

Report of Public Comments

Preliminary Issue Report on a GNSO Policy Development Process to Review All Rights Protection Mechanisms in All gTLDs

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Section I: General Overview and Next Steps

This public comment proceeding sought to obtain community input on the Preliminary Issue Report on reviewing all Rights Protection Mechanisms (RPMs) in all generic Top-Level Domains (gTLDs).

The question of who legally has rights to, or is the legitimate holder of, a domain name can be open to dispute. In relation to domain name disputes concerning the registration and use of legally protected trademarks, the Uniform Dispute Resolution Policy (UDRP) is the longest standing alternative dispute resolution procedure. As a result of the New gTLD Program, several new rights protection mechanisms (RPMs) were developed to mitigate potential risks and costs to trademark rights holders that could arise in the expansion of the gTLD namespace: the Uniform Rapid Suspension Dispute Resolution Procedure (URS); the Trademark Clearinghouse (TMCH) and the associated availability through the TMCH of Sunrise periods and the Trademark Claims notification service; and the Post-Delegation Dispute Resolution Procedures (PDDRs).

Prior to the launch of the New gTLD Program, on 3 October 2011 ICANN staff had published a Final Issue Report on the current state of the UDRP. The recommended course of action in that UDRP Report was not to initiate a PDP at the time, but to hold off launching any such PDP until after the new URS had been in operation for at least eighteen (18) months.

Subsequently, on 15 December 2011, the GNSO Council requested that ICANN staff prepare and publish a new Issue Report on the current state of all rights protection mechanisms implemented for both existing and new gTLDs, including but not limited to the UDRP and URS. This Preliminary Issue Report is being published for public comment as the result of that GNSO Council request.

Next Steps

Staff will review all comments and, based on the feedback, make amendments before forwarding the Final Issue Report to the GNSO Council for consideration.

Section II: Contributors

At the time this report was prepared, a total of 22 community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
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WIPO	Erik Wilbers, Brian Beckham	WIPO
European Communities Trade Mark Association	Barbara Diaz-Alminos	ETCA
Donuts	Mason Cole	Donuts
Governmental Advisory Committee	Tom Dale	GAC
Demys Limited	Tim Brown	DL
Internet Address Dispute Resolution Committee	Areum Seo	IDRC
International Federation of Intellectual Property Attorneys	Alexandra Louage	FICPI
GAC Switzerland	Jorge Cancio	GAC CH
Intellectual Property Constituency	Greg Shatan	IPC
Com Laude and Valideus	Susan Payne	CL&V
International Trademark Association	Lori S Schulman	INTA
Non-Commercial Stakeholder Group	Tapani Tarvainen	NCSG
Italian GAC	Rita Forsi	GAC IT
At-Large Advisory Committee	Leon Sanchez	ALAC
Business Constituency	Steve del Bianco	BC
Forum	Daniel Legierski	Forum
Internet Commerce Association	Phil Corwin	ICA
Domaine Mondo	John Poole	DM

Individuals:

Name	Affiliation (if provided)	Initials
Ron Baione-Doda		RBD
Samuel Kutter		SK
James Wright	Jury Trail Consultants	JW

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

22 comments were received in the public comment forum. Details can be found below in the 'Collated Comments' Section.

The content of comments are diverse with some advocating not to review the UDRP at all because it is a well functioning, long-standing policy and opening it to review may lead to its destabilization. Others pointed out that, even though the UDRP might be well functioning, there is no reason not to review it because a review itself does not mean that changes will be recommended.

Many comments provided additional issues that they believe should be included in any potential PDP reviewing RPMS.

Staff provided three possible option on how to proceed, not all commentators provided feedback on this. Of those that did, most favored Option 3 (a two-stage PDP with the new gTLD RPMS being reviewed first and the UDRP later), but there were also some that advocated Option 1 (one PDP reviewing all issues). One commentator suggested to review the UDRP first and all new gTLD RPMS later and another to conduct a review of only the RPMS developed for the New gTLD Program but foregoing any review of

the UDRP.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

Staff will update the Preliminary Issue Report so that all relevant issues raised will be incorporated into the final Issue Report that is then forwarded to the GNSO Council.

Public Comment Review Tool – Review of all Rights Protection Mechanisms in all gTLDs – Preliminary Issue Report

1 December 2015

Consolidated Comments

#	Comment	Contributor	Action Taken
Comments received in the Public Comment Forum			
1.	DL “view the UDRP as a success, both for Complainants and Respondents, and would strongly suggest that before embarking on a review of the UDRP, ICANN should first consider the complexity and necessity of reviewing a system that works efficiently and effectively.”	DL	n/a
2.	DL points out that “[d]omain name dispute mechanisms, including the UDRP, are designed to be simple, quick and inexpensive for both Complainants and Respondents and must remain so to be a practical alternative to cross-jurisdictional litigation, which is recognised as being both time-consuming and expensive for all parties.”	DL	n/a
3.	DL notes that “[a]ny review must carefully consider the “unintended consequences” of any changes to the current policy and procedures. While changes to the policy, such as “loser pays” sanctions, variations to the Whols, consideration of potentially-infringing content beyond the domain name, may appear to some to be desirable, the long-term consequences of complicating what is a relatively simple and straightforward process must be taken into account.”	DL	Update Section 3
4.	DL “suggest[s] that care is taken to avoid capture [of a reform debate] by entities either strongly for or against [RPMs]. A balance between the rights of both Complainants and Respondents is fundamental to any review. The consequences of implementing changes that may lead to the diminution or loss of an inexpensive, straightforward and certain pathway to solve domain name disputes must be carefully considered.”	DL	n/a
5.	DL “endorses the comments made earlier in this process by WIPO and we lend our support to the view that caution should be taken when opening up the UDRP for review”	DL	Update Section 3
6.	SK is concerned with the “blackmail” approach of Domain Grabbers, [who] do not actively use their registered domain, and their sole business model is to sell the domains at an elevated price that is not justified by actual costs.”	SK	n/a
7.	SK suggests that “[f]or founders and small businesses, the cost of an UDRP at an arbitration court are high. First, these fees should be lowered and capped, in particular for simple cases where individuals with limited resources have a legitimate cause for an UDRP. As ICANN officially accredits UDPR arbitration courts, they should work towards and impose low fees, in particular for simple, individual cases.	SK	n/a

#	Comment	Contributor	Action Taken
8.	From SK's experience: "the fundamental problem with arbitration procedures is that the fees (that are justified to some extent to cover court expenses) determine a "price point" for the Domain Grabbers: they will sell a domain at the cost (or slightly below) you are going to face if you take them to an UDRP. This is rational, economical behaviour.	SK	n/a
9.	<p>To address some the problems he raised, SK suggests:</p> <p>"i. Before the actual UDRP arbitration process starts, there is a "registration phase". The claimant must pay a low fee (50 Euro) to open a case against a respondent. Both parties are required to hand in proofs that they deserve the use of the domain name (according to the existing ICANN policies). The parties are asked to hand in the proofs, e. g. trademark registrations, business or company registrations, identity proofs, proof of business activity on similar websites etc.</p> <p>ii. If either party fail to submit the necessary documents or submits generic documents (generic text not giving actual, concrete details about the concerned domain name; automated text), then the other party automatically wins. – Furthermore, the arbitration court should insist that the documents should be provided in paper form. This simple, yet a little inconvenient formal requirement would certainly kill the business model of domain grabbers as they rely on highly automated systems that can process large quantities of domains and procedures. The formal requirement to compile, print and sign a few "real papers" will neutralize them quickly and nicely.</p> <p>iii. If the documentation is handed in by both parties, the UDRP arbitration shall proceed as ever: The complainant shall pay the remainder of the necessary fee and the panel is appointed. As already mentioned in 1), the fee should be lowered for simple cases.</p> <p>The initial "registration fee" of 50 Euro and the necessary paper work will keep away "Reverse Domain Name Hijacker" and similar unjustified, harassing complaints.</p>	SK	n/a
10.	SK also suggests that "ICANN and/or the arbitration courts should hold public blacklist of notorious Domain Grabbers. Any case against this group is going through a simplified procedure with lower fees. Additionally, court fees might be invoiced from companies on this list, and/or other domain names that are held by members of this group might be seized as forfeit / deposit."	SK	n/a
11.	WIPO points out that "UDRP enables brand owners from around the world to efficiently address trademark abuse without having to go to court, let alone in foreign jurisdictions; in the process, the UDRP helps to reduce fraud and consumer confusion in the digital economy."	WIPO	n/a
12.	According to WIPO, "[u]nlike in court, UDRP decisions do not impose monetary damages on registrants. Moreover, the overall predictability of the UDRP framework allows registrants to make an informed decision whether to defend a case. This UDRP predictability has also supported a high settlement rate between parties. More broadly, UDRP jurisprudence informs domain name registration practices and website use."	WIPO	n/a

#	Comment	Contributor	Action Taken
13.	WIPO explains that “[t]he need for UDRP stability recognized by the GNSO in 2011 [when the GNSO Council postponed the review of the UDRP] is even more important today. New gTLDs having already attracted some 10 million registrations, the UDRP has been seamlessly applied in hundreds of such cases. In contrast, a significant number of difficult files are competing for the ICANN community’s attention, for example IANA transition, and new gTLD operations and compliance.	WIPO	n/a
14.	WIPO is clear that “[a]ny review of the UDRP (including its relation to the URS) must take a considered holistic approach. Politically expedient trade-offs between wish-lists simply to conclude the process (for example as a prerequisite to approval of subsequent new gTLD rounds) will be certain to cause more harm than good. Tempting as they may be, piecemeal gains are unlikely to serve UDRP stakeholders’ longer-term interests.”	WIPO	Update Section 3
15.	WIPO points out that through an RPM review, “[d]estabilization of the predictable UDRP framework may have a range of unintended consequences. It would disrupt the body of precedent carefully developed by hundreds of panelists from across jurisdictions in tens of thousands of cases.”	WIPO	Update Section 3
16.	WIPO notes “that the existing UDRP terms already carry the flexibility which a dispute resolution framework needs to stay relevant. WIPO’s “Jurisprudential Overview”, its annual Panelists Meetings, its Legal Index, and its Advanced Workshops are live testimony to this adaptive capacity. Using reasonable discretion under the Rules, panels have successfully addressed a dynamic range of emerging DNS issues, such as consolidated complaints, reseller scenarios, party identity in relation to privacy services, and appropriate language of proceedings.”	WIPO	Update Section 3
17.	In WIPO’s view, the “UDRP demonstrates the flexibility to meet the demands of an evolving DNS; it does not need system-wide updates that would imprudently limit this flexibility.”	WIPO	Update Section 3
18.	In WIPO’s view: “there is a threshold question whether an open-call ICANN Policy Development Process is best suited for any UDRP review process.”	WIPO	Update Section 3
19.	“Given the deliberate balance underpinning the UDRP’s positive track record, WIPO supports the Report’s caution about opening up the UDRP system, including in its relation to the URS.”	WIPO	n/a
20.	JW points out that “this current system needs a severe penalty to deter Reverse Domain Name Hijacking attempts.”	JW	n/a
21.	RBD proposes fair compensation to domain name holders that are willing to part with their domain: “In no way should domains be taken without every effort to pay the owner for it and to contact the owner or owners family about the possible transaction.”	RBD	n/a
22.	ECTA is opposed to any modification of the UDRP given that whilst not perfect as a rights protection mechanism, it has a track record of success over the last 15 years across legacy gTLDs and new gTLDs in over 20 languages, and it has served the ICANN community well.	ECTA	Update Section 3
23.	ECTA is of the view that no review is needed at this stage. If such a review would be carried out in the future, ECTA’s view is that it would necessarily be extremely complex and thus needs a sound basis in fact, which would require a review of all UDRP decisions over the last 15 years across all providers. We would, thus, suggest to direct resources to such a review in the first instance so as to objectively assess the effectiveness of the UDRP.	ECTA	Update Section 3
24.	ECAT then provides a number of answers to the list of potential issues for a future PDP. The answers will be forwarded to the WG if/when it will be created.	ECTA	n/a

#	Comment	Contributor	Action Taken
25.	Donuts supports a PDP to review existing rights protection mechanisms (RPMs) in two stages. The first stage would be to review the RPMs of this current round of new gTLDs to determine their effectiveness and appropriateness in a subsequent round, as well as with an eye toward making the existing RPMs apply fairly and equitably across all existing gTLDs, not just a subset of them.	Donuts	Update Section 3
26.	[T]he work of the RPM PDP should flow into the work of the Subsequent Rounds PDP. Per the Staff Recommendation section of the Report, by having an RPM PDP, the work could “guide future rounds of gTLD expansion...A PDP could also result in clear and consistent policy frameworks for all PMs in all gTLDs.	Donuts	Update Section 3
27.	The second phase would be a review of the UDRP. It is not necessarily safe to assume it is a widely- held presumption that UDRP is without flaw; Donuts further believes it’s generally wise to review policy that has been in operation for over a decade, as has UDRP.	Donuts	Update Section 3
28.	Thus, with regard to the three options for “work to be initiated by the GNSO in respect of reviewing the RPMs...”, Donuts favors the third option (conduct a policy review of all the RPMs in two phases). To review the UDRP with its over fifteen years of history and case law at the same time would bog down the review of the other RPMs, thereby needlessly delaying the potential to implement existing RPMs in all TLDs and delaying the possibility of another round of TLDs.	Donuts	Update Section 3
29.	Finally, Donuts disagrees with the interpretation that the Implementation Advisory Group concluded that UDRP and URS complaints are “first priority” metrics (report sec. 3.2.2.2, p.22). These merely are the most “visible” and therefore easily citable metrics; this, however, does not equate to their priority above the other 64 metrics.	Donuts	Update Section 3
30.	The Issue Report includes reference to previous GAC input, namely: GAC comments to the 2011 Preliminary Issue Report on the Current State of the UDRP; and GAC comments on the Applicant Guidebook in April/May 2011. The GAC notes that there continue to be clear public policy implications arising from the proposed review of rights protection mechanisms for all gTLDs. The GAC supports the creation of a Policy Development Process for the review of Rights Protection Mechanisms and looks forward to contributing to it	GAC	Update Section 3
31.	Since the ICANN adopted UDRP as a policy to resolve disputes on gTLD in 1999, we acknowledge the UDRP as an effective system contributing to resolution for disputes on domain names in a short period of time and at a low cost compared with those involved in judicial procedures.	IDRC	n/a
32.	UDRP is a mechanism to resolve disputes on a global scale extending to global jurisdiction, and under the circumstances, it properly serves the balance of interests of the public and the right holders across the globe, albeit not with ease. UDRP with the judicial procedures and systems taken into account may not be the world’s best mechanism to protect rights, but based upon the precedents established thus far since 1999, the goal for finding such balances will be achieved. In essence, we do not find any areas to make improvement at present.	IDRC	Update Section 3
33.	In the meantime, we think that more time is necessary to review a correct protection mechanism of new gTLD because of its short history.	IDRC	Update Section 3

#	Comment	Contributor	Action Taken
34.	Although URS and the Trademark Clearinghouse relates only to the new gTLD strings, whereas UDRP is used for all gTLDs as well as some ccTLDs, they are all systems created to ensure that trademark owners have available the tools necessary to stop infringements and misuse in the form of registered and used domain names. FICPI believes a combined, single-step review is therefore the best and most effective way to review and consider improvements generally in order to ensure the real world trade mark rights are protectable and enforceable when used on the Internet. FICPI supports a combined, single-step review of all RPMs, including the UDRP.	FICPI	Update Section 3
35.	FICPI is of the view that cautious and minor changes that do not erode the fundamental premises upon which the UDRP was based should be considered. FICPI also advocates all means through which ccTLD dispute resolution mechanisms based on those same fundamentals are implemented, and compliance assured.	FICPI	Update Section 3
36.	FICPI then provides a number of answers to the list of potential issues for a future PDP. The answers will be forwarded to the WG if/when it will be created.	FICPI	n/a
37.	As to the options for work to be initiated by the GNSO in respect of reviewing the RPMs which are mentioned on page 6 and 7, we support the third option. Thus, for efficiency purposes, the review should be conducted in two phases. The first phase should focus exclusively on the RPM's developed specifically for the New gTLDs, and the subsequent phase on the UDRP.	GAC CH	Update Section 3
38.	We firmly support a broader goal for a global review of the RPMs: violations of trademarks constitute only one aspect of many issues related to intellectual property and Internet. Focusing on trademarks is too narrow. A global review should address the global dimension of this issue. Concretely, we kindly request that ICANN examine the protection of country names and geographical indications, and generally of indications of source, within the RPMs as part of the mandate. In addition, business identifiers and acronyms of international organizations should also be adequately addressed. These issues should be fully taken into account and mentioned especially in chapter 2.2.1 and in the list of potential issues for review in a PDP (chap. 3.2.2.3, incl. every single topic of it, namely 3.2.2.3.1, 3.2.2.3.2, 3.2.2.3.3, 3.2.2.3.4, 3.2.2.3.5, 3.2.2.3.6).	GAC CH	Update Section 3
39.	An additional question should be integrated to chap. 3.2.2.3.6 reflecting the perspective of owners of protected signs: "In the light of concrete cases (case law) and from the perspective of owners of protected signs and of marks, which are the identified deficits of the RPMs"	GAC CH	Update Section 3
40.	We also believe that the mandate should consider the complex tension between trans-jurisdictional issues and national law.	GAC CH	Update Section 3
41.	Finally, the PDP Working Group should be composed adequately and in a balanced manner. Especially, owners of protected signs and marks as e.g. trademark owners, IGOs, GI-related organizations, consumer organizations should be represented.		n/a

#	Comment	Contributor	Action Taken
42.	<p>If, based on a thorough review of 15 years of UDRP experience, a decision is made to seek to amend the UDRP and its Policy, then this must be done with extreme care, covering the above listed issues but also others, such as:</p> <ul style="list-style-type: none"> • Should “or” be introduced instead of “and” in the bad faith requirements? • Should there be an introduction of a “loser-pays” scenario? • Should monetary damages be awarded? The UDRP (unlike court proceedings) does not allow this, but there are examples of ccTLD registries now applying monetary damages. • Should the relevant time periods be reduced? • Should filing fees be lower? • Should injunctive relief be available? • Should there be a bad-faith presumption for repeat/serial offenders? • Should repeat/serial offenders be blacklisted from new registrations? • Should permanent suspension be added as an additional potential remedy under the UDRP? • How should the Privacy and Proxy services which are now frequently used by registrants to shield their identity be more efficiently removed in the course of a UDRP proceeding? • Should the UDRP be revised to cover challenges to trademark-infringing content even in the absence of trademark infringement in the domain name? Should a failure to respond result in an automatic default victory for the complainant? • Should a failure to maintain an active credit card with the registrar in order to fulfil any “loser pays” obligations result in an automatic default victory for the complainant? 		Update Section 3
43.	<p>The UDRP, whilst it may not have been reviewed per se, has nevertheless evolved over the last 15 years, and has been sufficiently flexible to deal with new issues in the DNS as they arise. As such, and with over 50,000 cases, there is a significant body of precedent carefully developed by hundreds of expert domain name panellists coming from a wide variety of jurisdictions. That very body of precedent is at risk if the underlying framework is significantly amended or destabilized.</p>	IPC	Update Section 3
44.	<p>Indeed, whilst some may argue for a need to review, the consideration back in 2011 is important to recall, as there the experts (UDRP panelists and UDRP providers who have to work daily with the UDRP) advised against seeking amendments to the UDRP Policy. This was echoed by other experts involved, namely counsel to Complainants but also counsel to Respondents.</p>	IPC	Update Section 3
45.	<p>As noted above a broad review of the UDRP Policy brings with the very real possibility of a divisive and polarizing debate, with unintended consequences and a potential damaging of the existing predictability and status quo that the UDRP has obtained over the last 15 years. As such, the IPC recommends that if a review should be done it should concentrate on a review of the experience of the last 15 years enabling the effectiveness of the UDRP to be assessed and whether it has met the objectives for which it was created.</p>	IPC	Update Section 3

#	Comment	Contributor	Action Taken
46.	The UDRP is a policy based firmly in principles of trademark law and jurisprudence. Any review of the UDRP must be carried out by a group capable of working in a sophisticated and fluent manner with the tapestry of national and international trademark protections. As such, if a review of the UDRP as a policy is to be considered, an “Expert Group” should be assembled to carry out this review.	IPC	Update Section 3
47.	The IPC's view is that whilst there is merit in measuring its effectiveness there should be no amendment of the UDRP Policy at the present time.	IPC	Update Section 3
48.	The IPC then provides a number of answers to the list of potential issues for a future PDP. The answers will be forwarded to the WG if/when it will be created.	IPC	n/a
49.	The IPC also expects the proposed PDP to discuss additional issues [to those mentioned in the Preliminary Issue Report] involving the Trademark Claims service, such as those presented in the RPM Review Report, to ensure thorough discussion as to how best to improve this important RPM. The IPC looks forward to bringing its substantial collective experience with the Trademark Claims service to bear on those Working Group discussions.	IPC	n/a
50.	Missing, however, in the Additional Questions is the primary question of whether or not the RPMs are working. The IPC notes that to date there has not been an analysis of whether the RPMs are “collectively fulfilling the objectives for their creation,” namely “to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks.” In our view, if there is any such review it must also take into consideration those recommendations of the Implementation Recommendation Team (IRT), set out in its Final Report, ⁴ which were not in fact implemented in the New gTLD Program. Principle amongst these is the concept of the added protection afforded by means of a Globally Protected Marks List (GPML).	IPC	Update Section 3
51.	The IPC also notes that an important aspect of the existing rights protection ecosystem is currently not envisaged as being included in any PDP to review the “state of all RPMs implemented for both existing and new gTLDs”: the registry-specific RPMs implemented by some registry operators such as Donuts, Rightside, and Minds & Machines. A number of the respondents to the Draft Staff Report on RPMs highlighted this as a significant omission. Although, by their very nature, these non-mandatory RPMs are not “policies and processes, developed in consultation with the ICANN community” it is important that they be taken into consideration when reviewing the mandatory RPMs since their existence and availability have a direct impact on the utilization and effectiveness of the mandatory RPMs in those registries to which they apply. Whilst the preliminary Issue Report does envisage that a review of RPMs might cover additional issues not identified in the Issue Report, the IPC considers that it is important that the above elements are specifically called-out, to ensure that they are within the scope of any review which is initiated.	IPC	Update Section 3

#	Comment	Contributor	Action Taken
52.	<p>The IPC supports the first alternative – a combined, single-step review of all RPMs – for the following reasons.</p> <ol style="list-style-type: none"> 1. A Single-Stage, Comprehensive Review of All RPMs Will Provide a More Holistic and Meaningful Analysis of the Total Effectiveness of RPMs in Protecting the Rights of Brand Owners 2. A Single-Stage Review is More Likely to Result in Effective Improvements to All RPMs 3. A Two-Stage Approach to Review Could Potentially Weaken the Viability of All RPMs as Effective Tools to Safeguard Brand Rights 	IPC	Update Section 3
53.	<p>The various RPMs were developed with the aim of “combatting cybersquatting and providing workable mechanisms for trademark owners to either prevent or remedy certain illegitimate uses of their trademarks in the Domain Name System (DNS)”. An overarching question for any PDP to review these RPMs, therefore, must be whether they have adequately achieved that aim. In considering that question two additional elements, not identified in the Preliminary Issue Report, should be taken into consideration:</p> <ol style="list-style-type: none"> 1. A review of the RPMs requires a holistic assessment of the environment in which they operate, since the utilization and effectiveness of any one RPM is impacted by the other RPMs available as an alternative. This would therefore include the registry-specific RPMs, such as the Domains Protected Marks List (DPML) of Donuts and other registry operators, notwithstanding that these are not “policies and processes, developed in consultation with the ICANN community”. 2. A review of the RPMs to determine whether they have adequately achieved their aim ought also to consider whether or not that aim would have been better achieved with the inclusion of the concept of a Globally Protected Marks List, as was proposed by the Implementation Recommendation Team (IRT). The IRT proposed a suite of RPMs in its Final Report and stated that “each proposal presented herein is part of a tapestry of solutions which are interrelated and interdependent ... designed comprehensively to balance in relation to one another and the removal of any of the proposals will likely require further strengthening of the others”. A review of the RPMs ought therefore to include an assessment of whether the removal of one of the proposals, without such strengthening of the others, served to weaken the protection overall. 	CL&V	Update Section 3

#	Comment	Contributor	Action Taken
54.	Any procedure which has been operating for 15 years without any review really ought to be subject to some assessment of whether it has met the objectives for which it was created, and whether it continues to do so. This need not mean that any such review would result in wholesale change, but could consider, for example, procedural changes to keep pace with changes to technology and business practices (such as the adoption of electronic filing which has already occurred).	CL&V	Update Section 3
55.	The need to review the RPMs in the context of the overall landscape, we consider that if there is to be a review of the UDRP it would probably be necessary to uncouple this from the new gTLD RPMs (i.e. option 3)	CL&V	Update Section 3
56.	A consideration of the Trademark Claims service ought therefore to also consider the question of whether these should extend beyond identical matches to plurals and “marks plus”.	CL&V	Update Section 3
57.	An additional question for consideration in any PDP to review the RPMs, therefore, would be whether notices to the trademark owner ought to be sent before the domain is registered.	CL&V	Update Section 3
58.	The questions of Sunrise pricing and the treatment of Premium and Reserved names by Registries are highly relevant to a review of the RPMs, and must be considered as part of any such review	CL&V	Update Section 3
59.	INTA would like to propose another option -- conducting a review of only the RPMs developed for the New gTLD Program but foregoing any review of the UDRP.	INTA	Update Section 3
60.	As a dispute policy, the UDRP has been a great success and has functioned extraordinarily well. Since its inception, over 45,000 decisions have issued in relation to .com domain names alone. Although these decisions are not technically precedential, from them a vibrant and strong set of commonly accepted principles have emerged, many of which have been collected in such well-regarded guides as the WIPO Overview 2.0. This very solid and stable foundation, upon which both complainants and respondents have come to rely, would be put at risk were the UDRP to be subject to modification in any substantive way.	INTA	Update Section 3
61.	Finally, if the UDRP were to be subject to review and subsequent revision, there is a risk that it will be weakened to the point that it no longer serves its intended purpose, and thus more trademark owners are likely to resort to court action. This will result in more cost for all involved and there will be a renewed focus on monetary damage awards against cybersquatters.	INTA	Update Section 3

#	Comment	Contributor	Action Taken
62.	If ultimately INTA's assertions are not accepted, then INTA would strongly recommend to ICANN that the review of RPMs should be phased, with a review of the RPMs developed for the New gTLD Program accomplished first, in light of the CCT Review.	INTA	Update Section 3
63.	Because the CCT Review will provide additional data, INTA believes it is important for this data to be considered in the RPM Review. Again, this does not mean that the commencement of any RPM Review should be put on hold pending the CCT Review, but that the results of the CCT Review should be considered and incorporated at the appropriate juncture.	INTA	Update Section 3
64.	The RPM Review should ultimately consider a variety of perspectives, not the least of which are qualitative reports on brand owners' experiences with the available RPMs (including, where relevant, reports on enforcement actions that did not fit into, or that are not included in, RPM statistics).	INTA	Update Section 3
65.	INTA offers five suggested clarifications (or questions seeking clarification) for the issues presented by the Preliminary Report.	INTA	Update Section 3
66.	<p>INTA offers these three suggested additions to the issues presented by the Preliminary Report:</p> <ul style="list-style-type: none"> • the Preliminary Report should raise as a topic for the PDP working group's consideration whether and how to develop a mechanism by which trademark owners can challenge Sunrise pricing practices that flout the purpose of Sunrise. • the Preliminary Report should raise as a topic whether more can be done to improve transparency and communication about various Sunrise procedures. • the Preliminary Report should raise as an overarching topic the extent to which changes to one RPM will need to be offset by concomitant changes to the others. 	INTA	Update Section 3
67.	This PDP working group cannot lose sight of that tapestry: as it analyses potential changes to one RPM, it must consider how those changes will impact the other "interrelated and interdependent" RPMs. To the extent that this reminder is made explicit in the PDP Charter – all the better.	INTA	Update Section 3

#	Comment	Contributor	Action Taken
68.	<p>The NCSG would like to strongly suggest a fourth approach: evaluate the UDRP first and RPMs second:</p> <ul style="list-style-type: none"> • While we agree that the work of the UDRP should be staggered, we think it is the trunk of the tree from which all other trademark rights protection mechanisms have grown. It works to embody the principles and purposes of our work in balancing trademark rights and the traditional fair use and free speech/freedom of expression rights of all others. We cannot really examine the other rights protection mechanisms until we stabilize foundation, which is the UDRP review. • The UDRP created the principles from which the URS and Trademark Clearinghouse (TMCH) were negotiated. Are those principles valid and strong? Do they need to be revised? Assessing the Uniform Rapid Suspension (URS) and Trademark Clearinghouse (TMCH) put the cart before the horse – we should assess the strength of foundation – before checking its higher and newer levels. • The roll-out of New gTLDs is still in progress. We expected to be nished by this point, but many New gTLDs are still in contracting and others are still in contention. Key Sunrise and Trademark Claims periods are yet to be undertaken, and data about the roll-outs of all New gTLDs would be helpful. We will have a fuller data set if we wait for more New gTLD introduction. Accordingly, we ask for UDRP rst, and its RPM New gTLD o shoots second. 	NCSG	Update Section 3
69.	<p>The 2011 GNSO Issue Report of the UDRP is half a decade old! That's centuries in terms of Internet time, and if used, the UDRP Review will be missing:</p> <ol style="list-style-type: none"> 1. Major UDRP decisions of 2011-2015 (thousands of decisions) 2. The entire overlap of the New gTLDs and their RPMs with the UDRP (one of the key criteria of evaluation in this “Review of All Rights Protection mechanisms” 3. The benefit of the Arbitration Forums self-reviews, including the <i>WIPO Advanced Workshop on Domain Name Dispute Resolution, May 2015</i>, in which inconsistencies of decisions, including in the free speech/freedom of expression area were candidly discussed and contemplated. 4. Recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN (note the many, many sessions on Human Rights, including by the Cross Community WG and the GAC in Dublin, and the discussions in the CCWG on IANA transition Accountability stream). 	NCSG	Update Section 3
70.	<p>NCSG asks for fairness and balance in the representation of the goals of the upcoming UDRP and RPM evaluation process.</p>	NCSG	Update Section 3

#	Comment	Contributor	Action Taken
71.	<p>Under all national laws, trademark holders rights are limited and the rights of others are balanced. Including the rights to:</p> <ol style="list-style-type: none"> 1. Use generic and descriptive words in new and novel ways 2. Use their last names, in all ways legal under law (which includes major protections in this area), and 3. Use geographic words that accurately mark where an organization, business or individual is located. <p>Reflecting such a balance has **always been part of the goals of the UDRP and RPMs since their formulation and adopted by the ICANN Community** and must continue in the upcoming process. It is a fundamental responsibility of ICANN to reflect that fairness and the public interest values which must be balanced. We ask that the full balance of the goals of this review process be clearly laid out at <i>each and every opportunity</i>, not just in the introduction</p>	NCSG	Update Section 3
72.	<p>Finally, we ask that this UDRP review not be treated as an Expedited PDP, absent the much more extensive evaluation which in our view it requires at this juncture. This is an evaluation of our very rst consensus policy – one adopted very quickly by ICANN and without many of the Stakeholder Groups that exist today. This is an evaluation of a sixteen year old consensus policy, and a review years in the making. Let's give it the full and careful consideration that it deserves.</p>	NCSG	Update Section 3

#	Comment	Contributor	Action Taken
73.	<p>NCSG Is proposing a number of additional issues to be listed in the Report:</p> <p>Are the processes being adopted by Providers of UDRP, URS, and TMCH services fair and reasonable?</p> <p>Are the Providers' procedures fair and equitable for all stakeholders and participants?</p> <p>Are the Providers consulting with all stakeholders and participants in the evaluation, adoption and review of these new procedures?</p> <p>Are the Providers training both the Complainants and the Respondents, and their communities and representatives, fairly and equally in these new procedures?</p> <p>Are Providers exceeding the scope of their authority in any of the procedures they are adopting?</p> <p>Is ICANN reaching out properly and sufficiently to the multi-stakeholder community when such procedures are being evaluated by ICANN at the Providers' request? Is this an open and transparent process?</p> <p>What remedies exist, or should exist, to allow questions about new policies by the Providers offering UDRP, URS and TMCH services, and how can they be expeditiously and fairly created?</p> <p>What changes need to be made to ensure that procedures adopted by providers are consistent with the ICANN policies and are fair and balanced?</p>	NCSG	Update Section 3

#	Comment	Contributor	Action Taken
74.	<p>The NCSG lists for inclusion the following Issues for evaluation with the UDRP Review</p> <ul style="list-style-type: none"> • Recommend that the term “free speech and the rights of non-commercial registrants” be expanded to include “free speech, freedom of expression and the rights of non-commercial registrants” to include rights under US law and the United Nations' Universal Declaration of Human Rights. • Inclusion of: Are the critical concepts of “fair use” and “fair dealing” fully and accurately reflected in the UDRP (and also URS and TMCH rules)? • Are generic dictionary words being adequately protected so that they are available for all to use as allowed under their national laws and international treaties? E.g. sun, windows. • Are last names and geographic places adequately protected so that they are available for all to use allowed under their national laws, e.g. Smith, McDonald, Capitol Hill Cafe, Old Town Deli? • Now that Reverse Domain Name Hijacking is a regular finding of UDRP panels, indicating that domain name registrants are being abused by complaints brought against them in the UDRP process, what penalties and sanctions should be imposed on Complainants found to be reverse domain name hijackers? How can those penalties and sanctions be aligned so as to be fair, as compared to the loss of a domain name taken from a registrant found to be a “cybersquatter”? • Are free speech, freedom of expression and the rights of non-commercial registrants uniformly protected in existing UDRP (and URS and TMCH) policies and their implementation procedures? As currently phrased, the “potential issue” asks if it is “adequately protected,” but where we find differences among Panelists of different countries, we should ask if free speech is “adequately and uniformly protected” – as equity and fairness lies in both. • Should defenses be expanded, e.g., as seen in Nominet's policy and the URS? 	NCSG	Update Section 3
75.	<p>NCSG lists for inclusion the following Issues for evaluation with the URS Review</p> <ul style="list-style-type: none"> • Has ICANN done its job in training registrants in the new rights and defenses of the URS? • Are the expanded defenses of the URS being used and if so, how, when, and by whom? • – What sanctions should be allowed for misuse of the URS by the trademark owner? • What evidence is there of problems with the use of the English-only requirement of the URS, especially given its application to IDN New gTLDs? • How can the appeals process of the URS be expanded and improved? 	NCSG	Update Section 3

#	Comment	Contributor	Action Taken
76.	<p>NCSG list for inclusion the following Issues for evaluation with the Trademark Clearinghouse Review, Sunrise Period and Trademark Claims:</p> <ul style="list-style-type: none"> • Is the protection of the TMCH too broad? • Is the TMCH providing too much protection for those with a trademark on a generic or descriptive dictionary word, thus allowing a trademark in one category of goods and services to block or postpone the legitimate and rightful use of all others in other areas of goods and services? Are legitimate noncommercial, commercial and individual registrants losing legitimate opportunities to register domain names in New gTLDs? • Is the TMCH and the Sunrise Period allowing key domain names to be cherry-picked and removed from New gTLDs unrelated to those of the categories of goods and services of the trademark owner (e.g., allowing “Windows” to be removed from a future .CLEANING by Microsoft)? • How should the TMCH scope be limited to apply to only the categories of goods and services in which the generic terms in a trademark are protected? • How can TMCH services be much more transparent in terms of what is offered for ICANN pursuant to ICANN contracts and policies vs. what services are offered to private New gTLD registries pursuant to private contract? • How can the TMCH provide education services not only for trademark owners, but for the registrants and potential registrants who are equally impacted by their services? • How quickly can a cancelled trademark be removed from the TMCH database? (note: rejected trademarks and cancelled trademarks are different, with cancelled trademarks involving trademarks that have already been issued). • What is the chilling effect of the 90 day Trademark Claims process? • Should Tdmk +50 be reversed? 		Update Section 3
77.	<p>Given that no proceedings have taken place under the Post-Delegation Dispute Resolution Procedures (PDDRP) involving allegations against an entire registry and its gTLD, we have no evidence or record for review and we think it is premature for the review of this policy.</p>	NCSG	Update Section 3
78.	<p>As per paragraph 3.2.2.3, where we have been asked to provide feedback on whether all the RPMs have, in the aggregate, been sufficient to meet their objectives or whether new or additional mechanisms, or changes to existing RPMs, need to be developed.</p> <p>Italy believes that a global review of the Rights Protection Mechanisms in all gTLDs is to be strongly recommended, for that reason we are very supportive of the creation of a specific Policy Development Process.</p>	GAC IT	Update Section 3

#	Comment	Contributor	Action Taken
79.	The current structures of RPMs create serious barriers to access for end users, especially the ones from developing regions.	ALAC	Update Section 3
80.	The cost of registering a trademark may already be a burden to many end users. The additional cost of protecting that trademark against unlawful or abusive registration in the DNS may render end users unable to access the RPMs.	ALAC	n/a
81.	<p>The ALAC supports the suggested list of potential issues included in the Preliminary Issue Report, and the ALAC further recommends to add the following questions and remarks to the potential issues concerning Uniform Domain-Name Dispute- Resolution (UDRP), Uniform Rapid Suspension System (URS), Trademark Clearinghouse (TMCH), Trademark Claims and Sunrise Period:</p> <ul style="list-style-type: none"> a. Are there any barriers that can prevent an end user to access any or all RPMs? b. How can costs be lowered so end users can easily access RPMs? c. There should be a review on accessibility to TMCH for individuals, private trademark holders and trademark agents in developing countries. 		Update Section 3
82.	The ALAC is concerned that, so far, the TMCH has not achieved its goal of protecting a large number of trademarks in the DNS. This concern is based on the fact that “Between March 2013 and May 2015, the Clearinghouse verified and accepted for inclusion 32,667 nationally or regionally registered trademarks, 42 trademarks protected by stature or treaty, and two court-validated trademarks. These numbers amount to a little over 10% of the 2015 Year-to-date registered trademarks only in the United States Patent and Trademark Office. This, of course, is a clear signal that registrants are not using the services of the TMCH, although the reasons are not as clear. One of the possible reasons may be the fact that there is only one provider of the service. In that sense, the ALAC recommends that the TMCH services be open to more providers so that competition will drive prices down and lower the barriers to entry for end users to this specific RPM. A single provider for the TMCH services harms the market and the end users’ rights insofar its monopoly constitutes a serious barrier to access its services.	ALAC	n/a
83.	The ALAC is confident that a thorough Policy Development Process to review all rights protection mechanisms in all generic top-level domains will benefit end users and contribute to enhance trust in the DNS.	ALAC	Update Section 3

#	Comment	Contributor	Action Taken
84.	While the BC believes that the UDRP is working well overall, it now seems timely to engage in a review of its performance with an eye toward considering possible improvements, so long as that UDRP review commences after completion of the RPM review.	BC	Update Section 3
85.	The Report lays out three possible options for conducting the review of the RPMs and UDRP. The BC strongly prefers the third option.	BC	Update Section 3
86.	In regard to the draft Working Group (WG) Charter appearing at pp.34-7 of the Report, we would request that there be two final Charters, one for the RPM review WG and the second for the UDRP review WG, and that both Charters be based upon elements of the comments that follow. However, if our input on review options is followed the UDRP review will not commence until the RPM Review is completed. Therefore, the Charter for the UDRP review should not be made final until its commencement; we comment further on the proper scope of a UDRP review later in this submission. The final text of both PDP Charters will of course be subject to standard GNSO Council review and approval.	BC	Update Section 3
87.	The BC then provides a number of answers to the list of potential issues for a future PDP. The answers will be forwarded to the WG if/when it will be created.	BC	n/a
88.	In addition to the above issues, the BC believes that any UDRP review should give serious priority consideration to developing a standard agreement to be entered into between ICANN and all accredited UDRP providers. This would be consistent with the concerns we have already expressed regarding lack of adequate consistency and predictability in UDRP decisions, and has been a long-standing BC position.	BC	Update Section 3
89.	<p>The BC does not agree with the opinion that the scope of a UDRP review should be limited to subjects raised in comments filed in 2011, as well as topics derived from the RPM review.</p> <p>A sequential approach with the RPM review preceding the UDRP would mean that UDRP review would not commence until 2017 at the earliest. And the RPM review would necessarily be focused on those RPMs, and not on UDRP issues that have arisen or assumed greater significance since 2011.</p> <p>Therefore, the BC believes that the scope of a PDP encompassing review and potential reform of the UDRP should be delineated based upon the WG Charter approved by the GNSO Council at the time of its consideration, and should be informed by the input of those the Councillors represent as well as others who submit public comments on a draft Charter at the time of its consideration.</p>	BC	Update Section 3
90.	Forum strongly recommend that any RPMs review not carry with it the implication that change is a necessary outcome. In fact, we strongly caution that any changes be taken with an abundance of caution so as not to neutralize the overwhelming success of the UDRP. Second, we strongly recommend that any review be undertaken as a whole. Any issues that exist with a particular RPM should be balanced in light of the other RPMs. Any identified gap in one could be fixed by a solution with another, and so on.	Forum	Update Section 3

#	Comment	Contributor	Action Taken
91.	A review of RPMs should not, have at its core, any assumption that things must change. A mindset that “of course” something is broken will never lead to an objective outcome.	Forum	Update Section 3
92.	It is also important to make sure that a review is looking for unintended consequences (negative or positive) caused by the RPMs themselves or the current processes of the new gTLD program.	Forum	Update Section 3
93.	The key to a review is not to propose changes to fix every little bump or inconsistency, but to identify global issues of concern that affect reasonably large populations of users.	Forum	Update Section 3
94.	Until metrics are created to define success, an RPM review will likely flounder and could become a shouting match for competing interests.	Forum	Update Section 3
95.	The URS and the UDRP should be examined together. They were designed to be complementary. But some constituencies are looking for the quality and detail of the UDRP to be handled using the automation and “quick look” review of the URS. A full-scale review of both policies together would allow the working group to compare and contrast where both policies have succeeded or failed. And looking at Claims data or TMCH filings might contribute to an understanding of why parties are choosing one over the other or choosing neither at all.	Forum	Update Section 3
96.	There are not so many “grey” area cases as to render the system broken. Features like (1) “loser pays” or (2) “penalties for reverse domain name hijacking” or (3) “laches” or (4) “codify a ‘free speech’ defense” seem to us to be red herrings. First, seventy percent of respondents don’t respond; they’re not likely to pay. Second, there are relatively few cases of RDNH given the high cost to bring a UDRP (and to those who have argued to reduce the fee, consider what sort of decision you’re likely to get from a competent attorney if you further reduce rates that haven’t gone up since 2009). Third, the majority of panelists will recognize a delay in bringing a UDRP dispute when the use of the domain name is not targeting the complainant’s brand. And fourth, the UDRP has a well-used paragraph 2(c)(iii) that is routinely used to justify true “free speech” uses.	Forum	Update Section 3
97.	ICA prefers a separate and sequential approach for the reviews and subsequent reports and recommendations, with the RPM review preceding and thereby informing the UDRP review. [Option 3]	ICA	Update Section 3

#	Comment	Contributor	Action Taken
98.	ICA believes that the URS has been largely effective in achieving its intended goals. We would strongly oppose any alterations that could make it a substitute for, rather than a narrow supplement to, the UDRP. In addition, the initiation of a PDP to determine whether the URS and other new gTLD RPMs should become Consensus Policies for all gTLDs, and the full consideration of the multiple transitional issues accompanying any such decision, illustrates again that the decision of GDD staff to seek imposition of the URS in contract renewal negotiations with legacy gTLDs was a direct and impermissible intrusion into the policy realm reserved to GNSO Council by ICANN's Bylaws. ICANN's Board should therefore instruct GDD staff to cease and desist from any such attempts during the time that these PDPs are open and active, and should refuse to approve any legacy gTLD renewal contract that contains any provision of new gTLD RPMs.	ICA	Update Section 3
99.	The language of Trademark Claims notices may deter legitimate non-infringing domain registrations at new gTLDs. This situation can be partly but not completely addressed by providing more comprehensive information in the notice to the prospective registrant, and also clarifying under what circumstances the post-notice registration of a domain will be considered to constitute "bad faith" for UDRP and URS purposes.	ICA	Update Section 3
100	Labels that generate a Trademark Claims notice should not be expanded beyond the present system of exact matches of the trademark, plus domain labels recovered in UDRP or court actions under the 'Trademark-plus-fifty' implementation measure.	ICA	Update Section 3
101	The right of first refusal for a premium domain name during or after the sunrise period should be conditioned on whether the trademark is unique or a dictionary word, and if a dictionary word whether the gTLD label is related to the goods and services for which it is registered.	ICA	Update Section 3
102	Our responses to the report's UDRP questions emphasize the need for a mechanism, perhaps via an optional internal appeal, to establish greater predictability and consistency in decisions dealing with similar facts; better protection for free speech, especially legitimate noncommercial criticism; more equitable time periods for respondents to choose counsel and draft answers; a fairer means of allocating cases among UDRP providers and their panelists; and establishment of a uniform laches policy barring complaints in defined circumstances.	ICA	Update Section 3
103	Our additional comments on the UDRP address the need for clear guidelines and meaningful penalties to determine and deter attempted Reverse Domain Name Hijacking; greater transparency requirements for UDRP providers; and establishment of an ICANN-maintained centralized database of UDRP decisions and other relevant information.	ICA	Update Section 3

#	Comment	Contributor	Action Taken
104	Finally, we have strong disagreement with the view expressed by a minority of commenters that the UDRP review anticipated by the GNSO Council's Resolution of December 15, 2011 should not proceed at all, and that any such undertaking would be unduly arduous and dangerous. The UDRP is the only ICANN Consensus Policy that has never been reviewed. Like any human undertaking, it is not perfect and was drafted by individuals who could not have known how it would be implemented in practice. Any UDRP review should of course be fully informed by the actual record of UDRP practice and experience of participants, and should proceed carefully. But we are confident that a good faith UDRP review that considers the legitimate rights and interests of both registrants and complainants, as well as related public policy issues, can produce a more balanced and consistent system that preserves the fundamental virtues of the UDRP while yielding modifications that benefit all affected parties.	ICA	Update Section 3
105	The UDRP needs to be fixed. There should be no dispute about this. The UDRP process should be reformed to provide results that are consistently 1) fair and 2) predictable (for both domain name registrants and trademark holders). There are 2 major problems: (a) UDRP Panelists who "go rogue" and make up the law at personal whim, and (b) the increasing malevolent attempts by some trademark holders to steal valuable dot COM domain names by filing meritless UDRPs. Both of these practices need to be corrected or stopped by reforming the UDRP. Since ICANN created the UDRP and has known about these problems since at least 2001, ICANN bears responsibility.	DM	Update Section 3
106	The UDRP should apply to all gTLDs. The URS should not apply to legacy gTLDs, particularly those in existence before ICANN was incorporated, including .COM, .NET and .ORG. As noted above, there is a problem with some trademark holders attempting to steal .COM domain names by filing meritless cases. Expanding the URS to .COM would only exacerbate this malevolent activity. There are no penalties for Reverse Domain Name Hijacking provided in the UDRP; perhaps this should be included in the needed reform of the UDRP.	DM	n/a
107	Given that ICANN, for purposes of making money, has unleashed hundreds of unwanted, unneeded new gTLDs upon the global DNS like some modern day version of the Medieval bubonic plague, provisions of the URS should be expanded to protect trademark holders in the case of all new gTLDs, now or in the future.	DM	n/a
108	JP suggests a number of changes and amendments that in his view should be made to the URS and other policies – these suggestions will be forwarded to the PDP Working Group if/when it is formed.	DM	n/a
109	JP provides answers to some of the issues raised in the report. These will be forwarded to the PDP Working Group if/when it is formed.	DM	n/a