

Attendance and AC chat RPM PDP WG 26 September 2018

Attendance

Brian Beckham
David McAuley
George Nahitchevansky
Gerald M Levine
Greg Shatan
Griffin Barnett
Hector Ariel Manoff
Ivett Paulovics
Jay Chapman
John McElwaine
Justine Chew
Kathy Kleiman
Kristine Dorrain
Lori Schulman
Martin Silva Valent
Maxim Alzoba
Michael Graham
Michael Karanicolas
Pascal Boehner
Paul Keating
Paul Tattersfield
Petter Rindforth
Rebecca Tushnet
Renee Fossem
Roger Carney
Steven Levy
Zak Muscovitch

Apologies: Lillian Fosteris, Susan Payne, Marie Pattullo

Staff : Mary Wong, Julie Hedlund, Ariel Liang, Nathalie Peregrine

AC Chat 26 September 2018

Nathalie Peregrine:Dear all, welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday 26 September 2018 at 12:00 UTC

Nathalie Peregrine:Agenda wiki page: <https://community.icann.org/x/ZgKNBQ>

Maxim Alzoba (FAITID):Hello all

Maxim Alzoba (FAITID):It will be able to listen mostly (driving)

Nathalie Peregrine>Welcome!

Maxim Alzoba (FAITID):sound via Adobe Connect is perfect (at least for my location)

Nathalie Peregrine:thanks Maxim!

George Kirikos:Hi folks.

George Kirikos:No Asia-Pacific participants yet for the APAC-friendly call?

Griffin Barnett:Hi all - just a heads up that I will be the presenter for Proposals #10, #11, and #15

George Kirikos:Is there a clock today?
George Kirikos:(doesn't appear yet in the bottom left pod)
Ariel Liang:Yes, it will be on when the meeting starts
George Kirikos:Thanks Ariel.
Ariel Liang:no problem
Brian Beckham - WIPO:Just FYI, as usual, we are waiting a few minutes to see if more people join.
George Kirikos:20+, right.
David McAuley:+1 @Brian -
George Kirikos:Maybe do the SOIs, to kill time?
Brian Beckham - WIPO:Nathalie, all, why don't we start at 5 past, and see if there are SOI/agenda updates/comments.
Lori Schulman:Hi. I am online and on the phone. Good evening Asia.
Lori Schulman:Can we have the link to the URD downloads posted please?
George Kirikos:All the proposals are
at: <https://community.icann.org/display/RARPMRIAGPWG/URS+Proposals> for those who'd prefer to read them on a bigger browser window.
Lori Schulman:Audio is bad on the phone.
Lori Schulman:Echo
Griffin Barnett:SOunds OK to me
Paul Tattersfield:Who do different working group lists show different SOI affiliations?
David McAuley:Thank you George
Justine Chew:I'm not getting any audio at all. Will disconnect and log in again.
Mary Wong:@Paul, apologies, can you clarify what you mean?
Nathalie Peregrine:AC audio works fine
David McAuley:audio fine on adobe
Griffin Barnett:We hear you
Paul Tattersfield:Phillip is shown as BC
here <https://community.icann.org/pages/viewpage.action?pageId=48347895>
Maxim Alzoba (FAITID):yes
Lori Schulman:Are their Asian residents on the call? I am always curious as to whether the shift in time is effective for more real time participation.
George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-wg/2018-September/003338.html>(Phase 1 vs Phase 2)
Lori Schulman:INTA has had mixed results with time shifting
Mary Wong:@Paul, thank you - we will update the listing as it was probably created when the WG was formed.
George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-wg/2018-September/003315.html>
Lori Schulman:Agree. That is where I thought we were going. Some remedies only apply to the URS and some don't. Costs and other factors in each RPM may result in different answers.
George Kirikos:That doesn't make sense. Otherwise, I should be able to present ALL my topics in Phase 1, by that standard.
Paul Tattersfield:2 years? !
George Kirikos:My various topics are equally urgent. e.g. the cause of action issue.
George Kirikos:statute of limitations.
Griffin Barnett:AGree with the co-chairs
Griffin Barnett:Forget "efficiency" we've been working on these things for 2 years now, so if you have a proposal that applies to the URS let's just discuss it now

Griffin Barnett:And if a similar topic comes up again in connection with the UDRP let's raise it again then

George Kirikos:@Griffin: mine do apply to both.

Griffin Barnett:That's fine then

Griffin Barnett:Raise the URS-specific version now

Griffin Barnett:And raise the UDRP-specific version at the appropriate time later

George Kirikos:@Griffin: I'll do that, if that's what people want.

George Kirikos:But, it defeats the entire purpose of having a Phase 1 and Phase 2, then.

Kathy Kleiman:Phase 2 was given to us by Council in the Charter

Griffin Barnett:We can take what we've learned about the URS and apply it as appropriate to the UDRP

Paul Tattersfield:Brian +1

Renee Fossen:Sounds good

Griffin Barnett:Fine

John McElwaine:yes

Lori Schulman:agree

Georges Nahitchevansky:Brian +1

George Kirikos:#10 was up first?

Griffin Barnett:There is inconsistent number as between the URS page on the wiki and the survey monkey

George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-wg/2018-September/003337.html>

Kathy Kleiman:Can Staff help us understand why Proposal #10 is labeled #15?

Julie Hedlund:Yes, #10 is first

Griffin Barnett:#15 in Survey Monkey = #10 on the URS wiki

George Kirikos:10, 11, 24, 25, 15, 16, 22

Ariel Liang:Yes - the numbering on the document is automated by Survey Monkey, so it is not insync with the numbering staff labeled

David McAuley:that's right Julie - #10 was on screen

Kathy Kleiman:That's been true for a long time...

Kathy Kleiman:It's the PDF that's labeled #10

Lori Schulman:putting the proposals together facilitated renumbering or so I thought? Ariel explained that the coordinating of all the reports necessitated renumbering.

Lori Schulman:Inside the wiki

Mary Wong:The PDP Charter contemplates the possibility that Phase One findings may emerge that are relevant to Phase Two discussions - and these should (if known at the appropriate stage) be noted in the Phase One report. The Charter also allows the WG to review its Phase One report if relevant to Phase Two.

Kathy Kleiman:Agree with Griffin

Philip Corwin:Can we unsync the proposal so we can actually read the full text?

Julie Hedlund:@Phil: It is now unsynced.

David McAuley:This is similar to what I suggested but for 30 days vs 90 days but I can support this idea

Martín Silva Valent:this is the same problem, I also oppose to the it for the same reasons

Griffin Barnett:I understand your rationale, but the evidence shows that no one is filing within the 1 year post-default period

George Kirikos:https://urldefense.proofpoint.com/v2/url?u=https-3A_domainnamewire.com_2018_09_25_state-2Dbar-2Dof-2Dcalifornia-2Dcybersquatting_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TE&s=6kyJvQFS9EVNOp05bq4CwryQflofzXJTGE4epFfvUck&e=

Lori Schulman:Exactly, the 1 year period is not being utilized...

Martín Silva Valent:is their right to do so or not, is part of the balance

Georges Nahitchevansky:George You have almost no evidence that is statistically relevant thta shows folks are not getting proper notice

Griffin Barnett:No one is arguing against any appeal process - I explicitly said that the existing URS appeal process stands

Michael Karanicolas:If it's not being utilized, why the focus on getting rid of it? If it were the other way around, IP folks would be complaining about it being too much of an administrative burden.

Paul Keating:Assuming the evidence shows all of the filings were within 30 days, I do not see a reason to change what is already there. There is no evidence that the current period has been abused in any way.

George Kirikos:@Georges: go read the above link, and many other complaints about expiring domains.

George Kirikos:Witness the big market for expiring domains, and how registrars are compelled to send renewal notices 60 days in advance, etc.

Paul Tattersfield:Do you think statistical evidence would be helpful on this matter Georges?

George Kirikos:Witness how credit card companies allow chargebacks for up to 6 months after a charge.

Georges Nahitchevansky:BAased on your prior points regarding statistically relevant evidence, this is anecdotal and not proof that this issues exists as you have provided it

Brian Beckham - WIPO:(your line sounds OK for me Rebecca)

George Kirikos:@Georges: what evidence is there in support of the proposal?

George Kirikos:+1 Rebecca: A solution in search of a problem.

Paul Tattersfield:Exactly Rebecca

Griffin Barnett:The problem is that complainants who prevail are still in "limbo" in a sense until the existing post-default de novo review period ends

George Kirikos:*6 to unmute/mute

Zak Muscovitch:come bacxx to me audio poroblem

George Kirikos:1-866-692-5726 to dial-in.

George Kirikos:(RPM Member = password)

Rebecca L Tushnet:What is the practical effect of "limbo"?

George Kirikos:We do have evidence of lack of notice....the huge default rate.

Griffin Barnett:Don't think you can infer one from the other necessarily

David McAuley:These positions pro and con are well stated – but that seems to suggest we should get public comment on this, no? Fair to ask if 12 months fits in to a 'rapid' system

Michael Karanicolas:John - that's obviously a straw man. It's a weak standard of notice.

Griffin Barnett:Agree David

George Kirikos:Registrants were never surveyed.

Zak Muscovitch:can i try again?

David McAuley:and agree we should make sure notice is adequate, that is the due process bit here

George Kirikos:I did make a proposal to improve notice, by adding a Legal Contact to WHOIS.

Rebecca L Tushnet:12 months is a misleading formulation, as Kathy pointed out. If no one has asked for an extension, it's 6 months--which goes to the "no one has identified a harm from this" since they can't distinguish 6 from 12 months.

George Kirikos:That will now have to be brought to Phase 1, instead of being deferred to Phase 2.

David McAuley:dealing with notice in phase 1 seems fair to me

Martín Silva Valent:why are we debating at all if consensus at any level is not needed to make the public comment?

Rebecca L Tushnet:+1 Martin

John McElwaine:@George I support looking into improved notice

Michael Karanicolas:I agree with Martin - I'm very confused by this process. If strong opposition doesn't matter to whether these things go out, why are we bothering to discuss them?

George Kirikos:(that was my proposal #7, for the record)

Griffin Barnett:nope not hearing paul

Kathy Kleiman:no sound :-(

David McAuley:not hearing as well

Paul Keating:Sorry I will type it in.

Philip Corwin:@martin--we are seeing if a proposal has adequate support. If it does we let the community have a chance to comment, not just let 20 people on a call decide its fate. But after public comment if it doesn't have consensus in original or revised form it does not go forward as a WG recommendation

Georges Nahitchevansky:The claimed huge default rate does not prove lack of notice. Look at the domain names that were the subject of defaults. It seems more likely that folks did not defend because they may have been cybersquatting. In other words in cases where someone registered an abusive name, they may simply choose not to fight. It does not mean lack of notice, so the claim such is really a stretch

Georges Nahitchevansky:Sorry for the typos

Paul Keating:2 points: (1) . Assuming the evidence shows all of the filings were within 30 days, I do not see a reason to change what is already there. There is no evidence that the current period has been abused in any way.. (2) . There are a great many ways that registrants may not receive notice. Assuming (as the evidence suggests) there is no abuse, why should we limit the time and potentially harm those non-abusing registrants who received notification late. Also, I agree with ZAK on the appeal issue.

Kathy Kleiman:Tx Griffin

Kathy Kleiman:Brian, can you read Paul Keating's comment in chat?

Georges Nahitchevansky:Why not read all comments then

Paul Keating:Yes, thank you Brian

George Kirikos:@Georges: because others didn't have audio problems.

Lori Schulman:I think that an issue has been independently identified by both McCauley and Barnett, it would be worth more consideration. Merging the proposals in some way could make sense.

George Kirikos:#11

Kathy Kleiman:(Again note the #11 in PDF title, not the #19)

David McAuley:on response fee issue that Griffin just spoke to I support this in concept but also wish to review the public comment that comes in regarding the correct new threshold for triggering a response fee from registrant

Paul Tattersfield:could be very problematic on 'generic' domains

Ariel Liang:Time is up

David McAuley:cannot hear Michael

Griffin Barnett:not hearing Michael

George Kirikos:*6 to unmute/mute

Michael Karanicolas:be right back with a mic

George Kirikos:The phone bridge is the most reliable, compared to VOIP.

George Kirikos:1-866-692-5726, pass = RPM Member

George Kirikos:+1 Zak;

Paul Tattersfield:Exactly Zac

Zak Muscovitch:Thats all I got!

Martín Silva Valent:I also want to strongly oppose to this proposal, I think there is no evidence to ask for it and doing so would jeopardize the fair balance of this process.

Martín Silva Valent:3!!!!

Paul Keating:What is the evidence supporting this change? It appears that most abusive URS complaints are defaulted. So why penalize a registrant who wants to actually defend a URS?

George Kirikos:Exactly, Michael. It can encourage gaming.

Lori Schulman:If 3 is too low and 15 too high, what is the correct balance?

George Kirikos:Not a discount, but a way to compel costs on the other side.

Justine Chew:I believe response fee goes with filing, must be paid within 1 business day of filing response..

Martín Silva Valent:fees are to be paid by complaints

Michael Karanicolas:Where's the evidence that 15 is too high?

Lori Schulman:I meant if 3 is too low and 15 too high, what could be a compromise balance?

Martín Silva Valent:that's the balance

George Kirikos:Strawman? Look at all the reverse domain name hijacking.

Martín Silva Valent:I am a registrant sitting here, why should I pay for your claim?

Michael Karanicolas:It's not a hypothetical. It's a fairly obvious avenue for how your proposal could be gamed.

Griffin Barnett:@Michael, only 0.7% of URS cases involve 15 or more domains in dispute that would trigger the response fee.... 5.2% of cases involve 3 or more disputed domain names - this idea is that the 15 threshold is too high to have any real meaning based on the caases to date

Mary Wong:Will it be helpful for staff to go back and look at where/when/how the 15 number was arrived at? We can also do the same for the 6 month + 6 month extension question from the previous proposal, if appropriate.

Justine Chew:+1 Mary

George Kirikos:That affects my example, but Zak's example is still an issue.

Paul Tattersfield:no it wouldn't on weak 'generic' marks

Michael Karanicolas:It doesn't actually resolve that problem, Greg.

George Kirikos:i.e. orange.horse, orange.cat, orange.dog

Georges Nahitchevansky:Again George you are mixing and matching ideas. The point is that 15 is a very burden and basically rarely occurs so for aspects of fairness there should be a lower number.

Lori Schulman:Agree with Georges Nahitchevansky.

Michael Karanicolas:It seems a bit silly to be citing, as the evidence underlying this, that not enough people are getting the discount.

Martín Silva Valent:15 is low enough, 3 would put a lot of normal registrants in a shift of weight in the process

George Kirikos:Remember, the URS is compelled upon registrants, for the benefit of TM holders.

George Kirikos:A registrant might be happy to defend in court, where there is better due proces, etc.

George Kirikos:#24 is my language proposal, coming up next.

Georges Nahitchevansky:Compelled??? Then what about the need for brand owners to protect themselves from abusive registrations that cost very little to a registrant to do in the first place

Michael Karanicolas:So the current number was already set as a compromise. And now it's claimed this compromise needs to be shifted to a lower compromise?

George Kirikos:@Georges: I'd be happy to opt-out of URS/UDRP, if you think it's not a compelled policy.

Georges Nahitchevansky:You mist the point as usual

Paul Tattersfield:No it doesn't because it particularly punitive to registrants in the poorer jurisdictions

George Kirikos:I didn't use survey monkey.

Paul Tattersfield:thats probably temporal

Griffin Barnett:While I don't think we can necessarily draw a correlation between defaults and notice/language, I do support putting this proposal to public comment, and even support in principle mirroring the UDRP language rule in the URS

Griffin Barnett:Although I do have some concerns about the impact this may have on cost of administering the URS

Griffin Barnett:Something we might want to look at

Georges Nahitchevansky:If you have a language rule you should also not make it as part of the word limitation of the URS

Griffin Barnett:AGree with Renee also about the timing issues

Ivett Paulovics:It is not a sustainable cost for the URS Provider considering the low fees

Paul Tattersfield:What's to stop registrants putting Korean contact details into delay process and create cost?

Griffin Barnett:It would be tied to the language of the registration agreement

George Kirikos:@PaulT: it's not contact details, but language of registration agreement (registrar).

Griffin Barnett:At least that's how the UDRP works

Georges Nahitchevansky:George. But you agree that the language of the proceeding would still be subject to a panelist determination

Paul Tattersfield:I appreciate that George but it would be an easy way inject time and costs

Mary Wong:If it helps, staff did look at the 15 or so cases where language issues were mentioned as possibly problematic, but the results were not conclusive (i.e. no issue was found).

George Kirikos:@Georges: yes, I'd be amenable to that (was waiting to do it orally).

Pascal Boehner:And what about the fact that URS providers would then have to have panels for (basically) all languages worldwide...?

Maxim Alzoba (FAITID) 2:please note that there could be Reseller between Registrar and RegRegistrar

Paul Tattersfield:I could register all my names in a niche language as a defensive mechanism for example

Justine Chew:I agree with Phil

Lori Schulman:Maxim's point is well-taken re: resellers.

Renee Fossen:+1 Maxim

Kathy Kleiman:If we follow the URS Procedures, then it would be "the predominant language used in Registrant's country or territory." URS Procedures

Mary Wong:@Phil, we can check with our GDD colleagues but the information (if any) may be limited to what is disclosed during the registrar accreditation process.

Maxim Alzoba (FAITID) 2:@Lori, I can not use mic. if possible , please read it to the confcall

Justine Chew:Kathy is correct

Kathy Kleiman:URS Procedures 4.2

Paul Tattersfield:We this sometimes with people who have moved to the West using languages from their country of origin to block process

Lori Schulman:The EU has 3 official languages for TM applications (If I recall correctly). I would think that if we were to agree that adding a language is important we would have to determine based on usage and the ability to support translation, etc. There is an extra cost here. Who would bear it? I can't see the whole proposal on the screen.

George Kirikos:#25

Georges Nahitchevansky:One issue is gaming by registrants given the GDPR. A registrant could use a Chinese registrar and falsely claim to be in China, but if there is no real whois data as to the registrar there may be very little useful information regarding the registrant to show the person actually understands or speaks English. So such a proposal should have some refining

Kathy Kleiman:lol

Paul Tattersfield::)

Kathy Kleiman:(on the onions)

Lori Schulman: onions are odious to many

Martín Silva Valent: I support George concerns of languages

Paul Tattersfield: What about the language of the TM?

Griffin Barnett: Can we have wscrolling rights on the screen?

Lori Schulman: Is the proposal synched again?

Griffin Barnett: Not able to see the rest of the propoal

Paul Tattersfield: Shouldn't the language be the language of the trademark?

Lori Schulman: All questions should be considered "friendly" as we are trying to reach compromise in the spirit of multistakeholderism

Michael Karanicolas: I support Zak's proposal. I think it touches on an important issue.

Philip Corwin: Again, can we please unlock the document?

Kathy Kleiman: Possibility for George and Zak to merge these overlapping proposals?

Griffin Barnett: Only question is what about mixed-script domain names?

Griffin Barnett: Perhaps latin SLD and non-Latin TLD or vice-versa, or mixed scripts werven within an SLD which I believe is now possible

Griffin Barnett: *even within

George Kirikos: I can be limited in fluency to translate one word for a domain, but not able to respond to a complaint in that language.

Julie Hedlund: @all: the document is unsynched.

Lori Schulman: Can the survey monkey forms be scaled somehow? Very hard to read. Downloading the .pdfs knocks you out of chat unless you have 2 screens which I don't at the momentn

Michael Karanicolas: We would need to find a way to communicate the option for translation into the local language though

George Kirikos: Can we perhaps have a friendly amendment of having preferred language be a field within the WHOIS itself?

Griffin Barnett: I would support combining George's and Zak's similar proposals for further refinement

Martín Silva Valent: +1 Michael

George Kirikos: That would give the public (and complainants) notice of what language should be used. It would require augmenting WHOIS, though.

George Kirikos: (always controversial)

Martín Silva Valent: +1 griffing

Ariel Liang: @Lori - you should be able to click on the plus sign on the top of sharing pod to zoom into the document

George Kirikos: Complainant bears the cost.

George Kirikos: Just like in the UDRP.

George Kirikos: Since the complaint wouldn't always be in English anymore.

Kathy Kleiman: Happily, the Complaint is short!

Griffin Barnett: I'd be fine with that George, if we also introduce some of the other proposals to offset these costs in certain cases, e.g. loser pays, repet offenders, etc.

George Kirikos: Translation costs for 500 words is going to be on the order of \$50?

Lori Schulman: @Ariel - the plus gives me a larger document but I find that sliding the screen to read a full sentence and having to slide back to start another very difficult and trying to keep track.

Martín Silva Valent: in any other crossborder process you would be obligated to fill in a translation, it has a point

George Kirikos: (i.e. for a complainant to bear, if they don't have the same language as respondent)

Rebecca L Tushnet: I would note that there's a not insignificant number of foreign language URS claimants who are already bearing that cos

Rebecca L Tushnet: *cost

George Kirikos:+1 Rebecca

Griffin Barnett:@Rebecca can you elaborate on that?

Griffin Barnett:Ah nevermind

Ariel Liang:@Lori - sorry to hear the inconvenience. The AC room sharing pod has limited scaling capability

Griffin Barnett:Misread your comment, I get it now

Lori Schulman:@Ariel - I tried the full download feature before the call. I got the files but then couldn't open them. I will keep trying... I appreciate that manipulating the docs has been difficult for staff and appreciate the effort. I still think that a consolidated report document in portrait view would be helpful if not too onerous to staff.

Griffin Barnett:I agree there are some cases where the current requirement of English-only can be a burden to complainants as well

Lori Schulman:Would decisions have to be translated into i

Lori Schulman:English

George Kirikos:Are we going to defer this one to Phase 2?

George Kirikos:(this is #15)

George Kirikos:I thought Brian said that we would hold off on these ones today?

Ariel Liang:@Lori - yes staff will work on consolidating all proposals and also relabeling the numbering on the documents after the call. we will let the WG know when this is done

George Kirikos:Big Problems with this proposal, including Identity Theft, see: <https://mm.icann.org/pipermail/gnso-rpm-wg/2018-September/003291.html>

Lori Schulman:I think that given the number of English speaking practitioners that even if proceedings are held in non English languages, the decisions should be translated in English in order to track outcomes.

Paul Tattersfield:Unworkable on sooo many levels

Renee Fossen:@Lori at the Provider's expense?

Griffin Barnett:It is related but not the same as just "loser pays"

David McAuley:Sanctioning repeat offenders is also proposed in another number – I believe #14 – I can support the idea in concept, and I think co-chairs have asked for more detail if memory is correct

Lori Schulman:@Renee - I understand that providers have very slim margins but maybe ICANN pays?

Lori Schulman:Or there is a way to order a translation from the provider at a fee? Not sure.

Griffin Barnett:I take your point George about inaccurate WHOIS, but that's a separate issue - there is a WHOIS Inaccuracy Reporting process

Lori Schulman:I think we do need a uniform way of reporting outcomes.

Justine Chew:Agree with George

Lori Schulman:It aides in research and analysis such as Rebecca Tushnet's study

Ariel Liang:time is up

Paul Tattersfield:You also need the naughty people to play nice and use their own name

George Kirikos:What are the penalties for successfully opposed TM applications?

Griffin Barnett:I understand there are implementation challenges. Most of the specifics of what the "enhanced penalties" would be are included here as a strawman

Griffin Barnett:Important to focus on the actual policy proposal here, which is enhanced penalties for repeat offenders/high-volume

George Kirikos:What are Barclay's penalties, besides fines, in being restricted from the finance business, when they were manipulating FX?

Griffin Barnett:Irreelevant Goerge

George Kirikos:https://urldefense.proofpoint.com/v2/url?u=http-3A_www.circleid.com_posts_20150520-5Fshould-5Fbarclays-5Flose-5Fthe-5Fbarclays-5Ftop-5Flevel-

[5Fdomain &d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=z9Vrh7pBaBWSnRzHJcE5-vdZGjWhAwT9oEmjR8ShFYc&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.auda.org.au_index.php_policies_index-2Dof-2Dpublished-2Dpolicies_2008_2008-2D09_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=z9Vrh7pBaBWSnRzHJcE5-vdZGjWhAwT9oEmjR8ShFYc&e=)

George Kirikos:You have to allow these punitive damages to be assessed by courts, not 'thin' panels with limited due process.

George Kirikos:ACPA ca get you \$100K/domain.

George Kirikos:*ca=can

Brian Beckham - WIPO:@Michale, just FYI there are some spaces that use such an approach, e.g., AU: https://urldefense.proofpoint.com/v2/url?u=https-3A_www.auda.org.au_index.php_policies_index-2Dof-2Dpublished-2Dpolicies_2008_2008-2D09_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=lqD6m4LGad0q-E1q-yfYulFHY07_BWMIzTQs5gaEEBo&e= and https://urldefense.proofpoint.com/v2/url?u=https-3A_www.auda.org.au_index.php_policies_index-2Dof-2Dpublished-2Dpolicies_2014_2014-2D06_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=b7DYGJ0XnLlge75nhafnZLqKPzs3eMqBIT79gTUiHUK&e=

[3A_www.auda.org.au_index.php_policies_index-2Dof-2Dpublished-2Dpolicies_2008_2008-2D09_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=lqD6m4LGad0q-E1q-yfYulFHY07_BWMIzTQs5gaEEBo&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.auda.org.au_index.php_policies_index-2Dof-2Dpublished-2Dpolicies_2008_2008-2D09_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=lqD6m4LGad0q-E1q-yfYulFHY07_BWMIzTQs5gaEEBo&e=)

[and https://urldefense.proofpoint.com/v2/url?u=https-3A_www.auda.org.au_index.php_policies_index-2Dof-2Dpublished-2Dpolicies_2014_2014-2D06_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=b7DYGJ0XnLlge75nhafnZLqKPzs3eMqBIT79gTUiHUK&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.auda.org.au_index.php_policies_index-2Dof-2Dpublished-2Dpolicies_2014_2014-2D06_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=b7DYGJ0XnLlge75nhafnZLqKPzs3eMqBIT79gTUiHUK&e=)

Renee Fossen:Apologies - I have to jump off and take the child to school in a few minutes.

Griffin Barnett:It's a determination for the complainant to make as to what makes sense

Griffin Barnett:for them to pursue

John McElwaine:@George the ACPA penalties only apply to a person that you can personal jurisdiction over in the U.S.

George Kirikos:+1 Zak. Asymmetric policy. (ran out of my 2 minutes)

Paul Tattersfield:Use the justice system that's what's its there for

Lori Schulman:Let's remember UDRP/URS developed to handle more obvious cases. That is why they are low cost and streamlined. ACPA is not that.

George Kirikos:Plus, the URS *already* has a penalty, i.e. loss of the renewal privileges, plus suspension.

George Kirikos:i.e. domain gets deleted, for first-come first served again.

Griffin Barnett:that's the basic remedy George, we are talking here about enhanced penalties in a certain limited set of circumstances

Lori Schulman:Perhaps we are coming from opposite ends in order to find a middle?

George Kirikos:Can I get back on the voice, if allowed?

Lori Schulman:Or have we just given up on compromise, multi-stakeholder approach?

Zak Muscovitch:@Greg, I am not criticizing one-sided policies per se, as obviously interests will propose a proposal of particular interest to them. But ultimately balance is what is required when it comes to enactment.

Martín Silva Valent:exactly

Zak Muscovitch:@Lori, I haven't given up on that and look forward to reaching compromises! :)

Paul Tattersfield:not radical just daft

Lori Schulman:@Zak - very good to hear.

Griffin Barnett:Balance is fine, and I note there are already some specific "remedies" where abusive complainants are identified

George Kirikos:It costs under \$20 to form a new company, see: https://urldefense.proofpoint.com/v2/url?u=https-3A_www.gov.uk_limited-2Dcompany-2Dformation_register-2Dyour-2Dcompany&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9G

[HvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=B8ySW_W4cuEk8Q-nAfiQr5TsPvASI5zd_Prt45s6IzM&e=](https://www.whois.com/whois/HvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFlzBd25OMpJ9geFOZ7TeE&s=B8ySW_W4cuEk8Q-nAfiQr5TsPvASI5zd_Prt45s6IzM&e=)

Lori Schulman: Agree that we need to be flexible on both sides.

Griffin Barnett: I agree that public comment will elicit this kind of balancing feedback

George Kirikos: So, such a policy would be easily routed around thus would be ineffective.

Martín Silva Valent: I have to express my opposition to this proposal

Griffin Barnett: It's a good point George, gaming can take place of these mechanisms in a variety of ways, doesn't mean we shouldn't try and improve or refine the rules anyway

Martín Silva Valent: is neither fair nor balanced

Griffin Barnett: They're not unworkable

Paul Tattersfield: They are ;-)

Griffin Barnett: The concept of enhanced penalties applying in certain circumstances is workable, and is done in a variety of administrative and judicial contexts around the world

George Kirikos: It's unworkable, if you don't have verified WHOIS first.

George Kirikos: Otherwise, it'll encourage bad guys to make their WHOIS be "Google Inc", "Amazon Inc", etc.

Paul Tattersfield: It's not only the implementation, it's wrong on so many levels it's not even sensible or even desirable

George Kirikos: +1 Paul

Rebecca L Tushnet: I gotta wonder why we're spending a bunch of time talking about each proposal if having it laid out and presented is enough to constitute enough support to put it out to the public

Michael Karanicolas: Sorry! Had to step away

George Kirikos: #16

George Kirikos: Right of first refusal, plus extended suspensions.

Martín Silva Valent: +1 Rebecca

Georges Nahitchevansky: Gaming is definitely an issue, so the problem always comes back to fairness in these loser pay proposals so that the burden does not fall primarily on one group. How you get there is difficult if you look at it as simply a financial penalty. But unless there is a workable fairness framework then I think that Michael K is right that there will be much pushback

Justine Chew: @Griffin, please also consider at what point "offenders" get to the black list via a vis determination versus appeal.

Griffin Barnett: Sorry, should have clarified the presenters earlier on - I did the first three, Lori will do this one, and John McElwaine will do the last of our set of 5

George Kirikos: If the ICA or other "groups" made large "joint" but extreme proposals, they'd face the same issue.

Griffin Barnett: @Justine it's a good point - any enhanced penalties would likely only apply after a final determination

Brian Beckham - WIPO: @Rebecca, this is why we have used the "bias towards inclusion" terminology, but you raise a good point.

Justine Chew: @Griffin, that wasn't clear in the proposal. Thanks.

Griffin Barnett: And like I said, the specific suggested penalties we mentioned are intended more as a strawman, but I think certain open to further consideration and discussion as to what appropriate enhanced penalties could be

Paul Tattersfield: I think we should celebrate that URS, UDRP and judicial proceedings are markedly different that is a strength not a weakness

Rebecca L Tushnet: I agree, Paul--I would like a better explanation of why the UDRP isn't good enough for someone who wants a transfer

Griffin Barnett:There are other considerations, like the timing - it might be critical to have the domain suspended quickly bc of abusive content or other malicious use

George Kirikos:Right of first refusal is even more valuable than a transfer, because you can save registration fees.

George Kirikos:(for a TM holder)

George Kirikos:So, that makes it *better* than the UDRP, as Zak said.

Griffin Barnett:George, how so? If the complainant accepts the registration it will pay the registration fees as normal

Griffin Barnett:At least that's how I would understand it to work

Zak Muscovitch:new hand for me

George Kirikos:@Griffin: right of first refusal means that some 3rd party attempts to register the domain, after deletion, but TM holder must be consulted first.

Zak Muscovitch:I will defer to steve

Martín Silva Valent:there is no evidence to support this, in the cases reviewed it was not an issue

George Kirikos:@Griffin: what you described is mandatory transfer.

George Kirikos:So, while the domain name is unregistered, the TM holder doesn't have to pay at all.

Griffin Barnett:Hmm, I didn't understand it to work precisely in that way, perhaps we need to be more precise in describing what is intended by the ROFR concept

Kathy Kleiman:Voluntary transfer was something the Practitioners Survey discussed as well.

George Kirikos:+1 Zak.

Martín Silva Valent:this proposal goes way beyond the current policy

Martín Silva Valent:+1 zak

Paul Tattersfield:Patience might have been the best course of action

here https://urldefense.proofpoint.com/v2/url?u=http-3A_www.adrforum.com_domaindecisions_1703352D.htm&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=moCqx4aQ4HWJq7fb7EvHnYFizBd25OMpJ9geFOZ7TeE&s=rH5gsPUmerlRdCgSOGiGU2qbxDtEQ_rHd4M_7tUb3L0&e=

Kathy Kleiman:Zak just outlined the reasoning of the STI on this matter.

Jay Chapman:+1 Zak

Philip Corwin:Modifying URS remedies definitely a Phase 1 issue IMHO. Whether there will be consensus for any modification is a separate matter.

Justine Chew:+1 Zak. It's also not clear to me how URS and UDRP would work in parallel if this proposal is implemented.

Griffin Barnett:I mean, all domain names are FCFS so this issue about conflicting trademark rights has always existed

Kathy Kleiman:Poor Delta, we've been talking about this example for 20 years!

George Kirikos:Plus, some folks want this to apply to legacy gTLDs like .com. The problems would be amplified.

Griffin Barnett:Choose a better mark Delta!

Griffin Barnett:lol

Brian Beckham - WIPO:dont forget "united" or "apple" Kathy ;)!

George Kirikos:i.e. these problems seem minor for 'worthless' new gTLDs. The stakes are much higher for .com domains, with many competing registrants wanting a domain (consider the heated domain expiry market, where hundreds of registrants want a domain as bidders in auctions).

Brian Beckham - WIPO:(Having a little trouble hearing Lori)

Paul Tattersfield:+\$1 first year registrations George

Brian Beckham - WIPO:(better now)

Kathy Kleiman::-)

Paul Tattersfield:Should just be quietly dropped

George Kirikos:Not many are going for new gTLDs in terms of drop catching, as a practical matter.

Griffin Barnett:Well said Lori

George Kirikos:Not enough time for the next one, loser pays.

George Kirikos:#22

Justine Chew:It's a fine balance between needing to develop versus attempting to fix something that is broken.

David McAuley:agree with Brian re closeness to end of call

Justine Chew:that isn't broken I meant.

David McAuley:Can staff be sure at end to remind us of next call

Griffin Barnett:Agree Lori - let's use this discussion process to merge and refine proposals, and tend toward inclusion in the Initial Report

Mary Wong:@David and all - next regular call should be next Weds 3 October, 1700 UTC - but note the possibility of additional calls that the co-chairs are considering.

Griffin Barnett:(of "final" versions of the proposals)

Julie Hedlund:@All: The next call is 03 October at 1700-1900 UTC.

Martín Silva Valent:just because a proposal exist, it doesn't mean it has to be included in the end, there can be proposals dropped if there is no consensus

Brian Beckham - WIPO:thanks @Julie!

Philip Corwin:All wisdom does not reside within the WG, and public comments may well suggest middle ground that can lead to a modification that can get consensus for the Final Report

Paul Tattersfield:Are we asking the community for their own divergent issues too or just to comment on ours?

Griffin Barnett:The co-chairs, and the public

David McAuley:thanks Mary - i will be traveling and will keep attuned to that possibility

Griffin Barnett:Presumably the community can comment in whatever manner it likes

Philip Corwin:That is why, at this stage, the bias is toward inclusion so we get public comment

Griffin Barnett:+1 Phil

Paul Tattersfield:I held back to phase II too

George Kirikos:So, should Paul T be allowed to submit a new proposal now?

George Kirikos:(and others who 'held back')

Maxim Alzoba (FAITID):bye all, have to drop the call

Lori Schulman:Agree with Kristine re implementation

Lori Schulman:We have to be practical about cost and effects on registrars

Justine Chew:@Kristine, absolutely!

Lori Schulman:and registries

Paul Tattersfield:Exactly !

George Kirikos:Right, I am in favour conceptually of loser pays, but it's just not workable, due to identity theft and other issues.

Rebecca L Tushnet:Completely agree with Kristine that you can't just throw it to the nerds to design

George Kirikos:Otherwise, it will push the debate even further into the iRT.

Griffin Barnett:Hopefully we haven't given folks the impression that we haven't given thought to implementation, but the point overall is well-taken

Jay Chapman:+1 Kristine

Paul Tattersfield:Exactly ! was @ (Kristine)

Kathy Kleiman:IRT = implementation review teams

Lori Schulman:@Rebecca - LOL

Lori Schulman:Nerds rule.

Griffin Barnett:I think we ARE the nerds....

Kathy Kleiman:Usual time next week!

Paul Tattersfield:It's embarrassing put out so poorly thought out proposals

Lori Schulman:ciao. thanks to the chairs

David McAuley:Thanks Brian, staff and all

George Kirikos:Very limited APAC participation today, by the way.

Griffin Barnett:Thanks all, bye

Zak Muscovitch:Thank you Brian, staff, chairs and all! :)

George Kirikos:Should check the attendance records.

Paul Tattersfield:thanks brian Bye