

Comments of Time Warner Inc.

Re: Uniform Rapid Suspension

<http://www.icann.org/en/public-comment/#urs>

April 1, 2010

Time Warner Inc. (Time Warner) appreciates this opportunity to comment on the revised proposal for a Uniform Rapid Suspension (URS) procedure, as a mandatory feature of the rollout of new generic Top Level Domains (gTLDs).

Time Warner commends ICANN for recognizing that a URS procedure should be mandated for all new gTLDs. Consumers risk facing increased exposure to confusion, fraud, and other serious harms that will accompany cybersquatting in the new gTLDs. An efficient, inexpensive and expedited system for handling clear-cut cases of abusive registration could go a long way toward improving the brand owners' confidence that they will have access to a useful and practical mechanism to reduce these risks and protect their consumers.

However, in order to achieve this objective, some improvements are needed in the URS as it has been proposed by the ICANN staff. These include:

- While we strongly support the staff's recommendation that the filing process should be "as simple and as formulaic as possible," provision should be made for multiple unrelated parties to file jointly against a single registrant.
- To keep the URS as cheap and as streamlined as possible, notification by e-mail should be the norm.
- The time for submitting a response should be limited to 14 days, as recommended by the STI, rather than the 20 days called for by staff.
- The ability to "answer after default," while a useful safety valve, should be safeguarded against abuse. For instance, instead of the 2-year period allowed for this procedure under the staff's proposal, the time period for re-opening a default should be much shorter, so that the examiner's decision will have greater finality on which the right holder can rely. Furthermore, a fee ought to be imposed upon such "answers after default."
- In order to achieve the hoped-for cost savings of the URS, we continue to support a full, or at least a partial, loser-pays system for defraying the costs of the URS. Surely it is not improper to require that the registrant of a large number of domain names identified in a single URS complaint be required to pay an answer fee, refundable if the respondent prevails, but forfeited to the complainant if the respondent loses. Similarly, a fee imposed for "answer after default" could be recovered by the complainant if the outcome remains unchanged. This issue requires further examination before the URS procedure is finalized, so that an appropriate "loser pays" provision can be included in the final DAG.

- While we support including an optional remedy to extend the registration period of a “frozen” domain name for one additional year, we believe a longer freeze period should be available to a successful URS complainant. This will reduce the risk of repetitive abusive registrations.
- We agree in principle that penalties should be provided against complainants who file multiple abusive URS complaints, and look forward to participating in the discussion aimed at clarifying what constitutes “abuse.” (It should be made clear that the URS provisions of the DAG will not be finalized until this discussion has concluded.)
- However, we note that the staff recommendations provide no corresponding penalties for abusive registrants. This is a serious omission. We strongly recommend that ICANN require registries and registrars to implement penalties for registrants who have been found to repeatedly register domain names infringing upon trademarks, thereby profiting from consumer confusion. We further recommend that such repeat offender registrants (along with any related entities that can be identified) be barred under the new gTLD registry agreements from registering domain names in any of the new gTLDs for a set period, such as three to five years.

Time Warner urges that these improvements to the URS be included in the final version of the Draft Applicant Guidebook. If you have questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

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