

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working
Group call
Wednesday, 17 August 2016 at 16:00 UTC.**

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Coordinator: Recordings have started.

Woman: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of All Rights Protection Mechanisms, RPM, in all gTLD PDP Working Group Call taking place on the 17th of August 2016.

In the interest of time there will be no roll call as we have quite a few participants. Attendance will be taken by the Adobe Connect room. So if you are only on the audio bridge, could you please let yourself be known now?

Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I'll hand it back over to our Chair today, J. Scott Evans. Please begin.

J. Scott Evans: Good morning, good evening and afternoon everyone. As you can see from our agenda, it's packed today. So we're going to try to move through things as quickly as possible.

I did want to draw everyone's attention to an email that Mary sent out yesterday morning regarding the questions that have been prepared to send out to the TMCH providers, the gTLD registries and registrars based on the input we see from the mailing list and sub-team calls.

And if you have any comments with regards to (those), you need to review her email and send those around email because we will not be discussing those directly today.

And what we are going to be discussing first thing is to discuss and finalize questions that we are contemplating sending to the ICANN Compliance Team with regards to the information we may want to seek from them with regards to the types of disputes that we might receive; they may be hearing about from trademark owners and that might fall within the PDDRP solution as it was envisioned and written.

So I think Mary has put up in the Connect room the questions for compliance, external counsel and other parties that was discussed on August 10. You can see that, you know, that we have a question for them. And what you get is the staff has complied under it - we asked a similar question earlier and we received a response for them basically saying they weren't real sure because they didn't evaluate it in the form of looking at the PDDRP.

So at this point I'll take any questions, concerns, comments regarding Question 1 that we might have regarding, you know, formulating the question we'd want to put to the Compliance Team. Does anyone have any thoughts here? (Kurt).

(Kurt): Hi J. Scott. I'm just wondering whether we should put a finer point on it given ICANN's previous response that they received the minimal number of complaints.

So, you know, we don't want to receive the same response back. We want to receive sort of a listing of what complaints there were or, you know, some answer with better specificity even if at the end of the day they don't meet the bar of, you know, triggering up PDDRP complaints.

J. Scott Evans: Yes. Okay. That sounds good. I agree. One of the things I was thinking is we might want to say have you, you know, how many complaints have you received about - from trademark owners regarding bad faith registration practices. And then maybe list out two or three different types of scenarios for them to respond to.

I don't know but it seems like if we gave them some guidance on what we were looking for. In other words, we classify things into something that would fit under the PPDRP in sort of a broad fact pattern or scenario. And then let them give us a response specific to that scenario.

Does that sound like the kind of direction you think would assist them? They say they haven't looked at them through the lens. Well maybe if we provide them a lens of what we're looking about - looking for, they can say oh, we've got - we've had similar complaints about X, Y and Z. Does anyone agree, disagree?

I'd say - (Kurt) says that he thinks that sounds right in the chat box. But I'm not seeing any hands or hearing any comments from any of the participants. And we really do need - okay. Susan Payne sends out sounds reasonable.

Looks like we're having some audio problems. I'll just - if anyone's on the call that could assist Dominique DeLuca is having audio problems. So anyway,

there's also a dial in. In case the Connect is causing you audio problems, you can dial in.

So is there any input here from other folks about that? Does that sound like a good idea, a way that we might frame this to give them the kind of direction to get specific responses with regard to the type of information we're seeking? Okay.

I mean we have to do this by consensus folks. So I need you all to chime in and tell me how you feel if it's just by using the Connect room to give me a green arrow or if it's by speaking up. I see Alistair Payne is agreeing. I've got three - Peter Renforth is agreeing. Okay.

It looks like we're getting a group of people together. So what I would ask is that those that feel that there are certain types of issues they have faced or their clients have complained to them about, give us those scenarios so that we can then list them, you know, show them to the group, get consensus around we're going to pick these three or four scenarios.

And then we're going to post, you know, put these forth to compliance as part of Question 1. Is that something we can look to those who deal with these issues to give us guidance on?

Well that's a takeaway. So, you know, between now and let's say our next call if we could have, you know, three or four scenarios from the working group of things they believe illustrate situations that they have either faced or would be handled under the, you know, the PDDRP if they could set those out in a brief little fact scenario.

Like if you ever had a complaint from a trademark owner or the registry is registering names in (unintelligible) because they are doing X, Y and Z. And just set that out in a little, you know, or similar behavior and see if we can get

a more specific response to them because it looks like that's what they're asking for is something more specific than the broad generic question.

So we see that Mary's asked my same question in the chat room. So people - everyone will be aware that that's what I'm calling for. But we need those from you all so that we can know that it's working group material and it's people who are familiar with these issues from the trademark owner side so that we know that we're asking the right kinds of questions so that we're fairly presenting the material to compliance so that we know that we're getting accurate information when they respond.

Okay. We have the second question here. I don't know about you all but I'm only getting partial of it in my screen. Not getting the entire document. But we hear - so we see the second - oh, there it is. All right.

So the second question we see here is one that we were going to put to them if they become aware of any possible problem (unintelligible) regarding the TMH or other RPMs or if it's a result of community work views or other circumstance comes to light, which they (unintelligible) they proceed to investigate the absence of formal complaint.

So I guess as I look at that question it's saying if you don't get a formal complaint or you find out through other mechanisms that there's a problem, did they look into it, investigate that. And if so, you know, how are them empowered to act and if they've taken any action, how have they taken an action and based on what information?

I think that's an excellent question. You know, it's basically do you act just based on information that's in the ecosphere as opposed to getting a specific request or complaint from a third party? And sort of do you take proactive?

And then we have a question that came in over email from Kathy Kleiman. Oh, I'm sorry. I'm rambling on. Did anyone have any questions, concerns, additions, deletions, clarifications to Question Number 2?

This is really a broader question that doesn't apply just to the PDDRP. I think it just applies to the role compliance may fill. And if that's, you know, filling a void that was there prior to some of these dispute resolution mechanisms being drafted and if, you know, that proactivity somehow may be affecting whether people are using or not using the mechanisms.

Any concerns, questions? If you don't have any concerns and you're okay with it, could you - okay. I see (Allister). I'll call on you right away. If you would after we finish discussion, I'll call for consensus. Let me know by the green check if you're okay with it so that I'll know we have consensus because I don't want this to be the J. Scott talk for an hour and we ended up doing, you know, this and nobody agreed with me. So (Allister).

(Allister): J. Scott, I just wondered in the context of it applying to a broader range of things than just the PDDRP whether we should ask them also for some examples of the kinds of complaints they've had and what the - exactly what they've done about it in different circumstances. It would be interesting to find out I think.

J. Scott Evans: And could you give me an example of what you're talking about?

(Allister): Well it just occurred to me that they could come back with a very general broad...

J. Scott Evans: Right.

(Allister): ...response. And that's really not what we want. What we want to know is exactly what processes they go through in different circumstances. So I mean

I'm not sure and I'm not aware of what sort of problems or complaints they may have become, you know, may have been brought to their attention.

J. Scott Evans: Right.

(Allister): But I think it would be very useful if there were some examples and we could see exactly what it was, what process they go through and what they do do. As far as I've seen just from sitting on - in on some of the sessions over the last few ICANN meetings, it seems to me that, you know, things are improving but things were not what - perhaps what they could have been. So it would be interesting to know the process they go through.

J. Scott Evans: Okay. Susan Payne.

Susan Payne: Yes. I was just going to give some background in case people haven't been on previous calls. This question I think comes about as a result of the conversation that the subgroup on the TMCH had with Analysis Group where in the course of reading their report and the discussion with them they said that they'd identified a couple of registrars who's activity was different to the norm, if you like, and might have indicated that they were interrogating the TMCH data for a purpose other than for the purpose of registering a domain name.

So for example, it could have been an indication of someone interrogating the data to work out what (unintelligible) are in the clearinghouse for another unauthorized purpose.

They're data didn't determine one way or the other. And so this question arises out of that. Of, you know, what happens where something like a review identifies a potential situation which appears to warrant at least more investigation.

And is that something compliance pickup or do they only deal with a specific complaint in relation to a specific party, which of course wouldn't be the case in this case because none of us know who these two registrars are.

J. Scott Evans: Right.

Susan Payne: So that's how this came about.

J. Scott Evans: Okay. All right. Okay. I think here again we'd need to have some volunteers come up with some specific - more specific pointed questions with regard to this or acts, you know, such, you know, you know, if you become aware.

I guess the first question is - I'm starting to get an echo so if everyone would please...

Susan Payne: Sorry. I think it's me.

J. Scott Evans: So, you know, I could see a situation whereby you - what the first question is, you know, an overarching question is does compliance ever take action without a specific complaint from a third party? Then I could see a second question being, you know, if so, what type of action is required to initiate proactive compliance?

And then maybe we could give some, you know, examples. Should a working group discover activities on behalf of registry - of registered parties of - and contracted parties that are beyond the, you know, outside the scope of the normal functioning or perhaps perceived as abusive by the community?

Does the Compliance Department take action on such reports and activities or does it still require specific complaint. And then I think (Allister)'s questions of, which is more specific, is when you do receive a complaint whether specifically or more generally from perhaps a working group or report or

practices that have been reported on let's say in the press, what workflow do you follow in processing that complaint or investigating that concern?

Is that what we're looking for? (Allister) says that's what he was talking about. Okay. So I think that the staff and the notes we've taken today -- and Susan says yes as well -- with those two things I think we can clearly draft a question based on two - based on this discussion that we can draft that perhaps we can then send to the working group for approval.

Does that sound like a plan? Staff, is that something you think you and - I'm happy to work with you on that. Any - Mary Wong is typing. Okay. Staff says yes.

And then we had a question that came in. You see question subsequently suggested from the mailing list. And this is a question that came in after the initial discussions.

And it says what additional information can compliance provide us regarding the detail of the complaint involving new gTLDs? We have heard from the TMPDDRP providers that complaints that might otherwise go to them have gone to compliance instead.

We are operating with a disconnect and we think there is information that compliance can provide to us. What complaints have they received regarding ccTLDs and specifically .sucks?

I'm not sure. Okay. Kathy is the one that may have submitted this question it's my understanding. So and her hand is up. (Allister), is that a new hand or is that an old hand from our previous discussion? I'm going to go ahead and call on Kathy. Okay. I see (Allister) say's it's old. I'm going to go ahead and call on Kathy. Kathy.

Kathy Kleiman: Great. Thanks J. Scott. Obviously the last line has a typo. Instead of what complaints have been received about ccTLDs, that would be gTLDs and specifically .sucks.

This is - in some ways the discussion today has already been trying to bridge the gap that this question was also trying to bridge, which is this disconnect between what we're hearing from the providers and the little that we've heard from ICANN Compliance.

You know, would that they could just come on to a call with us and talk with us as candidly as some of the providers have talked to us but that doesn't seem to be the case.

And, you know, maybe we can just ask can they come on the phone and just talk with us. But, you know, to the extent that other people feel that this kind of general question still is a bridge or helps fill a gap, then let's include it. Otherwise it may have been taken care of by the modifications that you're putting in for Questions 1 and 2 above. Thanks J. Scott.

J. Scott Evans: Okay. Thanks Kathy. Well what about if we ask what type of metrics that they maintain? And if they - those metrics include categorization of they types of complaints they receive?

And then if they'd be willing to share us just, you know, their metrics on the types of complaints they're receiving with regards to new gTLDs.

Kathy Kleiman: That's a good idea.

J. Scott Evans: So what we're getting is, you know, because I don't - and then we could, you know, is that something I think that we should ask them? I think that's certainly something we should ask them.

If they keep that - they already publish metrics (Jeff) says. So maybe we need to have a group to look at those metrics and see if those are broken out. And if they already publish metrics, maybe we ask if they have some internal metrics that are more specific than those that are published and if they're be willing to share those.

Kathy Kleiman: That makes sense. That makes sense. But also - ultimately I think we should decide kind of how much time we want to spend on this. Is there really something that we're digging for? Do we really think, you know, the emphasis in some of the discussion last week was very much on specific harm?

So is there some specific harm? Is there some specific complaint that we think they've dealt with that they're kind of not telling us about it; that if we ask the right question they'll tell us about?

I'm not sure how much we want to go into hypothetical. It would be good to see the metrics. But, you know, I'm not sure how much time we want to spend on this. But, you know, we just kind of want to get from them whatever it is that would be useful to our evaluation, whatever it is that they've dealt with that might have gone to the providers.

So we think there's something specific out there we should be asking. And we haven't kind of gotten our hands around it. So I'd like (unintelligible)...

J. Scott Evans: Yes.

Kathy Kleiman: ...metrics.

J. Scott Evans: Yes. I like the idea too. I think the first thing - well, why don't we reserve Question 3 and see if we can get some folks to look at the metrics they have now and see if it provides us with the information we're looking for?

If it doesn't, then we could decide whether we wanted to ask additional information about metrics. Is that acceptable to the group? And if so, can I call upon some volunteers to help out with just taking a look at the metrics and seeing, you know - I'm not asking you to gather it up.

I'm just asking you to look at it and see if you think it contains useful information that might inform us. And if so, then we can have staff gather it up. Any volunteers to take just a quick look? Mary, you're raising your hand.

Mary Wong: I am J. Scott. And hi everybody. This is Mary from staff. So just to support your suggestion if we may on the staff side and what I've done is put in the Adobe chat a link to resources from compliance. And there's a bunch of menus on that page including a very specific one that provides compliance's monthly dashboard and metrics and data.

So it would be really helpful if we had even just a couple of working group members go through that and see if there's anything there that's relevant to our work. Maybe identify what those are. And if there's not, going back to the questions that we've just been discussing, what are the specific requests might want to make. Of course staff will support all that but it would be helpful to work with members on that. Thanks.

J. Scott Evans: Right. Can we get some volunteers here? I see Rebecca Tushnet has said if somebody else will volunteer, she'll work with you. So can I - come on somebody. Not like I'm doing a - trying to raffle off - okay. (Caroline Coin) has said -- and I actually got your name right (Caroline). I'm so proud of myself -- is happy to help.

So if we could just call on Rebecca and (Caroline) to coordinate with staff, look at this and just report out perhaps by email if they think that provides the type of information we were looking for. And if not, you know, then we can hone then on specifics we want to add and ask the third question. Is

everyone happy with that plan? Because I'd like to move on to the next topic for discussion.

And answer your question (Caroline), I think they're further up in the chat. Between a comment - between (Kurt) and (George) there's a link. Okay. Now let's move on to our next point in our agenda, which is Item 3, which is to conclude our discussion on the document that we've been discussing, which is the issues document.

If I could get someone from staff to put that into the Adobe Connect box so we have it in front of us. And I see (Caroline) just so you know, it looks like there are a bunch of links coming up that all might be helpful, so. I think Jeff Neuman has been putting some and Mary has put some additional. So Rebecca and (Caroline) there's a variety of links in the chat box for you to look at.

Okay. Now it's my understanding -- I'm sorry I could not be here last week; I had a meeting with my boss that I could not change -- that we had gotten on in the discussion down to where we had concluded - what we had had a pretty robust discussion, which continued online regarding the burden of proof.

And then there was a doodle poll regarding the burden of proof. And our doodle poll showed that there was no support for continuing discussions on the burden of proof at this point. I see Lori Schulman's hand has gone up. So I'm going to call on Lori to...

Lori Schulman: Hello J. Scott. Can you hear me?

J. Scott Evans: I can. There's a little bit of...

Lori Schulman: Can you hear me?

J. Scott Evans: I can hear you but there's some feedback.

Lori Schulman: Oh, right. Maybe I'll just type. I'll type into the chat and then you can answer. That might be easier. I'm on (solely) the computer. I'm not on a telephone. Why don't I do that?

J. Scott Evans: Okay.

Lori Schulman: Okay.

J. Scott Evans: (Typing) into the chat. So we'll wait for her to do that. But people are getting funny in our chat box. So we have - so anyway, we have this poll that showed that.

And I think the point that Jeff Neuman I believe was making pretty emphatically during the email exchange on this subject during the week was that he didn't feel like this group should be looking at any issue with regards to changing some of the substantive things in the policy or even I think he addressed rules of procedure unless the parties who are requesting change could show that there was some situation that called for such a change.

They can demonstrate the need for such a change. Okay. So Lori Schulman says INTA wrote a letter to compliance last year regarding abuse of practices with specific examples.

The response that we got from compliance is that there wasn't much ICANN could do other than file a suit to enforce the pick. Yes. I think having a copy of that letter would be very helpful and their response if you're willing to share it. And I think Phil Corwin indicates that he agrees that would be helpful.

So the Chairs and I just to let you know where we are on the burden of proof issue is we believe that there's a clear indication at least at this stage that

there's not a willingness to continue discuss the burden of proof. There seems to be a consensus to put that to bed.

But we are seeking additional input from groups. And so the Chairs felt it was best to say okay, we're willing to move on at this stage. But should we receive some information in this additional outreach that we're doing that indicates this is a topic that needs to be revisited, we plan to revisit it.

So we just didn't want anyone to think that it was completely closed out at this point. We want you to be aware that should we get additional information to indicate it is something that should be discussed or revisited, it is still on the table.

And that would remain for a lot of the issues that we may be discussing as we get additional information before, you know, we write our final report. Of course we would make sure that there is consensus on any point that we make with regards to any issue. Jeff Neuman's hand's up. Lori, if you could put your hand down so I know you're finished with me. And Jeff.

Jeff Neuman: Yes. Thanks. Can you guys hear me okay?

J. Scott Evans: I can.

Jeff Neuman: Great. Yes. I just wanted to be a little bit more clear on my comment that I made on discussion in the list. So the (unintelligible) was on - not necessarily on burden of proof but also on additional actions or -- what was it -- additional complaints.

The INTA letter and some issues that Susan had brought up - Susan Kawaguchi on the last call didn't really - weren't really related to burden of proof, i.e., you know, the clear and convincing evidence standard, but were more related to additional causes of action.

So I want to make sure that when Lori's letter comes in, Lori is not necessarily saying that we need to change it from clear and convincing evidence to preponderance of the evidence for example, which I think is a burden of proof.

But I think Lori, the INTA letter and Susan's complaints were whether there should be additional causes of action that could be handled under something like the PDDRP.

So I just want to be clear that I agree that we shouldn't be discussing the burden of proof issue at all because no one's presented - even Susan and Lori's letters -- I believe because I think I've seen them -- don't say that the burden of proof should be lessened but more that there should be additional causes of action. So I just wanted to distinguish between those two things. Thanks.

J. Scott Evans: Thank you Jeff. And I didn't take it as a relying to that. I thought it was more in line of looking what compliance's response to dealing with specific types of abuses. And it was a chance for us to get a peek at when they would - been asked those questions before how they had responded in regards to them. That's how I took it. Not as specific to this issue, so.

But I think Lori says in the chat box that there is no discussion of the burden of proof in it; that you were correct and that the letter is just for context. And that's how I took it as well. Jeff, is your hand still up?

Jeff Neuman: Yes. Just to - yes, just to clarify also - yes. Thanks. That's helpful. And then the other point that there was also some questions in that survey about whether there should be online mediation. There may have been some other questions.

And I think my general point on that and on - and it would be the same for all the other rights protection mechanisms. I think we really should not be

looking at making any changes to any of the policies unless someone comes forward with some evidence of why those policies would be changed.

They should present something. And I think - like I said, it's not just for the PDDRP but I think it's also for UDRP and others. We shouldn't really be kind of saying what would make the most optimal best procedure ever possible if there's no evidence that there's something that necessitates that change.
Thanks.

J. Scott Evans: Great. Thanks. I see your point but I also do believe that our doodle poll showed that there was consensus with proceeding with looking at mediation as being a possible option. So I get that you have a point with regards to that and it's been duly noted both in the written record and here.

I don't know what was said last week but I assume it's a similar theme. And, you know, as we deal with these issues, we'll have to look to see whether there's consensus as to any suggested changes that are made. I'll - Jeff, I'll give you one more chance to respond and then I'm going to move on.

Jeff Neuman: Thanks. And I'll try to be quick. Look. I think the doodle poll is a little bit unfair in the sense of if you ask anyone the hypothetical about yes, should we talk about (online) mediation; sure, why not? There's no - everyone of course would love to talk about new things and make them look utopian type of process.

But I think that we really should be very careful about trying to discuss subjects or make changes unless there's some evidence that there needs to be a change. Otherwise we're going to be here for years. So thanks.

J. Scott Evans: Thank you Jeff. Okay. So moving on to the remedies section here. We've got a few more minutes to discuss. We've got about 23 minutes. And I've got more things. We may not get through everything in our agenda today.

But here we have a list of - we heard from the providers and I believe specifically from a former employee of one of the (provisors) from the Asian group who said that they felt like the remedies that were provided were unclear and that there needed to be more clarification in the remedies section in order for the policy to be more effective.

And so I think that that's where we are here. I see Mary's hand's up real quick. I just noticed that. So before we get into this just in case it relates to something else.

Mary Wong: Thanks J. Scott. Hello everybody. It's Mary again from staff. So it's not about this point specifically but more generally as a follow up from Jeff's point.

And staff did go back and look at the document as well as the public comments from the period when the PDDRP was being developed. And we did notice that some of the - I think as you mentioned J. Scott are topics that had been canvassed previously and as Jeff as noted, some of these really haven't given us more additional information.

The potential exceptions although I probably shouldn't use that word is that we didn't see a whole lot of public community discussion over the mediation option. And on the other topics some were more discussed than the others.

So our general sense from the staff side is that it might be helpful to keep mediation on the table for now. And for the other topics to see what that we might get especially from the community survey that we're going to be sending out. Thank you.

J. Scott Evans: Okay. So I'm going to open this up. So we've had two providers who state that they think that the - one of the problems they perceive in the policy is the fact that the remedies are unclear.

And so I'm opening this up for discussion. Taking it to the point of Jeff's overall comment that he doesn't think anything should be revisited unless someone can show a demonstration of where something isn't working. No one has a comment with regards to the remedies? Greg Shatan.

Greg Shatan: Thanks. Greg Shatan for the record. Just based on what you put in front of us, if two of the providers think the remedies are unclear, that seems to be a problem on its face since the providers are where the remedies, you know, are, you know, deeply involved or would be deeply involved in the remedies.

And as we've seen from so many of the processes that took place with third party providers during the application process, there's nothing worse than a confused provider.

And, you know, even using the Neuman test, which I think is a higher bar than I would suggest, I think it clears the Neuman bar.

J. Scott Evans: Okay. I see that Kristine Dorrain has raised her hand.

Kristine Dorrain: Hi. Thanks. This is Kristine from Amazon Registry speaking in my capacity as a former Director of the forum. And I'm one of the ones that initially sort of commented together with (Netta) about this.

And I just wanted to offer some clarity. The providers as far as I'm concerned are not confused as to what the remedies are. I think the issue that was identified was that there's a list of possible remedies to be left to the discretion and possibly even imagination of the arbitrator.

And if you are a brand owner seeking to use the trademark PDDRP, perhaps that could be a deterrent. So I think this came up in the context of why isn't anyone using the PDDRP.

And I think both the gentleman from ADNDRC and the, you know, the respondents from the forum were both indicating that in their opinion perhaps people weren't using the PDDRP because the remedies were not defined and precise. They left a lot to be the imagination and a lot open-ended. And it was a little bit too much of a gamble for the process.

So I think that was where it was going. I think that was where the conversation was going. It wasn't that the providers didn't understand the remedies.

J. Scott Evans: Thanks Kristine. That's a much better summary than I was giving. I apologize because I - that's exactly what I took away as well. So I saw in the chat that Jeff said well perhaps we need to ask some more follow up - better follow up questions to the providers. Is that something we feel like we need to do? Or, you know, I need - the people who feel like we need to look into remedies need to step up and tell me why they think we need to look into them and what they think needs to be reformed. Kristine.

Kristin Dorrain: Hi. This is Kristine from Amazon Registry again. Thank you. I don't know that the providers are going to be your next best step. If you, you know, and WIPO if you're on the call, speak up. But the providers are neutral.

They really, you know, I mean obviously they're kind of the experts on how the process goes and the rules and they can tell you, you know, what happens when a complaint is filed and what the arbitrators are, you know, supposed to do and that sort of thing.

But as far as having an opinion on whether or not the remedies are wrong or should be codified differently, that's really not the mandate of the providers. The providers are there to be the neutral bodies.

So I think to the extent that there's a, you know, there's a perception that the remedies might be vague, I think you need to go back to the people that

would be possibly using this process and ask them what they think of the remedies; ask the people that might be impacted, the registry operators. Ask ICANN.

J. Scott Evans: Right.

Kristine Dorrain: But I think, you know, I think that's where I'm going with it. I don't know that the providers - I think the providers have given you everything they can.

J. Scott Evans: Thanks. So it's - I see WIPO has raised his hand.

Brian Beckham: Hi J. Scott. This is Brian Beckham for the record. Thanks. I just wanted to dovetail on what Kristine said. And I think we're probably running up against the practical limitations of what we can ask providers.

But just to sort of circle the wagons on this a little bit, I think the question certainly from WIPO's perspective and this is not so much as a provider but as one of the originators of the idea of a post-delegation mechanism.

It's not so much about the burden of proof or the substantive criteria or if there's a mediation component or the remedies' easily understood. It's a little bit more nuanced than that.

And the gist of it is that from the original WIPO and IRT proposals, the post-delegation mechanism went through the policy development process at ICANN. And our informal feedback from potential filing parties is that the different additions to the original post-delegation mechanism whether that went to the substantive criteria to the remedies to the burden of proof, it's not one single factor.

But taken as a whole the adaptations that were made from the original proposal to what we have today make it to a point where I think trademark owners are asking or certainly the feedback that we've been receiving is that

with the PDDRP in the current state, which the combination of factors the question trademark owners have been asking themselves is would it be more burdensome to satisfy the post-delegation criteria on the whole versus engaging in potential litigation in court.

And I think that's where the scales have been tipped. So I think it may be it's asking too much to say could we adjust this aspect or that aspect and it's more of a holistic approach that's maybe shifted the focus a little bit from whether it can be used in the ICANN context or whether it would be not used in this current formulation.

J. Scott Evans: Okay. Thanks Brian. Any additional comments? Mary.

Mary Wong: Thanks J. Scott. So just to follow up on the comments that were made especially those by Kristine, just to note that in the community survey that's going out one of the questions we ask is whether a respondent or anyone they represent or the members considered and did not use the PDDRP. And we asked for the reasons.

Obviously we don't know if we're going to get any helpful response but to the extent that Kristine's comment was that we might need to go to those other than the providers (about) more information, that may be something to look out for if and when we get responses back. Thanks.

J. Scott Evans: Okay. Thank you. All right. So it seems that I'm not hearing a great groundswell of support for continuing to look into the remedies at this point unless and until as I mentioned earlier we get these surveys back - this additional information back. And it indicates that there might be something that is some new information that requires us to look at those.

I mean I hear what Brian Beckham is saying. But that seems to feed right into Jeff's point of we're not renegotiating the policy. We're fixing the problem if we identify the policies if we see problems.

So I think that with that in mind unless I see a clamor of red X's, I'm going to say that we stick a pin in this at this point until we get back the additional information from what we're sending out with survey and additional information we may get from others before we do that.

I will ask that - I think Kristine made a great point with regards to remedies. We - that may be a question we want to ask the registrars - I mean the registries specifically is whether they believe they're too vague and need to in any way be more specific or clarified.

Since they are an affected party, I assume - and if we were asking that to them, we may want to put a correlating question to the community as well. Okay. Now we're moving into the - unless I see - Mary, I see your hand is up.

Mary Wong: Apologies J. Scott. I just want to do a quick follow up on your last point about Kristine's suggestion to go to the registries. Just a note that the Registry Stakeholder Group is to date the only stakeholder group that responded to our group's initial outreach for comment.

J. Scott Evans: Your right.

Mary Wong: Their input does not address the PPDRP but to the extent that we have a specific question like this one or others for them, it would probably be a good thing to do that as a follow up to the input. Thank you.

J. Scott Evans: Thanks. That would be my suggestion. Do I see support for that? Do I see no support for that? (Caroline) I take it is supporting that. I'm looking to see in my - I see Greg Shatan is supporting it. Jeff is not. Peter Renforth does. Susan Payne does. Okay. So I don't see any harm and it looks like we have more green than not green in doing a follow up question. Phil Corwin agrees. (John McIlwaine) agrees.

I don't see anything - any harm in going back to the registries and asking that specific question. Jeff Neuman, I see your hand is up.

Jeff Neuman: Yes. The reason I have disagree is I think it also needs to point out that to the registries that if you do think the remedies are vague, please understand that you're inviting the working group to actually do policy work on it.

I think registries may answer that in two different ways. They may say yes, it's kind of vague but we don't want any more work done on it. That's my gut just knowing the registries pretty well.

So I do think that when you send them the question, you need to be honest that hey, if you answer that it's vague, that may result in us doing policy work on it because I think the registries would say, you know what, we're happy with the status quo and nothing done on it. I think it's really important.

J. Scott Evans: Do others agree that we need to stay to the registries that we're asking because we're looking to them to give us an impetus to take action? The only green check I see is Greg Shatan. So - and Rebecca.

((Crosstalk))

J. Scott Evans: Hello.

Greg Shatan: It's Greg. That was an old check.

J. Scott Evans: Okay. Then I would suggest that Jeff since you seem to have a pretty strong point of view on this, yes. I agree with what I see Phil saying in the chat box. I don't think there's any need for us to say anything. They know that - what we're doing.

If they tell us it's going to be - it needs clarification, they've got to assume -- they're pretty sophisticated -- that what we're going to do is we're probably going to look at ways to fix that problem if they identify it as a problem.

But so I'm not seeing a groundswell of support for doing that. I think we just ask the follow up question and, you know, see what they say. I mean I don't think we've done that on any of the information we send out to any other party saying oh by the way, please understand that all of your answers here are going to affect whether we take any action. I just don't think we need to do that.

I think we just ask the question. If they believe that there - that they're vague. And we could ask the question if so, what type of clarifications they believe would be - would remedy that situation. Jeff Neuman.

Jeff Neuman: Yes. The only reason I was saying that is because it's a follow up question. I understand we usually don't say that to parties but if we're only sending follow ups to the registries, I think it should be worded as such a way not of do you think that it's vague but do you think it's a problem. Do you think the vagueness of remedies provided in the agreement presents a problem that needs to be addressed? Something like that is a good way to ask it.

J. Scott Evans: Okay. Well what I'll ask...

Jeff Neuman: (Unintelligible).

J. Scott Evans: ...staff to do - yes Jeff.

Jeff Neuman: Yes. Sorry. I was going to say because some people may say and I think the remedies were last intentionally vague when we initially did it to give ICANN some discretion if I remember back to the IRT days. That we wanted ICANN to have some discretion and therefore it was fairly vague. But I believe intentionally so. Thanks.

J. Scott Evans: Well I'll ask staff based on this discussion to put together a proposed follow up question. And I would take issue with the fact Jeff I think we are sending some - we're seeking follow up information from other people as well.

It just so happens this is being couched in the way of a follow up just because we actually got a response from them regarding all of our work. We're asking a more specific question regarding a specific piece of our work. But we'll get consensus on the question that we're going to ask them in the way it's presented. And we'll make sure to circulate that to the list.

So it looks like that is the end of that discussion. Okay. Mary's asking a question on timing. The TMCH sub-team may have some different questions for the registry as well. Can we hold this until the sub-team confirms that they do and send it as a single follow up request?

I don't think that that's a problem. And it looks like we have in a chat box a bunch of people thinking that is probably the best is just to send it in one document - in a one request so that we're not constantly peppering them with seeking information, so. But we should go ahead and get consensus about what we're going to ask.

So now we come down to the additional pre-complaint notification issues. I think there was some issue about whether we need to improve the notice requirement. And someone says well you need to - they suggested that you specify the goods and classes in which the (sort of) trademark is registered and contain a link to the source.

You know, I - taking off my Chair's hat and taking prerogative to speak first since I have the floor, I would argue that we have no indication that that's a problem; that the lack of having that information is a problem.

And so if we're applying that to all the other issues where we have not reached a consensus in the group that it needs to be looked at, I would say that falls in the same category. But I'll open it up to the floor for any other comments. Jeff says he agrees. And so does (Caroline). So it looks like - again, we're putting a pin in some of these.

If we get back some comments in the additional information that seems to indicate that this is an issue, we can revisit that. And then we have some additional issues, concerns, suggestions by working group members.

I think the first bullet point, the do no harm rule, seems to be where Jeff is coming from in a lot of his comments regarding the overall approach we take to our work.

And I think the second comment also encapsulates that as well is that there's a view that we shouldn't be taking action just to make this the perfect - the question is whether there is any problem.

So these have already been discussed. I think we can say that they're resolved. The - where I see us ending at this point is that we are going to seek some clarification regarding remedies from the affected parties and we should probably ask a similar question to the community.

We also are going to put a pin in some of the other issues to see what, if any, information we get back. And if it identifies a problem that we're unaware if it needs to be fixed. That we're going to the Compliance Department to see if we get more specific information and see if it identifies where compliance may be handling issues that would have normally fallen under the PDDRP.

But I do believe that there has been consensus expressed with regards to looking into whether there should be an optional mediation with regards to the PDDRP.

And with that regard, we're going to need to have some sort of proposal put forth that the group can look at, decide whether that is something that they are willing to endorse as a possible amendment to the PDDRP.

So with that, we're probably going to need to put together a sub-team that can look at the issue of mediation and give us an outline for a proposal that we would put forth and recommendations. Is - can - are there any members at this point that are interested in volunteering to assist with that effort?

I'm not seeing any hands going up. Rather than take time here, I think we should - Mary, can we put out a call for volunteers on the list with regards to that particular issue and see what, if any, volunteers we receive to assist. Okay. Mary says that can happen.

So everyone should be looking for that. And I think you should seriously consider if this is something you or a group that you represent believes is something that would be valuable to add to the process, I think that you need to find some volunteers in time to get involved to assist us in crafting something for the group to look at as a - in order to see whether we can get some consensus around it.

So that would be - we'll put that call out and hopefully we can see if we can get some people pulled together within the next week or so that would be willing to look at that.

The next - we're already at 10:01. So our next call - Mary, can you tell us when our next call is next week?

Mary Wong: Hi J. Scott. This is Mary from staff. I believe we're back to the alternate rotation and I'm looking for Terri to correct me. But I believe that is going to be 2100 UTC.

J. Scott Evans: That's what I have on my calendar. So we'll meet at 2100 UTC next Wednesday, which is the 24th of August. On that call we will start with the end of our agenda that we ended with today, which is to discuss the analysis the work team - the sub-team's meeting with the Analysis Group and then the analysis report and to try to come up with a plan on how we want to interact with the workgroup as we move forward because we're getting where we're going to put a pin in our work with regards to the PPDRP and start developing that.

And we'll begin to look forward with moving on to the Trademark Clearinghouse. So we may have continued work going on with regard to the PDDRP if we have this mediation sub-team while we plow forward to make sure we stay on schedule with regards to working through the issues with regard to the TMCH and gathering the necessary information we need so that we can look at that properly.

So with that, I want to thank everybody for their time this afternoon, the morning, this evening and apologize for having gone one minute over the hour and hope everyone has a pleasant weekend. And we will talk to you next week. Thanks. Ciao.

Man: Bye all.

Woman: Once again, the meeting has been adjourned. Thank you very much for joining.

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