Terri Agnew:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call on Wednesday, 17 May 2017 at 17:00 UTC for 90 minute duration.

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_x_egffAw&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=HWgHSNEJt1PkvYpbOiotU1s7tBBtS4_E8oEw6B3t1vA&s=NvNx-GpuyfrJ7OwymSWZbpAKJAYVO7Jno27A_dSmEuc&e=

George Kirikos:Hi folks.

Philip Corwin:Hello all. Waiting on operator

J. Scott Evans:I dialing.

George Kirikos:It took several minutes for an operator to answer, and I called around 12:45 pm.

George Kirikos:(15 minutes early)

Terri Agnew:alerted op

Maxim Alzoba (FAITID):Hello All

Steve Levy:G'day all

Philip Corwin:Safe travel to all those WG members heading to INTA Annual in Bacelona. I arrive Friday and look forward to seeing some of you there.

Maxim Alzoba (FAITID):is it still cold there?

Philip Corwin:I don't want to hog the spotlight. All the co-chairs should have their 90 minutes of fame, or infamy, whatever the case may be ;-)

Philip Corwin:@Maxim--weather forecast for BCN quite nice

George Kirikos:Are some of the past data requests forthcoming? (e.g. top 500 matching terms in the TMCH, via The Analysis Group, etc.)

George Kirikos:*6 to mute/unmute

Mary Wong:@George, I think the Analysis Group is working on these requests

Amr Elsadr:Apologies. Trying to fix my audio.

Maxim Alzoba (FAITID)::(last meeting it was a flight day for me

Mary Wong:Claudio is on

Mary Wong:The table being displayed is an update from the one last discussed. The only updates made were to include Claudio's proposal and rationale.

George Kirikos:Country names?

George Kirikos:(did I hear that correctly?)

Philip Corwin:Claudio did mention country names

Mary Wong:However, his proposal is limited to GIs only, I believe

George Kirikos:Which country names collide with GIs?

Kristine Dorrain - Amazon Registry Services:Claudio, if a GI is a registered TM, it can enter the TMCH...are you proposing some ADDITIONAL protection for GIs?

Mary Wong:@Kristine, isn't the challenge here that we have GIs currently in the TMCH, not under the "registered TM" category but under the "mark protected by statute or treaty" category (for which the TMCH does not investigate whether there is a corresponding trademark)>

Greg Shatan:The Comite Interprofessionel du vin de Champagne controls the GI.

George Kirikos:(GIs that aren't registered TMs, presumably)

George Kirikos:Champagne is a brand (registered TM) of mangos, by the way, in the USA. :-) https://urldefense.proofpoint.com/v2/url?u=http-3A__tsdr.uspto.gov_-23caseNumber-3D75479467-26caseType-3DSERIAL-5FNO-26searchType-3DstatusSearch&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpCIgmkXhFzL7ar9Qfqa0AIgn-

Mary Wong:Claudio's proposal means that sui generis protection would be fine, right?

Kristine Dorrain - Amazon Registry Services:@Mary, that seems like a slipperly slope.

Kristine Dorrain - Amazon Registry Services:or slippery

Kristine Dorrain - Amazon Registry Services:I

Maxim Alzoba (FAITID):@Greg, do you suggest meeting of two sub groups : claims + sunrise?

Susan Payne:@Greg - I think your comments about wghere this is discussed go to the heart of how the work will be carried out going forward. I'm certainly unclear whether the Claims and Sunrise Subs have a future role once they have finished their current task of reviewing charter Qs, identifying data needs and proposing work flow.

George Kirikos:Lots of audio noise.

Mary Wong:Should the first question be whether GIs should be included in a RPM, and, if so, whether that should be Sunrise, Claims or both?

Greg Shatan:FIAT is a registered trademark....

George Kirikos:Could ACPA actions for cybersquatting be brought on the basis of a GI that is not a registered TM? (methinks not, but curious if anyone knows of a case....)

Mary Wong:@George, I don't know of a case but ACPA is US law so presumably it would only apply to those GIs (if any) that are protected under US law

Greg Shatan:It is in our charter, as Claudio points out....

George Kirikos:+1 Jeremy

Mark Massey:+1 Jeremy

Susan Payne:I don't agree with the Jeremy that it is out of scope. I'm not arguing in support of GI protection

George Kirikos:X if we disagree?

George Kirikos:And X if we disagree, to vote?

George Kirikos:Examined, (but ultimately rejected).....could still show we considered/reviewed GIs (i.e. shows up as "PDP decided not to expand protection to GIs"....)

Kristine Dorrain - Amazon Registry Services:Claudio, how is the proposal to add non-registered GIs different from expanding the TMCH to common law marks?

George Kirikos:(which might be useful, to ensure that no future PDP needs to review the issue)

Paul McGrady\:@Claudio - kicking the can on an issue that has already been talked to death is not a good use of resources.

Kathy Kleiman:Claudio: could you summarize your revised proposal in a quick sentence?

George Kirikos:Very low volume.

Philip Corwin:While I am somewhat agnostic on GIs, I am adamantly against creation of a database separate from the TMCH

Claudio:@Kathy, for the WG to consider how GIs should be protected in new gTLD RPMs

Mary Wong:Although this may be jumping the gun - staff feels oblged to note that it is open to this WG to recommend that GIs (and possibly other source identifers that are not also registered TMs) - be considered for rights protection, possibly via a different mechanism TBD.

Claudio:consistent with the Charter provision "Examine the protection of country names and geographical indications, and generally of indications of source, within the RPMs."

Paul McGrady\:@Mary - it is also open to interested individuals to start a PDP in the ordinary course

Claudio:@Paul, this is the RPM working group - why isn't this the right group to consider this topic?

Mark Massey:Kathy +1

Marie Pattullo:GIs are a form of IPR in the EU, so not akin to other source identifiers.

Paul McGrady\:@Claudio - because it will slow this process down to a crawl. It took 4 weeks just to get your proposal.

Jon Nevett:thinking about the .wine experience and the European governments, some group needs to deal with this at some point in detail

George Kirikos:As Claudio mentions, it's in the charter, but ultimately it's going to go nowhere, so......it should probably be reflected in our report somewhere.

Claudio:Paul, so we don't have enough time to consider it is your reason?

Paul McGrady\:@Claudio, my reasons have been spoken and written repeatedly on these calls and on the various lists.

Kathy Kleiman:@Claudio: there are provisions for other databases to be kept and maintained separately by the Trademark Clearinghosue

Phil Marano:Won't this topic just come up again anyway in connection with the Draft Report and public comments on it?

Claudio:@Kathy, I agree

Lori Schulman:agree. we need a GI WG to look at the panoply of GI issues in the DNS

George Kirikos:@Phil: right, I raised my hand to say the exact same thing.

George Kirikos:We don't want it to be raised elsewhere, otherwise it'll keep coming up, and volunteer fatigue sets in, and opponents won't always show up.

Claudio:This is the RPM WG, so this is the right group to consider whether a type of IP should be protected

Mary Wong:All, from the staff perspective - it may be helpful to note in our Initial Report that the question of GIs (and potentially other types of source identifiers) was raised but no recommendation was developed.

Mary Wong:Public comments (as Phil M noted) may then provide us and the GNSO Council with feedback on how that might best be tackled.

J. Scott Evans:can everyone clear the votes

Lori Schulman:agree with Mary. we need to note that GI issue raised and outcome of proposal.

George Kirikos:Far too many false positives, though, especially for short marks.

Louise Marie Hurel:+1 Rebecca

Mark Massey:+1 Rebecca

Vinzenz Heussler:+ 1 Rebecca

Maxim Alzoba (FAITID):Also Registries ...are they to pay to ICANN as for claim registrations in those numerous occasions?

Maxim Alzoba (FAITID):I do not think we need to create rights which do not exist in real world

George Kirikos:Also, from an implementation basis, beyond my prior comments, one might need to give a *different* TM Claims notice wording for these non-identical matches.

Maxim Alzoba (FAITID):single letter TMCH entries ... do they have rights for almost all symbols?

Maxim Alzoba (FAITID):two chars

George Kirikos:e.g. someone wants to register "CARS", and gets a notice "Your domain might be infringing on the Computer Associates TM for "CA"......

George Kirikos:(claims notice might be different than if someone wanted to register "CA.TLD"

Maxim Alzoba (FAITID):or the infamous "the" TMCH entry ... will it lead to the* wildcard situation?

Susan Payne:yes, that was my intention Phil

George Kirikos:At least with the TM+50, there have been cases of actual cybersquatting with those variations.

George Kirikos:If it applied to Legacy, that implies that Claims Notices would be perpetual, instead of 90 days.

Kathy Kleiman:Enom -> Venom (discussed extensively in the STI)

Philip Corwin:@George--agree that applying Claims Notices to legacy would imply perpetual notices

Maxim Alzoba (FAITID):creating wildcard like trigger needs an answer - do those TM owners have the right for the same in Real World?

Philip Corwin:Based on Deloitte data there has been very little use of TM+50

Rebecca L Tushnet:Before we talk about matching rules shouldn't we establish the existence of a problem to be solved?

Philip Corwin:GM/froGMan - I think the "dumb matches" will be endless

Amr Elsadr:Non-exact matches were considered in the AG revised report regarding omitting ampersands, replacing ampersands with "and", replacing @ with "at", removing all spaces and other non-allowed characters, replacing all spaces and other non-allowed characters with hyphens

Philip Corwin:Not arguing for TM+goods/service, but at least that relates to the TM. But TM anywhere in the string gets wildly afield of the scope of TM rights

Maxim Alzoba (FAITID):or 'est' with west, rest, best

Greg Shatan:I suggest looking at UDRP and trademark infringement litigation, also typosquatting, etc. if you want to establish the issue. I think the issue is clear enough we can take "judicial notice" of it.

Mary Wong:One more document I forgot to mention - ICANN Explanatory Memorandum from Sept 2012 on this question, noting that it will be important that the TMCH not be asked to exercise subjective judgment (e.g. for the so-called "dumb matches" and false positives Greg, Phil and others mentioned)

Steve Levy:Need to jump to the audio-only line...

Greg Shatan:I'm not suggesting subjective judgment, only more carefully crafted "rules."

Mary Wong:@Greg, yes - just noting some rationale that was provided for the current rule.

Rebecca L Tushnet:Greg, there's certainly cybersquatting--but I would like to see what indication we have that expanding the match criteria would matter because many marks are not in the TMCH.

Mark Massey:This degenerates to a problem in semantic analysis. There is ALOT of technology that could be potentially employed here. But doing this right would require a deep beifing of this technology.

Jeremy Malcolm:Agree with Kathy

Mark Massey:Agree with Kathy

khouloud Dawahi:i agree with kathy as well.

Greg Shatan:Rebecca, there will always be those who don't take advantage of the TMCH. I don't think that should have an effect on policy relating to those who do.

Jon Nevett:Practical question -- do we think that we would get sufficient consensus of the community on extending past exact match? If not, let's not kick the can down ther road on this issue either for all the reasons Paul McGrady argued on the GI issue.

Greg Shatan:That's already the case even with exact match.

Jeremy Malcolm:+1 Jon

Mark Massey:+1 on public database Greg

Marie Pattullo:Disagree on public DB as discussed at length on the lists.

Kristine Dorrain - Amazon Registry Services:+ 1 Jon

Mark Massey:Just kill the idea of expanded matching - it is a complexity reltive to the basic purpose of the TMCH

Maxim Alzoba (FAITID):ending up with 100% of registrations causing notices ... is not better than having zero number of notices

Kathy Kleiman:@Phil: who matches, who monitors?

George Kirikos:If the TMCH is public, good faith purchasers could check themselves.

Kristine Dorrain - Amazon Registry Services:+1 Maxim

Marie Pattullo:Was never the purpose of the DB, George, as again already discussed.

Kristine Dorrain - Amazon Registry Services:@George most people who just want to buy a domain name for their lawn mowing service are not going to search a db any more than the USPTO

George Kirikos:Gentleman.tld === likely matches "GE", "NTL", "MAN", and other TMCH claims, just for 1 domain.

Kathy Kleiman:Agree with Phil re: the matches problem

Mark Massey:Agree with Phil and Kathy

Marie Pattullo:+1 Kristine

Jon Nevett:@Phil -- same issues for mark + keyword -- ING -- walking, talking, drinking

Mary Wong:Would it be worth distingushing between plurals, typos, mark+keyword and "mark contains"?

George Kirikos:I think expanded matches should only be triggered for some of the most famous marks, e.g. Verizon, Google, Yahoo, Lego, i.e. ones that get lots and lots of UDRPs/cybersquatting.

Philip Corwin:@Jon-exactly

Kristine Dorrain - Amazon Registry Services:@ George, now we're back to the fight over whose mark is famous enough

George Kirikos:i.e. instead of allowing ALL TMCH marks to trigger it, auction 50 or 100 slots, and those top 50 or 100 brands get the right to the expanded notices.

George Kirikos:@Kristine: correct. And some TM folks want to avoid that discussion.

Griffin Barnett:+1Greg

George Kirikos:But, in reality, some marks are more famous than others.

George Kirikos:Or get more cybersquatting, or more damage (e.g. banks).

George Kirikos:So, limit it to 50 or 100 "critical" cases (e.g Paypal).

Susan Payne:@Jon, good point, that is another dumb match, but I think you can find a way to identify keywords that have a direct relevance to the TM registration G&Ss

Louise Marie Hurel:I don't agree we that should go for famous as criteria

Marie Pattullo:Damage is relative, and consumer damage/confusion should not be forgotten.

Susan Payne:+1 Michael

Amr Elsadr:@Michael: I need to double check, but I believe that finding in the AG revised report might have been specific to effectiveness of the Claims Notice in deterring bad-faith registration attempts.

Philip Corwin:As I understand it, 'mark contained' generation of claims notice would be an automated process. Only way to avoid dumb/crazy/irrelevant matches would be to develop software that would pare the matches only to words (containing the mark) that related to the goods & services associated with the trademark. Who would develop that, and would it be feasible?

Amr Elsadr:And abandoment rate.

George Kirikos:It has to be "exact match+", if you already registered every exact mark yourself. :-)

khouloud Dawahi:yes I agree with georges !+1

Grace M:True @ Luoise Marie, famous is relative to many factors

George Kirikos:e.g. if Google registered every Google.TLD, of course all their cases will be Google+something.

Rebecca L Tushnet:"Get the geeks on it" is not a compelling plan--that's very different from "it's a covered good or service," which at least has a limit we can understand.

Susan Payne:Analysis Group also did not actually conduct any cost analysis at all, so had no data on which to base their cost-based conclusion. Nor did AG consider mark + indistry keyword such as the apple-computer example despite acknowledging that it was a very relevant assessment for them to do

George Kirikos:You still get matches for long domains, e.g. someone registers "GeorgeCloud.xyz", gets a TM notice for (1) GE, (2) George AND (3) Cloud.

George Kirikos:(and probably other TM terms, too)

Greg Shatan:All still dumb matches.

Cyntia King:I suggest that the TMCH charteer should be limitd & that the TMCH should provide the full range of potential matches. Other entities (or the TMCH administrator) could elect to provide services to manipulate the results (likely for a fee) based on a TM ownrs needs (e.g. how many TMs do they own, known confilcts, regional application of marks, etc.)

George Kirikos:@Greg: how about MicrosoftGoogle.xyz -- you'd still get 2 notices.

Greg Shatan:@Susan, should it be called "Speculation and Conjecture Group" then?

George Kirikos:Or, MicrosoftCloud.xyz (since "CLOUD" is in the TMCH).

George Kirikos:If you want to "enhance notice", make the TMCH public.

Philip Corwin:Noting that if GM is in the TMCH and therefore generates a claims notioce for frogman, or if GE is registered and registers a notice for pageant, neither frogman or pageant would be considered identical or confusingly similar for UDRP/URS purposes.

Mark Massey:If the CLearing House was open this would be a non-issue. A reasonable human correlates this kind of info very quickly.

George Kirikos:@Kathy: there were multiple points in the proposal (scroll to the bottom of page 7 on the screen).

Philip Corwin:So what I am saying is that these preventative RPMs should bear some relationship to the curative rights protections available if the domain registration proceeds

khouloud Dawahi:yes the very famous criterion is very subjective and discretionary (inspired from the usa trademark law) however without it we will be in a swamp

Marie Pattullo:Restricting to so-called "famous" marks would serve no purpose except to discriminate against owners of perfectly legitimate, yet smaller (again, a subjective term) TM, for no reason.

George Kirikos:@Khouloud: yes, that's why an auction approach, limiting to 50 or 100 critical brands, would be more defensible (e.g. PayPal, American Express, other payment services, Google, Microsoft, and a few others who spend a lot on UDRPs).

Maxim Alzoba (FAITID):I wonder what happens to googlemicrosoftapplecarefour.TLD ?

Rebecca L Tushnet:On mushing together: consider the unfortunate URL of this Chinese restaurant: handynasty.com

Michael Graham:@Jeremy: I'm not proposing allowing Deloitte discretion -- but a defined rule.

Paul McGrady\:Can think of all kinds of good reasons to register apple.farms, but very few for applycomputer.farms...

George Kirikos:@Rebecca: Indeed, and with IDNs, where the term is XN--somethingorother, there can be a LOT of false positives.

Greg Shatan:Not suggesting discretion. Han Dynasty's domain would not come up in a rules-based matching system.

George Kirikos:(since the something ot other after XN-- in an IDN can be relatively "random" ASCII)

Greg Shatan:NB: They deliver to my apartment, but I prefer some of the other Chinese restaurants in the area.....

Mark Massey:disagree with Susan

Mark Massey:What about other nations etc.

Paul McGrady\:Good point Brian

George Kirikos:GM, "MAGMA.TLD" too.

Susan Payne:thanks Brian, really good point

Greg Shatan:frogman/GM = dumb match.

Mark Massey:+1 Greg

khouloud Dawahi:@george yes I totally agree with you an auction approach limitin g to 50or 100would be better

George Kirikos:@Greg: but, how do you define what is a "smart" match?

Mary Wong:Note - the Claims Service has two parts: pre-registration notice to the potential registrant, and post-registration notice to the rights-holder. In reviiewing this proposal, the WG may wish to consider if it is concerned with both aspects, or just with the Notice of Registered Name to the rights-holder.

Greg Shatan:A limited list of rules.

George Kirikos:i.e. a mechanical rule that only increased the TM claims notices from 30% of the time to 31% might be OK. One that takes it from 30% to 90% -- not ok.

Paul McGrady\:@Phil - nor can I imagine a potential registration of FROGMAN being deterred by a notice about the GM's mark

Rebecca L Tushnet:+1 George K

Kathy Kleiman:Right, this is exactly what the URS was intended for -

George Kirikos:Only a simulation would reveal what would happen.

Cyntia King:Generating data set - TMCH job. Sorting data set - TM owner job (which could be accomplished in-house or by outside, paid service).

Marie Pattullo:+ 1 Paul

Griffin Barnett:+1 Paul....the language of the notice should be sufficient to explain this

Kathy Kleiman:those cases that are "slam dunk abuse"

George Kirikos:(and one can simulate it, by getting a list of all registration attempts)

George Kirikos:Simulate it against the .com zone file, too.

George Kirikos:I imagine that would be fun.

Kathy Kleiman:Agree w/ Phil re: concerns he raised.

Kathy Kleiman:Well reasoned

Michael Graham:@J Scott -- Could I propose that I revise language in proposal to address some of the issues raised?

George Kirikos: Silicon Valley joke there. ;-) via HBO

George Kirikos:https://www.theverge.com/tldr/2017/5/14/15639784/hbo-silicon-valley-not-hotdog-app-download if you've not seen the show.

Michael Graham:@Greg -- Too much Silicon Valley!!!!

George Kirikos:It actually *is* rocket science.

Kathy Kleiman:this is exactly what the URS was created for.

George Kirikos:To limit false posititves is hard.

Mark Carvell UK GAC rep:GM is the two letter country code for The Gambia - thought I'd just mention that....! Relates to a different dialogue....

Greg Shatan:GE is Georgia....

George Kirikos:Consider how often false positives happen with automated censoring of comments on WordPress blogs, or YouTube, Facebook, etc.

Philip Corwin:@Mark -- NO ;-)

Michael Graham:Also UDRP incorporates a Bad Faith Use requirement that further hinders applicants.

Mary Wong:No

Terri Agnew:Next call: Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 31 May 2017 at 16:00 UTC for 90 minute duration.

Amr Elsadr:No, J. Scott.

George Kirikos:2 weeks.

Greg Shatan:I'd like to suggest a refined version of Claudio's proposal as well.

Philip Corwin:No call next week due to INTA

Paul McGrady\:Yay!

Greg Shatan:Agreement on one call??!!

Michael Graham:I will work on a draft for Monday after INTA.

George Kirikos:Productive call. Kudos, folks!
George Kirikos:Bye everyone.
Paul McGrady\:See many of you in Barcelona!
Michael Graham:Thanks all!
Jay Chapman:thanks all
Mark Massey:Bye all!
Mary Wong:Thanks everyone, and J. Scott!
Philip Corwin:Ciao
khouloud Dawahi:thank you all
Amr Elsadr:Thanks all. Bye.
Susan Payne:thanks J Scott
David McAuley:thanks all, bye
J. Scott Evans:ciao
Monica Mitchell:thank you all
Greg Shatan:Bye all!