

I C A N N
POLICY FORUM

62

PANAMA CITY

25–28 June 2018

**Rights Protection Mechanisms (RPMS)
Policy Development Process
JUNE 2018**

Presentation from the Uniform Rapid Suspension (URS) Practitioners Sub Team

Status Update Presentation to the Working Group

Wednesday, 27 June 2018



Agenda

1

Current Status and
Next Steps

2

Results from URS
Practitioners Survey:
Issues Identified and
Possible Actions

Current Status & Next Steps

⦿ **Current Status:**

- Developed questions for URS practitioners;
- Administered a survey to a list of URS practitioners;
- Received and analyzed survey results;
- Identified suggested possible actions;
- Discussion with full Working Group at ICANN62.

⦿ **Next Steps:**

- Working Group to agree to possible actions and/or recommendations to incorporate in the Initial Report.

List of URS Practitioners

- Selected URS practitioners who had handled 5 cases or more;
- Final list was 34 practitioners;
- Forum assisted in administering the survey;
- Survey was open for ~3 weeks;
- There were two reminders;
- As of 14 June there were 14 responses.

Rauschhofer Rechtsanwälte of Wiesbaden, Germany
Nameshield of Angers, France.
Stobbs Julius E Stobbs of Cambridge
Bloomberg L.P. of New York, New York, USA.
The GigaLaw Firm, Douglas M Isenberg, Attorney at Law, LLC of Atlanta, Georgia, USA.
Cowan, Liebowitz & Latman, P.C. of New York, New York, USA.
Mayer Brown JSM
Marchais Associes Philippe MARTINI-BERTHON of Paris, France
David Taylor of Paris
McDermott Will & Emery LLP of Irvine, California, USA.
INSIDERS Mathieu Lamotte of Paris
IBM of Armonk, New York
Kelley Drye & Warren LLP of New York, New York,
Partridge IP Law P.C. Mark V.B. Partridge of Chicago, IL, USA
DOMAINOO Joanna Aknin of Paris, France
Fross Zelnick Lehrman & Zissu, P.C. Todd Martin of New York, NY,
Aaron B Newell of London, UK
Holland & Hart LLP Darin L. Brown of Boulder, CO
Kleinberg & Lerner, LLP Marshall A Lerner of Los Angeles, CA,
DLA Piper LLP (US) of Washington, District of Columbia, USA.
Faegre Baker Daniels, LLP Stephanie A. Gumm of Indianapolis, IN, USA
Beetz&Partner Patentanwaelte
CSC Digital Brand Services of Wilmington, DE
BARDEHLE PAGENBERG Pascal Boehner of München, Germany
Boehmert & Boehmert Lawfirm of Potsdam, Germany.
Baker McKenzie of London, United Kingdom.
Katten Muchin Rosenman LLP Jessica M Garrett
Dreyfus & associés Nathalie Dreyfus of Paris, France
HK2 Rechtsanwälte of Berlin, Germany.
John Berryhill of Ridley Park, Pennsylvania, USA.
Jaburg & Wilk, P.C. of Phoenix, Arizona
GED Testing Service LLC of Bloomington, Minnesota
Steven M Levy of Philadelphia, USA
William J Seiter of Santa Monica, CA, USA
Dennemeyer & Associates S.A Clémence Le Cointe of HOWALD, Luxembourg
Wolfram Group LLC Noah K Tilton of Champaign

Respondent Cases Handled

Of the 14 respondents:

- ⦿ 2 handled 3-5 cases = 6-10 cases
- ⦿ 5 handled 5-10 cases = 25-50 cases
- ⦿ 6 handled 10 or more cases = 60+ cases

Represents 91-120+ cases out of 827 total

ANSWER CHOICES	RESPONSES	
1 to 2	0.00%	0
3 to 5	14.29%	2
5 to 10	35.71%	5
10 or more	42.86%	6
None	7.14%	1
TOTAL		14

Issues Identified and Possible Actions

Substantive Issues, Question 4: *Have you encountered any problems with the implementation of the relief awarded following a URS decision?*

ANSWER CHOICES	RESPONSES	
Yes	33.33%	4
No	66.67%	8
TOTAL		12

Responses:

1. The relief awarded by the URS process is inadequate. In some cases, a losing Respondent is able to re-register a domain once it becomes available.
2. After the lock, the cybersquatters just renew the domain name.
3. Any problems with Chinese Registrar in order to implement the decision.
4. Registrars often do not respond to the request for renewal of the suspension.
5. Some registrars do not understand the process of paying for an additional year of suspension.

Issues Identified and Possible Actions, Cont.

Discussion:

- ⦿ Not a surprising response and probably also explains why not a huge a number of cases filed.
- ⦿ Possible procedural problem because registrars should be responding.
- ⦿ The issue on the Chinese registrar is that it is often very hard to get Chinese registrars to implement decisions appropriately. The registrars put up a number of what appear road blocks. Some issues in the UDRP for example, may involve PRC laws re .com registration, so not surprised that there would be implementation issues with URS relief.
- ⦿ Need to determine the issues concerning not implementing the suspension and not obeying the rule.

Issues Identified and Possible Actions, Cont.

Substantive Issues, Question 5: *Do you believe the relief provided by a URS proceeding is adequate?*

ANSWER CHOICES	RESPONSES	
Strongly agree	8.33%	1
Agree	25.00%	3
Neither agree nor disagree	0.00%	0
Disagree	58.33%	7
Strongly disagree	8.33%	1
TOTAL		12

Responses:

1. A winning Complainant should have the option of either a) transfer of the domain to Complainant or b) a right of first refusal to purchase the domain when it next becomes available.
2. Transfer or annulation of the domain name.
3. Allow for cancellation or transfer of domain names.
4. Include transfer as a remedy in the event of default.
5. A possible remedy should be the transfer of the domain name
6. Suspension is good, but the respondent can re-register.
7. After the lock, the cybersquatters just renew the domain name. It's turning out to be a worthless remedy.
8. There needs to be an established process for requesting suspension renewals. Often, when Registrars are contacted regarding renewal, the Registrars are unaware of the renewal option or simply does not reply.

Issues Identified and Possible Actions, Cont.

Discussion:

- ⦿ Highlight the second response and revisit at an appropriate time.
- ⦿ Regarding remedies, responses suggest that the relief is not adequate and something better is needed. Suggestions:
 - An out-and-out transfer to a winning party as opposed to suspension.
 - 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.
- ⦿ 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:
 - "a right of first refusal to purchase the domain when it next becomes available." and
 - "an established process for requesting suspension renewals".

Issues Identified and Possible Actions, Cont.

Discussion:

- ⊙ 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:
 - "a right of first refusal to purchase the domain when it next becomes available." and
 - "an established process for requesting suspension renewals".

Issues Identified and Possible Actions, Cont.

Practical Issues, Question 6: *Do you believe the existing word limitation for filings in a URS proceeding is appropriate?*

ANSWER CHOICES	RESPONSES	
Strongly agree	0.00%	0
Agree	41.67%	5
Neither agree nor disagree	25.00%	3
Disagree	33.33%	4
Strongly disagree	0.00%	0
TOTAL		12

Responses:

1. 500 words is arbitrary and often insufficient
2. Some cases need more explanations than others
3. Word limit for complaints should be kept low but raised to 1,000 to accommodate things like case citations
4. should be slightly increased

Issues Identified and Possible Actions, Cont.

Practical Issues, Question 8: *Do you believe the existing limitations on the submission of evidence in a URS proceeding are appropriate?*

ANSWER CHOICES	RESPONSES	
Strongly agree	8.33%	1
Agree	58.33%	7
Neither agree nor disagree	8.33%	1
Disagree	16.67%	2
Strongly disagree	8.33%	1
TOTAL		12

Responses:

1. Often exhibits are required to prove a point that can't be captured in 500 words.
2. Regarding submission of evidence, allowance should be made for evidence of cybersquatting beyond what may be shown in a resolving website. E.g., evidence of other bad faith activities such as phishing emails should be more easily accommodated in the URS process.
3. Need clearer way to submit additional evidence.

Issues Identified and Possible Actions, Cont.

Discussion:

- ⦿ Seems like important procedural changes.
- ⦿ Should not be particularly objectionable but would be easy fixes.
- ⦿ Procedural changes could include:
 - Increasing the word limit to 1000 words;
 - allowing exhibits; and
 - accommodations of additional evidence of bad faith.

Thank You and Questions