

Adobe Connect chat transcript for 29 March 2017:

Terri Agnew:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday, 29 March 2017 at 16:00 UTC for 90 minutes

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_Jb-2DRAW&d=DwlCaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=bxc8XkZTyThHS0yUYg5AISqmEft25DrJDWYxkiMZ4Zc&s=-I9c8EI2nPORjs-iXPzH7hrwjBAauNtLgTxu70pBdqk&e=

Poncelet Ileleji:Hello all

George Kirikos:Hi folks.

Monica Mitchell:hello everybody!

Paul Tattersfield:Hello everyone

Ankur Raheja:Hello

Martin Silva Valent:Hi all, gonna be in another call for the firts minutes, I will join you as soon as I can.

George Kirikos:Someone needs to mute (*6 to mute / unmute).

Steve Levy:Hello all

Yuri Chumak:greetings from Toronto

Griffin Barnett:Need to attend another call at 12:30 but plan to remain in the AC room

Philip Corwin:Good day. Nice to see that participation in this WG remains high.

GraceM:Hi everyone

Maxim Alzoba (FAITID):I have an update in my SOI (reflected in the portal), I have added RDS PDP WG, and RPM PDP WG to .12. of the SOI form

Kathy Kleiman:Not raised now!

Terri Agnew:everyone can scroll themselves

Kristine Dorrain - Amazon Registry Services:Mary, you're fading in and out.

Reg Levy - MMX:Mary, your voice is coming and going

George Kirikos:Can we isolate who is causing the noise?

Rebecca L Tushnet:Mary's still going in and out for me.

Terri Agnew:finding the line

George Kirikos:Thanks, Terri.

Mary Wong:Sorry for bad audio

Mary Wong:Think I fixed it now

Paul Keating:hello all. Sorry I am late

Terri Agnew:background noise is from J Scott's telephone line (on a train)

George Kirikos:Phil has a hand up.

Rebecca L Tushnet:I'm sorry, I'm missing what J Scott has proposed

Paul Keating:someone needs to mute their phone or move to a quieter place please.

Kiran Malancharuvil:@Paul, the chair is on a train. He can't mute.

Terri Agnew:background noise is from J Scott's line (he is on a train)

Paul Keating:ok thanks

George Kirikos:@Rebecca: he said perhaps combining GIs/treaty marks with design/figurative marks.

George Kirikos:i.e. combine 7/8 in some way, at least for discussion.

Paul Keating:+1

George Kirikos:+1 Phil

Greg Shatan:I've been cut off. And trying to get back in.

Poncelet Ileleji:..+1 Phil

Greg Shatan:Operator is not answering.

Terri Agnew:alerting op

Kiran Malancharuvil:+1 Kristine.

Rebecca L Tushnet:+1 Kristine

Terri Agnew:Greg is back on audio

Colin O'Brien:+1 Kristine

Kiran Malancharuvil:I appreciate the attempt at being more efficient, but they aren't easily combined

Petter Rindforth:Let's not extending it too much. Then we will also have to consider other kinds of "name rights" - and there are some out there... ;-)

Lori Schulman:Agree with Kristine. We are comparing apples to oranges I think.

Paul Tattersfield:+1 Kristine

George Kirikos:IGOs have certain blocking rights via Article 6ter, which are not trademarks, but have certain similarities, and they are expected to be added to the TMCH at some point.

Kristine Dorrain - Amazon Registry Services:Greg, do we have an example of a mark that was entered under the "statute or treaty" section that is not actually a mark?

George Kirikos:IGOs = Intergovernmental Organizations, e.g. UN, World Health Organization, World Bank, etc.

Greg Shatan:@Kristine -- Geographic Indicators may be examples of items entered under the "statute or treaty" that are not marks.

George Kirikos:Perhaps TMCH needs to be renamed to "Rights Clearinghouse" (RCH, if ICANN hasn't already reserved that acronym). :-)

Kristine Dorrain - Amazon Registry Services:@ Greg, I can imagine a hypothetical, that's not the problem. I'm looking for an example.

Maxim Alzoba (FAITID):UN is it an example of a such trademark?

Greg Shatan:I would not necessarily expect 6ter entries to be added to the TMCH.

Paul Keating:@Greg I agree with you.

Scott Austin:Do we have any concrete examples of what "pseudomarks" have been permitted that are offensive or questionable

Petter Rindforth:GAC has their own list of IGO's that does not follow Article 6ter

Paul Keating:@Mary, I suggest we move forward as per Phil's suggestion. Deal with those we can deal with and all others are pushed.

George Kirikos:@Maxim: UN is an example of a name protected by Article 6ter of the Paris Convention, see: https://urldefense.proofpoint.com/v2/url?u=http-3A_www.wipo.int_article6ter_en_&d=DwlCaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmKXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=bxcl8XkZTyThHS0yUYg5AISqmEft25DrJDWYxkiMZ4Zc&s=pjRfljrooPlyfgGXT7pqV-OidVF8i0haW4j6Ma-GHU&e=

Maxim Alzoba (FAITID):@George thnx

Kathy Kleiman:@Scott: no, we don't have specific examples. Only the number -75 accepted by Deloitte to date

Philip Corwin:Was thinking the same as George -- given that TMCH already consists not just of TMs but of TM+50 terms, geo indicators, and statute and treaty marks, it's clear that there is a lot more than Trademarks in the TMCH

Maxim Alzoba (FAITID):Intergovernmental Organizations have special separate protection under new gtds RA .. with reference to https://urldefense.proofpoint.com/v2/url?u=http-3A_www.icann.org_en_resources_registries_reserved&d=DwlCaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmKXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=bxcl8XkZTyThHS0yUYg5AISqmEft25DrJDWYxkiMZ4Zc&s=951vgYaut_LzqbBYvwJW2S_IE5u_vlmfEY17AwZIVmdQ&e= ... do we need to discuss it here?

Paul Keating:@phil, If we do not know what marks are in the database how can we determine there is no abuse?

Greg Shatan:I don't agree that there' a lot more than trademarks in the TMCH. "Statute or treaty" marks were intended to be trademarks, and I don't think GIs (unless they are marks) were intended to be in the TMCH.

George Kirikos:@Maxim: That's a separate working group, I believe, re: the IGOs reserved list.

Paul Keating:@Mary please read my question

Mary Wong:@Paul, sorry I didn't see it till now

Paul Keating:+1 to delay until we know what the other group has concluded

Maxim Alzoba (FAITID):I meant do we have other examples of items protected by statute or treaty .?

Kathy Kleiman:Analysis Group should be joining us next week.

Maxim Alzoba (FAITID):which have no protection

Philip Corwin:@Paul--we can review the CPH transcript, but my recollection is that deloitte told us that only about 1% of all terms registered in the TMCH came in under the TM+50 exception.Assuming they are vetting them properly (determining they were won in litigation or a UDRP) there would be no abuse in the registration.

Kathy Kleiman:@Mary, there is a request from Paul Keating to read his question... a page back.

George Kirikos:e.g. .MAKEUP (\$5,000/yr) would only allow beauty-related TMCH entries

Paul Keating:added discussion.

George Kirikos:Yes, more discussion needed.

Paul Keating:ok

Kurt Pritz:There was a fairly strong sentiment at the ICANN meeting that the single provider model was fairly strong

Steve Levy:Are there other groups that have requested to be a clearinghouse? If there's no demand to provide this service is this question moot?

George Kirikos:Single provider, vs. single validator?

Paul Keating:Is there a WG dealing specifically with #12?

Kurt Pritz:I think Phil summarized this at the meeting and could recall it here

Maxim Alzoba (FAITID):+1 @George

George Kirikos:ICANN has the right to audit Deloitte. They should exercise that right, to look at the financials.

Kurt Pritz:I agree with George there

George Kirikos:(as per Fadi Chehadi's blog post)

Steve Levy:Thanks, Mary

George Kirikos:*Chehade, even

Paul Keating:Do we actually know who is involved with Deloitte? Who is CHIP?

Jon Nevett:Definite sentiment of registries that the \$5K per TLD pass through to Deloitte was too high

Kurt Pritz:CHIP was the developer of much of the software

Paul Keating:I agree with J.Scott's suggestion

George Kirikos:+1 Jon. Windfall, I think. An audit would reveal that sort of stuff.

Maxim Alzoba (FAITID):+1 Jon

Lillian Fosteris:+1 Jon

Kurt Pritz:When we look at cost - we should look at all cost factors: Deloitte pricing, whether scope can be reduced, charges by others (e.g., agents)

George Kirikos:Registries are complaining about losing money, yet want a 2nd round? Absurd.

Mary Wong:@Kurt, I believe J Scott and others suggested that this WG doesn't look into the details of cost but make a general recommendation for addressing in implementation phase.

Maxim Alzoba (FAITID):it looks like 2nd round is noting to be brands only

George Kirikos:I think they want a 2nd round so that they can go back and rewrite the contract terms of the 1st round (i.e. a backdoor bailout).

Paul Keating:@Mary I agree. We need to focus and this is something for which there appears to be a specific WG to deal with.

Kurt Pritz:What did we decide on uestion 12

Mary Wong:@Kurt, I believe it was that operational and implementation concerns should be dealt with under implementation

Paul Keating:is this ONLY about agents?

Mary Wong:@Paul, I think J Scott was referring to Deloitte's note to us that they do not have information on where rights holders who use TM agents are located.

George Kirikos:Definitely an open question.

Paul Keating:Agreed continued discussions needed. NOW? or later?

Kathy Kleiman:@Paul: interesting question. Would it be better to review #15 after the various rights protection mechanisms?

Jeff Neuman:Everyone should also read the IAG report Mary sent around today. This was a group which had representation from the community that came to the conclusion that the data should be confidential.

Paul Keating:Transparency is absolutely needed to continuously determine what is included and to audit how they are being used. Otherwise there is no ability to audit or have public debate.

Michael R Graham:Sorry for the delay -- could not find call-in info. Thanks for the help!

Paul Keating:The TMCH allows pre-emptive rights.

Kiran Malancharuvil:+1 Susan

Beth Allegretti:+1 Susan

Kiran Malancharuvil:Correct Susan. Totally agree.

Michael R Graham:+1 Susan

bradley silver:+1 Susan

Colin O'Brien:+1 Susan

Griffin Barnett:+1

Paul Keating:I absolutely disagree with Susan (no offense)

George Kirikos:It's Susan's choice to register a subset, as I noted. No one forced her to submit any, all, or a subset.

J. Scott Evans:That is not my recollection at all.

J. Scott Evans:on the IRT, kristina rosette argued that the data needed to be confidential

George Kirikos:If the costs were a lot lower (as I've argued they would be), she could certainly choose to register all of Facebook's marks into the TMCh.

Mary Wong:Staff note - neither the IRT nor the STI had a specific recommendation on confidentiality. Perhaps it was an assumption (one way or the other) and it was felt there was no need to specify?

Susan Kawaguchi:@ George there is a much more work to entering trademarks into a database than the TMCH fee

George Kirikos:@Susan: yes, but ultimately it's your choice.

Kiran Malancharuvil:Perhaps, George, you can pose that as a question to the community. Instead of assuming, can you ASK whether cost would be a factor in registering entire portfolios? I can tell you that the answer will not support your hypothesis.

George Kirikos:I had a second point I forgot to make orally. Most small businesses only have a SINGLE mark to protect. The folks who are complaining about the "subset inference" issue are global multinationals (i.e. the richest companies) --- less sympathy there, sorry.

Griffin Barnett:Want to amplify Mary's point, above -- I am looking through the STI report and have not been able to find a reference one way or the other regarding open vs. confidential TMDB

J. Scott Evans:That is my recollection as well. This was debated exhaustively on the IRT and STI
Kiran Malancharuvil:George, I work with many small businesses and not for profits. It's incorrect that they only have one mark to protect.

George Kirikos:TM holders make a choice whether to submit the marks into the TMCH, though. So, they can't complain about inferences being made, when those inferences are a result of their own choices.

Mary Wong:@Jeff, I think it was Dakar and/or Singapore

Michael R Graham:Confidentiality was a major subject of discussion in TMCH discussions.

George Kirikos:@Kiran: true, many have zero marks. :-)

Susan Kawaguchi:It would be interesting to hear what harm has. occurred due to a closed database other than generic trademarks allowed. That is an issue to take up with governments that issues the trademark registration

George Kirikos:No, 39 minutes.

Jeff Neuman:Sorry for killing time, but i had to correct the record on when things were done and why

George Kirikos:Is this just a scheduling call, then?

Kiran Malancharuvil:Correct Susan. I think most of the harms articulated have nothing to do with the TMCH and everything to do with some of the registrations.

Kiran Malancharuvil:I appreciated Jeff's comments of clarification.

Jon Nevelt:what about releasing a simple list of dictionary terms in the TMCH? Not opening up the entire database with all the records.

Rebecca L Tushnet:Susan, it's not an issue for the issuing gov't because the mark may not be generic for the goods and services in the home registration; it just becomes all-encompassing in the TMCH.

Philip Corwin:Given the strongly held views on this transparency/confidentiality question, I do not foresee us reaching consensus on this matter unless someone has a middle ground proposal they think may garner consensus. I would personally favor transparency but I respect the views of those arguing to the contrary.

George Kirikos:#16 and #13 are essentially the same.

Philip Corwin:@Jon--that option might be worth further discussion, IMHO

Rebecca L Tushnet:+1 Philip

Greg Shatan:@Jon, what would be the point of releasing "dictionary terms"? As trademarks, these are just as valid as coined terms.

Griffin Barnett:+1Greg

Terri Agnew:muting the line

Jon Nevelt:deal with the gaming concerns per Kiran's point above

George Kirikos:We know from the Analysis Group report the top 10 most requested TMCH claims terms are all common dictionary terms used by many potential users.

Maxim Alzoba (FAITID):@Amr is it possible to make history size of the chat window bigger?

George Kirikos:Correct, anonymized. Just the number of marks, bucketed. e.g. 1500 companies registered 1 mark, 3000 registered 2 marks, 3 registered between 500 and 1000 marks, etc.

Philip Corwin:On questions 13 & 16, I'm generally in favor of deep-sixing all the nebulous philosophical questions on the RPMs. We should be dealing with specific proposals for change. If anyone thinks the operations of the RPMs disadvantages some group they should propose a specific means of addressing that, not pose open-ended questions with no specific concrete remedy.

Greg Shatan:@Jon, That's way overbroad to deal with "gaming" concerns. Although I note that "Donuts" is a dictionary term.... :-)

Jon Nevelt:Donuts is in the TMCH -- happy to be transparent about that

Greg Shatan:Also a Simpsons term....

George Kirikos:We can possibly get a (redacted) copy of the contract between ICANN & Deloitte?

Rebecca L Tushnet:Of course, agreements can be changed if the policy changes.
Amr Elsadr:@Maxim: Does that help?
George Kirikos:*redacted
Jon Nevett:@greg do you think that there is a less overbroad way to deal with the gaming?
Maxim Alzoba (FAITID):@Amr, can not say now .. some of the chat messages gone already
George Kirikos:But, Deloitte's publication might be broader than the rights granted to them by ICANN.
Amr Elsadr:@Maxim: You can't scroll up in the chat window?
George Kirikos:i.e. Deloitte might be asserting confidentiality, when it might not actually exist.
Lori Schulman:We never scream.
Maxim Alzoba (FAITID):I thought Deloitte has rights for the contents of the TMCH
Rebecca L Tushnet:presumably it's not confidential when there's a match on an attempted registration
Lori Schulman:just emphatically make our points. :)
Maxim Alzoba (FAITID):@Amr , yes
Terri Agnew:everyone can scroll themselves
Jeff Neuman:I believe that the Ts and Cs do require that the TMCH may only use the data for the purposes set forth in the description of the services
Jeff Neuman:It is why they can disclose the data pursuant to a claim but for no other purposes
Greg Shatan:That needs to be considered in the context of the expectation of confidentiality by registrants, except to the extent a single registration is released in a claims notice.
Jeff Neuman:I believe that was also a recommendation from the IAG and others
Amr Elsadr:@Maxim: As usual, transcripts of the chat will also be circulated following the call.
Mike Rodenbaugh:dislike
Steve Levy:I feel we should be able to get things done in 60 minute calls
George Kirikos:Perhaps it should be on the mailing list.
Poncelet llejei:+1
Kathy Kleiman:90 minute calls through the end of June.
Lori Schulman:2 hours calls are too much
Jeff Neuman:The license given by trademark owners to deloitte is very narrow. The data may not be used for any other purposes
George Kirikos:Given that everyone here could obviously make it for 90 minutes -- biased sample.
Kathy Kleiman:I think we are reevaluating after that...
Maxim Alzoba (FAITID):120 seems to be much
Lori Schulman:I am in favor of short calls but our need to discuss things seems to chew up time
Phil Marano (Mayer Brown):You and we acknowledge that the information provided in the Trademark Records are predominantly comprised of information owned or provided by Trademark Holders and information that is in the public domain (e.g. trademark registration numbers) and that any rights in the underlying trademarks remain solely held by the applicable Trademark Holder. We represent and warrant that we will not disclose or use any Trademark Record information for any purpose other than providing the services contemplated by this Agreement or as required by law.
Phil Marano (Mayer Brown):https://urldefense.proofpoint.com/v2/url?u=http-3A__www.trademark-2Dclearinghouse.com_sites_default_files_files_downloads_TMCH-2520terms-2520and-2520conditions-2520-2D-2520Trademark-2520Agent-2520-2D-25201.1.pdf&d=DwlCaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=bx8XkZTyThHS0yUYg5AISqmEft25DrJDWYxkiMZ4Zc&s=_u6QlnV8KLUA4vQKLO61ZNMnKKztb5epUIvmSkSqP4A&e=
Lori Schulman:Private lists like Donuts?
Jeff Neuman:Thanks Phil

Mary Wong:@Lori, yes

Lori Schulman:I am not sure that is in scope.

Paul Keating:@Mary, regarding the question to Deloitte, please note that a "legal restraint" on disclosure of all or part of the database includes any legal restraint. Thus, if there is a statute then that is stated. If it contractual then that is stated. However, a TOS on the TMCH or Deloitte website is the creation of TMCH and is not a legal restriction preventing TMCH from disclosing all or a part.

George Kirikos:Rightside has something like that, too, see:

https://urldefense.proofpoint.com/v2/url?u=http-3A_domainnamewire.com_2017_03_28_rightside-2Dchanges-2Dbrand-2Dblocking-2Dservice-2Dnew-2Dtlds_&d=DwICaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=bxcl8XkZTyThHS0yUYg5AISqmEft25DrJDWYxkiMZ4Zc&s=FrgGh02Y21FcFFKsELsL_hAR3Ivaahg6h-faZyBZMWM&e=

Kathy Kleiman:Would one subteam work?

Paul Keating:@JS can you please describe what is the scope of each subteam?

Maxim Alzoba (FAITID):good idea

Jeff Neuman:@Paul - We are not talking about a click through TOS for a website....we are talking about an actual contract between trademark owners and Deloitte. Trademark owners are entering into a CONTRACT with the TMCH to perform specifically enumerated services in exchange for consideration. So, yes by contract the rights to disclosure can absolutely be prevented.

Jon Nevett:FYI -- DPML does not require use of the TMCH

Paul Keating:@JNewman: I did not presume otherwise. However, contractual issues are a subset of a statutory prohibition.

Mary Wong:@Jon, yes - that is not how the TMCH is set up, we believe.

Jon Nevett:Registries could use the TMCH or not -- they could validate on their own or not even validate -- some use the TMCH as a matter of efficiency

Paul Keating:ok

Kristine Dorrain - Amazon Registry Services:I have to drop a little early for another obligation today. Please circulate any calls for subteam members to the list once the WG decides on what subteams should be constituted.

Jon Nevett:Phil, my point is that we don't have to use the TMCH

Paul Keating:I also unfortunately need to leave for a family obligation. Thank you to all and thanks JScott for juggling so well.

Lori Schulman:Burn-out is a real thing folks. Thanks for the clarification Mary.

Lori Schulman:I like J Scott's compromise.

Jeff Neuman:i need to drop as well. Thanks.

Maxim Alzoba (FAITID):sunrise is more complex process that claims ... does it sound reasonable that the devoted time is going to be longer?

Steve Levy:Agree. Makes more efficient use of time

Greg Shatan:@Jon. Good points. I would not want to see "private services" treated the same as Sunrise and Claims which are clearly within our remit. To do so would be "bootstrapping."

Philip Corwin:@Jon -- https://urldefense.proofpoint.com/v2/url?u=http-3A_www.donuts.domains_services_dpml_dpml-2Doverview&d=DwICaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=bxcl8XkZTyThHS0yUYg5AISqmEft25DrJDWYxkiMZ4Zc&s=ycfasEEu2ROfJiQ_qpoX6lgD92qMxsOaPpcpdJtd9Cg&e= -- "Prior to submitting a DPML Application, DPML Applicants first must provide information to the TMCH to obtain an SMD File (as detailed in the TMCH Guidelines). Once the TMCH

has validated a mark, it will issue the mark holder an SMD File. Each DPML Application must (i) include one or more SMD Files corresponding to the applied-for label(s) and (ii) meet the qualifications specified by ICANN and detailed in the TMCH Guidelines, as they may change from time to time."

Jon Nevett:Phil, again you are missing my point

Jon Nevett:we didn't have to use the TMCH -- we chose to do so as a matter of efficiency -- there is no requirement that we made that decision

Mike Rodenbaugh:I don't think the WG agreed on 90-minute calls. Such decisions ought not be taken without input from the mail list.

George Kirikos:+1 Mike

George Kirikos:There's a sample bias, since everyone here could make it for 90 mins. Those who couldn't aren't here.

George Kirikos:(plus, several people dropped off before 90 mins, indicating potential issues)

Maxim Alzoba (FAITID):is it possible to use polls about questions - like RDS PDP WG does?

Philip Corwin:Jon, if you didn't use the TMCH or some other means of TM verification how would you know that the block related to a real TM and that the blocker was the rights holder?

George Kirikos:+1 Maxim. 2 polls, 90 mins vs 60, and day-of-week question.

Jon Nevett:Phil -- scroll up

Maxim Alzoba (FAITID):+1 George

Maxim Alzoba (FAITID):it will be like more homework vs. more seminar time

Jon Nevett:we could do our own validation if we wanted to -- just like registries did before the TMCH

Philip Corwin:Let's take this discussion offline, Jon. OK?

Kathy Kleiman:Tx to all who joined us in Copenhagen - and George for joining us remotely!

George Kirikos:Bye folks.

Maxim Alzoba (FAITID):bye all

Paul Tattersfield:thanks all, bye

Kathy Kleiman:Tx J. Scott!

Steve Levy:Bye all

Vinzenz Heussler:bye

Jay Chapman:thanks, all

Poncelet Ileleji:Thanks Bye

Greg Shatan:Even if private registrations use the fact of a TMCH regn as a ready-made validation it does not give us jurisdiction over those services.

Mary Wong:Thanks everyone

Amr Elsadr:Thanks all. Bye.

Greg Shatan:Bye all.