**NOTES FROM URS DOCUMENTS SUB TEAM MEETING OF 28 FEBRUARY 2018**

*Please note that these are only high-level notes that are intended to capture the main themes of discussion. It is not an authoritative record of the meeting. Please refer to the audio recording for the full details of the discussion.*

**GENERAL ACTION ITEMS:**

* Create template for Case Review, to be used by all reviewers for the types of cases identified as requiring review (staff)
* For all questions directed to Practitioners, ask them to identify if they more commonly represent Complainants or Respondents

**ACTION ITEMS FROM THE CALL:**

* Staff to update the topic table in the Consolidated URS Discussion Document and Practitioner/Provider documents accordingly; and prepare short summary of Sub Team methodology for reporting back to Working Group
* Sub Team members to indicate if they will be attending San Juan sessions (in person or remotely): <https://docs.google.com/forms/d/e/1FAIpQLSclVS9__ofc94mstK-jXKk7ngv5PV9scbj-S8d3StdjBGbLyg/viewform>
* Sub Team members to raise any additional issues or concerns they believe have not been adequately addressed on the mailing list. At the moment, where we are is only developing suggestions for discussion by the broader WG (i.e. not final recommendations)

DISCUSSION:

**(1) Quick review of data sources/suggestions from last week**

- For the Practitioner & Provider sub teams, staff prepared a separate document incorporating what is in the fifth column of the Consolidated Document, separated out by Provider/Practitioner.

- Question whether for some of those questions, additional refinement or context should be provided by this Sub Team prior to sending over to the other two Sub Teams

- Sub Team should go through the Consolidated Document, to confirm that these are the data sources they wish to suggest

**(1a) Standing - obtaining Practitioner feedback**

- Brian B: suggest looking to see if the mark is listed in the decision; that will tell us it was listed in the complaint. If we feel at that point we still need good data, we can go to the practitioners (Zak: agrees with suggestion)

- J. Scott: do we look at all 800 cases or a subset, for this?

- Rebecca: she is coding all that, won't be hard to pull out from her work (is the TM mentioned). Happy to also ask practitioners but notes that looking at the decisions is the only way to look at the universe of cases.

- Berry: semi-qualitative (practitioner feedback) vs quantitative (looking at all the cases); both can be helpful

- David M: seconding Berry's suggestion; need to be careful with qualitative matters esp in relation to what is "abusive". Re going to Practitioners for this topic - focus on those (first) who typically represent Respondents.

- Brian B: take more objective look at data first, then turn over to Practitioners. Agree we need a representative cross-section of Practitioners representing Complainants and Respondents.

AGREED ACTION: Both data points to be suggested as sources (Berry: may still be helpful to list guidance for Practitioners, e.g. point out that we welcome information that can help WG decide whether to expand the standing criteria; J Scott: any questions for Practitioners should be asked to the full group of practitioners - better not to do filtering to make sure we get the best information we can)

**(1b) Any other objections/suggestions/clarifications**

- David M: Process question - what is the scope of this Sub Team, e.g. to do the case review, develop the Examiner Guidance etc.?

- J. Scott: Co-chairs intend to invite Sub Teams to proceed with the work and open up Sub Teams for additional volunteers

- Staff: When reporting back to full WG, Sub Team should also report on whether it is willing to continue on with the next phase of work

**(2) Section H: Potentially Overlapping Process Steps**

- Brian B: review of cases should help us find out about utility of the different types of appeals

- Rebecca: Should have data on when Responses were filed (not sure if requests will be coded separately)

- Berry: Rebecca is coding for response dates

AGREED ACTION: Look at Rebecca's data on Responses

**(3) Section I: Cost Allocation Model**

- John McElwaine: refer to Practitioners, ask what in their experience was the average cost to prosecute and/or defend a URS proceeding; can also ask Providers what filing fees they received. The feedback should help WG decide whether to go to a "loser pays" model. INTA Survey may also have some data on this.

AGREED ACTION: Per John McElwaine's suggestions.

**(4) Section J: Language**

- Renee: FORUM provides ICANN with reports on langauges they use at any particular period/point of time (for sending Notices under URS)

- J. Scott: Ask Practitioners for feedback (since Complaint is still in English)

- John M: Providers should have good feel for any language issues that may have arisen; Practitioners can give anecdotal information but unlikely to be good source of firm data

- Berry: ADNDRC may be a good source for insights relating to non-English speaking registrants

David M: Possible topic for WG later on: Should Complaint include at least a summary, in the language of the "offending" registration?

Zak: Provider feedback should be useful.

- Renee (responding to Zak): Per Rule 9, Complaint is in English, Notice is in registrant's language, Response can come either in English or as used in Notice; Examiner to be fluent both in English and language of Response; Examiner has discretion to decide which language to proceed in. If no Response is received, proceedings go forward in English. Examiner may ask for translations but no other obligation for Providers. Also, FORUM does not receive many enquiries from Respondents on language issues (though they don't keep statistics on this).

- Hector: as URS examiner, he issues decisions in Spanish as well, if the Complaint and Response are in Spanish.

- Renee: FORUM does as much research as it can to find out what language to use for the Notice (not always possible but they try). Suggest finding out from Practitioners who are also Examiners when, and on what basis, they decide to issue a decision in a language other than English.

- Zak: Feedback from Providers and Examiners will be useful.

- Brian B: Under UDRP it is not necessarily language of the Respondent, but language of the Registration Agreement. This may make it more straightforward.

- Renee/Zak: Under URS it is the "predominant language used in the registrant’s country or territory, as determined by the country(ies) listed in the Whois record when the Complaint is filed”

- Zak: Seems that the main difference between the URS and UDRP in respect of language, is that the UDRP complaint is supposed to be brought in the language of the registration agreement, whereas the URS requires it to be brought in English - period

AGREED ACTION: Providers may be best source for language issues (what they are doing, where they have seen problems); Sub Team can identify additional gaps once they receive feedback.

**(5) Section K: Abuse of Process**

- Zak: Is abuse of process actually considered in issuing a decision? Look at cases to determine. Secondly, can ask Practitioners for anecdotal feedback.

- Staff (responding to Zak): If Examiner finds that Complaint was filed to harass the registrant or in bad faith, Examiner to declare that Complaint was filed in bad faith and constitutes abuse of process

- Berry: Sub Team has already noted the need to review the 58 cases where Respondent prevailed, plus the 14 Appeals

- Brian B: Denial of Complaint does not mean there has been an abuse of process

- Renee: There is an abusive filing database (mandated by the Rules) shared by all Providers; does not appear to have been any cases of abuse. FORUM's set up is that it is alerted when an Examiner makes a finding of abuse, so they know to add it to the abuse case database (it has not happened to date at FORUM)

- Zak: From the 58 cases, there doesn't seem to be consistency in Examiners stating any findings regarding abuse (not obligatory to opine). How to discern if there are cases where such a finding should have been made - ask Practitioners?

- J. Scott: Look at the 58+14 cases first to make sure nothing was missed, other discussions may be too conclusory at this point (i.e. cannot conclude right now that there are cases where abuse should have been found)

- Zak: What about "How many cases was abuse considered in, or an express finding was made that there was not'.

AGREED ACTION: None (since there have not been any abuse cases to date); look to the Provider abuse case database. Further action may be necessary after completing review of the 58+14 cases already noted.

**(6) Section L: Education & Training**

- J. Scott: Look at Provider, registrar & ICANN websites to see what public information is provided

- Griffin: Agree with J. Scott at least as a starting point

AGREED ACTION: Per J. Scott's suggestions (also include as a question to Providers under Section M)

**(7) Section M: Providers**

- J. Scott: ICANN can be asked

- Staff: Discuss evaluation issue with Provider Sub Team; ask Providers what training they provide

- John M: For evaluation, can also ask the customers (i.e. parties' representatives)

AGREED ACTION: Per staff suggestions and agreed action under Section L

**(8) Section N: Alternatives**

- J. Scott: not sure there are any useful sources for this; more of a policy question (not data-driven)

- Zak/Diana/John M: agree with J. Scott

AGREED ACTION: None