

Attendance:

Christopher Wilkinson
Claudio DiGangi
David McAuley
Greg Shatan
Jason Schaeffer (J Schaeffer)
John McElwaine
Kathy Kleiman
Kristine Dorrain
Maxim Alzoba
Michael Karanicolas (Michael)
Petter Rindforth
Susan Payne
Zak Muscovitch

Apologies:
Phil Corwin

Staff:
Julie Hedlund
Ariel Liang
Mary Wong
Michelle DeSmyter

Zoom chat:

00:06:35 Ariel Liang: You are welcome to download the file and scroll through on your own

00:06:50 David McAuley: None here

00:07:05 Maxim Alzoba: Hello all

00:07:43 claudio digangi: greetings Maxim

00:12:21 claudio digangi: Great summary David!

00:14:43 mary.wong: As noted on the Claims Sub Team call, to see where this group is in your review of the Charter questions and proposals, where you see suggested answers and draft recommendations in the summary table is basically where the Sub Team is on that topic.

00:15:29 Maxim Alzoba: what is the URL for the document?

00:15:44 Maxim Alzoba: We need to scroll

00:16:01 Ariel Liang: Maxim, the document has been sent to the chat and you can download directly

00:16:04 Maxim Alzoba: we had some lengthy discussions about it in the past

00:16:27 Maxim Alzoba: please resend to the chat

00:16:43 Ariel Liang: Here is the URL if needed:
<https://community.icann.org/download/attachments/102138618/%5BSunrise%20Summary%2>

0Table%5D%20%2816%20April%202019%29.pdf?version=1&modificationDate=15551562400&api=v2

00:17:13 Kathy Kleiman: could someone remind us of the data?
00:17:15 Maxim Alzoba: Also some games will be gamed by TM owners if 4d is granted
00:17:24 Kathy Kleiman: for misuse of reserved names (of which there are 100, right?)
00:17:54 julie.hedlund: @Maxim: Staff have summarized previous discussions from the chat rooms and transcripts.
00:17:54 Susan Payne: @Kathy -no. ROs can reserve an unlimited number of names. some had thousands
00:18:29 Maxim Alzoba: for example POLICE.CITY METRO.CITY
00:18:33 Susan Payne: 100 names was a specific subset
00:18:43 J Schaeffer: Where is the evidence/data that this is a widespread problem?
00:18:47 Maxim Alzoba: what is the reason for TM owners to have it? is it for public interest?\

00:19:06 Maxim Alzoba: generic city terms were wanted by mayors offices
00:19:32 claudio digangi: Maxim, there can be a pre-registration period for those names
00:19:38 Susan Payne: @Jason, I included some in my proposal. INTA survey was also informative on this, as was the AG survey of brand owners
00:20:25 Kristine Dorrain: @Claudio, only if you get an ALP, which only one RO has been able to navigate yet.
00:20:48 Susan Payne: @Kristine - QLP also applies
00:21:00 Kristine Dorrain: @Susan, yes, thank you!
00:21:17 claudio digangi: @kristine, to the extent that is a issue, let's fix it!
00:21:36 J Schaeffer: @Susan, yes there is some evidence, but I don't see this as a widespread issue. For example, John mentioned in many cases it involved a dictionary word in addition to to a TM. In others there could be, and likely were justifications for the treatment.

00:22:09 Petter Rindforth: Fruits - like Apple
00:22:26 Maxim Alzoba: and pineapple too
00:23:08 Kathy Kleiman: @All -- did we agree to a new "uniform mechanism" that "allows trademark owners to challenge a determination by a Registry Operator" of a premium name or reserved name?
00:23:19 Kathy Kleiman: I thought we agreed to a more informal mechanism?
00:23:46 Kathy Kleiman: That's what's in Question 3 now...
00:23:51 Maxim Alzoba: I must remind the WG that for GEOs ALP did not work at all (in realistic terms), and only combination of Reserved lists, QLP and special periods allowed to deliver what local governments wanted (mayor's offices and alike)
00:25:17 Maxim Alzoba: Is there a reason to believe that a panel will better understand a mission of a TLD than a REgistry?
00:25:19 John McElwaine: @Susan - I agree that is a PIC is a good idea to help determine what is "unfair"

00:25:44 julie.hedlund: @Kathy: At the beginning of the call Greg asked if the Sub Team wanted to revisit Question 3, and the decision was to move instead to Question 4. However, staff will be introducing a thread on Question 3 and the answers/preliminary recommendations so there is an option for continued discussion.

00:26:33 julie.hedlund: @Kathy: Also note that the summary table has been updated to reflect the discussions thus far on Question 3 as captured from the transcripts and recording.

00:26:53 Maxim Alzoba: I believe there should be some kind of balance for TMCH entries owners, some analogue of PIC, to prevent bad actors from abusing the system (bad actors, who pretend to be TM owners)

00:27:26 Kristine Dorrain: @Susan and @John, I can see that point, but I caution that this is going to get super murky and potentially expensive and uncertain for ROs. It's going to drag RO business practices through some sort of administrative process again and again.

00:27:30 claudio digangi: @Maxim, we can enhance the SDRP policy

00:27:45 Maxim Alzoba: it is per TLD policy , not wide one

00:28:41 claudio digangi: @Kristine, perhaps one way to address that concern is to require a prima facie case to trigger the mechanism

00:28:55 Zak Muscovitch: Greg, what about language similar to that provision you mentioned from the Reg Agreements a while back? I believe it mentioned discriminatory pricing, and wouldnt appear to breach the picket fence.

00:30:10 Maxim Alzoba: and to alter policies of TLDs is a new idea, which is not going to be well perceived , and will not pass voting

00:32:00 Susan Payne: in my proposal I suggested 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. but Zak's discriminatory pricing language would work too; ie

00:32:02 Kristine Dorrain: I think Kathy brings up an interesting point: Premium names are different from Reserved. Premium goes to cost. Reserved means unavailable for registration.

00:32:21 Kristine Dorrain: We can't challenge an RO's right to hold domains back from registration for business reasons.

00:32:24 Maxim Alzoba: If actions of the WG lead to situation where all premium names are going to be challenged to GA basic layer -> prices will go up for all domains (registries have costs, and without recuperation it is the way to go out of business for small and medium TLDs)

00:32:44 Susan Payne: the registry is not to act in a manner calculated to circumvent the RPMs, includingh by means of discriminatory pricing

00:33:31 Susan Payne: @Maxim, no one is suggesting that

00:33:32 Maxim Alzoba: @Susan, even 5USD vs 3USD can be seen as discriminatory

00:33:49 Ariel Liang: Staff is re-sending the document in case folks want to scroll through on your own

00:34:51 Kathy Kleiman: When is pricing announced? More specifically, if we are in Sunrise, and there are various Landrush periods to come, will the price of a domain name for General Availability be known?

00:35:16 Zak Muscovitch: Discriminatory pricing would be generally pretty tough to prove except in the clearest of cases involving a highly distinctive/unique mark

00:35:19 Kristine Dorrain: Prices aren't announced.

00:35:34 Maxim Alzoba: someone who sent a 3d printed prototype , sent it to the neighbor via mail after being paid, is a valid party for TMCH (after registering a TM)

00:35:36 John McElwaine: @Claudio - good point that we should look at the Sunrise Challenge mechanisms

00:35:39 Kristine Dorrain: A RO sets the price for Rrs and then the Rr can mark it up and sell it.

00:36:33 Kathy Kleiman: Tx for responses! Looks like it would be hard to challenge Sunrise based on price...

00:37:05 Kristine Dorrain: Also, a RO can put domain names in pricing tiers. A premium name can be sold at any point.

00:37:06 julie.hedlund: @Jason: We can hear you.

00:37:32 Maxim Alzoba: could we remove upper video tab? nobody is using a cam

00:38:53 Maxim Alzoba: we should be realistic, how are we going to deal with thousands entries of reserved lists?

00:38:56 Kristine Dorrain: Agree with Jason, we cannot talk about Premium together with Reserved. They're not the same thing.

00:40:30 Maxim Alzoba: small business is not capable of bear costs of TLD business

00:41:22 Susan Payne: Perhaps we could try to divide the discussion up so we don'tn have one person talking about reserved names, someone else talking about discriminatory pricing and it all gets mixed up together and we come to no conclusion. I realise this keeps happening because of how the CQs are structured, but we all know they are flawed

00:42:20 Maxim Alzoba: @Susan, the issue is that experience about Reserved lists limited to Registries and to some degree to Registrars

00:42:31 David McAuley: exactly right, Greg

00:42:34 Maxim Alzoba: from technical and operational perspective

00:42:51 julie.hedlund: @All: To confirm what Greg just said, staff will be starting email discussion threads on question 3 and question 4 (separate threads) to help advance the discussion.

00:43:05 David McAuley: That's not so handy

00:45:21 Kathy Kleiman: what type of PICs

00:45:37 Kathy Kleiman: I think we discussed this earlier -- a mandatory PIC?

00:46:03 Kristine Dorrain: @Staff, the PIC (proposal 11) doesn't relate to Q4. It's related to Premium Pricing, which is Q3.

00:46:42 Ariel Liang: Thanks Kristine. We will note that in the next version of summary table

00:46:49 Kathy Kleiman: So back to 1.3.3?

00:47:50 Maxim Alzoba: Also we need to prevent scenario , when a bad actor challenging all TLDs the same time, wasting money of ICANN community and Registries

00:51:28 Kathy Kleiman: 4b)?

00:51:33 mary.wong: In terms of the mechanics, rather than focus on a PIC (specifically), isn't Susan's proposal basically asking that a contractual obligation be added to the Registry Agreement? (assuming the Sub Team agrees what the "problem" is and that it is a problem that should be addressed in some way)?

00:52:26 David McAuley: I cannot get out of zoom to pull it up - Kathy put on list last week

00:52:55 Kathy Kleiman: I did, but I didn't pull it up. Could Staff grab it?

00:53:06 Ariel Liang: We are checking

00:53:17 John McElwaine:
<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-global-amendment-31jul17-en.html>

00:53:40 Kristine Dorrain: Just a reminder that the RA cannot be unilaterally amended.

00:54:13 John McElwaine:
<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>

00:54:35 John McElwaine: .3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

00:55:45 mary.wong: Apologies, staff had tried to share the language on screen (but clearly didn't work, sorry). It's now captured in the Notes on the screen. Thank you John!

00:56:48 Kathy Kleiman: sounds like 1.3.3 might already include useful language.

00:57:27 Maxim Alzoba: it is about CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

00:58:41 John McElwaine: The key is that Section 2.2 of the RA requires Registries to comply with Consensus Policies

00:58:55 John McElwaine: and then References Specification 1

00:59:50 David McAuley: good point IMO from Maxim, personal opinion

01:00:14 Maxim Alzoba: please scroll to the beginning of spec 1

01:00:43 mary.wong: Hand raised from staff

01:02:32 Kathy Kleiman: So perhaps answer to Q4(b) is No?

01:02:55 Kathy Kleiman: Q4(c)?

01:03:06 mary.wong: The Bylaws that reflect the scope of the Consensus Policies spelled out in Spec 1 are in Annex G-1 & G-2:
<https://www.icann.org/resources/pages/governance/bylaws-en/#annexG1>

01:03:59 Susan Payne: @Greg - exactly

01:04:38 Maxim Alzoba: 1.4.4 prevents that

01:04:49 Maxim Alzoba: from the same Spec 1

01:04:58 Kristine Dorrain: +1 Mary

01:05:40 Maxim Alzoba: formally it fits

01:05:48 Susan Payne: @Maxim, I don't think we've had any suggestion to change that 1.4.4

01:05:59 David McAuley: I agree with Greg here

01:06:18 Maxim Alzoba: sorry, there is a clause about material changes

01:06:42 Kathy Kleiman: asked and answered?

01:07:02 John McElwaine: I definitively support publication. It would have saved lots of problems for my clients

01:07:12 Maxim Alzoba: about Special Amendment

01:07:50 Maxim Alzoba: 7.6 Amendments and Waivers.

01:07:56 Maxim Alzoba: about the process

01:08:34 Kathy Kleiman: I thought Maxim said publication would raise legal problems for some registries?

01:09:31 John McElwaine: It did very from TLD to TLD and I never could figure out why'

01:10:09 Kathy Kleiman: right!

01:10:27 Kathy Kleiman: I think it was Jason's idea last week...

01:10:55 Maxim Alzoba: in our jurisdiction publishing of swear words is a punishable offence

01:11:09 John McElwaine: The RA already allows ICANN to request a list of reserved names. Section 3.3 of Spec 5: Upon ICANN's request, Registry Operator shall provide a listing of all names withheld or allocated to Registry Operator pursuant to Section 2.6 of the Agreement. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

01:11:33 Kristine Dorrain: @John. different list.

01:11:57 Kathy Kleiman: @Kristine -- are there two different reserved lists?

01:11:59 Maxim Alzoba: @John, yes, we would attach Confidential Information to the list

01:12:22 Maxim Alzoba: @Kathy, it is up to the software logic of very different platforms

01:12:50 John McElwaine: None of this is Confidential

01:12:55 Maxim Alzoba: it could be a list, the set of lists and it is database entries, not a static thing

01:13:39 Maxim Alzoba: it can change 100 times a minute

01:14:24 David McAuley: Thanks Kristine

01:14:33 John McElwaine: @Kristine - I was not referring to a list varying. The notice that you get was in my experience never clear

01:14:49 Kathy Kleiman: This is confusing. When we drafted (2009), Reserved names was the 100 names.

01:15:04 Kathy Kleiman: -- reserved for technical + operational purposes.

01:15:09 Kristine Dorrain: @Kathy. ot

01:15:23 Kristine Dorrain: it's bad terminology

01:15:28 Kathy Kleiman: Should we come up with clearly names, Kristine, for the two different types of Reserved Names List?

01:15:33 Kristine Dorrain: there are 100 Reserved Names (capital R)

01:15:52 mary.wong: In Spec 5, Section 3.2 speaks to the 100 names; Section 3.3 to the ones withheld pursuant to Section 2.6 of the main agreement.

01:15:54 Kristine Dorrain: But the RO doesn't need to sell it's entire inventory all at once.

01:16:11 Maxim Alzoba: also - ICANN required reserved names (for example - string example, red cross, olympic things, country names) ... also some SSAC concerns like WPAD

01:16:30 John McElwaine: @Mary - your right.

01:16:38 John McElwaine: I stil think they should be published

01:16:44 Kristine Dorrain: +1 Maxim, and those are spelled out in a Specification.

01:16:45 Kathy Kleiman: @Kristine, where is the unlimited reservation of domain name allowance in the Registry agreement? I ask because perhaps we can name the two reserved names list after the two contract provisions?

01:17:08 Kristine Dorrain: @Kathy, it's the inverse. there is no requirement to sell every domain name.

01:17:25 mary.wong: And the Sunrise Charter Questions Sub Team's proposed definition of Reserved Name referred expressly to those withheld under Section 2.6.

01:17:27 Kristine Dorrain: We don't need any new contract terms, it adds additional limitations on the business.

01:17:51 Maxim Alzoba: could I speak?

01:19:32 Kathy Kleiman: so two registered names lists -- the 100 Reserved Names and the ability of a registry to withhold any number of domain names from registration...

01:20:02 Kristine Dorrain: @John, it might not be about your client.

01:20:18 Kristine Dorrain: and RO's shouldn't have to explain their business strategy about why they won't sell a name.

01:21:01 Kristine Dorrain: @Kathy, that's correct.

01:21:29 Kathy Kleiman: Tx!

01:21:48 Susan Payne: Link to RA for those who want to refresh their memory:
<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.docx>

01:22:16 Kathy Kleiman: @Kristine, but perhaps ROs should be able to share information to help a trademark owner from going in circles -- informational support?

01:22:34 Kathy Kleiman: just a thought.

01:22:59 Kristine Dorrain: they can, if they want. Requiring confidential business disclosures is different though.

01:23:32 Kathy Kleiman: makes sense

01:23:42 claudio digangi: @Kristine, does the publication of reserved names go to the reason of WHY they are reserved?

01:23:46 Maxim Alzoba: @Kathy, TM owner is a pure third party to all Registry agreements (if the business model does not offer some other , non registry services to TM owners)

01:24:02 Kristine Dorrain: No, but recall theh argument of brand owners as to why the TMCH shouldn't be open.

01:24:13 Kristine Dorrain: a lot can be learned about strategy from lists.
01:24:23 Kathy Kleiman: 4(d) seems linked to all of our conversation today...
01:24:27 Maxim Alzoba: @Claudio, are we expecting registries to publish thousands of entries with detailed explanation?
01:24:40 Kathy Kleiman: I think we've answered this one.
01:24:50 Kathy Kleiman: with the questions we are asking about possible mechanisms...
01:24:52 claudio digangi: @Maxim, I meant the opposite, e.g. no reason required
01:25:29 Maxim Alzoba: 4d should be split, for example notice and opportunity to register are quite different
01:25:44 claudio digangi: @maxim, I thought TLDs are public resources, even when privately licensed to ROs
01:25:53 julie.hedlund: @Greg: Discussion on Q4 can continue on the list with the thread.
01:26:07 Kristine Dorrain: claims applies.
01:26:17 julie.hedlund: Staff hand up
01:27:07 Maxim Alzoba: providing notice is not harmful, but opportunity is the ability to provide benefits to only one part of the community during the whole life of all TLDs
01:28:10 Maxim Alzoba: @Terri, is it possible to remove the upper video tab next meeting?
01:28:32 Christopher Wilkinson: Hello. I think I have joined the wrong call. I am joining the PDP call at 20.00 UTC. (At least this confirms that Zoom can be made to work!!) CW
01:29:04 Susan Payne: hey Christopher - 30 mins to go before WT5 call. This is RPMs
01:29:11 Maxim Alzoba: first two weeks of May is GDD Summit for Registries and Registrars
01:29:13 mary.wong: Not from me thanks Ariel
01:29:33 Kristine Dorrain: thanks all, dropping now for another meeting!
01:29:40 Maxim Alzoba: @Ariel, please remove upper video tab next meeting
01:30:02 Ariel Liang: Maxim, we will check with the SOAC Team colleagues on this
01:30:31 Maxim Alzoba: @Ariel, thanks, I had meetings without it (or I think so :)
01:30:49 Maxim Alzoba: time to use coffee icons