

## Adobe Connect: 20 Members

Alan Greenberg	Kristina Rosette (Amazon Registry)
Anne Aikman-Scalese (IPC)	Kurt Pritz
Avri Doria	Liz Brodzinski
Cheryl Langdon-Orr (CLO - PDP Co-Chair)	Michael Flemming
Gg Levine (NABP)	Phil Buckingham
Greg Shatan	Phil Marano
Jamie Baxter   dotgay	Rudy Mendoza
Jim Prendergast	Samantha Demetriou
Jon Nevett	Susan Payne
Karen Day	Tijani BEN JEMAA

**On audio only:** none

**Apologies:** none

### Staff:

Emily Barabas	Nanig Mehranian
Julie Hedlund	Berry Cobb
Trang Nguyen	Steve Chan
	Terri Agnew

Terri Agnew: Welcome to the New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes call on Tuesday, 09 January 2018 at 15:00 UTC for 60 minutes.

Terri Agnew: agenda wiki page: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_x\\_YB1yB&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=NeV6C\\_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=GcaKwCdztID8pb-pzoltgTfc6iyln6Gb0TZBIXqSRDk&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_YB1yB&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=NeV6C_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=GcaKwCdztID8pb-pzoltgTfc6iyln6Gb0TZBIXqSRDk&e=)

Tijani BEN JEMAA: Hi terri

Terri Agnew: everyone can scroll themselves

Gg Levine (NABP): I am unable to see slides. Can others see them?

Steve Chan: @Gg, yes, I can see them

Steve Chan: You may need to close and reopen the AC room?

Kristina Rosette: dropping momentarily to switch to computer

Emily Barabas: @Gg, if AC is still giving you trouble, you can also access the slides here:

[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_x\\_YB1yB&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=NeV6C\\_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=GcaKwCdztID8pb-pzoltgTfc6iyln6Gb0TZBIXqSRDk&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_YB1yB&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=NeV6C_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=GcaKwCdztID8pb-pzoltgTfc6iyln6Gb0TZBIXqSRDk&e=)

Gg Levine (NABP) 2: Reopening the Connect room worked. Thanks!

Terri Agnew: If needed, please run the Adobe Connect add-on found here:

[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_tinyurl.com\\_icannactest&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=NeV6C\\_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=fcz4zG-StASMw0FeEhdBn1YfqMSCVKN\\_H6Y3qh3BjPk&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_tinyurl.com_icannactest&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=NeV6C_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=fcz4zG-StASMw0FeEhdBn1YfqMSCVKN_H6Y3qh3BjPk&e=)

Kristina Rosette (Amazon Registry):With apologies because I'm behind, would the person who proposed "any" please describe the purpose and reason for it?

Kristina Rosette (Amazon Registry):I see his colleague, Liz, is on. Liz?

Michael Flemming:Apologies for being late

Jon Nevett:maybe we should postpone the discussion until he can join -- seems like we will have to have it again anyway

Jim Prendergast:agree with Jon

Susan Payne:me too, I'm not sure we can have a very fruitful discussion

Kristina Rosette (Amazon Registry):Perhaps we could use the time to identify our questions and concerns so that they can be addressed more efficiently when he is able to join?

Jon Nevett:i prefer keeping it as infringed

Greg Shatan:I would suggest "violated".

Cheryl Langdon-Orr (CLO - PDP Co-Chair):minor correction fori meeting record, it's a WT 4 call on later this week on the 11 Jan at 1500UTC... WT5 is at 2000UTC on the 17tg (WT1 meets at the same time on the 16th 24hrs earlier)

Greg Shatan:"infringed, diluted, misappropriated or otherwise violated"

Kurt Pritz:This objection was always intended to be a narrow inquiry - focused on the string itself. It is difficult to extrapolate from a string name to infringement or abuse or misappropriated without some additional action (which occurs typically after the string is delegated). With such a narrow inquiry, I prefer the legal term infringement - which seems to have the clearest meaning.

Jon Nevett:there is a body of law on infringement

Kristina Rosette (Amazon Registry):Staff, would it be possible for you to post a link to Paul's paper putting forward the strawman and rationale? That would be extremely helpful.

Greg Shatan:dilution and misappropriation still go to the string itself.

Julie Hedlund:@Kristina: Here is the link: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_display\\_NGSPP\\_2017-2D02-2D07-2BNew-2BgTLD-2BSubsequent-2BProcedures-2BPDP-2BWork-2BTrack-2B3-3Fpreview-3D\\_63157176\\_64067212\\_7.2.5-2520Legal-2520Rights-2520Objection-2520-2D-2520Strawman-2520Edits.pdf&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=NeV6C\\_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=0KPXHehMlk-e7i1sIO-t4dLzIH0HQGgf3loanHgRR\\_Q&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_NGSPP_2017-2D02-2D07-2BNew-2BgTLD-2BSubsequent-2BProcedures-2BPDP-2BWork-2BTrack-2B3-3Fpreview-3D_63157176_64067212_7.2.5-2520Legal-2520Rights-2520Objection-2520-2D-2520Strawman-2520Edits.pdf&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=NeV6C_H1UTLtoaeNXzhRXEP-pB-FOGtIPnQNovg8Drg&s=0KPXHehMlk-e7i1sIO-t4dLzIH0HQGgf3loanHgRR_Q&e=)

Kristina Rosette (Amazon Registry):@Julie: Thank you!

Greg Shatan:Dilution and misappropriation also have clear legal meanings.

Anne Aikman-Scalese (IPC):Agree with Greg that dilution and misappropriation go to the string itself

Kristina Rosette (Amazon Registry):I'd be interested in hearing an explanation as for why abuse, dilution, violation, etc don't raise the same issue as infringement.

Jon Nevett:where there objections rejected in the 2012 round that Paul and others think should be decided differently in this round? That might help frame why we need changes in the first place.

Jon Nevett:were

Kurt Pritz:Infringement is difficult to prove and rightfully so - at this stage of the application process. We can't deny an application for what an applicant might do.

Anne Aikman-Scalese (IPC):@Jon - agree those examples would be helpful. He also seems to be suggesting later that some objections were filed solely for the purpose of triggering a private auction and getting paid off. Does anyone know of any examples of this?

Kurt Pritz:What is the type of string that the inclusion of "abuse" might disqualify that infringe might not? I am concerned it might be some type of public forum TLD.

Jon Nevett:i think Paul is suggesting that the application was filed to go to private resolution not the objection

Michael Flemming:agree

Kurt Pritz:I am concerned that this redline about triggering auctions might lead to multiple IRPs

Michael Flemming:I agree with Paul

Anne Aikman-Scalese (IPC):I would support the change that adds "translation or transliterations" of Gg Levine (NABP) 2:Change is appropriate.

Jon Nevett:how do you prove that an application was filed to go to private resolution

Kurt Pritz:@Jon - it is very difficult - but it would provide a tool for use by objector's to slow the process

Jon Nevett:I object

Jon Nevett:I don't understand it at this point

Kristina Rosette (Amazon Registry):Can we put a marker down on that one? The niche fame incorporaes the dilution standard, the other parts effectively strike a fair use defense by the applicant

Kristina Rosette (Amazon Registry):Sorry. Mistyped. Not fair use. Competing legal rights.

Anne Aikman-Scalese (IPC):The issue is the definition of the "relevant sector". Hard to tie down. for example, are we talking about household goods or industrial goods? paul describes the possibility of a niche market (a narrow, not a broad one where a name or trademark is known to those participants in the market.)

Anne Aikman-Scalese (IPC):for example, under German law, I am told you only have to show the mark is well known in its own market and there is a percentage test used. This is a difficult area since trademark law is not uniform worldwide.

Michael Flemming:Have we seen any evidence for d?

Michael Flemming:If not, I don't think that would be necessary.

Jon Nevett:what's the relevance of the trademark search? Majority of dictionary terms are trademarks somewhere, no?

Michael Flemming:Just because legal rights objections can be loosely done if an applicant applied for the string as a trademark in the wake of applying for it.

Kurt Pritz:In this case, conducting a trademark search is evidence of infringement, abuse, etc. Correct?

Kristina Rosette (Amazon Registry):In its current form, the trademark search requirement seems overly burdensome. Trademark search in what jurisdictions? What if the string is a common dictionary word such that a trademark search could yield thousands of results? I defended one LRO for which a search of the USPTO database would yield almost 1000 registrations or applications containing the TLD string term.

Michael Flemming:applying for it as a tld \*

Kristina Rosette (Amazon Registry):And, for the record, I'm not referring to the LRO in which Anne was opposing counsel.

Anne Aikman-Scalese (IPC):It may be that evidence of a trademark search that comes up clear could help demonstrate that the applicant had no intent to violate another's rights. This is an optional consideration, right?

Jon Nevett:Agree with Kristina

Kurt Pritz:To build on my last comment - doesn't the inquiry into whether a trademark search was conducted tend to discourage such searches by applicants?

Anne Aikman-Scalese (IPC):If the element of the analysis relates to the element of proof of "intent", then evidence re the trademark search is quite relevant to that determination.

Kristina Rosette (Amazon Registry):One issue with d is that it assumes that an applicant participates (or participated) in a private auction solely to "raise funds from competing applications" and that is a false assumption.

Cheryl Langdon-Orr (CLO - PDP Co-Chair):in very many classes of use as we amusing, indeed... worth looking at clarification

Kurt Pritz: Susan is making my point better than I did. Ex. there is an objection because the string is a trademark. The panel looks into whether there has been a trademark search,. If there has been, that is evidence of infringement.

Michael Flemming: agree with Kristina

Kurt Pritz: I also object to using participation in auctions as evidence of abuse.

Jon Nevett: disagree with suggested change to 5

Anne Aikman-Scalese (IPC): I do think history of Applicant's trademark search, if any, is probative on the question of "intent". It seems that "applicant's intent" is relevant. Since it's relevant, the evidence of trademark search results would definitely be relevant (but not necessarily relevant if Applicant failed to conduct a trademark search since that doesn't prove any sort of intent.)

Kurt Pritz: Well, it might be games but it is just evidence to be considered

Kristina Rosette (Amazon Registry): It's still early here in WA, but #6 would seem to result in the conclusion that an applicant that applied for a generic term to use it as its dictionary meaning would then have to either (a) impose restrictions or (b) be found to not have any defenses. That seems to be a catch-22 to me.

Kurt Pritz: "might be gamed"

Michael Flemming: Doesn't this section refer to a tld that is not an exact match of a trademark but similar enough? Apologies, very late and trying to read small print on my phone so I may have misinterpreted 7.

Kristina Rosette (Amazon Registry): Some countries afford corporate names trademark-like protection.

Cheryl Langdon-Orr (CLO - PDP Co-Chair): good to have had a read of through and start discussion on this Strachan doc team, time well spent today, please keep up the deliberations on your list as well, bye ðŹŹŹŹ for now then...

Terri Agnew: next call for the New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes will take place on Tuesday, 30 January 2018 at 20:00 UTC for 60 minutes.

Cheryl Langdon-Orr (CLO - PDP Co-Chair): thanks everyone

Kristina Rosette (Amazon Registry): Have to drop for another call. Thanks, all.

Jon Nevett: Me too - thanks all!

Cheryl Langdon-Orr (CLO - PDP Co-Chair): bye ðŹŹŹŹ

Phil Buckingham: thanks Karen