



Proposed Updates to Existing Rights Protection Mechanisms Documentation

Submitted October 3, 2023

These comments are submitted by the Intellectual Property Constituency (“IPC”), whose membership includes and represents trade associations, large multinational corporations, as well as small businesses and individuals.

The IPC appreciates the efforts of the Rights Protection Mechanisms (RPMs) Phase 1 Policy Development Process (PDP) Implementation Review Team (IRT) to implement the PDP recommendations. In general, the IPC agrees with and supports the IRT’s report and associated implementation plan. That said, below we provide limited comments identifying some areas where we believe further refinement may be appropriate.

1. URS Rules

The IPC supports the proposed amendments to the URS Rules, which we believe faithfully implement the PDP recommendations.

2. 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 merely 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).

3. Uniform Rapid Suspension (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 at the disputed domain name is part of the “bad faith registration and use” element and not its own independent element of the URS.

4. TMCH 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).

5. Other Comments

Any references in the implementation documents referring to “Whois” or “WHOIS” may need to be updated to “Registration Data Directory Service” or “RDDS” or any other relevant 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.

The IPC appreciates its role in the ICANN multi-stakeholder model and trusts that ICANN and the IRT will take these comments into consideration. We look forward to engaging in further work to implement the important consumer protection related recommendations stemming from the RPM review and related workstreams.

¹ The IPC notes that regardless of whether this system is called “WHOIS” or the “Registration Data Directory Service” (i.e., “RDDS”), it is important to recognize that reasonable access to domain name registration data serves a fundamental 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.