

AC Attendance / 31 members

Brian Beckham	Kathy Kleiman
Claudio DiGangi	Kristine Dorrain
David Maher (PIR)	Lori Schulman
David McAuley	Marie Pattullo
Diana Arredondo	Maxim Alzoba (FAITID)
Gary Saposnik	Michael Karanicolas
George Kirikos	Michael R. Graham
Gerald M. Levine	Nat Cohen
Greg Shatan	Paul Tattersfield
Griffin Barnett	Phil Marano
Jason Schaeffer	Philip Corwin
Jay Chapman	Salvador Camacho
John McElwaine	Sara Bockey
Justine Chew	Zak Muscovitch

On audio only: Rebecca Tushnet, Mitch Stoltz

Apologies: Susan Payne, Petter Rindforth, Cyntia King

Staff: Antonietta Mangiacotti, Ariel Liang, Julie Hedlund, Mary Wong, Berry Cobb, Julie Bisland

AC Chat:

Julie Bisland:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday, 01 August 2018 at 17:00 UTC

Julie Bisland:Agenda Wiki: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_sANpBQ&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=tACswd9PRIJT_uyO-1euH757AjK-3LkcdcCvEE0D0o8&s=EH-Xd6N7wWz-HXs_mimlh2Hj9I9puaTy04sOBeS-gQQ&e=

George Kirikos:Hi folks.

Paul Tattersfield:Hi George, everyone

George Kirikos:Hi Paul.

George Kirikos:Yes, it did.

David:I got both emails

David:David = David McAuley

Paul Tattersfield:Julie, I got the emails however it doesn't show in my Outlook calendar like yesterday's subgroup meeting

David:I am going to leave room and re-enter with full name - am on phone as well

Julie Bisland:@Paul, maybe we can look into that further after the call, sorry for that

David:never mind, can't fix it

Maxim Alzoba (FAITID):Hello All

Philip Corwin:Don't care if Providers goes 2nd or 3rd today.

Mary Wong:We were advised that around 3-4 beta testers per survey is optimal, and as Julie is saying, to preferably include those not involved in developing the questions.

David McAuley:i prefer to look at it on list, see what skills might be needed

David McAuley:skills

Mary Wong:@David, I think just a willingness to go through one or more of the surveys before end of next week :)

David McAuley:Thanks Mary - I will probably volunteer

Mary Wong:(though obviously if volunteers had some familiarity with the target group for that survey, all the better!)

Mary Wong:i.e. registry operators, registrars, TM/brand owners, actual registrants, potential registrants = the various target groups for the Sunrise and Claims surveys.

George Kirikos:I disagree with Jason's assessment.

Mary Wong:The Providers Sub Team have also noted a few operational communications issues with some registry operators and registrars.

Michael R. Graham:Apologies for my lateness.

Philip Corwin:While URS Guidelines might be beneficial, as URS is a supplement to UDRP the WIPO Guidance is relevant. Also, a lot of that guidance concerns shades of grey situations, whereas URS only for black-and-white -- so any supplementary guidance would likely be shorter

Lori Schulman:URS is intended for slam-dunk cases. Not grey cases. That the results favor complainants demonstrates the intended purpose is fulfilled.

Michael R. Graham:Agree with the Practitioner Sub Team assessment.

George Kirikos:I disagree with the entire subteam's assessment, then, for the reasons previously statement.

John McElwaine:Sorry to join late.

George Kirikos:What are the errors (+/-) of a sample of 14? It'll be like +/- 25% or something.

Kathy Kleiman:Greg: is your hand still raised?

Greg Shatan:Not on my screen.

George Kirikos:https://urldefense.proofpoint.com/v2/url?u=https-3A__www.surveymonkey.com_mp_margin-2Dof-2Derror-2Dcalculator_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=tACswd9PRIJT_uyO-1euH757Ajk-3LkcdcCvEE0D0o8&s=ehuqL8yyldbvQ4BAVfgX4u6EeeHxtnBw27rhx9VcjpY&e -- calculator for margin of error; population size = 300, confidence = 95%, sample size = 14, margin of error = +/- 26% !!

George Kirikos:Even in the smaller unrepresentative group of "repeat customers" (34), it's +/- 20%.

Brian Beckham:Got it - thx Jason (makes sense)

George Kirikos:That "structural" problem is one of the subgroup's own creation. When we designed the survey, it wasn't intended only for those who were involved in 5 or more disputes.

George Kirikos:Go back and collect more data --- it's easy.

Gerald M. Levine:I noticed there were a number of pro se respondents. Any reach out to those respondents?

George Kirikos:Send it to ALL parties, regardless of number of disputes.

Kristine Dorrain:How do you expect to get that information, George?

Greg Shatan:George, where did you get your population size of 300? "Error rate" is only relevant to the extent that one seeks to claim this is representative of the whole population.

Brian Beckham:I would add to what Jason has said that there have been concerns raised about SMD files, I believe by John Berryhill, and that this SMD file issue has been captured

George Kirikos:@Kristine: the same way that population of 34 was determined, but with 1 or more.

George Kirikos:@Greg: you had mentioned 300 I believe a few minutes ago, when you spoke.

George Kirikos:A number like 800 or more might be more appropriate, though.

George Kirikos:Even with a universe of 34, though, it's +/- 20%.

Greg Shatan:That's a problem with your analysis then. I said I didn't know what the population was.

George Kirikos:It's obviously bounded by the number of disputes in total, i.e. less than 1000.

Greg Shatan:I just threw that number out as I was discussing.

George Kirikos:Riht, I used *your* number.

Greg Shatan:Where do you get 800 from?

Greg Shatan:I never said my number was accurate, nor that it was "my" number.

George Kirikos:A guesstimate, i.e. 1000 upper limit (really 2000, since there are 2 sides to a dispute).

George Kirikos:Subtracting multiple cases, another guesstimate.

Greg Shatan:Thanks for providing your basis, George.

Kathy Kleiman:the presentation of John Berryhill and Doug Isenberg earlier...

George Kirikos:+1 Zak, indicative of those who were surveyed, but very bad to extrapolate it to the entire universe, given that it was unrepresentative and small.

Kathy Kleiman:To Julie H: Document subeam is second -- can you queue up these slides?

Julie Hedlund:@Kathy: Done.

Mary Wong:A quick scan of the cases seems to show that (privacy/proxy aside) cases where a respondent engaged counsel may be fewer than 5% of all total cases, which is less than 20% of all the cases which saw a Response filed.

Kathy Kleiman:thanks!

claudio:Nice work Jason and subteam

George Kirikos:Some of those 14 people are likely participants of this Working Group, too. So, it would be elevating their input, to place them above other participants, since they were part of the survey.

Kathy Kleiman:survey anonymous

Michael R. Graham:@Phil -- Excellent points. We should not lose sight of the forest for the tree of the survey. All these surveys were intended to seek illumination, not to seek resolution.

George Kirikos:Only 1 respondent, lol.

Brian Beckham:So @Berry, that is 14 of the 20 that were surveyed?

Mary Wong:38 cases out of 827 = less than 5% (as noted upthread). And of that 38, it's less than 20% of the total number of cases where a Response was filed.

Berry Cobb:I filtered Rebecca's spreadsheet that contains a column that list the Respondent's Representative. There were 38 cases that contained a representative. A few contained privacy information, but ultimately narrowed down to 21 unique representatives. John Berryhill had 3 cases.

Greg Shatan:The primary goal of the survey was not statistical extrapolation.

Berry Cobb:....again this was just a very quick scan, subject to adjustment if more time is spent extracting that data set.

claudio:Goerge: I believe the purpose was to survey experienced practitioners, not registrants et al

George Kirikos:Let's suppose we only survey domain owners, when we sought data for UDRP reform? TM holders (representing complainants) would be up in arms.

Berry Cobb:and btw, of those 38 cases, 3 were denied.

Mary Wong:If you wish to review all the data and summary tables the Documents Sub Team collected and look at, the most recent versions are available here:

https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_NgdpBQ&d=DwlFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QIF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=tACswd9PRIJT_uyO-1euH757Ajk-3LkdcCvEE0D0o8&s=0Uv0xPf0gfdxhpH_JxrMmysuTloBAGFL21nZqA5BJ_8&e=

Mary Wong:Staff is consolidating the various data tables into the primary URS Data Compilation Staff Report (an earlier version of which was presented to the full WG), and will circulate that when ready.

George Kirikos:87% win rate for complainants when a response is filed is *much* higher than the win rate for complainants in UDRP cases where there's a response.

George Kirikos:(I believe it's closer to 50:50 in defended UDRP cases)

Gerald M. Levine:Not correct, George

Kristine Dorrain: ^This is likely data to show that complainants are generally filing cases only on clear-cut abuse cases that meet the higher standard.

George Kirikos: What are your numbers, Gerald?

Gerald M. Levine: Very close

George Kirikos: 87% win rate for defended UDRPs?

Gerald M. Levine: Over the years it has run from 85% to 92% (roughly)

George Kirikos: I'm thinking 3 member panels, true.

George Kirikos: Where it's closer to 50:50. You might be right for 1 member panels.

Gerald M. Levine: Correction for defended UDRPs. I think the % is 30% in Respondent's favor

George Kirikos: Laches / statute of limitations *will* be important for policymaking, though, going forward.

George Kirikos: These policies might not be reviewed for another 10 or 20 years. A respondent shouldn't have to be subject to these procedures for "aged" domains.

Lori Schulman: Sound just died

George Kirikos: Sound is fine by the audio bridge, Lori.

George Kirikos: Might want to dial-in if you're having trouble.

Gerald M. Levine: Higher % in favor of Respondent's where marks are weak which is also true in URS

Julie Bisland: @Lori, please message me with your phone number if you would like the operator to dial out to you

George Kirikos: That idea isn't practical. If it's available for registration by anyone, a drop catching service can grab it.

claudio: registrants who lose URS decisions should not be able to RENEW the domain upon expiry

George Kirikos: @Claudio: I agree with you. Seems to be a poor implementation.

George Kirikos: Policy was to allow the URS winner to renew it, and keep the suspension notice.

David McAuley: grab bag is good term

George Kirikos: (URS winner ==>> URS complainant, if they won)

Berry Cobb: From a review of the domain disposition, I only found one case where the losing Respondent re-registered the domain after suspension. Looking at the site, it appears to be consider legitimate use, although I won't claim to be an expert in that regard.

Berry Cobb: There are several cases after the domain suspension was lifted that it was re-registered by what appeared to be a different Registrant.

Mary Wong: David had a few specific suggestions for operational/administrative improvements, which are now included in the Documents Sub Team's consolidated table (available at the wiki link posted upthread).

claudio: @berry, I'm not referring to re-registering, but merely renewal

Berry Cobb: @Claudio - my apologies.

David McAuley: Thanks Mary and I also had one potential policy issue as well in our report, outcome

Kristine Dorrain: The point of not tying up a domain in perpetuity for URS was: 1. The complainant didn't want it (otherwise they'd have filed a UDRP), 2. the registry/registrant didn't want to continue to pay ICANN fees for suspended domains, 3. there may be other, legitimate uses that the domain could be put to.

Mary Wong: @David, yes and that's been noted too :)

claudio: @berry no worries.. but you are correct that it doesn't happen often, but it happens enough to act as a deterrent for some brand owners

David McAuley: thanks Matry

David McAuley: Mary, that is

claudio: I've worked with some clients who are reluctant to bring URS cases after they've won and the registrant renewed

George Kirikos:I notice some of the text in the chat is appearing in the "Notes" pod--- odd. Not sure if it's just me.

Mary Wong:@George, staff is incorporating suggestions from chat into the notes.

Philip Corwin:Setting aside dictionary words, if a domain targeted in a URS is identical or substantially similar to a unique, non-dictionary trademark it is difficult to envision a non-infringing use by anyone other than the TM holder (noting that fair use criticism websites usually have an additional term in the domain name indicating that use).

Julie Hedlund:@George: Staff has pasted chat into the notes pad where it relates to the notes.

George Kirikos:Oh, ok.

David McAuley:Thanks Brian

Kathy Kleiman:The issue of "negotiated transfer" came up as a suggestion from some Practitioners -- which seemed to be a voluntary settlement -- with questions re: how to implement.

Kathy Kleiman:Tx to Documents Subteam - and Brian - for a great presentation!

Michael Karanicolas:@Phil - I could see .sucks domains having a legitimate use. Environmental activists wanting to purchase Exxon.sucks, for example.

Philip Corwin:@Michael-- .sucks may be the exception that proves the rule

claudio:one issue we should consider is whether principles of res judicata (issue and claim preclusion) should be applied so a winning URS claimaint doesn't have to re-litigate the same facts under the UDRP (with a lower standard of proof) to obtain a transfer

George Kirikos:@Claudio: Ideally, if there was sufficient due process, there'd be an integrated single policy.

George Kirikos:So, one wouldn't have to do it twice. It would require some extra work to get it right, but I hope folks would consider that a potential goal.

Ariel Liang:The full responses from the Providers are on the spreadsheet here:

https://urldefense.proofpoint.com/v2/url?u=https-3A_docs.google.com_spreadsheets_d_11-2Dqe-5F14OkQT7IU-5FriHMQVa9Ebj8Ik6vay1vr5Yt9Zlg_edit-3Fusp-3Dsharing&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QIF-05YzARoSrVtYd84AB_UYInlydmFcjNmBM5XgySw&m=tACswd9PRIJT_uyO-1euH757AJK-3LkcdcCvEE0D0o8&s=3B2TFDI9SCunCIV9_mlqD8zf3-vl28r3bsJOFdekVUg&e=

Michael Karanicolas:@Phil - yes, maybe. I think I would concede that where the registration is for trademark that's not a dictionary word or common name, it's more than likely it's going to be an infringing use.

Mary Wong:This document on screen was circulated along with the agenda for this call.

Ariel Liang:And you can also download it from this wiki page here (last row):

https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_FBu8B&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QIF-05YzARoSrVtYd84AB_UYInlydmFcjNmBM5XgySw&m=tACswd9PRIJT_uyO-1euH757AJK-3LkcdcCvEE0D0o8&s=ucFKkiV8R6-KnciTy41Keskub82Z5HpOYPVEhQXJ-Mk&e=

George Kirikos:@Michael: also acronyms have multiple potential uses.

George Kirikos:i.e. 2-letter, 3-letter, 4-letter domains.

Michael Karanicolas:Agree @George

Mary Wong:For clarity, please note that this document from the Providers' Sub Team is limited only to those specific issues that the Sub Team noted may require follow up or policy deliberation. As Ariel has posted, the actual provider responses is available as a separate document on the wiki page.

George Kirikos:Nat made an excellent point today, see third comment at:

https://urldefense.proofpoint.com/v2/url?u=https-3A_domaininvesting.com_complainants-2Dwinning-2Dmore-2Dat-2Dwipo-2Deach-2Dyear-2Dbut_-23comments&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QIF-

[05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=tACswd9PRIJT_uyO-1euH757AjK-3LkcdcCvEE0D0o8&s=lZBW4g0weQbqf8cMil27fDUJa9IK5QPfMoUd7z69mHk&e=](https://www.icann.org/ipeds/05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=tACswd9PRIJT_uyO-1euH757AjK-3LkcdcCvEE0D0o8&s=lZBW4g0weQbqf8cMil27fDUJa9IK5QPfMoUd7z69mHk&e=) (in relation to UDRP, but logic applies to URS too). One needs to weight "errors" in decisions by the value of the domain name.

George Kirikos: If the panel makes an incorrect decision on a \$100,000 domain, that has more impact than "getting it right" on a 1000 cases involving \$10 "throwaway" domains.

Paul Tattersfield: it should be left alone

Greg Shatan: If one were to follow that logic (not recommended) one would also have to consider the value of the Complainant's rights as well. However, I don't think the "resale value" of a domain is germane in analyzing case outcomes.

Griffin Barnett: Agree w/ Greg

Michael R. Graham: @George K -- Weighting decisions by domain name valuation is an interesting concept -- but impossible to apply because domain names have no inherent or determinable value.

George Kirikos: @MichaelG: no inherent value?? Read DNJournal.com's weekly list.

Michael R. Graham: @Greg -- Agree "resale value" is not germane, even if determinable (which it is not).

Nat Cohen: @claudio - the URS decision would be based on the evidence presented, or lack of evidence presented if the respondent self-represents or fails to appear. As we've seen respondents rarely engage an attorney for URS disputes. A respondent may put more effort into developing defense for a UDRP dispute, and may engage an attorney if the transfer of a domain is at stake. Wouldn't want to see an assumption that prevailing on a URS should lead to an automatic transfer order through the UDRP.

Michael R. Graham: @George -- resale price has no place in the analysis.

George Kirikos: @MichaelG: I'll happily buy Expedia's Hotels.com domain name for \$1 million, since it has no 'inherent' value. :-)

George Kirikos: @MichaelG: some disputes are about more valuable assets, plain and simple. That's why there are small claims courts, vs. higher courts.

Kathy Kleiman: Applause to Phil and Providers Subteam - a huge effort!

Griffin Barnett: Yeah but determining whether the processes are working properly and as intended has nothing to do with the value of the domain name(s) at issue

Michael R. Graham: @Phil and Subteam -- Great work.

Jason Schaeffer 2: Thanks all. Need to jump for a 2:30 call

Kathy Kleiman: Phil, could you take questions at the start of the next meeting?

David McAuley: Thank you for presentations Jason, Brian, Phil

Kathy Kleiman: If there are any?

George Kirikos: If we can get documents at least 48 hours before meetings, that would be helpful.

Zak Muscovitch: Thank you to all subteam leaders, Phil, Jason, Brian, and Kathy, and staff.

Nat Cohen: Thanks to all sub-team efforts for all your work.

Julie Bisland: Wednesday, 08 August 2018 at 17:00 UTC for 90 minutes.

George Kirikos: 5 hours doesn't give much time to review them.

George Kirikos: Bye folks.

Kathy Kleiman: Good idea, Brian

claudio: Nat, the losing registrant in URS risks losing the domain (upon expiration)

Jay Chapman: Thanks, all

Griffin Barnett: Thanks all

Paul Tattersfield: thanks all bye

Lori Schulman: Thank you and thanks to the URS subteam

Maxim Alzoba (FAITID): bye all

claudio: ciao

Greg Shatan:Bye all

Julie Hedlund:Thanks everyone -- bye!