

PROPOSED RIGHTS PROTECTION MECHANISMS

PUBLIC COMMENT SUMMARY (29 October to 26 November 2009)

Source

The full text of the comments may be found at <http://forum.icann.org/lists/proposed-protection-mechanisms/>.

Process

Additional trademark protection solutions are needed

INTA is concerned that ICANN has apparently rejected the IRT recommendations regarding the Globally Protected Marks List (GPML) and use of the string similarity algorithm without proposing alternatives to meet the policy objectives of the proposals. INTA expects that ICANN will issue the GNSO Council recommendations on these topics for public comment so they can be properly considered by the community as called for by the Board's October 12, 2009 letter. *INTA (20 Nov. 2009)*.

While a helpful start, the staff's rights protection mechanism (RPM) recommendations do not assure adequate protection and efficiencies for key stakeholders. The ICANN staff discarded two of the major recommendations of the IRT and, in doing so, diluted the effect of the two others. All four of the proposed protection mechanisms as reported by the IRT should be retained. *AT&T (22 Nov. 2009). BC (23 Nov. 2009)*.

RPMs should be optional and voluntary

Anything other than voluntary and optional RPMs will constitute a negation of the GNSO Council policy making process. The record shows that there was no consensus for mandating RPMs by either the GNSO or the IP Constituency and to do so now runs counter to that lack of consensus. The guide "A Perfect Sunrise" worked on by the IP Constituency and others would be a good ancillary to the final Applicant Guidebook by providing assistance to potential gTLD applicants in identifying and assessing pre-launch RPMs. *A. Doria (9 Nov. 2009)*.

Trademark protections have received extensive discussion and decisions for DAG trademark provisions should be finalized

ICANN has paid extensive attention to trademark issues in the normal course of ICANN's policy development process. After this long and detailed consideration, good, fair and practical solutions have been developed and, by and large, agreed to. The ongoing GNSO process should be the final review. Much like any law, treaty or regulation, there will be some issues worked out once the new program or rules are actually used. We should not delay new gTLDs indefinitely to meet an unrealistic desire to get everything perfect prior to launch. Now is the time to make decisions and move on. *Demand Media (23 Nov. 2009)*.

Trademark protections should be fair and reasonable and not extend to trademark holders rights that they are not entitled to in other areas. It is troubling that ICANN and its staff have spent so much time and resources on IP issues. Other areas of online activity are of much greater and valid concern. *M. Neylon (23 Nov. 2009)*. New RPMs must not increase costs of

operating a new TLD to a point where they are higher than costs of existing TLDs; this would reduce competition. *RySG (23 Nov. 2009)*.

More protections exist for trademarks in new gTLD program

The combination of protections included in the current DAG and others that ICANN is likely to adopt based on the IRT recommendations will far surpass the trademark protections available in current TLDs. Many new registries are building in additional protections, including proactive policing and takedown measures, adopted from successful ccTLD policies. Thus, trademark owners and others concerned about abuses should welcome new TLDs and the rules that come with them. *Demand Media (23 Nov. 2009)*.

Enforcement of existing legal rights--choice of law

The Recommendation 3 phrase “enforceable under generally accepted and internationally recognized principles of law” should be left to the applicable laws in each locality. *A. Doria (9 Nov. 2009)*.

Protection of rights beyond commercial IP

Per the language of Recommendation 3 giving examples of “existing legal rights,” some effort should be made to ensure that the new procedures protect all rights (e.g., human, civil, political) at least as stringently as they protect commercial IP rights. *A. Doria (9 Nov. 2009)*.

Holistic management of the new gTLD rollout

AT&T urges continued focus on all threshold issues and a careful approach that thoroughly addresses concerns. Trademark protection is but one of four overarching issues (others are malicious conduct, security and stability) that must be resolved prior to new gTLD introduction. Also, the long-sought foundational economic study and analysis is yet to be completed. *AT&T (22 Nov. 2009)*.

IRT Recommendations

Support

FICPI strongly supports the recommendations of the IRT Final Report. The latest proposals seem to indicate a weaker position and a more uncertain RPM solution than the recommendations in the IRT Final Report. *FICPI (21 Nov. 2009)*. *Lovells (22 Nov. 2009)*.

Globally Protected Marks List (GPML)

The GPML would not lead to the creation of new rights. These trademarks already are in a special position with enhanced legal protection based on years of extensive global use. *FICPI (21 Nov. 2009)*. IBM supports the concept of a GPML and the strict eligibility requirements for inclusion of a mark on the GPML and urges ICANN to reconsider implementing a GPML as part of the new gTLD regime. IBM questions whether the \$185K will in every case deter a cybersquatter who may anticipate a profit many times that number as a result of criminally misusing another’s internationally-recognized brand. *IBM (22 Nov. 2009)*. *Lovells (22 Nov. 2009)*. *J. Lake (23 Nov. 2009)*.

By eliminating the GPML, the staff removed the most effective, proactive, cost effective brand protection and has forced the business community into an unnecessarily expensive defensive posture. There is no demonstration that the proposed GPML will in fact burden the IP Clearinghouse more than it will help. There is no basis to conclude that there is an inability to establish applicable criteria for the GPML. AT&T supports continued analysis and development of the GPML as a good faith indication that trademark infringement and consumer confusion issues are being prioritized and addressed as part of the new gTLD process. Fears regarding an expansion of trademark rights, to the extent they have any basis, can be easily addressed in implementation of the RPM. *AT&T (22 Nov. 2009)*. Absence of the GPML means that trademark holders and businesses will have to undertake defensive registrations, effectively paying for unwanted domains in every new gTLD. *BC (23 Nov. 2009)*.

Olympic trademarks reserved names list

Just as ICANN has done for its own trademarks, there should be a reserved names list for the Olympic trademarks, which enjoy special statutory protection on a global basis. *IOC (23 Nov. 2009)*.

Further analysis

The FORUM is encouraged that the IRT's recommendations were not adopted wholesale and that many of the points adopted in the draft appear to be included after significant thought. *FORUM (22 Nov. 2009)*.

Trademark Clearinghouse

Support

The trademark clearinghouse should be mandatory for all registrars. *A. Aikman-Scalese (22 Nov. 2009)*. *Lovells (22 Nov. 2009)*. IBM supports the concept of an IP Clearinghouse proposed by the IRT and included as a proposed RPM. It should be required that the clearinghouse is functional at the onset of the first sunrise period. *IBM (22 Nov. 2009)*. *J. Lake (23 Nov. 2009)*. IOC gives qualified support to the trademark clearinghouse. *IOC (23 Nov. 2009)*.

The GNSO should endorse the clearinghouse, and implementation should start right away, because it will provide an effective and efficient way to implement other RPMs such as sunrise, IP and URS. It will be a storage facility, not a policy determination facility. The clearinghouse must be used by registries. *Demand Media (23 Nov. 2009)*. The clearinghouse should be mandatory for all new gTLD registries that implement a sunrise or IP Claims process. The clearinghouse may not be necessary for certain limited TLDs that do not need to implement any pre-launch RPMs (e.g., a "brand" or "corporate" TLD that merely serves its own employee base or is purely used internally). *RySG (23 Nov. 2009)*.

Sunrise period—mandatory

There should also be a mandatory sunrise period prior to public launch of a new TLD which offers trademark owners the opportunity to make an "IP claim" on domain names containing their trademarks or to purchase domain names they are entitled to because of their trademarks. *Demand Media (23 Nov. 2009)*. *BC (23 Nov. 2009)*.

Identical match definition

It should be the same as the IRT, and take into account singular and plural versions of the mark as well as typographical variations (typosquatting). *BC (23 Nov. 2009)*.

Process: mandatory trademark notices (misnamed “IP claims”)

All applications for new TLDs must be checked against the clearinghouse whether during sunrise or after (i.e. IP claims should be available post-launch). Trademark notice is given to applicant per staff recommendation if the applied-for domain string contains text of the trademark listed in the clearinghouse. The trademark owner is notified if the domain is registered. Trademark owners have the option to trigger notices if the applied-for domain string includes the trademark altered by typographical errors (e.g. yaho0). Applicants must affirmatively respond to the trademark notice, and registrars must maintain written records of such responses for every domain name. The trademark owner must get notice of every registration that occurs. The trademark notice should allow the registrant to have the option of stipulating its intended purpose. *BC (23 Nov. 2009)*.

Opposition

The clearinghouse seems to go too far; it forces registrants to prove innocence rather than IP holders to prove guilt. It could create problems on multiple fronts since just about every innocuous word in the English dictionary has been used as a mark somewhere. It would be better to include language in the registry/registrar agreements to reinforce the existing UDRP-style post-registration dispute mechanisms. Also, despite allusions to “interfaces” between registries, registrars and the database, no one seems to have any operational “proof of concept.” How will it work in real time and with EPP, and what are the contractual implications on registrars and registries? The combination of a mandated sunrise period for all new TLDs and existing dispute procedures provides ample opportunity for trademark holders to make defensive registrations. *M. Neylon (23 Nov. 2009)*.

Clearinghouse name

The name should be “IP Clearinghouse” because its purpose should be to list a number of different “name” rights that, depending on the jurisdiction, could be an obstacle to a certain domain name. The clearinghouse should allow collection of prior rights, whereas it will be up to each gTLD provider to dictate whether only registered and common law trademark rights count or whether other nationally protected name rights count as well. *FICPI (21 Nov. 2009)*.

Changing the name to “Trademark Clearinghouse” is advisable. *A. Aikman-Scalese (22 Nov. 2009)*.

The name should be changed to Domain Name Clearinghouse or something similar so as not to suggest all intellectual property would be “cleared” by the clearinghouse. *IBM (22 Nov. 2009)*.

Oversight by ICANN

ICANN should have direct oversight over the clearinghouse and be involved in ensuring it meets a strict level of technical requirements and service levels, including 24-7-365 support to the registries. ICANN must ensure through its agreement with the clearinghouse provider that it does not use the data it collects for any purpose other than what is necessary to provide the clearinghouse services. *RySG (23 Nov. 2009)*.

One global clearinghouse

It is important to create one global clearinghouse, not a number of regional entities, to keep the goal of the clearinghouse proposal—i.e., to simplify the collection of data from the rights holders. If several different clearinghouses are established, the rights holder will have to provide the same data over and over again. *FICPI (21 Nov. 2009)*.

Criteria for inclusion in clearinghouse

The clearinghouse should be limited to only nationally registered trademarks that are easily able to be objectively verified through online or hard-copy documentation. A registry or clearinghouse should not be in the position of interpreting national law in trying to figure out what constitutes “common law” rights. If a registry wants to include additional elements in a sunrise or IP Claims process, it should have the ability to include those elements—e.g., if a .pizza registry wants all pizza stores in the world to participate in a sunrise process (whether or not they have trademark registrations) and the information can be validated, then a registry could have the option of doing so. *RySG (23 Nov. 2009)*.

Use of the clearinghouse

As enumerated by the IRT the following services make sense: validation of trademark rights on an annual basis that can be pushed to new gTLD operators or pulled by them to support pre-launch RPMs such as sunrise schemes; a pre-launch IP Claims service to notify new gTLD applicants and trademark owners that a current validated right exists for the identical term being applied for at the second level; generation of data for and participation in URS pre-registration, and validation of URS complaint claims regarding trademark rights. Other IRT clearinghouse recommendations should be adopted by ICANN staff:

- Operation by an outsourced entity under a renewable contract of at least 5 years, awarded on the basis of open, competitive tender;
- Operated by a neutral service provider not currently in direct contractual relationship with ICANN to provide domain name registration services to a gTLD registry or registrar, and operating according to a strict code of conduct allowing equitable access to its services and 24-7-365 availability and commercially reasonable customer support services;
- Must be technically state-of-the-art; daily operation must enhance rapid provisioning of domain registrations (e.g., must support EPP as well as offer a web interface; must not slow registration process unreasonably);
- Must be able to deliver fast, accurate information in a standard format using a state-of-the-art, secure and robust technical platform; most communication will be electronic. *RySG (23 Nov. 2009)*.

Archiving of clearinghouse data

The IRT report does not address this. Historical archives of the data should be maintained and accessible, and the specific requirements for this and a definition of access rights should be provided. *RySG (23 Nov. 2009)*.

IDNs

The pre-launch trademark Claims Service under the trademark clearinghouse should also accommodate internationalized domain names, which are included in the new gTLD program. *IOC (23 Nov. 2009)*.

Costs

Costs of the clearinghouse should be borne by those seeking secondary registrations in the new TLDs. *A. Aikman-Scalese (22 Nov. 2009)*. The clearinghouse should be funded entirely by registries and registrars who will benefit financially from the new gTLD program, not by trademark owners. *IOC (23 Nov. 2009)*. The RySG disagrees with the staff's proposed implementation of the clearinghouse and requests reconsideration of the comments made by the IRT regarding costs. It is unclear why the staff departed from the IRT proposals and RySG reserves the right to provide further comment once such explanations are made known. *RySG (23 Nov. 2009)*.

Phonetic search mechanism

There should be a phonetic search mechanism when a potential second level registration is being searched so that misspellings do not go through (e.g., kocacola.drinks should not be registrable). See trademark.com for examples of workable phonetic search capability. A bid should be obtained from Micropatent to implement this more comprehensive approach because they already have a wide global database with a phonetic search capability. *A. Aikman-Scalese (22 Nov. 2009)*.

“Red flag” capability and safe harbor

The clearinghouse should have the power to raise “red flags” based on agreed standards even if the domain to be registered is not identical to the registered or validated unregistered mark. Checking with the trademark clearinghouse should provide a safe harbor for the registrar if no red flags are raised by the independent operator of the trademark clearinghouse. The gTLD Registration Agreement should require that any applicant who fails to check a registration in the trademark clearinghouse or sells second level registrations in spite of getting a red flag report from the independent operator of the clearinghouse waives objections to jurisdiction in any forum selected by the trademark holder who is complaining of infringement in the registration process. The same obligation should run through to the second level registrant. *A. Aikman-Scalese (22 Nov. 2009)*.

Fees

There should be only a nominal fee for an entity to list its trademarks and other relevant assets in the clearinghouse. *IBM (22 Nov. 2009)*.

Fees--registrars

If the clearinghouse is a paying service for registrars it may create a problem since registrants may try many domain names before deciding whether to register and, if so, which one to register. *P. Mevzek (21 Nov. 2009)*.

End user access

Since end user contracts must incorporate terms stating that end users are responsible for not infringing trademarks when registering domain names, will the clearinghouse have public interfaces for end users so they can make these checks by themselves? *P. Mevzek (21 Nov. 2009)*.

“Validation” and renewal fees—clarification

Is the renewal fee applied annually or only at the trademark end of life? If trademark owners pay the validation fee, this validation occurs only once, so why should there be a renewal fee? National trademark offices do not revalidate trademarks annually. *P. Mevzek (21 Nov. 2009).*

Further procedural details needed

More details are needed about how the clearinghouse contacts trademark holders upon registration—e.g., is this service billed or is it free; what are the guarantees given by the clearinghouse, such as delivery delay after registration; what is the method of delivery (if email, they should be digitally signed (S/MIME or OpenPGP); how can a trademark holder change its personal information in the clearinghouse when needed during the life of its trademarks? Also, there should be some deeper review of influences among this clearinghouse service and the “defensive registration” services provided by some registries; here, the registration succeeds even if it conflicts with the trademarks, leaving disputes to be settled after the fact. *P. Mevzek (21 Nov. 2009).*

Technical interfaces

Regarding the interfaces offered by the clearinghouse to registries, registrars or registrants, study should be made of the IRIS protocol (IETF RFC 3981, also 3982, 4414, 4698, 4991,4992,4993,5144) that seems better suited for that than whois. *P. Mevzek (21 Nov. 2009).*

Ongoing review and verification of clearinghouse effectiveness

Clear objectives and a timeframe should be set for verifying that goals are being met; the clearinghouse should publish public data such as number of trademarks stored over time, number of queries by registries/registrars/registrants/etc. Competition should be addressed—if there is only one clearinghouse, its contract should not provide perpetual renewal and reassignment to another operator in the future should be possible for reasons such as lower costs, as the costs are ultimately paid by end users even if it goes through registries or registrars. These two points would apply to the two actors (as per the split duties recommended in the draft) in the clearinghouse. *P. Mevzek (21 Nov. 2009).*

Further operational guarantees—languages; ownership

There should be more guarantees provided regarding the languages that the clearinghouse can operate, as well as the two entities’ independence from registries and/or registrars (so it should not own/be owned by registries, registrars or even UDRP providers). Strict separation of roles should be enforced at all times, but there should be working cooperation between the clearinghouse and the current UDRP providers. *P. Mevzek (21 Nov. 2009).*

Clearinghouse should not be mandatory for registries

To foster competition among gTLDs, the use of the clearinghouse should not be mandatory for registries. If registries can provide adequate solutions to their specific needs in their TLD that seem as good as the clearinghouse then they should be allowed to operate that way. *P. Mevzek (21 Nov. 2009).*

Trademark holder pre-registration contacts with registrants

If a registry elects to implement a pre-launch IP claim process there is no chilling effect on a registrant pre-registration because the IP claim process does not provide contact information for any of the persons or entities applying for the domain name registration that identically

matches an IP claim. The trademark owner is not notified until after the registrant proceeds with a registration and the domain name is actually registered. *RySG (23 Nov. 2009)*.

Details about possible future combined functions of the clearinghouse and URS

More details should be provided about any future efficiency measure that combines the functionality of the URS and clearinghouse (reference in the summary of changes draft: “they remain separate for now...efficiency can be introduced later”). The absence of those details creates a huge hole ripe for abuse, where dealing with trademarks is already something to be taken with care if we want to avoid misuses. *P. Mevzek (21 Nov. 2009)*.

Application to existing registries is unnecessary

Per the staff implementation plan, the trademark clearinghouse applies only to pre-launch mechanisms (IP Claims and sunrise). Since existing registries have already launched, they have no need of pre-launch RPMs so there is no point in having clearinghouse requirements apply to existing registries. *RySG (23 Nov. 2009)*.

Liability from verification of trademarks

Registries should be indemnified by the clearinghouse for all false positives and negative results. The clearinghouse can manage its liability in this regard through its agreements with trademark owners that file with it. All new registries will likely disclaim liability for false positives and negative results in their registry-registrar agreements and require that such disclaimers be passed through ultimately to resellers (if applicable) and to registrants. Still not addressed is: if a registry elects to use the clearinghouse on an ongoing basis and not just for pre-launch activities, how will the clearinghouse support registry operations without impacting SLAs or registry performance? *RySG (23 Nov. 2009)*.

Uniform Rapid Suspension System (URS)

Support

The URS should be implemented as soon as possible. It is a beneficial supplemental tool for trademark owners, but not a replacement for the UDRP. It greatly reduces trademark owners' costs for policing trademarks and more effectively deals with cybersquatters. URS has legitimate safeguards to protect legitimate domain name registrants: (1) the burden of proof is clear and convincing, higher than the UDRP standard of preponderance of the evidence; (2) reconsideration of the original record may be requested by a losing registrant, and a de novo proceeding in a court may also be initiated; (3) URS has low tolerance for abusive complaints; if three abusive complaints are filed, the complainant is barred from utilizing the URS for a one-year period. Final decision favoring the complainant only causes suspension of a name for the rest of the registration term, not a cancellation or transfer. *H. Tsai (2 Nov. 2009)*. *A. Aikman-Scalese (22 Nov. 2009)*. *IBM (22 Nov. 2009)*. *NCTA (22 Nov. 2009)*. *Demand Media (23 Nov. 2009)*. *J. Lake (23 Nov. 2009)*.

The substantive standard of the UDRP must be exactly replicated in the URS. The link of the URS for pre-registration in the IP Clearinghouse should be maintained. *BC (23 Nov. 2009)*.

Domain name transfer option

Rather than defaulting to freezing a TLD following an adverse decision for the applicant, the successful objector should have the option of having the TLD transferred to it, as in a standard UDRP. *IBM (22 Nov. 2009)*. If no appeal is filed within 90 days of a URS decision, a successful complainant must have the option to transfer the name or cancel. There should also be the option of suspension until the end of the current registration term, and then indefinite flagging; the flag must be recorded in the clearinghouse so that if anyone seeks to register such name(s) again they would get a notice. *BC (23 Nov. 2009)*.

Limited domain name suspension remedy is not meaningful

URS must be revised to strengthen this remedy so that infringing domain names will not be resurrected. Though domain name transfer may not be feasible under the URS, it should at least incorporate some mechanism to place subsequent registrants on notice of prior successful actions. *IOC (23 Nov. 2009)*.

URS—public safety benefits

URS could be particularly useful in demonstrating at the pleading stage the harm to the public from abuse of well-known trademarks in domain names particularly in cases creating public safety issues, such as toys and pharmaceuticals. Failure to implement URS procedures, especially as to areas involving public safety (dot drugs, dot toys, etc.) would be socially irresponsible conduct. *A. Aikman-Scalese (22 Nov. 2009)*.

URS should be mandatory

The URS should be mandatory, as recommended by the IRT. If it is a “best practice” there is an obvious risk that less organized gTLDs will not offer a URS and leave rights holders with no alternative than to take the dispute to court in another country with extensive costs and lengthy proceedings. As pointed out in the Draft Summary of Differences between the IRT and DAG v3, the applicant can choose to have no URS and still comply with the process. *FICPI (21 Nov. 2009)*. *Lovells (22 Nov. 2009)*. URS should be mandatory for all registries. *Demand Media (23 Nov. 2009)*. *IOC (23 Nov. 2009)*. *BC (23 Nov. 2009)*.

URS should be optional

The requirement of a URS should go through ICANN’s policy development process. The FORUM position is that the URS is no substantial change from the UDRP except in attempting to reduce the fee paid per domain name contested (leaving the costs of the process unchanged). *FORUM (22 Nov. 2009)*.

Conduct review of UDRP and URS proposal together

All current discussions of disputes—the URS proposal as well as current requests for UDRP procedure changes by UDRP providers—should be taken together and needed changes if any should be done in one procedure (the UDRP or a new one based on it) instead of creating yet another structure and process. The URS is not required for new gTLD providers, so there is no hurry to create it right now and more time should be taken to study the whole area of disputes handling. *P. Mevzek (21 Nov. 2009)*.

Better technical modes of communications (for URS and UDRP)

Emails with huge Word documents or PDFs should be avoided as much as possible. Interaction between the URS-DRP and its “customers” can be done as the provider wishes, but communications between providers and registries and registrars should use better technical

tools that ensure confidentiality, integrity and authentication. Avoiding paper and fax should also be a goal. Registry whois show domain name status and a human readable message should be attached and visible in whois telling that a URS procedure is being conducted for the domain name. *P. Mevzek (21 Nov. 2009)*.

Answer fee

The IRT suggestion of a fee imposed on the registrant to file an answer if more than 26 domains are at issue should be maintained. *BC (23 Nov. 2009)*. If there is a response fee it should be fully refundable if the current registrant wins; in that case it should be refunded more than what was paid by the registrant. *P. Mevzek (21 Nov. 2009)*.

Fee refunds (section 5.1)

No fee refunds should be made in the URS process, including in cases where the respondent prevails--which would mean the case has a response, is likely not clear cut and therefore has costs (to be covered by the fees) associated with the panel's review and analysis. Requiring routine refunds would add complexity and cost for the URS-DRP, and URS' hallmark is supposed to be simplicity. *FORUM (22 Nov. 2009)*.

Languages

More information should be given about the procedure languages—i.e., the registrant's language? *P. Mevzek (21 Nov. 2009)*. What language is the URS to be conducted in? UDRP specifies the proceeding language as the language of the registration agreement (e.g., it varies by registrar). *FORUM (22 Nov. 2009)*.

“On hold” domain name (section 9)

The term “on hold” should not be used here. The procedure should specify who handles the nameservers associated to the domain names and regarding this specific website--is it the registry? the URS-DRP? *P. Mevzek (21 Nov. 2009)*.

Purpose of URS

The URS is not a tool to fight “content” to be removed from the Internet; it should only be a tool to fight against misuse of the domain name itself, and not what can be seen on a website. *P. Mevzek (21 Nov. 2009)*.

Abusive complaints

“Abusive complaint” needs to be defined (section 10.2). Also, in cases of abusive complaints, is the complainant the trademark holder or its representatives/lawyers? How does this deal with companies having their various trademarks owned by some affiliates/subsidiaries? I.e. –in case of abuse, who will really be banned from further URS proceedings? This URS ban may not be useful since other proceedings like the UDRP would still be possible. Replacing the proposed ban with fees that go higher each time a previous complaint is deemed abusive could be more useful. *P. Mevzek (21 Nov. 2009)*. Complainant abuse should be defined the same as Reverse Domain Name Hijacking under UDRP. *BC (23 Nov. 2009)*.

If more than one URS-UDRP is approved, who is responsible for policing complainant's number of abusive complaints under section 10.2? Must the URS-DRPs search the other providers' databases or is it up to respondents to submit the information to the panel for review and determination? To whom may a complainant appeal (and what are the appeal procedures and

who handles) in section 10.3 if it objects to a finding of “abusive complaint”? *FORUM (22 Nov. 2009)*.

The “three strikes” (abusive complaints) policy should be dropped

It ignores the sheer amount of infringement that a famous trademark owner suffers on a regular basis. The IOC knows of no other enforcement policy in the world that periodically suspends a trademark owner’s right to enforce its valid, registered trademarks. If it is retained, it should also account for the number of successful challenges brought by a trademark owner. *IOC (23 Nov. 2009)*.

Complaint requirements

In section 1.4, regarding appeal to a court, is there a provision for a jurisdiction to which the complainant submits, or must a losing respondent always appeal its case in the complainant’s jurisdiction? Is there a deadline for the initial review? UDRP requires the deficiency check to be done within 3 days. In the section 3 initial review by the URS-DRP, will a complaint be dismissed for lack of a formality, or is there a deficiency period as in the UDRP? The GNSO should set guidelines on page limits for the complaint submissions consistent with making URS an expedited and inexpensive process. *FORUM (22 Nov. 2009)*.

There should be “tighter” language defining a proper URS claim to deter abuse and ensure the URS is limited to cases of obvious infringement. *Demand Media (23 Nov. 2009)*.

Domain Lock (section 4.1)

The URS should continue the current common UDRP practice of requesting a lock on the domain name(s) as soon as the case is filed. If there is non-compliance, the lock can be lifted, but if there is a weekend or other extenuating circumstance, the absence of an immediate lock has been detrimental to complainants. *FORUM (22 Nov. 2009)*.

Electronic service (section 4.2)

The service should be entirely electronic except for hard copy letters as suggested by WIPO in its eUDRP proposal. Requiring service by mail would be cost prohibitive. *FORUM (22 Nov. 2009)*.

Use three modes of service

Mail, fax and email should be required to avoid respondents claiming subsequent to default that they had no notice of the proceedings. *BC (23 Nov. 2009)*.

Non-compliant responses (section 5.5)

In recognition that some respondents are unsophisticated and sometimes do not speak the language of the complainant, the GNSO should clarify what makes a response non-compliant, making the case considered a default. The GNSO also should clarify if, as in the UDRP, all URS case documents are to be sent to the panel regardless of compliance, giving the panel authority to accept or reject each submission. *FORUM (22 Nov. 2009)*.

Defaults (section 6)

Regarding section 6.1, is there any substantive effect achieved by labeling a case as a default? Clarification is needed regarding section 6.2 and what changes about the respondent’s ability to access the website at the moment of default, as well as the lock. Does the URS-DRP have to give any instruction to the registry or registrar? *FORUM (22 Nov. 2009)*.

The ban against the registrant changing content found on the site during the default period (section 6.2) cannot be enforced or controlled by the registry or the URS-DRP. *P. Mevzek (21 Nov. 2009)*.

After default and a decision favorable to the complainant with the site taken down, any right of restoration or right to enter the process should not be based on the respondent arguing that it did not receive notice in any of the three modes (mail, fax, email); that it did not receive notice because it did not update whois information; or that it did not receive notice because whois information was inaccurate. If the respondent appears after a default and takedown, the site should go back up only after a decision is rendered in favor of the respondent. *BC (23 Nov. 2009)*.

Panel determination

What is the GNSO's view on the substance of the panel determination (e.g. a simple form noting who won with little or no discussion of the merits of the case), and should it vary if the case is considered a default? *FORUM (22 Nov. 2009)*.

Appeal (section 11(b))

Regarding appeal to a court of competent jurisdiction, the draft procedures do not specify the jurisdiction in which the complainant may be sued. UDRP defines competent jurisdiction by using the two jurisdictional choices available in the Registration Agreement (through the RAA—i.e., location of registrar and location of registrant) and allowing the complainant to agree to one of those jurisdictions (of its choice). *FORUM (22 Nov. 2009)*. An appeal right should be maintained through either a UDRP proceeding or redress in court. *IBM (22 Nov. 2009)*. A meaningful appeal process is required; there is no staff proposal on it yet. *BC (23 Nov. 2009)*.

Registry agreement—consequences of implementation failure

The Registry Agreement should outline what will happen if a registry fails to implement the panel determination (preferably within a set time period). The Agreement should define what will happen if a registry fails to lock a domain name within the time established in the URS. *FORUM (22 Nov. 2009)*.

Other

Cybersquatting legislation

The ACPA should be amended to require a good or service to be provided outside of the service of serving potentially relevant ads in order to allow a domain to be registered. Also, domain name expiration dates should not be published. *C. Neeley (29 Oct. 2009)*.

Whois/"privacy"/domain expiration dates

Why is it accepted to sell a service that makes the registrant contact information unavailable for an immediate query? Expiration dates being accessible in a Whois database complies with ICANN policy. Registrars who run advertisements of domains that are nearing or are slightly past their expiration dates should be prohibited. *C. Neeley (12 Nov. 2009)*.

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