad faith).

Option 2: Just delete the "During the Default period" text.
[Note, there is no Default period defined here or anywhere - the case goes to the Examiner.]

Q4 What is your rationale for the proposal? (250 words max)

No one but the registrant and its webhost can change the content on a web page - the passive text indicating that changing it "will be prohibited" is confusing. If changing website content is prohibited (and it appears it is), that text should move to a direct instruction to the registrant, and the procedure should include a note to the Examiner to make all reasonable inferences from such behavior.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The language of the URS procedure.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

It has not been addressed to my knowledge.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

No, this is an operational fix to make the procedure make sense.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Experience with the URS.

#2

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Wednesday, August 29, 2018 9:15:57 AM
Last Modified:	Wednesday, August 29, 2018 9:39:57 AM
Time Spent:	00:23:59

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Maxim Alzoba

Q2 What type of URS recommendation are you proposing?

Operational
Fix

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

Legal requirements should be moved from
the technical document
"URS High Level Technical Requirements for Registries and Registrars"

this bit
"4. Registry-Registrar Agreement:
* The Registry Operator MUST specify in the Registry-Registrar Agreement for the Registry Operator's TLD that the Registrar MUST accept and process payments for the renewal of a domain name by a URS Complainant in cases where the URS Complainant prevailed.
* The Registry Operator MUST specify in the Registry-Registrar Agreement for the Registry Operator's TLD that the Registrar MUST NOT renew a domain name to a URS Complainant who prevailed for longer than one year (if allowed by the maximum validity period of the TLD)."

to another document (URS Procedure or URS Rules) or to leave the text, but to rename

"URS High Level Technical Requirements for Registries and Registrars"
into "URS High Level Requirements for Registries and Registrars"
and on ICANN's page https://newgtlds.icann.org/en/applicants/urs
to change it's name from "URS Technical Requirements 1.0"
to "URS Registrars and Registries Requirements 1.0"

Q4 What is your rationale for the proposal? (250 words max)

The reason to ask it - to avoid confusion among Registries and Registrars, usually Engineers read technical documents and legal teams read Rules and Procedures, and here
we see a legal requirement to include particular text into Registry-Registrar Agreement.

This change will simplify process of understanding of the URS implementation for new Registries and Registrars, and lower workload for ICANN Compliance/Legal Depts
without significant changes.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

As a Registry we had to response to an ICANN B2B case where we had to add a particular addendum to the Registry-Registrar Agreement (nobody expected legal requirements in a document called "technical") with the text required by part 4 of "URS High Level Technical Requirements for Registries and Registrars"

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

it was noted during the meetings (including F2F in Abu Dhabi).

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

I am not sure that the SubTeams were working on this particular topic.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

I think we need not to forget this change to be done.

#3

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Friday, August 31, 2018 11:04:25 AM
Last Modified:	Friday, August 31, 2018 11:06:21 AM
Time Spent:	00:01:55

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Zak Muscovitch

Q2 What type of URS recommendation are you proposing?

Operational Fix

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

Revise URS Policy Paragraph 10 to reflect the following new provisions:

10.3 There shall be an option for a successful or non-successful Complainant to extend the registration period for one additional year at commercial rates.

10.5 Notwithstanding any locking of a domain name pursuant to Paragraph 4.1 and notwithstanding the suspension of domain name pursuant to Paragraph 10.2, a registrant shall be entitled to renew a subject domain name registration and the registry shall permit same in accordance with its usual commercial rates for a period of up to one year.

Q4 What is your rationale for the proposal? (250 words max)

What happens when a URS decision is issued, for example, merely one (1) day prior to the expiry of the disputed domain name? Pursuant to Paragraph 12.4 of the URS Policy, an appeal must be brought within 14 days of the decision. Both complainants and respondents would as a result, be unable to appeal under such circumstances, unless they filed the appeal within one (1) day of the decision coming out, since the registration would expire before the end of the 14 day appeal period.

Accordingly, the URS Policy needs to correct this oversight in order to enable the appeal mechanism to work in all situations. Currently, a complainant can only renew a domain name if it was successful in the URS proceeding. The proposal allows an unsuccessful complainant to also renew the registration for a year, so as to enable an appeal in circumstances where the 14 day appeal period extends beyond the registration expiry date.

Similarly, a registrant who wants to appeal a suspension order also needs to be able to extend the registration beyond the original expiry date.

A registrant also needs to be able to extend the registration period if it wants to file a Response within 6 months of the Default Determination, in circumstances where the registration expiry date will occur before the end of the 6 month period.

This policy proposal would oblige the parties to extend the registration period if they wanted to appeal and the domain name was going to imminently expire.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The “evidence” in support of the proposal is that the current Policy and Rules on their face, do not contemplate the expiry of a domain name before the parties are able to exercise their legal remedies. This is therefore an apparent gap or oversight in the URS that needs to be addressed.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

Although the SubTeams and WG looked at the Scope of Remedies, Duration of Suspension and Review of Implementation (See Super Consolidated URS Topics Table at Sections F(1), F(2) and F(3), this particular issue was apparently not contemplated nor addressed.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The data did not address this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

n/a

#4

Proposal for URS Policy and Operational Recommendations

IMPORTANT

- *This form is used by RPM Working Group members to submit proposals for URS policy and operational recommendations. Please submit to ariel.liang@icann.org.*
- ***Proposals submitted not using the required form will not be in order and will not be discussed.***
- ***One individual form must contain only one proposal for one recommendation.***
- *Answer to every text field is required and mandatory(*).*
- *As soon as practical after receiving the submissions, staff will forward the proposals to the Working Group email list.*
- *The final date for submission of member proposals is* ***COB on Friday, 31 August 2018****.* ***Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

___ Policy

_X__ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

All URS Suspension pages must be delivered in both HTTP and HTTPS versions.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

URS Suspension pages have a clear purpose, namely to provide notice to the registrant and the public that a domain name has been suspended after an adverse URS ruling. However, that URS Suspension page might not be visible for TLDs that have HSTS-preloading of their entire TLD (as in the .app TLD) if the Suspension Page is only delivered via HTTP. Requiring HTTPS versions of the page ensures that the intent of the policy is not thwarted, and that registrants and the public can always see the suspension page.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The evidence for this was posted on the RPM PDP mailing list in June, see:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-June/003139.html

when the first URS complaint involving a .app domain name was decided, and the suspension page wasn't visible.

Kathy Kleiman confirmed this evidence, in her reply to that email:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-June/003144.html

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

I first brought this to the attention of the Working Group in May 2018, in the thread at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-May/003112.html
https://mm.icann.org/pipermail/gnso-rpm-wg/2018-May/003119.html

which continued into June 2018:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-June/003139.html
https://mm.icann.org/pipermail/gnso-rpm-wg/2018-June/003144.html

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The URS Sub Teams did not collect any relevant data for this issue.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

The source was direct observation of a failure of the URS policy in this “edge case”, which had not been contemplated at the time of the URS policy’s creation. The solution is rather obvious, once one observes the failure of the policy in that edge case.

#5

Proposal for URS Policy and Operational Recommendations

IMPORTANT

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I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

The URS and UDRP policies should be amended to introduce a limitation period for filing complaints. While specific implementation can be performed by a future IRT, I propose at this point that the limitation period be 2 years, as measured from the creation date of the domain name (this would match the statute of limitation in Ontario, Canada).

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

This proposal attempts to eliminate the absurd scenario that a TM holder would be barred from bringing a case to court, due to statute of limitations legislation, but would still be able to bring the same dispute under the UDRP or URS. TM owners who "sleep on their rights" by not bringing complaints in a timely manner should lose the ability to utilize the ADR procedures. The URS/UDRP exist to provide a faster and cheaper route to the expected outcome that would occur in a court of law, not to provide a superior outcome (greater rights) for TM holders. Implementation of a limitation period would thus be consistent with the reality that ICANN is not the place to create "new law", but merely a venue that should respect and reflect existing laws in a conservative manner using globally recognized principles. Absence of such a limitation period in the current policies must be corrected, to be consistent with underlying national laws.

Both policies were designed to remedy clearly abusive domain registrations. However, over time, the policies have tended to be exploited for situations that are no longer "obvious" cybersquatting. This is particularly the case for "aged" domains, where the rate of "false positives" and controversial disputes more suited to courts tend to be higher. The longer a domain name exists, the lower the probability that it was abusive, since clearly abusive domains tend to be throwaway domains that are not renewed.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Legislation in various jurisdictions specify limitation periods to bring claims, e.g. 2 years in Ontario, Canada: https://www.ontario.ca/laws/statute/02l24 TM holders themselves benefit from limitation periods, as their TMs become "incontestable" after 5 years in Canada/USA (although there are paths around such incontestability). Similarly, domain registrants deserve similar protections for their intellectual property, compelling timely challenges to a domain name's registration in order to use the ADR procedures.

Anecdotally, the rate of "false positives" (the decisions that are most controversial, where a panel found in favour of complainant, but a different outcome occurred as a result of court proceedings) in the UDRP tend to involve the more valuable domains that have been renewed for many years since creation. e.g. Soundstop.com, AustinPain.com, SDT.com to name a few, see past discussion at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-April/002940.html

This can be studied statistically in more detail and with more precision in Phase 2 of our work (but needed to be proposed now, due to the rules of procedure proposed by the co-chairs). Given the URS is relatively new and applies to new gTLD domains that aren't "old" yet, the data from the URS wouldn't exist now (but might exist in 5 or 10 years). Domain age can be considered a proxy for domain value, and disputes for more valuable domains should be handled by courts with full due process, instead of a weaker ICANN-created procedures.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

In Section A.3 of the August 31, 2018 version of the Super Consolidated URS Topics Table, the topic is hinted at, but not addressed with any proposal. Sub Teams did not attempt to survey registrants, who are deleteriously affected by the unlimited ability of TM holders to file complaints at any time, regardless of a domain's age.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Sub Teams did not even attempt to survey registrants, who are deleteriously affected by the unlimited ability of TM holders to file complaints at any time, regardless of a domain's age.

To the extent that a single practitioner who has represented registrants in the URS was surveyed, there was an imbalance and that person's data was overwhelmed by the 13 that represented complainants, and thus this was an unrepresentative sample that didn't capture the issue. More data can and should be collected during Phase 2 of our work (where we will specifically study the UDRP, and can make inferences on future aged domains for the URS).

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Addressed above.

#6

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 06, 2018 4:23:10 PM
Last Modified: Thursday, September 06, 2018 4:38:51 PM
Time Spent: 00:15:40

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Claudio DiGangi

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

The recommendation is to permit multiple unrelated complainants to bring a single complaint jointly against a single domain name registrant (or related registrants) who has registered multiple domain names, by deleting the following procedural element within Section 1.1.3 of the URS Procedure:

"One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related"

Q4 What is your rationale for the proposal? (250 words max)

A single complaint against a single domain name registrant (or related registrants) should be permitted to be joined by multiple unrelated complainants. There is no practical difference between allowing a complaint based on trademarks that are owned by different, but related corporate entities, as permitted in Section 1.1.3 of the URS Procedure, and allowing a complaint based on trademarks owned by different, but unrelated entities, whose marks are similarly being abused by the same registrant.

Allowing multiple unrelated complainants to bring a single complaint jointly will enhance the utility of the URS by:

• reducing the cost burden on all parties, including Providers, by avoiding duplication and maintaining focus on the scope of the abuse to multiple trademarks by one respondent registrant.

• streamlining the process, creating significant efficiencies, and enabling the suspension of multiple domain names abusing third-party rights.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Under the existing UDRP policy, unrelated trademark owners are able to bring a single complaint jointly against a single registrant to recover domains that have been abusively registered under a common occurrence or scheme. Once ownership of the trademark(s) is established, there is no reason why such a consolidated proceeding should not be permitted in the URS mechanism for the benefit of all parties.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This issue has not been specifically addressed by the WG or Sub Team to date.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The Sub Teams did not collect relevant data on this topic.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

The proposal is based on the WG's general analysis of the URS policy and procedures.

#7

Proposal for URS Policy and Operational Recommendations

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I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

The URS and UDRP policies shall be changed to require that providers provide notification to a registrant's Legal Contact, in addition to (not replacing) the current required notification to registrants. At the implementation stage of this policy change, WHOIS (or its successor) would be augmented to add that Legal Contact on an opt-in basis. To reduce costs, notices from URS/UDRP providers to the Legal Contact should be by email and FAX only (not courier).

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

Deadlines in civil litigation typically are measured from the time of receipt of actual notice of a complaint, being served properly according to the Rules of Civil Procedure of the relevant jurisdiction, or the Hague Convention, etc. for international service of process. However, the URS and UDRP have not attempted to measure actual notice, but instead start the clock immediately upon the notice of complaint being sent (but not necessarily actually received).

This proposal attempts to address this policy deficiency by adding a new contact (the Legal Contact) who would supplement (but not replace) existing contacts and thereby increase the likelihood of early actual notice to registrants regarding the dispute. A registrant that is on holiday, or who misses a notification (that went to their spam folder, etc.) is less likely to default if their legal contact receives notice of the complaint simultaneously. Earlier notification to a legal contact allows them more time to respond, without the lag that occurs waiting for the registrant to receive the notice.

A visible legal contact in the WHOIS has the added benefit of reducing frivolous complaints, as potential complaints would be aware that a registrant has legal representation. For legitimate complaints, a visible legal contact might encourage fast settlement without resorting to a URS or UDRP, saving everyone time and money.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

There are very high default rates in both the URS and UDRP (as per statistics from Professor Tushnet's work, and as noted in data source of C.1 of the URS Super Consolidated Topics Table; NAF and WIPO statistics on UDRP defaults are well known, although not specifically studied yet in this PDP). Part of this can be attributed to lack of actual notice to registrants, and also insufficient time to respond.

Registrants haven't been explicitly surveyed systematically in this PDP, which has hampered our work, by not collecting data from registrants which bring to light current imbalances in policies such as lack of effective notice.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

Section B.1 of the Super Consolidated URS Topics Table focused on receipt by the registrant of notices, but did not consider the broader question of how to achieve notice by other means. The specific proposal of adding a legal contact was not considered by the Working Group or Sub Teams to date.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes, given the high default rates already visible in the data, this demonstrates the need to address the root causes, which include lack of actual notice to registrants. Adding an additional legal contact would be a low cost method to help improve actual notice to registrants.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#8

Proposal for URS Policy and Operational Recommendations

IMPORTANT

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I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

The URS and UDRP should adjust their response times, by adding 3 additional days to respond for every year that has elapsed since the creation date of the domain in dispute, up to a maximum of 60 days in total.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

Deadlines in civil litigation typically are measured from the time of receipt of actual notice of a complaint, being served properly according to the Rules of Civil Procedure of the relevant jurisdiction, or the Hague Convention, etc. for international service of process. However, the URS and UDRP have not attempted to measure actual notice, but instead start the clock immediately upon the notice of complaint being sent (but not necessarily actually received).

This proposal attempts to address this policy deficiency by increasing the time to respond by a factor determined by the age of the domain name relative to its creation date. There is simply less urgency to a URS or UDRP dispute involving older domains, so this proposal attempts to take this into account by lengthening the response period accordingly. Given TM holders can take years to bring a complaint, this attempts to address this obvious imbalance between complainants and respondents. To the extent that laches is unaddressed by policy, this proposal reduces the burden on respondents of complaints not brought in a timely manner by adjusting the time to respond. Urgent cases can still be handled by courts, at the option of the TM holder.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

There are very high default rates in both the URS and UDRP (as per statistics from Professor Tushnet's work, and as noted in data source of C.1 of the URS Super Consolidated Topics Table; NAF and WIPO statistics on UDRP defaults are well known, although not specifically studied yet in this PDP). Part of this can be attributed to lack of actual notice to registrants, as well as insufficient time to consult with attorneys/advisors.

Registrants haven't been explicitly surveyed systematically in this PDP, which has hampered our work, by not collecting data from registrants which would make evident current imbalances in policies such as the time to respond.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

Topic C.1 of the August 31, 2018 "Clean" Super Consolidated URS Topics Table did not have any policy recommendation. However, this is a proposal that would apply to both the URS and UDRP, in order to address deficiencies in both procedures (best left to Phase 2 of our work).

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The high default rates noted in Topic C.1 do show a need to improve responses rates of registrants, and having more time to respond (and to actually receive notices) would certainly help. To the extent that practitioners were surveyed, there was an obvious imbalance between practitioners representing complainants (13 of the 14 practitioners), and thus to the extent that practitioners representing registrants should have been more equally surveyed, this issue would have had greater visibility and weight than at present. Registrants were never surveyed at all, further reducing visibility of this issue. I would hope that in Phase 2, registrants will be explicitly surveyed.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Discussed above.

#9

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Thursday, September 06, 2018 2:50:22 PM
Last Modified:	Thursday, September 06, 2018 3:00:28 PM
Time Spent:	00:10:05

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

David McAuley

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

This is a proposal to eliminate one round of three possible URS examinations for those registrants who default to a URS complaint, i.e. who do not answer a URS complaint within the 14-day notice period, and to shorten the extended time given to those who default. My proposal is to reduce the six-month response period for defaulting registrants to engage in URS to three months and make it non-extendable. And their engagement would not be a for a ‘de novo review’ but rather a de novo appeal under procedure 12 with a chance to respond (thus giving defaulting registrants up to two examinations).

Q4 What is your rationale for the proposal? (250 words max)

Under the URS procedures, a registrant defaults if it fails to reply to a complaint within 14 days (Procedure 6.1). All default cases proceed to examination on the merits of the claim (6.3). (I call this Examination #1.)

If the defaulting registrant loses Examination #1, it can file for “de novo review” within six months of default. It can ask for another six-month extension (6.4) (thus up to twelve months after default).

The filing of a response by defaulting registrant after default is not an appeal - the case is considered as if responded to in a timely manner. (6.5). (Examination #2.)

Under procedure #12, either party can file for de novo appeal (12.1) within 14 days after a default or final determination (12.4). (For defaulting registrant this de novo procedure is Examination #3.)

So, defaulting registrant gets up to three examinations which can take up to a year and several months or more.

A registrant who actually responds to a complaint within 14 days, on the other hand, gets up to two examinations – the original examination (under Procedure 9), and the de novo appeal under
Procedure 12.1. (This can all happen within two to three months.)

This seems contrary to the ‘rapid’ nature of URS and could encourage defaults.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

This is a rules-based proposal.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

I noticed this as a potential issue while on the Documents sub-team.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The Document sub-team saw this potential anomaly and I am submitting it for consideration by the WG. A registrant who defaults may need more time, perhaps because of language issues or something similar. But an extra examination and a year or more seems excessive.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

N/A

#10

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Thursday, September 06, 2018 4:30:12 PM
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Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Brian Winterfeldt; Christopher Thomas; Colin O'Brien; Griffin Barnett; Jeff Neuman; John McElwaine; Lori Schulman; Pascal Boehner; Paul McGrady; Susan Payne

Q2 What type of URS recommendation are you proposing?

Policy

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

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, should be changed. Instead, the period in which a defaulting respondent can file a reply either immediately after defaulting or after a default determination is issued should be limited to 30 days after issuance of a decision and suspension/deactivation of the disputed domain name. Alternatively, given the availability of the "appeal" process under the URS, which is also a de novo review, the post-default de novo review process could be eliminated altogether.

Q4 What is your rationale for the proposal? (250 words max)

As domain name registrants often address URS cases on a pro se basis and sometimes view service of URS complaints as spam, they may not become fully aware of the dispute until after their domain and website are disabled. This counsels in favor of some grace period for submitting a reply but the current one year period is excessive. If a losing respondent doesn't notice that its domain has been suspended within 30 days one may safely assume that the domain is of little importance to the respondent and they have consciously foregone the opportunity to formally respond in the URS proceeding. Alternatively, given the availability of the "appeal" process under the URS, which is also a de novo review, the post-default de novo review process could be eliminated altogether.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

There have been no URS cases in which a defaulting Respondent sought to reply / obtain a de novo review post-default determination outside of the initial 6 month period for doing so. There have only been 29 URS cases out of 827 counted between February 2014 and December 2017 in which a defaulting Respondent sought de novo review of a default determination – this represents only 3.5% of all cases. All 29 of these de novo review filings were brought within the initial 6 month period. In fact, in such cases, responses were filed, on average, just over 5 days after the respondent defaulted. This evidence supports the shortening of the de novo review period, and the proposed 30 day period is actually fairly generous, as the longest period of default in which a response was ultimately filed was 18 days and the average period was about 5 days. See Staff table on De Novo Review cases; Staff compilation report - updated URS data_v1.1 - 9 July 2018.docx.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This issue has been discussed within the Documents Sub-Team, which reviewed URS proceedings in which a de novo review was instituted as well as appeal cases. The consolidated URS Document provides “Based on Sub Team discussions relating to De Novo Review, full WG to discuss (and community input to be solicited for Initial Report) on policy question as to number of possible instances, and related time frames, where a defaulting respondent has the opportunity to file for a de novo review following default, before a possible appeal.” Concerning the appeal process, the consolidated URS Document provides, “RECOMMENDATION: Facilitate better clarity, precision and consistency of language and terminology by developing a template for Determinations. Full WG to discuss (and community input solicited for Initial Report) on the broader policy question.” See Consolidated URS Discussion Document - updated 31 July 2018v1.docx. The issue was also discussed within the Practitioners and Providers Sub-Teams. See id.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes – see proposal and rationale, and summary of Sub Team work on this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

This is already addressed above.

#11

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 06, 2018 4:48:25 PM
Last Modified: Thursday, September 06, 2018 4:50:49 PM
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Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Brian Winterfeldt; Christopher Thomas; Colin O'Brien; Griffin Barnett; Jeff Neuman; John McElwaine; Lori Schulman; Pascal Boehner; Paul McGrady; Susan Payne

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

The Response Fee threshold should be lowered from 15 domain names to 3, because this is sufficient to demonstrate a clear pattern by the registrant based on relevant URS (and UDRP) precedent. In cases where the named respondent is ultimately determined not to be the actual registrant of all the domain names in the complaint, the fee would only apply if the registrant is confirmed for 3 or more of the listed domain names; otherwise, no such fee would apply.

Q4 What is your rationale for the proposal? (250 words max)

Cases in which there are 3 or more domain names in dispute should be viewed in the same light as those involving habitual cybersquatters. In fact, it is a consensus position that as few as 3 cyberquatted domain names can create a "pattern of conduct" to show bad faith under both the UDRP and the URS. Reducing the Response Fee threshold would help deter such registrants from using the cost of filing complaints as leverage in trying to negotiate the sale of the disputed domain names to brand owners, and would serve as a general deterrent against serial/high-volume cybersquatting.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

To date, 6 cases out of 827 (0.7%) have involved complaints listing 15 or more domain names (to which the Response Fee applies). There have been 25 cases (including those 6) out of the 827 total cases (3%) where the complaints listed 5 or more domain names. There have been 43 cases (including those 25) out of the 827 total cases (5.2%) where the complaints listed 3 or more domain names. See URS Case Review - Final.xlsx. URS precedent has indicated that as few as three domain names can indicate a pattern of bad faith. See, e.g., Moncler S.P.A. v. Trani Johanna, Case No. 1713264 (Forum Feb. 6, 2017) ("registration of three very similar domain names in issue in this case is indicative of a 'pattern' of bad faith registration by Respondent"). The threshold should be lowered from 15 domain names to 3 domain names as a reasonable modification, given the case support for only 3 domains being required to establish a pattern.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The issue of the Response Fee has been discussed within the Documents Sub-Team, which reviewed cases where 15 or more domains were listed to determine any issue as it relates to the Response Fee. This issue was also discussed within the Providers Sub-Team. The consolidated URS Document contains the following recommendation regarding Response Fee: “Data shows no basis for any policy conclusion or recommendation. Flag the issue of Response Fee for 15+ domains for community input in Initial Report.” We disagree that the data shows no basis for any conclusion or recommendation; rather, we believe it supports reducing the number of domain names in a single complaint to trigger the Response Fee from 15 to a reasonable minimum of 3, given evidence of numerous cases involving at least 3 domain names establishing a clear pattern of targeting and bad faith, but only a small number of cases involving 15 or more domains.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes – see proposal and rationale, and summary of Sub Team work on this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

This is already addressed above.

#12

Proposal for URS Policy and Operational Recommendations

IMPORTANT

- *This form is used by RPM Working Group members to submit proposals for URS policy and operational recommendations. Please submit to ariel.liang@icann.org.*
- ***Proposals submitted not using the required form will not be in order and will not be discussed.***
- ***One individual form must contain only one proposal for one recommendation.***
- *Answer to every text field is required and mandatory(*).*
- *As soon as practical after receiving the submissions, staff will forward the proposals to the Working Group email list.*
- *The final date for submission of member proposals is **COB on Friday, 31 August 2018**. **Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

The URS and UDRP policies shall be changed to require that complainants prove that a domain name was created in bad faith (with the creation date of the domain name being the relevant date), replacing the current ambiguous registered in bad faith standard. All other remaining prongs of the 3-part test shall continue as before (e.g. use in bad faith, no legitimate interest, confusingly similar to a TM).

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

Pro-complainant UDRP and URS panels have, due to the ambiguous nature of the term "registered", long interpreted it to mean the date the current registrant acquired the domain name (see Question 5 below), rather than its creation date. This means that a domain name that was created in good faith can potentially be found to have been "registered in bad faith" if it is assigned to a new registrant, because the date of the test changes. This is a deep policy error in interpretation by panelists, treating domain registrants differently than owners of other intellectual property such as TMs, copyrights or patents.

When the DNS was relatively young in the 1990s or early 2000s, this might have been an innocent mistake. But, domain names themselves are now recognized as valuable intellectual property in themselves (see SEC filings, for example, like https://www.sec.gov/Archives/edgar/data/1645194/000119312515394008/d30149dex99h4.htm). It's no longer acceptable to treat domain names as second-class citizens that are somehow inferior in standing to TMs, copyrights and patents. Domain name rights, and in particular their assignment to others, should no longer be penalized for being transferred to others. Such penalties can hamper the sale of assets of a business, succession planning for families, the resolution of estates after a death, and corporate reorganizations, among other deleterious effects.

This proposal will reduce risks and harm to registrants of ownership transfers, thereby protecting registrant rights.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

WIPO overview 3.0 answer 3.9 discusses the current panel views:

http://www.wipo.int/amc/en/domains/search/overview3.0/#item39

"On the other hand, the transfer of a domain name registration from a third party to the respondent is not a renewal and **the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith**. This holds true for single domain name acquisitions as well as for portfolio acquisitions." (emphasis added)

A (rare) case where a panel correctly recognized that a transfer of ownership of a domain makes the new registrant a successor-in-interest was the Voyuer.com UDRP at: http://www.adrforum.com/domaindecisions/433802.htm

(a careful reading of that decision shows the panel found that Respondent was determined to have registered the domain as of the original creation date, as a successor-in-interest, not its acquisition date)

Other intellectual property such as TMs, copyrights, and patents can be fully assigned to new owners without the "penalty" in terms of resetting priority dates that UDRP/URS panels have been handing out to domain registrants. This is evidence in law, where assignees are treated no differently than original registrants for TMs, copyrights and patents. Transfers of ownership do no harm to the new owners by applying a different date/standard to any test for rights/priority.

The now discredited Octogen analysis, which attempted to treat renewal dates as the "registered" date, demonstrates how far pro-complainant panels have gone to harm registrant rights through creative reinterpretation of the policies.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This topic hasn't been addressed by the working group or sub teams.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Sub Teams did not even attempt to survey registrants, who are deleteriously affected by the current incorrect interpretation of "registered" by panels. To the extent that a single practitioner who has represented registrants in the URS was surveyed, there was an imbalance and that person's data was overwhelmed by the 13 that represented complainants, and thus this was an unrepresentative sample that didn't capture the issue. More data can and should be collected during Phase 2 of our work (where we will specifically study the UDRP; the 3-prong tests are the same in both the URS and UDRP).

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#13

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 06, 2018 7:10:58 AM
Last Modified: Thursday, September 06, 2018 7:14:13 AM
Time Spent: 00:03:14

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Marie Pattullo (AIM - European Brands Association)

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

That the losing Respondent cannot re-register the same domain name once it is no longer suspended.

Q4 What is your rationale for the proposal? (250 words max)

Where a Respondent loses the URS case relating to a specific string, it should not be permitted to simply re-register that name once it is no longer suspended. This would help to prevent gaming of the system and unnecessary cluttering of the providers' workload with spurious or vexatious cases.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Super Consolidated URS Topics Table, F(2)/Practitioners Sub-Team: "in some cases, a losing Respondent is able to re-register a domain once it becomes available"; "after the lock, the cybersquatters just renew the domain name".

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

Super Consolidated URS Topics Table, F(2)/Practitioners Sub-Team: "in some cases, a losing Respondent is able to re-register a domain once it becomes available"; "after the lock, the cybersquatters just renew the domain name".

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The Practitioners Sub-Team (quoted above) considered the issue and but the recommendation goes only to a technical/operational, rather than this policy, fix. However, the Documents Sub-Team's draft policy recommendation is that "the question of adequacy and scope of remedies be deliberated among the full WG".

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

See above.

#14

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 06, 2018 7:14:32 AM
Last Modified: Thursday, September 06, 2018 7:19:33 AM
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Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Marie Pattullo (AIM - European Brands Association)

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

That repeat offenders should be sanctioned.

Q4 What is your rationale for the proposal? (250 words max)

Repeat infringers meet little if any sanction. This should be defined as any registrant that has lost URS cases pertaining to, for example, three or more registrations. While of course this could be for many reasons and the registrant may be acting in good faith, sanctions such as a blocked guarantee being required for further registrations (which could be released after a new level of “clean" registrations is reached) will not be of concern to such a party. Other technical sanctions can be discussed for viability with the CPH, which of course is also keen to promote a clean DNS.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

We refer the WG to the amount of repeat infringers cited in, e.g., the WIPO UDRP figures as well as the 98 cases cited in the staff compilation report that involved multiple domain names. Cybersquatting is not a product of the remedy: it is an infringement and absent effective sanction, it will continue.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

Referenced in Super Consolidated URS Topics Table K(1) - abuse of process – and discussed in all Sub-Teams.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

As rights owners we would place this under the Documents Sub-Team's draft policy recommendation that "the question of adequacy and scope of remedies be deliberated among the full WG".

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

See above.

Question: Please provide your proposed definition of “repeat offender”.

Answer: As set out in our proposal, we would suggest that thisbe defined as any Registrant that has lost URS cases pertaining to, for example, three or more registrations. We would be interested to hear from the entire WG on their workable proposals.

Question: Please provide some details regarding the types of proposed sanctions that you envision.

Answer: Again as we set out in the proposal, we would suggest sanctions such as a blocked guarantee being required for further registrations (which could be released after a new level of “clean" registrations is reached). Another possibility would be that repeat offenders be sanctioned by a reversal of the cost structure: so for example, if a Registrant were to lose three URS cases based on bad faith, all further URS cases against that Registrant would be granted automatically, at no cost, unless the Registrant requires the arbitration. And if it does, it should be at its own costs, with time limits - e.g. within one month of the URS decision. The repeat offender “flag” would be removed should an arbitration panel deem it appropriate, and/or automatically whenever the Registrant prevails. Other technical sanctions can be discussed for viability with the CPH (under the general scope of the Documents’ sub-team proposal that “the question of adequacy and scope of remedies be deliberated among the full WG”).

#15

COMPLETE

Collector:	Web Link 1 (Web Link)
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Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Brian Winterfeldt; Christopher Thomas; Colin O'Brien; Griffin Barnett; Jeff Neuman; John McElwaine; Lori Schulman; Pascal Boehner; Paul McGrady; Susan Payne

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

The URS should be amended to include express provisions (beyond the mention of a "pattern of conduct" in URS par. 1.2.6.3(b)) which provide additional penalties for "repeat offenders" and "high-volume cybersquatting." The definition of a "repeat offender" should be any domain name registrant who loses two or more separate URS proceedings. The definition of "high-volume cybersquatting" should be any URS proceeding where the complainant prevails against a single respondent in a complaint involving 10 or more domain names. Once either of these standards are established, the penalties should include (i) a requirement that the registrant deposit funds into an escrow account, or provide an equivalent authorization on a credit card, with each new domain registration (such funds could be dispersed to prevailing complainants in future domain name disputes against that registrant as part of a "loser pays" system), and (ii) a universal blocking of all domain registrations for a set period for the registrant (i.e. "blacklisting" the registrant on a temporary basis). There may be other possible enhanced penalties that would also be appropriate. Such requirements could be included in updated URS Rules, made enforceable against registrars via parallel updates to the RAA and domain name registration agreements of individual registrars. These obligations would be enforceable by ICANN Compliance.

Q4 What is your rationale for the proposal? (250 words max)

Habitual cybersquatting is a significant problem and registrants who have lost multiple cases or have been found to target numerous domain names are clearly not changing their activities based on such losses. Enhanced penalties are needed to serve as a further deterrent again serial cybersquatting and patterns of bad faith and abusive domain name registration and use.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

To date, there have been 827 URS cases, involving a total of 1,861 domain names. See Staff compilation report - updated URS data_v1.1 - 9 July 2018.docx. Of that number, 98 cases involved multiple domains, covering 1,134 domain names of the 1,861 total. See URS Case Review - Final.xlsx. This shows that a large proportion of the domain names subject to a URS are covered in a small number of the total cases – meaning that many cases involve multiple domain names and a pattern of bad faith conduct by the particular registrant (about 61% of domain names subject to URS come from about 12% of total cases). Some cases involved dozens or even hundreds of domain names, like Case No. 1703352 (Ashley Furniture Industries, Inc. v. Fahri Hadikusuma, 457 domain names), Case No. 1731038 (Eli Lilly and Company v. Shaternik, 202 domain names), Case No. 1713119 (Moncler S.P.A. v. Ndiyaye therese, 85 domain names), Case No. 1714210 (Moncler S.P.A. v. Trani Johanna, 34 domain names), and Case No. 1757790 (moncler S.P.A. v. Dominique Lacroix, 32 domain names). The data also shows a number of respondents named in more than one complaint – evidence of serial cybersquatting on multiple different brands owned by different trademark owners/complainants. For example, yoyo.email/yoyo.email Giovanni Laporta and Ron Van Belkom. See id. These facts demonstrate the need for stronger deterrents against serial cybersquatting and repeat offenders, including enhanced penalties for repeat offenders.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The issue of cost allocation has been discussed within the Documents, Providers, and Practitioners Sub-Teams, and the issue of “repeat offenders” (specifically respondents) was discussed within the Documents Sub-Team. See Consolidated URS Discussion Document - updated 31 July 2018v1.docx. The Practitioners Sub-Team captured data on the qualitative experiences on the average cost to prosecute and/or defend a URS proceeding. The Providers Sub-Team captured feedback on what filing fees were received. The Documents Sub-Team considered the data from the INTA survey for any results relating to fees and costs. Ultimately, the full WG was called on to discuss a loser pays model and other aspects of cost allocation. There has been little substantive discussion to date about the notion of enhanced penalties for repeat offenders, although the Tushnet case research provides data about such repeat offenders from which conclusions as to policy changes can be drawn.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes – see proposal and rationale, and summary of Sub Team work on this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

This is already addressed above.

#16

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Thursday, September 06, 2018 4:46:26 PM
Last Modified:	Thursday, September 06, 2018 4:48:19 PM
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Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Brian Winterfeldt; Christopher Thomas; Colin O'Brien; Griffin Barnett; Jeff Neuman; John McElwaine; Lori Schulman; Pascal Boehner; Paul McGrady; Susan Payne

Q2 What type of URS recommendation are you proposing?

Policy

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

The URS should allow for additional remedies such as a "right of first refusal" to register the domain name in question once the suspension period ends or the ability of the complainant to obtain additional extensions of the suspension period.

Q4 What is your rationale for the proposal? (250 words max)

One reason the URS has not met with wide adoption by brand owners is the limited remedies available. It would likely increase URS utility if prevailing complainants had the opportunity to securely take possession of the disputed domain name(s) without the delay and risk of waiting for a suspended domain to expire and then placing a back order or otherwise attempting to acquire it in the marketplace once the suspension period ended. Such enhanced remedies could include a right of first refusal upon expiration of a suspended domain name but they could also provide for the ability of a losing respondent to voluntarily transfer a suspended domain to the complainant upon a negotiated settlement prior to the domain's expiration. Also, a successful complainant could be given the option of maintaining and extending the suspension for additional periods of time, potentially subject to payment of a reasonable extension fee in each instance.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The vast majority of URS complaints have been successful – specifically, there were only 59 of 827 cases where the claim was denied (7.1%) accounting for only 63 out of 1,861 total domain names (3.4%). In 30% of cases (17% of domain names) the complainant uses brand protection from a provider, a protected marks list, or reserved the name with the Registry. However, where complainants prevailed, 365 out of the 1,745 subject domain names are no longer registered (20.9%). Of these, 1 domain name was subject to a DPML subscription, while the other 364 are simply available for any party to re-register in the general pool of publically-available domain names. See Staff compilation report - updated URS data_v1.1 - 9 July 2018.docx. Although this is not an overwhelming number of the total domains/cases, it represents a substantial number of the total cases/domain names that seems to represent a need for additional post-suspension options to protect the domain names from further cybersquatting/bad faith registration and use. These options could include a post-suspension transfer or right of first refusal to the prevailing complainant to register the domain name after the suspension period. Having these choices could alleviate the need for brand protection services or other options that may be more costly than simple defensive registration.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The issue of remedies has been discussed within the Documents, Providers, and Practitioners Sub-Teams. Six sources of Data for Section F (Remedies) were identified and considered. From Providers - qualitative experiences relating to the scope and duration of current remedies, and qualitative experiences on implementation of current remedies. The Documents Sub Team reviewed IRT & STI Reports, to document origin and development of remedies, domain lifecycle after a suspension for those cases where the complainant prevailed (shown through the Tushnet research the Staff compilation report), the INTA Survey for any relevant information related to remedies, and relevant sections of the CCT-RT report. Practitioners & Providers Sub Teams discussed remedies as part of review of the survey results, resulting in a number of additional observations and recommendations for full WG consideration. The consolidated URS Document captures the following existing recommendation, but it does not opine on the possibility of enhanced or additional/alternative URS remedies: “Suspension remedy seems to be working as intended, based on data collected and reviewed (including post-dispute domain disposition). Full WG to deliberate broader question of whether any policy change needs to be made to Remedies issue, taking into account reports from the other two Sub Teams. Without modifying the remedy (subject to further WG deliberations), consider a recommendation that post-suspension domains not be listed by drop-catch services. Consider including data and observations about post-dispute domain disposition (per staff report) in Initial Report, to inform Phase 2 deliberations about possible relationship between URS and UDRP.”

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes – see proposal and rationale, and summary of Sub Team work on this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

This is already addressed above.

QUESTION: What "additional remedies" for winning Complainants, in addition to the "right of first refusal", do you contemplate? Please provide details.

RESPONSE: In addition to the "right of first refusal," the proposal also contemplates an ability for prevailing complainants to obtain additional extensions of the URS suspension period. As specifically stated in the proposal: "The URS should allow for additional remedies such as a 'right of first refusal' to register the domain name in question once the suspension period ends *or the ability of the complainant to obtain additional extensions of the suspension period.*" Currently, the URS permits a suspension period of the remaining life of the registration, plus an additional year at the option of the complainant. The proposed additional remedy contemplates an ability for such complainants to further extend the extension period, potentially on an annual basis, for some period longer than the life+1 year currently available. Although we do not propose a maximum extension renewal period, if asked to make a specific suggestion we might propose the possibility of extensions up to a maximum of five years (after the initial registration period lapses). We would also be open to considering the possibility of a reasonable fee for such extensions, potentially to cover the cost of the normal registration/renewal fee that would apply to the domain name.

#17

COMPLETE

Collector: Web Link 1 (Web Link)
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Last Modified: Thursday, September 06, 2018 7:05:40 AM
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Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Marie Pattullo (AIM - European Brands Association)

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

That the suspension period be extended from one to five years.

Q4 What is your rationale for the proposal? (250 words max)

The basis for the URS is rapid suspension of names that clearly infringe the rights of a trade mark owner. However, given the timeframe for the action, such names can rapidly be re-registered by the same, or another, infringer. A longer suspension period would prevent opportunistic infringers from simply monitoring URS cases and immediately registering such names when they are no longer in suspension: the simple fact that there has been a URS case will be regarded as evidence that this name is important to the right owner. This is a consumer protection issue: end-users must not be duped into believing that the name will resolve to the right holder's site.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The URS is clearly not being systematically abused by Complainants, given that of the 827 URS cases decided through end-2017, in only 59 did the Complainant not prevail (e.g. Super Consolidated URS Topics Table, C(3)). Part of ICANN's role is to protect the DNS against gaming (such as the registering of previously suspended names for bad faith purposes) at the expense of "clean" contracted and non-contracted parties, registrants, end-users and consumers. Relying on defensive registrations is not an acceptable business model; neither is one predicated on deliberately confusing or misleading consumers. A longer suspension period is justified to maintain a clean DNS.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

Super Consolidated URS Topics Table, F (Remedies), (2) (Duration of Suspension).

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The Documents Sub-Team's draft policy recommendation is that "the question of adequacy and scope of remedies be deliberated among the full WG".

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

See above.

#18

Proposal for URS Policy and Operational Recommendations

IMPORTANT

- *This form is used by RPM Working Group members to submit proposals for URS policy and operational recommendations. Please submit to ariel.liang@icann.org.*
- ***Proposals submitted not using the required form will not be in order and will not be discussed.***
- ***One individual form must contain only one proposal for one recommendation.***
- *Answer to every text field is required and mandatory(*).*
- *As soon as practical after receiving the submissions, staff will forward the proposals to the Working Group email list.*
- *The final date for submission of member proposals is **COB on Friday, 31 August 2018. Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

This is the first of three related proposals (alternatives to one another) to address the issue of access to the courts for de novo review on the merits of complaints.

I propose that the URS and UDRP be modified to implement a "Notice of Objection" modeled on a similar appeal mechanism in the British Columbia Civil Resolution Tribunal (see: https://civilresolutionbc.ca/how-the-crt-works/how-the-process-ends/#what-if-i-dont-agree-with-the-decision) to set aside ADR decisions by paying a (refundable) fee, allowing disputes to proceed to courts with a clean slate, without having the ADR outcome interfere with the court case. Court costs can be assessed later as a penalty, at the discretion of the courts, if the person who filed the notice of objection did no better in court than in the ADR.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

As discussed at length in November 2017 at: https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html there was an underlying assumption that registrants could challenge a URS or UDRP decision in court, when these policies were being contemplated. In some jurisdictions, that has proven false, e.g. in the Yoyo.email case in the UK, also discussed at http://www.circleid.com/posts/20180103_the_udrp_and_judicial_review/ causing registrants to be seriously affected. The root cause of this issue is the role reversal that takes place, whereby a registrant is the defendant in the URS/UDRP, but under current procedures, would need to be the complainant in court to challenge an adverse ADR outcome. If a "cause of action" doesn't exist (e.g. in the UK) to bring a dispute in that jurisdiction, then the URS/UDRP outcome becomes final, which thwarts the intent and "bargain" behind the URS/UDRP, that the disputes would always be able to be determined de novo on the merits by the courts. The Notice of Objection system completely (and elegantly) eliminates that role reversal, as the TM holder would always be the complainant in court, just as would be the natural state if the URS/UDRP never existed. The Notice of Objection fee should be set comparable to the court fees in filing a statement of defense, to prevent any gaming. Futhermore, gaming is reduced due to the cost consequences upon a party making the notice of objection if they fail to do better in court than in the ADR.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The court case (and external legal commentary) for the Yoyo.email dispute was found in the post at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html

and in David Maher's article at: http://www.circleid.com/posts/20180103_the_udrp_and_judicial_review/

From discussions in the IGO PDP, Paul Keating had mentioned that there are similar problems in Australia.

While this major problem for registrants has only been documented in relation to the UDRP, it applies equally to the URS (new gTLDs are generally less valuable, and the URS is newer, so the issue hasn't arisen there yet, as there have been fewer domains where owners sought appeal of URS outcomes).

The proposed policy change/solution is consistent with a proven procedure adopted in an "offline" jurisdiction (British Columbia, Canada) made by lawmakers – instead of reinventing the wheel, we can copy successful mechanisms of others. Due to the nature of the solution, the root cause of the problem (role reversal) is obviously eliminated, and so this "quirk of process" (whereby a registrant is essentially deprived of a de novo court decision on the merits of the dispute) no longer would exist if adopted.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The underlying problem was first discussed in November 2017 in this PDP, as noted in the email to the mailing list posted at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html

and ensuing thread. Various suggestions were briefly mentioned on the preceding conference call (that email followed from a discussing a few days orally), but no formal policy proposal was made by the Sub Teams or Working Group until now. [would be topic G.1]

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Sub Teams didn't address the issue. As noted when this came up on the call of August 8, 2018 (see the Adobe Connect chat transcript, pages 2-5 linked from https://mm.icann.org/pipermail/gnso-rpm-wg/2018-August/003210.html), this topic had been previously listed as "External appeal via filing court proceedings" on the list of questions, but apparently simply disappeared from consideration (and data hadn't been collected).

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Addressed above.

#19

Proposal for URS Policy and Operational Recommendations

IMPORTANT

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- *The final date for submission of member proposals is* ***COB on Friday, 31 August 2018****.* ***Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

This is the second of three related proposals (alternatives to one another) to address the issue of access to the courts for de novo review on the merits of complaints.

I propose that the URS and UDRP be modified so that in the event that a court finds a registrant has no cause of action to bring forth an appeal of an adverse URS/UDRP ruling in that jurisdiction, that the URS/UDRP decision be vitiated (set aside).

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

As discussed in November 2017 at: https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html there was an underlying assumption that registrants could challenge a URS or UDRP decision in court, when these policies were being contemplated. In some jurisdictions, that has proven false, e.g. in the Yoyo.email case in the UK, also discussed at http://www.circleid.com/posts/20180103_the_udrp_and_judicial_review/ causing registrants to be seriously affected. The root cause of this issue is the role reversal that takes place, whereby a registrant is the defendant in the URS/UDRP, but under current procedures, would need to be the complainant in court to challenge an adverse ADR outcome. If a "cause of action" doesn't exist (e.g. in the UK) to bring a dispute in that jurisdiction, then the URS/UDRP outcome becomes final, which thwarts the intent and "bargain" behind the URS/UDRP, that the disputes would always be able to be determined de novo on the merits by the courts.

This proposed solution mirrors the consensus policy recommendation for a related situation in the IGO PDP, where a role reversal can cause a quirk of process involving immunity. It puts the parties back in the same position they'd be, had the URS/UDRP dispute not happened, allowing the TM holder to bring a court case without the interference to the registrant's case caused by the role reversal.

[the Notice of Objection system (proposed separately) is superior to this policy (less gaming, cleaner, faster). Unfortunately, the Notice of Objection system was discovered too late to be contemplated in the IGO PDP.]

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The court case (and external legal commentary) for the Yoyo.email dispute was found in the post at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html

and in David Maher's article at: http://www.circleid.com/posts/20180103_the_udrp_and_judicial_review/

From discussions in the IGO PDP, Paul Keating had mentioned that there are similar problems in Australia.

While this major problem for registrants has only been documented in relation to the UDRP, it applies equally to the URS (new gTLDs are generally less valuable, and the URS is newer, so the issue hasn't arisen there yet, as there have been fewer domains where owners sought appeal of URS outcomes).

The proposed policy change/solution is consistent with the consensus policy recommendation in the IGO PDP for a similar role reversal situation. Due to the nature of the solution, the root cause of the problem (role reversal) is obviously eliminated, and so this "quirk of process" (whereby a registrant is essentially deprived of a de novo court decision on the merits of the dispute) no longer would exist if adopted. As noted in Section #4, though, the Notice of Objection system proposed separately would be even better than this solution, though (less gaming, cleaner, faster).

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The underlying problem was first discussed in November 2017 in this PDP, as noted in the email to the mailing list posted at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html

and ensuing thread. Various suggestions were briefly mentioned on the preceding conference call (that email followed from a discussing a few days orally), but no formal policy proposal was made by the Sub Teams or Working Group until now. [would be topic G.1]

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Sub Teams didn't address the issue. As noted when this came up on the call of August 8, 2018 (see the Adobe Connect chat transcript, pages 2-5 linked from https://mm.icann.org/pipermail/gnso-rpm-wg/2018-August/003210.html), this topic had been previously listed as "External appeal via filing court proceedings" on the list of questions, but apparently simply disappeared from consideration (and data hadn't been collected).

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Addressed above.

#20

Proposal for URS Policy and Operational Recommendations

IMPORTANT

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- *The final date for submission of member proposals is* ***COB on Friday, 31 August 2018****.* ***Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

This is the third of three related proposals (alternatives to one another) to address the issue of access to the courts for de novo review on the merits of complaints.

I propose that the URS and UDRP be modified so that in the event that a court finds a registrant has no cause of action to bring forth an appeal of an adverse URS/UDRP ruling in that jurisdiction, that the permitted "mutual jurisdiction" be expanded to always include the United States as a potential jurisdiction that can be utilized by a registrant, with the registrar maintaining the "status quo" pending resolution of the US court case.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

As discussed in November 2017 at: https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html there was an underlying assumption that registrants could challenge a URS or UDRP decision in court, when these policies were being contemplated. In some jurisdictions, that has proven false, e.g. in the Yoyo.email case in the UK, also discussed at http://www.circleid.com/posts/20180103_the_udrp_and_judicial_review/ causing registrants to be seriously affected. The root cause of this issue is the role reversal that takes place, whereby a registrant is the defendant in the URS/UDRP, but under current procedures, would need to be the complainant in court to challenge an adverse ADR outcome. If a "cause of action" doesn't exist (e.g. in the UK) to bring a dispute in that jurisdiction, then the URS/UDRP outcome becomes final, which thwarts the intent and "bargain" behind the URS/UDRP, that the disputes would always be able to be determined de novo on the merits by the courts.

This solution was actually first put forward by Paul McGrady when the problem was identified. While I don't think that this solution is as elegant as the Notice of Objection system (first choice solution to this problem, less gaming, cleaner, faster), or even the "Vitiation" solution, both proposed separately, I do think it's worth putting on the record, and considered, although it has a bias towards US law. The ACPA explicitly recognizes a cause of action.

These should all be considered in Phase 2 of this PDP, along with any other potential solutions.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The court case (and external legal commentary) for the Yoyo.email dispute was found in the post at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html

and in David Maher's article at: http://www.circleid.com/posts/20180103_the_udrp_and_judicial_review/

From discussions in the IGO PDP, Paul Keating had mentioned that there are similar problems in Australia.

While this major problem for registrants has only been documented in relation to the UDRP, it applies equally to the URS (new gTLDs are generally less valuable, and the URS is newer, so the issue hasn't arisen there yet, as there have been fewer domains where owners sought appeal of URS outcomes).

The proposed policy change/solution would work, given the ACPA explicitly allows these cases to go forward in US courts (the cause of action would exist). However, it might not be as preferable, for a global policy-making organization, to adopt such a solution that is so US-centric, when superior alternative options are available which explicitly eliminate the root cause of the problem (the role reversal), as the Notice of Objection system and even the "vitiation" solution do (proposed separately), and that are not US-centric.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The underlying problem was first discussed in November 2017 in this PDP, as noted in the email to the mailing list posted at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html

and ensuing thread. Various suggestions were briefly mentioned on the preceding conference call (that email followed from a discussing a few days orally), but no formal policy proposal was made by the Sub Teams or Working Group until now. [would be topic G.1]

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Sub Teams didn't address the issue. As noted when this came up on the call of August 8, 2018 (see the Adobe Connect chat transcript, pages 2-5 linked from https://mm.icann.org/pipermail/gnso-rpm-wg/2018-August/003210.html), this topic had been previously listed as "External appeal via filing court proceedings" on the list of questions, but apparently simply disappeared from consideration (and data hadn't been collected).

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Addressed above.

#2 1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 06, 2018 7:05:54 AM
Last Modified: Thursday, September 06, 2018 7:10:32 AM
Time Spent: 00:04:38

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Marie Pattullo (AIM - European Brands Association)

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

“Loser pays”: if the Complainant prevails, the costs of the URS should be carried by the Respondent.

Q4 What is your rationale for the proposal? (250 words max)

No enforcement action is without cost to the right owner, while both the infringement and attempts at enforcement frequently cost very little to the infringer. While realising that an infringer may be difficult to locate in many instances, we should not perpetuate a system where any potential infringer knows that it will suffer little, if any, sanction or financial burden.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

This goes beyond the URS into simple psychology: knowing that there is no sanction is going to act as an invitation to infringement, just as we saw more abuse in those new gTLDs that offered free registrations. This has been discussed in the WG: see Super Consolidated URS Topics Table I(1), Cost Allocation Model. While we note that providers think that there may be implementation difficulties, we repeat that it should not be free to infringe. As a point of principle, an infringer should know that its actions will attract sanctions.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

Super Consolidated URS Topics Table, I (Cost).

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The discussion within the Providers Sub-Team seems to have been limited to difficulties foreseen by the providers: as rights owners we would place this under the Documents Sub-Team's draft policy recommendation that "the question of adequacy and scope of remedies be deliberated among the full WG".

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

See above.

Question: Please specify what the loser would pay. (Is it other party's administrative filing fee? Legal (attorney) costs? Both? Other costs?)

Answer: The basis is that it should be high enough to act as a deterrent. While there is a common filing fee there are vast differences in legal costs, so we would suggest that it could be a fixed amount, not set on a case-by-case basis. Perhaps the administrative costs + 500 EUR?

Question: Please provide details on how payment would be assured of being collected.

Answer: It could never be "assured", nothing ever is: it's a point of principle. Enforcement costs fall on those who have no part in, and take no benefit from, the infringement – the brand holders – and implementation costs on the CPs/providers. Only the infringer avoids these costs, to the detriment of every "clean" player in the DNS and, ultimately, consumers. Financial details for the registration are taken by the Registrar. Registrars (should) know who their customer is - brand holders do not - while Registrants know that they face no sanctions should they choose to register/use a DN in bad faith. There could be a contractual provision in the registration agreement that the Registrar has the right to charge (e.g.) the credit card used for the registration for the amount noted in point 1 if the Registrant were to lose a URS, monies to be either transferred to the Complainant or to a common fund to reimburse all successful URS Complainants on a pro rata basis (per number of successful cases). The money would be held in a blocked account pending appeal deadlines being surpassed, and of course would be returned to a Registrant successful in such an appeal. While many infringing Registrants use aliases, which post GDPR/the effect on WHOIS are becoming even harder to detect, at least they should know there is a *possibility* that this will cost. We could take inspiration from successful programmes such as .de, where a domain is simply shut down if the WHOIS information is fake. This should also include wholesalers/resellers, which hijack/drop-catch names with randomly generated IDs based on real addresses or simple ID theft, although a cursory check of Registrant ID (where possible) shows that it's blatantly fake. Starting with those responsible for multiple infringement first makes the most sense. Will this actually result in any money being clawed back? Uncertain – but there should be at least clarity that in principle, an infringer will be held liable for costs.

#2 2

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Thursday, September 06, 2018 4:42:52 PM
Last Modified:	Thursday, September 06, 2018 4:46:17 PM
Time Spent:	00:03:24

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Brian Winterfeldt; Christopher Thomas; Colin O'Brien; Griffin Barnett; Jeff Neuman; John McElwaine; Lori Schulman; Pascal Boehner; Paul McGrady; Susan Payne

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

The URS should incorporate a "loser pays" model.

Q4 What is your rationale for the proposal? (250 words max)

The current cost allocation model is sufficient for most cases but it is not equitable for situations involving serial cybersquatters whose activities do not seem to be deterred by multiple adverse URS or UDRP decisions. In line with the above question regarding repeat offenders, a provision requiring registrants who have met a set threshold for habitual cybersquatting could be required to deposit funds into an escrow account with each new domain registration or the registrar should be authorized under its terms of service to charge the credit card on file in connection with the registration in order to satisfy the "loser pays" requirement. Such funds could be dispersed to prevailing complainants in future domain name disputes against that registrant. The loser pays model could be adopted in all cases regardless of whether the respondent meets the "repeat offender" or "high-volume cybersquatting" thresholds, or it could be limited only to those cases involving a "repeat offender" or "high-volume cybersquatting."

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

To date, there have been 827 URS cases, involving a total of 1,861 domain names. See Staff compilation report - updated URS data_v1.1 - 9 July 2018.docx. Of that number, 98 cases involved multiple domains, covering 1,134 domain names of the 1,861 total. See URS Case Review - Final.xlsx. Thus, a large proportion of the domain names subject to a URS are covered in a small number of the total cases – many cases involve multiple domain names and a pattern of bad faith conduct by the registrant (about 61% of domain names subject to URS come from about 12% of total cases). Some cases involved dozens or even hundreds of domain names, like Case No. 1703352 (Ashley Furniture Industries, Inc. v. Fahri Hadikusuma, 457 domain names), Case No. 1731038 (Eli Lilly and Company v. Shaternik, 202 domain names), Case No. 1713119 (Moncler S.P.A. v. Ndiyaye therese, 85 domain names), Case No. 1714210 (Moncler S.P.A. v. Trani Johanna, 34 domain names), and Case No. 1757790 (moncler S.P.A. v. Dominique Lacroix, 32 domain names). The data also shows a number of respondents named in more than one complaint – evidence of serial cybersquatting on multiple different brands owned by different trademark owners/complainants. For example, yoyo.email/yoyo.email Giovanni Laporta and Ron Van Belkom. See id. This demonstrates the need for stronger deterrents against high-volume cybersquatting and repeat offenders, including a loser pays system. A loser pays system should apply in all cases, but at a minimum should apply in cases involving a repeat offender.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The issue of cost allocation has been discussed within the Documents, Providers, and Practitioners Sub-Teams, and the issue of “repeat offenders” (specifically respondents) was discussed within the Documents Sub-Team. See Consolidated URS Discussion Document - updated 31 July 2018v1.docx. The Practitioners Sub-Team captured data on the qualitative experiences on the average cost to prosecute and/or defend a URS proceeding. The Providers Sub-Team captured feedback on what filing fees were received. The Documents Sub-Team considered the data from the INTA survey for any results relating to fees and costs. Ultimately, the full WG was called on to discuss a loser pays model and other aspects of cost allocation. There has been little substantive discussion to date about the notion of enhanced penalties for repeat offenders, although the Tushnet case research provides data about such repeat offenders from which conclusions as to policy changes can be drawn.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes – see proposal and rationale, and summary of Sub Team work on this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

This is already addressed above.

QUESTION: Please specify what the loser would pay. (Is it other party's administrative filing fee? Legal (attorney) costs? Both? Other costs?)

RESPONSE: The loser would pay the prevailing party's administrative filing fees as well as some level of "representation fees" associated with bringing the action (the specific details of such "representation fees" would need to be worked out as part of implementation).

#23

Proposal for URS Policy and Operational Recommendations

IMPORTANT

- *This form is used by RPM Working Group members to submit proposals for URS policy and operational recommendations. Please submit to ariel.liang@icann.org.*
- ***Proposals submitted not using the required form will not be in order and will not be discussed.***
- ***One individual form must contain only one proposal for one recommendation.***
- *Answer to every text field is required and mandatory(*).*
- *As soon as practical after receiving the submissions, staff will forward the proposals to the Working Group email list.*
- *The final date for submission of member proposals is **COB on Friday, 31 August 2018. Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

The URS and UDRP should be updated to permit both registrars and registries the ability to recover from URS and UDRP providers (e.g. WIPO, NAF, etc.) reasonable administrative and compliance costs. Should a provider not pay such costs, which can vary based on the number of domains involved in a dispute, the complaint shall be barred at that provider. If commercial credit is extended to providers, and payment is in arrears, complaints from that provider involving that registrar or registry to be suspended.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

At present, the URS and the UDRP policies allow providers like WIPO and NAF to charge fees for disputes, however they do not explicitly allow for recovery of administrative and compliance costs by important stakeholders, namely registrars and registries. The policies should be updated to explicitly allow such cost recovery by permitting registrars and registries to charge reasonable fees (to be determined by an Implementation Review Team, but perhaps on the order of $50/dispute plus a variable fee of $10/domain) to providers like WIPO and NAF.

If a dispute takes 30 minutes of administrative time, that might be consistent with a reasonable $50/dispute charge (at a typical cost of $100/hr for labour).

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

I consulted with the 2nd largest registrar (Tucows), and reviewed the registration agreement of GoDaddy, see:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-September/003256.html

and learned that an average dispute generates 30-35 minutes of compliance costs. I also saw that GoDaddy has attempted to shift the burden of such compliance costs upon registrants, when it is really a cost that is directly generated through the interaction of providers (WIPO/NAF, etc.) with registrars and/or registry operators.

Also, some disputes involve multiple domain names, thus justifying a per domain variable cost within a fee schedule for registrars/registries to recover costs from providers.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

I brought the data to the attention of the PDP Working Group in a post to the mailing list at: https://mm.icann.org/pipermail/gnso-rpm-wg/2018-September/003256.html

This has not otherwise been explicitly addressed by the Working Group or Sub Teams. The August 31, 2018 "Clean" Super Consolidated URS Topics Table focuses on providers costs in section I (e.g. I.1), not on costs to registrars/registries. I expect that this proposal will interact with some of the expected "loser pays" proposals. As this proposal involves both the URS and UDRP, I put it on the record now, but propose it be deferred to Phase 2 work.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Not applicable, as they did not appear to collect such data from registrars and registrars regarding administrative and compliance costs.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#24

Proposal for URS Policy and Operational Recommendations

IMPORTANT

- *This form is used by RPM Working Group members to submit proposals for URS policy and operational recommendations. Please submit to ariel.liang@icann.org.*
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- *The final date for submission of member proposals is* ***COB on Friday, 31 August 2018****.* ***Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

URS shall be amended to incorporate in full Rule #11 of the UDRP Rules regarding "Language of Proceedings", see: https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.
(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

Currently, the URS Rules only require that the Notice of Complaint be translated into the language of the respondent's country, not the Complaint itself (Rules #4 and #9 of the URS). This can put respondents who don't understand English at a severe disadvantage in the process.

For ICANN to be placing one language above all others for mandatory policies in a multilingual world defies common sense.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

1. nTLDstats.com shows that the largest number of registrations come from China, see: https://ntldstats.com/country If there was to be a default language, it should be Chinese, not English! Many popular registrars also from China: https://ntldstats.com/registrar

2. Chinese registrants respond at much lower rates than those from the USA, see: https://mm.icann.org/pipermail/gnso-rpm-wg/2018-August/003248.html which can likely be explained by language issues (19.8% vs 35.8%).

3. Professor Tushnet's dataset also showed that there were 252 cases involving a registrant from China, and 159 cases with a USA registrant. See: https://www.dropbox.com/s/1dodxsqkauqp1vr/URS%20Case%20Review%20-%20Final.xlsx?dl=0

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This was topic J.1 in the "Super Consolidated URS Topics Table". However, the analysis of those 2 sub teams did not go far enough (none of the data/analysis in point #5 above appears to have been considered, for example) in coming up with all appropriate recommendations.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The sub teams did not collect all the relevant data to properly address this issue. In addition to the data I provided above in point #5, registrants could have been surveyed, to ensure that those important stakeholders had their views within the dataset.

The "Super Consolidated URS Topics Table" itself documented "several cases where Examiners noted a Respondent might have had possible issues with language." But, that wouldn't capture default situations where the respondent didn't respond at all because they couldn't understand the complaint, and thus understates the extent of the issue.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#2 5

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Friday, August 31, 2018 10:43:10 AM
Last Modified:	Friday, August 31, 2018 11:04:20 AM
Time Spent:	00:21:09

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Zak Muscovitch

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

Revise URS Rule 9 to reflect the following new provisions:

(a) Where the subject domain name is in non-Latin script, the URS Complaint shall be brought in the corresponding language unless otherwise agreed by the parties, and subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) Where the subject domain name is in Latin script and where the complainant and respondent are located in the same country, the URS Complaint shall be brought in a corresponding official language of that country unless otherwise agreed by the parties, and subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(c) In all other cases, the language of the URS proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Q4 What is your rationale for the proposal? (250 words max)

Currently the URS Rule Rule 9 provides that “The Complaint shall be submitted in English”.

Consider the situation of a Chinese trademark owner who has a Chinese language trademark and finds a possible cybersquat in a Chinese language new gTLD, such as Dot Chinese Website (.中文网). The Complainant must bring the URS in English, even if the complaint is brought at ADNDRC??

Also consider the situation of a Chinese registrant, who registers a Chinese language new gTLD at a Chinese registrar, and is subject to a URS over a Chinese trademark. He or she should have to respond to an English URS Complaint? What is the correlation between English and this situation?

In both of these situations, it is unfair to force English upon the parties when there is no genuine correlation between the English language, the parties or subject matter of the dispute, and possibly the forum of the dispute if it is ADNDRC.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The “evidence” is the inequitable nature of the Policy requirement itself on its face, combined with the fact that many registrants are non-English speaking.

China is actually the leading country in registrations. See new gTLD stats as referenced by George Kirikos in a prior Policy Proposal submitted by him (https://ntldstats.com/country)

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The examination of “Language Issues” did not consider this issue at least in the Super Consolidated URS Topics Table.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The data did not address this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

n/a

#26

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, August 31, 2018 11:06:23 AM
Last Modified: Friday, August 31, 2018 11:10:07 AM
Time Spent: 00:03:43

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Zak Muscovitch

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

Revise Paragraph 7 of the URS Policy to reflect the following additional provisions:

7.4 Each Provider shall publish their roster of Examiners who are retained to preside over URS cases specifically and identify how often each one has been appointed with a link to their respective decisions.

Q4 What is your rationale for the proposal? (250 words max)

The Policy does not adequately provide for rotation of panelists, as it only vaguely “to the extent feasible to avoid forum or examiner shopping”, pursuant to Paragraph 7.3. The issue is that the parties and the public are unable to determine to what extent such examiner appointments are truly random and well distributed, thereby depriving stakeholders and the public of effective oversight of this fundamental aspect of the procedure.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Rebecca Tushnet’s data shows that some particular examiners were appointed to as many as 29 cases, whereas others were appointed to only a single case. This has apparent discrepancy has not been adequately explained nor have any steps been proposed to address it. Moreover, without Ms. Tushnet’s data being available in the future on an ongoing basis (which is of course unlikely), it will be difficult to compile such data without the Provider’s themselves publishing it.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The issue of examiner appointment methods came up in surveys provided to the Providers, however the issue of satisfactory distribution and safeguards for same has not been addressed.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Ms. Tushnet's Data does address this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

n/a

#27

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, August 31, 2018 11:10:12 AM
Last Modified: Friday, August 31, 2018 11:15:02 AM
Time Spent: 00:04:50

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Zak Muscovitch

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

Revise URS Rule 6 to reflect the following new provision:

6(a) Each Provider shall maintain and publish a publicly available list of Examiners and their qualifications by way of publishing a current curriculum vitae updated on a regular basis.

Q4 What is your rationale for the proposal? (250 words max)

As per the Super Consolidated URS Topics Table at Section M(1), it was found that some providers do not seem to publish all of their examiner's CV's. Rule 6(a) merely requires the provider to list the panelist's qualifications. This should be clarified to expressly require a CV. Moreover, it is important that this CV be reasonably current, as some panelists have been around for 20 years and their CV may not have been updated since. Knowing a panelist's background of course informs parties and stakeholders as to their suitableness for appointment.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

From a cursory review of panelist CV's on provider websites, it appears that some have not been updated in many years, whereas others apparently have been updated. For example, randomly looking at Carol Stoner's CV for example (http://www.adrforum.com/SearchPanelists#), it appears that it may not have been updated since 2010 (according to metadata, and assuming there is something to update since then), whereas for example, randomly looking at Jeffrey Samuels' CV, it appears to have been updated in 2018 (according to metadata). Further examination of this is required by way of making inquiries to the Providers.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

As noted above, the Super Consolidated URS Topics Table at Section M(1), found that some providers do not seem to publish all of their examiner's CV's. Rule 6(a) merely requires the provider to list the panelist's qualifications, however the issue of having current CV's was not addressed.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Data was not collected on this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

n/a

#28

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, August 31, 2018 11:15:11 AM
Last Modified: Friday, August 31, 2018 11:18:47 AM
Time Spent: 00:03:36

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Zak Muscovitch

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

Revise URS Rule 6 to add the following provision:

6(c) Each Provider shall ensure compliance with the Panelist Conflict of Interest Policy.

The "Conflict of Interest Policy" should be developed by the WG and applied to all Providers.

Q4 What is your rationale for the proposal? (250 words max)

Currently there is no known conflict of interest policy for Examiners, let alone one which applies across all Providers. Accordingly Examiners are left to determine for themselves what constitutes a conflict of interest which must be disclosed pursuant to Rule 6. Examiners would generally appreciate to have such guidance in place, as would parties who could then feel more confident in knowing when an Examiner is and is not required to disclose a conflict or recuse him or herself. There are codes of conduct employed for arbitrators in other forums, such as the IBA Guidelines on Conflict of Interest in International Arbitration (See; https://www.ibanet.org/Document/Default.aspx?DocumentUid=e2fe5e72-eb14-4bba-b10d-d33dafee8918).

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The evidence is that there is no conflict of interest policy and having one would be an important facet of a trusted and transparent dispute resolution system.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The Super Consolidated URS Topics List at Section M discusses conflicts and there was a Draft Policy Recommendation that the WG consider explicit standards ‘for removal’, but there was no specific policy recommendation that a Conflict of Interest Policy be developed and adopted across all Providers.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The Data did not address this issue.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

n/a

Question: In regard to your statement that “The "Conflict of Interest Policy" should be developed by the WG and applied to all Providers”, please describe your envisioned division of labor, if any, between the Working Group regarding the key components of such a policy, and a post-WG Implementation Review Team should your proposal gain Consensus support. (It could be helpful in adding context to the proposal by including implementation details that you may have already thought of, although the actual implementation work will not be done by the WG)

Answer: I would propose that rather than attempt to reinvent the wheel, Staff and WG members be invited to research potential ‘Conflict of Interest Policies’ which have already been developed by third parties for use in arbitration. Such polices are commonplace and are widely used by arbitrators and arbitration service providers.

Then I would suggest that WG members be invited to review a few of these policies and determine if they would be suitable ‘as is’ for adoption for URS and UDRP, or whether supplementary provisions would need to be developed as ‘add-ons’. Staff and/or the implementation team would then need to inquire as to whether the adoption of an already established third party policy set, needs to be licensed for use by ICANN DRP’s or whether they are freely adoptable.

Once a set of policies is developed and/or adopted by the WG, it would then become mandatory for all dispute resolution providers to adopt them. Panelists would then be able to use the Policy as a guide for determining whether a conflict exists that should be disclosed or result in their recusal.

Any such Policy would provide comprehensive guidance to Panelists and to parties and DRP’s, as to what constitutes a conflict or potential conflict of interest by panelists, so that panelists are able to make a more informed determination of whether they are able to certify their impartiality and are able to fairly serve on a URS or UDRP panel.

An example of such a Policy is the IBA one, here: https://www.ibanet.org/Document/Default.aspx?DocumentUid=e2fe5e72-eb14-4bba-b10d-d33dafee8918. As you can see, it covers many potential aspects of conflict of interest that are commonly encountered in arbitration.

Question: Please provide details regarding the key components of your proposed conflict of interest policy for Examiners; including what objective criteria would be evaluated, who would enforce the policy, what penalties for violations should be, etc.

Answer: I would propose that the Policy be largely self-enforced by panelists. To the extent that there are any complaints from parties, the public, or dispute resolution providers themselves which are not voluntarily rectified by the subject panelists, then;

a. if the alleged conflict arose and/or was discovered in the course of a pending URS or UDRP hearing, the panelist(s) would first hear the complaint and attempt to resolve it;

b. if the result of the hearing described above in (a) was unsatisfactory to the complainant, or if the complaint arose outside of the context of an active hearing, then a hearing would be conducted by the Dispute Resolution Provider to determine the appropriate resolution, which may include

disqualification, recusal, disclosure, or termination of panelist accreditation, depending on the severity of the breach of the Policy. A report on the result of every hearing would be made to ICANN.

#29

Proposal for URS Policy and Operational Recommendations

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I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

All URS (and UDRP) decisions shall be published in a standardized machine-readable XML format, to complement existing formats of decisions.

NB: This topic can be deferred to Phase 2 of our work, since it applies to both the URS and the UDRP. I sought clarification on the RPM PDP mailing list on August 26, 2018 as to whether these topics should be held back, but no answer has been provided as of the time of this submission. See:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-August/003245.html

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

1. It is consistent with ICANN's recently announced Open Data Strategy:

https://www.icann.org/news/blog/icann-org-s-open-data-strategy

2. It lowers the cost of academic research, by making it much easier to access and manipulate the data within decisions.

3. It improves transparency, and thus accountability, of the procedures.

4. It makes future evidence-based reviews of the policies easier, since the raw data can be accessed at much lower cost than at present.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Besides the obvious fact that standard machine-readable formats are easier for computer programs to access, Alex Noonan (Rebecca Tushnet's research assistant) spoke to this issue when I asked about it on May 9, 2018. See page 21 of the transcript at: https://gnso.icann.org/sites/default/files/file/field-file-attach/transcript-rpm-review-09may18-en.pdf
"So XML would have been incredible. Berry did a great job pulling a lot of these fields for us so some of them were easily scrapeable, but there are some that are important that weren't. So it took a lot of time to paste in the representative information. The country information, that kind of stuff is interesting. Like I would have expected a lot of these to be coming from China but as a matter of fact a lot of them were coming from the United States. That kind of stuff was valuable but really hard to get. On average it took me approximately six minutes to code each one of these and because the decisions are so short, a good bit of that was copying and pasting of stuff. That actually wasn't academic work. So I think in the end it was like - it was a substantive effort but XML would have been incredible and made it so much easier."

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

It was discussed by the working on January 17, 2018, see pages 22-23 of transcript at:

https://gnso.icann.org/sites/default/files/file/field-file-attach/transcript-rpm-review-17jan18-en.pdf

and in the Adobe Connect chat transcript of that same meeting archived at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-January/002700.html (pp. 3-5 of PDF)

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Sub Teams did not collect any data pertinent to this issue.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#30

Proposal for URS Policy and Operational Recommendations

IMPORTANT

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- *Answer to every text field is required and mandatory(*).*
- *As soon as practical after receiving the submissions, staff will forward the proposals to the Working Group email list.*
- *The final date for submission of member proposals is* ***COB on Friday, 31 August 2018****.* ***Any proposal received after that date will not be in order and will not be discussed.***

I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

_X__ Policy

___ Operational Fix

___ Other (please specify: _____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

The URS and UDRP should implement a mandatory mediation step as part of their processes, modeled on the successful Nominet mediation system, in order to encourage early settlement of disputes, thereby reducing the costs on all stakeholders. While an IRT would develop a full implementation, it should be run by professional mediators (not the URS/UDRP panelists), scheduled within 10 days of a notice of dispute, and be for a maximum of 30 minutes (to keep costs low).

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

In the IGO PDP, we had a presentation on Nominet's ADR procedures, see:

https://community.icann.org/display/gnsoicrpmpdp/2017-12-12+IGO-INGO+Access+to+Curative+Rights+Protection+Mechanisms+Working+Group

As noted by Paul Tattersfield when this topic came up within the RPM PDP:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-January/002717.html

mediation resolved more than 30% of disputes at an early stage, providing impressive benefits. Furthermore, mandatory mediation is being implemented in more and more jurisdictions. For the URS, this would provide for an additional benefit to complainants, namely domain transfer as a possible settlement outcome within mediation. Partial dispute fee refunds can occur after settlements, of course.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The Nominet presentation, as first posted on the RPM PDP at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-January/002712.html

which also noted mandatory mediation in IP disputes being introduced in Greece.

http://ipkitten.blogspot.com/2018/01/a-legislative-initative-that-merits.html

There are also mandatory mediation programs in other civil disputes, including those in my own Province of Ontario, Canada, see:

https://www.attorneygeneral.jus.gov.on.ca/english/courts/manmed/

which reduce the burden of disputes on society, by encouraging early settlements.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This had been brought up occasionally within the Working Group, as noted on the mailing list thread at: https://mm.icann.org/pipermail/gnso-rpm-wg/2018-January/002712.html

However, the August 31, 2018 "Clean" Super Consolidated URS Topics Table did not have any policy recommendations or data in Section N (Alternative Processes), or mention mediation at all, so it's not been a topic that's been seriously considered. It should be considered, particularly in our Phase 2 work, as it would affect both the URS and UDRP.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

They didn't collect such data. I think it would be illuminating if we, as part of our Phase 2 work, had a presentation from Nominet on this topic.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Discussed above. The impressive benefits provided by Nominet's mediation speak for themselves.

#3 1

COMPLETE

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Last Modified: Thursday, August 30, 2018 8:08:47 AM
Time Spent: 00:11:45

Page 1

Q1 Proponent's Full Name* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

David McAuley

Q2 What type of URS recommendation are you proposing? **Policy**

Q3 What URS recommendation are you proposing?* Please be succinct as well as substantially specific and not general in nature.* One proposal for one recommendation only.

For the sole purpose of assuring that this subject is included in the Initial Report for the solicitation of public comment, I am proposing that the WG put out for Public Comment the issue of whether the URS should become an ICANN Consensus Policy.

Q4 What is your rationale for the proposal? (250 words max)

On behalf of Verisign, I am proposing that the WG put out for Public Comment the issue of whether the URS should become an ICANN Consensus Policy. Verisign believes that it is the appropriate time for this matter to be discussed in the Public Comment forum on the WG's Initial Report. Sub-team developed data indicates that URS in practice has proven viable, efficacious, and fit-for-purpose as a rapid remedy for clear-cut instances of protected mark abuse. We believe that inviting public input will be valuable, indeed essential, in informing the RPM PDP WG in its future work.

Q5 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Data and analysis developed by the URS Practitioners, Providers, and Data sub-teams, Professor Tushnet's data/analysis project, and the general RPM PDP WG discussions to date have indicated that, while some URS operational adjustments are advisable, the time is right to invite public comment on this matter. Further, we have seen no reports in the domain industry press indicating any abuse of the URS.

Q6 Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This issue has so far not been specifically addressed by the WG or Sub Teams. However, data developed by the Sub Teams indicates that the URS is a valued supplement to the UDRP, is targeting clearly infringing domains, is not being abused by complainants, and provides meaningful due process and appeals opportunities to domain name registrants.

Q7 Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The RPM PDP Charter addresses potential issues for consideration in this PDP, and asks: “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?” Moreover, the Charter goes on to indicate that the first Initial Report should highlight any issues or recommendations that the WG considers relevant to possible work in Phase Two. The public comment received on this proposal can inform the WG on the question of whether a final decision on this matter should occur in Phase 1 or 2.

Q8 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

N/A

#32

Proposal for URS Policy and Operational Recommendations

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I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

___ Policy

___ Operational Fix

_X__ Other (please specify: elimination of URS procedure entirely_____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

I propose that the URS be eliminated as a mandatory policy for new gTLDs, and furthermore that it not be a GNSO consensus policy mandated for legacy TLDs. The UDRP alone is sufficient, and should be focused on instead for improvement.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

The URS should be eliminated, as its purported benefits do not exceeds its costs. Thus, on a cost-benefit analysis, it should dropped, with focus to return to the UDRP instead, and also to deterrence.

The URS was only accepted "at gun point" by the community under the new gTLD program, due to exaggerated claims of an impending cybersquatting apocalypse if new gTLDs were introduced. The program was held hostage unless additional RPMs were added. Like many folks making predictions about new gTLDs, the proponents of additional RPMs beyond the UDRP proved to be completely wrong about huge waves of cybersquatting. Since those predictions were wrong, the policy outcomes of the past that were based on and justified by incorrect expectations should be undone.

The purported benefits of the URS flow mainly to the largest corporations (who dominate the list of complainants), who can certainly afford a UDRP. The compliance costs on registrars, registries, and registrants exceed any benefits.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Rebecca's research ("Complainant Analysis" tab in spreadsheet of https://mm.icann.org/pipermail/gnso-rpm-wg/2018-May/003037.html) shows top 21 complainants accounted for 314 of 787 non-withdrawn complaints, demonstrating that benefits flow to a small group of large multinational companies who can afford a UDRP (as does the full complainant list for all complaints).

Marginal cost of a UDRP relative to a URS is relatively small (a few hundred dollars). Given roughly 200 cases per year, paying $500 less (for a URS, instead of a UDRP), is a mere $100,000/year total saved by all these large multinationals combined, which is ultimately a rounding error.

Looking at NAF (via domains.adrforum.com), typical time to complete a "default" UDRP (majority of URS cases are defaults) is quite fast (e.g. 27 days for clips4sale.com), only marginally slower than a URS (e.g. 16 days for geeks-quad.online). Thus, the speed benefit of a URS vs. a UDRP is small. One can shutdown abusive sites even faster using Section 3.18 of the 2013 RAA for registrars, complaints to ISPs, and by using blocking mechanisms such as Google's Safebrowsing https://safebrowsing.google.com/

Compliance costs for registrars and registries can be much higher, though, as noted by Jonathan Frost within the recent thread at https://mm.icann.org/pipermail/gnso-rpm-wg/2018-September/003270.html There are also new burdens on registrants having to respond to URS complaints faster than a UDRP (less due process). There's also the burden of supporting (and reviewing!) 2 separate DRPs, rather than a single DRP.

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This is an overarching question, that hasn't truly been addressed by the sub teams or the Working Group to date. The purported benefits have been greatly exaggerated, and the real compliance costs for registrars, registries and registrants far exceed the benefits.

Registrants themselves weren't surveyed, and it appears that registrars/registries were never surveyed as to their compliance costs either, for supporting multiple DRPs.

Sub teams also didn't consider the marginal benefit of the URS, relative to only the UDRP.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

The Sub Teams really focused only on providers and TM holders, and not the other stakeholders. Thus, to the extent that the Sub Teams collected data, it did not collect data from all stakeholders to be in a proper position to look at overall costs and benefits, especially compared to a UDRP-only alternative. The evidence from Jonathan Frost, for example, is the tip of the iceberg.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#33

Proposal for URS Policy and Operational Recommendations

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I. General Questions

*1. Proponent's Full Name

If this proposal is developed by more than one WG member, please write the full names of all proponents involved

George Kirikos_____

*2. What type of URS recommendation are you proposing?

___ Policy

___ Operational Fix

_X__ Other (please specify: _URS and UDRP Providers themselves to be brought under contract with ICANN_____)

*3. What URS recommendation are you proposing?

Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

[NB: Topic can be deferred to Phase 2 of our work, as it applies to both the URS and the UDRP.]

All current and future URS and UDRP providers should be brought under formal fixed-term contract with ICANN, instead of the current arrangements (MOUs for URS providers, and nothing at all for UDRP providers). Those contracts should not have any presumptive renewal clauses.

II. Justification Statement

IMPORTANT

- Must be no more than **250 words** in length for each of two sections below.
- Should state the operational or policy rationale for the proposal.
- Should cite any evidence in support of it. Such evidence may be information developed by the Sub Teams or documented in other sources.

*4. What is your rationale for the proposal? (250 words max)

The current legal relationships between ICANN and the URS/UDRP providers create uncertainty regarding accountability, transparency, and compliance. Formal contracts, for a fixed term, without presumptive renewal clauses, will help improve the current state of affairs. Contracts will provide all parties with clear expectations of rights and responsibilities.

Providers should be subject to the same scrutiny as other contracted parties such as registrars and registry operators, to ensure that bad actors do not gain control over an ADR provider. All beneficial owners of 15% or more (directly or indirectly) of a provider should be disclosed.

The current “accredit and forget it” model is unacceptable. These are multi-million dollar ADR services annually in aggregate and should be formalized with contracts.

*5. What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

Formal fixed term contracts with ADR providers are not new. Forthright (which is or was closely related to NAF) had a three year contract with New Jersey, for example, to administer its PIP arbitrations:

https://www.prnewswire.com/news-releases/forthright-awarded-new-jersey-no-fault-arbitration-contract-114724104.html

III. Pertinent Questions

- *The proposal must address the following three questions*
- *Can be no more than **250 words** in length for each of two sections below.*

*6. Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

This has not been addressed by the sub teams, but was hinted at in discussions on the mailing list, when I asked about NAF's business practices in March 2018:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-March/002803.html

and ensuring thread, e.g. Paul Keating's posts at:

https://mm.icann.org/pipermail/gnso-rpm-wg/2018-March/002830.html
https://mm.icann.org/pipermail/gnso-rpm-wg/2018-March/002833.html

No proposals have been made on this issue until now.

*7. Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

They didn't collect such data. NAF's answers to my questions (see #6 above) were inadequate, see pages 35-36 at:

https://gnso.icann.org/en/meetings/transcript-rpm-review-15mar18-en.pdf

More data from all providers can be collected during Phase 2 of our work.

*8. If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Discussed above.