
RECORDED VOICE: This meeting is now being recorded.

DAVID TAYLOR: So hi everybody, welcome to our second INTA Impact Study Group Subgroup Meeting Call where we've got a few more people than last time. And really, I mean we're gonna try and discuss the takeaways and the clarifications that everyone was gonna submit in that wonderful table I've prepared with four examples from me on the takeaways and one example on the clarifications you can see on this slide on the Adobe.

But I haven't received anybody, I'm not sure if anyone's had time to read report and add anything, so I'm wondering what we want to do next. Does that mean that there's no comment, no clarifications from anybody else, or did people not manage to get time to read it through yet?

CARLTON SAMUELS: This is Carlton. I read it through, David [inaudible] the most important thing [inaudible] the new program [inaudible]. So that's the most [inaudible]. [AUDIO BREAK]

JORDYN BUCHANAN: Hi David, it's Jordyn. I don't know if I have any other takeaways, but I do have a few questions that I guess are clarifications that I haven't added to the doc, but I'm happy to. [AUDIO BREAK]

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DAVID TAYLOR: So there's clarifications. I don't know if -- the other thing I didn't ask Jean-Baptist to have the slides ready to go up. I don't know if you have got the slides, Jean-Baptist, sorry about that. I should've thought about that beforehand.

JEAN-BAPTIST DEROULEZ: No problem, David.

DAVID TAYLOR: I was thinking that we would be discussing the table, but if we can pull up the slides, we can run through—

JEAN-BAPTIST DEROULEZ: Sure, you want the complete text?

DAVID TAYLOR: If you can, maybe I ought to give -- Jordyn can say which slide number it is and you can find it.

JORDYN BUCHANAN: Sure, so one of my questions -- I have questions around -- there's a series of slides starting at -- where's the numbers, oh there -- they start over?

CARLTON SAMUELS: [Inaudible].

JORDYN BUCHANAN: Oh, I think we're back to only hearing every other word from Carlton. [AUDIO BREAK] [CROSSTALK] The slides I was interested in are -- let's see. So, general cost, this is different than my -- this is much nicer looking than my version. Do I have an old version of this? [CROSSTALK]

No, the version that's being displayed right now looks much nicer than the version I've been looking at. I must have an old version. [AUDIO BREAK] Or maybe it just -- hold on, let me--

DAVID TAYLOR: This is the version which I sent around.

JORDYN BUCHANAN: I don't know, it's just rendering weird in Google Docs, hold on, let me try something here.

Alright, someone else can talk for a minute cause I have to like look at these better slides. I need to look at a better rendering of these slides than I have been, which was most of my confusion, I think. [AUDIO BREAK]

DAVID TAYLOR: Okay. If you wanna go through those then, and then any clarifications, pop them into the doc. Sorry, go on mate, is that you Carlton?

CARLTON SAMUELS: Yeah, I was asking Jordyn if the slides related to [inaudible] he was interested in.

JORDYN BUCHANAN: Yeah, those were the slides I was interested in, [inaudible] couldn't really make sense of the numbers on the slides and the way I was looking at them, but I think that's just cause the way they were rendering for me, so they're actually much clearer here. So, it's not a problem with the data, it's a problem with the technology on my end.
[AUDIO BREAK]

I do have one quick observation I guess that I'll make, which is, of the respondents 45% of them had applied for a new gTLD, which I guess like mostly just tells us something about the sample, which is it is a -- I would imagine it's a more actively engaged than ICANN samples that average. Like David, from your experience, your clients as a whole, that would be a very high fraction I would presume, am I right, of just trademark holders in general? [AUDIO BREAK]

DAVID TAYLOR: Yeah, I think so. My guess on that was one of simply, when it went out to so many of the INTA members, those who had applied would probably see -- probably they're more open to responding because they'd given the consideration and gone through the whole understanding of the new gTLD process, so I'm getting -- you know, a survey about new gTLD's probably speaks more to them than many of the other brands who haven't applied and were pulling their hair out, like, "Here's another burden," in a way, and that was something which

came up in a couple of clients I spoke to -- “The new gTLD process has cost us enough time, we’re not going to fill in a survey about it as well.”

So I think it depends really what the sort of perception of it is. I think of those people who applied and [inaudible] speak, I know a couple of our clients did reply to that, they took more care over it because they felt more engaged with the new gTLD process itself. What we take away from that we have to figure out.

JORDYN BUCHANAN:

Right, yeah. It just strikes me that certainly it’s not the case that 45% of all INTA members have applied for new gTLD’s, otherwise there’d be a lot more of that brand, so it seems like we’ve got a somewhat [inaudible] samples towards people engaged in the program. [AUDIO BREAK]

DAVID TAYLOR:

I mean, it is interesting cause when you look at that and you consider things, I mean I know one of the arguments we would put forward when I was advising clients saying, “If you go for a new gTLD, you’re getting your own personal [inaudible], so ultimately you can forget the woods which are out there and all of the having to come to register 1000 TLD’s and 600 ccTLD’s and odd variations etc, because it’s cost prohibitive. You can go back to your island and your dot brand and concentrate from there, and that’s the kudos and that’s the true brand if you like on the internet.

So it's interesting there because certainly what I [inaudible] is the statistics of who replied what, what were the replies from those whom applied for TLD and what were the replies from those who didn't apply for a TLD and [inaudible] been considered because it may well be that some had taken quite a radical approach of saying, "Well, we're not paying for this, we're not paying for that, we've applied for our new gTLD so that's where our costs have got and we're not going to put them into the enforcement side." Things -- we just don't know but it raises more questions than it answers in many ways.

JORDYN BUCHANAN:

Yeah, we can probably ask Neilson to generate that crosstab. We did take a look at this from the TMCH Study Data and found out that marks that had new gTLD's associated with them actually had more registrations than new gTLD's than those that didn't, so it doesn't seem to be the case that people get to sort of retreat to their own island I guess.

My reaction to that is like that's not that surprising, it's like probably the bigger and more famous brands that applied for new gTLD's and those are also the ones that are more likely to register defensively, but it doesn't seem like a virtuous effect that you described of being able to just like say, "Here's my TLD, therefore I don't care about any other TLD's," doesn't seem to actually have played out in practice, at least in terms of the TMCH data, but it would be interesting to look at this data as well.

DAVID TAYLOR:

Yeah and I agree with that, and I think obviously you've got to be quite a vigorous brand to decide that that's your new strategy, to sort of suddenly accept cyber squatting and accept any other TLD's, so I don't need something necessarily which many brands would have taken to heart as the right strategy going forward. I think it's something we -- my view is this is the way to go in five to ten years and it depends obviously on what the brands [inaudible] strategy is.

I do know that that is the case, you know, that it is an anticipated route forward. I know of two brands that have applied for TLD's and that is their ultimate goal, and there's literally a drill down on their strategy and their spend is one of reducing the spend and recreating it over five to ten years, so it is there, but again, I've no idea how many brands would be thinking that way because it's a tip toe into the market, isn't it?

You're going to see what happens with the new gTLD, you're not gonna go and launch everything and run everything off it at this stage, in one year, two years, three years, four years, I think that's where we'll see the difference which is maybe a good question to be having for future questionnaires or impact studies to see how that does develop [inaudible]. [AUDIO BREAK]

CARLTON SAMUELS:

David, this is Carlton. I would think that the fact that you haven't had a movement away from other registrations and other TLD's from the brand TLD's is just reaffirming that those registrations remain defensive. Wouldn't you say?

DAVID TAYLOR:

Yeah, I do. I think it's clear that it is defensive. I would say that it is almost across the board because we advised, I don't know, I'd say 50 to 100, 150 clients on this area and I've yet to see a client that's jumped for joy and said, "Oh good, we're excited to go and get [inaudible] insurance because we're an insurance company."

It's just that is a priority one for them to put it a defensive registration out there and it may be something they would use in the future depending on what the insurance does etc, but the vast majority are either just doing defensive registrations in the entities or the TLD's that are relevant to them and those with more money are doing defensive in more of the TLD's that they look to be at risk.

So there's a strategy out there when I'm looking at the TLD's and I say, dot whatever and dot whatever there seems to be more DNS abuse in it, there seems to be more trademark, there's [inaudible] file than that might be a TLD you want to protect your name in because there seems to be more bad guys in that, and so we will have clients doing more defensive registrations in some TLD's, but again, you try and look at the distribution of the TLD's across and advise on strategy, but it is clear to me that it's defensive and almost purely defensive.

I don't know of any clients actually who [inaudible] one with dot bank. I don't think any client is actually said they're gonna go full whack ahead with a second level TLD as a major brand or move to that, and many of them aren't live and are just purely defensive, and that's certainly something which we see across the board.

CARLTON SAMUELS: Carlton again, one of the things that I noticed which we supported with [inaudible] recommendation is the proposal from the brand owners [inaudible] into the reflections where there's people who did the survey that they seemed to think that points of contact with the registrars [inaudible] they're asking for a special window to view the complaint.

That is something that we report. One of the recommendations that we have that there should be at least more clarity with respect of the points of contact, abuse claims. [AUDIO BREAK]

DAVID TAYLOR: I got part of that, Carlton, you were going in and out for me, and is that the point of contact in TLD's basically, I was gathering?

CARLTON SAMUELS: Yes, they think they could improve that point of contact, locating that person [inaudible] with any kind of clarity about [inaudible]. I'm saying that it supports one of our major recommendations [inaudible] clarification in that area.

DAVID TAYLOR: I'd agree with that and I don't know -- we go into other things, then maybe it's a discussion for the whole group so we can bring it up then but that point of contact, that's one of the things which goes through [inaudible] privacy and certainly when you look at it and it's something I know it's been raised in a number of areas, that in certain ccTLD's you have to have a point of contact and so for instance dot FR, you know, on the admin C contact to Facebook dot FR, so we can receive anything

from two to 20 contacts a week from police, from law enforcements etc, and they all come channeled through me and there's a legal obligation in the French Law that I pass those on to Facebook within a relevant time period.

In effect, we work it out within 12-14 hours and often it can be quicker than that, and so that type of things means that there is a direct access to the registrant in that area, so I know that's something which certainly is of interest to brands and to I think many people, for a variety of reasons. [AUDIO BREAK]

Any other thoughts or comments? Dejan, have you got anything or –

DEJAN DJUKIC: Yes, can you hear me? Hello?

DAVID TAYLOR: Yes, I think so, yeah.

DEJAN DJUKIC: I was surprised how a number of [inaudible] registrations [inaudible] with that result of a limited number [inaudible]. So only new gTLD's [inaudible]. [AUDIO BREAK]

DAVID TAYLOR: Thanks Dejan, I don't know whether it's my connection from South Africa through, but again I had quite a bit difficulty hearing that and

certainly all of the details, I don't know if everybody else caught it. I can certainly hear Jordyn clearly, I can't hear you so clearly.

I don't know what the best way is to summarize that but perhaps if you wanna do that in a table, if you can just put that in as a comment and just have that so we've got those together and we can look a little bit further, that might be something if you're surprised, I think it was you that was surprised about the number of registrations in ccTLD's is I think what you're saying, but that's something we can drill down with Nelson.
[AUDIO BREAK]

DEJAN DJUKIC: I'll send it in the--

DAVID TAYLOR: I can see Jordy saying that the cost on slides 34 and 35 seem remarkably low. Who's got control of the scroll?

JORDYN BUCHANAN: I think it's on the [inaudible] now. [AUDIO BREAK]

I synced to those slides.

DAVID TAYLOR: 34, 35, Trademark Clearing Claims Notice and Internet Monitoring Trademarks, yep.

JORDYN BUCHANAN: David, I guess this is a subset of the like total sort of Non-Defensive Registration costs, but you know if you sort of look at like how much a company is spending on investigations and cease and desist letters and UDRP's and other actions and monitoring, if you add up like the mediums of all those actions, it's like \$35,000 over two years, so like \$17,000 a year or something like that.

It seems like a really, really -- considering the sort of vigor of that INTA public comment to us, saying like how we're not really understanding the costs to trademark holders, like when I look at this slide I'm like, "What costs?" I mean \$17,500 I guess is not no money, but it seems like a very small amount of money. It seems like it costs more money to write that letter than \$17,500.

DAVID TAYLOR: No, certainly for a big brand with many brands I totally agree with you on that. So that's just the trademark clearing house claims notice, isn't it?

JORDYN BUCHANAN: Yeah, I guess so. So I guess they could be noticing infringement in other ways which this wouldn't account for. But I don't think that these types of activities are quantified anywhere else, like the cease and desist letters and UDRP.

DAVID TAYLOR: No, I don't think they are. And that would be good to get an idea of that cause it seems we've got a lot of separate costs but we're not quite

sure what the overall cost is. And so I guess [CROSSTALK] -- running a team of 12 doing a domain name enforcement, not based on [CROSSTALK].

JORDYN BUCHANAN:

It mostly would be helpful just to understand like the extent that INTA thinks from the public comment; it seems like they do believe that there's significant costs being born by trademark holders, like where are they? Cause at least in this survey I don't see them, like it's hard to quantify, other than just someone saying, "Yeah, it's really expensive to me," it's not obvious where they're coming from. Therefore it's hard to do anything about them.

DAVID TAYLOR:

No. [AUDIO BREAK]

Yeah, I think that's a good point. How does slide 34 and 35 – underline that, where's the evidence? It's very surprising because you wonder where that comes out, really. That to me was really just on trademark clearing claims notices and how many people are using that as a notice. To an extent, I'm just trying to think of examples on that, you know we've got one client for instance and we get trademark clearance notices monthly running from between 50 and 200 registrations, so there's a lot there and a lot of those ones are completely ignored.

I think we've probably taken action on two in the last year, it was a short email and then that was resolved, so that client, which is quite a big client, would be sitting there in the category two I think well under

\$8,400, probably about \$500 but that's probably because they're simply ignoring it, cause they've got too many.

So, it's a hard one. Most clients seem to ignore the clearing house claim notices, from the ones we work with. I do know [inaudible] this, and I've spoken to other lawyers, and we do act a lot more on those but we only use a few of them. We probably don't – of the URS's we've filed, I think less than a quarter will of come out of the clearing claim notice, per say. It's a --

JORDYN BUCHANAN:

So David, where would the discovery of the other types of infringement come from? So it's not coming from the clearing house, does it come from like the Internet Monitoring Services, or is it reported to the companies, do they have their own internal investigations, like how does it come to light?

DAVID TAYLOR:

That's a good point. That was one of the discussions which came out on the survey is, it's too complicated and people just didn't have that information to hand. I remember when we talked about this at the beginning, I said, "Well, can we not just look at the company's underlying budget, what is their budget." I know what my budgets are from the clients when they say to me, "This is out budget for enforcement next year. Please, can you develop an appropriate strategy?"

And it's a lot more than \$17,000 for those clients. I don't know many clients that are paying us less than \$17,000 for their strategy and they've been paying way before new gTLD's. So, there's a lot of money that goes elsewhere, many brands are paying half a million, a million plus for their enforcement work and then they've got potential registrations separately to that. There's a lot going on and without drilling down as to where that all goes to.

The bulk of it on my side, it really comes out, but the bulk of the work is the advising, the cease and desists and the monitoring, and certainly the tip of the iceberg is [inaudible] UDRP's, 'cause you only got one in 20 cases, one in 30 cases go to UDRP or URS. And even when you do file a URS or UDRP, quite often you withdraw it. Many clients will just want to save the filing fee and then withdraw at that point so this will never get public.

We don't like that really, so points in saving \$15,000 if you'd already paid out X thousands to investigate, find out the guy, prepare the complaint, which is false economy, just go through to decision. But there's always that fear that they might lose the case, so they'd be better off just taking the domain name for \$10 because the guys, they're gonna give it back.

So many of these cases I think it's just a wastage of -- the costs sort of disappear and there's no -- these questions didn't really sustain where that money was going because it was very specific and again, we filled in this for two clients I think it was, two clients in total, and we had difficulty beating it with the figures because the figures coming through -
- we looked at how much we were spending on claim notices and well,

not a lot, so that ties in now, thank God, probably under number four on that, but it wasn't a massive amount, considering the number of brands they've got. That's it.

Jordyn, I think your question is a very, very relevant one. We should have the INTA people do that call with INTA and Neilson, and if you think the call with INTA, we could do one before, because I think those points are good to really try and understand where they think the costs are because I don't wanna necessarily answering that on behalf of the brand owners, I'm just answering on my personal experience and I'm trying to match my personal experience with the results of the survey and try and come up with something which is objective. But I'd be interested to hear as well what their take on that is. I think it's a very good question.

JORDYN BUCHANAN:

Yeah, thanks David. I mean it could be that -- like there is a certain amount of internal consistency to the report, so if you look on slide 10 it says that, here I'll sync to that -- the total costs associated with new gTLD's are about \$40,000 on average, oh I guess that's two years though, so it'd only be \$20,000 a year. [Inaudible] is probably a particularly dumb way to figure out a total and probably overstates it.

So anyways, somewhere between \$20,000 - \$35,000 a year would be sort of the average costs if you sort of -- associated with the new gTLD program. Either if you go with my old version or the costs listed on slide 10. There's some internal consistency like, you know, we said in our report like the average trademark holders registering three copies of their trademark and new gTLD's and therefore the cost is pretty low.

And so if you say like, “Oh well, you know, the CCT is saying it just costs whatever, three times \$50 or something, \$150,” really it costs \$40,000 or \$20,000 or \$35,000, whatever, in the tens of thousands of dollars, they can say, “You guys are off by 1,000 times in terms of estimating the costs to us,” and so it could be true that just focusing on the defensive registrations has a tendency to understate the costs to a certain extent.

But also that the overall costs are not that high in terms of the costs to these brands and total marketing budgets and even total domain budgets it looks like from this slide 10 is that even if you take this at face value, that one seventh of the defensive actions from a big brand or for one of these brand holders is related to new gTLD’s, that’s not that far off, I think, the total volume of new gTLD’s relative to total TLD’s in the world at this point.

It may be that it’s just like the right sort of proportion of the total registration volume is being spent on new gTLD’s versus legacy gTLD’s versus more of them. New gTLD’s exist now and so it’s taking up some the budget. [AUDIO BREAK]

DAVID TAYLOR:

Yeah. I mean, tell me, which other discussion we had where we were saying that the -- was it the focus when we met face to face in Joburg. I’m trying to remember the conversation where we said that the costs were shifting. It’s the abuse, wasn’t it? I’m trying to look for parallels of what we’ve got on the DNS abuse etc, and I think the DNS abuse was saying that the abuse seems to be there, or whatever level it is, relative [inaudible], but we don’t seem to have a massive increase in amount of

DNS abuse, it's just shifted a little bit out of wherever old legacy TLD's and a little bit more new gTLD's but the total abuse in the world today is fairly similar.

I think that's in a way perhaps might be a conclusion we get to that the abuse is fairly similar on trademark abuse. The total is maybe a little bit higher and we're seeing it a little bit higher but there's been a cost shift, so that the brands are maybe getting a little bit less in ccTLD's and doing a bit more important into gTLD's because it's easier to spot because of the searches. It's certainly a lower hanging fruit, you can see a lot more if it. It's really a question of do you spend the money or do you just spend the money on the lowest hanging fruit and ignore the rest. I think that by ignoring the rest, you start ignoring the little bit more what's going through ccTLD's. The brands aren't -- I can't see anything saying that brands have generally been tripling, quadrupling their budgets because new gTLD's.

JORDYN BUCHANAN:

Yeah, that would be the interesting question, like what is the state of the budget before and after the program, if that increased. If they felt like that they had to spend more total dollars, then that's an increase in cost. If they spend the same amount of money but just reallocated it because now new gTLD's are a thing, it's hard to see the impact as clearly.
[AUDIO BREAK]

DAVID TAYLOR:

And that was one of the things which I know we were trying to get what the overall cost to brand owners were because certainly before the new

gTLD process there was various comments to US Senate and that about how -- I remember Fox coming out and saying that it was going to cost, I can't remember the stats now, but like an extra \$6,000,000 a year which was terrible if that's the case.

But clearly Fox, and even if that is the calculation based on this is what we spend over 22 gTLD's and X number of ccTLD's, if there's a 500 in the market, you can't necessarily get up and say, well this is going to be the total cost. It would be if you had the same behavior and you did the same level of important and doing exactly the same, look at how it's a type of [inaudible] and they go after it, but I do think now there's more of a tolerance in the fact that there is a type of -- unless it's pointing to an active live website with some form of abuse on there, it just gets ignored which wouldn't have been the case five years ago for many brands.

Again, that's a very hard thing to get data on [inaudible] in quite a different way, as you say there with a total spend, that was one thing we were trying to get from brands but there was no brand willing to say, and I know the two clients which we asked on this, they weren't willing to say, "I'll tell you what our spend was each year," cause obviously we know what their spend was over the last 10 years so we've got a lovely graph that's confidential [inaudible] what we spend is and I could break that down quite nicely into what's going on and where their spend is, but then I don't have the complete picture for those clients cause they do spend elsewhere and you need the entire global defensive and important because they do use other law firms which is normal, so even that becomes hard to track.

JORDYN BUCHANAN: This is like the brand equivalent of the registry pricing data. It would be really helpful for us to have but no one wants to give it to us. [AUDIO BREAK]

DAVID TAYLOR: Reminds me of a discussion with a client who says, "I'll give it to you but you already have it, but which hat do you got when you're asking me for it?" And you sort of sit there and think who else will have it and you think yeah, heck we won't go there, it's a little bit too complex.

That's good, I think we -- your point there is true, even the \$40,000, I mean it's considerable and it's certainly higher than we looked at with the defensive registrations. But again, that comes down to the sample size, as well we don't really adjust in the acceptable levels of a sample and I'm quite sure if we did this again we'd get some widely varying figures. It's high, but it's not -- I think it's just shifting.

That's my feel, from having gone through it and after our meeting it was one of those things which I'm slowly forming as an objective view on it, that it's very similar to the DNS abuse, it's shifting a bit, the abuse, whether it's trademark abuse or DNS pure abuse, and there's certainly it is in new gTLD's and we know that, cause it is rampant to know. Is it minimal? No, cause there's quite a bit in there. Is it really costing brand owners a lot? Some yes, some not, [inaudible] we gotten the original, some are ignoring it, some aren't ignoring it.

I think it's very much a wait and see. I think we'll see a lot more, we'd probably have more data if we could answer my questions in 18 months' time. We'll be able to get the data and I think that's important going forward that we have something similar to this but in a form that can be asked to brand owners not to spend four, or five or six hours laboring over a survey and we can get some high level end results back and start saying if we think it's abuse. Anyway, that was my sort of thought on it.

[AUDIO BREAK]

Okay. Anybody else wanna say anything or should we go on the basis of thinking back on any comments that you've got through today and through the end of tomorrow say, and I'll just work on the basis of those and then try and get those off on to INTA, but it's more the clearance, the takeaways we can skip to those takeaways, but any clarifications we want to go through.

And maybe Jordyn, if you want to encapsulate that into the table so we've got it, and Dejan, just what you were saying and we'll get a call with INTA based on those. I can send those to INTA and say this is what we would like clarification on and they can give us initial clarification or initial thought and then we all take that to Neilson and do that the week of the 24th. Does that work for everybody, please do hit the mic.

[AUDIO BREAK]

Good, look at that unanimous on the chat, I like that. Brilliant. Okay, so I'll add a couple of things to the table. Yeah, please do Jordyn. Dejan,

please do and Carlton, if we caught all of your comments just if you can summarize it in that table, that would be just great, so we've got something to work with. And then I'll do that, I'll get back to INTA this week on that and then setup a call the week of the 24th.

Okay, I'm good, everyone else is good. We'll do that and the deadline for this is tomorrow, end of tomorrow, whatever time zone you want, the end of tomorrow. If you could do it today, I would appreciate it. The 14th of July is a public holiday in France, even though I'm in South Africa I'm going to follow that, go off on holidays. Alright, everybody.

[END OF TRANSCRIPTION]