

#8

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 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.