

16 Members

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Christine Farley

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Jim Prendergast

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Kathy Kleiman

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AC chat transcript 01, March 2018

Michelle DeSmyter: Dear All, welcome to the New gTLD Subsequent

Procedures Sub Team - Track 2 - Legal/Regulatory Issues call on Thursday, 01 March 2018 at 15:00 UTC.

Michelle DeSmyter:Agenda wiki page:

https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_FR08B&d=DwIFaQ&c=FmY1u3PJp6wrcrw113mSVzgfkbPSS6sJms7xc14I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwehFBfjrsjWv9&m=pECYzDTQHKC328zF-t-b6PeIJdNfnARoc4UXF_yXki8&s=waGhgWrF6EG335bbfZ2Svs_laIGaBWHHv3GVVQ0Q4og&e=

Michelle DeSmyter:Google doc:

https://urldefense.proofpoint.com/v2/url?u=https-3A_docs.google.com_document_d_1TDzPUL5NlsgbnbnjVRMLCfRDz8AA37-5FLgeZtrXCVpkY_edit-23heading-3Dh.rj6tr7jwqxy8&d=DwIFaQ&c=FmY1u3PJp6wrcrw113mSVzgfkbPSS6sJms7xc14I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwehFBfjrsjWv9&m=pECYzDTQHKC328zF-t-b6PeIJdNfnARoc4UXF_yXki8&s=I4GL9z6-upu9B_vYvTpDDC24ploawK577MBt0reVGqI&e=

Jeff Neuman:Good morning

Alexander Schubert:Good late afternoon :D

Jeff Neuman:you can test out your mic by going to "Adjust Microphone volume"

Michael Flemming:Hopefully have enough feedback over the mailing list

Jeff Neuman:yes

Michael Flemming:Yes

Kathy Kleiman:Yes but there was not much high level agreement on the last call...

Jeff Neuman:pg 14

Michael Flemming:We start with what is written for high level agreement at this time and then move backwards by introducing background material to dwell into further detailed next steps

Kathy Kleiman:can you summarize the issues?

Karen Day:hello - my apologies for being late.

Steve Chan:I believe it's 9 months to complete contracting and 12 months to complete delegation.

Kathy Kleiman:Any studies in this section we can reference?

Michael Flemming:Yes, Kathy. We did reach out to GDD for data about how exemptions about the deadline were granted in the past.

Alexander Schubert:So essentially you can "squat" on "your vertical" - and shut it down!

Michael Flemming:However, our conclusion was that those exemptions may not be necessary to be granted in the future.

Alexander Schubert:Say you sell books - and want to shut down the book-gtld-namespace

Michael Flemming:So timing may not be the issue, but rather the definition of "use" as is being brought up now.

Michael Flemming:Majority

Michael Flemming:Well... I can't say that.

Michael Flemming:But, based upon statistical data, likely it is a majority.

Alexander

Schubert:https://urldefense.proofpoint.com/v2/url?u=https-3A_ntldstats.com_tld&d=DwIFaQ&c=FmY1u3PJp6wrcrw113mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwehFBfjrsjWv9&m=pECYzDTQHKC328zF-t-b6PeIJDnfnARoc4UXF_yXki8&s=Rj06BPDWn93SEFZr-5ZQTD8pEOn_mL-55GqDzpGqSrI&e=

Michael Flemming:many*

Alexander Schubert:Just look at these with 1 or 2 regs

Michael Flemming:my vocabulary is not fairing well tonight.

Sophia Feng 2:I assumed majority of the brand TLDs only have nic.TLD delegated

Kathy Kleiman:good question - lame duck TLD delegation?

Alexander Schubert:As per

https://urldefense.proofpoint.com/v2/url?u=https-3A_ntldstats.com_tld&d=DwIFaQ&c=FmY1u3PJp6wrcrw113mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwehFBfjrsjWv9&m=pECYzDTQHKC328zF-t-b6PeIJDnfnARoc4UXF_yXki8&s=Rj06BPDWn93SEFZr-5ZQTD8pEOn_mL-55GqDzpGqSrI&e= there seem to be (if their data is accurate) that there are 386 gTLDs with only ONE registration!

Jim Prendergast:Delays maybe on ICANN but staff turnover at applicants and registries certainly is not.

Alexander Schubert:Most of these seem to be brands!

Jeff Neuman:@Jim - the delays caused issues and in some cases certain people to be terminated from their jobs because they made representations relying on ICANN's timeline.

Jeff Neuman:So, there is a relationship there

Kathy Kleiman:Then let's impose a new deadline, but a reasonable one.

Jim Prendergast:I would also say that many of the brands were victims of the free puppy syndrome - whereby legal applied for it in defensive posture and once it came time to delegate it, they punted it to marketing who said - hey here's a free TLD. with no budget, planning etc

Jeff Neuman:@Kathy - the deadline on delegation is a reasonable one. The timelines should be on ICANN to meet

Alexander Schubert:Lots of Amazon business plans - all having only one domain registered:

Alexander

Schubert:.audible.book.circle.coupon.deal.fast.fire.free.got.hot.joy.like.pay.read.room.safe.save.secure.silk.song.spot.talk.tunes

.you.zero

Kristina Rosette (Amazon Registry):@Alexander: That's right. Lots of business plans being developed.

Kathy Kleiman:I'm online in the chatroom -- but YES

Jeff Neuman:@Alexander - lets heed Kristina's warning and not make assumptions on motives for Registries

Karen Day:@Kathy - a deadline of anykind isn't going to work in for a brand that has management change over where since delegation, we've had to re-educate and re-sell our vision to a new c-suite 2x over for example

Kathy Kleiman:I have a huge problem with it.

Karen Day:That should not diminish our right to our brand tld

Kathy Kleiman:exactly -hording is exactly the right word

Alexander Schubert:Some might just want to "shut down" their verticals!

Kathy Kleiman:@Karen, brands are probably different.

Kristina Rosette (Amazon Registry):Let's be careful about our assumptions, folks.

Kathy Kleiman:but the rest - the vast majority of gTLDs - should not be horded. Not fair to the Global South.

Kathy Kleiman:Global South :-)

Christine Farley:I disagree with everything that was just said!

Jeff Neuman:@Christine - can you be more specific for the record

Christine Farley:1) I'm against hording. 2) We SHOULD investigate the past to form future policy. 3) .brands should NOT have special rules b/c there re other brand owners elsewhere interested in the same TLDs & some brands are generic words.

Kathy Kleiman:right - I just stepped away and came to the same conclusion as Christine - it's still hording for brands since many brands share the same name.

Jeff Neuman:Perhaps some useful data we can get would be: (i) How many TLDs have just nic.TLD delegated and (ii) Of those TLDs with just nic.TLD delegated, how many of them have either a spec 13 designation or a Code of Conduct exemption

Kristina Rosette (Amazon Registry):I think we need to break that first question down.

Jim Prendergast:It sounds like from this discussion there is an open question the the purpose and utility of the deadlines - probably a question that should be posed to community as past fo preliminary report

Kathy Kleiman:What should Delta Airlines sit on .delta if other delta organizations, corporations, organizations want it?

Kathy Kleiman:even other brand owners

Kathy Kleiman:I like the idea of looking, Jeff.

Kathy Kleiman:Otherwise, let's keep the delegation rules the

same.

Jim Prendergast:if other corps want .delta - they could make an offer to buy it. Then Delta re-evaluates its model

Kristina Rosette (Amazon Registry):I'd caution folks against making assumptions and levying allegations such as "hoarding." There are no facts to support those allegations.

Karen Day:+1Kristina

Christine Farley:What about putting into the deadline extensions of time as in US Intent-to-use policy?

Michael Flemming:We are playing with ideas

Kathy Kleiman:no - a request

Kathy Kleiman:we need this data

Jim Prendergast:yes - need data

Christine Farley:Jeff, how would you imagine that we find out if a brand owner somewhere in the world would be interested in a delegated TLD?

Kathy Kleiman:it's a fairly defined question for data gathering

Jeff Neuman:@Steve - it is a request and is easy to obtain

Michael Flemming:Yes, but lets formulate it properly and send it to the list before we send it off to ICANN. We benefited from that last time when we sent a data request to ICANN.

Steve Chan:From a procedural perspective, the idea of distributing to the list is to ensure that those not on the particular call are also informed of the question/data request and allowed to weigh in.

Jeff Neuman:@Christine - I am not saying that we can find that out...but you made a statement that said that there are "other brand owners elsewhere interested in the same TLDs". We cannot either prove or disprove your statement

Steve Chan:From a staff perspective, it just seems like a good idea to do so.

Michael Flemming:Steve, we will formulate it and send it to the list.

Kathy Kleiman:It's a good question, but not a cshow stopper. We are a technical organizaiton- we can certainly define "use."

Karen Day:+1 to Alan's comment on determining if this is a road worth travelling

Kathy Kleiman:The pause is that it's likely to be different for brands and other tlds.

Kathy Kleiman:also needs data...

Michael Flemming:On page 9

Jeff Neuman:@Kathy - other than the data I have asked for, is there other data you think we need?

Trang Nguyen:Contractual Compliance has been working on providing more granular details in their reports. An example is this new report:

[https://urldefense.proofpoint.com/v2/url?u=https-3A_features.icann.org_compliance_dashboard_2017_q4_registrar-2Dresolved-2Dcodes&d=DwIFaQ&c=FmY1u3PJp6wrcrwl13mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWGlBLwwehFBfjrsjWv9&m=pECYzDTQHKC328zF-t-b6PeIJdNfnARoc4UXF_yXki8&s=pGw9Wik-8wPcdKV0MIkBRl22V-Q32PCddqt5ZECm8WM&e=.](https://urldefense.proofpoint.com/v2/url?u=https-3A_features.icann.org_compliance_dashboard_2017_q4_registrar-2Dresolved-2Dcodes&d=DwIFaQ&c=FmY1u3PJp6wrcrwl13mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWGlBLwwehFBfjrsjWv9&m=pECYzDTQHKC328zF-t-b6PeIJdNfnARoc4UXF_yXki8&s=pGw9Wik-8wPcdKV0MIkBRl22V-Q32PCddqt5ZECm8WM&e=)

Kathy Kleiman:Sorry, I'm preparing for a speech in an hour and had to step away.

Kathy Kleiman:What was delegated from RPM to SubPro -- happy to think about with you.

Kathy Kleiman:right - issues brought to us, but not studied by us (RPM) yet. Actually, we have some questions going on these issues in our professional data gathering study going out shortly.

Kathy Kleiman:(RPM WG)

Kathy Kleiman:Tx for clarification, Jeff.

Sara Bockey:i need to drop. Thanks all

Michael Flemming:Thanks for joining us, Sara!

Michael Flemming:Feel better soon and have a good weekend.

Jim Prendergast:do we have any sense of how widespread this activity was and was it brought to compliance? If so, what was their response, if any?

Michael Flemming:Jeff*

Kathy Kleiman:the WGs should share information on this.

Jeff Neuman:Sorry I rambled a little bit there. I will try to take a first stab at pointed questions.

Michael Flemming:I agree that any current data gathering going on right now by RPMs would be welcomed to collaborate on with WT2.

Christine Farley:Do I understand correctly that of the 3 concerns raised by brand owners that Jeff just outlined, only 1 was specific to brands. That is, the exclusion of premium names from sunrise and price in sunrise is not specific to brand owners. the concern specific to brand owners is names that are TMs that priced higher.

Jeff Neuman:@Christine - The concerns were brought up by brand owners. Whether they are exclusive to brand owners, I will let others weigh in.

Kathy Kleiman:@Alan and all: I would like to find out how extensive a practice this was before we get into it further.

Jim Prendergast:Greg - when you say widespread - can you put metrics on that? I ask because is this limited to some registry operators or do we need an ICANN wide policy?

Kathy Kleiman:Unfortunately, the Trademark Clearinghouse data is secret, the Premium Names list is secret as are the Reserved

Names List.

Kathy Kleiman:How do we go beyond anecdotal on this?

Christine Farley:Seems like it would be interesting to look at exactly which names that are also TMs were priced higher. I'd like to know if they were TMs that are exclusively used by one party or not.

Jeff Neuman:All - The RPM Group is discussing what is in the TMCH. Lets not go down that path please

Greg Shatan:Alexander, I would be curious to see those lists of "generic terms" registered as trademarks to get a sense of which ones are bad faith registrations and which ones are legitimate registrations of non-coined terms.

Christine Farley:@Greg, me too. But how can we see what is in the TMCH?

Kathy Kleiman:good phrasing

Greg Shatan:@Christine, that is still a good question for which there is no good answer.

Christine Farley:Shouldn't ACME be a premium name?

Greg Shatan:On what basis?

Alexander Schubert:I had access to lists of literally HUNDREDS of generic premium terms that were submitted to the TMCH to snag up premium domains. Most of these TMs stem from the .eu introduction when THOUSANDS of generic terms were trademarked to get the top .eu domains! I assume by 2021 all of these .eu trademarks are expired hopefully.

Christine Farley:wide interest

Michael Flemming:A good question would be to ask Registries how they built their premium name lists. Alexander's input suggests a potential answer to that question.

Jeff Neuman:@Alexander - That data is good to provide to the RPM Group. I am sure the more specific you can be and data you can provide would be helpful.

Alexander Schubert:And Greg again: "facebook" on a premium list is a SCANDAL! I agree.

Christine Farley:Wouldn't the answer to Jim's question be that this a trade secret business model?

Karen Day:PICDRP was filed in one case and registry was found to have committed fraud if I recall correctly.

Jeff Neuman:Also forgot to bring up another point - The practices of .feedback were brought up in a PICDRP Case. Although the panelists found "fraud", they conceded that there was nothing in the Agreement that punished a registry for committing fraud. Should we address that?

Alexander Schubert:What about that only dictionary terms can be in the reserved list?

Greg Shatan:Many strong and valuable trademarks are "dictionary

terms". Trademark law gives largely the same protections to trademarks whether they are made-up terms or "dictionary terms."

Jim Prendergast: not a lawyer - but if there was fraud - could there be legal action outside of ICANN?

Alexander Schubert: Greg: Agreed. A problem!

Jeff Neuman: @Jim - nope. The agreement did not prohibit fraud :)

Christine Farley: @greg, that's not exactly true

Jeff Neuman: It was not criminal level fraud which could be prosecuted by states, but a civil form of fraud

Greg Shatan: The most valuable brand in the world is Apple. A "dictionary term."

Greg Shatan: @Christine, I said "largely." We could get into the nuances but there's really no need to.

Kathy Kleiman: How about closed TLDs???

Kathy Kleiman: would benefit a lot from community input

Kathy Kleiman: Tx Michael!

Christine Farley: Delta is also a valuable brand, but I can see why it could be a premium name

Jeff Neuman: @Kathy - we will put out to the list

Kathy Kleiman: good discussion, tx!

Alexander Schubert: THANKS. Bye!