

Adobe Connect chat transcript for 14 December 2016:

Terri Agnew: Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday, 14 December 2016 at 17:00 UTC for 60 minutes.

Terri Agnew: agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x-5FZzDAW&d=DglFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=tYht_qyyD8ZnTP9hpp7YiqSallBZBKJ42os7r2Uoiho&s=KBi2hNPxx_k3FcaWACuB-FIUfBNI7alb6LsrUSLcBV0&e=

George Kirikos: Hi folks.

Philip Corwin: Good day all

Paul Tattersfield: Hi Everyone

George Kirikos: Welcome Phil & Paul.

Maxim Alzoba (FAITID): Hello all

Elizabeth Featherman: Hello everyone! Sorry I have a client call within this hour and may have to bow out early. I apologize for the interruption.

George Kirikos: That's the bottom of page 2.

Mary Wong: Yes, document is unsync'ed

Mary Wong: Oh dear, yes, sorry for poor spelling :(Will fix in the next version.

George Kirikos: 'Exclusively' makes more sense.

Massimo Vittori: I'ma trying to take the floor :-)

Beth Allegretti: Sorry I'm late

George Kirikos: You can raise your hand using the button at the top, Massimo.

George Kirikos: (that gets the attention of the co-chair)

George Kirikos: *6 to unmute

George Kirikos: (if you're on the phone)

David McAuley (RySG): very feint

Terri Agnew: @Massimo, I sent you a private AC chat, check tab below this chat

Mary Wong: @Kathy, just a note from staff that the first 3 questions Massimo asked are actually questions that our Data Gathering Sub Team have asked of Deloitte.

Terri Agnew: Massimo has activated mic

Vaibhav Aggarwal: Hi TEam

Vaibhav Aggarwal: Sorry was late

Kristine Dorrain - Amazon Registry Services: @Mary, thanks. I thought so, but I wasn't sure.

Vaibhav Aggarwal: +1 Massimo

Paul Tattersfield: Can we widen the questions generally to include marks such as GI and other treaty and statutes etc. by changing In Q3.2 'within a trademark' to "within a mark" and In Q4.1 'trademark owners' to 'rights holders'

George Kirikos: (one can click the button at the top to lower one's hand, or clear status)

Mary Wong: Just a note that the Data Gathering Sub Team did not specifically ask Deloitte about GIs or AoOs, but presumably this can be an easy follow up by the Sub Team.

Kristine Dorrain - Amazon Registry Services: Ah, ok, rusty memory.

Mary Wong: On this question, the Data Gathering Sub Team asked the following of Deloitte: "Can you tell us who is using the TMDB and under what circumstances (other than for providing the Sunrise and Claims Notice services required by ICANN)? How many "blocking"-type services are you supporting (e.g. protected marks lists), and with/for whom? Are you aware of other services that may be provided by registry operators using the TMDB other than via contract with you?"

Marie Pattullo: Agree with Kathy - can we specify that this is as rejected for recordal in the TMCH?
George Kirikos: That's more precise, and good, Marie.

David McAuley (RySG): it is a good show

Beth Allegretti: I have the same question Kristine

Mary Wong: The Sub Team's question to Deloitte on cancelled TMs: "How are marks cancelled within national/regional registries handled at the TMCH level, if validation is only done annually? In other words, what is the TMCH process (if any) relating to marks that are cancelled or expire: reactive (e.g. TM owner/agent obligations) or proactive?"

George Kirikos: I think it's the chilling effect for prospective registrants of having received a TMCH notice.

George Kirikos: Which might cause the prospective registrant to abandon their shopping cart, and thus "losing" a potential customer.

Vinzenz Heussler: by potential registrants?

Kurt Pritz: The second part of the question: "Is this satisfactory?" is not necessary as it is clearly implied in the first question.

Mary Wong: Note: This question is the same as what was in the Charter (i.e. not changed by the Sub Team). It was suggested in a comment to the Preliminary Issue Report.

George Kirikos: Really only the first part of the question is needed, i.e. "How quickly can a cancelled TM be removed from the TMCH?" (i.e. the "should" is obviously "immediately", as we'd want to have an accurate database).

Kristine Dorrain - Amazon Registry Services: It really reads like it was the type of comment that states a point then merely restates it... but am I wrong?

Kurt Pritz: The Charter question (first part) could be more generic, i.e., "to avoid deleterious effects" or "to avoid negative impacts on prospective registrants."

Mary Wong: I can hunt for and pull up the public comment in question if need be

George Kirikos: (and the rest of the question is just providing a justification for the first part of the question, so that 2nd part isn't necessarily needed to pose the question itself)

Phil Marano (Mayer Brown): The question appears to assume that TMCH records discourage registrations. Is this an assumption that everyone accepts and wishes to endorse in a Charter question? Shortening may be necessary.

Vinzenz Heussler: "should" could be become ambiguous without the end of the sentence?

Greg Shatan: TMCH records themselves don't discourage registrations....

Kristine Dorrain - Amazon Registry Services: Correct. Shortening doesn't presume the problems or the solutions.

Kristine Dorrain - Amazon Registry Services: Phil, the URS *relies* on an SMD file. The UDPR is independent of the TMCH.

Kristine Dorrain - Amazon Registry Services: I suggest staff log the second part of this for the discussion when we get there.

George Kirikos: *6 to unmute, Lori.

Maxim Alzoba (FAITID): who is responsible of notifying TMCH about a cancellation? (no one?)

Maxim Alzoba (FAITID): *for

George Kirikos: @Maxim: I think that's why the TMCH database should be public, so that the public can issue challenges to its accuracy, etc.

Philip Corwin: @Kristine--what if a URS is brought on behalf of a mark that has not been registered in the TMCH? URS is available for any mark, not just TMCH marks.

Mary Wong: @Maxim, I believe rights holders have to inform the TMCH of updates and changes within a reasonable time (happy to be corrected by others who have direct experience with this).

George Kirikos: Question 3.1 is describing, in broad terms, our entire charter. :-)

Kurt Pritz:"which" should be "that" (sorry)

Bradley Silver:What does the reference to "legitimate" mean in reference to non-trademark registrants?

Kristine Dorrain - Amazon Registry Services:@ Phil, then the complainant needs to independently establish use. It's not that you can't use the URS, but the Charter question seemed to me to be focusing on the link. the only link between URS and TMCH is that SMD file to establish use. But clearly, I was also confused as to how "losing" could happen.

Maxim Alzoba (FAITID):it sounds like an attempt to undermine one of the generic fruit marks :)

Phil Marano (Mayer Brown):With respect to Q 3.1, can anyone please explain what is meant by "legitimate rights of non-trademark registrants?" What specific rights are envisaged?

Mary Wong:@Phil, @Bradley - that was the wording in the question that was suggested via public comment.

Beth Allegretti:Who is going to make the judgement that the goods and services are "related"?

Greg Shatan:We're not beholden to the original wording of any of these questions.

Bradley Silver:Thanks @Mary, I think it raises questions though, about what "legitimate" rights means, as opposed to mere "rights".

Paul Tattersfield:'dictionary term' should be changed to 'words' as 'dictionary' is a varying subset of words

George Kirikos:@PhilM: It could be rights to use a term for goods/services unrelated to the TM, or might be for criticism of the TM holder, or any other non-TM infringing use (including non-commercial uses).

George Kirikos:"terms" should include non-words, like commonly-used acronyms that might not appear in a dictionary.

John McElwaine (Nelson Mullins):+1 Phil - that is what I've been saying all along

Kristine Dorrain - Amazon Registry Services:@Phil and Bradley: perhaps not "legitimate" but absence of bad faith. We keep coming back to terms used in the UDRP.... :)

Bradley Silver:@George - not sure all those things are "rights".

Phil Marano (Mayer Brown):Are any particular legal rights envisaged? If so, it may be helpful to state them specifically.

George Kirikos:@PhilM: perhaps it's the right to "life, liberty, and the pursuit of happiness"?!?!? :-)

Greg Shatan:"word" could end up encompassing every "word mark" - a proper noun is still a word. So that's too broad.

George Kirikos:Oops, I meant @Bradley.

Vaibhav Aggarwal:@Greg Agree

Kristine Dorrain - Amazon Registry Services:@Beth: Phil made a good observation on the email string. We can't let the possible outcome that there is no viable solution stop the question. We can say, there is a problem, here is a solution; there is a problem, there is no solution; or there is no problem (among other answers).

George Kirikos:https://urldefense.proofpoint.com/v2/url?u=https-3A__en.wikipedia.org_wiki_Life-2C-5FLiberty-5Fand-5Fthe-5Fpursuit-5Fof-5FHappiness&d=DglFaQ&c=FmY1u3PJP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=tYht_qyyD8ZnTP9hpp7YiqSaIlBZBKJ42os7r2Uoiho&s=nA_Jo-lfdOEi3vjT2uQ3yVG_-J7UyUCSXMcsgdaFArw&e= (unalienable rights!)

Vaibhav Aggarwal:Silence May be Disagreement and Blankness too - There could be a few who just did not have time enough to take a deeper look at it

Maxim Alzoba (FAITID):or in .eco for proper eco apples

Paul Tattersfield:Phil's rewording is a fudge and it loses what the original question was driving at whether or whether not the original question was correct or realistic

George Kirikos:3.2 is somewhat related to 3.1, though. So the information we're asking about could easily be submitted via the answers to 3.1, instead of 3.2.

David McAuley (RySG):Phil makes a fair point

Vaibhav Aggarwal:Only NGTLD Only @Phi

Vaibhav Aggarwal:@Phil

Vaibhav Aggarwal:That can still be done

Marie Pattullo:Q: Lotus (car), Lotus (paper tissues), lotus (flower). If you limit a TMCH record to cars, the result is still tissues can get an identical DN, just not in Sunrise. No?

Mary Wong:Yes

Marie Pattullo:What category of goods & services is dot shop related to; anything ever that could be sold via a shop?

George Kirikos:You'd need to assign (possibly multiple) TM classes to each TLD.

George Kirikos:https://urldefense.proofpoint.com/v2/url?u=http-3A__www.oppedahl.com_trademarks_tmclasses.htm&d=DglFaQ&c=FmY1u3Pjp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmKXhFzL7ar9Qfqa0Aign-H4xR2EBk&m=tYht_qyyD8ZnTP9hpp7YiqSallBZBKJ42os7r2Uoiho&s=h9-W8ndUeSDXbxuNZnnA77vZw8pdNhHniWnvM70tsFE&e=

John McElwaine (Nelson Mullins):@Marie - good point. As Phil was saying there's no way to implement the concept

Greg Shatan:There's no rational correlation between TLDs and trademark classes.

Kurt Pritz:On question cat 3 Q 1: It might be better to say the "legitimate interests of non-trademark registrants."

Marie Pattullo:+1 to Greg.

Kurt Pritz:On Cat 3, Q2: I thought Marie's question is good. Can that be discussed?

Maxim Alzoba (FAITID):@Greg , at least there hard to find objective method to find it

Philip Corwin:I agree, Greg, and you can say that in your answer. But can we please get the text of 3.2 agreed to? And then we can discuss whether it belongs in Balance or another category of questions.

Beth Allegretti:+1 to Bradley

George Kirikos:I wouldn't use the term "non-trademark registrants" --- there might also be folks who hold TMs, but are not recorded in the TMCH databases.

Philip Corwin:Agree with Bradley. Besides, what are illegitimate rights?

George Kirikos:(i.e. not all TM holders feel the need to spend \$\$\$\$ to record their rights in the TMCH database)

Greg Shatan:I think Phil's wording of 3.2 is no longer a TMCH question.

Maxim Alzoba (FAITID):+1 @George

Edward Morris:Agree with deletion of 'legitimate'.

Kiran Malancharuvil:I agree with that

Beth Allegretti:Agree

Paul Tattersfield:agree

Phil Marano (Mayer Brown):+1

John McElwaine (Nelson Mullins):+1

Paul Tattersfield:@Greg exactly!

Kurt Pritz:"Should the TM+50 be retained as is, amended, or removed?"

Maxim Alzoba (FAITID):how many marks used this right?

George Kirikos:There's more than one "Phil", so folks might want to specify last names for the transcript.

Kurt Pritz:@ Phil: I don't think that is a Charter question. I think your question flows from it

Kristine Dorrain - Amazon Registry Services:@Phil C I think we asked for that.

Kristine Dorrain - Amazon Registry Services:Accepted as amended or as is.

George Kirikos:Kurt's language seems fine.

Mary Wong:Data Gathering Sub Team question to Deloitte on TM+50: "How many TMCH records include a TM+50 list; and how many are on this list on average? How many registrations were made for entries on the TM+50 list?"

Philip Corwin:Thanks Kristine. Just wanted to make sure.

Beth Allegretti:+ 1 to Kurt's suggestion

Maxim Alzoba (FAITID):bye all

George Kirikos:Bye folks! Have a great day.

Kiran Malancharuvil:Thanks

Terri Agnew:Next call: Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 21 December 2016 at 22:00 UTC for 60 minutes.

Thomas Brackey:Hasta Luego...

Paul Tattersfield:bye all

Steve Levy:Thanks for your time. Ciao all!

Marie Pattullo:As the chances of me making a 23:00 meeting next week are minimal, happy holidays!!

Vaibhav Aggarwal:Ciao

Monica Mitchell:tchau:)

Terri Agnew:@Marie, will not your apology for meeting next week