

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 has not yet responded as of 02:00 UTC 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)	No response from ADNDRC	
4. Administrative Review Sub Team to obtain details from ADNDRC and	No response from ADNDRC FORUM:	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
<p>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</p>	<ul style="list-style-type: none"> ● 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 	
<p>6. Amending the Complaint in light of GDPR/Temp Spec</p> <p>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”)</p>	<p>No response from ADNDRC</p> <p>FORUM:</p> <ul style="list-style-type: none"> ● 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 	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
	<p>to manually amend the Complaint</p> <ul style="list-style-type: none"> ● 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 	
<p>6. Amending the Complaint in light of GDPR/Temp Spec</p> <p>Sub Team to follow up with MFSD to request data/evidence that support their claim about the difficulty in filing a “Doe Complaint”</p>	<p>MFSD:</p> <ul style="list-style-type: none"> ● Less than 10 Complainants expressed that: <ul style="list-style-type: none"> ○ 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 	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
	<ul style="list-style-type: none"> 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 	
<p>7. SMD file</p> <p>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?</p>	<p>No response from ADNDRC</p> <p>FORUM:</p> <ul style="list-style-type: none"> 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 <p>MFSD:</p> <ul style="list-style-type: none"> 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) 	
<p>8. Other topics</p> <p>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</p>	<p>MFSD:</p> <ul style="list-style-type: none"> 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 	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
B. NOTICE		
<p>2. Effect on Registry Operator</p> <p>Sub Team to follow up with FORUM and ask why GDPR may make the activation of URS Lock more difficult.</p>	<p>FORUM:</p> <ul style="list-style-type: none"> 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		
<p>2. Other issues relating to Responses (other than issues relating to Defenses), e.g. Default procedures</p> <p>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</p>	<p>FORUM:</p> <ul style="list-style-type: none"> FORUM's Appendix B <p>MFSD:</p> <ul style="list-style-type: none"> MFSD's Checklist used for the Administrative Review of the Response 	
E. DEFENSES		
<p>While the following action items are for the WG, the Providers Sub Team is likely to be asked to provide input:</p> <ul style="list-style-type: none"> WG to further examine the divergent practice and requirements of Providers 	<p>No response from ADNDRC regarding request to provide its Determination Guideline</p> <p>FORUM:</p> <ul style="list-style-type: none"> FORUM Default Determination 	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
<p>with regard to Examiners' providing reasoning in support of their Determinations;</p> <ul style="list-style-type: none"> WG to consider whether all providers should give similar types/forms of guidance to their Examiners 	<ul style="list-style-type: none"> Template FORUM Final Determination Template FORUM Appeal Determination Template <p>MFSD:</p> <ul style="list-style-type: none"> MFSD Determination Form 	
F. REMEDIES		
<p>4. Other topics</p> <p>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</p>	<p>Registry Operators: Timing to send the inquiry TBD in view of Sunrise & Claims surveys that are about to be launched</p> <p>GDD:</p> <ul style="list-style-type: none"> 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 	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
	<ul style="list-style-type: none"> ○ Both FORUM and MFSD 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 did not respond to this question 	
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	No response from ADNDRC	
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: <ul style="list-style-type: none"> ● 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 request all three Providers to provide a copy of the Notice of Complaint they send to the Respondent	No response from ADNDRC FORUM:	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
	<ul style="list-style-type: none"> ● 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 <p>MFSD:</p> <ul style="list-style-type: none"> ● 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 	
Sub Team to ask ADNDRC to provide a copy of their Response Form and Appeal Form	No response from ADNDRC	
Sub Team to review the Notice of Complaint and Providers’ online forms/instructions before considering whether any recommendations should be made	<p>ADNDRC:</p> <ul style="list-style-type: none"> ● ADNDRC Complaint Form <p>FORUM:</p> <ul style="list-style-type: none"> ● Forum Appendix A (Complaint) ● Forum Appendix B (Response) ● Forum Appendix D (Appeal) ● FORUM Notice of Complaint <p>MFSD:</p>	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
	<ul style="list-style-type: none"> ● MFSD Complaint Form ● MFSD Response Form ● MFSD Appeal Form ● MFSD Notice of Complaint 	
M. URS PROVIDERS		
<p>1. Evaluation of URS Providers and their respective processes</p> <p>Sub Team to ask ADNDRC to elaborate on their panel selection processes</p>	No response from ADNDRC	
<p>1. Evaluation of URS Providers and their respective processes</p> <p>Sub Team/WG to examine MFSD dispute no. 8422F178 e-leclerc.paris & no. 429EC571</p>	<p>Original question:</p> <ul style="list-style-type: none"> ● 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 <p>Comment from Brian Beckham:</p> <ul style="list-style-type: none"> ● This looks to be fairly standard language as to an Examiner drawing an inference, for whatever worth. 	
<p>1. Evaluation of URS Providers and their respective processes</p> <p>Sub Team to ask ADNDRC to provide details in order to understand whether ADNDRC has</p>	No response from ADNDRC	

Action Item	Response Summary & Material	Proposed Suggestion to the WG
<p>been out of compliance with technical requirements</p>		
<p>1. Evaluation of URS Providers and their respective processes</p> <p>Sub Team to ask ADNDRC to provide details on the information or data that ICANN requested from them via their regular communications</p>	<p>No response from ADNDRC</p>	
<p>1. Evaluation of URS Providers and their respective processes</p> <p>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</p>	<p>No response from ADNDRC</p> <p>FORUM:</p> <ul style="list-style-type: none"> ● Examiner Training Example <p>MFSD:</p> <ul style="list-style-type: none"> ● 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) 	
<p>2. Conflict of interest</p> <p>Sub Team to ask ADNDRC to confirm whether any of their Examiners voluntarily disclosed any conflict of interest</p>	<p>No response from ADNDRC</p>	