

Attendance:

Brian Beckham - WIPO
Cynthia King
George Kirikos
Griffin Barnett
Kathy Kleiman
Michael Graham
Philip Corwin
Rebecca L Tushnet
Roger Carney
Sara Bockey
Scott R. Austin
Susan Payne
Zak Muscovitch

Audio Only:

None

Apologies:

Kristine Dorrain

Staff:

Ariel Liang
Julie Hedlund
Andrea Glandon

AC Chat:

Andrea Glandon:Welcome to the Sub Team for Trademark Claims Data Review call held on Wednesday, 13 February 2019 at 17:00 UTC.

Andrea Glandon:Wiki Agenda Page: <https://community.icann.org/x/858WBg>

George Kirikos:Hi folks.

Rebecca L Tushnet:6579 is me

Julie Hedlund 2:Thanks Rebecca!

Kathy Kleiman:I'm in the room -- also wanted to check my audio.

Andrea Glandon:Thank you, Rebecca!

Philip Corwin:Who is "Restricted"?

Kathy Kleiman:That might be me -- I'm coming in on Skype

George Kirikos:Additional Data Sources (posted to the main RPM mailing list): <https://mm.icann.org/pipermail/gnso-rpm-wg/2019-February/003651.html>

Andrea Glandon:Thank you, kathy!

Sara Bockey:apologies for joining late. last call ran long

Kathy Kleiman:Could someone post the link.

George Kirikos:+1 Kathy. That's why Table 4 on page 18 is relevant.

George Kirikos:That's why I put an asterisk next to the "survey" results, for a similar disclaimer (same with the INTA report).

George Kirikos:But, some of the numerical evidence is powerful.

George Kirikos:0.3% dispute rate is raw data, as is 93.7% abandonment rate.

Griffin Barnett:Yeah I agree generally with Susna; in other words, the DATA from the report is useful but I don't know that we can rely on the conclusions/exposition by AG about what the underlying data actually means or suggests

Griffin Barnett:*Susan

Griffin Barnett:That is our job to really discuss the data and what it actually means

George Kirikos:The "additional" data I posted with the 40+ links showed additional common dictionary words in the TMCH being used in sunrise (and thus in claims too).

Griffin Barnett:I think AG later admitted, or ICANN later found, that the cited 93.7% abandonment rate was actually flawed because it included a very high and disproportionate number of "abandonments" from a particular registrar doing automated queries of the system

Griffin Barnett:I think that was related to this report, but I could be thinking of something else

George Kirikos:@Griffin: that 93.7% is already an adjusted figure (they removed 2 registrars; it was 99%+ unadjusted).

George Kirikos:So, they already removed those disproportionate abandonments.

George Kirikos:See footnote 55 on page 17.

Griffin Barnett:Hmm...ok...if that's the case, that data still doesn't really illuminate the reasons for abandonment....the newer AG survey provided more data fleshing out various reasons for abandonment, the majority of which, if I recall correctly, did not relate to receiving a Claims notice

George Kirikos:I didn't find anything for Q3.

George Kirikos:But, Rebecca's data is certainly still important.

Griffin Barnett:@STaff - can we unync the document in the AC room?

Ariel Liang:Griffin - it is unsynced

Griffin Barnett:Hmm... I can't seem to control it...

Griffin Barnett:Might be on my end

Griffin Barnett:Thanks Ariel

Ariel Liang:Sorry about Griffin

Brian Beckham - WIPO:From an email on list 9-June-2017 on abandonment: "See https://urldefense.proofpoint.com/v2/url?u=https-3A_www.godaddy.com_garage_smallbusiness_market_effective-2Dstrategies-2Dto-2Dboost-2Dabandoned-2Dcart-2Demail-2Dconversion-2Drates_&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHorKms9SFxImbYEJqG-y9I&m=HPHF69G8P8wOsBLJncbrk50tG3jaq0m7mitQVUpgyTA&s=gmn7QeMWxa382L5czKzcl-8n8plZlBFPjQwAcWbfxs&e= and <https://www.godaddy.com/garage/industry/retail/ecommerce/want-to-to-increase-sales-reduce-shopping-cart-abandonment/>. There are many articles on this topic with varying figures, but they tended to generally note abandonment rates upwards of 60%."

Brian Beckham - WIPO:<https://mm.icann.org/pipermail/gnso-rpm-wg/2017-June/002079.html>

George Kirikos:"IF" we redraft the claims notice language.

George Kirikos:Since, we might decide to eliminate the TM Claims entirely, if that's the consensus.

Cyntia King:+1 Susan - we aren't writing international TM law. We're tasked w/ enforcing laws as they exist in the world.

George Kirikos:It *is* our job to decide which TMs should be included.

Griffin Barnett:So it seems like an issue of wording in the Notice itself - further explanation about TM versus dictionary/generic uses?

Cyntia King:@George - No. It is not.

George Kirikos:If the TM system is broken, then that should be taken into account as to whether it should be relied upon at all.

Cyntia King:We are not the TM law writers for the world.

George Kirikos:A throwaway Pakistani or Benelux mark by Michael Gleissner isn't as strong as "Verizon" in the USA.

Griffin Barnett:At the end of the day it is the prospective registrant's responsibility to understand their rights vis-a-vis third-party trademarks

Cyntia King:We have all agreed that the notice language can be greatly improved. That is our purview.

Rebecca L Tushnet:To ensure that staff captures my point: This isn't a question of validity of the underlying mark. It's a question of the unintended effects of how this particular system—which sends out notifications based only on a linguistic match to a common term that is only a trademark under certain circumstances—works. Now that we know that "cloud" and the like are the most common triggers of notifications, it matters that many notifications are likely to be going out to people whose uses aren't conflicting.

Brian Beckham - WIPO:<https://mm.icann.org/pipermail/gnso-rpm-wg/2017-July/002233.html>

Julie Hedlund 2:@Rebecca: Your point is captured in the chat room and will be posted on the wiki.

Griffin Barnett:If you get a Claims Notice and believe the cited mark should not be in the TMCH there is a mechanism to challenge that recordal

George Kirikos:The claims notice doesn't post the TM Registration number, or creation date, or other details (or even if it's a figurative mark, etc.).

Griffin Barnett:There's no real reason to make the entire TMDB open/searchable for that purpose

Cyntia King:@Rebecca - then the Notice should encourage prospective registrants to investigate TM that may apply to their jurisdiction & circumstance.

George Kirikos:(this was pointed out in prior weeks)

Griffin Barnett:@George, it provides a number of details sufficient to then identify those other details

George Kirikos:Plus you only get the Claims notice if and only if the domain name is available.

George Kirikos:If the domain name is already taken, you won't get the claims notice.

Cyntia King:If the domain isn't available, then there's no need for a Claims Notice.

Griffin Barnett:So then how is that any different from other registration attempt?

George Kirikos:So, you can't see even the minimal info of the claims notice, if the name was already registered, to be able to challenge.

Rebecca L Tushnet:FYI, the info text in the Notice is supposed to be:

Griffin Barnett:*any other

Rebecca L Tushnet:Mark: <tmNotice:markName>Jurisdiction: <tmNotice:jurDesc>Goods
and Services: <tmNotice:goodsAndServices>International Class of Goods
and Services or Equivalent if applicable:
<tmNotice:classDesc>Trademark Registrant: <tmNotice:holder>Trademark
Registrant Contact: <tmNotice:contact>

George Kirikos:e.g. WIDGET.tld is already registered. You attempt to register WIDGET.TLD, you won't see the claims notice for "WIDGET".

George Kirikos:We kind of went off on a tangent, agreed.

Rebecca L Tushnet:But I agree, this is something you only get in a registration attempt, not beforehand.

George Kirikos:@Rebecca: not just on a registration attempt, but the domain also has to be available (unregistered).

Cyntia King:@George - The Claims Notice isn't a TM investigation, a comprehensive assessment of anyone's rights validity.

Griffin Barnett:Again, Kathy is citing AG conclusions, but I don't know that what they are saying there is actually supported by their underlying data

Susan Payne:I didn't say tables are not your specialty Kathy!

Cyntia King:A person or business interested in using a particular name (in any TLD) for business has the responsibility to vet their name. It isn't ICANN's job to do the job of a TM clearance report or professional advice.

Griffin Barnett:But that's something we as a group can evaluate at the appropriate time

George Kirikos:lol Susan.

George Kirikos:Since all 3 co-chairs are here, happy to have the section 3.7 appeal right now, esp. re: today's "deadline"

Kathy Kleiman:Tx!

Kathy Kleiman:Tx much!

George Kirikos:I believe there was some raw data in an appendix somewhere, as I recall reading somewhere a response of something like \$5 million claimed by one respondent as their costs for enforcement, etc.

Roger Carney:Great, thanks everyone!!

Cyntia King:Happy Valentine's Dy!

Susan Payne:great, thanks all

Kathy Kleiman:Tx Roger!