

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working
Group
Wednesday, 11 May 2016 at 16:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at : <http://audio.icann.org/gnso/gnso-rpm-review-11may16-en.mp3>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar#may>

Coordinator: Excuse me, participants. The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon, and good evening. Welcome to the review of All Rights Protection Mechanisms, RPM in all gTLDs PDP Working Group call held on the 11 of May, 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, so if you are only on the audio grid, could you please let yourselves be known now? Hearing no names, I would like to remind you all 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 turn it back over to you, Phil.

Phil: Okay. Thank you and thanks again to all the members who are on this call. We're now up to 52 participants, so good turnout. We appreciate that.

Staff, can we put the draft work plan in the Adobe room for everyone's ability to review it? And what we're going to do here is fairly rapidly go through the draft work plan, which is obviously just a draft and will be adjusted at various points probably in our work depending on whether certain items take more or less time. But it's to give everyone a - an idea of what the - what we - the journey ahead.

So - and - so here we have page 1 and, as it notes, the work plan's been developed with some assumptions that - first, that each rights protection mechanism reviewed in Phase 1 will be reviewed in consecutive and not concurrent order. That means we're going to be focused on a particular RPM at any one time. However, we may be doing data-gathering preparing for the next step for the next RPM as we're addressing one.

We may be using sub-teams at appropriate times to perform various tasks and, in fact, we're going to be discussing our initial sub-team request. Today, we've already had the separate webinars, which are open to both members and observers, so we're past that bullet point. And for each RPM, our first step is going to be discussing the aim of the final design set forth by the STI RT, which was a special trademark issue review team back at the dawn of history of the new RPMs.

And in the final applicant guidebook for the new TLD program, and also consider whatever empirical data is available that is useful in evaluating how each RPM has performed against that standard. That doesn't mean we can't discuss whether the objectives for the RPM should be adjusted, but the first thing we're going to do is look to whether it performed a good job in addressing the problem it was meant to address.

So we're now on the timeline where, obviously, when you scroll to page 2 - and each of you can scroll independently - this draft work plan, we're on the May 11 call. We have another call next week which will involve some further discussion of this work plan, discussion of an outreach letter to supporting

organizations and advisory committees as well as stakeholder groups and constituencies.

We'll get into that in more detail in a few minutes. Next week, we'll formally adopt our work plan. Again, the work plan can be modified down the road. There will be no meeting the week of May 25 - or the date of May 25 because many of the workgroup members will be attending the International Trademark Association annual meeting and will not be readily available for calls.

So we'll pick up again on June 1, further discussing the outreach letter and next steps for our substantive review. Our aim is to finalize and get the outreach letters out by June 8 and then to launch our substantive review work on - in mid-June -- June 15. The first issue we're going to address, and to some extent, we, the co-chairs, are proposing that this be the first for two reasons.

If the PDDRP, which is the Post-Delegation Dispute Resolution Procedure, and, that's being done for two reasons. One, we don't know of any instance in which that procedure is actually being employed so we can - we'll be reviewing what it was designed for and, of course, we can consider whether requirements have prevented its use or whether it's a remedy in search of a problem, but we can talk about that.

There'll be little to no empirical data regarding its use. The following week, we're going to be preparing for the ICANN meeting in Helsinki for our face-to-face meeting there. For those of you who will not be attending in Helsinki, you can of course participate remotely through ICANN's excellent remote participation technology.

There'll be - oh, wait, so we have no meetings - just the week before and the week after the Helsinki meeting. So any planning for Helsinki will be on June 15, and we back - on the PDDRP in mid-July and looking to wrap that up

toward the end of August and then launching into the trademark clearing house -- very important and widely used rights protection mechanism on which there is a great deal of data regarding its use as well as its results in terms of trademark claims and Sunrise, which will be treated as discrete issues or plan.

It's for the TMCH to consider review to run from late August through early January. So that'll be a big topic. Of course, if we move more quickly, we can complete it more quickly. We've got another ICANN meeting in the midst of that discussion -- ICANN 57.

We're waiting to be advised for the location of that meeting. And so we're looking at wrapping up TMCH no later than the beginning of January 2017 and then getting into the things that are generated by registrational marks and the Trademark Clearing House which is the right of a marks-holder to Sunrise registration before general availability and the generation of trademark claims notices to those who initiate a registration of a mark that is in the Trademark Clearing House database.

So - and then we're going to go through those. We haven't put a lot of detail in, but we're looking at those items running from the beginning of January through April of next year with the first ICANN meeting of 2017 intervening and then launching a review of the uniform rapid suspension -- the URS -- beginning in the first part of April next year.

And again, all of these items will probably be preceded by planning and outreach before we begin the initial discussion of each of them. And the URS will go through - from April through mid-July. And our projection - and at that point, we will completed the separate substantive discussion of each of the separate new rights protection mechanisms if we adhere to this schedule.

So that's when we'll begin working on final Phase 1 and preparing a draft report on our findings and conclusions and recommendations resulting from

our Phase 1 work. That process will run through the fall of 2017. There will be an open public comment forum at the ICANN meeting next October.

There will be public comment period and then the projection of the close of public comment for the initial report on Phase 1 is in late November 2017. Then we will put out the final report on Phase 1 in early 2018 and submit it to the GNSO council and then we will commence our work on the UDRP review we project in the middle of January 2018.

So again, this is a view from several thousand feet up. It's a - we will be probably adjusting this if some phases take less time or more time some (unintelligible) work here. But this is our plan at the moment.

The co-chairs have discussed it based on our own participation in other working groups with complex subject matter as well as consultation with staff. We believe this is a realistic projection. We have not in any way yet discussed the content of the Phase 2 UDRP review.

We have plenty of time to begin that discussion, which will probably, you know, ratchet up in the second half of 2017 and, for planning purposes, as we approach the initiation of Phase 2 in the UDRP review. So that's the - that's what we projected and, at this point, we've presented the draft work plan for the consideration of members.

And now we open it up for questions and discussion by the members. And the first hand up I see is Jeff Neuman. Why don't you go ahead, Jeff?

Jeff Neuman: Thanks, (unintelligible). Can you guys hear me?

Phil: Can hear you quite well, Jeff.

Jeff Neuman: Oh, great. Okay. This is Jeff Neuman for the record on - just I'm participating in this group as a member of the group but also as one of the co-chairs of the

subsequent procedures PDP. And the question I have is why is - why was it decided to start with PDDRP as opposed to starting with something like the Clearing House?

And the reason I ask that is because I think the output of the work on the Clearing House may affect the work of the subsequent procedures PDP. And if that's not done until late 2017, I'm concerned that that may have an effect on the overall timeline with the...

Phil: Well, Jeff, that was done for two reasons. I explained one of them was that the PDDRP hasn't been used. So we thought it would - could be done relatively quickly. It's not that complex an issue and it could - there are many members of this working group who've not participated in other working groups.

We thought it would give them a relatively easy introduction into the methodology of the working group process and prepare them for the more complex issues. The other reason is that we think there's going to be time required to gather data on the Trademark Clearing House. There's an ongoing study on the Clearing House which won't be ready for a few months.

And so it's for those reasons -- one, to start with the simplest, and get people used to the process who haven't been in a working group before, and two, to give us time to get more empirical data to support a review of the Clearing House. I understand your concern, but that's the reasoning behind the co-chair's decision.

Okay, do we have other questions or comments or is everyone so happy with this work plan they don't want to say anything? Well, I'm not seeing any hands or anything in the chatroom. I see Jeff says he wants time to consider our rationale.

That's fine, Jeff. We're not - this work plan isn't locked down yet. We're going to consider it again next week. But the big factor there is making sure we have enough empirical data to begin a useful review of the Clearing House.

So there's no other questions or comments on that, then we can proceed to Item 4. Oh, Petter, I see your hand up. Why don't you go ahead?

Petter Rindforth: Thanks, I - sorry, just a follow-up question when it comes to that. You say that it's better for us to wait until the other working groups are dealing with the Clearing House finished, if that's correct.

Phil: No, Petter. No, we're going to have a - we're - in a minute, we're going to be discussing the need to establish a liaisons between this working group and the subsequent procedures. But what we're going to inform the - keep the other group informed of what we're doing as we're going to be informed of their work.

But the reason is the need for some time to gather whatever we believe is required empirical data to have an informed discussion of the Clearing House.

Petter Rindforth: Okay, thanks. So then, if I understand you then, correctly, just for my own point of view, that there will be some work on this topic in the meantime. So we are, in fact, not drafting when it's scheduled on the agenda you sent out -- that there will...

Woman 1: Yes.

Petter Rindforth: ... be some preparatory work.

Phil: Yes, as I said at the beginning of the call - I don't know if you were on at the beginning - but while we're going to address each separate RPM consecutively and not concurrently, we will be having a concurrent work in

terms of data-gathering and other preparatory work to address the next RPM on the schedule while we're dealing substantially (sic) with a particular RPM.

So while we're discussing the PDDRP in the background, we - we're going to have staff and perhaps a subgroup gathering and even analyzing whatever empirical data is available on the Clearing House so that we can run - launch right into it when we get to that point and not have to spend time just beginning the data-gathering. So there will be background work preparing for each of the next RPMs before we actually get to discussing them.

Petter Rindforth: Okay, thanks.

Phil: Okay. The next item on our agenda is we are required to and it's good practice anyway to make an outreach effort to the other - supporting organizations -- GNSO and CCNSO, the advisory committees, ALAC and GAC, and all the stakeholder groups and constituencies within the GNSO to inform them of our work and of our plans and invite their participation as well ask particular questions of them and invite them to identify matters of particular concern to them.

Now we're looking on this call to get two to three volunteers for our first sub-team which will be - the task of that sub-team will be to work off a standard template that will be supplied by staff for such letters - such outreach letters and to customize it somewhat for our working group and to have all of that done by our meeting next week. So we're looking for two, three people who can work together fairly quickly to customize the template.

And then we'll be a discussing that - let me get - I just have to scroll up to the relevant page of the work plan here so I don't misspeak - yes, so our plan is to have a draft of that outreach letter which will be circulated before our meeting of May 18, and then to discuss it on the next week. And then there may be - but you'll see on the plan, we don't confirm the separate outreach letters.

There'll be some further customization for different groups. We don't think every group's going to require a customized letter, but some groups like the GAC were more likely to need them than others. So we will be still working on the outreach letters on June 1 and then have a June 8 target for finalizing that and getting that out to all the groups.

So that will still be several weeks before Helsinki, so they'll be well aware of our work and the invitation to participate and to give us feedback before we get to the Helsinki meeting for a face-to-face meeting. So at this time, by show of hands, are there any working group members who would be interested in joining the sub-team to draft the initial draft of the outreach letter for our working group and be able to work on that and get something together for next - an initial draft for next week's meeting?

It's probably just an hour or so's - hour to two's work to get that done with the communication by email between the - unless you feel a call is necessary. So I'm not seeing any hands up. I see (Steve Aleevey) saying in the chat room he'd be happy to help.

So, (Steve), we appreciate that and (Paul Keating). So we've got two volunteers. Do we have a third? We want to keep this group small but there's still room for third person.

So we've got (Steve Aleevey), (Paul Keating), and Petter Rindforth. Okay, so that's our first sub-team -- Petter, (Steve), and Paul. And we'll - staff will get that template out to you after this call and - so you can start your work.

And, of course, staff will assist in any way in terms of providing more background information or facilitating a call if you think a call is necessary in addition to just email exchanges to himself. And I see (Rudy) will volunteer later in the process. And that's fine, (Rudy).

We're going to have plenty of sub-teams on this working group to expedite our work. So thank you to the three volunteers who have stepped up to the plate on our outreach letter and we look forward to viewing the initial draft next week. And we'd hope that that draft is ready at least a day prior to our meeting of May 18 so that members have a chance to review it prior to discussing it on the call.

The next item - and I particularly invite Jeff Neuman to weigh in on this because Jeff was - after I finish speaking, Jeff - there was some email on this is morning - we are required, and again, it would be good practice anyway to establish one or more official liaisons between our working group and the new GTLD subsequent procedures PDP working group. I've been participating -- mostly listening in on the - that other working groups' calls which are held each Monday.

Now, we are going to - we're going to identify - in order to be one of the liaisons, and at least at this working group, the co-chair, the initial thought of the co-chairs is that we should probably have at least two official liaisons so if one can't make the meeting or - and also given the complexity and the volume of the work that both groups are involved in, it'd be better to have the work shared by at least two liaisons rather than one

Clearly, to be a liaison between the two groups, you have to be a member of both because the liaison has to be participating in the work of one group and able to inform the other group of what's going on, not just by email, but be available on calls and to take questions. So staff's going to identify all the individuals who are members of both working groups.

So the reason I'm raising this now is not to ask for volunteers because all the folks who are on the - both working groups will get a letter - an email inviting them to volunteer for this liaison position and then the co-chairs will select individuals for the position. But if you're currently on this working group but not on the subsequent procedures, or maybe you're just there as an observer

or not a member and you want to be considered for the liaison position, this is a chance to change your status.

Likewise, anyone who is not on this call because you're not a member or just an observer of this working group but who's a member of the other working group and who wants to upgrade their status for our working group to membership to be considered, now is your chance to do so. So are there any questions about that and, Jeff, in particular, do you have any comments because I know you were on some emails this morning on the same subject.

Jeff Neuman: Yes, thanks, Phil. This is Jeff Neuman. I think you pretty much said it.

The only other thing I would add is I think it's important that the liaisons be fairly active - not necessarily in participation in both groups, but to have good knowledge of what's going on so that they could point out if there's any overlap in discussions or, you know, bring to the attention of the co-chairs where there may be overlap or things that rely on each other in both groups so that we don't have - you know, we're not duplicating tasks or to the extent that we're sending out surveys or have communications with registrants or certain organizations, perhaps, trying to coordinate those with both groups so that we're not burdening these groups by asking them two different sets of questions when we could ask them one.

So I actually see the liaison role as pretty important and really think that, you know, it's going to require some time, but I know that there's a lot of people that are certainly qualified that are in both groups and I see Robin has already kind of thrown her hat into the ring. So, yes, I think that's all I would add. Thanks.

Phil: Well, thank you, Jeff, for that further explanation. And, yes, it's going to be - require some individuals with judgment to know what's going on in one group that's going to be really relevant and important for the other group to know

about, not to download everything that's gone on within a meeting of the other group, but to do some editing work and focus in on the important parts.

So thank you, Robin, for volunteering. Again, we're going to have a formal outreach to all of the individuals and members of both groups and invite volunteers - all of them to volunteer and then make a final decision among the co-chairs, but you're certainly a strong candidate for the role having participated in many of these groups and we appreciate your stepping up the plate.

Any further discussion or questions about the liaison role before we move on? I don't see any hands raised or I hear anyone on the phone so - and Greg, I just saw your comment -- value in convening the overlap group. Are you talking about separate meetings for the members who are - people who are members of both groups?

I'm just wondering about the time - I'm not quite sure what the point would be, but even if there's a good purpose, it would be in addition to already being on two calls a week and preparing for them.

Greg Shatan: This is Greg. I'm not necessarily suggesting separate calls. It might make sense to have, you know, a sub-group mailing list or something like -- see what grows out of it.

Or you could just use the tool to select the liaisons and otherwise. So, you know, nothing is done with the overlap group, but it just seems to me that it might make sense beyond the liaison to at least have kind of a way for that group to communicate amongst itself -- more likely a mailing list than any meetings unless that group decided it needed a meeting to achieve something.

Phil: Okay, well, I think, you know -- and (Kathy) and J. Scott feel free to chime in - I think the co-chairs will take that under advisement and think about and

discuss it among ourselves and with staff, see if there's any precedent and we can get back on the next call about that. Is that okay?

Greg Shatan: Works for me.

Phil: Okay, and Paul McGrady, I see your hand up.

Paul McGrady: Thanks, Phil. Thank you. Paul McGrady for the record. If we're going to establish this kind of overlap group and have a mailing list, I think it also makes sense to include the GNSO council liaisons for each of the two RPMs.

So I'm the liaison for the subsequent procedures working group. Not sure who will replace you, Phil, in that role in RPM. But I think keeping the council in the loop as part of that liaisoning process (unintelligible).

Phil: Yes, that definitely establishes (unintelligible) mailing list so - which we're going to discuss. And I believe that council will be discussing tomorrow who should replace me as the council liaison to this working group, so that should be resolved fairly quickly.

Okay, anything else on liaison role or any other topic we've discussed today before we get to any other business? All right, well now we are up to any other business so it's wide open now for anyone to raise anything else and our co-chair J. Scott Evans has his hand raised. Go ahead, Scott.

J. Scott Evans: This is J. Scott Evans for the record. I just want to emphasize that I think Phil brought up, at the beginning of the call, and I didn't want to get to lost in any - in the subsequent details that we've gone through.

And we realize, all of us, that - staff and co-chairs - that you all just got this morning. And so that's the reason next week we are having an - a call where we're going to focus on the plan again. So if you have any questions, concerns, or things that you'd like to bring up - I know Jeff has reserved the

right to consider his thinking on the PDDRP and our order that we've suggested, so that's fine - please feel free to bring those up at next week's call or on the list prior to next week's call if you feel like that would help.

So I just want to let you know that we haven't adopted this plan yet and the fact that we presented it to you today, it's not up (unintelligible). We would like to hear from you understanding that some of the comments may have been a little bit more reserved today because you haven't had a chance to thoroughly comb through it. So I just wanted to put that on the record.

Thank you, Phil.

Phil:

Yes, and thank you for pointing that out, J. Scott. And just to second that thought, the role of the co-chair's working with staff is not to make decisions for the working group. The role of the co-chairs is to propose management - you know, to manage the working group and propose ways forward, but all it is always subject to review and revision by the members of the working group and we reach final decisions by consensus.

So as J. Scott pointed out, our next meeting - well, let me say again, is there any other business? If not, we're going to discuss this next meeting and end this call early. All right, going once, going twice.

Our next meeting will be one week from today. It will be at the same time. We're going to move to a - it'll be the June 1 call that moves to a different time to better accommodate the Asia Pacific base members of the working group. But our call next week will be at the same time -- Wednesday, May 18, 16:00 UTC.

We will resume discussion of the working plan with all of you having the benefit of a week to consider it as well as the opportunity to raise questions and discuss it on the working group email list. By then - we will also - for that call, we'll have a draft letter back - an outreach letter from the three

volunteers who agreed to do that on this call and we'll be discussing that and discussing whether that letter needs to be customized for any of the various groups that are going to be receiving it, start that discussion.

And we expect to adopt the final work plan. Again, the work plan is subject to revision if particular items take more or less time and practice than we're projecting here, but adopt at least the work plan for the time being on next week's call. And that'll be it.

So one last chance here for any questions or comments. And if there are none, we can adjourn the call 25 minutes early. We're always happy to end the call early if there's no reason to prolong it.

Okay, so seeing no hands, hearing no voices, we're going to conclude the call and I invite all working group members to please give the work plan some more consideration over the coming week and get back to us by email if you have any questions or comments about what the co-chairs and staff have come up with. Thank you very much for joining today. And I think we can stop the recording.

Coordinator: Thank you. Once again, the meeting has been adjourned.

END