

Adobe Connect: 46 Members

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Terri Agnew:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group on Wednesday, 10 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_tAxyB&d=DwIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIGn-H4xR2EBk&m=xUscCl743vUsnEJsPTSCwwULN84iKVwZQ7F2SkAJXMs&s=SFXmtqy6MP8I1heJ8LL7PefNMdbgu7uaQxU9f3kEh4E&e=

George Kirikos:Hi folks.

George Kirikos:Wow, lots of apologies today.

Benjamin Akinmoyeje (Nigeria):hello everyone

George Kirikos:Welcome Benjamin.

Benjamin Akinmoyeje (Nigeria):thank you George

Steve Levy:Hello all

George Kirikos:PDF is on the web via: <http://mm.icann.org/pipermail/gnso-rpm-wg/attachments/20180108/fce0bed6/CompilationofCurrentURSDiscussionDocuments-04Jan2018-0001.pdf>

Julie Hedlund:All: Note that the document is unsynced so you can move it yourself.

J. Scott Evans:To be clear, those questions are just suggestions that we will discuss and decide upon once we have agreed upon the topic to be explored.

Mary Wong:Yes, page 5

David McAuley:page 4

David McAuley:woopps, sorry

Mary Wong:@David, if your scrolling stopped at page 4 that's what it will show next to the up/down arrows :)

David McAuley:right Mary - thanks

Lori Schulman:Hello all. Sorry that I am late.

Michael Karanicolas:I would support adding that.

Pascal Boehner:Isn't negotiation always possible?

Cyntia King:Hmmm, interesting thought

Steve Levy:Pascal, negotiation is always possible but post-decision transfer is not under the current system.

Susan Payne:Steve's suggestion seems a good one for us to consider. It would fall within the existing topic "scope of remedies" I think wouldn't it

George Kirikos:As I noted on the mailing list, the URS can be thought of as similar to a UDRP with a cancellation request, albeit with a delay (cancellation taking place at the end of the normal expiration/deletion cycle).

Maxim Alzoba (FAITID):Hello All, sorry for being late

Cyntia King:Nope

George Kirikos:And so conceivably, this commonality might support merging the URS and UDRP into a single process at some point, if folks look at things in that manner.

George Kirikos:Welcome Maxim.

Maxim Alzoba (FAITID):@George, procedurally URS is more Registry oriented and UDRP more Registrar oriented

Cyntia King:@George. Perhaps. Although, I think the purpose of the URS was good - having a way to immediately take down flagrant TM violators.

claudio:@George, its a good point

George Kirikos:@Cyntia: right, depending on the "path" a complainant takes in a merged DRP, some complaints might be handled much faster than a full-fledged contested "UDRP" branch.

Maxim Alzoba (FAITID):@Cyntia, though I think lack of fast track procedure for frequent losers of URS might improve it (the person who lost 10 cases over the year, most probably needs to be processed faster)

Maxim Alzoba (FAITID):* I meant addition of such procedure might improve it

Maxim Alzoba (FAITID):but URS is not meant to be the way to handle the domain to the prevailing party , whilst UDRP is

George Kirikos:In many cases, the complainant doesn't really want the domain name (i.e. worthless domains where renewals aren't worth the cost). So, suspension for as long as possible (the normal expiry process) actually helps them.

Susan Payne:Thanks J Scott, that makes sense

George Kirikos:Whereas the UDRP has immediate cancellation (no delay), so the name might be misused again quickly. After a year, the potential for misuse might have declined.

Cyntia King:URS was supposed to make it easier & less costly for brand owners to take away domains that clearly violate TM. The fact that the domain cannot be transferred to the TM owner is a flaw, IMO.

Maxim Alzoba (FAITID):@George, I think adding clarification of "please think again if you need to use the domain name instead of preventing use of it by third parties" - to URS texts with clear reference to UDRP (and vice versa - text to UDRP with reference to URS and applicability (not all gTLDs use it)

Maxim Alzoba (FAITID):I think clarity would help affected parties to choose correct option

Mary Wong:@Phil, that was the original question with the text unedited from the public comment that was submitted. Presumably the high level questions for this topic will be different.

Justine Chew:@Cyntia: Yes, or at the very least, the ability for the registrant to be able to register that domain in question after the expiration of suspension is very questionable.

Griffin Barnett:+1 Mary - my understanding is that we were just going to discuss appeals as the high-level topic, and not necessary refer to the original unedited version of the question, which I agree with Phil is inappropriately biased

claudio:@Maxim, its often a Hobson choice for the TM owner, because even if they do not want the domain, not having it under the control leaves it open for abuse - so they can't win either way

Susan Payne:Agree that the original charter Q on appeals is not neutral - as is the case for many of them

Justine Chew:+1 Phil and Susan

David McAuley:+1 as well

Cyntia King:@Maxim but by "choosing the correct option" we mean spending more time/money by the TM owner in order to secure the domain. I'm personally aware of 2 domainers whose biz model is to scan USPTO records for TM filings to register domains.

Mary Wong:@George, what is the sub topic you are suggesting?

Griffin Barnett:@George, I don't think we are substantively discussing appeals issues yet....

Griffin Barnett:*George

Philip Corwin:This WG has no ability to influence the availability of judicial appeal or the national law standards under which such an appeal is decided.

Mary Wong:Maybe Section G can be rephrased as Post-Determination Proceedings, have Appeal Process as sub topic 1 and Alternative/Additional Mechanisms as sub topic 2

Maxim Alzoba (FAITID):@Cyntia, in our case (as a Registry) we are aware of at least one big EU company, which tried to use URS to have control over the domain name (might be poor advice)

Philip Corwin:As for mediation, I believe a threshold question is whether mediation is compatible with a suspension process that is meant to occur rapidly.

Maxim Alzoba (FAITID):usually courts of the Registry/registrar jurisdiction have more power than other jurisdictions

Steve Levy:I've had conversations about mediation with the major dispute providers and would be happy to share my findings

Petter Rindforth:Although mediation is a good way to solve some kind disputes, adding that to URS will not fit into the Uniform RAPID Suspension...

Griffin Barnett:+1 Petter

Lori Schulman:Agree mediation is not rapid

jeff neuman:mediation is almost a completely new rpm

George Kirikos:Sometimes simply getting the parties on the phone for 15 mins can solve the dispute. If mediation can be fast/cheap, that might reduce the burden on all sides considerably.

Steve Levy:Agree, Petter. This was the consensus of provider perspective on that topic. However, Nominet does a fantastic job so I'm reluctant to dismiss the idea completely

George Kirikos:With Nominet, I think the stat was 30%, in terms of successful resolutions during mediation.

Griffin Barnett:Negotiation between parties is always an option, but doesn't need to be included as formal process in the URS

George Kirikos:(as per their presentation to the IGO PDP)

Petter Rindforth:It may rather be something to discuss when we come to the UDRP.

Steve Levy:Brian makes a good point and, yes, Nominet has various means of funding not available to other dispute providers

George Kirikos:We talked about reducing costs via a "notice of dispute" first step, too.

Griffin Barnett:Agree we need to look at potentially overlapping process steps - seems like it is already captured well

jeff neuman:In the original IRT we did look at mediation type services, but concluded we could not do it. At the time we did look to Nominet and I think at the time Ebay had an interesting policy to handle IP disputes

Petter Rindforth:Mediation is also used for .dk, .no and .fi disputes, but again - we are there tasking to full domain disputes that takes some time (longer than UDRP even), and there mediation can be a way to find a solution

David McAuley:are costs appropriate?

Mary Wong:@Phil, is this a topic suggestion or a high level question suggestion?

David McAuley:might be the Q

Maxim Alzoba (FAITID):I am not sure ccTLD experience is applicable in full to gTLDs

Maxim Alzoba (FAITID):due to being relevant to local litigation costs e.t..c

jeff neuman:I agree with J Scott.

jeff neuman:And there is competition between providers, right? ICANN itself does not set the fees

Griffin Barnett:Agree with the point that perhaps the key issue for us is cost allocation rather than costs generally

Philip Corwin:I believe we have already heard that for NAF offering the URS is a break-even proposition at the current fee level

George Kirikos:New hand.

George Kirikos:lol

George Kirikos:(was changing my mind, after listening to prior speakers)

Mary Wong>Note that staff, when consulting with Heather about the topic listing, assumed that all of these points will be raised and discussed under the actual topic of "cost allocation" (in this case).

Mary Wong:The idea was to keep the topics brief, and when the time comes to discuss each topic against the agreed high-level questions, staff can go back to these early discussions and pull out information if needed.

Susan Payne:@George - sure, but they will pass them on to their customer!

Mary Wong:The contract is not public but we have noted several times that a summary of the contract was.

George Kirikos:Redacted request.

Mary Wong:This summary has been circulatd previously, and is included in the TMCH information on the Working Group wiki.

Mary Wong:The MOUs with the URS providers are published.

Philip Corwin:The co-chairs have proposed review of URS provider adherence to the MOU

George Kirikos:https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_news_blog_a-2Dfollow-2Dup-2Dto-2Dour-2Dtrademark-2Dclearinghouse-

[https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_news_blog_a-2Dfollow-2Dup-2Dto-2Dour-2Dmeetings&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIn-H4xR2EBk&m=xUscCI743vUsnEJsPTSCwwULN84iKVwZQ7F2SkAJXMs&s=xmU81fsbFnZ81AWoBnT_rXaO5IEpwQwRnQpBbc04_eU&e="](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_news_blog_a-2Dfollow-2Dup-2Dto-2Dour-2Dmeetings&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIn-H4xR2EBk&m=xUscCI743vUsnEJsPTSCwwULN84iKVwZQ7F2SkAJXMs&s=xmU81fsbFnZ81AWoBnT_rXaO5IEpwQwRnQpBbc04_eU&e=) "ICANN may audit Deloitte's performance (and revenues/costs) to confirm that the costs and fees for validation services are reasonable."

George Kirikos:That's what I was referencing.

claudio:we can consider recommending that some portion of new gTLD auction proceeds be used to reduce external costs imposed by the program, by providing refunds to registries, registrars, TM owners/registrants (who win URS decisions)

Kristine Dorrain - Amazon Registry Services:the question about provider-offered training is presented twice.

Pascal Boehner:interesting proposal, Claudio!

George Kirikos:+1 Zak

George Kirikos:Like the WIPO Consensus views for the UDRP, but for the URS instead.

Justine Chew:Wouldn't that better fit under Topic M?

Julie Hedlund:@Kristine: Thanks for catching that. We'll delete the duplication.

Mary Wong:The current Procedure mandates that panelists be trained specifically in URS

Kristine Dorrain - Amazon Registry Services:Providers are required to train panelists. They are not required to train complainants/respondents.

Petter Rindforth:There are yearly meetings with both URS and UDRP panelist, with updates, education, etc on cases and policies

Phil Marano:Cybersquatting school for prospective registrants seems like an interesting idea worth exploring.

Heather Forrest:+1 Phil - objectivity was unquestionably my intention in making the suggestion that put us on this path

Philip Corwin:Just lost my audio/calling back in

Philip Corwin:Back on audio now

George Kirikos:I think default was under C.2 ?

Mary Wong:Yes, there is an admin check on the provider side

Griffin Barnett:@claudio - i think default processea would be covered by overlapping process issues or appeals

George Kirikos:Actually, maybe not.

Griffin Barnett:Or potentially C 1 - duration of response period

Griffin Barnett:or C 3 - Response - Other issues

George Kirikos:Right, Griffin. I think we talked about it. Maybe wasn't captured.

Steve Levy:Sorry folks. Gotta run to a meeting

claudio:take care Steve

George Kirikos:The first question might go into the table in "E".

George Kirikos:Scope of defenses.

David McAuley:I actually think there is much here that needs to be asked

David McAuley:oh - I mean in general charter Q's

Mary Wong:These are questions relevant to all the RPMs for the most part, so the question for the WG is when they wish to go over them.

Mary Wong:The staff suggestion previously was to do so after the RPMs have all be reviewed (for Phase One, in this case) - and see what, if anything, is missing or may need to be added to the review before Phase One is deemed complete.

Griffin Barnett:I supported that approach - these "general charter questions" relate to the overarching impact of the RPMs, taken together. We should re-visit them at the end of Phase 1

David McAuley:I agree re fair and reasonable in section M - better Q is do the processes meet the agreed requirements - so an exercise in objectivity seems a good idea

Lori Schulman:I echo David McAuley.

Kathy Kleiman:Bottom of page 8 to end of document

Mary Wong:I can answer John's question

Cyntia King:Hello?

Mary Wong:The Working Group is obliged to publish a Phase One report, before commencing Phase Two.

George Kirikos:But, would the Phase One be considered "complete"?

George Kirikos:Because how does one handle things, that are interrelated with Phase Two?

Maxim Alzoba (FAITID):I am afraid we forgot to add note about moving legal requirements from URS Tech document to URS Rules

Maxim Alzoba (FAITID):or at least to add a placeholder of sorts somewhere

George Kirikos:It seems we'll need to make Phase One be "preliminary recommendations" subject to further review after Phase Two??

J. Scott Evans:I think we need to focus on one topic at a time. Right now we seem to be discussing both the Overarching questions and the Co-Chair memo.

George Kirikos:lol Kathy Hopefully not 15 years from now!

Mary Wong:The Charter specifies that the Phase One report findings can be considered in Phase Two if appropriate

Philip Corwin:@Claudio -- co-chair statement is meant to start a discussion of how to best objectively analyze the work of the URS providers, not to be a dictate

George Kirikos:Page 9.

George Kirikos:3rd bullet point.

George Kirikos:(in the bottom section, given there are separate bullets at the top)

David McAuley:I don't know how we can make recommendations regarding URS without establishing how they are working now relative to requirements

claudio:@Phil, understood. I'm just a little confused how we would go about answering the 3rd bullet point on page 9

Maxim Alzoba (FAITID):it might or might not be :)

David McAuley:Better in future to number specific points rather than use bullets - this is confusing

Greg Shatan:+1 to Brian's points.

Maxim Alzoba (FAITID):some TLDs have old types of Agreements, and the answer is not so simple

Justine Chew:Yes, impact of URS becoming consensus policy.

George Kirikos:We might recommend elimination of the URS, as a consensus policy. :-)

Jay Chapman:exactly, Phil

Greg Shatan:Of course, even if URS is not consensus policy, it can still be adopted by legacy TLDs.

claudio:I wonder if we can answer these questions by the end of Phase 1, or until we review all the rpms, including the udrp

Mary Wong:@Maxim, on your earlier point about missing topics - we are capturing those suggestions that have been made previously but not yet discussed by the WG in a separate document.

Mary Wong:@Claudio, that was a question that came up in the Phase One/Two discussion before the PDP was launched - it was a question that just couldn't be answered before the reviews are actually conducted.

Maxim Alzoba (FAITID):@Mary , Thanks

claudio:@mary, ok thanks.

Philip Corwin:A Consensus Policy is one that all registries must adhere to. Right now the URS is an implementation detail of the new gTLD program and does not apply to legacy gTLDs as a mandate.

claudio:are we also going to be asking whether some form of TM claims should be a Consensus policy?

Mary Wong:@Susan, if you are talking about "consensus" in the general sense about whether any particular rule, policy or process obtained community agreement, then yes that was not what I was addressing (like Phil, I was speaking to Consensus Policy as policies binding on contracted parties)

Terri Agnew:next call: Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 17 January 2018 at 18:00 UTC for 90 minutes.

J. Scott Evans:Ciao.

David McAuley:thanks all, good bye

George Kirikos:Bye folks.

Maxim Alzoba (FAITID):bye all

Philip Corwin:Good call and good progress

Marie Pattullo:Thanks!

claudio:thanks all!

Lori Schulman:bye