Follow-up on Action Items for Providers Sub Team

22 August 2018

The table consolidates all the action items for the Providers Sub Team, as recorded in the "Super Consolidated URS Topics Table (draft as of 7 August 2018)". For consistency and ease of reference, the table is organized using the same subheadings as in the "Super Consolidated URS Topics Table".

Most of the action items are for the Providers Sub Team to follow up with URS Providers to seek responses to additional questions and/or request additional materials. Both FORUM and MFSD responded by the deadline of Monday, 20 August. ADNDRC submitted response on Wednesday, 22 August. ICANN GDD also provided response to a few questions.

Staff have summarized the responses received in column 2 to assist the Sub Team in your review of the additional information/materials. The aim here is to identify issues and propose suggestions for the consideration of the full WG. The proposed suggestions can be recorded in column 3.

For the full responses from the Providers and additional details, please refer to the "Responses & Notes - URS Provider Questions" spreadsheet, where you can find the providers' full responses to the follow-up questions sent by the Providers Sub Team in the second tab.

Action Item	Response Summary & Material	Proposed Suggestion to the WG
A. THE COMPLAINT		
4. Administrative Review Sub Team to ask **ADNDRC** to explain why they accept Complaints that do not contain all the elements required in URS Rule 3(b)	ADNDRC: • Do not accept Complaints that are missing URS Rule 3(b) elements • Case managers check necessary information in accordance with relevant URS rules • Pay special attention to language compliance of complaints.	
4. Administrative Review	ADNDRC:	

Sub Team to obtain details from **ADNDRC** and **FORUM** on their administrative check to determine whether a domain name is already subject to an open and active URS/UDRP proceeding or court case	● At least check whether the same complaint as already been filed with another ADNDRC office FORUM: ● Most Complainants are well informed and abide by the rules ● If there is a filing from a new Complainant, or from a Complainant that typically files with another Provider, FORUM's case coordinators search the other Provider's websites to determine if a case involving the same domain name is pending ● To FORUM's knowledge, no disputed domain name was already subject to an open and active URS/UDRP proceeding or court case	
6. Amending the Complaint in light of GDPR/Temp Spec Sub Team to ask **ADNDRC** and **FORUM** whether they accept a URS Complaint if the Complainant does not provide the contract details of the Respondent ("Doe Complaint")	ADNDRC: ● Yes, accept "Joe Doe" Complaints since the implementation of GDPR ● Have not accepted any new URS complaint since GDPR implementation FORUM: ● Yes. From May 25 to August 15 FORUM received 44 URS Complaints, several of which were "Doe Complaints" ● If the Registrant information is masked, FORUM is not yet able to add it to the Complaint	

	● The Registry is rarely able to provide all of the Registrant information ● Only a handful of Registrars provide the complete contact details of Registrants on URS privacy shield cases ● A complete technical redesign of the URS filing process is required in order to manually amend the Complaint ● Even if FORUM was able to manually amend the Complaint, there is rarely any additional information to amend it with ● All Registrant information obtained from the Registry or the Registrar is provided to the Complainant upon request and to the Examiner appointed to the case ● Other GDPR impact: Registries are inconsistent with respect to how they would like to either receive verification requests or how FORUM should receive the verification from them (e.g., drop box, zip file with password, web based access). The inconsistency adds a significant amount of time to case handling	
6. Amending the Complaint in light of GDPR/Temp Spec Sub Team to follow up with **MFSD** to request data/evidence that support their claim about the difficulty in filing a “Doe Complaint”	MFSD: ● Less than 10 Complainants expressed that: ○ They would hardly file "Doe Complaints", OR ○ They would delay filing URS	

	Complaints until they can access to the Whois data prior to the filing, OR ○ They had rather file UDRP, because the UDRP Complaint might be amended ● The major part of the Complainants filing with MFSD are from European civil law systems, where the common law concept of "Doe Complaint" is unknown	
7. SMD file Sub Team to ask **all three Providers** to confirm whether their Examiners are able to obtain the jurisdiction information of the trademark/category of goods and services. Based on their response, WG to determine whether to propose an operational fix; alternatively is there another way to ensure Examiners can obtain this trademark information?	ADNDRC: ● ADNDRC Examiners have not relayed any difficulties of obtaining jurisdiction information of the trademark and category of goods and services FORUM: ● SMD files are permitted as Proof of Use evidence and can be uploaded as part of FORUM's online filing process ● SMD files are not required as evidence for Proof of Use MFSD: ● If any SMD file is submitted with the Complaint, it is transmitted to the Examiner together with the case file ● Once the SMD file is submitted, MFSD also verifies that it has not been revoked (SMD Revocation List)	
8. Other topics	MFSD:	

Sub Team to follow up with **MFSD** to request data/evidence to support their claim regarding certain factors being possible deterrents to filing a URS Complaint	• Statement is based on informal feedbacks of Complainants / their authorized representatives • There is objective data that the URS disputes are less-used than UDRP, rendering the conclusion that the limited applicability and the remedy are the main reason for that	
B. NOTICE		
2. Effect on Registry Operator Sub Team to follow up with **FORUM** and ask why GDPR may make the activation of URS Lock more difficult.	FORUM: • As Registries struggle with how to handle the implications of GDPR, FORUM has experienced delay in obtaining verification details. • A small number of Registries do not respond within in the required 24 hours.	
C. RESPONSE		
2. Other issues relating to Responses (other than issues relating to Defenses), e.g. Default procedures Sub Team to review **FORUM**'s Appendix B and **MFSD**'s Checklist used for the Administrative Review of the Response and consider whether further deliberation is needed	FORUM: • FORUM's Appendix B MFSD: • MFSD's Checklist used for the Administrative Review of the Response	

E. DEFENSES		
While the following action items are for the WG, the Providers Sub Team is likely to be asked to provide input: ● WG to further examine the divergent practice and requirements of Providers with regard to Examiners' providing reasoning in support of their Determinations; ● WG to consider whether all providers should give similar types/forms of guidance to their Examiners	ADNDRC: ● ADNDRC Determination Guideline FORUM: ● FORUM Default Determination Template ● FORUM Final Determination Template ● FORUM Appeal Determination Template MFSD: ● MFSD Determination Form	
F. REMEDIES		
4. Other topics Sub Team to solicit input from **ICANN GDD** and **Registry Operators** with regard to the HSTS-preloaded domain suspension issue and the potential GDPR impact on Providers' ability to check the completion of URS actions by Registry Operators	Registry Operators: Timing to send the inquiry TBD in view of Sunrise & Claims surveys that are about to be launched GDD: ● ICANN is aware of the challenges related to HSTS-preloaded domain suspension and is working on alternatives to support TLS and other technologies in this service ● Since nameserver/domain status data is not personal data, URS providers can check the status of this in the public Whois ● URS providers can also visit the	

	webpage associated with the domain which should redirect to a webpage that mentions that the domain name has been suspended because of a URS Complaint ADNDRC, FORUM & MFSD: ● All three Providers request Registry Operator to change the URS suspended domain's servers to point to their DNS servers to ensure it resolves to the suspension page (ADNDRC example)	
J. LANGUAGE ISSUES		
Sub Team to ask **ADNDRC** how their Examiners' language skills are used in the URS proceedings where the Respondents are not English speakers (if any)? And ask ADNDRC how their Examiners handled the situation (if any) where a Respondent did not have the capability of understanding English	ADNDRC: ● All our rendered URS decisions are in English ● Most of ADNDRC URS Examiners (who are often also our UDRP panelists) speak Chinese or other Asian languages in addition to English. These skills have not been used in our URS proceedings but are often used in our UDRP proceedings ● Has not encountered a situation in URS proceedings that the Respondent did not have the capability of understanding English	
Sub Team to ask **MFSD** for a direct response whether they think it would be feasible to mandate sending Registry and Registrar notices in the same language(s)	MFSD: ● No. It would be burdensome (in terms of costs and time) for Providers. (same opinion as ADNDRC	

	and FORUM)	
L. EDUCATION & TRAINING		
Sub Team to review the Notice of Complaint and Providers' online forms/instructions before considering whether any recommendations should be made ● Sub Team to request **all three Providers** to provide a copy of the Notice of Complaint they send to the Respondent ● Sub Team to ask **ADNDRC** to provide a copy of their Response Form and Appeal Form	ADNDRC: ● ADNDRC Complaint Form ● ADNDRC Response Form ● ADNDRC Appeal Form ● ADNDRC Notice of Complaint FORUM: ● FORUM Complaint Form ● FORUM Response Form ● FORUM Appeal Form ● FORUM Notice of Complaint: The Notice of Complaint is sent in English and in the primary language used in the Registrant's physical location based on the Whois information MFSD: ● MFSD Complaint Form ● MFSD Response Form ● MFSD Appeal Form ● MFSD Notice of Complaint: The Notice of Complaint is sent in English and translated into the predominant language used in the Registrant's country or territory, as determined by the country listed in the Whois; a Model Response is also sent to the Respondent in such language	

M. URS PROVIDERS		
1. Evaluation of URS Providers and their respective processes Sub Team to ask **ADNDRC** to elaborate on their panel selection processes	ADNDRC: ● Non-Invited Candidates: ○ Interested candidate can contact the ADNDRC Secretariat office or any of the four offices with a detailed CV ○ ADNDRC Panel Selection Committee, including the chairman of ADNDRC, for their consideration and evaluation ○ Section criteria: ■ substantial arbitration and/or intellectual property experience ■ knowledge in the field of information technology and computing including without limitation the use of e-mail ■ an established and recognized international reputation ■ not been found guilty of misconduct by a court or disciplinary tribunal which calls into question the candidate's ability to act as an Administrative Panelist ■ not reached the age limit of 75 years old ■ make available two references in support of the application ■ Attend a one-day seminar approved by the Selection Committee ○ The Selection Committee in its	

	discretion may look at other factors and waive any or all of the above criteria ● Invited Candidates: ○ The ADNDRC committee in its discretion can invite eminent people of astute knowledge and vast experience in the field of domain name disputes for empanelment	
1. Evaluation of URS Providers and their respective processes Sub Team/WG to examine **MFSD** dispute no. 8422F178 e-leclerc.paris & no. 429EC571	Original question: ● Has any of your Examiners drawn inferences per URS Rule 12(f) when a party is not in compliance with URS Rules, Procedures, and Supplemental Rules, in the absence of exceptional circumstances Comment from Brian Beckham: ● This looks to be fairly standard language as to an Examiner drawing an inference, for whatever worth.	
1. Evaluation of URS Providers and their respective processes Sub Team to ask **ADNDRC** to provide details in order to understand whether ADNDRC has been out of compliance with technical requirements	ADNDRC: ● ADNDRC website was under maintenance due to which we were facing difficulties in complying with the URS technical requirements ● Now that the website is up and running, the URS technical requirements are complied with	
1. Evaluation of URS Providers and their respective processes	ADNDRC: ● Example 1 ● Example 2	

Sub Team to ask **ADNDRC** to provide details on the information or data that ICANN requested from them via their regular communications		
1. Evaluation of URS Providers and their respective processes Sub Team to ask **all three Providers** to provide specific examples of their Examiner training and education programs/materials, to assist the WG to determine whether further deliberation is needed	ADNDRC: ● Examiner Training Example FORUM: ● Examiner Training Example MFSD: ● Examiner Training Example 1 ● Examiner Training Example 2 ● Examiner Training Example 3 ● Examiner Training Example 4 (the seminar held on 22 May 2017 during INTA Barcelona was open for everyone: out of 20 attendees 3 were Examiners)	
2. Conflict of interest Sub Team to ask **ADNDRC** to confirm whether any of their Examiners voluntarily disclosed any conflict of interest	ADNDRC: ● No	