

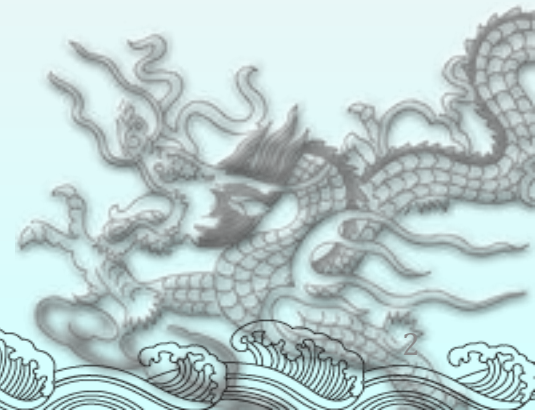
Intellectual Property and IDNs in New gTLDs Program

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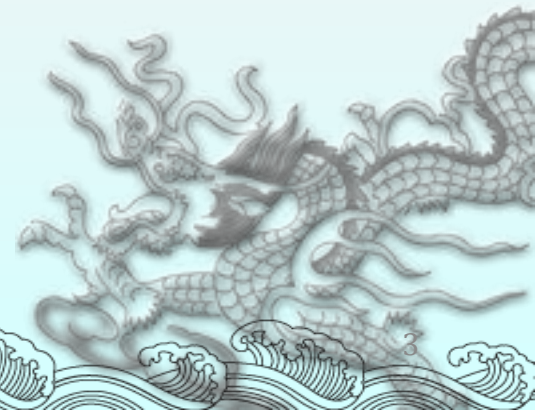
RPMs in NgTLD Program

- ◆ What is being vehemently doing?
 - ◆ TMCH
 - ◆ URS
 - ◆ PDDRP
 - ◆
 - ◆ PICDRP
- ◆ In addition to the existing UDRP.



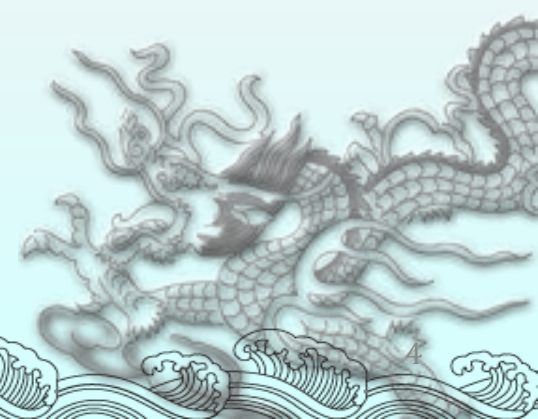
Concerns

- ◆ Unbalanced
 - ◆ Does IPR interest outweigh public interest and human right on free expression?
- ◆ Extensive
 - ◆ From trademarks to other IPRs



Anatomizing new PIC

- ◆ RA Specification 11
 - ◆ 3(a) Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law; and,
 - ◆ Providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.
- ◆ If breached, subject to PICDRP
- ◆ And, may result in termination of RA



Anatomizing new PIC

- ◆ What must the registries prohibit?
 - ◆ Domain name strings; and,
 - ◆ Website contents
- ◆ What are the registries pushed to do?
 - ◆ Editorial judgment
 - ◆ New layer of censorship
 - ◆ DNS filtering or blocking
- ◆ Do the registries have the capacity, expertise and resources for content regulation?

DNS Filtering or Blocking

- ◆ The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that many filtering and blocking measures are in violation of international human rights standards, notably those on the right to freedom of expression.
 - ◆ For example, done in an “overly broad and vague manner” so that blocking and filtering is arbitrary and excessive, or,
 - ◆ Content often blocked without the possibility for independent review

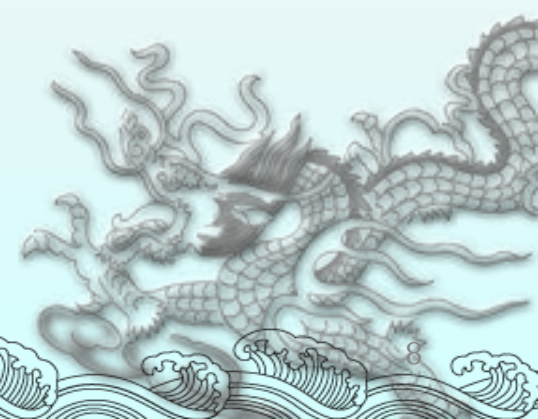
Human Right Standards

- ◆ United Nations Human Rights Council Resolution ‘The Promotion, Protection and Enjoyment of Human Rights on the Internet’ (07/12)
- ◆ The same rights that people have **offline** must also be protected **online**, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.



Reluctant to React to IDN Variants

- ◆ ALAC Statement on TMCH and IDN Variants
 - ◆ Measures taken to avoid IDN Users' confusion while variant issues are ignored at TMCH
 - ◆ For example: “华为” ≠ “華為” (“HUAWEI”)
 - ◆ “清华” ≠ “清華” (“Tsinghua”)
- ◆ Board NGPC's Reply
 - ◆ No action needed at TMCH
 - ◆ Variants handled at registry level



As a Result of *Laissez-faire*

- ◆ In violation to the fundamental purpose of trademark protection
 - ◆ Users' confusion with "*variant-squatting*"
 - ◆ Upon Registries' different variant rules and implementation
- ◆ Discriminative treatment to:
 - ◆ IDN marks involving variant DNs and other marks
- ◆ Discouraging to registries from bearing the burden of handling variants

Consequences for Sunrise Registration

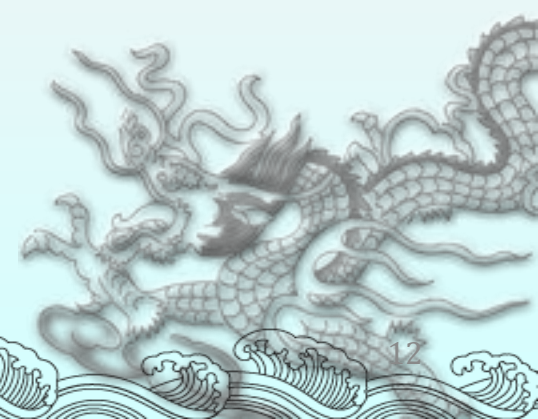
- ◆ Dilemma of Registries with variant management
 - ◆ TMCH RPM Management Requirements (04/2013)
 - ◆ Registry Operator **MUST** only register domain names during the Sunrise Period
 - ◆ If Registry Operator wishes to implement variant or bundling rules, domain names allocated under such variant or bundling rules **MUST NOT** be allocated prior to the conclusion of the Sunrise Period
 - ◆ Sunrise twice?
 - ◆ Sunrise period: SMD: 华为
 - ◆ A supplementary sunrise period for the trademarks involving DM variants: “華為”

Consequences for TM Claims

- ◆ Registries without variant management, no claim
 - ◆ SMD for “爱马仕” (simplified characters for “*Hermès*”)
 - ◆ No claims for “愛馬仕” (traditional characters)
 - ◆ No claims for “愛马仕” or “爱馬仕” (mixed characters)
- ◆ Registries with variant management, the Registries paid for TMCH services (including a one-time setup fee) but have to process variants at their own costs and resources
 - ◆ So, registries discouraged from variants management and let the “variants” be;
 - ◆ Although, the Claims Notice is intended to provide clear notice to the prospective domain name registrant of the scope of the Trademark Holder’s rights.

New Move?

- ◆ Is there support for language community initiative?
- ◆ Conclave?
 - ◆ Transparency and Accountability



Welcome to the Brave New World!

