

FORUM's Responses to RPM Working Group's Questions Regarding the PDDRP  
As Discussed on June 15, 2016

- What reasons might there be for the TM-PDDRP to have not been used to date?
  - It is our speculation that the high substantive standards, particularly at the second level (Para 6.2), might be a reason for the TM-PDDRP to have not been used to date.
  - The few questions we have received about the general purpose of the policy show that the PDDRP may not be well-known or well-understood and therefore, underutilized.
  - Based on our general experience in alternative dispute resolution, the unspecific nature of the remedies available in TM-PDDRP could be another reason why it has not been used.
  
- Is there any ongoing cost to [providers] in having this procedure available if it is not used?
  - Not for FORUM.
  
- Have [providers] received any feedback from trademark owners or Registry Operators as to potential problems or other considerations in relation to using the TM-PDDRP?
  - No.
  
- Have [providers] received any enquiries from potential complainants who nevertheless decided not to proceed, in particular as to the standards to be applied?
  - FORUM has received very few enquiries about the general purpose of the TM-PDDRP (what does it do?).
  - In 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.
  
- How ready are the Providers in the event that a Complaint is filed?

FORUM is ready:

  - TM-PDDRP submission forms for both sides are available: <http://www.adrforum.com/gTLD>
  - FORUM's Supplemental Rules are available: <http://www.adrforum.com/resources/gTLD/Supplemental%20Rules-PDDRP.pdf>
  - Panelists designated: <http://www.adrforum.com/SearchPanelists>
  - Internal guidelines and procedures available for case coordinators
  
- Have the Providers identified potential Panelists?

Yes. About 35 panelists have signed up to hear TM-PDDRP cases. However, if the need arises, we can expand to our broader panel of domain dispute panelists.

- Would adding mediation to the Procedure be advisable?
  - FORUM does not recommend a mandatory mediation step. Forcing parties to mediate defeats the purpose of mediation, and at times frustrates the parties with undue delays.
  - We stand ready to consider administering an optional mediation step. However, the working group might consider the additional fees that could be added to the process in case mediation is unsuccessful and the proceedings continue. FORUM does not believe that adding a mediation step will have a significant influence on triggering filings under the TM-PDDRP.
  
- What other feedback do the Providers have at this stage, given that the TM-PDDRP has not been used and that the first New gTLD was delegated in October 2013?
  - ICANN's compliance has been influential in controlling the registrars and registries. This may raise a question as to 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 TM-PDDRP has not been used so far, we cannot be certain that it is unnecessary as a RPM.
  - 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.