

Attendance: (40 Members)

Benjamin Akinmoyeje	Marie Pattullo
Brian Beckham	Martin Silva Valent
Chris Thomas	Maxim Alzoba
claudio	Michael Karanicolas
Colin O'Brien	Michael R Graham
Cyntia King	Mitch Stoltz
David Maher	Paul Tattersfield
David McAuley	Peter Müller
Diana Arredondo	Petter Rindforth
Elisa Cooper	Philip Corwin
Gary Saposnik	Poncelet Ileleji
George Kirikos	Renee Fossen
Georges Nahitchevansky	Roger Carney
Gerald M. Levine	Salvador Camacho Hernandez
Greg Shatan	Sara Bockey
Griffin M Barnett	Scott Austin
Jason Schaeffer	Steve Levy
John McElwaine	Susan Payne
Kathy Kleiman	Zak Muscovitch
Kristine Dorrain	

Audio only: Dale Nelson

Apologies: Rebecca Tushnet, Justine Chew

Staff: Mary Wong, Berry Cobb, Julie Hedlund, Dennis Chang, Ariel Liang, Antonietta Mangiacotti, Michelle DeSmyter

AC chat:

Michelle DeSmyter:Dear all, welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday, 08 August 2018 at 17:00 UTC.
Michelle DeSmyter:Agenda wiki page: <https://community.icann.org/x/uwNpBQ>

George Kirikos:Hi folks.

Michelle DeSmyter:Hi George, welcome!

George Kirikos:Hi Michelle.

Michael R Graham:Calling in for audio

George Kirikos:Updated SOI: <https://community.icann.org/x/O7rhAg>

George Kirikos:*6 to mute/unmute

susan payne (SCA/valideus):sorry to be late

Brian Beckham:@Julie, just lost my connection - dialing back in

Steve Levy:Sorry I'm late!

George Kirikos:Access to the Courts, for example, is a topic I raised, which isn't in the table. Statute of Limitations, whether URS should apply to legacy gTLDs as a consensus policy, are just a few of the topics not in the table.

Mary Wong:@George, the topics are what the WG agreed to several months ago.

Maxim Alzoba (FAITID):Hello all, sorry for being bit late

Martin Silva Valent:Hi all

George Kirikos:@Mary: Access to the Courts should have been in those "questions" from months ago.

George Kirikos:Hi Maxim.

George Kirikos:Hi Martin.

Cynthia King:I cannot hear the speaker

George Kirikos:Can't hear him -- its intermittent here.

Griffin M Barnett:Brian is very difficult to hear/understand

Georges Nahitchevansky:Can't hear Brian

Michael R Graham:Brian is breaking up

George Kirikos:Is he on a cell phone?

Kathy Kleiman:+1 This document should be a summary of where we are thus far...

Mary Wong:@George, apologies but as Julie has noted, the WG went through a discussion of all the URS-related topics that should be included on the table. Each Sub Team then did

very substantial work on data collection and reviewing what came back. While the actual Sub Team recommendations and suggestions captured in this document are what is intended the WG should discuss - to see if it wishes to develop policy or operational recommendations - discussion over what should be on the actual list of topics should not be reopened unless the WG agrees to do so.

David McAuley (Verisign):sorry to be late

George Kirikos:@Mary: I don't think that's correct, as there were questions that were in previous documents that aren't present. Access to courts used to be in one of the tables.

George Kirikos:(i.e. the Yoyo.email issue)

George Kirikos:If there's no standing to bring a court action by a registrant, that needs to be corrected within the policy itself.

Mary Wong:@George, if you can point the group to the previous documents you had in mind, that will be helpful. Staff has not changed any of the topics on the table since the WG agreed to the topics.

George Kirikos:I thought that up in November 2017 (see: <https://mm.icann.org/pipermail/gnso-rpm-wg/2017-November/002585.html>) and it was reflected in a later document.

George Kirikos:I don't have time to check now, but i do recall it in one of the docs.

Mary Wong:As noted, this list of topics was what the WG agreed to after discussion.

George Kirikos:That's a critical issue for registrants. if they don't have access to the courts to challenge a URS decision, then it's a huge denial of their rights.

Brian Beckham:<REPLY> To George's question - while the chart is not meant to foreclose further discussion, it is a good faith attempt at capturing the work of the subteams. The purpose of today's, and likely the next few, calls was to make sure this was an accurate and comprehensive reflection of our discussions so far. That said, WG members should bear in mind that we are seeking consensus, so items which are unlikely to achieve that may not be appropriate to reflect as a recommendation, but could be included in public comments on the Initial Report. Also, before adding items to this chart, we will want to work with staff to see whether such topics was previously discussed, and if so, the level of agreement/consensus. In other words, it is not necessary final, but is equally an opportunity to reintroduce topics which have been discussed, but for which consensus is/was not possible. <END REPLY>

Michael R Graham:@George -- I do not believe ICANN is in the position to create standing for a lawsuit insofar as it is not a legislative nor judicial agency. Standing issues must be

determined by the Courts and the Legislatures. If this is not what you were suggesting needs be addressed, apologies.

Mary Wong:@George, as that is not on the list of topics, staff presumes that no one has suggested taking that right away as a topic of discussion. There IS a topic at the end of the document about "alternative processes" (although that is not quite the same thing), BTW.

Griffin M Barnett:Agree with Michael; I think all an ICANN policy can do vis-a-vis standing, is indicate that parties can pursue other legal remedies

George Kirikos:@Michael: URS (and UDRP) wasn't intended to be the "final" word.

Michael R Graham:@Mary -- Agree. The "alternative processes" provides ability to discuss.

Griffin M Barnett:It would then be up to any court or other applicable body to make a determination as to standing, etc. under applicable law

Paul Tattersfield:@Michael we are not here to design a litigation strategy we are here to build an equitable framework

Griffin M Barnett:I thought we were here to review the RPMs?

Griffin M Barnett:.)

George Kirikos:@Griffin: A complainant would have standing, of course. But, there's a "role reversal" that happens, where it's the registrant filing a lawsuit (not the TM holder). In which case "standing" might not exist anymore.

George Kirikos:That's an unintended consequence of the policy, which should be addressed.

Griffin M Barnett:not sure i follow you George

George Kirikos:(both in the URS and UDRP). See the thread linked to above.

George Kirikos:The topic *was* on the list, see Question G.1 in the questions. It was summarized merely as "External 'appeal' via filing court proceedings"

George Kirikos:This was in the doc at: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_download_attachments_79432641_URS-2520Docs-5FICANN61.pdf-3Fversion-3D1-26modificationDate-3D1520631910000-26api-3Dv2&d=DwIFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl415cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwwehFBfjrsjWv9&m=QN4jDiTx-d596wbudanb6f0mbqbI6_qbBVyXfT5I9qg&s=yPHLOazgLATonZl2bqXZ9_E5jqj-YRz-GXXeH-ler4I&e=

Michael R Graham:@Paul -- Correct -- equitable and supporting DNS.

George Kirikos:So, it's not reflected in this new "super consolidated URS topics table", but *was* in the earlier set of questions, as I recalled)

Kathy Kleiman:@All, could we focus on the materials before us; @Mary: could we create a list of "missing issues" -- a list of issues raised in this call (and calls to follow); we can evaluate the nature and weight of these ideas later...

Mary Wong:@George - you are referring to one of many specific questions (including charter questions) that were discussed as part of the topics within some of the Sub Teams.

Mary Wong:It was not a separate topic.

Philip Corwin:Can we please unlock the document as some provisions straddle 2 pages?
thanks

Michael R Graham:@Kathy -- Thank you!

Ariel Liang:unlocked

Philip Corwin:Thanks

Ariel Liang:np

Brian Beckham:#George, this was discussed, and did not achieve agreement

George Kirikos:@Brian: the subteams aren't the entire working group, as you know.

Gerald M. Levine:In any event, equitable defenses would raise a genuine contested issue thus outside the scope of the URS

Cynthia King:Not sure that ignorance of an offending registration is not absolution of infringement.

John McElwaine:I don't support rehashing concepts that had no support

Griffin M Barnett:Content of domain names can change, though so if a domain is inactive or something for a long time, then suddenly becomes active in connection with something infringing/abusive, then any limitation period (which I don't agree there should be one in any case, but assuming, arguendo, there is one) should not run until the change in content is reasonably noticed by the TM owner

George Kirikos:No support? I'm supporting it.

David McAuley (Verisign):+1 @Kathy

Griffin M Barnett:In any case, I agree this substantive discussion may be premature for this exercise

George Kirikos:There are limitation periods in real courts.

Cyntia King:It's like "adverse possession" in real estate or "squat it til you own it."

Mary Wong:We encourage all WG members to review all the previous reports from each Sub Team, and all the documents they worked on. They are linked in this document.

Griffin M Barnett:@George, sometimes but not always

Brian Beckham:@Kathy, I agree, and this is what I tried to express in my "reply" -- let's capture these items

Georges Nahitchevansky:Ignorance depends on the situation. there is a concept of willful blindness and the duty to search. If such did not exist then anyone could claim they were unaware of another's rights

Mary Wong:@Kathy, this was discussed wthin the Docs Sub Team and reported to the WG - no objections or other comments were made, so this is not a missing issue (though staff obviously will keep a list of any actual missing issues that we inadvertently omitted).

George Kirikos:@Griffin: a registrant who owns a domain for 20 years shouldn't have to be concerned about a policy that can take their domain down with very short time period to respond.

Griffin M Barnett:They should be, if they suddenyl start using it for something they shouldnt

George Kirikos:There's no "urgency" that requires a URS for a long-term domain owner. At some point, it needs to die.

George Kirikos:@Griffin: *no*, because it is then hard to argue it was *registered* in bad faith.

Griffin M Barnett:That would be for the panel to determine

Marie Pattullo:+1 to Griffin.

George Kirikos:Nearly all the URS practitioners surveyed were Complainant counsel.

George Kirikos:So, it's missing for that reason too.

Kathy Kleiman:@Mary, I agree with Phil. Let's keep the list now... Just because it hasn't been raised in the past does not mean it is not an issue for the future...

George Kirikos:If more Respondent counsel had been surveyed, it would have certainly been mentioned as an important issue. Neither were registrants surveyed.

susan payne:@George, that would only even be an option if the trademark pre-dated. But it seems to me this is unlikely to be a situation in practice where a URS was brought because it would probably not be a "slam dunk" case after 20 years unless there had been a change of circumstances

George Kirikos:All of this is moot if the URS only applies to new gTLDs.

Griffin M Barnett:Agreed Susan

George Kirikos:But, some want to make this a consensus policy. In which case a large number of domain owners in com/net/org would be adversely affected.

Griffin M Barnett:George - I mean the URS could apply 10, 15, 20 years from now...

Cyntia King:@Georges - length of infringement is a matter for consideration, but should not be an automatic pass.

Mary Wong:On the issue of delay and laches - as reported by the Docs Sub Team, the data did not provide any basis for which a policy recommendation should be made. The Providers and Practitioners Sub Teams also did not uncover any specific issues that came to either practitioners' or providers' attention.

Cyntia King:I have a client w/ a well-known US brand who only recently became aware of a squatter in a small ccTLD

George Kirikos:@Mary: as stated earlier, bad data, due to not properly surveying registrants and respondent's counsel.

Philip Corwin:Our Charter requires that we consider whether the URS should become a Consensus Policy. It will be up to WG members to discuss whether it should, as well as whether that decision should be made during phase 1 or 2 of our work. The policy stays as is unless there is consensus for change.

Kristine Dorrain (Amazon Registry):ICANN compliance talks to Providers

Berry Cobb:Do recall, ICANN has established MOUs with each of the three providers.

Maxim Alzoba (FAITID):decisions are made in Legal

Maxim Alzoba (FAITID):dept

George Kirikos:That's not a contract, though.

Griffin M Barnett:An MOU could be legally enforceable, depending on the circumstances

George Kirikos:Griffin: see the example of the 2-page MOU at: https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_en_system_files_files_mfsd-2Durs-2D20aug15-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwehFBfjrsjWv9&m=QN4jDiTx-d596wbudanb6f0mbqbI6_qbBVyXfT5I9qg&s=wJ0s3y1n9VhfiPyM8FSczZPFIdGWDi6-6A-wPPYXBW8&e=

Brian Beckham:@Michale could you repeat the Q

George Kirikos:It does have a 60 day termination clause, on page 2.

Griffin M Barnett:OK?

George Kirikos:But, it seems that ICANN hasn't really been monitoring things.

Brian Beckham:Got it - this was not discussed in the Docds subteam

Brian Beckham:but I would recall the key aim of the URS as lighter than the UDRP

Philip Corwin:That can be proposed when we reach the decisional phase on URS. Again, the list we are seeing is not meant to be exclusive or foreclose other proposals.

George Kirikos:Perhaps providers can provide stats on the average word length of complaints, to see how close to the 500 words they are at present.

George Kirikos:(i.e. a table of distributions, e.g. 10% under 200 words, 20% between 201 and 300, etc.)

Mary Wong:FYI - 4. On 500-word Complaint Limit - Practitioners' survey results were split (out of 12, 5 agree it's sufficient, 4 disagree); results included feedback from some that the word limit was too low: "arbitrary and often insufficient" and "should be slightly increased".

George Kirikos:2-3 days might not be a good rule (e.g. weekends, time to research, etc.)

George Kirikos:i.e. maybe 5 business days, etc.

Scott Austin:@Mary +1 of the comments received all suggested an increase would be beneficial needed for citation, variation in cases, etc.

George Kirikos:<<--- demonstrating balance, as 2-3 days is unfair to complainants

Michael R Graham:@Brian/Phil -- Thanks -- I do think the list is an excellent means for illuminating what may not be covered there. While I understand and generally agree with the decision not to suggest an expansion of the word limit, I wonder if there aren't situations (multi- domain challenges, etc.) where a Complainant or Respondent might be given the opportunity to request an expansion. Staff -- Please capture this for decisional phase. Thanks!

George Kirikos:There have been 2 1/2 months of post-GDPR data now (for both URS and UDRP).

claudio:it's difficult to prove a negative, e.g. respondent doesn't have rights/legitimate interest in domain, under "clear and convincing" and without access to data

Renee Fossen (Forum):Forum is asking for amendment of the complaint in UDRP - under the rules that's not allowed in URS.

Brian Beckham:good point @Kristine

Renee Fossen (Forum):Forum will expand on this in the additional written responses.

Michael R Graham:@Julie -- Thanks!

Mary Wong:FYI - staff has sent the follow up questions to the providers, those noted in Column 3.

susan payne:I believe that is correct Greg

Mary Wong:The SMD files contains some basic human-readable information, with the rest of the information coded.

Scott Austin:WIPO approach to doe complaints has been very helpful and provides some comfort that lack of true regsitant/registant organization data masked due to GDPR will not result in a deficient complaint for an omitted respondent.

John McElwaine:+1 Greg

Mary Wong:For example, the trademark itself is human-readable but the applicable Nice classification is coded. A SMD file is used by registries/registrars for validation, and as Greg noted, to demonstrate use.

Mary Wong:From the TMCH provider: https://urldefense.proofpoint.com/v2/url?u=http-3A_www.trademark-2Dclearinghouse.com_help_faq_which-2Dinformation-2Ddoes-2Dsmd-2Dfile-2Dcontain&d=DwIFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfbPSS6sJms7xcl4I5cM&r=8_WhWI PqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWGIBLwwwehFBfjrsjWv9&m=QN4jDiTx-

Cyntia King:@Georges - Agree

George Kirikos:@GeorgesN: right, but when it's brought over an "aged" domain, there's far less urgency.

susan payne:@George - it could be an ancient domain but circumstances have changed

George Kirikos:Right now, we see URS brought mostly against young domains which are relatively worthless.

Georges Nahitchevansky:What is an aged domain in your view

Paul Tattersfield:may be a new owner

Cyntia King:@George - that's an assumption. If I was getting ready to launch in a new market & discovered an infringing registration that could divert traffic from my imminent marketing, that still requires a timely response.

George Kirikos:If the "circumstances changed", that's a change in use, but they'd fail on "registered in bad faith". These should be domains which can't have any conceivable good faith use.

Kathy Kleiman:@Georges: I've seen this issue I think with some country codes. It's easier to bring an action against a domain name when it is very young -- a few days or weeks. Does anyone know the details or remember which ccTLDs do this?

susan payne:ok, so the complainant would lose then

Philip Corwin:The URS burden of proof is consistent with its intended targeting of clear cases of infringement, in my personal view

George Kirikos:Try to put yourself in the shoes of a registrant (I try to put myself in the shoes of a complainant too).

susan payne:sure you do George

George Kirikos:The real "laws" have that sort of balance in their due process procedures.

George Kirikos:@Susan: see above, when I suggested 2-3 days was too short for a complainant, if you're being sarcastic.

Cyntia King:The point is that there are enough circumstances that give rise to the URS 'quick responses' that we should NOT make assumptions into policy. It is an assumption that an "aged" domain would not require a fast response.

susan payne:the registrant has multiple opportunities to reopen the case in the unlikely event they miss this on a "valuable" domain

George Kirikos:@Susan: the TM holder can get an injunction via a court, in a real emergency where there's urgency.

Kristine Dorrain (Amazon Registry):@ George, in SOME courts....

claudio:@Phil, I understand/appreciate your point - but UDRP is also limited to clear cases as well (its basically a Summary Judgement standard) So never really understood the distinction

George Kirikos:Folks want to apply "URS" for cases that are no longer clear cut, leaving open all possible scenarios at their discretion.

Paul Tattersfield:Can also use RAA 3.18 for free...

George Kirikos:These RPMs aren't there to replace the courts.

susan payne:@george - and then they will lose

George Kirikos:+1 Paul.

George Kirikos:Too many lawyers don't want to use the courts, which is puzzling.

Kristine Dorrain (Amazon Registry):@George, it costs far more, takes far longer, and it's inaccessible in many jurisdictions....

Cyntia King:@George - You make too many assumptions. @George - you assume the majority of complainants are big companies w/ awyers & deep pockets. URS & UDRP are for small businesses, as well.. I should NOT have to go to court instead of using the URS/UDRP just because I have access to the courts.

Philip Corwin:summarizing is fine by me

Kathy Kleiman:fine by me!

George Kirikos:@Cyntia: Complainants' side is making assumptions, too.

Georges Nahitchevansky:George K. The URS is meant to address clear and convincing cases of infringement. Your notion of injunctions is a tad absurd. A person registers a domain name for less than \$50 and brand owner find out about at some pointt and tehen files an injunction in court for tens of throusand of dollars. Where is t the balance

Brian Beckham:same, thx

Salvador Camacho Hernandez:As Kristine Dorrain mentioned, there's only applicable in some jurisdictions. In Mexico, we have not being able to file a domain name case due to Courts ignorance about the subject and also, because it could take years to be solved

Georges Nahitchevansky:Sorry for the typos

George Kirikos:@GeorgesN: Yet, there's no URS/UDRP for copyright, etc.

George Kirikos:Yet, somehow the world goes on. Same for patent infringement, etc.

George Kirikos:Same for other kinds of cybercrime.

Cyntia King:This isn't a cybercrime or patent PDP.

Georges Nahitchevansky:Completely different animal -- and by teh way there is the DMCA in the US for copyright situations

George Kirikos:US-centric, not worldwide.

George Kirikos:And DMCA has counter-notifications, etc.

Georges Nahitchevansky:Go check the other jurisidcition and you will see that tehre are bodies of law that apply to copyright and trademark infringement. The DMCA is one example. The poiint is that you are mixing apples and oranges

George Kirikos:No, taking similar principles and applying them here.

Cyntia King:We're spinning out fo control - extending the time to respond to URS cases just because a domain registration is not new defeats the pupose of fast action to take down an infringing domain once it's discovered.

George Kirikos:They're not identical, but broadly similar.

Georges Nahitchevansky:You are not taking similar principles you are craeting self serving conclusions that are not accurate

George Kirikos:@Cyntia: fast action is also required by complainants. If they waste 5 years in bringing a complaint in the first place, they shouldn't consider it an emergency that needs an expedited decision.

Georges Nahitchevansky:Cynthi a+1

Kathy Kleiman:From all the data points here, a ripe area for fixes!

claudio:an older domain doesn'

claudio:George, understand your point, but an older domain registration doesn't necessarily mean it's been in use the entire time

Kathy Kleiman:there appear to be some language issues as well- especially for non-English speaking Registrars

Paul Tattersfield:some will have more because the domains are 99c

Michael R Graham:Not sure "cost of implementation of URS" for Registries/Registrars is relevant to effectiveness of URS?

Michael R Graham:@Julie -- Thanks -- good clarification!

George Kirikos:Yes, that Action Item is important, to get compliance COSTS especially.

George Kirikos:Since we need to do a costs vs benefits analysis.

Brian Beckham:@George, what about costs to providers, who may be running the URS at a loss

Kathy Kleiman:Applause to Julie for an excellent presentation -- tx you!~!

Cynthia King:We don't need to do a cost/benefit analysis (the costs & benefits aren't ICANN's), the providers, registrars, registries need to be asked if they are overburdened by the costs of compliance.

Renee Fossen (Forum):@George - I would disagree and will provide more information on HSTS issues in the written responses.

Jason Schaeffer:Thanks Julie and Staff on pulling this material together.

George Kirikos:@Renee: HTTPS pages are trivial to add.

Renee Fossen (Forum):@George - that's not the issue.

Brian Beckham:(Have my hand up, but lost the signal again - dialing in)

Cynthia King:@George - as you know, the upfront cost may be low, but maintaining pages & any penalties for non-compliance may be the kicker. May need more discussion.

George Kirikos:Isn't it? HSTS tells the browser to look only for the HTTPS page (not the HTTP version). So if the URS provider only serves the suspension page on HTTP, the user won't see the HTTPS page (since it doesn't exist).

David McAuley (Verisign):I will add a comment on list about a possible policy issue to look at later as Phil suggested - to do with default appeals/reviews

Kathy Kleiman:+1

Brian Beckham:thank @Phil - agree this is a check if something is missing - but we need not wordsmith as this doc will be revisited

Brian Beckham:(sorry, have lost the phone signal - only on adobe/wifi)

George Kirikos:So, next week pages 24-36 too?

George Kirikos:Oops, up to page 35.

David McAuley (Verisign):I will wait till later period then

George Kirikos:Bye folks.

Cyntia King:I'm so excited by our progress!!!

David McAuley (Verisign):Thanks Julie and all

Paul Tattersfield:thanks all bye

Maxim Alzoba (FAITID):bye all

Poncelet Ileleji:bye

Peter Müller:bye

Benjamin Akinmoyeje (Nigeria):bye