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Phase 1 Initial Report on the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process

18 March 2020

Status of This Document

This is the Phase 1 Initial Report of the GNSO Policy Development Process (PDP) on the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs, covering RPMs applicable to gTLDs launched under the 2012 New gTLD Program. This Initial Report has been posted for public comment.

Preamble

The primary objective of this Initial Report is to solicit input/feedback on the PDP Working Group's: (i) twenty-six (26) preliminary recommendations; (ii) seventeen (17) specific questions for community input; and (iii) twenty-four (24) proposals submitted by individual Working Group members that did not rise to the level of becoming preliminary recommendations. In addition, the Working Group invites input on its six (6) overarching Charter questions. This Initial Report also documents the Working Group's deliberations and other pertinent information that provides background, context, and rationale. The Working Group will produce its Final Report after its review of the public comments received in response to this Initial Report, and subsequently submit its Final Report to the GNSO Council for its consideration.

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1 Executive Summary

1.1 Background

On 18 February 2016, the GNSO Council voted[1] to initiate the Policy Development Process (PDP) on the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs. On 15 March 2016, the GNSO Council approved the PDP Charter[2] for the review to be conducted in two phases. Phase 1 focuses on reviewing all the RPMs and associated structures and procedures applicable to gTLDs launched under the 2012 New gTLD Program, specifically:

- The Uniform Rapid Suspension System (URS);
- The Trademark Clearinghouse (TMCH);
- The Sunrise and Trademark Claims services offered through the TMCH; and
- The Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP).

Phase 2 will focus on reviewing the Uniform Dispute Resolution Policy (UDRP), which has been an ICANN Consensus Policy since 1999. Please see the "Background" section of this Initial Report for summaries of these RPMs.

On 21 April 2016, the Working Group held its first meeting to commence its Phase 1 work and has been meeting regularly since that time.

1.2 Deliberations and Outcome

The Working Group's Charter contains a list of specific topics and questions that were reproduced verbatim from previous ICANN community consultations on the topic of RPMs. This led to the Working Group agreeing, early on in its work, that it would first need to refine these original Charter questions so as to clarify their intent and ensure that the PDP discussions remain objective and neutral. Please see the "Annex B - Charter Questions" section of this Initial Report for additional details.

To address the final agreed Charter questions for Phase 1, the Working Group engaged in extensive data collection and analysis efforts, as to date there have not been comprehensive studies or data collected that measures the effectiveness of the Phase 1 RPMs.

As a result of its analysis of the data and input it collected, the Working Group is proposing a total number of twenty-six (26) preliminary recommendations at this time. No formal consensus call has been taken on any of the preliminary recommendations, but these received sufficient support among the Working Group members to be included as preliminary recommendations for public comment.

[1] See the approved GNSO Council motion initiating the PDP here: https://gnso.icann.org/en/council/resolutions#201602
[2] The Charter of the PDP Working Group is included in the "Annex A - PDP Working Group Charter" section of this Initial Report. It can also be downloaded here: https://gnso.icann.org/sites/default/files/filefield_48755/rpm-charter-15mar16-en.pdf

The Working Group is also including seventeen (17) questions for which it wishes to seek community input. The Working Group hopes the community input will allow it to finalize any recommendations that it may wish to make on these topics in its Final Report. All these preliminary recommendations and community questions are consolidated in the "Overview of Preliminary Recommendations and Questions Seeking Community Input" section of this Initial Report.

In addition, the Working Group is putting forward a total number of twenty-four (24) individual proposals specifically pertaining to the URS and TMCH, which are included in the "Individual Proposals (Non-Recommendations)" section of this Initial Report. These proposals were submitted by individual Working Group members for Working Group consideration but have not, at this time, attained sufficient agreement amongst the Working Group members such as to become preliminary recommendations.

This Initial Report also includes a summary of the Working Group's discussion of the additional marketplace RPMs that several Registry Operators and the current TMCH Validation Service Provider have voluntarily adopted, over and above the mandatory ICANN RPMs. The Working Group did not develop any specific recommendations concerning these RPMs as they are outside the scope of this PDP. Please see the "Additional Marketplace RPMs" section of this Initial Report for details.

It should be noted that the PDP Charter includes several general, overarching questions as well as a number of additional questions that the Working Group is expected to address at the conclusion of Phase 1 or Phase 2 of its work, as appropriate. The Working Group also invites input on six (6) overarching Charter questions during the public comment proceeding for the Initial Report. Furthermore, after the completion of the public comment, the Working Group is expected to consider a general question about the additional marketplace RPMs, which is related to one of its overarching Charter questions. These overarching Charter questions and the additional general question are described in the "Next Steps" section.

1.3 Conclusions and Next Steps

This Initial Report will be posted for public comment for 40 days. After the Working Group reviews public comments received on this Initial Report, it will finalize its recommendations and develop the Final Report.

The Working Group's review of the public comments may lead to Working Group consensus to:

■ Amend, add, and/or remove its preliminary recommendation published in this Initial Report;

■ Make final consensus recommendations on any of the proposals submitted by individual Working Group members that are published in this Initial Report.

Following a formal consensus call at the plenary level, the Working Group's Final Report will be updated accordingly with the proposed PDP final recommendation, which will then be reviewed by the GNSO Council and, if approved, forwarded to the ICANN Board of Directors for approval as an ICANN Consensus Policy.

1.4 Other Relevant Sections of this Initial Report

For a complete review of the issues, methodologies, and interactions of this Working Group, the following sections are included in this Initial Report:

- Summary of Working Group deliberation that includes context for preliminary recommendations and community questions;

- Documentation on the Working Group's Sub Team approach, data gathering and review efforts, and Charter question refinement work;

- An annex of featured documents and tools that assisted the Working Group's review of Phase 1 RPMs.