

4-May-2020

Response of the ICANN Business Constituency (BC) to Phase 1 Initial Report of the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP Working Group

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URS Recommendation #1: <https://community.icann.org/x/byJBw>

Note: URS Recommendation #1 has an associated URS Question #1 below.

7. Please choose one of the following responses for URS Recommendation #1:

Support Recommendation as written

8. (a) propose changes to URS Recommendation #1; and/or (b) provide a rationale for your response:

The BC supports this change since it merely reflects proposed rule changes to mirror the current approach taken in practice for the UDRP. Complainants file complaints based on publicly available Whois data, providers reveal underlying registrant data, and then Complainants have an opportunity to update their complaints to reflect actual respondents.

URS Question #1 <https://community.icann.org/x/cCaJBw>

9. URS Q1a. Should URS Rule 15(a) be amended to clarify that, where a Complaint has been updated with registration data provided to the Complainant by the URS Provider, there must be an option for the Determination to be published without the updated registration data?

In general, no, we don't need that amendment. Except in rare exceptions for minors and victims of certain crimes, parties to legal disputes are uniformly made a matter of public record, thus serving important notice and public policy goals. The URS is no different, and should remain no different.

10. URS Q1b. If so, when, by whom, and how should this option be triggered?

11. URS Q1c. Are there any operational considerations that need to be addressed in triggering this option?

In general, no, we don't need that amendment. Except in rare exceptions for minors and victims of certain crimes, parties to legal disputes are uniformly made a matter of public record, thus serving important notice and public policy goals. The URS is no different, and should remain no different.

URS Recommendation #2 <https://community.icann.org/x/hCGJBw>

12. Please choose one of the following responses for URS Recommendation #2:

Support Recommendation as written

13. If you wish to (a) propose changes to URS Recommendation #2; and/or (b) provide a rationale for your response, please do so here.

The BC supports this change since it merely reflects proposed rule changes to mirror the current approach taken in practice for the UDRP. Once a domain name is locked by the registrar, URS Providers may send requisite notices.

URS Recommendation #3: <https://community.icann.org/x/hiGJBw>

14. **Support Recommendation concept with minor change**

15. If you wish to (a) propose changes to URS Recommendation #3; and/or (b) provide a rationale for your response, please do so here.

The BC supports this change since it merely reflects proposed rule changes to mirror the current approach taken in practice for the UDRP. Importantly, by default, the "predominant language of the Respondent" must be determined by the language of the domain name registration agreement.

[URS Recommendation #4:](#)

Note: URS Recommendation #4 has an associated URS Question #2 below.

16. Please choose one of the following responses for URS Recommendation #4:

Support Recommendation concept with minor change

17. If you wish to (a) propose changes to URS Recommendation #4; and/or (b) provide a rationale for your

While we support the Recommendation, it should also provide for the elaboration of consistent enforcement mechanisms, including sanctions for non-compliance.

Developing metrics for measuring performance of URS Providers, Registries, and Registrars in the URS process.

[URS Question #2](#)

Note: URS Question #2 is related to URS Recommendation #4.

18. URS Q2a. What compliance issues have Registries and Registrars discovered in URS processes, if any?

The compliance requirement for URS and UDRP are similar, and therefore should be enforced consistently.

19. URS Q2b. Do you have suggestions for how to enhance compliance of URS Providers, Registries, and Registrars in the URS process?

Uniform supplemental rules, and a comprehensive URS provider contract instead of a Memorandum of Understanding, together with an established compliance mechanism

To enhance compliance, it's critical to have access to accurate, current registration data upon legitimate request. GNSO Council and the EPDP should act on the matter of accuracy.

[URS Recommendation #5](#)

20. Please choose one of the following responses for URS Recommendation #5:

Support Recommendation as written

21. If you wish to (a) propose changes to URS Recommendation #5; and/or (b) provide a rationale for your response, please do so here. N/A.

[URS Question #3](#)

Note:

- The Working Group recommends that public comment be sought from Registry Operators.
- URS Question #3 is related to URS Recommendation #5

22. URS Q3a. Question to Registry Operators -- Have Registry Operator experienced any issues with respect to receiving notices from URS Providers? N/A.

23. URS Q3b. Question to Registry Operators -- Were these notices sent through appropriate channels? N/A.

24. URS Q3c. Question to Registry Operators -- Did the notices contain the correct information? N/A.

[URS Recommendation #6](#)

25. Please choose one of the following responses for URS Recommendation #6:

Support Recommendation as written

26. If you wish to (a) propose changes to URS Recommendation #6; and/or (b) provide a rationale.

The BC supports this change since it is designed to ensure that complainants, respondents, and URS panelists each set out specific fact-based evidence, conclusions of law, and persuasive precedent, as opposed to mere conclusions.

[URS Question #4](#)

Note: URS Question #4 is related to URS Recommendation #6.

27. URS Q4a. What content and format should these educational materials have?

Materials must contain a proposed illustrative checklist of evidence to support the conclusion that a domain name has been registered and used in bad faith.

**For example, Nominet has useful resources, at <https://www.nominet.uk/domain-support/uk-domain-disputes/>
Detailed information on the three-part tests and what they mean and require, in particular what “clear and convincing” requires.
Detailed summaries of applicable precedent and case law, eg a “Consensus View”
A help line for procedural issues.**

28. URS Q4b. How should these educational materials be developed?

By the community, URS providers and panelists and ICANN Org.

29. URS Q4c. Who should bear the cost for developing these educational materials?

These materials can be developed on a volunteer basis by providers and panelists (at no cost), coordinated and supported by ICANN Org.

30. URS Q4d. Should translations be provided?

Yes

[URS Recommendation #7](#)

31. Please choose one of the following responses for URS Recommendation #7:

Support Recommendation as written

32. If you wish to (a) propose changes to URS Recommendation #7; and/or (b) provide a rationale for your response.

Examiners should certify that their decisions must include an explanation of their rationale in reasonably brief and sufficient detail so that a reader or review body can understand the basis for the decision and not merely set out that the tests have been met.

[URS Recommendation #8](#)

33. Support Recommendation as written

34. If you wish to (a) propose changes to URS Recommendation #8; and/or (b) provide a rationale for your response, please do so here.

The BC supports any changes necessary to permit Registry Operators to offer the option to URS complainants to extend suspension for an additional year after expiry.

[URS Question #5](#)

35. URS Q5. Should the Registry Requirement 10 be amended to include the possibility for another Registrar, which is different from the sponsoring Registrar but accredited by the same Registry, to be elected by the URS Complainant to renew the URS Suspended domain name, and to collect the Registrar renewal fee?

Yes

[URS Recommendation #9](#)

36. Please choose one of the following responses for URS Recommendation #9:

Support Recommendation concept with minor change

37. If you wish to (a) propose changes to URS Recommendation #9; and/or (b) provide a rationale for your response, please do so here.

The BC views such implementation guidance as inappropriate coming from the Implementation Review Team. Such guidance is the responsibility of the providers and its panelists, which should accord with the body of determinations already well established and used to determine the language of the proceedings under the UDRP. We need all URS providers to follow the same rules, and we can't leave it up to the providers to individually determine what language to use without any guidance on this issue.

[URS Recommendation #10](#)

38. Please choose one of the following responses for URS Recommendation #10:

Support Recommendation as written

39. If you wish to (a) propose changes to URS Recommendation #10; and/or (b) provide a rationale for your response, please do so here.

The working group should look to existing examples, perhaps from WIPO or other providers, to determine whether or not there are industry best practices that could be applied.

[URS Question #6](#)

40. URS Q6. Who has the responsibility for developing the uniform set of basic FAQs for URS Complainants and Respondents?

These educational materials should be developed as the result of volunteer efforts by URS providers and panelists, coordinated and supported by ICANN Org.

[URS Question #7](#)

41. URS Q7. What mechanism do you suggest that allows a URS Provider to efficiently check with other URS and UDRP Providers in order to ensure that a disputed domain name is not already subject to an open and active

The responsibility to notify URS providers of concurrent proceedings between the parties properly falls to the parties themselves. This is particularly the case in putative instances of domain names subject to receivership. That said, when attempting to lock a domain name upon receipt of a URS complaint, it should be the registrar’s responsibility to advise the URS provider whether or not the same domain name is already locked pursuant to a concurrent legal proceeding.

[URS Question #8](#)

Note: The Working Group recommends that public comment be sought from Registry Operators.

42. URS Q8a. Question to Registry Operators -- What issues have you encountered with respect to implementing the HSTS-preloaded domain suspension remedy, if any?

N/A.

43. URS Q8b. Question to Registry Operators -- What would need to be done to help resolve the issues you have encountered? N/A.

[URS Question #9](#)

44. URS Q9. Are the non-refundable, late Response fees paid by Respondent reasonable?

Yes. The BC supports certain reasonable Respondent fees—whether for late responses, multiple domain names, or repeat serial cybersquatters—designed to better apportion proceeding costs between the parties. There should be standardization of late fees across all dispute resolution providers.

[URS Question #10](#)

45. URS Q10a. Are penalties for Complainant or Respondent who abuse the URS process sufficient?

Yes with respect to complainants, who are currently penalized for “deliberate material falsehoods.” And the BC recommends that comparable penalties apply to respondents who abuse the URS process.

46. URS Q10b. If not, should they be expanded?

Yes

47. URS Q10c. If they should be expanded, how?

The BC recommends that the prohibitions against “deliberate material falsehoods” be explicitly extended to apply to respondents, not just complainants.

Section 4: TMCH Preliminary Recommendation

[TMCH Recommendation #1](#)

49. Please choose one of the following responses for TMCH Recommendation #1:

Support Recommendation as written

50. If you wish to (a) propose changes to TMCH Recommendation #1; and/or (b) provide a rationale for your response, please do so here.

The BC supports the status quo for these three elements of the TMCH. However, the BC also supports relaxed evidentiary standards to support TM + 50 entries (meaning that determinations should be sufficient without referring to specific trademark registration numbers) and “exact match” rules should be expanded to cover certain variants such as singular and plurals. Finally, the BC opposes any formalized limitation on the scope of RPMs based on the categories of goods or services arguably related to a particular gTLD.

Section 5: Sunrise Service Preliminary Recommendations & Community Questions

[Sunrise Recommendation #1](#)

52. Please choose one of the following responses for Sunrise Recommendation #1:

Support Recommendation as written

53. If you wish to (a) propose changes to Sunrise Recommendation #1; and/or (b) provide a rationale.

[Sunrise Recommendation #2](#)

54. Please choose one of the following responses for Sunrise Recommendation #2:

Support Recommendation

55. If you wish to (a) propose changes to Sunrise Recommendation #2; and/or (b) provide a rationale for your response, please do so here.

The BC supports this recommendation, prohibiting the circumvention or RPMs by registry operators.

[Sunrise Recommendation #3](#)

56. Please choose one of the following responses for Sunrise Recommendation #3:

Support Recommendation as written

57. If you wish to (a) propose changes to Sunrise Recommendation #3; and/or (b) provide a rationale for your response

[Sunrise Recommendation #4](#)

58. Please choose one of the following responses for Sunrise Recommendation #4:

Support Recommendation

59. If you wish to (a) propose changes to Sunrise Recommendation #4; and/or (b) provide a rationale for your response, please do so here.

The BC supports this recommendation as the default rule.

[Sunrise Recommendation #5](#)

60. Please choose one of the following responses for Sunrise Recommendation #5:

Support Recommendation as written

61. If you wish to (a) propose changes to Sunrise Recommendation #5; and/or (b) provide a rationale for your response

[Sunrise Recommendation #6](#)

62. Please choose one of the following responses for Sunrise Recommendation #6:

Support Recommendation as written

63. If you wish to (a) propose changes to Sunrise Recommendation #6; and/or (b) provide a rationale for your response

Sunrise Recommendation #7

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/uiGJBw>

64. Please choose one of the following responses for Sunrise Recommendation #7:

Support Recommendation as written

65. If you wish to (a) propose changes to Sunrise Recommendation #7; and/or (b) provide a rationale:

Sunrise Recommendation #8

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/vCGJBw>

66. Please choose one of the following responses for Sunrise Recommendation #8:

Support Recommendation as written

67. If you wish to (a) propose changes to Sunrise Recommendation #8; and/or (b) provide a rationale for your response, please do so here.

The BC would oppose any proposed limitations on sunrise registrations to specific categories of goods or services. Such a limitation would be an entirely subjective analysis, subject to differing interpretations regarding related or overlapping goods or services.

Limiting Sunrise to the categories of goods and services for which the TM is actually registered would be both inappropriate and impossible. There can only ever be one string (as opposed to co-existing TMs for different classes and services).

Sunrise Question #1

68. Sunrise Q1. What remedy(ies) would you propose for any unintended effects of the Sunrise Period that you have identified in your public comment?

The BC is confident that the current challenge procedure for sunrise registrations adequately addresses any “unintended effects” or gaming. It is incumbent upon the parties alleged to have been affected by such “unintended effects” to actually use the relevant registry SDRP.

Sunrise Question #2

Please find the link to this Question and its context here: <https://community.icann.org/x/wCGJBw>

69. Sunrise Q2a. Have you identified abuses of the Sunrise Period?

Back in 2015, the BC wrote to ICANN Org with serious concerns about brand domain name pricing abuses in the Sunrise period for .SUCKS, including this:

Vox Populi plans to take trademarks registered in the TMCH and sell corresponding domain names at “\$2499 and up,” a price much higher than the cost recovery basis contemplated by the consensus policies as reflected in the gTLD Applicant Handbook. This approach turns the creation of the TMCH on its head – instead of using the TMCH to promote an efficient approach to dealing with recognized trademarks, it penalizes businesses that have chosen to use the process and register their marks in the TMCH. If Vox Populi was populating the list using data from the TMCH, that too would be a breach of its registry agreement with ICANN prohibiting such activity. see <https://www.bizconst.org/assets/docs/positions-statements/letter-to-icann-dotsucks.pdf>

The TM-PDDRP was written to prevent Registry Operators from taking unfair advantage of trademark owners. Fortunately, other ICANN policies and AGB terms have prevented many of the harms the TM-PDDRP was designed to address. As a result, the TM-PDDRP is not regularly used. However, new issues like price gouging (that was not considered as part of the original TM-PDDRP) are consistent with the premise for creating the procedure - helping guard against bad actor Registry Operators.

We propose the Working Group consider a few minor wording adjustments to be provided to allow brand owners to use the existing procedure to seek recourse against Registry Operators engaging in egregious pricing practices. We note several guardrails that will prevent over-reach:

- 1. Higher prices alone are not de facto price gouging. Registries often charge slightly higher prices for Sunrise based on their costs.**
- 2. Price gouging does not include listing an otherwise generic name at a higher price unless it is specifically targeted based on the TLD term (e.g., apple.computer vs. apple.food)**
- 3. The policy can only be used against a Registry Operator that shows a pattern of bad faith behavior, not a few isolated incidents.**
- 4. The system is loser-pays.**
- 5. Compliance still must still determine the appropriate remedy.**
- 6. This change does not add any new rights, but merely proposes a new way to enforce the existing policies and procedures.**

[the above response is repeated for TM-PDDRP Rec 1]

70. Sunrise Q2b. To the extent that you have identified abuses of the Sunrise Period, if any, please describe them and specify any documentation to substantiate the identified abuses.

Sunrise Question #3

Please find the link to this Question and its context here: <https://community.icann.org/x/wiGJBw>

Note:

- The Working Group recommends that public comment be sought on questions #3a-d from Registry Operators.
- The Working Group asks Registry Operators to be specific about which program(s) (i.e., ALP , QLP , and/or LRP) they are referring in their responses to all questions and what the shortcomings of each of those mechanisms are.
- The Working Group also recommends that public comment be sought on question #3e from non-Registry Operators.

71. Sunrise Q3a-1. Question to Registry Operators -- If you did not attempt an ALP, QLP, or LRP, was the reason for not taking advantage of those programs related to how they integrate with Sunrise? N/A.

72. Sunrise Q3a-2. Question to Registry Operators -- Were you able to achieve your goals in a different way (such as by combining any or all of these programs)? N/A.

73. Sunrise Q3b-1. Question to Registry Operators -- If you did attempt an ALP, QLP, or LRP (or combination) but didn't successfully use any, was the reason you did not take advantage of those programs related to how they integrate with Sunrise? N/A.

74. Sunrise Q3b-2. Question to Registry Operators -- Were you able to achieve your goals in a different way? For instance, some Registry Operators may have used the QLP 100 (Section 3.2 of Registry Agreement Specification 5) (plus IDN variants) in combination with registry-reserved names to obtain the names they needed. Did you do this? N/A.

75. Sunrise Q3b-3. Question to Registry Operators -- If so, were you able to reserve or allocate all the names you needed to? N/A.

76. Sunrise Q3c-1. Question to Registry Operators -- If you used an ALP, QLP, or LRP(or combination), did you experience any unanticipated trouble with integrating the Sunrise Period into your launch? N/A.

77. Sunrise Q3c-2. Question to Registry Operators -- Specifically, were you able to allocate all of the names you needed to allocate under those programs before the Sunrise Period? N/A.

78. Sunrise Q3d-1. Question to Registry Operators -- For each issue you have identified in your responses to questions #3a-c, please also include a suggested mitigation path. What do you suggest the RPM Working Group

consider to help alleviate the burden of trademark protection goals of the Sunrise Period? N/A.

79. Sunrise Q3d-2. Question to Registry Operators -- How important is it to make changes to these programs before another round of new gTLDs (that is, are these issues worth "holding up" another round for, or are the work-arounds tolerable)? N/A.

80. Sunrise Q3e. Question to Non-Registry Operators -- Did you experience struggles with the way ALP, QLP, or LRPs (or a combination) integrated with Sunrise, either as registrar, as a brand owner, or as a domain name registrant? N/A.

Sunrise Question #4

Please find the link to this Question and its context here: <https://community.icann.org/x/xCGJBw> Note:

The Working Group recommends that the following guidance be sought from Registry Operators.

81. Sunrise Q4a-1. Question to Registry Operators -- If you had/have a business model that was in some way restrained by the 100-name pre Sunrise limit for names registries can reserve under Section 3.2 of Registry Agreement Specification 5, or the practical problems with the ALP, please share your experience and suggested path to improvement.

82. Sunrise Q4a-2. Question to Registry Operators -- what was your work-around, if any? For instance, if you withheld names from registration ("reserved" names), how well did that work?

83. Sunrise Q4b-1. Question to Registry Operators -- If the Working Group were to identify specialized gTLDs as a key concern that required changes to the way the Sunrise Period operates, are there other TLDs, besides GeoTLDs that did or will encounter the same problem?

84. Sunrise Q4b-2. Question to Registry Operators -- What suggestions do you have for work-arounds or solutions that will not diminish the protections available from the Sunrise Period (balanced with the need to finish this work in a timely manner)?

85. Sunrise Q4c-1. Question to Registry Operators -- Did you initially intend (prior to the implementation of Sunrise rules in the original Applicant Guidebook) to offer a special Sunrise before the regular Sunrise that targeted local trademark owners?

86. Sunrise Q4c-2. Question to Registry Operators -- For instance, would the ability to offer a special "pre-Sunrise" Sunrise solve any problems?

87. Sunrise Q4c-3. Question to Registry Operators -- If so, would you have validated the marks in some way?

88. Sunrise Q4c-4. Question to Registry Operators -- How would you have resolved conflicts between trademark holders that got their domains during the first Sunrise and trademark holders who had an identical trademark in the TMCH that was registered prior to Sunrise?

Sunrise Question #5

Please find the link to this Question and its context here: <https://community.icann.org/x/xiGJBw>

Note: The Working Group recommends that public comment be sought from trademark holders who use non-English scripts/languages.

89. Sunrise Q5a. Question to trademark holders who use non-English scripts/languages -- Did you encounter any problems when you attempted to participate in Sunrise using non-English scripts/languages?

Yes

90. Sunrise Q5b. Question to trademark holders who use non-English scripts/languages -- If so, please describe problems you have encountered.

At the outset, entry of non-English trademarks into the TMCH yielded its own set of difficulties, including: the lack of publicly accessible national trademark databases, or databases in a language accessible by the TMCH; and rejection of TMCH entries based on minor discrepancies and issues lost in translation by the TMCH.

91. Sunrise Q5c. Question to trademark holders who use non-English scripts/languages -- Do you have suggestions on how to enable trademark holders who use non-English scripts/languages to effectively participate in Sunrise?

Focus on reducing the barriers to entry at the TMCH for non-English scripts and languages.

Section 6: Trademark Claims Service Preliminary Recommendations & Community Questions

Trademark Claims Recommendation #1

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/2yGJBw>

93. Please choose one of the following responses for Trademark Claims Recommendation #1:

Support Recommendation as written

94. If you wish to (a) propose changes to Trademark Claims Recommendation #1.

Trademark Claims Question #1

Please find the link to this Question and its context here: <https://community.icann.org/x/2yGJBw>

95. Trademark Claims Q1a-1. Have you identified any inadequacies or shortcomings of the Claims Notice?

Yes

96. Trademark Claims Q1a-2. If so, what are they?

The Claims Notice is only issued in English. The BC recommends that the Claims Notice be translated and delivered in all official United Nations languages.

97. Trademark Claims Q1b. Do you have suggestions on how to improve the Claims Notice in order to address the inadequacies or shortcomings?

The Claims Notice is only issued in English. The BC recommends that the Claims Notice be translated and delivered in all official United Nations languages.

We should also make notices more user friendly and provide more information, including explanation that it does not mean that you have necessarily done anything wrong or that the referenced trademark owner has any superior rights. This will help avoid the notice appearing to be spam as per Recommendation #1. Could also give examples of why a registration subject to a Claims Notice may be lawful or unlawful.

Trademark Claims Recommendation #2

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/3SGJBw>

98. Please choose one of the following responses for Trademark Claims Recommendation #2:

Support Recommendation concept with minor change

99. If you wish to (a) propose changes to Trademark Claims Recommendation #2; and/or (b) provide a rationale for your response, please do so here.

It is likely easier for registrars to deliver a single notice, containing the recommended hyperlink to translations in all official United Nations languages. The mandate to issue the Claims Notice in “the language of the registration agreement” may prove impractical in jurisdictions where registrars do not use one of the six United Nations languages.

Trademark Claims Recommendation #3

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/3yGJBw>

100. Please choose one of the following responses for Trademark Claims Recommendation #3:

Support Recommendation as written

101. If you wish to (a) propose changes to Trademark Claims Recommendation #3; and/or (b) provide a rationale for your response, please do so here.

The BC supports the current status quo on sending a Claims Notice before a domain name registration is completed.

Trademark Claims Recommendation #4

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/4SGJBw>

102. Please choose one of the following responses for Trademark Claims Recommendation #4:

Support Recommendation as written

103. If you wish to (a) propose changes to Trademark Claims Recommendation #4; and/or (b) provide a rationale for your response, please do so here.

The BC supports a mandatory Claims Period for open TLDs.

Trademark Claims Recommendation #5

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/4yGJBw>

104. Please choose one of the following responses for Trademark Claims Recommendation #5:

Support Recommendation as written

105. If you wish to (a) propose changes to Trademark Claims Recommendation #5; and/or (b) provide a rationale for your response, please do so here.

The BC supports a uniform mandatory Claims Period for open TLDs, including the minimum initial ninety day period when a TLD opens for general registration.

Trademark Claims Question #2

Please find the link to this Question and its context here: <https://community.icann.org/x/5yGJBw>

Note: Trademark Claims Question #2 is related to Trademark Claims Recommendations #4 &

#5.

106. Trademark Claims Q2a. Is there a use case for exempting a gTLD that is approved in subsequent expansion rounds from the requirement of a mandatory Claims Period due to the particular nature of that gTLD? Such type of gTLD might include: (i) “highly regulated” TLDs that have stringent requirements for registering entities, on the order of .bank; and/or (ii) “Dot Brand” TLDs whose proposed registration model demonstrates that the use of a Trademark Claims Service is unnecessary.

Yes. The BC maintains its position that a mandatory Claims period makes no sense in a completely closed single-registrant registry, such as a .Brand TLD.

107. Trademark Claims Q2b. If the Working Group recommends exemption language, what are the appropriate guardrails ICANN should use when granting the exception (e.g. Single-registrant? Highly-regulated or manually hand-registered domains? Something else?)?

The BC recommends that all exempted registries launch a new sunrise period in the event that they ever open up registrations to the public.

Trademark Claims Recommendation #6

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/5SGJBw>

108. Please choose one of the following responses for Trademark Claims Recommendation #6:

Support Recommendation as written

109. If you wish to (a) propose changes to Trademark Claims Recommendation #6; and/or (b) provide a rationale for your response, please do so here.

The BC supports the status quo exact matching criteria for Claims Notices.

Section 7: TM- PDDRP Preliminary Recommendation

This section seeks to obtain input on the preliminary recommendation related to the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP).

TM-PDDRP Recommendation #1

Please find the link to this Recommendation and its context here: <https://community.icann.org/x/9SOJBw>

111. Please choose one of the following responses for TM-PDDRP Recommendation #1:

Support Recommendation concept with minor change

112. If you wish to (a) propose changes to TM-PDDRP Recommendation #1; and/or (b) provide a rationale for your response, please do so here.

The BC supports modifications to the TM-PDDRP to permit joint complaints and consolidation of complaints.

In addition, the BC noted this recommended change in our response to Sunrise Question 2:

Back in 2015, the BC wrote to ICANN Org with serious concerns about brand domain name pricing abuses in the Sunrise period for .SUCKS, including this:

Vox Populi plans to take trademarks registered in the TMCH and sell corresponding domain names at “\$2499 and up,” a price much higher than the cost recovery basis contemplated by the consensus policies as reflected in the gTLD Applicant Handbook. This approach turns the creation of the TMCH on its head – instead of using the TMCH to promote an efficient approach to dealing with recognized trademarks, it penalizes businesses that have chosen to use the process and register their marks in the TMCH. If Vox Populi was populating the list using data from the TMCH, that too would be a breach of its registry agreement with ICANN prohibiting such activity. see

<https://www.bizconst.org/assets/docs/positions-statements/letter-to-icann-dotsucks.pdf>

The TM-PDDRP was written to prevent Registry Operators from taking unfair advantage of trademark owners. Fortunately, other ICANN policies and AGB terms have prevented many of the harms the TM-PDDRP was designed to address. As a result, the TM-PDDRP is not regularly used. However, new issues like price gouging (that was not considered as part of the original TM-PDDRP) are consistent with the premise for creating the procedure - helping guard against bad actor Registry Operators.

We propose the Working Group consider a few minor wording adjustments to be provided to allow brand owners to use the existing procedure to seek recourse against Registry Operators engaging in egregious pricing practices. We note several guardrails that will prevent over-reach:

- 1. Higher prices alone are not de facto price gouging. Registries often charge slightly higher prices for Sunrise based on their costs.**
- 2. Price gouging does not include listing an otherwise generic name at a higher price unless it is specifically targeted based on the TLD term (e.g., apple.computer vs. apple.food)**
- 3. The policy can only be used against a Registry Operator that shows a pattern of bad faith behavior, not a few isolated incidents.**
- 4. The system is loser-pays.**
- 5. Compliance still must still determine the appropriate remedy.**
- 6. This change does not add any new rights, but merely proposes a new way to enforce the existing policies and procedures.**

Section 8: URS Individual Proposals (Non- Recommendations)

- This section seeks to obtain input on all the individual proposals related to the Uniform Rapid Suspension System (URS). These proposals were submitted by individual working group members but did not rise to the level of becoming preliminary recommendations.

URS Individual Proposal #1

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/6iGJBw>

114. Please choose one of the following responses for URS Individual Proposal #1:

Support Proposal as written

115. If you wish to (a) propose changes to URS Individual Proposal #1; and/or (b) provide a rationale.

The BC Supports Option 2, to simply delete the irrelevant reference to “During the Default period”.

URS Individual Proposal #2

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/fSCJBw>

Note: The Working Group particularly seeks public comment from the Contracted Parties House with regard to this proposal

116. Please choose one of the following responses for URS Individual Proposal #2:

Support Proposal concept with minor change

117. If you wish to (a) propose changes to URS Individual Proposal #2; and/or (b) provide a rationale for your response, please do so here.

The BC supports the proposed alternative “to leave the “legal requirements” text, but rename the "URS High Level Technical Requirements for Registries and Registrars" document as "URS High Level Requirements for Registries and Registrars".”

URS Individual Proposal #3

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/7CGJBw>

118. Please choose one of the following responses for URS Individual Proposal #3:

Support proposal concept with minor change

119. If you wish to (a) propose changes to URS Individual Proposal #3; and/or (b) provide a rationale for your response, please do so here.

While we understand the rationale, this should be clarified in the wording of the proposal itself, to explain that such extension or renewal should be limited to the purposes of the appeals as described.

URS Individual Proposal #6

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/7iGJBw>

120. Please choose one of the following responses for URS Individual Proposal #6:

Support Proposal as written

121. If you wish to (a) propose changes to URS Individual Proposal #6; and/or (b) provide a rationale for your response, please do so here.

As with UDRP complaints, URS complaints could be brought by multiple complainants where one is a licensee of the other or where they are part of a group of companies under a parent company.

URS Individual Proposal #11

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/8CGJBw>

122. Please choose one of the following responses for URS Individual Proposal #11:

Support Proposal concept with minor change

123. If you wish to (a) propose changes to URS Individual Proposal #11; and/or (b) provide a rationale for your response, please do so here.

The BC supports an upfront respondent response fee where ten (10) domain names are included in a single proceeding.

124. URS Individual Proposal #11 - Q1. Should the current Response Fee threshold of fifteen (15) domain names be lowered?

Yes

125. URS Individual Proposal #11 - Q2. If so, what should be the new threshold?

The BC supports an upfront respondent response fee where ten (10) domain names are included in a single proceeding.

URS Individual Proposal #13

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/fyCJBw>

126. Please choose one of the following responses for URS Individual Proposal #13:

Support Proposal as written

127. If you wish to (a) propose changes to URS Individual Proposal #13; and/or (b) provide a rationale for your response, please do so here.

The BC strongly supports this recommendation, since the ability of losing respondents to re-register the same domain name has always been a fatal weakness of the URS, notwithstanding the losing registrant's ability to simply re-register the same domain name under a pseudonym. We note that enforcement will be challenging, and that should be addressed in implementation.

128. URS Individual Proposal #13 - Q1. How feasible would it be to enforce this Proposal should it be implemented?

One relatively simple implementation idea: prohibit the same registrar from allowing reregistration of the same domain name by the same customer, i.e. the same account or payment information.

URS Individual Proposal #15

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/8iGJBw>

129. Please choose one of the following responses for URS Individual Proposal #15:

Support Proposal as written

130. If you wish to (a) propose changes to URS Individual Proposal #15; and/or (b) provide a rationale for your response, please do so here.

The BC supports additional penalties for repeat offenders where the definition of "repeat offender" requires multiple findings by URS Examiner(s) that the domain names were "registered and used in bad faith".

131. URS Individual Proposal #15 - Q1. Is the proposed definition of "repeat offender" in this Proposal appropriate?

Other. The BC supports the definition of "repeat offender" as requiring multiple findings by URS Examiner(s) that the domain names were "registered and used in bad faith", subject to Examiner having discretion with regard to particular circumstances of the present case.

132. URS Individual Proposal #15 - Q2. Is the proposed definition of "high-volume cybersquatting" in this Proposal appropriate?

Yes

133. URS Individual Proposal #15 - Q3. How feasible would it be to implement this Proposal?

Blacklists are feasible and are utilized effectively with email spam filters and other cybersecurity measures. However, we would need to decide on the duration of the "temporary" blacklist period.

Escrow payments upon domain name registration may be feasible, although with implementation challenges. Registrars would have to be contractually required to collect them from repeat offenders, or at least have a repeat offender policy.

URS Individual Proposal #16: <https://community.icann.org/x/9CGJBw>

Note: URS Individual Proposal #16 has a specific question below seeking public comment.

134. Support Proposal concept with minor change

135. If you wish to (a) propose changes to URS Individual Proposal #16; and/or (b) provide a rationale for your response, please do so here.

The BC supports additional URS remedies such as a right of first refusal to register the domain name once suspension ends, and the ability to obtain additional extensions of the suspension.

Some BC members note that a complainant desiring transfer of a domain name may use the UDRP. Adding right-of-first refusal is an expansion of the URS to make it a cheaper, faster, and less involved transfer process than UDRP, without the procedural safeguards in the UDRP.

136. URS Individual Proposal #16 - Q1. How feasible would it be to implement this Proposal?

This proposal is immediately implementable, by either extending the current one year registration renewal option under the URS, or adding a transfer remedy upon expiry.

Some BC members note that a complainant desiring transfer of a domain name may use the UDRP. Adding right-of-first refusal is an expansion of the URS to make it a cheaper, faster, and less involved transfer process than UDRP, without the procedural safeguards in the UDRP.

URS Individual Proposal #22

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/gSCJBw>

137. Support Proposal concept with minor change

138. If you wish to (a) propose changes to URS Individual Proposal #22

The BC supports a limited “loser pays” model which applies to either complainants or respondents who are found to be repeat offenders.

139. URS Individual Proposal #22 - Q1. Is a "loser pays" model appropriate for the URS?

Other -- the BC supports a limited “loser pays” model which applies to either complainants or respondents who are found to be repeat offenders.

140. URS Individual Proposal #22 - Q2. Please provide input on the definition of specific criteria mentioned in this Proposal (e.g., “repeat offender” over a defined time period, and “high-volume cybersquatting”).

The BC supports a limited “loser pays” model which applies to either complainants or respondents who are found to be “repeat offenders”. The BC supports a definition of “repeat offender” as a

and used in bad faith". A Complainant would be a "repeat offender" if URS Examiner(s) have determined that they have brought multiple abusive complaints.

141. URS Individual Proposal #22 - Q3. Please provide input on the specific item(s) that should be paid in a "loser pays" model (e.g., administrative fees, attorneys' fees).

The BC supports payment of a reasonable filing fee in a "loser pays" model as explained above, covering the Administrative Filing Fees.

142. URS Individual Proposal #22 - Q4. Please provide input on the enforcement mechanism of the proposed "loser pays" model. N/A.

The Respondent's credit card number is presumably on-file with their Registrar. The complainant can provide a credit card number. If the Examiner determines either party is a "repeat offender", that party's credit card would be charged in advance of the proceeding, and those funds would be used to satisfy a "loser pays" settlement after the case is decided.

URS Individual Proposal #26

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/9iGJBw>

143. Please choose one of the following responses for URS Individual Proposal #26:

Support Proposal as written

144. If you wish to provide a rationale for your response, please do so here.

The BC supports publication of panelists for the purpose of establishing transparency and impartiality in each individual case.

URS Individual Proposal #27

Please find link to this Individual Proposal and its context here: https://community.icann.org/x/_CGJBw

145. Please choose one of the following responses for URS Individual Proposal #27:

Support Proposal as written

146. If you wish to (a) propose changes to URS Individual Proposal #27; and/or (b) provide a rationale for your response, please do so here.

The BC supports the proposal for each provider to publish a CV for its panelists.

URS Individual Proposal #28

Please find link to this Individual Proposal and its context here: https://community.icann.org/x/_iGJBw

147. Please choose one of the following responses for URS Individual Proposal #28:

Support Proposal

148. If you wish to (a) propose changes to URS Individual Proposal #28; and/or (b) provide a rationale

149. URS Individual Proposal #28 - Q1. Please provide input on the suggested elements of the proposed "Panelist Conflict of Interest Policy", should it be developed by the Working Group and applied to all URS Providers.

Look to international arbitration organizations for their conflict of interest policies.

150. URS Individual Proposal #28 - Q2. Please list existing conflict of interest policies that can serve as examples for the proposed "Panelist Conflict of Interest Policy".

See: International Chamber of Commerce; IBA Guidelines on Conflict of Interest and Arbitration

URS Individual Proposal #29

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/-CGJBw>

151. Please choose one of the following responses for URS Individual Proposal #29:

No opinion

152. If you wish to (a) propose changes to URS Individual Proposal #29;

153. URS Individual Proposal #29 - Q1. What are the cost and benefits of implementing the Proposal?

The potential administrative costs to this proposal appear to outweigh any benefits.

URS Individual Proposal #31

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/-iGJBw>

Note: URS Individual Proposal #31 stems from one of the general overarching Charter questions -- "General Overarching Charter Question #2: 2a. Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs? 2b. If so, what are the transitional issues that would have to be dealt with as a consequence?"

154. If you wish to provide a rationale for your response, please do so here.

The BC supports the URS becoming an ICANN Consensus Policy, and therefore apply to all gTLDs.

If URS were to become consensus policy, it should apply only to registrations done after the effective date of the consensus policy.

[URS Individual Proposal #33](#) (uniform contracts)

155. Please choose one of the following responses for URS Individual Proposal #33:

Support Proposal.

156. If you wish to (a) propose changes to URS Individual Proposal #33; and/or (b) provide a rationale for your response, please do so here. N/A.

The BC has previously advocated that “ICANN must first implement a standard mechanism with any and all UDRP arbitration providers that defines and constrains their authority and powers, and establishes regular and standardized review by ICANN with flexible and effective means of enforcement.”

We believe this should also apply to URS providers.

157. URS Individual Proposal #33 - Q1. What additional elements, if any, that need to be included to enhance ICANN’s Memorandums of Understanding (MOUs) with URS Providers and enforce their compliance? N/A.

URS Individual Proposal #34

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/AiKJBw>

158. Please choose one of the following responses for URS Individual Proposal #34:

Support Proposal as written

159. If you wish to provide a rationale for your response, please do so here.

The BC supports the issuance of Notice of Complaints under the URS in the language of the domain name registration agreement.

URS Individual Proposal #36

Please find link to this Individual Proposal and its context here: <https://community.icann.org/x/BCKJBw>

160. Please choose one of the following responses for URS Individual Proposal #36:

Support Proposal as written

161. If you wish to (a) propose changes to URS Individual Proposal #36; and/or (b) provide a rationale

Section 9: TMCH Individual Proposals (Non- Recommendations)

TMCH Individual Proposal #1 <https://community.icann.org/x/eCCJBw>

163. Please choose one of the following responses for TMCH Individual Proposal #1:

Support Proposal concept with minor change.

164. If you wish to (a) propose changes to TMCH Individual Proposal #1; and/or (b) provide a rationale for your response, please do so here. N/A.

While supporting the premise, it would be better to say that the TMCH should make available appropriate education materials, rather than actively be responsible for education.

165. TMCH Individual Proposal #1 - Q1. Should education about the TMCH and its services be provided?

Other. The TMCH should make available appropriate education materials, rather than actively be responsible for education. Development of materials should be the responsibility of volunteer stakeholders, coordinated and supported by ICANN Org

166. TMCH Individual Proposal #1 - Q2. If there should be education about the TMCH and its services, how and by whom should such education be provided?

The TMCH should make available appropriate education materials, rather than actively be responsible for education. Development of materials should be the responsibility of volunteer stakeholders, coordinated and supported by ICANN Org.

TMCH Individual Proposal #2 (1 of 2 proposals concerning design marks) <https://community.icann.org/x/eyCJBw>

167. Please choose one of the following responses for TMCH Individual Proposal #2:

Do not support Proposal

168. If you wish to (a) propose changes to TMCH Individual Proposal #2; and/or (b) provide a rationale for your response, please do so here.

The BC does not support a complete bar on entry into the TMCH of composite marks that feature both design and text elements. Trademarks with textual elements should continue to be allowed into the TMCH.

TMCH Individual Proposal #3 (2 of 2 proposals concerning design marks)

Please find the link to this Individual Proposal and its context here: <https://community.icann.org/x/eyCJBw>

169. Please choose one of the following responses for TMCH Individual Proposal #3:

Support Proposal as written

170. If you wish to (a) propose changes to TMCH Individual Proposal #3; and/or (b) provide a rationale for your response, please do so here.

The BC supports the proposal to continue to allow composite marks into the TMCH, so long as all of the textual elements are not disclaimed.

171. TMCH Individual Proposals #2 & #3 - Q1. suggestions for ways to reconcile TMCH Individual Proposals #2 and #3?

No. Proposal #2 represents an inappropriate attempt to exclude from the TMCH composite marks that are accorded trademark protection under international legal norms.

TMCH Individual Proposal #4 (1 of 2 proposals concerning geographical indications) <https://community.icann.org/x/CSKJBw>

172. Please choose one of the following responses for TMCH Individual Proposal #4:

Do not support Proposal

173. If you wish to provide a rationale for your response, please do so here.

The BC supports Proposal #5 instead.

TMCH Individual Proposal #5 (2 of 2 proposals concerning geographical indications) <https://community.icann.org/x/CSKJBw>

174. **Support Proposal concept with minor change**

175. If you wish to (a) propose changes to TMCH Individual Proposal #5; and/or (b) provide a rationale for your response, please do so here.

Geographical Indications and Appellations of Origin are not identical to trademark rights and should not be treated the same way as trademarks absent an independent national trademark registration or other *sui generis* protection.

176. TMCH Individual Proposals #4 & #5 - Q1. Do you have suggestions for ways to reconcile TMCH Individual Proposals #4 and #5?

No. See previous response. The BC does not support the underlying rationale for Proposal #4.

TMCH Individual Proposal #6

Please find the link to this Individual Proposal and its context here: <https://community.icann.org/x/CyKJBw>

77. Please choose one of the following responses for TMCH Individual Proposal #6:

Support.

178. If you wish to (a) propose changes to TMCH Individual Proposal #6; and/or (b) provide a rationale for your response, please do so here.

TMCH Individual Proposal #7: <https://community.icann.org/x/DiKJBw>

179. Please choose one of the following responses for TMCH Individual Proposal #7:

Do not support Proposal

180. If you wish to (a) propose changes to TMCH Individual Proposal #7; and/or (b) provide a rationale.

The BC opposes the proposal to make the TMCH database both public and searchable. The TMCH database contains confidential and trade secret information, namely the trademarks most valued by businesses and brand owners, the trademarks most enforced within the DNS, and the protection strategies of each entity who entered in data.

Claiming that “the commercial information contained in the TMCH is already effectively public” shows a fundamental misunderstanding of this system. A tiny proportion of TMs that exist globally are lodged in the TMCH.

Allowing bad actors to “differentiate between claims which are not actively enforced online” is a strange goal. We also note that a TM being in the TMCH does not prevent that string from being registered by another party.

TM databases are open, and so they should be: the TMCH is not a TM database. This is a completely false equivalence.

Section 10: Overarching Charter Questions

182. General Overarching Charter #Q1. Do the RPMs collectively fulfil the objectives for their creation, namely “to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks? In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?

The RPMs collectively help alleviate the costs and burdens of protecting trademarks in the new gTLDs. They have generally, in the aggregate, been sufficient to meet their objectives, while noting that URS has seen low usage levels thus far.

The BC believes that RPMs can be improved, but does not believe that the creation of additional RPMs is necessary.

183. General Overarching Charter #Q2a. Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs?

Once any agreed-upon improvements have been identified and implemented, all RPMs should go through the appropriate process to potentially become ICANN Consensus Policies, applicable to all gTLDs to the extent feasible. All gTLD registry operators should be on an equal competitive playing field to the extent possible, understanding that legacy gTLDs have a first-to-market competitive advantage regardless of implementation of additional Consensus Policies.

The BC supports the URS becoming an ICANN Consensus Policy, although it should apply only to

184. General Overarching Charter #Q2b. If so, what are the transitional issues that would have to be dealt with as a consequence?

See previous comment. The BC supports the URS becoming an ICANN Consensus Policy, although it should apply only to registrations done after the effective date of the consensus policy.

185. General Overarching Charter #Q3a. Will changes to one RPM need to be offset by concomitant changes to the others?

The new gTLD RPMs were intended to be complementary, and therefore, interdependencies should be dealt with as discussion on each individual RPM evolves.

186. General Overarching Charter #Q3b. If so, to what extent?

See previous comment. The new gTLD RPMs were intended to be complementary, and therefore, interdependencies should be dealt with as discussion on each individual RPM evolves.

187. Additional Overarching Charter #Q1. Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use)?

Yes.

188. Additional Overarching Charter #Q2. Is the recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

This discussion may be best left until after Work Stream 2 matters, including discussions on Human Rights and their relationship to ICANN, are discussed in the context of CCWG-Accountability.

189. Additional Overarching Charter #Q3. How can costs be lowered so end users can easily access RPMs?

Please see our previous responses for more detailed discussion of cost issues.

Section 11: Other Comments & Submission

191. Are there any additional recommendations that you believe the Working Group should consider making? If yes, please provide details below. N/A.

192. Are there any other comments or issues you would like to raise pertaining to the Initial Report? If yes, please enter your comments here. If applicable, please specify the section or page number in the Initial Report to which your comments refer.