

**ICANN
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working
Group**

Wednesday, 13 July 2016 at 17:00 UTC

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Coordinator: The recording is started.

Terri Agnew: 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 13 July, 2016. In the interest of time there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe Connect room only. So if you are only on the audio bridge could you please let yourselves be known now? Jeff, I already have you noted for audio only. Anyone else?

Mona Al Achkar: Sorry? I didn't get. Excuse me.

Terri Agnew: Yes, go ahead.

Mona Al Achkar: I'm hearing you.

((Crosstalk))

Terri Agnew: Thank you, Mona. Hearing no one...

((Crosstalk))

Terri Agnew: You're welcome. Hearing no more names, I would like to remind all of you to please state your name before speaking for transcription purposes.

Mona Al Achkar: Okay, yes.

Terri Agnew: And 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 Phil. Please begin.

Phil Corwin: Thank you.

((Crosstalk))

Phil Corwin: Who was that speaking?

Mona Al Achkar: Sorry. Hello everybody, it's Mona (unintelligible).

Phil Corwin: Okay, well, we'd like to start the discussion. Could you put yourself on mute and if you want to speak at any point if you're in the Adobe chat room raise your hand. If not, just indicate verbally that you wish to speak, okay?

Mona Al Achkar: Okay. Thank you.

Phil Corwin: Thank you. Okay. Welcome, everyone. Philip Corwin, one of the cochairs of this group. And welcome back. It was good to see many of you at the Helsinki meeting and hope you all had - if you stayed in Helsinki or had additional travel that it was enjoyable. And that your trips home were without problems.

We're going to continue the discussion we started in Helsinki on the responses received from the trademark PDDRP providers based on whatever input they got since it's not based on actual experience and administering the dispute resolution process since we never had a filing under it.

So - and what's - see what slide we have here. Okay, we know the three providers. They've provided us with responses and can we unlock this - these slides so we can scroll? Thank you. Thank you. So let me just so does anyone recall how far we got in revealing these responses in Helsinki?

J. Scott Evans: Phil, this is J. Scott.

Phil Corwin: Yes.

J. Scott Evans: I don't believe that we went over these specifically in Helsinki. We had had a call the two weeks prior, so our last call, where I think we had a member from the forum on the line. And then we had received, that day, the responses from WIPO and the responses from the Asian group. And we discussed them briefly on the telephone call, but I don't think we specifically went into the enumerated things at our meeting in...

Phil Corwin: Okay, okay good. Thanks, J. Scott. So why don't we proceed as follows? Why don't we quickly go through each slide, review the response or questions and then discuss them. And then we can get onto discussing what we do next in regard to this PDDRP.

So the first question is the - what are the reasons that we haven't seen this DRP used to date? Excuse me. WIPO indicated that the non-use doesn't mean it's not needed, but that there were substantive reasons and procedural ones as well. There's no willful blindness standard. You have to prove that the registry operator intended for infringement take place. There's a two-pronged conduct requirement in terms of proof. There is the burden of proof

and we can get into whether that should be lower. That the remedies are not particularly robust. And not sure what they meant by applicability to registrars.

But the Asian Dispute Center also raised a burden of proof especially for second level infringement that we did hear in Helsinki, and we see in this answer, that the procedural - the vetting of registry operators probably prevented really bad actors from getting new TLDs delegated to them, so prevent - there was a preventative aspect. And the, again, the remedies may not be useful for second level infringement.

I'm hearing a lot of background noise. Could whoever is causing that mute their line? Thank you.

And the National Arbitration Forum, again, raised the high substantive standards to be proven and also raised the possibility that there may be very wide knowledge of the availability of this usage. And that the remedies were rather, again, not particularly specific. You can spend a lot of time and money pursuing this DRP and not knowing whether any effective relief will be forthcoming.

Sorry for that background noise. That's at my end. Okay. Sorry. Just remove my cell phone from my immediate proximity to - back to - any - well before taking comments let's get through a few of these and see if there's discussion and then do the rest.

Is there any ongoing costs? Are we losing anything by retaining this procedure even if it hasn't been used yet? WIPO seemed to say no. The Asian Dispute Center said there were some costs in terms of maintaining systems. I'm not sure what that means but staff training. And NAF said no, so at least a majority of the providers said it's not really burdensome on them to keep this dispute resolution process available.

Did they get feedback from any trademark owners or registry operators about potential problems or concerns? And WIPO said some along the lines of their responses to Question 1; the other two providers said no, they haven't gotten any feedback.

Next question, more relevant I think, whether rights owners looked into the procedure but then elected not to use it. And we asked whether any inquiries from potential complainants who didn't proceed. WIPO said yes, I guess they got some inquiries and then when people found out what they had to prove and what the relief would be they decided not to proceed.

Asian Dispute Center said a couple of questions regarding the proceedings. The case filing fee and the available remedies but that ended the inquiry. National Arbitration Forum, very few inquiries about the general purpose of it. And then parties were facing a potential loss in a predelegation trademark clearinghouse proceeding inquired about a potential filing post-delegation.

We might want to know a little bit more about that. I'm not quite clear on my own what a loss in a predelegation TMCH proceeding might have consisted of.

And fifth question, are you operationally ready if someone files? And all three providers said yes. And Question 6, they all have panelists ready if there's ever a filing that goes to one of them.

An issue that got some discussion in Helsinki, should mediation be added to the procedure, that is before getting into the proof and the remedy stage try to bring the parties together and see if they can resolve their differences.

WIPO said it's difficult to positively answer and difficult to justify, this is just an additional layer but it might be useful if it serves to assist the parties to consider tailored settlement options or remedies. Asian Center said it could be an effective means and resolving things in a timely and cost efficient

manner. And but that it might have a possibly adverse effect on a panelists neutrality after he or she had received confidential information from a party during a mediation that didn't result in any agreement.

Okay that was my echo. That seems to have been eliminated. And the Forum said they wouldn't want to see mandatory mediation but making it optional could be considered but that the additional fees - yes, someone on the line, if you're not muting your speakers that's why suddenly we're getting feedback from my voice.

And the Forum didn't believe that a mediation step will have a significant influence on triggering filings. That's halfway through the responses. I'm just going to check the chatroom now to see if anyone's raised any questions. None so far. Apparently some people are having problems with the audio on Adobe while others are not.

So summing up the first half, the burden of proof and what has to be proven and the lack of clear enforcement steps as a result of winning seem to be discouraging use. And there was some interest in mediation as possibly adding it, not as mandatory but as permissive as a way to avoid the whole back and forth of a full process.

So continuing on, any additional feedback, WIPO just said refer to their previous responses and noted that this is part of a tapestry of all the protections which would be true for any of the protections. That's a personal note on my part.

Asia Center said that there'd be - they'd like to see more specificity regarding the available remedies, regarding monetary damages or sanctions. And direct actions by the registry operator contrary to those required under the registry agreement. I'm not quite clear on what that would be but we can explore that further.

Arbitration Forum said the ICANN compliance, and again the same thing we heard in Helsinki, has been doing a good job and controlling registrars and registries and potential filers may elect to go directly to ICANN compliance if they think a registry is not operating in accordance with their registry agreement and that that may resolve problems without need for this recourse.

Again, they didn't think it was unnecessary that we should eliminate it. That more clearly defined remedies could make it a more interest to trademark owners. And example cases could be helpful to indicate why it hasn't been used so far. I'm not sure how we'd get those examples but we can look into that.

Okay so additional suggestions, whether we should seek feedback from panelists who have been trained in the PDDRP or have extensive experience with similar proceedings. Whether there should be more promotion of this available remedy by ICANN. Whether we have knowledge of - in terms of questions whether we have knowledge of why potential complainants who inquired did not proceed to filing.

That - I guess that we'd have to find out and make sure we're not violating any confidentiality who made those inquires to the separate providers. And Kathy, I'll get to you in a minute. I see your hand up. Just let me get through the last two slides. We're almost done here.

Whether there are PDDRP requirements that present administrative challenges and that whether the lack of use of this DRP results from the lack of instances of abuse or the cost and evidentiary elements as well, I guess, is the available remedies at this time.

So, Kathy, let me take your question now then we'll delve into the last two slides. Go ahead, please.

Kathy Kleiman: Sure. Phil, this is Kathy Kleiman. Phil, there are several things coming up in the chat room and also in the responses that I just wanted to highlight because it may give us a topic to continue on in the next meeting. And that's the - and that's that we keep hearing that ICANN compliance has been playing a more influential role in the types of disputes that might otherwise go to the PDDRP than was expected when we drafted the PDDRP so many years ago.

And I think this is something we heard when J. Scott was hosting the last meeting before Helsinki from the provider from NAF that was talking with us, it's something that we're seeing now in responses, something that we're seeing in the chat room. So I'd like to propose that we invite - we find out who at ICANN compliance has been working with PDDRP type issues and invite them to join us and talk about whether maybe through certain kinds of procedures ICANN has taken on some of these roles for itself, that could be very useful to us. Thanks, Phil.

Phil Corwin: Yes, thank you for raising that, Kathy. I think that's a good suggestion. It would be useful to know if ICANN compliance has gotten the inquiries or complaints from trademark owners at a specific registry was either violating its RA or was operating kind of fast and loose and encouraging infringement and what if anything compliance did in response to that. So that would be a useful inquiry and discussion to have.

Proceeding to the final slides here, these are policy questions for the working group that we might want to consider as we deal with the PDDRP. Is there - one, is there a policy-based need to address the goal of the DRP? Two, is it broad enough to cover abuses that were not anticipated when it was developed. Alternately, do we still need it? I have my own personal answers to these but - Kathy, your hand is still up, you might want to lower it unless you have a new statement to make.

Three, there's an overarching charter question as to whether the RPMs collectively fulfill the objectives for which they were developed. Are there some - in this context are there some policies, procedures that be carried across all mechanisms regarding costs, fees for the prevailing party? Should the standards be changed to address the full range of conduct that may be sanctioned by this process?

Those are rather broad suggestions. We can get into it but, you know, the full range of conduct - you know, our charter is to address trademark abuses, trademark related abuses, not other types of bad conduct that a registry may engage in or turn a blind eye to, that's the province of the working group on subsequent procedures is my understanding.

Question 4, if we made - even if we made no changes to the - this DRP is there any burden to it remaining available for use should an appropriate case arise or would changes make it more useful? I guess by more useful you mean more - if it's more useful we would anticipate that it might actually be used at some point in the future if there's applicable bad conduct going on.

Opposite point of view, given how much it costs to be a registry operator, and I'd add to become a registry operator given the application fees and associated legal and consulting costs and backend costs, is it too easy to bring a - one of these actions? You know, answer for myself, if it was too easy I think we would have seen some filed by now if there's abuse going on that it covers.

Concerning the TMCH sunrise practices, certain registries charge fees that some consider disproportionately high. Is there any relation to the sunrise registration fees? In particular registries to the conduct of the registry operator itself that would be relevant in the post-delegation context.

Well that relates to our upcoming work on the TMCH which will include both the claims notice and the sunrise will be getting into certainly I'm sure that registry practices will be cited in that discussion.

I'm not sure - unless - thinking out loud, even a registry operator charged (unintelligible) price or was asking a very high price to register a mark in their sunrise registration period, that would (unintelligible) the duty to not encourage infringing registrations of that mark in any subsequent registration period.

Would adding mediation be advisable? We heard from the providers on that and there was some interest on that in Helsinki, possible follow up questions to the providers. I think they've already answered Question 1 to the best of their ability. Are there any requirements that present administrative challenges? I think the one they've cited is the evidentiary challenges but that's not administrative. They haven't identified any potential issue in administering this. In fact, they've said they're ready to take one on if one is filed, all three of them said that.

And again, this is the central question, Number 3, do you believe that the lack of use of this DRP results from no need for it, that we haven't seen the type of abuse it was designed to respond to? Or are there unreasonable burdens in bringing it? I guess remedies that don't rise to the challenge that discourage potential complaints.

To that I want to add one more that - and I think Greg Shatan for raising this in Helsinki. He pointed out that where there's some pattern of infringement going on at a particular registry a single trademark owner may not wish to bring - to incur the entire cost of an action that will benefit many other trademark owners and he raised the question of whether something akin to a joint action, a class action, where owners join together in bringing an action - this DRP against a particular registry should be considered as a cost sharing measure to overcome the cost aspect.

And frankly, I would think that if a number of trademark owners should show substantial infringement of their marks in a particular registry that might also ease their - add to - trying to think how to say this properly. It would ease their - I think probably their overall burden in meeting the evidentiary standard. So I'm going to stop talking now. I see Susan Payne's hand up. And I'll check out the chatroom. So go ahead, Susan, we welcome your thoughts.

Susan Payne: Hi. Yes, it's just related to that point you were just referring to. And it - having given this a bit more thought it seems to me that I'm not sure whether it's expressed that you can bring some kind of a class action or whatever. But I think it must be implicit that you can, given that the PDDRP is intended to address a sort of pattern of bad behavior.

And the reality is that a single brand owner is extremely unlikely to have the kind of evidence that would demonstrate a pattern of behavior. You know, the bad actor would be having to be targeting their brands in particular. So it's just a comment really. And I don't know if we need to clarify language or we need to suggest that language is clarified. But it seems to me that it must be intended or have been intended, that some kind of, you know, activities in relation to a multitude of brands would be covered by this and could be acted upon collectively.

Phil Corwin: Right. I take your point, Susan. I think we have to look at the actual language of the PDDRP to see if at least there's an implicit possibility of a joint action being brought. I'm not familiar enough with the precise language to know that. But others on this group. Mr. Austin, I see your hand up. Please speak.

Scott Austin: Yes, hi Phil. Can you hear me?

Phil Corwin: Yes.

Scott Austin: Okay. I just was looking at...

Phil Corwin: And just identify yourself for the audio record.

Scott Austin: I'm sorry. Scott Austin. And I am UDRP panelist. And I have taken some training on the PDDRP. It was quite a while ago. But I recall that one of the things in terms of specific language in the - I almost said "statute" - in the policy is that the complainant is supposed to at least either send a demand letter or some kind of notice almost a - it reminds me of a cooling off sense approach or an informal attempt to resolve the matter before it goes forward, I think to the PDDRP.

And I'm trying to find that particular section. I think it's Section 7.2.3d says "Before filling a complaint the TM holder must have notified the registry operator about its specific concerns and resulting infringement and indicated its willingness to meet to resolve the issue." I think the better question here would be to check with registry operators and see if any of them have had even this minimal threshold, and I'm not talking about threshold panel, but a minimal informal inquiry or notice to the registry operator.

And the other thing I think is important to remember about the PDDRP is this is a pretty big move. It's a pretty big challenge for an average trademark holder to actually question a registry which in most trademark holder's minds, I would think even in fairly experienced counsel's minds is sort of, you know, they think back on network solutions or the well-known registries that are out there as being pretty formidable and probably represented by pretty formidable counsel. So there may be an inclination.

Plus, when you add to that clear and convincing evidence and I will say the PDDRP does allow for a limited discovery, unlike the UDRP, and actually a in person hearing, at least that's in the policy. So in fact that maybe closer to a true mediation or arbitration than you have in the more expedited process summary proceedings that we have under the UDRP and under the URS surely.

But I just wanted to make that note that maybe we need to ask some of the registries if they've heard anything just (unintelligible) on notice and then it was resolved without there ever having to have been a PDDRP. Does that make sense? Did I lose you, Phil?

((Crosstalk))

Phil Corwin: Sorry, I put myself on mute. I apologize. I had another phone ringing, I didn't want people to be bothered by it. Yes, thank you, that was very helpful. That suggests to me that we should, through the Registry Stakeholder Group, inquire as to whether any registries have in fact received such a note or such an input and from a trademark owner that we can't guarantee that one who did will respond. We have no way of compelling that.

But the other point you raised for my while we've gotten into the general purpose of this PDDRP, I don't think we've reviewed the specific language of it. And we get, you know, peel back the onion and get into questions like burden of proof, remedies, all that, we're going to have to look at the specific language if we're even contemplating any potential modification of any of those parts.

So I think we should note that that's something we'll need to be doing in the near future once we agree on what possible modifications we'd at least collectively want to look at to some extent, not deciding we should do them but at least that we should look into them and that would require looking at the present language of the DRP and seeing, you know, what if any changes might be made.

Based on what you just said, there almost is a mediation process built in or at least a discussion. There's no third party involved but there is a requirement to initially contact the registry and have some discussions before the trademark owner can go onto the next step of actually filing. Is that correct?

Scott Austin: Sorry, now it was me who had to go off mute. Yes, I think that the - I think that's correct but I want to point out that when I said yes there's an initial informal inquiry that goes on between the registry and the trademark holder, but there is also - when I mentioned the request for limited discovery and that parties may request in person hearing, that would involve a third party. I mean, that would be, you know, more formal.

Phil Corwin: Okay.

Scott Austin: And that's why I say it tends to be more like mediation. The other thing that I wanted to point out...

((Crosstalk))

Phil Corwin: Scott, can I just stop you there? Would that third party - that would still be before filling the formal PDDRP. Who would that third party be?

Scott Austin: No, no, no, that's - I think that would be after the policy...

((Crosstalk))

Phil Corwin: Oh would be. Would be okay.

Scott Austin: Yes, yes, that would actually be part of. That's under the - let me see what section, just trying to see what section that was related to. So PDDRP 16 is where it references that the party - so obviously if it's saying "parties" at that point then there has been already a filing under the PDDRP. They can request limited discovery, that's PDDRP 15, or they can request an in person hearing under PDDRP 16.

But the other point I wanted to make was you mentioned the involvement of ICANN compliance and that makes a lot of sense since that really is the primary remedy.

Phil Corwin: Right.

Scott Austin: The panel would form - a form of recommendation to ICANN's contractual compliance team. So it sounds to me like maybe people are just sort of skipping the PDDRP process and going right to compliance and saying hey, here's what's happening, what can we do.

Phil Corwin: Yes, I would agree if I were a rights holder and I thought there was a problem at a particular registry why take the time and expense to file an action that's going to wind up recommending an action to compliance? Why not just go to compliance in the first place?

Scott Austin: Exactly.

Phil Corwin: Okay. All right, Scott, your hand is down. I don't see any other hands up of anyone in the working group who wants to comment on any of this. Mr. Evans, my cochair. Go ahead, Scott.

J. Scott Evans: I think - I think it's important - I think Caroline Chicoine mentioned early on in the call that we should reach out to ICANN compliance and perhaps we should have sort of a discussion with them and invite them to come to one of our calls where we can discuss with them, and, you know, run a few scenarios past them. You know, what is your procedure if you receive this type of complaint? And hear what they currently have in place and what they're doing and see if we can get an understanding of what they're doing. I think having that would assist us.

I also want to remind everyone that at the end of our meeting in Helsinki, and I'm sure there are many people on this call who were not in Helsinki so if you

haven't listened to the recording or read the transcript, I asked everyone to put together a list of 1-4 things that they think we might need to address, whether these are issues or clarifications, so that we can put together a list that we could work through for discussion purposes beyond the outreach we've done to the providers.

So I asked Mary Wong, in our chair call yesterday, and she said she has not heard from anyone with regards to this. So it would be great if we could get that so that we can start putting together this list. But I think the first order of business, since we've heard from...

Phil Corwin: Yes.

J. Scott Evans: ...the providers is to get to compliance because that's a data point that's already there that doesn't need to be gathered necessarily and then we can have a discussion just for our own elucidation.

Phil Corwin: I agree. I agree. I'm wondering if after this call, you know, I note we have 48 participants on this call but that's still less than half of the membership much less observers, whether we should put out a formal request to - for members to submit up to four suggestions for things that should be looked at along the lines of what you suggested in Helsinki because, you know, a written reminder is often much more effective than just what's said during a call or at a meeting verbally.

Okay. So well we've gone through the slides. And I haven't heard anyone bring up additional issues that we should consider. There is a general agreement that we should survey the members of this working group for input on areas of further inquiry on this DRP that they want us to delve into. We seem to have an agreement that we should reach out to the Registry Stakeholder Group and find out if any of the registries if they can survey their members and ask if any of them have gotten that preliminary step from trademark owners and if so how was it resolved.

Obviously none of it led to a, excuse me, a filing. We've agreed that we should probably invite compliance staff to join one of our calls in the near future to discuss whether they've gotten inquiries or complaints about specific registries and how they've handled them.

And then in terms of issues within the PDDRP that there seems to be - there's been some input from various parties, whether members of this group or the providers that are worth additional inquiry. Let me list the ones I remember and see if anyone can add any others. Whether or not joint actions are now permitted and if not whether they should be? Whether the burden of proof or the elements to be proven are too burdensome.

Whether the remedy is too nonspecific to justify the time and cost of bringing this and I guess whether - well what you have to prove whether that's too high or whether a registry operator is turning a blind eye and tolerating high levels of infringement should be available to get the remedy particularly since the remedy is not very harsh in this case, it's not necessarily going to lead the shutting down of the registry.

And I'll call back on Scott in a second. I just want to read some of the comments in the chatroom where - well Petter Rindforth has a rather complicated comment. I might ask or encourage Petter to chime in verbally. Kristine Dorrain said "Phil suggests going a step further with compliance and presenting them with cases or situations." Kristine, I assume, and you can type in or speak up, that you're talking about hypotheticals. It'd be hard for us to know if there was any specific situation that they had an inquiry on.

And then Caroline Chicoine, her perspective is that changes depending on whether this DRP is the only mechanism or the mechanism of last resort if compliance does in fact have the mechanisms to deal with things. And there's no need to file this formal action. And that would get back to whether we need to keep this. If the only thing this results in is a recommendation to

compliance do we really need a costly complex DRP to communicate with compliance.

I see Kristine, why don't you go ahead? I see your hand up. And then we'll take Petter's comments.

Kristine Dorrain: Thanks a lot, this is Kristine from Amazon Registry. And I just wanted to mention that (unintelligible) is because back when it was created ICANN wasn't - compliance wasn't responding to complaints. And so the other two got together and (unintelligible). That's the impetus behind my suggestion of using hypotheticals because if in fact ICANN has now filled all those gaps in and the need for the PDDRP has sort of become moot, I think we want to know that.

Or if there are specific isolated instances or types of use cases or hypotheticals where ICANN would say gosh, no, you know, we're not going to make a decision on that and we'd have to outsource that, I think that would be really helpful to know (unintelligible) because if there already (unintelligible) situations in which the PDDRP could still apply I think we definitely want to be able to target any suggested PDDRP (unintelligible) to those specific types of infringements.

Phil Corwin: Okay. Thank you for that input, Kristine. Good suggestion. Petter, why don't you go ahead.

Petter Rindforth: Petter Rindforth here. Also being one on the so far unused panelists, just agreed on the conclusion that it's the second level that is perhaps the more complicated part of it. I mean, the top level disputes it's more similar to the traditional dispute resolution policies. But on the second level I said it's not sufficient to show that the registry operator is on notice of a possible trademark infringement the registrations in the gTLD. So there I definitely agree that if it's - could be a possibility to go together with the other trademark holders.

Because one example of infringement at this level is where the registry operator has a pattern or practice of actively and systematically encouraging registrants or registered second level domain names and to take unfair advantage of, well the trademark or where the registry operator has a pattern or practice of asking the registrant or beneficial user of infringing registrations to monetize and profit in bad faith.

And especially that last example I think it could be difficult for a single trademark owner to show that if it's not one of those trademark holders that are facing continuously online disputes. Thanks.

Phil Corwin: Yes, thank you for that input, Petter. All right. So in identifying additional issues, steps we want to take as we go forward and try to decide whether we want to recommend any changes in this DRP does anyone else have anything else to add? And I see Scott Austin's hand up. Scott, go ahead.

Scott Austin: Well I just wanted to come back to in the initial responses WIPO did have, I thought, a very well, you know, had a good list of substantive reasons and percentage layers, I mean, I think you could take that list and add a few things in there, no willful blindness standard, two-pronged affirmative conduct requirement. I mean, all of those are elements that do make it I think pretty onerous or make it onerous on a trademark holder to step up to the plate especially if they're not doing it with someone else and especially because of some of the requirements in terms of pattern of conduct, etcetera.

The other thing that is in the back of my mind, and this is because of work with - or as a panelist, is in the PDDRP there's sort of general reference to the fact that it was based - the process is, quote, similar to that for the UDRP. But has elements of traditional arbitration. I guess my question is does that mean that UDRP precedent is given weight or is relevant or is there - can you bring in cases outside of fewer domain name disputes?

In other words, could it be like a traditional or an (unintelligible) proceeding or something that deals with more federal cases and what kind of case law, what is going to be considered by the panelist as relevant precedent? And I don't know if that's set forth in the policy someplace in terms of either limitations or preferences or, you know, what is accepted as precedent. And I think that's another item on the list we can add to it.

Phil Corwin: Okay, we'll add that to the list. You know, just thinking about that, you know, let's say - I'm just thinking out loud here. Hypothetically there's a registry and a bunch of trademark owners allege or at least state verbally that there's a significant amount of infringement going on at this registry. And while the registry may not have actively encouraged it they're turning a blind eye to it.

There's a lot of questions that are, you know, what's a significant amount? What constitutes a pattern of practice? One percent of all the domains registered, 2%, 10%. At one point should something like this be used or at least should compliance step in? How do you prove that there's actual infringement without actually doing a URS or UDRP for each of the domains cited and actually looking at each one?

And, you know, what is the registry supposed to do if someone says these 100 domains are infringing, is the registry in a position to - even if they agree - to negate those registrations? Or is that something that should be dealt with through the UDRP or URS? I'm just raising these questions, I don't know what the answer are but I can, you know, it gets complicated I think once you start looking at it at that hypothetical.

So those are personal views of course and just thinking out loud. But it's now 11 minutes before the end of our call. I don't see any more requests to input on what our next step should be on deciding whether we should be recommending any changes to this PDDRP or recommending that it's no longer needed.

So why don't we get back to staff, and very quickly note the next few meetings, at least the meetings for the rest of the summer so you know what our schedule is going to be. And then staff can follow up by sending this schedule out to everyone so you can mark your calendars, or better yet, send out multiple calendar invitations that you can accept or decline.

And then we're going to talk a little bit about ICANN 57, which is several months away. It's the first week in November in Hyderabad India. But the issue for us is whether there is a possibility - it wouldn't be adding a day to the meeting but there is - there are time slots on Day 1 of that meeting for face to face - facilitated face to face meetings of particular PDP working groups. Ours is one that's been identified as possibly, you know, qualifying for that so we should begin a discussion on whether we think it would be helpful to our work to request such a facilitated face to face meeting in Hyderabad.

And I know one of the things we wanted to get at last initial indication of is whether, you know, how many members of this working group are planning to be in Hyderabad because we've heard from some ICANN attendees that because they hadn't budgeted for a meeting in India and because of the cost involved and the time involved in traveling if they're based outside of Asia that they may skip that meeting. So Kathy, quick comment, Kathy, and then let's have staff put up the coming meetings for the summer.

Kathy Kleiman: Great. Thanks, Phil. And it looks like Susan has her hand raised as well.

Phil Corwin: Okay, sure.

Kathy Kleiman: I wanted to provide a little more background. Thank you for the introduction to the face to face meeting. I wanted to provide a little more background to people who don't know that this is - you know, this possibility of having a full day meeting is one that's given to each working group generally once in its

cycle. We may be able to ask for one twice since we have two phases, one for the new rights protection mechanisms and then maybe one for the UDRP.

But you only get it once so that's one of the reasons we're surveying everybody is to see whether to be India or the following meeting, which is Copenhagen. So I've raised - I've put a checkmark next to my name to show that I'm probably going to India so I thought maybe, Phil, other people could do that as well and let us know.

Phil Corwin: Yes, I intend to ask people to - when we get to that part we'll ask for an indication from all the members on whether they're, at this time, planning to go to India. Susan.

Susan Payne: Yes, thanks. Susan Payne for the record. In fact, Kathy, you've answered part of my question. But I still - I'm not entirely clear what it means if we don't have that facilitated face to face. Does that mean we get no face to face time allocated to our PDP at all during the meeting? Or does it just mean we don't have a really substantive one-day session but we would still have time for, say, an hour and a half of the, you know, a working group meeting?

Phil Corwin: Yes, Phil in response. I'm sure that even if we don't have a full day face to face facilitated meeting on Day 1 our working group is going to have a meeting of some several hours' duration during the Hyderabad meeting. And I see Mary's hand up. I'll let her speak in a second.

I just want to add, you know, we're not - it might be useful if we're going to have a significant turnout in Hyderabad to have that. But if we get one meeting for Phase 1 and then one for Phase 2, because this is a multiyear working group with two phases, one issue is whether it would be most useful in Hyderabad or it'd be more useful when we're further along in our work in Copenhagen or maybe it's more useful in the midyear meeting next year, which I believe is Johannesburg.

Is that correct, when we'll be probably starting to work on our initial report and recommendations to having completed most of the discussion of the substantive issues covered by Phase 1. So we don't lose the possibility of a facilitated meeting if we don't have it in Hyderabad.

So it being six minutes before the end can staff put up now the schedule of the meetings for the rest of July and August and then we'll be sending this out to all members after the meeting and sending out calendar invites if you can indicate whether you'll be on those. Okay so here we are. And scrolling down.

Yes, our meeting today is on Page 4, that's the meeting of July 13. So our meeting next week is at 1600 UTC, we jump back to an hour earlier because of lack of conflict with the bimonthly registry call. On July 27 we jump to 2100 the call to make things easier for the people in the Asia Pacific region.

On beginning of August - August 3 back at 1600; August 10 at 1700. I want to note now for the record I will probably not be on that August 10 call. I will be on vacation in Maine with limited or no telephone connectivity. So but we can - the beauty of having three cochairs is that if one can't participate in a particular meeting we still have two others.

Seventeenth of August, 1600; 24 of August 2100, the later meeting time again; and 31 August 1600. And we project that during that time we're going to - that by the end of August we're going to be pretty much wrapped up on PDDRP and have gotten a status report from the trademark clearinghouse subteam and actually start the TMCH review in that last call of August.

Maybe we can, you know, it's possible we might get a meeting ahead on that. It depends on how this topic goes. But that's the outline for the rest of the summer. So and again staff will put something out by email.

Mary, go ahead and speak. I see your hand up.

Mary Wong: Thanks, Phil. Hi, everybody. This is Mary from staff. Beginning with this series of dates just to follow up on Phil's comment, we will send you calendar invitations a few meetings at a time so that you have at least a few of the rotations in your calendar going forward. And we've already uploaded this work plan to the wiki but as Phil noted, we will send this around to everyone so you have in your inbox as well.

I wanted to go back to some of Susan's questions about the face to face meeting and this idea or proposal that we are discussing is separate from the regular one-hour, 90 minutes or two-hour working group sessions that each working group holds at every ICANN meeting.

At the moment, and as far as I can tell, those regular short meetings will still go on in Hyderabad as in every ICANN meeting. The face to face meeting that is being considered for this working group as well as some of the others, is a longer one to take place on Day 1.

And by longer it could be a half day of four hours, which would allow us to do two working groups in that one day or it could be that one working group or two working groups could take up a full day. So in this respect, and I think Susan, you had a question on this as well, the fact that a working group or PDP working group may or may not have that sort of face to face meeting depends really on whether that group is in a particular stage of its work where both it and the GNSO Council believe that it would be beneficial for that group to have a meeting.

So while a PDP working group would not have a four-hour or full day face to face meeting at every ICANN meeting, it might have more than one at different stages of its work. For example, the privacy proxy group did two, I believe one at initial report stage and one before finalizing its last report.

So it really is a question of what pace and phase of work that particular group is. So hopefully that answers some of the questions, Phil, Susan had...

((Crosstalk))

Phil Corwin: Right. Well thank you, Mary. And we're one minute before quit time. So everybody think about the usefulness of a facilitated face to face meeting in Hyderabad to our group. But before we leave I'm going to ask everyone if you're either sure you're going to Hyderabad or leaning toward going, let me ask you to click on the Agree, that's the green arrow. Let's do - so please go up - it's the same as the raise hand function. Click on the green arrow for agree if you're going to - if you know you're going to Hyderabad or you think you're probably going or leaning toward going.

And okay so all right I see a little over a dozen so about 1/4 of the people who are on this call are either sure they're going or thinking of going to Hyderabad. Now clear that please and if you're sure you're not going or you - if you either know you're not going to leaning against going to Hyderabad for whatever reason could you click the X, the disagree symbol and let's see how that pans out.

All right, I'm seeing - I'd say from what I'm seeing again, about 1/4 of the group sure that they're not going and leaning against, which means, you know, for the 45 people we have on the call right now about 1/4 will probably be there, about 1/4 probably won't and the remainder, which is almost half of the group is undecided at this point. So alright well that's useful information. We'll probably need to survey the entire group by email as we address this question of a face to face taking place in Hyderabad.

It's now one minute past the hour and so I'm going to call this call to a conclusion and thank everyone for participating. And staff will be following up with - on the calendar item, the schedule, and with invitations for meetings throughout July and August so you can get them locked into your calendar. And we'll start focusing on those additional issues we're going to dig deeper

into on the next call, which will be chaired by Kathy. Thank you all and good-bye.

Kathy Kleiman: Thanks, Phil. Bye all.

Terri Agnew: Once again the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END