

Attendance - 16 Members

Brian Beckham - WIPO
David McAuley
George Kirikos
Greg Shatan
Griffin Barnett
John McElwaine
Kathy Kleiman
Kristine Dorrain
Maxim Alzoba (FAITID)
Michael Karanicolas
Mitch Stoltz
Petter Rindforth
Philip Corwin
Susan Payne
Zak Muscovitch

Apologies: none

On audio only: Michael Graham (joined as guest, not Sub Team member)

Staff: Ariel Liang, Julie Hedlund, Julie Bisland

AC Chat:

Julie Bisland: Welcome to the RPMs Sunrise Data Review Sub Team call on Wednesday, 16 January 2019 at 18:00 UTC

Julie Bisland: Agenda wiki: https://community.icann.org/x/iwj_BQ

David McAuley: dialing in

David McAuley: I am #4154

George Kirikos: Hi folks.

David McAuley: Hi George, hi all

David McAuley: thanks Julie - start at 5 past the hour

Mitch Stoltz: I am #9333

Julie Bisland: thank you, Mitch

George Kirikos: Hi David.

Julie Hedlund 2: @All: To allow a transition from the previous call, we will start this call at 5 minutes after the hour.

Maxim Alzoba (FAITID): Hello All, sorry for being bit late

Julie Hedlund 2: @All: New comments are in green.

George Kirikos: Thanks David.

George Kirikos: Understood.

George Kirikos: Maxim added new text.

Griffin Barnett: I believe we discussed many of these questions last week

Julie Hedlund 2: @George: Correct, but everyone would have had a chance to review the next text, so the question was whether anyone have any comments on Maxim's text.

Kristine Dorrain: I don't think we have any new input this week.

Griffin Barnett: Yes thanks for clarifying

Maxim Alzoba (FAITID):Pricing is outside of PDP remit

Griffin Barnett:@George - there is survey data specifically about pricing

Kristine Dorrain:There are a bunch of questions on pricing coming up.

Kristine Dorrain:But spoiler alert...Maxim is right.

Michael Karanicolas:I do think that pricing, to a certain degree, is just in the high of the beholder. Some of these domains might sell on the open market for vastly more.

Julie Hedlund 2:@All: Just noting that as you scroll through the document the new text is in green.

Philip Corwin:I don't recall anyone on this WG ever stating that TM owners can do no wrong

George Kirikos:@Griffin: yes, there's more weight to "I paid \$200 in sunrise" rather than "prices were too high".

Julie Bisland:sorry to interrupt chat: may I ask who has the phone number ending in 4330?

George Kirikos:I do know the distinction, Susan.

Susan Payne:evidence would suggest otherwise

George Kirikos:Yes, .makeup.

Michael Karanicolas:I think he said .makeup

George Kirikos:But, on an absolute basis, is \$6,000 "high" or is "\$200" high?

George Kirikos:That's more subjective.

Maxim Alzoba (FAITID):both is outside of picket fence in RA, RAA 2013 (regulating Registries and Registrars)

Maxim Alzoba (FAITID):*are

Kathy Kleiman:RY/RR TabF52 -- people don't understand "sunrise" "ga" "landrush".... so after GA, some people think the TLD is reserved to companies or local public entities or whatever, people don't understand the price....Screen reader support enabled.

George Kirikos:e.g. paypal.tld vs. paypalbank.tld, if there's no TM for "Paypal Bank" and only "Paypal"

George Kirikos:18, not 8

Maxim Alzoba (FAITID):Do Brand owners have similar rights (extended matching) outside of domains sunrise suggestion? if not - why granting it ?

George Kirikos:Plus, TM owners could still register those variations in GA.

Griffin Barnett:@Michael, yes it's a fair point - it's a bit tautological

George Kirikos:i.e. there's no "race" to get those variations, usually, at GA

Griffin Barnett:I was perhaps scraping for any relevant data we could identify here as being relevant - but ultimately, there really isn't any

Kristine Dorrain:When we discuss solutions, vs the survey data, we will want to discuss balancing preventative vs curative rights....

Susan Payne:@Maxim - yes sort of. would frequently win a TM infringement action or a UDRP. Obviously depending on the exact circs

Griffin Barnett:But gareed, we are not yet at the stage of trying to develop any kind of fix or recommendation type conclusion

Greg Shatan:I don't think URS can deal with typosquatting, but I could be wrong.

Griffin Barnett:@Greg I think it can actually

Michael Karanicolas:I was making a counter-point to an issue that was raised. I don't see how that's outside of scope.

David McAuley:fair point, MK

Griffin Barnett:(so long as there are other factors supporting the overall analysis of all the elements and meeting the standard of proof)

George Kirikos:There are so many TMs for single letters, e.g. "A".

George Kirikos:Can that be used to get "AA", "AB", etc, as those are "typos" of "A"?

Kristine Dorrain:+1 Griffin

Michael Karanicolas:+1 Maxim. I think the expansion of this system beyond how trademarks are legally protected is a major problem

Maxim Alzoba (FAITID):@Susan, it requires involvement of court or panel of sorts without predictable result

Griffin Barnett:Yeah I wasn't necessarily suggesting any opinion as to expansion or not

Griffin Barnett:I think that needs to be discussed later

George Kirikos:That was hinted at in one of the registry responses, e.g. Police (actual law enforcement) wanting police.geo, but trumped by the band.

Griffin Barnett:Right now we should be focused on the survey data and whether it helps us answer the questions

Maxim Alzoba (FAITID):@George, this example was in one of GAC letters

George Kirikos:+1 Mitch. Survey didn't attempt to get those stakeholders involved.

Griffin Barnett:I think Mitch's comments, while relevant generally, are not necessarily relevant to our instant data-linkage exercise?

Griffin Barnett:I take the point about respondent pool

George Kirikos:Right, he's more pointing out the deficiencies in the survey.

Griffin Barnett:But that I guess would (or was supposed to be) covered under the registrant/prospective registrant pool

Kathy Kleiman:When we were writing the Sunrise period rules, we were very aware that typos for some brands are entirely new words (and even other brands, other organizations, other blogs).

Mitch Stoltz:Griffin, to that point, I note that a relatively large number of respondents to the registrant survey Q11 who intended to use domains for personal blogs, etc., indicated that they may be deterred by a claims notice. (cell D17) That is a problem because the owner of a personal, noncommercial blog has the very same legal right to use the domain name as a trademark holder.

George Kirikos:Right, different business models, Walmart low price high volume, vs. Tiffany high price, low volume.

Greg Shatan:Mitch, why do you say it is the "very same legal right"?

Griffin Barnett:The main concern, as expressed earlier by Susan and reiterated by me, is not the issue of absolute pricing, but about disparate pricing as between Sunrise and other phases

George Kirikos:The picket fence doesn't allow consensus policy to affect pricing, though.

Susan Payne:exactly Griffin

Kristine Dorrain:Correct, George.

George Kirikos:<https://mm.icann.org/pipermail/accountability-cross-community/2015-February/001274.html> " In addition to the other limitations on Consensus Policies, they shall not:

1.4.1 prescribe or limit the price of Registry Services;"

George Kirikos:Maybe we should discuss whether to eliminate this Charter question? Although, we could still take a position for "moral suasion" purposes, but it can't become a policy.

Maxim Alzoba (FAITID):+1 @George on this item

George Kirikos:(unless we think that Picket Fence can be modified?)

Mitch Stoltz:@Greg, because a trademark generally does not convey a right to block the noncommercial use of a word.

Julie Hedlund 2:@George and Maxim: I don't think we have the option to eliminate a charter question.

Kristine Dorrain:@George, many of us on the subteam believe this question didn't belong here, but we lost.

George Kirikos:@Mitch: nor does a TM give a right to pre-emptive use, or first dibs, etc.

Mitch Stoltz:@George +1

Griffin Barnett:@Michael - right, and there is data indicating that pricing deterred SUNrise registrations because it was unexpectedly high

George Kirikos:TM rights are generally curative, not preventative in nature.

Michael Karanicolas:I also think that's a feature, not a bug

Michael Karanicolas:@Griffin

Griffin Barnett:How does that serve the intended purpose of SUNrise though?

Michael Karanicolas:To discourage domain squatting over domains that aren't a priority

Michael Karanicolas:To promote a robust domain name space, where people who will actually make constructive use of domains get them

Griffin Barnett:Not sure defensive registration can be equated to domain squatting....

Griffin Barnett:The point, as mentioned before, it to prevent names from being registered by third-parties without authorization to prevent infringement, phishing, etc.

Griffin Barnett:That speaks to the consumer trust aspect of DNS policy

Michael Karanicolas:@Griffin But - there are a number of other existing remedies to prevent that, where bad faith use occurs

Susan Payne:sorry what question are we on did we move off 3?

Ariel Liang:We are currently on 3

Kristine Dorrain:I missed it too, Susan.

Griffin Barnett:@Michael, there are both preventative (Sunrise) and curative (URS, UDRP)

Michael Karanicolas:I don't think preventing bad faith use is the purpose of the sunrise at all. It shouldn't be an avenue for defensive registrations

Susan Payne:oh don't understand maxim's comments then. didn't seem to relate to 3

Griffin Barnett:The hope is to prevent bad faith use in the first place through Sunrise registrations

Griffin Barnett:Otherwise, damage is already done

Michael Karanicolas:@Griffin - Why is that use necessary when there's a rapid and low-cost response available?

Michael Karanicolas:Literally, tailor made for this problem

Griffin Barnett:Well that's the point of what we were discussing with the SUNrise pricing issue - Sunrise pricing was intended not to price out the ability of brand owners to do this kind of preventative approach

Griffin Barnett:But it has

Maxim Alzoba (FAITID):@Susan, Premium names are pricing and policy can not affect it , reserved name is a mechanism for Registries to operate domains, and involvement on operational level might lead to procedural disaster

Susan Payne:I don't think it's reasonable to just assume they are big companies who answered that question

Kristine Dorrain:@Griffin, that might be the hope of some....but the purpose was to give brand owners first dibs to USE the name. the point was never to force TM holders to register thousands of names. Most TLDs want brand owners to use the names.:)

Julie Hedlund 2:@Kathy: Yes, the Google documents will be unlocked after the meeting.

Kristine Dorrain:(of course, how that worked out is different)

Griffin Barnett:Kristiine - yes I agree affirmative use is often preferable, but defensive registration is a legitimate approach for the reasons I mentioned earlier (re avoiding use of domains for infringement, phishing, fraud etc)

Michael Karanicolas:@Kristine - exactly right. It's to prevent third parties from taking the brand names before their owners, not to give brand owners first track to gobble up as much of the domain name space as they can.

George Kirikos:@Susan: it's not an assumption. We have the size of the TM holders as one of the answers in the survey (many large companies, hundreds of millions or billions of dollars in revenues)

Kristine Dorrain:Thanks for the opportunities, David. I only have a few points and I've made most of them in the chat. :)

Ariel Liang:yes of course, we will make the new comments/input obvious for the sub team to review

David McAuley:Thanks Kristine

George Kirikos:See: TM Owner - Q6 tab, Susan. Very large firms.

Griffin Barnett:Trust me, most brands wish they didn't have to "gobble up" domains in Sunrise, but the new gTLD program created consumer protection concerns on an unprecedented scale

Griffin Barnett:And bc of cost, most didn't actually gobble up anything

Susan Payne:@george - 39 respondents were up to 500 TMs. that's not a big portfolio/huge company

Griffin Barnett:But all this talk of gobbling is making me hungry

George Kirikos:@Susan: go look at TM Owner - Q6 tab.

Greg Shatan:@Griffin, that may be why some say the sunrise participation was "low."

Michael Karanicolas:@Greg Or maybe sunrise was a solution in search of a problem.

Griffin Barnett:Greg, yes participation was "low" or at least lower than anticipated for the various reasons we are looking at - pricing, premium, reserved policies etc

Griffin Barnett:At least that's what the survey data seems to indicate

Maxim Alzoba (FAITID):GEO Tlds had to use Reserved names due to low QLP numbers (100) to be able to deliver street names (in big cities more than 100), public service names, e.t.c. to the city (and ALP, which was thought to be used for GEOs was not usable)

Susan Payne:@george - majority of respondents did not answer that Q however

Greg Shatan:@Michael, in launches prior to this round, Sunrise was both important and relatively well-used.

George Kirikos:@Susan: 24 did. Also, F7 of the TM & Brand Owners survey showed many TM holders with hundreds or thousands of marks, not typical.

Kristine Dorrain:re: 4(b), Registry Agreement cannot be unilaterally amended.

Griffin Barnett:I agree there is probably no need to force publication of reserved names lists; but a more uniform challenge mechanism when a reserved name clashes with a Sunrise-eligible name

Griffin Barnett:(I say as much in my written input)

Greg Shatan:@Michael, I think the problem is fairly clear (cybersquatting), but Sunrise is not limited to solving a problem.

Maxim Alzoba (FAITID):for Notes: in case of profanity language in reserved list - publishing might cause violation of the law

Susan Payne:George look at Q3. and I repeat hundreds of trade marks is not a big portfolio. that's pretty modest. 17 respondent only had between 1-10 - tiny

Julie Hedlund 2:@Maxim: Noted.

Maxim Alzoba (FAITID):@Julie, thanks

George Kirikos:@Susan: maybe it's modest for Com Laude clients, but not for typical TM holders.

Maxim Alzoba (FAITID):in WHOIS it was possible to check (with the response - you can not register)

Griffin Barnett:what is a typical TM holder?

Maxim Alzoba (FAITID):depended from implementation of the particular RO

Griffin Barnett:I mean it's just going to be the case that the largest companies with the most products/services are going to have the largest TM portfolios

Susan Payne: i think you have done this to death Geoge

Griffin Barnett:That's just how trademarks work by nature - they are indicators of source....

George Kirikos:Thoroughness isn't a vice, Susan.

Griffin Barnett:I mean the data is the data ... we were asked to look at the survey data and identify how it helps answer the question so that's what i did

George Kirikos:+1 Kathy. Those were all documented in the 5(a) document, too.

Griffin Barnett:QLP and ALP are exceptions to Sunrise priority... if there were implementation challenges as far as implementing ALP/QLP/Sunrise that should be worked out, but I don't know if it's an issue of policy

Michael Karanicolas:@Greg - you are exactly right. Which explains the remarkable divorce between trademark remedies at ICANN and the actual scope of trademark protections offered under law.

Maxim Alzoba (FAITID):@Griffin, it is regulated by policy, so should be fixed by policy

George Kirikos:Folks in Europe should be able to register bigmac.TLD ! ;-) (EUIPO just killed BIG MAC as a TM for McDonalds) https://urldefense.proofpoint.com/v2/url?u=https-3A_www.theguardian.com_business_2019_jan_15_mcdonalds-2Dloses-2Dbig-2Dmac-2Dtrademark-2Dlegal-2Dbattle-2Dsupermacs&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=QUPjRljiZ1UF4STpSM_0N6T8cTM0mtrrBOwj8Xk5H-0&s=5K4oVArICOVUBwCgx8npGllvLRPmtFU0q5-mydgWs&e=

Griffin Barnett:But if the issue was an implemenetation issue that's not something any policy change could fix?

Griffin Barnett:Perhaps there would need to be better implementation guidance

Kathy Kleiman:I'll certainly go back and take a look!

Griffin Barnett:George - bc there were pre-existing TM rights for another party

Susan Payne:F51

Julie Hedlund 2:F51

Susan Payne:registry

George Kirikos:Hard to say something is "significant", when we're talking about under 30 responses.

Kathy Kleiman:I had spreadsheets running in the background when I was working, but I could certainly have miscalculated. Will look

David McAuley:Thanks

Griffin Barnett:Are we out of time?

George Kirikos:6 is easy. ;-)

Greg Shatan:This is a 90 minute call.

Griffin Barnett:Oh nvm we moved to 90 mins

Griffin Barnett:(if needed.....)

Maxim Alzoba (FAITID):I am not sure we even know how many SDRPs were filed in total

Maxim Alzoba (FAITID):not many, most probably

George Kirikos:Would the Registry Operators have that data?

George Kirikos:(i.e. Donuts, Uniregistry, .club, etc?)

Maxim Alzoba (FAITID):Registries has to have SDRPs, but due to difference in policies, SDRPs are, most probaly quite different

Kristine Dorrain:@George they would....but it's unlikely they'd share that....

Maxim Alzoba (FAITID):and there is no obligation to keep the data, and since many years passed, I am not sure we can find this kind of info

George Kirikos:@Kristine: do we have any registries in this sub team, who might be able to help with that?

George Kirikos:(new gTLD registries, that is)

Maxim Alzoba (FAITID):in our case it was Zero in two GEOs

Kristine Dorrain:yes please!!!

George Kirikos:What's up for next week?

Susan Payne:please. it's 7.05pm i'd like to go home

Ariel Liang:There are remaining 6 charter questions to tackle

Griffin Barnett:Haha I'd like to go have lunch :0

Greg Shatan:Ariel, yes, that would seem to be the homework.

Griffin Barnett:I would suggest we identify the remaining charter Qs as HW, and have a 90 min slot to get through those next week

Griffin Barnett:With caveat of possibility of ending early if we get through the material

Ariel Liang:Yes Greg. Staff will send the homework to the list after the call

Maxim Alzoba (FAITID):@Julie, I will not be able to attend next week meeting due to overlap with GNSO Council activities

Kristine Dorrain:Excellent job David!

David McAuley:Thanks Kristine

Julie Bisland:thank you, Maxim, your apology is noted

George Kirikos:If folks add something to an existing spreadsheet, perhaps give ppl a heads up on the mailing list later, so we can check that future input.

Julie Hedlund 2:@George: Staff can also indicate where next text is provided (and put it in green).

Kristine Dorrain:We were able to go through the questions because people had done the homework (including many people who didn't add physical comments).

Kristine Dorrain:So well done, all.

Greg Shatan:Agree, Kristine.

George Kirikos:All the sunrise issues documented on blogs, for example.

Michael Karanicolas:If it's problematic for staff to gather it... could we submit avenues we want to be considered?

George Kirikos:We all have ideas on recommendations, true.

Maxim Alzoba (FAITID):bye all, have to drop the call , will try to follow next week call transcript later

George Kirikos:Those can work in parallel, perhaps, while we continue to go through the data.

Kathy Kleiman:But we are moving through the data quickly -- why not finish this review?

George Kirikos:Staff said they were seeking "direction" from the working group.

George Kirikos:But, how would that direction take place, when there's no plenary call scheduled to direct them to go and collect it?

Ariel Liang:This is the summary table that Greg is referring to:

<https://community.icann.org/download/attachments/102138613/Table%20of%20final%20agreed%20Sunrise%20questions%20%26%20data%20for%20review%20-%203%20Dec%202018.docx?version=1&modificationDate=1546967564000&api=v2>

George Kirikos:I think the key was that it's *not* in preparation....staff halted that data collection.

Greg Shatan:What data collection was halted?

George Kirikos:See: <https://mm.icann.org/pipermail/gnso-rpm-wg/2019-January/003608.html>

Griffin Barnett:Agreed this call should be over by now....

George Kirikos:" Given that it was unclear what, exactly, the scope of the search was to be (e.g. what search terms were to be used, and what excluded) and that the Working Group soon thereafter decided to develop the data request that ultimately became the Sunrise and Claims surveys administered by the Analysis Group, staff has not proceeded further with the research – pending more specific direction from the Working Group once analysis of the Sunrise and Claims survey data as well as the data already available is complete, such that the utility of such a wide-ranging and undefined search can be clearer."

George Kirikos:"staff has not proceeded further with the research" (key takeaway)

Kathy Kleiman:Garden of italics :-)

Kathy Kleiman:I like it!

George Kirikos:Evidence-based policymaking, yes.

Kathy Kleiman:Tx David and All.

Griffin Barnett:Thanks all

George Kirikos:Bye folks. Have a great day!

Julie Bisland:Next call: Wednesday, 23 January 2019 at 18:00 UTC for 90 minutes.

David McAuley:Thanks all

David McAuley:good bye

Ariel Liang:thanks everyone

Kristine Dorrain:bye all.

Greg Shatan:Bye all!