Terri Agnew:Welcome to the New gTLD Subsequent Procedures Sub Team – Track 2 – Legal/Regulatory Issues call on Thursday, 02 March 2017 at 21:00 UTC for 60 minutes.

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_x_7ZLRAw&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=G5NCNIjPh8JfDXAGjCT7WnPi6lqh2L4zFNA-8MoKX5o&s=7bvJjK1XwWpPFO0UKjiSy10Kq25506GfXRVEqkyEqjo&e=

Emily Barabas:a little quiet

Susan Payne:sounds fine

Kristina Rosette (Amazon Registry):we can hear you.

Karen Day:sounds fine

Julie Hedlund:Your voice is quiet Michael

Emily Barabas:but audible

Julie Hedlund:Much better!

Kristina Rosette (Amazon Registry):yes

Karen Day:wow!

Emily Barabas:yes

Jeff Neuman:Hereis the report: https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_en_system_files_files_report-2Dcomments-2Dclosed-2Dgeneric-2D08jul13-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=G5NCNIjPh8JfDXAGjCT7WnPi6lqh2L4zFNA-8MoKX5o&s=yn2GD2JlqrqmAqbb6TOdU80R_pi9WebcFMf17o3pLi0&e=

Jeff Neuman:(Public comments)

Kristina Rosette (Amazon Registry):That's the link I sent around by email before the call.

Jeff Neuman:you dont have to read it

Kristina Rosette (Amazon Registry):You don't need to read it. Everyone can find it on ICANN's website.

Emily Barabas:we see what you are doing

Emily Barabas:(scrolling, zooming, etc)

Steve Chan 2:We'll unsync now though...

Alexander Schubert:The AG should exclude generic keyword strings!

Alexander Schubert:.makeup - L'Oréal - totally unused

Susan Payne:Alexander, do you have voice capability - would be good for you to expand on makeup

Karen Day:@Alexander should exclude generic strings or just closed generic strings?

Alexander Schubert:Some corporate platers buy these strings up to close them down....

Alexander Schubert:You will also see registries who will rather keep ownership of all domains and "lease" them out; instead of having regular registrations. Which kills all rights for domain registrants.

Cheryl Langdon-Orr (CLO):of course they do and that as a model for them is Ok... but it does have a chilling effect on others and contributes nothing to diversity trust competition or choice

Cheryl Langdon-Orr (CLO):that last comment was re buy and shut down name use

Cheryl Langdon-Orr (CLO):yes Jeff that is a real risk IMO

Karen Day:@CLO - I disagree as regards stiffling competition, it may well 'chill' competition amongst the buy/sell side but it infact encourages competition between business and those who can innovate in the domain space by offering a tangible reward for devloping a viable innovative buisness model.

Susan Payne:correct :Paul - Board chose not to make really a decision on this which is why they tasked GNSO to form a policy for future. No-one in round one could proceed as a closed generic but they were given option eventually (after most had already agreed they would open up) to go on indefinite holdd pending this PDP.

Karen Day:@Alexander the .makeup space isn't being used b/c L'Oreals model was not operate an open registry. Perhaps it would be a very cool space if they hadn't been forced to open??

Kristina Rosette (Amazon Registry):Here's the Amazon letter I mentioned: https://urldefense.proofpoint.com/v2/url?u=https-3A__forum.icann.org_lists_comments-2Dclosed-2Dgeneric-2D05feb13_pdfgIbbsgX7WQ.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=G5NCNIjPh8JfDXAGjCT7WnPi6lqh2L4zFNA-8MoKX5o&s=FmZ3F6AhElQbth0lFxBUsqtum7qEbwWzgHXCWXpv7BY&e=

Paul McGrady:@Susan, except what the Board did was undo the decision that they had made to allow it when the AGB was published.

Cheryl Langdon-Orr (CLO):possibly @Karen,

Kristina Rosette (Amazon Registry):+1 Paul

Susan Payne:@Paul - Yes, I agree the AGB did not prohibit

Alexander Schubert:If it is not a generic keyword based string: operate it like you want. But category killer keyword strings should not serve to cut out your competition or have some fishy business models which deprive registrants of certainty. A

Heather Forrest:Hi everyone - apologies for joining late!

Alexander Schubert:Closed Generics WILL be abused - big time. Yes: There MIGHT be some benefitial cool new business models. I doubt it: There were zero new business models in 2012. Likely this simply opens the floodgates to abuse.

Karen Day 2:+1 Kristina - there is too much inconsistancy as is.

Kristina Rosette (Amazon Registry):@Alexander: I think it's too early to say that zero new business models came out of the 2012 round.

Paul McGrady:@Alexander - maybe the cool new business models were shutdown when the Board shutdown new generics...

Alexander Schubert:Say 99% run the .com model :-)

Cheryl Langdon-Orr (CLO):that is a risk that parts of the ICANN community will be most concerned about @Alexander... yes

Alexander Schubert:Then: If someone needs a closed gneric for a category killer keyword string - let them propose their model - give the Internet community opportunity to oppose it!

Kevin Kreuser (GoDaddy):Dish

Paul McGrady:An 8 year hold is a death sentence. Let's not pretend that what the Board did was anything other than killing off closed generics...

Kristina Rosette (Amazon Registry):@Jeff: You can figure it out by reading the Spec. 13 application. That's public.

Kristina Rosette (Amazon Registry):Well, you can see what they argued. Not what ICANN's rationale was.

Paul McGrady:The difference between now and then is that the USG was part of the GAC that advised to kill off closed generics. The USG was, at the time, the final say in what got in and what did not. There would have been no point in allowing closed generics to proceed if the USG was not going to let them in the root in any event. However, the USG is no longer in that role.

Karen Day 2:Guess we need to ask Apple too then @Jeff - it's a brand.

Michael Flemming:I think Jeff is aware of that. He just wants us discuss about those brands that overlap with generic strings.

Alexander Schubert:ICANN provides registrants with certain rights! If domains aren't anymore REGISTERED (via registrars) then all these rights are gone. The domain is then "leased" - maybe according to some Offshore legal entity that you can't even sue in the U.S.! Does the registrars constituency know that they are about to be thrown under the bus? Maybe someone should tell them....

Kristina Rosette (Amazon Registry):I don't think it's necessarily your role to have to come up with all the questions. We, as a group, do.

Paul McGrady:@Jeff, its a competition law issue.

Mary Wong:@Paul, what would be the specific legal question(s) to be asked?

Susan Payne:OK - Question to get ball rolling: Is there a harm to allowing closed generics and if so what is that harm

avri doria:what the harm is, or what the harrm is beleived to be.

Karen Day 2:That wasthe percieved harm, but maybe Susan is asking do we have evidence of actual harm?

Mary Wong:Going back to basics - does the group have a common understanding of what "closed generics" means as a term and category?

Alexander Schubert:ONE SImple example: In the current registry-registrar-registrant model a domain is registered; and can be renewed infinitely. The registrant invests money and builds a brand around the domain. In the closed generics model a registry could simply retain the right to "sell" the domain at any time - and cancel the lease! So if you make books.com a big brand - the registry can kind of sell the besis of your brand! Just an example how registrants rights might be violated!

Heather Forrest:In my mind this all feeds into a broader question, which is: what do we do with those areas of the Guidebook that progressed/changed after the GNSO PDP recommendations were agreed upon (ie, through GAC/Board change)?

Paul McGrady:@Mary Wong, happy to help think through your question and get a more robust/specific response, but what immediately comes to mind is: Does the post-IANA transition ICANN (the corporation) have a legal basis to restrict the nature of the business models adopted by gTLD registries other than requiring registries to comply with applicable law?

Kristina Rosette (Amazon Registry):Many of us have long flights coming up in which we could read the public comment report. ;-)

Karen Day 2:@Mary, I think that is a debatable question as some will argue that "generic" only applies to those specific tlds that the GAC called out.

avri doria:i have heard of no actual harm. Food is a good example. while it is a brand, it looks like a close generic and if being run as a closed generic, has there been any harm?

Mary Wong:@Karen, that's why staff is asking the question - if there is no agreed understanding of what the term means, it's hard to see how conclusions can be reached via consensus.

Mary Wong:@Paul, thanks

Cheryl Langdon-Orr (CLO):good plan Jeff

Karen Day 2:@Mary totally agree

avri doria:and are there other cases of branded generic words that are being run closed?

Paul McGrady:@Jeff, I think we need to answer the basement question first. Can the new ICANN actually do this (harm or not)?

Jeff Neuman:Paul - I dont think that we can get into the overarching questions

Jeff Neuman:@paul - that question would apply to everything ICANN does

Paul McGrady:@Jeff, how so?

Jeff Neuman:I guess their answer would be that they can do anything that anyone contractually agrees with

Jeff Neuman:Does ICANN have the right to require PICS?

Jeff Neuman:Does ICANN have the right to require a public whois?

Jeff Neuman:What I am saying is that it cant be for our group to research whether icann has the right to regulate

Kristina Rosette (Amazon Registry):Oh Jeff, I don't have the energy for an existencial crisis right now. :-)

Jeff Neuman:@Kristina - exactly :)

Cheryl Langdon-Orr (CLO):hell no

Paul McGrady:@Jeff, its not the right to regulate that is the concern. It is the right to exclude that is the problem being discussed.

Cheryl Langdon-Orr (CLO):the energy not the answer to the questions

Jeff Neuman:By signing the Applicant Terms and conditions, every applicant gives ICANN the right to exclde for any reason

Jeff Neuman:(which I do not agree with)

Jeff Neuman:But that is what they would argue

Paul McGrady:@Jeff, if I don't want to sign the Applicant Terms & Conditions, where else can I "buy" a TLD registry contract?

Kristina Rosette (Amazon Registry):I think we have only a few minutes. Can we agree on an action plan for our next meeting?

avri doria:For the moment can we accept there is as of yet no proof of harm?

Alexander Schubert:This is how for example .de.com domains are sold in a way that completely "feels" like a "normal regisration" - but if someone buys "de.com" up - all registrantions are gone...
https://urldefense.proofpoint.com/v2/url?u=https-3A__www.namecheap.com_domains_registration_cctld_de-2Dcom.aspx&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=G5NCNIjPh8JfDXAGjCT7WnPi6lqh2L4zFNA-8MoKX5o&s=ZN1VkJqj2_DBTqG3FYb4iozjz7BZwhrmOaVGzA_zTB0&e=

Michael Flemming:Yes, Avri. So we will ask for it.

Cheryl Langdon-Orr (CLO):bye for now then... safe travels to those who are attending CPH meeting

Kristina Rosette (Amazon Registry):bye. Safe travels.

Jeff Neuman:my computer is not letting me lower the hand :)

Alexander Schubert:TNX

Alexander Schubert:Bye

Robert Burlingame:Thank you.

Karen Day 2:bye all