

## Questions for URS Practitioners

Introductory Note: The purpose of the following questions is to elicit useful information from those counsel who have filed or responded to a claim under ICANN's Uniform Rapid Suspension System ("URS") for use by the ICANN Rights Protection Mechanisms Working Group. The RPM WG has been tasked with reviewing the URS to determine what changes, if any, should be recommended to ICANN to improve the URS as an RPM. The purpose here is not to relitigate or critique any decision, attorney work product or stakeholder position, but to generally learn from those who have experienced the process through your observations from personal knowledge of the URS' perceived benefits and burdens and any compelling bases for change.

### **URS Practitioner Background Experience and Perspective**

1. *In how many URS proceedings have you been involved as Complainant or its representative?*

- A. 1 to 2
- B. 3 to 5
- C. 5 to 10
- D. 10 or more
- E. None

2. *In how many URS proceedings have you been involved as Respondent or its representative?*

- A. 1 to 2
- B. 3 to 5
- C. 5 to 10
- D. 10 or more
- E. None

3. *Overall, leaving aside the result of the proceeding, how was your experience with the process of a URS proceeding?*

- A. Extremely Positive
- B. Positive
- C. Neither positive nor negative
- D. Negative
- E. Extremely Negative

With respect to question 3 above, please indicate if you are:

- A. A Respondent or its representative
- B. A Complainant or its representative
- C. A representative of both Complainants and Respondents.

With respect to question 3 above, please indicate what URS provider you used:

\_\_\_\_\_.

### Procedural Issues

1. When involved as Complainant or its representative in a URS proceeding, were there any issues difficulties with delivering notice of the proceeding to the Respondent?

- A. Yes
- B. No
- C. Not applicable

If yes, briefly explain the issue: \_\_\_\_\_

2. When involved as Respondent or its representative in a URS proceeding did the Respondent experience any issues with receiving notice of the proceeding, not including a delay in the Respondent sending the notice to its representative?

- A. Yes
- B. No
- C. Not applicable

If yes, briefly explain the issue: \_\_\_\_\_

3. Have you filed or been involved in an appeal of a URS decision?

- A. Yes
- B. No

If yes, why? \_\_\_\_\_

4. If yes to question 6, and leaving aside the result of the proceeding, from the choices below how would you characterize your experience with the appeal process after a URS proceeding?

- A. Extremely Positive
- B. Positive
- C. Neither positive nor negative
- D. Negative
- E. Extremely Negative

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With respect to question 7 above, please indicate if you are:

- A. A Respondent or its representative
- B. A Complainant or its representative
- C. A representative of both Complainants and Respondents.

With respect to question 7 above, please indicate what URS provider you used:

5. Have you or a party adverse to you in a URS proceeding ever sought de novo review under Paragraph 6.4 of the URS Procedure.

- A. Yes, within the initial 6 months
- B. Yes, within a six month extension period
- C. No
- D. Not applicable

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6. If you answered yes to Question 5, and leaving aside the result of the proceeding, from your experience with de novo review under Paragraph 6.4 of the URS Procedure, do you believe this procedure should be retained, modified or removed?

- A. Yes, retained as is
- B. Yes, retained but modified
- C. No, should be removed
- D. No opinion

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7. Please provide any comments you wish to add in explanation of any of your answers to questions 3 through 9 above: \_\_\_\_\_.

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### **Substantive Issues**

1. Do you believe that URS dispute resolution providers should provide a resource similar to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions for the URS?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

2. In your URS proceeding(s) do you believe the Decision/Determination provided the reasons upon which the decision was based, as required by Section 13(b) of the URS Rules?

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<#>No

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

3. Do you believe that the URS is *primarily* being used for the types of cases for which it was intended, namely, clear cases of abuse?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

4. Have you encountered any problems with the implementation of the relief awarded following a URS decision?

- A. Yes
- B. No

If yes, please briefly describe: \_\_\_\_\_

5. Do you believe the relief provided by a URS proceeding is adequate?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

If your response to question 5 is D or E, how would you change it?  
\_\_\_\_\_

6. Should there 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?

- A. Yes, more guidance from the dispute resolution service provider
- B. Yes, from ICANN
- C. No, the guidance is already adequate
- D. No opinion

7. Based on your experience as a URS practitioner, is the standard of "clear and convincing evidence" for the burden of proof in a URS proceeding appropriate?

**Commented [MOU1]:** David McAuley: Someone could answer 'agree' and nonetheless believe it is also being used inappropriately. Wouldn't it help to phrase it 'generally being used' or 'primarily being used' or some such phrase?

- A. No, too high
- B. Appropriate
- C. No, too low
- D. No opinion

8. Based on your experience with the URS, should the standard for the burden of proof be modified?

A. Yes, it should be lowered – please explain the basis for your position:

B. No, it is adequate as is

C. Yes, it should be made higher – please explain the basis for your position:

D. No opinion

9. Please provide any comments you wish to add in explanation of any of your answers to questions 1 through 8 above: \_\_\_\_\_.

**Practical Issues**

1. ~~Do you believe the current mechanisms for proving use in a URS case are adequate?~~  
Do you believe that the submission of a declaration and a specimen of current use in commerce should be adequate evidence of use for a URS case?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

2. Do you believe that the submission of an SMD file from the Trademark Clearing House to demonstrate that ~~proof~~ evidence of use was filed with the TMCH is ~~is~~ should be adequate proof of use for a URS case? ▲

- A. Yes
- B. No

<sup>1</sup> "Specify the trademark(s) or service mark(s) on which the complaint is based and the goods or services with which the mark is used including evidence of use – which can be a declaration and a specimen of current use in commerce - submitted directly or by including a relevant SMD (Signed Mark Data) from the Trademark Clearinghouse;" Section 3(y). The Complaint, at: <http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf>; See also Section 1.2.6.1(a) and 8.1.2.1 at: <http://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf>

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Moved up [1]: <#>Yes, it should be lowered – please explain the basis for your position: ▲

**Commented [MOU2]:** Greg Shatan: Question 1 doesn't account for the fact that there are two mechanisms for proving use. There will be no way to distinguish between a practitioner who believes both methods are inadequate and a practitioner who believes one method is adequate and the other is inadequate. Both would have to answer "Disagree" or "Strongly Disagree." At the least, the options provided should allow for answers that cover the various options where one method is adequate and the other is not. However, there are too many combinations of levels of agreement on one and disagreement on the other, and which is the one you agree with, that it would be unwieldy to have the combination options each laid out separately. It would be far better to have one question about each type of use. **I suggest that Q1 be deleted and replaced with a question that allows the practitioner to respond separately regarding each type of evidence of use.** We already have a question about the SMD file but not one about submitting a declaration and a specimen (which is a problem in and of itself, in terms of survey design). Also, Question 1 also doesn't align with the text of the rules and procedures, which refer to "evidence of use" not "proof of use." As well, the Questions 1 and 2 are flawed — under the Rules and Procedures, both a declaration/specimen or an SMD file are adequate evidence of use. The question is whether they should be adequate evidence of use as set forth in the Rules and Procedures.

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3. Do you believe the filing fee for a URS is appropriate?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

If you answered D or E, should it be higher or lower, and why? Or, please suggest what you think is an appropriate fee: \_\_\_\_\_

4. Do you believe the response fee for a URS is appropriate?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

If you answered D or E, should it be higher or lower, and why? Or, please suggest what you think is an appropriate fee: \_\_\_\_\_

5. Do you believe there are adequate means for searching prior URS cases?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

6. Do you believe the existing word limitation for filings in a URS proceeding is appropriate?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

If you answered D or E, should it be higher or lower, and why? \_\_\_\_\_

7. Do you believe the existing time frames for submitting filings in a URS proceeding are appropriate?<sup>2</sup>

<sup>2</sup> These are: 14 days for a response (including a right to request 7 days extension), seeking de novo review (from default) for up to six months plus an option to request an additional 6 months, and filing an

Commented [MOU3]: From George Kirikos: shouldn't there be something with regards to the response fees, appeal fees and/or other fees, instead of just filing fees by complainants? For example, at NAF, the types of fees are on page 9 of their supplemental rules: <http://www.adrforum.com/resources/URS/URS%20Supplemental%20Rules.pdf>

Commented [MOU4]: From George Kirikos: shouldn't there be something with regards to the response fees, appeal fees and/or other fees, instead of just filing fees by complainants? For example, at NAF, the types of fees are on page 9 of their supplemental rules: <http://www.adrforum.com/resources/URS/URS%20Supplemental%20Rules.pdf>

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- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

If you answered D or E, should it be longer or shorter, and why? \_\_\_\_\_

8. Do you believe the existing limitations on the submission of evidence in a URS proceeding are appropriate?

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- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly Disagree

9. Please provide any comments you want to add to explain your answers to questions 1 through 7 above: \_\_\_\_\_

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**Other**

1. If you chose not to file a URS in a particular matter, what was the reason? Please choose from the following options:

- A. No remedy available for transfer of disputed domain name to prevailing complainant
- B. Procedural reasons such as word limitations in a complaint
- C. Time or cost reasons
- D. Burden of proof
- E. Other: please elaborate and if possible without violating confidentiality, privilege or attorney work product, specify the alternative action you did take: \_\_\_\_\_

2. Do you believe that the URS Process as it now exists is an effective rights protection mechanism?

- A. Strongly agree
- B. Agree
- C. Disagree

\_\_\_\_\_ [appeal for up to 14 days after default or a determination. See: The Procedure: http://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf](http://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf) and the [Rules: http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf](http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf).

D. Strongly Disagree

2. If the URS was available in all gTLDs, would you use it? Why or why not? \_\_\_\_\_

3. Please provide any comments you want to add to explain your answers to questions 1, 2 and 3 above: \_\_\_\_\_

4. Do you serve as a URS panelist?

A. Yes  
B. No

5. If yes, do you undertake a law firm-wide conflicts check to verify that neither you nor your law firm has any actual or potentially adverse conflict of interest to the complainant and/or respondent?

A. Yes  
B. No

If yes, please briefly describe the methods used to verify the absence of conflicts: \_\_\_\_\_

If yes, do you retain records of your search?

A. Yes  
B. No

6. Have you ever communicated with a third party regarding an ongoing URS dispute in which you were a panelist?

A. Yes  
B. No

If yes, please briefly explain the nature of such communications: \_\_\_\_\_