

Adobe Connect chat transcript for 24 August 2016:

Terri Agnew:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group held on Wednesday, 24 August 2016 at 21:00 UTC for 60 minutes.

Terri Agnew:wiki agenda page: <https://community.icann.org/x/HQ6sAw>

George Kirikos:Hi folks.

Dominic DeLuca(FORUM):Just a general question. Were the finalized questions for the PDDRP providers going to be sent out this week?

Mary Wong:@Dominic, yes, we are planning to do that

Dominic DeLuca(FORUM):Thanks, Mary.

VaibhavAggarwal:Evening team

Steve Levy:Hello all!

Philip Corwin:Hi, Awaiting operator

Marina Lewis:Hi everyone

Philip Corwin:in now

Maxim Alzoba (FAITID):Hello All

Paul Tattersfield:Hi All

Brian Cimboric:Hi all

Terri Agnew:everyone has scroll

Terri Agnew:finding the line

George Kirikos:*6 to mute/unmute

Maxim Alzoba (FAITID):any kind of proof that registries done that?

Jeff Neuman:The RRDRP is for the Subsequent Procedures PDP, correct?

Mary Wong:@Jeff, I believe so

Jeff Neuman:I thought this PDP agreed to forward all RRDRP stuff to the Sub Pro Working group

Mary Wong:@Maxim, can you clarify your question?

Maxim Alzoba (FAITID):We have seen some investigations from Compliance which were not in scope of legal framework, do we know numbers of cases which were not dismissed?

Mary Wong:@Jeff, yes - so this isnt about reviewing the RR-DRP, it's just a note that there were complaints that were about the RR-DRP but none about the TM-PDDRP (illustrative comparison).

Maxim Alzoba (FAITID):lack of grounds e.t.c.

George Kirikos:Not very granular.

Jeff Neuman:ok - IF this Subteam can forward these to the Sub Pro PDP Work Track 2 team, that would be great

Maxim Alzoba (FAITID):Compliance tend to create self generated cases

Kristine Dorrain - Amazon Registry:RRDRP complaints require a filing with ICANN first: Complainants must have filed a claim through the Registry Restriction Problem ReportSystem (RRPRS) to have standing to file an RRDRP.

George Kirikos:Yes, we can hear you.

Susan Payne:thanks Caroline

Maxim Alzoba (FAITID):QUESTION: Could we clarify with the ICANN Compliance - how many cases survived grounds check? Are these numbers reflect all opened cases?

Mary Wong:@Jeff, per Caroline, we just have no additional info about the actual complaints to Compliance on RR-DRP, just the number of complaints.

J. Scott Evans:sorry to be late.

George Kirikos:Usually "other" should be a small proportion of cases (i.e. say under 25%). When "Other" is 3/4 of the cases, there's likely a problem with the categorization.

Maxim Alzoba (FAITID):then these numbers are not solid, so we can not use it as basis for work

Denise Michel:+1

Paul Tattersfield:and the Other

Mary Wong:SUGGESTION - We will circulate the updated list of Questions for Compliance (updated based on last week's call), as well as the new suggestions from this report, to everyone for review. The Sub Team can then follow up with Compliance on all the questions at the same time.

Mary Wong:@Paul T, are you asking that we also ask for more details about what types of complaints comprise the "Other" category? We can add that to the list if so, unless other WG members object.

Susan Payne:Caroline - I think "other" will turn out to be operational issues for registries such as timing of dealing with CZDS requests, data escrow delays, and that sort of thing

Maxim Alzoba (FAITID):@Mary, numbers without clarification of real cases vs. self created/dismissed are misleading in this approach

Paul Tattersfield:Yes thank you Mary I think that may be helpful

Mary Wong:@Paul T, ok, thanks

Maxim Alzoba (FAITID):Do we recommend to add cloutary mediation to all kind of DRPs? or only to this one?

Maxim Alzoba (FAITID):*voluntary

Mary Wong:Only this one - and that decision hasn't been made yet, it's simply exploratory at this point (or so it was intended)

Maxim Alzoba (FAITID):Why do we need to add additional layer of complexity to something never used?

Maxim Alzoba (FAITID):+1 @Jeff on no mediation addition

George Kirikos:If we go to our Charter, mediation was expressly mentioned:

<https://gnso.icann.org/en/drafts/rpm-charter-09feb16-en.pdf>

Statton Hammock:Also agree with Jeff and those iin support.

George Kirikos:(albeit in the context of the UDRP; but, same logic would apply)

Caroline Chicoine:Would the consumer survey we sent out help enlighten what if any need there is so can we postpone until we get results?

Statton Hammock:No mediation is needed. Parties can always enter into mediation on their own if they choose.

Beth Bacon:+1

Kristine Dorrain - Amazon Registry:+1 Jeff, et. al.

Mary Wong:@Reg, all - how we got here is that in early discussions about this, quite a few WG members seemed to think it would be a good idea to add/explore this. This was also indicated by the Doodle poll. That's probably how we got here, though of course it doesn't mean we shouldn't be hearing from those who don't support futher work on this topic right now.

Griffin Barnett:@George, not sure the same logic would necessary apply given the difference in use between UDRP vs. PDDRP

Kristine Dorrain - Amazon Registry:Agree, Griffin

Brian Cimboric:Agreed Susan

George Kirikos:I didn't say "thou shalt go and create a mediation program" -- just pointing out that this PDP had a broad scope.

Kristine Dorrain - Amazon Registry:Mary, I don't think anyone has said mediation is a bad idea. I think the problem is, we don't know yet what problem mediation is supposed to solve?

Jeff Neuman:Yes Phil there was an objection from me

Jeff Neuman:I thought the Doodle Poll was not well drafted on the issue

Jeff Neuman:and was biased

George Kirikos:@Kristine: isn't the "problem" self-evident? i.e. high litigation costs can be reduced by encouraging settlement discussions. Mediation helps get the parties talking.

Kristine Dorrain - Amazon Registry:No. What high litigation costs? Who said the PDDRP was expensive? No one has used it.

Jeff Neuman:thanks J Scott :)

Susan Payne:@George - I think you keep conflating the UDRP with the PDDRP. They are not the same thing

Kristine Dorrain - Amazon Registry:If there was evidence about the high cost of the PDDRP being a barrier to entry, then I would support discussing mediation.

Maxim Alzoba (FAITID):when party is not brave enough to go into the litigation ... most probably mediation is useless

George Kirikos:Your confusing PDDRP fees (by the ADR provider) with litigation fees (which are much higher, i.e. costs of discovery, costs of lawyers, time of managers, etc.)

George Kirikos:*You're, even

Statton Hammock:That was helpful J Scott.

Kristine Dorrain - Amazon Registry:We can't control litigation costs, we're talking only about PDDRP thought.

Kristine Dorrain - Amazon Registry:*though

Mary Wong:@J Scott, yes, that is our recollection as well.

George Kirikos:By the logic of "no one has used it", why not go further and ask "We should eliminate the PDDRP entirely?" :-) If it's just there as a deterrent, is there a more effective means of deterrent?

Statton Hammock:Move that we adopt the "Neuman Rule" going forward, namely, we should put forward no recommended change in processes, procedures, or mechanisms unless and until we have identified or gathered proof that a problem is evident.

Reg Levy - MMX:I agree, that comports with the way that I voted on the Doodle poll.

Brian Cimboric:agreed @Reg and @Jeff

Kristine Dorrain - Amazon Registry:Agree Jeff

Brian Cimboric:err @Statton, rather

Laurie Anderson:+1 Jeff

Mary Wong:@Jeff, the Doodle poll was formulated that way based on the general sense following discussions on that basic question in Helsinki and within the WG up to that point in time, so, yes, it's not the same question but the idea was to base it on discussions that had taken place.

Jeff Neuman:LOL: As I told Phil this would be Neuman Rule #2; Neuman Rule #1 is never call a meeting during lunch unless you are serving food.

Beth Bacon:+1 Reg and Statton- let's not try to fix problems that don't exist

Kristine Dorrain - Amazon Registry:@George: If we have data that supports elimination of the PDDRP then I think it's in our scope to discuss it. We first need data. Mediation is a fantastic solution. But we have no data indicating a problem.

Paul McGrady:Does "Review" mean improve without a problem or does it mean "identify and fix" problems. Improve with no known problems sounds like we will finish in 2032...

Brian Cimboric:+1 David

J. Scott Evans:well, the one problem we identified is that no one used this policy. Some felt cost was a problem and mediation might be a solution.

Laurie Anderson:Agree, Kristine. Unless we have valid data, there's no way to make an informed decision.

George Kirikos:Right, J. Scott. I think if you go back to the early calls, that was how things originated.

Kristine Dorrain - Amazon Registry:@ J Scott, is non-use a problem? OR a sign that registries are on the up and up? I thought we were starting to try to answer that question...

George Kirikos:So, if costs are an issue (and they ALWAYS are an issue), then things that reduce overall costs (and mediation is one such thing) *is* in scope.

Maxim Alzoba (FAITID):+1 @Kristine

George Kirikos:Costs are not the same as "fees", as pointed out above.

Beth Bacon:+1 Kristine

Jeff Neuman:@George - Mediation does not always lower the costs

Kristine Dorrain - Amazon Registry:Correct, Jeff. Mediation can be very expensive

Maxim Alzoba (FAITID):@George, costs of establishing a registry are way higher , so there should be some barrier to prevent blackmailing

George Kirikos:@Maxim: I hope you feel that 'logic' about barriers to blackmailing also applies to other DRPs, such as the URS and UDRP.

Maxim Alzoba (FAITID):@George URS is almost useless, so it could be the reason for low numbers even with 375USD price for up to 14 domains

Maxim Alzoba (FAITID):@George, this particular DRP kills business, unlike URS or UDRP

George Kirikos:URS and UDRPs also take businesses offline. Registrants are businesses too.

Paul Tattersfield:Generally if both sides would voluntarily seek and agree to mediation then it is difficult to see how it can be bad option for any framework to offer.

George Kirikos:(that should be an ICANN T-shirt, "Registrants are businesses too!") i.e. registries aren't the only 'business' out there....

Maxim Alzoba (FAITID):@George, please compare digits and you will see millions vs. thouthands

George Kirikos:@Maxim: many domain names are worth more than the \$185K ICANN costs of a TLD.

Kathy Kleiman:Tx you, Susan!

Maxim Alzoba (FAITID):@George, 185k is peanuts to real costs ... multiply by 10

Kathy Kleiman:Others from the TMCH Subgroup should feel free to add to the discussion...

George Kirikos:I noticed that in the report, a very high proportion of TMCH applications got "verified", however, as I pointed out over the weekend, in reality there's a big "proof of use" problem.

<http://mm.icann.org/pipermail/gnso-rpm-wg/2016-August/000474.html>

George Kirikos:If the USPTO's own audit showed that more than 1/2 the proof of uses were deficient, can we trust that the TMCH applied an equally high standard to their own reviews, where they approved close to 90%?

Maxim Alzoba (FAITID):@George +1, we can not :)

Lori Schulman:I am not so sure that PTO data is comparable since it is evaluated by International Classification under the Paris Convention. A very different standard.

George Kirikos:Right, there needs to be an audit of the TMCH "proof of use". The USPTO study was relatively recent (i.e. well after the TMCH was setup). So, it's not a problem policymakers were aware of when it was setup.

Jeff Neuman:@George - Have you noticed a problem? Have trademark owners gotten domain name registrations which you believe they should not have gotten because of an insufficient demonstration of use?

Kristine Dorrain - Amazon Registry:We would love more active participants!!!

Jeff Neuman:@Kristine +1 : I am on that small group and we need help ;)

George Kirikos:@Jeff: that's something we should survey. Of course, I don't personally register new gTLD domain names. :-)

George Kirikos:(plus, it's not just gaining domains; it's also creating claims notifications, which might cause prospective registrants to not register a certain domain)

Kathy Kleiman:The TMCH Subgroup meets on Fridays @11am Eastern for an hour. If you would like to join us, feel free to let Mary Wong or David Tait know, or just post in this chat room.

Jeff Neuman:@George, you are not required to demonstrate use to be enrolled in the claims service

J. Scott Evans:next week

Susan Payne:deadline is 3 Sept

Marina Lewis:Re USPTO vs TMCH, I think we're talking apples and oranges here. The problem with the USPTO is not that the proof of use itself is deficient, but that many registrants would be unable to prove use for EVERY item in the registration (as required under US law), should they be compelled to do so. TMCH only requires that brand owners submit proof of use for one item of goods/services, and it appears many TMCH users are properly able to do so.

Lori Schulman:Marina is exactly right.

George Kirikos:Marina: 16% of marks were entirely removed from the USPTO.

Maxim Alzoba (FAITID):we have seen situations where TMCH was gamed to obtain generic words

Mary Wong:Analysis Group will take on board public comments received, update the report if appropriate, and then publish a Final Report.

George Kirikos:It wasn't just proving all categories of use. i.e. 16% were so bad, they had to be eliminated.

Lori Schulman:There may be use but not the use in the original registration either of exact goods or in the same class, it is a nuanced evaluation.

Kristine Dorrain - Amazon Registry:Maxim, that would be helpful information to submit to the subteam.

Terri Agnew:Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 31 August 2016 at 16:00 UTC for 60 minutes.

Mary Wong:The Final Report will be sent to the GAC, who requested the review in the first place, and be available to the community (including our WG) to inform the community work (including our PDP)

Paul McGrady:Good call Phil!

Mary Wong:Yes

Jeff Neuman:@George - I do not believe that our role is to try to change National Trademark laws

George Kirikos:Bye folks.

Lori Schulman:Bye George.

Laurie Anderson:bye all

Monica Mitchell:Thank you

Jay Chapman:thanks, all

Paul Tattersfield:Thanks, bye All.

Susan Payne:thanks all

Maxim Alzoba (FAITID):good night

Greg Shatan:bye all!

Marina Lewis:bye all!

Steve Levy:Bye for now

Lori Schulman:ciao