

**Attendance: (35 members)**

Benjamin Akinmoyeje	Justine Chew
Brian Beckham	Kathy Kleiman
Brian King	Lillian Fosteris
Chris Thomas	Marie Pattullo
Cyntia King	Martin Silva Valent
David Maher	Michael Karanicolas
David McAuley	Michael R. Graham
Diana Arredondo	Monica Mitchell
Gary Saposnik	Phil Marano
George Kirikos	Philip Corwin
Georges Nahitchevansky	Rebecca L Tushnet
Gerald M. Levine	Roger Carney
Greg Shatan	Steve Levy
Griffin Barnett	Susan Payne
Jay Chapman	Thomas Brackey II
John McElwaine	Zak Muscovitch

**Audio Only:** Rebecca Tushnet, Dale Nelson, Claudio DiGangi

**Apologies:** Maxim Alzoba, Renee Fossen, Lori Schulman

**Staff:** Mary Wong, Julie Hedlund, Ariel Liang, Dennis Chang, 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, 15 August 2018 at 17:00 UTC.

Michelle DeSmyter:Agenda wiki page: <https://community.icann.org/x/vgNpBQ>

George Kirikos:Hi folks.

Martin Silva Valent:Hi all

Kathy Kleiman:Hi All - many people must be on vacation this week!

Kathy Kleiman:Shall we wait another 2 minutes?

Julie Hedlund:@Kathy: Yes, we'll wait until two minutes after the hour to allow more people to join.

Michael R. Graham:Morning all!

George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-wg/attachments/20180808/7b420872/SUPERCONSOLIDATEDURSTOPICSTABLE7August20183-0001.pdf>for those who want to see the document in their own browser.

Diana Arredondo:Hi all, good morning

David McAuley:I made some minor changes in SOI

David McAuley:Thanks Julie

Susan Payne:Excellent points David

David McAuley:Thanks Susan, I think we can clean up some confusion between rules 6 and 12

George Kirikos:Practitioners' survey was of course unrepresentative.

George Kirikos:(tilted towards pro-complainant practitioners)

Susan Payne:@George - you have raised this now multiple times. Perhaps we could all take it as read that you have objections to the survey

Georges Nahitchevansky:Disagree. Respondents were involved in the design of the survey and there was opportunity to get involved.

Cynthia King:I object @George characterization of respondents as "tilted". Several folks on this committee participate in domain advocacy groups - every opportunity has been offered to both camps to respond. We have the data for those who chose to respond.

Cynthia King:Lead the horse to water & all that.

George Kirikos:We know that 13 of the 14 survey respondents were those representing complainants. That's a fact. That's like surveying 90%+ Democrats, and trying to say that is a fair representative of a presidential poll.

Kathy Kleiman:@All, the Practitioners Survey was not an open survey, and I believe only one Registrant attorney qualified for it.

George Kirikos:Learn some basic statistics.

Philip Corwin:Personal view -- Noting in regard to availability of statutory law providing de novo judicial review of URS decision: While ICANN has no ability to ensure that there is such law in the nation in which a registrant resides, registrant can always assure such availability by utilizing a registrar located in a national jurisdiction with such a law. For example, any registrant regardless of location can utilize a US-based registrar and thereby gain ability to file a judicial appeal under ACPA as a US court would be one of "mutual jurisdiction" under UDRP/URS policy.

David McAuley:on 'loser pays' idea - have we ever said what loser pays? wghat this is supposed to mean

Susan Payne:@George - this has been aired multiple times. No-one else appears to share your concerns exatly. But the point is you've raised this. You don't need to keep doing so. The poeple who disagree with you have raised their views. They shouldn't have to waste their time continuing to respond to you instead of addressing what is currently being discussed

George Kirikos:@Phil: ICANN shouldn't be making policy that \*causes\* the problem in the first place.

George Kirikos:If it's causing the problem now, due to that role reversal, then it should either eliminate the problem, or make URS/UDRP opt-in.

George Kirikos:@Susan: Others agree about the statistical issue. Anyhow, this chat is asynchronous to the oral discussion.

Cyntia King:@Kathy, point taken. I understand the practitioners survey respondents were limited to those participating in URS cases.

Michael R. Graham:@Rebecca -- Has there been any additional inquiry in regard to the "possible language issue" cases noted?

Mary Wong:@Michael, staff is looking at the cases highlighted in Rebecca's research. We completed review of all the 29 De Novo review cases and could not discern what the specific issue may have been from the face of the record, since for those cases, all but one response was filed in English.

Brian Beckham:@Cynthia, @Kathy, do recall we had the presentation from John Berryhill and Doug Isenberg

Martin Silva Valent:Sure

David McAuley:a little muffled here as well

Cyntia King:Thanks @Brian Beckham

Michael R. Graham:@Mary -- Thanks. I presume that Rebecca has not provided any clarification from her team's review?

Martin Silva Valent:I said that there were issues with the published languages being used!

Martin Silva Valent:Thak you kathy! yes!

Mary Wong:@Michael, I don't believe we asked her to do more than provide the data - staff will do our best to complete the review of those cases her research noted as soon as we can.

Mary Wong:@Martin - can you clarify what you mean by "published languages"?

Brian Beckham:thanks for flagging that Kathy, let's encourage folks to think about possible solutions

Kathy Kleiman:@Brian, yes.

Kathy Kleiman:(to earlier question)

Cynthia King:Thanks for clarifying, @Susan

Martin Silva Valent:Education and Trainign should be in other langagues!

Martin Silva Valent:it seems obvios

George Kirikos:+1 Michael.

George Kirikos:Indeed, Martin. It should have been obvious when the policy was created.

Martin Silva Valent:is not sich a big burden and really changes the global operation of the process

Cynthia King:Agreed @Martin Silva Valenti

Kathy Kleiman:We're discussing next steps after the table...

Philip Corwin:I can respond

David McAuley:OK, thanks Phil

David McAuley:GDPR could, I sippose, have an impact on this CV issue, although seeking examiner consent to show seems reasonable

Martin Silva Valent:it really shouldnt... they are willingly doing their job and this is a requierment

David McAuley:makes sense, thanks

Mary Wong:To follow up on Phil's response - while there's a substantial amount of detail in each of the Sub Teams' reports, it may be helpful for WG members who have not been following the Sub Team reports closely to review those documents as you develop suggestions and potential recommendations to be proposed to the full WG for its consideration. Staff has included links to all three Sub Teams' reports at the top of this document.

Brian Beckham:further to Mary's comment, those reports were present two weeks ago

Philip Corwin:@Mary--thanks

George Kirikos:Sound?

Cyntia King:volume just tanked

Martin Silva Valent:thank you Sussan!

Greg Shatan:If Martin's comment was limited to that issue, I would agree that is a conflict of interest (panelist previously represented a party).

Brian Beckham:@Martin, I am having trouble hearing you, would you mind typing your comment/question, and suggestion for the WG to consider, in the chat?

Martin Silva Valent:sure

Susan Payne:I think we would all probably agree that Martin has flagged a good reason to have access to the CVs in order to assist in identifying IF there is a conflict, as opposed to there being a fundamental conflict of sometimes wearing different hats

Martin Silva Valent:@Greg, what about working in the same firm?

Mary Wong:@Greg - you're describing the Bar in my home country :)

Greg Shatan:Martin, do you mean both are in the same firm at the time of the case?

Greg Shatan:That would be a problem.

Greg Shatan:Otherwise, not an issue.

Martin Silva Valent:yeap

Cyntia King:I believe Mediation is antithetical to the basis for URS - clear violation & Quick action.

George Kirikos:1 month process, versus 2 months for UDRP. Not very rapid.

Cyntia King:We're not talking about UDRP

Susan Payne:@George - exactly, so hardly appropriate to shove extra time delay into the process

George Kirikos:Contrast that with a Notice of Dispute (even shorter than a URS complaint, thus lightweight), kind of like a C&D on steroids, followed by branching to various processes that are heavier depending on response/non-response.

David McAuley:good point Phil

George Kirikos:@Susan: by having a notice of dispute, though, it would be happening \*before\* complainants contemplated escalating to a URS in the first place.

Cyntia King:We aren't re-creating the courts here. This is supposed to be a fast way of taking down clearly-infringing domains.

George Kirikos:i.e. Often they'd send out a C&D, send out emails to a Registrar, etc.

Susan Payne:@George - hah, that would require them to be given access to registrant data

Susan Payne:not that I'm agreeing with the notion

George Kirikos:@Susan: can still do it via the registrar or via a provider.

Greg Shatan:That might be a prelude or alternative to a UDRP; highly unlikely in the URS context.

Susan Payne:yeah right

George Kirikos:There are only 200 or so URS disputes per year. How many C&Ds do folks think preceded these cases?

David McAuley:This was super-consolidated

Mary Wong:@David, you should have seen the first cut :)

David McAuley;;-)

Greg Shatan:Susan is correct. Why do we keep going round on this?

Greg Shatan:I think someone was confused about this way back when in the WG. Is anybody still confused?

George Kirikos:Sound?

David McAuley:bad audio

George Kirikos:Fine now.

Susan Payne:I don't think so

Mary Wong:This is what is in the SMD file: [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_www.trademark-2Dclearinghouse.com\\_help\\_faq\\_which-2Dinformation-2Ddoes-2Dsmd-2Dfile-2Dcontain&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=8\\_WhWI PqsLT6TmF1Zmyci866vcPSF04VShFqESGe\\_5iHWGIBLwwwehFBfjrsjWv9&m=3-YgQ4B3ZQbVTsiMyI-ZJVZ6CjfsS2O1ciN4WpLE\\_10&s=g2i7zl-9w0zaeDYb2OBLLAjgNv5myWpg-LN-T1GBExU&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.trademark-2Dclearinghouse.com_help_faq_which-2Dinformation-2Ddoes-2Dsmd-2Dfile-2Dcontain&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWI PqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWGIBLwwwehFBfjrsjWv9&m=3-YgQ4B3ZQbVTsiMyI-ZJVZ6CjfsS2O1ciN4WpLE_10&s=g2i7zl-9w0zaeDYb2OBLLAjgNv5myWpg-LN-T1GBExU&e=)

Michael Karanicolas:It sounds to me that there's conflicting opinions on this - so at least we should be examining the role of the SMD file.

Mary Wong:It is used to demonstrate use for purposes of Sunrise and filing a URS complaint.

Greg Shatan:Michael - show me where there is anything other than misinformation??

Mary Wong:@Michael, there are documents that explain the scope, role and use of a SMD file, published as part of the TMCH documentation. We can circulate those if WG members are interested.

Martin Silva Valent:"the Nice classification (if applicable) and detailed description of goods and services of your trademark [encoded];contact information of yourself , if you use a holder account, or contact information of your trademark agent, you are using one [encoded]."

Michael Karanicolas:@Mary - the link you included describes what in it, not the purpose.

Martin Silva Valent:Ia m just trying to figure it out between to versions

Martin Silva Valent:I'm not trying to be hard !

David McAuley:Yes, thanks Julie

Mary Wong:@Michael, yes, there are more reference documents.

Brian Beckham:yes, thanks @Julie, and @Staff

Greg Shatan:Martin, what were you quoting from?

George Kirikos:And John Mc.

Greg Shatan:If that's in the encoded material, it was never meant to be decoded as part of the URS process.

Martin Silva Valent:the link Mary gave

Mary Wong:@Greg, I believe the Nice classification is not part of the human-readable part of the SMD file.

Greg Shatan:For URS purposes, the SMD file only serves to show that the specimen of use was accepted by the TMCH.

Philip Corwin:Noting that timeline gives us 4-6 WG sessions to consider all URS policy and operational proposals

Justine Chew:From the perspective of the Providers ST, I only recall the SMD file issue was just in relation to whether the 3 providers allow for Complainants to upload SMD files as part of filing the Complaint. (and MFSD did, if I recall correctly).

David McAuley:The suggestion on default reviews is indirectly noted in super-consolidated table but not specifically

George Kirikos:This was compared to the original document from the Initial Consolidated URS Topics Table, i.e. the missing topics.

Susan Payne:oh good - apologies then Rebecca  
Susan Payne:my error

John McElwaine:Supporting @Mary and @Justin: URS Rule 1.2.6.1. .that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce– was submitted to, and validated by, the Trademark Clearinghouse)b. Proof of use may also be submitted directly with the URS Complaint. and...

George Kirikos:So, the subteams had no deference to remove topics from discussion, or setup final decisions.

Mary Wong>Please note - by "missing topics" we did not mean additions to Column 1, which are the WG's agreed URS topics for review.

Greg Shatan:Too late for that, Kathy...



Susan Payne:George has already thrown in the kitchen sink

Greg Shatan:Now it's a question of how many kitchen sinks will be thrown in.

David McAuley:if we have kitchen sink items and part of URS will come up in Phase 2 can we raise general issues in Phase 2 or will it itself be limited when it comes to URS

David McAuley:BTW, I don't have a kitchen sink here, not yet

George Kirikos:@Susan: I made valid proposals. No need for namecalling.

Mary Wong:By "recommendation", staff had meant - once you review the Sub Team reports, conclusions and recommendations, is there a proposal or solution that addresses the Column 1 topic but has not been considered or addressed by the available data?

Susan Payne:@George, I didn't namecall. "kitchen sink" refers to your very long list of items

Susan Payne:I'm objecting to the assumption that everything you have proposed is validly in scope, but the rest of us are supposed to exercise restraint

Georges Nahitchevansky:I agree that what these last minutes lists bring in are not per se within scope. Some of these things have been discussed and rejected so we should note multiple bites at the apple for the same issue

George Kirikos:Disagree that the public should be shielded from the various options under consideration. That's now how it's been done in other PDPs.

George Kirikos:e.g. in the IGO PDP, we were leaning towards one option for a recommendation, but still listed the other options.

Michael R. Graham:@Kathy -- Agree -- Supported proposals, not kitchen sinks should be part of preliminary report.

Philip Corwin:Agreeing with Kathy -- while consensus not required for inclusion of proposal in Initial Report, there should at least be significant support among WG members.

George Kirikos:Consensus Call doesn't take place until the very end.

Philip Corwin:In particular, a proposal with very limited support and very significant opposition should not be included IMHO

Georges Nahitchevansky:Correct. proposals that have support are valid for discussions not the hobby horses of certain members who keep bringing up the same things after they have been considered and rejected

Marie Pattullo:If it's one person's opinion, that is a minority statement, not a discussed/supported/rejected point for inclusion, I think?

George Kirikos:Minority Statements don't take place until the very end.

Michael R. Graham:@Phil -- Agree.

George Kirikos:i.e. how can the public comment on issues that aren't in the draft report?

George Kirikos:\*Minority, even

Greg Shatan:I have seen Minority Statements in Initial Reports.

Michael R. Graham:@Marie: Actually, "minority" would be more than a single opinion.

George Kirikos:If that's the case, Greg, as long as it's in the Initial Report.

George Kirikos:But, that hasn't been what I've seen.

Marie Pattullo:How can the public comment on issues that the WG did not agree to put into the report? And thanks Michael - useful to know - appreciated!

George Kirikos:e.g. Jeremy had proposed elimination of Sunrise. That shouldn't be excluded from the initial report. (re; TMCH).

Mary Wong>Please note - as we noted in Panama, formal consensus calls typically don't occur for Initial Reports but any recs that seem to have general agreement or consensus are published for comment as such.

Greg Shatan:I know we had it in CCWG WS2.

Mary Wong:We can recirculate the preso staff prepared for that Panama session where we discussed the typical approach (per Brian and Kathy's request).

Mary Wong>Please note - this slide was prepared before today's discussion of a 28 August deadline for comments on the Super Consolidated Table.

George Kirikos:Bye folks.

Michael R. Graham:@George -- I wonder if what you're referring to (i.e. all the issues and opinions brought up in discussions of the PDP) would be appropriate for a narration of the process and discussions -- but not the Preliminary Report in which we provide PDP's review and proposals.

David McAuley:bye all

Cyntia King:Bye!

Monica Mitchell:bye

