

Proposal for An Approach toward Rechartering the Review of All Rights Protection Mechanisms (RPM) in All gTLDs Policy Development Process (PDP) Phase 2: Review of the Uniform Domain Name Dispute Resolution Policy (UDRP)
9 July 2021

Introduction & Proposal:

The GNSO Council has approved the RPMs PDP Phase 1 Final Report and submitted the recommendations to the ICANN Board for consideration. Under the [RPMs PDP Charter](#), the next step is for the GNSO Council to initiate Phase 2 of the PDP, to review the UDRP, although the Charter does not specify the timing for this step. The GNSO Council had previously indicated that, prior to initiating Phase 2, they wish to review and potentially amend the RPM Charter.

To ensure that the rechartering process focuses on specific issues and topics that could benefit from a comprehensive policy review, resulting in a clearly scoped and precise Charter, GNSO Council leadership suggests that the Council consider as an option whether to first request that ICANN org’s Global Domains & Strategy team prepare a Policy Status Report (PSR). The PSR should: (1) identify the major substantive and procedural issues that have been reported to ICANN org and the respective UDRP providers regarding use of the UDRP; (2) include recent, relevant and available data that can assist with an effective assessment of the UDRP; and (3) highlight any changes and trends that have been observed since the GNSO’s 2011 [Issue Report on the State of the UDRP](#).

Council leadership believes that the following factors support the request for a PSR. First, as noted, the last Issue Report focusing on the UDRP was published in 2011. Given the timing of that Report, it will be crucial to gather data on new issues or relevant information that has emerged in the past ten years that could be relevant to facilitate a clearly scoped and precise policy review. Second, as noted in the Final Report on the Implementation of GNSO PDP 3.0¹, the Council and ICANN community have acknowledged that policy development should be data-driven, and the PSR can provide those data and metrics. Third, the RPMs PDP working group as well as the Competition, Consumer Protection & Consumer Trust Review Team had noted a dearth of available data that can be used to anchor a review – while a PSR need not contain a full analysis of the tens of thousands of UDRP panel decisions that have been made since its inception, a PSR can provide a useful starting point for Phase 2 by noting the available data sources. Finally, feedback provided in the RPMs PDP working group [Self-Assessment](#)² noted that a much more tightly scoped Charter is necessary in order to minimize the sort of problems that PDP 3.0 was intended to address, and that the working group identified in its self-assessment.

¹ See: <https://gns0.icann.org/sites/default/files/file/field-file-attach/pdp-final-report-10feb20-en.pdf>.

² Feedback from the self assessment include concerns that the Phase 1 Charter was not objective, with questions that were repetitive, mis-guided, and not properly reviewed by GNSO Council. Commenters noted that the poorly vetted charter questions contributed to the divisive and highly partisan positions of some members and the inability of the Working Group to reach agreement on meaningful changes to policy. Most comments concurred that the initial part of the work consisted in gathering and assessing data to further refine the charter when this should have been done prior to launching the PDP.

Background

The GNSO Council initiated the RPMs PDP on 18 February 2016 and chartered the working group in March 2016. This PDP has two phases: Phase 1 reviewed all the RPMs applicable to gTLDs launched under the 2012 New gTLD Program. Phase 2 will focus on reviewing the UDRP, which has been an ICANN consensus policy since 1999. On 21 January 2021, the GNSO Council unanimously [approved](#) the Phase 1 Final Report. On 19 March 2021, the GNSO Council sent the [Recommendations Report](#) to the ICANN Board with the recommendation that the Board adopt all the Phase 1 final recommendations.

As noted in the RPMs PDP Charter, prior to the launch of the New gTLD Program, ICANN org had published a [Final Issue Report on the current state of the UDRP in October 2011](#). The recommended course of action in that UDRP Final Issue Report was not to initiate a PDP at the time, but to hold off launching any such PDP until after the new Uniform Rapid Suspension procedure (URS) had been in operation for at least eighteen (18) months. In addition, a RPM [Staff Paper](#) (the final version of which was published in September 2015) had explicitly noted that some community concerns that had been raised might be appropriate topics for policy development work.

The RPMs [Final Issue Report](#) which scoped the work for the RPMs PDP had proposed that a review of the UDRP be conducted in Phase 2, after a review of the RPMs developed for the New gTLD Program has been completed. The UDRP review was to be based substantially on the concerns specific to its scope that were raised in the 2011 GNSO Issue Report, as updated or supplemented by issues identified during the public comment forum for the Preliminary Issue Report for this PDP and other relevant topics, including any that may be noted during Phase 1.

Conclusion

In summary, at this point in time, no further analysis has been conducted as to issues or potential new topics that could be included in a UDRP review. Consequently, requesting that ICANN org provide the GNSO Council with a PSR seems to be an appropriate starting point for scoping and rechartering RPMs Phase 2.