

#28

COMPLETE

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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 policies 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.