

AC Attendance - 42 Members

Brian Beckham - WIPO
Brian Cimbolic
Brian J Winterfeldt
Colin O'Brien
Collin Kurre
Cynthia King
David Maher
David McAuley
George Kirikos
Georges Nahitchevansky
Gerald M. Levine
Greg Shatan
Griffin Barnett
Ivett Paulovics - MFSD
Jason Schaeffer
Jay Chapman
Jeff Neuman
Jon Nevett
Kathy Kleiman
Khouloud Dawahi
Kiran Malancharuvil

Kurt Pritz
Lillian Fosteris
Lori Schulman
Marie Pattullo
Martin Silva Valent
Maxim Alzoba(FAITID)
Michael Karanicolas
Michael R Graham
Monica Mitchell
Paul McGrady
Petter Rindforth
Philip Corwin
Rebecca L Tushnet
Renee Fossen
Roger Carney
Sara Bockey
Scott Austin
Steve Levy
Susan Payne
Vinzenc Heussler
Zak Muscovitch

On Audio Only: Claudio DiGangi, J. Scott Evans

Apologies: Heather Forrest, Diana Arredondo, Justine Chew

Staff: Antonietta Mangiacotti, Ariel Liang, Julie Hedlund, Mary Wong, Berry Cobb, Dennis Chang, Julie Bisland

AC Chat Transcript:

Julie Bisland:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday, 07 February 2018 at 18:00 UTC

Julie Bisland:Agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_ugxyB&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=LZ3slaCOVRt4h0mvmSgULe1LUT1PeyVigrLoqEQUa xc&s=vh5qHTHQ7fvhri_Mgyb1IG4I5BfzguYAwQXXAU50cos&e=

Julie Bisland:**If Adobe Connect is not functioning properly, please check your plug ins:
https://urldefense.proofpoint.com/v2/url?u=http-3A_tinyurl.com_icannactest&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=LZ3slaCOVRt4h0mvmSgULe1LUT1PeyVigrLoqEQUa xc&s=I9I6NBTTHgqBfmKcgOVIMDa0AV2-jBZQRT5ieDWDnPO&e=

George Kirikos:Hi folks.
Julie Bisland:hello George, welcome :)
George Kirikos:Thanks, Julie. How are you today?
Julie Bisland:very well! and you, good I hope!
George Kirikos:I'm doing fine, thanks.
George Kirikos:Next week's call is on Valentine's Day. ICANN should give out free chocolates to attendees.
George Kirikos:Or at least virtual ones. :-)
Julie Bisland:I'll see if i can get that set up!
George Kirikos:hehehe
Maxim Alzoba(FAITID):hello all
George Kirikos:Hi Maxim.
khouloud Dawahi:hi
George Kirikos>Welcome Khouloud.
Lori Schulman:3rd ICANN call today
Lori Schulman:sigh
Lori Schulman>Welcome Khouloud. We are a fun group.
khouloud Dawahi:thanks George .
Mary Wong>Action item #1 has been completed by staff
Julie Hedlund:@All: The document is unsynced so you can move it yourselves.
khouloud Dawahi:yes we are .We re making RPM great again @Lori
Lori Schulman:MRGA
Susan Payne 2:our internet is being worked on so I'm playing safe
Petter Rindforth:Frankly, I have seen a number of URS decisions between 500 - 700 words. Just a bit less than in UDRP decisions
Cyntia King:lol
George Kirikos:900 cases @ 1 minute per case = 15 hours. Very doable.
Berry Cobb:827 Cases on 1861 domains
George Kirikos:There's so much boilerplate text, that one can go through them very, very quickly.
David McAuley:I was hoping for no more than 826
Greg Shatan:How about no cases?
Paul McGrady:Back down. Will wait
David McAuley:I used to review -some- URS cases when I worked at Bloomberg – there is boilerplate but this is a monumental task nonetheless, IMO
Cyntia King:Why in God's name would we want to review 827 cases???
Susan Payne 2:@David - quite. And a number of us are questioning the fundamentals of this review
Marie Pattullo:I'm so glad you asked that Paul. I'm not sure what we're doing this for either.
Jeff Neuman:There was not any agreement on the last couple of calls that a qualitative review of the URS cases was necessary
Jeff Neuman:In fact, an alternate proposal was submitted to look at the instructions provided to the panelists to make sure that the right standardss were being applied.
Brian Beckham - WIPO:Excellent additional data points that (among others) could be added Paul, if there were agreement to do any such review.
Cyntia King:Would we then be required rto review UDRP cases?
Paul McGrady:This is a dangerous path - are we going to do this come UDRP time? That will bring Phase 2 to a grinding halt...
Jeff Neuman:Some on the last call argued that substituting our own opinions for those of the panelists was not a good course of action

Lori Schulman: Agree about reviews. We cannot put ourselves in the shoes of the panelists.

Lori Schulman: the appeal rate should tell us something

J. Scott: I am not sure the proper question is "

Lori Schulman: that's it

J. Scott: is the URS being applied properly

Michael R Graham: Apologies I missed the earlier call. However, I do not believe a qualitative review by this PDP working group would be appropriate. We cannot fall into the practice of applying our analysis to the Panelists' decisions. I do believe the question whether appropriate instructions and guidelines are given by the URS providers. As such, I do not believe a review of the 800+ decisions necessary or appropriate, but a review of the materials and training would be.

J. Scott: I think we can look at decisions to determine if there are aspects of the decisions that can be improved

Lori Schulman: @Michael, I think you meant "inappropriate."

Steve Levy: I'm not clear on precisely what data points would be reviewed and which would actually help inform our discussions. Also agree that this sets a dangerous precedent for phase 2 when we consider the UDRP.

David McAuley: lost audio for a bit

Kathy Kleiman: Might be worth listening to Berry Cobb's presentation as background for this discussion.

George Kirikos: When Public Citizen examined NAF, they looked at far more than 900 cases, see page 14 of https://urldefense.proofpoint.com/v2/url?u=https-3A_www.citizen.org_sites_default_files_final-5Fwcover.pdf&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=LZ3slaC0VRt4h0mvmSgULe1LUT1PeyVigrLoqEQUa xc&s=deW2KRu7EpsYGczZh3vBdazszqAkQKq11eNZajRq5k&e=

Mary Wong: All, it may be MUCH clearer and more helpful after you hear Berry's presentation.

David McAuley: I agree with Phil about making an objective inquiry and using a sample, not all cases. If we have a team of qualified outside volunteers to undertake this exercise then it would be in our interest, IMO, to give them a template looking to apply objectivity to be using – for instance looking at whether the decision is within the objective standards for a URS decision, maybe note any unusual aspects, etc.

Cynthia King: Where does it stop??? If we don't understand a panelist's reasoning, are we then going to ask them to explain?

Michael R Graham: @Lori -- Thank you -- the first "appropriate" should be "inappropriate" -- a slip I sometimes make in typing. ;-)

Mary Wong: Staff is NOT proposing that the WG should do a substantive/qualitative analysis - we are going to present a possible framework for extracting information from published URS decisions, from which you can then decide if you wish to go further,

Lori Schulman: A critical point Michael. I do it all of the time.

Lori Schulman: Maybe we let Berry give his presentation and then we critique/comment

Colin O'Brien: Cynthia I agree are we meant to be a court of appeals now? This is huge overreach.

Cynthia King: We are not an enforcement body. We are POLICY. We examine the larger body of evidence, generate suggested policy & make sure there are means to tweak that system.

Lori Schulman: As a compromise, I might only look at appeals.

Mary Wong: Please, let's hold off on discussing whether you want to "open up" cases beyond the published case decisions until Berry has had a chance to present.

Michael R Graham: @Cynthia -- +1

Lori Schulman: Appeals that assert that the standard has not been applied.

Jeff Neuman: @Mary - I understand that we should hold off on a final decision, but it sounded like from the presentation that it was a foregone conclusion

Greg Shatan: Why don't we just ask the Panelists whether they believe they have appropriately applied the "clear and convincing evidence" standard?

Cyntia King: Making a judgment that application of the rules was faulty in any case would give the appearance of offering an appeal to the losing party.

J. Scott: Speaking as one of the Co-Chairs, my intention with the memo was to simply have a discussion on this issue.

Lori Schulman: @Greg, I don't think that a panelist would say that they did not apply the correct standard.

George Kirikos: @Greg: that's the same as asking "Did you do your job?" LOL

Mary Wong: @Jeff, apologies if that was what came across - the staff intro was meant to do the opposite.

George Kirikos: What will they say, other than "Yes, I did my job"?

Steve Levy: Will a review of cases merely consider whether the appropriate standard of review has been mentioned in each decision? Anything beyond that requires reading a good portion of each decision and then making a subjective determination of whether the standard has been applied.

Mary Wong: i.e. present a possible data-based framework for looking at selected URS decisions. The WG can then decide if they want to go that route, add other data elements, or review all/no cases at all.

Jeff Neuman: The information Barry is providing is objective data. Re-examining a panelist's decision is in no way objective.

Cyntia King: We are not relying on our own opinions - in fact, by asking the constituencies we are asking THEIR opinion on whether the system is working?

David McAuley: I think there are two different things afloat and so let's hear Barry and see what's on offer

Mary Wong: @Steve, thanks - that's why staff is hoping that Barry's presentation can provide a useful starting point for deciding how much the WG believes is appropriate to look at.

George Kirikos: +1 Rebecca. Sometimes the panelists mess up the boilerplate reply, making things illogical or internally inconsistent. I pointed that out before in the context of the UDRP.

Cyntia King: That is the issue succinctly - it's not our job to determine if each panelist is "doing the right thing".

Kathy Kleiman: All answers in Barry's presentation

Mary Wong: @Paul, no

Kathy Kleiman: It might be good to do that now.

Brian Beckham - WIPO: As to Greg's question, the fact that you have cases in which relief is denied means that there are panelists who feel that - based on the facts before them, the burden has not been met or not, so yes, they are applying it (the burden) according to their judgment in each case.

David McAuley: no pressure @Barry

George Kirikos: [Rebecca L Tushnet: No, because you haven't heard about what either the WG or my RA are going to look at, so judging now is not the greatest idea.](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.circleid.com_posts_20100423-5Fnaf-5Fcopying-5Fpasting-5Fnonsense-5Finto-5Fudrp-5Fdecisions_&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=LZ3slaCOVRt4h0mvmSgULe1LUT1PeyVigrLoqEQUaxc&s=58pWKeHPNi6UHnALLUYnCIQFW7lnQigz0_tSFHYry4&e=<<--- perhaps a review of the URS decisions will discover similar issues.</p></div><div data-bbox=)

Michael R Graham: @Phil -- I would agree, but even the act of review to determine whether the standard of review is being correctly applied constitutes overreach. Asking "What analysis was applied? What standard was set forth in the decision?" would be appropriate. Asking if they were the correct analysis or standard seems inappropriate. (There, got it right!)

Kathy Kleiman:Can we do the rest of the presentation?

Mary Wong:@Paul, while staff has been coordinating with Prof Tushnet and her RA - to understand what we are each doing, and because we are starting from the same data (as you will see), what Berry will present is NOT the same as Rebecca's research.

Paul McGrady:Can I respond to that?

Ivett Paulovics - MFSD:Hi everyone. Sorry about being late.

Paul McGrady:@Phil - seems like Rebecca can get offline whatever input she wants from whatever WG members who want to give it; but let's not mash up her research efforts with the efforts of this WG.

Colin O'Brien:@Paul +1

Cyntia King:With respect, I have concerns about case reviews being done without bias. Were we to take this on, it should really be done by an outside group w/ set standards & no bias.

Paul McGrady:Also, if Rebecca is undertaking this research of her own accord, why would we ask Staff or the WG volunteers to do the same thing? Staff Burnout. Volunteer Burnout.

claudio:also just from a practical perspective, "clear and convincing" is an evidentiary standard, so to review a statistically % of cases, we would need to access to the underlying evidence and pleadings, which we don't have

Mary Wong:@Paul, all - this WG's ultimate approach will not affect Rebecca's academic research; at the same time, there are common elements in the staff proposal with what Rebecca is doing. But note that these commonalities are ALL to do with informational elements that are on the published URS record.

Ivett Paulovics - MFSD:Just a short comment. Determinations rendered in the disputes handled by MFSD contain as detailed description of the allegations of the parties and reasoning as possible.

George Kirikos:At least 80% of the disputes are "no-brainers", i.e. unwinnable by the registrant. It's how the other 20% which are defensible that one cares about. Ari Goldberger of Esqwire.com noted he wins about 95% of UDRPs (representing the domain owner), because he focuses on that smaller group of "winnable" cases (e.g. dictionary words, acronyms, or "valuable domains", for lack of a better term, which have multiple competing good faith uses).

George Kirikos:(I think Ari's stats were in a recent DNW.com podcast)

Cyntia King:@George, so someone would still need to go through all cases to locate the % "defensible"?

Petter Rindforth:The URS Procedure 1.2.6, requires Complainant to make a prima facie case, proven by clear and convincing evidence, for each of the three elements to obtain an order that a domain name should be suspended. That also means that the Examiners have to study and comment on each element, and then decide. These steps should be clearly described in each decision. Can be done in less than 500 – 700 words ;-)

George Kirikos:@cyntia: well, sometimes it's obvious, but you're right, folks might disagree.

Paul McGrady:How would researchers even reach a conclusion on correct or incorrect decisions? The underlying complaint and response isn't published? At best, at the end of the research someone could opine on whether or not they think the Decision was written as well as it could be.

Cyntia King:+1 Paul

Kathy Kleiman:@Paul: because that's not what they're studying...

George Kirikos:@Paul: sometimes even the panelist gives enough info to put in doubt the conclusion that was drawn.

George Kirikos:e.g. "the domain name was parked at the registrar" -- shows the name wasn't being used for anything yet, how was that abusive?

Mary Wong:As Berry makes his presentation, please remember that the staff questions for the whole WG are: (1) Do you think, as part of data-driven policy making, the WG should review all, some (or none, per Greg) URS cases? And (2) If some, what types of cases ("buckets", per Berry) should those be?

Lori Schulman:@Kathy - in 1 or 2 lines, what are they studying? it might clarify.

George Kirikos:(I cited a couple of cases at last week's call, in the chat transcript)

Kathy Kleiman:enjoy the presentation!

Petter Rindforth:@Phil: It will add 60 min, but it's worth that extra time to be more clear in the decision

David McAuley:How about Commander Data?

Paul McGrady:@George - parked at the registrar could mean any number of things. Without the underlying papers, there would be no way to know, so at best the analysis would be "we wish this panelist had written this Decision more clearly so that we could know more about why he reached his decision". Not helpful.

Lori Schulman:@David. Love it. or just DATA.

Paul McGrady:@David - Ha! Do it and see if Paramount comes after us...

David McAuley:good point Paul

Cyntia King:@Lori he should be a robot

George Kirikos:Or, folks rightly criticize the recent "Ado.com" decision (in the UDRP context), because the panelists tried to suggest a 3-letter one-word dot-com should have the same value as a 4-letter non-word dot-com. Silly stuff like that. https://urldefense.proofpoint.com/v2/url?u=https-3A_domainnamewire.com_2018_02_05_wipo-2Dpanel-2Dscrews-2Ddomaining-2Dcom-2Downer-2Dfrancois-2Dcarrillo-2Dado-2Dcom_&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=LZ3slaCOVRt4h0mvmSgULe1LUT1PeyVigrLoqEQUaxc&s=4sCZ1BgQ0uw-CD7K9qEn9zjnK6sv9szb1uNSbdbwr5Q&e=

Philip Corwin:@Petter -- 60 minutes just to say the trademark was "x" and there was no/this content at the website? seems high

Jeff Neuman:@George, there were other facts in that case other than the value of the .com

Jeff Neuman:IN particular, the Registrant didnt help themselves by designing logos that were semi similar to the complainants

George Kirikos:True, Jeff. But when they miss the mark so badly on that, it calls into question all the rest of their findings.

George Kirikos:@Jeff: I didn't see them as similar. Red but different font.

Jeff Neuman:@George - its a subjective decision. You dont see them as simiar, but the 3 panelists did

Petter Rindforth:@Phil - 60 min includes at least 500 well considered words.

George Kirikos:@Jeff: the same three panelists who blew it on domain valuation. :-)

Jeff Neuman:That is why we cannot put ourselves into the position of the panelists especially where reasonable minds may differ

Cyntia King:@Jeff @George - There generally are factors specific to the case that would be relevant to a decision. We do not have the time or \$ to review every case & to try to understand all the factors.

Susan Payne:Data driven policy development is not disputed. But you need to be looking at the data that is relevant and appropriate to the task. Just because something constitutes data does not mean it is relevant/appropriate

J. Scott:+1 Susan

Paul McGrady:Interesting that the data sets described didn't lead with Xhundreds were found to be clear cut abuses of trademark rights and were not appealed. This is the problem with carve out the outlier trees and missing the forrest in the analysis.

George Kirikos:That Public Citizen review of NAF that I posted earlier examined far more than 900 cases. It can be done.

khoulood Dawahi:+1susan .

Cyntia King:+ Susan

Paul McGrady:+1 Susan. Data for no purpose is wheel spinning. Wheel spinning leads to Staff and Volunteer burnout. We need to have a good reason to do this, especially if Rebecca is already volunteering to do this on her own.

Cyntia King:Again: Any review qualitative case review must have clear cut standards & be unbiased. We would likely need to have an outside vendor do such a review to obtain homogenic data.

Paul McGrady:@Berry - would there be an assumption that any cases that were not reviewed were rightly decided? Cherry picking the data sets you want to review is an easy way to skew outcomes.

Kathy Kleiman:@Paul - exactly: no cherry picking.

Lori Schulman:I think measuring things like numbers of appeals, length of time from filing to decision, etc. could be helpful at a very high level. Anything else is too subjective.

George Kirikos:When you review all of them, by definition there's no cherry picking.

Mary Wong:All, the WG will still need to identify the specific types of cases ("buckets") to review; the template Berry is discussing only shows how the data from those cases can be captured.

George Kirikos:Since it's the entire universe of data, not a subset that folks might dispute as unrepresentative statistically.

Maxim Alzoba (FAITID):if we review all of them - there is a budget limit

Mary Wong:For "buckets", you could consider Appeals, Responses, "dictionary word" disputed domains, etc.

Marie Pattullo:And a time limit, Maxim. We are supposed to be trying to get to results, not exhaust time and budget on tangents.

Cyntia King:@George Review all cases? Why? Why not query the constituencies for how they perceived the process?

Cyntia King:And again, this sets an unmeetable standard for our UDRP review.

Lori Schulman:with a few notable exceptions, every word in a trademark will be found in a dictionary

Paul McGrady:Again, why would the WG take this on if Rebecca is going to do it on her own? Why would we ask Staff to do? Also, why would we bake into Rebecca's research the WG's biases which will ensure confirmation bias when we see her results? Wouldn't it be more useful if she conducted her research independently so that we have something semi-independent to review (it will never be fully independent since she is a member of the WG, but mash us up into her process is going to complicate things further).

Mary Wong:Berry is now talking about the purple section in the middle of the document.

Julie Hedlund:@All -- we've synced it now to make it easier to see where he is.

Cyntia King:Thanx, Julie. Very helpful.

Mary Wong>Please note the staff note under the three TM columns - we specifically identify these elements as requiring more subjective analysis, and not data.

Lori Schulman:why does it matter if owner is mentioned

Sara Bockey:I need to drop for another meeting. Thanks all.

Steve Levy:I don't see anyone being able to collect this information at 1min per decision

Lori Schulman:agree with yes/no to get aggregated data but I am not sure that the questions are relevant

Mary Wong:@Lori, that is an element that Rebecca and her RA included in their initial template. That's why the staff note cautions against interpreting this as proving anything about the TMCH.

Philip Corwin:putting myself in queue first to kick off discussion when Berry finishes

Mary Wong:@Steve, yes, that's why staff noted earlier that while it may take 1 minute to glance over a panelist's decision, entering any number of data elements (e.g. disputed domain, TM at issue, result etc.) will take longer. At a conservative estimate of 10 minutes per decision, how long the effort will take depends on how many (and which) "buckets" of cases are agreed on as meriting this type of data extraction.

David McAuley:I'm going to be dividing time on two calls in a few minutes, so want to thank Berry now and say this kind of data shown so far seems objective – which is much preferred, IMO, to any subjective review of the merits/quality of a decision.

Greg Shatan:I need to chair Jurisdiction Subgroup in 2 minutes, but I have a lot fo concerns about this.

Mary Wong:@David, that's why I also said in the intro that this does not include any future WG decision - AFTER you have seen the result of this data (based on "buckets", as noted, if the agreeemnt is to do some rather than all or none of the cases) - as to whether any of the reported data merits a futtther analysis.

Lori Schulman:Greg, your concerns are shared.

Lori Schulman:and we will speak up

David McAuley:Thanks @Mary

claudio:"renewed" can be listed as another outcome in the "Domain Disposition" column, since under the current remedy registrants are able to renew the domain and continue using it

George Kirikos:Mute/unmute?

George Kirikos:*6

George Kirikos:PG.food vs PG.movies

Mary Wong:@REbecca, that is correct - the staff view is that those elements go beyond data and may involve more subjective analysis/judgment.

Michael Karanicolas:Sorry I joined a bit late - this sounds like a valuable supplement to the other research avenues, @Rebecca, I think it will be a valuable addition.

J. Scott:@Rebecca. Not necessarily. If tower.london is being used to offer counterfeit goods or set up false customer service sties, you'd expect a win for the TM owner.

Susan Payne:@Rebecca @J Scott precisely, why we have pointed out that you cannot do this exercise without all the facts. which are not available

Lori Schulman:Right, I am concerned about absence of context

Kathy Kleiman:@Michael Graham -- good question re: provider

George Kirikos:Is there any academic literature on an accepted numeric measure of "trademark strenth", or is it still considered somewhat objective in academia?

George Kirikos:somewhat *subjective, rather.

Jeff Neuman:Presumably at least in the US if a mark is "descriptive" it must have been judged to have acquired secondary meaning. That has as much protection under the law as a suggestive or arbitrary mark

Lori Schulman:@Georges, there are studies on valuation and some marks are ranked by measures of value and recognition. I am not aware of an objective standard, generally, for strength.

Lori Schulman:I mean @George K

Mary Wong:@Rebecca and all, yes - that is why the staff note calls out those elements specifically as NOT being pure data.

George Kirikos:Some different models of TM strength in a paper at:

https://urldefense.proofpoint.com/v2/url?u=https-3A_cyberlaw.stanford.edu_files_publication_files_understandingtrademarkstrength.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=LZ3slaCOVrt4h0mvmSgULe1LUT1PeyVigrLogEQUa_xc&s=zU87R44k6MbCISNyLq5iEXJ40e3DPFfMZn0dQ9UFHaM&e= But, perhaps others know of better papers (just a quick Google search to find that article, so not a comprehensive literature review)

George Kirikos:Thanks Lori.

Griffin Barnett:Again, why are we getting into any evaluation at all regarding trademark strength....?

khouloud Dawahi:thanks @George for sharing the paper

Michael R Graham:@Rebecca -- Understood, but for the validity of your research, I think it essential to indicate whether the determination of the nature of the trademark (and hence level of protection) is that of the Panelist or your researcher.

Mary Wong:@Griffin, those are NOT part of the staff proposal - thsi entire template was what was developed by Rebecca's RA and we did not think it appropriate for us to tinker with it; that is why we did the callout comments.

George Kirikos:@Khouloud: no problem. It was the first hit in Google for "strength of trademarks objective measure" LOL :-)

Griffin Barnett:Thanks Mary, understood....I was more ferring to some of the discussion going on in the chat

Griffin Barnett:*referring

Cyntia King:+1 Paul

Susan Payne:+1 Paul

khouloud Dawahi:i have noticed @George but thanks anyway .It is still an effort to try to move the discussion toward TRADEMARK STRENGTH nonetheless

Michael Karanicolas:There's obvious relevance for this research to the working group. Why would we not discuss how to best utilize it, to ensure that it will be maximally useful?

Martin Silva Valent:+1 Michael

J. Scott:@Paul & Phil: I felt that the purpose of this call was to look at all the data we have now and the data is going to look out in order to identify a set of data points that we can use to help us to narrow the field of cases to review.

Scott Austin:+1 Paul

Michael Karanicolas:@Paul - this should be viewed as a resource, not a drain on the WG's time. It's a contribution.

Paul McGrady:@Phil - I'll read anything from anyone with enough gravitas to make it worth reading, Rebecca certainly has the gravitas.

Susan Payne:@ J. Scott there is still a difference of opinion over what level of case review is relevant and appropriate, if at all

Cyntia King:@Michael Karanicolas Reviewing decided cases is not imperative to our misson.

J. Scott:@susan. I agree. We have decisions to make.

J. Scott:The threshold question needs to answered. Review or no review. If review, how much? if reviewing segments, what data or criteria used to identify segments.

Paul McGrady:We are in extremely unusual space where we are essentially being asked, as a WG, to participate in private research.

Berry Cobb:@Kathy - none yet, but could be an element added to the matrix

Lori Schulman:I think there is a major difference between review of process vs. review of substance.

Martin Silva Valent:@cinthia this is exactly what we have to review

Cyntia King:YES @Lori!

George Kirikos:Document is locked, but some of that might be captured via Country of TM, etc.

George Kirikos:(I can't see all the columns)

Mary Wong:@J Scott, thank you - that is how staff tried to frame this discussion, sorry if the message got lost.

George Kirikos:Thanks for unlocking.

Cyntia King:@Martin - Really, why?

Berry Cobb:@George. Sorry, I thought it was unsynced.

Griffin Barnett:+1 Lori - that is a critical point, and agree that if we undertake any review it really should be limited to URS process - were the rules/procedures followed

Michael Karanicolas:I disagree with @Paul that this is such an unusual situation. People do background research to support WGs on their own all the time, and it's not unusual to co-ordinate and discuss it.

George Kirikos:Yes, those countries are captured now.

Kathy Kleiman:@Berry - tx, I think that would be a good element to add.

Griffin Barnett:as others have said, we should not engage in sbstantive review of panel decisions, but rather ensure that they followed the right procedures

Martin Silva Valent:We have to understand the outcome of the process to review thr processes itself. Is like fixing an engine without seeing it running

Paul McGrady:My concern is that by making the members of the WG into human subjects, we run the risk of the outcomes of this study being considered to be more than what it is - an independent research project by a respected academic.

George Kirikos:Actually, unless I missed something, just countries of complainant/registrant, not country of TM itself?

Kathy Kleiman:How do you analyze the charter questions without data?

Paul McGrady:+1 Susan - participating in private research activities is outside of the scope of this WG.

Michael Karanicolas:+1 Kathy

khoulood Dawahi:kathy +1

Jay Chapman:+1 Kathy

Colin O'Brien:+1 Susan

George Kirikos:Having 2 more columns, (1) TM itself (2) country might help. Even services/goods as a 3rd.

Cyntia King:+1 Susan

Michael Karanicolas:I really don't understand the resistance to supporting gathering data to better inform our decision. There's no rational basis for divorcing ourselves from that process.

Griffin Barnett:Perhaps we should not be trying to make this decision in the abstract - we can look at our topics we have identified and determine specifically what additional data we might need to answer the framing questions

George Kirikos:+1 Michael.

Griffin Barnett:(if any)

George Kirikos:ALL.

Martin Silva Valent:+1 kathy

Martin Silva Valent:Gnso council itself said this should be a data driven review

Berry Cobb:I'd also like to note that staff is NOT involved in any of Rebecca's and Alex's research other than us sharing the raw data that we scraped and a few columns of the coding matrix in hopes that their effort can be leveraged. Staff does not have the resource to go through all cases.

Steve Levy:Will we also be reviewing all UDRP cases in phase 2? There are only 50,000 of them

Cyntia King:@Michael Karanicolas - This is not a research group. Thi si a working group. Our purview is to review the RPMs & decide if they're working or need to be tweaked. Reviewing all URS (and by extension, UDRP) cases is far afield of our purpose.

khoulood Dawahi:why not to vote on whether we would like to choose all , buckets or none ,simply ??

Scott Austin:+1 Susan; experienced TM lawyers disagree (and litigate) every day over a mark's distinctiveness along the continuum of arbitrary, fanciful, suggestive, descriptive

Steve Levy:+1 Scott. No objective way to assign distinctiveness to most marks

Brian Beckham - WIPO:Exactly, Scott

Cyntia King:@Martin Silva Valent - yes, data driven. Not second-guessing-based-on-limited-data driven, which is what reviewing decided cases would be.

khoulood Dawahi:Let s just vote on whether we would like to choose all , buckets or none ,simply

Brian Beckham - WIPO:@Steve, to your question of reviewing 50,000 UDRP decisions, well, we did that already and published the WIPO Overview 3.0 -- I can assure you this was no small task

Cyntia King:Agree @Lori

Paul McGrady:Old hand, but we need to make a decision on whether or not it will be mandatory for the WG members and the Staff to participate in Rebecca's research, or whether we just wish Rebecca well and tell her we look forward to reading her article.

George Kirikos:INTA survey had some very subjective responses, too. e.g. claimed damages, someone responded with \$5 million, arbitrarily in that survey, if I recall correctly.

Mary Wong:@Paul, as we have said several times, Rebecca's research is independent of this WG and staff work. We are not participating in her research.

Michael Karanicolas:I don't think anyone's talking about making participation "mandatory" for you Paul, you can always log off. Nobody is forcing you to participate.

Lori Schulman:INTA's analysis was done for different review team with different focus.

Georges Nahitchevsky:Rebecca's research is her own research as an academic and should just be a data point given to the working group and could be considered along with other data points provided by others in group, such as INTA.

Cyntia King:+1 @Georges

Kiran Malancharuvil:+1 Georges

George Kirikos:Rebecca's research will presumably be peer-reviewed and published at some point, higher quality work like that is desirable.

Paul McGrady:@Mary - by providing comments to her chart today, we have already participated in her research.

Michael Karanicolas:I find it ironic that the same people complaining about this discussion wasting our time and very happy to argue until the cows come home against it

Brian Beckham - WIPO:@Phil, there is no agreement on the scope, which is necessary before any review takes place (there is not even agreement on such a review)

Lori Schulman:Agree that Rebecca's study can be useful data point. But do not agree that the group should participate in it.

Lori Schulman:data point

claudio:@Rebecca, for your research: the outcomes in the Domain Disposition should relate to the remedy/decision, these are listed in the "Status" drop-down menu on the NAF website, e.g. 1) claim denied; 2) suspended; however, you can add another column "Current Status of Domain": 1) still under suspension, 2) available for registration; 3) renewed by the registrant; 4) registered by another registrant; 5) registered by trademark owner

Martin Silva Valent:+1 Michael

Lori Schulman:Agree with Brian Beckham. We need to agree on scope and then decide how many cases, if any, to look at.

Brian Beckham - WIPO:Agree @Lori, there may be plenty of academic research this WG can look at, but these are independent

Cyntia King:@George - when Rebecca's study is complete & understanding it's plimited application to our WG, agreed.

Maxim Alzoba (FAITID):NOTE: I'd like to support the idea of using free services of a Harvard Law School (if we can afford it for free)

Michael Karanicolas:+1 Maxim.

Martin Silva Valent:+1 maxim

Kathy Kleiman:@claudio: interesting.

claudio:thanks, Kathy. @Rebecca, did you catch that?

Paul McGrady:@Phil - I think we need to have that conversation, but not in the context of Rebecca's research

Kathy Kleiman:@Maxim, interesting.

George Kirikos:Bye folks.

Georges Nahitchevansky:George K; Rebecca's reserach has some parts that are objective (e.g., how many domain names at issue, is the domain one word v. multiple words etc...). There are subjective elements that reuqire analysis and thus at that point there are decisions and points of view. Rebecca is only one academic there are others that could look at things differently, so it seems to me that her research should simply be another data input to the WG.

Maxim Alzoba (FAITID):bye all

Cyntia King:@Maxim They aren't working for us, they're doing independent research. We should review & give as much weight as any other outside work, like the INTA report.

khouloud Dawahi:+1 Kathy

Paul McGrady:@Kathy - so long as silence on the template isn't taken as assent. I don't have time to participate in private research efforts of other WG members.

Maxim Alzoba (FAITID):@Cyntia, if the research matches our needs - I do not see harm

Mary Wong:Can we clarify? Phil did not say circulate Rebecca's template, just the consolidated document from last week - or did we hear incorrectly?

Lori Schulman:Agree with J Scott -- there is no agreement on whether/how we look at cases?

Georges Nahitchevansky:Which template? Rebecca's!! Let her do her own research however she wants to, but we should not be sanctioning this.

Lori Schulman:We can certainly look at Rebecca's template for informational purposes.

Martin Silva Valent:We said resources were scarce, this is a very good opportunity

Lori Schulman:but it's not the WG's template

George Kirikos:Basic quality control can't be done if there's no review of the cases.

Julie Hedlund:@All: Per the notes, as far as staff heard, staff will circulate the compilation of current URS discussion documents.

Susan Payne:agree J Scott

Paul McGrady:Agree J Scott

Martin Silva Valent:This is relevant data being proposed

Cyntia King:We are NOT Quality Control

Paul McGrady:Folks, we all have calls to be on for which we are 3 minutes late. We need to wrap this up.

Mary Wong:To be clear, the template was not prepared by staff.

Cyntia King:@ Maxim Alzoba - Rebecca's research has limitations that make it interesting but imperfect for our purposes.

Michael Karanicolas:#ReleaseTheDocuments

Maxim Alzoba (FAITID):@Cyntia, we need to see the documents to tell that

George Kirikos:lol Michael.

Paul McGrady:Sorry. Have to go. Sounds like the co-chairs should touch base on what they want these calls to be about.

Steve Levy:+1 J Scott

Julie Bisland:next meeting: Wednesday, 14 February 2018 at 18:00 UTC for 90 minutes

Michael Karanicolas:Thanks all!

Maxim Alzoba (FAITID):bye all

George Kirikos:Bye folks.

Kathy Kleiman:Valentine's day together :-)

Steve Levy:Thanks all

Cyntia King:@ Michael Karanicolas - hysterical
Lori Schulman:thanks.