

Julie Bisland:Welcome to the New gTLD Subsequent Procedures Sub Team – Track 2 – Legal/Regulatory Issues on Thursday, 05 October 2017 at 20:30 UTC

Julie Bisland:Agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_i4JEB&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QIF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=8xCtt7BaRUSHkYuWRPoh8VnToJsFBVCvJn6vDfAlO Fg&s=HPiRQyzi3gWI4IKetUJsM_5YkLEHfmmhlw0WBcaGFzA&e=

Cheryl Langdon-Orr:hi all

Julie Bisland:reminder: please mute

Jeff Neuman:michael - are you ready?

Cheryl Langdon-Orr:morning Michael ðŸ˜€

Cheryl Langdon-Orr:slide control? or is it just me

Jeff Neuman:there are no slides :)

Cheryl Langdon-Orr:ok....

Kiran Malancharuvil:I don't have audio. I have a new SOI.

Kiran Malancharuvil:thanks michael

Steve Chan:Link to the file being shared: https://urldefense.proofpoint.com/v2/url?u=https-3A_docs.google.com_spreadsheets_d_1kua4x0sLOXy5ZStMkzqG3oYnbkzbxCNMMIGCFURKJO4_edit-3Fusp-3Dsharing&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QIF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=8xCtt7BaRUSHkYuWRPoh8VnToJsFBVCvJn6vDfAlO Fg&s=-oB6z6WrhUAFVY2tFpys-j2g_HrAkNod_7FdcLwZwlo&e=

Alexander Schubert:What is the "harm" to the general public by blocking free access to a beach? Well: they don't have access! Same with generic term based gTLDs. Do you REALLY expect a beach-goer would start litigation? No. They are simply sad and go to another beach. Does ICANN want to produce sad prospective registrants?

Julie Bisland:For attendance purposes, please let me know who is 2062661000

Kristina Rosette (Amazon Registry):Hi Julie, I suspect that's me.

Julie Bisland:Thank you, Kristina :)

Greg Shatan:Beachgoers have in fact started multiple litigations with that fact pattern.

Greg Shatan:There are always sad prospective registrants. It's inherent in the concept of unique strings.

Annebeth Lange:If we compare this to the TLD-world, there would'nt be any more beaches to go to. That is a huge difference.

Greg Shatan:There are no more prospective TLDs? Well then we can just shut this WG down now. And go to the beach.

Alexander Schubert:+1 Annabeth

Alexander Schubert:And yes: a closed beach potentially allows for "new business models" - but chances are it's beneficial only for a few; and often the beach might simply be shut down entirely and nobody can enjoy it.

Annebeth Lange:What I mean is that the difference with TLDs is that it is only one registry that can have it, for example compared to trademarks, where several companies can have the same name in different areas.

Alexander Schubert:+1 Annabeth

Steve Chan:Beijing GAC Advice: https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_en_system_files_correspondence_gac-2Dto-2Dboard-2D18apr13-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QIF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=8xCtt7BaRUSHkYuWRPoh8VnToJsFBVCvJn6vDfAlO Fg&s=TGLzQwoVRsmajXlhbynXPsSttxw8Ts1C0CIpRMxabM&e=

Annebeth Lange:+1 Greg, this is not only a question of the law, but should also be about policy
avri doria:can lack of material harm be equated to a lack of detriment to the public interest?

Holly Raiche:@ Avri +1

Jim Prendergast:are the leadership team calls where this topic was discussed recorded and/or transcribed? And available?

Greg Shatan:They did refer to the concept of "monopoly"

Greg Shatan:The panel was correct to reject that, as a matter of law. That's what I meant to say.

avri doria:Jim, I think they are recorded, but have not been made available outside the set of co-chairs.

Annebeth Lange:But will it not be a kind of monopoly, when one actor is the only one that can use this generic term?

Annebeth Lange:That is the reason why in the trademark world they do not allow generic terms as trademark, as least not in Norway

Jeff Neuman:@Kathy - Most of the comments here are on the 4th element

avri doria:Has the GAC standard of supporting a public interest been accepted by the PDP?

Greg Shatan:Not a "monopoly" as legally defined. And "generic terms" are allowed to be trademarks (even in Norway), as long as they are not generic for the goods and services of the applicant. I assume you were referring to "generic for the applicant's goods/services" meaning of "generic"....

Jeff Neuman:@Kathy - That is my point. If you can show material detriment, then the TLD will not be allowed. But is it right to establish a rule preventing all forms of closed generics even though they cannot establish any likelihood of material harm

avri doria:and, if so, which definition of public interest has the PDP accepted?

Jeff Neuman:Does the right to "use" a generic word include the right to "register" a second level domain

Jeff Neuman:I see those as different aspects

Jeff Neuman:If a .book were introduced for example that was run by a company that owned all of the registrations but they allowed everyone in the world to "use" the content provided through the space, is that harmful?

Annebeth Lange:@ Greg. Actually, in Norway we would never allow one company to register "book" as their trademark, even if the company sells books. The reason being that that gives one company an unfair advantage.

Jeff Neuman:@Annabeth - they actually allow those in the Benelux countries as well

Annebeth Lange:Interesting, Jeff.

Greg Shatan:Annabeth, what if they only sell apples?

Jim Prendergast: GAC advice process question - do we know if GAC advice from 2012 will still stand for this round or will the GAC have to issue new GAC advice on this and the multitude of other issues they issued advice on?

avri doria:a generic word like "ibm"

Annebeth Lange:Well, several companies can sell only apples, and in Norway it is a demand that you create a name that is unique to get it registered as a trademark.

Jeff Neuman:@Jim - my assumption is that unless they specifically say that it only applies to that round, it continues to stand

Greg Shatan:I was trying to make the point that a bookseller may not be able to register books, but an airline has...

Jim Prendergast:thx

avri doria:but a domain name is not a trademark.

Kristina Rosette (Amazon Registry):Greg makes a good point. The analogy to trademark seems misplaced to me because the relevant goods and services (for which some are describing a TLD as "generic") are registry operator services or domain registry services (however you want to call them).

Annebeth Lange:I agree, Avri, and that is even worse. Only one can have it and rule everyone out.

Annebeth Lange:So if the company decides who are going to have a name on the second level, they can decide for example which applesellers that can register under .apple

avri doria:or under .applesellers

avri doria:?

Annebeth Lange:Greg + 1

avri doria:would .applesellers be a generic?

Jeff Neuman:I have no idea what those words mean :)

Annebeth Lange:Apple is a difficult example since it has been allowed as trademark in US. But the Norwegian word would not have been allowed.

Greg Shatan:"second level domains for third parties"

Michael Flemming:Thanks, Greg.

Annebeth Lange:Greg, let us have a discussion on this next time we meet. We have had several court cases in Norway about this. It is really difficult to get a generic word registered as a trademark.

Alexander Schubert:I am not sure what exactly is being discussed here. here what will happen: Industry leaders will shut down "their" industry defining keywords! Or they will only allow registrants that promote THEIR brand!

Kristina Rosette (Amazon Registry):With apologies, it seems I'm going to have to be on mute for a while. The dogs on my hallway are having a bark-a-thon.

Greg Shatan:It's hard to foster innovation when you are looking backwards,

Kristina Rosette (Amazon Registry):There's already some ICANN precedent for deferring competition issues to governmental authorities (the RSEP for example).

Greg Shatan:How about the "I don't like it" objection?

Greg Shatan:Very well put, Paul. Agree completely.

Alexander Schubert:If ICANN promotes 2nd level registrations - then we need to MAKE THEM AVAILABLE! And not allow mlti billion corps to shut down generic terms!

Kurt Pritz 2:To build on Greg's comment: What would go for a higher price at auction: book.com or .book? What is more of a "monopoly," .books or book.com.? My point is this: these are all just web addresses. If Barnes and Noble makes great use of book.com, the internet-using public will flock to it. If Amazon makes fantastic use of second-level names in .book, the internet using public will flock to it. There are millions of alternative web addresses available at the top and second level. I think we should not (and I think Greg was saying, we cannot) agonize over future uses of web addresses. As others have intimated, creating rules for restricting closed generics is problematic. The Guidebook allowed closed generics because it treated TLDs as alternative form of web addresses and because trying to restrict them is problematic. As Paul just said, we should not be pre-supposing which business model is preferred.

Jeff Neuman:@Kathy, but many said just the opposite

Greg Shatan:Registrars and registries can "promote" the market sale of second level domains. ICANN should not.

Jeff Neuman:@Kathy - if you had asked most of the people participating in the policy process before the applications were submitted, whether closed generics would be allowed, I predict that 9 out of 10 would have said, yes

Greg Shatan:Kathy, can you point us to a place where a closed generic applicant said they wanted to "lock out" their competitors (or words to that effect)?

Alexander Schubert:Kurt: OBJECTION! boo.com owned by one company is the NORM - the Internet user KNOWS THAT! If all .book domains are given ONLY to authors that work with a certain publisher: The public won't know that not every author had access to these domains!

Greg Shatan:Or is that only the "sour grapes" crowd.

Alexander Schubert:*book.com

Jeff Neuman:Attorneys making arguments against the practice saying that they never expected it is a little disingenuous

Kathy Kleiman:@Jeff - not true. Please look at the list of companies that I shared, and that includes Yahoo! and J.Scott Evans... and materials submitted by Mark Partridge's firm

Jeff Neuman:@Kathy - again, I love some of the people you are talking about, but they were responding as competitors of the applications

avri doria:i certainly assumed it was possible and ok at that time.

Michael Flemming:Co-Chair hat off: That what was I wanted to say. None of the applications included terms like monopoly within their application.

Kathy Kleiman:Why can't you do that under .AWS or similar gTLDs, Kristine?

Karen Day:+1 Kristina

Greg Shatan:+1 Kristina

avri doria:Kathy, why should they have to use a meaningless string?

Greg Shatan:@Kathy, why restrict innovation? .AWS would be one kind of innovation. That doesn't exclude innovation based on words.

Alexander Schubert:Maybe this discussion has to go OUTSIDE of this tiny circle of ICANN insiders who are clearly interest conflicted. Whenever I tell the "layman" out there that we are about to shut down ENTIRE VERTICALS by granting access to ONE player only - they look at me in gross disbelief!

Gg Levine (NABP):Would banning closed generics put the interests or potential registrants above those of gTLD applicants/potential registry operators?

Alexander Schubert:Why don't we put this out to discussion outside of the inner ICANN circles?

Greg Shatan:"I'm shocked, shocked that there are closed generics in this establishment."

Alexander Schubert:E.G. a nice article in The Atlantic?

Greg Shatan:@Alexander, because you would have to explain what a TLD is first. And they might ask, why should I care?

Alexander Schubert:Maybe we lost contact with reality - and need some input from normal people from outside ICANN.

avri doria:Really, I was cited? did not know. i was pretty sure that it was the case at the time.

Alexander Schubert:Every single person I have told about "closed generics" commanded me to "stop that".

Alexander Schubert:And the people out there aren't all stupid.

Alan Greenberg:+1 Jeff

Kurt Pritz 2:Hi Alexander. How are you? It is the norm today. We are still at the early stages of the DNS life. In a sense, isn't it HORRIBLE that stodgy Barnes and Noble monopolized this key internet space? Nonetheless, the marketplace worked around it.I think they are all web addresses that Internet users can access. I find it really hard to put anyone in the governance role to restrict usage.

Heather Forrest:A blanket rule (to the extent based on the undefined concept 'public policy') is ineffective in any event, as proven by the disputes that came out of 2012 applications

Alexander Schubert:To the GAC participants: Is GAC aware that we are about to allow generic term based new gTLDs being "shut down"?

Jeff Neuman:I concede that some people were shocked.....I also know there were others that expected and in fact advocated it

Greg Shatan:I thought that Co-Chairs participated in subgroups in their individual capacities, Kathy.

Greg Shatan:Or is that only in the RPM group?

avri doria:Greg, that is correct, except for when they specifically don their co-chair hats.

Alexander Schubert:Well: We do all this FOR THE PUBLIC; so let's loop in the public. Because we are all conflicted in some way or other.

Jeff Neuman:@Alexander - Whatever we come out with, we will of course ask the public in the form of public comments

Jeff Neuman:We are just trying to come up with something to put out for public comment

Annebeth Lange:But isn't that the difference between "true" generics and brands? Even if all words except of ccTLDs are considered gTLDs, brands in my mind are not generics

Kathy Kleiman:Could you summarize it in one sentence again, Michael?

Heather Forrest:@Michael - how can we base an applicant's fate on the necessity of proving something that they don't know what it means (ie, public policy)? This renders the entire application process so uncertain as to be worthless

Jeff Neuman:It was interesting because ICANN asked all of the closed generics how they would "use the TLD" in the public interest, but did absolutely nothing with that information

Jeff Neuman:Instead it played the waiting game

Jeff Neuman:game

Jeff Neuman:Until many withdrew

Jeff Neuman:or caved in

Kathy Kleiman:@Greg, isn't there infinite room for innovation across the gTLD - why the push for doing it in Closed Generics?

Alexander Schubert:Greg: I totally agree that IF the general public had somehow "fair an equal" access to 2nd level domains: everyone is fine. New business models: GREAT! But the reality will be that generic keyword terms will be shut down - or used in a way that ONLY promotes the brand that owns it!

Greg Shatan:Your personal prediction of the future is not "reality".

Alexander Schubert:".bank" is NOT closed - it is "restricted"

Alexander Schubert:Any bank can have a .bank!

Michael Flemming:Alexander, she is referring to .bank.au within that regard

Alexander Schubert:SORRY!

Greg Shatan:And why. is it bad thing if a TLD promotes only the company that owns it?

Greg Shatan:That would seem to cover a lot of good business models.

Alexander Schubert:Greg: Thank you for that comment :D

Kristina Rosette (Amazon Registry):As I understand what Holly is describing, the gTLD analogue would be "open restricted" (I think).

Holly Raiche:Thanks Kristina- correct

Annebeth Lange:Alan, +1

Cheryl Langdon-Orr:middle ground is a good aim. IMO

Gg Levine (NABP):Not hearing anything. Is audio working?

Michael Flemming:Yes

Michael Flemming:Gg, please try restarting

Alexander Schubert:New business models are good - we just need to make sure to ensure access in my opinion. Denying access is already harm. Like with the beach: no access = harm.

Greg Shatan:There are plenty of private beaches.

Greg Shatan:Third party access to register second level domains in top level domains is not a divine right.

Greg Shatan:Jeff, you say that with all the power of your personal capacity, right?

Annebeth Lange:Greg, - but only one .beach

Jeff Neuman:@Greg, that was actually my alter ego talking

Greg Shatan:But also .beaches, .shore, .shores, .waterfront, .waterfronts, .coast, .coasts, etc., etc.

Annebeth Lange::-)

Heather Forrest:Sorry, all - I have to drop now.

Cheryl Langdon-Orr:we have Paul on audio so we can capture

Gg Levine (NABP):Then why not have all applicants show public interest?

Annebeth Lange:I have to go - very interesting discussion tonight. And one that really shows that there is very diversified views here.

Cheryl Langdon-Orr:bye ðŸˆ Annabeth

Annebeth Lange:Goodnight :-)

Jon Nevett:I'm having a hard time understanding the rights to register a domain name concern -- isn't the harm the same w/r/t rights to register 2nd level names if Apple operates .apple as a brand TLD or apple operates .computer? Do folks think we should prohibit both?

Kathy Kleiman:I think we should put the two different models forward

Jeff Neuman:@Jon - we established that last week that Brands being closed is ok

Jeff Neuman:if they are using their brands

Jon Nevett:so how is the harm different?

Greg Shatan:"Prior restraint" is running through my head.....

Julie Bisland:next call, Thursday, 12 October 2017 at 15:00 UTC for 90 minutes.

Greg Shatan:BTW, prior restraint is not a good thing.

Kristina Rosette (Amazon Registry):Have to drop to get to another building for a 3 PM meeting.

Greg Shatan:More than two models, I expect.

Jeff Neuman:Remember there is always competition law

Kathy Kleiman:Bye All

avri doria:thanks all, good conversation

Greg Shatan:Bye all!

Cheryl Langdon-Orr:thanks everyone bye ðŸˆ