

URS Final Recommendation xx Individual Proposal #1

The Working Group recommends that the URS Procedure para 6.2 be amended to: (i) clearly define what “Default Period” means; and (ii) state that the registrant shall not change the public and non-public registration data elements related to the disputed domain name(s) during the Default Period.

The Working Group further recommends deleting the text “the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use” from URS Procedure para 6.2, and incorporating it in other appropriate section(s) in the URS Procedure as factors which an Examiner may take into account in determining whether there was registration and use in bad faith.

Implementation Guidance:

For consideration of the IRT, the Working Group suggests that the deleted text may be incorporated in URS Procedures para 5.9 and/or 8.1.¹

Context:

This recommendation was developed following the Working Group’s review of public comments to URS Individual Proposal #1, which did not rise to the level of becoming a preliminary recommendation, but received sufficient support from the Working Group to be published in the Phase 1 Initial Report for public comment.²

This recommendation specifically concerns the following parts of the URS Procedure:

- **URS Procedure 6.2:** In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.

The Working Group agreed that the current language of URS para 6.2 needs to be amended in order to address technical issues and maintain consistency with the EPDP Team’s Phase 1 recommendations.³

The Working Group found that there is no definition of the phrase “Default Period” in its sole occurrence in the URS Procedure para 6.2; and this term is not defined anywhere else in the URS Rules, URS Procedure, or other URS related documentations. Based on the definition of the word “Default” pursuant to URS Rule 12(a), the Working Group understood that the Default Period starts when a URS

¹ See the full text of the URS Procedures para 5.9 and 8.1 here:

<http://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf>

² See the full text of the URS Individual Proposal #1 on pp. 57-58 of the RPM PDP Phase 1 Initial Report:

<https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-initial-18mar20-en.pdf>

³ Please see the full text of the EPDP Phase 1 recommendations #21, #23, and #27, as well as reference to the ICANN Org EPDP Phase 1 Recommendation #27 Wave 1 Report in the “Background” section of this Final Report.

case enters Default and ends when the Examiner issues a Default Determination.⁴ For sake of clarity, the Working Group recommends that “Default Period” be clearly defined in URS Procedure para 6.2.

The current language of URS Procedure para 6.2 includes the phrase “Whois information”. ICANN Org’s EPDP Phase 1 Recommendation #27 Wave 1 Report suggests that the Working Group consider recommending an update to URS Procedure para 6.2 to clarify that a registrant shall not change the public and non-public registration data elements subject to URS proceedings during the Default Period.⁵ The Working Group agreed with this suggestion and is making a recommendation accordingly.

The Working Group also recommends replacing the use of the passive voice in the phrase “will be prohibited” in URS Procedure para 6.2 with the active voice, to provide direct instruction to the registrant, as no one but the registrant and its webhost can change the public and non-public registration data elements.

Furthermore, the Working Group agreed that a registrant’s action of changing website content can be taken into consideration by the Examiner, as to whether it might be further evidence of bad faith. Some Working Group members noted there may be legitimate or legal reasons for the registrant to update the content of a website, and some websites embed dynamically generated ads and social media feeds. Therefore, the Working Group recommends moving the prohibition against changing website content for domain names subject to URS proceedings to the appropriate section(s) in the URS Procedure as behaviors to be considered by the Examiners, who should make all reasonable inferences when finding bad faith.

Public Comment Review:

Based on the public comments received, the Working Group noted that URS Individual Proposal #1, which served as the origin of this recommendation, received general support with some opposition mostly from individual commenters. However, commenters also voiced preferences as between the two options indicated in the original proposal. The Working Group’s final recommendation attempts to bridge the gap between the two options while maintaining consistency with the EPDP Team’s Phase 1 recommendations.

URS Final Recommendation xxIndividual Proposal #2

The Working Group recommends that the "URS High Level Technical Requirements for Registries and Registrars" document be renamed as the "URS High Level Requirements for Registries and Registrars". The Working Group also recommends that on ICANN org's web page <https://newgtlds.icann.org/en/applicants/urs>, the "URS Technical Requirements 1.0" document be

⁴ URS Rule 12(a): If at the expiration of the 14-day Response period (or extended period if granted), the Respondent does not submit an answer, the Complaint proceeds to Default. In case of Default, the Provider shall appoint an Examiner to review the Complaint for a prima facie case, including complete and appropriate evidence. See full text of the URS Rule 12 here: <http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf>

⁵ See the ICANN Org EPDP Phase 1 Recommendation #27 Wave 1 Report here: <https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-phase-1-recommendation-27-18feb20-en.pdf>.

renamed as the "URS Registrars and Registries Requirements 1.0".

Context:

This recommendation was developed following the Working Group's review of public comments to URS Individual Proposal #2, which did not rise to the level of becoming a preliminary recommendation, but received sufficient support from the Working Group to be published in the Phase 1 Initial Report for public comment.⁶

The Working Group recognized that the technical document "URS High Level Technical Requirements for Registries and Registrars" also includes the following legal requirements pertaining to the inclusion of a particular text in the Registry-Registrar Agreement:⁷

4. Registry-Registrar Agreement:

- The Registry Operator MUST specify in the Registry-Registrar Agreement for the Registry Operator's TLD that the Registrar MUST accept and process payments for the renewal of a domain name by a URS Complainant in cases where the URS Complainant prevailed.
- The Registry Operator MUST specify in the Registry-Registrar Agreement for the Registry Operator's TLD that the Registrar MUST NOT renew a domain name to a URS Complainant who prevailed for longer than one year (if allowed by the maximum validity period of the TLD).

The Working Group agreed that this minimal change would enhance clarity of the document scope and reduce the risk of confusion among Registries and Registrars, who may be puzzled by the inclusion of requirements with legal implications inside a document with the phrase "technical requirements" in its title. The Working Group also agreed that the title of the same document published on the ICANN org's web page <https://newgtlds.icann.org/en/applicants/urs> needs to be updated for sake of clarity and consistency.

Public Comment Review:

Based on the public comments received, the Working Group noted that there was no objection to the URS Individual Proposal #2, which served as the origin of this recommendation. Furthermore, the Working Group noted that the second approach suggested in the original proposal garnered more support among public comment contributors; the GNSO's Contracted Parties House, which the Working Group particularly sought public comment from with regard to the original proposal, also supported the second approach. Therefore, the Working Group agreed to put the second approach forward as a recommendation for inclusion in its Phase 1 Final Report.

⁶ See the full text of the URS Individual Proposal #2 on pp.58-59 of the RPM PDP Phase 1 Initial Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-initial-18mar20-en.pdf>

⁷ See p.5 of the URS Technical Requirements for Registries and Registrars: <https://newgtlds.icann.org/en/applicants/urs/tech-requirements-17oct13-en.pdf>

URS Final Recommendation xx Individual Proposals #26 & #27

The Working Group recommends that the URS Rule 6(a) be amended to clarify that each URS Provider shall maintain and publish a publicly available list of Examiners and their qualifications through regular updating and publication of their Examiners' curriculum vitae.

The Working Group further recommends that the URS Procedure para 7 be amended to add a requirement that each URS Provider shall publish their roster of Examiners who are retained to preside over URS cases, including identifying how often each one has been appointed together with a link to their respective decisions.

Implementation Guidance:

To assist the IRT that will be formed to implement recommendations adopted by the Board from this PDP, the Working Group has developed the following implementation guidance:

- As URS Providers cannot compel Examiners to provide updates or verify if there are changes to each Examiner's qualifications and professional affiliations, URS Providers shall be required to request that Examiners update their CV's as prescribed, keep their CV's current and submit any updates to the Provider;
- It will be sufficient to satisfy the objective of providing public visibility of Examiner rotations for if a Provider's website provides a mechanism or function where one can search for those URS decisions that a specific Examiner presided over.

Context:

This recommendation was developed following the Working Group's review of public comments to URS Individual Proposals #26 & #27, which did not rise to the level of becoming preliminary recommendations, but received sufficient support from the Working Group to be published in the Phase 1 Initial Report for public comment.⁸

This recommendation specifically concerns the following parts of the URS Rules and URS Procedure:

- **URS Rule 6(a):** Each Provider shall maintain and publish a publicly available list of Examiners and their qualifications;
- **URS Procedure para 7.3:** Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid forum or examiner shopping. URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, nonperformance, or malfeasance) to be determined on a case by case analysis.

In examining the URS Providers' websites, the Working Group found that some URS Providers did not seem to publish all of their Examiner's CV's. As the URS Rule 6(a) only requires the Provider to list the Examiner's qualifications, the Working Group agreed that this rule should be clarified to expressly require publication of a current CV of the Examiner, which will help inform the URS parties and other stakeholders involved in the URS proceeding of the Examiner's suitability for appointment in a URS proceeding.

⁸ See the full text of the URS Individual Proposals #26 and #27 on pp. 64-65 of the RPM PDP Phase 1 Initial Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-initial-18mar20-en.pdf>

Based on input from FORUM, the Working Group acknowledged that it may not be possible for URS Providers to compel Examiners to update their CVs, or actively keep track of professional/career related changes of their Examiners such as to make determinations on whether any particular CV is or is not current. As implementation guidance, the Working Group agreed that the Providers be required to request that Examiners update their CVs as prescribed, keep their CV's current, and submit the latest versions once updated.

The Working Group also noted that the current URS Procedure does not adequately provide the public with visibility into the rotation of Examiners to determine to what extent such Examiner appointments are random or well distributed. The Working Group found that while most URS Providers already publish their roster of Examiners, they may not take the further step of identifying the number or frequency of their appointments, or linking to their respective decisions beyond the general publication of all URS decisions. Therefore, the Working Group further recommends that the URS Providers shall make their roster of Examiners publicly searchable based on the decisions of URS cases that they preside over. This is to ensure that the Examiner rotation, as required in URS Procedures para 7.3, can be confirmed by the public.

The Working Group noted that FORUM, one of the URS Providers, offers a decision search function on its website -- decisions can be filtered by the URS cases and specific Examiners who presided over these cases; each decision can be displayed in response to a search based on the name of the Examiner. As implementation guidance, the Working Group agrees that it will be sufficient to satisfy the objective of this recommendation if a Provider's website already provides such a mechanism or function similar to FORUM's (i.e., one can search for URS decisions that an Examiner presided over).

Public Comment Review:

Based on the public comments received, the Working Group noted that URS Individual Proposals #26 and #27, which served as the origin of this recommendation, received wide and similar levels of support. Due to the close relationship between these two proposals, the Working Group agreed to put forward a recommendation which consolidates and bundles these two proposals in sequence. In addition, based on public comments from FORUM, the Working Group agreed to add implementation guidance language to provide practical flexibility with regard to implementing this recommendation for consideration by the IRT.

URS Final Recommendation xx Individual Proposal #28

The Working Group recommends that the URS Rule 6 be amended to add a requirement that each URS Provider shall publish an effective Examiner Conflict of Interest (COI) policy that the Provider reasonably enforces against any Examiners who violate such policy.

Context:

This recommendation was developed following the Working Group's review of public comments to URS Individual Proposal #28, which did not rise to the level of becoming a preliminary recommendation, but received sufficient support from the Working Group to be published in the Phase 1 Initial Report for public comment.⁹

This recommendation specifically concerns the following parts of the URS Rules:

- **URS Rule 6(b):** An Examiner shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Examiner's impartiality or independence. If, at any stage during the URS proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Examiner, the Examiner shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Examiner.

The Working Group had diverging opinions on the adequacy of the current rules as regards to handling conflicts of interest for URS Examiners. On the one hand, some members believed that currently there is no known COI policy for Examiners, let alone one which applies across all Providers; accordingly Examiners are left to determine for themselves what constitutes a conflict of interest which must be disclosed pursuant to URS Rule 6(b). Thus, these members believed that Examiners would generally appreciate having such guidance in place, as would parties who could then feel more confident in knowing when an Examiner is and is not required to disclose a conflict or recuse himself or herself in a URS proceeding.

On the other hand, some Working Group members questioned the necessity of this recommendation. They agreed that in general there are already policies that appropriately prevent conflict of interest pursuant to URS Rule 6(b). They understood that each URS Provider implements its own individually-developed COI policy (akin to supplemental rules), so there is some variation among each Provider.¹⁰ Thus, these members agreed that there is no need to develop a universal COI policy for all Providers, noting that all URS Providers already implement conflict of interest measures. The Working Group further agreed that it is not necessary or practical for the Working Group to develop a universal COI policy that can gain consensus support within the PDP timeframe.

Based on public comments received, the Working Group ultimately agreed that every URS Provider should publish an effective Examiner COI policy that the Provider reasonably enforces against any Examiner who violates such policy. The Working Group noted that while FORUM, one of the URS Providers, does not currently publish its COI policy, it does not have an issue making that policy public.

Public Comment Review:

⁹ See the full text of the URS Individual Proposal #28 on pp. 65-66 of the RPM PDP Phase 1 Initial Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-initial-18mar20-en.pdf>

¹⁰ 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's Examiners have not voluntarily disclosed any conflict of interest, but no issue was raised. URS Providers have different methods seek confirmation from Examiners on their impartiality or independence (FORUM - [Neutral's Oath](#); MFSD - email & checkbox on [Determination Form](#); ADNDRC - email)

Based on public comments received, the Working Group noted that URS Individual Proposal #28, which served as the origin of this recommendation, received general support but with some opposition. The Working Group took into account the opposing opinions to the original individual proposal and agreed to remove the sentence “The ‘Conflict of Interest Policy’ should be developed by the Working Group and applied to all Providers” when developing the final recommendation text. While the Working Group sought public comment on the suggested elements of the proposed universal COI policy for Examiners as well as existing COI policies that can serve as examples, the Working Group received very limited input.

URS Final Recommendation xx URS Individual Proposal #34

The Working Group recommends that the URS Rules be amended to incorporate in full Rule #11 of the UDRP Rules regarding “Language of Proceedings”, see:

<https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.”

Implementation Guidance:

As implementation guidance, the Working Group recommends that the IRT consider the following:

- Preliminary submissions by either side to the Panel regarding the language of the proceeding should be limited to 250 words, and not be counted against the existing URS word limits.
- The Notice of Complaint should contain a section explaining that the Respondent may make a submission regarding the language of the proceedings.
 - If a translation is ordered, exceeding the URS word limits should be permitted, as long as the original submission meets the word limits in the original language.

Context:

This recommendation was developed following the Working Group’s review of public comments to URS Individual Proposal #34, which did not rise to the level of becoming a preliminary recommendation, but received sufficient support from the Working Group to be published in the Phase 1 Initial Report for public comment.¹¹

The Working Group noted that currently, the URS Rules (Rules #4 and #9 of the URS) only require that the Notice of Complaint be translated into the predominant language used in the registrant’s country or

¹¹ See the full text of the URS Individual Proposal #34 on pp. 68-69 of the RPM PDP Phase 1 Initial Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-initial-18mar20-en.pdf>

territory, not the Complaint itself, which is currently required to be in English only.¹² The Working Group agreed that this can put Respondents who do not understand English at a severe disadvantage in the process.

The Working Group further agreed that by having the language of the registration agreement determine the language of the administrative proceeding, registrants will have the opportunity to select a registration agreement in the language of their choice, and thereby be able to fairly participate in the URS. To be clear, the Working Group noted that URS providers would not be required to provide translations of pleadings (only the Notice of Complaint), so they would not bear additional costs (the pleadings need to be provided by the parties in the appropriate language, subject to panel discretion as per the URS' flexibility). Any panel order for translation would need to be carried out by the parties.

Public Comment Review:

Based on public comments received, the Working Group agreed that URS Individual Proposal #34, which served as the origin of this recommendation and implementation guidance, received wide support. The Working Group noted that, in essence, this recommendation seeks to apply the UDRP framework to determine the language of the proceeding in the URS.

TMCH Final Recommendation xx

The Working Group recommends that the TMCH Validation Provider be primarily responsible for educating rights-holders, domain name registrants, and potential registrants about the services it provides.

The Working Group also recommends that the IRT work with the TMCH Validation Provider and consider enhancing existing educational materials already made available by the TMCH Validation Provider, with additional attention to providing information that can benefit domain name and potential registrants.

Context:

This recommendation was developed following the Working Group's review of public comments to TMCH Individual Proposal #1, which did not rise to the level of becoming a preliminary recommendation, but received sufficient support from the Working Group to be published in the Phase 1 Initial Report for public comment.¹³

The Working Group agreed that the TMCH services benefit multiple stakeholders, so for the TMCH to have successful interactions with the community, it should provide meaningful information about its services. The Working Group further agreed that the TMCH Validation Provider is best positioned to explain its own services and correctly identify the stakeholders it interacts with. It therefore should be primarily responsible for the educational efforts.

¹² URS Rules can be downloaded here: <https://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf>

¹³ See the full text of the TMCH Individual Proposal #1 on pp.70-71 of the RPM PDP Phase 1 Initial Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-initial-18mar20-en.pdf>

Based on public comments submitted by Deloitte, the current TMCH Validation Provider, the Working Group understood that Deloitte has already been providing education on the TMCH, the New gTLD Program, and its associated RPM's since the launch of the TMCH in March 2013. Therefore, the Working Group further suggested these existing educational and outreach efforts be enhanced to benefit current and potential domain name registrants beyond trademark owners in order to serve the fuller community. This suggestion aligns with the Working Group's Trademark Claims Final Recommendation xx concerning the improvement of the Trademark Claims Notice.

The Working Group adopted the suggestion raised in public comments that the IRT should work with the TMCH Validation Provider and consider enhancing the educational materials. In this regard, the IRT (consisting of community volunteers working in consultation with ICANN org staff) should bear primary responsibility for improving the education materials, to be subsequently published and distributed by the TMCH Validation Provider.

Public Comment Review:

Based on the public comments received, the Working Group noted that TMCH Individual Proposal #1, which served as the origin of this recommendation, received wide support. The Working Group adopted a suggestion raised in public comment to clarify that it is the TMCH Validation Provider who has the primary responsibility for education. Furthermore, the Working Group adopted another suggestion raised in public comment that the IRT should consider enhancement of educational materials already being made available by the TMCH Validation Provider, with an eye toward also benefiting current and potential domain name registrants.

TMCH Final Recommendation xx

The Working Group recommends that the Trademark Clearinghouse database provider be contractually bound to maintain, at minimum, industry-standard levels of redundancy and uptime.

Implementation Guidance

To assist the IRT that will be formed to implement recommendations adopted by the Board from this PDP, the Working Group has developed the following implementation guidance:

- Consider the advisability of requiring that more than one provider be appointed; and
- Review the work of the Implementation Advisory Group that was formed for the 2012 New gTLD Program to assist ICANN org with developing the specifications for and design of the Trademark Clearinghouse.¹⁴

Context:

This recommendation was developed following the Working Group's review of public comments to TMCH Individual Proposal #6, which did not rise to the level of becoming a preliminary recommendation, but received sufficient support from the Working Group to be published in the Phase 1 Initial Report for

¹⁴ See details about the Implementation Advisory Group here:

<https://newgtlds.icann.org/en/about/trademark-clearinghouse/summary-iag-input-26sep12-en.pdf>

public comment.¹⁵

This recommendation concerns the operation of the Trademark Clearinghouse Database (currently administered by IBM). Where Deloitte operates the Trademark Clearinghouse validation service that checks trademarks submitted for entry into the TMCH against the substantive and other criteria set out in the TMCH Guidelines, IBM operates the resulting TMCH Database with which Registry Operators and registrars interact, e.g. to offer the Trademark Claims service. In this context, some Working Group members expressed concerns about operational considerations due to there being only a single provider (e.g., one Working Group member noted that several Registry Operators had experienced downtime issues when accessing the TMCH Database).

Based on the wide support received from public comments for the original proposal, the Working Group believed that it is critical that the Trademark Clearinghouse database remains available for access by registries and registrars in order to provide the mandatory Sunrise and Trademark Claims services and, in some cases, additional services such as extended claims periods. Therefore, the Working Group agreed to put forward this recommendation in its Phase 1 Final Report for consideration by the IRT.

Public Comment Review:

Based on the public comments received, the Working Group noted that TMCH Individual Proposal #6, which served as the origin of this recommendation, received wide support. In reviewing the public comments, the Working Group agreed that there was an anecdotal but real report of operational problems related to the TMCH Database, and there was support that the uptime requirements and reliance of the TMCH services should be changed to industry standards.

¹⁵ See the full text of the TMCH Individual Proposal #6 on p.77 of the RPM PDP Phase 1 Initial Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-initial-18mar20-en.pdf>