

Adobe Connect chat transcript for 03 August 2016:

Terri Agnew:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group held on Wednesday, 03 August 2016 at 16:00 UTC for 60 minutes.

Maxim Alzoba (FAITID):Hello All

VAIBHAV AGGARWAL:Hi

VAIBHAV AGGARWAL:I am in

Maxim Alzoba (FAITID):Hi Terri, could you ask operator to call me in? (number in e-mail)

Terri Agnew:Hi Maxim the op is calling you at this time

VAIBHAV AGGARWAL:@Kathy @Teri @Maxim from Y'day @Jay @Petter greetings

Maxim Alzoba (FAITID):thanks

Paul Tattersfield:Hi all

George Kirikos:Have no fear, George is here. :-)

George Kirikos:(hi everyone)

Martin Silva Valent:hi all!

George Kirikos:Echo, echo....

George Kirikos:*6 to mute/unmute

Greg Shatan:Ironic that it came during the announcement to mute.....

George Kirikos:Dog days of summer....woof.

Yuri Chumak:hello all

Kathy Kleiman:Hi All- Hope everyone's summer is going well.

Paul McGrady:Good morning all!

Kathy Kleiman:I greatly enjoyed the Latin American Internett Governance Forum in Costa Rica last week

George Kirikos>Welcome, Kathy and Paul M.

Mary Wong:These draft questions were just circulated to the mailing list, and incorporate some suggested edits from Brian Winterfeldt and his team to the staff draft we sent to them (per the WG agreement on the call last week).

Marina Lewis:Hi everyone!

George Kirikos:Hi Marina.

Kathy Kleiman:+1 on neutrality

Susan Payne:+1 on Supp Rules

Griffin Barnett:Agree that this issue should be at the policy level rather than the Supplemental Rules level

Griffin Barnett:I think the wording may just be to clarify that if this policy change is made to accommodate a joint complaint, that the supplemental rules may need to be amended accordingly

Mary Wong:To expedite matters, WG members should also send comments to the mailing list between now and next week.

Lori Schulman - INTA/IPC:Good afternoon. Sorry I am late. I had a prior call run over.

George Kirikos>Welcome, Lori.

Maxim Alzoba (FAITID):BRG?

Maxim Alzoba (FAITID):BRG are both brands and Registries

George Kirikos:Perhaps those registered on the TMCH should also be surveyed, as they might not be active within the GNSO, but are still more vigilan than other markholders.

Mary Wong:These questions were based on the suggestions made by J Scott and others on the call last week.

Mary Wong:@George, we will need to figure out how to contact the TMCH registrants in that case, I suppose.

Maxim Alzoba (FAITID):and BRG members are not usually participate in RySG meetings

Paul McGrady:I would change "clients" to "people or entities you represent" and I think they should be sent out to everyone so that no one can claim later that they weren't given the same voice as IPC/BC in this process.

Kathy Kleiman:I would revise Question 4 to start: "Has there been an *New gTLD* registry conduct... " since that is the scope of the current TM-PDDRP

Paul McGrady:Every constituent element of ICANN: Constituencies, Advisory Committees, etc.

Greg Shatan:Shatan rhymes with Manhattan....

Paul McGrady:+ Kathy

Greg Shatan:and not rattan

Edward Morris:Agree with Kathy and Paul.

Mary Wong:By "everyone" do we mean all GNSO SG/Cs or all ICANN SO/ACs?

khouloud Dawahi:couldnt agree more ,+1 kathy

George Kirikos:Rhymes with "satin" but with a "Sh", Greg?

Kurt Pritz:What is the purpose of question 1? We have to be careful that it not be used to establish the awareness level of RPMs generally as it is just asked of ICANN community members.

Lori Schulman - INTA/IPC:I agree with Paul and Kathy. All groups should be polled. Casting a wider net should give us more accurate results.

Paul McGrady:@Mary: All ICANN.

Lori Schulman - INTA/IPC:I'll take Manhattan and Staten Island too. Sorry, couldn't help myself.

Paul McGrady:For example, GAC is not technically part of GNSO, but we really would like to hear from them on these questions - especially because we don't want anyone to claim later they weren't asked.

Kathy Kleiman:To Question #4 I would add at the end. If so, why?

George Kirikos:For question 4, instead of making it a "Yes/No" question, it should be "If so, describe...."

Greg Shatan:Kathy, can you expand on what the "why" refers to?

Marina Lewis:I still think we should make an effort to target people or entities who would actually consider filing a PDDRP. Registries (even members of BRG) aren't likely to respond in the affirmative so I don't see the purpose of casting such a wide net. Am I missing something?

Greg Shatan:Recognizing that #4 is now a moving target....

Marina Lewis:she = should

Greg Shatan:Marina, I think the general distro is in addition to the targeting attempt, not instead of it.

Greg Shatan:I see it more as a matter of transparency than anything else. That said, we may also ask whether the respondent is a TM owner (and this a potential plaintiff) or not. Questions 2 and 3 are really only relevant to trademark owners, so I'm not sure we should seek (or expect) answers to those questions from others.

Caroline Chicoine:had issues getting on adobe so sorry if already raised, but on questions 2 and 3 to TM-PDDRP, I would change "If so, what are the limitations?" to be more neutral and say "If so, what, if any, limitations are there to consolidation" and add "If not, why do you believe such consolidation would not be feasible/advisable."

Marina Lewis:Thanks, Greg. Is there any concern for skewed results, such as a scenario where 45% of responses come from registries. I would suggest we have some mechanism to monitor responses in order to identify bias.

Kurt Pritz:Building on Mary's comment on stakeholders being overloaded with questions: we should take care in approaching the GACnad manage expectation. Maybe tell them that we will be sending them x number of sets of questions with this time frame so they plan their work.

Kurt Pritz:"in approaching the GAC and managing expectations." --- I think the GAC is a special case.

Lori Schulman - INTA/IPC:+1 Caroline's suggestion. I missed the beginning too. The questions should appear as objective as possible.

Mary Wong:@Kurt, thanks - that's what we thought might be helpful, esp the GAC but possibly also other groups as a kind of head's up

Paul McGrady:Agree we can't halt our work while waiting for non-responders, but at the same time I don't think it makes any sense not to ask them just because we know they are busy.

Kurt Pritz:We are most interested in IP and BC comments. When we send to them, say that there quick response is important. When we send to others, tell them the time is short but we did not want to omit them and if they cannot respond in time that we understand.

Susan Payne:I think we should ask respondents to anonymise the registry name if they are concerned and just explain the circumstances of the case. our role is not to police a specific registry but to consider the issues which have arisen

George Kirikos:+1 Susan. It's the abusive practise that is of concern, not the identity of any particular alleged abuser.

Paul McGrady:Not only just concerned here about liability, but also concerned about throwing gas on the dying embers of last years' fire(s).

Beth Allegretti:+1 Susan

khoulood Dawahi:yes we should anonymise the registry name @susan but the case provided by them should be provided with specific details as well

khoulood Dawahi:i believe

George Kirikos:practice, even

Lori Schulman - INTA/IPC:Agree with Susan

Susan Kawaguchi:Not sure I am concerned with naming the registry most people will know what registry is being described

Susan Kawaguchi:by the bad behavior

Maxim Alzoba (FAITID):maybe the text clearly should say that the example should be generalized (not to leave traces)

Lori Schulman - INTA/IPC:Some practices have been highly publicized. Some have not but i have heard some horror stories from nonprofits trying to register their trademarked names in the less publicized tlds

George Kirikos:As long as they speak the truth, liability concerns are minimal.

Lori Schulman - INTA/IPC:It's not 1 registry.

Lori Schulman - INTA/IPC:It's many.

Susan Kawaguchi:+1 kathy

martín silva:+100 at lori

Rebecca Tushnet:Agreed with Kathy: we should know what the real issues are. And we may have disagreements about whether the target actually facilitates infringement.

Edward Morris:Less abstract the better.

Kathy Kleiman:gorillas :-)!

Marina Lewis:+1 Kathy. :)

Paul McGrady:Let's allow them to name, but not require it. That said, I wonder if we are piling kindling on last years' fire(s) just to find something to fix in this policy because there isn't much that jumps out at us as needing to be fixed.

khoulood Dawahi:my thumbs up for you @kathy us usual

George Kirikos:There are other avenues for non-TM stuff, eg. FTC.

George Kirikos:(in the US, i.e. for consumer protection)

Kathy Kleiman:To Sarah: I think that is a fair question to ask

Kurt Pritz:Sarah is saying, if you have seen violative behaviour, are you one with standing to bring a PDDRP action?

George Kirikos:<https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection>

Marina Lewis:Are we trying to establish whether a respondent would have standing to file a PDDRP? I don't think it matters because this is all hypothetical...plus, an entity or person might have standing in the future and would consider an action them.

Roger Baah:Hi All sorry am late.

George Kirikos:Welcome, Roger. Better late than never. :-)

Mary Wong:We're taking notes and will double check the transcript to make sure we capture all the suggestions. Thank you.

Paul McGrady:Good discussion. Glad we get a second bite next week.

Mary Wong:I believe we ar at the bottom of page 5 (burden of proof) so we should start with page 6 (heading under (iii); for Remedies)

khouloud Dawahi:yes

Kathy Kleiman:yes

Marina Lewis:yes

George Kirikos:I don't see the "limitation period" (e.g. statute of limitation) in the document.

Mary Wong:Correct, Phil

George Kirikos:That should be added, for clarity.

Mary Wong:@George, sorry - this is the old document but we have noted that additional suggestion you made from last week. Maybe we can trouble you to bring it up again when we get to the bottom of this page/section? Sorry.

George Kirikos:Ok.

Mary Wong:Thank you!

George Kirikos:For (iv), some TM offices don't have online sources to "link" to, so they should simply include the TM registration documents or number (and country).

George Kirikos:(Apple is famous for filing some TMs in countries with no online interface/search, for "stealth" registration of marks for future products)

Kathy Kleiman:@Mary: could you kindly include a question about laches or statue of limitations considerations? Tx!

Sonigitu Ekpe:Greetings all sorry for been late

Dominic DeLuca:Would UDRP Decisions be applicable to PDDRP disputes?

George Kirikos:The time limit is based on the when the cause of action could have arisen (i.e. ALL the facts necessary to pursue the cause of action).

George Kirikos:If the registry operator was a respondent in the UDRP, then it could be.

George Kirikos:Or, was a related party to the UDRP respondent.

George Kirikos:Statute of limitations would depend on the jurisdiction of the registry operator. Since, it would create an absurdity that someone could bring a PDDRP as an alternative to courts, when the court could never hear that complaint in the first place (because it was statute barred).

Paul McGrady:+1 Susan. What are we trying to fix?

bradley silver:+1 Susan

Susan Payne:contract runs only for 10 years in any event

Paul McGrady:Very complex solution to an unidentified problem.

George Kirikos:I disagree, given that the jurisdiction for the PDDRP appeal to the courts is the jurisdiction of the registry.

Edward Morris:Agree with Phil on uniform SOI

George Kirikos:So, the jurisdiction of the registry operator sets the time limit for a dispute.

Susan Payne:would need to be tied to the jurisdiction of the contract surely

Jon Nevett:just an FYI -- SOL for breach of contract under California law is 4 years

Terri Agnew:next call: Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Groupis scheduled for Wednesday, 10 August 2016 at 17:00 UTC for 60 minutes.

Kathy Kleiman:@Susan, that's an interesting issue: if the trademark rights after the Registry is created, does that raise special issues for consideration?

Kathy Kleiman:I know this has been a problem in the UDRPs - trademarks arising after the domain name.

George Kirikos:Echo, echo.

Maxim Alzoba (FAITID):bye all , have to disconnect

Philip Corwin:FYI, I posted this article on the Analysis group TMCH report --

http://www.circleid.com/posts/20160801_tmch_review_recommends_status_quo/

Terri Agnew:find the line

Mary Wong:We're trying

Mary Wong:Thanks Terri - you're way faster than I am!

Griffin Barnett:Thanks all

Georges Nahitchevansky:Thanks everyone.

VAIBHAV AGGARWAL:Thanks Team

Lori Schulman - INTA/IPC:Thank you Phil.

VAIBHAV AGGARWAL:Look forward

Mary Wong:Thanks Phil, everyone!

Paul Tattersfield:thanks all bye

Elizabeth Featherman:Thank you Phil!

George Kirikos:Bye folks.

Roger Baah:bye

khouloud Dawahi:thank you all

Marina Lewis:bye everyone