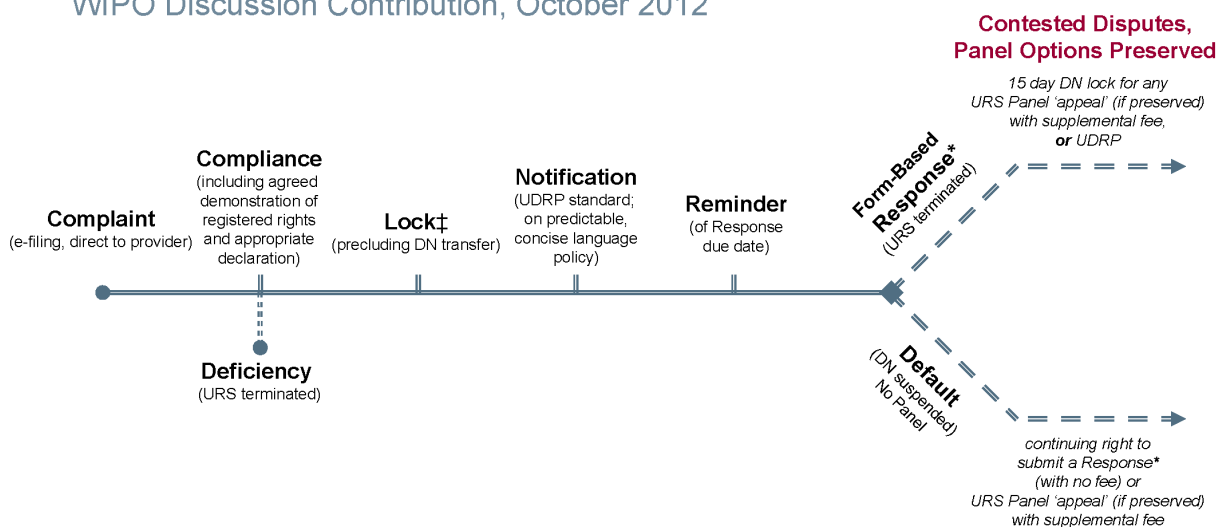


URS 2.0?

WIPO Discussion Contribution, October 2012



‡Alternate option: Lock on filing, with direct copy to respondent, with compliance check to follow. If deficient, URS terminated and DN unlocked.

The Objective

A simple and cost-sustainable suspension mechanism, offering a reversible remedy (suspension + lock), without requiring expert appointment in default cases, with sufficient registrant protections that any unwarranted result could be realistically corrected at any relevant time by respondent itself, by submitting an appropriate form-based response.

Problem with the Current Design

Under the UDRP, the panel typically comprises some two thirds of the filing fee, with the remedy (transfer, non-reversible except via court appeal) warranting panel appointment in all cases, contested and default alike. The still-current URS is significantly more complex than the UDRP procedurally, offering a lighter remedy (reversible on appeal), for a price target of less than a third of the UDRP. This is neither realistic nor optimal. In order to responsibly approach the target price point in the time available, either the current model needs to be propped up financially, or it needs to be made simpler and more efficient at a design level, while retaining important registrant safeguards.

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ICANN Subsidy?

Subsidizing or underwriting administration has been proposed as one possible option, at least in the short term. However, propping up a model financially does not fix fundamental design issues, or make the model sustainable in the longer term. Although it may help to stimulate some providers' interest initially, such interest would in effect likely be limited to the duration of the subsidy, and may act as a disincentive to longer-term investment in URS infrastructure. Such arrangements would also need to take due account of the optics of registration or application-derived revenue flowing to neutral dispute resolution providers, of why other ICANN-adopted dispute resolution mechanisms (such as the UDRP) would not also warrant subsidization or underwriting in this way, and of the basis for and mechanics of disbursement (also likely to be complicated, especially so across any multi-provider model).

Alternative Model

In WIPO's continuing assessment, adoption by ICANN of a default-based model for the URS would be the cleaner way to significantly reduce costs for the majority of URS cases, preserving important registrant safeguards, while underwriting cost sustainability of the system in the longer term.

The Complaint

Under the WIPO model, URS Complaints would need to contain an appropriate demonstration of relevant rights, to address the substantive criteria of the UDRP, to contain an appropriate declaration as to the truth of claims made (which if found to be untrue could be held against the declaring party in any subsequent URS appeal or UDRP proceeding), and be subject to an appropriate provider compliance check, including on the inclusion of the necessary rights, statements and declarations. It would not be a substantive analysis as such, but it would provide a check on potentially abusive complaints, as would the filing fee, the potential consequences in any subsequent proceedings of false or misleading statements made under declaration, the possibility of a URS appeal with panel, and the possibility of recourse to the courts.

If a filed complaint would be found by the examining provider to be administratively non-compliant, it would be dismissed without prejudice and the domain name unlocked. Compliant complaints would be notified to the registrant using a 'UDRP standard' (including by email and written notice to postal address), with a reasonable period to respond.

Response

If the registrant would timely respond to the complaint, the URS proceedings would be dismissed, with the lock on registration remaining for 15 days, giving the complainant the option to commence a URS appeal (for a supplemental fee) or commence a UDRP proceeding.

Default

If the registrant would default, the domain name would be suspended (i.e. it would no longer resolve) and registration would remain locked pending submission of any response or domain name expiry. No panel would need to be appointed, with the fact of any default validated and notified by the provider only. Thus, the 'remedy' (suspension + lock, pending any response) granted in case of default would be wholly procedural in nature (in real-world terms, it would be wholly reversible by any responding respondent). In practice, a complainant would achieve the

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desired result of a suspension in an appropriately filed URS case in which a respondent defaulted, for as long as no response would be forthcoming. A defaulting respondent would retain the option to submit a response at any time during its remaining registration of the domain name at no cost in filing fee to lift a suspension, and no substantive or reasoned finding would be recorded against a defaulting registrant on the basis of their default.

Lifting Suspension

Under the WIPO model, it bears emphasis that all a registrant would need to do to have the suspension of its domain name lifted, and for the suspended domain name to resolve, would be to submit a form-based response. It would pay no response fee, and could submit that response at any time for the period of its remaining registration of the disputed domain name.

After the submission of any response to the provider, the registry would be notified accordingly by the provider, suspension of the domain name would be duly lifted (enabling it to again resolve), while a temporary lock would remain on transfer of the domain name registration for a further brief 15 day period (though with no restriction on use), to enable any URS panel appeal (at supplemental cost) to be lodged, or for the Complainant to take the matter directly to the UDRP, without undue risk of cyber flight.

Appeal?

The option for a URS 'appeal' involving panel appointment (at a supplemental fee) with a reasoned substantive determination on the merits in any contested URS case, or on any due process or potential abuse of process claims, could be retained. Alternately, given the purpose of the URS and relatively lightness of its (reversible) remedy, the enhanced ability of a defaulting registrant to raise its hand and lift any default-based suspension through belated response, the continuing availability (to complainants) of access to the UDRP for contested cases (which mechanism also includes declaratory abuse of process provisions), and (to both parties) of the possibility of courts, consideration could also be given to discontinuing such URS 'appeal' option.

This would greatly simplify the URS model overall, avoid potentially complex issues over 'precedent' as between reasoned decisions under any URS appeal system and the UDRP, and reduce risks of forum shopping. In short, if a URS appeal option would be discontinued, the URS would be appropriate for default cases only, and the UDRP would be appropriate for any contested disputes.

End Goal

In any event, in WIPO's view, for purposes of the URS it is most important for there to be a workable balance between the relative lightness of the remedy (suspension + lock on transfer, both reversible), simplicity and efficiency of the process (linear, no panel for default cases), sustainable pricing in the longer-term, and real-world respondent safety valves (including option for Respondent to 'lift' the suspension at any time at no cost through submission of a response).

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