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COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, March 28, 2019 6:03:14 AM
Last Modified: Thursday, March 28, 2019 6:06:57 AM
Time Spent: 00:03:43

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Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Susan Payne

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Both**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

Implement an obligatory Public Interest Commitment or other contractual provision that the registry is not to act in a manner calculated to circumvent the RPMs, including not to set its pricing at a level, compared to general availability pricing, which has the effect of undermining brand owner access to the sunrise. If introduced as a PIC this would enable aggrieved third parties to take action themselves under the PICDRP, rather than being reliant on ICANN Compliance to enforce the contract.

Such a PIC could address practices such as the designating of well-known trademarks as premium names; setting the pricing for all sunrise names many multiples higher than the general availability pricing – at a level that could not reasonably be considered to reflect cost-recovery; and reserving names matching trademarks (ie withholding them from release) during the sunrise period in order to release them later when the sunrise has ended (whether or not at a premium price).

Q5 What is your rationale for the proposal? (250 words max)

There are charter questions covering this topic - therefore it is already a task for the subteam to consider this issue and no individual proposal ought to be necessary. Nevertheless, the interplay between individual proposals and the work of the subteams is extremely unclear.

Many trade mark owners, who have recorded their trademark in the TMCH, have reported that when they have attempted to register a matching domain in a TLD they have been notified that the domain is a premium one for which they must pay a significantly higher price than that of a general, non-premium domain (irrespective of whether they applied a higher price generally during the sunrise). There may be some circumstances where the brand has another meaning, such as a dictionary meaning which, within the context of the specific TLD, would justify this premium status. Frequently this is not the case. The brand is either one which has no dictionary meaning, or, in the context of the TLD in question it is the brand value which appears to be driving the premium pricing.

In other cases, whilst a specific brand owner may not have been targeted, some registries have set the pricing for all sunrise names many multiples higher than the general availability pricing – at a level that could not reasonably be considered to reflect cost-recovery.

Whilst ICANN cannot mandate specific prices in new gTLDs, nevertheless there is a point at which this serves to undermine the RPMs introduced to protect brand owners and their customers.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Examples submitted by working group members in October 2016 :

<https://community.icann.org/display/RARPMRIAGPWG/Additional+Documents+and+Materials+on+the+TM-PDDRP?preview=/61606586/62399692/Collated%20Examples%20of%20Perceived%20Registry%20Conduct%20within%20TM-PDDRP%20scope%20-%202017%20Oct%202016.pdf>

INTA Impact study; See in particular page 14, 48-50, 58:

<https://community.icann.org/display/RARPMRIAGPWG/Additional+Materials+on+Sunrise+and+Trademark+Claims?preview=/71602718/71602725/INTA%20Cost%20Impact%20Report%20revised%204-13-17%20v2.1.pdf>

Analysis Group Survey <https://drive.google.com/open?id=1uwNtzemdC65DWMcVkJ2HfWFIHyCvtJzqMgaarLn2nsM>

https://docs.google.com/document/d/1dxPbe4gApZO6USTfDI-xMp3lIeS7hIxoX_0ad_xfl8/edit?usp=sharing

https://docs.google.com/document/d/1-rpRnMArtFoS8_6Sx99aBY3FAJRWhfyfPY-bc6CR6DI/edit

and previously collected data

https://docs.google.com/document/d/1k8SXcZRSzluqAVkTxYJL63qbBt_A8e9vZNdoKJp8tFc/edit?usp=sharing

https://docs.google.com/document/d/10npR7b_6WWJZ6J20583GNq2OLM4jBp-sS-Yeq564GwM/edit

<https://docs.google.com/document/d/1ecm9e0jiA6dPsUcACNIHOLgFD5tZPgU3PzF3WtDOdqY/edit>

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here:

<https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here:

<https://goo.gl/FeAJpa>

Sunrise charter questions 2, 3 and 4

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes - see above

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Addressed above
