

Michelle DeSmyter>Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call held on Wednesday, 08 June 2016 at 16:00 UTC.

Michelle DeSmyter:Wiki page:

<https://community.icann.org/x/rhi0Aw>

George Kirikos:Hi Michelle.

George Kirikos:It looks like we're the early birds today. :-)

Michelle DeSmyter:Hi there George - yes! :)

Petter Rindforth:All on Summer holiay already?

George Kirikos:Hi Petter. What's a 'holiday'? ;-)

Petter Rindforth:I read about it in the Wikipedia...

George Kirikos:hehe Yes, something from mythology.... ;-)

George Kirikos:Perhaps some folks think the meeting is at 1 pm? (due to the Doodle poll)

George Kirikos:1 pm Eastern time, that is.

Mary Wong:@George, I hope not!

George Kirikos>Welcome David and Mary.

David Tait:hi george

Philip Corwin>Hello all

George Kirikos:Hi Philip, Elliot, Kristine, Statton, Sara and Steve.

George Kirikos:<<--- Walmart greeter :-)

Kristine Dorrain - Amazon Registry:Hi George. Thanks for the shopping cart.

George Kirikos:Thanks for the one-click checkout! :-)

Mary Wong:@George, LOL

Steve Levy>Hello all

Ankur Raheja>Hello All

Kathy Kleiman:Hi Everyone

Susan Kawaguchi:good morning!

George Kirikos>Welcome Ankur, Kathy & Susan.

Grace Mutung'u:hi all!

Rudi Vansnick:hi all

George Kirikos:Hi Grace & Rudi.

Kathy Kleiman:PDDRP is a tongue twister!

George Kirikos:Indeed, Kathy. I suppose ICANN ran out of 2, 3, and 4-letter acronymns already..... :-)

Robin Gross:I'd like to volunteer for this group as well.

George Kirikos:\*acronyms, even

Kathy Kleiman:Great, tx Robin

Mary Wong:We will start a mailing list for the Sub Team

Kathy Kleiman:@George: perhaps :-)

Grace Mutung'u:I would like to volunteer for the subteam too

Kathy Kleiman:Tx you, Grace

George Kirikos:Can we unlock the slides? (so we can scroll?)

Kristine Dorrain - Amazon Registry>Please include me for the

subteam also.

Marina Lewis:Hi Everyone!

khoulood dawahi:hii

VAIBHAV AGGARWAL:I am In. Traffic :-)

Philip Corwin:Thanks Kristine

Philip Corwin:And thanks Grace as well

George Kirikos:When the 2nd-level domain name is not owned by the registry, it seems that this 'ex parte' procedure might have serious due process concerns (i.e. the provider would not have both sides of the story, since the registrant isn't being represented).

VAIBHAV AGGARWAL:Sub Team Volunteer Plz

Kathy Kleiman:Tx Kristine and Vaibhav

Susan Payne:@George - the action is against the RO, not the registrant: 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).

Grace Mutung'u:Just wondering whether this PDDRP envisages other rights that may not be registered trade marks....

Philip Corwin:What is the initial filing fee and other costs to be borne in bringing a PDDRP?

George Kirikos:The 30 days notice prior to filing a complaint - something that we might want to utilize in the UDRP, when we get to it.

Kristine Dorrain - Amazon Registry:Forum's fee structure is similar to a traditional arbitration. From Forum's Supp Rules: Fees are a combination of flat administrative fees and hourly panelist fees. Estimated panel fees are collected up front and as needed throughout the process.

George Kirikos:Here's WIPO's PDDRP page -- <http://www.wipo.int/amc/en/domains/tmpddrp/>

George Kirikos:Fees are much higher than UDRP -- <http://www.wipo.int/export/sites/www/amc/en/docs/feestmpddrp.pdf>

George Kirikos:Up to \$30,500.

Cyntia King:Are fees recoverable if the Registry is found to be at fault?

VAIBHAV AGGARWAL:@GK the 2nd link dosent work

George Kirikos:Note how 45 day response period is far higher than the 20 days for UDRP.

Kristine Dorrain - Amazon Registry:George: That's because, spoiler alert, this is not a lightweight mechanism. A Provider can recommend a Registry be shut down.

Petter Rindforth:Question: in what amount have the PDDRP

providers at least received questions from TM owners (that may indicate that TM owners at least have considered using the PDDRP)?

George Kirikos:Vaibhav: Might be your browser? Links work fine here (or search Google for "PDDRP WIPO").

George Kirikos:Kristine: For a 7-figure domain name, the damage for a UDRP can be the same, for a respondent.

VAIBHAV AGGARWAL:Got it

Kathy Kleiman:@Petter - that 's a great question for the Providers

Kristine Dorrain - Amazon Registry:No argument there, George, though the INTENT of the UDRP was very lightweight and the INTENT of TMPDDRP was not.

Philip Corwin:Would be interested in knowing whether, when PDDRP was created, any consideration was given to permitting a "class action" -- that is, permitting a group of aggrieved TM owners to bring a joint action and thereby defray the considerable costs?

Jeff Neuman:@Philip - the answer to that is yes it was considered, but because of complexities of Class Actions (including who can represent a class, etc.), it was not accepted. Those could be handled in court

George Kirikos:Would the "remedial measures" , if they're discretionary, effectively transform the PDDRP panelists into defacto policy makers, which is really the role of the GNSO?

Philip Corwin:Thx Jeff

Cyntia King:Again, are fees recoverable if the Registry is found to be at fault?

Jeff Neuman:I probably should state for the record that I was involved in the original creation (for better or worse)

Jeff Neuman:@Cynthia -- there is your answer :)

George Kirikos:How do panels enforce 'costs'? i.e. they're not courts, so is there some jurisdiction that they all agree to, for enforcement of costs?

Kristine Dorrain - Amazon Registry:Yes, in full disclosure, I helped with the PDDRP Rules and developed Forum's Supp Rules, though I'm no longer at Forum.

Kristine Dorrain - Amazon Registry:George do you mean the procedure costs

Kristine Dorrain - Amazon Registry:Forum's rules require deposits like in traditional arbitration.

George Kirikos:Kristine: costs awarded against the unsuccessful party, by the panel.

Jeff Neuman:All costs from the registries can be recovered as a contractual matter with ICANN. In other words, failure of a registry to pay is a breach of the RA in and of itself

Kristine Dorrain - Amazon Registry:+1 Jeff

Jeff Neuman:As the Complainant must pay all costs up front, the case will not be heard if the Complainant doesn't pay its portion

Jeff Neuman:Complainant

Philip Corwin:How about appeal to a court? If a registry was to be shuttered I'd think they'd want that option.

George Kirikos:Jeff: I think ICANN has not had success collecting fees from contracted parties in the past, given the "correspondences" page. Might need to have deposits, etc.

Jeff Neuman:@Philip the remedy is termination by ICANN. The registry can "appeal" by invoking dispute resolution procedures under its registry agreement

George Kirikos:What's the jurisdiction for court proceedings? Is it a "mutual jurisdiction"?

Denise Michel:Thanks, Mary. Very useful

Jeff Neuman:@George - As ICANN decides the remedy ultimately, any "appeal" by the registry is done under the governing law provisions of the Registry Agreement

Kristine Dorrain - Amazon Registry:The PDDRP Rules also state: State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding, to the jurisdiction of the courts where the Registry has its principal place of business;

Jeff Neuman:@Mary - Can we get control of scrolling the slides ourselves?

George Kirikos:Thanks Jeff.

Mary Wong:@Jeff, done

Michael A. Peroff:Thank you, Mary!

Ankur Raheja:Thanks Mary

George Kirikos:If it costs \$30K+, I can see why no one has used it yet.

VAIBHAV AGGARWAL:The Read was Interesting Mary. Thank

Jeff Neuman:Remember a court proceeding looking at these matters would be hundreds of thousands of dollars if not millions

George Kirikos:Question: Can GROUPS of TM holders use the PDDRP, in a single complaint? (kind of like how groups of copyright holders go after The Pirate Bay, etc.)

Jeff Neuman: you are talking about taking away an entire registry

Kristine Dorrain - Amazon Registry:George, it depends on the provider. I don't think ADNDRC is that much. And Fpri,

Kristine Dorrain - Amazon Registry:And Forum's pricing starts at the cost of a UDRP and goes up based on requests from the parties (discovery, hearing, etc)

Steve Levy:I know that FORUM has identified potential Panelists since I'm one of them

Kathy Kleiman:@Jeff: exactly, it could be revocation of an entire registry, potentially with thousands or even millions of registrants...

George Kirikos:Jeff: some domain names are worth far more than \$185K. Although, it's good that you negotiated a better procedure for registries in the PDDRP, than registrants get in the UDRP!

Mary Wong:@George, on jurisdiction I believe that the Complainant has to agree to the jurisdiction where the registry operator has its principal office.

Jeff Neuman:@George, that is not the issue. In this case you are going after a registry for what other people do. In a UDRP you are going after the registrant for what it does

Jeff Neuman:BIG Difference

Susan Payne:I don't see that there is any need to remove this mechanism - even if we made no changes is there any burden to it remaining available for use should an appropriate case arise? Perhaps that's a question for the Providers - is there any ongoing cost to them in having this procedure available if not used?

George Kirikos:Jeff: Isn't the PDDRP going after what the registry does??!!?? (see the earlier slides)

George Kirikos:Part 3: "Registry Operator's affirmative conduct....."

Jeff Neuman:@George - this is more of a contributory infringement claim

George Kirikos:(on slide page 4)

Kristine Dorrain - Amazon Registry:Susan: I think one of the questions is "would changes make it more useful"?

Robin Gross:Question: given how much it costs to obtain a registry (far higher than we knew), is it TOO EASY to bring a TM-PDDRP action? And do we still need it?

Susan Payne:@Kristine - agreed. I was just reacting to the suggestion that perhaps we should remove this procedure because it hasn't been used

Marina Lewis:The Complainant needs to make a showing that the RO engaged in an affirmative pattern of bad-faith registration. Having a situation where many registrants register infringing domains on their own isn't enough. Otherwise, Verisign (.com) would have been the subject of a PDDRP a long time ago.

George Kirikos:Given the Communications Decency Act, for US-based registries, I think the law gives them broad immunity.

Cyntia King:I think it may be useful for the group to identify a few policies/procedures that should be carried across all mechanisms (given applicability). For example, the ability for the losing party to be assessed the fees of the prevailing party

should be considered for the UDRP, & URS.

Kristine Dorrain - Amazon Registry:Cyntia, we have to be careful because the different mechanisms do different things and ICANN has varying levels of control over the parties in each situation.

Statton Hammock:Well said Jeff. Thanks for sharing that insight.

Kurt Pritz:@Brian or anyone: can we point to any example where the PDDRP would be exercised, even if a willful blindness standard was in place? I don't think there is and would recommend that the standard not be changed until there are real-life examples where reducing the standard would serve the public good.

Cyntia King:Understood. But I think it may be helpful to have additional consistency, if we can.

Kurt Pritz:I.e., I don't think there is sufficient data in place to justify upsetting the existing policy.

Mary Wong:The PDDRP gives this example of infringement at the top level (by the registry): "An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark."

Kristine Dorrain - Amazon Registry:Apologies - I have a weekly conflict with this call so I have to jump. I'll catch the rest via audio and the list.

Mary Wong:Thanks for the help, Kristine!

Marina Lewis:The CDA is designed to protect OSP/ISP's who are passive platforms for infringing content. In a TRUE contributory infringement case, the CDA doesn't provide such sweeping immunity.

Cyntia King:@Mary: How is .SUCKS not in violation of "An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark."?

Caroline Chicoine:Just a reminder of how the Lanham Act deals with Registry and Registrar liability - Under the Lanham Act (Section 32) a domain name registrar, a domain name registry, or other domain name registration authority shall not be liable for damages under this section for the registration or maintenance of a domain name for another absent a showing of bad faith intent to profit from such registration or maintenance of the domain name.

Mary Wong:@Cyntia, I don't think I can respond to that question, sorry.

Cyntia King:@Mary: :)

Jeff Neuman:@cyntia - Mary couldn't answer, but I did :)

Mary Wong:We (staff) will double check the transcript for the oral discussion/questions.

VAIBHAV AGGARWAL:Is there a Provision for a Refund ?

VAIBHAV AGGARWAL:or Application Withdrawl

VAIBHAV AGGARWAL:and Refund

George Kirikos:Are we having a meeting on June 22nd (a few days before the ICANN meeting in Helsinki)? Or will it be skipped, to allow travel, etc?

Mary Wong:@George, I believe there will not be a meeting that day

Kathy Kleiman:@Vaibhav, are you asking generally, or after a specific outcome?

George Kirikos:It might be wise to offer a mediation service, to complement the PDDRP, given that the PDDRP has never been used.

VAIBHAV AGGARWAL:@GK good Suggestion so Mediation could be a Step - Try there - Pay Less and then Move on with a Heaftier fee to go ahead

George Kirikos:In my province of Ontario, there's a mandatory mediation program for civil suits, see:

<https://www.attorneygeneral.jus.gov.on.ca/english/courts/manmed/>

VAIBHAV AGGARWAL:@Kathy : I am asking a Question Specifically as part of the Process

Neda S. (Forum):Forum will participate as well. Thanks.

George Kirikos:Nominet also has mediation, for their domain disputes, I believe.

George Kirikos:(for .uk)

Cyntia King:Mediation as a first step should not be mandatory in this case, especially in hte case of clear & ongoing damage.

VAIBHAV AGGARWAL:Nominet is not Volunterily - it is mandated by the Regitry

VAIBHAV AGGARWAL:Can be confirmed

VAIBHAV AGGARWAL:as part of Data Gathering

VAIBHAV AGGARWAL:@Phil Can We send the Advance Claneders please

Kathy Kleiman:Everyone please fill out the Doodle poll!

George Kirikos:It's at <http://doodle.com/poll/5t5zaticrz9cfizf>

VAIBHAV AGGARWAL:I think we are missing some mails on the List

Kathy Kleiman:We are trying to figure out whether we can move the main meeting time one hour later

VAIBHAV AGGARWAL:Can We not just have a List with email IDs of the Group

Kathy Kleiman:Is that a problem for people, particularly in Europe and Asia?

Rudi Vansnick:thanks, till next call

George Kirikos:Bye everyone.

VAIBHAV AGGARWAL:Asia Shud be ok

Kathy Kleiman:Please send PDDRP Provider questions to the list!

WIPO - Brian Beckham:Yes, Kathy, we would appreciate leaving it

(the time) as is.

Marina Lewis:Thanks, everyone!

VAIBHAV AGGARWAL::-)

Georges Nahitchevansky:bye everyone

Robin Gross:Thanks, all, bye!

Denise Michel:Thanks

Darcy Southwell:Thank you!

VAIBHAV AGGARWAL:thanks Peeps

Steve Levy:Thanks Kathy

Kathy Kleiman:Tx Mary for a great presentation!