

RPM SubTeam URS for Providers Attendance and AC Chat – 23 August 2018 at 12:00 UTC

Attendance:

Phil Corwin
Susan Payne
Justine Chew
Michael Karanicolas

No apology

Staff : Ariel Liang, Julie Hedlund, Nathalie Peregrine

AC Chat :

Nathalie Peregrine:Dear all, welcome to the RPM Sub Team for URS Providers call on Thursday 23 August 2018 at 12:00 UTC

Nathalie Peregrine:Agenda Wiki: <https://community.icann.org/x/WxudpBQ>

Susan Payne:hi, is it possible to do audio through the adobe room?

Nathalie Peregrine:It's enabled Susan, do you see it?

Susan Payne:thanks Nathalie

Susan Payne:I think we thought that this might be a misinterpretation of the Q - now corrected so nothing to be done I think

Ariel Liang:<https://community.icann.org/download/attachments/79436564/MFSD-Check%20List-Post%20GDPR.pdf?version=1&modificationDate=1528731844000&api=v2>

Susan Payne:@Phil I think they are saying that people in Europe are less aware and understanding of the concept of a doe complaint so it doesnt occur to them

Susan Payne:so maybe some education

Justine Chew:MFSD's practice of verifying that a submitted SMD file has not been revoked is interesting.

Susan Payne:se p14 of the Forum doc Colin circ'd - requires TM Cert to be uploaded

Justine Chew:URS Rules r.3(b)(v) Specify the trademark(s) or service mark(s) on which the complaint is based and the goods and services with which the mark is used including evidence of use-- which can be a declaration and a specimen of current user in commerce -- submitted directly or by including a relevant SMD from the TMCH

Michael Karanicolas:The ANDDRC guidelines don't appear to contain any consideration of defenses

Susan Payne:well mthey don't really seem to be guidelines!

Susan Payne:agree Phil that the existing proposal for minimum standards is one we'd support too

Justine Chew:One that applies across the board, yes.

Susan Payne:oh well yes Valideus would but I was imaginging this Sub would too

Michael Karanicolas:thats fine

Michael Karanicolas:FORUM templates also don't seem to have any consideration of defenses...

Michael Karanicolas:I think it's UN languages but would be interested in verifying

Michael Karanicolas:"(b) The Notice of Complaint to the Respondent shall be transmitted in English and shall be translated by the Provider into the predominant language used in the registrant's country or territory, as determined by the country(ies) listed in the Whois record when the Complaint is filed."

Michael Karanicolas:9. Language of Proceedings The URS Procedure Paragraph 4.2 specifies the languages in which the Notice of Complaint shall be transmitted. (a) The Complaint shall be submitted in English.(b) The Response may be provided in English, or in one of the languages used for the Notice of Complaint.10(c) The Examiner appointed shall be fluent in English and in the language of the Response

and will determine in which language to issue its Determination, in its sole discretion.(d) In the absence of a Response, the language of the Determination shall be English.(e) The Provider is not responsible for translating any documents other than the Notice of Complaint.

Susan Payne:Procedure 4.2 The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the Registrant's country or territory.

Justine Chew:They check the WHOIS on registrant location

Justine Chew:I don't recall us asking about translation of complaint.

Susan Payne:thanks Ariel. but that's a breach of the rules

Justine Chew:Except for the Notice of Complaint, no?

Ariel Liang:ADNDRC said they don't translate the Notice of Complaint either

Michael Karanicolas:Does there need to be some sort of auditing to catch this going forward?

Susan Payne:@Michael - yes ICANN should check providers comply

Michael Karanicolas:Or, more generally - about ignoring procedures

Susan Payne:ADNDRC process looks pretty positive

Susan Payne:agree

Susan Payne:ah, ok thanks

Justine Chew:What is the concern here?

Ariel Liang:(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

Susan Payne:this is what MFSD said before Yes. In Default Determinations Examiners concluded that: "Respondent's default does not automatically result in a decision in favor of the Complainant. Although, the Examiner may draw appropriate inferences from a Respondent's default, Paragraph 12 of the URS Rules requires the Examiner to review the Complaint for a prima facie case, including complete and appropriate evidence [...] The Examiner finds that in this case there are no such exceptional circumstances. Consequently, failure on the part of the Respondent to file a response to the Complaint permits an inference that the Complainant's reasonable allegations are true. It may also permit the Examiner to infer that the Respondent does not deny the facts that the Complainant asserted" (e.g. Dispute no. 8422F178 e-leclerc.paris; Dispute no. 429EC571 reinhausen.international).

Susan Payne:I think we are just meant to review those cases to make sure we aren't uncomfortable with them

Justine Chew:Still don't understand what the concern here is. I don't see an issue with Examiner being allowed to draw inferences from a Party's non-compliance to any provision or requirements under the Rules/Procedures

Michael Karanicolas:I think the issue is to make sure the burden of proof remains firmly on the complainant

Susan Payne:I think it is just that they gave us some examples of where this had happened so for completeness we should review

Susan Payne:old comment

Susan Payne:thanks Ariel, sounds good

Michael Karanicolas:thanks all

Susan Payne:thanks all

Susan Payne:)