



Rights Protection Mechanisms (RPMs)

A Discussion of the Clearinghouse,
Uniform Rapid Suspension
and Post Delegation Dispute Resolution
Procedure

October 2009

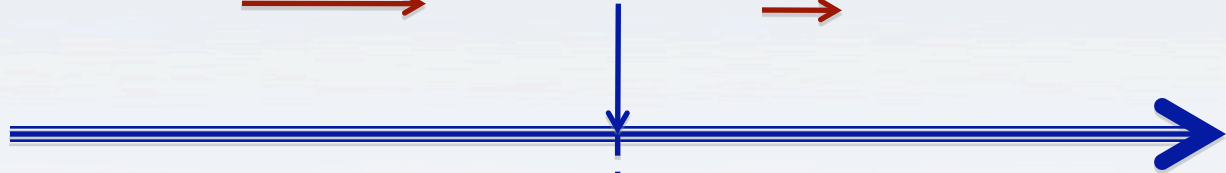
Development of Rights Protection Mechanisms

- Implementation Recommendation Team (IRT) formation, work & report recommending specific Rights Protection Mechanisms (RPMs)
- Public consultations
 - Online forum (200+ comments)
 - Sydney, New York, London meetings
- Analysis of public comment
- Recommendations for specific new gTLD RPMs
- Referral of certain recommendations to GNSO

RPMs – Registry Lifecycle

REGISTRY LIFECYCLE

PRE-LAUNCH LAUNCH ONGOING OPERATIONS



IP CLEARINGHOUSE
→ IP CLAIMS
→ SUNRISE

→ URS
→ POST-DELEGATION
PROCIESS
- - - → UDRP

PROPOSED RPMs



Trademark (IP) Clearinghouse – What is it?

- A single database of authenticated registered trademarks and authenticated unregistered marks
- Two functions:
 - validate trademarks
 - provide data for pre-launch claims or sunrise services
- Replaces need for:
 - Trademark holders to register in many databases as TLDs are launched
 - Registries to develop IP Claims and Sunrise processes (registries choose which legal rights are recognized in their processes)



- Operated by third-party license or agreement with ICANN

Trademark Clearinghouse – What’s changed?

- Call it “Trademark” (not “IP”) Clearinghouse to reflect tailored purpose
- Limited terms of use instead of license for data
- Does not include GPML
- Divided responsibility for trademark validation and database administration to avoid potential abuses

Trademark Clearinghouse Discussion

1. Should the IRT recommendation for GPML be included in the set of adopted rights protection mechanisms?
2. What should the relationship be between ICANN & clearinghouse?
3. One clearinghouse or regional clearinghouses?
4. Does the IP Claims service have a chilling effect on potential registrations?
5. How can data on unregistered rights on names be consistently validated?

Uniform Rapid Suspension (URS) - What is it?

- Rapid relief to trademark holders for the most clear-cut cases of infringement
- Higher burden of proof than UDRP
- Filing fee set by URS provider
- Expected fee in range of \$300
- Results only in suspension, not transfer of name

URS – What's Changed?

- Proposed as best practice, but incented by evaluation process
- No fee to defend any number of names
- 14 days to answer, plus 7-day extension upon request
- Notice by fax, in addition to email and postal mail

URS Discussion

1. If adopted, should the URS be mandatory or a best practice?
2. Balance the short response time (14 days) against the need to keep the “R” in URS.
3. Can the fee level (similar to the Nominet £300 fee) be attained?
4. What if there is an incorrect decision?
5. What is the “reinstatement” process?

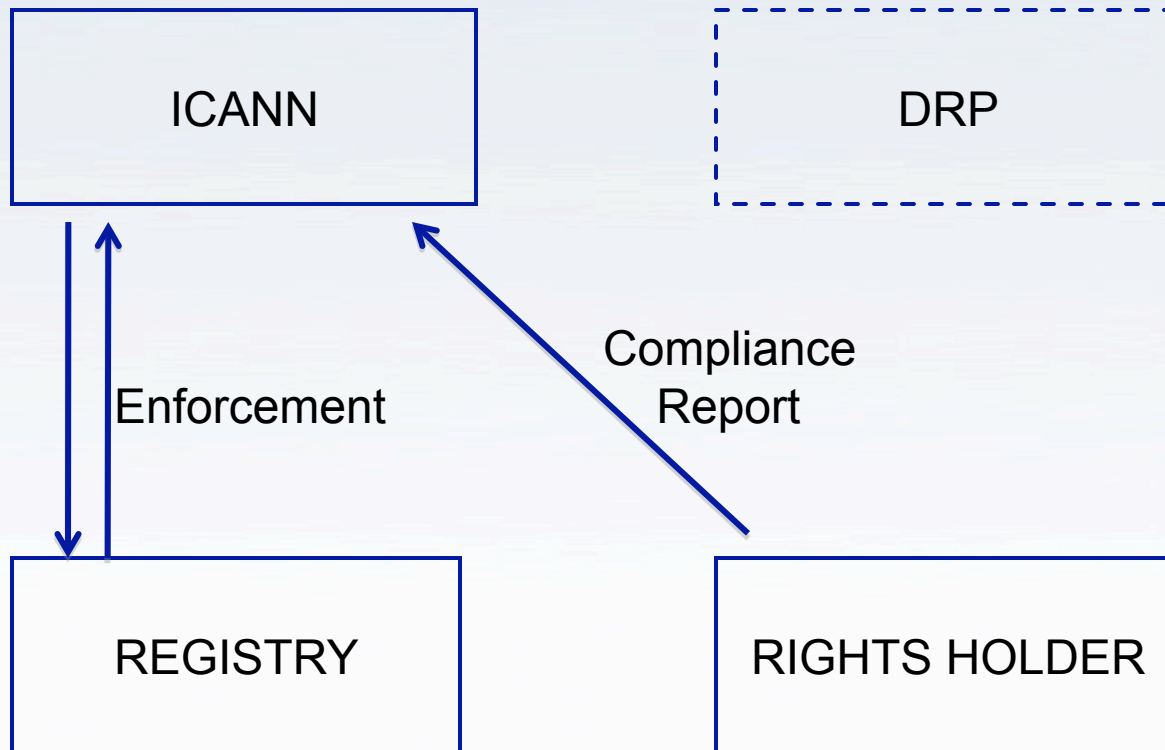
Post-Delegation DRP (PDDRP) – What is it?

- Addresses systemic cyber-squatting in new gTLD registries
- A claim of rights infringement against registry filed with a dispute resolution provider
- Independent dispute resolution process
- Remedies include sanctions, suspension, and termination

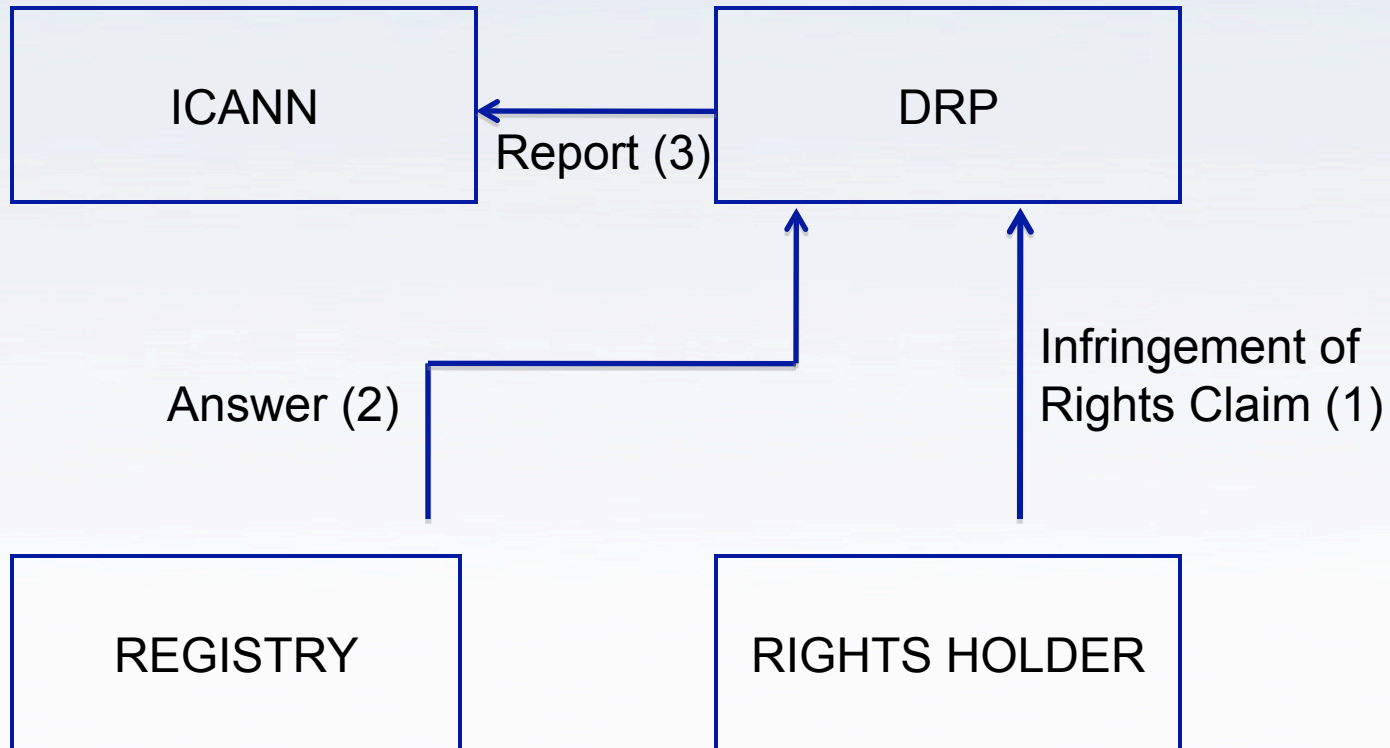
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- Separately, a registry agreement contract breach:
 - should be reported to ICANN
 - will be addressed by ICANN Contractual Compliance

Compliance reports



Infringement of rights claims



PDDRP – What's Changed?

- Requires clear and convincing evidence of affirmative conduct by registry operator
- Mere knowledge by registry operator of infringement by third parties not actionable
- ICANN not a party to disputes between trademark holders and registries – eliminates 45-day ICANN investigation before filing with DRP
- Both sides pre-pay; refund to prevailing party
- Registry operator loses if it fails to respond

Post-delegation Discussion

1. Should ICANN perform first evaluation of claims of rights infringement (prior to independent dispute resolution consideration)?
2. What mechanisms can discourage frivolous or abusive rights infringements claims?

Discussion

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Thank You