

One World
One Internet

ICANN Update: What We're Doing, What We're Not, and Why This Matters to Intellectual Property Owners

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Session Focus on Three Current Issues/Topics

Reviewing the Rights Protection Mechanisms for Trademark Owners in the New gTLD Program

- Scope, timing and policy review

Protection of Geographic Names at the Top and Second Level in Future New gTLDs

- Fate of the current proposal by a group of governments

Whois Policy and related Procedures – Problems, Proposed Changes and Potential Policy Work

- Imminent policy development process – scale and scope of effort

I. Reviewing the various Rights Protection Mechanisms (RPMs)

What we have now:

- The “legacy” gTLDs = ***UDRP***
- The New gTLD Program = ***UDRP + URS + Trademark Clearinghouse*** (sunrise, claims notices as minimum mandatory requirements) + ***Post-Delegation Dispute Resolution Procedure (PDDRP)***

February 2015 Draft ICANN Report on RPMs:

- *“intended to be available to **inform the Issue Report requested by the GNSO as well as the independent review of Trademark Clearinghouse recommended by the GAC** [and] input to the Review Team on Competition, Consumer Trust, and Consumer Choice [required by the] Affirmation of Commitments, charged with assessing the effectiveness of the safeguards developed for the New gTLD Program.”*

What the paper is:

- Collecting data and input from users and providers about effectiveness of RPMs developed for the New gTLD Program

What it is not:

- A review of *ALL existing RPMs* (including UDRP)
- A replacement for exhaustive policy review – the role of the community-based Generic Names Supporting Organization (GNSO)
- GNSO Council has requested an Issue Report – mandatory first step in a new policy development process
- Issue Report due in *October 2015* – will take into account the final version of the February paper

User and provider feedback being sought on:

- *Verification standards used by the TMCH*
- *Clarity of rules and guidelines on, e.g. word marks, the “dot” character, “identical match”*
- *“Proof of Use” requirement*
- *Effectiveness of “sunrise”, including dispute resolution procedure*
- *Effectiveness of Claims Notices*
- *Effectiveness of URS service*

Further Information:

- February 2015 paper and public comment forum (open till 3 May 2015):
<https://www.icann.org/public-comments/rpm-review-2015-02-02-en>
- GNSO Council resolution calling for Issue Report on RPMs in both legacy and new gTLDs:
<http://gnso.icann.org/en/meetings/minutes-council-29jan15-en.htm> (approval of six-month extension of time to consider February 2015 paper); updating
<http://gnso.icann.org/en/council/resolutions#201112>
(December 2011 – calling for March 2015 Issue Report)

II. Work on Geographical Names

- **29 October 2014:** paper published for public comment
“Geographic names should not be allowed to be registered as gTLDs, unless requested by the relevant communities where they belong or after a specific authorization given by the government or community”
- **31 December 2014:** Over 20 comments, including:
 - *ICANN’s ccNSO Council, ICANN’s gTLD Registries Stakeholder Group, Business Constituency, IP Constituency, ICANN’s At-Large Advisory Committee, civil society and industry groups (AIPPI, INTA Internet Committee, MARQUES and USCIB)*
 - *Concerns expressed over legal basis for recommendations and vagueness of definitions (including the “public interest”)*
- **11 February 2014:** Public community session at ICANN52

What the paper is:

- A proposal from a sub-working group of ICANN's Governmental Advisory Committee (GAC)

What the paper is not:

- ICANN or even the GAC's formal position
- Output of the current Cross-Community Working Group for the Use of Country & Territory Names at the top level in new gTLDs for the next round

Much remains to be discussed by the community and agreed on (including by the GAC through consensus) before then

Further Information:

- GAC Sub-Working Group paper:
<https://gacweb.icann.org/download/attachments/35455403/Geo%20names%20in%20new%20gTLDs%20Updated%20%20V3%20%2029%20august%202014%5B4%5D.pdf?version=1&modificationDate=1411549504000&api=v2>
- Summary of public comments received:
<https://gacweb.icann.org/display/gacweb/Summary+of+community+input>
- Cross-Community Working Group on Use of Country & Territory Names as Top-Level Domains:
<https://community.icann.org/x/X7XhAg>

III. Whois – Policy and Procedural Reviews

- Data retention of registrant information required by ICANN's ***Registrar Accreditation Agreement*** (RAA), with specific procedure for exemption/waiver – community has raised concerns over procedural requirements and delay
- Closely related to ongoing community discussion over ICANN's ***Whois Conflicts with National Laws*** procedure
- More broadly, data protection and retention – and general concerns over privacy rights – are an increasingly central issue in potential work involving replacing the current Whois system with a new ***Registration Directory Service*** (RDS)

What is happening now:

- Review of *Whois Conflicts with National Law procedure* – underlying policy requires that registries and registrars “credibly demonstrate” that national or regional law prevents the fulfillment of contractual obligations
- Policy Development Process concerning *Accreditation of Privacy & Proxy Registration services* – attempt to resolve longstanding problems with standards for “relay” requests and to govern the “reveal” of underlying customer data
- *Expert Working Group (EWG) on gTLD Directory Services* – Final Report published June 2014

Anticipated timelines/milestones by end-2015:

- Review of Whois Conflicts of National Law Procedure – *completed*
- Accreditation of Privacy/Proxy Services – policy recommendations *approved*, implementation design *begins*
- Policy Development Process on Purpose of gTLD Registration Data (initiated previously by the ICANN Board) – *launch*, taking into account the EWG's recommendations
- ***Multiple streams of Whois-related policy work to continue, with potential for an entirely new Whois (or RDS)***

Further Information:

- The Data Retention Specification from the 2013 RAA:
<https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#data-retention>
- Procedure for handling data retention waiver requests:
<https://www.icann.org/resources/pages/waiver-request-process-2013-09-13-en>
- Expert Working Group Final Report (June 2014):
<https://community.icann.org/x/FajhAg>
- Board-GNSO Process to develop framework for overall PDP:
<https://community.icann.org/x/9SnxAg>
- GNSO Privacy & Proxy Services Accreditation Issues Working Group: <http://gnso.icann.org/en/group-activities/active/ppsa>