

# **SUPER CONSOLIDATED URS TOPICS TABLE**

## **WITH FINDINGS, ISSUES, SUGGESTIONS FROM ALL THREE URS SUB TEAMS**

### **FOR WORKING GROUP DISCUSSION**

**Prepared by ICANN staff – draft as of 7 August 2018**

#### **Introduction:**

Given that the approved charter for this RPM Working Group (WG) had included an unfiltered series of sometimes overlapping and unclear questions, at one point this WG had set out to refine those questions to assist its work in producing relevant policy recommendations and to identify areas where specific feedback from the community would be useful (e.g., where it was not possible to conclude specific policy recommendations).

Towards this end, the WG had agreed to seek to apply several standard “high level” questions on the basis that these questions can be used as a framework for evaluating and developing policy suggestions for the URS dispute resolution process (but noting that they may not all be applicable to each situation); those are:

- Has it been used? Why or why not?
- What was the original purpose and is it being fulfilled?
- Bearing in mind the original purpose, have there been any unintended consequences?
- What changes could better align the mechanism with the original purpose/facilitate it to carry out its purpose?
- What was the ultimate outcome?

The WG had also agreed to use the initial Consolidated URS Topics Table, which includes suggested URS review topics, the original charter questions, suggested refined/new questions, and data sources to assist the WG’s work:

[https://community.icann.org/download/attachments/79432641/URS%20Docs\\_ICANN61.pdf?version=1&modificationDate=1520631910000&api=v2](https://community.icann.org/download/attachments/79432641/URS%20Docs_ICANN61.pdf?version=1&modificationDate=1520631910000&api=v2)

In February 2018, the WG established three URS Sub Teams to identify address topics relating to the URS providers, practitioners, and to identify sources for related documents and to analyze those sources. This data gathering effort is based on the guidance provided in the Consolidated URS Topics Table.

The URS Providers and URS Practitioners Sub Teams were tasked to develop, administer, and analyze surveys for the current URS providers and experienced URS practitioners. In April 2018, these surveys were distributed among the target respondents; in June 2018 prior to ICANN62, responses were received.

Concurrently, the Documents Sub Team was tasked with 1) identifying various data sources (in addition to providers and practitioners) corresponding to the Consolidated URS Topics Table, 2) reviewing and examining certain categories of URS cases, and 3) developing specific potential recommendations for full WG consideration based on the survey results from providers and practitioners.

During the ICANN62 Panama Meeting, the three Sub Teams presented on the then current status of their efforts. Following ICANN62, the Providers and Documents Sub Teams continued their deliberations while the Practitioners Sub Team concluded its work. On 1 August 2018, the three Sub Teams discussed with the full WG the preliminary findings/issues that they identified, as well as proposed suggestions including draft recommendations, proposed operational fixes, questions, and action items.

This document synthesizes the three Sub Team's preliminary findings/issues, proposed suggestions, and data sources. It is organized according to the URS review topics in the initial Consolidated URS Topics Table. The WG Co-Chairs hope that this document will facilitate WG discussions concerning similar or complementary URS findings/suggestions as well as differences, including whether, and what scope/type of, guidance should be developed to improve the URS, and also open questions on which community feedback should be specifically sought. Please note that neither is the WG bound to take the proposed suggestions, nor do the proposed suggestions restrict the scope what the WG will consider as it prepares the draft Initial Report.

**For the ease of reference: draft recommendations are highlighted in GREEN, suggested operational fixes in ORANGE, action items in YELLOW, and questions in BLUE within the "Proposed Suggestion" column.**

For fuller details on the data collected, including the survey results, reports, and deliberations from each of the three URS Sub Teams as well as additional background (including the original URS Charter questions), please check:

- Practitioners: <https://community.icann.org/x/0IlpBQ>
- Providers: <https://community.icann.org/x/FBu8B>
- Documents: <https://community.icann.org/x/NgdpBQ>

Note: As of 07 August 2018, the Providers Sub Team is waiting for responses to the follow up questions/requests for the three providers and ICANN GDD based on a "[Suggested List of Issues for Discussion](#)" developed from a review of the providers' initial feedback. Therefore, additional findings/issues and proposed suggestions may be included in this document as appropriate.

## A. THE COMPLAINT

| Topic                                                                                                                                                                  | Preliminary Finding/Issue                                                                                                                                                                                                                                                        | Proposed Suggestion                                                                                                                                                                                                                                                            | Data Source                                                            |
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| <b>1. Standing to file</b><br>Standing and the suggestion to consider expanding standing to allow marks that were abusively registered but are not confusingly similar | (Documents ST)<br><ul style="list-style-type: none"> <li>No data/feedback to support this</li> </ul>                                                                                                                                                                             | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST)<br><ul style="list-style-type: none"> <li>No additional policy work required</li> </ul>                                                                                                                                         | Practitioners survey results: pp. 21-22, 28, 29                        |
| <b>2. Grounds for filing</b><br>Grounds, specifically, types of marks on which a complaint may be based                                                                | (Documents ST)<br><ul style="list-style-type: none"> <li>No data/feedback indicating this is a URS problem</li> </ul>                                                                                                                                                            | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST)<br><ul style="list-style-type: none"> <li>No additional policy work on URS required</li> <li>Questions about “types of marks” seem to be part of the TMCH and in particular Claims Notices review</li> </ul>                    | Rebecca Tushnet’s coding: 894 identical, 900 mark+plus, 21 typos       |
| <b>3. Limited filing period</b>                                                                                                                                        | (Practitioners ST)<br><ul style="list-style-type: none"> <li>The Sub Team did not comment on the survey results with respect to the response period or time frames connected to Complaint filings</li> <li>See Section C below</li> </ul>                                        |                                                                                                                                                                                                                                                                                | Practitioners survey results: p. 26;<br><br>Providers feedback: Row 18 |
| <b>4. Administrative review</b>                                                                                                                                        | (Documents ST)<br><ul style="list-style-type: none"> <li>Feedback from providers do not seem to indicate need for additional policy work</li> </ul><br>(Providers ST)<br><ul style="list-style-type: none"> <li>ADNDRC accepts Complaints that do not contain all the</li> </ul> | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST)<br><ul style="list-style-type: none"> <li>No additional policy work required</li> </ul><br><b>SUGGESTED OPERATIONAL FIX:</b><br>(Providers ST)<br><ul style="list-style-type: none"> <li>Since at least one Provider</li> </ul> | Providers feedback: Row 14                                             |

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|                             | <p>elements required in URS Rule 3(b)</p> <ul style="list-style-type: none"> <li>Providers rely heavily on information provided by the Parties and are unable to search or track information (at least in several jurisdictions) about active court cases related to the URS proceedings</li> </ul>                                                          | <p>appears to accept Complaints that do not contain all the elements in Rule 3(b), even before GDPR came into effect, WG to consider how ICANN should enforce compliance with the URS Procedures and Rules, including URS Rule 3(b) (and URS procedures and rules generally)</p> <p><b>ACTION ITEM:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>Sub Team to ask ADNDRC to explain why they accept Complaints that do not contain all the elements required in URS Rule 3(b)</li> <li>Sub Team to ask 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</li> </ul> |                                                                       |
| 5. 500-word Complaint limit | <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>Some thought the word limit of 500 words was too low: “arbitrary and often insufficient” and “should be slightly increased” were two responses</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>Providers’ feedback confirms that some practitioners have</li> </ul> | <p><b>DRAFT RECOMMENDATION:</b><br/>(Three STs)</p> <ul style="list-style-type: none"> <li>This is an area on which views will differ, and the overall purpose of the URS as a lighter complement to the UDRP needs to be borne in mind</li> <li>No policy recommendation at this time</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                               | Providers feedback: Rows 30, 31 - 22 Cases (FORUM w/ 17); Rows 14, 16 |

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|                                                      | <p>raised issues with word limit</p> <ul style="list-style-type: none"> <li>• However, Providers generally believe that the balance of the word limits for both Complaint and Response is reasonable</li> <li>• If Complaint word limit is increased, should Response limit be correspondingly increased? If so, need to consider impact on Examiners</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• Based on Practitioners' survey results, no additional policy work is required</li> </ul>                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                |
| 6. Amending the Complaint in light of GDPR/Temp Spec | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• MFSD accepts "Doe Complaint"</li> <li>• MFSD' feedback was that Complainants are not likely to file Doe Complaints, given the standard of proof (clear and convincing)</li> <li>• It may also be difficult to satisfy the second and third URS elements without access to the registration data before submission of the Complaint and without the possibility to amend the Complaint after the submission</li> <li>• MFSD suggests amending the URS Procedure 3.3 in order to enable the Complainant to modify the Complaint within 2-3 days</li> </ul> | <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• WG to discuss whether URS Rule 3(b) needs to be amended in light of GDPR and "Doe Complaint"</li> <li>• WG to consider if URS Procedure para 3.3 should be amended to enable modification of Complaint within 2-3 days from disclosure of the full registration data by the URS Provider</li> <li>• WG to consider whether recommend Providers modifying their operational rules in terms of automatically populating the Complaint Form using WHOIS data</li> </ul> | Providers feedback: Row 14, 28 |

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|             | <p>from the disclosure of the full registration data by the URS Provider</p> <ul style="list-style-type: none"> <li>• WHOIS information is automatically pulled into FORUM's Complaint Form once Complainant enters the domain name to prevent Complainant error</li> </ul> | <p><b>ACTION ITEM:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>• 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")</li> <li>• Sub Team to follow up with MFSD to request data/evidence that support their claim about the difficulty in filing "Doe Complaint"</li> </ul>                                                                                                                                                                                                                                      |                            |
| 7. SMD file | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Most of the data in the SMD file is difficult to read and remains encoded</li> </ul>                                                                                                                         | <p><b>SUGGESTED OPERATIONAL FIX:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>• 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. Based on their response, WG to determine whether to propose any operational fix recommendation (e.g., Providers pass SMD file to the Respondent and Examiner so that the key information about the underlying trademark is known, including jurisdiction, date of issue, categories of goods and services); alternatively is there another way to ensure Examiners</li> </ul> | Providers feedback: Row 16 |

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | know this trademark information?                                                                                                                                                                                                                                                                                                    |                                                                                      |
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| 7. Other topics | <p>(Providers ST)<br/>MFSD' feedback suggests the following factors as possible deterrents to filing a URS Complaint:</p> <ul style="list-style-type: none"> <li>• limited applicability of the URS (not a consensus policy)</li> <li>• the suspension remedy (Complainants prefer filing a UDRP instead of having the domain name suspended through a URS without the possibility to own, control, use, or transfer the domain)</li> <li>• stricter burden of proof</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>• There was a split regarding the adequacy of relief (some expressed a desire for a transfer, others with a right of first refusal and others seeking a "voluntary (negotiated) transfer from the losing respondent to a prevailing complainant" option or cancellation). The Sub Team did not comment on the survey results that most Practitioners believe that a declaration along with a specimen of use (including the submission of a SMD file from the TMCH) is adequate for demonstrating evidence of</li> </ul> | <p><b>ACTION ITEM:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Sub Team to follow up with MFSD to request data/evidence to support their claim in order to determine whether further deliberation on their feedback regarding factors as possible deterrents to filing a URS Complaint is needed</li> </ul> | <p>Providers feedback: Row 28</p> <p>Practitioners survey results: pp. 21-22, 30</p> |

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## B. NOTICE

| Topic                                                                              | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Proposed Suggestion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Data Source                                                              |
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| <b>1. Receipt by Registrant</b><br>Notice (feedback from Complainant & Respondent) | (Providers ST) <ul style="list-style-type: none"> <li>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.</li> <li>There are potential difficulties for Providers to comply with the URS Rules &amp; Procedure due to the impact of GDPR</li> <li>Providers reference WHOIS data in order to communicate with, as well as send the Notice of Complaint and the Notice of Default to the Respondents</li> <li>Providers would reference WHOIS, if the Registrar does not communicate any underlying contact information of Registrant when the privacy/proxy service is used</li> <li>Providers also obtain Registrant's contact information provided by the Complainants, Registry Operators and Registrars, and information shown on Registrants' websites</li> </ul> | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST) <ul style="list-style-type: none"> <li>No additional policy work required</li> </ul> (Providers ST) <ul style="list-style-type: none"> <li>WG to consider impact of GDPR on Providers' obligations concerning notice</li> </ul> <b>SUGGESTED OPERATIONAL FIX:</b><br>(Providers ST) <ul style="list-style-type: none"> <li>ADNDRC to change their operational rules to comply with URS Procedure 4.2 (e.g., delivery of the Notice of Complaint in hard copy is critical if a spam filter removes the electronic Notices from view and to comply with URS policy)</li> </ul> | Practitioner survey results: pp. 5-6<br><br>Providers feedback: Rows 4-8 |



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|                                                                                     | <ul style="list-style-type: none"> <li>• Nevertheless, they reported that they have not received any complaint regarding not receiving notice</li> <li>• FORUM and MFSD reported that their mail, fax, and email to the Respondent were not delivered sometimes. Providers are unable to use courier services to deliver mail to P.O.box addresses</li> </ul>                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                   |
| <b>2. Effect on Registry Operator</b><br>Notice requirements for Registry Operators | (Providers ST) <ul style="list-style-type: none"> <li>• Providers' feedback indicates there may be some clerical issues concerning the Registry Operators, including: <ul style="list-style-type: none"> <li>○ Communicating from email addresses different from the contacts present in ICANN's repository</li> <li>○ Not responsive to requests for information from URS Providers</li> <li>○ Delay in sending notifications to the URS Providers regarding the completion of URS actions</li> <li>○ Not completing URS actions despite notifications and reminders from the Providers, resulting in a need for the Providers to report non-compliance to</li> </ul> </li> </ul> | <b>SUGGESTED OPERATIONAL FIX:</b><br>(Providers ST) <ul style="list-style-type: none"> <li>• WG to discuss whether issues with registry operators and locking of domains raise enforcement or compliance issues</li> <li>• WG to evaluate how clerical issues can be addressed, including keeping ICANN's email address for Registry contracts (reached by Providers) up to date</li> </ul> <b>QUESTION:</b><br>(Documents ST to Providers ST) <ul style="list-style-type: none"> <li>• Is any other additional policy work required? (This will depend on whether specific issues are identified for policy work from the follow up with the three Providers)</li> </ul> | Providers feedback: Rows 9-12, 33 |

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|                 | ICANN                                                                                                                                                                                                                                                                                                                                   | <p><b>ACTION ITEM:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Sub Team to follow up with FORUM and ask why GDPR may make the activation of URS Lock more difficult.</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• WG to contact registry operators to obtain feedback on qualitative experiences about receiving notices from Providers; e.g. were these sent through appropriate channels, and did they contain the correct information? NOTE: Timing TBD in light of imminent issuance of Sunrise &amp; Claims surveys</li> </ul> |                            |
| 3. Other topics | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• ADNDRC did not receive information from ICANN regarding the Back End Registry Operator (BERO) point of contact</li> <li>• FORUM receives a report from ICANN that contains this information</li> <li>• MFSD receives credentials to access ICANN's repository</li> </ul> | <p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Sub Team to contact ICANN GDD, inquiring about the inconsistency with regard to how BERO information is relayed to the Providers. Based on ICANN GDD's response, WG to consider whether any operational fix recommendation should be proposed</li> </ul>                                                                                                                                                                                                                            | Providers feedback: Row 11 |

## C. RESPONSE

| Topic                                                                                                                                                                                                    | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Proposed Suggestion                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Data Source                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <b>1. Duration of response period</b><br>Duration of response period (including the initial 14-day period, 6 months after Notice of Default (including possibility of extension), and 14 days to Appeal) | (Practitioners ST)<br><ul style="list-style-type: none"> <li>The Sub Team did not comment on the survey results indicating that 8 out of 12 Practitioner responses either agreed or strongly agreed these are appropriate; with 3 disagreeing and noting they should be shorter.</li> </ul><br>(Providers ST)<br><ul style="list-style-type: none"> <li>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.</li> </ul> | <b>DRAFT RECOMMENDATION:</b><br>(Provider and Documents STs)<br><ul style="list-style-type: none"> <li>No additional policy work required</li> </ul>                                                                                                                                                                                                                                                                                                                                           | Rebecca Tushnet's coding:<br>Review of 250 cases where Response filed<br><br>Staff compilation report:<br><ul style="list-style-type: none"> <li>p. 16, TABLE 11: URS Case Response Analysis -- Of the 827 cases decided through end-2017:               <ul style="list-style-type: none"> <li>27% of the cases saw a Response filed to the Complaint</li> <li>23% of the cases saw a Response filed within the 14-day period specified in the URS procedure and rules</li> <li>13% of the cases with a Response resulted in the claim being denied</li> </ul> </li> <li>p. 14-15, TABLE 10: Multiple URS Cases Against the Same Domain</li> </ul><br>Practitioner survey results: pp. 24, 27<br><br>Providers' feedback: Rows 47, 48 |
| <b>2. Other issues relating to Responses (other than issues relating to Defenses), e.g. Default procedures</b>                                                                                           | (Documents ST)<br><ul style="list-style-type: none"> <li>Reviewed the data from the cases noted where a Response was submitted</li> </ul><br>(Providers ST)<br><ul style="list-style-type: none"> <li>FORUM and MFSD conduct compliance check on Responses for factors beyond the ones stated in the URS Rule 5(g)</li> <li>ADNDRC only flags the "superficial formatting and non-compliance issue" in a Response; the appointed</li> </ul>                                                                                              | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST)<br><ul style="list-style-type: none"> <li>On the cases where Responses were filed, no additional research or work seems necessary</li> </ul><br><b>ACTION ITEM:</b><br>(Providers ST)<br><ul style="list-style-type: none"> <li>Sub Team/WG to review <a href="#">FORUM's Appendix B</a> and <a href="#">MFSD's Checklist used for the Administrative Review of the Response</a> and consider whether further deliberation is needed</li> </ul> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|                                                                          | Examiners screen the other non-compliance issues                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                       |  |
| <b>3. Response fees</b><br>Response Fee applicable to 15 or more domains | (Practitioners ST) <ul style="list-style-type: none"> <li>The Sub Team did not comment on the survey results indicating that 4 Practitioner survey responses said it was sufficient, 1 disagreed, and 7 neither agreed nor disagreed</li> </ul> (Providers ST) <ul style="list-style-type: none"> <li>Providers' feedback indicates no late responses have been filed to date</li> </ul> (Documents ST) <ul style="list-style-type: none"> <li>The current data does not reveal any issue or possible policy conclusion</li> <li>No response was in filed in any of the 6 cases with 15+ domains (outcome: Suspension)</li> </ul> | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST) <ul style="list-style-type: none"> <li>Available data does not indicate any basis for additional work or policy conclusions</li> </ul> |  |

## D. STANDARD OF PROOF

| Topic      | Finding/Issue                                                                                                                                                                                                         | Suggestion                                                                                                                                                                                                            | Data Source                                                                                                                                                      |
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| 1. General | (Practitioners ST) <ul style="list-style-type: none"> <li>Most survey respondents reported that "the Decision/Determination provided the reasons upon which the decision was based, as required by Section</li> </ul> | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST) <ul style="list-style-type: none"> <li>Based on the data, there does not appear to be a need to modify the standard of proof for URS (clear and convincing)</li> </ul> | Practitioner survey results: pp. 13, 14, 18-20<br><br>Staff compilation report: URS data: p. 11-13, TABLES 8&9: Analysis of URS Cases where the Claim was Denied |

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|                    | <p>13(b) of the URS Rules”</p> <ul style="list-style-type: none"> <li>Practitioners believe that the RPM is being used for “clear cases of abuse” as it was intended</li> <li>Most thought that the “standard of proof” is “adequate as is”</li> </ul>                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Rebecca Tushnet's coding: tab - "Denied Claims Analysis"                    |
| 2. Examiners guide | <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>About half of the Practitioner respondents agreed there should be “more guidance provided to educate or instruct practitioners on what is needed to meet the ‘clear and convincing’ burden of proof in a URS proceeding”</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>2 out of 3 Providers did not strongly support the issuance of an Examiners Guide, at least, to the extent that the guide is to provide direction or examples as to the distinction between clear-cut and more difficult cases</li> </ul> | <p><b>SUGGESTED OPERATIONAL FIX</b></p> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>Recommends creating educational materials to provide more guidance to “educate or instruct practitioners on what is needed to meet the ‘clear and convincing’ burden of proof in a URS proceeding.</li> <li>Parties would find value in the creation of an “Overview for URS Decisions” (like the WIPO Overview on UDRP Cases)</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>Although it may be useful to provide some guidance as to what constitutes “clear and convincing” evidence in light of the different laws around the world, the guidance would not extend to providing Examiners with specific directions as to what is, and is not, a clear-cut case</li> <li>It may be preferable to</li> </ul> | <p>Practitioner survey results: p. 17</p> <p>Providers feedback: Row 98</p> |

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|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | develop a guide that is more in the nature of a checklist (such as the one initially developed by the IRT as Appendix E of its report) rather than a substantive document like the WIPO UDRP Overview |  |
| 3. Other topics | <p>(Documents ST)</p> <p>The Documents Sub Team has begun reviewing the 59 cases where the Respondent prevailed (i.e. the Complainant's claim was denied). Analysis so far:</p> <ul style="list-style-type: none"> <li>• 31 cases saw no Response filed</li> <li>• Of the 28 cases where a Response was filed: <ul style="list-style-type: none"> <li>○ 22 of these were filed within the initial 14-day response period</li> <li>○ The remaining 6 were cases where a de novo review occurred as the Respondent filed a Response after the 14-day period following a Notice of Default but before the 6-month period expired (see Section G, below)</li> </ul> </li> </ul> |                                                                                                                                                                                                       |  |

## E. DEFENSES

| Topic | Preliminary Finding/Issue | Proposed Suggestion | Data Source |
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| <p><b>1. Scope of Defenses</b></p> <p><b>2. Unreasonable delay in filing a complaint (i.e. laches)</b></p> | <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• Case review indicates that there are some inconsistencies across Examiners as to whether or not rationale or justifications are provided (and in what detail) for their findings</li> <li>• Suggested asking the Providers' Sub Team what their research discloses about the following, so as to assist in illustrating how the "clear and convincing" standard has been applied:             <ol style="list-style-type: none"> <li>1. What instructions have the URS providers given to the panelists?</li> <li>2. What did the URS providers advise the panelists?</li> <li>3. Do the URS providers have minimal standards for panelists for decision making?</li> <li>4. Have the minimal standards been met?</li> <li>5. What are the URS providers' procedures? Have the URS providers done their work?</li> <li>6. How have the URS providers ensured that the "clear and convincing evidence" standard has been applied?</li> <li>7. How do the URS providers police the</li> </ol> </li> </ul> | <p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• There have been Determinations where either no clear rationale/reasons were elaborated in the decision</li> <li>• Providers also vary in terms of the amount of guidance they provide their Examiners and in the use of a template Determination form</li> <li>• WG to further examine the divergent practice and requirements of Providers with regard to Examiner providing reasoning in support of their Determinations</li> <li>• WG to deliberate on FORUM's practice, which significantly deviates from that of ADNDRC and MFSD and consider whether it raises any compliance issue</li> </ul> <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• WG to consider whether all providers should give similar types/forms of guidance to their Examiners</li> </ul> <p>(Documents ST; see also Section G)</p> <ul style="list-style-type: none"> <li>• WG to consider recommending the</li> </ul> | <p>Providers' feedback: Rows 17, 96, 97, 99, 100, 101.</p> |
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|  | <p>existing rules for the panelists?</p> <p>8. What does "clear and convincing evidence" mean?</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● ADNDRC: <ul style="list-style-type: none"> <li>○ provides Examiners with Determination Guideline</li> <li>○ directs Examiners to previous decisions to reference</li> <li>○ requires Examiners to provide some explanations of facts and reasoning in support of their Determinations</li> <li>○ does not appoint Examiners who renders Determinations not adhering to the standards or qualities of URS awards</li> </ul> </li> <li>● FORUM: <ul style="list-style-type: none"> <li>○ has a template for Determinations through its portal, with text boxes that are required to be filled out for the reasoning</li> <li>○ does not intervene in an administrative capacity to review and revisit an Examiner's Determination</li> <li>○ does not prepare any additional documents or edit in any matter</li> </ul> </li> </ul> | <p>development of an administrative checklist or basic template of minimum elements that should go into a Determination</p> |  |
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|  | <ul style="list-style-type: none"> <li>○ does not undertake to review each Determination for an explanation of the facts and reasoning</li> <li>○ <u>only</u> FORUM has Determinations 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</li> <li>● MFSD: <ul style="list-style-type: none"> <li>○ provides online Determination Form that has instructions and guidelines for Examiners</li> <li>○ encourages Examiners to refer to WIPO Overview of WIPO Panels Views on Selected UDRP Questions and Third Edition (WIPO Jurisprudential Overview 3.0)</li> <li>○ encourages Examiners to cite URS and UDRP case law they retain significant for the decision of the dispute</li> <li>○ provides Examiners information regarding case management</li> </ul> </li> </ul> |  |  |
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|  | <ul style="list-style-type: none"> <li>○ conducts the ex-post quality check of the Determinations</li> <li>○ disqualifies/bars an Examiner who renders Determinations contrary to the policies and rules or with insufficient and illogical reasoning</li> <li>○ 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</li> </ul> |  |  |
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## F. REMEDIES

| Topic                       | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                                                                                                 | Proposed Suggestion | Data Source                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>1. Scope of Remedies</b> | <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>• The Practitioners ST observed a split in responses regarding the adequacy of relief (some expressed a desire for a transfer, others with a right of first refusal, and others seeking a “voluntary (negotiated) transfer from the losing respondent to a prevailing complainant” option or cancellation).</li> </ul> <p>The following options were suggested in the Practitioners’</p> |                     | <p>Practitioners survey results: p. 15</p> <p>IRT Final Report: pp. 25-37</p> <ul style="list-style-type: none"> <li>• “The purpose of the URS is to provide a cost-effective and timely mechanism for brand owners to protect their trademarks and to promote consumer protection on the Internet. The URS is not meant to address questionable cases of alleged infringement...”</li> <li>• On remedy: "The URS is designed to provide a faster</li> </ul> |

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|  | <p>survey results:</p> <ul style="list-style-type: none"> <li>• An out-and-out transfer to a winning party as opposed to suspension</li> <li>• An option of a voluntary (negotiated) transfer from a losing respondent to a prevailing complainant before the domain expires. There are negotiated transfers taking place, not sure how they are implemented</li> <li>• It would be interesting to look at the suggested remedies to see if they were considered in the history of the promulgation of the URS: <ul style="list-style-type: none"> <li>○ "a right of first refusal to purchase the domain when it next becomes available" and</li> <li>○ "an established process for requesting suspension renewals"</li> </ul> </li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• The Documents ST suggests that these questions be deliberated among the full WG</li> </ul> |  | <p>means to stop the operation of an abusive site. The UDRP is designed to result in the transfer of the abusive domain name. Brand holders seeking to thwart infringement could utilize either or both proceedings."</p> <p>STI Report: pp. 15-25</p> <ul style="list-style-type: none"> <li>• "...a cost effective, expedited process in instances of clear cut instances of trademark abuse..." (Note: STI was unanimous on adopting IRT format, but with minority views on remedy).</li> </ul> <p>INTA Survey:</p> <ul style="list-style-type: none"> <li>• RPM effectiveness ("how well RPMs mitigate risks"): UDRP 67%, Sunrise 64%, Claims 36%, <u>URS 27%</u>, PDDRP 15%</li> <li>• "Have you heard of Whack a Mole? This is what domain enforcement is. As a brand owner, I fail to see the need for all of the new TLDs and feel like the RPMs are just another way to spend money on something that doesn't buy much protection."</li> <li>• "UDRP still helps mitigate risks the best. While URS is helpful, the escalated proof required and limited remedy makes it of limited usefulness."</li> </ul> |
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|  |  |  | <ul style="list-style-type: none"> <li>• “Improvements to URS. Perhaps a loser-pays model. Perhaps improvements to the remedy.”</li> </ul> <p>CCT-RT Review:</p> <ul style="list-style-type: none"> <li>• Review of the URS to consider inter alia (1) whether there should be a transfer option with the URS rather than only suspension; (2) whether two full systems should continue to operate (namely UDPR and URS in parallel) considering their relative merits, (3) the potential applicability of the URS to all gTLDs and (4) whether the availability of different mechanisms applicable in different gTLDs may be a source of confusion to consumers and rights holders.</li> <li>• Success Measures: Based on the findings, a clear overview of the suitability of the URS and whether it is functioning effectively in the way originally intended: “A full review of the URS should be carried out and consideration be given to how it should interoperate with the UDRP.”</li> <li>• “The uptake in use of the URS appears to be below expectations, so it would be useful to understand the</li> </ul> |
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|                                                                                          |                                                                                                                                                                                                                     |                                                                                                                                                                                                               | <p>reasons for this and whether the URS is considered an effective mechanism to prevent abuse. It is also important for all TLDs to have a level playing field.”</p> <ul style="list-style-type: none"> <li>“...overall the URS has produced positive results in certain limited cases. The speed and low cost caters to those who have clear-cut cases and are indifferent towards the [suspension remedy]. However, some [don't use it] due to the “clear and convincing” standard being seen as too strict and the [limited remedy]. There is also concern voiced over the possibility of the domain name being registered once more by another potential infringer once it is released, thus some rights holders feel more comfortable having the domain name in their portfolio, which can be achieved via a UDRP. Indeed, the value of a suspended domain name is questioned.”</li> </ul> |
| <p><b>2. Duration of Suspension Period</b></p> <p><b>3. Review of Implementation</b></p> | <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>One-third of Practitioners indicated “problems with the implementation of the relief awarded following a URS decision.” Their responses</li> </ul> | <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Providers ST):</p> <ul style="list-style-type: none"> <li>WG to re-examine the URS technical requirements and discuss whether URS Technical Requirements 3</li> </ul> | <p>Providers feedback: Row 12, 105-108</p> <p>Practitioners survey results: p. 15</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|  | <p>bear review:</p> <ul style="list-style-type: none"> <li>○ “Registrars often do not respond to the request for renewal of the suspension</li> <li>○ “Some registrars do not understand the process of paying for an additional year of suspension”</li> <li>○ “In some cases, a losing Respondent is able to re-register a domain once it becomes available”</li> <li>○ “After the lock, the cybersquatters just renew the domain name”</li> <li>○ “Any problems with Chinese Registrar in order to implement the decision”</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● Providers reported some difficulty getting the Registry and the Registrar on the same page to implement a settlement, which typically involves a transfer of the domain registration at the Registrar level</li> <li>● Some registry operators did not complete suspensions despite notifications, resulting in a need to report their non-compliance to ICANN. Some delayed sending notifications to Providers regarding the completion of</li> </ul> | <p>and Registry Requirement 10 should be amended</p> <p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● WG to discuss whether issues with registry operators and implementation of URS decisions raise enforcement or compliance issues</li> <li>● WG to discuss whether there is a need to enhance understanding by Registry Operators and Registrars of their roles in the URS process</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● Sub Team recommends an enhanced education to help Registrars understand how to implement relief and gain better awareness of URS procedures.</li> </ul> <p><b>ACTION ITEM:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● Sub Team to contact Registry Operators and Registrars about the compliance issues - Timing TBD in view of Sunrise &amp; Claims surveys that are about to be launched</li> </ul> |  |
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|                 | <p>the URS Suspension</p> <ul style="list-style-type: none"> <li>• Registry and Registrar have difficulty implementing the extension request of the URS Suspension, as they may not have understood their roles in the process</li> <li>• Some feedback from FORUM Examiners was also received supporting the possibility of altering registration information during the additional year of suspension that is available to a successful Complainant</li> </ul>                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                 |                                                                                       |
| 4. Other topics | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Providers' feedback suggests the following factors as possible deterrents to filing a URS Complaint: <ul style="list-style-type: none"> <li>◦ limited applicability of the URS (not a consensus policy)</li> <li>◦ the suspension remedy (Complainants prefer filing a UDRP instead of having the domain name suspended through a URS without the possibility to own, control, use, or transfer the domain)</li> <li>◦ stricter burden of proof</li> </ul> </li> <li>• GDPR would affect Providers' ability to discover and report to ICANN the lack/error of implementation of URS</li> </ul> | <p><b>ACTION ITEM:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• 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</li> </ul> | <p>Providers feedback: Row 28, 96, 108</p> <p>Practitioners survey results: p. 30</p> |

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|  | <p>Determination by the Registry Operator</p> <ul style="list-style-type: none"> <li>HSTS-preloaded domain suspension remedy is problematic</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>The Practitioners Sub Team did not comment on the survey results that a majority of respondents noted that they chose not to file a URS in a particular matter because of the lack of a transfer remedy (Practitioners survey result p. 30 - Note 13 Survey Respondents appear to have handled between 91 -120 URS cases of the 827 total URS filings at the time of the Survey)</li> </ul> |  |  |
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## G. APPEAL

| Topic              | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                   | Proposed Suggestion                                                                                                                                                                                                                                                                                                                                                        | Data Source                                                                                                                                                                                                                                                                                                                         |
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| 1. Appeals process | <p>(Documents ST)</p> <p>Documents Sub Team reviewed:</p> <ul style="list-style-type: none"> <li>All 14 cases where an Appeal was filed – <ul style="list-style-type: none"> <li>Complainant ultimately prevailed in 12 of the 14 Appeals (Complainant had prevailed at the Default/Final Determination stage in 8)</li> <li>9 Appeals were heard by</li> </ul> </li> </ul> | <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Documents &amp; Practitioners STs)</p> <ul style="list-style-type: none"> <li>Appeals - process seems to be working as designed, no need for additional policy work</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>Administrative/Operational – Develop mandatory template/form to be used for</li> </ul> | <p>Staff compilation report - URS data:</p> <ul style="list-style-type: none"> <li>p. 22-23, TABLE 13: Analysis of URS Cases where an Appeal was filed (see appeals_v0.2.xls for full analysis)</li> <li>p. 16, TABLE 11: URS Case Response Analysis: 30 of 827 cases saw a Response filed within 6 months but after the</li> </ul> |



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|                   | <p>3-member panels</p> <ul style="list-style-type: none"> <li>○ 7 Appeals related to the .email gTLD (with 6 cases concerning yoyo.email)</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● Of the Practitioners who used the Appellate mechanisms, all characterized their experience as “positive”</li> </ul>                                                                                                                                                                                                                                                                                                                                                             | <p>all Determinations; purpose is to ensure consistency and precision in terminology and format as well as ensure that all steps in a proceeding are recorded (e.g. Default, Appeal)</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>● Regarding mandatory template/form for all Determinations - additional specific issues may arise from follow-up with the Providers</li> </ul> | <p>14-day initial period; of those 30 cases the Complainant's claims were denied in 6.</p> <p>Staff report on De Novo Review cases:<br/> <a href="http://mm.icann.org/pipermail/gns-o-rpm-documents/attachments/20180726/8586717c/SummaryTable-URSFinalDeterminationCasesasofDec2017-UPDATED25July2018-0001.docx">http://mm.icann.org/pipermail/gns-o-rpm-documents/attachments/20180726/8586717c/SummaryTable-URSFinalDeterminationCasesasofDec2017-UPDATED25July2018-0001.docx</a></p> <p>Providers' feedback: Rows 128-132</p> <p>Practitioners survey results: p.7-9, 11</p> |
| 2. De novo review | <p>(Documents ST)</p> <p>Documents Sub Team reviewed:</p> <ul style="list-style-type: none"> <li>● All 29 cases where a De Novo Review occurred (i.e. Final Determination issued where a Respondent filed a Response after Default but before expiry of the 6-month permissible period for a Response) – <ul style="list-style-type: none"> <li>○ Respondent prevailed in 6 and Complainant in 23 cases (of which 2 were Appeals)</li> <li>○ 28 Final Determinations were rendered in English (with 1 in Spanish)</li> </ul> </li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>● The Sub Team did not comment on the Practitioners survey results indicating that</li> </ul> | <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Documents ST; see also Section H)</p> <ul style="list-style-type: none"> <li>● De Novo Review – WG to discuss if substantive policy recommendations are needed in light of current response periods and possible points of determination during a proceeding</li> </ul>                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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|  | 2 respondents believed the De Novo Review process should be retained, and 3 felt it should be removed |  |  |
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## H. POTENTIALLY OVERLAPPING PROCESS STEPS

| Topic                                                                                                                                  | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                                                                                              | Proposed Suggestion                                                                                                                                                                                                                                                                                                          | Data Source                |
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| <b>1. Potential overlap concerning duration of respondent appeal, review and extended reply periods along the URS process timeline</b> | <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>Documents Sub Team has completed data review of Appeals, De Novo Review, and Response Received cases</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>The Sub Team did not comment on the Practitioners survey results indicating that 2 survey respondents believed the De Novo Review process should be retained, and 3 felt it should be removed</li> </ul> | <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>WG to discuss policy question around the number of instances where a de novo examination can occur in cases involving a defaulting respondent and the duration of response periods for de novo review and appeal</li> </ul> | See Sections C & G, above. |

## I. COST

| Topic                           | Preliminary Finding/Issue                                                                                                                                                                                                                   | Proposed Suggestion                                                                                                                                                                                | Data Source                                                                                                                                                                     |
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| <b>1. Cost allocation model</b> | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>2 out of 3 Providers do not support a “loser pays” model, noting likely implementation problems; the third is not opposed to it but prefers a better escrow payment</li> </ul> | <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>WG to discuss whether any of the late Response fees create a burden for the Respondent</li> </ul> | <p>Providers’ feedback: Rows 26-28, 48</p> <p>INTA Survey: for RPMs generally (p. 10) - 40,528 (14% of Internet enforcement budget) for 2-year period (see also pp. 34-40).</p> |

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|  | <p>system</p> <ul style="list-style-type: none"> <li>• Forum has a flat fee for late response. ADNDRC and MFSD have fees based on the number of domains and/or the type of Respondents involved</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>• The Sub Team did not comment on the survey results that 8 Practitioners (out of 12 who responded) either agreed or strongly agreed the filing fee for a Complaint is adequate, with 2 disagreeing</li> </ul> |  | <p>1: \$2,450 (2)<br/> 2: \$6,300 (16)<br/> 3: \$6,350 (6)<br/> 4: \$16,500 (1)</p> |
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## J. LANGUAGE ISSUES

| Topic                                                                                                                 | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                                                             | Proposed Suggestion                                                                                                                                                                                                                                                                                                                                                                                                     | Data Source                                                                         |
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| <b>1. Language issues, including current requirements for complaint, notice of complaint, response, determination</b> | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• ADNDRC communicates in English only</li> <li>• FORUM and MFSD communicate to the Respondent in the language of the Respondent, with translations provided for the Notice of Complaint, Notice of Default, emails, template documents, and Determinations</li> <li>• FORUM and MFSD check WHOIS as well as information from the registrar to</li> </ul> | <p><b>ACTION ITEM:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Sub Team to ask ADNDRC how their Examiners' language skills are used, and how they handled the situation (if any) that a Respondent did not have the capability of understanding English</li> <li>• Sub Team to ask MFSD for a direct response whether they think it would be feasible to mandate sending REgistry</li> </ul> | <p>Providers' feedback: Rows 38, 81</p> <p>Staff report on De Novo Review cases</p> |

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|  | <p>determine Respondent's dominant language</p> <ul style="list-style-type: none"> <li>• Different from FORUM and MFSD, language skills of the Examiners do not seem to be a factor in the assignment and rotation of the Examiners in ADNDRC</li> <li>• ADNDRC does receive inquiries, especially from the Respondent, regarding the language of the proceedings. All of ADNDRC's assigned Examiners are fluent in the non-English language of the Respondent</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• A review of the 29 cases where a De Novo Review occurred (indicating a Response was filed after Default) showed a few cases where respondents were located in China or a European country, but no indications on the record that English was an issue. Only 1 out of the 29 cases saw a Final Determination issued in Spanish.</li> <li>• Rebecca Tushnet's coding research shows several cases where Examiners noted a Respondent might have had possible issues with language. Staff is reviewing those cases to identify</li> </ul> | <p>and Registrar notices in the same language(s)</p> <p><b>SUGGESTED OPERATIONAL FIX:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Based responses from ADNDRC to the follow-up question, WG to consider recommending ICANN to enforce the URS Rules with respect to Providers communicating with the Registrant in the language of the Registrant (e.g., ADNDRC to change their operational rules to comply with URS Procedure 4.2 and deliver Notice of Complaint also "translated by the Provider into the predominant language used in the Registrant's country or territory")</li> </ul> <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• WG to consider whether, in light of ADNDRC and FORUM feedback that it may not be feasible to mandate the sending of Registry and Registrar notices in the same languages, additional policy work is needed on this topic</li> <li>• WG to consider creating guidance for Examiners to assist them with deciding</li> </ul> |  |
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|  | <p>possible policy issues.</p> <ul style="list-style-type: none"> <li>WG member observation that the current practice is that the Providers' original notice to a registry operator is sent in English, but that notices to registrars may be in both English as well as the registrant's language (if not English) – but note that ADNDRC and FORUM do not think it would be feasible to mandate sending Registry and Registrar notices in the same language(s).. Documents Sub Team noted the possible need to clarify which notice(s) this observation related to.</li> </ul> | <p>what language to use in going ahead with a URS proceeding and Determination</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>WG to consider whether, in light of FORUM and MFSD feedback on use of WHOIS to help determine Respondent language, policy recommendations should be developed to handle language and related GDPR concerns</li> </ul> |  |
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## K. ABUSE OF PROCESS

| Topic                                                                                                                                                                              | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                                    | Proposed Suggestion                                                                                                                                                                                                                                                                                                                                                                                                           | Data Source                                                                                                                                   |
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| <p><b>1. Misuse of the process, including by trademark owners, registrants and “repeat offenders”</b></p> <p><b>2. Forum shopping</b></p> <p><b>3. Other documented abuses</b></p> | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>FORUM has handled cases where the Respondent alleged an Abuse of Process by the Complainant (with FORUM reviewing 20 cases for the Providers Sub Team) but no abuse was found by the Examiner</li> </ul> <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>The Sub Team did not comment on the survey</li> </ul> | <p><b>DRAFT RECOMMENDATION:</b></p> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>No additional data collection needed at the moment (all Providers are currently required to submit cases where abuse was found to an Abuse Case Database; none have been found to date)</li> <li>However, WG may revisit this question depending on results of review of the remaining cases where the Respondent</li> </ul> | <p>Providers feedback: Rows 122-126</p> <p>Practitioners survey results: p. 14</p> <p>Documents Sub Team review of 58 Claims Denied cases</p> |

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|  | <p>results indicating that 11 out of 13 survey respondents either agreed or strongly agreed that the URS is being used for clear-cut cases, as intended.</p> | <p>prevailed (review of cases where the Respondent prevailed after filing a response has been completed)</p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>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</li> </ul> <p><b>QUESTION:</b><br/>(Documents ST to Providers &amp; Practitioner STs):</p> <ul style="list-style-type: none"> <li>Should sanctions for abuse by respondent be added (may depend on whether case analysis reveals this to have happened)?</li> </ul> |  |
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## L. EDUCATION & TRAINING

| Topic                                                                                                               | Preliminary Finding/Issue                                                                                                                                                                                         | Proposed Suggestion                                                                                                                                                                                                                                                                                  | Data Source                                                                                                                                                                                                  |
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| <b>1. Responsibility for education and training of complainants, registrants, registry operators and registrars</b> | <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>FORUM provides regular reports to ICANN that list the languages used in cases occurring during the reporting period</li> </ul> <p>(Providers ST)</p> | <p><b>ACTION ITEM:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>Sub Team to request all three Providers to provide a copy of the Notice of Complaint they send to the Respondent</li> <li>Sub Team to ask ADNDRC to provide a copy of their Response Form and Appeal</li> </ul> | <p>Providers feedback: Rows 53, 58-77, 96</p> <p>Practitioners survey results: p. 12 (10 out of 13 either agreed or strongly agreed that an Overview will be of value)</p> <p>Websites: ICANN, Providers</p> |

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|  | <ul style="list-style-type: none"> <li>• 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. FORUM's case coordinator assists Respondents on an individual basis via phone or email</li> <li>• Review of ICANN's and Providers', websites show that the URS Procedure &amp; Rules can be downloaded from ICANN and Provider websites (in all 6 official UN languages from ICANN, in English from the Providers)</li> <li>• Each Provider's Supplemental Rules can be downloaded from its website (in English)</li> <li>• In the Notice of Complaint sent by Providers, information regarding the procedure and timeline of the URS proceeding is included</li> <li>• Providers' online Complaint and Respondent Forms contain instructions on the complaint and response process (though not all Providers publish the same level of details)</li> </ul> | <p>Form</p> <ul style="list-style-type: none"> <li>• Sub Team/WG to review the Notice of Complaint and Providers' online forms/instructions before considering whether any recommendations should be made</li> </ul> <p><b>DRAFT RECOMMENDATION:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>• WG to discuss whether to recommend ICANN to develop an easy-to-understand, multilingual, and linkable guidance (e.g. basic FAQs) for both URS parties</li> <li>• WG to discuss whether Providers should develop additional materials specific to their service, practice, website, etc.</li> </ul> <p>(Documents ST)</p> <ul style="list-style-type: none"> <li>• Supports the creation of a basic, multilingual FAQ for Complainants and Respondents</li> </ul> |  |
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## M. URS PROVIDERS

| Topic                                                                                                  | Preliminary Finding/Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Proposed Suggestion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Data Source                                                                |
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| <b>1. Evaluation of URS providers and their respective processes (including training of panelists)</b> | <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>ADNDRC and FORUM do not seem to publish all their Examiners' CVs, which may be contrary to URS Rule 6(a): "Each Provider shall maintain and publish a publicly available list of Examiners and their qualifications"</li> <li>ADNDRC publishes Examiners' CVs/resumes subject to the Examiner's consent on how much information can be made public. It seems to be at odds with URS Rules 6(a)</li> <li>FORUM does not obtain the CVs of panelists from other Providers</li> <li>Providers also gave feedback about handling Examiner conflicts and removal</li> <li>ADNDRC will not appoint an Examiner who <ul style="list-style-type: none"> <li>renders Determinations not adhering to the standards or qualities of URS awards</li> <li>represented a Complainant in a URS or UDRP proceeding where there was a finding of Reverse Domain Name Hijacking</li> </ul> </li> </ul> | <p><b>DRAFT RECOMMENDATION:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>WG to consider if there is a need to include any explicit standard for removal of Examiners based on particular background and factors such as their record, e.g. representing serial cyber-squatters</li> </ul> <p><b>SUGGESTED OPERATIONAL FIX:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>WG to discuss whether Providers' non-compliance with URS Rule 6(a) is an issue, and whether any operational fix recommendation should be proposed; ADNDRC, in particular, should list the backgrounds of all of their Examiners so Complainants and Respondents can check for conflicts of interest</li> <li>Based on ADNDRC's responses to follow-up questions, WG to discuss whether ADNDRC's non-compliance with the technical requirements is an issue, and whether any operational fix</li> </ul> | <p>Providers' feedback: Rows 59, 60, 62, 64-67, 69, 75-77, 82, 92, 136</p> |



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|  | <ul style="list-style-type: none"> <li>• FORUM may remove an Examiner for reasons including: <ul style="list-style-type: none"> <li>◦ failing to comply with deadlines</li> <li>◦ failure to understand the Policy and Rules</li> <li>◦ repeatedly being unavailable to take a case due to schedule or conflicts of interest</li> </ul> </li> <li>• MFSD would disqualify/bar an Examiner for reasons including: <ul style="list-style-type: none"> <li>◦ non-declaration of conflict of interest</li> <li>◦ repeated non-participation at trainings</li> <li>◦ rendering Determinations contrary to the policies and rules or with insufficient and illogical reasoning</li> </ul> </li> <li>• 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</li> <li>• MFSD's Examiners have drawn inferences per URS Rule 12(f)</li> <li>• ADNDRC has indicated difficulties complying with the</li> </ul> | <p>recommendation should be proposed</p> <p><b>ACTION ITEM:</b><br/>(Providers ST)</p> <ul style="list-style-type: none"> <li>• Sub Team to ask ADNDRC to elaborate on their panel selection processes</li> <li>• Sub Team/WG to examine MFSD Dispute no. <a href="#">8422F178</a> e-leclerc.paris; MFSD Dispute no. <a href="#">429EC571</a> reinhausen.international).</li> <li>• Sub Team to ask ADNDRC to provide details in order to understand whether ADNDRC has been out of compliance with technical requirements</li> <li>• Sub Team to ask ADNDRC to provide details on the information or data that ICANN communicated with them</li> <li>• Sub Team to ask all three Providers to provide specific examples of their Examiner training and education programs/materials for WG to determine whether further deliberation is needed</li> </ul> |  |
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|                         | <p>URS technical requirements, as it is migrating to a new website</p> <ul style="list-style-type: none"> <li>All three Providers maintain regular communications with ICANN. FORUM and MFSD provided details of their communications</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                    |                                                                                     |
| 2. Conflict of interest | <p>(Practitioners ST)</p> <ul style="list-style-type: none"> <li>No Practitioner indicated having “an experience with an Examiner having an actual or potential conflict of interest in a URS proceeding”</li> </ul> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>Both FORUM and MFSD’s Examiners have voluntarily disclosed conflict of interest, but no instance of a conflict presenting itself after an Examiner has accepted a case. ADNDRC did not provide a direct answer</li> <li>Providers have inconsistent methods seek confirmation from Examiners on their impartiality or independence (FORUM - <a href="#">Neutral’s Oath</a>; MFSD - email &amp; checkbox on <a href="#">Determination Form</a>; ADNDRC - email)</li> </ul> | <p><b>ACTION ITEM:</b></p> <p>(Providers ST)</p> <ul style="list-style-type: none"> <li>Sub Team to ask ADNDRC to confirm whether any of their Examiners voluntarily disclosed any conflict of interest</li> </ul> | <p>Providers feedback: Row 67</p> <p>Practitioners’ survey responses: pp. 38-39</p> |

## N. ALTERNATIVE PROCESSES

| Topic                                                                     | Preliminary Finding/Issue | Proposed Suggestion                                                                                                                                                                                                                                                                                                                                                                                 | Data Source |
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| 1. Possible alternative(s) to the URS, e.g. summary procedure in the UDRP |                           | <b>DRAFT RECOMMENDATION:</b><br>(Documents ST) <ul style="list-style-type: none"> <li>Documents Sub Team notes that this section was added based on suggestions from WG members, and it was not included in the original Charter questions. As the URS was intended as an alternative to the UDRP, no specific policy issues have been identified in relation to this topic at this time</li> </ul> |             |

## ADDITIONAL SUB TEAM NOTES

### Documents ST:

- There is an action item for staff (originally proposed by John McElwaine) to find out if decoding software is available that can read the coded portions of a SMD file, or if this is possible only using the specific key from the TMCH. *Comments from Co-Chairs:*
  - Do not think it is about the coding; but what is actually in the SMD file. It seems clear that the relevant info is simply not there: <http://www.trademark-clearinghouse.com/help/fag/which-information-does-smd-file-contain>
  - Much subteam spent on how to pass the full TM information to Examiners -- and if not SMD - how else?

### Practitioners ST:

- Overall the Practitioner's Survey indicates that Practitioners' have a "Positive" view of the URS and find the URS to be "an effective RPM." (pp. 32 and 35 )