Transcription ICANN Dublin
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Review of All RPMs in All gTLDs Preliminary Issue Report
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Jonathan Robinson: And the next item we've got is an update from Mary and Lars on the work to review all of the RPMs in all gTLDs and the preliminary issue report, so an update and discussion on that. Go ahead Mary or Lars, are you going to…?

Lars Hoffmann: I'll take it. I'll give it a go anyway. Thank you Jonathan. This is Lars for the record. So yes the preliminary issue report on a potential PDP to review all RPMs in all gTLDs, which has been put out for public comment I believe late last week because the ICANN meeting obviously the period has been extended already from the start. It's open until the last day of November, the 30th.

A quick timeline – there was a review of the UDRP requested by the GNSO back in 2011. Staff recommended to delay until after the implementation of the new gTLD program that was granted by the council and now we are a little bit more than 18 months after. There was another extension.

Anyway, so the public comment is out and if we proceed the council will probably vote on the final issue report and proceedings in January. These are the main policies that we are looking at for here. I'm not going to go through these. You probably know most of them anyway.

The sunrise period and trademark claims periods, the URS, the UDRP, the PDDRP – Post-Delegation Dispute Resolution Procedures – and the trademark clearing house. And so while we're doing research on this, Mary and I, we obviously stumbled across a couple of things.

And there is some parallel efforts that are somewhat overlapping – and we elaborated on this obviously in the report – such as the trademark clearinghouse review that was requested by the GAC, the competition and consumer trust, consumer choice review, part of the ARTP, AR – anyway and dated by the AoC and applicants to PDP obviously are new subsequent rounds that may or may not be initiated by the council very soon.

And so all these somewhat – it might impact a PDP on the review of rights protection mechanisms. And so instead of suggesting a straightforward PDP and lining out a charter, staff decided to give the community three options on how to proceed, bearing this in mind.

The first option basically just start a charter and let any issues that may come up from overlapping efforts be sorted out by the working group itself. I'm paraphrasing slightly but that's what it boils down to.

The second issue is that you build in from the beginning a roadblock. So that's to say the working group gets going, has a charter, reviews these, but as soon as the consumer trust choice review is out and the TMCH review is out, there's the roadblock and the working group is required per its charter to review what has been coming out of those two parallel efforts and to implement that in a new work plan and/or even a new/extended scope.

The third option is that the effort of review would be divided into two phases. The first phase would be to have the new RPMs so anything that you saw on this slide apart from the URD piece or the other four have those reviewed first potentially under either a separate charter or even by the new subsequent round working group.

And then when that is finished and by that time one would assume the parallel efforts have also finished these three things. And then you would combine anything that comes out of that into a new PDP that would look at the UDRP specifically and any outcomes of the Phase I review that would either be done by a PDP or by the new gTLD PDP.

It's very difficult to summarize this in three minutes, which I haven't succeeded at all but even in five it's not quite as easy, so I recommend that you read through these options. Staff also pointed out explicitly if the community can come up with a better fourth or fifth option as it were to put these forward during the public comment period.

And so we are not entirely sure what is the very best way to go about this. Obviously we have our opinions but we think these are the three most likely possibilities, and so we're calling on the community to give us feedback and see how to proceed best with this review. And with that here are the next steps, very briefly.

So public comment – there's a session on Wednesday. The public comment closes the end of November. And then there's potentially - generally the council might vote on any recommendations that are then in the final issue report which will depend on the comments received by the community. Thank you.

Jonathan Robinson: Thanks Lars. For further discussion it's probably best to have the previous slide up. Sorry. So essentially through the public comment period you're looking at feedback on those three different options. That's your primary question in the whole thing? Or are there many more supplementary minor questions for the public comment?

Lars Hoffmann: No those are the - I mean it's a general issue report, the preliminary issue report. Obviously we're looking also for comments on we're lifting issues that are due for review that have been gathered from previous community input. So anything that is in the report is obviously out for public comment.

But specifically what is I think most important is to see what the community thinks is the best way forward considering the request for review and the power efforts that are going on and how to combine those most effectively.

Jonathan Robinson: Thanks Lars. Just a reminder, anyone is welcome to contribute to the discussion, not just those around the table and please state your name before speaking. Go ahead Steve.

Steve Metalitz: Thank you. Steve Metalitz, member of the Intellectual Property Constituency. This is just a question about the scope of this.

Some of us would have considered that an additional rights protection mechanism that is involved in the new gTLDs is the public interest commitments, which contain some obligations about how registries and registrars are supposed to deal with domain names that are being used to carry out piracy and counterfeiting among other rights violations.

Was there a - I don't see that addressed in the report. Was that a conscious decision to carve that out or was that something that was not brought to the attention of the staff in preparing this? Or I just wonder if you could react to that.

Mary Wong: I'm going to go ahead anyway. This is Mary from staff. So Steve I think that this is actually one of the purposes of having an issue report out for public comment because there's a number of discussions that we had internally as staff as to what ought to be the proper scope when you consider the rights protections mechanisms. And that's one of them.

And there's a couple of others that deal with related issues. I think the decision that we came down on was what were the policies and procedures that were specifically intended and developed as rights protection mechanisms and that's what we put in the report.

But if in the comments it comes out that the themes are strong enough then there's no reason why when the council considers it, it would not also consider those.

Steve Metalitz: Okay so that's an issue that could be raised in the public…

Mary Wong: Absolutely.

Steve Metalitz: …in the public comments, thank you. I'm not suggesting that it necessarily should be expanded to that. I just wanted to know what the background was. Thanks.

Jonathan Robinson: Thank you Steve. Thanks Mary. Paul.

Paul McGrady: Paul McGrady, member of the IPC and coming on the council here at the end of the meeting. Just a quick question on the three options. Are these the only three options?

                    Are they strictly mandatory or is it possible for the council to say at this time we're dealing with transition and a thousand other things and we're going to put this off for X number of months or whatever? Or are we on a course to move forward regardless of what else is going on right now? Thanks.

Jonathan Robinson: Okay go ahead Lars.

Lars Hoffman: Thank you. Thanks Paul. This is Lars. So these are the three options that we laid out. There's a preliminary issue report, there's a procedure obviously involved. We called for a fourth option or (unintelligible) option to be brought forward by the community. Whether that is to delay or not to do this review at all or whether it is to have a different way forward, that is up to obviously community comment on.

                    Staff will then assess the comments, whatever they may be, and then put forward the option that staff believes based on the comments is the best way forward.

                    Now at that point the council then decides whether to initiate a PDP or not. So staff might say well the feedback was very clear that Option 1 is the way

forward. That's what the community wants so that's what we recommend we do. Council please vote on a PDP, phrasing it slightly differently.

And if the council then says no we don't see at this moment this is the way forward, we want to delay this by a year or a month or whatever time, that's up to the council. But as staff we cannot recommend - unless, you know, every public comment would say we want to delay this. Then staff would recommend probably that we delay. But it's still then up to the council to make that happen or not. Thank you.

Jonathan Robinson: So I've got a couple more people. But I mean I took that question from Paul to be both on scope and timing. And to some extent we have the option to manage the timing as well.

I mean, even notwithstanding whether we modify the scope or the scope is modified through the public comment we have discretion on timing as well. It may be that there's a decision to respond to either comments or to some extent the council to respond in that way. So I've got (Margie) and Phil. So (Margie) go ahead.

(Margie): Yes I'm on the SI team and staff took the initiative and we managed the AoC processes. And so just - we'll talk about it tomorrow when we come with (Teresa). But one of the things that we raised in the issue report is the fact one of the subject matter for the review is the right protection mechanisms.

And it may very well be that at the conclusion of that review team that they make recommendations on how things should change from a policy process. So that's why it's one of the options listed to wait until that process is concluded to see whether there's a reason to do a policy development process at that point as opposed to now. So that's certainly something you all could consider. Thank you.

Jonathan Robinson: Thanks (Margie). Philip Corwin – Phil?

Philip Corwin: Thank you. Phil Corwin for the record. I just want - within the business constituency we have not yet discussed which of these different options we would favor. We're certainly going to be looking at that as we prepare a comment letter.

But I did want to allude to something involved with this report which I think is very integral to the integrity of the functioning of this council. In the report at Page 22 to 23 under the heading 3.2.2.3 the list of potential issues for review in a PDP, it lists a large number of potential issues that might be addressed by the PDP.

But it says these issues – and that's all the secondary issues – would be specific topics of the address as part of the charter by the PDP working group. In addition to the more general or overarching issues such as - and it lists two of them.

The first is – and no one would disagree with that this is an overarching issue – whether the RPMs have in the aggregate and it's sufficient to meet their objectives, etcetera.

And the second one, the second overarching issue, is whether any of the new RPMs such as the URS should like the UDRP be consensus policies applicable to all gTLDs.

Now on Tuesday of this week, the BC along with the non-commercial stakeholder group filed a request for reconsideration on the board's September 28 approval of the renewal registry agreements for Dot Cat, Dot Travel and Dot Pro, all of which contain the URS because GDD staff decided on their own to make them de facto consensus policies to have that as the starting point for negotiations with registry operators needing their contracts renewed and taking the position that whatever they wanted in terms of improvements in their own contract, what GDD staff wanted in return was acceptance of the new TLD RPMs including the ERS.

It really makes a mockery of this entire process for staff to make an overarching policy decision on an issue that we're supposed to be addressing in this PDP. So I just wanted to bring that to the council's attention. I think it goes to the integrity of the policy-making process.

I intend to raise with GDD staff tomorrow were they intent to keep as other legacy TLD contracts come up for renewal where they continue to have as our opening bid that they should include the URS because that as the BC comment letter on this originally stated in our view is the creation of de facto consensus policy by staff directive and it usurps the proper role of this council in making policy.

This is separate from the issue of whether the URS should be a consensus policy. The weight of opinion in the BC will probably be that it should be, but it should be done in the proper way and not by staff decision. So I wanted to bring that to everyone's attention and thank you for that.

Jonathan Robinson: Thanks Phil. So actually it does make sense that there's at least some discussion of that with the GDD tomorrow. So I assume that as you say that's on your list. And as we go through scoping out those different conversations for tomorrow, that can be part of it. So that makes sense. Any other comments, any responses from other counsellors on that topic or comments? Amr?

Amr Elsadr: Thanks. This is Amr and I'd like to follow up on what Phil said. We've had several discussions on the Policy and Implementation Working Group list over an extended period of time of concern that the new processes that have been adopted will not in fact be used effectively.

And I think that this would have been an excellent opportunity to avoid making de facto consensus policy and perhaps using one of these new processes and respecting some of the principles that came out of the final report of that working group.

There were options at hand to sort of launch maybe an expedited process with a limited scope as opposed to a full PDP. And this might also be something we might want to pay attention to in the future as the manager of the policy development process that these options are available. Thanks.

Jonathan Robinson: I'm thinking that's a perfect additional point to make tomorrow really. It makes sense to do that. The other question in my mind is timing wise, in terms of when this work was done just to understand if the contract negotiations were done ahead of when the final recommendation. It might be worth checking that as part of a homework for discussion tomorrow whether or not they were in that sense available as tools to use, okay? Heather?

Heather Forrest: Thank you Jonathan. Heather Forrest. I ask my question and I hope you won't read too much into it. I'll make it very clear from the beginning it's from a lack of knowledge. I understood in BA we had some discussions around these things, in BA, with staff.

And the question came up as to how did this happen let's say. And the answer that we got back in BA if I didn't misunderstand was that the parties had requested this, that it wasn't initiated by staff. And now I would like clarity I suppose in this discussion with the GDD as to who - how did these things find their way into the contract?

I don't know if - I wonder if it's a situation where we get one answer from GDD and we get another answer from the other side of the contract if you like – contracts because it's several in this case.

If council can take the opportunity to ask those questions I think that would be very helpful because it is a piece of information that we all need to know. And again whether we get a straight answer I'm not sure. But it would certainly help me in my understanding of what's going on here.

Jonathan Robinson: Fair enough. So in a sense we have a form of prep session. I know (James) is in line. Do you want to respond to that very quickly Phil?

Philip Corwin: Well just it's on the record. And when they published the renewal registry agreements for those three TLDs in writing in the publications asking for comment it stated quite clearly that GDD staff had proposed that URS and other RPMs be included because they had concluded that for the sake of consistency these legacy TLD contracts should have the same RPMs as the new TLDs.

So there's really no question. They put it in writing that they had proposed it and that they had decided that it was the proper thing to do for the sake of consistency which I think goes directly to the question of who decides what the policy is.

Jonathan Robinson: Okay so further follow-up from Heather and then I'll come to you (James).

Heather Forrest: Thank you Jonathan. Heather Forrest. Just a very quick follow-up. I've read the language too Phil and I take your point but I think we've all had experience where a possible interpretation is not let's say the understanding. And I say that in light of the comments that were made in BA.

I understood that there was hostility over this in Buenos Aires and the pushback was well this isn't something that was initiated by staff. We know that we're not supposed to initiate this sort of thing and I couldn't exactly point to the meeting where that happened. So I read the language too. I just I wonder what the intention was behind the language.

So perhaps we use that as the starting point for the discussion. We read this particular language. Can you explain what is meant by this? I think it would be a helpful thing in this discussion. Thanks.

Jonathan Robinson: Thanks. (James)?

(James):   So this is (James) speaking. So this is kind of where I was going as well in asking perhaps - reflecting back on the tense discussions in Buenos Aires

and wondering if looking at the registry reps here if we could possibly even have some of the other affected counter signatories to these new contracts present during this session so that we can make sure that we're getting both sides of the discussion at the same time.

But then I had another question which is that if I'm not mistaken as part of this, the - part of this new contract was to transform a sponsor TLD into an unrestricted gTLD. Am I correct in that? I mean that also just strictly playing devil's advocate could also be considered a policy decision.

You know, if someone went and said look, you know, I understand I've been operating this TLD as a sponsored TLD and that was part of the arrangement that, you know, back in 2000 and whatever that got this launched. But now I'd like to change that arrangement. And, you know, should that also have been just sort of a bi-lateral contract discussion or should that also have been part of a broader community discussion?

I don't know the answer to that. I'm just kind of putting that on the table as another element to this, which is that, you know, where do you draw the line here between just negotiating a contract versus actually making policy decisions bilaterally?

Jonathan Robinson: Food for the discussion tomorrow. Any other comments or points on this? Mary?

Mary Wong: Actually it's not on this specific point because I don't have any comments on this specific point. I think for us – Lars and myself and the staff presenting this – this is really a question of what the GNSO would like to do on the policy development side.

And so I just want to take this opportunity to of course remind everybody to read the wonderful issue report not just because it explains the options in somewhat greater detail than we had space on this slide but going back to something Lars mentioned as well – and that Phil picked up on – that there is

a list of potential issues that could be considered by the working group should a PDP or any of these options or any variations thereof be launched.

And I wanted to emphasize that that list of issues is taken from the community feedback that has been provided to the various times that we've talked about this, including in 2011 to the UDRP review and of course more recently to the RPM paper that was written by GDD staff.

So we've used that as a starting point should you want to proceed forthwith with PDP or like I said whatever variance. I also wanted to highlight again something what Phil said, that in addition to these very specific topics we do try to highlight in the issue report certain self-evident facts. I mean obviously one is that none of these policies have been comprehensively reviewed by the GNSO including the UDRP which is the longest standing consensus policy.

But more to the point, none of these RPMs have been reviewed comprehensively as a - I guess an overall compilation of measures. And so to the extent that any policy work is undertaken by the GNSO in whatever form and at whatever time, it would then serve as a framework, hopefully a uniform consistent framework for future reviews and future work of this type.

And finally I would just end by reminding everybody that these are just the three options that staff is raising based on the internal work that we've done including with our GDD colleagues and strategic initiatives. There may well be – as Lars said – four or five other ways that are much better or that take some part of this and make it more useful for the GNSO.

So please do give us your comments and hopefully we'll find a good way forward. Thank you.

Jonathan Robinson: Thanks Mary and thanks for bringing us back to that. I accept the connection with and the concern with URS and the legacy contracts. But primarily this session is about dealing with this report and the public comment

on it. We have the option with the GDD tomorrow and we can work up those topics as part of the later work today.

So that brings us to a conclusion on this session.