

Proposed Questions	ADNDRC Response	FORUM Response	MFSD Response
Communications			
<p>Have you experienced difficulties in communicating with Registry Operators in respect of their role in any part of a URS proceeding? If yes, please elaborate.</p>	<p>Usually no, but as mentioned above, it takes some Registry Operators longer back to ADNDRC inquires.</p>	<p>FORUM does encounter some difficulty and delay in getting responses to verification and lock requests from some Registries likely because there are so few URS cases in comparison to UDRP.</p> <p>If the parties settle after commencement, there is some difficulty getting the Registry and the Registrar on the same page to implement a settlement which typically involves a transfer at the Registrar level.</p>	<p>Communications with Registry Operators are smooth, cordial and collaborative.</p> <p>In very few cases we faced the following difficulties:</p> <ol style="list-style-type: none"> 1. MFSD was appointed as URS Provider in December 2015. In 2016 some Registry Operators were not aware about MFSD's appointment as URS Provider and it was necessary to exchange several e-mails, before obtaining the requested actions (Lock / Suspension). After the start-up phase, this was not an issue any more. 2. Some Registry Operators communicate from e-mail addresses different from the contacts present in ICANN's repository. In that case, it is not possible to send them encrypted notifications signed with the PGP key. 3. In few cases we had to send reminder e-mails to obtain the activation of the URS Lock and in 1 case it was necessary to submit a report to ICANN for the lack of response from the Registry Operator to the Notice of Complaint (https://forms.icann.org/en/resources/compliance/registries/urs/form). 4. In few cases we had to send reminder e-mails to obtain the activation of the URS Suspension and in 2 cases it was necessary to submit a report to ICANN for the lack of implementation (suspension) by the Registry Operator (https://forms.icann.org/en/resources/compliance/registries/urs/form).
Fees			
<p>Do you have any opinion regarding the design and feasibility of a "loser pays" model that could levy additional costs against a losing party to a URS?</p>	<p>We are not against a loser pays model. However, a better escrow payment system might be able to be utilized by dispute resolution providers to better manage the loser pays feel model.</p>	<p>Yes, FORUM does not believe a loser pays model would work unless the Respondent pays upon filing a Response. The majority of URS cases already receive no response and a loser pays model would likely result in a further reduction in the number of responses received. There would be no economical way to collect from a non-appearing Respondent.</p>	<p>URS fees are relatively low and are wholly advanced by the Complainant (except for the case of Response to Complaint involving 15 or more domain names - Response Fee or Late Response - Re-examination Fee). Recovering URS fees in multiple jurisdictions through enforcement proceedings if the losing party (Respondent) does not pay voluntarily would be burdensome for the Parties (Complainant) and/or the URS Provider either in terms of time, costs and complexity. Moreover, some of the domain names are registered with privacy or proxy service without the possibility for the Complainant and the URS Provider to obtain underlying registration data of the registrant.</p> <p>Respondents usually do not file the Response to the Complaint and even if they file the Response they are not required to provide any banking (credit card) information (except for the case of filing Response to Complaint involving 15 or more domain names, but in that case the Rules already provide for a kind of "loser pays" model, i.e. the Response Fee is refunded to the prevailing party and the Re-examination Fee - non refundable). This is an additional difficulty for the Complainant and/or the URS Provider in recovering the URS fees if Respondent loses. On the other hand, making mandatory (as policy requirement) to provide credit card details when submitting a Response (cases involving less than 15 or more domain names) might be a deterrent to filing a Response.</p> <p>Even if it would be a very complex process the only solution for collecting the URS fees from the losing Respondents would be through the Registrars.</p>
Notice of Complaint and Locking of Domain			
<p>Please provide feedback regarding your experiences in getting the disputed domain name (s) locked. In particular, have you experienced any difficulties having the URS Lock activated within 24 hours after sending the request to Registry Operators?</p>	<p>Usually this is not a problem, but it definitely takes some Registry Operators longer than others to perform the lock step.</p>	<p>FORUM has experienced difficulty with having the lock activated within 24 hours. With the implementation of GDPR this is a larger concern.</p>	<p>In most cases the URS Lock is activated in a few hours from the notification of our Notice of Complaint to the Registry Operator. In few cases we had to send reminder e-mails to obtain the activation of the URS Lock within 24 hours from our communication and in 1 case it was necessary to submit a report to ICANN for the lack of response from the Registry Operator to the Notice of Complaint (https://forms.icann.org/en/resources/compliance/registries/urs/form). However, all issues were resolved shortly after the receipt of our reminder e-mails by the Registry Operators and after submitting the report to ICANN.</p>

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Language			
<p>Have you experienced any difficulties or issues with the current URS language requirements? What steps have you taken to comply with and implement the current requirements?</p>	<p>All communication with URS Parties, Registries, and Registrars are conducted in English. ADNDRC does not have a formal procedure of translating documents or communications to corresponding languages, but the case administrators are usually happy to answer questions from URS parties.</p> <p>At times, ADNDRC does receive inquiries, especially from the Respondent, regarding the language of the proceedings.</p>	<p>FORUM checks WHOIS information and information from the Registrar to obtain the physical location of the Respondent. Based on that information, FORUM researches what the dominant language is in Respondent's physical location in order to provide translations.</p> <p>FORUM translate all template documents.</p> <p>If there is a Response that comes in from a given region, FORUM appoints an Examiner that speaks the language of the Respondent. All the documents are prepared for that Examiner in the corresponding language.</p> <p>Many determinations on FORUM website are in the non English languages of the Respondents.</p>	<p>Communications to the Respondent, including the Notice of Complaint, Notice of default, and all emails, are translated to the language of the Respondent, in addition to English.</p>
Examiner Determination			
<p>What guidance have you formally or informally given to the Examiners?</p> <p>What is your understanding of the "guidelines" referred in URS Rule 13(c)? Are they referring to Provider's Supplemental Rules? If not, can you provide a copy of any alternative guidelines that you have developed?</p>	<p>ADNDRC has a template for Examiners and has all past Determinations made available online for Examiners to reference. When examiners log onto the ADNDRC case determination system, they will be directed to an Online Determination Form with basic guidelines for structuring an URS determination. However, ADNDRC does not restrain the way that the examiners would like to write their decision.</p> <p>Within seven calendar days of receiving a Determination, any Party may send a notice to ADNDRC and any other Parties, requesting the Examiner to correct any computational, clerical, or typographical errors in the Determination. Such corrections shall be given in writing to the Parties and become part of the Determinations. ADNDRC has not dealt with such cases.</p> <p>ADNDRC adheres with its very strict publication rules. Within 24 hours upon receipt of that Determination, ADNDRC makes the decision available online and to the Parties, the Registry, and the Registrar.</p> <p>After receiving Determinations from Examiners, ADNDRC determines whether the Determination complies with the URS Rule. If a particular Examiner's writing of Determination does not meet the standards, there usually will be an internal reference so that this particular Examiner would unlikely be appointed in future URS proceedings.</p> <p>Supplemental Rules: Article 9. Examiner Determination</p> <ol style="list-style-type: none"> 1. An Examiner shall make its Determination in writing and shall state the reasons upon which the Determination is based. The Determination shall be of a length that the Examiner deems appropriate and shall meet all the requirements set forth in Article 13 of the Rules. 2. The Examiner shall communicate its Determination to the Relevant Office of the Centre within three (3) Business Days of its appointment. In exceptional circumstances, the Relevant Office of the Centre may extend the time as required for the Examiner to communicate its Determination. 3. The Relevant Office of the Centre shall within 24 hours upon receipt of a Determination from the Examiner notify the Determination to the Parties, the Registrar, the Registry Operator, and ICANN, and publish the full Determination on the Centre's website according to Article 9 of the Procedure and Article 15 of the Rules. 	<p>FORUM has a template for Determinations through its portal.</p> <p>There are text boxes that are required to be filled out for the reasoning.</p> <p>Determinations are issued upon completion to the Parties and are available on the website immediately. All of the decisions on the Website can be full text searched.</p>	<p>Determinations are filed by the Examiner through his/her account at the online dispute management platform (in case of exceptional circumstances, e.g. technical problems, by e-mail).</p> <p>Examiners are provided with instructions on the URS elements and defenses and how to conduct the Examination of a URS proceeding -- references to URS Procedure and Rules are contained in the online Determination form.</p> <p>Determination shall meet the requirements of paragraphs 8 and 9 of URS Procedure and 13 and 15 of URS Rule and is of the length that the Examiner deems appropriate (no limit).</p> <p>Determination is transmitted to Registry (cc Registrar) with the specification of the remedy and the required actions to be taken by the Registry and to the Parties. After that the Determination is published on the MFSD Website.</p> <p>After receiving the confirmation from the Registry that the remedy is carried out, MFSD checks in the WHOIS data whether such action is reflected.</p> <p>Supplemental Rules: 13. Examiner Decisions Examiner decisions will meet the requirements set forth in Paragraphs 13 and 15 of the Rules and will be of a length that the Examiner deems appropriate.</p>

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<p>The URS Documents Sub Team has suggested that a Guide for URS Examiners be developed, to assist them with understanding the distinction between clear-cut and more difficult cases. Do you agree? If so, who should develop this guide – ICANN, each Provider separately, or should all Providers collaborate to develop a uniform guide?</p>	<p>We think a uniform Guide for URS Examiners should be developed. On that, all providers should collaborate to develop a uniform guideline together with ICANN.</p>	<p>FORUM believes that it may be difficult to explain the distinction between clear-cut and not clear-cut without providing examples. Examples then lead to the desire to find exact matches in fact patterns to the examples, which then may lead to undesired results. FORUM Examiners have been trained and believes that the Examiners on FORUM's roster (most of whom have been on the roster since the beginning of the URS) have the experience to know a clear-cut case when they see it. However, if it is concluded that a guide would be helpful, FORUM will be there to assist in its development, likely in collaboration with the other Providers.</p>	<p>Please see our response provided under the question above (row 97). We retain that Examiners selected on the basis of their qualification, language skills and thorough expertise in domain name disputes have sufficient experience to make the distinction between clear-cut and more difficult cases. However, we would be happy to collaborate with the other Providers to develop a uniform guide if that might be of assistance for the Examiners and the Parties and contribute to a more consistent case law.</p>
Remedies			
<p>Please provide feedback regarding any difficulties encountered in the implementation of the suspension remedy.</p>	<p>N/A.</p>	<p>FORUM does receive reports from successful Complainants regarding non-implementation. In those instances FORUM immediately contacts the Registry and requests implementation.</p>	<p>Usually no difficulties in the implementation of the suspension remedy. In few cases we had to send reminder e-mails to obtain the activation of the URS Suspension within 24 hours from our communication and in 2 cases it was necessary to submit a report to ICANN for the lack of implementation (URS Suspension) by the Registry Operator (https://forms.icann.org/en/resources/compliance/registries/urs/form).</p>