**AN ARBITRATION OPTION WITHIN THE FRAMEWORK OF THE UNIFORM RAPID SUSPENSION (URS) PROCEDURE**

**Expedited Policy Development Process (EPDP) for Specific Curative Rights Protections for International Governmental Organizations (IGOs)**

**Summary prepared by ICANN staff (as of 31 August 2021)**

Question:

Should the EPDP team’s recommendations for an option to agree to binding arbitration, in cases where an IGO Complainant prevails against a registrant in a Uniform Domain Name Dispute Resolution Policy (UDRP) proceeding, also apply to the URS? Put another way, is there any substantive or principled reason why the EPDP team’s recommendation on binding arbitration in relation to the UDRP should not also apply to the URS in the case where a Determination has been made in favor of an IGO Complainant?

Key Differences between the UDRP & URS:

* **Different remedy:** The only remedy under the URS is for suspension of the domain name for the balance of its registration period, with the complainant able to extend that registration for one additional year[[1]](#footnote-1). Under the UDRP, the disputed domain name can be transferred to the prevailing complainant or canceled.
* **Timing of Implementation:** Suspension of a domain name under the URS is done immediately upon a registry operator’s receipt of the initial URS Determination[[2]](#footnote-2). Under the UDRP, the relevant registrar must wait 10 business days after it is informed of the initial UDRP decision before canceling or transferring the domain name (as applicable).
  + Throughout the duration of suspension, the nameservers are directed to a URS informational page supplied by the URS dispute resolution provider; and the domain name cannot be transferred or modified[[3]](#footnote-3).
* **Different Standard of Proof:** Under the URS, the complainant must provide clear and convincing evidence[[4]](#footnote-4) to prevail. Under the UDRP, the standard of proof that a complainant must satisfy is a preponderance of the evidence (also known as the balance of probabilities.)
* **Scope of Eligible Marks:** The URS applies to registered trademarks in current use, court-validated marks and marks that are protected by a statute or treaty in effect at the time the complaint is filed; in all cases, however, the complainant must have a “word mark”[[5]](#footnote-5). The UDRP is limited to trademarks or service marks in which the complainant has rights.
  + The scope of the URS aligns with the scope of the Trademark Clearinghouse that was also established for the 2012 New gTLD Program. The UDRP predates the URS, having been an ICANN policy since 1999.
* **Appeal Mechanism:** The URS has a built-in internal appeal mechanism, under which either party can request a de novo review of the initial URS Determination by an appeal panel selected by the URS provider, at its own cost, and with a limited right to introduce new material evidence[[6]](#footnote-6). There is no internal appeal process in the UDRP.
  + Under both the UDRP and URS, both parties always retain the right to file proceedings in a court.
  + Under the URS, the complainant also retains the ability to file a UDRP complaint, for which the outcome of the initial URS Determination has no prejudicial effect.
* **URS allows losing respondent to seek Final Determination of an initial Default Determination:** The URS allows for a 6-month period following an initial Default Determination, during which time the defaulting respondent can ask for a de novo review of the case[[7]](#footnote-7). This is not the same as an appeal, which must be filed within 14 days of the initial Determination.
  + The internal appeal process remains available for the losing party in a Final Determination[[8]](#footnote-8).
  + There is no equivalent to this additional step for Final Determination in the UDRP.

Other Notes about the UDRP & URS:

* Both processes currently require that complainants agree to submit to Mutual Jurisdiction.
* Both processes allow the parties to take their case to a court.

What would an arbitration option look like under the URS?

1. **At the complaint filing stage:** IGO Complainant is exempted from the Mutual Jurisdiction requirement and agrees to have post-Determination disputes settled by binding arbitration, if the respondent also agrees to binding arbitration.
   * This is the same recommendation as for the UDRP.
2. **Following a URS Determination (including Default or Final) in favor of the IGO Complainant:** registrar informs respondent that it may elect binding arbitration instead of filing an internal appeal or going to court.
   * This is the same recommendation as for the UDRP.
   * This will not change the rule requiring an immediate suspension of a domain name in a case where the complainant prevails.

*(Note: The question as to whether the arbitration option will continue to be available in a case where the losing registrant initiates proceedings in court is the same as for the UDRP. As such, the EPDP team’s decision should be uniform for both types of proceedings.)*

1. URS Sections 10.3 & 10.4. [↑](#footnote-ref-1)
2. URS Section 10.2. [↑](#footnote-ref-2)
3. URS Section 10.2. [↑](#footnote-ref-3)
4. URS Section 8.2. [↑](#footnote-ref-4)
5. URS Section 8.1.2. [↑](#footnote-ref-5)
6. URS Section 12. [↑](#footnote-ref-6)
7. URS Section 6.4. [↑](#footnote-ref-7)
8. URS Section 12.4. [↑](#footnote-ref-8)