

### **Attendance - 12 Members**

Brian Beckham - WIPO  
George Kirikos  
Greg Shatan  
Griffin Barnett  
Kathy Kleiman  
Kristine Dorrain  
Martin Silva Valent  
Michael Graham  
Rebecca Tushnet  
Roger Carney  
Sara Bockey  
Zak Muscovitch

**Apologies:** Susan Payne, Cyntia King

**Staff:** Ariel Liang, Julie Hedlund, Mary Wong, Julie Bisland

### **AC Chat:**

Julie Bisland: Welcome to the RPMs Sub team for Trademark Claims Data Review call on Wednesday, 20 February 2019 at 17:00 UTC

Julie Bisland: Agenda wiki: <https://community.icann.org/x/9Z8WBg>

George Kirikos: Hi folks.

Martin Silva Valent: Hi all

George Kirikos: Welcome Marrtin.

Martin Silva Valent: Welcome George!

George Kirikos: I think Ariel meant to say <https://mm.icann.org/pipermail/gnso-rpm-trademark/2019-February/000223.html> "It seems that the INTA survey data **\*\*DOESN'T\*\*** really assist in answering the Claims Charter questions,..." in yesterday's email. Although, there were a handful of "nuggets" in there, if folks were looking for them.

George Kirikos: (I found a few, but didn't post them, in order to give others a chance to shine.....)

Kristine Dorrain: Greetings! I'm back from vacation super late last night so I apologize once again for being unprepared. I'll be on my game next week (unless you resolved everything last week while I was on the beach)

George Kirikos: No need to apologize, Kristine, as you're in the 99th percentile for effort. :-)

Roger Carney: I am 3959 :)

Julie Bisland: thank you, Roger!

Julie Hedlund: @Martin -- George has his hand up.

Griffin Barnett: I also was not able to add any new input this past week, other matters taking up my bandwidth

Michael Graham: I began review of INTA survey but have not entered any of the information -- will do so after this call.

Griffin Barnett: I do hope to get back into the swing of things after this call as well

Julie Hedlund: @Michael: Noted and we'll be sure to open the Google doc back up.

Martin Silva Valent: you can come up to the mic :-)

Martin Silva Valent: and please do

Griffin Barnett:I'd be curious to hear the basis for asserting that there is probably overlap between the INTA survey respondents and the AG survey respondents... could be some, but not sure that is certain

Michael Graham:@George -- Actually, to my knowledge there was little or no overlap with the AG study -- based on my asking question of INTA members.

Griffin Barnett:So large companies? They tend to own the most trademarks or the most well-known ones

Griffin Barnett:Not sure why that degrades the quality of the data

Julie Hedlund:@George Kirikos: It will be helpful if you could add your comments to the Google doc if you have not already. We'll open the document after the call.

George Kirikos:@Michael: the AG report said they got their submissions by advertising to the ICANN community, so it's highly likely there was overlap. Also, the AG openly said they didn't test whether folks were members of this PDP or not.

George Kirikos:(see point (f) at <https://mm.icann.org/pipermail/gnso-rpm-trademark/2018-December/000092.html> for further details, and the entire email)

Griffin Barnett:The ICANN community doesn't necessarily equate to the INTA community though  
George

Griffin Barnett:Even within the IPC

Griffin Barnett:BC etc.

Michael Graham:@George -- Again, regardless of the advertisement to the "ICANN community" the trademark registrant community

Kristine Dorrain:+1 Griffin....INTA is far more global.

Ariel Liang:page 8 has Kathy's question/comment

George Kirikos:It's all anonymous anecdotes, but it appears to me to be all the same people, i.e. the most interested parties at INTA are likely in this PDP.

Michael Graham:community's response to my queries was negative -- they had not received the AG survey or participated.

Griffin Barnett:Hi Kathy... I can try and add more specific citations

George Kirikos:@Kristine: see page 6; 67% of respondents based in NA, 21% EU

Rebecca Tushnet:I have to admit I'm a bit disturbed by Kristine's argument. (1) SMEs are presented in other places as the key entities we're trying to benefit; if that's not the case, then the standards for what is effective are different. (2) It sort of sounds like the Q being asked then is whether the big brands are successfully offloading some of their enforcement costs to (relatively smaller) entities like registries, registrars, and potential/actual registrants. That may be descriptively true but is worth discussing normatively as well.

Michael Graham:@George -- No, the most interested trademark owners are not involved in this PDP.

Griffin Barnett:I tended to copy/paste directly from the docs so a simple Ctrl+F should bring you to the language in the doc, but fair enough

Kristine Dorrain:@Rebecca, where would you get the understanding in #1?

George Kirikos:@Michae;:can't know for sure, but it appears to me the same folks, with the same arguments.

George Kirikos:Is Rebecca on audio?

George Kirikos:Actually, nevermind, she does show as being on the phone.

Rebecca Tushnet:Griffin and others have repeatedly raised SMEs as our targets of protection. I actually think you're probably right descriptively but then I find arguments about protection of SMEs unavailing.

George Kirikos:Page 6 of the document shows who did the survey.

Mary Wong:The INTA survey was administered by Nielsen, the more recent AG survey by AG - so we (ICANN) did not restrict who or how they distributed it to.

Greg Shatan:@Griffin, we're trying to make sure these tables are good resource finding tools.

Griffin Barnett:Not sure I said that specifically.... but I would say that the targets of protection are any and all trademark owners, regardless of size

Rebecca Tushnet:Sorry, my son is snowed in and loudly videogaming next to me.

Griffin Barnett:@Greg, understood

Michael Graham:@George -- Not surprising that trademark owners would share the same concerns in regard to domain name issues.

Kristine Dorrain:To be clear, I'm not saying the survey is impeccable, but if the goal is deterring bad faith registrations (for all brand owners), then we should not discount owners of big TM portfolios just because they pay more for enforcement. My point is that, for at least some demographics, it might be working, which is the point of the question.

Kristine Dorrain:We

Kristine Dorrain:We're not answering the question to today. I'm just observing that the data here could be helpful.

Kristine Dorrain:Which I believe is still the point here....is there helpful data in the docs?

George Kirikos:Self-selected, not the way a random sample is done to have statistical validity. Plus, one can't overcome the small size. So, it's an unrepresentative small anonymous sample of anecdotes.

Kathy Kleiman:Hand down - agreed.

Griffin Barnett:Agree with Kristine's point above... setting aside statistical validity or the substance of the matter, we should remain focused on whether there is relevant data to the questions

Griffin Barnett:We will surely debate substance later, but let's stay on task

Griffin Barnett:I know that is challenging

George Kirikos:Glad you said "empirically", Michael. This study is the antithesis of empirical "science". But, I did record all the points in this paper, regardless (see the points I brought up already re: Q1, and upcoming questions).

Rebecca Tushnet:(1) Having the same basic concern (I would like my mark legally protected) is not the same thing as needing or using the same mechanisms.

Kristine Dorrain:+1 Michael...agree that we can't say if SMEs have different concerns about protecting their marks than large companies right now. But the point is someone, somewhere IS seeing a benefit and the question is about deterrance. While we will get to if EVERYONE is benefitting, that doesn't mean we ignore the data that some are.

Michael Graham:@George -- You confuse "empirical" with "proof". The survey results do provide empirical evidence of the experience of the respondents. The same cannot be said of AG survey of registrars, for example.

George Kirikos:This all goes to how much "weight" we assign to the results. But, happy to get back to the results.

Rebecca Tushnet:(2) Deborah Gerhardt's empirical research gets into this; the point that large TM owners are filing for existing brand variants is part of the point about why they have different interests in the scope of rights. Beebe & Fromer also discuss this in their empirical work (which I have submitted as a resource in the Google doc)

Michael Graham:@Kristine -- Good points.

Sara Bockey:Apologies for joining late

Griffin Barnett:I take kathy's point, but that;s the purpose of nuanced legal advice from a professional

George Kirikos:Any other "nuggest" on Q1?

Kathy Kleiman:@Griffin - I wish they all hired us!

Griffin Barnett:Navigating the legal landscape as part of corporate due diligence

Greg Shatan:Just to be clear, many of the TM owners I've represented are new businesses, entrepreneurs, etc.

Griffin Barnett:@Kathy, indeed

Griffin Barnett:Some do, some don't

Griffin Barnett:We also represent entities of all sizes, included new businesses, entrepreneurs, etc.

Julie Hedlund 2:@All: If there are any points you are raising today pertain to how the data helps to answer the charter questions, or not, and these aren't already reflected in the Google doc, we would appreciate if you could add them to the document once we open it after the call.

Kathy Kleiman:Tx George

George Kirikos:Nothing on Q5 from mw.

George Kirikos:\*me

Greg Shatan:Need to drop. Apologies.

George Kirikos:We should talk about workload, if not everyone is doing the homework.

George Kirikos:I did submit roughly 50 additional sources of data:

<https://mm.icann.org/pipermail/gnso-rpm-wg/2019-February/003651.html> --- these should not be suppressed.

Martin Silva Valent:every input is more than welcome

George Kirikos:12 we've been working through. I think we've gone through 9.

Kathy Kleiman:What are the other 3?

Kathy Kleiman:How long are they?

George Kirikos:There was a transcript of a call we had.

George Kirikos:One was a table, which is of no help.

George Kirikos:Dates of sunrises/etc.

George Kirikos:14 or 15.

Martin Silva Valent:Of course Julie!

George Kirikos:Only some relate to claims.

George Kirikos:More relate to sunrises.

Kathy Kleiman:Does anyone else share concerns?

George Kirikos:But, Kathy's on both subteams, so all 15. :-)

George Kirikos:But, we should add the 50+ I found.

George Kirikos:Wasn't enough time, given some of us suffered from extreme workload.

George Kirikos:This was ICANN staff's job, recall, from 18+ months ago.

Kathy Kleiman:Interesting, tx Ariel.

Kathy Kleiman:will the additional data be sorted by TM and Sunrise?

George Kirikos:So, does anyone think we should \*NOT\* consider those 50+ sources?

Kathy Kleiman:Tx Martin, tx All!

Ariel Liang:@Kathy - we will sort the spreadsheet accordingly

Kathy Kleiman:Tx Ariel!

Michael Graham:@George -- I would exclude articles that do not include data -- opinion and "insight" pieces I would object to including.

Brian Beckham - WIPO:1) articles do not necessarily equal data, 2) there was a process established for submissions

Kathy Kleiman:Yes they were

George Kirikos:Procedures were challenged via section 3.7, yet they refuse to hear the appeal.

Mary Wong:@George, your email was also seen by all WG members and you will have the opportunity to comment when the discussion takes place (e.g. if you have data that supports or contradicts a data source or conclusion).

George Kirikos:I didn't say suspend the work -- but they should hear the section 3.7 appeal, to give good reasons why the data is being suppressed.

George Kirikos:@Mary: the form said that data not submitted by that form is "out of order"

Julie Bisland:next call: Sub Team for Trademark Claims Data Review -- Wednesday, 27 February 2019 at 17:00 UTC for 60 minutes.