Terri Agnew:Dear all, Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDS PDP Working Group call on Wednesday, 01 February 2017 at 17:00 UTC

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_x_OZ3DAw&d=DwICaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=WSyDAOtLazkJ9WTqW0MuhW02WrFFsSKdjt7PMqZyYTA&s=IZsuiqc1mNll40DaHMSb0sI7U43OD2rsTQ51jeZZxsE&e=

George Kirikos:Hi folks.

Jay Chapman:Howdy, George

George Kirikos:Hey Jay.

Nat Cohen:Hi Goerge, Jay, all

Nat Cohen:George

Maxim Alzoba (FAITID):Hello All

George Kirikos:Welcome, Nat and Maxim.

Steve Levy:Hi everyone

George Kirikos:Hi Steve.

Philip Corwin:Hello all

George Kirikos:Hey Phil.

Terri Agnew:currently all can scroll slides themselves

Mary Wong:I've now posted the 4 options in the Notes pod on the right hand side (they were also in the email sent out with the agenda)

Mary Wong:Note that Deloitte's response provides some information about the kind of outreach and education they have performed.

George Kirikos:Here's Deloitte's response on the wiki: https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_pages_viewpage.action-3FpageId-3D64066042&d=DwICaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=WSyDAOtLazkJ9WTqW0MuhW02WrFFsSKdjt7PMqZyYTA&s=imAC6_x5U3DY_WZyu3ttvahW8gA17KvjKVMQ27g8648&e=

Mary Wong:We have Deloitte's response available to post in the Adobe Connect room as well.

Mary Wong:They are on the wiki, let me get the link.

Mary Wong:Final agreed list of TMCH Charter questions (16 questions in 6 categories): https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_download_attachments_58729944_Clean-2520-2D-2520TMCH-2520Charter-2520Questions-2520-2D-25206-2520Jan-25202017.pdf-3Fversion-3D1-26modificationDate-3D1484721370000-26api-3Dv2&d=DwICaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=WSyDAOtLazkJ9WTqW0MuhW02WrFFsSKdjt7PMqZyYTA&s=rH8C1qsR79QYl0JvWieDDSsaBWNGSzeCmnyz_HwoppI&e=

George Kirikos:We're able to scroll ourselves now.

Terri Agnew:everyone can scroll themselves on the document

George Kirikos:Most of their outreach appears to be geared to the IP constituency (as one might expect), rather than to registrants (or prospective registrants) who are affected by the claims process.

Edward Morris:The education seems only oriented towards rights holders - what about registrants?

George Kirikos:+1 Edward

Mary Wong:@George, from what Deloitte has said publicly, it seems that they consider their primary audience TM rights holders and their agents

Kurt Pritz:That is not surprising to me.

Marc Trachtenberg:Why would their audience be anyone other than TM rights holders since the TNCH is a respository of TM rights?

George Kirikos:@Marc: Well, if the ability to challenge recordals existed, then the potential audience would include those "challengers" (i.e. registrants and prospective registrants, typically, although perhaps also registries/registrars).

David McAuley (RySG):I took a look at Deloitte's answers

David McAuley (RySG):they sounded frustrated with some of the q's

Marc Trachtenberg:@George: They reached out to TM Rights holders becuase they wanted people to use the TMCH. They had no obligatio to reach out to anyone

Susan Payne:This is exactly as I expected from Deloitte. They do not consider it to be their role and remit to educate. where they did so, it was to educate those who would be considered the users/customers of their services

David McAuley (RySG):agreed Kathy - some answers quite informative

Marc Trachtenberg:The TMCH is a database not a university.

George Kirikos:@Marc: Agree, it's to be expected, given that their mission is to make $$$$$. That's why the hybrid model, where ICANN can look at other stakeholders (like registrants, etc) is appealing.

Susan Payne:+1 Marc

Marc Trachtenberg:The obligation to communicate and educate stakeholders regarding the TMCH falls on ICANN, not the TMCH

Marie Pattullo:But George, all the TMCH does is record legal TMs. So if a "challenger" thought the recordal was wrong, he'd oppose the TM itself in the relevant TM Registry.

George Kirikos:@Marie: Not quite, since they also test for "use" (not just registration). The "use" can be entirely bogus, and subject to challenge.

Lori Schulman:Use isnt' challenged at TMCH level, is it?

Griffin Barnett:@George, I don't think that's quite right actually....you can record a mark in the TMCH without proof of use, you just can't use it to make Sunrise registrations without providing acceptable proof of use

Lori Schulman:I would image it would have to be at either an admin hearing or court proceeding as with all TM matters

Mary Wong:@Griffin, yes, that is the case.

Griffin Barnett:So I think Marie's point above is still correct

George Kirikos:The sunrise scenario is the main one --- a registrant won't really care if they get "notice", but can still ignore it and get the domain they requested.

George Kirikos:i.e. that's where the "gaming" aspect of the TMCH is highest, for use to get first dibs during sunrise.

Philip Corwin:On the education issue, of course the TMCH's primary focus is going to be on making its potential customers, who are rights holders. The venues it is active in will get some attendance from sophisticated domain investors and their counsel, but not ordinary registrants. For ordinary registrants, the primary factor they need to understand is whether receipt of a Claims Notice means that continuing with a registration meamns they will be commiting infringement.

Marc Trachtenberg:@Phil: Agree but it is not the responsobility of the TMCH to educate registrants - that is the job of ICANN

Maxim Alzoba (FAITID):+1 Philip

Mary Wong:https://urldefense.proofpoint.com/v2/url?u=https-3A__newgtlds.icann.org_en_about_trademark-2Dclearinghouse_registries-

2Dregistrars_reports&d=DwICaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSF
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H4xR2EBk&m=WSyDAOtLazkJ9WTqW0MuhW02WrFFsSKdjt7PMqZyYTA&s=SJx60dlhvyQRRDrggxZPCiQ
W8oQCoN4C-0522Bri0W0&e=

Kurt Pritz:My takeaway is that the TMCH exceeded expectations on education, we expected them to be a mere repository, However, communications on the new gTLD overall should be approved. ICANN should develop an alternate communications plan and can ask the TMCH to undertake pertinent (to TM holders) parts of it if that makes sense and communicate to registrants and other through other chanels.

Mary Wong:On screen now - the full Deloitte response to all the questions.

Philip Corwin:For those ordinary registrants, my own view is that the best way to educate them is to develop some information understandable by laymen, but not constituting legal advice, available on the ICANN website with a link in a revised Claims Notice, supplemented by a similar information sheet that can be distributed to registrars and made available to their customers.

Griffin Barnett:Agree w/ Marc and Kurt

Kurt Pritz:The costs of communications should not be passed onto TMCH registrants

George Kirikos:+1 Phil.

Marc Trachtenberg:@ Phil - Sounds like you agree with me that this is ICANN's responsibility

George Kirikos:@Marc: in conjunction with registrars, too.

Marie Pattullo:Agree with Phil re the registrars; that's where registrants go after all, and they should explain the process

Vaibhav Aggarwal, NCSG:So Icann can have a SPV for Educaton Purposes

Vaibhav Aggarwal, NCSG:there it will solve the entire Saga

Griffin Barnett:I have no problem with including a link to ICANN educational materials in a TM Claims Notice

Marc Trachtenberg:@ George - Are you saying registrars need to also be educated, or that they have an obligation to ecuate registrants?

Edward Morris:Agree with Phil

George Kirikos:@Marc: They'd be posting the link to ICANN materials, etc. (i.e. it should be part of their registration flow, or duplicated in their FAQs, etc.).

Marc Trachtenberg:@George - I have no problem with them doing that and they should do that. However they have no obligation to do that unless put in the RAA

Vaibhav Aggarwal, NCSG:@George @Marc I think it is Icann or Registrars - isnt it the same thing ?

Vaibhav Aggarwal, NCSG:Infact if they are doing business on registrants' money Might as well be a part of the Education effort

Marc Trachtenberg:@ Vaibhav - ICANN and the Registrars are not the same thing. They are separate legal entities in a contactualrelationship.

Griffin Barnett:Number 5 appears directed to rights holders themselves to challenge a rejection of their mark being recorded

Marie Pattullo:See above - don't see how the TMCH can be somewhere to oppose a TM.

George Kirikos:"an objection to an accepted recordal" (vs a challenge of a rejected recordal) for #5

Mary Wong:@George, if something is rejected, it won't become a recordal

Marie Pattullo:Re Mary's point, Lori explained why TM holders don't support the searchable DB, not least because of commercial strategy of not disclosing which TMs they have chosen to record.

George Kirikos:@Marie: But, domain names are public. By that logic, should the domain name database be private, lest their "commercial strategy" of not disclosing which matching domain names they've chosen not to register become public?

George Kirikos:e.g. if Microsoft owns a TM for "cortana", but hasn't registered "cortana.TLD".......

George Kirikos:There's a bit of a disconnect --- TM holders support searching which other domain names a domain name registrant owns (i.e. they generally oppose WHOIS privacy), in order to demonstrate a "pattern" of cybersquatting, etc.

Lori Schulman:Marie has reiterated my point. That is what I explained on the last call.

David McAuley (RySG):Good idea Mary

Susan Payne:very helpful thanks Mary

Mary Wong:We will do our best

Marie Pattullo:Many cases, but one: you register a new TM for a product, and at the same time record in the TM as, when you actually lauch the product, you know where/if to regsiter the DN. Only when the product is popualt would you get the baseline cybersquatter trying to register that TM as a DN.

Marie Pattullo:Popular. Even. Sorry.

Maxim Alzoba (FAITID):bye all, need to attend another call

Marc Trachtenberg:@George: There is a dicsonnect becuase as many have pointed out, domain names are different than trademarks

George Kirikos:That would be the middle of the night on the US East coast, if it's in the morning in Denmark.

Mary Wong:That's right, Kathy

Terri Agnew:Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 08 February 2017 at 18:00 UTC for 60 minutes.

Vaibhav Aggarwal, NCSG:Thanx Guys

Vaibhav Aggarwal, NCSG:Ciao

Marie Pattullo:Thanks all.

David McAuley (RySG):Thanks Kathy, Mary, terri and all

George Kirikos:Bye folks.

David McAuley (RySG):Terri, that is