

**Transcription ICANN Dublin
Wednesday 21 October 2015
GNSO Preliminary Issue Report on Reviewing RPM in All gTLDs**

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On page: <http://gns0.icann.org/en/group-activities/calendar#oct>
The transcriptions of the calls are posted on the GNSO Master Calendar page

Mary Wong: Hello everybody. This is Mary Wong from ICANN staff. And thank you all for coming to this session.

Before we actually get started with the presentations this is the room that we will also be presenting the second issue report which actually chronologically came out first.

So I just want to make sure that with all the schedule changes everybody is in the right room at the right time.

And so what we're going to do is start off with the GNSO's preliminary issue report on the possible PDP a Policy Development Process to review all the rights protection mechanisms for all the gTLDs.

And we've allocated up to an hour for that discussion partly because that's the newer issue report so it's not been out for that long and we thought maybe the community would like a little bit more time to talk that through.

But partly also because for those of you who have seen this preliminary issue report instead of a single staff recommendation on a way forward there's a

few options that we present to the community for feedback. And (Lars) will take us through that presentation so you know what those options are.

But the important thing is that issue report just came out. And it will be very important to have community input on any of the content obviously but also on the various options that we're presenting. So that's why we've allocated time for this issue report.

Depending on how the discussion goes but no longer than an hour. We will then move to a presentation and discussion of the other preliminary issue report which I mentioned came out earlier and that is on a possible policy enrollment process as well.

But to look at the policy principles that the GNSO has and whether or not those that are currently dating from 2007 would apply for subsequent rounds of the new gTLD program, whether they should be amended, clarified, added to, et cetera, et cetera.

So if you're here for both issue reports stick around same room we're just going to swing right into it. If not whichever one you're interested in just hang out and hopefully you can ask us a few questions and hopefully we can provide you with the answers that will allow you and your community groups to provide the input that you feel would be absolutely necessary to allow the GNSO Council to decide how to move forward.

So let's move then right into the first preliminary issue report the possibility that the GNSO Council might do a Policy Development Process or a PDP to review all of the trademark Rights Protection Mechanisms or RPMs in all gTLDs meaning not just those developed for the new gTLD program but including the Uniform Dispute Resolution Policy which I think everybody in this room knows is the longest standing consensus policy at ICANN.

So what we're going to do here is that I'm going to turn it over to (Lars) my colleague in the policy department who will talk you through some of the basic points of the preliminary issue report.

We will then have our colleagues from GDD Karen Lentz and Antonietta Mangiacotti to talk you through some of the related parallel efforts which are actually also described in the preliminary issue report that's happening on some of the other reviews like the Trademark Clearinghouse, as well as the competition consumer protection and Consumer Trust I can never tell which one comes first but this CCT review.

And that actually is one reason why in this preliminary issue report we present several options for the communities to consider.

So hopefully that will give everybody a good guidepost and roadmap and allow for some good discussion. So on that note (Lars) are you ready?

(Lars): As ready as I'll ever be I guess. Welcome everybody we're not doing a tour at the table I take it?

I'll take you straight in. So there is the preliminary issue report on the potential PDP to review all RPMs and all gTLDs. So that includes the UDRP as well as the RPMs that have been developed for the new gTLD program.

I'm sorry that didn't work. The reports there's a little bit of background here on how this came to be. In 2011 the GNSO Council requested in fact an issue report to potentially launch a PDP on the review of the UDRP.

And then in the same year staff in its final issue report recommended to delay the PDP on reviewing the UDRP until after the gTLD program had launched.

That was taken on board by the GNSO Council. So there was a delay. There was a further extension earlier this year.

And so we come to October 2015 when staff has published the issue report we're going to talk about today the preliminary issue report and that is currently open for public comment.

The period closes as you can see here on 13 November. So it's an extended comment period due to the ICANN meeting and one or two other things that are going on in the community at the moment.

And at the very earliest in January 2016 the state has determined by procedural deadlines, et cetera, that the council will then potentially vote whether or not to launch a PDP or take any other action following the publication of the final issue report.

So these are the RPMs. These are the RPMs that are going to be reviewed or that staff has identified to be reviewed as part of the preliminary issue report.

I'm not going to go through all of these. I suspect most of you around the table are familiar with the policies, the Trademark Clearinghouse obviously, sunrise periods, the post delegation dispute resolution procedure and the URS.

Good perfect. Those have all been developed for the new gTLD program. And then the UDRP the Uniform Dispute Resolution Policy which has been in place since 1999 it's one of the oldest if not the established consensus policy.

And that is in fact never been reviewed. And so that was initially four years ago but the council thought it might be a good idea to give that the once over.

In the report staff has identified numerous issues that could or should be reviewed or be part of any potential PDP charter for the review.

These issues I haven't listed them because it would just be a list. You can go into the report, it's on pages 24 to 26.

They are based not on what staff thinks should be done but they're all based on community feedback and that have gone into the 2011 UDRP report.

And also my colleagues here Antonietta and Karen in the RPM review that they're going to talk about in a minute.

So I should also point out in this moment it was also mentioned in the report that some community members thought that for example the UDRP shouldn't be reviewed at all. And we make that clear as well.

So that's something that you might want to consider or think about when you post comments on the preliminary issue report.

What staff has identified is that they are currently some parallel efforts going on. So there was a GAC request to review the Trademark Clearinghouse.

There is the as Mary just mentioned the Competition Consumer Trust and Consumer Choice Review of the new gTLD program -- that just slips off the tongue obviously -- as mandated by the IOC.

And there's a potential PDP as many of you are aware probably also on the new gTLD subsequent round procedures that is still depending on the GNSO Council vote. But I don't think I'd be too crazy to say that this will most likely be launched at some point in the future.

So all of these efforts kind of touch upon potentially issues that would fall under the RPM report as well. And so what staff has been wondering or questioning is how to if you want to square the circle how to make sure that all of these efforts can be combined in the most effective and efficient way without duplication or potential overlap.

And this has led in fact to the presentation of three potential option in the preliminary issue report. The first option that staff - I was like well we could do this we just launch a box standard PDP.

So we, you know, give the PDP Working Group a charter that are based on the questions or issues identified by the community.

There's a list and report. Potentially any additional ones that are brought up by the community during the now I'm going public comment period.

And then let the working group figure out how if and when they want to take into account any outcomes of those previous mentioned parallel efforts.

The option two would be to have a hard stop in the PDP. So to say well we send off a PDP right now again based on the issues identified previously and in the public comment period but per charter there's a hard stop built in.

So at the moment that any of the other issues or all of them are concluded the working group is forced or, you know, required by its charter to drop everything if you want, review the outcomes of those parallel effort and based on that adjust the scope potentially or the work - direction of its work and take those into account.

Obviously there's, you know, there's risks with all of these. And obviously an issue would be that potentially work has been rendered mute potentially has been - achievements have been rendered mute depending on the outcomes of those parallel efforts.

And the third option would be to in fact have a two stream if you want PDP for two stream review process whereby an initial review would be launched on just the RPMs that are developed for the new gTLD program, so everything but the UDRP.

This could be done either by a specifically chartered PDP on this issue. It could be done also as a potential add on to the potentially or probably soon to be launched new gTLD subsequent round PDP.

And once that then would be concluded a second PDP a Phase 2 if you want would be launched on the UDRP taking into account the outcome of the first one and therefore then combining the two at the very end or at the end during the second phase.

We are aware that there's obviously potentially other options that could be done or could be favored by the community.

So the report explicitly calls out for feedback on A those three options and also encourages the community to submit any additional options that they might think is the way forward to proceed with an effective review taking also into account the parallel efforts that are going on.

And then these are the next steps and some further information. As I said earlier public comment closed on 30 November.

And then staff will prepare a summary of the comments submitted, a brief analysis and then adjust the final report.

And it's expected that at that point it will present the GNSO Council with the option that has been favored.

If there's, you know, if there's something that comes out in the public comment period that's favored by the community and how to proceed. And then it would be up to the GNSO Council to vote on the issue report and - to follow staff recommendation or potentially recommend something else.

Here's some links for information. If you just Google ICANN public comment you will come up to the public comment page. And you'll find a link to the report.

And there's also references to other reports that's been published. And they're fed in substantively into this preliminary issue report.

And with that I'm going to pass it on to Antonietta and Karen. Thank you.

Karen Lentz: Thank you (Lars). Can we have the next slide? So we thought it would be useful just too sort of give context to the parallel activities (Lars) was discussing. And so we have a few slides that just provide the details on that.

The Affirmation of Commitment 9.3 calls for a review of Competition Trust and Choice. And you've heard about that a lot this week.

But it calls for review of essentially three subject areas one being the Title Competition Trust and Choice, and then the effectiveness of the application evaluation process and the safeguards to put in place to mitigate issues.

So the rights protection figures in Part B that - those were a significant part of the safeguards that were built into the program to address certain perceived risks.

And so this review is getting underway. There's a call for volunteers that was just published. We think that team will actually be convened and starting to work sometime early next year.

It's a recurring review like the other AOC reviews so we won't just review these things once but it will happen every periodically thereafter.

So in regard to Part B of the AOC and that review teams work we've been porting together staff some preliminary data and analysis to inform that part of

the review teams consideration. And I'll ask Antonietta that she walk you through a little bit of what's been done there. Thanks.

Antonietta Mangiacotti: That's fine. Go back yes.

(Lars): All right?

Antonietta Mangiacotti: Go back yes. Yes.

Karen Lentz: One more?

Antonietta Mangiacotti: There you go. So thank you (Lars) and Karen. I'll just briefly talk about the Rights Protection Mechanisms and Trademark Clearinghouse reviews and how those tie in with the GNSO policy discussions and issue report on RPMs.

So I've just to recap what we had discussed on Monday in the high level program review session. We conducted this review to assess the effectiveness of the safeguards established in the UD gLTD program.

Over a year we've collected and analyzed both quantitative and qualitative data on the use of the Trademark Clearinghouse, the URS, and that post delegation dispute resolution procedure.

The staff RPM report (unintelligible) with a number of graphs, and tables, charts to illustrate the use of various RPMs in the new gTLD program.

The draft report was posted for comment in February of this year. It's since been updated based on the community feedback received as well as the latest data available.

And the revised RPM report was published in September of this year. And it's expected to serve as input to various planned activities which I'll discuss shortly.

Next slide. So in terms of the feedback that we received during the comment period in response to the draft report it indicated that there is a need for operational improvements in relation to the Trademark Clearinghouse.

For instance some users were having difficulty using the clearinghouse upload system while some members of the community feel that there are other issues that either need policy development by the GNSO or just additional review in general.

For instance extending the claims notice to potential registrants indefinitely or establishing a mechanism to challenge the designation of (unintelligible) names.

Next slide. So in terms of the various activities that the RPM review is intended to inform and support by providing useful data and information those include the issue report on RPMs and deliberations by the GNSO Council over whether to initiate a PDP to review all RPMs.

The GAC recommended independent review of the clearinghouse which I'll discuss next. The CCT review team which as Karen mentioned was charged with assessing - was charged with establishing safeguards that were intended to mitigate issues in the new gTLD program.

And the project again is - has beginning to kick off with the call for volunteers which was posted October 1.

So the independent review of the clearinghouse was recommended by the GAC. We committed to undertaking this review to assess only the processes pertaining to the Trademark Clearinghouse such as the guidelines and

verification process, the sunrise period, to invoke claims in conjunction with the GAC requested areas for review which asked us to look at whether we should consider extending the claims period beyond the required 90 days and whether the sunrise and claims services should allow the inclusion of non-exact matches?

And some of the proposed data sources that we will use to (unintelligible) processes and I include the clearinghouse database, ICANN, and clearinghouse customer service reports, records of dispute proceedings, interviews with key user groups as well as with our service providers, the revised RPM report as well as the draft RPM report and the public comment report for those.

Anyone senses that this is intended to be an informational study to inform the discussion on related RPM reviews and to enable consideration of RPMs in the domain name space.

It's expected that this - a review may also identify other operational issues that need improvement or issues for evaluation that could be included in the analysis of the clearinghouse or issues that may need to be addressed in policy development work.

And being that this review may reveal policy related topics that would fall within the scope of the PDP a possible PDP Working Group needs to coordinate with whoever the appointed vendor is to ensure that all of the milestones take into account these policy related topics.

And currently where we are with that we are reviewing our proposals response to the RFP which was released on August 7 and I just want to mention that the timeline was published with the RFP willing to be updated to allow for a more workable schedule for the appointed vendor to meaningfully meet all of the work methods and data gathering for that.

And then next slide. And lastly here we have an estimated timeline of all of the planned reviews related to the rights protection mechanisms which were discussed in the presentation.

Mary Wong: So thank you to (Lars), Karen and Antonietta. We thought this might be useful like I said to try to give everybody a sense of how all these different efforts go together and complement each other.

And obviously where the GNSO is concerned any of the information that may be provided or identified in the reviews that Antonietta just mentioned will feed into any PDP that the GNSO chooses to launch.

And with this timeline we thought we would end with this too just again to give you a sense of how everything goes together, and of where we are in the process, and where we can be going forward obviously with some dependencies depending on the kind of work that's undertaken.

So you've probably heard more than enough from us. We would like to open it up at this point to questions or comments.

And if I may ask everyone to state their names for the record before speaking -- and of course I should have said this is Mary Wong from staff -- go ahead Brett.

(Brett Foster): Thanks, mic on? There we go. (Brett Foster) from the Union Registry, (Lars) on your presentation you had the three options that were available for review.

As I was reviewing - as I was looking at them I have a clear preference for option three. It seems to me it makes most sense to do the new gTLD RPMs as part of the new gTLD review.

The UDRP is so mature like it or not it's stable and predictable. And it seems to me that if we're going to do that I would peel that off and do that separately. I sort of like option three the best of those, yes.

(Lars): Obviously that makes sense. What we discussed though is also the fact that there could be an argument made -- I'm not saying it's the right or the wrong one -- that there could be a combination for example of the URS.

People might think well the URS it's not as effective or it's much too used it may be should be. So should that be combined with the UDRP?

So that has been something that where you see where there's a potential overlap of the two. Even if you think the UDRP should not be touched you still might want to extend it.

So it's not quite as, you know, your point is very well valid and it would be good if you make it but there's others who might see that slightly differently as well to - even if you don't want to change it to still combine it with something else or with the URS or other the current new RPMs.

(Brett Foster): The URS is the closest bladed to the UDRP. So I can see the overlap there. But, you know, still even if you were going to do URS and UDRP together I would peel those off and make that a separate project because there's 15 years of history at this point. So there's a lot of work to review.

Mary Wong: So (unintelligible) before you get that let me just add onto that. Again this is Mary from staff. One of the things that we try to highlight in the report that we hope the community would take into consideration in terms of looking at each of these options or as (Lars) mentioned possibly options four or five or however many there may be is that not only has the UDRP not been reviewed -- and it's been around since 1999 and therefore is very stable as (Brett) has said -- but there has not been -- and partly because the new RPMs are fairly new - a general comprehensive review of whether all of these

taken together have collectively fulfilled the objectives for which they were developed.

And in so doing however we choose to do it may be one end objective ought to be for the GNSO to actually have some sort of consistent framework.

So whatever review it is that is done if one is done the hope is that that will provide that sort of uniform guideline if you like for future reviews and future development work on RPMs. Thanks, Elaine sorry.

Elaine Pruis: Thanks, Elaine Pruis from Donuts. And I saw you have the Trademark Clearinghouse as one of the things that will be reviewed. And I'm assuming that claim certifications will be part of that not just the sunrise aspect of it.

So I would ask -- and sorry for getting in the weeds -- but I haven't figured out how to find this information in any other way so maybe you could make it part of the study is to find out the effectiveness of the claims notification and how much cart abandonment results from it.

We can't actually see or guess what that could be because of the number of claims notices presented is not really counted anywhere except for at the registrar level.

We can't assume because somebody downloaded a claims notice it was actually presented. And if you look at the numbers of downloads of claim certifications it's, you know, in the millions maybe tens of millions. So if you could just make that part of the review I really appreciate it. Thanks.

Karen Lentz: Thanks Elaine. So this is Karen Lentz. And I agree that's definitely a subject of interest. And it's hard to, you know, while we have numbers on a lot of things it's hard to discern a lot of time to be, you know, the registrants decision or experience in receiving the notice or processing it but that's definitely one of the study questions that we want to examine.

Phil Corwin: Yes good morning. Phil Corwin. First I'm putting on my GNSO counselor and acting Chair of the BC hat. And we had an initial discussion of this yesterday.

The initial indications from our members who were here -- although we're going to, you know, obviously survey all of them -- is that they view they think option three separating the review of new TLD RPMs from UDRP reform is probably the best way to go.

That UDRP reforms just such a megaproject first review after nearly 20 years putting them together might really bog down both of them that they could move faster.

Separately now taking off that hat and putting on my hat as council to the Internet Commerce Association I'm a little concerned about I guess in the review of RPMs there may be some discussion of applying them to legacy TLDs.

Of course GDD staff are already doing that by contract which is a bit concerning. And the BC has filed a request for reconsideration in that regard.

But I think on behalf of ICA we'd be a little concerned about opening up one aspect of the UDRP and separating the others.

I think once you start getting into it you'll find that in considering one part of UDRP and that would be kind of a fast track version some modification or integration of the URS would raise issues about many other parts of UDRP and that it'd be very difficult to just take out one strand of spaghetti and not drag a few others along. So but we'll get back to you on that. Thank you.

Mary Wong: Thank you Phil. And not so much a response but just maybe an expansion of the point I mean each of these options, you know, it's kind of obvious -- I'm sorry this is Mary for the transcript -- has its pros and has its cons.

And I think there's obviously a lot of benefits that they identify by yourself, (Brett) and others about option three.

But to go back to the point that I made earlier about possibly there being a need for a uniform framework for future work.

One of the things that is also identified in the issue report is well a couple things one is obviously as you said that we're not just talking about all RPMs but all RPMs in all of the gTLDs.

And so if you were to take option three and review them in phases how would you do the ones for the new RPMs?

Would you just look at the new gTLD program and then do it with the legacy as part of the second phase or something else?

And in that regard one of the questions -- and this is a point you made too -- that we also highlight in the issue report is the question of consensus policy.

The UDRP is a consensus policy capital C, capital P. So it is binding as a matter of consensus policy on all contracted parties whereas the new RPMs were developed for the new GLT - GTL D program as part of the implementation consultations that led to the many iterations of applicant guidebook that a lot of people in this room are familiar with.

So one of the things that we do call on the issue report is whether or not say the URS for example that was developed as part of this community consultation process should itself also be a consensus policy.

And so in terms of let's say you're looking at option three there is a question of how would you address those kinds of more overarching issues? So again

we hope for some comments from the committee on that. So can I go to (Christine)?

(Christine): Thanks Mary. This is (Christine) from National Immigration Forum. I have two things. One is a brief semantic correction for Phil Corwin because its UDRP review not UDRP reform yet.

Secondly my concern was and it was kind of brought up by (Brett) that he said well perhaps you do UDRP first and then all the new gTLD rights protection mechanisms later. And then he said will may be because URS and UDRP are similar that you would combine them.

I just wanted to caution you because one - depending on how you would identify success or effectiveness that might be, you know, there might be a reason to not break off the URS from the rest of the new gTLD RPMs because when you consider the Trademark Clearinghouse, and the sunrise, and the trademark claims you might find that the URS is effective or not. I'm not arguing for a point one way or the other.

I'm just saying that given other data you - the study might find URS to be effective when in combination with other things as compared to UDRP rather than just in a vacuum compared to UDRP.

So I just wanted to throw that out there as an option when considering whether or not bifurcation is the appropriate mechanism.

Phil Corwin: Can I just respond since my name was brought up not in vain but two things. One it's difficult to envision that a review of the UDRP would find that everything about it is just perfect and that no reform is needed. So reform - review generally reads to reform.

Secondly putting back my ICA cap I know my members believe that some reforms would be advisable to make the UDRP more predictable and uniform in effect.

So I just I know there's a difference between review and reform but it's difficult to believe we would undertake a comprehensive review and decide that no reform at all was required. Thank you.

Mary Wong: Thank you. (Christine) did you - thank you Phil. And it's actually kind of hard to look around this room. And so but I think next in line we have our colleague from the policy team our team leader Marika Konings who probably wants to expand a little bit on some of these options.

Marika Konings: Yes thanks Mary and sorry for being late. But just listening to the comments that were made I think one of the options you may want to consider and I think it's may be implicit in three or maybe it's a variant where you could say that you review the RPMs as part of the new gTLD PDP.

And in that - then when you just focus on indeed what enhancements or changes and modifications may need to be made in the context of the new gTLDs.

And once that has concluded that work those results are then taken into the UDRP review which would review the UDRP together with all the possibly revised or reformed RPMs, review those in a holistic context and also address the question of should those be consensus policies or not?

In that way you may be able to stage that as well that still all the questions will get address but maybe in a more manageable way and timely and linking the new gTLD questions to the new gTLD PDP and overall RPMs questions to the UDRP potentially.

Mary Wong: Yes. And obviously, you know, again all these comments and suggestions will of course be recorded and transcribed but we can't over emphasize how important it is then to have them in the public comments as well in part because all the public comments are published so that even folks who aren't here or, you know, paying attention to the meeting can see where the sense of the community is.

And following on what Marika has said when all this comes back to the council whatever is recommended in the final issue report there's likely to be some discussion even if it's option three, or 3.5 or option four how that's going to look in terms of process because the GNSO Council -- and we've got some counselors present and future in the room -- is going to have to decide as the manager of that process what makes the most sense in terms of the efficacy the timeline so that - this is really the starting point. Paul McGrady?

Paul McGrady: Thank you Mary, Paul McGrady. So I have three hats first hat incoming Vice Chair of the INTA Internet Committee.

Like Phil's membership our membership I think sees some benefit in UDRP reform. The one thing that the historic record has showed is there's tens of thousands of acts of cybersquatting since the UDRP came into existence.

And it's been a nice pressure valve to keep litigation down but it's not disincentivized people to engage in cybersquatting.

So I - and there are other INTA members here in the room including my INTA boss John McElwaine over there who may have more detailed comments.

But INTA is going to participate in this robustly and are looking forward to doing that in a way that helps move the ball forward for everybody.

Taking that hat off now inbound GNSO counselor for the IPC love all the comments loving all the feedback great way to take the temperature of the

community on this issue. So thank you all who are here and who are saying things and let's all keep talking about that.

And putting on the author of a treatise on domain names for LexisNexis this question is for Marika. If option number two were to happen and we did a reform of the new gTLD RPMs essentially through the new gTLD process to get ready for round two would those reforms that were - that would evolve for round two be retroactively effective for round one new gTLDs?

It's - I'm not exactly clear procedurally how option number two would work and how we wouldn't end up with sort of URS two, you know, Trademark Clearinghouse two and then we'd end up with three schemes instead of two. Two is weird enough but three schemes would be unmanageable. Thank you.

Marika Konings: Yes and this is Marika. And I think I have a definite response. But my personal instinct will be that indeed it would be on the direction of the working group but hopefully the working group would say indeed those reforms would also apply to what is already in place because as you said it may not make sense to have different models in there.

But I don't know if that would require specific direction from the working group or as it's in the agreement and looking at Karen as well she may have a better idea on how that would practically work. But I think that's definitely a question that will need to be addressed.

Paul McGrady: Thank you, Paul McGrady again. Just because I'm - and I've not looked at the new gTLD registry agreement specifically for that question to see if there is a mechanism in the agreement.

But it seems to me it would have to be already in the agreement in order to do that. I'm not sure. I'm not opining. I'm just raising the issue. Thank you.

Karen Lentz: This is Karen Lentz. And I think, you know, Paul's point is actually very important as to how you scope the PDP and whether you're doing work that, you know, creates new consensus policy because that, you know, that then makes it applicable to everybody who has an agreement who has a registry agreement.

And if you're doing some other, you know, type of arrangement I think it's more complicated to figure out, you know, what the requirements are for which group of TLD's.

Mary Wong: Phil Corwin.

Phil Corwin: Okay just to elaborate on what I said before another good reason to separate them is that there will - I think we anticipate probably the next round of new TLDs it's got to wait till the affirmation of commitments review on consumer trust and all of that is completed.

But that would mean it would roll out sometime in 2017. And these are very complex reviews particularly the UDRP one.

And if they're combined there might be a tendency to want to rush the combined review to be in place before the second round of new TLD starts. And that might give short shrift to the time required for a really good UDRP review. And that was my BC hat.

I'm not going to put on my INTA hat other than note that I am a member of the Internet Committee. But putting on my ICA hat I just want to say on UDRP reform I've had some preliminary conversations with people in the brand protection business.

And I think you'll find when we get into this there's not unanimity but on - there's a great deal of common ground between brand protection, and

trademark litigation folks and domain investors on what reforms will be desirable for UDRPs.

So they'll be some disagreement but no one should think that there's going to be, you know, a sharp divide. There's I think we can get a lot of consensus agreement on some changes to make it operate better.

Mary Wong: Paul is that a new hand or a vestigial hand?

Paul McGrady: It is a negligent old hand. I will lower it now.

Mary Wong: Thank you. So I think one point for those in the room who haven't been following all these developments closely is that obviously we've been talking a little bit about the possibility not just of a PDP on this but also the PDP on the new gTLD subsequent procedures whether that one will be launched and when, and whether this one if you're going to lunch it should form part of that one. Did I get all my this and that's correct?

But just in terms of timing the earliest that the GNSO Council will likely look at the new gTLD PDP will be December. And the earliest that the GNSO Council would likely look at this RPM PDP would be January.

And that's basically just a necessary function and outcome of the public comment periods when they close and the need for the staff to prepare the final issue report.

The council does have, you know, different options as to like when it wants to consider some of these reports within certain constraints. So this is probably something that we'll also go back to the council when those reports are out.
John McElwaine.

John McElwaine: So we've been talking a lot about hats that have been on and this is really with my INTA hat on. We've been mainly concerned with timing.

We've got a lot going on with the transition. INTA has been a big supporter and has been talking about helping out on the CCT data collection.

It just seems to me that we really need to be very cognizant. And I may have missed this in the beginning but talking about when is this all going to occur? And what data are we going to have in front of us?

And we can all talk about reforms we would like to see but if we don't have that hard data in front of us throughout the CCT and have gotten a big chunk of the transition work behind us I think that is our biggest concern.

We've got lots of overworked people in making sure that we have the bandwidth to handle it is really important so that's it.

Mary Wong: Thanks John. And I guess I was just trying to be a little vague -- and this is Mary for the transcript -- when I said dependencies. And I think you've identified a very large one.

Some relative good news or hopeful good news is that at least on the GNSO front we have some PDPs that are either coming to a close or that have just closed.

So to that extent we are also aware I mean both the community and the staff that whether you're talking about the new gTLD PDP or an RPM PDP they are both fairly large and somewhat complex for different reasons.

So community workload is also one of the points that we call out in the issue report for folks to comment on because obviously we're talking about a community of volunteers. And so that's one thing for the council to consider as well.

Other questions and comments in the hat shop? Jonathan Cohen welcome.

Jonathan Cohen: I'm wearing a hat.

Mary Wong: You are wearing a hat so therefore you should comment.

Jonathan Cohen: It's to cover my baldness. Just a heretical time bomb I don't know how many of you know where the RPMs came from. How many of you know who developed them?

Okay. That shows you what history is at ICANN because it was something called the IRT. And there are a number of members here.

And I put it out to you that while PDPs are wonderful and a great idea that this may be one of those times when the IRT may be a different set of people might be reconstituted and get a working paper that then goes to the people for the community for a comment.

It's a heck of a lot faster. One of the things that was happening on the IRT when we developed this was we made sure that as part of the group of people that weren't just IPC or IP people we had some At-Large. Mary was one of them.

We had - he's disappeared. Oh there he is. Sorry I thought you disappeared. And John Nevett as well was a registrar registry.

And it was very effective. And I believe we started our work in February and completed it by May. And they had a full blown set of RPMs.

Now they were discussed at large in the community and changes were made. But it got done. And I just throw it out there because I'm a troublemaker.

Thank you.

Mary Wong: Thank you Jonathan. Phil?

Phil Corwin: Yes. I'd like to respond to that and respectfully disagree on a number of grounds. Number one the IRT there was a lot of consternation when it was created about how the selection process which was very rapid and very closed.

I attempted to become a member. I was not permitted to. The President of the ICA's General (Counsel Cito) asked to join. And he was not permitted. So I wouldn't want to see a closed self-selected group operate.

Secondly that operated as an implementation team. It was implementing the policy in the applicant guidebook.

I think we're past the implementation stage for the new TLD program. This is clearly this report seems to be laying the groundwork for a policy review.

And I don't believe - I'm not against having expert input as long as there's, you know, an open as to who can serve on that. And it's not closed off to people who have expertise and want to participate.

But I think where I'd like to clarify with staff are we for the RPM review are we still in the implementation of the new TLD program area or is this now leading to a policy?

My understanding is this is going to be considered by the council as a policy matter and not as an implementation matter.

Mary Wong: Right as far as the GNSO is concerned it would be policy development work. And as part of that policy development work if it were to be done you would start off with a review.

And as part of that review the information that reports from GDD including the ones Antonietta was talking about would feed into that process.

And I thank our colleagues because that specifically noted several times I think in the work that's put out in the presentations here. So hopefully that clarifies that for the GNSO. We are talking about the policy work.

And to go back to your comment and Jonathan's and again for those who may not be too familiar with GNSO processes if you were to convene a working group including a PDP Working Group the GNSO's Working Group guidelines do expressly permit a working group to consult subject matter experts. And I think Phil you're chairing a group that is doing that at this moment.

So there is that ability and the flexibility even within the GNSO process to have that happen whether that's a small group, large group, a group of whatever type of persons or a single individual. So that may be helpful as well.

And if Jonathan's point is about basically trying to get some quick ideas on the table that's something that the council could consider or the working group could consider. Paul McGrady.

Paul McGrady: Paul McGrady for the record. I only wanted to make an ICANN joke and say that Jonathan that's fine as long as you hand the report you're - the IRT hands its report to we members of the STI to mess with before we send it in.

Phil Corwin: Absolutely.

Mary Wong: Yes Brian, go ahead.

Brian Beckham: Thanks. This is Brian Beckham from the World Intellectual Property Organization. And I think something that Jonathan said and Phil and Paul have commented on it's important to bear in mind which is the UDRP was created by WIPO almost 15 years ago well over 15 years ago.

And a lot of people in the room have recognized today that it's largely stable and predictable and it works.

It's not perfect. And of course there are outlier cases. And there are examples that people on all sides of the issue can point to that they take issue with.

But at the end of the day it works. And it works for everyone. It keeps registrars, and registries and registrants out of court. It doesn't provide penalties which I know the trademark owners would like but it works.

And I think it's important to bear in mind whatever group reviews this, reforms this whatever guise it takes to listen to the experts, to listen to the providers who actually have to implement whatever changes would be proposed, to listen to trademark experts because of course the principles in the UDRP are enshrined for example in the United States in the ACPA.

So I think it's important to - and Paul made a point earlier about the timing and how this would work and if this would be put down.

One particular path of these three options that have been laid out or another variant of that, that there's a risk that in order to get to that goal of a subsequent gTLD round the UDRP review would be rushed through.

And I think that would be a mistake. It's important to take the time to get this right because it's running, it's effective and it would be in nobody's interest if the end result was a case of the cure being worse than the disease.

Mary Wong: Thanks Brian, other questions and comments? So last call nobody wants a new hat? So just bring this part of the session to a close again by encouraging you all to look at the preliminary issue report where we highlight not just the three options but as (Lars) said there may be other options and some of which I can - have been maybe started on today. And I'm going to

stop myself at the moment - oh that's all right Susan. Susan, please go ahead.

Susan Payne: Hi Susan Payne for the record. And just as you were talk - you were saying there about the three options or perhaps other options other people would call out.

I'm not saying this to try to, you know, draw this process out longer than it needs to but I am curious about how this would work if one person suggests option four and it seems like a great option but that's just one person who suggested it.

So, you know, how then would you ensure that the people who have actually that you've had input on whether everyone else agrees that that's a great option.

I mean would there be a situation where you would put this back out for further comment if - on an option four which hadn't previously been discussed and considered?

Mary Wong: We don't contemplate a further comment period. And obviously I think as a contributor in the past for (unintelligible) and the many others in the room we don't count comments either and we don't say well this comes from a very experienced person or we don't say well this is one comment out of 600.

So I think the answer to a large part would be it does depend if it is an option 4 that no one has thought of but it seems to staff to be something that's really not just novel but really would be helpful in overcoming some of the cons then I think we may be in a situation where the staff would recommend that hypothetically in the final issue report.

Obviously the final issue report will identify, you know, some of the other options that have support. And the GNSO Council would then have to take that into account.

It - they could adopt the staff suggestion or they could go against it. And they could say we actually prefer something that nobody has suggested altogether which is very unlikely and ill-advised perhaps but that's entirely possible. And that's the Council's prerogative as the manager of this process if that helps?

And so again please look at the issue report. And as (Lars) highlighted in his presentation the issue report doesn't just outline the various options that have been identified to date but it does include a list of the issues that staff drew together from the various community comments in the past not just to the staff paper that Antonietta described but also in the prior issue reports that were done on the UDRP.

So regardless of which option you may favor or not favor there may also be additional issues or there may be certain ways of framing those issues that would be helpful for the Council in considering not just whether to do the PDP but on the scope of that PDP and what would go into the charter for the working group.

So thank you all very much and I suppose at this point we will then go right into the next presentation. But first I think we have to stop the recording for this one.

END