

ICANN Public Comment Summary Report

Proposed Updates to Existing Rights Protection Mechanisms Documentation

Open for Submissions Date:

Thursday, 24 August 2023

Closed for Submissions Date:

Monday, 30 October 2023 (Extended from Tuesday, 03 October 2023)

Summary Report Due Date:

Wednesday, 15 November 2023 (Extended from Tuesday, 17 October 2023)

Category: Policy

Requester: ICANN org

ICANN organization contact(s): antionietta.mangiacotti@icann.org

Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023>

Outcome:

ICANN org received a total of 6 submissions from groups, organizations, and individuals. ICANN org will review the suggested changes to existing RPM documentation in consultation with the IRT to determine which changes are in scope for implementation of the RPM Phase 1 policy recommendations.

Section 1: What We Received Input On

This Public Comment proceeding was intended to gather input from the ICANN community on the proposed implementation of the recommendations received from the Rights Protection Mechanisms (RPMs) Phase 1 Policy Development Process (PDP) that call for updates to existing procedural documentation concerning the RPMs. Specifically, ICANN org was seeking input on the following RPM-related procedural documents, which have been revised in accordance with the following PDP Phase 1 outputs:

- Uniform Rapid Suspension (URS) Rules: updated in accordance with URS Recommendations 1, 2, 3, 4, 6, 7, and 11.

- URS Procedure: updated in accordance with URS Recommendations 1, 4, 5, and 6.
- URS High-Level Technical Requirements for Registries and Registrars: updated in accordance with URS Recommendation 15.
- RPM Requirements: updated in accordance with Trademark Claims Recommendations 2, 5, and 6.
- PDDRP Rule: updated in accordance with the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP) Recommendation.

Note that the implementation of the RPMs PDP Phase 1 recommendations is divided into five separate groups of work that allows for easy-to-implement recommendations to be implemented first, and those recommendations with more complexity and timing considerations to be implemented sequentially according to level of effort. The recommendations above, which entail updating documentation and related materials concerning RPMs, are being implemented first with the help of a community-based Implementation Review Team (IRT).

Section 2: Submissions

Organizations and Groups:		
Name	Submitted by	Initials
Accent Law Group, Inc.	Steve Levy	ALP
ICANN Business Constituency	Business Constituency	BC
WIPO Arbitration and Mediation Center	Brian Beckham	WIPO
Intellectual Property Constituency (“IPC”)	Patrick Flaherty	IPC
Non-Commercial Stakeholder Group	Johan (Julf) Helsingius	NCSG

Individuals:		
Name	Affiliation (if provided)	Initials
Bidaro Albidary	Almalik Lilduwmayn	BA

Section 3: Summary of Submissions

There were six submissions to the Public Comment proceeding. For the purpose of this summary, key themes from each of the comments are highlighted below. All comments are available in full on the [Public Comment page](#).

General Comments

“The Business Constituency has reviewed the Implementation Proposals for the Rights Protection Mechanisms documentation, and agrees that they are consistent with and support the Policy Proposals.” (BC) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/icann-business-constituency-bc-03-10-2023>

“In general, the IPC agrees with and supports the IRT’s report and associated implementation plan.” The IPC also notes that “Any references in the implementation documents referring to “Whois” or “WHOIS” may need to be updated to “Registration Data Directory Service” (“RDDS”) or any other updated terminology to reference the relevant registration data directory / query / disclosure service in current usage.¹ In addition, although the IPC believes the IRT would be capable of implementing the additional 13 recommendations of the PDP without pushing them off to a work track of the future Subsequent Procedures IRT, the IPC does not oppose this approach and looks forward to supporting implementation of these further RPM-related recommendations in due course.” (IPC) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/intellectual-property-constituency-%E2%80%9Cipc%E2%80%9D-03-10-2023>

“The NCSG would like to thank the IRT for all the work this team has already done until now. Most of the changes to the documents are welcome and reflect a genuine attempt to seek a better level of balance in alternative dispute resolution systems that historically seem to be created, interpreted, or modified towards the interests of rights holders. The search for balance and fairness, fundamental pillars not only of ICANN's policies but also of intellectual property, are not just a question of ethics or justice, but a way of guaranteeing the legitimacy of these systems. For this reason, the NCSG urges the team to remain attentive to sensitive points of the debate around Rights Protection Mechanisms (RPMs) developed within ICANN, especially in the processes that have led to the present moment, which is the subject of this Public Comment. The language used is highly relevant, particularly in the field of intellectual property, and cannot be perceived as something secondary, which is why we recommend that all the points be reviewed in detail to reflect the aforementioned discussions.” (NCSG) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/non-commercial-stakeholder-group-30-10-2023>

URS Rules

“The IPC supports the proposed amendments to the URS Rules, which we believe faithfully implement the PDP recommendations.” (IPC) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/intellectual-property-constituency-%E2%80%9Cipc%E2%80%9D-03-10-2023>

¹ The IPC notes that regardless of whether this system is called “WHOIS” or the “Registration Data Directory Service” (RDDS), it is important to recognize that reasonable access to domain name registration data serves a critical role in addressing abuse and protecting consumers in the domain name ecosystem – including by enabling intellectual property rights owners to investigate and pursue enforcement action against potential infringers. The IPC continues to advocate that ICANN org and those participating in the ICANN multistakeholder community revisit current registration data policy, which imposes undue hurdles to rights holders’ legitimate access to data – particularly in light of regulatory developments such as the EU NIS2 Directive.

“At 2(a)(i) given the intended rapid nature of the URS, postal mail should not be required.

At 5 it jumps from (a) to (e), i.e., (b), (c), and (d) are missing.

At 5(a)(iii) this should be moved to its own letter, and not sit under (a) (moreover, in that (a) states that the Response “shall” whereas (iii) states that the “Respondent may request”).

At 9(c) it should state that the Examiner should be fluent in English and the language of the “Determination” (not the language of the “Response” given that – as is stated in the final half of this sentence – per the panel’s discretion, the language of the proceedings may be different than the language of the registration agreement/Response).

At 12(d) and (e) instead of “made a prima facie case according the” it should say “satisfied”. (WIPO) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/wipo-arbitration-and-mediation-center-03-10-2023>

URS Procedure

“Under Section 8, “Examination Standards and Burden of Proof” we recommend the following modification in relation to current sub-paragraphs 8.1.3 and 8.1.4:

8.1.3 The domain was registered and is being used in a bad faith. **As noted above in Section 5.9.3, changes to the content found on the website associated with a domain name does not in and of itself constitute bad faith under the URS, but such conduct may be evidence of bad faith depending on the circumstances of the particular dispute.**

8.1.4 ~~The content found on the site was changed to argue that it is now a legitimate use.~~

We believe this proposed change clarifies that the language concerning changes to associated content as the disputed domain name is part of the “bad faith registration and use” element and not its own independent element of the URS.” (IPC)

<https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/intellectual-property-constituency-%E2%80%9Cipc%E2%80%9D-03-10-2023>

“I support the current proposed changes but feel that one item should be added for consideration to account for the situation where URS parties are able to negotiate the transfer of a disputed domain name after the conclusion of a URS case:

URS par. 10.2 should be revised to “...the domain name will not be able to be transferred, deleted or modified for the life of the registration unless both Complainant and Respondent mutually agree, in a written instrument signed by both parties, to a transfer of the domain name to Complainant. In such an event, the domain name shall be unlocked solely for the purpose of completing the transfer and the suspension of the domain name shall be removed after the transfer has been completed.” (ALP)

<https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/levy-steve-02-10-2023>

“At 1.1.2 the words “which is under consideration” should be removed.

At 1.1.3 “but only if the companies complaining are related” is redundant and should be removed.

At 1.2.1 and 1.2.2 it should say “Complaint” instead of “Complaining Party (Parties).”

At 3.3 the opportunity to amend a pleading following registrar disclosure of registrant information should be reworded so as to avoid a misunderstanding that it is a compliance deficiency (“inadequacy” as written); it is not an administrative deficiency.

At 4.2 the registrar provision of the language of the registration agreement should be moved up to 4.1 to be bundled with the registrar lock.

At 4.3 given the intended rapid nature of the URS, postal mail should not be required.

At 5.4 both given the intended rapid nature of the URS and for parity with the complaint, the word limit should be 500 (not 2,500).

At 6.1 the word “Determination” should be added after “Default.”

At 8.1.2 it should read “right or legitimate interest” (not “legitimate right or interest”) (see URS section 8.3).

At 8.1.4 this entire addition should be removed; it is already covered in 5.9.3, and it is moreover an illustration/consideration factor, not an examination standard.

At 9.6 it should be clarified that the days referred to are business days.

At 10, either the clause “If the Determination is in favor of the Complainant” should be set apart as a preamble for sections 10.1, 10.2, and 10.3, or it should be introduced at sections 10.2 and 10.3.” (WIPO) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/wipo-arbitration-and-mediation-center-03-10-2023>

TM-PDDRP Rules

“The IPC generally supports the proposed amendments to the TM-PDDRP Rules, with one proposed clarification to wording in the proposed amendment to Section 3(g):

Should any unrelated entities wish to file Complaints to the same PDDRP Provider concerning a Registry Operator that has engaged in conduct that has affected the Complainants' rights in a similar fashion, at the top or the second level of the same gTLD for all Complaints, Complainants may initially submit such complaints as a joint Complaint or may, at the discretion of the Threshold Panel, consolidate such complaints upon request after the disputes were filed. PDDRP Providers must ~~permit~~ allow for such consolidation in their Supplemental Rules. See the Provider's Supplemental Rules regarding consolidation.

The above minor change is intended to help clarify that the Supplemental Rules must allow for this consolidation (it is still in the discretion of the Threshold Panel to grant or permit it).” (IPC) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/intellectual-property-constituency-%E2%80%9Cipc%E2%80%9D-03-10-2023>

“The Definition of Complainant should also refer to the operation of a Top Level Domain (TLD) (see [PDDRP section 6.1 – “Standards Top Level”](#)).” (WIPO) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing->

[rights-protection-mechanisms-documentation-24-08-2023/submissions/wipo-arbitration-and-mediation-center-03-10-2023](https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/wipo-arbitration-and-mediation-center-03-10-2023)

RPM Requirements

“While reserving its right to comment further based on practical implications, the IPC supports, in principle, the proposed amendments to the RPM Requirements stated at Section 3.4 relating to asynchronous domain name registrations based on domain name applications (e.g., auctions / pre-registrations).” (IPC) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/intellectual-property-constituency-%E2%80%9Cipc%E2%80%9D-03-10-2023>

“We are particularly interested in knowing when the IRT will convene digital rights and law education groups to help clarify the Trademark Notice so it is understandable by those who are outside of ICANN, unfamiliar with ICANN, and unfamiliar with many of the issues they are facing in the Trademark Notice.” (NCSG) <https://www.icann.org/en/public-comment/proceeding/proposed-updates-to-existing-rights-protection-mechanisms-documentation-24-08-2023/submissions/non-commercial-stakeholder-group-30-10-2023>

Section 4: Analysis of Submissions

Overall, commentators support the proposed updates to existing RPM documentation. However, some of the feedback received also specified suggested changes to the URS Rules and Procedure, as well as the TM-PDDRP Rules and RPM Requirements (see Section 3: Summary of Submissions section above).

ICANN org will review the suggested changes and feedback received in consultation with the IRT to determine which changes are in scope for implementation of the RPM Phase 1 policy recommendations. The existing RPM procedural documents will be updated as appropriate.

Section 5: Next Steps

ICANN org will review the comments received in collaboration with the IRT to determine whether any further changes need to be made to the RPM procedural documents as a result of the input received. When this process is completed, the updated RPM procedural documents will be published on the ICANN website.