

Adobe Connect: 20 Members

Alan Greenberg	Karen Day
Anne Aikman-Scalese (IPC)	Kristina Rosette (Amazon Registry)
Avri Doria	Michael Flemming
Cheryl Langdon-Orr (CLO)	Phil Buckingham
Gg Levine	Robin Gross
Greg Shatan	Rubens Kuhl
Jamie Baxter dotgay	Rudy Mendoza
Jeff Neuman	Samantha Demetriou
Jim Prendergast	Susan Payne
Jon Nevett	Tijani BEN JEMAA

On Audio only: none

Apologies: none

Staff:

Julie Hedlund	Steve Chan
Emily Barabas	Terri Agnew
Trang Nguyen	

Terri Agnew:Welcome to the New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes on Tuesday, 13 February 2018 at 15:00 UTC for 60 minutes.

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_CwWfB&d=DwIFaQ&c=FmY1u3PjP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIGN-H4xR2EBk&m=EgRNBkA6weLzRABdLMegxGvEoVtcfUuHpuQRsqBn8e4&s=H-ipdv_36Ccl-OgksY4cNY1aDVyiVgHI88TdcP_Fb9w&e=

Emily Barabas:The slides are now unsynced. Everyone can scroll for themselves.

Karen Day:Thanks, Emily

Tijani BEN JEMAA:I agree with Anne

Gg Levine:Agree with Anne; language is slanted.

Steve Chan:Here is the language from the Final Issue Report: "It should also be noted that the Cross Community Working Group on Enhancing ICANN Accountability (CCWG) seeks to integrate human rights impact analyses within its mission, which should provide guidance to this PDP-WG in its deliberations."

Steve Chan:Apologies for terrible formatting

Kristina Rosette (Amazon Registry):For the record (and to avoid any doubt), I support the inclusion of "geo names" in the second bullet under "Take Away from Last Call."

Anne Aikman-Scalese (IPC):@Alan - I am in favor of specifically referring to freedom of expression. agree with you but i think others do as well.

Jim Prendergast:sorry - need to jump to another call

Karen Day:Thanks, Jim

Robin Gross:Principle G

Cheryl Langdon-Orr (CLO):this cross reference still needs to here in the section as a placeeholder

Anne Aikman-Scalese (IPC):@ Greg - how does new IRP process affect this question?

Greg Shatan:I don't think it affects it much, for the reasons Jeff is articulating.

Anne Aikman-Scalese (IPC):Okay thank you.

Rubens Kuhl:Idea 1: No panels of less than 3 members. Idea 2: Substantive review is only available if a dissenting opinion existed in the original decision.

Cheryl Langdon-Orr (CLO):there seems to be no downside to a post decision appeal process...

Alan Greenberg:@Cheryl, the downside is that it might be used very heavily, but if we design the original decision process better, we may be able to control that.

Jeff Neuman:Even Reconsideration requires that an action (or inaction) contradicts ICANN's Mission, Commitments, Core Values and/or established ICANN policies.....

avri doria:It does seem the case, speaking personally, that the bylaws cover adherence to policies, but not necessarily to implementations. Question: after this substantive review mechanism i am assume the bylaws mechanisms would still be called on. so this is an extra review in the process.

Jeff Neuman:So to me that leaves too much wiggle room for the BAMC to deny reconsideration requests even where an evaluator gets something wrong

Jeff Neuman:@Avri - True, but all reconsiderations were denied because nothing empowered the Board to review what an outside panel did

Jeff Neuman:When push comes to shove, I believe the same would happen even under these new bylaws

Rubens Kuhl:Not in a position to speak today.

Alan Greenberg:Not all panels had multiple judges.

Alan Greenberg:String similarity for example.

Rubens Kuhl:The first. The starting panels would need to be of 3 or more.

Rubens Kuhl:And the existence of a dissenting opinion would be the trigger to allow a substantive review (appeal), but that wouldn't be automatic, it would have to be invoked by a party.

Anne Aikman-Scalese (IPC):@Rubens - very interesting ideas! Well worth exploring.

avri doria:New IRP has not been tested yet, btw.

Anne Aikman-Scalese (IPC):What about sticking with one panelist but allowing appeal to panel of 3?

Rubens Kuhl:Standing panels would fit FCFS, so depending on the discussion in the full WG, we might have to tune objection processes a little.

Anne Aikman-Scalese (IPC):Rubens - how do you conduct string confusion objection in FCFS?

Rubens Kuhl:@Anne, that would allow every decision to be appealed, generating a likely heavy load on Org and parties.

avri doria:one problem i have seen with panels, is that most issue have at least 2 sides to the issue, so whatever the decision it is will be further appealed.

Kristina Rosette (Amazon Registry):Wholeheartedly support

Jeff Neuman:The other reason for an Appeal is tied to the work that Work Track 2 is doing on the Applicant Terms and Conditions. If ICANN intends to require applicants to sign Ts and Cs in which it agrees not to take ICANN to Court, then there must be a substantive review through an appeals mechanism

Rubens Kuhl:String confusion had both existing TLDs and applicants as parties. String confusion objection with existing TLDs would still be a possible objection.

Anne Aikman-Scalese (IPC):Okay Rubens but would this not also be true any time there is a dissent opinion? Which could be limited to "I dissent"?

Rubens Kuhl:If there was a dissenting opinion, there is at least a possible cause.

Rubens Kuhl:I think no decisions, whether in favor or dissenting, should lack reasoning. Every decision, in any direction, should provide reasoning.

Robin Gross:When the ICANN board believes its fiduciary duty is at issue in the case, they must have the last say. But on issues that don't invoke that duty, it could be other decision makers.

Anne Aikman-Scalese (IPC):Rubens -yes of course as to pre-existing TLDs. What about applications for .mediator and .mediators in new application process FCFS? Does the first one filed win even if filed a couple of days before?

Kristina Rosette (Amazon Registry):Personally, I think it's challenging to make a meaningful decision about an appeal mechanism without getting into the details (threshold, standard of review, interplay with other accountability mechanisms, DRP, panelist qualifications, etc.).

avri doria:at the end of most days isn't it the IRP -> Board -> "EC" -> courts

Rubens Kuhl:Anne, since decisions are not instant even in FCFS, in this case both .mediator and .mediators would have cause for string confusion objection. But if confusion is found, then the first one applied prevails.

Jeff Neuman:@Avri - But ICANN requires that all applicants agree not to sue ICANN in court. and that has been upheld in some cases

Anne Aikman-Scalese (IPC):Given pent-up demand for next round, I would likely put .mediator and .mediators in string contention.

Kristina Rosette (Amazon Registry):@Jeff: But is currently under appeal to the 9th Circuit.

avri doria:so that may be an issue.

Rubens Kuhl:@Anne, pent-up demand is a blocking factor for FCFS. So both of them shouldn't occur at the same time.

Jeff Neuman:@Kristina - True - but it may be years before we know how that turns out. And I dont have high hopes in the US courts to overturn a case on disclaimers of liability

Anne Aikman-Scalese (IPC):Very good question Steve - to clarify which final decisions we are discussing.

Anne Aikman-Scalese (IPC):Given length of time since last round, we will likely have to let ICANN staff recommend at some point of time in the future when they could reasonably move to FCFS applications.

Jeff Neuman:We may need to have a visio-type diagram as to where appeals could come in.

Robin Gross:I think it is important that substantive appeals be allowed (not only process), but I don't know which path they must take. I think the important piece is that substantive appeals be allowed.

Jeff Neuman:i need to drop :)

Terri Agnew:Next call: New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes will take place on Tuesday, 27 February 2018 at 20:00 UTC for 60 minutes

Susan Payne:me too

Kristina Rosette (Amazon Registry):Have to run for another call. Thanks, all. Good call, Karen.

avri doria:i think the new bylaws allow substance to be taken into account on future reconsiderations and IRPs. but they still need to be tested.

Cheryl Langdon-Orr (CLO):thx everyone let's take this to the list

avri doria:bye

Robin Gross:Thanks Karen and all. Bye!

Cheryl Langdon-Orr (CLO):bye 🙋🙋🙋