

# #7

## 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](mailto: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 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.