

Suggested List of Issues for Discussion - URS Providers Survey

The suggested list below is developed based on staff’s observation and understanding of the Providers’ Sub Team review of the Providers Survey results. The list contains issues identified by the Sub Team for further discussion and as requested by the Sub Team, additional issues identified by staff based on the survey results. Findings/recommendations that appear suitable for presentation to the full Working Group are highlighted in **green**, and staff questions for the Sub Team have been highlighted in **yellow**.

The issues and recommendations have been categorized using the same subheadings as in the “Consolidated URS Discussion Document” previously agreed by the full Working Group. Staff anticipates that the “Consolidated URS Discussion Document” will remain the frame of reference for Working Group deliberations following each of the Sub Teams’ reports.

For the full responses from the Providers and additional details, please refer to the "[Responses & Notes - URS Provider Questions](#)" spreadsheet.

A. THE COMPLAINT

GDPR ISSUE				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
Row 14: Do you accept Complaints that do not contain all the elements required in URS Rule 3(b)? Please provide your online forms for Complaint filing and identify any deviation from URS Rule 3(b).	<ul style="list-style-type: none"> ADNDRC accepts Complaints that do not contain all the elements required in URS Rule 3(b) MFSD accepts “Doe Complaint”. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to ask ADNDRC to explain why they accept Complaints that do not contain all the elements required in URS Rule 3(b). 	<ul style="list-style-type: none"> For instance, ADNDRC’s Complaint Form does not ask the telefax numbers of the Complainant; it is not mandatory for the Complainant to fill out the trademark information details. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team/WG to discuss whether URS Rule 3(b) needs to be amended in light of GDPR and “Doe Complaint”. Sub Team to follow up with MFSD to request

<p>Row 28: <i>Have you received feedback on whether your fees structure has been a major deterrent to the filing of Complaints or Responses?</i></p>		<ul style="list-style-type: none"> • 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”). • WG to discuss whether ICANN should enforce the rules to ensure that ADNDRC only accepts Complaint that contain all the elements required in the URS Rule 3(b)? 	<ul style="list-style-type: none"> • MFSD indicates that the Complainants would hardly file “Doe Complaint”. The lack of access to registration data makes it difficult for the Complaint to meet the strict burden of proof of clear and convincing evidence. • MFSD suggests amending the URS Procedure 3.3 in order to enable the Complainant to modify the Complaint within 2-3 days from the disclosure of the full registration data by the URS Provider. 	<p>data/evidence that support their claim about the difficulty in filing “Doe Complaint”.</p> <ul style="list-style-type: none"> • Sub Team/WG to consider whether any deliberation on MFSD’s suggested amendment to the URS Procedure 3.3 is needed.
<p>Row 24: <i>How many Complaints have been dismissed as a direct result of the incorrect domain name Registrant being named in the Complaint, regardless of whether the domain name(s) registered were subject to a privacy or</i></p>			<ul style="list-style-type: none"> • WHOIS information is automatically pulled into FORUM’s Complaint Form once Complainant enters the domain name to prevent Complainant error. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> • Sub Team to consider whether the full WG needs to consider whether changes may be needed to Provider’s operational rules.

<p><i>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.</i></p>				
SMD FILE				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 16: <i>A) How does 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 URS Rule 3(b)(v)? Specifically, the RPM WG understands that the applicable categories of goods and services relating to the trademark is encoded in the SMD file. Are you able to access and read this encoded information? What part(s) of the information in the SMD file are made available to Examiners, Complainants and</i></p>	<ul style="list-style-type: none"> • Most of the data in the SMD file is difficult to read and remains encoded. 	<p style="background-color: #90EE90;">RECOMMENDATION:</p> <ul style="list-style-type: none"> • Sub Team to ask all Providers to confirm whether their Examiners are able to obtain the jurisdiction information of the trademark/category of goods and services. 		

<p><i>Respondents for the URS proceeding?</i></p> <p><i>B) Does ADNDRC's electronic Complaint form (Form C_URS) also allow the uploading of SMD files in the same manner as MFSD?</i></p>				
WORD LIMITATION				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 18: <i>Has any Complainant expressed any difficulty with regard to the 500-word limit set for the Complaint?</i></p>	<ul style="list-style-type: none"> Providers believe the balance of the word limits for the Complaint and the Response is reasonable. 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Providers' feedback seem to indicate the current word limit works well. Unless the WG/other Sub Teams believe otherwise, there does not appear to be a need for further deliberations on this point.
ADMINISTRATIVE CHECK				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 19: <i>Do you check to determine whether a domain that is cited in a new URS Complaint is already subject to an open</i></p>	<ul style="list-style-type: none"> Providers rely heavily on information provided by the Parties. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to ask the ADNDRC how they conduct cross-checks to determine whether 		

<p><i>and active URS or UDRP proceeding? If so, how do you find this information?</i></p>	<ul style="list-style-type: none"> In several jurisdictions, Providers are unable to search or track information about active court cases related to the URS proceedings. 	<p>a domain name is already subject to an open and active URS or UDRP proceeding.</p>		
<p>Row 20: <i>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?</i></p>		<ul style="list-style-type: none"> Sub Team to ask FORUM what triggers their suspicion that a domain name is subject to a pending URS or UDRP case. 		
<p>Row 120: <i>To your knowledge, have there been instances of legal proceedings relating to URS proceedings and, if so, what effect did such instance(s) have?</i></p>				
DETERRENCE TO FILING COMPLAINTS				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 28: <i>Have you received feedback on whether your fees structure has been a major deterrent to the filing of Complaints or Responses?</i></p>			<p>MFSD indicates the following factors are deterrent to filing URS Complaints:</p> <ul style="list-style-type: none"> limited applicability of the URS (not a consensus policy); 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to follow up with MFSD to request data/evidence to support their claim in order to determine whether further

			<ul style="list-style-type: none"> the remedy available in the URS; successful complainant cannot own, control, use, or transfer the domain domain name suspended through a URS; strict burden of proof. 	deliberation on these points is needed.
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B. THE NOTICE OF COMPLAINT

DELIVERY				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p><i>Row 4: Please provide us with information regarding the means by which you communicate with complainants and respondents, including relevant provisions of your Supplemental Rules.</i></p>	<ul style="list-style-type: none"> ADNDRC only sends the Notice of Complaint to Respondents via emails and does not use the other two means (i.e., fax, physical mail) indicated in the URS Rules. URS Rules only require actual notice, so ADNDRC's method may not be 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> WG to discuss whether changes may be needed to Provider (especially ADNDRC)'s operational rules to comply with URS Rule 2(a). 	<ul style="list-style-type: none"> ADNDRC indicates they have not received any complaint regarding not receiving notice. Their system has been designed in a way that has ensured the compliance. 	<p>QUESTION:</p> <ul style="list-style-type: none"> Based on Providers' response with regard to non-delivery of communications and notices, does the Sub Team believe any operational change is needed?
<p><i>Row 5: Please explain why ADNDRC rely solely on email as the mode for issuing a Notice Complaint? In your view, is this communications</i></p>				

<p>method in compliance with the URS Rule Clause 2(a)(i) and Procedure Clause 4.3?</p>	<p>non-compliant, if it achieves notice by email.</p>			
<p>Row 35: 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 notifications of non-delivery?</p>	<ul style="list-style-type: none"> FORUM and MFSD reported that their mail, fax, and email to the Respondent were not delivered sometimes. Non-delivery is caused by the incorrect contact details provided by the Respondent, recorded in WHOIS, and confirmed by the Registry Operator. Providers are unable to use courier services to deliver mail to P.O.box addresses. 			
GDPR ISSUE				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 7: Which of the two cited methods in URS Rule 2(a) do you use to deliver the Notice of Complaint, including both the hard and electronic</p>	<ul style="list-style-type: none"> Providers reference WHOIS data in order to communicate with, as well as send the Notice of Complaint and the Notice of 			<p style="background-color: #90ee90; margin: 0;">RECOMMENDATION:</p> <ul style="list-style-type: none"> WG to deliberate on the communications challenge due to the impact of GDPR and consider potential

<p><i>copy? What mechanism(s) do you have in place in either method to track actual delivery to or receipt by the Respondent? Do you utilize any means to confirm receipt?</i></p>	<p>Default to the Respondents.</p> <ul style="list-style-type: none"> • Providers also use Registrant’s contact information provided by the Complainants, Registry Operators and Registrars, and information shown on Registrants’ websites. • If the Registrar does not communicate any underlying contact information of Registrant when the privacy/proxy service is used, Providers would reference WHOIS. • There are potential difficulties for Providers to comply with the URS Rules & Procedure due to the impact of GDPR. 			<p>policy and operational recommendations.</p>
<p>Row 33: <i>Please provide feedback regarding your experiences in getting the disputed domain name(s)</i></p>			<ul style="list-style-type: none"> • FORUM expresses concern that GDPR may make the 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> • Sub Team to follow up with FORUM and ask why.

<p><i>locked. In particular, have you experienced any difficulties having the URS Lock activated within 24 hours after sending the request to Registry Operators?</i></p>			<p>activation of URS Lock more difficult.</p>	
REGISTRY OPERATOR ISSUE				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 9: <i>Do you receive notifications from Registry Operators via email regarding the completion of URS actions on a domain name?</i></p>	<p>While Providers' communications with Registry Operators generally work well, some clerical issues concerning Registries include:</p> <ul style="list-style-type: none"> • Using email addresses different from the contacts in ICANN's repository; 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> • Sub Team/WG to contact Registry Operators about the clerical issues. - Timing TBD in view of Sunrise & Claims surveys that are about to be launched.
<p>Row 12: <i>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.</i></p>	<ul style="list-style-type: none"> • Unaware of MFSD's appointment as URS Provider; • Slow to respond to inquiries from Providers; • Delay sending notifications to Providers regarding 			<ul style="list-style-type: none"> • Based on input received from Registry Operators, WG to deliberate on the recommendation of asking ICANN to enforce the rules to ensure compliance of Registry Operators in URS process.

	<p>the activation of the URS Lock;</p> <ul style="list-style-type: none"> ● Inaction and lack of communication after the Provider attempted several times to receive notifications; <ul style="list-style-type: none"> ○ After the Provider reported such instances to ICANN issues were resolved: https://forms.icann.org/en/resources/compliance/registries/urs/form 			
<p>Row 11: Do you receive information from ICANN with regard to the point of contact of the Back End Registry Operator (BERO) appointed by a Registry Operator?</p>			<ul style="list-style-type: none"> ● ADNDRC did not receive information from ICANN regarding the BERO point of contact. ● FORUM receives a report from ICANN that contains this information. ● MFSD receives credentials to access ICANN's repository. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● Sub Team to contact ICANN GDD, inquiring about the inconsistency with regard to how BERO information is relayed to the Providers.

C. THE RESPONSE

COMPLIANCE CHECK				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 42: <i>Have you conducted a compliance check for a Respondent for factors beyond the two items stated in URS Rule 5(g)?</i></p>	<ul style="list-style-type: none"> ● FORUM and MFSD conduct compliance check on Responses for factors beyond the ones stated in the URS Rule 5(g). <ul style="list-style-type: none"> ○ FORUM screens all response compliance issues; ○ MFSD screens non-payment issue, and flags other issues for the Examiner to consider. ● ADNDRC only flags the “superficial formatting and non-compliance issue” in a Response; the appointed Examiners screen the other non-compliance issues. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● Sub Team to review the following documents to consider whether further deliberation is needed: <ul style="list-style-type: none"> ○ FORUM's Appendix B ○ MFSD's Checklist used for the Administrative Review of the Response. 		
<p>Row 43: <i>Who determines whether a Response is non-compliant – you or the appointed Examiner?</i></p>				

RESPONSE PERIOD				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 47: Do you believe the deadline for filing Responses is long enough? (Please provide your rationale and any feedback from Respondents that the time period is insufficient.) If not, what time period would you support (keeping in mind that the URS is supposed to operate with rapidity)?</p>	<ul style="list-style-type: none"> All Providers believe that the Response period is sufficient. Providers also grant requests for extension of time to respond. No Provider has received late response. 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> There does not appear to be a need to change the Response period based on the feedback received.
<p>Row 48: Have you received any late Responses?</p>				

D. STANDARD OF PROOF

GUIDE FOR EXAMINER				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 98: The URS Documents Sub Team has suggested that a Guide for URS Examiners be</p>	Regarding the idea of developing a Uniform Guideline for URS Examiners to assist them			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Different from FORUM and MFSD, ADNDRC supports the idea, considering their

<p><i>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?</i></p>	<p>with understanding the distinction between clear-cut and more difficult cases:</p> <ul style="list-style-type: none"> ● ADNDRC: support -- a guide should be developed in collaboration between the three Providers and ICANN. ● FORUM: does not strongly support -- UDRP precedent and the WIPO Overview are helpful by analogy; many Examiners are also UDRP panelists; guides stultify the process; it may be difficult to explain the distinction without providing examples, which then may lead to undesired results. ● MFSD: does not strongly support -- Examiners have sufficient experience to make the distinction; but happy 			<p>statement that “domain name disputes is a niche practice area and relatively new in Asia” (Row 60).</p> <ul style="list-style-type: none"> ● Sub Team/WG to review the information below (section “E. DEFENSES”) to consider whether further deliberation is needed.
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	to collaborate with the other Providers to contribute to more consistent case law.			
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E. DEFENSES

REASONING IN DETERMINATION				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 17: <i>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 was 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?</i></p>	<ul style="list-style-type: none"> ● ADNDRC: <ul style="list-style-type: none"> ○ provides Examiners with Determination Guideline; ○ directs Examiners to previous decisions to reference; ○ requires Examiners to provide some explanations of facts and reasoning in support of their Determinations; ○ does not appoint Examiners who renders Determinations 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● WG to further examine the divergent practice/requirements of Providers with regard to Examiner providing reasoning in support of their Determinations. ● WG to deliberate on FORUM's practice, which significantly deviates from that of ADNDRC and MFSD. ● WG to discuss whether Providers should give further guidance to Examiners as to what 	<ul style="list-style-type: none"> ● MFSD's Determination Form requires the Examiners to reassume the position and defenses of the Parties, as well as explain the procedural findings, the findings of facts, the reasoning with reference to the three URS requirements. The Determination Forum also provides Examiners with instructions and guidelines on the URS elements and defenses. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● Sub Team to examine MFSD's Determination Form and consider whether it should be used as an example for other Providers to follow. ● Sub Team to request: <ul style="list-style-type: none"> ○ ADNDRC to provide a copy of their Determination Guideline; ○ FORUM to provide a copy of their Determination Template..
<p>Row 96: <i>What guidance have you formally or informally given to the</i></p>				

<p><i>Examiners? What is your understanding of the “guidelines” referred in URS Rule 13(c)? Are they referring to Provider’s Supplemental Rules? If not, can you provide a copy of any alternative guidelines that you have developed?</i></p>	<p>not adhering to the standards or qualities of URS awards.</p> <ul style="list-style-type: none"> ● FORUM: <ul style="list-style-type: none"> ○ has a template for Determinations through its portal, with text boxes that are required to be filled out for the reasoning; ○ does not intervene in an administrative capacity to review and revisit an Examiner’s Determination; ○ does not prepare any additional documents or edit in any matter; ○ does not undertake to review each Determination for an explanation of the facts and reasoning; ○ <u>only</u> FORUM has Determinations 	<p>basic elements should be included in every URS decision.</p>		
<p>Row 97: <i>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?</i></p>				
<p>Row 99: <i>How do your Examiners apply the “clear</i></p>				

<p><i>and convincing evidence” standard of proof required in URS cases?</i></p>	<p>without any reasons and without stating the circumstance as the basis of their finding of demonstrable bad faith registration, or how the burden of proof is satisfied.</p> <ul style="list-style-type: none"> ● MFSD: <ul style="list-style-type: none"> ○ provides online Determination Form that has instructions and guidelines for Examiners; ○ encourages Examiners to refer to WIPO Overview of WIPO Panels Views on Selected UDRP Questions and Third Edition (WIPO Jurisprudential Overview 3.0); ○ encourages Examiners to cite URS and UDRP case law they 			
<p>Row 100: <i>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.</i></p>				
<p>Row 101: <i>Among your Examiner’s Determinations, how many did not provide the reasons on which the Determination is based but simply stated that the URS elements have been established?</i></p>				
<p>Row 103: <i>(A) Do you supply the Examiners with information, analysis, or research concerning a Complaint or Response that is not to be found within the Complaint or Response itself? If so, please explain. (B) Do you provide drafts or exemplars to the</i></p>				

<p><i>Examiners? If so, please explain.</i></p>	<p>retain significant for the decision of the dispute;</p> <ul style="list-style-type: none"> ○ provides Examiners information regarding case management; ○ conducts the ex-post quality check of the Determinations. ○ disqualifies/bars an Examiner who renders Determinations contrary to the policies and rules or with insufficient and illogical reasoning; ○ MFSD's Examiners have cited various circumstances, in addition to the ones included in URS Procedure 1.2.6.3., considered as indicia of bad faith registration and use. 			
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F. REMEDIES

REGISTRY OPERATOR AND REGISTRAR ISSUE				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 12: 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.</p>	<p>Challenges during the implementation of URS remedies include:</p> <ul style="list-style-type: none"> • Registry Operators delay sending notifications to Providers regarding the completion of the URS Suspension; • Registry Operators' inaction and lack of communication after the Provider attempted several times to receive notifications; <ul style="list-style-type: none"> ○ After the Provider reported such instances to ICANN, issues were resolved: https://forms.icann.org/en/resources/compliance/registries/urs/form; 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> • Sub Team to contact Registry Operators and Registrars about these challenges - Timing TBD in view of Sunrise & Claims surveys that are about to be launched.
<p>Row 105: Do you ask for any additional information in the Complaint beyond what is required in the URS Rules? If so, please provide the relevant provision(s) of your Supplemental Rules.</p>				<ul style="list-style-type: none"> • Based on input received from Registry Operators and Registrars, WG to deliberate on the recommendation of asking ICANN to enforce the rules to ensure compliance of Registry Operators and Registrars in URS process.
<p>Row 106: Are you aware of any instances where a successful Complainant has requested the extension of the registration period of the URS Suspended domain name for one additional year? If so, do you know if any of them encountered</p>				<ul style="list-style-type: none"> • WG to deliberate on whether there is a need to enhance understanding by

<p><i>difficulties extending the registration period of a URS Suspended domain name for the additional year? If so, do you know how the matter was handled?</i></p>	<ul style="list-style-type: none"> • Registry and Registrar have difficulty implementing a settlement, which typically involves a transfer of the domain registration at the Registrar level; • Registry and Registrar have difficulty implementing the extension request of the URS Suspension, as they may not have understood their roles in the process. 			<p>Registry Operators and Registrars of their roles in the URS process.</p>
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GDPR ISSUE

Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 96: <i>What guidance have you formally or informally given to the Examiners? What is your understanding of the “guidelines” referred in URS Rule 13(c)? Are they referring to Provider’s Supplemental Rules? If not, can you provide a copy of any alternative</i></p>			<ul style="list-style-type: none"> • Providers check the WHOIS data to confirm whether Registry Operators have carried out the URS actions <ul style="list-style-type: none"> ○ e.g., If original name servers were substituted with Providers’ name servers. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> • Sub Team to solicit input from Providers, ICANN GDD, and Registry Operators on potential alternative methods for confirming the completion of URS actions. - Timing TBD in view of Sunrise & Claims surveys that

<p><i>guidelines that you have developed?</i></p>			<ul style="list-style-type: none"> GDPR would affect Providers' ability to discover and report to ICANN the lack/error of implementation of URS Determination by the Registry Operator. 	<p>are about to be launched.</p>
<p>Row 108: <i>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?</i></p>				
TECHNICAL REQUIREMENT				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 107: <i>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</i></p>	<ul style="list-style-type: none"> Some FORUM Examiners indicated that the domain registration information should be altered during the one additional year of URS Suspension extension. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> WG to re-examine the URS technical requirements and discuss whether URS Technical Requirements 3 and Registry Requirement 10 should be amended. 		

<p><i>altered in such circumstances?</i></p>	<ul style="list-style-type: none"> ADNDRC said no; MFSD did not have an opinion. 			
<p>Row 108: <i>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?</i></p>			<ul style="list-style-type: none"> HSTS-preloaded domain suspension requires the Provider to obtain SSL certificates. Providers will incur additional expenses to monitor and renew the certificates manually. The process will be further complicated if the Registry Operator does not communicate the status of the Suspension. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to solicit input from ICANN GDD and Registry Operators to determine whether further deliberation is needed. - Timing TBD in view of Sunrise & Claims surveys that are about to be launched.

G. APPEAL

H. POTENTIALLY OVERLAPPING PROCESS STEPS

I. COST

LOSER PAY MODEL

Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 26: <i>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?</i></p>	<ul style="list-style-type: none"> ● ADNDRC: not against -- suggests using a better escrow payment system. ● FORUM: against -- <ul style="list-style-type: none"> ○ it would only work unless the Respondent pays upon filing a Response; ○ likely result in a further reduction in the number of Responses received; ○ no economical way to collect from a non-appearing Respondent. ● MFSD: against -- <ul style="list-style-type: none"> ○ burdensome for the Complainant and/or the Provider; ○ impossible to obtain registration data when privacy/proxy service is used; 			<p>RECOMMENDATION: Providers expressed strong reasons opposing the Loser Pay model, as there appear to be many complications and problems for implementations.</p>

	<ul style="list-style-type: none"> ○ Respondents are not required to provide any banking info when filing Responses, making it difficult to recover the URS fees; ○ making mandatory (as policy requirement) to provide credit card details when submitting a Response might be a deterrent to filing a Response; ○ only solution for collecting the URS fees from the losing Respondents would be through the Registrars. 			
LATE RESPONSE FEE				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<i>Row 49: What are the fees were associated with these any late Responses?</i>	<ul style="list-style-type: none"> ● Forum has a flat fee. ● ADNDRC and MFSD have fees based on the number of 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● WG to discuss whether any of the late Response fees 	<ul style="list-style-type: none"> ● There has been no late Response received among all three Providers (Row 48). 	

	domains and/or the type of Respondents involved.	create a burden for the Respondent.		
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J. LANGUAGES

NON-ENGLISH LANGUAGE				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<i>Row 74: What procedures do you employ to rotate case assignments among your Examiners?</i>	<ul style="list-style-type: none"> ADNDRC conducts communications in English only. FORUM and MFSD communicate to the Respondent in the language of the Respondent; translations are provided for the Notice of Complaint, Notice of Default, emails, template documents, and Determinations. Different from FORUM and MFSD, language skills of the Examiners do not seem to be a factor in the 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to ask ADNDRC the following questions: <ul style="list-style-type: none"> As ADNDRC conducts all communication in English only, how are Examiners' language skills being used? Have you encountered a situation that a Respondent did not have the capability of understanding English? If so, how was it handled? Based on response received from ADNDRC, Sub Team
<i>Row 79: Have you experienced any difficulties or issues with the current URS language requirements? What steps have you taken to comply with and implement the current requirements?</i>				
<i>Row 83: Are all of your assigned Examiners fluent in the non-English language of the Respondents?</i>				
<i>Row 84: Can you provide any information as to</i>				

<p><i>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?</i></p>	<p>assignment and rotation of the Examiners in ADNDRC.</p> <ul style="list-style-type: none"> ADNDRC indicated that all of their assigned Examiners are fluent in the non-English language of the Respondent. ADNDRC does receive inquiries, especially from the Respondent, regarding the language of the proceedings. 			<p>to consider whether further deliberation is needed.</p>
<p>GDPR ISSUE</p>				
<p>Question to Providers</p>	<p>Sub Team Found</p>	<p>Sub Team Suggestion</p>	<p>Staff Found</p>	<p>Staff Suggestion</p>
<p><i>Row 80: Do you utilize WHOIS data in order to determine the proper language to be used in transmitting the Notice of Complaint?</i></p>	<ul style="list-style-type: none"> FORUM and MFSD check WHOIS and information from the Registrar to obtain the physical location of the Respondent and then research the Respondent's dominant language. 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> WG to consider whether deliberation on policy/operational recommendation is needed.

NOTICE TO REGISTRY AND REGISTRAR				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<i>Row 81: Do you think it would be feasible to mandate sending Registry and Registrar notices in the same language(s)?</i>	<ul style="list-style-type: none"> ADNDRC and FORUM do not think it is feasible. MFSD did not provide a direct answer. 			RECOMMENDATION: <ul style="list-style-type: none"> Sub Team to ask MFSD for a direct response.

K. ABUSE OF PROCESS

ALLEGATION OF AN ABUSIVE COMPLAINT				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<i>Row 38: 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? Have your Examiners received any affirmative claims for relief from Respondents, for reasons beyond an allegation of an abusive</i>	<ul style="list-style-type: none"> ADNDRC and MFSD have never received any Responses alleging an abusive Complaint. FORUM has received 20 cases where the Response alleged an abusive Complaint. <ul style="list-style-type: none"> no cognizable argument to support an abusive complaint finding; 	RECOMMENDATION: <ul style="list-style-type: none"> WG to consider potential recommendation on the incorporation of penalties for the abuse of the process by the Respondent in the URS Rules. The abuse of "what" needs to be clarified. 		

<p><i>Complaint? If so, what was the basis of the claim(s)?</i></p>	<ul style="list-style-type: none"> ○ Respondent alleged “trademark bullying” or “blackmail” in response to cease and desist requests from Complainant or Complainant representatives; ○ To date, no findings of abuse have been made. 			
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L. EDUCATION & TRAINING

COMPLAINANT & RESPONDENT EDUCATION				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p><i>Row 53: What, if any, other anecdotal feedback have you received from Respondents regarding the URS Rule and Procedures or your administration of the same?</i></p>	<ul style="list-style-type: none"> ● FORUM is aware that some Respondents did not file a Response as they did not know how to proceed. There are general complaints regarding FORUM’s online filing portal. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● Sub Team/WG to review the Notice of Complaint and Providers’ online forms/instructions before considering whether any additional educational materials should be developed. 		<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● 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

	<ul style="list-style-type: none"> ● FORUM's case coordinator assists Respondents on an individual basis via phone or email. ● FORUM is open to the idea of developing a basic FAQ for Respondents. ● In the Notice of Complaint sent by Providers, information regarding the procedure and timeline of the URS proceeding is included. ● Providers' online Complaint and Respondent Forms contain instructions. ● The URS Rules, URS Procedure, and Supplemental Rules can be downloaded from all three Providers' websites. 	<p>Existing materials include:</p> <ul style="list-style-type: none"> ○ ADNDRC Complaint Form ○ Forum Appendix A (Complaint) ○ Forum Appendix B (Response) ○ Forum Appendix D (Appeal) ○ MFSD Complaint Form ○ MFSD Response Form ○ MFSD Appeal Form <ul style="list-style-type: none"> ● WG to deliberate on whether to recommend ICANN to undertake the development of easy-to-understand, multilingual, and linkable guidance (e.g. basic FAQ) for both the URS Parties. ● WG to deliberate on whether to recommend Providers to develop their own educational materials 		<p>Appeal Form. FORUM and MFSD have provided these forms/instructions.</p>
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	<ul style="list-style-type: none"> URS services are provided in a competitive environment. Providers should be left to offer resources that they think are useful for the Parties. 	specific to their service, practice, website, etc.?		
EXAMINER EDUCATION & TRAINING				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p><i>Row 59: What, if any, training or guidance do you provide for the selected Examiners?</i></p> <p><i>Row 60: What factors should we consider in regard to evaluating your processes and practices pertaining to Examiners' selection and training?</i></p>	<ul style="list-style-type: none"> ADNDRC indicates that panel selection and training processes must be flexible and not rigorous, as domain name dispute is a niche and new area in Asia. Providers offer a variety of training and guidance to their Examiners: <ul style="list-style-type: none"> ADNDRC: examination guidelines, annual training programs, online training materials 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to ask ADNDRC to elaborate on their panel selection processes. 		<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to ask all three Providers to provide specific examples of their training and education programs/materials for Examiners. Based on the review of the examples, Sub Team/WG to determine whether further deliberation is needed.

	<ul style="list-style-type: none"> ○ FORUM: PowerPoint presentation, in-person annual training program, webinar training ○ MFSD: regular online trainings (webinars) and in-person workshops; informational emails with update on policy changes regarding development of the URS and UDRP case law of other Dispute Resolution Providers. 			
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M. URS PROVIDERS

EXAMINER				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<i>Row 62: (To ADNDRC and FORUM) Why have the qualifications of some</i>	<ul style="list-style-type: none"> ● ADNDRC publishes Examiners' CVs/resumes subject 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● WG to deliberate on these issues. 		

<p><i>of your Examiners not been published?</i></p>	<p>to the Examiner's consent on how much information can be made public. It seems to be at odds with URS Rules.</p> <ul style="list-style-type: none"> FORUM does not obtain the CVs of panelists from other Providers. 			
<p>Row 64: <i>How do your Examiners confirm their impartiality and independence?</i></p>			<ul style="list-style-type: none"> Providers have inconsistent methods seek confirmation from Examiners on their impartiality or independence (FORUM - Neutral's Oath; MFSD - email & checkbox on Determination Form; ADNDRC - email). Providers are unable to undertake independent inquiries on the absence of conflict of interest of the Examiners. They rely on the information disclosed by the Examiners and 	<p>QUESTION:</p> <ul style="list-style-type: none"> Does the Sub Team believe any policy or operational recommendation is needed to address these issues?
<p>Row 65: <i>Can you provide a copy of any oath taken by your Examiners to affirm that they will be neutral and independent? Is the oath signed by the Examiners?</i></p>				
<p>Row 66: <i>Do you undertake any independent inquiries to adequately satisfy yourself of your Examiners' impartiality and independence? Or do you rely solely upon the oath</i></p>				

<p>or declaration made by each Examiner?</p>			<p>challenges filed by the Parties.</p>	
<p>Row 69: Has there been any incident in which an allegation of partiality, non-independence, or bias of an Examiner was raised by any party to a 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?</p>				
<p>Row 67: 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?</p>	<ul style="list-style-type: none"> Both FORUM and MFSD said “yes”, but no instance of a conflict presenting itself after an Examiner has accepted a case. ADNDRC did not provide a direct answer. 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to ask ADNDRC to confirm whether any of their Examiners voluntarily disclosed any conflict of interest. 		
<p>Row 75: Has any Examiner ever been removed from the pool of Examiners for any reason? If so, why? What behaviors would</p>	<ul style="list-style-type: none"> ADNDRC will not appoint an Examiner who renders Determinations not adhering to the 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> WG to deliberate on whether any explicit standard for the removal of Examiners with particular 		

<p><i>disqualify/bar an Examiner from future cases?</i></p>	<p>standards or qualities of URS awards.</p>	<p>background is needed (e.g., someone has repeatedly represented serial cyber squatters).</p>		
<p>Row 76: <i>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 Reverse Domain Name Hijacking?</i></p>	<ul style="list-style-type: none"> ● FORUM may remove an Examiner for reasons including: <ul style="list-style-type: none"> ○ failing to comply with deadlines; ○ failure to understand the Policy and Rules; ○ repeatedly being unavailable to take a case due to schedule or conflicts of interest. ● MFSD would disqualify/bar an Examiner for reasons including: <ul style="list-style-type: none"> ○ non-declaration of conflict of interest; ○ repeated non-participation at trainings; ○ rendering Determinations contrary to the policies and rules or with insufficient 			

	<p>and illogical reasoning.</p> <ul style="list-style-type: none"> ADNDRC will remove an Examiner if he/she represented a Complainant in a URS or UDRP proceeding where there was a finding of Reverse Domain Name Hijacking. <ul style="list-style-type: none"> FORUM & MFSD will evaluate this on a case by case basis. 			
<p>Row 82: Are all of your Examiners fluent in English?</p>			<ul style="list-style-type: none"> Staff recall that some ADNDRC Examiners indicate in their CVs that their English skill is not at the fluency level (e.g., proficient). ADNDRC Examiner webpage is currently not accessible: http://adndrc.org/mten/ListOfPanelists.php 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to follow up with ADNDRC on these issues.
<p>Row 92: Has any of your Examiners drawn inferences per URS Rule 12(f) when a party is not in</p>	<ul style="list-style-type: none"> MFSD's Examiners have drawn inferences per URS Rule 12(f). 	<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team/WG to examine the following cases to determine 		

<p><i>compliance with URS Rules, Procedures, and Supplemental Rules, in the absence of exceptional circumstances? If so, what inferences were made?</i></p>		<p>whether further deliberation is needed:</p> <ul style="list-style-type: none"> ○ MFSD Dispute no. 8422F178 e-leclerc.paris; ○ MFSD Dispute no. 429EC571 reinhausen.international). 		
OTHER ISSUES				
Question to Providers	Sub Team Found	Sub Team Suggestion	Staff Found	Staff Suggestion
<p>Row 88: <i>(To FORUM) Do you have any explanation of the seeming 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?</i></p>			<ul style="list-style-type: none"> ● FORUM Supplemental Rule 12(a) allows the Complainant to withdraw without prejudice with the potential to refile to promote accurate case filings due to the rapidity of the process and potential privacy shield concerns. 12(b) is in place to promote settlement between the parties. 	<p>QUESTION:</p> <ul style="list-style-type: none"> ● Does the Sub Team consider FORUM's response clear/satisfactory?
<p>Row 137: <i>Do you have any difficulties complying with the URS technical</i></p>	<ul style="list-style-type: none"> ● ADNDRC indicates “yes”, as it is migrating to a new website. 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> ● Sub Team to ask ADNDRC to provide details in order to

<p><i>requirements (e.g., utilizing PGP Keys, etc.)?</i></p>				<p>understand whether ADNDRC has been out of compliance with technical requirements.</p> <ul style="list-style-type: none"> Based on ADNDRC's further input, WG to consider whether policy/operation related deliberation is needed.
<p>Row 138: <i>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.</i></p>	<ul style="list-style-type: none"> All three Providers maintain regular communications with ICANN. FORUM communicated with ICANN on: <ul style="list-style-type: none"> standing request for monthly statistics; registry contact information; verification of SMD files; impact of masked WHOIS information in the wake of GDPR; Technical Specifications in light of the new 			<p>RECOMMENDATION:</p> <ul style="list-style-type: none"> Sub Team to ask ADNDRC to provide details on the information or data that ICANN communicated with them.

	<p>https suspension issues.</p> <ul style="list-style-type: none"> ● MFSD communicated with ICANN on: <ul style="list-style-type: none"> ○ statics on URS disputes; ○ data of abusive complaints case and practice on handling abusive proceedings database; ○ change in fees, office address, E&O policy; ○ technical issues; issues related to GDPR and the Temporary Specification ○ URS Providers' presentation. 			
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N. ALTERNATIVE(S) TO THE URS