

Terri Agnew: Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group held on Wednesday, 28 September 2016 at 16:00 UTC for 60 minutes.

Terri Agnew: agenda wiki page: <https://community.icann.org/x/QAu4Aw>

George Kirikos: Hi folks.

George Kirikos: It looks like the layout of the room was adjusted slightly?

David Tait: Hi George, yes there have been some updates to add additional functionality to the AC rooms

Steve Levy: Hi all!

Paul Tattersfield: Hi everyone

Greg Shatan: Nice new room! I can still smell the paint.

Yuri Chumak: hi

Ankur Raheja: Hello

Kathy Kleiman: But do you like the color, Greg?

Greg Shatan: So many shades of gray.

Maxim Alzoba (FAITID): Hello all

Kathy Kleiman: oh dear.

Greg Shatan: We will need to provide color with our chat colors. And with our comments.

Georges Nahitchevansky: Who was in charge of the paint job

Kathy Kleiman: indeed, color commentary...

George Kirikos: A theme selector would be nice....perhaps aqua.....

Greg Shatan: I want to rock and roll all night, and ICANN every day.

Greg Shatan: Custom skins for Adobe Connect rooms!

Mary Wong: Ack, earworm!!!

Greg Shatan: @Mary, sorry...:-)

Mary Wong: :)

----- (09/28/2016 11:07) -----

Terri Agnew: everyone can turn the slides themselves

----- (09/28/2016 11:09) -----

Terri Agnew: Please remember to mute when not speaking

Jeff Neuman (Com Laude): yep.

Paul Keating: Hello all. Sorry I am late.

----- (09/28/2016 11:11) -----

Paul McGrady: Sorry to be tardy. Good m/a/e.

----- (09/28/2016 11:12) -----

George Kirikos: Is there a reason for the English bias in the notice? (Given the large number of registrants from China, are they getting adequate notice? Are the Chinese registrars translating into Chinese?)

Griffin Barnett: I believe it is required (not optional) to provide the notice in English and the language of the registration agreement

Maxim Alzoba (FAITID): How to say .... lot's of potential registrants were freaked out due to the text and did not realise that they are not doing wrong things ... it would be nice to have more non-legal persons friendly text

Mary Wong: The TMCH Requirements provide the following: "The Claims Notice MUST be provided by the registrar to the potential domain name registrant in English and SHOULD be provided by the registrar to the potential domain name registrant in the language of the registration agreement."

George Kirikos: Do we have any stats on whether the registrars are following the "should" advice? Or are they cutting costs, and ignoring the suggestion?

Mary Wong: So whether there is a Chinese version depends on whether the registration agreement is in Chinese (which may well be the case if the registrar is a Chinese-based registrar).

Philip Corwin: Slide 4 notes that Notice must be provided in English and, preferably, language of registration agreement

----- (09/28/2016 11:16) -----

George Kirikos: 46.8% of registrants are from China for new gTLDs, so perhaps the "should" can be replaced by "must" <https://ntldstats.com/country>

Jeff Neuman (Com Laude): One interesting note was that the original policy was that a Registry had to run a Sunrise OR a Claims Period, but not both.

Jeff Neuman (Com Laude): That changed after GAC Advice

George Kirikos: (might even be higher than 46.8%, depending on the 17.9% of proxy registrations)

Jeff Neuman (Com Laude): We need to decide whether to formally codify both into the policy (or not)

Mary Wong: @George, we (staff) don't know at this point if the aggregate numbers for Claims Notices sent are available broken down into different languages. Note that the official working language at ICANN is English, so the official notice (as provided for in the TMCH Requirements) is provided in English. I don't believe we provide an official translation in multiple languages.

----- (09/28/2016 11:19) -----

George Kirikos: That's surprising that there's no official translation, given that one of the justifications for the new gTLDs program was for IDNS, and "lesser served" countries in general.

Maxim Alzoba (FAITID): than, given that most people on the planet do not read English ... I think big share of those notices were not understood

Jeff Neuman (Com Laude): @George, perhaps that's a policy recommendation; (Namely, we should have formal translations done in at least the 6 UN languages)/

George Kirikos: +1 Jeff

Mary Wong: All, for Slide 10, the "either type of registration activity" quoted refers to both legitimate registrations and cybersquatting activity.

Maxim Alzoba (FAITID): +1 for chilling effect

----- (09/28/2016 11:22) -----

Griffin Barnett: agree that official translations of the claims notice language in at least the 6 UN languages would be helpful

George Kirikos: How many registration attempts didn't trigger a claims notice? (i.e. is XX million+ total registration attempts, but 1.8 million triggered a Claims Notice?)

Jeff Neuman (Com Laude): And today Donuts announced a new DPML Plus service

George Kirikos: (and of those that didn't trigger a claims notice, what % (presumably higher than 6.3%) went on to complete the domain name registration?)

Mary Wong: @George, I think we can only get that total number if all registrars agree to provide that information.

Jeff Neuman (Com Laude): <http://www.donuts.domains/services/dpml-plus/dpml-plus-overview>

George Kirikos: @Mary: We'd need those kinds of figures, to determine whether or not the 6.3% is indeed a "chilling effect"

----- (09/28/2016 11:26) -----

Philip Corwin: I'm confused about Donuts' DPML service. Slide says that mark registered in TMCH can be blocked, but also says that blocked mark need not be an exact match of the TMCH registered mark. How broad is the potential scope of blocking?

Maxim Alzoba (FAITID): this kind of extra protection will prevent those parties from obtaining their matching domains, the way we see now with IGOs ...

Mary Wong: @George, we don't disagree - but I doubt we can get all the data so as to be a reliable figure. Perhaps we can compare the number of Claims Notices issued and the number that proceeded nevertheless (per the Analysis Group's data) with the total number of registrations?

Jeff Neuman (Com Laude): Can we add the question of whether both Sunrise AND Claims should continue to apply or whether we stick with the original policy which was Sunrise OR Claims

Philip Corwin: My recollection is that TM+50 not being used much

Paul Tattersfield: It's probably a helpful chill, developing a (non-infringing) business on a domain where there is also a larger brand in an unrelated sector is a serious headache and it doesn't go away with time. If possible choosing a unique name is a far better route.

Paul Tattersfield: time

Mary Wong: @Phil, on the breadth of a DPML block, the operative word used by these registries is "contains" the TM. I believe they also include substitutions (e.g. numbers for characters).

Maxim Alzoba (FAITID): given the amount of generic names registered as TMs- extra protection will make future TLDs useless

Kathy Kleiman: Looking at the Additional Questions and Issues from the Charter, perhaps the key question is: are the TM Claims Services policies fair and balanced as adopted and as used?

----- (09/28/2016 11:30) -----

Steve Levy: I feel balance is an important consideration given the huge number of cybersquatted domains compared with the lower number of generic domains claimed during sunrise by trademark owners

George Kirikos: Do we have any stats on what percentage of the claims notices get triggered in different time periods? (e.g. first 10 days of GA, vs. 80th-90th days of GA) Perhaps that would help determine where the "sweet spot" is, in terms of picking an optimal time period for the claims notice period.

Paul Keating: Perhaps organizing them by category. TMCH procedural issues, Rights protections, etc.

Rebecca Tushnet: It seems to me a problem with data collection is that registries aren't required to let ICANN inspect--subject to confidentiality agreements--the actual attempts that triggered matches/notices. Without being able to audit a sample there is just no way to make any kind of informed judgment about whether these are true positives or false positives, or what percentage of each we might be getting.

Statton Hammock: I don't think the first and last are NOT the same. One asks for an opinion, the other asks for facts.

Mary Wong: @Rebecca, that is the staff concern - that any data we get from registrars will likely be incomplete and thus not as accurate or helpful as we may need.

Rebecca Tushnet: So can contracts with registries be changed to allow such audits in the future, again subject to confidentiality obligations?

Jeff Neuman (Com Laude): Rebecca - I think you meant registrars in your point. Registries do not have the information you point out (Namely, whether registrations were attempted but decided not to proceed) . That is the registrar level

Rebecca Tushnet: And by allow I mean "require access to"

John McElwaine: @jscott Agree with that approach

Rebecca Tushnet: Sorry, registrars

Petter Rindforth: agree

khoulood Dawahi: yes

Kathy Kleiman: @J.Scott: What slide are you looking at now? Tx.

Philip Corwin: @Steve Levy--what is factual basis for statement that there is "huge number of cybersquatted domains"? UDRPs constitute less than 1/100 of all registered gTLD domains.

Maxim Alzoba (FAITID): Even adding "if you do not understand the text = please click this URL in 6 UN languages will help"

Beth Allegretti: + 1 Caroline

Bret Fausett, Uniregistry: I like the suggestion of changing the text of the notice.

Jeff Neuman (Com Laude): Yes, I will go after

Jeff Neuman (Com Laude): because my question is semi different topic

George Kirikos: Here's what the TM Claims Notice looks, for one registrar (Tucows/OpenSRS):  
<https://kb.opensrs.com/22964-domains/188131-trademark-claims-notifications>

Vaibhav Aggarwal: HI I am In Sorry for being late kept waiting on the older link only to realise that the Talk is in a new Room :-)

Kristine Dorrain - Amazon Registry: Thanks. all. I have to bail. Will listen to the rest this afternoon.

George Kirikos: (scroll down a couple of pages, to see what the registrant sees)

----- (09/28/2016 11:37) -----

Kathy Kleiman: @Mary and David: Could you add Jeff's question to the right?

----- (09/28/2016 11:39) -----

Mary Wong: Done!

----- (09/28/2016 11:41) -----

Ivett Paulovics: Sorry for being late

Ivett Paulovics: Hi everyone

Jeff Neuman (Com Laude): We need to decide also from a policy perspective as to whether to codify tM plus 0

Jeff Neuman (Com Laude): 50

George Kirikos: Interestingly, for Tucows/OpenSRS "You cannot enable Contact Privacy for domains that match marks in the Clearinghouse." I wonder if other registrars do the same, to mitigate risk.

Jeff Neuman (Com Laude): that was not a GNSO policy

Jeff Neuman (Com Laude): That was a Board addition after consultation

----- (09/28/2016 11:44) -----

Greg Shatan: A more "conversational" notice could make sense. Would "Abandon Hope, All Ye Who Enter Here" be too harsh for a claims notice? It translates nicely into Italian.

----- (09/28/2016 11:45) -----

George Kirikos: Thanks for pointing out that list, Kathy.

Kathy Kleiman: @Greg, Dante's words may not be welcoming to registrants :-)

Mary Wong: @Paul M, that language was in the TMCH Requirements. We haven't (David and I) seen an actual Claims Notice but we can ask.

J. Scott Evans: @Greg ah hahahahahaha

Kathy Kleiman: How do we encourage fair use and discourage infringing use?

----- (09/28/2016 11:48) -----

Kathy Kleiman: blame us!

George Kirikos: Perhaps the Claims Notice should only be triggered if the prospective registrant is in the same country as the mark. e.g. US Mark would show to a US Registrant, but not to a Canadian registrant. Pakistani mark wouldn't show to a US registrant.

Kathy Kleiman: we did try to create a balanced notice...

Greg Shatan: Agree with Paul, the notice does need to be firmly stated enough to put the potential registrant on notice.

Kathy Kleiman: +1 Paul!

Greg Shatan: The balance may be right -- it may be the legalistic language that needs fixing.

Lori Schulman: Kathy just explained the problem in a nutshell. How do we balance the message?

Kathy Kleiman: for those reading the chat room later - the 10 most frequently downloaded trademark strings in claims service data - smart, forex, hotel, one, love, cloud, nyc, london, abc, luxury

Philip Corwin: @Paul--I wasn't advocating any particular "softening" language at this time, just some thinking about whether language can be made a tad less legalistic and thereby clearer for average registrant. Agree that some intended registration may be very infringing, while others would not -- often dependent on registrant intent rather than the TMCH-registered mark.

Jeff Neuman (Com Laude): I also believe that a number of notices may be sent as part of an error from a particular registrar

Steve Levy: Sorry, have to log off now but will continue on the phone line.

Phil Marano (Mayer Brown): Should we explore the possibility / likelihood that potential registrants who ultimately decline to register domain names upon receipt of a claims notification, are simply seeking to reverse engineer the Clearinghouse database through a multitude of queries and attempted registrations?

Mary Wong: @Phil M, how would we do that, though?

Greg Shatan: Phil, that's an interesting point. And could skew the data.

Phil Marano (Mayer Brown): @Mary: Not sure, open to any thoughts of course.

George Kirikos: I wonder if the 93.7% figure might be overstated, if some of the domain names that triggered Claims Notices were also Premium Domains?

George Kirikos: e.g. "smart" or "hotel" might be \$50,000/yr domains.

Kathy Kleiman: @Mary and David: could you include Beth's question re: language and translation?

Jeff Neuman (Com Laude): I do believe it is overstated

Mary Wong: The Technical Requirements say "SHOULD" (for language of registration agreement)

Maxim Alzoba (FAITID): the only language of Registry Agreement is English

John McElwaine: @Phil I was about to mention that . We cannot assume that every purported "registrant" is actually trying to register a domain name.

Greg Shatan: Can we find out what the more popular local registrars are doing, in fact? There can't be that many.

George Kirikos: Plus, if 10 people were deterred from registering Hotel.TLD, it doesn't mean the string doesn't get registered --- the 11th person might (smartly) recognize the term can be used for non-infringing sites, and she/he goes ahead with the registration.

Greg Shatan: It's the end-user registration agreement, not the Registry Agreement. I assume if I'm sitting in China and using a Chinese registrar, the registration agreement is highly likely to be in Chinese.

----- (09/28/2016 11:55) -----

George Kirikos: Perhaps "human rights" refers to Free Speech?

Statton Hammock: Agree J. Scott

Mary Wong: We will add this - but, again, that depends on registrars agreeing to provide that information, and we may not also get all to respond.

Jeff Neuman (Com Laude): Every PDP is now being asked about Human Rights

Mary Wong: (this = questions/data about language of registration agreements)

Greg Shatan: There's the CCWG-Accountability WS2 Subgroup on Human Rights

Jeff Neuman (Com Laude): Seems to be a popular addition

Jeff Neuman (Com Laude): And those that added the Human Rights language are never in these groups :)

Jeff Neuman (Com Laude): Stephanie Perrin I believe on the Council always wanted to add this language

George Kirikos: I'm in favour of Article 24: <http://www.un.org/en/universal-declaration-human-rights/> (right to rest and leisure) :-)

Greg Shatan: I'm in there too, We are in the "messy" stage of the multistakeholder process. This too shall pass (it almost always does.)

Jeff Neuman (Com Laude): I have to drop.....Bye all

Mary Wong: "1. Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?"

Paul McGrady: @George K: love it! "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."

Paul Tattersfield: breach of natural justice is important

Paul McGrady: I am very concerned about just cherry picking one human right to apply here.

Paul McGrady: This is a morass we should not allow ourselves to get trapped in. This is the work of that WS2 Subgroup.

Paul Keating: J Scott: The EU certainly DOES have fair use. It is in 41bis of the EC Regulation on Trademarks

Paul McGrady: Article 27(2) "(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

Mary Wong: @Greg, as noted, these were community suggestions made to ICANN, unedited by staff.



Bret Fausett, Uniregistry: I would invite people who are knowledgeable of, sensitive to, and passionate about "human rights in the DNS" look at the work of the working group, and every working group, and tell us if what the group is doing impacts the issues. I am open to this issue, but I don't know enough about it to have an opinion one way or another.

Vaibhav Aggarwal: Where are you going with this on TMCH ?

Paul Tattersfield: Its relevant for refiling UDRPs

Vaibhav Aggarwal: This is not the Statge

Vaibhav Aggarwal: Guys

Vaibhav Aggarwal: I am confused

Vaibhav Aggarwal: This is TMCH - Just a Repository

Vaibhav Aggarwal: an Agency

Vaibhav Aggarwal: Takes Information from one Source and Sends it to other

Vaibhav Aggarwal: thats it

Greg Shatan: Umbrella with broken spokes and bum handle...

Mary Wong: Note that all these questions are community-made. The Charter states that "The issues that are listed here reflect the suggestions that have been made to date by the community regarding improvements or modifications to the RPM(s) in question and should form part of the discussions of the PDP Working Group. The Working Group may decide to address all, some or even additional issues to these."

Paul Keating: do NOT strike. It should be kept but agree dealt with last.

Vaibhav Aggarwal: @Greg ha ha ha

Bret Fausett, Uniregistry: I wouldn't strike it, J. Scott. Let's just defer this.

Bret Fausett, Uniregistry: Maybe just a change of terminology.

Paul Keating: If it is an umbrella question it impacts all of the various points.

Greg Shatan: Maybe by then the WS2 subgroup on HR will be finished with its work.

Paul McGrady: WS2 HR is supposed to be done well ahead of us.

Kathy Kleiman: +1 Paul

Terri Agnew: The call for the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 05 October 2016 at 17:00 UTC for 60 minutes.

Kathy Kleiman: Each umbrella question should be evaluated with each RPM - as appropriate

Greg Shatan: And don't forget to update your Adobe Connect link.

George Kirikos: Bye folks.

Maxim Alzoba (FAITID): bye all

Kathy Kleiman: Tx J. Scott and All

Greg Shatan: Bye all.

Georges Nahitchevansky: Bye everyone

Elizabeth Featherman: bye all!

Vaibhav Aggarwal: Thanks Team

Vaibhav Aggarwal: ciao

Paul Tattersfield: bye everyone

Philip Corwin: Ciao