Attendance: (30 members)

Colin O'Brien  Kristine Dorrain
Cynthia King  Martin Silva
David Maher  Michael Graham
Gary Saposnik  Michael Karanicolas
George Kirikos  Monica Mitchell
Greg Shatan  Paul Keating
Griffin Barnett  Paul Tattersfield
Hector Ariel Manoff  Phil Marano
Jason Schaeffer  Philip Corwin
Jay Chapman  Rebecca Tushnet
John McElwaine  Reg Levy
Jonathan Frost  Renee Fossen
Justine Chew  Susan Payne
Kamila Sekiewicz  Zak Muscovitch

Audio Only:
Claudio DiGangi
Kathy Kleiman

Apologies:
Marie Pattullo
Maxim Alzoba
Petter Rindforth

Staff:
Mary Wong
Julie Hedlund
Ariel Liang
Berry Cobb
Antonietta Mangiacotti
Michelle DeSmyter

AC chat:
Michelle DeSmyter: Dear all, welcome to the Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call scheduled for Friday, 12 October 2018 at 17:00 UTC.

Michelle DeSmyter: Agenda wiki page: https://community.icann.org/x/oQK8BQ
George Kirikos: Hi folks.

Michelle DeSmyter: Hi George, welcome and happy Friday to you!

George Kirikos: Hi Michelle. Happy Friday to you too.

George Kirikos: I thought I'd come early, to get ready for the 3 more presentations (Zak is doing the last one).

Michelle DeSmyter: Sounds good!

George Kirikos: Are there audio issues?

Jonathan Frost: Audio works for me

George Kirikos: I think we have found the perfect time slot for future calls, when most of the TM lawyers in the IPC don't attend. :-(

Griffin Barnett: Really George? ...

George Kirikos: Welcome, Griffin. I was jesting... (note the smiley). :-(

Griffin Barnett: (I know it was intended as a joke)

David McAuley: cannot hear on adobe - will dial in


Julie Hedlund: The document is posted and unsynced.

Paul Tattersfield: What level of payments do you think should be made in this case?

Jonathan Frost: This seems like a really strong proposal.

Paul Tattersfield: https://urldefense.proofpoint.com/v2/url?u=http-3A__www.adrforum.com_domaindecisions_1703352D.htm&d=DwIFaQ&c=FmY1u3Plp6wr-cwll3mSVzgfkbPSS6slms7xcl4I5cm&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESG-e_5iHWGIhLwwwehFBfjrsjWv9&m=ZpygxmnaSGa6ffGGrVe6Ej7vTUljMq5D0ngOFyQW-ls=DVbyuh6KkWlacin9k1K-WL_bITFw0om0pHo1HqkKgCs&e=

Griffin Barnett: Is this something registries and registrars want?

Griffin Barnett: Also, seems unfair to effectively hamper complainants for an issue between a provider and a contracted party
PAUL KEATING: Hi. Sorry I am late

Griffin Barnett: This kind of proposal would be more attractive if the losing party were paying the costs


Michael Graham: I would not support #23. Instead, this should be (and I imagine it already has been) considered a cost of doing business by registrars/registries and allocated to registration costs.

Ariel Liang: time is up

Griffin Barnett: I would generally agree with Michael

Jason Schaeffer: +1 Michael This would unnecessarily impact complainants and respondents.

George Kirikos: Burdens from new consensus polices might create that risk of a fee increase from .com.

George Kirikos: Even if it hasn't entered the discussions, it's in the contract.

George Kirikos: Hollywood Accounting....

David McAuley: well said, Phil

Georges Nahitchevansky: The proposal basically will put a further burden on brand owners. Registrars and registries can cover these costs easily by a very small increase in domain name costs (probably a few pennies more per name given that several registrars have millions of domain names). This should be the cost of doing business for registrars and registries.

Paul Tattersfield: George how much would be in volved with https://urldefense.proofpoint.com/v2/url?u=http-3A__www.adrforum.com_domaindecisions_1703352D.htm&d=DwIFaQ&c=FmY1u3Pjp6wr crwll3mSVgfkbPSS6s7ms7xcl4l5cM&r=8_WhWIPqSLT6TmF1Zmyci866vcPSFO4VShFqESG e_5iHWGlBLwwwwhEBfjrjWv9&m=ZpygxmnaXsGa6ffGGVe6Ei7vTUljMq5D0ngOXFYwQW -I&s=DVbyuh6KkWlacin9k1K WL_bITFw0om0pHo1HkqKgCs&e= under your proposal?

Susan Payne: I also do not support the inclusion of this in the initial report.

Michael Karanikolas: I keep seeing these complaints about the "burden" on brand owners. This entire system is for their protection and benefit - why shouldn't they bear the costs?
Michael Karanicolas: Amazing how it’s not enough to have this system in place - brand owners need to make others pay for it as well.

Cyntia King: Good points

George Kirikos: Registrars are used to collecting $10/domain. I don’t think they’ll have a problem collecting $50. :-(

George Kirikos: *6 to mute/unmute

Justine Chew: Can’t hear Mr Frost

Susan Payne: @michael K, this is not just a benefit to brand owners. Registies and Registrars benefit from having theses disputes dealt with by URS/UDRP rather than being dragging into the middle of court proceedings

Jonathan Frost: I’m speaking, not on mute, but not coming through

George Kirikos: 1-866-692-5726 code = RPM Member to dial-in

Jonathan Frost: I’ll dial in

Jonathan Frost: Come back to me.

Michelle DeSmyter: Jonathan, sending you a private chat

Renee Fossen (Forum): +1 Susan

Georges Nahitchevansky: The entire system of domain name registrations benefits registrars and registries. Cheap domain name registrations hurt some parties and benefit registrars and registries based on volume (i.e. one registers an abusive name for $10 a someone has to defend for $3000 to $5000 dollars.) where is the fairness in that?

Griffin Barnett: @Susan, and frankly registrants benefit from having a lighter-weight proceeding too, if they are indeed innocent

Griffin Barnett: Everyone benefits from reducing litigation

Michael Karanicolas: @Susan - if that were really the case, why are the IP folks the loudest (and indeed, often the only) voices in favour of expanding the URS?

Susan Payne: Michael K - that proposal came from Verisign!

Jonathan Frost: calling in right now

Jonathan Frost: Thanks for your patience
Michelle DeSmyter: Jonathan has audio now

Jonathan Frost: Ok i’m ready :)

Paul Tattersfield: A TM holder is looking to intervene as a 3rd party into a private contract. This is important because there are two parties to the private contract and this provides two distinct opportunities to readdress any harms. Paying the registrars seems counter intuitive to their obligations under RAA 3.18

Cynthia King: When we talk about "brand owners" we're not just talking about large corps. These rules impact individuals, small businesses owners & even many domainers who also are developers.

Griffin Barnett: WIPO doesn't administer the URS

Griffin Barnett: Which is what we are talking about right now

Griffin Barnett: Just FYI

Reg Levy - Tucows: but let’s be honest, the majority of the brand owners that bring URS/UDRP complaints are large corporations with a bevy of large legal corporations

Michael Graham: @Michael K -- Actually "This entire system" is designed to protect the security of and trust in the DNS. If the system is created for the benefit of anyone, however, it is for registry investors -- be they individuals, brand owners, domain speculators, etc.

Susan Payne: @Reg, what’s your point? let’s stick them with as much cost as possible?

Georges Nahitchevansky: And registries and registrars are small companies? what about holders of large portfolios, they can't afford to pay something

Paul Keating: I agree it should be presented for public comment

Paul Tattersfield: Susan +1

Michael Graham: @Reg -- Although irrelevant, even if your point is correct doesn't it make perfect sense that Bad Faith registrations and use are more likely to target large corporations with Brands and Trademarks with valuable reputations, than with smaller companies with little or no public recognition -- not to mention much shallower pockets.

Reg Levy - Tucows: I'd disagree that contracted parties aren't just intermediaries and that we "flog" domains that are infringing
Reg Levy - Tucows:@michael be that as it may, when we discuss this, it is, in fact, large brand owners that are the ones who take advantage of these rules—even occasionally against smaller brand owners

Martín Silva:hi all, sorry to be late

Cyntia King:@Reg Levy - Just because large businesses (who often have many TMs) bring many/most URS actions, it does not follow that we make policy that could be harmful to the many small operators.

Reg Levy - Tucows:I have plenty of examples of fair use that large brand owners attempt chill against smaller brand owners

Reg Levy - Tucows:@Cyntia: correct, I’m not saying that it necessarily follows, only that in some cases it actually does

Martín Silva:@reg here as well

Reg Levy - Tucows:+1 Michael Graham

Griffin Barnett:That problem is solved by having a loser pays system I think

Paul Tattersfield:We would need to see if there was a correlation between discount pricing / particular registrars / length of registration and the %age of URS & UDRP disputes

Reg Levy - Tucows:(re:DNS)

PAUL KEATING:if the URS/UDRP results in costs these costs should not be borne by the the domain registrant population as a whole for the benefit of the trademark claimant. Nor should it be charged to individual registrants involved in the dispute as this is a form of tax upon registrants without regard to whether the trademark claim is valid.

Georges Nahitchevansky:The provider should not be charged because that cost will just end up raising teh provider fee and be passed on to the brand owner, so why, instead, shouldn't the registrant be charged for this if they engage in bad faith abusive registrations

Julie Hedlund: George Kirikos

Michael Graham:@Reg -- Please share examples of "this" offline if you would. These are statements that should be considered, but also should be tested.

Cyntia King:@Reg - Not to put too fine a point on it, but so what. We can't control the free market, but we can mitigate ICANN policies that place an undue burden on individuals & small biz
Jason Schaeffer: Not sure how this addresses the "problem." The fee will be passed through from the Providers to the Complainants and/or Respondents. That's not acceptable either.

Susan Payne: @Reg, I'm sure there are bad actors, and also some who are misguided/poorly advised in thinking they may win. But then they lose. You seem to be suggesting that even those cases take hours of your time? Why? don't you have the same acts to perform regardless of that?

Michael Graham: +1 @Cyntia

Griffin Barnett: So that means that 400+ complaints for other parties...?

Georges Nahitchevansky: But the tax you foresee Paul ultimately goes to the brand owner an d then gets passed on to consumers. So under your logic, the entire consumer population should be ultimately supporting the activities of a group of bad actor registrants. That is simply not a fair system

Michael Graham: Unless agreed to by consensus of this PDP group, I do not believe #32 appropriate for Public Comment. It is my understanding that it is the Charter of this WG to consider whether RPMs (like URS) are effective and whether there are issues with them that should be addressed or merit change. Rather than assist this PDP in clarifying issues and positions, I am afraid posting this proposal for Public Comment by the PDP would have a nuclear effect.

Reg Levy - Tucows: @michael, done!

George Kirikos: https://mm.icann.org/pipermail/gnso-rpm-wg/2018-October/003397.html

Michael Graham: @Reg -- Thanks.

David McAuley: For record, I oppose eliminating URS as mandatory policy for new gTLDs and thus oppose #32

Griffin Barnett: I do not support this proposal

Reg Levy - Tucows: @Susan: I'm not sure what you mean. The data I provided was the amount of time spent on URS/UDRP complaints. Full-stop. I had no idea what this data would be used for. I've no objection to it being presented to public comment.

Susan Payne: Oppose

George Kirikos: If David's proposal goes out, so should this one, to balance it out.
Cyntia King: IMHO, we should stop assuming that cybersquatters (not dominers et al) are the only individuals affected by this policy. The vast majority of the public are decent folks who shouldn’t have to mortgage their home to fight an abusive registration of their name, organization or small biz.

Colin O’Brien: oppose

Georges Nahitchevansky: This latest proposal simply misses the point of the URS. The speed benefits are actually real and George minimizes this. George’s claimed other ways to shut down domains is based on limited evidence. While it may be possible to shut a domain name down with an abusive site in certain jurisdictions, there are registars in many jurisdictions that will simply do nothing.

Renee Fossen (Forum): Oppose.

Griffin Barnett: Phil: we all hear Greg and Claudio

John McElwaine: I think Phil has lost audio

Kathy Kleiman: Phil you are having audio problem

Griffin Barnett: It seems you are the one having audio issues

George Kirikos: It should at least be out out for public comment, regardless of whether individuals here might oppose it.

David McAuley: noting that on the consensus policy issue I presented last week we are looking for comment only now to inform our work - the proposal was NOT that URS become consensus policy. We are interested in public comment.

PAUL KEATING: Phil - I completely support moving this to public comment. It is important to measure the actual data which if George is correct seems to indicate that the URS is not cost efficient.

Kristine Dorrain - Amazon Registry: Martin, there is a lot of background noise.

Michelle DeSmyter: If anyone does need a dialout, please let me know.

PAUL KEATING: lots of background noise

George Kirikos: We need to hear from registrants, as to whether they want this to be a consensus policy.

Kathy Kleiman: Staff can you help?

Kristine Dorrain - Amazon Registry: I can hear Claudio and Greg
Griffin Barnett: PHIL - YOU ARE THE ONE NOT HEARING ANYONE

David McAuley: sounds like lunch in background

Griffin Barnett: Now there is a ton of background

Georges Nahitchevansky: This is an ill thought out proposal with a flimsy basis and should not go to public comment

Mary Wong: We are trying to figure out the problem

Greg Shatan: On the prior proposal: As Susan points out, the URS and UDRP provide a benefit to the registries and registrars, perhaps we should also put out a counter-proposal that the registrar and registry pay a fee (rather than charging one). In addition to providing a cost to go along with this benefit. This would have the “secondary gain” of deterring registry/registrar policies that tend to encourage registrants likely to be respondents.

David McAuley: I heard a bunch of noise on phone

Michelle DeSmyter: Audio sounds good now

Kathy Kleiman: Claudio is waiting on audio in the queue as well.

David McAuley: I heard Phil Greg

Kristine Dorrain - Amazon Registry: I can hear Greg

David McAuley: hear Greg

Griffin Barnett: I am hearing you Greg

Philip Corwin: I will call in on different phone

John McElwaine: Yes, we can hear you Greg

Paul Tattersfield: I hear you

Philip Corwin: Greg go ahead

Mary Wong: @Kathy, let’s go with Greg, Martin and Claudio?

Cyntia King: @George Kirikos - by that logic, every proposal should go out for comment.

Martin Silva 2: OK, I am in
Kathy Kleiman: @Mary, yes, tx

PAUL KEATING: @staff - please be sure to include comments in the chat. I should be listed as in favor as noted above. thank you

Griffin Barnett: @George, we would hear that based on D. McAuely's proposal

Mary Wong: @Paul, as we noted last week, all the chats are saved and published.

Julie Hedlund: @Paul: The chat is captured separately and will be noted for the Initial Report. The high level notes in the pod are simply for quick reference and do not replace the chat or the transcript. It is the chat and transcript that reflect the record -- not the high-level notes.

Kristine Dorrain - Amazon Registry: Sorry I'm late. I'm assuming the WG is going to come out with support for either David McCauley's proposal to make the URS a consensus policy OR we're going to decide to do away with it (this proposal). Do others agree? Or does anyone think a plausible outcome is maintaining the status quo (ie. this is a procedure not a policy and we'll keep going like that)

Griffin Barnett: @Kristine, I think maintaining the status quo would be a plausible outcome

Michael Graham: +1 @John M -- I do think we should discuss the notion of eliminating URS if it appears from everything that it is problematic. However, posing this as an issue for Public Comment is out of scope.

Griffin Barnett: Although would prefer URS become a consensus policy

Griffin Barnett: I think it does have benefits that outweigh the costs, as a complement to the UDRP and other RPMs

Cyntia King: @Kristine - since this policy is still relatively new, I wouldn't be opposed to keeping the status quo until we have more info (time) upon which to make a decision.

Justine Chew: I have concerns about that some proposals are at opposite extreme ends so if they are "judged" as having sufficient support to go out for public comment, then the order or how such directly competing proposals should be carefully presented.

Kristine Dorrain - Amazon Registry: Interesting, Griffin. I had always understood, since 2012/2013 that the intent all along was to either make it a full consensus policy or be done with it...but I'd need to dig up old transcripts to remind myself why I thought that.

George Kirikos: Background noise.

Griffin Barnett: We hear you but lots of background noise
Michelle DeSmyter: Yes, but a lot of background noise

George Kirikos: Phone dial is best.

Greg Shatan: Seems like foreground noise to me.

Michael Graham: @Kristine -- Yes, I think the Status Quo would be a possible resolution.

John McElwaine: @Martin - please site to the specific portion of the Charter you believe places this within scope

Kathy Kleiman: @Staff, I think Martin also responded to the scope question - and said he thinks it is in scope.

Martin Silva 2: I think is inside of the scope,

Greg Shatan: An impressionistic view of the scope of the WG is neither helpful nor relevant.

Martin Silva 2: Is the a core question

Martin Silva 2: Is this fit for the initial purpose

Cyntia King: @Justine - agreed. I see the problem of having discussion "silos" if cimoeting proposals aare offered ad hoc.

Greg Shatan: Where in the charter do you see that as a core question?

Martin Silva 2: Is must do question

Griffin Barnett: Aside from whether any particular issue is within or outside of charter scope, shouldn't we determine that before putting anything out for public comment?

Martin Silva 2: We are reviewing how these policies solve the problems we ai to solve

Martin Silva 2: If the whole policy is not fit, then is a relevant thing to ask

John McElwaine: @Martin that is not the scope

Justine Chew: What amount of evidence has been presented to judge if URS has not been an effective as an RPM for new gTLDs?

Reg Levy - Tucows: I agree that it's within the scope.

Paul Tattersfield: Paul K +1

Paul Tattersfield: One would hope so!
Mary Wong: Julie

Michael Graham: The argument that because it has not been widely used we should eliminate the URS ignores the very real probability that the URS has had exactly the effect it was intended to have: to prevent recidivist and broad bad registration and use of domain names in the New gTLD -- by discouraging the action because bad actors would face the possibility of a URS being filed.

Greg Shatan: My hand is new.

Reg Levy - Tucows: getting a lot of breaks in Julie’s audio

George Kirikos: Can we save that until the end, and focus on questions re: the proposal now?

George Kirikos: (since this is a tangent)

Kathy Kleiman: Staff has done a lot of Initial Reports!

George Shatan: I hear Julie perfectly — but I am on Adobe Connect audio.

Reg Levy - Tucows: hmm, I am, too... weird audio issues today, it seems

Justine Chew: +1 Michael

Michael Graham: That is: URS is effective not only because the actions can be brought, but the existence of the process will deter wrongdoers. So don’t base proposals merely on numbers -- though I’d argue that 800+ is a high number of actions in light of the high burden of proof under the URS.

George Kirikos: @Michael: 200/yr.

George Kirikos: Out of 20+ million domains?

George Kirikos: 800+ was over several years.

George Kirikos: (cumulative)

Justine Chew: That’s 800+ more than zero

Michael Graham: @George K -- Yes, 200/year is enough. But, again, I believe the mechanism also has a prophylactic effect. On the other side: what harm is having it?

George Kirikos: @MichaelG: compliance costs
Ariel Liang: Please note only 10 min left for this proposal discussion + George’s response (30 min max for each proposal)

Paul Tattersfield: We’ve been constituted for over 18 months I would think there is a reasonable expectation in that time a WG could put together coherent set of suggestions that wouldn’t come apart with even cursory analysis

Greg Shatan: We need to be careful that our report does not contain “fake news,” such as that gunpoint reference.

Ariel Liang: time is up

Michael Graham: +1 @Claudio -- Even if we agree to post this question, we need to ensure that rhetorical arguments are removed.

Griffin Barnett: Agree that this rationale contains a lot of hyperbolic rhetoric that is inappropriate

Michael Karanikolas: The gunpoint reference may be hyperbolic, but it’s also 100% accurate.

George Kirikos: +1 MichaelK

Griffin Barnett: So literally someone held a gun to someone and demanded it Michael?

Griffin Barnett: Really?

Reg Levy - Tucows: +1 to speaker and not necessarily accepting my comments as supporting the proposal, only the submission of the proposal to public comment

George Kirikos: @Griffin: note the "quotes" in the actual text

Georges Nahitchevansky: again the compliance cost are minimal if you charge pennies more per domain. 800 plus cases does represnet yet more costs passed on to consumers ultimately. So your proposal is to impose more costs on others for the benefit of a few. Sounds fairly one sided.

Griffin Barnett: If something is hyperbolic it, by definition, it typically not accurate

Martin Silva 2: URS was a compromise due to a fear that never materiaized, is not crazy to ask oursevles if we need it anymore

Griffin Barnett: Just bc you put that term in quotations George doesn’t somehow insulate it from being an inappropriate choice
George Kirikos: read the newspapers these days, as to what language is appropriate or not.

Martin Silva 2: the best status is not the one were we just build RPMs for the sake of them, if the reason to have an URS are not there, then we should consider if we need it

Ariel Liang: time is up

Martin Silva 2: debating on the words of the metaphor is deviating the debate

Justine Chew: I again reiterate concern about how some of the directly competing proposals are going to be coherently presented for public comment. Careful effort needed.

Kristine Dorrain - Amazon Registry: +1 Justine.

Greg Shatan: It’s not the metaphor that’s in question, it’s the facts or lack thereof that is in question.

Cyntia King: The URS was meant to be a fast/cheap alternative for obviously infringing domains. I like fast & cheap.

Griffin Barnett: George, we can hold ourselves to a higher standard than ”what’s in the newspaper” these days

John McElwaine:@Martin - (and this may come as a surprise) I agree with that statement but to be within scope we need also add how getting rid of the URS will approve the effectiveness of the RPMS (at least as a whole), or clarify or unify the policy goal for which they were created.

Griffin Barnett: Some other 3.7 process you went through George has no bearing on whether this issue is or not

Michael Graham: I would strongly oppose presenting this issue using the language George K has used in the Rationale section.

John McElwaine: #George - see my response to Martin

Griffin Barnett: (is or is not within scope of this charter)

Michael Karanicolas: Ok. So given this focus on the words ”at gunpoint” - I take it that if this is rephrased to express, in a less hyperbolic way, how the IPC held the process hostage, there would be no problem?

Griffin Barnett: You can make an argument if you feel that that was factually the case

Greg Shatan: Substituting one inflammatory and untrue phrase for another solves nothing.
Cyntia King: Al proposals should be reviewed to be sure they clearly & neutrally communicate the idea.

John McElwaine: @Cyntia +1

Michael Graham: @Michael K -- You’re joking, right?

Michael Graham: +1 @Cyntia

Justine Chew: +1 @Cyntia

Colin O'Brien: +1 @Cyntia

Michael Graham: @George K -- Your "large" and "small" company discussion is irrelevant.

Griffin Barnett: Let’s not forget that the companies using these mechanisms are the ones whose trademarks are targeted by cybersquatters, which tend to be trademarks that are the most well-known and valuable, which tend to belong to larger established companies.

Kristine Dorrain - Amazon Registry: @ George, big companies’ marks are more likely to be infringed bc that’s where the money is. Who is going to make a buck off Joe Shmo?

Paul Tattersfield: You would expect only a small number of large companies to dominate URS.

Greg Shatan: Kristine, agree, the bigger companies are using URS because they are the most often victimized.

Susan Payne: @Phil - if at all possible could we speed this all up. We only have 4 proposals yes at this rate we are going to spend 2 hours - the same amount of time in which we got through at least double that on previous calls.


George Kirikos: In support of Proposal #33: the post from earlier today: https://mm.icann.org/pipermail/gnso-rpm-wg/2018-October/003394.html re: Phil Corwin’s blog post

Justine Chew: Thank you, Phil, for your clarification.

Cyntia King: ccTLD domains account for 10% of worldwide registrations. Obviously the vast majority of individuals & small biz use gTLDs where the URS doesn’t apply & therefore, they can’t use this RPM.
Michael Graham: @KRistine and @Greg -- +1 as to Larger Companies and Famous Marks are the largest targets, so what’s surprising that they would also bring or be the subject of the majority of actions?

Mary Wong: Please note that this was not an approved COnsensus Policy

Michael Graham: As to #33 -- Is this really within our PDP scope? Seems an implementation question for ICANN to me.

Cynthia King: Not sure how not having "presumptive renewal" improves performance. Lots of companies have quality controls (incl contract dissolution for cause) WITH auto-renewal

Paul Tattersfield: Kristine +1

Michael Graham: @George K -- What about this proposal would improve the RPMs?

Justine Chew: I'm not in favour of Proposal #33 going out for public comment. I think we should concentrate on filling up lacunas in the URS Rules & Procedures and compelling ICANN Org to undertake compliance monitoring.

Georges Nahitchevansky: Correct Dorrain. I recall Paul K on a prior call saying that if something was not broken it should not be changed in response to a proposal being made by Griffith Barnett on teh appeal and default reargument periods. So why a double standard here

Michael Graham: +1 @ Kristine

Mary Wong: Correct, Claudio. The Board directed staff to implement in accordance with community comments on the proposals.

Susan Payne: @Justine - agree, and we've identified various tweaks already which go to address issues that we did identify

Justine Chew: ICANN Memo on UDRP from July 2013: https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_en_system_files_files_uniformity-2Dprocess-2D19jul13-2Den.pdf&d=DwIFaQ&c=FmY1u3PIp6wrcrwll3msVzgfkbPSS6sJms7xcl4l5cM&r=8_WhWlPqSLT6TmF1Zmyci866vcpSF04VShFqESGe_5iHWGlBLwwvewhFBjrjWv9&m=ZpygxmnAxSGa6FGGVe6El7vTUlJm5D0ngOXYfQW-l&s=MP7UjLA1DMs-La8fpqjvix9wVHeWxkXDNZhNn5OB3w&e= is an interesting read.

Justine Chew: @Susan, yes, any clearing up identified ambiguities also.
Mary Wong: Thanks Justine - yes, that is the memo that explains why MOUs were used for URS providers.
Greg Shatan: What is not “formal” about the MoUs?

Greg Shatan: @Martin?

Kristine Dorrain - Amazon Registry: And, as an add-on to Greg, what else should the contract say???

Greg Shatan: Talking into your hand, Reg? :-)

Reg Levy - Tucows: I don’t think we can debate whether an MOU is a contract

Kristine Dorrain - Amazon Registry: Nothing prevents ICANN from booting a provider at any point. Why is an additional contract needed?

George Kirikos: A MoU is often a pre-contract document.

George Kirikos: Something before a formal contract.

Reg Levy - Tucows: (I mean, any more than we can debate whether or not gravity exists)

Kristine Dorrain - Amazon Registry: +1 Reg

Martin Silva 2: MOU and LOI can have a wide range of formalities, is always a contract, but for some reason we have more binding documents than MOUs

Cyntia King: Having a renewable contract is not equal to controlling quality nor ensuring compliance.

Reg Levy - Tucows: I agree, Kristine—I’d just like to hear assurances from ICANN that there is some ongoing review of the the providers

Susan Payne: @Reg - we did have various proposals which came out of subgroup work to address Q of provider compliance

Reg Levy - Tucows: I don’t think it has to be as formal as the Contractual Compliance models

Reg Levy - Tucows: @Susan, thank you, I’ll review the archives—I’ve been booted from the email list, somehow.

Kristine Dorrain - Amazon Registry: @Reg... to the extent anyone wants to complain about a provider, they can. No need to wait for a review. :)

Mary Wong: There is a termination clause in the MOU, if a provider does not comply with its provisions, the Procedure or the Rules.
Jonathan Frost: I wonder if a similar proposal that the material terms of the MOU be enshrined in the consensus policy would gain more support.

Mary Wong: All three MOUs are listed on the Working Group wiki space here: https://community.icann.org/pages/viewpage.action?pageId=79435438

Cyntia King: Number of cases assigned = bias?

Ariel Liang: time is up

Kristine Dorrain - Amazon Registry: Just to be clear that Paul is only talking UDRP here....

Julie Hedlund: @Paul: Your time is up.

David McAuley: I regret to say am having connectivity issues (not in office, using a dodgy albeit secure router) - will leave adobe BUT will remain on audio on phone

George Kirikos: @Kristine: don't worry, I'll be proposing this in Phase 2 too. :-)

Greg Shatan: Coincidence is not causation.

Reg Levy - Tucows: my main concern with providers is that panalists are allowed to also represent complainants, which I see as a conflict of interest.

Greg Shatan: I'll give Paul my last 15 seconds, but I think he used it already.

Kristine Dorrain - Amazon Registry: @ George, I'm not worried.

Michael Karanicolas: Agree @Reg, I think the conflict issue is a significant one

Greg Shatan: Again, what is “informal” about the contracts?

Cyntia King: @Reg - I don't understand "also represent complainants"

Kristine Dorrain - Amazon Registry: @ reg....is is more concerning than lawyers that represent different clients?

Kristine Dorrain - Amazon Registry: (assuming no conflicts issues)

Michael Karanicolas: I think it's more analogous to judges representing clients
Michael Graham:@Reg -- but (at least for attorneys) rules of Ethics prohibit panelists from considering matters relating to any of their clients. And I believe there are similar rules in WIPO/NAF.

Jay Chapman 2:+1 Zak

Reg Levy - Tucows: to Kristine's point, I would agree that, if there is an issue with a provider, it should be the case that a complaint to ICANN would cause a review—the last speaker seemed to indicate that this was not the case

Justine Chew: Since this proposal #33 touches on both URS and UDRP, how will it be presented for public comment (assuming that it does)?

Greg Shatan: I'm glad to hear that some people like intricate contracts (wearing my “day job” hat).

Reg Levy - Tucows: @Cyntia: I mean that someone who is an expert in IP law can be hired as a panalist and then, later, represent a different complainant and rely upon their prior ruling for support

Greg Shatan: We could call this the “Lawyers Full Employment Act.”

Mary Wong: @Reg, all complaints to ICANN Compliance are ticketed and reviewed.

George Kirikos: The Paper Chase: https://urldefense.proofpoint.com/v2/url?u=https-3A__en.wikipedia.org_wiki_The-Paper-Chase-28film-29&d=DwIFaQ&c=FmY1u3Plp6wrcrwl3mSVzgfkbPSs6sIms7xcldL5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGlBLwwwwehFBfjrsjWv9&m=ZpygxmnAxSGa6fGGVe6Ej7vTUlMq5D0ng0XFyQW-I&s=zOMt6VYFnoAkFAaF1-c9JyoOGVxsNcPzC99IODAE0o&e=

Greg Shatan: Actually it's not debatable.

Reg Levy - Tucows: I take extreme offense to George’s presumption about why I became a lawyer—I wanted to save the treeeeeees

Cyntia King: This proposal is not about improving compliance - if it was, there would be proposals to improve compliance not just avoid renewal clauses.

Kristine Dorrain - Amazon Registry: +1 Reg.

Susan Payne: +1 Cyntia

Greg Shatan: An MoU is a contract.
Kristine Dorrain - Amazon Registry:@George, I would like to see this proposal contain the additional terms you’d like to see.

Greg Shatan: Has anyone ever said these are informal and merely an understanding? Citations, please.

Michael Karanicolas:@Reg - Just a guess, but most lawyers have a negative impact on the tree population, what with all those printouts.

Cyntia King:@Reg - thx for the clarification. I think this should be part/parcel of the 'Conflict of Interest' proposals, no?

Julie Hedlund: George Kirikos and Zak Muscovitch (#34): https://community.icann.org/download/attachments/93126760/URS-Proposal-34.pdf?api=v2

Greg Shatan: Being internet and software lawyers, we are saving trees through the paperless office.

George Kirikos:@Kristine: that’s really the work for an ensuing IRT.

George Kirikos: Can you put it in the pod?

PAUL KEATING:@staff. I cannot scroll to see the entire proposal

Cyntia King: I do not support this proposal as it stands - I’d prefer to offer a compliance proposal w/ some actual meat on the bones.

Julie Hedlund: Up and unsynced.

Reg Levy - Tucows:@Michael Karanicolas: I insist upon digital everything and fly into a rage if anyone even suggests the “f” word (facsimile transmission)

Greg Shatan: George, the basis of your proposal is that something is missing from these documents. You need to say what’s missing for the proposal to be intelligible.

Martin Silva 2: that for sure

Kristine Dorrain - Amazon Registry:@George and that is the danger.....I oppose any proposal this is a vague wishlist (unicorn) of what would be nice in Disneyland....proposals should be concrete with only a few implementation details left.

Reg Levy - Tucows:@Cyntia yes, but as a mere registrar, I don’t have standing, as I understand it, to bring that up

Reg Levy - Tucows:+1 Greg
Michael Graham:@Greg +1 == George K -- Can you identify terms you believe should be included in the MoU/Contract?

Justine Chew:+1 Kristine, it’s not what a document is called but what’s in it that’s important.

Greg Shatan:Just saying an “MoU” needs to be replaced with a “contract” says nothing and is based on a false premise. And yes, if the MoUs said BANANA on top, they would still be contracts.

Reg Levy - Tucows:+1 Justine

Cyntia King:@Reg - Conflict of Interest proposals are going out for public comment, so we’ll def have a chance to address this again. Perhaps staff could capture you’re specific concern for that discussion?

Greg Shatan:I propose Klingon and Esperanto as additional languages.

Paul Tattersfield:There is a guy who does it lives in Scotland but uses Korean WHOIS because it reduces the chances of UDRP proceedings against him, he knows many companies will either pay the fee he is requesting or just give up.

George Kirikos:@Greg: create a registrar with those languages (Zak and I joked about Klingon, too).

Greg Shatan:Also the word count for German needs to be adjusted.

Cyntia King:+1 Klingon

Reg Levy - Tucows:I’d be happy if just the decision was in the language of the registration agreement

Kristine Dorrain - Amazon Registry:@George, please consider in the rationale, who will pay for all the translations the providers will need to do? Or by how much should filing fees go up?

Georges Nahitchevansky:Just to be sure I understood correctly. A request that the language be other than the language of the registration agreement would not count as apart of the 500 words

Greg Shatan:Are Klingon IDNs possible?

Reg Levy - Tucows:+1 Klingon

Kristine Dorrain - Amazon Registry:Also, how long will timelines be extended to allow everyone to translate everything?
Greg Shatan:@Georges, yes an extra 250 words to argue language.

Reg Levy - Tucows:I’m working on a proposal to allow the existing unofficial punycode for plcad (the Klingon script) to become official, Greg.

Reg Levy - Tucows:*plcaD, apologies

Jonathan Frost:+1 Reg

Greg Shatan:Reg, you are my hero.

Cyntia King:+ Reg

Kristine Dorrain - Amazon Registry:The providers communicate with the parties. A lot.

Cyntia King:@Kristine - agree. I grow concerned about the cumulative effect of proposals that would increase costs to providers & registrars/registries.

Kristine Dorrain - Amazon Registry:George....false premise.

Kristine Dorrain - Amazon Registry:Happens ALL THE TIME

Reg Levy - Tucows:☆find me in barcelona with my Klingon nametag☆

Phil Marano:We may be able to address concerns about both the depth of URS determinations and some translation concerns if the mandatory website screen grabs are published with each determination. A picture of clear cut infringement is worth a thousand words, in any language.

Kristine Dorrain - Amazon Registry:No, George, the URS is VERY prescriptive about timing.

Kristine Dorrain - Amazon Registry:No extensions.

Kristine Dorrain - Amazon Registry:Except for Respondents.

George Kirikos:@Kristine: it’s really about the complainant making the translation if they’re trying to change the language. The longer the time it takes, the more they suffer (since they’re asking for the suspension).

George Kirikos:+1 Zak

Martin Silva 2:I’m convinced, I would like to support Zack

Cyntia King:Thanks for clarification @Zak
PAUL KEATING: I completely support this moving to public comment.

Cyntia King: @Paul - hopefully the public can read the proposal in order to comment.

Martin Silva 2: me too

Greg Shatan: Cyntia, we can ask people to submit a 250 word statement (in English) arguing why we should translate that proposal into their language of choice.

Cyntia King: @Greg - exactly.

Kristine Dorrain - Amazon Registry: If the bar is so low that the proposal is too vague for readers to fully understand what the changes might mean, then I think we need to have a Statement of Opposition that says something like "significant numbers of the WG believe this proposal is too undefined and unclear to warrant comment at this time."

Paul Tattersfield: they ought to be viable though otherwise we just look incompetent + it will squander weeks of times

Kristine Dorrain - Amazon Registry: +1 Paul....they have to viable.

Kristine Dorrain - Amazon Registry: Otherwise this is just a pie in the sky wishlist.

Kristine Dorrain - Amazon Registry: Dare I say "unicorn" again

Susan Payne: +1 to Paul T and Kristine

Paul Tattersfield: and its just goes on and on

Martin Silva 2: I always supported a strict view and consensus required to move proposal to public comments, but the general group thought that "some support" would be enough

Cyntia King: +1 Paul - it’s incredibly frustrating to take the time to consider/respond to something that was never viable.

Justine Chew: @Paul T, you used the word I refrained myself from using earlier ... "incompetent".

Kristine Dorrain - Amazon Registry: To be clear, if people want to flesh out vague proposals, fine, but some are too nebulous to push forward. Readers will not come away with a collectively similar understanding of what is meant.

Greg Shatan: We can call this the “throw spaghetti on the wall and see what sticks” Report.

Greg Shatan: Pro tip: Cooked but unsourced spaghetti works best.
Greg Shatan: unsauced! darn autocorrect

Cyntia King: Can we submit proposals offering a paragraph on both the affirmative case & opposition case?

Kristine Dorrain - Amazon Registry: the devil is in the details though...

Kristine Dorrain - Amazon Registry: Consider the US viewpoints on universal healthcare...

Julie Hedlund: @Kathy: That’s correct -- staff are reviewing chat and transcripts.

Kristine Dorrain - Amazon Registry: Or anything....everyone has thoughts on what the means and how it would work

Kristine Dorrain - Amazon Registry: the public comments will be a nightmare

Cyntia King: @Kristine + I’d rather not have that headache today...

Kristine Dorrain - Amazon Registry: LOL Cyntia....sorry!

Cyntia King: Was there any proposal that did not receive adequate support?

Paul Tattersfield: there’s low and there’s low!

Kristine Dorrain - Amazon Registry: @Cyntia, I thought so..maybe it was just me....

Justine Chew: @Cyntia, good question. That would be the benchmark huh?

Michael Graham: @Phil -- Will the PDP see the form in which Public Comments are being sought and have opportunity to propose edits/etc?

Martin Silva 2: some of us thouhg public comments required consesus at some level

Martin Silva 2: It was a surprise to see it was not the case

Mary Wong: @Michael, the Initial Report itself is first discussed by the WG before it's published for public comment.

Martin Silva 2: but know is too late, we chose a "some/any support" and we have to follow it

Mary Wong: @Martin, typically a formal consensus call is not conducted for Initial Reports.

Paul Tattersfield: that's a working group task not a public comment exercise!

Martin Silva 2: not formal one
Martin Silva 2: but a higher level of "support" if consensus is not the word

Greg Shatan: How does loser pays relate to statute of limitations, except as some form of hostage negotiation?

Cyntia King: Can the proposal format for public comment offer each proposal as a neutral statement and include a paragraph on both the affirmative case & opposition case?

Susan Payne: @George - I think the point is that some are not viable in terms of being implemented - and so if they were to go out to comment then the community need to have this significant difficulty drawn to their attention

Martin Silva 2: to pick up more feedback?

George Kirikos: @susan: like Loser Pays, which is not viable?

Susan Payne: are you asking me a question?

Mary Wong: @Martin, the co-chairs had proposed that adequate support be the threshold for URS proposals, and this seemed acceptable to the Working Group.

Paul Tattersfield: +1 Greg it’s a terrible way to develop policy

George Kirikos: @Susan: just fleshing out that what you might consider viable, others might consider very viable.

Michael Karanicolas: Wherein the IPC complains about hyperbolic language, and then uses the exact same phraseology 30 minutes later.

George Kirikos: +1 MichaelK

Cyntia King: @Michael Karanicolas - point taken

Griffin Barnett: Michael I don't think it's fair to ascribe hyperbolic language to an entire constituency

Griffin Barnett: I frankly disagree with that kind of approach in all cases

Michael Karanicolas: Well... I don't like calling people out by name.

Michael Karanicolas: But you're right.

Paul Tattersfield: I think in some jurisdictions it's call pork
Kristine Dorrain - Amazon Registry: Thankfully no one has blamed the Registries for my use of "unicorns" -- that metaphor is mine alone.

Michael Karanicolas: blamed/credited

Griffin Barnett: personally, I like unicorns more than guns, but that might just be me?

Kristine Dorrain - Amazon Registry: +1 Griffin

Greg Shatan: Unicorns didn't come from an IPC member (much less the IPC as an organization) but I will +1 unicorns over guns.

Michael Karanicolas: (and we're back to the guns)

Cyntia King: I would propose a poll (accessible only to WG members) measuring support on a scale of 1-10 then put results to group for final decision.

Greg Shatan: We know who brought the guns into today's call...

Kristine Dorrain - Amazon Registry: @cyntia... seems decent, but I suspect people might think they're voting on support for the proposal themselves, not just inclusion in the initial report.

Martin Silva 2: @greg, not fair IPC memebers put out a lot of proposals I don't agreee on, and I don't trash talk them

Greg Shatan: Ultimately, its a decision by the group how to handle this. The Chairs decision is not final, even if some people wish it were.

Jonathan Frost: What level of support is neeeded to change the level of support requirement?

Reg Levy - Tucows: +1 Martin

George Kirikos: lol Jonathan

Martin Silva 2: is too late to change the level of support

Martin Silva 2: we just finished them!

Greg Shatan: @Martin, what trash talk? And the issue here is not agreement (or not) but the use of derisive and divisive rhetoric.
George Kirikos: 1-10 is funny. Ones you support, you'll vote "10", ones you hate, you'll say 1.

Martin Silva 2: I debated to have some level of consensus of what went public, the group moved towards another interpretation on the going, now we cannot change it back again, it changes the dynamic of the debates.

Martin Silva 2: @greg, the unicorn reference, like people that don't agree with you are crazy.

Greg Shatan: I have specifically supported the publication of proposals I disagree with, based on the low bar approach.

Martin Silva 2: for some, is intimidating.

Cyntia King: @Kristine - understand your concern, but I think we could overcome it.

Martin Silva 2: is a chilling effect.

George Kirikos: So have others, Greg.

Reg Levy - Tucows: +1 Martin

Greg Shatan: @George, I don't disagree with that, but I was being accused otherwise.

Greg Shatan: @Martin, nothing I said about unicorns remotely conveyed what you put in chat. Perhaps you're thinking of something else.

Greg Shatan: or someone else?

Justine Chew: Options with pro's and con's?

Julie Hedlund: @Kristine: Correct, there are various ways to include proposals in the Initial Report -- some might be recommendations, some options, some questions for feedback, some just in deliberations. Something doesn't usually make it into recommendation with out unanimous support.

George Kirikos: But, then there's debate about whether the "cons" are true or not, or how much weight to give to them. THose should be in the *comments* to the proposals, not the proposals themselves.

Greg Shatan: To be clear, I have never, ever said that anyone (much less everyone) who disagrees with me is crazy. I think that disagreeing without being disagreeable is a fundamental concept in the multistakeholder model.
Kristine Dorrain - Amazon Registry: @George, there is also debate about the "facts" in the proposals.

Kristine Dorrain - Amazon Registry: People are just going to have to read and consider both, I guess.

George Kirikos: Plus, I think there are going to be Minority Statements even to the Initial Report, correct?

Martin Silva 2: @grerg, let it go, the point is to be more freindly on our comments towards others opinion

Cyntia King: @Martin & @George Kirikos - I’m not trying to upset the process, I just believe there were lots of good points made

George Kirikos: Folks can put their thoughts in the Minority Statements.

Kristine Dorrain - Amazon Registry: @George, there is no majority/minority so far on this.

Greg Shatan: @Martin, just don’t like being falsely accused. It's not “friendly.”

Martin Silva 2:...

Julie Hedlund: @George: Minority Statements are not part of the process for Initial Reports since there is no consensus process for Initial Reports.

Martin Silva 2: let’s clear it with beers in barcelona, on me

Kristine Dorrain - Amazon Registry: @Zak, as someone who routinely responds to public comments, it’s helpful to know all the things the WG discussed and considere...it’s frustrating to think "good lord, did no one think of this?"

Mary Wong: Just to reiterate what staff has noted, both in Panama and by Julie again today, there is flexibility within an INitial Report to accommodate various practices and dynamics of a Working Group - ranging from specific, agreed-text recommendations that clearly got a lot of support to totally open issues to specific questions directed at the community.

Paul Tattersfield: Are we asking for addtional ideas or just comments on our proposals?

Cyntia King: It is our function to put out to the public considered & viable proposals for their comment. That is our job on their behalf.

Kristine Dorrain - Amazon Registry: @Paul, I expect people with ideas will supply them. :)

Justine Chew: @Paul, I would imagine both!

Mary Wong: For all reports, staff does our best to summarize the group's deliberations. It is not just a document that simply reproduces the text of the proposals/recommendations/questions.

George Kirikos: And that only took me a few seconds to find. ;-)

Kristine Dorrain - Amazon Registry: That's helpful too, Mary.

George Kirikos: That was how it was supposed to be, proposals from the Authors.

Cyntia King: @Mary - I would hope that the proposals are stated neutrally, then the support & oppose positions summarized. Is that correct?

John McElwaine: From the Charter: n public comments to the UDRP Final Issue Report, the RPM Staff Paper and the Preliminary Issue Report for this PDP, various community groups and participants had identified a number of issues that they considered appropriate for review in a PDP. As such, and following its preliminary assessment of the effectiveness of the relevant RPM(s) in each phase of its work, the Working Group should consider the suggestions that have been made to date by the community regarding improvements or modifications to the RPM(s) in question. These community suggestions are attached to this Charter and they are intended to provide a framework and starting point for the PDP Working Group at the appropriate stage in its work, with further modifications, additions and deletions to be determined by consensus of the Working Group.

George Kirikos: ICANN63 schedule?

George Kirikos: I guess they were on Sunday and Monday.

Mary Wong: @Cyntia, that is one possible approach - as we noted, the practice can vary from group to group; and Phil has noted that the co-chairs will discuss the suggestions received.

John McElwaine: So, again, working on the fly here: If a proposal was covered by the Attachment than it should be covered. Other proposal should require consensus,

Julie Hedlund: @Geoge: The schedule is posted in the pod and is unsynced. It also will be sent again for reference.
Julie Hedlund:@George I mean.

George Kirikos: Should we have the Revised Proposals ready for Barcelona? Or the call after Barcelona??

Cyntia King: Thnank you, @Mary.

George Kirikos: Thanks Julie. Didn't notice that.

Julie Hedlund:@George: Per the timeline the URS discussion will end with Barcelona. We have time in Barcelona for discussion of revised proposals.

PAUL KEATING: Greg, I agree that the proposals should not be described as having any consensus. Rather they should merely be described as issues that the WG want to solicit public comment.

PAUL KEATING: when is the meeting in BCN?

Justine Chew: Thanks, all, I'm glad I stayed up for this call :)

Julie Hedlund:@Paul: The schedule is in the pod, but staff will send it again for reference after this call.

Paul Tattersfield: thanks all, bye

Jay Chapman 2: Thanks, all

Reg Levy - Tucows: thanks, all

Griffin Barnett: Thanks, all

George Kirikos: Bye folks. Have a nice weekend.

Greg Shatan: Bye all

John McElwaine: bye

PAUL KEATING: thanks Julie,