

MINUTES FROM THE IPC MEETING
TUESDAY, JUNE 26, 2012, AT 1400 UTC
PRAGUE

ATTENDEES:

In Person:

Name	Affiliation
Adams, Michael	Mayer Brown
Al Shabibi, Saleem	TRA/OMAN
Al Siyabi, Hilal O.	TRA/OMAN
Ali Khan, Shahzeb	UISOC-Lahore Pakistan Chapter
Anthony, Susan	USPTO
Arias, Francisco	ICANN
Barbero, Luca	Studio Barbero
Bartoskova, Teresa	CAC
Beckham, Brian	WIPO
Berneke, Lutz	EuroDNA/eBrand
Bivins, Amy	Bloomberg BNA
Brown, Northcott, Dana	Amazon
Bruniaux, Nichele	Namebay
Chang, Moonchul	Korea Internet Adress DR
Chaumont, Eugenie	
Chung, Dan	Johnson & Johnson
Cohen, Jonathan	Shapiro, Cohen
Conkus, Yori	Deloitte
Covington, Laura	Yahoo!
de Bevere, Dirk	IBM
de Brabandere, Barbara	IBM
DiGangi, Claudio	INTA
Dimol, Daniel	ICANN Fellow
Disman, Marek	ITC Lawyer
Dorrain, Kristine	NAF
Dwyer, Sean	QVC, Inc.
Eguiron, Maria	Melbourn IT
Falco, Sheri	ICM Registry
Fancher, Don	Deloitte
Felman, Fred	MarkMonitor
Folens, Vicky	Deloitte
Gaines, Rudy	Marksmen
Gamboa, Karen	Costa Rica
Georgelin, Marianne	AFNIC
Goiris, Joris	IBM

Name	Affiliation
Golovina, Ksenia	Brights Consulting
Graham, Richard	Edwards Wildmer
Green, David	KPMG
Haley, John	World IP Review
Hirsch, Sylvain	IP Twins
Hostas, Petr	CAC
Hudson, John A.	Deloitte
Ichoyhev, Alexandar	Popovskr Law Office, Skopje Macedonia
Jarvis, Joshua	Foley Hoag/IPO
Karlsson, Karl	Student
King, Stacey	Richemont
Kirsch, Tony	ARI Registry
Kolarova, Irena	KPMG Legal
Kriner, Robert	Corsearch/Wolters Kluwer
Kudlacik, Mark	
LaCroix, Stephanie	Keep Alert
Levy, Jonathan	Aremi Group SA
Lieben, Bart	Crowell & Moring
Lloyd, Catherine	IFPI
Marano, Phil	Steptoe & Johnson
Margocchi, Stefano	Ferrero
Mason, Nicole	Valideus
Maurel, Gregory	Brights Consulting, Inc. (Japan)
McGary, Raedene	McGary & Co
McGrady, Paul	Winston & Strawn
Metalitz, Steve	Coalition for Online Accountability
Murakah, Yoshi	Brights Consulting
Murray, Emily	Steptoe & Johnson
Nunes, Esther	Pinheiro Neto-Adv.
Nurton, James	Managing IP
Pangborn, Russell	Microsoft
Partridge, Mark	ABA/AIPLA
Penaceque, Stephanie	Corporate Damages
Prahl, Dennis	Ladas & Parry LLP
Prendergast, Jim	Galway Strategy Group
Repp, Amy	Central Nic
Rindforth, Petter	QPC/FICPI
Roache-Turner, David	WIPO
Robbriht, Darie	Laga
Roberts, Ashley	Valideus
Rodenbaugh, Mike	Rodenbaugh Law/eBay
Rosette, Kristina	Covington & Burling
Saia Peop, Roberta	Rapisardi Intellec. Property
Sanchez, Leon Felipe	Creative Commons Mexico

Name	Affiliation
Sansen, Ian	CHIP
Santesson, Minna	SCA
Schaeffer, Jason	.Tub & IP Conseld
Schwimmer, Marty	Leason Ellis
Scott, Peter	World IP Review
Seeuws, Hans	CHIP
Shankman, Ellen	Ellen Shankman & Associates
Sheckler, Vicky	COA/RIAA
Simon, Maarten	SiDN
Smigelski, Owen	ICANN Staff
Sobrevern, Teresa	Melbourn IT
Soerensen Garcia, Mario	
Strola, Claudia	RAPI SARDI
Svensen, Christian	Cloudnames
Sweeney, David	ISFE
Taylor, David	Hogan Lovells
Vall, Lucas	Brights Consulting
Welch, Becky	Orange
Werquin, Francis	IBM
Winterfeldt, Brian	Steptoe & Johnson
Wolfe, Jennifer	Wolfe-SBMC, LLC
Wood, Nick	Valideus
Yooris, Celine	Deloitte
Zamkova, Maria	FenixLegal KB
Zantkeren, Yuval	Domain The Net

By Telephone:

Ken Taylor, Marksman.
 Fabricio Vayra, Time Warner
 Anne Aikman-Scalese
 John McElwaine, Nelson

1. Introduction/agenda/review/scribe

Steve Metalitz opened the meeting with a brief description of the agenda and process. Attendees (in-person and telephonic) then introduced themselves. Steve noted that the meeting was particularly well attended and especially welcomed participants from the Czech Republic and surrounding countries.

A. Leadership Report

Steve discussed the recent events related to new gTLDs and the effects upon the IPC, including the introduction of new participants with new views and the changing perspectives of current participants. Steve believes that the IPC needs to reflect on those changes over the next several months and try to establish a clear direction by the time of the Toronto ICANN meeting.

2. Contract Compliance Update

Jonathan Zuck provided a brief update on compliance efforts within ICANN. These include:

- ICANN's general complaint system (3 C tickets) has been enhanced and is now in production. ICANN is working to track data manually for the last three months.
- Additional enhancements are coming for WHOIS tool (July) and UDRP system (over the next several weeks).
- ICANN is looking into a consolidated tool along with several other pilots and new initiatives over the upcoming months.
- Jonathan is meeting with Staff from the Compliance Department on Wednesday of the Prague meeting to discuss further updates and will send along details of the meeting

Owen Smigelski, in the audience, from ICANN contractual compliance offered to answer any questions. Steve asked about the budgetary issues related to compliance efforts. Jonathan stated that in order for the Compliance Department to function it needs to be automated and the data needs to be obtained so that the department can reach the size that it needs to in order to function optimally. Owen said that the money budgeted was going to the audit, systems, and new hires. Jonathan said that milestones and bench marks being met are the real test of progress rather than just hiring more people. Steve noted a significant increase in budget (somewhere between 59-61 percent increase) and welcomed the change. Steve then asked Owen about the Compliance Department's involvement in RAA negotiations. Owen indicated that the department was not actively involved.

3. Discussion of Issues at Prague Meeting

Steve provided a briefing on the Q&A sessions that members of the IPC had with 6 applicant groups regarding the applicant's plan to address intellectual property issues. Steve said that on the whole he was impressed with the applicants and their understanding of the issues important to the IPC. Ellen Shankman took away from the meetings that the applicants are concerned about public comments being made about them and that some of the applicants genuinely may not have thought much about IP issues, but seemed open to input. Kristina Rosette indicated that the applicants are waiting for finalization of the URS and Clearinghouse and when that is finalized further discussions with the applicants may be in order. Mark Partridge comments that some of the applicants had enhanced IP protections beyond what is in the new gTLD Applicant Guidebook. Mark suggested that members of the IPC review those and support them in comments.

David Taylor indicated that the meetings were far more positively than expected, including that some of the registries retained the right to take down a domain name. Mike Rodenbaugh asked

about whether or not the IPC can identify the “additional” RPMs and support those. Ellen discussed review of applications and cost recovery models. Marc Trachtenberg suggested means to efficiently review the applications and Fred Felman indicated that Mark Monitor has a database that may be helpful. Fabricio Vayra (on the phone) discussed further INTA’s Internet Committee’s efforts and the opportunity to reach out to applicants regarding best practices. John McElwaine (on the phone) gave a further update of the need for speed.

Steve raised the question of what home is the best home within the IPC structure for so-called “dotBrand” applicants? Steve raised the issue of how this effects the future of the IPC, including the possibility of the IPC becoming an advisory committee. Steve opened the floor to ideas, which included:

- J. Scott Evans discussed observer status of new gTLD applicants, including limitations on what those members can and cannot do.
- Brian Winterfeldt said this was an opportunity to educate newcomers to the ICANN process
- Kristina Rosette agreed that we should be providing information to newcomers, but not make any decisions about how those newcomers should participate until they are here.
- Mark Partridge discussed the various options of where they could vote and encourage participation outside
- Paul McGrady discussed some details of observer status in the Registry Constituency as well as advocated for serious consideration of Advisory Committee Status
- Jonathan Cohen discussed the implications of participation in the BC
- David Taylor indicated that not having voices on the GNSO would be problematic.

4. ICANN Staff Briefing: Implementation of the Trademark Clearinghouse

Kurt Pritz, Amy Stathos, Bill Yang and Karen Lentz attended on behalf of Staff. Karen provided an update on implementation, including retaining Deloitte to run the Clearinghouse. Karen discussed the collection and use of community inputs in the process of developing the Clearinghouse. Karen stated that the following were key issues:

- Potential for abuse or misuse of trademark data
- Possible disruption of registration process by dependence on third parties

Karen said that these issues were addressed in the development, including restrictions on how data can be used which will be part of the contract that users have to agree to. Karen also discussed education, communications and testing prior to launch. Kurt indicated that the IPC’s involvement in education and testing is important and invited the IPC into dialogue as the model develops. Kristina asked whether or not the restrictions on the use of the data will be found in registry agreements and talked about factors that might encourage or discourage brand owners to use it. Amy indicated that the Clearinghouse is part of the base agreement for new gTLD registrants, but did not believe that there would be third party rights coming out of ICANN’s agreement with the Clearinghouse. Amy and Kristina discussed whether or not abuse of data would result in Compliance department action.

Jonathan Cohen asked about timing. Karen indicated that October 2012 is still the target date for the submission of trademark data by brand owners. Claudio Di Gangi asked about the status of the implementation assistance group and whether or not assistance for Clearinghouse implementation would be available. Karen said that ICANN was still getting feedback through the IAG, even if formally not active. Karen indicated that the estimates provided to the community have resulted in feedback. Marc Trachtenberg asked why not provide for third party beneficiary rights in the contract with the Clearinghouse provider, since that would provide a means of self-help. Amy and Marc engaged in a discussion about possible means of enforcement. Michael Graham (remote participation) asked if there is anything else that IPC members can do to help with the implementation process. Amy said that they will always take input as things are being developed. Anne Aikman-Scalese (telephonic participation) asked about “proof of use” issue. Karen indicated that proof of use will be a declaration and one sample.

J. Scott asked whether or not there would be any RPMs that would not be applicable to single users/single registrant models? Kurt said that there was discussion, but that even the “dotBrand” concept has various levels of registrant activities. Steve said that there was discussion in meetings with applicants of the \$7,000 - \$10,000 fee range per registry. Regarding costs for brand owners to participate, Nick Wood indicated that there was concern not only for initial implementation but also for renewals. Laura Covington suggested a permanent claims service without renewals. Karen discussed renewal fees and annual verification process. There were other questions from the audience regarding costs. Steve invited comments from Deloitte and/or IBM participants in attendance. Representatives from Deloitte introduced themselves and pointed out approximately 10-12 others between Deloitte and IBM in the room. Deloitte suggested a working group for the IPC to work with them on the development. Deloitte assured that the pricing stated thus far would be “maximum pricing.” Deloitte encouraged participation at their session on Wednesday at the Prague meeting.

5. ICANN Staff Briefing: Implementation of the URS

Kurt provided an update, indicating that all targets have been met, except for the price point issue. Kurt indicated that the Wednesday session on URS is to kick off discussion of how to reduce the costs but retain safeguards. Ellen asked what are items that are making it more costly? Kurt said:

- Overhead with appeals process
- Overhead with loser pays
- Costs associated with substantive review of each case, even default cases

Kristina asked how the NAF and WIPO think about the issues of costs and how to get it down to the \$300-\$500 range. Brian Beckham from WIPO and the Kristine Dorrain NAF both indicated that the means to reach the price tag includes eliminating the substantive review in default cases, but Kristine indicates that loser pays is also a costly administrative burden. J. Scott encouraged participation and Ellen recapped the feedback from the dispute providers. Fabricio suggested changes related to how user paid is managed in order to keep that cost in line. Kurt discussed balancing the various expense factors. Claudio asked about what the next steps were to finalize

these issues, e.g. public comments, etc. J. Scott indicated that there were suggestions that will come out of tomorrow's session. Steve asked whether or not there will be URS Summits. Kurt said that there is a budget placeholder to allocate funding for that effort. Steve asked whether or not Nominet was approached to provide this service (since they do so now). Kurt said that the Nominet service was subsidized. Steve asked whether or not ICANN should subsidize the URS for the first couple of years so that trademark owners will be incentivized to use it? Kurt and Steve discussed where the funds will come from, e.g. application fees. Fabricio suggested balancing of the URS factors to bring costs and timing into alignment. Rudy Gaines asked about cost and process related to the URS. J. Scott provided history of the URS, including the IRT and STI. Chat room participants asked if the URS had to be implemented prior to delegation of any new gTLD. Kurt indicated that Staff would cross that bridge when they come to it.

6. ICANN Staff Briefing: RAA Amendments

In addition to Kurt Pritz, staff members included Samantha Eisner and Margie Milam. Samantha indicated that the process is open for public consultation, including WHOIS validation and data retention requirements. Kurt indicated that progress had been made on proposals from law enforcement and GNSO/ALAC. Kurt said that there was disagreement on whether or not domain names resolve prior to WHOIS verification. Law enforcement wants registrars to maintain data for life of the registration plus 2 years and the registrars want hold the information for only 6 months pointing to their interpretation of EU privacy laws. Kurt says there is an impasse on these issues and was asking for community input. Margie mentioned issues about annual validation.

Marty Schwimmer asked about the balance of public policy issues related to delays in resolution vs. registry costs. Kurt indicated that delays could be several days and the costs for second level registrations could double. Steve indicated that the registrars were invited to this meeting to discuss this issue but could not be here due to their constituency meeting being scheduled for the same time. Steve thanks Staff for the way in which they made information available for discussion. Steve asked about standards for those registering through proxy services. Samantha said that there were changes to the WHOIS data outputs that would result in obligations on the part of registrar-run proxy services, but there would be no immediate requirement for proxy services not affiliated with a registrar. Steve, Samantha, and Margie further discussed the issue of proxy services and validation, including the proposal for proxy accreditation program. Steve asked what is the best way to provide input on the remaining process. Samantha indicated "the sooner the better" since negotiations were ongoing (and a public comment process would result in delay). Steve and Samantha discussed timing to finalize. Chat room question came in related to fees and pricing. Samantha indicated that there was no way to set floors or ceilings in pricing.

Steve capped the discussion with an offer of assistance and thanked the Staff.

7. Adjournment

Steve provided information on next telephonic meeting (7/10/12, 1530 UTC) and declared the meeting adjourned.