

COLLATED INFORMATION FROM RPM WORKING GROUP MEMBERS CONCERNING PERCEIVED ABUSE BY NEW GTLD REGISTRY OPERATOR RELATING TO INTELLECTUAL PROPERTY RIGHTS

Type of Behavior:	Description:	Submitted by:	Sub Team comments and questions:
Tactics	<p>(1) .xyz cramming domain names into registrant's accounts with no fees but placing our company's information without consent into Whois, then overwhelming push and notices to renew the domain names after a year</p> <p>(2) .xyz "cramming" (domain names placed in registrants' accounts without authorization); .feedback's conflicting stated use of domain names; misuse of brand and brand infringement; many new gTLDs not complying with their own registration requirements (eg. .film)</p> <p>(3) Reservation of domain names that match famous brands at the second level</p>	<p>(1) Susan Kawaguchi (BC)</p> <p>(2) Denise Michel (BC)</p> <p>(3) A trademark owner</p>	<p>Would this fall within the current scope of the TM-PDDRP?</p>
Pricing issues	<p>(1) .top increasing the sunrise fee for Facebook.top because FB is a famous trademark</p> <p>(2) outrageous premium pricing (eg. .top); using TMCH as a shopping list for predatory pricing</p> <p>(3) Premium pricing for domain names which match famous brands at the second level, clearly targeting those brands</p>	<p>(1) Susan Kawaguchi (BC)</p> <p>(2) Denise Michel (BC)</p> <p>(3) A trademark owner</p>	
General	<p>(1) I think there have been different types of abuse - eg</p>	<p>(1) Emily Taylor</p>	<p>Would this fall within</p>

	<p>artificially boosting the number of registrations, but not aware of the 'substantial pattern....TM infringement'</p> <p>(2) It is possible that such a case might be made out as to .sucks and .feedback, and more broadly perhaps as to open TLD operators who have reserved well-known trademarks and have charged unreasonably high amounts to the trademark owner to register them.</p> <p>(3) Decisions on names seem to be oriented towards maximizing ICANN funding</p>	<p>(RrSG)</p> <p>(2) Mike Rodenbaugh (IPC)</p> <p>(3) Mike Urban (At Large)</p>	<p>the current scope of the TM-PDDRP? [added by Darcy Southwell]</p>
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EXAMPLES OF PERCEIVED REGISTRY BEHAVIOR OF CONCERN

The following examples were submitted by a registrar member of the WG:

1. OVH – IMPROPER SUNRISE: ONLY SIGNING UP ONE REGISTRAR

.OVH did not appear to follow the Sunrise rules – they “ran” a Sunrise but only had their own registrar signed up and so reserved all TMCH-recorded names to release later. They then apparently ran a subsequent period for release of the TMCH-matching names, although without publicising it:

They had a “Key Dates” section on the nic.ovh website. According to this, Sunrise began on 1st September 2014 and ended on 1st October 2014.

Then between 1st April 2015 and 30th April 2015 there was a “period reserved for trademarks registered in the TMCH”. If they did run this second period in April then they did not seem to publish any information on it and it did not appear in the ICANN launch schedule or Calzone.org

Apparently from 5th May 2015 registrations were open to everyone (although we did manage to secure some names matching our clients trademarks by direct contact with the registry).

It's not clear if any Compliance action was taken, although this seems to be a breach of the RPM requirements.

During the time in question, .OVH also had only one registrar, ovh.ie (ie a group company), which appears to have been a factor in the non-Sunrise, since corporate registrars who wished to register on behalf of clients could not do so.

2. SEVERAL REGISTRIES SETTING TRADEMARK-MATCHING NAMES AS PREMIUM

a. LOVE

The .LOVE registry designated a large number of well-known trademarks as premium, so that prices during sunrise (and after) were set at significantly higher than the "standard" price. For example:

- An English word, but registered extensively as a trade mark, and not "generic" in the context of the .LOVE registry - \$800
- An extremely well-known retail brand, which does have another meaning in a different context, but again is not "generic" in the context of the .LOVE registry - \$8,000

When queried, the registry response was that the words were common dictionary words, which cannot be subject to a trademark.

b. .YOGA, .VOTING, .SITE

The same retail brand was designated as premium in .YOGA and .VOTING registries, with prices up to \$4000. Again, there is no generic meaning for the brand in these contexts.

There are similar examples in .SITE, with premium prices quoted for TMCH-recorded terms between \$1000 and \$5000

c. .RENT

Trademark (coined term with no other meaning) of a business in the property field, set at \$1000 in the .RENT registry

3. RELEASE OF PREVIOUSLY RESERVED NAMES - .OOO

All New gTLDs were required to reserve 2-character second level domains. Subsequently, ICANN gave approval to release all letter-number, number-letter and number-number terms. The .OOO registry chose to release these terms without notifying registrars and consequently when a trademark owner of a well known brand) tried to register their TMCH-matching term it was already

registered. Although the reservation of these particular terms was ICANN-driven, the reservation of names and their release after the sunrise can have the effect of circumventing the sunrise.

4. FAMOUS FOUR's "BRAND PROTECTION TIER"

FFM set names in its brand protection tier at a higher price than the standard registration. Apparently names were identified based on a list of all word marks registered in popular trademark databases (such as the USPTO and EUTM), which were compared to domain registration frequency in existing TLDs to determine those most likely to be a target by cybersquatters. Brand names which were considered to be high risk of cybersquatting were then placed on FFM's brand protection pricing tier. Despite the "brand protection" term, however, names on the brand protection list were available for registration by anyone, not just the trademark owner. This therefore appears to have been purely a means of generating additional revenue out of cybersquatted names – the terms are high value because they are widely infringed.