CONTENT OF CHATROOM – NBO Meeting – TRADEMARK PROTECTION IN NEW gTLDs

Date:
Monday, 8 March 2010 - 16:00 - 17:30

Room:
Tsavo A

Presentation:
Trademark Protection in New gTLDs

Meeting Leaders:
Margie Milam Senior Policy Counselor

http://nbo.icann.org/node/8927

[16:00] Frederick_F: no audio
[16:00] Roland_2: Terrible echo on the audio
[16:02] Nick_Ashton: Welcome to the session
[16:02] markus_trav:
[16:02] Robert_Hogg: welcome everyone
[16:04] Robert_Hogg: given the three-part format of this session PLEASE indicate the topic of your question before you type it
[16:05] nashton: To ask a question or make a comment, please use the link immediately to the right entitled 'Ask a question or make a comment' by clicking on it, and pressing the 'Browse to" button directly below
[16:06] nashton: You may also find the URL for the question/comment box on the agenda page for the session at http://nbo.icann.org/node/8927
[16:06] nashton: You can also see the comments and questions of others using the relevant button on the right, and from the URL in the agenda
[16:16] Frederick_F: wait, isn't it that with new TLDs that the clearing house is only in effect for secondary registrations
[16:17] James_Blade: Question: If the new registry uses the TMCH for Sunrise, does this mean they can cease using (and paying for) it once the TLD is open for general registration?
[16:17] *** Kathy_Kleiman2392 (anon@208-58-72-27.c3-0.fch-ubr2.lnh-fch.md.cable.rcn.com) has joined channel #tsavoa
[16:17] jberryhill: @bladel - a registry could choose to use it as part of a claims notification service (like the .biz STOP)
[16:19] James_Blade: @John: Optionally?
[16:19] Kathy_Kleim: Peter is right -- and the goal of the STI was to prevent the Clearinghouse from doing any independent verification of trademarks.
Kathy_Kleim: That type of verification is not a role we wanted ICANN - or an ICANN-contractor. That's not ICANN's role (nor one we want).

jberryhill: @bladell - sure @Kathy_Kleiman - I can get any TM registered that I want in 24 hours in Tunisia or 2 weeks in Benelux - that's what happened to the .eu sunrise, it was swamped by "TM registrants"

Gordon_Chil: "Verification" can be "show me a specimen of use"

Gordon_Chil: Court Validated" marks sort of suggests why they didn't simply go to an existing database.

jberryhill: @gordon because some people do not register or enforce until they have an infringer

Gordon_Chil: Understood, and they wanted to be able to cover that.

Kathy_Kleim: That's why, if the Clearinghouse is mandated to accept the Benelux (no review) marks, then under the STI recommendations, Registries should be able to choose only the substantive review marks in their pre-launches.

jberryhill: @gordon - at least "some official body" has looked at it. However, I can run a collusive suit and get a court judgment.

jberryhill: I file suit against you for infringing my "blah" trademark - you stipulate to an injunction - boom, I have my "court validated trademark". Easy peasy

James_Blade: Question: If the use of TMCH is optional for rights holders, then what is the incentive to use & pay for the service? Should failure to register marks with TMCH be considered in UDRP / URS?

Michele_Ney: "court validated"? What's that mean in terms that a normal human can understand?

Frederick_F: @kathy K - what constitutes substantive review? and how do you differentiate between substantive and other reviews?

Kathy_Kleim: yes, we were using the one from the IRT Report

jberryhill: @bladell - it's just a toolkit upon which policies can be built. @michele - "court validated" means that a court has rendered a judgment of some kind - like my default suit against you in a remote jurisdiction

Michele_Ney: John - that's nuts

Michele_Ney: So "court validated" means I have to sue one of you just to show that I have a TM

jberryhill: Rather than fixating on what is "substantive review" the question is "how do we address 'paper trademarks' for dictionary words in easy jurisdictions"

jberryhill: @michele - yes. In some jurisdictions, registration is not required to have an enforceable right

Eric_Brunne: ++1 jberryhill

Michele_Ney: John - I know - I've defended our rights based on common law rights and usage

Kathy_Kleim: It was understood in STI that creating a list of countries which conduct substantive review would be straightforward to produce. We discussed this a lot.

Michele_Ney: Kathy - great, but you're ignoring lots of people's rights based on usage + actual LAW

Michele_Ney: as opposed to some ICANN invented rubbish

jberryhill: Hang on Michele - the database itself doesn't determine anyone's rights under any
policy - it is but ONE tool of many

[16:28]  jberryhill: The problem is trying to solve EVERY problem with each tool, instead of looking at the overall picture and deciding whether we have enough different tools

[16:29]  Michele_Ney: John - so let the courts decide :)

[16:29]  Kathy_Kleim: M-N, the goal is to protect and balance everyone's rights -- including the rights of others to dictionary words, fair use and generic terms

[16:30]  Michele_Ney: Kathy - I see it being abused by big brand holders

[16:32]  Kathy_Kleim: I do too -- that is why goods and services are listed in the TC, and the STI wanted to give Registries to use only those TMs with the goods and services relevant to their new gTLD

[16:33]  Kathy_Kleim: wanted to give Registries **the right** to use only those TMs with the goods and services relevant to their new gTLD

[16:34]  Peter: hello

[16:34]  jberryhill: @kathy - but let's not confuse "what goes in a database" with "what does a policy do with it"

[16:38]  gpmgroup: Would it be worth considering price limits for domain names registered during sunrise periods or perhaps even the option to register a non resolving name where the funds are paid to ICANN rather than the new gTLD registry as these measures may help minimize any new gTLDs being set up primarily to benefit from defensive registrations and speculation purposes?


[16:53]  Doug_Brent9: test

[16:55]  Doug_Brent: Test


[16:57]  wseltzer: whoa, the Board might make a decision??

[16:58]  Michele_Ney: odd

[16:58]  Eberhard: I am surprised, too, to hear that the Board might decide

[16:59]  Kathy_Kleim: There is great worry in the community that the Czech Arbitration Court and WIPO expedited review changes to UDRP will bypass the ICANN community input process. We hope all changes to the UDRP will be done together!

[16:59]  Jeff: We may have a couple people here in Reston that have a question. Kristina has one.

[17:04]  Kathy_Kleim: It must be faster- it's a 3-day decision period (or thereabouts)

[17:05]  Bruce_Tonki: Cost and time to resolve are often trade-offs. In this case I assume we are trying to make it cheaper and faster. May not always be possible to do both.

[17:06]  jberryhill: it can only be fast and cheap if narrow, but everyone wants to solve every problem with it

[17:06]  Bruce_Tonki: Certainly thre can be cost savingsd in using electronic documents rather than shipping paper around.

[17:06]  Bruce_Tonki: Also cost savings in allowing judgements online, rather than having to attend a court hearing

[17:07]  Kathy_Kleim: It is much narrower than the UDRP - again to make decision-making faster (and to encourage Complainants to bring only appropriate filings to the URS forum).

[17:07]  Jothan_Frak: it was partially rhetorical
Jothan_Frak: thank you for consideration
mib_jt5l7e: Nominet doesn't have an expediated process - just a cheaper process in cases where a registrant doesn't respond to a complaint.
ms_2: Nominet has a mediation phase plus a cheaper and quicker process where no response is filed
Pat_Kane: hey suzanne
Kathy_Kleim: Nominet has very clear criteria for safe harbors -- which are now embraced under the "defenses" section of the URS.
RESTON: Scribe audio is cutting out -- but our audio is fine here in Reston -- Mikey
Joly_MacFie: It's cutting out for me too
Frederick_F: audio poor now
Frederick_F: cutting in and out
Marika_Koni: We are working on it
Philip_Corw: cutting in and out for me as well--was fine until just a few minutes ago
RESTON: bah! Never mind -- we're coming in by phone. belway that last comment -- Mikey - - too little sleep
steve_metal: Same audio troubles here though nothing seems to be lost
Frederick_F: dropping substantially most of the content at this point
Marika_Koni: Please confirm whether audio has improved
Kathy_Kleim: Alas, no
Michele_Ney: audio is in and out
steve_metal: audio has not been fixed and is now totally out of sync with scribing
gpmgroup: no
Philip_Corw: what audio?
Michele_Ney: no audio at all now
Philip_Corw: it is getting worse, not better
ms_2: Give it a minute or two
steve_metal: video just dropped
Jothan_Frak: try using the feed instead of the adobe connect audio
Jothan_Frak: 16k feed working great
ms_2: it is back
Joly_MacFie: 64k not
steve_metal: video back but no audio
Michele_Ney: ack it's just avc anyway
Jothan_Frak: http://stream.icann.org/tsavoa-16-en.m3u
Michele_Ney: sure what will he say? :)
Michele_Ney: or here
Marika_Koni: We are looking into it
ICANN: it is a general issue
Joly_MacFie: scribes are on the phone presumably?
VeriLAN_MDR: no, scribes are in an office at ICANN HQ
Michele_Ney: fallback audio only on both channels
Michele_Ney: piano music
gpmgroup: scribes must be hands free - their ability to keep up with even the fastest speakers is amazing
Marika_Koni: We are working on it, but it might take a little bit to get the audio streams back up
Marika_Koni: Hopefully everyone can see the scribing in Adobe Connect
Joly_MacFie: yes thanks
Frederick_F: can see but can't figure out how to scroll back to re-read something
Joly_MacFie: http://nbo.icann.org/SCRIBE-feed
Kathy_Kleim: Agreed - much work to done on this point.
Nick_Ashton: Cannot scroll the scribining in the AC interface - we are going to make improvements for Brussels to make that possible
Nick_Ashton: However, as Joly said, the lo-bandwidth scribe feed will let you scroll
Eric_Brunne: nic: sound is down
Nick_Ashton: Yeah, sorry about that, they are working on it
Jothan_Frak: +1 Michael
Joly_MacFie: Michele must be upset to miss Foody
Kathy_Kleim: Who is responding to Paul?
Jothan_Frak: Kathy that's michael silber
Kathy_Kleim: Tx, it's all silence here...
Jothan_Frak: the moderator
Kathy_Kleim: Agree with the moderator!
ms_2: thanks kathy :-)
ms_2: Even though I was only partly correct
Frederick_F: Jothan - what m+m study was referred to earlier?
Joly_MacFie: almost getting audio on the 64k
Michele_Ney: Frederick - there are two on the M + M site
Joly_MacFie: but no cigar
paulfarkas: no audio again
Frederick_F: but there was one referred to in this session, which was referred to?
Jothan_Frak: it is up on the mm website under the blog or email me jothan at mindsandmachines.com and I'll send it to you
Jothan_Frak: @ff
Kathy_Kleim: But these is another remedy in the new gTLDs for post-launch disputes - in addition to the URS -- and that's the UDRP. As Mary mentioned, the UDRP still exists and is not displaced by the URS. They complement each other.
Jeff: Although the line between fast track UDRP and URS is being blurred by dispute providers
Jeff: And we need to examine that
Joly_MacFie: audio there but a lot of clicking
Joly_MacFie: http://stream.icann.org/tsavoa-64-en.m3u
Kathy_Kleim: We do, but I don't see any adoption of that yet. It should some though ICANN.
[17:47] Kathy_Kleim: meant -- it should go through ICANN.
[17:47] Nick_Ashton: There is a problem upstream in Europe apparently
[17:47] Philip_Corw: ICANN Board has to tell CAC that they can't just go ahead and implement their
own fast track UDRP process absent ICANN approval in a blatant attempt to attract complainants
[17:48] Joly_MacFie: audio good now
[17:49] Phil_Buckin: I am in UK - no audio for ages
[17:49] Philip_Corw: still the sounds of silence at my computer in Alexandria VA
[17:49] wseltzer: nearly wrapping up here
[17:50] gpmgroup: @Philip more here http://www.adr.eu/arbitration_platform/news.php
[17:50] ms_2: you back philip?
[17:51] Joly_MacFie: still no audio in adobe connect - but audiocast is good
[17:52] Paul_Farkas: thanks
[17:52] Paul_Farkas: finally
[17:52] Joly_MacFie: now back in adobe
[17:52] Philip_Corw: audio back here as well
[17:53] Paul_Farkas: ok lets start over
[17:53] Jothan_Frak: I congratulate the team on their work and the improvements that they've made
since Sydney
[17:53] Jeff: lol
[17:53] Phil_Buckin: Audio back finally
[17:54] nashton: Sorry for the period with no audio, there was a problem upstream from Nairobi, at
the first uplink from Nairobi there was a period of serious packet loss
[17:54] dotSCOT: Joy, an echo on the audio feed now!
[17:54] Joly_MacFie: sounds good here
[17:54] nashton: Getting no echo from the AC audio feed...
[17:54] ms_2: do you have audio feed and adobe running at the same time
[17:55] Mouhamet_Di: yes for now
[17:55] dotSCOT: Let me check, but I don't think so...
[17:56] Kathy_Kleim: Great panel, All, thank you!!
[17:56] wseltzer: and we're out
[17:56] ICANN: Thanks so much, everyone remotely
[17:57] Joly_MacFie: very good
[17:57] Mouhamet_Di: Thanks you all for allowing us to follow remotely.
[17:57] Mouhamet_Di: Good job
[17:57] Nick_Ashton: Thank you for joining!
J: thank you all
Michele_Ney: audio disaster
Eric_Brunne: thanks all
Nick_Ashton: Seeing so many people using these services makes it all worthwhile
Ryan_Kaatz: Thank you for setting this up.
Joly_MacFie: presumably the connection problems won't affect the archive