Staff Proposed Introductory Text: *You are only being asked to formulate responses insofar as you have the knowledge or ability to do so as professional URS service Providers. The RPM PDP WG would be grateful to receive your responses by [insert suggested deadline], as the WG aims to discuss your responses during the ICANN62 Meeting. Thank you for your time and kind cooperation.*

Consolidated Questions to URS Providers (26 April 2018)

Deleted: 1

Communications

1. What percentage, if any, of communications to Complainants and Registrants are done in ways other than electronically/via the Internet? What alternative means are utilized?

Comment [AL1]: **Staff Comment:** This question may require the Provider to review party submissions.

2. Which of the two cited methods in the URS Rules 2(a)(ii) do you use? What mechanism(s) do you have in place in either method to track actual delivery to or receipt by the Respondent?

    - *URS Rules 2(a): When forwarding a Complaint, including any annexes, electronically to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:*

        (i) sending the Notice of Complaint to all email, postal-mail and facsimile addresses shown in the domain name's registration data in the Whois database for the registered domain-name holder, the technical contact, and the administrative contact, as well as to any email addresses for the Respondent provided by the Complainant; and

        (ii) *providing the Complaint, including any annexes, in electronic form, either via email to email addresses mentioned in (i) above, or via an email link to an online platform requiring users to create an account.*

3. Do you conform to the communications timeline in accordance with URS Rules 2(g)?

    - *URS Rules 2(g): Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Rule 2(f).*

    - *URS Rules 2(f): Except as otherwise provided in these Rules, or decided by an Examiner, all communications provided for under these Rules shall be deemed to have been made: (i) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or, where applicable; (ii) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or (iii) if by postal or courier service, on the date marked on the receipt.*

4. Do you receive notifications from Registry Operators via email regarding the completion of URS actions on a domain name?

5. Do you receive notification via email from Registry Operators:

    A) If a URS Locked or URS Suspended domain name has been either deleted or purged?

    B) If the registration of a URS Locked or URS Suspended domain name has expired?

C) If a URS Suspended domain name has been renewed for an additional year?

6. Do you receive information from ICANN with regard to the point of contact of the Back End Registry Operator appointed by Registry Operators?

7. 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.

The Complaint

1. Do you accept Complaints that don't contain all the elements required in the URS Rules 3(b)? Please provide your online forms for Complaint filing and identify any deviation from URS Rules 3(b).

2. Do you ask for any additional information beyond what is required in the URS Rules? If so, please provide the relevant provision of your Supplemental Rules.

3. A) (To FORUM) How does the FORUM handle the submission (through its online Complaint filing site) of a relevant SMD proof of use from the TMCH which is expressly provided for in the URS Rules 3(b)(v)?

   B) (To ADNDRC) Does ADNDRC's electronic Complaint form (Form C_URS) also allow the uploading of .smd files in the same manner as MFSD?

   In answering this question please note the following:

   - *An SMD is typically a file with the extension .smd and such format is not expressly provided for under the FORUM's Annex A. By comparison, MFSD's Supplementary Rules 3 expressly specifies acceptance of .smd file as an annex.*

   - *URS Rules 3(b)(v) states: 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.*

4. What other circumstances -- not included in the non-exclusive list in the URS Procedure 1.2.6.3 -- have led your Examiners to determine that the domain name was registered and is being used in bad faith? Have there been cases where your Examiners have not expressly cited a circumstance as the basis of their finding of demonstrable bad faith registration and use? Here is the relevant text:

   - *URS Procedure 1.2.6.3: that the domain was registered and is being used in bad faith. A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:*
     a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
     b. Registrant has registered the domain name in order to prevent the trademark holder or

Comment [AL2]: Renee Fossen (Forum): This question requires the Provider to review decisions and potentially, party submissions to draw its own inferences as to what led the Examiner to make a Determination.

Ivett Paulovics (MFSD): Agree with Renee's comments, as such information is not retained separately.

Staff Comment: Rebecca Tushnet's research yields may provide answer or partial answer to this question.

service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

5. (To ADNDRC) Has any Complainant expressed any difficulty with regard to the 500 words limit set for the Complaint?

6. (To ADNDRC and FORUM) Do you check to determine whether a domain that is cited in a new URS Complaint is already subject to an open and active URS or UDRP proceeding? If so, how do you find this information?

7. Do you check to determine whether a domain name subject to a URS Complaint is also involved in an active court case in the event that a Respondent does not provide a Response? If so, how do you find this information?

8. Have you accepted any Complaints that multiple related companies brought against a single domain name Registrant?

9. Have you accepted any Complaints that were filed against multiple related Registrants in the same filing?

10. How many Complaints have you accepted that listed fifteen or more disputed domain names registered by the same Registrant?

11. (To FORUM and MFSD) How many Complaints have been dismissed as a direct result of the incorrect domain name Registrant being named in a Complaint, regardless of whether the domain name(s) registered were subject to a privacy or proxy service? Are you able to determine whether the mistake was due to Complainant error, or a WHOIS inaccuracy? If so, please share with us your analysis.

Comment [AL3]: Staff Comment: Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL4]: Staff Comment: Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL5]: Staff Comment: Rebecca Tushnet's research yields may provide answer to this question.

Fees

1. 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?

2. Among the Complaints you received that each listed fifteen or more disputed domain names registered by the same Registrant, how many Respondents filed a Response and paid the required Response Fee?

3. Have you received feedback on whether your fees structure has been a major deterrent to the filing of Complaints or Responses?

Comment [AL6]: Staff Comment: Rebecca Tushnet's research yields may provide (partial) answer to this question.

Administrative Review

1. (To FORUM) Has there been any issue with regard to meeting the two (2) business days requirement of conducting the Administrative Review?

Notice of Complaint and Locking of Domain

1. 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?
2. Is there a way to know whether a Registrant has actually received the hard and electronic copy of the Notice of Complaint from you? Do you utilize any means to confirm receipt?
3. Have you received any notification of delayed communications to the Registrant?
4. (To FORUM and MFSD) Have you received any notification of non-delivery of communications? If Respondents did not receive notifications on the first attempt, how could they know of the Complaint? What steps do you take if you receive notification of non-delivery?
5. Do you have a view on the meaning of "a normal domain name lifecycle" (this phrase is used in Registrar Requirement 2 in the URS Technical Requirements)?
    - *Registrar Requirement 2: Registrar MUST follow the normal domain name lifecycle for a URS Locked domain name. If the domain name registrant elects to renew, elected to auto-renew or restore the domain name registration, Registrar MAY accept such renewal and/or restoration (if the Registry Operator implements RGP).*

The Response

1. (To FORUM and MFSD) Have your Examiners received any Responses alleging an abusive Complaint? If so, how did the Examiners act in determining the validity of the allegations in those cases? What decisions were rendered on that claim?
2. Is this statement contained in the URS Rules 5(a)(v) included in your Respondent forms?
    - *URS Rules 5(v): Conclude with the following statement followed by the signature (in any electronic format) of the Respondent or its authorized representative:*

      "Respondent agrees that its claims and remedies concerning the dispute, or the dispute resolution, shall be solely against the Complainant and waives all such claims and remedies against (a) the Provider and Examiner, except in the case of deliberate wrongdoing, (b) the Registrar, (c) the Registry Operator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents. Respondent certifies that the information contained in this Response is, to the best of Respondent's knowledge, complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.";

Comment [AL7]: Staff Comment: This question may require the Provider to review party submissions and in some instances may call for Provider to make certain assumptions.

Comment [AL8]: Staff Comment: Staff suggest to delete this question, as the answer is published on icann.org as a "fact": https://archive.icann.org/en/registrars/gtld-lifecycle.jpg. Also, since the question is originated from URS Technical Requirements for Registries and Registrars, they would be more appropriate target for the inquiry, should this question be asked.

Comment [AL9]: Renee Fossen (Forum): The second question in Question 1 requires the review decisions and potentially party submissions. It may also require the Provider to draw its own inferences as to what led the examiner to make the determination.

Ivett Paulovics (MFSD): Agree with Renee's comments, as such information is not retained separately.

Staff Comment: Rebecca Tushnet's research yields may provide (partial) answer to this question.

3. Have you received any request for extension of time to respond?

   A) If yes, how many/what percentage of the Respondents asked for an extension of time?

   B) How many of these request were received after Default (14 Calendar Days), or after Determination (no more than 30 Calendar Days)?

4. Have you ever extended the period of time for the filing of a response by a Respondent under exceptional cases per URS Rules 5(e)? If yes, what have you considered as "exceptional cases" in those instances?

   - *URS Rules 5(e): At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider. Requests for an extension of time shall comply with the Provider's Supplemental Rules.*

5. Have you received any affirmative claims for relief by the Respondent for reasons beyond an allegation of abusive Complaint? If you have, what was the basis of the claim(s)?

6. Have you conducted a compliance check for a Respondent for factors beyond the two items stated URS Rules 5(g)?

   - *URS Rules 5(g): The Provider's compliance check for a Response shall at least consist of: (1) ascertaining the Response has been filed in a language acceptable under the Rules for that case; and (2) checking for payment of required fees.*

7. (To FORUM and MFSD) Who determines whether a Response is non-compliant – you or the appointed Examiner?

8. How many/what percentage of Responses have been determined to be non-compliant?

9. How many Responses were filed but were not accompanied by payment of any required fees?

10. Can you identify any case in which the Response was determined non-compliant for reasons other than the non-payment of the fee? If any, what was the reason(s)?

11. Have you received feedback from Respondents that the time period to respond to a URS Complaint is too short?

12. Have you received any late Responses?

13. (To ADNDRC and MFSD) A) Has any Respondent expressed any difficulty with regard to the 2,500 words limit set for the Response?

    B) Do you believe that the balance of the word limits for the Complaint (500 words) and the Response (2,500 words) is reasonable? If not, what adjusted balance would you suggest?

14. Have your Examiners received Responses that contain facts that sought to refute the claim of bad faith registration by setting out circumstances other than those included in URS Procedure 5.7? Were such facts persuasive and, if so, should additional grounds be added to Procedure 5.7?

Comment [AL10]: Staff Comment: This question may require the Provider to review party submissions.

Comment [AL11]: Staff Comment: This question may require the Provider to review party submissions, and speak to the thought process of Examiners.

Comment [AL12]: Staff Comment: This question may require the Provider to review decisions and party submissions.

Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL13]: Staff Comment: This question may require the Provider to review party submissions.

Comment [AL14]: George Kirikos: Conceivably, if all we're looking for is facts/data from the provider, rather than their opinion on policy changes, part of this might already be captured implicitly through Q3 on page 5; although, some respondents might have suffered through a short deadline, without asking for an extension.

Deleted: Do you believe the deadline for filing Responses is long enough? Please provide your rationale. If not, what time period would you support, keeping in mind that the URS is supposed to operate with rapidity?

Comment [AL15]: Staff Comment: Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL16]: Renee Fossen (Forum): This question requires the review decisions and responses in addition to requiring Forum to determine what an Examiner found persuasive.

Ivett Paulovics (MFSD): Agree with Renee's comments, as such information is not retained separately.

Staff Comment: Rebecca Tushnet's research yields may provide answer or partial answer to this question.

- *URS Procedure 5.7: The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:*
  5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
  5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
  5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

15. (To FORUM) What is the purpose of FORUM Supplemental Rules 5(d)(ii)? In any cases in which this Rule has been employed:
    A) Has any other named Respondent sought to be separated out from the case?
    B) Have any Registrants asked to be dismissed from the case on the basis of not having registered or being in control of the domain? If so, have your Examiners granted or denied such requests?

    - *FORUM Supplemental Rules 5(d): Multiple Respondents.*
      (ii) If you are named in a case that contains domain names not registered or controlled by you, you may request that the Examiner dismiss the case as to any domain names not owned by you. It is up to the Examiner's discretion to make a factual finding as to whether or not the evidence supports your claim.

Comment [AL17]: Staff Comment: This question may require the Provider to review decisions and party submissions.

Rebecca Tushnet's research yields may provide answer to this question.

Stay of the Administrative Proceeding

1. Have you received any joint requests for a Stay of the Administrative Proceeding? If yes, how many cases were reinstated or otherwise dismissed upon expiration of the Stay?
2. Have you received any requests for a Stay after the appointment of the Examiner? If so, how was this handled?

Comment [AL18]: Staff Comment: This question may require the Provider to review decisions and party submissions.

Rebecca Tushnet's research yields may provide answer to this question.

Examiner

1. What factors should we consider in regard to evaluation of your processes and practices pertaining to Examiners' selection and training?
2. (To ADNDRC and FORUM) Why haven't the qualifications of some of your Examiners been published?
3. (To MFSD) What is your conflict of interest policy for Examiners? How do you make the Examiners aware of their obligation to be impartial and independent?
4. (To MFSD) How do your Examiners confirm their impartiality and independence?
5. Can you provide a copy of any oath taken by the Examiners to affirm that they will be neutral and independent? Is the oath signed by the Examiners?

Comment [AL19]: Staff Comment: Paul Keating's suggested questions have been covered here:
-Do you take steps to ensure against bias or conflict of interest when selecting a panelist for any URS disputes (y.n)
-If yes, please briefly explain the steps taken

Forum and ADNDRC have already provided responses to these questions.

6. Do you undertake any independent inquiries to adequately satisfy yourself of your Examiners' impartiality and independence? Or do you rely solely upon the oath or declaration made by each Examiner?

7. (To FORUM and MFSD) Has any of your Examiners voluntarily disclosed any conflict of interest? If not, then what action was taken upon discovery of any conflict? If a conflict was disclosed, did the Examiner do this before and/or during the case proceeding?

8. Has there been any incidence of allegations of partiality or non-independence or bias of an Examiner being raised by any party to an URS proceeding either during the initial Determination process, or as ground for a review or Appeal? If so, how was the conflict of interest subsequently evaluated?

9. (To FORUM and MFSD) When a conflict of interest has been confirmed, what remedial actions have been taken? Is any Examiner who failed to disclose a proven conflict permitted to preside in subsequent cases?

10. (To FORUM) Why do you have a requirement that any request to challenge the selection of an Examiner must be filed within one (1) Business Day under FORUM Supplemental Rules 10(d)? Has any party filed a challenge after the end of the required time period? Have Respondents alleged any difficulties in meeting this deadline for filing a challenge?

    - *FORUM Supplemental Rules 10(d): A request to challenge must be filed in writing with the FORUM within one (1) Business Day of the date of receipt of the notice of the selection.*

11. (To ADNDRC) Has ADNDRC experienced any instance where an Examiner refused or failed to act per your Supplemental Rules 8.4? What motivated ADNDRC to adopt Rule 8.4?

    - *ADNDRC Supplemental Rules 8.4: Where an Examiner has been appointed but before rendering a Determination the appointed Examiner fails to act or refuses to act, the Relevant Office of the Centre may appoint a substitute Examiner upon request by the Parties or in its discretion.*

12. Has any Examiner ever been removed from the pool of Examiners for any reason? If so, why? What behaviors would disqualify/bar an Examiner from future cases?

13. Do you permit one to continue being an Examiner if one represented a Complainant in a URS or UDRP proceeding where there was finding of abusive Complaint or Reverse Domain Name Hijacking?

14. How large is the pool of URS Examiners? Are the Examiners randomly assigned, rotated, or assigned using some other procedure (please specify)?

    Providers' responses:

    ADNDRC: **180 Examiners --** Assignment of Examiners depends on the nature of the dispute, the availability of the Examiner (particularly important for URS proceedings considering its rapid nature), identity of the Parties, and nationality of the Parties (e.g. if an American trademark owner files a Complaint against a Chinese domain name holder, ADNDRC will not appoint an Examiner from either the US or China, but an Examiner with a neutral nationality).

Comment [AL20]: Staff Comment: This question may require the Provider to review case details, if such data is not retained separately.

Comment [AL21]: Staff Comment: This question may require the Provider to review decisions and party submissions.

Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL22]: Staff Comment: This question may require the Provider to review party submissions.

Comment [AL23]: Staff Comment: This question may require the Provider to review party submissions.

Comment [AL24]: George Kirikos: It seems to have already been responded to partially, based on the earlier wording of the question.

Staff Comment: This question has been partially answered (at least). Please see responses below.

Also, Paul Keating's suggested questions have been covered here:
-Do you assign URS disputes to panelists on a random basis (y/n)?
-If no please briefly describe the process undertaken to select panelists in any given URS dispute.

Assignment also depends on Examiners' independence and impartiality, their past experiences working with either URS Party, and the relevant legal background.

FORUM: 122 Examiners -- Rotation with 4 cases assigned at a time, with exceptions made for Examiner's availability and language considerations.

MFSD: 23 Examiners -- Assignment of Examiners is based on a case by case analysis. Examiner's language skills (in accordance with the language of the Response) are the most important factor. Another consideration is the availability of the Examiner due to the strict time frame of the proceeding.

15. In selecting Examiners, do you have policies in place that are aimed at developing a roaster which includes a balance of lawyers who focus on trademark enforcement and those who represent Respondents? Would you say these policies have been effective in generating a balance of Examiners who represent both side?

Language

1. Do you think it would be feasible to mandate sending Registry and Registrar notices in the same language(s)?
    - *Background: The URS Documents Sub Team has noted that the current practice seems to be that Registry notices are sent in English while Registrar notices are sent in English as well as (where applicable) the language of the affected registrant.*
2. Are all of your Examiners fluent in English?
3. Are all of your assigned Examiners fluent in the non-English language of the Respondents?
4. Can you provide any information as to whether, and in how many instances, it has been demonstrated that a Respondent had the capability of understanding English in addition to their primary language?

Further Statement

1. Have you acted in conformance with URS Rules 10 by not allowing an Examiner to request further statements or documents from either of the Parties?
    - *URS Rules 10: In order to ensure expedience of the proceeding, the Examiner may not request further statements or documents from either of the Parties.*

Withdrawal

1. (To FORUM) Do you have any explanation of the seemingly inconsistency between the use of the phrase “without prejudice” in 12(a), versus “with or without prejudice” used in 12(b) of the FORUM Supplemental Rules?

Comment [AL25]: Staff Comment: An alternative question might be: “What steps, if any, do you take to ensure that your Examiners have a diversity of relevant experience, e.g. have experience representing Respondents as well as Complainants?”

Brian Beckham: The Rules, and URS, respectively provide that examiners should be (a) “impartial and independent” and (b) “should have demonstrable relevant legal background, such as in trademark law”. Perhaps it would make more sense to reframe your question by reference to those previously-agreed provisions?

Paul Keating: I do not honestly see any inconsistency between the question and the standards you noted in your email. If you do can you perhaps explain your position further? I have submitted substantially similar questions which include an inquiry as to how the panelists are actually selected but the ADR provider. I know this is close to home for you given your position with WIPO. However, I ask that you try to put that aside so that the inquiries can be made.

Georges Nahitchevansky: My concern with compound questions like this is that they have underlying assumptions that we are not even sure exist (for example that there is a possible imbalance) which make them loaded questions. Moreover, as they are bulky they will likely not generate much relevant information. It seems to me that such an inquiry should be more neutral, focused on what the URS rules specifically require of providers in appointing panelists and inquire as to whether those rules are being followed.

Comment [AL26]: Staff Comment: If such information is not retained separately, this question may require the Provider to review Examiners’ bios/resumes and use other means to verify their English fluency level, and in some instances may call for Provider to make certain assumptions.

Comment [AL27]: Staff Comment: This question may require the Provider to review Examiners’ bios/resumes, decisions, and party responses, and in some instances may call for Provider to make certain assumptions.

Rebecca Tushnet’s research yields may provide answer to this question.

Comment [AL28]: Renee Fossen (Forum): This question requires the Provider to review decisions and potentially responses and in some instances may call for Provider to make certain assumptions.

Rebecca Tushnet’s research yields may provide (partial) answer to this question.

- *FORUM Supplemental Rules 12(a): Prior to the first issued Determination, the Complainant may withdraw the Complaint without prejudice. A withdrawal request must be Submitted to the FORUM via the online portal. Upon the FORUM's receipt of the withdrawal request, the Complaint will be withdrawn without prejudice and the administrative proceeding will be terminated.*
- *FORUM Supplemental Rules 12(b): Prior to the first issued Determination, the Complaint may be withdrawn pursuant to a joint request made by both parties. A withdrawal request must be Submitted to the FORUM via the online portal, must be consented to by both parties, and may request dismissal either with or without prejudice.*

Default

1. With reference to URS Procedure 6.2, how do you assist in ensuring that the Registrant is actually prohibited from changing content on their site during the Default period?
    - *URS Procedure 6.2: In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.*
2. Has any of your Examiners drawn inferences per URS Rules 12(f) when a party is not in compliance with URS Rules, Procedures, and Supplemental Rules, in the absence of exceptional circumstances? If so, what inferences were made?
    - *URS Rules 12(f): If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules, the URS Procedure or the Provider's Supplemental Rules, the Examiner shall draw such inferences therefrom as it considers appropriate.*

Examiner Determination

1. To your knowledge, has any Examiner rendered his/her Determination based upon wordmark factors beyond the three elements enumerated in URS Procedure 8.1.2?
    - *URS Procedure 8.1: The standards that the qualified Examiner shall apply when rendering its Determination are whether: 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed;*
2. Do you know of any situation in which the nominal registrant changed after the Complaint was filed? If so, how was it handled?
3. Noting URS Rules 13(a) provide that an Examiner may "make a Determination …in accordance with …any rules and principles of law that it deems applicable", are you aware of instances where an Examiner has invoked substantive criteria beyond those articulated in the URS?

Comment [AL29]: WG Comment: Sub Team to consider whether this question should still be kept, as Providers do not have the capability to prevent changing the content of a site.

Comment [AL30]: Renee Fossen (Forum): This question requires the Provider to review decisions and speak to the thought process of Examiners.

Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL31]: Staff Comment: This question may require the Provider to review decisions and speak to the thought process of Examiners.

Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL32]: Staff Comment: This question may require the Provider to review decisions and party submissions.

Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL33]: Renee Fossen: This question requires the Provider to review decisions and in some instances requests that the Provider speak to the thought process of Examiners.

Staff Comment: Rebecca Tushnet's research yields may provide answer to this question.

4. How do you compel your Examiners to comply with your templates in writing their Determinations or guidelines? Do you intervene in an administrative capacity to ensure your Examiners provide the most comprehensive written Determinations they possibly can? How do you strive to standardize the completeness or quality of your Examiners' written Determinations beyond the use of your online Determination template or form?

5. 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?

6. How do your Examiners apply the "clear and convincing evidence" standard of proof required in URS cases?

7. How do you ensure that Examiners actually provide some explanation of the facts and reasoning in support of their Determinations? If you do not do so, please explain why.

8. Among your Examiner's Determinations, how many do not provide the reasons on which the Determination is based but simply state that the URS elements have been established?

9. How often has URS Rules 13(d) been invoked? What factors have been cited by Examiners in making that determination?

    - *URS Rules 13(d): If after considering the submissions the Examiner finds that the Complaint was brought in bad faith or was brought primarily to harass the domain name holder, the Examiner shall declare in its Determination that the Complaint was brought in bad faith and constitutes an abuse of the URS proceeding.*

10. To what extent do you supply Examiners with information, analysis, or research concerning a Complaint or Response that is not to be found within the Complaint or Response itself? Does the Provider provide drafts or exemplars to the Examiners?

Providers' Responses

ADNDRC: 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. 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. 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. After receiving Determinations from Examiners, ADNDRC determines whether the Determination complies with the URS Rules. 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.

Comment [AL34]: Renee Fossen (Forum): This question requires the Provider to review decisions and in some instances requests that the Provider speak to the thought process of Examiners.

Staff Comment: Rebecca Tushnet's research yields may provide (partial) answer to this question.

Comment [AL35]: WG Comment: Sub Team to consider deleting, or rephrasing this question to avoid duplication.

Renee Fossen (Forum): This question requires the Provider to review decisions and in some instances requests that the Provider speak to the thought process of Examiners.

Staff Comment: Rebecca Tushnet's research yields may provide answer to this question.

Comment [AL36]: Staff Comment: This question may require the Provider to review decisions and to speak to the thought process of Examiners.

Rebecca Tushnet's research yields may provide answer or partial answer to this question.

Comment [AL37]: Staff Comment: Examiners may have at least partially answered this question. Please see responses below the proposed question. This question may also overlap with Q4, Q6, and Q7 under Examiner Determination. Staff suggest to delete this question.

George Kirikos: the "drafts" and "exemplars" language came from Rebecca's suggestion in the WebEx chat today; I hope I used it appropriately, although I'm welcome to friendly amendments; you'll recall that the "ghost-writing" term came from Paul Keating's comment to the article at: http://www.circleid.com/posts/naf_caught_revising_past_udrp_decisions/

As I noted in the Webex chatroom and orally today, there had been instances in the past where the same gibberish/nonsense appeared verbatim across multiple decisions (in the UDRP) from different panelists http://www.circleid.com/posts/20100423_naf_copying_pasting_nonsense_into_udrp_decisions/

So, I hope the above helps members of this PDP understand that this issue isn't "coming out nowhere".

FORUM: FORUM has a template for Determinations through its portal. There are text boxes that are required to be filled out for the reasoning. 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.

MFSD: 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). 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. Determination shall meet the requirements of paragraphs 8 and 9 of URS Procedure and 13 and 15 of URS Rules and is of the length that the Examiner deems appropriate (no limit). 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. After receiving the confirmation from the Registry that the remedy is carried out, MFSD checks in the WHOIS data whether such action is reflected.

Remedies

1. Please provide feedback regarding any difficulties encountered in the implementation of the suspension remedy.
2. How many/what percentage of successful Complainants have requested extension of the registration period for one additional year?
3. Do you know of any cases in which the Registry Operators refused to offer the option for URS Complainant to extend a URS Suspended domain name's registration for an additional year?
4. During the one additional year of URS Suspension available to the successful Complainant, the domain name must remain registered to the original Registrant. Should the registration information be altered in such circumstances?
5. Have you received any notices or queries from any party regarding procedural and/or implementation anomalies or mistakes following the issuance of a Determination (e.g., resolution of a domain name to particular Name Servers following issuance of a Determination)? If yes, what action did you take on receiving the notice or to resolving the query?

Determinations and Publication

1. What is your Examiners' practice with regard to the publication of an Appeal Determination?
2. Do you agree with the policy embodied in the URS Rules 15(f)?
    - *URS Rules 15(f): Determinations related to the same domain names and/or parties, but not part of the same case, need not be linked in any way on the Provider's website.*
3. Has any Determination that your Examiners have issued concerned the same domain name(s) at issue in a prior case? If so, have you linked the cases? Has any Final Determination been made

Comment [AL38]: Staff Comment: This question may require the Provider to review decisions and party submissions.

Rebecca Tushnet's research yields may provide answer or partial answer to this question.

Comment [AL39]: Staff Comment: Staff suggest to ask a more general question to let Providers explain instances where the Registry Operator, the Registrar, or both parties may cause issues regarding the extension of URS Suspension:

"Has any successful Complaint encountered difficulties renewing a URS suspended domain name for one additional year? If so, what happened? And how was it handled?"

Comment [AL40]: Staff Comment: This question may require the Provider to review party submissions.

Comment [AL41]: Staff Comment: Rebecca Tushnet's research yields may provide (partial) answer to this question.

by the same Examiner who made the initial Default Determination in the same case? If so, how many times has this occurred?

4. (To FORUM) What is the purpose of FORUM Supplemental Rules 15(b)? Has any party requested to include or exclude certain information from a publicly available Determination? If so, how did the FORUM act on such request?

    - *FORUM Supplemental Rules 15(b): All requests pursuant regarding what information a party wants included or excluded from a publicly available Determination must be made in a timely, compliant Complaint or Response.*

Settlement or Other Grounds for Termination

1. How many "unnecessary or impossible" incidents, per URS Rules 16(b), have been recorded by you?

    - *URS Rules 16(b): If, before the Examiner's Determination is made, it becomes unnecessary or impossible to continue the URS proceeding for any reason, the Examiner shall terminate the proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Examiner.*

Effect of Court Proceedings

1. To your knowledge, have there been instances of legal proceedings relating to URS proceedings and, if so, what effect did such instance(s) have?

Appeal

1. How do you implement URS Rules 19(b)? Do you conduct an administrative check on the data of any additional evidence sought to be introduced? How do you determine that the Appellant in seeking to introduce new evidence, is in fact, providing evidence that is material to the Determination and clearly pre-dates the filing of the Complaint?

    - *URS Rules 19(b): Appellant shall have a limited right to introduce new admissible evidence that is material to the Determination subject to payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.*

2. (To FORUM) How often/in what percentage of Appeals was a three-member Appeal Panel requested? Which party made the request?

3. (To FORUM) In appointing Examiners to the three-member Appeal Panel, did you encounter any difficulties appointing Examiners from each party's list to the Panel?

Exclusion of Liability

1. Have you or any of your Examiners been sued in regard to the issuance of a URS Determination?

Comment [AL42]: Staff Comment: This question may require the Provider to review decisions, and in some instances may call for Provider to make certain assumptions.

Rebecca Tushnet's research yields may provide answer or partial answer to this question.

Comment [AL43]: Staff Comment: This question may require the Provider to review decisions and party submissions.

Rebecca Tushnet's research yields may provide (partial) answer to this question.

Deleted: How often, if ever, was a related legal proceeding initiated prior to or during a URS proceeding? What was the effect on the URS proceeding?

Comment [AL45]: Staff Comment: This question may require the Provider to review decisions and in some instances requests that the Provider speak to the thought process of Examiners.

Rebecca Tushnet's research yields may provide (partial) answer or partial answer to this question.

Comment [AL46]: Staff Comment: Rebecca Tushnet's research yields may provide answer or partial answer to this question.

Others

1. Have you undertaken any internal reviews of your Supplemental Rules? If yes, how often? Have you discerned a need to tighten or provide greater clarity to your Supplemental Rules?

2. Do you have any difficulties complying with the URS technical requirements (e.g., utilizing PGP Keys, etc.)?

3. Do you maintain any regular communications with ICANN? If yes, did ICANN request any information or data from you via such communications? What other areas of the URS do such communications touch on? Please provide details.

4. (To FORUM) Did any party submit an individual file in excess 10MB? Did any party submit electronic case documents in excess of 10MB, in the aggregate, per domain name?

5. Do you think it would be feasible to add a requirement that Respondents who abuse the process should be sanctioned? What would be an indication of Respondent abuse, beyond bad faith registration and use of a domain name?

Comment [AL47]: Staff Comment: This question may require the Provider to review correspondence with ICANN, if such information was not retained separately.

Deleted: what areas of the URS do such communications touch on?Has ICANN ever requested any information or data from you since entering into your MoU?

Comment [AL48]: Staff Comment: This question may require the Provider to review party submissions.

Comment [AL49]: WG Comment: Remove this question if no suggestion for rephrasing is put forward.

Cynthia King: We could ask if Providers support sanctions against abusers of the process whether Complainant or Respondent