



ICANN

PDP to Review all Rights Protection Mechanisms in all gTLDs

Overview of the Charter and Issue Report
Wednesday 27 April 2016

The GNSO Policy Development Process – stages



Background

- **“Rights protection mechanisms”** (RPMs) in this context means those ICANN policies and processes that are aimed at combatting cyber-squatting and providing workable mechanisms for trademark owners to either prevent or remedy certain illegitimate uses of their trademarks in the domain name system (DNS).
 - ❑ 1999: adoption of the Uniform Dispute Resolution Policy (UDRP)
 - ❑ 2012 New gTLD Program application round: additional RPMs developed to supplement the UDRP:
 - **Trademark Clearing House** (TMCH)
 - **Sunrise** registrations and **Trademark Claims** services (associated with the TMCH)
 - **Uniform Rapid Suspension** procedure (URS)
 - **Post-Delegation Dispute Resolution Procedures** (PDDRs)
- Where the UDRP applies to all gTLDs, the RPMs developed for the 2012 New gTLD Program currently apply only to those gTLDs launched under that Program (though individual “legacy” contract extensions may adopt these through bilateral agreement rather than via ICANN consensus policy)

Snapshot of the RPMs to be Reviewed in this PDP

Sunrise Period and Trademark Claims Service

Sunrise services provide trademark holders with advance opportunity to register domain names corresponding to their marks before names are generally available to the public.

The Trademark Claims period follows the Sunrise period and runs for at least the first 90 days in which domain names are generally made available to all registrants that are qualified to register domain names within the TLD.

Uniform Rapid Suspension (URS)

The URS was designed as a complement to the UDRP, to provide trademark owners with a quick and low-cost process to suspend domain names on the same substantive grounds as the UDRP. It applies only to domain names registered in the New gTLDs.

Post-Delegation Dispute Resolution Procedures (PDDRPs)


The PDDRPs provide alternative avenues for a trademark holder who is harmed by a new gTLD registry operator's conduct to obtain redress.

Trademark Clearing House (TMCH)

The Trademark Clearinghouse is a global database of verified trademark information to support rights protection processes. Benefits of inclusion are access to Sunrise Period and Trademark Claims Service.

Uniform Dispute Resolution Policy (UDRP)

The UDRP was created in 1999 and provides a uniform, standardized alternative dispute resolution procedure to resolve disputes concerning who is the rightful holder of a registered domain name. It is applicable to all domains registered in all generic top-level domains (gTLDs).



The Final Issue Report preceding this Policy Development Process

Final Issue Report – Some Noteworthy General Considerations

- ❑ *There has not been a comprehensive review completed of the UDRP since its inception*
- ❑ *There has not been an analysis of whether or not the RPMs are collectively fulfilling the objectives for their creation and no overall framework for conducting future reviews*
 - There is currently no comprehensive GNSO policy guidance applicable to all the RPMs across all “legacy” and “New” gTLDs
- ❑ *Public input to the earlier 2011 Issue Report on the UDRP and subsequently the Issue Report for this PDP shows a divergence of views as to whether and how to conduct the reviews, and what aspects should be reviewed*
- ❑ *Parallel initiatives have been launched that may have findings/data relevant to this PDP:*
 - **TMCH Independent Review** (in data gathering phase as of Q1 2016)
 - **New gTLD Subsequent Procedures PDP** (initiated by the GNSO Council in December 2015)
 - **Competition, Consumer Choice and Consumer Trust Review** (mandated by ICANN’s Affirmation of Commitments; launched October 2015)

Final Issue Report – Some Noteworthy General Considerations

- ❑ Conducting a review does not mean there will definitely be new RPMs or changes to the existing RPMs
 - ✓ *Existing policies and processes will continue to apply unless policy recommendations to modify, add to or delete them are adopted*

- ❑ Possible outcomes of a PDP may include:
 - ✓ *Developing new or additional RPMs and/or new or additional procedures applicable to one or more RPM(s)*
 - ✓ *Clarifying, amending or overriding existing RPMs*
 - ✓ *Supplementing existing, or developing new, procedural requirements for existing RPMs;*
 - ✓ *Recommending neither substantive nor procedural changes to any existing RPMs, nor the creation of new RPMs*
 - ✓ *Recommending that all RPMs are Consensus Policies applicable to all gTLDs.*

Final Issue Report – Some Noteworthy General Considerations

- ❑ Build on previous work done by ICANN and the community e.g.:
 - ✓ *2011 Issue Report on the Current State of the UDRP*
 - ✓ *2015 ICANN Staff Paper on Rights Protection Mechanisms*
 - ✓ *Topics identified by the community over time as possibly warranting review (included in Working Group Charter)*

- ❑ Data and additional input from e.g. dispute resolution providers, TMCH operator and other sources may be sought

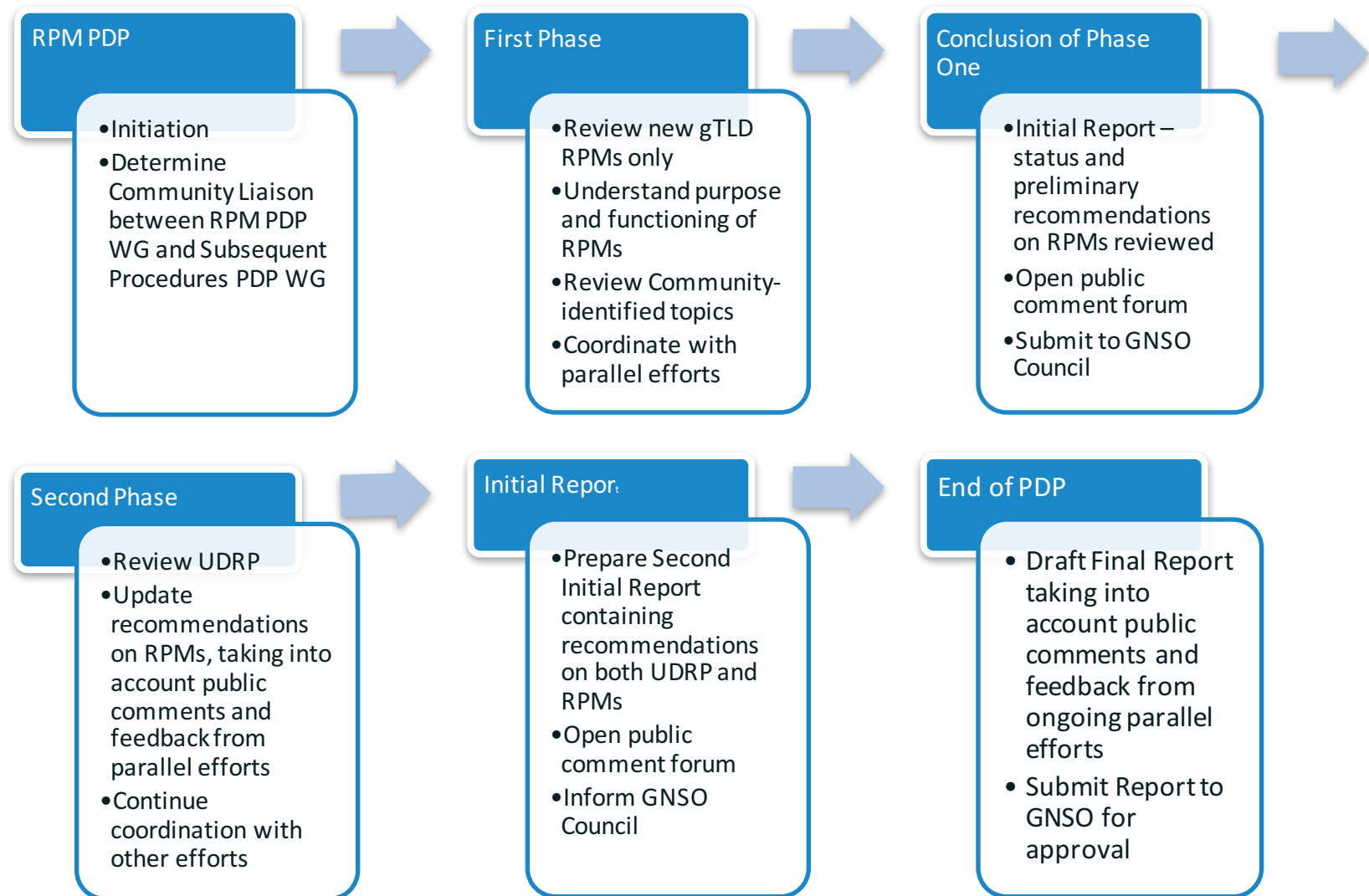
- ❑ Recommended steps from the Final Issue Report:
 - ✓ *Prioritize need to understand scope and applicability of each RPM, and their interaction to gain a more cohesive view of how the RPMs work collectively*
 - ✓ *Review suggestions made by community at an early stage in each Phase, to evaluate which are more suited to policy development work, and which relate to procedural and implementation improvements.*
 - ✓ *Coordinate with and track other, relevant, parallel projects*
 - ✓ *Publish report after Phase One to flag issues relevant to Phase Two, any preliminary recommendations, and any recommendations for consideration by the PDP Working Group on New gTLD Subsequent Procedures.*

The Working Group Charter

The Working Group Charter – Mission and Scope

- March 2016: WG chartered by the GNSO Council to conduct the PDP in two phases:
 - Phase One: focus on a review of the RPMs that were developed for the New gTLD Program
 - Phase Two: focus on a review of the UDRP (see next slide).
- For each Phase, WG is to assess the effectiveness of the relevant RPM(s), for which the WG should seek the input of experienced online dispute resolution providers and other subject matter experts.
- WG should also consider:
 - the interplay between and complementary roles of each RPM in seeking to more fully understand their overall functioning and effectiveness.
 - the overarching issue as to whether or not all the RPMs collectively fulfill the purposes for which they were created, or whether additional policy recommendations are needed, including to clarify and unify policy goals

Two-Phased PDP as laid out in the Charter



Charter – Objectives and Goals

- Working Group expected to consider, at the appropriate stage of its work, the overarching issue as to ***whether or not all the RPMs collectively fulfill the purposes for which they were created, or whether additional policy recommendations are needed, including to clarify and unify the policy goals.***
- If such additional policy recommendations are needed, the Working Group is expected to ***develop recommendations to address the specific issues identified.***
- Working Group also directed to bear in mind that a fundamental underlying intention of conducting a review of all RPMs in all gTLDs is to ***create a framework for consistent and uniform reviews of these mechanisms in the future.***

Charter – Deliverables and Timeframes

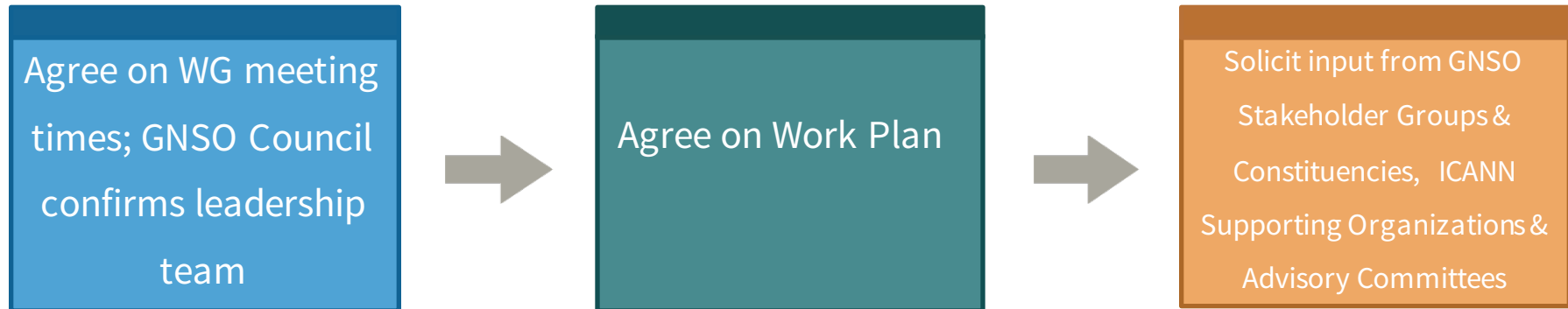
Conclusion of Phase One:

- The WG to provide an Initial Report to the Council
 - ✓ Report to include notes on the WG's progress and any preliminary recommendations developed with regard to the 2012 New gTLD RPMs
 - ✓ Report to highlight any relevant findings, information or issues that may be relevant for the Phase Two work, and any issues that should be considered by the New gTLD Subsequent Procedures PDP WG
 - ✓ Report to be published for public comment

For Phase Two:

- Review of the UDRP
 - ✓ WG also expected to review its Initial Report, taking into account public comments received, and/or feedback submitted from the New gTLD Subsequent Procedures PDP WG and other relevant ICANN efforts
 - ✓ Second Initial Report to be prepared and published for public comment
 - ✓ Final Report to be prepared based on public comments received, and submitted to the GNSO Council

Next Steps



More Information:

- ◎ WG Wiki Page: <https://community.icann.org/x/wCWAaw> (contains all background documents, including Final Issue Report and WG Charter, recordings and transcripts of all WG meetings, and all drafts and published documents of the WG)
- ◎ WG Project Page: <http://gns0.icann.org/en/group-activities/active/rpm> (contains information on milestones for the PDP, including dates of PDP launch, public comment periods, adoption by GNSO Council and ICANN Board)