ICANN 67 RECAP:
Remote Participation, Remote Productivity

March 17, 2020

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Today’s Webinar Agenda

- ICANN 67 Meeting At-A-Glance
- A word about the .ORG sale
- Registration Data (WHOIS) Policies
  - EPDP Phase 2 Final Report: System for Standardized Access and Disclosure (SSAD)
- DNS Abuse
  - Registrar and Registry Compliance
- Policy Working Group Updates
  - Subsequent Procedures Working Group
  - Rights Protection Mechanisms Review
- SSR2 Recommendations
- GAC Advice
- Getting Involved
MarkMonitor Presence at ICANN

MarkMonitor attends and actively participates in each ICANN meeting in order to provide added value to our clients and partners in following ways:

• ADVOCATE - on behalf of our clients’ intellectual property rights as well as to encourage policies that enhance consumer trust and safety on the Internet

• PARTICIPATE - in ICANN’s policy development process working groups and constituency meetings

• DEVELOP RELATIONSHIPS - with ICANN senior officials, strategic partners (e.g. ccTLD and gTLD registries), supporting organizations, and advisory committee leadership, governments, and law enforcement that can be leveraged for the benefit of our clients
ICANN (Virtual) Community Forum:
  • Six day meeting format; reduced as a result of the coronavirus
  • Full meeting schedule including general information sessions, policy meetings, constituency and stakeholder group meetings, some community outreach, inter-community working groups, and a split public forum
  • Number of Remote Participants – Unknown

Sessions with highest attendance, participation and interest:
  • GDPR: EPDP Phase 2 – Final Report
  • Subsequent Procedures Working Group Final Reports
  • DNS Abuse and Registrar/Registry Compliance
Conversation about .ORG

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Proposed Sale of PIR to Ethos Capital

Overview

- Price caps removed from .ORG Registry Agreement last year over objections, including from some registrars and the vocal domain investor community

- Sale of PIR to Ethos Capital announced November 13th. Change of control of Registry Operators is subject to consent by ICANN

- Concerns raised by various parts of the ICANN community, including domain registrants, governments; California AG sent questions to ICANN on January 23

- PIR/Ethos has undertaken significant public engagement, responding by:
  - Proposing legally binding Public Interest Commitments (PICs), including on price increase caps
  - Proposing a Stewardship Council with veto power

Who’s Who?

- **ISOC**: Internet Society, nonprofit “working for an open, globally-connected, secure, and trustworthy Internet for everyone”; owns PIR

- **PIR**: Public Interest Registry is a not-for-profit organization created by ISOC to manage the .org domain and help fund ISOC

- **Ethos Capital**: new for-profit venture capital firm, leadership includes ICANN and domain industry veterans
EPDP Phase 2: The Initial Report

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EPDP

Overview and Phase 1 Recap

- “EPDP” refers to ICANN’s “Expedited Policy Development Process” to develop a policy for the collection, transfer, and display of domain registration data (formerly known as “WHOIS”)

- EPDP completed Phase 1 in March 2019, and ICANN Board accepted all but two of the recommendations.

- Implementation Review Team (“IRT”) has been working to translate the policy recommendations into actual policy and is delayed. IRT is currently dealing with a conflict between Phase 1 policy and Thick WHOIS policy.

- Recommendation 18 codifies policy for one-off requests for registration data.

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- **Phase 1**: created policy for processing public registration data and one-off requests for redacted data

- **Phase 2**: creating policy for a system of standardized access/disclosure “SSAD” of registration data by third parties
Phase 2 Policy Development

- Phase 2 Initial Report published February 7. Public comment period is open until **March 23**. Highlights:
  - Accreditation required, and various accreditation types allowed
  - SLAs exist, and tighten over time
  - Requests cannot be denied solely because they relate to IP
  - Established detailed requirements for all requests
  - Denials must include rationale, and must be sent to ICANN
- Biggest issues for IP owners:
  - Central gateway’s ability to obtain RDS data, and impact on controllership
  - Open questions around evolutionary mechanism
  - Very limited automated use cases, not currently including IP
- “Priority 2” items in progress; supplementary initial report by end of March
  - Agreement on “Purpose 2”

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**Phase 1**: created policy for processing public registration data and one-off requests for redacted data

**Phase 2**: creating policy for a system of standardized access/disclosure “SSAD” of registration data by third parties
External Pressure

- European Parliament questions to European Commission:
  - What specific measures is the Commission planning to take to ensure this [access for IP purposes]?
  - Does the Commission support the creation of a centralized model?
  - Is the Commission planning to provide additional clarifications to eliminate misinterpretations that have unnecessarily hampered access to internet domain registration data, and will it confirm the need for access to WHOIS as necessary for the public interest?

- Resolved, That it is the sense of the House of Representatives that the domain name registration information, referred to as “WHOIS” information, is critical to the protection of the United States national and economic security, intellectual property rights enforcement, cybersecurity, as well as the health, safety, and privacy of its citizens, and should remain open and accessible.

- American Bar Association: Supports a right that would legally compel the disclosure of internet domain name registrant contact information by any U.S. entity that administers and maintains such contact information, upon receipt of a notice alleging a legitimate interest based on the registrant’s violations of applicable laws relating to intellectual property protections.

- Phase 1: created policy for processing public registration data and one-off requests for redacted data

- Phase 2: creating policy for a system of standardized access/disclosure “SSAD” of registration data by third parties
Projected Timeline for Completion of Phase 2 Activities

**EPDP Phase 2 - Summary Timeline**

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<thead>
<tr>
<th>Activity</th>
<th>Status</th>
<th>Condition</th>
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</thead>
<tbody>
<tr>
<td>1 Project Management, Workplan, &amp; Factsheet</td>
<td>Complete: 73%</td>
<td>Green</td>
</tr>
<tr>
<td>2 EPDP-P2 Priority 1 Deliberations</td>
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<td></td>
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<tr>
<td>3 EPDP-P2 Priority 2 Deliberations(^1)</td>
<td></td>
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<tr>
<td>4 Construct Initial Report</td>
<td></td>
<td></td>
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<tr>
<td>5 Public Comment on Initial Report</td>
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<tr>
<td>6 Review of Public Comment &amp; Submission of Final Report</td>
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<tr>
<td>7 Council Consideration of Final Report</td>
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<tr>
<td>8 Public Comment prior to Board Consideration(^2)</td>
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<tr>
<td>9 Board Consideration</td>
<td></td>
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<tr>
<td>0 Priority 1 – Unplanned</td>
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\(^1\) Items from priority 2 could be incorporated in the Final Report for priority 1, depending on their date of completion or they may be presented separately in a separate report and public comment.
DNS Abuse

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DNS “Abuse”

- Registries and Registrars are contractually required to address and mitigate various forms of DNS abuse.
- However, there is a debate within ICANN over the precise definition of “abuse” (strictly “technical” abuse or other does it include other forms?)
- Prior to the last ICANN meeting, some Registries and Registrars published a Framework To Address Abuse which identified five categories of abuse: malware, botnets, phishing, pharming, and spam plus recommendations on when registries and registrars would act on website content abuse: child sexual abuse material, illegal distribution of opioids, human trafficking and incitements of violence.
- IPC and BC would like violations of intellectual property rights included in the list of actionable abuse. MarkMonitor signed onto Abuse Framework and supports this inclusion.
Subsequent Procedures

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Subsequent Procedures Working Group:
“Round 2” of the New gTLD Program

Overview

• “Determine what, if any, changes may need to be made to the Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007.”
• Seven (7) total Subsequent Procedures sessions, not including BRG meeting; four (4) of them GAC sessions
• Important developments for MarkMonitor clients:
  • Considerable conversation and constructive suggestions for policy on “closed generics”
  • Current PICs in Specification 11, Section 3.a and 3.b should remain. No further PICs being considered.
  • Single-registrant TLDs will be exempt from 11.3.b monitoring

Status

• Final Report should be published just after the next ICANN meeting
• Next round timing may be impacted by GAC Montreal Communique providing prerequisites from CCT Review
New gTLD Subsequent Procedures (Sub Pro)

SubPro Timeline *

* Note: This timeline represents what the WG considers to be a worst-case scenario and the WG will actively strive to beat this timeline. As a result, WG milestones, like the public comment period, may in fact take place earlier than is depicted here.
RPM Update

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Review of Rights Protection Mechanisms (RPMs)

Policies on Brand Protection

Overview
- Working Group Phase 1 is evaluating RPMs put in place for the New gTLD program

Status Updates
- Finished review of all first-phase RPMs: URS, TMCH, Sunrise, Trademark Claims, TMPDDRP
- Generally positive or neutral outcomes for brand owners, no notable “losses” of RPMs
- Seventeen (17) proposals to be published for public comment

Next Steps
- Initial Report target date is Wednesday, March 18, 2020
- Opportunity for public comment for 40 days after Initial Report is published
- Phase 2 of the work will be a review of the UDRP, slated to begin as early as Q4 2020
Review of Rights Protection Mechanisms (RPMs)

- Chartered in March 2016 to conduct a two-phased PDP
- Phase 1 – RPMs applicable to gTLDs launched under the 2012 New gTLD Program:
  - Trademark Post-Delegation Dispute Resolution Procedures (TM-PDDRP)
  - Trademark Clearinghouse (TMCH)
  - Sunrise and Trademark Claims offered through the TMCH
  - Uniform Rapid Suspension (URS) dispute resolution procedure.
- Phase 2 – UDRP (an ICANN Consensus Policy since 1999)
- Aiming to complete Phase 1 by **Mid-October 2020 (5.5 months-extension)**
SSR2 Recommendations

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SSR2 (Security, Stability and Resiliency) Report

- Report makes recommendations for short and long-term abuse mitigation efforts

- Recommendation 16.1 (Rec 16.1) introduces the following Pricing incentives for registrars:
  i. Fee reductions for Registrars that have portfolios that have less than a specific percentage of abusive domain names;
  ii. Domains registered to “verified” registrants also get a fee reduction;
  iii. Waiving RSEP (Registry Services Evaluation Policy) fees where filings indicate how DNS Abuse is to be mitigated;
  iv. Refunds for registrars who take down “abusive” domain names within an “appropriate” period after registration.

- MarkMonitor supports this recommendation and this recommendation is now being considered by the RrSG DNS Abuse initiative that may put together a white paper.
GAC Communique

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Notable Statements from the GAC Communique

Policies on Brand Protection

No formal GAC Advice from ICANN 67 Communique, but important topics include:

• Acquisition of PIR (.org)
  • Engagement with the community
  • Transparency
  • Public Interest Commitments (PICs)
  • ICANN should consider the public interest

• Next new gTLD round
  • “Closed generics” – only if they serve a public interest goal
  • PICs – referred to previous GAC advice on DNS Abuse
  • GAC Early Warning/GAC Advice – “strong presumption” of application failure based on GAC Advice is important
  • Applicant Support – GAC favors outreach and engagement with underserved communities (e.g. Global South)
  • Community Applications – favored by the GAC, in particular community-based nonprofits

• RDS and Data Protection
  • Remains high priority, and GAC reiterated previous Advice calling for a standardized form
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ICANN Business Constituency
http://www.bizconst.org/

Intellectual Property Constituency
http://www.ipconstituency.org/

Brand Registry Group
http://brandregistrygroup.org/
got questions?
THANK YOU!!!!!

For information on MarkMonitor solutions, services and complimentary educational events:

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