

SUPER CONSOLIDATED URS TOPICS TABLE

WITH FINDINGS, ISSUES, SUGGESTIONS FROM ALL THREE URS SUB TEAMS

FOR WORKING GROUP DISCUSSION

Prepared by ICANN staff – updated draft as of 24 August 2018

Introduction:

Given that the approved charter for this RPM Working Group (WG) had included an unfiltered series of sometimes overlapping and unclear questions, at one point this WG had set out to refine those questions to assist its work in producing relevant policy recommendations and to identify areas where specific feedback from the community would be useful (e.g., where it was not possible to conclude specific policy recommendations).

Towards this end, the WG had agreed to seek to apply several standard “high level” questions on the basis that these questions can be used as a framework for evaluating and developing policy suggestions for the URS dispute resolution process (but noting that they may not all be applicable to each situation); those are:

- Has it been used? Why or why not?
- What was the original purpose and is it being fulfilled?
- Bearing in mind the original purpose, have there been any unintended consequences?
- What changes could better align the mechanism with the original purpose/facilitate it to carry out its purpose?
- What was the ultimate outcome?

The WG had also agreed to use the initial Consolidated URS Topics Table, which records the WG’s agreement on suggested URS review topics, the original charter questions, suggested refined/new questions, and data sources to assist the WG’s work:

https://community.icann.org/download/attachments/79432641/URS%20Docs_ICANN61.pdf?version=1&modificationDate=1520631910000&api=v2

In February 2018, the WG established three URS Sub Teams to address topics for feedback from the URS providers and practitioners, and to identify sources for related documents and to analyze those sources. This data gathering effort was based on the guidance provided in the Consolidated URS Topics Table.

The URS Providers and URS Practitioners Sub Teams were tasked to develop, administer, and analyze surveys for the current URS providers and experienced URS practitioners. In April 2018, these surveys were distributed among the target respondents; in June 2018 prior to ICANN62, responses were received.

Concurrently, the Documents Sub Team was tasked with 1) identifying various data sources (in addition to providers and practitioners) corresponding to the Consolidated URS Topics Table, 2) reviewing and examining certain categories of URS cases, and 3) developing specific potential recommendations for full WG consideration based on the survey results from providers and practitioners.

Legend: draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, action items (including suggested additional research) in **YELLOW**, questions in **BLUE**, and Sub Team’s conclusions which are not recommendations or fixes in **GREY**. Providers ST’s additional or amended findings/issues and proposed suggestions in **PINK**.

During the ICANN62 Panama Meeting, the three Sub Teams presented updates on the then current status of their efforts. Following ICANN62, the Providers and Documents Sub Teams continued their deliberations while the Practitioners Sub Team concluded its work. On 1 August 2018, the three Sub Teams discussed with the full WG the preliminary findings/issues that they identified, as well as proposed suggestions including draft recommendations, proposed operational fixes, questions, and action items.

This document synthesizes the three Sub Team’s preliminary findings/issues, proposed suggestions, and data sources. It is organized according to the URS review topics in the initial Consolidated URS Topics Table. The WG Co-Chairs hope that this document will facilitate WG discussions concerning: (i) similar or complementary URS findings/suggestions as well as differences, including whether, and what scope/type of, guidance should be developed to improve the URS, and (ii) open questions on which community feedback should be specifically sought. Please note that the WG is not bound to accept the proposed suggestions, nor do the proposed suggestions restrict the scope of what the WG may agree to consider as it prepares the draft Initial Report.

For the ease of reference: draft policy recommendations are highlighted in GREEN, suggested operational fixes in ORANGE, action items (including suggested additional research) in YELLOW, questions in BLUE, and Sub Team’s conclusions which are not recommendations or fixes in GREY. Providers ST’s additional or amended findings/issues and proposed suggestions in PINK.

For fuller details on the data collected, including the survey results, reports, and deliberations from each of the three URS Sub Teams as well as additional background (including the original URS Charter questions), please check:

- o Practitioners: <https://community.icann.org/x/0llpBQ>
- o Providers: <https://community.icann.org/x/FBu8B>
- o Documents: <https://community.icann.org/x/NgdpBQ>

Notes (updated following the WG call of 22 August 2018):

- The WG Co-Chairs presented a [proposal](#) concerning a possible procedural approach for developing policy and operational recommendations for the URS review at the 22 August 2018 Working Group meeting. The proposal recommends that the full Working Group first consider the proposals from the three URS Sub Teams as noted in this document. Concurrently, individual Working Group members are invited to submit their individual proposals for URS policy and operational recommendations by COB on Friday, 31 August 2018 (although the deadline may be extended for a few days). Members’ proposals will be considered after the WG has completed discussion of the URS Sub Teams’ proposals.
- As of 22 August 2018, the Providers Sub Team had a number of outstanding follow-up matters (see the previous version of the “Super Consolidated URS Topics Table” - draft as of 7 August 2018). They have since completed those action items, including reviewing responses to follow-up questions received from the three URS Providers and ICANN GDD. Any resulting additional or amended findings/issues and proposed suggestions are highlighted below in pink.

A. THE COMPLAINT

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Standing to file Standing and the suggestion to consider expanding standing to allow marks that were abusively registered but are not confusingly similar	(Documents ST) <ul style="list-style-type: none"> No data/feedback to support this 	SUB TEAM CONCLUSION: (Documents ST) <ul style="list-style-type: none"> No additional policy work required 	Practitioners survey results: pp. 21-22, 28, 29
2. Grounds for filing Grounds, specifically, types of marks on which a complaint may be based	(Documents ST) <ul style="list-style-type: none"> No data/feedback indicating this is a URS problem 	SUB TEAM CONCLUSION: (Documents ST) <ul style="list-style-type: none"> No additional policy work on URS required Questions about “types of marks” seem to be part of the TMCH and in particular Claims Notices review 	Rebecca Tushnet’s coding: 894 identical, 900 mark+plus, 21 typos
3. Limited filing period	(Practitioners ST) <ul style="list-style-type: none"> The Sub Team did not comment on the survey results with respect to the response period or time frames connected to Complaint filings See Section C below 		Practitioners survey results: p. 26; Providers feedback: Row 18
4. Administrative review	(Documents ST) <ul style="list-style-type: none"> Feedback from providers do not seem to indicate need for additional policy work (Providers ST) <ul style="list-style-type: none"> None of the providers accepts Complaints that do not contain all the elements 	SUB TEAM CONCLUSION: (Documents ST) <ul style="list-style-type: none"> No additional policy work required SUGGESTED OPERATIONAL FIX: (Providers ST) <ul style="list-style-type: none"> WG to consider whether to 	Providers feedback: Row 14, 19

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	<p>required in URS Rule 3(b)</p> <ul style="list-style-type: none"> Providers rely heavily on information provided by the Parties and are unable to search or track information (at least in several jurisdictions) about active court cases related to the URS proceedings Most of FORUM's Complainants are well informed and abide by the rules; no disputed domain name was already subject to an open and active URS/UDRP proceeding or court case ADNDRC at least checks whether the same Complaint was already been filed with another ADNDRC office 	<p>recommend that Providers check the websites of the other Providers to ensure a disputed domain name is not already subject to an open/active URS/UDRP proceeding or court case</p>	
5. 500-word Complaint limit	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> Some thought the word limit of 500 words was too low: "arbitrary and often insufficient" and "should be slightly increased" were two responses <p>(Providers ST)</p> <ul style="list-style-type: none"> Providers' feedback confirms that some practitioners have 	<p>SUB TEAM CONCLUSION: (Three STs)</p> <ul style="list-style-type: none"> This is an area on which views will differ, and the overall purpose of the URS as a lighter complement to the UDRP needs to be borne in mind No policy recommendation at this time 	Providers feedback: Rows 30, 31 - 22 Cases (FORUM w/ 17); Rows 14, 16

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	<p>raised issues with word limit</p> <ul style="list-style-type: none"> • However, Providers generally believe that the balance of the word limits for both Complaint and Response is reasonable • If Complaint word limit is increased, should Response limit be correspondingly increased? If so, need to consider impact on Examiners <p>(Documents ST)</p> <ul style="list-style-type: none"> • Based on Practitioners' survey results, no additional policy work is required 		
6. Amending the Complaint in light of GDPR/Temp Spec	<p>(Providers ST)</p> <ul style="list-style-type: none"> • All three Providers accept "Doe Complaints" • Since GDPR implementation, ADNDRC has not accepted any new URS Complaint; FORUM accepted 44 URS Complaint (some are "Doe Complaint") • FORUM is not yet able to add Registrant information to the Complaint if it is masked; the Registry and the Registrar are rarely able to provide the complete contact details of the Registrant • Based on comments from less than 10 Complainants, 	<p>DRAFT POLICY RECOMMENDATION:</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> • WG to discuss whether URS Rule 3(b) needs to be amended in light of GDPR and "Doe Complaint" • WG to consider if URS Procedure para 3.3 should be amended to enable modification of Complaint within 2-3 days from disclosure of the full registration data by the URS Provider • WG to communicate with the EPDP Team about this issue: European civil law systems do 	Providers feedback: Row 14, 28

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>MFSD provided the feedback that Complainants are not likely to file Doe Complaints, given the standard of proof (clear and convincing); they would hardly file “Doe Complaints”, or delay filing until they can access the WHOIS data, or file UDRP because the UDRP Complaint might be amended</p> <ul style="list-style-type: none"> • It may also be difficult to satisfy the second and third URS elements without access to the registration data before submission of the Complaint and without the possibility to amend the Complaint after the submission • The major part of the Complainants filing with MFSD are from European civil law systems, where the common law concept of “Doe Complaint” is unknown • MFSD suggests amending the URS Procedure 3.3 in order to enable the Complainant to modify the Complaint within 2-3 days from the disclosure of the full registration data by the URS Provider • FORUM also agrees with a 	<p>not recognize the common law concept of "Doe Complaint", and the concept is not well understood in Europe</p> <ul style="list-style-type: none"> • WG to consider recommending outreach and education (e.g. via INTA) to increase awareness among URS parties in Europe and other jurisdictions less familiar with a “Doe Complaint” about what it is <p>SUGGESTED OPERATIONAL FIX:</p> <ul style="list-style-type: none"> • WG to consider whether to recommend that Providers modify their operational rules in terms of automatically populating the Complaint Form using WHOIS data • WG to ask ICANN to determine whether operational fixes are required in light of GDPR, as GDD and RySG could develop a uniform system for interaction between the Providers and the Registries 	

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	<p>complete technical redesign of the URS filing process in order to manually amend the Complaint, but there is rarely any additional info to amend it with</p> <ul style="list-style-type: none"> • WHOIS information is automatically pulled into FORUM's Complaint Form once Complainant enters the domain name to prevent Complainant error 		
7. SMD file	<p>(Providers ST)</p> <ul style="list-style-type: none"> • Most of the data in the SMD file is difficult to read and remains encoded • The SMD file is only for proof of use; it is not how Providers find out the details about the trademark/category of goods and services (see page 14 of the FORUM document Colin O'Brien circulated: https://mm.icann.org/pipermail/gnso-rpm-wg/2018-August/003236.html) • In all three Providers' Complaint forms, the Complainant is asked to upload supporting documentation regarding the TM registration/Proof of court-validated mark/Proof that 		Providers feedback: Row 16

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>mark is protected by statute or treaty AND proof of use, in accordance with URS Rules 3(b)(v) and URS Procedure 1.2.5. and 1.2.6</p>		
<p>8. Other topics</p>	<p>(Providers ST)</p> <ul style="list-style-type: none"> ● MFSD' feedback suggests the following factors as possible deterrents to filing a URS Complaint: <ul style="list-style-type: none"> ○ limited applicability of the URS (not a consensus policy) ○ the suspension remedy (Complainants prefer filing a UDRP instead of having the domain name suspended through a URS without the possibility to own, control, use, or transfer the domain) ○ stricter burden of proof ● MFSD's statement is based on informal feedbacks from Complainants and their authorized representatives; there is objective data that the URS disputes are less-used than UDRP, rendering its conclusion that the limited applicability and the remedy are the main reason for that 		<p>Providers feedback: Row 28</p> <p>Practitioners survey results: pp. 21-22, 30</p>

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	(Practitioners ST) <ul style="list-style-type: none"> There was a split regarding the adequacy of relief (some expressed a desire for a transfer, others with a right of first refusal and others seeking a “voluntary (negotiated) transfer from the losing respondent to a prevailing complainant” option or cancellation). The Sub Team did not comment on the survey results that most Practitioners believe that a declaration along with a specimen of use (including the submission of a SMD file from the TMCH) is adequate for demonstrating evidence of use 		

B. NOTICE

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Receipt by Registrant Notice (feedback from Complainant & Respondent)	(Providers ST) <ul style="list-style-type: none"> ADNDRC only sends the Notice of Complaint to Respondents via emails and does not use the other two means (i.e., fax, physical 	SUB TEAM CONCLUSION: (Documents ST) <ul style="list-style-type: none"> No additional policy work required DRAFT POLICY	Practitioner survey results: pp. 5-6 Providers feedback: Rows 4-8

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	<p>mail) indicated in the URS Rules</p> <ul style="list-style-type: none"> • There are potential difficulties for Providers to comply with the URS Rules & Procedure due to the impact of GDPR • Providers reference WHOIS data in order to communicate with, as well as send the Notice of Complaint and the Notice of Default to the Respondents • Providers would reference WHOIS, if the Registrar does not communicate any underlying contact information of Registrant when the privacy/proxy service is used • Providers also obtain Registrant's contact information provided by the Complainants, Registry Operators and Registrars, and information shown on Registrants' websites • FORUM and MFSD reported that their mail, fax, and email to the Respondent were not delivered sometimes. Providers are unable to use courier services to deliver mail to P.O.box addresses • ADNDRC reported that they 	<p>RECOMMENDATION: (Providers ST)</p> <ul style="list-style-type: none"> • WG to consider impact of GDPR on Providers' obligations concerning notice <p>SUGGESTED OPERATIONAL FIX: (Providers ST)</p> <ul style="list-style-type: none"> • ADNDRC to change their operational rules to comply with URS Procedure 4.2 (e.g., delivery of the Notice of Complaint in hard copy is critical if a spam filter removes the electronic Notices from view and to comply with URS policy) 	

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	<p>have not received any complaint regarding not receiving notice</p>		
<p>2. Effect on Registry Operator Notice requirements for Registry Operators</p>	<p>(Providers ST)</p> <ul style="list-style-type: none"> ● Providers' feedback indicates there may be some clerical issues concerning the Registry Operators, including: <ul style="list-style-type: none"> ○ Communicating from email addresses different from the contacts present in ICANN's repository ○ Not responsive to requests for information from URS Providers ○ Delay in sending notifications to the URS Providers regarding the completion of URS actions ○ Not completing URS actions despite notifications and reminders from the Providers, resulting in a need for the Providers to report non-compliance to ICANN ○ Due to GDPR, Registries are inconsistent with respect to how they would like to either receive verification requests or 	<p>SUGGESTED OPERATIONAL FIX:</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> ● WG to discuss whether issues with registry operators and locking of domains raise enforcement or compliance issues ● WG to evaluate how clerical issues can be addressed, including keeping ICANN's email address for Registry contacts (reached by Providers) up to date ● WG to ask ICANN to determine whether operational fixes are required in light of GDPR, as GDD and RySG could develop a uniform system for interaction between the Providers and the Registries <p>QUESTION:</p> <p>(Documents ST to Providers ST)</p> <ul style="list-style-type: none"> ● Is any other additional policy work required? (This will depend on whether specific issues are identified for policy work from the follow up with 	<p>Providers feedback: Rows 9-12, 33</p>

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	<p>how the Provider should receive the verification from them (e.g., dropbox, zip file with password, web based access); the inconsistency adds a significant amount of time to case handling; a small number of Registries do not respond within in the required 24 hours</p>	<p>the three Providers); Staff note: in light of the Providers Sub Team follow up, can this question be considered answered?</p> <p>ACTION ITEM: (Documents ST)</p> <ul style="list-style-type: none"> • WG to contact registry operators to obtain feedback on qualitative experiences about receiving notices from Providers; e.g. were these sent through appropriate channels, and did they contain the correct information? NOTE: Timing TBD in light of imminent issuance of Sunrise & Claims surveys 	
3. Other topics	<p>(Providers ST)</p> <ul style="list-style-type: none"> • ADNDRC did not receive information from ICANN regarding the Back End Registry Operator (BERO) point of contact • FORUM receives a report from ICANN that contains this information • MFSD receives credentials to access ICANN's repository • The Registry Operator and its designated BERO URS 		Providers feedback: Row 11

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	<p>contacts are downloadable by the URS Service Providers. This information was provided to the Providers when they were onboarded</p> <ul style="list-style-type: none"> ADNDRC HKIAC had staff turnover recently and the previous personnel may not have handed over the information. However, the link has since been shared with ADNDRC HKIAC 		

C. RESPONSE

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p>1. Duration of response period Duration of response period (including the initial 14-day period, 6 months after Notice of Default (including possibility of extension), and 14 days to Appeal)</p>	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> The Sub Team did not comment on the survey results indicating that 8 out of 12 Practitioner responses either agreed or strongly agreed these are appropriate; with 3 disagreeing and noting they should be shorter. <p>(Providers ST)</p> <ul style="list-style-type: none"> All Providers believe that the Response period is sufficient. Providers also grant requests for extension of time to 	<p>SUB TEAM CONCLUSION: (Provider and Documents STs)</p> <ul style="list-style-type: none"> No additional policy work required 	<p>Rebecca Tushnet's coding: Review of 250 cases where Response filed</p> <p>Staff compilation report:</p> <ul style="list-style-type: none"> p. 16, TABLE 11: URS Case Response Analysis -- Of the 827 cases decided through end-2017: <ul style="list-style-type: none"> 27% of the cases saw a Response filed to the Complaint 23% of the cases saw a Response filed within the 14-day period specified in

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	respond. No Provider has received late response.		the URS procedure and rules <ul style="list-style-type: none"> 13% of the cases with a Response resulted in the claim being denied
2. Other issues relating to Responses (other than issues relating to Defenses), e.g. Default procedures	<p>(Documents ST)</p> <ul style="list-style-type: none"> Reviewed the data from the cases noted where a Response was submitted <p>(Providers ST)</p> <ul style="list-style-type: none"> FORUM and MFSD conduct compliance check on Responses for factors beyond the ones stated in the URS Rule 5(g) ADNDRC only flags the “superficial formatting and non-compliance issue” in a Response; the appointed Examiners screen the other non-compliance issues Staff has reviewed FORUM’s Appendix B and MFSD’s Checklist used for the Administrative Review of the Response and found that they satisfy the Administrative Review of the Response 	<p>SUB TEAM CONCLUSION: (Documents ST)</p> <ul style="list-style-type: none"> On the cases where Responses were filed, no additional research or work seems necessary 	<ul style="list-style-type: none"> p. 14-15, TABLE 10: Multiple URS Cases Against the Same Domain <p>Practitioner survey results: pp. 24, 27</p> <p>Providers’ feedback: Rows 47, 48</p> <p>FORUM’s Appendix B and MFSD’s Checklist used for the Administrative Review of the Response</p>
3. Response fees Response Fee applicable to 15 or more domains	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> The Sub Team did not comment on the survey results indicating that 4 Practitioner survey responses said it was sufficient, 1 	<p>SUB TEAM CONCLUSION: (Documents ST)</p> <ul style="list-style-type: none"> Available data does not indicate any basis for additional work or policy conclusions 	

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	<p>disagreed, and 7 neither agreed nor disagreed</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> Providers' feedback indicates no late responses have been filed to date <p>(Documents ST)</p> <ul style="list-style-type: none"> The current data does not reveal any issue or possible policy conclusion No response was in filed in any of the 6 cases with 15+ domains (outcome: Suspension) 		

D. STANDARD OF PROOF

Topic	Finding/Issue	Suggestion	Data Source
1. General	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> Most survey respondents reported that "the Decision/Determination provided the reasons upon which the decision was based, as required by Section 13(b) of the URS Rules" Practitioners believe that the RPM is being used for "clear cases of abuse" as it was 	<p>SUB TEAM CONCLUSION:</p> <p>(Documents ST)</p> <ul style="list-style-type: none"> Based on the data, there does not appear to be a need to modify the standard of proof for URS (clear and convincing) 	<p>Practitioner survey results: pp. 13, 14, 18-20</p> <p>Staff compilation report: URS data: p. 11-13, TABLES 8&9: Analysis of URS Cases where the Claim was Denied</p> <p>Rebecca Tushnet's coding: tab - "Denied Claims Analysis"</p>

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	<p>intended</p> <ul style="list-style-type: none"> Most thought that the “standard of proof” is “adequate as is” 		
2. Examiners guide	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> About half of the Practitioner respondents agreed there should be “more guidance provided to educate or instruct practitioners on what is needed to meet the ‘clear and convincing’ burden of proof in a URS proceeding” <p>(Providers ST)</p> <ul style="list-style-type: none"> 2 out of 3 Providers did not strongly support the issuance of an Examiners Guide, at least, to the extent that the guide is to provide direction or examples as to the distinction between clear-cut and more difficult cases 	<p>SUGGESTED OPERATIONAL FIX</p> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> Recommends creating educational materials to provide more guidance to “educate or instruct practitioners on what is needed to meet the ‘clear and convincing’ burden of proof in a URS proceeding. Parties would find value in the creation of an “Overview for URS Decisions” (like the WIPO Overview on UDRP Cases) <p>(Documents ST)</p> <ul style="list-style-type: none"> Although it may be useful to provide some guidance as to what constitutes “clear and convincing” evidence in light of the different laws around the world, the guidance would not extend to providing Examiners with specific directions as to what is, and is not, a clear-cut case It may be preferable to 	<p>Practitioner survey results: p. 17</p> <p>Providers feedback: Row 98</p>

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		<p>develop a guide that is more in the nature of a checklist (such as the one initially developed by the IRT as Appendix E of its report) rather than a substantive document like the WIPO UDRP Overview</p>	
3. Other topics	<p>(Documents ST) The Documents Sub Team has begun reviewing the 59 cases where the Respondent prevailed (i.e. the Complainant's claim was denied). Analysis so far:</p> <ul style="list-style-type: none"> ● 31 cases saw no Response filed ● Of the 28 cases where a Response was filed: <ul style="list-style-type: none"> ○ 22 of these were filed within the initial 14-day response period ○ The remaining 6 were cases where a de novo review occurred as the Respondent filed a Response after the 14-day period following a Notice of Default but before the 6-month period expired (see Section G, below) 		

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E. DEFENSES

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p>1. Scope of Defenses</p> <p>2. Unreasonable delay in filing a complaint (i.e. laches)</p>	<p>(Documents ST)</p> <ul style="list-style-type: none"> Case review indicates that there are some inconsistencies across Examiners as to whether or not rationale or justifications are provided (and in what detail) for their findings Suggested asking the Providers' Sub Team what their research discloses about the following, so as to assist in illustrating how the "clear and convincing" standard has been applied: <ol style="list-style-type: none"> What instructions have the URS providers given to the panelists? What did the URS providers advise the panelists? Do the URS providers have minimal standards for panelists for decision making? Have the minimal standards been met? What are the URS providers' procedures? Have the URS providers done their work? How have the URS 	<p>SUGGESTED ADDITIONAL RESEARCH:</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> WG to further examine the divergent practice and requirements of Providers with regard to Examiner providing reasoning in support of their Determinations WG to deliberate on FORUM's practice, which significantly deviates from that of ADNDRC and MFSD and consider whether it raises any compliance issue <p>DRAFT POLICY RECOMMENDATION:</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> WG to consider whether all providers should give similar types/forms of guidance to their Examiners WG to consider recommending that all Examiners document their rationale in all Determinations issued <p>(Documents ST; see also Section G)</p> <ul style="list-style-type: none"> WG to consider 	<p>Providers' feedback: Rows 17, 96, 97, 99, 100, 101.</p> <p>ADNDRC:</p> <ul style="list-style-type: none"> ADNDRC Determination Guideline <p>FORUM:</p> <ul style="list-style-type: none"> FORUM Default Determination Template FORUM Final Determination Template FORUM Appeal Determination Template <p>MFSD:</p> <ul style="list-style-type: none"> MFSD Determination Form

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>providers ensured that the "clear and convincing evidence" standard has been applied?</p> <p>7. How do the URS providers police the existing rules for the panelists?</p> <p>8. What does "clear and convincing evidence" mean?</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> ● There have been Determinations where no clear rationale/reasons were elaborated in the decision ● Providers also vary in terms of the amount of guidance they provide their Examiners and in the use of a template Determination form ● ADNDRC's Determination Guideline does not appear to contain any consideration of defenses; FORUM's templates also don't seem to have any consideration of defenses. It seems that these are just forms ● ADNDRC: <ul style="list-style-type: none"> ○ provides Examiners with Determination Guideline 	<p>recommending the development of an administrative checklist or basic template of minimum elements that should go into a Determination</p>	

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<ul style="list-style-type: none"> ○ directs Examiners to previous decisions to reference ○ requires Examiners to provide some explanations of facts and reasoning in support of their Determinations ○ does not appoint Examiners who renders Determinations not adhering to the standards or qualities of URS awards ● FORUM: <ul style="list-style-type: none"> ○ has a template for Determinations through its portal, with text boxes that are required to be filled out for the reasoning ○ does not intervene in an administrative capacity to review and revisit an Examiner's Determination ○ does not prepare any additional documents or edit in any matter ○ does not undertake to review each Determination for an explanation of the facts and reasoning ○ <u>only</u> FORUM has 		

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>Determinations without any reasons and without stating the circumstance as the basis of their finding of demonstrable bad faith registration, or how the burden of proof is satisfied</p> <ul style="list-style-type: none"> ● MFSD: <ul style="list-style-type: none"> ○ provides online Determination Form that has instructions and guidelines for Examiners ○ encourages Examiners to refer to WIPO Overview of WIPO Panels Views on Selected UDRP Questions and Third Edition (WIPO Jurisprudential Overview 3.0) ○ encourages Examiners to cite URS and UDRP case law they retain significant for the decision of the dispute ○ provides Examiners information regarding case management ○ conducts the ex-post quality check of the Determinations ○ disqualifies/bars an 		

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>Examiner who renders Determinations contrary to the policies and rules or with insufficient and illogical reasoning</p> <ul style="list-style-type: none"> MFSD's Examiners have cited various circumstances, in addition to the ones included in URS Procedure 1.2.6.3., considered as indicia of bad faith registration and use 		

F. REMEDIES

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Scope of Remedies	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> The Practitioners ST observed a split in responses regarding the adequacy of relief (some expressed a desire for a transfer, others with a right of first refusal, and others seeking a “voluntary (negotiated) transfer from the losing respondent to a prevailing complainant” option or cancellation). <p>The following options were</p>	<p>DRAFT POLICY RECOMMENDATION</p> <p>(Documents ST)</p> <ul style="list-style-type: none"> The Documents ST suggests that the question of adequacy and scope of remedies be deliberated among the full WG 	<p>Practitioners survey results: p. 15</p> <p>IRT Final Report: pp. 25-37</p> <ul style="list-style-type: none"> “The purpose of the URS is to provide a cost-effective and timely mechanism for brand owners to protect their trademarks and to promote consumer protection on the Internet. The URS is not meant to address questionable cases of alleged infringement...” On remedy: "The URS is

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>suggested in the Practitioners' survey results:</p> <ul style="list-style-type: none"> ● An out-and-out transfer to a winning party as opposed to suspension ● An option of a voluntary (negotiated) transfer from a losing respondent to a prevailing complainant before the domain expires. There are negotiated transfers taking place, not sure how they are implemented ● It would be interesting to look at the suggested remedies to see if they were considered in the history of the promulgation of the URS: <ul style="list-style-type: none"> ○ "a right of first refusal to purchase the domain when it next becomes available" and ○ "an established process for requesting suspension renewals" 		<p>designed to provide a faster means to stop the operation of an abusive site. The UDRP is designed to result in the transfer of the abusive domain name. Brand holders seeking to thwart infringement could utilize either or both proceedings."</p> <p>STI Report: pp. 15-25</p> <ul style="list-style-type: none"> ● "...a cost effective, expedited process in instances of clear cut instances of trademark abuse..." (Note: STI was unanimous on adopting IRT format, but with minority views on remedy). <p>INTA Survey:</p> <ul style="list-style-type: none"> ● RPM effectiveness ("how well RPMs mitigate risks"): UDRP 67%, Sunrise 64%, Claims 36%, <u>URS 27%</u>, PDDRP 15% ● "Have you heard of Whack a Mole? This is what domain enforcement is. As a brand owner, I fail to see the need for all of the new TLDs and feel like the RPMs are just another way to spend money on something that doesn't buy much protection." ● "UDRP still helps mitigate

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
			<p>risks the best. While URS is helpful, the escalated proof required and limited remedy makes it of limited usefulness.”</p> <ul style="list-style-type: none"> • “Improvements to URS. Perhaps a loser-pays model. Perhaps improvements to the remedy.” <p>CCT-RT Review:</p> <ul style="list-style-type: none"> • Review of the URS to consider inter alia (1) whether there should be a transfer option with the URS rather than only suspension; (2) whether two full systems should continue to operate (namely UDPR and URS in parallel) considering their relative merits, (3) the potential applicability of the URS to all gTLDs and (4) whether the availability of different mechanisms applicable in different gTLDs may be a source of confusion to consumers and rights holders. • Success Measures: Based on the findings, a clear overview of the suitability of the URS and whether it is functioning effectively in the way

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			<p>originally intended: “A full review of the URS should be carried out and consideration be given to how it should interoperate with the UDRP.”</p> <ul style="list-style-type: none"> • “The uptake in use of the URS appears to be below expectations, so it would be useful to understand the reasons for this and whether the URS is considered an effective mechanism to prevent abuse. It is also important for all TLDs to have a level playing field.” • “...overall the URS has produced positive results in certain limited cases. The speed and low cost caters to those who have clear-cut cases and are indifferent towards the [suspension remedy]. However, some [don’t use it] due to the “clear and convincing” standard being seen as too strict and the [limited remedy]. There is also concern voiced over the possibility of the domain name being registered once more by another potential infringer once it is released, thus some rights holders feel more comfortable having the

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
			domain name in their portfolio, which can be achieved via a UDRP. Indeed, the value of a suspended domain name is questioned.”
<p>2. Duration of Suspension Period</p> <p>3. Review of Implementation</p>	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> ● One-third of Practitioners indicated “problems with the implementation of the relief awarded following a URS decision.” Their responses bear review: <ul style="list-style-type: none"> ○ “Registrars often do not respond to the request for renewal of the suspension ○ “Some registrars do not understand the process of paying for an additional year of suspension” ○ “In some cases, a losing Respondent is able to re-register a domain once it becomes available” ○ “After the lock, the cybersquatters just renew the domain name” ○ “Any problems with Chinese Registrar in order to implement the decision” <p>(Providers ST)</p>	<p>DRAFT POLICY RECOMMENDATION:</p> <p>(Providers ST):</p> <ul style="list-style-type: none"> ● WG to re-examine the URS technical requirements and discuss whether URS Technical Requirements 3 and Registry Requirement 10 should be amended <p>SUGGESTED OPERATIONAL FIX:</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> ● WG to discuss whether issues with registry operators and implementation of URS decisions raise enforcement or compliance issues ● WG to discuss whether there is a need to enhance understanding by Registry Operators and Registrars of their roles in the URS process <p>(Practitioners ST)</p> <ul style="list-style-type: none"> ● Sub Team recommends an enhanced education to help Registrars understand how to 	<p>Providers feedback: Row 12, 105-108</p> <p>Practitioners survey results: p. 15</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<ul style="list-style-type: none"> Providers reported some difficulty getting the Registry and the Registrar on the same page to implement a settlement, which typically involves a transfer of the domain registration at the Registrar level Some registry operators did not complete suspensions despite notifications, resulting in a need to report their non-compliance to ICANN. Some delayed sending notifications to Providers regarding the completion of the URS Suspension Registry and Registrar have difficulty implementing the extension request of the URS Suspension, as they may not have understood their roles in the process Some feedback from FORUM Examiners was also received supporting the possibility of altering registration information during the additional year of suspension that is available to a successful Complainant 	<p>implement relief and gain better awareness of URS procedures.</p> <p>ACTION ITEM: (Providers ST)</p> <ul style="list-style-type: none"> WG to contact Registry Operators and Registrars about the compliance issues - Timing TBD in view of Sunrise & Claims surveys that are about to be launched 	
4. Other topics	(Providers ST) <ul style="list-style-type: none"> HSTS-preloaded domain 	<p>ACTION ITEM: (Providers ST)</p>	Providers feedback: Row 28, 96, 108

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	<p>suspension remedy is problematic; ICANN is aware of the challenge and is working on alternatives to support TLS and other technologies in this service</p> <ul style="list-style-type: none"> All three Providers request the Registry Operator to change the URS suspended domains' servers to point to their DNS servers to ensure it resolves to the suspension page; since nameserver/domain status data is not personal data, URS providers can check the status of this in the public WHOIS <p>(Practitioners ST)</p> <ul style="list-style-type: none"> The Practitioners Sub Team did not comment on the survey results that a majority of respondents noted that they chose not to file a URS in a particular matter because of the lack of a transfer remedy (Practitioners survey result p. 30 - Note 13 Survey Respondents appear to have handled between 91 -120 URS cases of the 827 total URS filings at the time of the Survey) 	<ul style="list-style-type: none"> WG to solicit input from Registry Operators with regard to the HSTS-preloaded domain suspension issue - Timing TBD in view of Sunrise & Claims surveys that are about to be launched 	<p>Practitioners survey results: p. 30</p>

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G. APPEAL

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Appeals process	<p>(Documents ST) Documents Sub Team reviewed:</p> <ul style="list-style-type: none"> ● All 14 cases where an Appeal was filed – <ul style="list-style-type: none"> ○ Complainant ultimately prevailed in 12 of the 14 Appeals (Complainant had prevailed at the Default/Final Determination stage in 8) ○ 9 Appeals were heard by 3-member panels ○ 7 Appeals related to the .email gTLD (with 6 cases concerning yoyo.email) <p>(Practitioners ST)</p> <ul style="list-style-type: none"> ● Of the Practitioners who used the Appellate mechanisms, all characterized their experience as “positive” 	<p>SUB TEAM CONCLUSION: (Documents & Practitioners STs)</p> <ul style="list-style-type: none"> ● Appeals - process seems to be working as designed, no need for additional policy work <p>DRAFT POLICY RECOMMENDATION: (Documents ST)</p> <ul style="list-style-type: none"> ● Administrative/Operational – Develop mandatory template/form to be used for all Determinations; purpose is to ensure consistency and precision in terminology and format as well as ensure that all steps in a proceeding are recorded (e.g. Default, Appeal) 	<p>Staff compilation report - URS data:</p> <ul style="list-style-type: none"> ● p. 22-23, TABLE 13: Analysis of URS Cases where an Appeal was filed (see appeals_v0.2.xls for full analysis) ● p. 16, TABLE 11: URS Case Response Analysis: 30 of 827 cases saw a Response filed within 6 months but after the 14-day initial period; of those 30 cases the Complainant’s claims were denied in 6. <p>Staff report on De Novo Review cases: http://mm.icann.org/pipermail/gns-o-rpm-documents/attachments/20180726/8586717c/SummaryTable-URSFinalDeterminationCasesasofDec2017-UPDATED25July2018-0001.docx</p>
2. De novo review	<p>(Documents ST) Documents Sub Team reviewed:</p> <ul style="list-style-type: none"> ● All 29 cases where a De Novo Review occurred (i.e. Final Determination issued where a Respondent filed a Response 	<p>DRAFT POLICY RECOMMENDATION: (Documents ST; see also Section H)</p> <ul style="list-style-type: none"> ● De Novo Review – WG to discuss if substantive policy 	<p>Providers’ feedback: Rows 128-132</p> <p>Practitioners survey results: p.7-9, 11</p>

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	<p>after Default but before expiry of the 6-month permissible period for a Response) –</p> <ul style="list-style-type: none"> Respondent prevailed in 6 and Complainant in 23 cases (of which 2 were Appeals) 28 Final Determinations were rendered in English (with 1 in Spanish) <p>(Practitioners ST)</p> <ul style="list-style-type: none"> The Sub Team did not comment on the Practitioners survey results indicating that 2 respondents believed the De Novo Review process should be retained, and 3 felt it should be removed 	<p>recommendations are needed in light of current response periods and possible points of determination during a proceeding</p>	

H. POTENTIALLY OVERLAPPING PROCESS STEPS

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p>1. Potential overlap concerning duration of respondent appeal, review and extended reply periods along the URS process timeline</p>	<p>(Documents ST)</p> <ul style="list-style-type: none"> Documents Sub Team has completed data review of Appeals, De Novo Review, and Response Received cases <p>(Practitioners ST)</p>	<p>DRAFT POLICY RECOMMENDATION:</p> <p>(Documents ST)</p> <ul style="list-style-type: none"> WG to discuss policy question around the number of instances where a de novo examination can occur in cases involving a defaulting 	<p>See Sections C & G, above.</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<ul style="list-style-type: none"> The Sub Team did not comment on the Practitioners survey results indicating that 2 survey respondents believed the De Novo Review process should be retained, and 3 felt it should be removed 	<p>respondent and the duration of response periods for de novo review and appeal</p>	

I. COST

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Cost allocation model	<p>(Providers ST)</p> <ul style="list-style-type: none"> 2 out of 3 Providers do not support a “loser pays” model, noting likely implementation problems; the third is not opposed to it but prefers a better escrow payment system Forum has a flat fee for late response. ADNDRC and MFSD have fees based on the number of domains and/or the type of Respondents involved <p>(Practitioners ST)</p> <ul style="list-style-type: none"> The Sub Team did not comment on the survey results that 8 Practitioners 	<p>DRAFT POLICY RECOMMENDATION:</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> WG to discuss whether any of the late Response fees create a burden for the Respondent 	<p>Providers’ feedback: Rows 26-28, 48</p> <p>INTA Survey: for RPMs generally (p. 10) - 40,528 (14% of Internet enforcement budget) for 2-year period (see also pp. 34-40).</p> <p>1: \$2,450 (2) 2: \$6,300 (16) 3: \$6,350 (6) 4: \$16,500 (1)</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	(out of 12 who responded) either agreed or strongly agreed the filing fee for a Complaint is adequate, with 2 disagreeing		

J. LANGUAGE ISSUES

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Language issues, including current requirements for complaint, notice of complaint, response, determination	<p>(Providers ST)</p> <ul style="list-style-type: none"> ADNDRC communicates in English only and all URS decisions are rendered in English All of ADNDRC's assigned Examiners are fluent in the non-English language of the Respondent. Most of ADNDRC URS Examiners (who are often UDRP panelists) speak Chinese or other Asian languages in addition to English. These skills have not been used in URS proceedings but are often used in UDRP proceedings ADNDRC does receive inquiries, especially from the Respondent, regarding the language of the proceedings, 	<p>SUGGESTED OPERATIONAL FIX:</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> As a compliance issue, WG to consider recommending that ICANN enforce the URS Rules 9 and URS Procedure 4.2 with respect to Providers communicating with the Registrant in the predominant language of the Registrant WG to inform ICANN that ADNDRC is not in compliance with URS Procedure 4.2 and URS Rules 9; WG to ask ICANN to request ADNDRC to change their operational rules and translate Notice of Complaint " into the predominant language used in the Registrant's country or territory" 	<p>Providers' feedback: Rows 38, 79, 81, 82, 84</p> <p>Staff report on De Novo Review cases</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>but has not encountered a situation in URS proceedings that the Respondent did not have the capability of understanding English</p> <ul style="list-style-type: none"> FORUM and MFSD communicate to the Respondent in the language of the Respondent, with translations provided for the Notice of Complaint, Notice of Default, emails, template documents, and Determinations FORUM and MFSD check WHOIS as well as information from the registrar to determine Respondent's dominant language Different from FORUM and MFSD, language skills of the Examiners do not seem to be a factor in the assignment and rotation of the Examiners in ADNDRC None of the Providers thinks it would be feasible to mandate sending Registry and Registrar notices in language(s) other than English. <p>(Documents ST)</p> <ul style="list-style-type: none"> A review of the 29 cases 	<p>DRAFT POLICY RECOMMENDATION:</p> <p>(Documents ST)</p> <ul style="list-style-type: none"> WG to consider whether, in light of all three Providers' feedback that it may not be feasible to mandate the sending of Registry and Registrar notices in the same languages, additional policy work is needed on this topic WG to consider creating guidance for Examiners to assist them with deciding what language to use in going ahead with a URS proceeding and Determination <p>(Providers ST)</p> <ul style="list-style-type: none"> WG to consider whether, in light of FORUM and MFSD feedback on use of WHOIS to help determine Respondent language, policy recommendations should be developed to handle language and related GDPR concerns 	

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>where a De Novo Review occurred (indicating a Response was filed after Default) showed a few cases where respondents were located in China or a European country, but no indications on the record that English was an issue. Only 1 out of the 29 cases saw a Final Determination issued in Spanish.</p> <ul style="list-style-type: none"> • Rebecca Tushnet's coding research shows several cases where Examiners noted a Respondent might have had possible issues with language. Staff is reviewing those cases to identify possible policy issues. • WG member observation that the current practice is that the Providers' original notice to a registry operator is sent in English, but that notices to registrars may be in both English as well as the registrant's language (if not English) – but note that ADNDRC and FORUM do not think it would be feasible to mandate sending Registry and Registrar notices in the same language(s).. 		

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	Documents Sub Team noted the possible need to clarify which notice(s) this observation related to.		

K. ABUSE OF PROCESS

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p>1. Misuse of the process, including by trademark owners, registrants and “repeat offenders”</p> <p>2. Forum shopping</p> <p>3. Other documented abuses</p>	<p>(Providers ST)</p> <ul style="list-style-type: none"> FORUM has handled cases where the Respondent alleged an Abuse of Process by the Complainant (with FORUM reviewing 20 cases for the Providers Sub Team) but no abuse was found by the Examiner <p>(Practitioners ST)</p> <ul style="list-style-type: none"> The Sub Team did not comment on the survey results indicating that 11 out of 13 survey respondents either agreed or strongly agreed that the URS is being used for clear-cut cases, as intended. 	<p>SUB TEAM CONCLUSION: (Documents ST)</p> <ul style="list-style-type: none"> No additional data collection needed at the moment (all Providers are currently required to submit cases where abuse was found to an Abuse Case Database; none have been found to date) However, WG may revisit this question depending on results of review of the remaining cases where the Respondent prevailed (review of cases where the Respondent prevailed after filing a response has been completed) <p>DRAFT POLICY RECOMMENDATION: (Providers ST)</p> <ul style="list-style-type: none"> WG to consider potential 	<p>Providers feedback: Rows 122-126</p> <p>Practitioners survey results: p. 14</p> <p>Documents Sub Team review of 58 Claims Denied cases</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
		<p>recommendation on the incorporation of penalties for the abuse of the process by the Respondent in the URS Rules. The abuse of “what” needs to be clarified</p> <p>QUESTION: (Documents ST to Providers & Practitioner STs):</p> <ul style="list-style-type: none"> Should sanctions for abuse by respondent be added (may depend on whether case analysis reveals this to have happened)? 	

L. EDUCATION & TRAINING

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Responsibility for education and training of complainants, registrants, registry operators and registrars	<p>(Documents ST)</p> <ul style="list-style-type: none"> FORUM provides regular reports to ICANN that list the languages used in cases occurring during the reporting period <p>(Providers ST)</p> <ul style="list-style-type: none"> FORUM is aware that some Respondents did not file a Response as they did not know how to proceed. There 	<p>DRAFT POLICY RECOMMENDATION: (Providers ST)</p> <ul style="list-style-type: none"> WG to discuss whether to recommend that ICANN develop an easy-to-understand, multilingual, and linkable guidance (e.g. basic FAQs) for both URS parties WG to discuss whether Providers should develop additional materials specific to 	<p>Providers feedback: Rows 53, 58-77, 96</p> <p>Practitioners survey results: p. 12 (10 out of 13 either agreed or strongly agreed that an Overview will be of value)</p> <p>Websites: ICANN, Providers</p> <p>ADNDRC:</p> <ul style="list-style-type: none"> ADNDRC Complaint Form

Legend: draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, action items (including suggested additional research) in **YELLOW**, questions in **BLUE**, and Sub Team’s conclusions which are not recommendations or fixes in **GREY**. Providers ST’s additional or amended findings/issues and proposed suggestions in **PINK**.

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	<p>are general complaints regarding FORUM's online filing portal. FORUM's case coordinator assists Respondents on an individual basis via phone or email</p> <ul style="list-style-type: none"> ● Review of ICANN's and Providers', websites show that the URS Procedure & Rules can be downloaded from ICANN and Provider websites (in all 6 official UN languages from ICANN, in English from the Providers) ● Each Provider's Supplemental Rules can be downloaded from its website (in English) ● FORUM's and MFSD's Notice of Complaint have provided quite thorough instruction to the Respondent about the steps and what to expect in the URS proceedings ● Providers vary in terms of the amount of guidance they provide to the URS Parties in their Complaint, Response, Appeal forms and associated instructions. E.g., FORUM provides PowerPoint Demo with step-by-step instructions; MFSD references specific URS Rules/Procedure & Supplemental Rules in detail; 	<p>their service, practice, website, etc.</p> <p>(Documents ST)</p> <ul style="list-style-type: none"> ● Supports the creation of a basic, multilingual FAQ for Complainants and Respondents 	<ul style="list-style-type: none"> ● ADNDRC Response Form ● ADNDRC Appeal Form ● ADNDRC Notice of Complaint <p>FORUM:</p> <ul style="list-style-type: none"> ● FORUM Complaint Form ● FORUM Response Form ● FORUM Appeal Form ● FORUM Notice of Complaint <p>MFSD:</p> <ul style="list-style-type: none"> ● MFSD Complaint Form ● MFSD Response Form ● MFSD Appeal Form ● MFSD Notice of Complaint

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	ADNDRC seems to only provide simple forms		

M. URS PROVIDERS

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Evaluation of URS providers and their respective processes (including training of panelists)	<p>(Providers ST)</p> <ul style="list-style-type: none"> ADNDRC and FORUM do not seem to publish all their Examiners' CVs, which may be contrary to URS Rule 6(a): "Each Provider shall maintain and publish a publicly available list of Examiners and their qualifications" ADNDRC publishes Examiners' CVs/resumes subject to the Examiner's consent on how much information can be made public. It seems to be at odds with URS Rules 6(a) FORUM does not obtain the CVs of panelists from other Providers Providers also gave feedback about handling Examiner conflicts and removal ADNDRC will not appoint an Examiner who 	<p>DRAFT POLICY RECOMMENDATION: (Providers ST)</p> <ul style="list-style-type: none"> WG to consider if there is a need to include any explicit standard for removal of Examiners based on particular background and factors such as their record, e.g. representing serial cyber-squatters <p>SUGGESTED OPERATIONAL FIX: (Providers ST)</p> <ul style="list-style-type: none"> WG to discuss whether Providers' non-compliance with URS Rule 6(a) is an issue, and whether any operational fix recommendation should be proposed; ADNDRC, in particular, should list the backgrounds of all of their Examiners so Complainants 	<p>Providers' feedback: Rows 59, 60, 62, 64-67, 69, 75-77, 82, 92, 136, 137</p> <p>ADNDRC:</p> <ul style="list-style-type: none"> Examiner Training Example <p>FORUM:</p> <ul style="list-style-type: none"> Examiner Training Example <p>MFSD:</p> <ul style="list-style-type: none"> Examiner Training Example 1 Examiner Training Example 2 Examiner Training Example 3 Examiner Training Example 4 <p>(the seminar held on 22 May 2017 during INTA Barcelona was open for everyone: out of 20 attendees 3 were Examiners)</p>

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	<ul style="list-style-type: none"> ○ renders Determinations not adhering to the standards or qualities of URS awards ○ represented a Complainant in a URS or UDRP proceeding where there was a finding of Reverse Domain Name Hijacking ● FORUM may remove an Examiner for reasons including: <ul style="list-style-type: none"> ○ failing to comply with deadlines ○ failure to understand the Policy and Rules ○ repeatedly being unavailable to take a case due to schedule or conflicts of interest ● MFSD would disqualify/bar an Examiner for reasons including: <ul style="list-style-type: none"> ○ non-declaration of conflict of interest ○ repeated non-participation at trainings ○ rendering Determinations contrary to the policies and rules or with insufficient and illogical reasoning 	<p>and Respondents can check for conflicts of interest</p> <ul style="list-style-type: none"> ● As a compliance issue, WG to consider asking ICANN to check Providers for compliance with technical requirements 	

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<ul style="list-style-type: none"> ● ADNDRC provided details of their panel selection process and criteria for non-invited candidates and invited candidates, and ST found it positive ● ST is not aware of any complaints that anyone who wants to be an Examiner is denied the opportunity ● MFSD's Examiners have drawn inferences per URS Rule 12(f), don't see an issue with Examiner being allowed to draw inferences from a Party's non-compliance to any provision or requirements under the Rules/Procedures ● ADNDRC has indicated difficulties complying with the URS technical requirements, as it is migrating to a new website; now its website is up and running so it complies with the URS technical requirements ● All three Providers maintain regular communications with ICANN ● All three Providers offer their 		

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	<p>Examiners regular education and training opportunities in various forms</p>		
2. Conflict of interest	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> No Practitioner indicated having “an experience with an Examiner having an actual or potential conflict of interest in a URS proceeding” <p>(Providers ST)</p> <ul style="list-style-type: none"> Both FORUM and MFSD’s Examiners have voluntarily disclosed conflict of interest, but no instance of a conflict presenting itself after an Examiner has accepted a case. ADNDRC’s Examiners have not voluntarily disclosed any conflict of interest, but no issue was raised Providers have different methods seek confirmation from Examiners on their impartiality or independence (FORUM - Neutral’s Oath; MFSD - email & checkbox on Determination Form; ADNDRC - email) 		<p>Providers feedback: Row 67</p> <p>Practitioners’ survey responses: pp. 38-39</p>

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N. ALTERNATIVE PROCESSES

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
1. Possible alternative(s) to the URS, e.g. summary procedure in the UDRP		<p>SUB TEAM CONCLUSION: (Documents ST)</p> <ul style="list-style-type: none"> Documents Sub Team notes that this section was added based on suggestions from WG members, and it was not included in the original Charter questions. As the URS was intended as an alternative to the UDRP, no specific policy issues have been identified in relation to this topic at this time 	

ADDITIONAL SUB TEAM NOTES

Documents ST:

- There is an action item for staff (originally proposed by John McElwaine) to find out if decoding software is available that can read the coded portions of a SMD file, or if this is possible only using the specific key from the TMCH.

Practitioners ST:

- Overall the Practitioner's Survey indicates that Practitioners' have a "Positive" view of the URS and find the URS to be "an effective RPM." (pp. 32 and 35)

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