

ICANN Transcription
Review of All Rights Protection Mechanism and All gTLDs PDP WG
Wednesday 08 June 2016 at 1600 UTC

Note: The following is the output of transcribing from an audio recording of Review of All Rights Protection Mechanism and All gTLDs PDP WG call on the Wednesday 08 June 2016 at 16:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at:

<http://audio.icann.org/gnso/gnso-rpm-review-08jun16-en.mp3>

Operator: Excuse me, the recording has started.

Michelle DeSmyter: Great, thank you. Good morning, good afternoon, and good evening.
Welcome to the Review of All Rights Protection Mechanism and All gTLD
PDP Working Group call held on Wednesday, June 8, 2016 at 1600 UTC.

In the interest of time today there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe Connect room. So if you're only on the audio bridge, please let yourself be known now. Thank you.

I'd also like to remind all participants please state your name before speaking for transcription purposes. And also keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll hand the call over to Philip Corwin.

Philip Corwin: Yes, good morning, all. Phil Corwin here, one of your three co-chairs. I see we're joined by Kathy Kleiman, another one of the co-chairs. J. Scott Evans

has a (sic) office responsibility today that prevents him from joining us but he'll be back with us next week.

And on today's call we're going to be exploring the intricacies of the PDDRP, the Post-Delegation Dispute Rights Protection mechanism, but before that, the staff briefing which is going to take us through the PDDRP. We're going to confirm the members of the volunteers for the sub-team on the trademark clearinghouse data gathering.

Mary, do you have those names? I'm not able to access my e-mail right now. I know you put it in an e-mail to me last night. If we could just read out those names and confirm them and then see if anyone else has interest.

Mary Wong: Surely Phil. Hello everybody. This is Mary from staff. I actually put the names in the right hand (site pod) as well, so Phil I can read those out or you can take over.

Philip Corwin: No, since they're there I don't think there's any - we have six volunteers so far. We thank those volunteers for stepping up to the plate.

And if anyone else has an interest on being on this sub-team which is going to develop criteria and specific items that we want to gather data on in regard to the operation of the trademark clearinghouse, please get your names in by close of business today. I think after that we're going to close out the volunteer stage and let the sub-team get moving.

So anything to add on that, staff? Or did I handle that correctly? I see a check mark from Mary. I'm assuming that means I handled that okay. So again we've got this sub-team, six volunteers. If others wish to volunteer, please do so by the end of today. And then we're going to assume we have the final sub-team.

So – and now I'm going to step back and we're going to have about a 15 to 20-minute presentation regarding the details of the PDDRP. And after that we're going to have some initial discussion about it and move toward agreeing on questions for the providers.

There are three designated providers as you'll see. None of them have ever adjudicated a PDDRP but we're still going to hold conversations with them to try to get some understanding of why it hasn't been used. So staff, why don't you go ahead and begin the briefing and we'll open it for comments and questions when the briefing is completed. Thank you.

Mary Wong: Thank you Phil. Hello again everybody. This is Mary Wong from ICANN staff. And I will run quickly through this presentation which I should warn everybody ahead of time is somewhat textually lengthy. But we intended this set of slides to also serve as an informational resource for everyone and a reference tool, so that's why we've included quite a lot of text.

We've also included some links as you'll see to the actual text of the procedures and the rules as well as the providers. And following the session today we will send around the set of slides as well as post them on the working group Wiki.

So some reference to the trademark post-delegation dispute resolution procedure had already been made previously, including in our initial presentations about the various RPMs that were developed for the 2012 round of the new gTLD program.

We had also noted in some discussions I believe last week that this trademark PDDRP is one of three post-delegation dispute resolution procedures that were developed as part of implementing the new gTLD program.

You see here on this first slide in the second bullet point that there are two other such post-delegation dispute resolution procedures dealing with somewhat different subject matter and therefore not trademarks per se. One is on restrictions and registration and the other is on a registry operator's public interest commitments if that registry operator does in fact have some as part of their agreement.

So as we may have mentioned last week – and if not I'll just highlight it here – the three co-chairs will be in discussions with the co-chairs of the new gTLD Subsequent Procedures PDP Working Group as to the appropriate place and mechanism for reviewing the two other post-delegation dispute resolution procedures.

For now in our PDP working group, we will be focusing on the trademark PDDRP. And as you see on this slide, it is something that is specifically intended to assist trademark owners in situations directly with a registry operator where the trademark owner believes that the registry operator's use operation of its particular gTLD supports trademark infringement within that gTLD.

So a couple of high level general points that may be helpful. This of course would mean that the trademark infringement that one can assert could occur at both the top as well as the second levels of that gTLD. And of course as a dispute resolution procedure it provides a trademark owner with an alternative administrative proceeding rather than going to court.

Other noteworthy observations before we dive into the process is that even in terms of a second level assertion of infringement, because this is a procedure that works directly between the trademark owner and the registry operator, in essence this would not involve the domain name registrant of the domain name in question or the registrar.

And of course as we said before, this procedure as well as the others, the determinations that might come up from any of these post-delegation processes are binding on registry operators of gTLDs delegated in the new gTLD program by virtue of the registry agreement.

The last introductory point that I'd like to make is to emphasize a point that I think all of us already know but there's no harm in repeating that there are other dispute resolution mechanisms that we are looking at that deal with trademark protections.

And these as we all know are the uniform dispute resolution policy, which we will look at in Phase 2 of this PDP and the uniform rapid suspension system, which we will look at as part of this current ongoing Phase 1.

But what's important to note – and I think it might be evident from the remarks I made already – that the trademark PDDRP differs both in objective as well as in coverage and scope.

Phil had mentioned that there are several providers for this particular dispute resolution procedure. And I've listed the three providers that have been appointed so far together with links to their Web site and their applicable rules.

I note that we have some representatives from at least two of these providers as members of our working group, so hopefully if and when we have some questions they will be able to assist us with the answers to those questions from our working group.

In terms of the scope and the substance of the trademark PDDRP, like I noted, it covers possible trademark infringement at the top and the second level. The first general point that I'd like to make that covers both types of infringement -- and you see here that it's been underlined in the middle of the slide – that not only is the burden of proving the infringement on the

complainant, the standard of proof for the trademark PDDRP is clear and convincing evidence.

What else we have in this slide shows what it means when we talk about infringement at the top level. And that would be a reference to affirmative conduct on the part of the registry operator itself in the sense that either in operating or using the gTLD string which must be identical or confusingly similar to the complainants' mark, that operation or use, which amounts to affirmative conduct, causes or materially contributes to infringement of the mark.

And in the next slide I'll talk a little bit more about this phrase "causes or materially contributes." This must be proven as I've noted through clear and convincing evidence for infringement at the top level.

In comparison, for infringement at the second level, the same standard of proof, same burden of proof. What the trademark owner must show in this instance -- again looking at the affirmative conduct of the registry operator -- that there is a substantive pattern or practice of specific bad faith intent to profit from the sale of domain names within that gTLD that infringed the complainant's trademark.

So it is somewhat different for infringement at the top and second levels. And the other point to note here before moving on is that the scope of the trademark PDDRP does not cover scenarios simply when one can assert that the registry operator may be on notice that there is or there may be infringement occurring within its gTLD.

So mere notice for example that infringing names are contained within its gTLD registry or even if the registry operator knows that there are such infringing names within its registry and certainly if the registry operator did not monitor the registrations that come within its registry, in none of these three

situations would it amount to infringement such that the trademark PDDRP would apply.

That's in the policy itself, and so we've just reproduced some of that language here so that you can see in general terms the substantive scope.

As I noted before, there are some additional provisions as to what exactly is infringement both at the top and second level. Again at the top level, it must be affirmative conduct by the registry operator that causes or materially contributes to infringement of the complainant's mark.

And the PDDRP does list three possible ways where that kind of causation or material contribution could arise. I'm going to pause here for a couple of seconds to let folks read that first bullet point.

And at the second level, the type of infringement, again looking at the registry operator's affirmative conduct of the pattern of specific bad faith intent to profit from selling infringing domain names or again a bad faith intent to profit from the systematic registration of domain names which are identical or confusingly similar to the complainant's mark. And again there are three ways where that can occur.

I don't think that any of this will come as much of a surprise to many members who are experienced trademark practitioners as well as those who have participated in a bunch of the comment and development processes leading to this.

Again as I noted earlier we wanted to have this set of slides here as a reference point for you. So essentially we're talking about scope of infringement of the top and second level that encompasses one or more of these particular types noted on this slide.

In terms of where the scope ends, the limits of infringement, as I mentioned earlier, the simple fact that the registry operator may be on notice that there may be trademark infringement within its gTLD because there are infringing registrations or there may be infringing registrations is not enough.

In addition, liability does not attach with respect to certain types of domain name registrations, for example those that are unaffiliated with the operator or where there's no direct or indirect benefit to the registry operator aside from the registration fee and other incidental fees directly attributable to that. Again this is replicated from the PDDRP language itself.

I see that there is a comment by (Susan) in the chat that I believe is a response to George Kirikos and there's another question by (Grace). If you don't mind, perhaps I could return to these and we can discuss these in greater detail following the presentation. But please continue to type in questions or comments in the chat so that we can indeed return to this in the discussion portion.

So moving on from the substantive scope of the trademark PDDRP to the procedural steps, I think the one observation in general terms that we would make on this is that several procedural layers are involved.

And some of these, while looking broadly similar to the other administrative proceedings that might be associated with dispute resolution procedures attached to domain names, one of the things that may be noteworthy is that there is a preceding step required of the trademark owner that we've summarized in the first bullet point.

And this is that at least 30 days prior to actually filing a complaint the owner must contact the registry operator to notify it of the specific concerns the owner has and express a willingness to meet to resolve the issue.

The other procedural requirement for filing a complaint are attached to this slide as bullet points. And another notable point here is the non-refundable filing fee.

Phil I see your question in the chat about the initial filing fee and other costs. In terms of other costs we'll touch on those a little bit later. And I believe the fees are set by the providers but I'm happy to be corrected on that by any of the providers or anyone else who is on the call today.

The needful administrative review upon the filing of a complaint for procedural compliance reasons is very similar to some of the other dispute resolution mechanisms that you may be familiar with.

There's of course certain notice period days. What might be interesting or another interesting point about the procedural layers for trademark PDDRP besides the ones that I've already noted is that following a successful administrative procedural review there is a threshold review that must also be conducted.

And the point of that threshold review is to determine that the complainant satisfies certain criteria listed elsewhere in the procedure including standing. And you see on the slide that it is a review carried out by one panelist that is appointed by the provider within a certain period of time.

So we thought we might spend a little bit of time on the threshold review basically noting what it is that the single panelist is supposed to determine after completion of the administrative review and before proceeding on with the complaint and response.

And these requirements or criteria are summarized on this slide, so for example the fact that the complainant must be the holder of a word mark that is one of the three listed with a use requirement for nationally or regionally registered trademarks.

There must be some assertion of material harm on the part of the complainant. And the complainant is able to say that it did indeed do the pre-filing notification of the registry operator.

I notice in the chat that (Christine) from Amazon has put in a note about the fee structure of the national arbitration forum. Thank you very much (Christine) for that. And hopefully that helps illuminate the point that Phil wanted to make as well about the fees and costs.

Going back to the threshold review, is it possible to respond or oppose a threshold review? The answer is yes. So for the registry operator who will be the respondent, there is a period of ten business days to file papers from which the complainant then has another ten business days to oppose the filing.

The panelist for the threshold review then has a certain period to render determination as to the success or otherwise of the threshold review. And you notice here that the PDDRP proceedings themselves will commence on the merits of the case only if the threshold review is successfully completed by the complainant.

And so for that reason we thought it would be helpful for this group to note the existence and the scope of the threshold review.

Assuming that the complaint successfully goes through the administrative procedural review as well as the threshold review, then we look into the process itself for determining the complaint.

And in terms of what is required or what may be expected, again it's broadly similar to some of the dispute resolution mechanisms that many of us might be familiar with in other fora relating to trademarks.

So obviously a registry operator may file a response within a certain period of time and the complainant in turn following that period will be able to file a reply, noting however that the reply may not introduce new facts or evidence into the record and can only address statements that were made by the registry operator in its response.

The expert panel will then be convened within a certain period after all of these are filed, certainly at least after a complaint or response is filed. And again there is this concept of default, which again may be familiar to some of you from other mechanisms.

And a notice of default must be provided to both parties by the provider but nevertheless a determination will still be made. So essentially once we have the complaint that's filed the administrative review completed, threshold review completed, then we look to whether or not the registry operator files a response.

If not, then that becomes a case of default. If the registry operator files a response then we look to see whether the complainant files a reply before moving on to the expert panel and determination.

I'm going to pause here because I see that there's some discussion in the chat, including about the fact that the fees would be much higher than the UDRP. And that as I think (Christine) has noted is because of the nature of this PDDRP.

And we'll go to some of the remedies, including the one that (Christine) notes in the chat about terminating a registry a little bit later on.

George also notes that the response period is different than the UDRP. Petter you've asked a question about the providers receiving questions from trademark owners. I'm afraid that I don't have an answer for that but perhaps this is something we can refer to the providers.

So we then move on to look at what happens at the expert panel determination phase. This would normally be done by a single panelist unless a three-member panel is requested by either party.

The point to note here is obviously that the panelists who did the threshold review cannot serve on the expert panel for the same proceeding. The PDDRP also provides for how the three-member panels are selected, notes that the panelists must be independent of the parties, and advises that the providers' slate of experts should be rotated as far as is feasible.

Questions obviously arise as to whether discovery is permitted. And as noted here this is at the panel's discretion. Questions could also arise as to whether or not hearings are permitted, noting that up to this point everything would have been filed, transmitted and notified electronically for the most part.

And no surprise here, no hearings are expected unless they're requested by the parties or one of the parties are determined to be necessary by the panel. And even then they should be conducted by a remote means as far as possible and should in most cases not last more than a single day.

Following all of that, the expert panel is expected to issue its determination in writing within 45 days generally speaking but not later than 60 days except in cases where there may be good cause to do otherwise.

And I hope I'm not going too quickly. I hope I'm also not boring everyone to sleep but am glad to see the activity in the chat.

Let me move on to the remedies portion. As noted again earlier by (Christine) there's a variety of remedies that can be recommended by the panel. As with the other points, the general observation that staff would make here is that if we recall that the parties to a PDDRP proceeding are the trademark owner and the registry operator, not a domain name registrant, the so-called normal

remedies that we might be used to in say a UDRP context would not apply here.

So you wouldn't get a transfer, a suspension or a deletion for example. Instead under the trademark PDDRP a variety of so-called graduated enforcement tools may be recommended by the panelists if the complainant prevails.

And an inclusive list is noted on this slide, such as measures to be taken to guard against future infringing registrations, suspension of accepting new registrations until the violation identified is cured or after a set period of time.

And this third bullet point is the point that I think refers back to the fact that this is not a lightweight mechanism. It's quite expensive and it is quite unusual because in extraordinary circumstances where malice is involved, the panelists may actually recommend terminating a registry agreement.

The PDDRP does provide that in recommending any of these series or variety of remedies the panel should consider both harm to the complainant on an ongoing basis as well as possible harm for others including good faith domain registrants that are unrelated and who may want to operate within the gTLD.

In terms of a case where the panelist or panelists may find that a complaint was filed without merit, there are some possible sanctions listed in the PDDRP. And ICANN expects it to impose the recommended remedies in line with the panel's decision except in extraordinary circumstances.

In terms of cost, I notice that there's a couple of questions in the chat – one from (Cynthia) and thanks (Jeff) for your answer. This goes back in part to the non-refundable filing fee that I mentioned a few slides ago that in addition to that, the complainant must also pay the administrative fees estimated by the

provider, the threshold review panel fees, as well as the expert panel fees at the outset of the proceedings.

So Phil I think you had a question about that earlier as well. I hope this helps to answer that. And the remaining bullet point shows how those fees can be divided and paid. And (Cynthia) hopefully that last bullet point answers your question as to what happens when the complainant prevails on the one hand and what happens if the registry operator prevails on the other hand.

(George) I noted your question about enforcement of cost. I believe that the way the PDDRP is drafted it is ICANN that imposes the remedies. So it would not in my limited understanding be for the panels to enforce those. And I do not believe that it is a requirement that there is a jurisdiction to be agreed to for that purpose.

I note also that (Jeff) and (Christine) you were involved in developing the procedure as well as the rules So if you have anything that you can add, please feel free to jump in or correct me if I've misstated anything.

The last substantive point that I thought we could cover is the question of an appeal. And so it's important to note here that either party can seek de novo appeal, either on the basis of liability that was found or not or the remedies that were recommended by the panel.

And there is of course a certain period of time within which an appeal is to be filed and to which a response should be filed prior to a three-member panel being appointed by the provider to hear the appeal.

In terms of cost, again the appeal costs are borne by the appellant initially but the prevailing party may be awarded the cost of the appeal at the end of it.

So the final slide here basically tries to wrap it all up and highlight a couple of other specific things about the PDDRP. As I've mentioned, ICANN has to

impose the recommended remedies except in extraordinary circumstances. But there are certain provisions that allow for a stay if there is an appeal for example or just a waiting period to see if an appeal is indeed made from the expert determination.

It's important to note also that the PDDRP does not preclude either party from proceeding to a national court. And in that event if there is documented proof, the provider under the PDDRP should either suspend or terminate those proceedings.

And the final point that I wanted to make is about language. And the PDDRP specifies that all submissions and proceedings should be in English, but in terms of supporting evidence, there can be evidence provided in the original language of the parties with a translation accompanying it.

So on that note I hope that this quick run through the trademark PDDRP has been helpful in terms of showing us or reminding us what it is that the PDDRP was intended to do as between the trademark owner and the registry operator – the fact that it can address trademark infringement at both the top and second levels, the substantive scope in terms of what constitutes infringement, the multiple procedural layers including a couple of steps that would be different and additional to the ones that we're maybe more familiar with under say the UDRP and other mechanisms down to appeals costs and remedies.

The last few slides besides a slide for additional information is meant to kick start or be part of the discussion that Phil I'm going to hand it back over to you to lead. And these two slides deal first with specific questions about the PDDRP for the working group's list of questions, either those in the charter or to add to those in the charter.

And the next slide is meant for discussion to see if this working group has some questions that we can even at this stage send to the providers. And

here you see some suggested questions that the co-chairs and the staff in our planning for this meeting came up with for you to look at. On that note, Phil let me hand that back over to you. And thanks everybody for your attention.

Philip Corwin: Yes thank you Mary. That was very helpful and there was a lot of detail but there's no way to understand the intricacies of this rights protection mechanism without going through all the details.

I can think of a few reasons why it hasn't been used, but at this point I'd like to open it up. We have 25 minutes left on this call. We've got three suggested questions showing at the top of the slide here that's being displayed. But I'd like to open it up for, you know, discussion of other potential questions for the providers.

And we are having to have a dialogue with one or more of the providers on our next call on the 15th. But I think besides questions, you know, if people want to talk about their guestimates of why this hasn't been used and, you know, eventually we're going to have to decide whether we need to keep this type of mechanism, if there's a registry operator with bad faith intent to actively encourage infringement at the first or second levels.

And if so we have to decide whether this procedure is designed fits the bill and the reason it hasn't been used is that nothing of the kind has occurred so far in the program or whether folks think that there have been some shady operators but that the mechanism for various reasons just is not useful for addressing registry operator abuse.

So I'm going to stop talking right there and I see Petter's hand raised so Petter why don't you chime in with your thoughts?

Petter Rindforth: Thanks. Petter Rindforth here. Just going back to you what's called some suggested questions and I see Number 3, the feedback, what kind of feedback the providers had at this stage.

I noted on the chat that it would be interesting to see if - and what kind of questions/comments proposed users have made directly to the providers during (VCS). And I presume that could be included in that question Number 3, but that indicates also what kind of problems and topics and considerations trademark holders have had in at least preparing to using this dispute resolution system and may also indicate (unintelligible) why they don't have proceeded to use it. Thanks.

Philip Corwin: Yes thank you Petter. Anyone else with questions or comments, now is the time. Yes WIPO. I'm not sure who's on from WIPO but go ahead. Please identify yourself.

Brian Beckham: Yes hi Phil Corwin. This is Brian Beckham. I'm here with my colleague Ty Gray. And thanks for listening. And I think one of the questions from the working group charter was do the rights protection mechanisms collectively fulfill the objectives for (unintelligible). So in other words are they fit for purpose.

And I think it would be useful for this working group to go back to some of the comments that were submitted not necessarily throughout the entire policy development process for new gTLDs but (unintelligible) slightly shortcut by looking at the comments from the proposed final applicant guidebook.

And I've gone through and done that on my end, and I note that comments from entities such as the IPC, (Mark Senecta), INTA, Microsoft, Hogan Lovells amongst others called for application of a willful blindness standard.

And I think if we're going to ask the question why hasn't the PDDRP been used to date, that might be a very relevant question. Certainly it's one that

trademark owners have raised during the policy development process and subsequent to the launch of new gTLDs.

Philip Corwin: Yes thanks for that comment Brian. And, you know, many of the folks who filed those comments are part of this working group. They're all on the record and we'll be looking at those to see whether they pinpointed some weaknesses in this mechanism.

Certainly from the description that staff just provided a registry operator can be aware of very substantial infringement going on within their registry but still not be liable under this mechanism. Jeff Neuman I see your hand up. Please share your wisdom with us.

Jeff Neuman: Yes thanks Phil. So I have to go on the record and just say I am speaking now not on behalf of my current employer or any of my clients but as someone who drafted the PDDRP and was involved in the original groups that came up with this concept.

So Brian raised some comments, Brian Beckham, that I feel like we're in a seven or eight-year déjà vu right now because - but I would agree with him. I think his comments should be reiterated, WIPO's comments. But then I would also submit the comments that I submitted.

And there are some CircleID articles and others that talk about why willful blindness is not an appropriate standard. The registries also had submitted that information. Obviously ICANN found that persuasive enough to not have a willful blindness standard in there, so there's a lot of comments on that.

But I also want to go back to, you know, Mary did a great job in explaining the PDDRP. But I think we also have to go back and consider the rationale for this in the first place and how really extreme this situation and remedy is. And the fact that it has not been used I could say is almost by design.

But the actions of a registry operator need to be sufficiently extreme enough to justify taking away an entire registry for activities that it does not necessarily do itself. In other words in a UDRP action, you're going after a registrant directly for what the registrant does. And the remedy involves that name. Is that name being used in bad faith?

But here in the PDDRP you are going after a registry for what third parties are doing and if the registry is profiting off of that in some sort of way. But again it's what a third party is doing. It's not what the registry necessarily itself is doing.

All that said, you know, again it was meant to be extreme. It was one of those things kind of like analogous - I'll say it's analogous to the transition that we're going through now. We've proposed a removal of the entire board remedy if - as kind of a final backstop if everything goes wrong with what - on the accountability front.

I look at the PDDRP in kind of that way as well. It's as if everything goes wrong and a registry is condoning and participating in and benefitting off of infringement that goes on in its space. So the fact that it hasn't been used I don't view as a failure of the mechanism but actually is a testament to the seriousness of this kind of remedy of taking away an entire registry based on what really is the conduct of third parties. Thanks.

Philip Corwin: Yes thanks Jeff. Good thoughts, and Kathy Kleiman, fellow co-chair, go ahead Kathy.

Kathy Kleiman: Hi Phil. I wanted to support everything that Jeff's just said. This was not meant to be an easy remedy, and the fact that it hasn't been used I agree with everything he says. It's not necessarily any kind of failing in the mechanism.

I did just want to add one wrinkle because I was with the registries when we were editing this. And there's one more set of conduct that can be brought into a PDDRP, and that's if the registry's use itself is an infringement of the trademark, and really a substantial infringement.

I wanted to give the example we talked about a lot in those days just to share it, which is Dot Apple. So again this is before any of the new gTLD registrations and we talked about a registry operator getting Dot Apple for its generic use, perhaps Apple Growers or the Seattle Apple Growers, and then selling the registry at some later point and the registry itself becoming an infringement of Apple computers or Apple records.

That was envisioned. It's a far out concept but that was also one of the ideas and visions so I just throw that out there for people to keep in their heads. But the bar was intentionally made quite high. Thank you.

Philip Corwin: Yes thanks Kathy. And I see Brian back in the queue. Why don't you go ahead Brian?

Brian Beckham: Yes thanks Philip. This is Brian again for the record. I think – and maybe there will be time during subsequent calls for more questions but just to put these on people's radars -- during the discussions in the policy development process around the new gTLD program there were prohibitions or at least limitations on vertical integration between registries and registrars.

And somewhere along that process that was changed so that there were calls for application of the PDDRP not only to registries but also to registrars. So again, just wanted to get that on folks' radar.

And then another I think important question is there were questions around whether this should not address the underlying conduct. So if the ideas that there's a registry that allows rampant cyber-squatting under its watch, the PDDRP is focused on the registrar operator's actions.

And so a question that arose during these conversations was should that not also address the underlying conduct, yes albeit of third parties. But it seems that somehow it would miss the mark if widespread infringement in a particular TLD were to go unaddressed while there's an acknowledgement that the registry operator somehow facilitated that abuse but the underlying abuse itself remained unaddressed.

And then just wanted to try to briefly speak without answering it to a question (Curt) raised in the chat, which is I think it would be wrong of me or WIPO to try to answer or opine on what types of conduct would bring this into play.

But one of the things that folks might want to think about is there were a lot of questions raised around sunrise practices, trademark clearinghouse practices, or certain registries charging fees that were disproportionately high for trademark owners.

And is there any relation between the sunrise registration fees for trademark owners, in particular registries, to the conduct of the registry operator itself that would be relevant to think about in this post-delegation context. Thanks.

Philip Corwin: Yes thank you Brian. And Jeff I'm going to call on you in a second. I just want to interject a couple of thoughts. One of the questions I'd like the providers to be asked when we speak to them is whether they've had any inquiries from potential complainants who decided not to go forward and in particular whether there were specific questions about how the various standards might be applied.

I would think that one barrier to bringing this aside from cost is that there's never been an action so there's no certainty before you put a great deal of money up as to how some of these standards will be applied to particular cases.

On (Curt)'s comment and Brian's comments on that, I know that personally I have blocked - certain new TLDs go straight into my junk mail simply because I get a great deal of spam from them and much of that spam is certainly trademark infringing in the subject line if not in the content.

But, you know, whether that, you know, whether making a lot of domains available where they're at a very low or no fee where there may be no profit but they're used for spam purposes you've got the question whether there's any profit and you need to show profit under this standard.

And also is just having very inexpensive domains, would that show a bad faith intent? I think there's a lot of questions we could look at, but at some point in this discussion -- I don't want to broach the subject now -- but I think members of the working group should be prepared to cite if they believe a specific TLD is doing something wrong that should be covered by this, by some type of mechanism but isn't now.

We may want to get into specifics at some point. So having said that, Jeff why don't you go ahead and give us your further thoughts.

Jeff Neuman: Thanks Phil. And actually that goes to something I did want to address. And I'm not going to - again this is kind of a personal opinion not my employer or my clients. But I was surprised in that the one area I thought it could have been used - I'm not saying, you know, what the finding would have been.

But in theory one area I thought it could have been used is in situations where let's say a registry got the list of marks from the trademark clearinghouse and decided to increase the fees based on the fact that it was in the clearinghouse.

If there was ever a situation that I thought personally could be subject to this proceeding in the event that those names were actually purchased by infringers, the fact that the registry was charging a higher substantial fee I

thought could have been a ripe situation for the PDDRP if things fell into place.

Again I'm not pointing the fingers at any particular registry at this point but I do think if we want to analyze scenarios that could be one in which we could kind of play it through at least as a role play of that type of activity. Thanks.

Philip Corwin: Thanks Jeff. And I note now that we're about eight minutes before the end of the call so if there's one or two more short questions or comments why don't we take them and then we can see if staff has captured all the oral discussion as well as the chat room discussion for additional questions we want to pose to providers. And then we can talk about next steps and the next meeting.

All right, seeing no further hands up and no one speaking on the line I'm assuming that for now we're done with additional suggestions for questions and comments on this subject.

My understanding is that we're going to try to have one or more of the providers on next week's call. Is that correct, staff?

Mary Wong: Hi Phil, everybody. This is Mary from staff. That was the intention in the work plan. I think it depends on what the working group would like the providers to either respond to -- which if they're not able to be on the call they can respond to in writing -- or what they would like the providers to cover.

Philip Corwin: Okay well we've got the three questions on the screen. You have other questions you've captured from the chat room. Other people raised questions in the oral commentary I think. I assume those will be picked up and added to the list. And we can - I would suggest we circulate that list within the next 24 hours and make sure everyone's questions have been captured there for the providers.

One more I'd like to ask the providers just, you know, is for them to speculate on why there's been absolutely no use of this. Is it because we've had such a clean new TLD program or because there are problems with the mechanism? And I saw Scott Austin raising a hand. Why don't you go ahead Scott.

Scott Austin: Yes thanks Phil. My comment is this. As a UDRP panelist and we also receive training for the PDDRP and several other DDRPs and I note that (Christine Dorain) who's now with Amazon but was the director for (NAF) for many years and was in fact our trainer in those various other panelist roles is part of this team.

And I would only ask if in any of her notes from whether it was the training or the development of the policies themselves if it might be of use for those of us on this team who are panelists to perhaps get together and think of those things that have come up either in the experience with UDRP or in the experience with any other panelist roles.

There may be even some very advanced folks here who have fully arbitrated domain name disputes outside of the more scrutinized or standard UDRP proceedings.

But I really think this is an opportunity for us to weigh in on what are some of the things that either were omitted or that have been perceived as stumbling blocks by people who are actually sitting in the role of a proprietor or an arbitrator and any of the things that they see, whether it's an evidentiary issue, because this seems very wide open.

This PDDRP process seems much more wide open than the typical UDRP process. And I think that may be one of the reasons that it's difficult for someone to think through what are the costs going to be, what is the time frame. I mean, you've got the rule time frames I understand but there are also questions about extensions.

And the whole issue of an appeal process too I think is very new because it's an appeal to a different level within the provider ranks but yet, you know, sort of a - I don't know if those are people with more experience, more years of serving as UDRP panelists. You know, what are those people drawn from or are they just other panelists that serve in an appellate role and what are the standards there?

I mean, we're really embarking on an entire new – for lack of a better term – judicial or administrative tribunal process. And it really is an opportunity to sort of think it through. So I would just ask if there are any folks who have that kind of experience that they would really step up now because if this is a worthwhile proceeding or a worthwhile tribunal that's provided, it needs to be fleshed out.

Philip Corwin: Yes thanks for those thoughts Scott. I thought they were very constructive. And just thinking about this a bit more, you know, as we look at this and decide whether it should be left alone or whether it should be left in place and untouched in terms of substance or change I think we'll be trying to find the right balance.

We don't want to make - this is such an extreme measure where you can shut down a registry and extinguish a great many non-infringing domains. On the other hand if we believe that there's been egregious registry operator conduct that should have been caught by a proper mechanism and that this one falls short in being useful, we're going to have to consider that. So we want to keep the balance.

And Scott your hand's still up. I assume you're done. But so we're at three minutes before the top of the hour. I've asked staff to circulate an updated list of all the questions that came out of the chat room discussion and were made orally during this presentation and hopefully circulate that on the next - by sometime tomorrow so that working group members have a chance to review

it and make sure that any question they think should be put to the providers is on there.

We hopefully will get one or more of the providers to commit to engage in a dialogue next week. We've got WIPO on this meeting so hopefully they'll be willing to do that and hopefully someone from the other two as well.

And we – just to revisit – we confirmed and added some members to the TMHCH data gathering sub-team and we're going to shut down the volunteer stage of that close of business tonight and set up the e-mail list for that sub-team and get it moving.

And our next meeting will be one week from today. It's going to be the rotational meeting to accommodate people in the Asia-Pacific area, scheduled for 2100 UTC, 9:00 p.m. Greenwich time, 5:00 p.m. East Coast time. You can figure out your own time zone from that.

And staff anything else before we shut down the call or any final comments for any of the working group members?

Mary Wong: Phil this is Mary from staff. Just to note that the co-chairs will be hopefully making a decision soon about whether or not the times for the non-rotating call might change because of conflicts that were identified.

And also we will be coming back to the group with more details about the schedule for Helsinki, both for the open community session scheduled for RPMs work as well as the working group meeting that will be held separately but during the same week. Thanks Phil.

Philip Corwin: Yes thanks for reminding me about that Mary. And in terms of removing the conflict we have with the twice monthly registry stakeholder group call, which is a two-hour call, that's the reason we switched the 2100 UTC call from this

Wednesday to next Wednesday so it would coincide with one of those registry SG calls and eliminate the conflict, the time conflict.

We're going to do a Doodle poll. That hasn't gone out yet – or has it – but we're going to do a Doodle poll as to whether other working group members would agree either as the standard time for the other three meetings or at least for the other monthly meeting that conflicts with the registry stakeholder group call, whether it would be acceptable to move that back one hour from 1600 to 1700 UTC so that we can make it easier for our many registry stakeholder group members to fully participate in this working group. And has that Doodle poll gone out yet Mary or is that in the works?

Mary Wong: Phil if you're referring to the Doodle poll to...

Philip Corwin: Yes.

Mary Wong: ...where the proposal is to change the time from 1600 to 17, that has indeed gone out.

Philip Corwin: Okay then I've neglected to answer it yet. And I'd urge everybody to look at your inbox and respond to that poll as soon as possible so we can get a fix on whether we're able to accommodate the registry stakeholder group members on the other call where we presently have a conflict.

And with that, I'm going to close out the call and thank everyone for participating today. And we'll try to nail down participation of the PDDRP providers on next week's call and move forward with that. So thank you all very much for joining today and we're ending one minute late but we began two minutes late so we took up only 59 minutes of your time today. Thank you. Bye all.

Mary Wong: Thank you Phil. Thank you everybody.

Michelle DeSmyter: Thank you. Today's meeting has been adjourned. Operator please stop the recording and disconnect all remaining lines. Everyone enjoy the remainder of your day.

END