

Discussion Paper: Uniform Rapid Suspension

Executive Summary

The Uniform Rapid Suspension (URS) system is designed to provide a rapid, low-cost means to address clear-cut instances of cybersquatting in domain names. The URS was created as one of numerous trademark protections added to the domain name system as part of the New gTLD Program. The URS designed, revised, and refined with significant input from many parts of the community.

Implementation work conducted on the URS to date indicates that the implementation will not attain the cost target of \$300-\$500 in URS fees per case. This is based on discussions with WIPO staff, direct communication with the IPC, and examples described by ICM registry and Nominet. Because the fee target is a primary goal of the URS, additional work and study should be undertaken to determine if amendments to the program might attain the fee goal and retain the safeguards and other features of the program. This study must be undertaken by a community group. While the scope of the effort is not yet defined, resources have been reserved in ICANN's proposed FY13 budget. The work will be done through a bottom-up, community discussion similar to the work done to create and review the URS in the first instance.

Background:

As originally described by the implementation recommendation team (IRT), “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 (e.g., use of terms in their generic sense) or for anti-competitive purposes or denial of free speech, but rather those cases in which there is no genuine contestable issue as to the infringement and abuse that is taking place.” (See <http://archive.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>)

After the URS was initially proposed, the Generic Names Supporting Organization (GNSO) Special Trademark Issues Working Group (STI) had an opportunity to review and revise. The STI stated that: “There is consensus among the members of STI that creation of a Uniform Rapid Suspension (URS) procedure would be a beneficial rights protection mechanism for inclusion in the New GTLD program. The STI recognized that the URS could provide trademark holders with a *cost effective, expedited process in instances of clear cut instances of trademark abuse*, provided that the procedure includes *appropriate safeguards* to protect registrants who engage in legitimate uses of domain names. Despite the expedited nature of the URS, the STI called for a URS that provides procedures consistent with fair notice, justice, and due process.” (See <http://www.icann.org/en/news/public-comment/sti-17dec09-en.htm>)

Following the IRT development and the STI refinement of the URS, the Governmental Advisory Committee (GAC) noted that “the URS mechanism was recommended specifically to tackle obvious examples of opportunistic cybersquatting by providing rights holders with a cost effective and swift remedy.” (See <http://archive.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>).

With this goal in mind, the GAC suggested some additional changes, including reducing the time periods between actions, using a form complaint with reduced word limits, a lower burden of proof, a “loser pays” mechanism, a reduced timeframe and clear rationale for appeal, a right of refusal for transfer, and expansion of exact match. In suggesting these and other refinements, the GAC commented that: “Without these amendments, the GAC believes that URS will fail to meet its stated purpose and will be rendered ineffective and useless.”

Discussion

Discussions with current UDRP service providers, and others, have indicated that it will be difficult to implement the URS in a way that will satisfy each of its goals, particularly the intended cost aspect.

As the URS cannot be changed without a public discussion, these issues are being described for further discussion at ICANN’s public meeting in Prague.

To begin the discussion, there are a few questions that the community needs to answer:

1. What are the goals of the URS?
2. As developed, can the URS satisfy those goals?
 - If so, then there is no further need for discussion at this stage.
 - If not, what are the key issues that need to be addressed in order to ensure the URS does satisfy the goals?
3. If changes are needed, how should those changes be made?

Goals of the URS

As noted above, the URS is intended to provide a rapid, low-cost means to address clear-cut instances of cybersquatting in domain names. It is meant to serve as a complement to the existing Uniform Domain Name Dispute Resolution Policy (UDRP), which will continue to be available in cases where transfer of a domain name is desired. The URS filing fee, targeted to be in the range of USD 300-500, would be set by the URS provider, and a successful URS complaint would result in suspension rather than transfer of the name.

The URS was developed according to a community process trying to balance these goals with reasonable cost targets, as well as protection for domain name registrants.

Potential Issues to be addressed:

- A. What are the cost drivers of the URS? What benefit is derived from each?

Examples include:

- Examination of complaint in the absence of a response. In the event that no response to a complaint is submitted, the complaint is still reviewed by the examiner prior to a determination being made.
 - Communications are provided by email, fax, and postal mail for notices to registrant. This was in place in the interest of providing an opportunity for the registrant to be aware of the complaint and the timelines for filing of a response
 - Default process. In cases where registrants do not file a response within the 14-day period, they are declared in default. After this has occurred, the registrant is required to pay a fee to file a response. However, they are still allowed to file the response for at least six months (with option to request another six).
 - Appeal process. An appeal may be filed by either party. Either party shall have a right to seek a de novo appeal of the Determination, for a reasonable fee to cover the costs of the appeal. The Appeal Panel, to be selected by the Provider, may request further statements or documents from either of the Parties. An appeal must be filed within 14 days after a determination is issued and any response must be filed 14 days after an appeal is filed.
- B. What are the significant safeguards for registrants provided by the URS as drafted? Can they be provided in some other, more cost effective way?
- C. What is the appropriate venue and participation level for discussion going forward?