

TABULAR SUMMARY OF TM-PDDRP RESPONSES RECEIVED FROM THE THREE PROVIDERS
16 June 2016

WG QUESTION	PROVIDER RESPONSE	WG FOLLOW UP
1. Possible reasons why TM-PDDRP has not been used	<p><u>WIPO:</u> As a higher-level DRP, non-use doesn't necessarily mean it is not needed. There could be substantive reasons as well as the many procedural layers, e.g.: no willful blindness standard, two-pronged affirmative conduct requirement, questions about the burden of proof, questions about remedies, applicability to registrars, ICANN's discretion/role in decision implementation, potentially duplicative procedural layers, failure to expressly allow class/joined complaints.</p> <p><u>ADNDRC:</u> Burden of proof may be difficult to discharge, especially for second level infringements. Top-level infringements possibly minimized by existence of pre-delegation objection processes, TMCH and SDRP. Remedies may not be useful for second level infringements (TM owner may prefer to use UDRP or URS directly against the registrant).</p> <p><u>FORUM:</u> High substantive standards, particularly at the second level; procedure may not be well-known; unspecific nature of the remedies.</p>	
2. Any ongoing costs if procedure is retained even if not used?	<p><u>WIPO:</u> Case filing fees support case administration.</p> <p><u>ADNDRC:</u> Yes - System maintenance; staff training; business development.</p> <p><u>FORUM:</u> No.</p>	
3. Any feedback received from TM owners or Registry	<u>WIPO:</u> Some (along the lines of the topics outlined in response to Q1).	

Operators about potential problems or concerns?	<p><u>ADNDRC</u>: No.</p> <p><u>FORUM</u>: No.</p>	
4. Any enquiries from potential complainants who nevertheless did not proceed?	<p><u>WIPO</u>: See response to Q3.</p> <p><u>ADNDRC</u>: Yes, a couple of enquiries regarding the proceedings flow, case filing fee and available remedies but did not hear further from them.</p> <p><u>FORUM</u>: Very few enquiries about the general purpose of the TM-PDDRP (what does it do?). On a couple of occasions, parties who were facing a potential loss in a pre-delegation TMCH proceeding enquired about a potential TM-PDDRP filing post-delegation.</p>	
5. Operationally ready if complaint is filed?	<p><u>WIPO</u>: Yes.</p> <p><u>ADNDRC</u>: Yes.</p> <p><u>FORUM</u>: Yes.</p>	
6. Panelists selected?	<p><u>WIPO</u>: Yes.</p> <p><u>ADNDRC</u>: Yes.</p> <p><u>FORUM</u>: Yes.</p>	
7. Should mediation be added to the process?	<p><u>WIPO</u>: Difficult to positively answer in the abstract given the additional layers to the process that were created in implementation. As merely an additional layer, stakeholders may find it difficult to justify. If, on the other hand, a mediation component would serve to assist the parties in considering tailored settlement options or remedies (or e.g., to supplant the role of the Threshold Review Panel), then it might prove to be a useful addition to consider.</p>	

	<p><u>ADNDRC:</u> It could be an effective means of resolving disputes in a time and cost efficient manner following the principle of “Med-Arb”, “Arb-Med” or “Arb-Med-Arb”. However, a criticism could be made about the adverse effect on the panelist’s neutrality after having obtained confidential information from a party without the presence of another party during a fruitless mediation.</p> <p><u>FORUM:</u> Not recommended if mandatory, though an optional step could be considered (but in that case WG should also consider the additional fees if mediation is unsuccessful). FORUM does not believe that adding a mediation step will have a significant influence on triggering filings.</p>	
<p>8. Any additional feedback on TM-PDDRP at this stage?</p>	<p><u>WIPO:</u> See generally response to Q3; bear in mind that the TM-PDDRP is part of the “tapestry” of protections created for the New gTLD Program.</p> <p><u>ADNDRC:</u> More concrete wordings under paragraph, i.e. the available remedies, e.g.:</p> <ul style="list-style-type: none"> • Amount of monetary damages or sanctions other than the cost of proceedings • Actual direct actions by the registry operator that are contrary to those required under the Registry Agreement <p><u>FORUM:</u></p> <ul style="list-style-type: none"> • Since ICANN’s compliance has been influential in controlling the registrars and registries, why would a potential filer spend their resources to bring a claim under TM-PDDRP and, if successful, receive a recommendation from a panelist to ICANN when instead, it can go directly to ICANN compliance? • Although it has not been used so far, cannot be certain that it is unnecessary • Solidifying remedies could potentially trigger filings • Creating and analyzing example cases could be helpful in determining when TM-PDDRP can be used and who could use it. This process could shed some light on why it hasn’t been used so far. 	

9. Other suggestions	<u>ADNDRC:</u> <ul style="list-style-type: none">• WG should also seek feedback from panelists/arbitrators, especially those who have been trained in the PDDRP or who have extensive experience with similar administrative proceedings or arbitration.• More promotional events should be hosted jointly by ICANN, providers and registry operators.	
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