

Attendance: 29 Members

Christine Farley	Kristine Dorrain
Colin O'Brien	Lillian Fosteris
Cyntia King	Martin Silva
David Maher	Maxim Alzoba
David McAuley	Michael Graham
Gary Saposnik	Michael Karanicolas
George Kirikos	Monica Mitchell
Greg Shatan	Nat Cohen
Griffin Barnett	Petter Rindforth
Jason Schaeffer	Renee Fossen
John McElwaine	Roger Carney
Justine Chew	Sara Bockey
Kathy Kleiman	Susan Payne
	Zak Muscovitch

Audio only:

Claudio DiGangi
Rebecca Tushnet

Apologies:

Jay Chapman
Sara Bockey
Marie Pattullo
Lori Schulman

Staff:

Julie Hedlund
Ariel Liang
Berry Cobb
AntoniettaMangiacotti
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, 10 October 2018 at 17:00 UTC.

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

George Kirikos:Hi folks.

Michelle DeSmyter:Hi George and Monica - welcome!

George Kirikos:Hi M & M. :-)

Michelle DeSmyter::)

Monica Mitchell:hi

George Kirikos:21 members of this PDP have a first name beginning with the letter 'M' -- by far the most popular letter amongst members.

George Kirikos:<https://community.icann.org/pages/viewpage.action?pageId=58729950>

George Kirikos:Actually, 22 members.

Kathy Kleiman:George - I hope you have a glass of water.

Kathy Kleiman:Many presentations today!

George Kirikos:I have a bottle. :-)

Kathy Kleiman::-)

Kathy Kleiman:I wish Marie Pattullo could join us as well.

George Kirikos:Can she make it on Friday? Could rejig the schedule.....

Julie Hedlund:@George: No Marie isn't available on Friday. Staff will have to read her proposal today.

Maxim Alzoba (FAITID):Hello All

Julie Hedlund:First up: 1. George Kirikos (#5): <https://community.icann.org/download/attachments/93126760/URS-Proposal-5.pdf?api=v2>

George Kirikos:All proposals are at: <https://community.icann.org/display/RARPMRIAGPWG/URS+Proposals>

George Kirikos:(easier to view in a browser)

Julie Hedlund:The proposal is in the pod and unsynced.

Greg Shatan:There are no "old domains" in the URS.

Greg Shatan:Though I suppose that may well change.

Michael Karanicolas:@Greg - there will be if it's expanded as your colleagues have proposed.

Griffin Barnett:Rules about limitations on periods in which suits can be brought varies greatly based on the claims at issue, jurisdictions, etc.

Michael Karanicolas:Also - will naturally change over time, of course

Greg Shatan:@Michael, sounds good to me.

Griffin Barnett:Many claims have no specific statute of limitations

Griffin Barnett:My main concern about the proposal as written is running the proposed limitations period from the creation date of the domain ... this could encourage registrants to register the domain, wait for two years and then start making abusive use of it, free and clear from possible URS claim

Gary Saposnik:Since can't bring a claim unless bad faith use, all it would take would be for a squatter to sit on a domain for 2 years, and then commit bad faith use without any action other than filing a court case.

George Kirikos:Line noise?

Michelle DeSmyter:Greg, there is an echo & static coming off of your line

Griffin Barnett:ALso it does not take into consideration the knew or should have known standard of discovering the problematic domain name

Griffin Barnett:I'm not saying we could not put som version of a SOL/laches proposal for public comment, but some refinements and other considerations to think about

Griffin Barnett:As John mentioned, I would think laches doctrine would be applicable, just as it taken nto consideration in a UDRP context, and that works just fine

Griffin Barnett:Lost Zak's audio....?

George Kirikos:Still fine here (connected by phone).

Maxim Alzoba (FAITID):I still hear it via Adobe audio

George Kirikos:1-866-692-5726

George Kirikos:"RPM Member"

David McAuley:i also hear Zak, on phone

Maxim Alzoba (FAITID):skype to it shoud be free

Griffin Barnett:Seems he just cut out briefly through AC audio

Griffin Barnett:hearing him fine now

Greg Shatan:One other point — statutes of limitations are typically a defense, which must be affirmatively raised by the defendant or else they are waived (under US law).

Maxim Alzoba (FAITID):few hundred laws at least...

Greg Shatan:Just another way in which this proposal goes far beyond any actual statute of limitation that I'm familiar with.

Griffin Barnett:I don't think it's worthwhile to survey national laws for this

Maxim Alzoba (FAITID):+1 Griffin

Griffin Barnett:maybe it would be an appropriate exercise for an IRT if the concept is recommended as policy

Susan Payne:+1 Claudio re timing

Renee Fossen (Forum):+1 Claudio

Michael Karanicolas:I think use v. registration is an interesting area to explore.

Greg Shatan:@Claudio, that is the change in circumstances that I asked about. A change in use (e.g., website changes) may change how and whether a case should be brought.

George Kirikos:+1 Rebecca, helps provide a balance.

Greg Shatan:Incontestability must be requested or granted; it doesn't just "kick in."

Greg Shatan:Sorry — "requested AND granted"

Michael Karanicolas:@Greg - this is a streamlined process You can't expect the procedures to work the same way.

Greg Shatan:If we are going to bring up analogies, they need to be correctly stated.

Kristine Dorrain:Also note that "creation of the domain name" means that subsequent transfers do not reset the clock.

Griffin Barnett:Good point Kristine, also problematic

Greg Shatan:Yes,@Kristine, it is a "maximum proposal" at this point.

Gary Saposnik:Agree Kristine. Could easily lead to gaming of the system.

Kristine Dorrain:Original registrant's good faith intent should not transfer to subsequent purchasers.

Michael Karanicolas:@Kristine - the rules say otherwise.

Kristine Dorrain:@Michael...where?

Griffin Barnett:the very very low renewal costs, typically

Susan Payne:9oh come on - renewal costs are peanuts

Michael Karanicolas:@Kristine: "registered and used in bad faith"

Kristine Dorrain:Yes, and a transfer of a domain name is a new registration (to that new registrant).

Julie Hedlund:Next: 2. George Kirikos
(#7): <https://community.icann.org/download/attachments/93126760/URS-Proposal-7.pdf?api=v2>

Greg Shatan:Not if you own thousands of domain names, Susan. That's a big inventory management cost.

Julie Hedlund:Up and unsynced.

Kristine Dorrain:George is proposing that person 1 can buy a domain in 2018 and sell the domain name in 2025 to someone who will use it to infringe TMs and the TM owner is SOL

Michael Karanicolas:Sorry - procedures not rules.

Susan Payne:+1 Kristine - transfer most definitely is a new registration

Kristine Dorrain:@Susan, yes. This is why "creation date" is nefarious.

Greg Shatan:@Kristine, that will increase the value of "old" registrations.

Michael Karanicolas:@Kristine - that's a misstatement of the meaning of the procedures

Griffin Barnett:I have no issue with this proposal from a substantive standpoint, but I wonder, in this particular privacy/WHOIS climate, whether this could be achievable

Kristine Dorrain:@Michael, nope.

Kristine Dorrain:check 20,000+ UDRP and URS decisions....

Maxim Alzoba (FAITID):expectation of a legal contact from physical person is bit high

Griffin Barnett:also, from a practical standpoint, most registrants use identical POCs for each type of WHOIS contact (reg/admin/tech) so I'm not sure whether providing this change would really have any meaningful impact

Michael Karanicolas:@Kristine - they why, in the very next paragraph, does it distinguish between "registered" and "acquired"

Susan Payne:@Kristine - Agreed. although George does specifically call this distinction out in one of his other proposals, which we'll be coming to on this call I believe

Greg Shatan:Idea: domain name registrants should be required to appoint an agent for service of process.

Cynthia King:Is there evidence of bullying ?

George Kirikos:Google "TM bullying"

Maxim Alzoba (FAITID):@Greg, it would drastically change requirements for physical persons and does not go well with Public Interest

George Kirikos:@Greg: would be fine for me....perhaps after a certain threshold? (i.e. above N domains, N = 500, 1000, etc?)

Kristine Dorrain:@ Michael, "registered or acquired" is only used in the context of buying a domain name for resale/transfer. Since the entire URS is drafted poorly, and given that the weight of all UDRP and URS cases do not distinguish between the two, I assume it's a redundancy. No evidence points to the contrary.

George Kirikos:I wanted it to be OPT-IN, btw.

John McElwaine:Registrars can charge for being "legal contact"

George Kirikos:(not mandatory, in the proposal)

Cynthia King:Why does it have to be only a legal contact? What about a business manager?

Kristine Dorrain:On Proposal #7, I think it's far outside the scope of this PDP to mandate changes to RDDS. At best, it might be a recommendation to a subsequent PDP or WG.

Greg Shatan:@Maxim, I think it would be quite consistent with Public Interest. It's true that natural persons don't have to have an agent for process, but they are much easier to locate in connection with "brick and mortar" issues.

Kristine Dorrain:(even for an optional field)

Kristine Dorrain:(maybe even *especially*)

Maxim Alzoba (FAITID):@Greg, I does not mean Community , I mean Public

Greg Shatan:So do I, @Maxim.

Maxim Alzoba (FAITID):I do not belive that forcing persons to hire additional agents will be in the interest of the Public

Maxim Alzoba (FAITID):also it is a bundling , and this might be prohibited as a trade practice locally

Cyntia King:@George: I just looked up TM bullying & found a case against the Olympic Committee that was apparently thrown out

Cyntia King:@Maxim: the Legal proposal doesn't "require" hiring a legal POC, it "allows" this

Kristine Dorrain:@George, any registrant has several fields to list important people who should be notified. Why draw the line at four? Why not five, six,....ten? Hyperbole aside, I don't see what problem you're solving for here that can't be solved with the fields we have.

Maxim Alzoba (FAITID):@Cyntia, nothing prohibits them hiring anyone now, why adding something?

Julie Hedlund:Next up: 3. George Kirikos
(#8): <https://community.icann.org/download/attachments/93126760/URS-Proposal-8.pdf?api=v2>

Greg Shatan:The first thing I found on point from that search was a USPTO survey that found that whether TM bullying exists to be unclear.

Julie Hedlund:Up and unsynced.

Greg Shatan:Apologies for awful syntax

Griffin Barnett:I have to say, I don't really get this proposal ... I can't think of any context in which response periods are on some sort of sliding scale

Cyntia King:@Maxim: The point is that individuals be "allowed" to offer a POC that can serve as a notification backstop to ensure a domain is not lost

Kristine Dorrain:Re: Proposal #8. No substantive concerns with me. I feel like it's creative. However, PLEASE talk to ALL providers. This will be a system nightmare (full employment act for developers?) and will likely create docketing headaches for complainant and their counsel.

Griffin Barnett:Also agree that it creates a lot of practical problems, per Kristine's comment

George Kirikos:I've proposed this in the past, but this is the first time we had a review of the URS/UDRP.

Cyntia King:I see no reason to allow additional time based on years of ownership. Is there any other rule/law that offers a sliding-scale timeframe for legal action?

Griffin Barnett:it is not required to achieve actual notice of a dispute/complaint in all contexts

Julie Hedlund:Susan Payne has her hand up.

Julie Hedlund:now it's down.

Susan Payne:This flies in the face of "Rapid"

Griffin Barnett:And "Uniform"

Michael Graham:@Cyntia -- Agree.

Michael Graham:@Susan -- Agree -- creates "slower path"

David McAuley:With respect to staff looking at chat for IR, that is what I understood - i.e. a statement of support can be made in chat as well as by audio. If this is wrong can staff let us know

Cyntia King:This rule applies to charges of infringement - why would a complainant be forced to allow continued infringement just because the respondent has been infringing for a long time?

Renee Fossen (Forum):A suspended domain may be the only way to achieve notice.

Julie Hedlund:@All: Staff confirms that the comments in the chat will be taken into consideration in the drafting of the initial report, in addition to the transcripts.

Greg Shatan:This seems rather arbitrary.

Griffin Barnett:Agree with Cyntia's point ... so, just bc someone has been using (potentially infringing) for a longer period of time, this should give them additional rights in the way of responding to a complaint? Not sure that makes sense

David McAuley:Thank you @Julie

Greg Shatan:@Susan, good point. This is a particularly bad fit for URS.

Cyntia King:+ @Susan - URS meant to be rapid AND for clear-cut instances of infringement. Why delay tie process based on length of ownership?

Maxim Alzoba (FAITID):@Cyntia, there is an Administrator field , and there could be a contracted agent

Justine Chew:Agree with Susan. Can't see the point of this proposal.

Michael Karanicolas:The high rate of default as evidence of a problem?

Kathy Kleiman:Greg - I think we're finished with the discussion.

Kathy Kleiman:Could you put the comment in the chat?

Greg Shatan:High rate of default is evidence of a problem of slam dunk cybersquatting.

Kathy Kleiman:Tx!!

Griffin Barnett:I don't see the logic in correlating the length of time a domain has been registered with the time it takes to respond to a URS complaint

Susan Payne:@George - but they haven't waited 5 years. and they are not likley to

Michael Graham:@George K -- What evidence of URS more than 2 years after domain registration do we have?

Cyntia King:@Maxim: That field is not understood to be a contact for legal service. Businesses are forced to indicate a registered agent for legal service - @George is suggesting the same for domains. I'm not opposed to this; but I wonder if it's feasible.

Greg Shatan:George is assuming facts not in evidence, that anyone is "waiting" to bring a complaint.

Julie Hedlund:Next up: 4. Marie Pattullo (staff to present on behalf of Marie)
(#13): <https://community.icann.org/download/attachments/93126760/URS-Proposal-13.pdf?api=v2>

Maxim Alzoba (FAITID):@Cyntia, if the party does not understand how fields work, why should we expect from them to understand how a Legal contact works?

Michael Graham:Agree we should procee #13 to public comment.

Michael Graham:*proceed*

Cyntia King:Variable response times will assuredly result in widespread public confusion. I think this does more harm than good for your average domain owner.

George Kirikos:@Susan: if they're not likely to wait 5 years, there's no harm from introducing a limitation period, then.

Greg Shatan:The concept of "waiting" is not correct.

Renee Fossen (Forum):+ 1 Cyntia

Cyntia King:@Maxim - I didn't say parties don't understand. The fact is that the [Administrator] field is NOT denoted for legal service.

Greg Shatan:You would have to prove actual notice and prove that the case was ripe in order to establish a start time for waiting — this is back to the concept of laches.

Griffin Barnett:Agree Cyntia - as I mentioned above in chat, it removes the "uniform" from URS (in addition to the "Rapid")

Kristine Dorrain:Re: Proposal 13: This is technically impossible.

Maxim Alzoba (FAITID):<Note> there are no safeguards for the situation where TM is no longer protected</Note>

David McAuley:I support this proposal (#13) in concept but will note that it will be important to review the public comments regarding enforceability

Maxim Alzoba (FAITID):about proposal #13

Greg Shatan:Idea: Instead of statute of limitations or laches as a (rather attenuated) touchpoint, we could consider looking at the Rule Against Perpetuities.

Kristine Dorrain:Let's assume a registrar or registry can identify a single customer (who hasn't opened a new account)...how would that information be included across hundreds of registrars....

Cyntia King:The onus could be placed on the Complainant to remind the registrar

Griffin Barnett:I actually agree with George - the proposal is good in concept - in fact, it seems a very basic logical extension of what the URS is intended to accomplish, but there are practical implementation concerns

Maxim Alzoba (FAITID):there is no way to identify a bad guy before they do something fishy or before they follow a pattern, ask SSAC

Kristine Dorrain:+1 Maxim

George Kirikos:There's no "KYC" (know your client) requirement for registrars to know the registrant.

Justine Chew:I support Marie Pattullo's proposal being put out for public comment, subject to confirmation that "loss" is "loss" after disposal of a de novo review or appeal (if any).

Kristine Dorrain:+1 George

Susan Payne:I support this going out to comment

Griffin Barnett:Same

George Kirikos:Perhaps Maxim might want to speak, as a registrar?

Maxim Alzoba (FAITID):and Registry

Cyntia King:I think this should go for public comment to see if there's enough support to dig into how it might be implemented

Maxim Alzoba (FAITID):(in cross control with Registrars)

George Kirikos:The implementation limitation might be at that same registrar, out of practicality.

George Kirikos:Otherwise, try to block "John Smith".

Kathy Kleiman:Zak, old hand?

George Kirikos:Also, what if the WHOIS of the registrant is fake, e.g. they use "Google Inc" as the registrant. It might mean Google couldn't register that domain if the domain expired and became available.

Zak Muscovitch:Lowered. :)

Griffin Barnett:Agree there are gaming concerns with the proposal, registrant's simply using false contact info

Maxim Alzoba (FAITID):effectively #13 will allow gaming of the system by TM owners (have protection of the TM for 1 year, go to TMCH, lose to an affiliate *(spend 150USD) = have protection forever)

Griffin Barnett:Could maybe be improved by linking to email address, payment info, or something more unique to the actual registrant

Justine Chew:From an implementation aspect, could use a blacklist to identify "losing Respondent" as named by that party itself, even if they used false name, contact info etc.

Maxim Alzoba (FAITID):@Griffin, payment info does not propagate further than 1 Registrar + potentially ICANN

George Kirikos:High monitoring burden....just like registrants have a burden of monitoring for incoming URS complaints? :-)

Michael Karanicolas:Monitoring infringements is the trademark owner's job. I can't say I'm that sympathetic to the "burden"

Griffin Barnett:@Maxim, true

Cyntia King:N@George: no policy is foolproof if a bad actor is particularly motivated. We can't make policy decisions on the longest odds cases

George Kirikos:John Smith at 123 Main Street, vs. John Smith at 2000 Avenue Road ---- same person?

Maxim Alzoba (FAITID):and , potentially , Law enforcement, if things go south

CHRISTINE FARLEY:If a registrant has been shown to have a bad faith in registering a domain, does it mean that all future registrations will be in bad faith? Or might it be possible for that registrant to re-register that domain with a good faith in future?

Justine Chew:What do we do with spam lists?

Michael Graham:@Kristine -- So we accept and develop policy based on the presumption that potential registrants will game the system and therefore we could not enforce proposal? Seems to me we should instead consider means of preventing such gaming, rather than accepting it.

George Kirikos:Only Chinese registrars could implement this, as I think they require National ID card to register domains?

Cyntia King:No monitoring burden at all if we allow a URS "winner" to file notice 0 days prior to renewal that they oppose renewal to current owner.

Michael Graham:This "impossible to identify registrants" discussion reinforces for me the need for requiring PII not only in registration of domains, but in accessible WHOIS/RDAP records.

Cyntia King:60 days

Kristine Dorrain:@Michael, absolutely not. There are many clever and creative proposals here. Additionally, this proposal is creative and may be useful someday. but that time is not now. We do not have the capacity to do this. As a complainant, let's say you win a URS

and the domain is immediately re-registered. How will you know if the person is the same? How will you enforce this? How would ICANN enforce this

Michael Graham:@Cynthia -- Agree with Notice proposal.

Maxim Alzoba (FAITID):@Michael, it is bit illegal now under GDPR (before the proper structure of puproses and contracts is here)

Julie Hedlund:Next up: 5. George Kirikos
(#12): <https://community.icann.org/download/attachments/93126760/URS-Proposal-12.pdf?api=v2>

Julie Hedlund:Up and unsynced.

Cynthia King:still synced?

Julie Hedlund:Oops :-)

Cynthia King:Thx!

Julie Hedlund:Now it's not.

Maxim Alzoba (FAITID):it is scrollable

Griffin Barnett:Sorry but if a name is transferred to a new registrant, it is logical that this constitutes a new "registration" for purposes of domain disputes

Cynthia King:Absolutely disagree w/ this proposal. Transfer date = new registration.

Griffin Barnett:there is a new owner, and that new owner's intent is fundamental

Maxim Alzoba (FAITID):transfer = new registration

Gary Saposnik:+1- Cytia and Griffin

Maxim Alzoba (FAITID):initial creation date is not an existing field

Kristine Dorrain:@George, are you willing then to uncouple registration AND use?

Cynthia King:I have seen domains transferred from a legit owner to a bad actor who, upon acquisition, immediately contacts TM owner w/ offer to sell for huge price.

Griffin Barnett:We are talking about disputes involving a standard that goes toward the registrant's intent - bad faith - accordingly, it must be the case that transfer of ownership must reset the analysis

Maxim Alzoba (FAITID):was discussed in the now dead RDS PDP

Michael Graham:@Kristine -- There are ways -- like upon confirming re-registration by wrongdoer the domain is required to be transferred to Complainant, with payment by wrongdoer credited to Complainant. There are ways -- which reflects this is a proposal whose simplicity is both a benefit and a burden as it must be expanded upon to be effective.. I think "waiting for the appropriate time" is a losing proposition -- we should address the problems and potential problems, and not wait for the ability to do so. (sounds odd having written this, but you get my meaning I think)

Kristine Dorrain:So the inference of good faith persists, but subsequent bad faith USE would void that?

Kristine Dorrain:+1 Griffin

Griffin Barnett:In cases where there is a good faith transfer, like a subsequent owner in interest, then that would overcome the bad faith registration element

Cyntia King:+1 @Griffin

Kristine Dorrain:@Michael, no, I don't understand I'm sorry. you said "like upon confirming re-registration by wrongdoer" - how do you propose to do that?

Michael Graham:@George K Proposal #12 -- Not all IP transfers carry all rights across. And what is "creation"?

Kristine Dorrain:Re: Proposal 12: What is the problem we're solving for here? Let

Kristine Dorrain:Let

George Kirikos:@Michael: Pepsi transfers a patent to a foreign subsidiary --- clock doesn't reset as to the age of the patent (or copyright, etc.)

Cyntia King:What about domains registered BEFORE the existence of a TM? A new owner AFTER TM registration is under the burden when the original registrant cannot be.

Michael Graham:@Kristine -- Good question -- but I presume UDRP or Litigation could reveal that a wrongdoer had assumed a new identify to re-register the domain. That sort of thing.

Kristine Dorrain:Let's assume the panelists were resolving an ambiguity. Why would over 20,000 cases from hundreds of panelists be wrong

Maxim Alzoba (FAITID):@George, domains work according to the lifecycle of a TLD, not like patents

Kristine Dorrain:We should be able to rely on their good solid work.

Kristine Dorrain:@Michael, UDRP could not...they only know what's in the Whois.

Michael Graham:@George K -- Would you consider changing "created" to "applied for"?

Cyntia King:This should not go out to the public. This is an issue of law, not personal opinion.

George Kirikos:@Michael: domains aren't applied for, though. There is just a creation date.

Maxim Alzoba (FAITID):the initial creation date is not tracked

Kristine Dorrain:Domains are created when the registrant registers them. Domains are also registered when they are transferred to a new holder.

Kristine Dorrain:@Maxim...I think some Ry's or Rr's used to....not sure if they still do

George Kirikos:@Kristine: no, they're assigned, not re-registerd.

Michael Karanicolas:I fundamentally think there's space on this issue to prevent the abuses or gaming that trademark folks are concerned about, while clarifying that a person won't open the door to losing their domain every time they undergo a reorganization, or sell their portfolio.

Maxim Alzoba (FAITID):basically there is no history of the domain in DNS system (beyond the current lifecycle)

George Kirikos:A transfer is a *trade* in some ccTLDs.

Kristine Dorrain:@George, from the Registry Operator (my) standpoint, they are new registrations. There is no concept of "assignment"

George Kirikos:@Kristine: not in .com, though.

Maxim Alzoba (FAITID):@George, ccTLDs have right to do whatever they find fit (and those who do not participate in ccNSO - even more)

Cyntia King:initial creation date can be established in several ways (TM application, Historical Whois, etc.) even in cases where the registrar doesn't track (some do).

Kathy Kleiman:Nat, old hand?

Michael Graham:@Kristine -- Actually, although not legal precedent (sp?), a UDRP decision could include this information if submitted by Complainant and supported with

evidence. And we have submitted additional information regarding the applicant/registrant's identity in some cases, in one case a multi-domain actions.

Griffin Barnett:It seems like we are quibbling over terminology, but the fundamental point remains the same: when a new owner is assigned a domain name, it must be considered a new "registration" for purposes of analyzing bad faith under URS.... because that element requires an examination of the INTENT of the registrant

Cyntia King:+1 @Griffin

Maxim Alzoba (FAITID):old hand

Greg Shatan:A new registrant can't inherit the intent of the prior registrant. Unless they agree not to change the use of the domain in any way....

Michael Karanicolas:I think there's room for refinement - but I also think this goes beyond "quibbling over terminology" - if it were, there wouldn't be this level of pushback.

Cyntia King:This should not go out to the public as it's a matter of law (see @Griffin Barnett's comments) not opinion.

John McElwaine:I believe that this proposal is out of scope of this working group.

Griffin Barnett:@George, your comments about transfer of ownership of patents, copyrights, etc. are just not accurate, and also not analogous

Michael Graham:@George K -- Actually, I would prefer the "registered" should be "created, registered, or transferred"

Kristine Dorrain:If we're going to equate creation intent with registrant intent, we should talk about decoupling USE then.

Michael Graham:@Kristine -- Agree with decoupling Use.

Kristine Dorrain:+1 Michael G....that would solve the clarity problem

Maxim Alzoba (FAITID):+1 Griffin

John McElwaine:@Kristine +1. It has to be or this proposal is out of scope of this working group. It is not within our charter to narrow or weaken the current RPMs

Kristine Dorrain:Yep

Michael Karanicolas:I'm sorry John - are you saying our Charter is limited to strengthening and expanding RPMs?

Julie Hedlund:Next up: 6. George Kirikos
(#18): <https://community.icann.org/download/attachments/93126760/URS-Proposal-18.pdf?api=v2>

Cyntia King:@Geaorge - your comment is just plain wrong. A domain owner is not liable for subsequent TM registrations EXCEPT when he uses the domain; at which point they are absolutely responsible to make sure their new use isn't infringing.

Julie Hedlund:Up and unsynced

Maxim Alzoba (FAITID):in some other jurisdiction it is a constitutional right to sue anyone

Griffin Barnett:George - your contention that there is no cause of action in certain jurisdictions to appeal a URS (or UDRP) is just wrong there was one case in the UK where a cause of action was rejected, it was poorly pled

John McElwaine:@Michael - no. But the effect of the proposal without eliminating "or" is to effiscreate the URS. George's concerns are already protected. No bad faith registration to start and then no bad faith use.

Kristine Dorrain:Re: Proposal 18: There is no ICANN policy that can override a national court's determination that it will or won't hear a case (for whatever reason). Why not try to change the relevant national law?

Maxim Alzoba (FAITID):and UK uses precedents system, and is not always the case around the globe

Griffin Barnett:If one court rejects a claim, nothing prevents the plaintiff from attempting to find another suitable jurisdiction to appeal

Maxim Alzoba (FAITID):+1 Griffin, they can always go to some other jurisdiction

Griffin Barnett:Furthermore, since we are talking about the URS right now, the URS already has its own appeal mechanism

Michael Karanicolas:John - please refrain from making blanket, false statements about the scope of our charter. If you disagree with a proposal, just say as much - don't spread falsehoods about the scope of discussion.

Griffin Barnett:and parties can then STILL pursue further appeals through courts

John McElwaine:@Michael - eviscerate - need spell check :)

Michael Graham:+1 @Griffin

George Kirikos:@Griffin: was upheld in another case, too.

Griffin Barnett:What was upheld?

George Kirikos:But, by implementing a Notice of Objection system, TM holder and Registrant would be back in their natural roles, as Complaint and Defendant respectively.

George Kirikos:@Griffin: that there was no cause of action.

George Kirikos:I posted the cases back in November.

Cyntia King:@Michael Karanicolas: Are you now a moderator of teh conversation? I'm unaware.

Kathy Kleiman:Is Zak quiet for you too?

Susan Payne:I don't think we should be hanging all this on one outlier UK case. It was a poorly crafted claim. And the brand owner also got summary judgment on the merits so that any comments about the rights of the registrant to bring the claim were obiter anyway

Cyntia King:Yes, Zak is quiet

Maxim Alzoba (FAITID):I hear Zak , clearly, but bit quiet

Griffin Barnett:Correct Susan

Cyntia King:Yes!

Maxim Alzoba (FAITID):better

Kristine Dorrain:yes

Kathy Kleiman:Can we reset Zak's time?

Kathy Kleiman:He lost about 20 seconds

Kathy Kleiman:due to problems

Griffin Barnett:We can agree to tack 20 seconds onto Zak's time

Michael Karanicolas:@Cyntia - No - but I remember what it was like to be a newcomer, and those kinds of statements are incredibly confusing, and bad for the discourse. It's just unnecessary, and can easily be avoided.

Greg Shatan:Yo-yo case is a "bad facts make bad law" poster child.

Ariel Liang:we will add 20 seconds after his time is up

Martin Silva:+100 michael

Martin Silva:K

Maxim Alzoba (FAITID):we do not have to follow other PDPs, it is not in the design of PDP

George Kirikos:Mute? *6 to unmute.

Michael Karanicolas:One sec - sorry

Griffin Barnett:One court denied one poorly-pleaded claim not a sufficient basis for asserting that URS parties do not have avenues of redress through the courts, if the internal URS review and appeal processes do not dispose of the case

Cyntia King:@Michael Karanicolas - Just not sure it's your job to tell others how to behave & what they can say....

Michael Karanicolas:Some issues w volume

Kathy Kleiman:Michael, are you online now?

Michael Karanicolas:I should be

Cyntia King:Perhaps a dial out ot Michael?

Kathy Kleiman:on phone?

Michael Karanicolas:@Cyntia - I'm old enough to remember when you and your colleagues were tone policing. Funny how things change.

Cyntia King:I was tone poilcing?

Maxim Alzoba (FAITID):in Russian Federation it is a constitutional right to go to court

Kristine Dorrain:+100 Susan

Maxim Alzoba (FAITID):does not grant anything though , it is competitive system

Martin Silva:yes

Maxim Alzoba (FAITID):perfect

Cyntia King:Don't think I ever told anyone they 'shouldn't spread falsehoods'

John McElwaine:@Michael - As I understand the proposal, I honestly believe that the proposal is outside the scope of the Charter which is to (a) assess the effectiveness of the

relevant RPM(s) and (b) whether the RPMs collectively fulfill the purposes for which they were created, or whether additional policy recommendations are needed, including to clarify and unify the policy goals..

Griffin Barnett:We cannot change national or international law

Kristine Dorrain:@Griffin, especially by ICANN consensus policy...

Griffin Barnett:We cannot create a cause of action in national courts

Maxim Alzoba (FAITID):+1

Kristine Dorrain:^this

Justine Chew:Would the winning party have a say in the URS decision being set aside by a losing party paying a fee?

Griffin Barnett:Thus, I don't see how we can put this proposal out for public comment

Julie Hedlund:Next up: 7. George Kirikos (#19): <https://community.icann.org/download/attachments/93126760/URS-Proposal-19.pdf?api=v2>

Julie Hedlund:Up and unsynced.

Kristine Dorrain:Another unicorn....looks nice and sparkly but a non-starter unless we can somehow dictate to national courts how they should operate....

Maxim Alzoba (FAITID):can not scroll

Susan Payne:This is another of Kristine's unicorns - it's not appropriate to put this out to comment

Michael Karanicolas:Ok @John - I understand. I just think that, when going beyond stating opposition and saying something is out of order, you have to be a bit careful since ICANN can be a confusing ecosystem, and it gets my back up a bit when I see things that, if I were a newcomer, would really inhibit my ability to engage. But you're saying it was made in good faith, and I accept that, so apologies if my reaction was wrongly directed.

Griffin Barnett:George - you just said it yourself - if this proposal were to go forward (it should not) - it would make the URS meaningless

Griffin Barnett:Any decision can be vitiated simply by bringing a court case and having THAT thrown out?

Kristine Dorrain:Re: proposal 19: So why bother with the URS at all, unless that is your point?

Kristine Dorrain:+1 Griffin

Maxim Alzoba (FAITID):courts can order registrars and registries to do something and there is no way to prevent that

Michael Karanicolas:Maybe these three proposals could be consolidated and rephrased in a more open-ended way?

Justine Chew:@Griffin, worse, paid for it to be vitiated. Strange.

Susan Payne:+1 Griffin - put forward a poorly crafted claim which gets rightly thrown out and you're home free

Griffin Barnett:This would just incentivize URS losers to find some random court where it has no chance of pursuing a cause of action in good faith and using the rejection by that court to vitiate the URS decision

George Kirikos:@Griffin: no, since there's the "mutual jurisdiction", not any random court.

Griffin Barnett:This proposal does not merit being put forward to public comment

Cynthia King:@Michael Karanicolas: Agreed would be helpful to see these 3 proposals reworked into a single, cohesive 'either/or' proposal

Maxim Alzoba (FAITID):@George, what to do if the parties are from different jurisdictions?

George Kirikos:@Griffin: vitiated only in the event a court denied the hearing on the merits, due to lack of cause of action.

George Kirikos:@Maxim: URS/UDRP already have mutual jurisdiction principles.

Griffin Barnett:@George, sorry but that doesn't really make a difference

Griffin Barnett:also, from the URS: "To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP."

Griffin Barnett:referring to any "court of competent jurisdiction"

Griffin Barnett:which is a decision for a court itself to make

Ariel Liang:time is up

Maxim Alzoba (FAITID):some countries believe that the laws of their jurisdiction are globally applicable, some do not

Kristine Dorrain:@Zak, if the court then throws out the case before it, now the complainant has no URS decision.

Cyntia King:@Zak: Doesn't that mean that the URS (developed specifically to address domain issues in an international venue) would be summarily tossed so a Respondent could pursue in a local court under local law?

Kristine Dorrain:Apologies all, I need to bail for another obligation, thanks to George for all his work presenting today!

Maxim Alzoba (FAITID):@Cyntia, there is no way to prevent that

Susan Payne:Can we all just treat everything we've already said on 18 and 19 as said for 20

Griffin Barnett:So it's fair due process for a prevailing URS party to have the URs decision vitiated, when the other party goes to any court, and that court decides there is no cause of action?

Cyntia King:@Maxim: Except that the URS decision doesn't cease to exist under current rules, right?

Griffin Barnett:The whole point of having URS (and UDRP) is to avoid incentivizing people to go to the courts

Griffin Barnett:except as a very last resort

Justine Chew:*Kangaroo court? No wonder you want to abolish URS altogether.

Susan Payne:+1 Griffin

Colin O'Brien:+1 Griffin

Griffin Barnett:You as a registrant agree to abide by URS when you are given the privilege (not right) of acquiring a domain name

Colin O'Brien:Are you claiming the URS providers are kangaroo courts?

Julie Hedlund:Next up: 8. George Kirikos
(#20): <https://community.icann.org/download/attachments/93126760/URS-Proposal-20.pdf?api=v2>

Cyntia King:"Registrants are suffering." How big is the problem?

John McElwaine:@Michael - No worries. I took no offense. It hard to explain ourselves adquately in the chat.

Susan Payne:yep Colin that is exactly what he said

Susan Payne:I defer to US lawyers but surely we cannot force the US court to take jurisdiction if it doesn't want to?

Griffin Barnett:As a US lawyer I actually take no issue with this particular proposal ;)

George Kirikos:lol Griffine :-)

George Kirikos:*Griffin

Maxim Alzoba (FAITID):@Cyntia, URS is an invention of ICANN process, and courts are more real thing

George Kirikos:We can do anything, as it's our policy.

Justine Chew:More work for you Griffin? :)

Griffin Barnett:People CAN under US law at least, generally agree in the terms of a contract to resolve disputes in a particular jurisdiction/venue

Griffin Barnett:and courts will typically honor that assuming the contract itself is valid and enforceable

Martin Silva:same in almost all latin countries

Griffin Barnett:again, a cause of action would still need to exist so that's a different question for the court to decide

Martin Silva:private parties can change voluntarily jurisdiction and law (

David McAuley:I agree with Griffin and believe courts can see through something too attenuated - courts are not bound by what parties do in this respect

George Kirikos:Right, choice of forum.

Maxim Alzoba (FAITID):@Martin, there are other countries which might not see it as a valid reason to close the case

Martin Silva:yes yes

Griffin Barnett:@David, correct, a court could potentially still find that the choice of jurisdiction/venue is too attenuated to the particular case that they will not honor the contractual choice

Martin Silva:just statying latin case

Griffin Barnett:so it's not a certainty, but could be done

David McAuley:long meeting, thanks all

Julie Hedlund:Next meeting is Friday, 12 October at 17:00 UTC for 2 hours.

Zak Muscovitch:Many thanks Kathy, staff, and everyone.

Susan Payne:so if we have gone through all of these why do we have to meet ona Friday night for 2 hours?

Julie Hedlund:That is just in case Susan.

Susan Payne:or Saturday morning for Justine

Julie Hedlund:It's blocked out in case we need it.

David McAuley:there are some remaining Susan

Julie Hedlund:There are more proposals, but we may not need 2 hours.

Susan Payne:@Julie - ok I guess

Ariel Liang:There are total 4 proposals left (including the revised proposal of Geroge and Zak)

Cyntia King:@George some proposals needed clarification

David McAuley:and thanks staff as well, good bye all

Justine Chew:@susan, I think it's at the same time as today so it's 1.00am to 3.00am Sat for me.

Griffin Barnett:I think if there was feedback and changes made to particular proposals, we would want to revise them before putting them out in their current form for public comment

Susan Payne:@Justine - yep lucky you. It's really not very reasonable

Julie Hedlund:There won't be further WG meetings on URS after Barcelona.

George Kirikos:Right, Julie. I meant not talking about them, but polishing the written final versions that would appear in the Initial Report.

George Kirikos:(i.e. we had to work with 250 word limits, etc., but might be able to polish them all to take into account all the comments, for the public to be able to fully understand the proposals).

Maxim Alzoba (FAITID):bye all

Justine Chew:Time fo bed!

Griffin Barnett:Thanks, bye