

# 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 31 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](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.

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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.

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 policy recommendations, proposed operational fixes, questions, and suggested action items for the WG.

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 Sub Teams' 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.

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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:

- Practitioners: <https://community.icann.org/x/0llpBQ>
- Providers: <https://community.icann.org/x/FBu8B>
- 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 WG meeting. The proposal recommends that the full WG first consider the proposals from the three URS Sub Teams as noted in this document. Concurrently, individual WG members are invited to submit their individual proposals for URS policy and operational recommendations by COB on Thursday, 6 September 2018. 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.

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- As of 31 August 2018, per Co-Chairs’ direction, all three URS Sub Teams have reviewed and updated their draft URS policy recommendations and proposed operational fixes. The aim of this exercise was to ensure that the Sub Teams agree on specific and justified proposals for full WG discussion and consideration. While not necessarily finalized, the updated Sub Team proposals, as well as their questions, non-proposal related conclusions, and suggested action items for the WG, are included in the “Proposed Suggestion” column in this table.

## A. THE COMPLAINT

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<b>1. Standing to file</b> 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"> <li>No data/feedback to support this</li> </ul>	<b>SUB TEAM CONCLUSION:</b> (Documents ST) <ul style="list-style-type: none"> <li>No additional policy work required</li> </ul>	Practitioners survey results: pp. 21-22, 28, 29
<b>2. Grounds for filing</b> Grounds, specifically, types of marks on which a complaint may be based	(Documents ST) <ul style="list-style-type: none"> <li>No data/feedback indicating this is a URS problem</li> </ul>	<b>SUB TEAM CONCLUSION:</b> (Documents ST) <ul style="list-style-type: none"> <li>No additional policy work on URS required</li> <li>Questions about “types of marks” should be addressed (if at all) as part of the TMCH and in particular Claims Notices review</li> </ul>	Rebecca Tushnet’s coding: 894 identical, 900 mark+plus, 21 typos
<b>3. Limited filing period</b>	(Practitioners ST) <ul style="list-style-type: none"> <li>The Sub Team did not comment on the survey results with respect to the response period or time frames connected to Complaint filings</li> <li>See Section C below</li> </ul>		Practitioners survey results: p. 26; Providers feedback: Row 18

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<p><b>4. Administrative review</b></p>	<p>(Documents ST)</p> <ul style="list-style-type: none"> <li>Feedback from providers do not seem to indicate need for additional policy work</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>None of the providers accepts Complaints that do not contain all the elements required in URS Rule 3(b)</li> <li>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</li> <li>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</li> <li>ADNDRC at least checks whether the same Complaint was already been filed with another ADNDRC office</li> </ul>	<p><b>SUB TEAM CONCLUSION:</b> (Documents ST)</p> <ul style="list-style-type: none"> <li>No additional policy work required</li> </ul> <p><b>SUGGESTED OPERATIONAL FIX:</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>A URS Provider should check the websites of other URS and UDRP Providers to ensure that a disputed domain name is not already subject to an open/active URS/UDRP proceeding</li> </ul>	<p>Providers feedback: Row 14, 19</p>
<p>5. 500-word Complaint limit</p>	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>Some thought the word limit of 500 words was too low:</li> </ul>	<p><b>SUB TEAM CONCLUSION:</b> (Three STs)</p> <ul style="list-style-type: none"> <li>This is an area on which</li> </ul>	<p>Providers feedback: Rows 30, 31 - 22 Cases (FORUM w/ 17); Rows 14, 16</p>

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	<p>“arbitrary and often insufficient” and “should be slightly increased” were two responses</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>Providers’ feedback confirms that some practitioners have raised issues with word limit</li> <li>However, Providers generally believe that the balance of the word limits for both Complaint and Response is reasonable</li> <li>If Complaint word limit is increased, should Response limit be correspondingly increased? If so, need to consider impact on Examiners</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>Based on Practitioners’ survey results, no additional policy work is required</li> </ul>	<p>views will differ, and the overall purpose of the URS as a lighter complement to the UDRP needs to be borne in mind</p> <ul style="list-style-type: none"> <li>No policy recommendation at this time</li> </ul>	
6. Amending the Complaint in light of GDPR/Temp Spec	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>All three Providers accept “Doe Complaints”</li> <li>Since GDPR implementation, ADNDRC has not accepted any new URS Complaint; FORUM accepted 44 URS Complaint (some are “Doe Complaint”)</li> <li>FORUM is not yet able to add</li> </ul>	<p><b>DRAFT POLICY RECOMMENDATION:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>URS Rules 3(b) should be amended in light of GDPR and the permissible filing of a “Doe Complaint”</li> <li>URS Procedure para 3.3 should be amended to enable modification of the Complaint</li> </ul>	Providers feedback: Row 14, 28

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	<p>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</p> <ul style="list-style-type: none"> <li>Based on comments from less than 10 Complainants, 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</li> <li>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</li> <li>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</li> <li>MFSD suggests amending</li> </ul>	<p>within 2-3 days from disclosure of the full registration data by the URS Provider</p> <ul style="list-style-type: none"> <li>Outreach and education efforts should be undertaken via expert intermediaries to increase awareness and understanding of the common law concept of “Doe Complaint” in civil law jurisdictions, especially the EU</li> </ul> <p><b>SUGGESTED OPERATIONAL FIX:</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>Providers should modify their operational rules in terms of automatically populating the Complaint Form using WHOIS data</li> <li>GDD, Providers, and Registries should jointly develop rules for the timely response by Registries to requests for non-public information from Providers</li> </ul> <p><b>SUGGESTED ACTION ITEM FOR THE WG</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>WG should informally communicate with the EPDP</li> </ul>	

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	<p>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</p> <ul style="list-style-type: none"> <li>• FORUM also agrees with a 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</li> <li>• WHOIS information is automatically pulled into FORUM's Complaint Form once Complainant enters the domain name to prevent Complainant error</li> </ul>	<p>Team about this issue: European civil law systems do not recognize the common law concept of "Doe Complaint", and the concept is not well understood in Europe</p>	
7. SMD file	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Most of the data in the SMD file is difficult to read and remains encoded</li> <li>• 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: <a href="https://mm.icann.org/pipermail/gnso-rpm-wg/2018-">https://mm.icann.org/pipermail/gnso-rpm-wg/2018-</a></li> </ul>		Providers feedback: Row 16

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	<p><a href="#">August/003236.html</a>)</p> <ul style="list-style-type: none"> <li>● 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 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</li> </ul>		
8. Other topics	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● MFSD' feedback suggests the following factors as possible deterrents to filing a URS Complaint: <ul style="list-style-type: none"> <li>○ limited applicability of the URS (not a consensus policy)</li> <li>○ 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)</li> <li>○ stricter burden of proof</li> </ul> </li> <li>● MFSD's statement is based on informal feedbacks from</li> </ul>		<p>Providers feedback: Row 28</p> <p>Practitioners survey results: pp. 21-22, 30</p>

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	<p>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> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>• 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</li> </ul>		

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## B. NOTICE

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Receipt by Registrant Notice</b> (feedback from Complainant &amp; Respondent)</p>	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>ADNDRC only sends the Notice of Complaint to Respondents via emails and does not use the other two means (i.e., fax, physical mail) indicated in the URS Rules</li> <li>There are potential difficulties for Providers to comply with the URS Rules &amp; Procedure due to the impact of GDPR</li> <li>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</li> <li>Providers would reference WHOIS, if the Registrar does not communicate any underlying contact information of Registrant when the privacy/proxy service is used</li> <li>Providers also obtain Registrant's contact information provided by the Complainants, Registry Operators and Registrars, and information shown on Registrants' websites</li> <li>FORUM and MFSD reported</li> </ul>	<p><b>SUB TEAM CONCLUSION:</b> (Documents ST)</p> <ul style="list-style-type: none"> <li>No additional policy work required</li> </ul> <p><b>DRAFT POLICY RECOMMENDATION:</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>For "Doe Complaints", Providers should first send notice to Respondents via the online registrant contact form and then by the required methods, as soon as relevant WHOIS data is forwarded by the Registry</li> </ul> <p><b>SUGGESTED OPERATIONAL FIX:</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>ADNDRC should change its operational rules to comply with URS Procedure para 4.2, requiring that Notice of Complaint be transmitted to the Respondent, with translation in the predominant language of the Respondent, via email, fax, and postal mail</li> </ul>	<p>Practitioner survey results: pp. 5-6</p> <p>Providers feedback: Rows 4-8</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>that their mail, fax, and email to the Respondent were not delivered sometimes.</p> <p>Providers are unable to use courier services to deliver mail to P.O.box addresses</p> <ul style="list-style-type: none"> <li>ADNDRC reported that they have not received any complaint regarding not receiving notice</li> </ul>		
<p><b>2. Effect on Registry Operator</b> Notice requirements for Registry Operators</p>	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>Providers' feedback indicates there may be some clerical issues concerning the Registry Operators, including: <ul style="list-style-type: none"> <li>Communicating from email addresses different from the contacts present in ICANN's repository</li> <li>Not responsive to requests for information from URS Providers</li> <li>Delay in sending notifications to the URS Providers regarding the completion of URS actions</li> <li>Not completing URS actions despite notifications and reminders from the Providers, resulting in a</li> </ul> </li> </ul>	<p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>ICANN's email addresses for Registry contacts should be kept up to date for use by Providers</li> <li>GDD, Providers, and Registries should jointly develop a uniform system for interaction between the Providers and the Registries regarding Registry notice requirements</li> </ul> <p><b>QUESTION:</b></p> <p>(Documents ST to Providers ST)</p> <ul style="list-style-type: none"> <li>Is any other additional policy work required? (This will depend on whether specific issues are identified for policy work from the follow up with</li> </ul>	<p>Providers feedback: Rows 9-12, 33</p>

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	<p>need for the Providers to report non-compliance to ICANN</p> <ul style="list-style-type: none"> <li>○ Due to GDPR, Registries are inconsistent with respect to how they would like to either receive verification requests or 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</li> </ul>	<p>the three Providers); Staff note: in light of the Providers Sub Team follow up, can this question be considered answered? Documents ST response: Defer to Providers ST as to whether any additional policy work is recommended</p> <p><b>SUGGESTED ACTION ITEM FOR THE WG:</b> (Documents ST)</p> <ul style="list-style-type: none"> <li>● WG should 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 &amp; Claims surveys</li> </ul>	
3. Other topics	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● ADNDRC did not receive information from ICANN regarding the Back End Registry Operator (BERO) point of contact</li> <li>● FORUM receives a report from ICANN that contains this</li> </ul>		Providers feedback: Row 11

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	<p>information</p> <ul style="list-style-type: none"> <li>• MFSD receives credentials to access ICANN's repository</li> <li>• The Registry Operator and its designated BERO URS contacts are <u>downloadable</u> by the URS Service Providers. This information was provided to the Providers when they were onboarded</li> <li>• 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</li> </ul>		

## C. RESPONSE

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Duration of response period</b> 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"> <li>• 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.</li> </ul>	<p><b>SUB TEAM CONCLUSION:</b> (Provider and Documents STs)</p> <ul style="list-style-type: none"> <li>• No additional policy work required</li> </ul>	<p>Rebecca Tushnet's coding: Review of 250 cases where Response filed</p> <p>Staff compilation report:</p> <ul style="list-style-type: none"> <li>• p. 16, TABLE 11: URS Case Response Analysis -- Of the 827 cases decided through end-2017: <ul style="list-style-type: none"> <li>○ 27% of the cases saw a</li> </ul> </li> </ul>

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	(Providers ST) <ul style="list-style-type: none"> <li>All Providers believe that the Response period is sufficient. Providers also grant requests for extension of time to respond. No Provider has received late response.</li> </ul>		Response filed to the Complaint <ul style="list-style-type: none"> <li>23% of the cases saw a Response filed within the 14-day period specified in the URS procedure and rules</li> <li>13% of the cases with a Response resulted in the claim being denied</li> </ul>
<b>2. Other issues relating to Responses (other than issues relating to Defenses), e.g. Default procedures</b>	(Documents ST) <ul style="list-style-type: none"> <li>Reviewed the data from the cases noted where a Response was submitted</li> </ul> (Providers ST) <ul style="list-style-type: none"> <li>FORUM and MFSD conduct compliance check on Responses for factors beyond the ones stated in the URS Rule 5(g)</li> <li>ADNDRC only flags the “superficial formatting and non-compliance issue” in a Response; the appointed Examiners screen the other non-compliance issues</li> <li>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</li> </ul>	<b>SUB TEAM CONCLUSION:</b> (Documents ST) <ul style="list-style-type: none"> <li>On the cases where Responses were filed, no additional research or policy work seems necessary</li> </ul>	<ul style="list-style-type: none"> <li>p. 14-15, TABLE 10: Multiple URS Cases Against the Same Domain</li> </ul> Practitioner survey results: pp. 24, 27  Providers’ feedback: Rows 47, 48  <u>FORUM’s Appendix B and MFSD’s Checklist used for the Administrative Review of the Response</u>

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<b>3. Response fees</b> Response Fee applicable to 15 or more domains	(Practitioners ST) <ul style="list-style-type: none"> <li>The Sub Team did not comment on the survey results indicating that 4 Practitioner survey responses said it was sufficient, 1 disagreed, and 7 neither agreed nor disagreed</li> </ul> (Providers ST) <ul style="list-style-type: none"> <li>Providers' feedback indicates no late responses have been filed to date</li> </ul> (Documents ST) <ul style="list-style-type: none"> <li>The current data does not reveal any issue or possible policy conclusion</li> <li>No response was in filed in any of the 6 cases with 15+ domains (outcome: Suspension)</li> </ul>	<b>SUB TEAM CONCLUSION:</b> (Documents ST) <ul style="list-style-type: none"> <li>Available data does not indicate any basis for additional work or policy conclusions</li> </ul>	

#### D. STANDARD OF PROOF

Topic	Finding/Issue	Suggestion	Data Source
1. General	(Practitioners ST) <ul style="list-style-type: none"> <li>Most survey respondents reported that "the Decision/Determination provided the reasons upon</li> </ul>	<b>SUB TEAM CONCLUSION:</b> (Documents ST) <ul style="list-style-type: none"> <li>Based on the data, there does not appear to be a need to modify the standard of proof</li> </ul>	Practitioner survey results: pp. 13, 14, 18-20  Staff compilation report: URS data: p. 11-13, TABLES 8&9:

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Topic	Finding/Issue	Suggestion	Data Source
	<p>which the decision was based, as required by Section 13(b) of the URS Rules”</p> <ul style="list-style-type: none"> <li>Practitioners believe that the RPM is being used for “clear cases of abuse” as it was intended</li> <li>Most thought that the “standard of proof” is “adequate as is”</li> </ul>	<p>for URS (clear and convincing)</p>	<p>Analysis of URS Cases where the Claim was Denied</p> <p>Rebecca Tushnet's coding: tab - "Denied Claims Analysis"</p>
<p>2. Examiners guide</p>	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>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”</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>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</li> </ul>	<p><b>SUGGESTED OPERATIONAL FIX</b></p> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>Recommends working with Providers, to hire Researchers and/or Academics who study URS decisions closely, perhaps with the help of volunteer Practitioners to create 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</li> <li>Recommends working with Providers, to hire Researchers and/or Academics who study URS decisions closely, perhaps with the help of volunteer</li> </ul>	<p>Practitioner survey results: p. 17</p> <p>Providers feedback: Row 98</p>

**Legend:** draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, suggested action items for the WG in **YELLOW**, questions in **BLUE**, and Sub Team’s conclusions which are not recommendations or fixes in **GREY**.



Topic	Finding/Issue	Suggestion	Data Source
		<p>Practitioners to create an “Overview for URS Decisions” (like the WIPO Overview on UDRP Cases)</p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• 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 should not extend to providing Examiners with specific directions as to what is, and is not, a clear-cut case</li> <li>• It may be preferable to 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</li> </ul>	
3. Other topics	<p>(Documents ST)</p> <p>The Documents Sub Team has reviewed the 58 cases where the Respondent prevailed (i.e. the Complainant’s claim was denied):</p> <ul style="list-style-type: none"> <li>• 31 cases saw no Response filed</li> <li>• Of the 27 cases where a</li> </ul>	<p><b>SUB TEAM CONCLUSION:</b></p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• Based on a review of the cases where the Respondent prevailed, no additional policy work seems to be required except as noted above (see D2)</li> </ul>	

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Topic	Finding/Issue	Suggestion	Data Source
	<p>Response was filed:</p> <ul style="list-style-type: none"> <li>○ 21 of these were filed within the initial 14-day response period</li> <li>○ 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)</li> </ul>		

## E. DEFENSES

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Scope of Defenses</b></p> <p><b>2. Unreasonable delay in filing a complaint (i.e. laches)</b></p>	<p>(Documents ST)</p> <ul style="list-style-type: none"> <li>● 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</li> <li>● Suggested asking the Providers' Sub Team what their research discloses about the following, so as to assist in illustrating how the "clear</li> </ul>	<p><b>SUGGESTED ACTION ITEM FOR THE WG:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● WG should further examine the divergent practice and requirements of Providers with regard to Examiner providing reasoning in support of their Determinations</li> <li>● WG should deliberate on FORUM's practice, which significantly deviates from that of ADNDRC and MFSD and</li> </ul>	<p>Providers' feedback: Rows 17, 96, 97, 99, 100, 101.</p> <p>ADNDRC:</p> <ul style="list-style-type: none"> <li>● <a href="#">ADNDRC Determination Guideline</a></li> </ul> <p>FORUM:</p> <ul style="list-style-type: none"> <li>● <a href="#">FORUM Default Determination Template</a></li> <li>● <a href="#">FORUM Final Determination Template</a></li> <li>● <a href="#">FORUM Appeal</a></li> </ul>

**Legend:** draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, suggested action items for the WG in **YELLOW**, questions in **BLUE**, and Sub Team's conclusions which are not recommendations or fixes in **GREY**.

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>and convincing" standard has been applied:</p> <ol style="list-style-type: none"> <li>1. What instructions have the URS providers given to the panelists?</li> <li>2. What did the URS providers advise the panelists?</li> <li>3. Do the URS providers have minimal standards for panelists for decision making?</li> <li>4. Have the minimal standards been met?</li> <li>5. What are the URS providers' procedures? Have the URS providers done their work?</li> <li>6. How have the URS providers ensured that the "clear and convincing evidence" standard has been applied?</li> <li>7. How do the URS providers police the existing rules for the panelists?</li> <li>8. What does "clear and convincing evidence" mean?</li> </ol> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• There have been Determinations where no</li> </ul>	<p>consider whether it raises any compliance issue</p> <p><b>DRAFT POLICY RECOMMENDATION:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• All Providers should provide similar types and forms of guidance to their Examiners</li> <li>• Examiners should document their rationale in all issued Determinations; in particular, when an Examiner finds that a registrant has registered and used a domain in bad faith, supporting facts should be cited</li> </ul> <p>(Documents ST; see also Section G)</p> <ul style="list-style-type: none"> <li>• WG to consider recommending the development of an administrative checklist or basic template of minimum elements that should go into a Determination</li> </ul>	<p><u>Determination Template</u></p> <p>MFSD:</p> <ul style="list-style-type: none"> <li>• <u>MFSD Determination Form</u></li> </ul>

**Legend:** draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, suggested action items for the WG in **YELLOW**, questions in **BLUE**, and Sub Team's conclusions which are not recommendations or fixes in **GREY**.

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>clear rationale/reasons were elaborated in the decision</p> <ul style="list-style-type: none"> <li>● Providers also vary in terms of the amount of guidance they provide their Examiners and in the use of a template Determination form</li> <li>● 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</li> <li>● ADNDRC: <ul style="list-style-type: none"> <li>○ provides Examiners with Determination Guideline</li> <li>○ directs Examiners to previous decisions to reference</li> <li>○ requires Examiners to provide some explanations of facts and reasoning in support of their Determinations</li> <li>○ does not appoint Examiners who renders Determinations not adhering to the standards or qualities of URS awards</li> </ul> </li> </ul>		

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<ul style="list-style-type: none"> <li>● FORUM:               <ul style="list-style-type: none"> <li>○ has a template for Determinations through its portal, with text boxes that are required to be filled out for the reasoning</li> <li>○ does not intervene in an administrative capacity to review and revisit an Examiner's Determination</li> <li>○ does not prepare any additional documents or edit in any matter</li> <li>○ does not undertake to review each Determination for an explanation of the facts and reasoning</li> <li>○ <u>only</u> FORUM has 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</li> </ul> </li> <li>● MFSD:               <ul style="list-style-type: none"> <li>○ provides online Determination Form that has instructions and guidelines for Examiners</li> <li>○ encourages Examiners to</li> </ul> </li> </ul>		

**Legend:** draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, suggested action items for the WG in **YELLOW**, questions in **BLUE**, and Sub Team's conclusions which are not recommendations or fixes in **GREY**.

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>refer to WIPO Overview of WIPO Panels Views on Selected UDRP Questions and Third Edition (WIPO Jurisprudential Overview 3.0)</p> <ul style="list-style-type: none"> <li>○ encourages Examiners to cite URS and UDRP case law they retain significant for the decision of the dispute</li> <li>○ provides Examiners information regarding case management</li> <li>○ conducts the ex-post quality check of the Determinations</li> <li>○ disqualifies/bars an Examiner who renders Determinations contrary to the policies and rules or with insufficient and illogical reasoning</li> <li>○ 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</li> </ul>		

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## F. REMEDIES

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Scope of Remedies</b></p>	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>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)</li> </ul> <p>The following options were suggested in the Practitioners’ survey results:</p> <ul style="list-style-type: none"> <li>An out-and-out transfer to a winning party as opposed to suspension</li> <li>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</li> <li>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:</li> </ul>	<p><b>DRAFT POLICY RECOMMENDATION</b></p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>The Documents ST suggests that the question of adequacy and scope of remedies be deliberated among the full WG</li> </ul>	<p>Practitioners survey results: p. 15</p> <p>IRT Final Report: pp. 25-37</p> <ul style="list-style-type: none"> <li>“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...”</li> <li>On remedy: "The URS is 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."</li> </ul> <p>STI Report: pp. 15-25</p> <ul style="list-style-type: none"> <li>“...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).</li> </ul>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<ul style="list-style-type: none"> <li>○ "a right of first refusal to purchase the domain when it next becomes available" and</li> <li>○ "an established process for requesting suspension renewals"</li> </ul>		<p>INTA Survey:</p> <ul style="list-style-type: none"> <li>● RPM effectiveness ("how well RPMs mitigate risks"): UDRP 67%, Sunrise 64%, Claims 36%, <u>URS 27%</u>, PDDRP 15%</li> <li>● "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."</li> <li>● "UDRP still helps mitigate risks the best. While URS is helpful, the escalated proof required and limited remedy makes it of limited usefulness."</li> <li>● "Improvements to URS. Perhaps a loser-pays model. Perhaps improvements to the remedy."</li> </ul> <p>CCT-RT Review:</p> <ul style="list-style-type: none"> <li>● 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</li> </ul>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
			<p>(namely UDRP 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.</p> <ul style="list-style-type: none"> <li>● Success Measures: Based on the findings, a clear overview of the suitability of the URS and whether it is functioning effectively in the way originally intended: “A full review of the URS should be carried out and consideration be given to how it should interoperate with the UDRP.”</li> <li>● “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.”</li> <li>● “...overall the URS has produced positive results in certain limited cases. The</li> </ul>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
			<p>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 domain name in their portfolio, which can be achieved via a UDRP. Indeed, the value of a suspended domain name is questioned.”</p>
<p><b>2. Duration of Suspension Period</b></p> <p><b>3. Review of Implementation</b></p>	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● 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"> <li>○ “Registrars often do not respond to the request for renewal of the suspension</li> <li>○ “Some registrars do not</li> </ul> </li> </ul>	<p><b>DRAFT POLICY RECOMMENDATION:</b></p> <p>(Providers ST):</p> <ul style="list-style-type: none"> <li>● URS Technical Requirements 3 and Registry Requirement 10 should be amended, and compliance efforts should be directed, to address problems with the implementation of the relief awarded following a URS decision; the implementation of a</li> </ul>	<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
	<p>understand the process of paying for an additional year of suspension”</p> <ul style="list-style-type: none"> <li>○ “In some cases, a losing Respondent is able to re-register a domain once it becomes available”</li> <li>○ “After the lock, the cybersquatters just renew the domain name”</li> <li>○ “Any problems with Chinese Registrar in order to implement the decision”</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● 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</li> <li>● 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</li> <li>● Registry and Registrar have</li> </ul>	<p>settlement (generally a domain transfer at the registrar level); and implementation of Complainant requests to extend a suspension</p> <p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● ICANN Compliance should be responsible for monitoring URS providers to ensure that they operate in accordance with the administrative requirements of the URS and URS Rules, including, by way of example, requirements as to method, language and timing of communications and the publication of required information. In view of the expedited nature of URS proceedings, ICANN Compliance should work with the URS Providers and relevant registries to rapidly address and resolve any incidences of registry non-compliance with obligations relating to registry locking/unlocking and suspension.</li> <li>● There should be efforts</li> </ul>	

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>difficulty implementing the extension request of the URS Suspension, as they may not have understood their roles in the process</p> <ul style="list-style-type: none"> <li>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</li> </ul>	<p>undertaken to better inform and enhance the understanding by Registry Operators and Registrars of their role in the URS process</p> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>Sub Team recommends an enhanced education to help Registrars understand how to implement relief and gain better awareness of URS procedures.</li> </ul> <p><b>SUGGESTED ACTION ITEM FOR THE WG:</b></p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>WG should contact Registry Operators and Registrars about the compliance issues - Timing TBD in view of Sunrise &amp; Claims surveys that are about to be launched</li> </ul>	
4. Other topics	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>HSTS-preloaded domain suspension remedy is problematic; ICANN is aware of the challenge and is working on alternatives to support TLS and other technologies in this service</li> <li>All three Providers request the Registry Operator to</li> </ul>	<p><b>SUGGESTED ACTION ITEM FOR THE WG:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>WG should solicit input from Registry Operators with regard to the HSTS-preloaded domain suspension issue - Timing TBD in view of Sunrise &amp; Claims surveys that are about to be launched</li> </ul>	<p>Providers feedback: Row 28, 96, 108</p> <p>Practitioners survey results: p. 30</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>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> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>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)</li> </ul>		

## G. APPEAL

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source

**Legend:** draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, suggested action items for the WG in **YELLOW**, questions in **BLUE**, and Sub Team's conclusions which are not recommendations or fixes in **GREY**.

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"> <li>● All 14 cases where an Appeal was filed – <ul style="list-style-type: none"> <li>○ Complainant ultimately prevailed in 12 of the 14 Appeals (Complainant had prevailed at the Default/Final Determination stage in 8)</li> <li>○ 9 Appeals were heard by 3-member panels</li> <li>○ 7 Appeals related to the .email gTLD (with 6 cases concerning yoyo.email)</li> </ul> </li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● Of the Practitioners who used the Appellate mechanisms, all characterized their experience as “positive”</li> </ul>	<p><b>SUB TEAM CONCLUSION:</b> (Documents &amp; Practitioners STs)</p> <ul style="list-style-type: none"> <li>● Appeals - process seems to be working as designed, no need for additional policy work</li> </ul> <p><b>DRAFT POLICY RECOMMENDATION:</b> (Documents ST)</p> <ul style="list-style-type: none"> <li>● Administrative/Operational – Develop uniform 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)</li> </ul>	<p>Staff compilation report - URS data:</p> <ul style="list-style-type: none"> <li>● p. 22-23, TABLE 13: Analysis of URS Cases where an Appeal was filed (see appeals_v0.2.xls for full analysis)</li> <li>● 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.</li> </ul> <p>Staff report on De Novo Review cases: <a href="http://mm.icann.org/pipermail/gns-o-rpm-documents/attachments/20180726/8586717c/SummaryTable-URSFinalDeterminationCasesasofDec2017-UPDATED25July2018-0001.docx">http://mm.icann.org/pipermail/gns-o-rpm-documents/attachments/20180726/8586717c/SummaryTable-URSFinalDeterminationCasesasofDec2017-UPDATED25July2018-0001.docx</a></p>
2. De novo review	<p>(Documents ST) Documents Sub Team reviewed:</p> <ul style="list-style-type: none"> <li>● All 29 cases where a De Novo Review occurred (i.e. Final Determination issued where a Respondent filed a Response after Default but before expiry of the 6-month permissible period for a Response) – <ul style="list-style-type: none"> <li>○ Respondent prevailed in</li> </ul> </li> </ul>	<p><b>DRAFT POLICY RECOMMENDATION:</b> (Documents ST; see also Section H)</p> <ul style="list-style-type: none"> <li>● De Novo Review – WG to discuss if substantive policy recommendations are needed in light of: (1) current response periods as prescribed in the URS; and</li> </ul>	<p>Providers’ feedback: Rows 128-132</p> <p>Practitioners survey results: p.7-9, 11</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>6 and Complainant in 23 cases (of which 2 were Appeals)</p> <ul style="list-style-type: none"> <li>○ 28 Final Determinations were rendered in English (with 1 in Spanish)</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● 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</li> </ul>	<p>(2) the various possible points of determination during a proceeding (i.e. as a Default Determination if no responses is received within the initial 14-day period, a De Novo Review if a response is received after Default, Appeal)</p>	

## H. POTENTIALLY OVERLAPPING PROCESS STEPS

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Potential overlap concerning duration of respondent appeal, review and extended reply periods along the URS process timeline</b></p>	<p>(Documents ST)</p> <ul style="list-style-type: none"> <li>● Documents Sub Team has completed data review of Appeals, De Novo Review, and Response Received cases</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● The Sub Team did not comment on the Practitioners survey results indicating that 2 survey respondents</li> </ul>	<p><b>DRAFT POLICY RECOMMENDATION:</b></p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>● WG to discuss whether to make a policy recommendation based on a discussion of: (1) the number of instances in the course of a URS proceeding where a de novo examination can occur (i.e. as a Default Determination if no responses</li> </ul>	<p>See Sections C &amp; G, above.</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	believed the De Novo Review process should be retained, and 3 felt it should be removed	is received within the initial 14-day period, a De Novo Review if a response is received after Default, Appeal); and (2) the current duration of response periods for de novo review and appeal	

## I. COST

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<b>1. Cost allocation model</b>	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>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</li> <li>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</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>The Sub Team did not comment on the survey results that 8 Practitioners (out of 12 who responded)</li> </ul>	<p><b>SUGGESTED ACTION ITEM FOR THE WG:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>WG should discuss whether any of the late Response fees create a burden for the Respondent</li> </ul>	<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
	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
<b>1. Language issues, including current requirements for complaint, notice of complaint, response, determination</b>	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>ADNDRC communicates in English only and all URS decisions are rendered in English</li> <li>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</li> <li>ADNDRC does receive inquiries, especially from the Respondent, regarding the language of the proceedings, but has not encountered a</li> </ul>	<p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>ICANN should enforce the URS Rules 9 and URS Procedure para 4.2 with respect to Providers communicating with the Registrant in the predominant language of the Registrant. In particular, as the WG has found that ADNDRC is not in compliance with URS Procedure para 4.2 and URS Rules 9, ICANN should request ADNDRC to change their operational rules and to translate the Notice of Complaint "into the predominant language used in the Registrant's country or territory"</li> </ul>	<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>situation in URS proceedings that the Respondent did not have the capability of understanding English</p> <ul style="list-style-type: none"> <li>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</li> <li>FORUM and MFSD check WHOIS as well as information from the registrar to determine Respondent's dominant language</li> <li>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</li> <li>None of the Providers thinks it would be feasible to mandate sending Registry and Registrar notices in language(s) other than English</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>A review of the 29 cases where a De Novo Review</li> </ul>	<p><b>DRAFT POLICY RECOMMENDATION:</b> (Documents ST)</p> <ul style="list-style-type: none"> <li>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, not to recommend any additional policy work on this suggestion</li> <li>WG to consider recommending that guidance be developed for Examiners to assist them with deciding what language to use in going ahead with a URS proceeding and Determination</li> </ul> <p><b>SUGGESTED ACTION ITEM FOR THE WG:</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>WG should 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</li> </ul>	

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>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"> <li>• Rebecca Tushnet's coding research shows several cases where Examiners noted a Respondent might have had possible issues with language. Staff has reviewed all the 15 cases tagged on this point where responses were filed by respondents whose primary language was not English, but where a Determination was issued in English (another 2 cases saw the Determination issued in the Respondent's primary language).. In some cases, the Examiners stated clearly their reasons for not using the Respondent's primary language; in the remaining cases, it seems clear from the reasons provided in relation to one or more of the 3 required</li> </ul>		

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>elements. Reasons included the filing of a Response in English, or in both languages; evidence that the Respondent could communicate in English; and evidence that the Respondent knew of the trademark at issue (e.g. via a Claims Notice)</p> <ul style="list-style-type: none"> <li>• 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).. Documents Sub Team noted the possible need to clarify which notice(s) this observation related to.</li> </ul>		

## K. ABUSE OF PROCESS

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source

**Legend:** draft policy recommendations are highlighted in **GREEN**, suggested operational fixes in **ORANGE**, suggested action items for the WG in **YELLOW**, questions in **BLUE**, and Sub Team's conclusions which are not recommendations or fixes in **GREY**.

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Misuse of the process, including by trademark owners, registrants and “repeat offenders”</b></p> <p><b>2. Forum shopping</b></p> <p><b>3. Other documented abuses</b></p>	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>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</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>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</li> </ul>	<p><b>SUB TEAM CONCLUSION:</b> (Documents ST)</p> <ul style="list-style-type: none"> <li>No additional data collection or policy work 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)</li> </ul> <p><b>SUGGESTED ACTION ITEM FOR THE WG:</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>WG should consider whether to include the following question in the Initial Report for the purpose of soliciting public comments: “Are penalties for abuse of the process by the Complainant or Respondent sufficient? If not, should they be expanded, and how?”</li> </ul> <p><b>QUESTION:</b> (Documents ST to Providers &amp; Practitioner STs/WG):</p> <ul style="list-style-type: none"> <li>Should sanctions for abuse by respondent be added (may depend on whether case analysis reveals this to have happened)?</li> </ul>	<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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## L. EDUCATION & TRAINING

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Responsibility for education and training of complainants, registrants, registry operators and registrars</b></p>	<p>(Documents ST)</p> <ul style="list-style-type: none"> <li>FORUM provides regular reports to ICANN that list the languages used in cases occurring during the reporting period</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>FORUM is aware that some Respondents did not file a Response as they did not know how to proceed. There are general complaints regarding FORUM's online filing portal. FORUM's case coordinator assists Respondents on an individual basis via phone or email</li> <li>Review of ICANN's and Providers', websites show that the URS Procedure &amp; Rules can be downloaded from ICANN and Provider websites (in all 6 official UN languages from ICANN, in English from the Providers)</li> <li>Each Provider's Supplemental Rules can be downloaded from its website (in English)</li> <li>FORUM's and MFSD's Notice of Complaint have provided quite thorough instruction to</li> </ul>	<p><b>DRAFT POLICY RECOMMENDATION:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>ICANN should develop easy-to-understand, multilingual, and linkable guidance (e.g., basic FAQs linked from Providers' websites, Notice of Complaint, and Complaint/Response/Appeal forms) for reference and informational purposes of both URS parties (Complainants and Respondents)</li> <li>URS Providers, and ADNDRC in particular, should develop additional clear and concise reference and informational materials specific to their service, practice, and website for the use and benefit of both URS parties</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>Supports Providers ST recommendation for the creation of a basic, multilingual FAQ for Complainants and Respondents; suggests that WG discuss who should</li> </ul>	<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"> <li><a href="#">ADNDRC Complaint Form</a></li> <li><a href="#">ADNDRC Response Form</a></li> <li><a href="#">ADNDRC Appeal Form</a></li> <li><a href="#">ADNDRC Notice of Complaint</a></li> </ul> <p>FORUM:</p> <ul style="list-style-type: none"> <li><a href="#">FORUM Complaint Form</a></li> <li><a href="#">FORUM Response Form</a></li> <li><a href="#">FORUM Appeal Form</a></li> <li><a href="#">FORUM Notice of Complaint</a></li> </ul> <p>MFSD:</p> <ul style="list-style-type: none"> <li><a href="#">MFSD Complaint Form</a></li> <li><a href="#">MFSD Response Form</a></li> <li><a href="#">MFSD Appeal Form</a></li> <li><a href="#">MFSD Notice of Complaint</a></li> </ul>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>the Respondent about the steps and what to expect in the URS proceedings</p> <ul style="list-style-type: none"> <li>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 &amp; Supplemental Rules in detail; ADNDRC seems to only provide simple forms</li> </ul>	<p>compile the FAQ and where it should be hosted/published</p>	

## M. URS PROVIDERS

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Evaluation of URS providers and their respective processes (including training of panelists)</b></p>	<p>(Providers ST)</p> <ul style="list-style-type: none"> <li>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"</li> <li>ADNDRC publishes Examiners' CVs/resumes</li> </ul>	<p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>Provider compliance with URS Rule 6(a) should be enforced. ADNDRC, in particular, should be required to list the backgrounds of all of their Examiners so that Complainants and Respondents can check for</li> </ul>	<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"> <li><u>Examiner Training Example</u></li> </ul> <p>FORUM:</p> <ul style="list-style-type: none"> <li><u>Examiner Training Example</u></li> </ul> <p>MFSD:</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>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)</p> <ul style="list-style-type: none"> <li>● FORUM does not obtain the CVs of panelists from other Providers</li> <li>● Providers also gave feedback about handling Examiner conflicts and removal</li> <li>● ADNDRC will not appoint an Examiner who <ul style="list-style-type: none"> <li>○ renders Determinations not adhering to the standards or qualities of URS awards</li> <li>○ represented a Complainant in a URS or UDRP proceeding where there was a finding of Reverse Domain Name Hijacking</li> </ul> </li> <li>● FORUM may remove an Examiner for reasons including: <ul style="list-style-type: none"> <li>○ failing to comply with deadlines</li> <li>○ failure to understand the Policy and Rules</li> <li>○ repeatedly being unavailable to take a case due to schedule or</li> </ul> </li> </ul>	<p>conflicts of interest</p> <p><b>SUGGESTED ACTION ITEM FOR THE WG</b> (Providers ST)</p> <ul style="list-style-type: none"> <li>● WG should consider explicit standards for the sanction and removal of Examiners [not finalized due to some support with opposition]</li> </ul>	<ul style="list-style-type: none"> <li>● <a href="#">Examiner Training Example 1</a></li> <li>● <a href="#">Examiner Training Example 2</a></li> <li>● <a href="#">Examiner Training Example 3</a></li> <li>● <a href="#">Examiner Training Example 4</a> (the seminar held on 22 May 2017 during INTA Barcelona was open for everyone: out of 20 attendees 3 were Examiners)</li> </ul>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>conflicts of interest</p> <ul style="list-style-type: none"> <li>● MFSD would disqualify/bar an Examiner for reasons including: <ul style="list-style-type: none"> <li>○ non-declaration of conflict of interest</li> <li>○ repeated non-participation at trainings</li> <li>○ rendering Determinations contrary to the policies and rules or with insufficient and illogical reasoning</li> </ul> </li> <li>● ADNDRC provided details of their panel selection process and criteria for non-invited candidates and invited candidates, and ST found it positive</li> <li>● ST is not aware of any complaints that anyone who wants to be an Examiner is denied the opportunity</li> <li>● 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</li> </ul>		

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<ul style="list-style-type: none"> <li>● 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</li> <li>● All three Providers maintain regular communications with ICANN</li> <li>● All three Providers offer their Examiners regular education and training opportunities in various forms</li> </ul>		
2. Conflict of interest	<p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● No Practitioner indicated having “an experience with an Examiner having an actual or potential conflict of interest in a URS proceeding”</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● 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</li> </ul>		<p>Providers feedback: Row 67</p> <p>Practitioners’ survey responses: pp. 38-39</p>

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Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
	<p>any conflict of interest, but no issue was raised</p> <ul style="list-style-type: none"> <li>Providers have different methods seek confirmation from Examiners on their impartiality or independence (FORUM - <u>Neutral's Oath</u>; MFSD - email &amp; checkbox on <u>Determination Form</u>; ADNDRC - email)</li> </ul>		

## N. ALTERNATIVE PROCESSES

Topic	Preliminary Finding/Issue	Proposed Suggestion	Data Source
<p><b>1. Possible alternative(s) to the URS, e.g. summary procedure in the UDRP</b></p>		<p><b>SUB TEAM CONCLUSION:</b> (Documents ST)</p> <ul style="list-style-type: none"> <li>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 and no additional policy work seems to be required</li> </ul>	

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## 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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