

February 5, 2019

Dear Mr. Kirikos:

We are writing in our capacity as co-chairs of the PDP Working Group for the Review of all Rights Protection Measures in all gTLDs, and are doing so in response to your self-described “Section 3.7 Appeal, February 3, 2019”.

Section 3.7 of the GNSO Working Group Guidelines provides:

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in Section 2.2 of this document, the same appeals process may be invoked.

A Section 3.7 appeal is available when one (or more) of three specific circumstances are met. If a 3.7 appeal is properly commenced, our duty is to engage in a discussion with the WG member of the circumstances forming the basis for their appeal: i.e. systematic ignoring or discounting of contributions, a decision that will go forward unless appealed, or the failure of someone to perform their role pursuant to Section 2.2.

For the appeal to be appropriate and for that discussion to be useful, they must be focused on reasonably objective claims, and those claims need to be backed up by an explanation and examples of the underlying facts.

In that regard, we note that your allegation that your contributions have been “systematically ignored or discounted” is not accompanied by any explanation or examples. We do not believe your allegation to be correct; noting for example, that all fourteen of your individual URS proposals will be included in the Initial Report for public comment, that your contributions are regularly taken up and discussed at length in the WG and the Sub Teams, and that, based on consultation with the relevant sub team co-chairs, your recent input regarding the period in which individual Trademark Claims and Sunrise proposals could be submitted resulted in a decision to delay the opening of that period while extending its length.

Likewise, your allegation that the co-chairs and ICANN staff are not adequately performing their roles fails to cite any examples or demonstrate any underlying facts backing that serious charge.

Most of your submission is devoted to your request to appeal, as a “decision of the WG,” the workplan posted for WG consideration of January 29th. We note that the subject line of that

email was “Updated **Proposed** Process for TMCH Sunrise & Trademark Claims Sub Teams Including Submission of Additional Data” (emphasis added) and that discussions on the sub team calls occurring the following day resulted in some agreement that additional workplan/timeline revisions might be advisable. We are in the process of discussing such revisions with sub team co-chairs and staff, and will likely seek additional feedback from sub team and full WG members on this subject. As the January 29th workplan was a proposed and not a final document, and as you filed your request for appeal just five days (and three business days) after its publication and just three days (and one business day) after your first email to the list on this subject, we view that portion of your submission as, at best, not yet ripe for a Section 3.7 appeal.

Therefore, we view your submission as a request for a more active dialogue regarding the proposed workplan, rather than as a document substantiating and providing an adequate basis for an actual “3.7 Appeal”. A discussion of the proposed workplan really needs to involve the full WG, rather than an off-line dialogue between you and the Co-Chairs.

We would respectfully suggest that any observations and concerns would be more productively discussed on a full WG call or on the WG email list, and that seeking to invoke a “3.7 Appeal” should be reserved for appropriate cases where it is reasonably clear that one or more of the predicate circumstances required by Section 3.7 have taken place. We would moreover respectfully ask you to bear in mind that both WG members and Staff/Co-Chairs may not have the capacity to react as quickly and in the time you prefer, but that does not mean your views are not being taken into consideration.

Finally, as we will share this response with the full WG just as you shared your request for appeal, we want to emphasize that the filing of even a fully documented 3.7 Appeal does not require any diversion or halting of WG activity. Therefore, the WG will continue its work as scheduled and under the current workplan/timeline until such time as it may be revised.

Brian Beckham

Philip Corwin

Kathy Kleiman

RPM PDP Working Group Co-Chairs