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ABU DHABI

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The Uniform Rapid Suspension Procedure (URS) Rights Protection Mechanism – Community Feedback Session

GNSO Policy Development Process Working Group – Review of All Rights Protection Mechanisms (RPMs) in All gTLDs

ICANN60 (Abu Dhabi)

2 November 2017

Preliminary Notes on Working Group Charters

- All GNSO Policy Development Process (PDP) Working Groups operate within scope of a Charter approved by the GNSO Council

- The Uniform Rapid Suspension procedure (URS) is one of the rights protection mechanisms (RPMs) the Working Group was chartered to review

- This PDP Charter contains a list of issues and questions identified by the community over the past few years:

  - ***GNSO Council decided not to review/edit the questions; all were included in their entirety in the PDP Charter***

  - Working Group needs to refine the Charter questions as a first step to reviewing the RPMs

Questions Specific to the URS:

Response to Complaints; Defenses; Standard of Proof

⊙ Should the ability for defaulting respondents in URS cases to file a reply for an extended period (e.g. up to one year) after the default notice, or even after a default determination is issued (in which case the complaint could be reviewed anew) be changed?

⊙ Should the Response Fee applicable to complainants listing 15 or more disputed domain names by the same registrant be eliminated?

⊙ Is the URS' 'clear and convincing' standard of proof appropriate?

⊙ Are the expanded defenses of the URS being used and if so, how, when, and by whom?

Remedies; Appeals; Costs

- ⊙ Should the URS allow for additional remedies such as a perpetual block or other remedy, e.g. transfer or a "right of first refusal" to register the domain name in question?

- ⊙ Is the current length of suspension (to the balance of the registration period) sufficient?

- ⊙ How can the appeals process of the URS be expanded and improved?

- ⊙ Is the cost allocation model for the URS appropriate and justifiable?

- ⊙ Should there be a loser pays model? If so, how can that be enforced if the respondent does not respond?

Misuse; "Repeat Offenders"; Language

⊙ What sanctions should be allowed for misuse of the URS by the trademark owner?

⊙ Is there a need to develop express provisions to deal with 'repeat offenders' as well as a definition of what qualifies as 'repeat offences'?

⊙ Has ICANN done its job in training registrants in the new rights and defenses of the URS?

⊙ What evidence is there of problems with the use of the English-only requirement of the URS, especially given its application to IDN New gTLDs?

Questions about Providers (applicable also to the Uniform Dispute Resolution Policy in Phase Two of this PDP)

⊚ Assess the benefit of the Arbitration Forums self-reviews, including the WIPO Advanced Workshop on Domain Name Dispute Resolution, May 2015, in which inconsistencies of decisions, including in the free speech/freedom of expression area were candidly discussed and contemplated

⊚ Are the processes being adopted by Providers of URS services fair and reasonable? *(note: this question also included TMCH & UDRP providers)*

⊚ Are the Providers' procedures fair and equitable for all stakeholders and participants?

⊚ Are the Providers consulting with all stakeholders and participants in the evaluation, adoption and review of these new procedures?

⊚ What changes need to be made to ensure that procedures adopted by Providers are consistent with the ICANN policies and are fair and balanced?

- Are Providers exceeding the scope of their authority in any of the procedures they are adopting?

- What remedies exist, or should exist, to allow questions about new policies by the Providers offering URS services, and how can they be expeditiously and fairly created? *(note: this question also included TMCH & UDRP providers)*

- Are the Providers training both the Complainants and the Respondents, and their communities and representatives, fairly and equally in these new procedures?

- Is ICANN reaching out properly and sufficiently to the multi-stakeholder community when such procedures are being evaluated by ICANN at the Providers' request? Is this an open and transparent process?
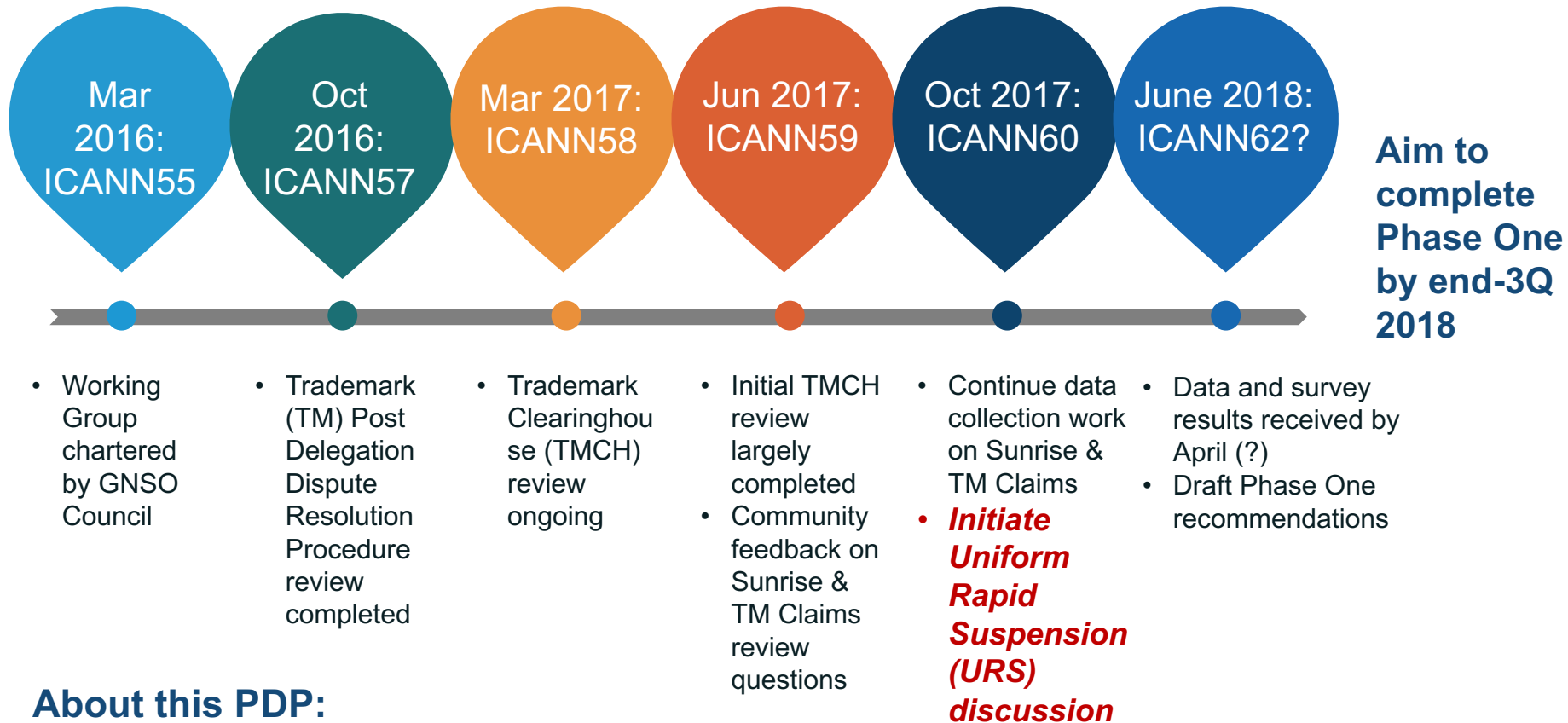
General Questions from the PDP Charter:

◉ Do the RPMs work for registrants and trademark holders in other scripts/languages, and should any of them be further "internationalized" (such as in terms of service providers, languages served)?

◉ Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use?

◉ Have there been abuses of the RPMs that can be documented and how can these be addressed?

◉ Whether, and if so to what extent, changes to one RPM will need to be offset by concomitant changes to the others

◉ Do the RPMs collectively fulfil the objectives for their creation… In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?

◉ Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?

- Do the RPMs work for registrants and trademark holders in other scripts/languages, and should any of them be further "internationalized" (such as in terms of service providers, languages served)?

- Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

- Are there any barriers that can prevent an end user to access any or all RPMs?

- How can costs be lowered so end users can easily access RPMs?

RPM Review PDP: Phase One timeline

Mar 2016: ICANN55

Oct 2016: ICANN57

Mar 2017: ICANN58

Jun 2017: ICANN59

Oct 2017: ICANN60

June 2018: ICANN62?

Aim to complete Phase One by end-3Q 2018

- Working Group chartered by GNSO Council

- Trademark (TM) Post Delegation Dispute Resolution Procedure review completed

- Trademark Clearinghouse (TMCH) review ongoing

- Initial TMCH review largely completed
- Community feedback on Sunrise & TM Claims review questions

- Continue data collection work on Sunrise & TM Claims
- *Initiate Uniform Rapid Suspension (URS) discussion*

- Data and survey results received by April (?)
- Draft Phase One recommendations

About this PDP:

PDP to review all the Rights Protection Mechanisms (RPMs) that are currently in operation
- Phase One - RPMs created for the 2012 New gTLD Program
- Phase Two - 1999 Uniform Dispute Resolution Policy (which applies to all gTLDs)

Further Information

URS Procedure, Rules & Requirements:

⊙ URS Procedure: https://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf

⊙ URS Rules: https://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf

⊙ URS Technical Requirements: https://newgtlds.icann.org/en/applicants/urs/tech-requirements-17oct13-en.pdf

Background on the PDP:

⊙ https://gnso.icann.org/en/group-activities/active/rpm (PDP background information)

⊙ https://community.icann.org/x/wCWAAw (Working Group wiki space)

⊙ https://gnso.icann.org/en/issues/policy-briefing-rpm-review-12oct17-en.pdf (Briefing Paper for ICANN60)

Engage with ICANN and the GNSO

Thank You and Questions

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