



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,



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Director

WIPO Arbitration and Mediation Center