

Attendance:

David McAuley
George Kirikos
Greg Shatan
John McElwaine
Kathy Kleiman
Kristine Dorrain
Michael Karanicolas
Mitch Stoltz
Petter Rindforth
Philip Corwin
Susan Payne
Zak Muscovitch

Apologies:

Griffin Barnett
Maxim Alzoba

Staff:

Julie Hedlund
Ariel Liang
Berry Cobb
Michelle DeSmyter

AC chat:

Michelle DeSmyter:Dear all, welcome to The Review of all Rights Protection Mechanisms (RPMs) Sub Team for Sunrise Data Review call on Wednesday, 23 January 2019 at 18:00 UTC

Michelle DeSmyter:Agenda wiki page: https://community.icann.org/x/jQj_BQ

David McAuley:dialing in - i will be #4154

Michelle DeSmyter:thank you David

George Kirikos:Hi folks.

Julie Hedlund>Welcome all -- we'll start at 5 minutes past the top of the hour to allow people to transition from the previous call.

David McAuley>Hello all, thanks Julie

Mitch Stoltz:Hi all. I'm dialed in at x9333

Julie Hedlund 2:Thanks Mitch and noted!

Petter Rindforth:045 seems to be me

George Kirikos:7 was easy. :-)

Julie Hedlund 2:@All: Just a reminder that this meeting is scheduled for 90 minutes, but we'll see where we are at the top of the next hour to see if we need the time.

George Kirikos:Thanks Kathy for posting the definitions of them (acronym overload!).

Kathy Kleiman:I put in definitions of ALP and QLP, does anyone know what an LRP is?

George Kirikos:They can opine, but there's a debatable question as to how strong the relevant TM is.....i.e. just because it's a TM, does that trump all? i.e. the Pakistani TMs held by Michael Gleissner are treated the same as a "strong" mark like Verizon, Exxon, etc?

George Kirikos:But, it's an issue, because this is about giving them Sunrise rights.

George Kirikos:Here's the spreadsheet: https://urldefense.proofpoint.com/v2/url?u=https-3A_docs.google.com_spreadsheets_d_1aBw-2DdW2gBzvBfhUgl3u6ShWIPZt0yyNF-2DVs1qmUuljg_edit-23gid-3D493176246&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwwehFBfjrsjWv9&m=80camjET03DbJAKx6uqy8aLLaBZaAwOX8vBhsFuJYWo&s=tYMBueLS9J6bF5cltjla-tw0IrZ_iYb3TuKJxrVjxHU&e=

Kristine Dorrain:@Geroge, all TM holders have rights already. the TMCH gives them access to a TLD first.

George Kirikos:It's a very long cell.

Kristine Dorrain:the policy says rights holders who jump throughy x hoops get a sunrise registration.

Ariel Liang:This is the text Kathy is referring to now: - We reviewed internally ICANN terms of Approved Launch Program and decided that it imposes high uncertainty and financial risks of not being able to deliver services until ALP is approved under the process which lacks clarity. Experience of .CORE showed us that our estimation was correct. We had to create special limited registration periods after the Sunrise to ensure protection of the local communities: for the trademark/service mark holders, protected under the Legislation of the Russian Federation, trade name holders, registered in Moscow, right holders for the use of product origin appellation in Moscow and/or Moscow Region, Non-profit organizations established under the laws in effect in the Russian Federation and registered in Moscow, Founders of the mass media registered under the procedure specified in the laws in effect in the Russian Federation, the output of which is being intended for distribution in Moscow, State and Municipal Authorities of Moscow,

Ariel Liang: State Authorities of the Russian Federation, Municipal and Federal entities. P.s: Such information it is available as Launch Program for all new gTLDs

at https://urldefense.proofpoint.com/v2/url?u=https-3A_newgtlds.icann.org_en_program-2Dstatus_sunrise-2Dclaims-2Dperiods&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWI PqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwwehFBfjrsjWv9&m=80camjET03DbJAKx6uqy8aLLaBZaAwOX8vBhsFuJYWo&s=KsUyZOE_onN35JdXgPz4DkCAn8lSVq1pa2VmtAmG1f0&e=and for .moscow and .xn--80adxhks in particular.

George Kirikos:I think when folks say "generic", they are common dictionary terms with multiple legitimate competing uses.

Kristine Dorrain:+1George

George Kirikos:"THE" "HOTELS", etc.

Julie Hedlund 2:@Greg: Order of hands is: Kathy, Susan, and Mitch.

George Kirikos:Hotels.Moscow couldn't be delegated to a Hotels industry group in Moscow, given there was a TMCH entry.

George Kirikos:(as a hypothetical example; not sure they wanted that particular string)

Kristine Dorrain:@George, yes, that is the hypothetical scenario.

George Kirikos:This goes to the binary nature of the TMCH. When we talk 'solutions' we might want to consider making it non-binary, i.e. giving a points system to marks, or placing numeric limits on how many sunrises a TMCH-registered term could be used for (as ways to reduce gaming).

Kathy Kleiman:Hypothetically, what about a local Sunrise period to allow the local trademark owners to register first, and then the TMCH sunrise to register second?

George Kirikos:e.g. the gamed TMCH entries for "HOTELS" could be limited to 5 sunrises, for example. Or be assessed at 5 out of 100, and set a threshold like 75 (risk scoring) for participation in sunrises (where marks like Paypal or Citicorp = 100 out of 100 as a risk score).

George Kirikos:+1 Kathy. I think that's what was an implied recommendation.

George Kirikos:Although, they'd have to mark the TLD as a "geo-TLD" in some manner.

Kristine Dorrain:I don't think we need to dive into proposals at this point, right?

Kristine Dorrain:At this point, we're just making sure the data cited is relevant.

George Kirikos:You're right, Kristine.

Greg Shatan:George, what is your basis for calling the HOTELS TMCH entry "gamed"?

Julie Hedlund 2:@All: time check -- even with 90 minutes we can't spend more than 20 minutes on a question/google doc.

George Kirikos:@Greg: I posted about that on the mailing list already, i.e. common dictionary term, domains were then put up for sale en masse, etc.

Julie Hedlund 2:@All: Noting that Michael Karanicolas is joining late and has asked us to wait until he joins to cover question 9.

Julie Hedlund 2:@All: Please mute when not speaking.

George Kirikos:Data is from one stakeholder mainly, though.

Kathy Kleiman:Hopefully Maxim will be able to join us next week!

George Kirikos:(stakeholder group, rather)

Julie Hedlund 2:Who is the number beginning in 1703 and ending in 6846?

John McElwaine:I did not understand this question

Julie Hedlund 2:George was first

Susan Payne:@John - pretty common reaction to the charter Qs

Susan Payne:@george - they aren't percentages

Kristine Dorrain:I thought I had attended all the subteam calls, but apparently I missed this one as I do not recall any context around this...

Kathy Kleiman:How much more does it cost to apply for proof of use?

George Kirikos:I agree, wasn't great data.

Kristine Dorrain:My interpretation was literal. "proof of use required by the TMCH"

George Kirikos:I think F14-15 are more for the first part of that question i.e. "explore use", rather than the second part, the "types of proof".

Kristine Dorrain:the odd part (that I sort of discarded) was "when purchasing domains..." because you don't purchase domains from TMCH

Susan Payne:quite Kristine

Kristine Dorrain:@Greg, true. It was ont.

David McAuley:Kathy first

Julie Hedlund 2:Order is Kathy, and then George

Susan Payne:@Kristine - I think the stepchild has to go to Sunrise because you don't have POU for Claims - but to my mind that's the onky reason it's in "sunrise"

Kristine Dorrain:I think you might be right.

Kristine Dorrain:And I think a variation of this IS in the TMCH stuff too.

Michael Karanicolas:Hi all. Sorry I'm late.

Julie Hedlund 2:@Michael Karanicolas: We skipped over question 9, but can go back now that you are here.

George Kirikos:There is some overlap.

Ariel Liang:Cell F53 - Q23. Do you believe the Claims Notice to domain name applicants has met its intended purpose of notifying applicants of possible conflict with a registered trademark? - "- Yes (23)- No (10)- Don't know / not sure (8)"

Ariel Liang:Sorry was referring to the TM tab - please disregard

George Kirikos:@Michael K -- do we know how many countries follow the Nice Classification systems worldwide? (everyone??)

David McAuley:I was wondering Ariel -

Ariel Liang:apologies for the confusion!

Michael Karanicolas:Domain name registration

David McAuley:I see different language in F53 including a long URL

Michael Karanicolas:That's not a belief - that's math

Julie Hedlund 2:@All: Time check. Staff suggests that we don't read out the comments, but that commenters and others can raise any points not made in the comments.

David McAuley:I referred to F53 in Registries and Registrars tab

George Kirikos:MichaelK is referencing the TM & Brand Owners tab, cells F14 vs. F17, I believe (might want to add those in the right-hand most column)

Michael Karanicolas:The maximum number of marks he could have registered is as I said, due to the way the responses are clustered

Mitch Stoltz:@susan A rightsholder's level of "concern" is not relevant to what the scope of their legal rights are

Julie Hedlund 2:Order of hands: Phil, Michael, and George

Michael Karanicolas:Correct.

David McAuley:Greg, after Phil the order is Michael and then George

Michael Karanicolas:5 on the average.

Kristine Dorrain:Apologies, I have a conflicting call at the top of the hour so I'm going to drop in about 5 min. It might short, and if so, I'll jump back on.

David McAuley:Thanks Kristine

Mitch Stoltz:@philip I agree that the data doesn't necessarily answer policy questions. We should all recognize that in the context of each question, not just this one.

Susan Payne:@Mitch - my point is that if you are operating in a particular field then you might consider it appropriate to cover all the TLDs directly relevant to your business area plus some other "generic term TLDs like online, shopt, etc". Some with a different attitude to risk might register fewer and decide they'll rely on the URS/UDRP for the rest

Susan Payne:but either way, it'snot "gaming". that's absolutely the point of the sunrise

Julie Hedlund 2:@All: Time check, 38 minutes remaining and 6 questions remaining.

Susan Payne:iTS NOT GAMING

Mitch Stoltz:@susan - thanks for clarifying your position. If the point of the sunrise is to allow trademark holders to monopolize generic terms across a broad spectrum of gtlds, that's a fundamental problem, because they will not be able to demonstrate such a broad claim under trademark law. This is a situation where the bad faith prong of UDRP/URS needs to come into play.

Kristine Dorrain:If we're not supposed to prejudge the "use" of a domain name by domain name investors, we should also not judge the reasons why brand owners take advantage of sunrise (defensive or otherwise).

Susan Payne:@Mitch - not what I said

Mitch Stoltz:@susan what you said speaks for itself

Susan Payne:right so you think that a brand owner in the fashion field whose conc

John McElwaine:@Greg. Thank you for that question. I simply do not understand Michael's conclusions on the data

Susan Payne:who's concerned about the term "shop" with their brand, that's overreach - that's what you think Mitch?

John McElwaine:What about Food Apps

Mitch Stoltz:@Susan .shop is not representative

Kristine Dorrain:you're completely suppressing a RO's right to sell TLDs globally if you're going to force categories.

Susan Payne:what does that mean

Kristine Dorrain:Most gTLD applications in the last round did not purport to limit the audience

Susan Payne:don't interpret what I said one way mich and when I seek to clarify tell me that one doesnt count

David McAuley:Let's try to be as concise as we can now in comments as we only have 30 min or so left

Kristine Dorrain:Sorry, got to drop. May be back....

Kathy Kleiman:louder, clearer George please

Kathy Kleiman:I can't hear you

John McElwaine:Canada does not, yet

John McElwaine:Its occuring soon.

Mitch Stoltz:@susan two shops called example have an equal claim to example.shop. As does a journalist or critic of a shop called example. The key in those circumstances is bad faith, which is why such disputes should be resolved in UDRP, not sunrise.

Susan Payne:those 2 shops both have the opportunity to register in the sunrise

Michael Karanicolas:@Susan - but not the journalist or critic in Mitch's example

Michael Karanicolas:This is increasingly sounding like a deposition, imho

Susan Payne:and yet,as a member of the public, what are you moist expecting to see on example.shop

Susan Payne:isn't that what sucks is for

George Kirikos:Exactly.

Mitch Stoltz:@susan you have touched the fundamental issue here. If you're making a claim about trademark law, you are incorrect. The critic has the same legal right to example.shop as the shop does. If you're making a policy argument, then we must discuss whether the policy of sunrise should give commercial interests a greater claim on common words than others.

Kristine Dorrain:I'm back. Did you resolve everything?
George Kirikos:..EU was gamed too.
Michael Karanicolas:ha
David McAuley:we are still on Q9 Kristine
George Kirikos:All the Benelux TMs used in Sunrise.
Michael Karanicolas:[That laugh was for Kristine]
Philip Corwin:We did have consensus Kristine...until we didn't
Kristine Dorrain:you people are a disappointment. :)
Greg Shatan:..law was a restricted TLD, lawyers only.
Susan Payne:@Kathy - you have absolutely no evidence that trade mark owners have done that! that is pretty offensive to those brand owners you just namechecked
Kathy Kleiman:@Susan, does thi s have to be personal?
Susan Payne:you just made it so
John McElwaine:What is the definition of "gaming"?
George Kirikos:F25 of the TM Owner - Q10 tab was implicitly defensive registrations
George Kirikos:"prevent third party registration"
George Kirikos:I think defensive registrations are ok, but whether that entitles being first in line (first dibs = sunrise) was the concern.
David McAuley:mitch was next
Julie Hedlund 2:@All: We have 20 minutes and 6 questions left.
Kristine Dorrain:Is it time to move on? There is a little relevant data. We located the cells. We're not drafting a recommendation here.
John McElwaine:What is the definition of "abusive"?
Julie Hedlund 2:Seems that we may not finish today -- staff will reserve a few minutes at the end to plan for next week's call.
Kristine Dorrain:QUESTION does anyone have any more cells to bring up for data reference or can we move on.
Kristine Dorrain:I vote that we stop discussing hypotheticals at this point.
George Kirikos:MICROSOFT = high risk score, = 100/100; "WINDOWS" = maybe a 50/100 in terms of a risk score (many competing uses). But, WINDOWS in dot-software would have a high risk score.
Mitch Stoltz:I am concerned about both, but more so about common words.
George Kirikos:i.e. risk score depends on TLD.
Susan Payne:me too Kristine. there's nothing in the data about any of this. And we have 2 more questions we have to get through
John McElwaine:I have had to take a 2:15 call for a few minutes. I will be back.
Julie Hedlund 2:@Susan and Kristine: We also have new comments on questions 3, 4, 5(b) and 6.
Julie Hedlund 2:So we have 6 questions to cover.
Kristine Dorrain:And we're not covering anything. We're just opining on hypotheticals right now.
Greg Shatan:Yes, we need to get back to the task at hand.
Julie Hedlund 2:We should be looking at whether/how the data address the charter questions.
Kristine Dorrain:YES PLEASE

Michael Karanicolas:These queries are very interesting to tease out... but fundamentally I agree with Kristine - I'm not sure this gets us anywhere on this call

Susan Payne:Absoluetely Phil - my point exactly at the beginning of this discussion

Kristine Dorrain:Michael K right. This is work we will be doing later. but we've blown 45 minutes down the rabbit hole

Julie Hedlund 2:@Greg: We also have new comments on Questions 3, 4, 5(b), and 6.

George Kirikos:+1 Julie.

Kathy Kleiman:Specialized examples include community and geos

Kristine Dorrain:As a reminder, we don't need to relitigate everything here....George has helpfully provided a link.

Julie Hedlund 2:@All: Time check -- 10 minutes remaining. Should allow a few minutes for planning for next week's call.

David McAuley:Good point, Julie

David McAuley:In Q8 discussion (LRP, ALP, QLP) George and Kathy floated the beginnings of recommendations (e.g. point system, local sunrise), so please keep those thoughts in mind for when we get to sunrise subteam recommendations

George Kirikos:Right, sometimes we only have data from one stakeholder group in the survey for a particular question.

George Kirikos:3, 4, 5(b) and 6 had new comments from Maxim, and Kathy. So, hopefully next week Maxim is present, in case he wants to elaborate on his new points.

George Kirikos:(most of them were brief)

David McAuley:Good idea Julie re 3, 4., 5(b), and 6

George Kirikos:Thanks Julie.

Ariel Liang:yes as Julie noted

David McAuley:Thanks Julie and thanks all staff for these tools

Kristine Dorrain:Thanks for that clarification, Julie

David McAuley:locked and loaded with data

David McAuley:Thanks Greg, Julie, and all

George Kirikos:Bye folks! Have a nice day.

Philip Corwin:Bye all and thanks

Mitch Stoltz:thanks all

Ariel Liang:thanks all