

Attendance:

David McAuley
George Kirikos
Griffin Barnett
John McElwaine
Kathy Kleiman
Maxim Alzoba
Michael Karanicolas
Mitch Stoltz
Petter Rindforth
Philip Corwin

Apologies:

Kristine Dorrain
Susan Payne
Greg Shatan

Staff:

Mary Wong
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, 30 January 2019 at 18:00 UTC.

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

George Kirikos:Hi folks.

David McAuley:Hi, I am #4154

Michelle DeSmyter:Thanks David!

Julie Hedlund:All -- just a reminder that this meeting will commence at 5 minutes past the top of the hour to allow a transition from the previous meeting.

David McAuley:does anyone know what 'adobe connect line' means among participants

Petter Rindforth:And I am probably the "Adobe connect line"?

David McAuley:thanks Michelle

Mitch Stoltz:Hi, I am x9333

Michelle DeSmyter:thanks Mitch!

Maxim Alzoba:Hello all

Michelle DeSmyter>Welcome Maxim!

George Kirikos:Kathy isn't here yet, but she had an update.

David McAuley:I expect Kathy to call in

Griffin Barnett:As George said, the HW for the past week was too much; especially for those of us on both sub-teams. As discussed in the other sub-team, there was agreement to identify a smaller chunk of HW and give folks another week to complete that and then resume discussions of that piece next week. We should consider a similar approach in this sub-team.

George Kirikos:She mentioned an updated to her SOI in the TM Claims sub team.

Griffin Barnett:*smaller

George Kirikos:*update

George Kirikos:+1 Griffin. We should sync the same documents for both sub teams, too, to get some economies of scale.

Julie Hedlund:Mary's mic wasn't showing for me

Griffin Barnett:Agree George

George Kirikos:INTA study was another small unrepresentative sample, so little weight should be accorded its results, as noted at the time.

David McAuley:Thanks Phil

Julie Hedlund:The document is in the Adobe room and unsynced

George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-wg/2019-January/003608.html> "it seemed clear that this was a huge task for which a significant amount of Working Group (or Sub Team) time would be needed." Now we are given only 9 days to do what had been originally sent to ICANN staff.

Mary Wong:@George, as staff explained on the previous Sub Team call and as Phil is saying - this is not the case.

Julie Hedlund:@David: Noted.

George Kirikos:If we had know that it wouldn't be collected/compiled back before Xmas, we'd have had 6 weeks to do this. Now we have 9 days?

George Kirikos:Compiling all the articles about sunrise abuses, for example, are not present in the AnalysisGroup survey. They're just from blogs, etc.

George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-sunrise/2019-January/000171.html> "As a starting point, so I'm not just casting stones, in preparation for this week's call, might I suggest we all focus on a deep dive on the first two or three sources (since George said it took four hours to review the first four sources) and then look for information for ALL of the charter questions (if you're on both sub teams, you would cross reference the sources against both tabs in the spreadsheet). That will hopefully be a more manageable start."

Julie Hedlund:The document is in the adobe room and unsynced

Julie Hedlund:@George: If you can revise your comments in the document that would be helpful.

Julie Hedlund:helpful

George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-sunrise/2019-January/000188.html>

George Kirikos:<https://mm.icann.org/pipermail/gnso-rpm-sunrise/2019-January/000189.html>

Julie Hedlund:@George: Is that based on previously collected data, or additional data?

George Kirikos:@Julie: will do.

George Kirikos:@Mary: but, to be "sunrise eligible", they need to have "proof of use"

George Kirikos:And, these token uses are used to game things.

Philip Corwin:Isn't adequate evidence of proof of use an issue for our full WG TMCH review, not this sunrise sub-team?

George Kirikos:@Phil: it intersects with sunrise, since the only reason one would submit proof of use is to become sunrise-eligible.

George Kirikos:(no other benefits from submission of proof of use)

Maxim Alzoba:ROs do not check proof of use (just for clarity)

George Kirikos:What are "ROs"?

Griffin Barnett:Registry Operators presumably

Maxim Alzoba:Registry Operators

Mary Wong:@George, yes - that is why I made the comment; viz. If the "proof of use" requirement is insufficient/unsuitable for demonstrating the kind of "use" that makes for a valid trademark.

Philip Corwin:Understood George. Just inquiring as to whether it's more of a TMCH operations question that we should bookmark.

George Kirikos:Right, they don't. So, that means a gamed recordal can be used to advantage that person, to get first dibs for desirable domains.

Maxim Alzoba:if the record in TMCH - the TM Owner can participate in Sunrises

George Kirikos:@Maxim: no. Some are just for claims. Sunrise-eligible ones (a subset) can participate in sunrises.

Maxim Alzoba:@George, I meant ROs have no means to check anything but yes/no

Griffin Barnett:I don't think anyone was suggesting otherwise Maxim

Griffin Barnett:The issue (if any) is at the TMCH level, not individual RO/Rr level

Maxim Alzoba:yes

Griffin Barnett:(at least with respect to whether a mark is Sunrise eligible, a decision made by the TMCH)

George Kirikos:@Maxim: right, even you (or 3rd parties) can't easily see which are gamed, and submitted questionable proof of use.

George Kirikos:No comments, due to the Workload elephant in the room.

Mary Wong:On the "use" question, one thing I should have emphasized is that the "use" requirement is not the same across all jurisdictions, and the TMCH requirement was adopted in order to allow for flexibility across all possible jurisdictions.

Maxim Alzoba:no new comments

George Kirikos:@Mary: right, but what some see as "flexibility", others see as gaming.

Julie Hedlund:@All: Note that we did have some comments we didn't run through last week that were received on the AG survey results -- nothing new from last week though (as the documents were closed)

Ariel Liang:The new input that the Sub Team hasn't reviewed is in green

Ariel Liang:Starting from page 3

George Kirikos:So, Maxim's input.

Julie Hedlund:Page 3 -- Maxim

Griffin Barnett:Based on original input I made when we were reviewing the AG survey data, I think the issue of perceived gaming can best be addressed through an enhanced uniform SDRP allowing folks to challenge a Sunrise registration, recognizing the need for flexibility as Mary suggested at the proof of use level/ TMCH level

Kathy Kleiman:Sorry for joining late - presentation delayed greatly.

Julie Hedlund:@All: Noting that these comments (those in green) should have been reviewed for last week's call.

George Kirikos:Kathy might want to mention her new SOI.

Julie Hedlund:@David: Maxim has his hand up.

George Kirikos:(updated SOI, rather)

Kathy Kleiman:Tx David, and again sorry to be late.

Julie Hedlund:@George and Kathy: Staff have captured the update to the SOI for the notes.

Kathy Kleiman:Phil, did you already speak about the new procedure for "submission of additional data" - deadline 2/8?

Julie Hedlund:@Kathy: Phil did.

Kathy Kleiman:Greaat

Griffin Barnett:Not sure I understand Maxim's comments ... of course there will be reserved names that must remain reserved for a variety of reasons - technical, policy, etc. - but there should still be a way to challenge a reserved name status against uniform predictable criteria, in particular where the name should also be Sunrise eligible

Maxim Alzoba:reserved name list - is a list for which registrations are not possible , without a reason

Maxim Alzoba:there are no 'reasons' = any reason = no registration

George Kirikos:Wasn't there DPML, and DPML+ ?

George Kirikos:https://urldefense.proofpoint.com/v2/url?u=https-3A_donuts.domains.what-2Dwe-2Ddo_brand-2Dprotection&d=DwICaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl415cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwehFBfjrsjWv9&m=0_MqIU-YZL_DiBO-UHTktenw1sTW-iTUI6k0LxaGUVQ&s=WLK2Fs_c_QLZOyZR7rH_PN2T4MWCykbK-K9TfkYmk&e=

George Kirikos:"Note that a DPML override does not apply to DPML Plus. An override of a DPML block is the registration of a DPML-blocked domain by a registrant that holds an SMD file containing the label that exactly matches the label under a DPML block. The DPML block holder may override and register domains under their own block, and other third party mark holders may override legacy DPML blocks. There are no wholesale fees applied to overrides."

Maxim Alzoba:for example RO has obligation not to register ICANN reserved names, and for example a list of swear words -> it is a single reserved list in the end (swear words + ICANN list)

John McElwaine:I can say with certainty that a reserved name by a registry will block registration of a sunrise registration within that registry

Ariel Liang:The green text from page 4

Griffin Barnett:@Maxim, I don't think the idea would be to challenge the reserved names list in total, but only a specific name on the list insofar as it may improperly prevent a Sunrise registration for that name, but where other legitimate reasons to keep it reserved may apply (such as by reason of applicable local law)

Maxim Alzoba:@Griffin, for example our policy does not allow swear words, and some of them are TMs, and it would allow that parties to violate our policy

Griffin Barnett:The individual challenge to the reserved name status could still be refuted on various grounds like the ones I mentioned - technical reason, ICANN policy reason (Olympic names), violation of local law etc

Griffin Barnett:It would not be an absolute challenge

Maxim Alzoba:but the only mechanics is the inclusion of the reserved list

Maxim Alzoba:damaging reserved list mechanics is a direct interference with the software platform logic

Griffin Barnett:Not sure I understand... are you suggesting that your system wouldn't allow you to unreserve and allocate a name from your reserved names list if you wanted to?

Maxim Alzoba:@Julie, please add my comments about reserved lists to the notes

David McAuley:thanks Maxim, good idea

Maxim Alzoba:@Griffin, reserved lists are like blocklists for something, when you remove a string from it, it can be registered

Julie Hedlund:@Maxim: Your comments are captured in the chat, which is more accurate than the notes. The chat is captured on the wiki.

Kathy Kleiman:@Julie, but lots of people do read the Notes (and not as many read the full chat)...

Maxim Alzoba:and if it is registered, it neglects the reason for inclusion of the string into the reserved list

Griffin Barnett:@Maxim, right that was my understanding, so it would be possible to unreserve and allocate a name on your reserved names list if it was determined through some kind of process to improperly interfere with a Sunrise registration, for example

Kathy Kleiman:@Julie, if someone wants their comment added to Notes...?

Griffin Barnett:*improperly

Griffin Barnett:ugh can't type... you know what I'm saying

Maxim Alzoba:@Griffin, this mechanism will allow to violate policies of RO, ICANN

Griffin Barnett:I don't think circumventing Sunrise is an ICANN or RO policy

Griffin Barnett:How would a mechanism determining that a certain name should not be reserved from Sunrise violate an ICANN or RO policy?

Maxim Alzoba:for example ICANN requires to reserve a list of names like boot1, ..., boot10, and suddenly TM owner of boot3 wins the right to remove it from the reserved list ... bingo

Griffin Barnett:Again, assuming that there was a determination to the effect that releasing the name from being reserved would not violate a technical, ICANN policy, or local law, etc.>

Maxim Alzoba:Reserved name list is = it can not be reserved now (and Sunrise is just a time frame on the line of the life of a TLD)

Griffin Barnett:@Maxim, you are missing my point... the process would only direct the unreservation of a name IF IT DOES NOT CONFLICT WITH some other existing ICANN policy, local law, etc.

Maxim Alzoba:@Griffin, the reserved list is the mechanism to prevent conflicts

George Kirikos:Bye folks.

Maxim Alzoba:and damaging it dangerous

Maxim Alzoba:bye all

Griffin Barnett:Maxim, we clearly need to take this discussion offline bc we are not getting one another

Griffin Barnett:Bye all