

Attendance:

Brian Beckham
Cyntia King
Greg Shatan
Griffin Barnett
Kathy Kleiman
Lori Schulman
Martin Silva Valent
Philip Corwin
Rebecca Tushnet
Roger Carney
Scott Austin
Susan Payne

Apologies:

Michael Graham
Zak Muscovitch

Staff:

Julie Hedlund
Ariel Liang
Mary Wong
Michelle DeSmyter

Zoom Chat:

00:20:46 Ariel Liang: You can scroll the document on your own. Q4 is on page 16
00:24:11 julie.hedlund: hand up Martin
00:25:43 Kathy Kleiman: we are really word people - it would be nice to see this in writing
00:26:42 julie.hedlund: @Kathy: Staff have not shared any text with the Sub Team Co-Chairs and so they have not had a chance to make any edits.
00:27:26 Kathy Kleiman: reading it may only confuse things...
00:28:45 julie.hedlund: Hand up from staff
00:28:50 julie.hedlund: after Susan
00:29:16 Martin: ok
00:32:13 Rebecca Tushnet: Blind optimism about a notice we haven't fixed yet isn't a policy.
00:32:52 Lori Schulman: Hello. Sorry for being late.
00:33:42 Kathy Kleiman: new hand for me
00:33:58 Philip Corwin: My hand is up

00:35:22 Susan Payne: well Rebecca many of us have been saying we should fix the notice for 3+ years but sadly it had not happened - yet

00:35:30 mary.wong: @Phil, that's correct.

00:40:39 Kathy Kleiman: hand up

00:41:37 Philip Corwin: There is broad agreement that the Notice language should be amended. We can't grapple with proposed edits until we decide if we are or are not expanding the matching criteria.

00:43:12 Susan Payne: we don't know there are harms against registrants Kathy. we have a suspicion that some may have been deterred but we don't have data

00:43:29 Roger Carney: +1 Kathy, non-co-chair hat

00:44:20 Cyntia King: So throw the baby out w/ the bath water?
If we can't eliminate the harm let's take our toys & go home?

00:44:53 Kathy Kleiman: URS is the catch-all of the problems... so it's our basis for data

00:45:52 Lori Schulman: We should have new gTLDs and appropriate RPM's. URS is noted as under utilized because the remedy is temporary. Let's look at UDRP.

00:45:59 Susan Payne: you cannot just look at the URS. with the best will, it is not the dispute mechanisms of choice for many many cases because of the limitations of the remedy, and the fact that it is intended at the slam dunk cases

00:46:02 Lori Schulman: WIPO studies say UDRP filings are up.

00:46:04 Kathy Kleiman: Neuman rule - if it's not broken, we don't fix it.

00:46:23 Cyntia King: URS has a very limited scope - how is this an appropriate basis?

00:46:45 Kathy Kleiman: It is where we would see a pattern of problems if they existed in new gTLD registration.

00:47:06 Kathy Kleiman: Michael's proposal? He's in Sunrise...

00:47:26 Rebecca Tushnet: Nor is there other data supporting that TM + prespecified brandrelated keyword is a source of a significant percentage of cybersquatting issues. My point is: if you want to look at evidence, URS and UDRP provide the most public evidence and no one has suggested any other evidence.

00:48:24 Susan Payne: but you aren't referring to UDRP data Rebecca, only to URS, correct?

00:48:33 Kathy Kleiman: the data has not shown us these are problems

00:48:49 Rebecca Tushnet: That's correct. If you have UDRP data showing that a significant % are TM + brandrelated keyword, please share it.

00:49:01 julie.hedlund: @Martin: Noted.

00:49:23 Kathy Kleiman: We evaluated a range of matches in 2009 (STI) as did IRT. We all arrived at exact match.

00:51:02 Kathy Kleiman: Question to Chair: are we collecting new data at this point in time?

00:53:01 Kathy Kleiman: @Scott -- this runs to the issue of bad faith, doesn't it?

00:53:05 julie.hedlund: @Kathy: There is no new data collection. The Sub Team has completed the review of all of the data collected.

00:53:14 Kathy Kleiman: Tx Julie.

00:53:26 Martin Silva Valent: Tx Julie for answering

00:53:46 Susan Payne: @Phil that wasn't the point Scott was making. His point was that the registrant would have benefitted from receiving notice

00:54:09 julie.hedlund: @Phil: Procedurally, a discussion thread has been opened on Question 4 to complete the development of answers to the charter question and preliminary recommendations.

00:54:19 Kathy Kleiman: Some members of the subteam do not think we have reached the threshold to getting to proposals.

00:54:54 Lori Schulman: Agree Phil's comment is more about notice and less about any liability to registrars

00:55:01 julie.hedlund: hand up

00:55:22 Martin Silva Valent: I know Claudio you are next :-)

00:57:45 Philip Corwin: @Susan--unless a domain is incapable of being used in a non-infringing manner, the registrar cannot IMHO be held responsible for the registrant's subsequent infringement

00:58:35 Lori Schulman: Exactly...the more information the registrant has, the better.

00:58:45 Rebecca Tushnet: I will point out again that we have collected zero evidence that Notice deters phishers and other intentional cybersquatters.

00:59:33 Kathy Kleiman: But also that the post-entry protection is not showing us a pattern of problems.

01:00:43 Kathy Kleiman: @Rebecca +1 and everyone agreed to that when we worked on the Notice

01:01:42 Scott Austin: @Kathy confusing similarity as well because the use of a business descriptor is a common term not sufficiently distinctive to avoid a finding of confusing similarity. It may also support bad faith as well but the issue I am raising re the addition of the business descriptor is primarily related to prong 1 of the udrp.

01:04:01 Cynthia King: It's disingenuous to suggest that the Claims Notice does not deter intentional cybersquatters. Evidence will be impossible to obtain since cybersquatters won't detail their illicit activity.

01:04:09 Griffin Barnett: To Rebecca's earlier point above, even assuming no evidence that notices deter intentional cybersquatters/phishers/etc., the notice still serves a useful purpose in downstream legal action, because it can then be shown that the person proceeded in disregard of the notice and being aware of the relevant rights; it is a key component of pleading wilful infringement, bad faith, etc.