

# Uniform Rapid Suspension – Community suggestions

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## Background

In the development of the New gTLD Program, a dedicated Implementation Recommendation Team (“IRT”) recommended the introduction of a new procedure to address clear-cut cases of trademark infringement. This procedure, the Uniform Rapid Suspension (URS) system, was refined through community input with the goal to create an efficient and low-cost process that included safeguards against abuse. The URS is a compulsory element to be available for all new gTLDs. The current text of the URS procedure is available under Module 5 in the Applicant Guidebook, see <http://newgtlds.icann.org/en/applicants/agb>.

The Uniform Domain Name Dispute Resolution Policy (“UDRP”) is applicable to new gTLDs and will continue to apply to all existing gTLDs. The URS is not intended to replace the UDRP, but to act as a complement to that long-tested process. The URS and UDRP have separate procedures with distinct timelines and remedies. The design of the URS is expected to provide a faster means to stop the operation of an infringing domain name and also to be available for a limited fee (in the order of 500 USD per case). The UDRP results in the transfer of the abusive domain name, while the URS is designed to result in suspension of a domain name. As designed, trademark holders seeking to address alleged infringements will be able to utilize either or both procedures. There is no requirement to use one procedure before the other. As with the UDRP, it is planned that multiple independent entities will be designated to offer the service of providing URS handling.

In community discussions over the last year, concerns have been raised about the viability of the fee and timeline targets of the URS. As a first step forward in addressing those concerns, a session was held at the ICANN meeting in Prague in June 2012 to collect suggestions on how these concerns could be addressed. Participants identified cost drivers in the process and provided proposals on how to reduce the influence of those drivers.

With a view to facilitating and informing further discussions on this topic, this paper summarises proposals discussed in the Prague session and provides some initial analysis. For full reference, the session transcript, presentation and recording are available at <http://prague44.icann.org/node/31773>.

## Areas of Suggested Focus

### **A. LIMIT THE PANEL INVOLVEMENT**

#### **Suggestion:**

**1. In clear-cut, default cases, when there is no response from the registrant, the complainant will be deemed to have prevailed without the need for a panel decision.**

**Considerations:**

This proposal would reduce cost, as the hourly fee for a panelist is a main cost driver in the process and considerably higher than for a case handler, and could lead to more rapid decisions in cases when the registrant does not reply. However, this type of default action is a deviation from the current URS that requires decisions to be taken by a qualified panel. This raises additional considerations. Therefore, cross-constituency community discussion is required to ensure efficiencies gained are not gained at the expense of registrant protections.

The IRT stated that there should be a substantive review of each complaint – even those complaints where there was no response. The substantive review was meant to be a protection for registrants. If an alternate model is considered for a default decision, there would have to be alternate protections for registrants. These might include a provision that any subsequent answer within a specified time frame by the registrant would restore the name pending panel consideration or that a registrant reply sends the dispute onto URS.

**Suggestion:**

**2. If a case takes more than a limited time of deliberation for the panel to decide, for example more than some fraction of an hour, the panel should reject the case as not being a clear-cut case of abuse.**

**Considerations:**

This proposal would reduce cost by setting an upper time limit for the involvement of panelists, while observing the objective that the URS be focused on resolving obvious cases of infringement. Experienced panelists would be asked to help establish the time limits, by providing information on how long it takes them to decide a clear-cut case of abuse. If the established and agreed time limit is exceeded, the case would be denied and subsequently be eligible for UDRP. This might be viewed as a deviation from the current URS model. The complainant would bear the URS cost, while having the option to file a UDRP case and pay the corresponding fee to pursue the matter if the outcome of the URS is not in the complainant's favor. This option presents a risk to be addressed. The option (which will always be available) for a complainant to file a UDRP case after an unsuccessful URS case could arguably give an undue incentive for a provider offering both URS and UDRP to deem a URS case unfounded and to expect an UDRP and the corresponding fee on top of the URS proceeding. This, in turn, could lead to complainants considering a URS filing less attractive than going straight to a UDRP.

**B. AUTOMATE AND SIMPLIFY****Suggestion:**

**1. Use web interfaces and email for as many steps as possible and reduce the number of case handler interventions.**

**Considerations:**

This proposal has potential for reducing costs to some extent, as each manual intervention by a case handler implies added time and cost. However, doing away with some of the multiple modes of registrant notification would constitute a deviation from the letter of the current URS and imply a risk that notification isn't received by the registrant in a timely fashion.

**Suggestion:**

**2. Limit the scope of the URS to accept only complaints related to trademarks registered in the Trademark Clearinghouse.**

**Considerations:**

This proposal would reduce cost by reducing the time needed for validation of the complainant's trademark rights. Furthermore, it could facilitate, or even automate, submission of the corresponding documentation to providers. This option was discussed during the development of the URS and Trademark Clearinghouse models, but was not incorporated immediately in order to provide time for the Trademark Clearinghouse model to develop first. As the models have evolved, it has become apparent that the URS should accept only complaints related to trademarks registered in the Trademark Clearinghouse, or the 500 USD target fee should apply only to Clearinghouse registered names where validation effort is not required.

**Suggestion:**

**3. Check only for identity between trademark and domain name, not for confusing similarity.**

**Considerations:**

This proposal would reduce cost by simplifying the similarity check that is an essential step in the URS procedure. However, it is a limitation of the scope of the URS and would reduce its usefulness for trademark holders while infringing parties could intentionally avoid URS proceedings by using domain names with a minimal difference from the intended trademarks.

**Suggestion:**

**4. Copy suitable cost-savings approaches from other existing procedures of a similar nature.**

**Considerations:**

Existing procedures brought up during the Prague session as deserving review for useful approaches to copy into the URS include an automated procedure already in operation at the Czech Arbitration Court, Nominet, and ICM's system. These proposals may be useful, if steps can be identified and assessed as compatible with the URS and its global, multi-jurisdiction scope. It should be kept in mind that the Nominet system is operating for a single ccTLD in one defined jurisdiction and that the ICM system is designed for a single specific gTLD. It follows that a careful analysis is needed to determine if any approach or step featured in these systems would work well in a wider context.

### **C. KEEP URS AS IS, PROVIDE TEMPORARY FINANCING OR SUPPORT AND REVIEW URS LATER**

#### **Suggestion:**

**1. Keep URS as is, find external partial financing of service providers' URS steps to achieve low URS fees and review the URS as foreseen in 18 months from launch.**

#### **Considerations:**

This proposal would not reduce the costs per se nor speed up handling, but clearly be a way to reduce the fees to users, provided such external partial financing can be found. The panelists should already receive education, presumably provided by ICANN or the URS service providers, and the first 18 months of the URS could be considered an educational exercise, justifying partial financing by ICANN of the panelists. (The actual cases appearing during these 18 months must of course be resolved appropriately by panelists that have already received appropriate education, so the expression "educational exercise" cannot be taken literally.)

There are reasons why this subsidization option should be considered after all other options are weighed. The number of cases and the resulting cumulative costs are unknown and their estimation would be highly speculative. ICANN's ability to finance the effort is unknown. Second, subsidized models are generally not sustainable; such a model presents risks to URS long-term viability. Third, any subsidy should take place after possible economies are realized to reduce risk. As called for in most cases of external financing, incentives for service providers to keep costs down are needed as a complement.

On a related topic, education of interested and participating parties is also important and should be funded. This type of education will also serve to keep costs low.

#### **Suggestion:**

**2. Seek volunteer panelists willing to work on URS cases for free until the URS is reviewed.**

#### **Considerations:**

This proposal would obviously reduce the cost, provided suitably qualified volunteers can be found, willing to take on URS cases as panelists without compensation. When considering or testing this model, the requirement that panelists be duly qualified should not be modified.

### **D. APPEAL TO OMBUDSMAN**

#### **Suggestion:**

**1. Introduce the possibility for registrants to appeal a URS outcome to an ombudsman rather than the URS appellate panel selected by the URS provider.**

#### **Considerations:**

There is an appeal mechanism in the existing URS model. Its presence in the model serves to increase the administrative burden (and costs) for the provider. However, there is a separate and additional fee to proceed with an appeal. If simplifications or other changes to the URS are introduced that could negatively affect the interest of registrants, a revised appeals mechanism could complement and help maintain the balance in the procedure with a view to safeguarding registrants' rights. There may be a cost reduction by eliminating the appeal in the current model (even though it does call for additional fees) and consider replacing it with a separately managed and funded model. That model could include an "Ombudsman" that would consider appeal from URS decisions. The issue here again, is how the Ombudsman will be compensated. If compensated by the appellant, to be effective it should be a lower fee than might already be anticipated for the appeal process in the current URS model.