**ICANN in Breach of URS Contract Commitment**

To our shock and dismay, ICANN staff today stated in Durban that it is not developing a standard and enforceable contract for Uniform Rapid Suspension (URS) arbitration dispute providers, going back on its written statement of April that it was doing precisely that.

Back at the April Beijing meeting we specifically asked about this during the Public Forum, stating[[1]](#footnote-1):

[T]*he STI-RT unanimously recommended that URS providers be placed under contract, and then the board unanimously adopted all of its recommendations regarding the URS. And, yet, the National Arbitration Forum which had been selected as an URS provider is bound to ICANN only by a two-page memorandum of understanding with no enforcement provisions. So the first question is: Will there be a contract developed that goes beyond that non-enforceable memorandum of understanding?*

In a May 10th blog post appearing under the name of ICANN Chairman Steve Crocker responding to all the Public Forum questions, our question was answered as follows:

***As regards Uniform Rapid Suspension (URS) providers, will there be a contract developed that goes beyond the non-enforceable memorandum of understanding? Will there be other URS providers?***

*Yes, a contract is being developed and additional URS providers will be added.*

Now that written answer seemed quite unambiguous to us. So at a URS update session held today in Durban[[2]](#footnote-2), we asked ICANN staff what progress was being made on the contract and when we could expect to see it published.

Their initial reaction amounted to “what contract”? Then they conferred with one another and conceded that no contract was in development. Finally, they tried to portray the 2-page MOU lacking enforcement provisions as the contract – when our Beijing question made quite clear that we were talking about something quite different than the MOU, and their April written response stating that “a contract is being developed” could not have meant the MOU since it already existed.

**This is all simply unacceptable. It is unacceptable for ICANN to fail to implement the unanimous STI-RT recommendation that URS providers be placed under contract. And it is doubly unacceptable to provide a written response which turns out to have no connection with reality. So we will have no choice but to continue to press ICANN to do what they should do, and already said they would do, but now say they have no intention of doing.**

(For the record, we have complete faith in Chairman Crocker’s integrity and veracity and believe he has been ill served by staff who prepared that erroneous response.)

Apart from discovering that the entire community had been told a very large untruth on this central issue, the URS session was quite useful. The National Arbitration Forum (NAF) presented a long visual demonstration of its automated interface for URS complainants and respondents[[3]](#footnote-3) and we were quite favorably impressed. URS complainants will pay a fee of $375 for up to 14 domains, and a maximum of $500 for larger volumes – and respondents will not be charged a fee in most circumstances. Respondents can also request and obtain a filing extension that will be generally available. Overall, the system is quite automated and simple to keep costs down.

NAF is also in the process of training examiners. While their counsel could not yet answer detailed questions on how determinations will be made – such as the presumption, if any, regarding bad faith registration if the registrant received a claims warning from the Trademark Clearinghouse – we were gratified to hear that NAF is emphasizing that URS complainants carry a much higher burden of proof than that for the UDRP, and that the standards for the two arbitration systems are quite different.

So we give NAF an A for effort in moving to implement URS, while withholding judgment on their administration of the system until we see actual case decisions.

But to ICANN we give a total FAIL for its disingenuous response to our question about contracts for URS providers. Rest assured, this is a subject on which we do not intend to rest or retreat.

1. See <http://internetcommerce.org/URS_Contracts_Coming> for full background [↑](#footnote-ref-1)
2. <http://durban47.icann.org/node/39825> [↑](#footnote-ref-2)
3. <http://durban47.icann.org/meetings/durban2013/presentation-urs-naf-17jul13-en.pdf> [↑](#footnote-ref-3)