[15-June-2016 WIPO Arbitration and Mediation Center replies to]
LIST OF QUESTIONS ON TM-PDDRP (from RPM Review WG call of 8 June 2016)

1. What reasons might there be for the TM-PDDRP to have not been used to date?

First, it is to be recalled that the PDDRP is intended to be a higher-level enforcement option; as such, the mere fact of its non-use to date does not necessarily indicate that there is no need for the availability of the PDDRP.

Reasons the PDDRP has not been used to date range from the substantive criteria to the various procedural layers. Merely to list a few examples, amongst a range of factors are: failure to accommodate a willful blindness standard, imposition of a two-pronged affirmative conduct requirement, questions about the burden of proof, questions about remedies – notably the failure to address the abusive second-level domain names underlying the PDDRP complaint, the applicability of the PDDRP to registrars (notably following V-I discussions), ICANN's discretion/role in decision implementation, potentially duplicative procedural layers, failure to expressly allow class/joined complaints, etc.

In any event, as mentioned on the last call, we suggest that as a minimum starting point, the Working Group go back and examine the thorough and extensive comments submitted *at least* in response to the Proposed Final Applicant Guidebook. For WIPO's part, these can be found at: *www.wipo.int/amc/en/docs/icann021210.pdf*.

Finally, we note that potential filing parties are likely to have additional feedback on this question.

2. Is there any ongoing cost to [providers] in having this procedure available if it is not used?

WIPO provides its ADR services, including the administration of tens of thousands of UDRP cases and the availability to administer PDDRP cases, on a not-for-profit basis. Any PDDRP case filing would incur filing fees which would in turn support such case administration.

3. 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?

We have received some feedback, particularly concerning the perceived limitations in the PDDRP as outlined in broad terms in reply to Question No. 1.

4. Have [providers] received any enquiries from potential complainants who nevertheless decided not to proceed, in particular as to the standards to be applied?

See reply to Question No. 3.

5. How ready are the Providers in the event that a Complaint is filed?

Founded on its globally-recognized expertise in the area of IP-related ADR, WIPO stands ready to administer PDDRP complaints. Our international and legally-trained staff is capable of handling cases in over a dozen languages. We have a dedicated PDDRP email address (in addition to email addresses for general queries) that we monitor regularly.

6. Have the Providers identified potential Panelists? (Note: at least one seems to have)

WIPO has publicly posted a range of PDDRP filing and informational resources, including its current list of PDDRP panelists at: *www.wipo.int/amc/en/domains/tmpddrp*.

7. Would adding mediation to the Procedure be advisable?

With the various procedural layers added to the PDDRP during the iterations of the Applicant Guidebook following its original proposal (*www.wipo.int/amc/en/docs/icann130309.pdf*), it is difficult to positively answer this question in the abstract. If mediation would merely be an additional layer, then stakeholders may find it difficult to justify yet another layer being added to the PDDRP. 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. It is recalled in this respect, that WIPO's experience with the UDRP has shown that settlement options are invoked in between 20% – 25% of cases; while these are not mediation-facilitated, it does show the relative benefit of parties considering options other than a full decision on the merits. (It is further recalled that some ccTLDs (e.g., .NL and .CH) successfully employ a mediation component.)

8. 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?

Generally speaking, see the reply to Question No. 3. We would also encourage this Working Group to bear in mind that the PDDRP forms part of the so-called "tapestry" of RPMs designed in connection with ICANN's New gTLD Program. Depending on the Working Group's consideration of, and indeed depending on any changes to other RPMs, there may be yet additional considerations to be taken into account in an assessment of the PDDRP's likely or intended effectiveness. (To name but one example, the relation between raised concerns over TMCH and Sunrise fees/practices, and registry operator conduct in connection thereto.)

Finally, please note that the above answers are provided merely as a reply to the specific questions raised by members of the RPM Working Group on its most recent call, and should not be taken as our comprehensive policy input on this or other RPMs.

In that light, thank you for this opportunity to provide some limited feedback on the PDDRP – an RPM intended to provide a progressive step towards self-regulation between *bona fide* stakeholders – and we look forward to providing additional feedback during this ICANN process.