

# РОЗДІЛ V

## Міжнародне наукове співробітництво

УДК 347.78:004.738.5

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### **The Uniform Rapid Suspension System (URSS): Comparative Analysis with ICANN's Uniform Dispute Resolution Policy (UDRP)**

This article aims to analyse the nature and features of the ICANN's Uniform Rapid Suspension System (URSS), as the Rights protection mechanism (RPM) and an alternative to the ICANN's Uniform Dispute Resolution Policy (UDRP) and court proceeding in trademark infringements. Effectiveness of URSS is evaluated through identification its advantages and disadvantages. Theoretical insight on URS Policy is combined with practical examples and compared with UDRP. URSS could be identified as a fair and efficient system which is preferable to the cost for rights owners to go to court.

**Key words:** Uniform Rapid Suspension System, Uniform Dispute Resolution Policy, Uniform Dispute Resolution Policy.

Stakeholder's identity could be damaged by improper use of domain name. Feature of domain name, as unique identifiers of stakeholder and its goods/services, is at the core of modern legal conflicts. Domain name infringement demands application of fast, inexpensive, and international RPM, which takes into account features and possibilities of the information technologies too.

In a world with over 1.6 billion Internet users, the expansion of generic Top-Level Domains (gTLDs) continues to be a key issue for legal right holders and Internet users generally. Originally, expansion of gTLDs was largely motivated by the recognition that there is a conflict between domain names and trademark owners with similar marks which belong to different geographical locations, or to different goods and/or services classification. This expansion has, in the past, been relatively «controllable» [1].

Increase of the Internet beyond traditional top-level domains (like .com, .net, and .org), and submission of own suffixes for registration became possible with introduction of new gTLDs: «In the first round of this expansion, nearly 2,000 applications were submitted for over 1,400 distinct new gTLDs—including, for example, .tech, .fashion, .youtube, and .samsung» [2].

Advantages of new gTLDs are improved competition, bringing innovations and opportunities to the Internet society. So, trademark owners can acquire new top-level domains that incorporate their trademarks: for example, Samsung could acquire «.samsung». Disadvantages of new gTLDs are seen in enlargement of consumer confusion, and cybersquatting. For instance, some Internet user might register «samsung.mobile» in second-level domain names in the new .mobile gTLD in bad faith [2; 3].

Particularly, as statistics show: «If you look at the approximately 1,400 unique new gTLDs, it is notable that brand owners have applied for almost half of these, with around 500 intended to be run on «open registration» [open to consumers] models. This is where the principal risk of cybersquatting will lie» [4]. As a result, additional RPM - the Uniform Rapid Suspension System (URSS) has been developed by ICANN to protect trademarks in the New gTLD Program [5], which was introduced in the root after 1 January 2013 [6].

**Research question:** Analysis of ICANN's URSS, as an alternative RPM in case on domain name infringement.

**ICANN's Uniform Rapid Suspension (URSS) system: nature and application.** UDRP was adopted by ICANN on 26th August 1999 as a set of guidelines for resolving disputes around the registration of domain names. The guidelines were designed «to protect recognized brands and trademarks from abusive registrations by third party registrants who intentionally register confusingly similar domain names in bad

faith for profit.» (ICANN) [7]. Thirteen years later, IP owners widely champion the UDRP policy as a cheaper and more efficient alternative to the courts [4].

More than 20,000 cases have been filed with the Forum (UDRP provider) domain name dispute resolution program since the program's inception. Forum domain name caseload volumes per year have increased steadily. The program now sees over 2,000 case filings a year [8]. Another UDRP arbitrator, the World Intellectual Property Organization (WIPO) «has processed more than 24,000 cases and possesses a deep, probably unrivalled, institutional knowledge of the UDRP. Since 2009, filings have risen by 40 per cent. In early 2012, the organisation published statistics showing that in 2011 it handled more cases (2,764) covering more domain names (4,781) than in any other year. The workload is piling up» [4]. A rise in UDRP complaints, its long continuance and costs (for instance, the cost of filing a single complaint at WIPO that is overseen by a single panellist is \$1,500 and at Forum is \$ 1,300) [4; 9] brought forth the idea to establish alternative efficient RPM before the new gTLDs go live.

URSS was developed to complement UDRP and to provide right holders with fast, simple, and cost effective relief in the most clear-cut cases of trademark infringements. According to Provision 8.5. of URS Procedure: «The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse». It was introduced as a lighter alternative to UDRP to ensure a swift remedy by means of taking down websites that infringe trademark rights. Such infringements include mostly registration of similar/identical domain names. It is difficult to implement the URSS in a way that will satisfy each of its goals (to be fast and simple), including the cost aspect (ICANN intended to maintain the URSS cost between \$300 and \$500 per case). Advantages of URSS could turn into disadvantages and influence the quality of dispute resolution.

Online filing system is used in URSS for submissions and case management. Documents are transmitted electronically and fees can be paid online. According to Rule 11 of URS Rules: «There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference)». This Rule underlines the expedited nature of the URSS [10], the rapid nature [10], and neutrality of URS Procedure.

All URS and UDRP filings have to be made with dispute resolution providers approved by ICANN. The Asian Domain Name Dispute Resolution Centre (ADNDRC) [11] and the National Arbitration Forum (Forum) [12] have been appointed as URS providers. As statistics show: «A total of 92 URS cases have been filed to date, 88 with Forum in the United States and four with ADNDRC in Hong Kong. Suspensions have been issued in 71 cases (including one affirmed on appeal, as noted below), versus nine instances where relief was denied. As of this writing, 12 cases remain pending» [13]. One or more additional providers are expected to be appointed in the near future [14]. UDRP providers, additional to the abovementioned, are represented by Czech Arbitration Court and WIPO Arbitration and Mediation Center.

Domain name dispute resolution is not based on jurisdiction or the location of the parties. A complainant makes their choice of dispute resolution provider, which could be located anywhere in the world. Thus, international scope of domain name infringement accounts for the RPM's international nature.

URS Rules and URS Procedures governing the URSS should be followed by Registry Operators and Registrars. These Rules should help service providers to implement URSS in a consistent manner, while the URS Procedure defines the URS claim process.

URS proceedings shall be governed by URS Rules and the Supplemental Rules of the Provider administering the proceedings, as posted on its web site. To the extent that the Supplemental Rules of any Provider conflict with URS Rules, the latest supersede [15].

Overall, legal nature of URS Rules, URS Procedure, the URS High Level Technical Requirements for Registries and Registrars [16] and Rules for UDRP [17] are controversial. They could be identified as policies, which are governed by ICANN and include rules (developed by the Internet society) instead of articles (developed and established by the state or international organization) [18]. At the same time, stakeholders recognize their legal force to provide resolution services for domain name disputes around the world. So, according to Rule 13 (a) of URS Rules, a Determination (Default, Final or Appeal) of a Complaint is made in accordance with the URS Procedure, URS Rules and any rules and principles of law, are deemed to be applicable. Both URSS and UDRP provide procedures, based on general principles of fairness (particularly, fair notice of registrant is widely used) justice, and due process.

**URSS and Uniform Dispute Resolution Policy (UDRP): similarities and differences.** URSS is more complicated than UDRP. It has a clear and convincing standard of proof (which is higher than in UDRP cases), multiple enforcement layers (from «initial freeze» to putting a domain on hold), and sole remedy (suspension of domain).

There is no discovery or hearing; the evidence consists only of the materials submitted with the complaint and the response (if any), and those materials will serve as the entire record forming the basis of the examiner's decision. The high standard of proof is the fundamental characteristic of URS proceedings: by requiring clear and convincing evidence that there are no disputed questions of material fact, the URS, like a motion for summary judgment, streamlines and expedites the resolution of clear cases of infringement [2]. Thus, requirements to evidence and burden of proof recognize brand's advantages in URS proceeding. At the same time, the system can only suspend a domain in comparison to its transfer to trademark owner under UDRP. Domain remains the property of the owner, but s/he is not allowed to make online changes or to use it for the remainder of its registration period. The following problem appears when the domain name is re-released into the pool of available domains after it expires: «Should the trademark owner not immediately secure the domain when it is re-released, it may be abusively registered again, creating a serial enforcement scenario. This remedy, and its limits, should be considered by brand owners when enforcing their marks» [19].

Compare to UDRP, URSS also has stricter criteria for filing of complaint. So, opportunity for claimants to correct claim is not foreseen by URSS. It contains complainant's responsibility for abusive filings, which could result in a ban on future URS filings [20].

The URS is designed to be lighter than the UDRP, but the built-in safeguards for registrants, if misused, could kill the potential gains in efficiency. This is because the URS can go into limbo if the respondent does not respond initially, since it can request a seven-day extension at any point in the 30 days following the default decision. «In addition, a *de novo* review can be requested at any time within six months after a decision, and a period of six months can be requested» [21]. Overall, abovementioned aspects of URSS together with requirements to have experts even in default cases, the option for defaulting respondents to re-open, as well as to appeal for a reversible remedy of domain's suspension, make for longer URS proceedings. However, involvement of experts together with features of appropriate evidences and dispute resolution underline neutrality of URSS.

Since URSS, compared to legal norms, can not be improved so easily and reflects technological possibilities, its social nature contains the risk to be unable to adapt quickly to technological progress and appropriate changes. As a result, URSS could be watered down or become over-burdened.

Taking into account advantages and disadvantages of URSS and UDRP, Comparison chart and recommendations on choosing an appropriate dispute resolution process were introduced on the Internet [7; 9]. As was concluded by James L. Bikoff, David K. Heasley, et al. (2014): «...a URS determination does not preclude any party from seeking additional remedies by bringing a UDRP action or an action in a court of competent jurisdiction, and a URS determination for or against a party does not prejudice the party in any such further proceeding» [2]. Trademark holders seeking to address alleged infringements should be able to use either or both procedures.

Where the URS proceeding is conducted by the Forum, parties also have the option of instituting a UDRP proceeding. In such cases, the Forum (which also administers UDRP proceedings) will credit half of the filing fee from the URS proceeding to the filing fee for the UDRP case, provided the parties and domains at issue remain the same and the UDRP is filed within 30 days of the URS outcome [2]. Such option stimulates establishment of the practice of preliminary use of URSS before UDRP in Forum.

**Conclusions.** URSS and UDRP could be identified as policies, governed by ICANN, which have legal and social nature. They consist of rules developed by the Internet society and established by ICANN. Resolution services for domain name disputes around the world are based on principles of fairness, justice and due process.

The utility and limitations of URSS are presented by its advantages and disadvantages respectively. So, among advantages of URSS could be identified: fast and simple nature of proceeding with cost effective relief; its application in relation to domain names which are registered in new gTLDs in cases of clear-cut trademark infringement (particularly, narrow specialization of provider positively influence the quality of examiner's determination); international competence of dispute resolution providers; submitted materials form the basis of examiner's determination (so, it could be predictable); multiple enforcement layers (what should help to convince registrant to stop illegal behaviour); fast technical decision of case and balance of stakeholder's interests without stifling innovations due to suspension of domain name; possibility to seek for additional remedies, like transfer of domain name, by applying to UDRP or appropriate court (particularly, Forum could credit half of the filings fee from the URS proceeding).

All the above mentioned advantages increase the utility of URSS for the Internet society and substantiate the claim about expedited nature of URS Rules, rapid nature of URS Procedure and neutrality of URSS in whole.

Limitations of URSS include: Admitting only clear-cut cases of trademark infringements suspension of domain name as sole remedy; only providers, approved by ICANN can be involved in the case; high standard of proof (only clear and convincing evidence are admissible); presence of danger of abusive registration of domain name after its release in common pool of domains due to termination of its registration and suspension; stricter criteria for filing of complain (for example, cases about abusive filings and no changes in complain could be made); prolongation of URS proceeding (in case of response of registrant, de novo review, appeal); as social norms, the rules are under risk inability to adapt quickly to technological progress and appropriate changes.

Overall, URSS could be identified as a fair and efficient system which is preferable to the cost for rights owners to go to court.

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**Чорноус О. Єдина система швидкого реагування (URSS): порівняльний аналіз з Уніфікованою політикою вирішення спорів про доменні імена (UDRP) Інтернет корпорації з присвоєння імен та номерів ICANN.** У цій статті проаналізовано характер та особливості Єдиної системи швидкого реагування (англ. Uniform Rapid Suspension System — URSS) Інтернет корпорації з присвоєння імен та номерів (англ. Internet Corporation for Assigned Names and Numbers – ICANN) в якості механізму захисту прав (англ. Rights protection mechanism - RPM) та альтернативи Уніфікованій політиці вирішення спорів про доменні імена (англ. Uniform Dispute Resolution Policy - UDRP) ICANN та судового розгляду справ щодо товарних знаків. Ефективність URSS оцінюється шляхом визначення його переваг та недоліків. Теоретичне уявлення про URS політику поєднується з практичними прикладами і порівнянням з UDRP.

**Ключові слова:** Єдина система швидкого реагування, Інтернет корпорація з присвоєння імен та номерів, Уніфікована політика вирішення спорів про доменні імена.

**Черноус А. Унифицированная система быстрой приостановки (URSS): сравнительный анализ с Унифицированной политикой по разрешению споров о доменных именах (UDRP) Корпорации Интернета по распределению имен и адресов (ICANN).** В данной статье проанализировано характер и особенности Унифицированной системы быстрой приостановки (англ. Uniform Rapid Suspension System – URSS) Корпорации Интернета по распределению имен и адресов (англ. Internet Corporation for Assigned Names and Numbers – ICANN) в качестве механизма защиты прав (англ. Rights protection mechanism – RPM) и альтернативы Унифицированной политике по разрешению споров о доменных именах (англ. Uniform Dispute Resolution Policy – UDRP) ICANN и судебного разбирательства по поводу нарушений прав торговой марки. Эффективность URSS оценивается путем определения его достоинств и недостатков. Теоретические представления о политике URS сочетаются с практическими примерами и сравнением с UDRP.

**Ключевые слова:** Унифицированная система быстрой приостановки, Корпорация Интернета по распределению имен и адресов, Унифицированная политика по разрешению споров о доменных именах.

УДК 336.71(438)

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## **Polish Banking System after the World War II (Part I)**

The banking model in Poland and regulations on this matter have been subject to profound changes after World War II and aimed at «ideologisation» of these areas. In fact, all the positive trends initiated before 1939 have been reversed to the negative side. Process of renaming and nationalizing of banks started, while keeping their total subordination to the state and party apparatus. Partly new institutions such as the Narodowy Bank Polski were created or pre-war institution as the Bank Gospodarstwa Krajowego was reactivated. Of fundamental importance is the regulation contained in Chapter 7<sup>th</sup> «Special rights of banks» of Decree of 15 January 1945 on the Narodowy Bank Polski. The Narodowy Bank Polski was exempt from all state and local taxes. All the evidence issued by the bank was free from stamp duties, banking books and other writings, included in the accounting and extracts thereof certified by the bank, had probative value of public documents. On the other hand, what is especially important documents stating the obligations of the bank statement, that based on this claim is enforceable and legally mature for execution, had the power to writs of execution. Executors' clause to these titles was given by the appropriate town court according to the provisions of the Code of Civil Procedure.

**Key words:** Polish banking system; Polish banks; banking law.

**General remarks.** The outbreak of the World War II significantly stopped development of the banking system initiated during the II Republic of Poland, which was guarded by modern banking law.

After the World War II major changes followed in the Polish banking system. First, less important direction of changes concerned granting most banks other names. Second, more important, aimed to nationalize banks - and gradually all banks were nationalized [1], with the exception of cooperative banks, that lost their independence and were subjected to state control [2]. Another important change after the World War II was the creation of new institutions such as Kasa Resortów, or the Narodowy Bank Polski which alluded to the tradition of pre-war Bank Polski as well as the reactivation of the Państwowy Bank Rolny that was operating before the War, or the Bank Gospodarstwa Krajowego.

**Creating and reactivating the pre-war banking institutions.** During the German occupation Polish banks located in areas connected to the German Reich were put into liquidation. In the General Government area functioning of Polish banks that were under German management became limited to financial operations with small industry and trade, as well as to the financing German companies. This has given Polish banks character of local credit institutions, which were subject to illegal seizure of the property by the occupiers [3, p. 14].

Shortly after the war the process of creating of the banking issuing body began. Initially, this function was performed by Kasa Resortów that was formed in 1944. The origins of its issuing activity were