

Adobe Connect: 15

Members

Claudio DiGangi	Greg Shatan	Phil Marano
David McAuley	Jay Chapman	Philip Corwin
Diana Arredondo	Jeff Neuman	Rebecca L Tushnet
George Kirikos	Justine Chew	Roger Baah
Georges Nahitchevanky	Kathy Kleiman	Steve Levy

On audio only: none

Apologies:

Susan Payne	Collin Kurre	Sara Bockey
Petter Rindforth	Maxim Alzoba	Marie Pattullo
Brian Beckham	Paul Keating	Heather Forrest
Renee Fossen	Khouloud Dawahi	

Staff:

Mary Wong	Antonietta Mangiacotti
Ariel Liang	Terri Agnew

Terri Agnew: Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group on Thursday, 01 February at 04:00 UTC for 90 minutes.

Terri Agnew: agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_uAxyB&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl415cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=hOBHWhpepXVHnXtpV-vExjvLmEsajScm2QNWX9bvjpQ&s=LiMXh6jUB2iBYh_AmAVRL3xR69ajOiz0WIIUHG1a-1M&e=

George Kirikos: Hi folks.

Roger Baah: Thanks

Roger Baah: hello

George Kirikos: Hi Roger.

Steve Levy: Good morning. Good evening. Good gosh it's late here!

George Kirikos: I might be mistaken, but it looks like most folks here aren't from Asia-Pacific, so far.

George Kirikos: USA, Canada, and Ghana, from what I can tell.

Mary Wong: Heather (normally in Australia) is in Los Angeles for GNSO Council and Non-Contracted Parties House meetings this week but I am not sure she can join due to them.

David McAuley: My wife is from Asia-Pacific if that counts

Mary Wong: @David, that probably means I should count too, since I'm from Singapore :)

David McAuley: Love Singapore @Mary, and Manila, my wife's home and where I lived for five years

Steve Levy: I lived in Tokyo for a year back in the early 90s. So can I also be considered Asia-Pacific?

Mary Wong: Justine who is from APAC has just joined.

Justine Chew: Yes, hi all, I just got back to my desk.

Mary Wong: @GEorge, the first two bullet points are already in the Charter.

Mary Wong: So the co-chairs' specific proposal for questions for additional or focused consideration are really the four bullet points on the following page.

Phil Marano:@ Jeff, its true

George Kirikos:@Mary: yes. But, that's why I didn't want the "or as focused substitutes" clause to be in effect.

George Kirikos:Otherwise, we'd be replacing the 2 bullet points on page 9.

Georges Nahitchevanky:Agree with Jeff. The problem is that the review would be without the benefit of the underlying arguments and evidence made, as those are not publicly available. so the review would be subjective and in a vacuum

David McAuley:I agree with co-chairs and George and expect we have pretty much assumed the RPMs have been applied as intended and testing such assumption to make sure that is right seems fundamental – to make sure we know what we are reviewing. I think we can understand and treat appropriately subjective applications of standards.

Georges Nahitchevanky:You can't read a decision and say no evidence if you don't know what was actually submitted

Steve Levy:+1 Jeff

Phil Marano:Agree with Jeff. Also consider that the vast majority of Respondents don't bother to ever respond or proffer any evidence.

Steve Levy:URS decisions are, by nature, rather summary and panelists are not well paid. There's certainly room for better procedures by the providers. In any event, I expect poorly-supported decisions are outliers and not a significant number of URS cases./

Justine Chew:I agree with Jeff. Can undo decisions. Instead, can someone point us to some stats on such "anomalies" and see how rampant it is? And then work out how to remove undesirable, alleged "non-compliance" to standards, procedures etc.

Philip Corwin:The co-chairs do not envision that there would be any "reversal" of prior decisions

Justine Chew:* Sorry I meant to say CANNOT undo decisions. Typo.

Georges Nahitchevanky:Phil; It might not be a reversal, but judgment will be cast on decisions without knowing what was before the panelist

David McAuley:I find Jeff's second statement closer to what i expected - checking with providers to see if they are following procedures as expected - and also don't want for us to act in appellate capacity

Steve Levy:Agree with the approach of reviewing the providers' procedures rather than dredge up stated reasoning (or lack thereof) in all URS decisions

Greg Shatan:I think you cherry-picked my remarks, and in any event these would be questions for the providers.

George Kirikos:+1 Rebecca

Greg Shatan:I guess we are having a battle of the analogies.

claudio:just for the record, I expressed concerns re this bullet point two calls ago - we don't have access to the pleadings to make a determination about whether the panelists applied the correct evidentiary standards

Mary Wong:Perhaps one way to approach this discussion could be to ask, is there enough on the public record to enable meaningful qualitative analysis, especially in cases where no response was filed?

Justine Chew:+1 Mary.

George Kirikos:@Mary: we do have the panelists' summary of the evidence, from their point of view.

George Kirikos:Sometimes the decisions don't seem to be supported even by the panelists' own summary.

Philip Corwin:Good suggestion, Mary

Justine Chew:@George: I don't think we could or should rely solely on those if at all -- we aren't looking at WHY the panelists came to their conclusion but more so HOW they came to the same -- ie. procedures, standards etc.

Justine Chew:@George: But I grant you that sometimes it is a fine line there...

Rebecca L Tushnet:... whereas legislators come from purely neutral positions? But I agree: we have a mission that's to review what's going on. That includes what's happening in actual US cases.

Greg Shatan:Lost Jeff

Justine Chew:Yep

Rebecca L Tushnet:URS excuse me

David McAuley:lost audio

Philip Corwin:Jeff is gone

George Kirikos:The panelists themselves, often are from the pro-plaintiff TM side. "Let's not kid ourselves"same logic would apply to them, then?

George Kirikos:The phone is more reliable than VOIP.

Greg Shatan:No.

George Kirikos:(there seemed to be some noise on Jeff's line, when he started speaking)

Terri Agnew:Welcome back Jeff

Jeff Neuman Take 2:I dont know what happened

Jeff Neuman Take 2:But it froze my computer and had to reboot

George Kirikos:@Jeff: you might want to use the phone connection, to supplement the Adobe Connect (much more reliable by phone).

Justine Chew:@Kathy / Phil: Can you give us an idea of what sort of parameters or criteria you have in mind to apply to past URS cases to facilitate this qualitative review?

Jeff Neuman Take 2:@George - I am one who has cut the cord at home and my cell reception is terrible :(

Jeff Neuman Take 2:I live near Langley.....you make your own assessment from that

George Kirikos:lol :-)

Justine Chew:So some kind of checklist of sorts?

George Kirikos:+1 Phil. Yes, some of the "non-use" considered to be abusive.

Georges Nahitchevanky:The review idea as proposed will be difficult and not necessarily meaningful. Two parties can likely disagree if a decision is correct or not -- particularly where as here the evidence and submissions are not available. Moreover the idea of contacting complainants and registrants will open the possibility of disingenuous responses as who can say that what they say was what was submitted or argued.

claudio:@ Phil - are you referring to website use or email use?

Jeff Neuman Take 2:@georges - Exactly. But if we feel like the panelists are not being accurately instructed, or that they are not being given guidance on how the standard should be applied...that would be something to review

George Kirikos:@Georges: It would be easier to implement than Greg's proposal re: broad matching for the TMCH, which essentially requires building a huge system with each complex rule.

Georges Nahitchevanky:Warehousing of abusive domain names has been a major issue . Perhaps the working group should change the standard to bad faith registration or use

Justine Chew:+1 Jeff

George Kirikos:If "difficulty" is the appropriate metric, that's the most difficult task that has been proposed.

David McAuley:Recasting bullet #3 does seem a good idea

Justine Chew:Apart from the possibility of re-writing the 3rd bullet, from a procedural aspect, so, is there any reason why the 4 bullets in the Co-Chairs Statement could not be incorporated or covered in the Part Two Table Section M? Opposed to contained in a separate Co-Chairs Statement. Can we work within the limitations around the Original Charter Question?

Philip Corwin:No objection to recasting #3

Georges Nahitchevanky:They issue decisions

claudio:@Phil - how do you know the domain you were referring to wasn't used for email abuse to further phishing attacks?

Georges Nahitchevanky:Good point Claudio

claudio:most phishing attacks are not based on website use

Rebecca L Tushnet:That was me, Kathy, you covered it

Philip Corwin:@Claudio-- would it be too burdensome to tweak the decisional element requirements to require a sentence stating such bad faith phishing use? that would add less than a minute to issuing it

Jeff Neuman Take 2:@Greg - That is how I interpreted Phil's comments as well

Jeff Neuman Take 2:(looking into Jurisprudence)

Jeff Neuman Take 2:And looking into jurisprudence also assumes that decisions are meant to set precedent for future decisions. That is not a concept currently in the URS or UDRP

Jeff Neuman Take 2:Personally I think it should be to ensure consistency, but at current, there is technically no requirement that precedent be applied

Jeff Neuman Take 2:sorry "precedent be applied"

claudio:I support working off of one document

David McAuley:no objection here to such a move and reflecting this discussion

Justine Chew:Yes, makes sense to me to move these to Section M. And it answers my earlier question too.

George Kirikos:Here's an interesting example, Expedia.Reviews, which seems questionable (in my opinion). https://urldefense.proofpoint.com/v2/url?u=http-3A_www.adrforum.com_domaindecisions_1611443D.htm&d=DwIFaQ&c=FmY1u3PJp6wrcrwl13mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=hOBHWhepXVHnXtpV-vExjvLmEsajScm2QNWX9bvjpQ&s=cNw0tDcpXi2Enh0v7JoOY8-FRBgcjTaKDrpIzQDaeBk&e Domain resolved to registrar's holding page, and panelist claimed "Finally, the function of the Domain does not fit into any accepted definition of "fair use" such as comment, criticism, etc." False, given "reviews" is by definition comment, criticism.

Mary Wong: @Kathy, I'd raised my hand to say it's not for staff to extract suggestions made by Susan or Brian.

Mary Wong:Since we have had Brian's email up on screen for a while, we can do the same with Susan's, so people on the call can review it as well?

Georges Nahitchevanky:George you are operating in a vacuum as you have no idea what was submitted. Your example is thus not probative of anything

claudio:@George, that panelist may have determined the TLD .Reviews was irrelevant to the overall use of the domain

Jeff Neuman Take 2:@George - the danger of a 1 sentence reason is that we read things into that one sentence without knowing what evidence was actually presented to the panelist.

George Kirikos:@Georges: I do have an idea --- the panelists' own summary.

Jeff Neuman Take 2:We dont know what was in the complaint

Jeff Neuman Take 2:this is the problem with doing the qualitative review

Phil Marano:That is a bad example. The salient test is not what legitimate purposes a particular domain name might be used for, rather it is actual evidence of legitimate use, i.e. a business plan, whether the Respondent bothered to reply to demand letters, or the complaint, etc...

claudio:we need to know what the overall evidence was

George Kirikos:That was just a random case, browng the URS decisions at NAF.

Greg Shatan:You may have found at random, but it was not chosen by you at random....

Phil Marano:It's precisely the type of monday morning quarterbacking on panel determinations that would be a complete waste of everyone's time.

George Kirikos:@Greg: more random than the 33 self-selected INTA responses that were considered a "great survey" by some.

Georges Nahitchevanky:No you don't. A sentence might be poorly written, but you can't draw absolute conclusions as you are simply coming up with a script that you believe supports your point of view (but you may be absolutely wrong if you don't know what was actually submitted).

Greg Shatan:They weren't self-selected, except to the extent that all survey responses are "self-selective"

Georges Nahitchevanky:No maybe as random as the flowers example you provided

David McAuley:Excellent point Kathy, and these are good notes in that respect

George Kirikos:Another bad example, BCG.OOO: https://urldefense.proofpoint.com/v2/url?u=http-3A_www.adrforum.com_domaindecisions_1658674D.htm&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Aign-H4xR2EBk&m=hOBHWHpepXVHnXtpV-vExjvLmEsajScm2QNWX9bvjpQ&s=3KhA562QjE89MExVvbz0jKbyPJq7XZ442vvMjHgROLI&e=

George Kirikos:" It is seen that the Respondent is not making use of this website with bona fide offerings of goods or services in any commerce. Neither is the Respondent making any legitimate non-commercial use nor fair use of this domain name. Further the Respondent also does not claim any rights in the acronym BCG in any other manner. The website of the Respondent does not exist and is parked with the message "This page can't be displayed." This leads to a clear inference that the Respondents have acquired the domain name "<bcg.ooo>" for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark at a profit. Thus, the Respondent's registration and use of the impugned domain name by the Respondent is in bad faith."

Terri Agnew:Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 07 February 2018 at 18:00 UTC for 90 minutes

Philip Corwin:Good night and good luck

David McAuley:Thanks all, good bye

George Kirikos:Very bad reasoning, in my opinion.

George Kirikos:Bye folks.

Justine Chew:Interference into the minds / conclusions of panelists is off limits but simply whether they applied themselves to a 'checklist' of sorts given the circumstances of each case could be looked into.

Roger Baah:Thanks