

#34

(merging #24 & #25)

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

Zak Muscovitch & George Kirikos_____

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

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.

Preliminary submissions by either side to the Panel regarding the language of the proceeding shall be limited to 250 words, and not be counted against the existing URS word limits. Notice of complaint shall contain a section explaining that the respondent may make a submission regarding the language of the proceedings. If a translation is ordered, exceeding the URS word limits shall be permitted, as long as the original submission met the word limits in the original language.

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) which is currently required to be in English. 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. By having the language of the registration agreement determine the language of the administrative proceeding, registrants will have the opportunity to select a registration agreement in the language of their choice, and thereby be able to fairly participate in the URS.

To be clear, URS providers would not be required to provide translations of pleadings (only the Notice of Complaint), so would not bear additional costs (the pleadings need to be provided by the parties in the appropriate language, subject to panel discretion as per the UDRP's flexibility). Any panel order for translation would need to be done by the parties.

***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! (we are not proposing this) 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.