

Adobe Connect: 46 Members

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George Kirikos

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Kristine Dorrain - Amazon Registry Services

Kurt Pritz

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Marie Pattullo

Marina Lewis

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Michael Graham

Michael Karanicolas

Monica Mitchell

Paul McGrady

Paul Tattersfield

Petter Rindforth

Phil Marano

Philip Corwin

Rebecca L Tushnet

Renee Fossen

(Forum)

Roger Carney

Sara Bockey

Steve Levy

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Wisdom Donkor

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Terri Agnew

Terri Agnew:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday, 03 January 2018 at 18:00 UTC for 90 minutes.

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_sgxyB&d=DwIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIn-H4xR2EBk&m=Wk8vr8SzV2yRgaFp71tJG6rcjdcLDZxwK6z43aj9oRg&s=7mBSXkFMYs4FChiaOKiRb0V_f5rkpruB8UPIPOEKCRU&e=

George Kirikos:Hi folks.

George Kirikos:Nice article on CircleID today, David. Thanks for helping educate folks on this important issue.

David Maher:Thank you, George

Martin Silva Valent:Hi all

George Kirikos:Welcome, Martin.

Elizabeth Featherman:Happy new year, everyone!

George Kirikos:Haooy New Year to you too, Elizabeth.

George Kirikos:Oops, *Happy New Year, even.

Elizabeth Featherman:Thanks George!

Rebecca L Tushnet:Is anyone speaking? I seem to have lost audio

George Kirikos:Terri is just speaking now.

George Kirikos:(I'm on the telephone bridge, as it seems more reliable)

Steve Levy:Hi all

George Kirikos:Welcome, Steve.

Philip Corwin:Hello all. Happy 2018

George Kirikos:I expect that we'll have some iterative process, as we go through the list of topics, to make sure that we have the right "columns" that encompass all the appropriate questions.

George Kirikos:(if each topic represents a row, in the matrix/table)

George Kirikos:<http://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html>

George Kirikos:Thanks Mary.

George Kirikos:So, I believe it was everything up to October or so?

George Kirikos:(in the current document on screen)

Mary Wong:All the suggested topics in Part One are relisted, in their entirety, in Part Two (Column 1), as J Scott is just saying.

George Kirikos:Yes, additional topic for that section.

George Kirikos:Either in A, or D (laches).

David McAuley:The answer to some of these questions will likely prompt additional questions like that

George Kirikos:Or both (since Laches and Statute of Limitations are slightly different)

Michael Karanicolas:Sounds like a good thing to consider

Michael Graham:This issue would be appropriate for D, rather than A.

Martin Silva Valent:I agree

Martin Silva Valent:w/ M.K.

George Kirikos:@Michael: right, it could be a defense to the action. But, conceivably the provider could kill the complaint before it even required a response.

George Kirikos:Michael has a hand up.

George Kirikos:Section K.

George Kirikos:Page 6.

George Kirikos:That goes to the "service of process", then. So, maybe in (A), i.e. how the complaint is being sent to the registrant.

Kathy Kleiman:+1; or if you even got it

Michael Karanicolas:I guess I'm not entirely happy with including it as a consideration under general education and training... as it seems more of a procedural question than a general awareness raising one.

Kristine Dorrain - Amazon Registry Services:I think it would be hard to prove a negative.

George Kirikos:Do respondents actually even receive them, though.

Michael Karanicolas:+1 Kathy. I think that would be the best avenue forward.

David McAuley:we could answer whether documents are reasonably understandable

George Kirikos:Let's not change the letters, though.....otherwise we'll be calling it "old B" and "new B" !!

George Kirikos:Call it "AA" or something.

Kristine Dorrain - Amazon Registry Services:@George, I wonder how we get to that. so we need to find people who defaulted on a URS case and then email them at...what...their Whois record...and then ask them ...what? and we think they'll respond to this?

George Kirikos:(and then change the letters all at once later)

George Kirikos:@Kristine: well, we know from the WHOIS studies that a large number are inaccurate.

Mary Wong:@George, we will make the updates after this call.

Griffin Barnett:Agree Susan

Kristine Dorrain - Amazon Registry Services:Right and a great number not "oh I moved" but actually non-existent, so now what...

Kathy Kleiman:to Julie - please add to notes on Notice -- and in the language of the registration agreement as required by the rules.

Michael Karanicolas:It's not about spoon-feeding people, isn't it about trying to level the playing field between powerful interests who are likely to have a strong familiarity with the process and those who may not be as familiar. Isn't that a basic aspect of procedural fairness in how a system is designed?

Kathy Kleiman:Tx!

Martin Silva Valent:the asymmetry is HUGE when it comes between trademark owners and general registrants

George Kirikos:What notice procedures are in place for TM disputes, say at the USPTO? Is email sufficient for those?

Kiran Malancharuvil:a basic language requirement would be adequate I think

John McElwaine:@Kiran - I agree

George Kirikos:+1 on Phishing. We're taught to not click on links from untrusted sources.

Kiran Malancharuvil:how could you ensure that it's always differentiated from phishing? seems impossible.

George Kirikos:And not to open attachments from untrusted sources. Getting a random "dispute" might be seen as a phishing attempt. (spear phishing, even)

George Kirikos:@Kiran: involving the registrar, who the registrant has a relationship with, might be appropriate. Rather than relying solely on the URS provider.

Susan Payne:Quite J Scott!

John McElwaine:@JScott agree

Marie Pattullo:Understanding the process should be in general education, surely? That if you register a DN there are some things you need to know - akin to general T&Cs/ cost of doing business/ performance?

Mary Wong:Current URS Rules are that Notice to Registrant must be in English and must be translated into "predominant language used in the registrant's country or territory, as determined by the country(ies) listed in the Whois record when the Complaint is filed"; and Provider must "employ reasonably available means calculated to achieve actual notice".

Georges Nahitchevansky:George K: The notice issue is way more complicated given the fact that many parties conceal their identity by using bogus contact information or incomplete address information and/or use privacy services. So my understanding is that notice is given by sending an email and sending a hardcopy to what is in the whois information

George Kirikos:@Mary: that's just the notice of the complaint, re: translation, but not the language of the actual complaint?

George Kirikos:i.e. "notice of complaint", not "complaint" itself.

Mary Wong:@George, correct

Mary Wong:I believe there is no requirement to translate the Complaint.

George Kirikos:Are URS providers using the same notice means (e.g. couriers, fax) in the URS, as they do for the UDRP?

George Kirikos:Since the cost of the URS is lower, they might be cutting costs there, conceivably.

Michael Karanicolas:I support the suggestion of adding "Notice" between "The Complaint" and "The Response". Sounds good to me.

Kathy Kleiman:+1 JSE

Griffin Barnett:At a certain point, it is incumbent on the registrant to educate themselves about these mechanisms, as part of the business of owning a domain

Griffin Barnett:Plenty of materials already exist for this purpose

Marie Pattullo:+ 1 @ Griffin.

George Kirikos:I wonder if there are resources on counter-notifications of the DMCA, for example, that might be used as a model for education?

Paul McGrady:No problems with educating Respondents nor using regular methods to attempt to provide actual notice. That said, this has to be balanced, i.e. a squatter can't make service so impossible/costly nor can they hide behind asserted ignorance.

Georges Nahitchevansky:Point as I see it is that notice should be tied to what the registrant put into the whois records and nothing more.. As to awareness of what the proceeding is about, I believe there is a cover page provided that explains what the proceeding is about and provides links to websites that have much information about the URS.

George Kirikos:e.g. how does YouTube or other places with user-generated content educate users about copyright, etc?

Griffin Barnett:+1 Paul

Martin Silva Valent:I was talking about URS, I said my research ON UDRP was consistent with the asymmetry problem that we are trying to solve in this URS process.

Mary Wong:To George's earlier question: Notice to Registrant must be sent by postal mail, and by email and fax (where available) (but Complaint can be sent electronically)

George Kirikos:+1 Paul that's fair. Not looking to protect people trying to actively avoid service.

Griffin Barnett:And also agree with Georges - tying notice to what's in Whois - responsibility is on registrant to ensure accuracy

George Kirikos:@Mary: do they just pop it in the regular (slow) mail? Or do they use couriers? (for the only UDRP I received, it was by courier, which is much faster than regular mail)

George Kirikos:+1 Rebecca

Mary Wong:@George, that's something we can ask the specific providers, when they are asked to meet with this group.

Kristine Dorrain - Amazon Registry Services:@Mary, hearing all the speculation about the "problems" with how people *THINK* the URS works, why aren't the Provider's presenting the process first, before the fiery darts. :)

George Kirikos:By the way, "Notice" might become very difficult under GDPR.

Kristine Dorrain - Amazon Registry Services:apologies for the misplaced apostrophe (I'm aghast)

Georges Nahitchevansky:Why not just a section N and call it procedural issues

George Kirikos:I brought up the topic of GDPR already, but it will likely be a factor for notice to European registrants. WHOIS might be entirely gone!

Paul McGrady:We also aren't reopening up the severity or not of suspension as a remedy. It is literally in the name of the URS.

Justine Chew:+1 Susan

Paul McGrady:+1 Susan

Georges Nahitchevansky:My sense is that there may be other procedural issues that come up, so a catch all for the procedural questions could be grouped there

George Kirikos:That was Georges N for the record. (and transcript) disagreeing.

Justine Chew:@Georges N: Such as?

George Kirikos:Isn't a "Reply" different from a "Response"?? (i.e. there is no "reply" or "sur-reply" in the URS)

Mary Wong:There's a Section D for Defenses, that can be added to.

Paul McGrady:Aren't Defenses a topic below?

David McAuley:I also think that there could well be other issues, procedural or otherwise, that come up as we address these issues - depending on what we decide

Paul McGrady:Disagree. I think Defenses are in the correct place on the chart

Susan Payne:Defence

John McElwaine:Disagree with Kathy. It should be under the Defenses section.

Georges Nahitchevansky:George K; Just to be clear I was not disagreeing that notice should be a topic, just that it should be in a bucket of procedural issues not a stand alone section

Jon Nevett:Think we should call it Burden of Proof

George Kirikos:Understood, Georges N.

claudio:should there be a Default Procedures topic?

Paul McGrady:According to Cornell Law School's site: "Clear and Convincing EvidenceA medium level of burden of proof which is a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard to meet than proving evidence beyond a reasonable doubt. In order to meet the standard and prove something by clear and convincing evidence, a party must prove that it is substantially more likely than not that it is true. This standard is employed in both civil and criminal trials."

George Kirikos:That might make sense, Claudio.

Kathy Kleiman:+1 Michael

John McElwaine:How would we investigate such understanding?

George Kirikos:The way the "Scope of defenses" is phrased now, doesn't ask whether there should be more defenses. (e.g. laches, etc)

Greg Shatan:I agree with how J Scott handled this.

Georges Nahitchevansky:If we start going down the path of adding topics every time a few people in a minority want to raise something, we will be here ten years from now.

George Kirikos:Was there a consensus, though, to "add" the topic? vs framing it as a "consensus to exclude the topic".

Michael Graham:I agree with the current methodology of decision making -- which J Scott has applied.

Steve Levy:Majority rule has always been the standard

George Kirikos:ii.e. framing the question in a certain manner can eliminate it.

George Kirikos:Rebecca on mute?

David McAuley:on mute?

John McElwaine:I support JScott's method

Terri Agnew:@Rebecca, check mute on your side

Marina Lewis:The topic is not "uncomfortable" - I am very comfortable saying that I don't care if someone doesn't know that it's wrong to rip off someone else's logo to use on a violent porn site. How is it ICANN's (or my or our) responsibility to educate them?

Steve Levy:Exactly the point. The number would be "arbitrary"

David McAuley:Fair point, when the question is framed as 'understanding' of this party or that it is hard to imagine what we can do

Georges Nahitchevansky:I think the consensue was not to include it. It is no a question of liking or not liking a topic, but seeing such as unworkable and thus a waste of time for the group

Kiran Malancharuvil:I think we understand the question and it's not a framing issue. We voted.

David McAuley:I agree with JScott on this - abstention (what I did) is abstention

Greg Shatan: Thank you, Marina. That was a presumptuous and self-serving characterization.

Cyntia King:Unfortunately, George, this is how the scope of the project balloons. To include every topic that any minority wishes to address will take us years to address.

Marina Lewis:Thanks, Greg. I did bristle a bit at that one. ;-)

Georges Nahitchevansky:IRebecca:

Rebecca L Tushnet:Both issues were "adds"

Griffin Barnett:My reason for excluding the suggested additional topic is that I don;t see how it is a policy issue - whether someone understands or does not understand the defenses available under the URS? How can we even evaluate that....

Rebecca L Tushnet:One was "disagree if youi don't want it added"

Rebecca L Tushnet:The second was "agree if you want it added"

Greg Shatan:I found J Scott's handling of the two questions to be consistent with each other. There was consensus on the first, and no consensus on the second.

Cyntia King:Kathy: I wasn't conofused by J Scott's question. If we're attentive to the question, then the responses - whether affirmative or negative - are a siplle mathematical calculation.

Georges Nahitchevansky: I think we all understood what the question was and people voted not to include it

Rebecca L Tushnet:We don't know if there was consensus on both

David McAuley:+1 @Griffin - not framed well

George Kirikos:1 person could create a CHARTER question, given the low threshold for charter questions (i.e. that came from the public, before this PDP started).

Greg Shatan:Rebecca, those two statements mean the same thing.

Greg Shatan:There was consensus on the first, because there was only one objection.

George Kirikos:Why should topics be excluded now, that actually have more support than topics that were randomly selected for the charter?

Marina Lewis:+1 Griffin - exactly. I have no idea how we might quantify whether or not registrants understand the nature of defenses available to them. I think it would completely stall the process.

Rebecca L Tushnet:That's not true: if you don't care enough to participate, you got counted as agree on the first and disagree on the second

Rebecca L Tushnet:We have a lot of nonvoters

Rebecca L Tushnet:Which is fine!

Rebecca L Tushnet:But they s houldn't be shifted around according to the chair's preference

Greg Shatan:There was no consensus on the second because there was a roughly divided group of voters.

Greg Shatan:Rebecca, J Scott said he did not count the non-voters at all, either way on either question.

George Kirikos:@Greg: so, no consensus to add, vs. no consensus to exclude? Which one? Framing the question differently leads to a different outcome.

Paul McGrady:https://urldefense.proofpoint.com/v2/url?u=https-3A__gnso.icann.org_en_improvements_proposed-2Dworking-2Dgroup-2Dguidelines-2D05feb09-

2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIn-H4xR2EBk&m=Wk8vr8Sv2yRgaFp71tJG6rcjdcLDZxwK6z43aj9oRg&s=nkPUvWj5n7bZRQ6Yd_94S_PSe2m-YU9GOAUNNf6mNgw&e=

Marina Lewis:@Rebecca - I believe J Scott said that he didn't count non-voters.

Greg Shatan:There was no consensus to act.

George Kirikos:@Greg: that's gaming things....not acting is also an action. :-)

claudio:I agree w Mary's point that we should try at all costs to minimize the voting

Greg Shatan:Not in this case. I think you are trying to game our entire decisional process so that losers become winners.

George Kirikos:@Greg: ad hominem? Are you suggesting I'm not acting in good faith here?

Marina Lewis:Regarding non-voters - please remember that some WG members may not be able to attend these calls in the chatroom and may only be on the phone bridge - which means they can't vote in the chat. I don't think we should attribute anything good or bad to somebody else's participation under those circumstances.

Greg Shatan:Not ad hominem - you were the one that brought up gaming first! Nice try though.

George Kirikos:haha

Mary Wong:@Marina, that's one reason why staff tries to get updates to the mailing list as quickly as we can, and allow for time for people to review and comment. It is for the chairs to decide if/when/how a discussion is to be considered closed, of course.

David McAuley:Thanks Mary - that was very helpful

Greg Shatan:Glad you have a sense of humor, George, though I don't know what you are laughing at.

Cyntia King:The participants on these calls are professionals & adults. We don't need to coddle & spoon-feed how questions must be framed & how to interpret responses.

Marie Pattullo:Confused: do we "vote" by SO/SG in a working group?

Greg Shatan:Anything can easily be added if there is sufficient support. There wasn't.

George Kirikos:+1 Kathy

Mary Wong:I'm sorry, Kathy - can you clarify what staff could easily have done but did not?

Paul McGrady:@Kathy - were your comments as co-chair or personal?

David McAuley:This discussion illustrates the possible wisdom of creating a bucket of 'others' that are prompted by massaging this list

George Kirikos:Notes to put into a Minority Report, if topics are excluded via the tyranny of majority.

khoulood Dawahi:+1 kathy

Griffin Barnett:Tyranny? Really?

Steve Levy:We have been at this now for nearly 2 years. Why are we still talking about how we vote and make decisions?

George Kirikos:@Griffin: well, I didn't see a legitimate reason for the exclusion.

George Kirikos:Just a "vote" as the "reason".

David McAuley:I also don't track speakers by group - don't know the relationships in most cases

Georges Nahitchevansky:Do you mean tyranny of the minority. Would love to get the review done this century

George Kirikos:Trying to form a consensus requires some reasoned analysis.

Marie Pattullo: People disagreeing with you is legitimate, George.

Cyntia King: "Tyranny of the majority" that's how decisions are made. Period.

Griffin Barnett: there were a number of rationales posted in this chat

Greg Shatan: This attempt to characterize what other people think — "uncomfortable" or "inconvenient" — is bizarre and unhelpful.

Marina Lewis: @J Scott - I believe your methodology was fine. Otherwise, we will get NOTHING DONE...EVER.

Greg Shatan: Tyranny of consensus?

Michael Graham: @Kathy -- My understanding is that members of this WG are participating as individuals, not as interest groups. Certainly there are shared interests, but I do not see any insidious scheme here.

Michael Graham: @Marina -- +1

khoulood Dawahi: Why not simply put the issue latter on the mailinglist and see the opinion of the majority just like @mary suggested

John McElwaine: I think that Kathy owes the group an explanation of the alleged conspiracy

Greg Shatan: It's not surprising that those who agree with each other are in the same interest group. Whether they are in one group or many has nothing to do with how the votes are counted.

Marina Lewis: @Mary - thank you, I made that comment because I saw members in the chat ascribing motives to non-voters that may not be accurate.

Michael Graham: I support determining content of High Level issues by majority votes. Otherwise we have an endless series of issues/questions which dilute all of the answers and make obtaining useful results difficult -- if not impossible.

Heather Forrest: Asking a co-chair to justify their actions when that person has clearly followed the PDP procedures is unhelpful. I agree with J Scott that this path is not helpful in terms of progressing the work

Cyntia King: Enough. Again we digress. As J Scott states, WE MUST MOVE FORWARD. This isn't a "Discussion Group", this is a "Working Group"

Michael Graham: @Heather -- +1

Brian Cimboric: +1 Heather

Michael Graham: +100 Cyntia

David McAuley: I tend to agree with J. Scott - perhaps unfortunate to lump speakers into a group when those speakers didn't make that point themselves

David McAuley: welcome music

Terri Agnew: finding the line

Cyntia King: LOL

David McAuley: that was a sign Greg

David McAuley: I think that is skating music here in the east of the US

George Kirikos: When the EFF rep added, in the TMCH section of our analysis, the topic "should the TMCH be eliminated", it only took 1 person to add that as a topic. A majority couldn't eliminate that as a topic.

George Kirikos: Yet, somehow Kathy's suggested topic was excluded by a "vote"??

Michael Graham:Overriding Question: Are we here to identify areas of inquiry regarding the efficacy of the URS procedure or to support our positions?

Greg Shatan:Kathy, were your comments as co-Chair or in your personal capacity?

Susan Payne:+1 Steve

George Kirikos:EFF Rep = Jeremy

Michael Karanicolas:I think it's clear what Kathy was saying, and I think it's been a major challenge to this working group. It's not about a "conspiracy" or about bad faith - it's about the fact that multistakeholderism means different voices can impact the process, even though non-commercial people tend to be in the minority here.

J. Scott Evans:Last comment will be Cyntia.

George Kirikos:+1 Michael.

Marie Pattullo:+1 Steve.

Petter Rindforth:+ Cynthia

Greg Shatan:If Jeremy was the only that supported putting that in, then it sounds like that decision may have been incorrect.

Marina Lewis:+1 Cyntia

George Kirikos:haha Greg.

Greg Shatan:Not being funny.

Kathy Kleiman:I've said personal capacity before each time I spoke except the last -- still personal.

Steve Levy:+1 Cynthia

George Kirikos:Seems like it. Are we changing the process now, compared to the TMCH review?

khouloud Dawahi:I think we should move forward and put the issue on the mailinglist

Greg Shatan:I don't see that we are changing the process.

Kristine Dorrain - Amazon Registry Services:I would like to put an official question to the co-chairs and staff. you all know my former role and a lot of time is being spent on people assuming they know how URS works. When will the providers be asked to present (and possibly answer some very simple questions). I think the list of questions to discuss will be greatly informed by this basic education. Thank you.

Greg Shatan:We need to be able to make decisions on calls.

Terri Agnew:next call: Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 10 January 2018 at 18:00 UTC for 90 minutes.

George Kirikos:We never "made decisions" on calls.

George Kirikos:The mailing list has always been consulted.

Greg Shatan:Kristine, that would be very helpful.

Cyntia King:We have absolutely made decisions on the calls.

Kathy Kleiman:No one's integrity is being challenged -- just a deep concern about ensuring that the concerns of all parts of our ICANN Community are heard (and incorporated)

Mary Wong:George, I'd say make preliminary decisions on calls that are then put to the list.

George Kirikos:+1 Mary

Steve Levy:Bye all

Marina Lewis:Thanks, J Scott and everyone

Greg Shatan:Agree with Mary,

David McAuley:Thanks J. Scott, and all, good bye

Greg Shatan:Thanks all.

claudio:bye everyone