

Terri Agnew:Welcome to the Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group on Wednesday, 16 August 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_ShMhB&d=DwIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmKXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=esXLb3-jl5RwBqvMSAs-rsZZ7K0eLPevTzDCfCtBvW0&s=PHrXZIk6W3FxlOd6EfGmlbR434yKpRwMD88TxJxZj7U&e=

Maxim Alzoba (FAITID):Hello Terri

Terri Agnew:thanks for testing your audio Maxim

George Kirikos:Hi folks.

George Kirikos:Perhaps blasting out a reminder email might be wise in a few mins?

Martin Silva:Hi all

George Kirikos:Hi Martin.

George Kirikos:BTW, I'm not sure if it was just me, but the Adobe got "stuck" trying to load it (had to try 3 times to get in).

George Kirikos:It was around 90% loading, but then just seemed to freeze.

Terri Agnew:reminder email just sent

George Kirikos:You're welcome. :-)

George Kirikos:By the way, there was something that mentioned looking at publicly traded companies, to perhaps glean financial estimates of sunrises (as discussed last time). It wasn't clear, but one would want to check current and past public listings (e.g. Rightside just got bought out, so they're no longer a public company, but their past financials are still public).

Mary Wong:Thanks, George - that's helpful. We will certainly make a note of it.

Philip Corwin:Dialing in

George Kirikos:Thanks, Mary. I think I think the text I read seemed to only capture current public companies, so that might not capture the Rightside example (and any other similar ones).

J. Scott:waiting on operator

George Kirikos:Can remove 1 "I think" from the above sentence. lol

Philip Corwin:My dial in got dropped. Now I am hearing Muzak

J. Scott:same thing happened to me, Phil

Terri Agnew:I have reported the telephone join issues to the operator

George Kirikos:I added some additional sources of data reflecting discussion on the mailing list over the past week: <http://mm.icann.org/pipermail/gnso-rpm-wg/2017-August/002374.html> which should also be added to this proposal.

Steve Levy:Sorry for joining late, folks

Lori Schulman:Hi, I am in Adobe and online.

Mary Wong:Thanks, Lori, yes I recall now that you had sent apologies for next week. Sorry I overlooked that.

Terri Agnew:@Lori, apology will be noted for next weeks call

Lori Schulman:Michael knows the material too but I am the spokesperson for INTA

J. Scott:I am not willing to concede that the additional data gathering is suggesting be added to this document without a thorough vetting by the WG

Michael R Graham:Have to go off call for a few moments.

Paul Tattersfield:we should!

George Kirikos:I think the point was that the 99% reduction *might* be explainable by looking at the annualized spend --- so, that would need to be collected, or estimated, by breaking it down in terms of volume and price per TLD launch (and then adding it up per year).

George Kirikos:(point not by me, but by someone else)

George Kirikos:We know that the sunrise volume exists, because how else do we know that the average sunrise was 130 names?

George Kirikos:(130 domains, rather)

George Kirikos:@J. Scott: Aren't we vetting it right now?

Greg Shatan:There is no 99% reduction. That's a manufactured concept invented by comparing apples and oranges.

Lori Schulman:Agree with Greg

Georges Nahitchevansky:I agree with J. Scott. This additional data does not really add much and is just more of this pedantic numbers approach without looking at the quality of registrations, the benefits etc.

George Kirikos:99% reduction in sunrise per TLD -- that's a truth.

George Kirikos:(compared to past sunrises)

Maxim Alzoba (FAITID):why do we suggest that TMCH sunrise is going to be a success without large number of TMCH entries?

George Kirikos:Aren't there 40,000+ TMCH entries?

Paul Tattersfield:As the number of TLD grows you wouldn't you expect a lower and lower percentage?

Lori Schulman:Volume and success do not necessarily correlate.

George Kirikos:130 is a lot smaller than 40,000.

Lori Schulman:The EFF paper is not evidence. We can consider it but no one has agree that it is determinative.

Maxim Alzoba (FAITID):do we know the reason for TMCH registrations? I am not sure, most probably it was protection

Lori Schulman:Agree with Susan. The questions were vetted over a number of weeks by the subteam and the wider WG as were the data requirements.

Susan Payne:ok, understood thanks Phil

Maxim Alzoba (FAITID):and not necessary for Sunrise registrations

Greg Shatan:It's a junk statistic. Comparing the massive rollout of new gTLDs, many of niche interest, on a granular basis with single launches of general interest is inappropriate and of no evidentiary or probative value.

Greg Shatan:Any additions to this list would need to go through the same consensus process.

Paul Tattersfield:Sepeculators and TM holders saw more value in the single launches

J. Scott:Again, Georges suggestions have not been discussed or vetted. Until they have, they do not belong in this data gathering exercise

Maxim Alzoba (FAITID):additional costs were imposed on Registries too , not being able to start registrations to the public for 2 months adds costs (rent, ISPs, escrow, salaries e.t.c)

George Kirikos:@JScott: I don't see the survey questions have been finalized at all --- they're still being designed.

Mike Rodenbaugh:+1 agree with Susan

David McAuley:I tend to agree w/Susan regarding timely contributions

Maxim Alzoba (FAITID):+1 Susan

George Kirikos:We added public SEC data just last week. There's not been a "last call" --- it's always been a living document, to reflect both the calls AND the mailing list.

Elisa Cooper:+1 J Scott

Maxim Alzoba (FAITID):first such a person would be required to understand our specifics ... and it takes time

George Kirikos:We've never voted up/down on a final data.

Cyntia King:In addition to mission drift, we should be wary of engaging in endless data gathering. In business, reseach must be balanced by the need to act in a timely fashion. This WG is not engaged in pure research.

Georges Nahitchevansky:George K's approach is not appropriate. If you are going to go down the path of cost benefit analysis in this narrow way then what about the costs to brand owners in having to protect their rights and the costs. We have going through this over and over again and the information George K and others are claiming to see at this late stage is myopic and too subjective. I oppose this last minute effort.

George Kirikos:(and certainly such a vote didn't include the mailing list)

David McAuley:Good point @Maxim

George Kirikos:Notice all the people opposed have been long opposed to other data requests that would disprove benefits of sunrise.

Kathy Kleiman:Doesn't #4 include outreach to the Registries with ALP, QLP and LRP?

Lori Schulman:Cynthia is reiterating the point that I made on the list earlier today

Kathy Kleiman::-) No longer on audio.

George Kirikos:@Georges: That data is being collected, via INTA, etc.

George Kirikos:One has to look at cost on all stakeholders. If you only talk to TM owners, that doesn't capture all stakeholders.

George Kirikos:There's talk of "late stage" --- where was the "deadline" ever specified?

Lori Schulman:Costs are direct costs. Those are the only costs that can be validly measured.

Opportunity costs are pure supposition.

Mary Wong:@Phil, yes, we will send it out by the end of this week.

Marie Pattullo:+ 1 Lori.

George Kirikos:@Lori: yet, TM owners claim they're stopping all kinds of speculative costs of cybersquatting.

Georges Nahitchevansky:Again, things like lost opportunity are speculative and subjective and not appropriate

George Kirikos:How are those not supposition?

George Kirikos:"i.e. registering Apple.horse saved us millions of dollars of potential damages, as per Georges' and others imagination)

Lori Schulman:We did not measure speculative costs. Only direct costs.

Lori Schulman:Speculative costs are not easily measured.

Greg Shatan:George, where are you quoting from? Or are you putting words in other people's mouths?

George Kirikos:@Georges: not speculative, because one could see how much additional services "normal" domains generate (e.g. SSL, SEO, webdesign, etc.) and compare that to defensively registered domains that are simply a redirect to the .com.

George Kirikos:@Greg: not putting words in anyone's mouth.

Kathy Kleiman:Great!

Kathy Kleiman:That's the type of outreach I think the subteam envisioned.

Greg Shatan:Then where did the quote come from.

Greg Shatan:Should we also measure the opportunity cost of domains kept in inventory by domain investors?

George Kirikos:@Greg: I didn't "quote" any email. I'm summarizing his essential arguments over the past few months, always claiming these sunrise registrations prevent massive damages.

Susan Payne:if someone wants a website they will buy a name and buy whatever additional services they required. The fact that an identical match to brand.TLD was not available does not prevent anyone from buying an alternative name with all the surrounding services. If the registrant only wanted brand.TLD and no alternative will suffice (for example because they think it will have an aftermarket value) and no other name then surely they aren't terribly interested in hosting etc etc

Georges Nahitchevansky:And by your narrow world view, the inability of some theoretical person to register a domain name is somehow causing massive amounts of losses that you cannot quantify except

through speculation. And by normal domain do you mean the millions of parked domain names that are not used for anything

Georges Nahitchevansky:And when I say parked, I mean warehoused domains that are not being used in any way.

Marie Pattullo:+ 1,000 to Susan.

Lori Schulman:Agree, there are exponential choices for potential registrants.

George Kirikos:<http://mm.icann.org/pipermail/gnso-rpm-wg/2017-August/002374.html>

Cyntia King:Were a new business to deeply desire a specific domain name that was withheld, is there anything preventing them from approaching the markholder directly?

George Kirikos:@Cyntia: it works the other way, too. If a TM holder "deeply desired" a certain name, they can get it from someone else, or "win" in landrush with a level playing field.

George Kirikos:One can use Google News to search for many TM blogs, too.

George Kirikos:Or, the Bing equivalent.

Cyntia King:The downside to TM holder is the potential for misuse of their valuable brand. Not so otherwise.

J. Scott:@George. The difference is that the LAW gives the trademark owner a right that the other party probably doesn't have. Don't equate profiteers with trademark owners.

Marie Pattullo:And the consumer damage when a brand they trust appears in a DN.

George Kirikos:@JScott: it's a curative right, by law, not a right to go to the front of the line. If it was a right to go to the front of the line, why wasn't there a sunrise at the TOP level by ICANN?

George Kirikos:That totally destroys the theory that there's a RIGHT to sunrise.

Marie Pattullo:+1 J. Scott. And remembering that the TM owner has paid for the registration of that TM - it didn't come for free with a bag of chips.

George Kirikos:No TM owner got a first right to a new TLD itself, ahead of all competing applications, just because of that TM.

Maxim Alzoba (FAITID):@George, most probably auctions were the way to resolve it

Cyntia King:My point is that several ccTLDs provide online contact forms. Could that be somehow adapted to allow potential buyers & TM owners to work this out outside of an ICANN-directed mechanism?

George Kirikos:@Maxim: yes, exactly. That's how a landrush would work at the 2nd level, if there was contention.

George Kirikos:Just like there was at the top level.

Kathy Kleiman:But All, the law does not give TM owners an advanced right of cancellation or blockage. Many future TM owners and noncommercial users will use the same word to label their goods and services. The question legally is infringement. and other evaluations based on use and confusion, right?

Kathy Kleiman:with use --> will use

George Kirikos:+10 Kathy

Lori Schulman:the top level has its own mechanisms for resolving conflicts. costs and scale are vastly different. the RPMs were tailored to specific circumstances. I don't think that top level and second level are fair comparisons here for sunrise

George Kirikos:(warriors from Bear Island are worth 10) :-)

Mary Wong:@Phil, @Susan, we will try to suggest a few keywords as well.

David McAuley:I think Phil is right about 'willingness' rather than 'ability'

J. Scott:No Kathy. Sunrise was developed to lower costs for trademark owners that continuously battle fraud, phishing, malware and cybersquatting. The status quo should remain so long as we can tweak it to solve the few issues we have identified (gaming).

Lori Schulman:Agree that we should focus on rationale for RPM's

Greg Shatan:Agree with J Scott and Lori.

Kathy Kleiman:@J. Scott, I think the question was legal rights...

Kathy Kleiman:... not ICANN created protections

Lori Schulman:I feel like we have lost sight of the fact that the issues were argued and a compromise was reached by IRT and STI. Now we look at the results not reargue the agreement. It's too soon for that if we agree that needs to be done

J. Scott:@Kathy. No, it was lowering costs and creating efficiency for dealing with fraud and abuse of trademark rights.

J. Scott:The mandatory requirement was from the GAC.

Scott Austin:+1 sUSAN

Georges Nahitchevsky:Exactly. Sunrise was created to help prevent the massive abuses that were seen to occur when the first round of gTLDs were launched. The costs to brand owners were staggering and well documented as opposed to the speculative cost benefit costs that some are now pushing

George Kirikos:<http://mm.icann.org/pipermail/gnso-rpm-wg/2017-August/002374.html>

Kathy Kleiman:Perhaps, but I was responding to those who raised the issue in the chat above about what "the law" requires...

Maxim Alzoba (FAITID):@J. Scott: there is nothing about costs of Sunrises in RA or policies, thus the question is more hypothetical

George Kirikos:Exactly, Kathy.

J. Scott:the law requires that trademark owners police their marks to retain their rights. Sunrise is a mechanism;

Cyntia King:Yes, we need an expert survey designer.

Rebecca L Tushnet:I think a professional designer would be useful

David McAuley:I took your answer that way @Kathy - about law rather than sunrise

Kathy Kleiman:+1

Rebecca L Tushnet:(Bad internet connection, sorry)

J. Scott:Expert survey designer

Paul Tattersfield:@Georges and disproportionate percentage of those staggering costs were born by the most famous Marks

Lori Schulman:We need expert designers and a broad range of beta testers

Lori Schulman:not just insiders

Greg Shatan:Agree that an expert survey designer would be helpful.

George Kirikos:Especially if it is a large \$\$\$ contract, \$50,000+, should be an invitation to bid.

Lori Schulman:i think that ICANN requires bids

Mary Wong:All, note that ICANN has rules and processes about when/how to tender and about doing requisitions.

George Kirikos:@Lori: all too often, they simply give it to someone.

Cyntia King:We should examine other prohibited registrations.

George Kirikos:(without a competitive bid)

Maxim Alzoba (FAITID):it was sent to the group

Cyntia King:I am aware of a .LY being cancelled because it promoted undesirable moral behaviour.

David McAuley:why not just put the question in the RO survey - about experience with profane limitations etc

Maxim Alzoba (FAITID):GEOtld

Maxim Alzoba (FAITID):not ccTLD

Cyntia King:Yes, nTLD. But countries in which these nTLDs exist may exert some control over offerings.

Sara Bockey:I need to drop for another call. I will catch up with the recording. Thanks all

Lori Schulman:Not every member of IPC is an INTA member.

Steve Levy:Sorry, but I've got to jump to the phone line.

Lori Schulman:There are a few TM associations but none as large as INTA. We have a lot of shared membership. ASIPI, Marques, CTMA, etc.

George Kirikos:https://en.wikipedia.org/wiki/Intellectual_property_organization has some regional ones.

Lori Schulman:AIPLA is not international.

Greg Shatan:That said, I very much support working with INTA on further surveys. They have great reach.

Lori Schulman:INTA as large as it is, has defined resources. Depending on the scope of the survey, it would have to be planned and negotiated.

David McAuley:and one education curve

Kathy Kleiman:Agree, same survey group would be a good idea

David McAuley:Agree that #4 seems unwieldy it is so large

George Kirikos:Include those in academia and other groups who've not historically done much input into ICANN. (i.e. more Rebeccas) :-)

David McAuley:is there a survey subteam?

Susan Payne:thanks Mary

Mary Wong:@David, not at the moment but it is something staff would like to suggest that the WG consider forming.

David McAuley:might add budget to the list

George Kirikos:Might be good to call it a day?

George Kirikos:People might be scared off by a 1 hour survey.

David McAuley:One thing to add to survey task list might be 'ranking' – I suspect a professional survey provider might say that once you exceed XX number of questions you lose interest in replying – we should be able to rank questions by importance by topic if needed

Maxim Alzoba (FAITID):we might ask to use + for those who will finish a 1hour survey :)

Michael R Graham:@Mary -- Entirely right that we need to coordinate our two lists.

George Kirikos:URS cases that referenced TMCH in their decisions.

Lori Schulman:Our survey was too detailed. It tooks hours to prep and complete. We should learn from that. Questions should be straight forward and absolutely ranked.

Lori Schulman:Happy to share our learnings

George Kirikos:(i.e. Complainant would say something like "Respondent had actual notice of the mark, as the domain owner would have seen the TMCH wording, etc."

Mary Wong:@Phil, yes

George Kirikos:Kristine has her hand up.

Susan Payne:wouldn't UDRP cases be relevant too?

George Kirikos:@Susan: Yes, those too.

Cyntia King:Any possibiity to offer a small benefit for taking survey? I recently got a \$10 Starbucks card for completing one

Jonathan Frost (.CLUB):I believe UDRPs are still used more often, and provide more substantial arbitration opinions, so UDRPs would be just as or more useful than URS

Lori Schulman:But there is also survey fatigue.

Lori Schulman:We need to be mindful of that.

Lori Schulman:too many surveys is not good. can't have too many and they can't be too long.

George Kirikos:For some reason, in some places on page 2 it just says "URS", whereas in other places it says UDRP/URS.

Lori Schulman:Agree with Kristine

George Kirikos:I think those needed to be fixed.

George Kirikos:(as per Susan's catch)

Mary Wong:@George, this table reflects what the Sub Team proposed.

George Kirikos:@Mary: then, Susan's point seems valid, shouldn't it have been both?

George Kirikos:(i.e. I thought it was just a typing oversight, not an actual decision not to look at UDRP)

David McAuley:these are good points Kristine is making - this sounds like a possibly masive undertaking

George Kirikos:I don't think subteams make decisions, just proposals.

David McAuley:am I only one to lose audio?

Kristine Dorrain - Amazon Registry Services:I didn't mean to imply we made a decision. We made a decisoin not to recommend...

George Kirikos:Why is the UDRP data more difficult? Filter by new gTLDs (exclude all .com/net/org, etc.)

Kristine Dorrain - Amazon Registry Services:Greater number

Mary Wong:@David, @Kristine - yes, staff review of all the suggestions so far (for both Sunrise and Claims) leads us to believe it is already a massive underatking. That is why we were thinking that a URS review now instead of also collecting all UDRP cases may be more appropriate for Phase One.

George Kirikos:UDRPsearch.com and other tools.

David McAuley:Thanks Mary - i have l;ost audio so may drop off for now

Susan Payne:hand no longer required - :)

Mary Wong:Kristine is making the point I was trying to make (and far more successfully!)

David McAuley:Thanks Mary

Kristine Dorrain - Amazon Registry Services:FYI, the Subteam did consider asking a university researcher to volunteer students....

Kristine Dorrain - Amazon Registry Services:consider *recommending*

George Kirikos:We're not talking about a lot of cases for new gTLDs, see:

https://urldefense.proofpoint.com/v2/url?u=http-3A_www.wipo.int_export_sites_www_pressroom_en_documents_pr-5F2017-5F805-5Fannexes.pdf-23annex1&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmKXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=esXLb3-jl5RwBqvMSAs-rsZ77K0eLPevTzDCfCtBvW0&s=RZ53-5-28YUYbvDkE85C4CG3aF9stRGPVN34yKJMWo&e=

George Kirikos:Most UDRPs are still for .com

Kristine Dorrain - Amazon Registry Services:There are many domains in some UDRP cases.

Kristine Dorrain - Amazon Registry Services:And the Whois record and sunrise dates for each would need ot be looked up.

George Kirikos:Yes, exactly, Kristine. More domains per case = fewer cases.

Kristine Dorrain - Amazon Registry Services:but the question is on a per-domain bases, not a per TLD basis\

Kristine Dorrain - Amazon Registry Services:I am not saying we shouldn't do it, I just want us to realize the magnitude of the project.

Maxim Alzoba (FAITID):there could up to 13 in URS case

Kristine Dorrain - Amazon Registry Services:Theoretically, URS is not limited either. :)

Paul Tattersfield:George + 1

George Kirikos:Exactly, Phil.

George Kirikos:Different legal tests in URS vs UDRP.

Paul Tattersfield:Different legal tests in URS vs UDRP. exactly

Michael R Graham:If we review UDRP decisions, we must do so for all the Panel providers -- not just WIPO.

Kristine Dorrain - Amazon Registry Services:It really depends on if we're doing more comprehensive research too. The ST was looking for representative data, so the URS seemed like a fair start for full WG consideration.

Terri Agnew:Next meeting: Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group is scheduled for Wednesday, 23 August 2017 at 17:00 UTC for 90 minute duration.

George Kirikos:@Michael: yes, that might double it.

George Kirikos:Still, not huge.

George Kirikos:Most UDRPs are for com/net/org, still.

George Kirikos:Some of those new gTLD UDRP cases were for hundreds of domains at a time (e.g. the 1 cent .xyz names).

Maxim Alzoba (FAITID):bye all

George Kirikos:Bye folks.

Martin Silva Valent:thanks all, see ya

Michael R Graham:Bye -- Kristine -- be glad to huddle on Q!s

Lori Schulman:by

Paul Tattersfield:thanks, bye

Susan Payne:thanks all

Greg Shatan:Bye all!