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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

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.