



March 30, 2010

Dear Sir / Madam,

Re: February 2010 ICANN Uniform Rapid Suspension procedure "URS"

Further to the earlier [proposal of April 3, 2009](#) of the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO Center), and its subsequent comments on various URS proposals, including most recently on the [STI Report](#), we submit the following. We continue to believe that adjustments to the present design of the URS would better protect existing trademark rights while also minimizing burdens on registration interests.

**The present URS does not optimally complement or interoperate with the existing UDRP, nor does it produce a substantially more time and cost efficient enforcement option.**

To truly add value as a trademark enforcement option, any URS-style mechanism must cooperate with, yet be sufficiently distinct from, the existing UDRP; the present design of the URS is unlikely achieve these goals.

So-called upgrades to the time-tested UDRP in the present design of the URS do little for the relative time and cost efficiency of the latter mechanism. Independent attention to producing a mechanism that would truly complement the existing UDRP may ultimately yield more practical results. Among other issues (*e.g.*, burden of proof), the below comments touch upon some of the design elements as relevant in this regard.

**Trademark laws and policies.**

The present design of the URS would require complaints to be based on a "valid trademark registration issued by a jurisdiction that conducts *substantive examination* of trademark applications prior to registration." Given that there was

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strong opposition in public comments on the Trademark Clearinghouse to any design elements that would have the effect of creating a distinction between trademark examination procedures, which distinction in any event does not find a basis in law, consideration should be given to consequences in the context of the present design of the URS.

**Default basis.**

With adequate registrant notice (*e.g.*, as under the recently approved eUDRP) and an appropriately-designed mechanism through which a respondent or unrelated third party could later establish their *bona fides* with respect to a domain name suspended as a result of a URS proceeding, the benefits of a default-based filtering (takedown) mechanism to stakeholders would appear evident. Indeed, the present design of the URS seems to acknowledge this in that a low response rate is predicted.

**Panel appointment.**

Moving away from system design that would require panel appointment in cases of respondent default in a URS proceeding – particularly where the present design of the URS envisions the remedy of temporary suspension of an infringing domain name – would appropriately decrease the cost and time in administering such a procedure.

We are posting a copy of this letter on the WIPO website for public information at <http://www.wipo.int/amc/en/domains/resources/icann/>.

Yours sincerely,



Erik Wilbers  
Director

WIPO Arbitration and Mediation Center