

00:32:30 Julie Bisland: Welcome to the Review of All Rights Protection Mechanisms, (RPMs) and all gTLDs PDP Working Group call on Wednesday, 8 January 2020 at 17:00 UTC.

00:33:29 Paul McGrady: It has worked well in SubPro

00:34:18 Ariel Liang: The slides of URS individual proposal can be downloaded here: <https://community.icann.org/download/attachments/93126760/URS%20Individual%20Proposal%20Survey%20Result.pdf?version=1&modificationDate=1576086277000&api=v2>

00:36:27 Julie Bisland: reminder: Please mute when not speaking :)

00:37:01 Ariel Liang: === We are currently discussing Proposal #3 ===

00:37:36 Susan Payne : I have an SOI update - I am now a member of the IRP-IOT. Although this was notified back in Montreal the formalities of getting added to the group have taken a while

00:38:52 Julie Hedlund: Noted Susan

00:39:32 David McAuley (Verisign): a technical correction likes this seems to make sense but we may wish to make that clear to public as Griffin seems to suggest

00:39:35 Kathy Kleiman: Susan is that -- Independent Review Process Implementation Oversight Team?

00:39:50 Susan Payne : oh, yes thanks Kathy it is

00:39:59 Kathy Kleiman: Feel free to use chat to support and oppose too!

00:40:43 Griffin Barnett: I might suggest we look at how the renewal issue is handled under the UDRP and perhaps use that info to clarify the language of this proposal a bit so it is very clear

00:41:15 Griffin Barnett: But happy to defer that until post-public comment (and we can include some suggestions for clarifying in public comment so as to not delay the process now

00:42:04 Ariel Liang: === Now Discussing Proposal #30 ===

00:42:59 Griffin Barnett: Very strongly oppose this proposal. Mandatory mediation would simply drag out what is intended to be a rapid procedure unnecessarily. I recognize that is a substantive ground for opposing rather than procedural in terms of threshold for publishing for comment.

00:43:11 David McAuley (Verisign): mediation could imperil the R of URS

00:43:50 Susan Payne : agree with the comments above and of Jason

00:44:06 Griffin Barnett: +1 with Jason's comments

00:44:20 Susan Payne : I don't necessarily support either for the UDRP but I do think we should note it to revisit and debate in phase 2

00:44:42 Griffin Barnett: Agree - definitely need to remove UDRP from this proposal in any case

00:44:47 Jason Schaeffer: +1 Susan

00:45:52 Paul Tattersfield: domain registrants?

00:46:07 Susan Payne : good [point Steve. I believe it's an increment from the domain cost that funds this

00:46:10 David McAuley (Verisign): I am assuming that our prior arrangement to remove considerations of UDRP from these discussions is still in place when we approach proposals that mention both URS and UDRP

00:46:11 Susan Payne : point

00:46:26 Justine Chew: Good intention but I don't see how parties can be compelled to undertake mandatory mediation. If parties don't want to then they will simply decline. So oppose for publication.

00:46:32 Griffin Barnett: I am curious who supported publication... no has spoken up in support

00:46:39 Griffin Barnett: (supported in the poll that is)

00:47:01 Ariel Liang: === Now Discussing #26 ===

00:47:02 Rebecca Tushnet: I do not think you should have to speak verbally to count.

00:47:17 Rebecca Tushnet: Otherwise this is just an endurance test.

00:47:20 Griffin Barnett: Rebecca - not disagreeing with that, just noting

00:48:04 Julie Hedlund: Note that staff will review both the chat and the transcript/recording for the record of deliberations

00:48:19 David McAuley (Verisign): Thanks Julie

00:48:31 Griffin Barnett: Not opposed to proposal 26, but I think most if not all providers do already publish their roster of examiners, although may not take the further step of identifying number of appointments and links to cases by each examiner (beyond the general publication of all decisions)

00:49:13 Ankur Raheja: +1 to Zak's proposal #26

00:49:35 David McAuley (Verisign): looks like #26 is ready for takeoff

00:49:41 Kathy Kleiman: Can we go back to the prior proposal?

00:49:44 Paul Tattersfield: Phil +1

00:50:47 Zak Muscovitch: @Renne that sounds sufficient to me

00:50:53 Justine Chew: @Renee, thanks, I was about to check if you were on the call and if you comment in this proposal #26 from a provider's POV.

00:52:01 Justine Chew: \*if you would comment on ...

00:52:41 Ariel Liang: === Now Discussing #7 ===

00:53:36 Julie Hedlund: hand up

00:54:13 Griffin Barnett: Do we have the authority/scope to recommend a change to WHOIS to add a new contact field, as this proposal suggests?

00:55:30 Kathy Kleiman: @Julie/Ariel - it would be good to show the comments briefly (next page)

00:55:33 Griffin Barnett: In principle I have no problem with having notice go to all available points of contact associated with a domain name, but I don't know that this proposal as currently written is something we can put forward

00:55:48 Renee Fossen: Agree with Griffin and Susan

00:55:59 Ariel Liang: Noted Kathy

00:56:11 Jay Chapman: +1 Griffin

00:56:14 Paul Tattersfield: Susan +1

00:56:22 Marie Pattullo: What if you don't have a retained lawyer? Or you have one for real estate, or family matters, but not for DNS? Can't see this being feasible.

00:56:27 David McAuley (Verisign): Susan's suggestion makes sense to refer the idea to the EPDP

00:56:55 Kathy Kleiman: Tx!!

00:56:57 Paul Tattersfield: :-)

00:57:13 Susan Payne : ha Jason - yes!

00:57:17 Griffin Barnett: Agree Jason - great point - anyone could put any contact into the legal contact field and potentially cause lots of issues with attorney0-client relationships etc

00:57:29 David McAuley (Verisign): Interesting point, Jason

00:57:31 Marie Pattullo: Agree with Jason & Griffin.

00:57:33 Griffin Barnett: (maybe that's why such a field does not exist)

00:57:56 Zak Muscovitch: + I don't want cybersquatters putting my name down as a Legal Contact

00:58:28 Jason Schaeffer: +1 Zak!!! :)

00:59:02 Justine Chew: Agree with Jason although I'm not sure that Legal Contact is a legal counsel per se. Having said that, I'm not convinced this is necessary. Admin Contact is sufficient, that person can deal with notice accordingly.

00:59:46 Ariel Liang: === Now Discussing #28 ===

00:59:51 Griffin Barnett: providers already implement conflict of interest measures... they may differ slightly by provider, but wondering if we need to address this at the PDP level?

01:00:22 Griffin Barnett: that said, no strong opposition to this in principle

01:02:00 Justine Chew: I think it is provider specific, as in providers themselves have one

01:03:01 Griffin Barnett: yes - providers each have internal conflicts policies that they employ, its just not a single uniform one... i also take that there may be concerns about proper compliance with these policies, but that is not a policy question, but rather an implementation/compliance issue

01:03:01 Justine Chew: Yes, what Griffin said

01:03:29 Griffin Barnett: Didn't we discuss this previously??

01:03:46 Griffin Barnett: #19 that is

01:03:53 Zak Muscovitch: What Griffin said.

01:03:53 Griffin Barnett: along with 18 and 20?

01:03:53 Paul Tattersfield: #18 I think Griffin

01:04:45 Julie Hedlund: hand up

01:04:57 Justine Chew: Were we meant to take #18, #19 and #20 together?

01:05:36 Rebecca Tushnet: I agree that a lot of discussion has occurred but if the survey matters, this one did do a lot better in the survey

01:06:30 Ariel Liang: === Now Discussing #29 ===

01:08:26 Griffin Barnett: Kathy - the prior comments have been captured, do we need to look at them for each proposal now, when presumably they will be part of the co-chair discussion ?

01:08:51 Griffin Barnett: (along with poll results and present discussion)

01:09:42 Kathy Kleiman: Agree with Phil

01:09:47 Renee Fossen: I suspect it would benefit few...

01:10:12 Justine Chew: Technical benefit is likely related to data download and analysis.

01:10:33 David McAuley (Verisign): Interesting point about the word 'all' - seems to require retroactive application - will be interesting to see what public thinks if this goes out

01:10:53 Justine Chew: +1 Kathy -- exactly what I mean

01:11:16 Paul McGrady: Might also be useful for Westlaw, Lexis, etc.

01:12:22 Ariel Liang: === Now going back to #19 ===

01:12:45 Kathy Kleiman: Tx going back...

01:12:52 Paul Tattersfield: lvery easy to circumvent

01:13:27 Paul Tattersfield: same as IP lawyers can do now with UDRP

01:13:53 Paul Tattersfield: not good

01:14:44 Ariel Liang: === Now discussing #5 ===

01:14:58 Griffin Barnett: Oppose #5

01:15:07 Marie Pattullo: Also oppose 5.

01:15:22 Georges Nahitchevansky: Oppose #5

01:15:34 Griffin Barnett: SOL from creation date makes no sense, as bad faith can take place much later in the domain lifecycle

01:15:48 Griffin Barnett: no - creation date of the domain name

01:16:03 Paul McGrady: Oppose #5.

01:16:32 Justine Chew: +1 Griffin, I have the same opinion

01:16:54 Renee Fossen: Oppose publication of #5

01:17:09 Susan Payne : creation date - this is George's argument that it's the first registration date that should set the date for limitation purposes and not any dates of subsequent transfer

01:18:17 Susan Payne : I am strongly opposed to the proposal, but it does have some support (and lots of opposition) to publication. If we publish we need to ensure the public understand what "creation date" means

01:18:46 Griffin Barnett: liitation period and laches are similar but not exactly the same; this proposal specifically refers to a specific, set and firm limitation period

01:18:52 Justine Chew: Still strange - what if bad act occurs after transfer?

01:18:57 Griffin Barnett: so let's not automatically conflate that with laches

01:19:15 Jay Chapman: The point of the proposal is a time limit for filing complaints. The example was "creation date", but the specific implementation to be considered/decided by an IRT.

01:19:24 Kathy Kleiman: is renewal (by old registrant) also considered a new registration?

01:19:36 Griffin Barnett: Kathy - likely not

01:19:42 Jason Schaeffer: No Kathy.

01:19:45 Kathy Kleiman: Tx Griffin!

01:19:53 Kathy Kleiman: and Jason!

01:19:55 Paul Tattersfield: @Kathy some panellists have tried that approach

01:20:12 Kathy Kleiman: @Paul -- I did think I saw it out there...

01:20:34 Justine Chew: Agree that if it goes out for publication, then it must explain the terms "creation" and "registration".

01:20:42 Griffin Barnett: Many years ago there was a question under UDRP jurisprudence whether a renewal constitutes a new registration date but it has been pretty well settled for a while that it does not, without an attendant change in registrant

01:20:44 Jason Schaeffer: Yes, Paul is correct

01:21:06 Susan Payne : I don't agree with Zak's suggestion regarding the intent of the URS

01:21:23 Jason Schaeffer: and Griffin.

01:21:45 Susan Payne : But think we may need to put this individual proposal out

01:22:02 Kathy Kleiman: +1 Susan

01:22:07 Jay Chapman: An effective SOL for filing complaints is a valid issue for publication

01:22:21 Paul Tattersfield: needs ALOT of work

01:22:31 Paul Tattersfield: even to go out comment

01:24:42 Georges Nahitchevansky: Renewal is not a new registration. The line of case that started to support that proposition were rejected by panelists as a group, Proposal 5 would be a major change in policy. I would reject this proposal and perhaps include a separate proposal as to whether or not there should be a limitation period in URS cases. But this proposal is not workable

01:25:53 Lori Schulman: Georges comment makes sense.

01:25:56 Paul Tattersfield: Georges +1

01:25:59 Ariel Liang: 11 proposals left

01:26:32 Ariel Liang: === Now Discussing #31 ===

01:26:45 Marie Pattullo: In the interests of time, can we roll 14 into 15, 17 into 16 and 21 into 22 please?

01:27:21 Susan Payne : +1 Phil - I think we were tasked under charter with considering this

01:27:40 Griffin Barnett: Agree - this proposal 31 should be put out for consideration

01:28:03 Marie Pattullo: Agree it should be put out.

01:28:21 Paul Tattersfield: It seems GDD front ran this working group on the recent .org and .info contracts

01:28:29 Ariel Liang: that's it

01:29:26 Cyntia King: Support publication

01:29:30 Marie Pattullo: Can we roll this into 22?

01:30:06 Ariel Liang: === Now Discussing #21 (related to #22) ===

01:30:08 Kathy Kleiman: any comments?

01:30:13 Susan Payne : this was merged with 22 when the IPs were previously reviewed

01:30:56 Paul Tattersfield: Very very strongly opposed to this as an overarching principle on such a lightweight RPM as URS as it will be used to bully registrants

01:31:47 Marie Pattullo: Yes!

01:32:20 Ariel Liang: === Discussing #21 & #22 Together ===

01:32:44 Paul Tattersfield: There will be lots of nastygrams and most unformed registrants will just not start a legitimate non competing business on a different domain

01:34:20 Cyntia King: I just don't see how this could work. At best I think we could request public comment on whether this should be studied.

01:34:23 Mike Rodenbaugh: Hi all, regardless the topic, a 50/50 split indicates to me that we should publish the issue for public comment and further discussion

01:34:54 Kathy Kleiman: Can someone clarify the question of what costs are involved here?

01:34:57 Marie Pattullo: Knowing that this may happen could have a deterrent effect on bad actors.

01:35:14 David McAuley (Verisign): Loser pays as a concept has a lot of nuance, including whether the loser participated in good or bad faith

01:35:21 Paul Tattersfield: 50 50 split benefits IPC :-))

01:35:23 Mike Rodenbaugh: Will also inform future debate re same issue(s) to be presented in Phase II re UDRP

01:35:36 Paul Tattersfield: bulk support v broad support etc

01:35:36 Mike Rodenbaugh: @Paul, not in this instance

01:36:10 Ariel Liang: Note that complete proposals are stored on this wiki page: <https://community.icann.org/x/aACNBQ>

01:36:18 Paul Tattersfield: thanks Mike I don't have the original data in front of me

01:36:35 Griffin Barnett: Agree - public comment could bear out ore specifics regarding these ites

01:36:37 Griffin Barnett: \*items

01:36:43 David McAuley (Verisign): +1 Phil on complexity of determining costs

01:36:45 Griffin Barnett: \*more

01:37:17 Paul Tattersfield: its an allegation

01:37:34 Ariel Liang: This is the link to the complete proposal #22: <https://community.icann.org/download/attachments/93126760/URS-Proposal-22.pdf?version=1&modificationDate=1537973000000&api=v2>

01:37:45 Paul McGrady: I would be interested on hearing from the broader community about (a) if/how this could be implemented and (b) in a way that wouldn't further slow down the URS process. Also, as Mike R. noted, this is surely to come up in Phase 2, so a preview on how the community is feeling about this might be helpful.

01:37:52 Paul Tattersfield: its an allegation at the point of the claim

01:38:10 Griffin Barnett: registrant bought the domain name reg using some payment method, so there is some means by which a urs fee could be charged to that same payment method, enforceable via the domain name registration agreement

01:38:15 Griffin Barnett: and effectuated by the registrar

01:38:36 Mike Rodenbaugh: Not sure about that, Griffin.

01:39:17 Susan Payne : @Phil, that's why I have supported putting out some of the others that I'm fundamentally opposed to on the merits

01:39:21 Justine Chew: If we are not merging closely related proposals how do we mitigate increased likelihood of confusion and unhelpful feedback from respondents?

01:40:18 Griffin Barnett: we are talking about implementation mecahnisms

01:40:34 Griffin Barnett: and a strawman

01:40:59 Paul Tattersfield: Wrong Griffin we are here to design an equitable framework not ease a litigation strategy fro one party

01:41:11 Jay Chapman: Beyond no mechanism and being effectively unenforceable, this concept would boost toothless threats and bullying

01:41:11 Paul McGrady: Zak, these are all interesting points and the community should include them in their comments.

01:41:16 Ankur Raheja: +1 Zak

01:41:33 Griffin Barnett: right - equitable - so complainants don't bear the full costs of pursuing valid claims

01:41:36 Griffin Barnett: \*claims

01:41:48 Scott Austin: +1 Zak

01:42:41 Griffin Barnett: so we are really getting into the substantive merits of the proposal, rather than whether it should be put to public comment

01:42:42 Paul Tattersfield: It's about access to justice Griffin if you want to inject costs file a court case

01:42:54 Mike Rodenbaugh: @Jason it must go both ways, RDNH = Loser, who pays; I am not sure IPC is (or ultimately will be) in favor of any Loser Pays type of model.

01:42:54 Griffin Barnett: clearly there is support and opposition, default to publication

01:44:18 Zak Muscovitch: Arguably, Griffin. But on the other hand, one of the other yardsticks we have ostensibly using, is whether a proposal can ever get consensus. And even if it is 50-50, that seems to mitigate against consensus being achievable.

01:44:30 Scott Austin: Doable within an expedited time frame

01:44:41 Griffin Barnett: so then let's forego any of this exercise and agree to status quo on all things

01:44:44 Paul Tattersfield: very well said

01:44:57 Rebecca Tushnet: +1 Cynthia

01:44:59 David McAuley (Verisign): Agree with Cynthia - wise comments

01:45:11 Scott Austin: +1 Cynthia

01:45:19 Jay Chapman: +1 Cynthia

01:45:28 Justine Chew: Agree with Cynthia -- Loser pays concept more appropriate for a discussion paper, not really for a open ended question/proposal.

01:45:36 Jason Schaeffer: Mike, I agree. Not sure this goes anywhere in UDRP or RDNH (Proposed Penalty). As stated, let's focus on the URS and purpose and intention of the URS as fast and efficient.

01:45:49 Jason Schaeffer: \*RDNH

01:46:19 Georges Nahitchevansky: I personally have questions about specific proposals on loser pays and agree with Cynthia that the proposal should be about putting the issue out of whether there should be some form of loser pay

01:46:38 Ariel Liang: === Now Discussing #6 ===

01:47:00 Griffin Barnett: yes - put the question out for public comment... maybe we ultimately decide no consensus to make it a WG recommendation and that's fine but should put out for comment to collect the feedback

01:47:06 Griffin Barnett: (that comment was re 21/22)

01:47:25 Rebecca Tushnet: Technical Q: isn't this also a GDPR issue?

01:49:16 Justine Chew: Like a mutant form of consolidation or class action

01:49:25 Paul Tattersfield: @Griffin on loser pays proposal - It will solve very little because under the new ICANN model for new gTLDs and now .info and .org etc can charge \$000s not only to buy the name but to register it every year – all they have to do is call it a premium name. URS & UDRP won't help

01:50:00 Griffin Barnett: not following your comment Paul

01:50:23 Paul Tattersfield: I post it to the list Griffin - after the call

01:50:27 Griffin Barnett: not sure what premium names has to do with implementing loser pays

01:51:30 Ankur Raheja: In India, we have penalties/cost of proceedings in case of INDRP (.IN Domain Disputes) and many times they are imposed along with transfer of domain name but I have never heard that they have ever been recovered...

01:52:02 Kathy Kleiman: +1 Paul -- is this even fair to the Examiner?

01:52:10 Griffin Barnett: I think Cyntia did describe the purpose of this proposal #6 - to facilitate joint complaints by multiple unrelated complainants against a single registrant who has registered many doains targeting multiple TMs of multiple parties - would be a very liited subset of cases

01:52:22 Jason Schaeffer: +1 Paul

01:52:46 Georges Nahitchevansky: Agree with Cynthia and should let the community comment on this

01:53:19 Kathy Kleiman: Could you ask? Perhaps of Griffin or the whole group?

01:53:22 Griffin Barnett: Would potentially maximize procedural efficiency, to consolidate cases like this (even if few such cases) as opposed to the alternative of having dozens maybe hundreds of separate individual URS cases by different complainants separately against the same registrant

01:53:34 Kathy Kleiman: Sorry -- question raised of what is a related case?

01:53:40 Scott Austin: Let the Community comment.

01:53:42 Justine Chew: Downstream, Proposal #6 might affect things like requirement to establish the relationship of domains in question, complaint word limit, costs incurred by provider/examiner ....

01:53:50 Jay Chapman: How is "related" defined?

01:53:51 David McAuley (Verisign): It's hard to imagine comapnies evening agreeing to do this

01:54:04 David McAuley (Verisign): as complainants

01:54:08 Jay Chapman: Agree, David

01:54:14 Griffin Barnett: related = all domains registered bv same registrant

01:54:44 Kathy Kleiman: How many are left?

01:55:01 Jason Schaeffer: Worth putting forward for comment, but we should closely consider how this would work in practice. Both Cyntia and Paul make good points.

01:55:15 Griffin Barnett: not sure we can get through 33 quickly haha

01:55:16 Julie Hedlund: Proposals remaining: 33, 15, 22, 4, 14, 13, 17, and 16.

01:55:17 Lori Schulman:and let's remember how many URS cases have been filed. only hundreds. how realistic is this scenario

01:55:20 Paul McGrady:Not an easy one.

01:55:45 Cyntia King: Has ICANN Mgt been consulted on this?

01:56:14 Ariel Liang: === Now Discussing #33 ===

01:56:22 Paul McGrady:Let's take this up in the next call.

01:56:38 Georges Nahitchevansky: I do think this would be tough to handle and could lead to massively long decisions depending on number of parties and marks involved. If there was to be such a possibility it would seem the fee would need to go up (perhaps each



complainant would have to pay a fee) to cover the administrative and panelist time spent on these types of matters. But, essentially, this should be put out to the community

01:56:39 David McAuley (Verisign): good question, Cyntia  
01:56:59 Griffin Barnett: @Georges, yes I think fees already escalate based on # of domains  
01:58:12 Julie Hedlund: hand up  
01:58:17 Ariel Liang: 8 proposals total left for next meeting, including #33  
01:58:23 Kathy Kleiman: Tx Phil!  
01:58:24 Georges Nahitchevansky: They do, but I would look at it as the fee each complainant would have to pay, which might be higher (e.g. if 5 domains is the same cost, then maybe each complainant pays a new fee)  
01:58:31 David McAuley (Verisign): good progress, good call  
01:58:33 Griffin Barnett: Thanks all, good progress today  
01:58:34 Julie Hedlund: hand up re: meeting time  
01:58:40 Paul McGrady: Great call! Thanks everyone for the collegiality on today's call.  
Happy New Year!  
01:58:50 Georges Nahitchevansky: Thanks everyone  
01:58:58 Kathy Kleiman: Julie's hand is up  
01:58:58 Julie Hedlund: David has his hand up  
01:59:01 Zak Muscovitch: Thanks Phil.  
01:59:02 Scott Austin: Thanks everyone  
01:59:09 Ankur Raheja: Thanks !  
01:59:21 Kathy Kleiman: back to 1pm Eastern  
01:59:34 Marie Pattullo: THAT'S a New Year's Resolution. Phil :-).  
01:59:50 Julie Hedlund: thanks Phil we'll take that as an action  
02:00:00 Marie Pattullo: (Re end Phase 1, not the call time)  
02:00:12 Julie Hedlund: Noting that the standard is to keep the calls at 17:00 UTC year round (as we have been doing)  
02:00:37 Kathy Kleiman: Bye All  
02:00:40 Lori Schulman: bye