

Attendance:

Brian Beckham -
WIPO
Cyntia King
Diana Arredondo
George Kirikos
Greg Shatan
Griffin Barnett
Justine Chew
Kathy Kleiman
Kristine Dorrain
Martin Silva Valent
Michael Graham
Philip Corwin
Rebecca L Tushnet
Roger Carney
Sara Bockey
Susan Payne
Zak Muscovitch

Staff:

Ariel Liang
Julie Hedlund
Michelle Desmyter

AC chat:

Michelle DeSmyter:Dear all, welcome to The Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims Data Review call on Wednesday, 16 January 2019 at 17:00 UTC.

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

Martin Silva Valent:Hi all

Michelle DeSmyter:Hello Martin, welcome!

George Kirikos:Hi folks.

Michelle DeSmyter:Hi there George, welcome!

George Kirikos:Hi Michelle.

Martin Silva Valent:yes, I would wait a few min

Rebecca L Tushnet:703 is me

Kristine Dorrain:I'm 8613

Kathy Kleiman:Belatedly - any other business

Kathy Kleiman:Does the new closure time work for everyone?

Susan Payne:what closure time Kathy, I may have missed something?

George Kirikos:Which closure time is that?

Justine Chew: Locking of googledoc
George Kirikos: Oh, was fine for me, obviously, as I responded in time. But, not many others did. :(

George Kirikos: Sound?

Griffin Barnett: Lost Martin audio

Susan Payne: yep

George Kirikos: Phone dial-in is most reliable.

Kristine Dorrain: I failed in my calendaring so I missed the deadline, but the time is fine. I've fixed the problem.

Kristine Dorrain: Martin, your phone sounds much better.

Kathy Kleiman: Continue with Q3?

George Kirikos: That's fine, thanks.

Kathy Kleiman: OK by me

Susan Payne: sounds good

Julie Hedlund 2: @Kathy: Yes, continue with question 3.

George Kirikos: +1 Martin. Lots of the submissions were attempts to answer the questions, rather than the limited task at hand.

George Kirikos: (i.e. "mining" the survey, to use Greg's language from last week)

Griffin Barnett: I mean, ultimately that is the goal so...

Julie Hedlund 2: @All: We are starting with the new text (in green) page 8:

Julie Hedlund 2: From Griffin Barnett.

Julie Hedlund 2: The document is unsynced.

Kathy Kleiman: we never reviewed the old text

George Kirikos: https://urldefense.proofpoint.com/v2/url?u=https-3A_docs.google.com_document_d_1WLE91cg73avpWHkzczNCnxw1ALWyhWqGZOnnrmqTsH4_edit&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWI PqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGlBLwwwehFBfjrsjWv9&m=Fmfhk-78VyhFxEf8kmqZDH9tRdMSpxqOLA2bsj7prUY&s=tW8L98dlh65w4QCJmsY3U6-qX0i1w7ILN36IqtOe4yo&e=

Martin Silva Valent: exactly, I checked the recordings, and we only touched 3.a.I

Julie Hedlund 2: Sorry for the interjection.

Kathy Kleiman: always hard to figure out the point to restart :-)

Kathy Kleiman: @Martin, how long would you like us to talk?

Griffin Barnett: I don't think there was a question asking if someone wanted "ore brand protection" - although I interpret that to be a paraphrasing....

Griffin Barnett: *"more"

George Kirikos: @Griffin: well, it was stuff like "do you wanted expanded matches, etc.", which is effectively that.

Michael Graham: @George -- I would not reduce the importance of anecdotal data nor of opinions.

Greg Shatan: "Worried" and "intimidated" sound like opinions....

Michael Graham: @Greg +1

George Kirikos: @Michael: I would, when it's mostly 'partisan' in nature for the opinions, and costless (i.e. I want more, and I plan to shift the burdens to others to get myself more....)

Cyntia King: I'm having real trouble hearing Griffen

Julie Hedlund 2:@Griffin: Your volume seems to be low.

Griffin Barnett:sorry for the volume issue - I'll try and work on that

Cyntia King:Much better thanks

Griffin Barnett:Well most of what I said is already in my written input so....

Griffin Barnett:read it :)

Martin Silva Valent:I heard fine using the phone audio (although it was lowish)

George Kirikos:+1 Kathy. Not very representative.

Griffin Barnett:Seems like we all agree we can improve the wording of Claims notice

Rebecca L Tushnet:It's probably simpler for me to put my notes in here b/c they are similar to Kathy's: Intimidating is not just I didn't understand it Abandonment rates as well as correct answers about the meaning of the notice differed noticeably between the ICANN group of experts and the non-ICANN panel so there is a clear effect on nonexperts - it's not communicating well to the people without prior trademark experience

Griffin Barnett:Also agree we can improve translation of the notice into appropriate languages

Michael Graham:@George -- Perhaps, but parsing "partisan" answers from "unbiased" ones could be assumptive. Plus, I generally presume those who took the time to answer do so honestly.

George Kirikos:That's "solutions" stuff, but there could be entirely different solutions, e.g. eliminating TM Claims entirely might be an option, but supplemented with registrant education on TMs in general, etc.

Griffin Barnett:To quickly comment on the email Rebecca sent around recently on the issue of notice timing - the notice really is intended to appear during the registration process before a registration is completed otherwise its purpose of deterring bad faith registrations is lost, unless there is some grace period when a person can cancel a registration after being confronted with a post-registration notice - but that seems less likely

Kathy Kleiman:I think we can say the data shows...

Greg Shatan:I think we can all agree the notice needs to be revised. Indeed I think we agreed on this over two years ago.

Michael Graham:@Rebecca -- I do note that I have some difficulty in ascribing weight to "do you understand the attached notice" answers of those in the non-ICANN panel who have not actually participated in process. They may or may not have sufficient "skin in the process" to put in context of the process.

Kathy Kleiman:that the notice is confusing and needs to be clarified and the translations need to be done.

Susan Payne:+1 Greg

Michael Graham:@Griffin -- +1

Kristine Dorrain:+1 Griffin

Greg Shatan:I suggest that 2019 be the year in which we actually prepare a draft revised notice.

Rebecca L Tushnet:What I sent around:

Rebecca L Tushnet:The data indicate pervasive confusion and not much time spent reading the notice—later delivery when it's not interrupting a planned registration may allow better evaluation of a claim, producing a more orderly and thoughtful response. There's no guarantee, of course, but it doesn't seem like the current workflow is

producing a lot of careful attention either. Separately, the current workflow seems to be causing problems with the overall process for registrars: they report expired claims notices and disruptions of first come first served when the notice is delivered before registration. (Note Pot & Actual registrants cell 27W: would not stop & consult because "Someone else may register the domain name before I have a chance to consult the said attorney.")

Michael Graham:@Kathy -- +1 that evidence suggests, and I would agree in the conclusion that the Notice should be reviewed and revised for clarity and translations may be called for.

George Kirikos:Sound is good.

Susan Payne:George - everyone is partisan. why are TM owners characterised as such repeatedly but registrars are not?

Greg Shatan:What level is "pervasive"?

Kristine Dorrain:@Rebecca, not to get into the weeds on solutions, but perhaps an option like Apple provides (review and agree but we're happy to also email you these terms) - would that help?

George Kirikos:@Susan: I discount the self-serving statements from others too, not just TM owners.

Greg Shatan:Looking at everything as "partisan" will not help get us to consensus.

Michael Graham:@Rebecca -- Spending more time on a Notice is no guarantee of increased understanding or review -- just as spending a short time does not indicate lack of attention to notice. However, Notice revision should take this into consideration so that essential information is made clearer and stands out for quick analysis. "Pervasive confusion" is not supported by the data -- "some confusion" is.

George Kirikos:Not everything is 'partisan' -- it was when the survey was asking for opinions, rather than for facts (e.g. actual costs, vs. "would you like prices to be lower?" types of questions)

Kristine Dorrain: to be clear "preregistration" is not some sort of ICANN-sanctioned thing that RRs are entitled to. I mean, it's lovely, but I'm not sure we need to customize policies around sales techniques registrars use (I mean, maybe we should, but let's not assume we need to solve for that).

Susan Payne:agree Kristine

Martin Silva Valent:Rebecca, wanna come on audio?

Cynthia King:Good point Kristine

Michael Graham:REMINDER: The data collected is intended to enlighten our analysis -- not determine our report or proposals. Just saying . . .

Griffin Barnett:+1 Kristine

George Kirikos:Cell G74 supports those, in the Registries & Registrars tab, Roger.

Martin Silva Valent:yes, we just need to agree the relevance of specific data on the sea of data the survey is, we can balance what it means to us later

Susan Payne:@Roger, to be precise they didn't "register" 6 months in advance because they weren't eligible to register at that point

Kathy Kleiman:Tx Roger.

Kristine Dorrain:@Roger, I think some customers would still have a problem right? For marks entered into the TMCH shortly before GA... Those people would not have originally been presented with a claims notice but would now have one, just prior to registration, right?

Cyntia King:Thanks @Roger for the info. Very enlightening.

Kathy Kleiman:Who would answer questions about the expiration of a TM Claims Notice token - Deloitte or IBM?

Greg Shatan:With apologies, I have to jump off.

Michael Graham:@Rebecca -- Do all the incorrect interpretations of the Notice have a negative effect?

George Kirikos:If we're tossing out proposed solutions, I would create a 15 minute online course on TMs, etc., to educate registrants. If a registrant passes that, they can get a small discount on ICANN fees, etc. (i.e. those customers are less likely to be troublemakers, etc.). Then, make the TMCH optional for them.

Cyntia King:@Kathy - I don't think we can call this "pervasive". Are we trying to solve for 100% comprehension? Or are we trying to solve for the average person can reasonably understand?

Kathy Kleiman:@Roger - belated tx!

Roger Carney:@Kristine, yes that would still be an issue. But from what we saw, claims notices almost never actually changed. It is possible and still needed to be accounted for

Greg Shatan:Pervasive is a word with a range of definitions, but a more well-defined rhetorical effect. Both of these things make it ineffective as an objective unit of measurement.

George Kirikos:Or, they can get a dot-com, and not get any notice. :-)

Kristine Dorrain:Thank Roger, that's what I thought. Theoretical, if unlikely, problem.

Cyntia King:@George - a 15 min explainer is nice for people who are interested. I can tell you from experience that the average person just wants to register a domain. The idea that they'd need a 15-min vid would be a deterrent to registration.

Kristine Dorrain:+

Kristine Dorrain:+1 Phil .. yep everyone gets paid

George Kirikos:@Cyntia: well, there'd need to be some financial incentive for completion of the course, e.g. 1 cent/year discount on all domains, etc.

Rebecca L Tushnet:@Michael: (1) yes, telling people something false about trademarks and domain names is a bad thing in itself, and (2) the more confusing and time-pressured the notice is, the more likely people are to make bad decisions. Likelihood and not 100% harm all the time is a reasonable standard for positions on all sides.

Cyntia King:So now we're paying people to view a video rather than creating a notice intended to be understood by the average person to a reasonable degree?

Roger Carney:@Kathy, I was thinking IBM, but not sure

Griffin Barnett:Martin appears to be on mute

Griffin Barnett:*mute

George Kirikos:Somebody beeped.

Kristine Dorrain:@George, I'm trying to stay on track, so I won't respond to your proposal, but it's not feasible. Happy to explain more if you want to move it to the list.

George Kirikos:Is now the time to answer this? Or just point to the survey.....

Kristine Dorrain:I think we need to see what the survey says and move on.'

Rebecca L Tushnet:The positive effect -- which might or might not be worth it, I want to hear from more people -- is (1) in implementation of notice delivery/first come first served and (2) time to consider and get advice if needed instead of the pressure to complete the

registration process. I agree with Kathy--those are relevant data for whether we should consider various solutions.

Kristine Dorrain:Rrs did

Kristine Dorrain:RRs did NOT answer the question, they merely flagged an issue with the way claims notices are presented.

Kristine Dorrain:They did not say "after the registration" was the answer. This is important because they'd be left holding the financial bag.

Cynthia King:I believe in the simplest solution first - let's agree we should re-work the notice then complete a follow-up analysis afterward.

George Kirikos:The problem with sending notice post-registration is that you'd need to create a refund process, for those who don't like the notice. But, that would create gaming, ala "Domain Tasting".

Kristine Dorrain:so there is some data about 3(b), but it doesn't directly answer the yes/no Q

Kristine Dorrain:(bingo George)

Rebecca L Tushnet:One possibility as a variation on (b) is whether a R ought to have the option about whether to do it before or after (with the email verification step)

Rebecca L Tushnet:Depending on the best workflow for what they're doing.

George Kirikos:But, this is debating solutions, rather than looking at the actual survey.

Kristine Dorrain:So to stay on track without discussion solutions..... there is a tiny bit of data about a problem related to 3(b), but no conclusive data/information.

Griffin Barnett:Agree with George that there are a number of problems created by the suggested post-registration notice suggestion, and also that it may be premature as it goes toward "solutions" rather than focusing just on what the survey data tells us

Michael Graham:@Rebecca -- Agree with (1), and (2) Agree we should suggest revision/clarification of Notice and consider ensuring that process ensures and Notice informs applicants that they have sufficient time to consider Notice before determining action. This relates to time for response, though, and not point at which Notice is sent to applicant. Make sense?

Michael Graham:Agree with Griffin and George on "number of problems"

Kathy Kleiman:Why should the token expire?

George Kirikos:The fundamental issue, though, isn't whether the TMCH should be "fixed" - it's whether or not it's actually effective, even if it was to be "tweaked". i.e. do its benefits exceed its costs? Unlikely.....relatively low overall cybersquatting, doesn't affect bad actors much, negatively affects good actors including registries/registrars.

Rebecca L Tushnet:@Michael I'm genuinely not committed to post registration notice but then let's seek input on what would actually work in terms of giving people time--the Rs have reported problems and I don't know what would work

Kathy Kleiman:We dropped a million domain names after registration and verification requirements took place. That process works too.

Griffin Barnett:@George - source for the proposition that there was "low overall cybersquatting"?

Kathy Kleiman:How do we summarize this -- and ask the key questions going forward?

George Kirikos:@Griffin: number of URS/UDRP complaints.

Griffin Barnett:That's not that strong of an indicator George

Kristine Dorrain:I summarized it: here is a tiny bit of data about a problem related to 3(b), but no conclusive data/information We think there could be solutions that we need to eventually discuss (perhaps in proposals)

George Kirikos:@Griffin: it's stronger than the anecdotes from a few unrepresentative TM owners.

Rebecca L Tushnet:@Kristine "tiny" is not something on which we could reach consensus

George Kirikos:Julie's sound is wobbly?

George Kirikos:Gone now, completely.

Kristine Dorrain:Ok, "Some"

George Kirikos:s sound dead?

George Kirikos:*Is

Kristine Dorrain:I'm hearing everyone...on phone.

Susan Payne:yes let's move on

George Kirikos:Maybe I got knocked off, then....calling back.

Kathy Kleiman:Tx Julie!

Griffin Barnett:Agree that the survey data didn't really directly speak to most of the Q4 sub-parts

Julie Hedlund 2:@All: Just a reminder that this call will adjourn at 5 minutes prior to the top of the hour, to allow for the transition to the next sub team call.

Griffin Barnett:We can try and draw conclusions, but I think these would mostly still be mainly opinion-based

Griffin Barnett:Hearing some background noise from another open line?

George Kirikos 2:(back on audio)

Kathy Kleiman:someone is talkin gnot on mute

Julie Hedlund 2:@All: Please mute if you aren't speaking.

Griffin Barnett:Maybe Roger?

Cyntia King:WWho's talking about hotels / charges?

Michael Graham:Sorry -- my phone was open. Topic was: Fraudulent trademark renewal notices.

Kathy Kleiman:yes!

Martin Silva Valent:yes

Julie Hedlund 2:Hear you loud and clear Griffin

Cyntia King:Sound good, @Griffen!

George Kirikos 2:I did find a few examples, but as Griffin said, wsan't much.

Kristine Dorrain:Just for the record: this question was designed to follow the "what are the problems", then "what are the proposed solutions" format. So we would not expect the survey to directly answer b-d. The survey was intended to invite stories of harm. We figured we'd come up with solutions on our own.

Michael Graham:@Kristine -- Excellent reminder.

Cyntia King:Thx, @Kristine

George Kirikos 2:I did find examples from TM holders (see my responses).

Griffin Barnett:@Kathy - didn't seem there was any survey question to TM owners about this issue

Griffin Barnett:Unless I missed something

Griffin Barnett:I mean, if the point of the notice is to notify people about rights/obligations (stopping short of full legal advice) it would be useful, in my view, to clarify this in terms of the exact matching vs. non-exact matching issue

Griffin Barnett:Thanks George for pointing to that cell about likelihood of confusion in the TM owner data

Kristine Dorrain:@Griffin, you're right. As I recall, we had to cut questions and the hope was TM owners who felt strongly about this issue would mention it on another question....I'd need to look back and see which Q we hoped covered it.

Kathy Kleiman:@Griffin -- that might be a very valid expansion of TM Claims language

Kathy Kleiman:(if we could say it clearly and simply :-))

Griffin Barnett:@kathy, yes but the notice would need to be triggered for non-exact matches for that language to be relevant

George Kirikos 2:I guess we're at our end time (55 minutes).

Kathy Kleiman:@at the point the chilling effect is enormous -- going back to very old arguments on the scope...

Martin Silva Valent:yes

Martin Silva Valent:since Cyntia put her hand out, Rebecca is the last one

Griffin Barnett:@kathy - unfortunately no data about that

George Kirikos 2:+1 Rebecca.

Griffin Barnett:Since we were only working from exact-match system

George Kirikos 2:Combinatorial explosion of matches.

Susan Payne:@Rebecca - who says we're talking about algorithmically generated?

Kathy Kleiman:Tx Martin and All1

Griffin Barnett:Thanks all, good discussion today I think

Martin Silva Valent:thank you all

Michael Graham:@Rebecca -- "Even more ineffective" is perhaps a false syllogism.

Roger Carney:Thanks everyone