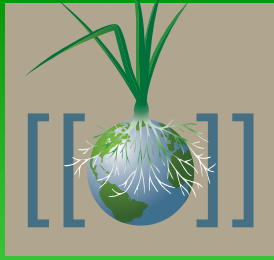


ICANNWIKIQUICKIE

June 27, 2006



ICANNWiki
www.icannwiki.org

Wiki Wiki means "quick" and "easy" in Hawaiian. A Wiki is a set of pages that are open for anyone to edit as they wish. Wiki also has "Automagical Linking" that handles all of the messy details of cross-referencing hyperlinks between the pages in the Wiki. The result is a very rich reading experience.

ICANNWIKI seeks to use wiki technology to create a valuable and long term resource for ICANN-goers, domain people and anyone interested in our industry.

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caricatures by Rhoda Grossman. www.digitalpainting.com

Monday ICANN Marrakech Session Notes Available

Session notes for several ICANN Marrakech conference sessions are now available. Topics include the Welcome Ceremony, the GNSO Cross Constituency Meeting, the NCUC, ALAC RALO and the Registrars Constituency. Check the page below often, as new content is constantly being updated.

Also, please feel free to add or edit any content you see. That's the beauty of a wiki!

http://icannwiki.org/Marrakesh_Schedule_%26_Session_Notes



Congressional Hearing on ICANN-VeriSign Settlement

On WEDNESDAY, JUNE 7, 2006, the House Committee on Small Business held a hearing entitled "Contracting the Internet: Does ICANN create a barrier to small business?" The topic of the hearing was primarily the price increase component of the ICANN-VeriSign Settlement.

Testifying before the committee were:

Becky Burr - primarily on historical background issues.

John Jeffrey - ICANN General Counsel

Rick White - Former US Congressman and current policy advisor to Verisign

Champ Mitchell - CEO of Network Solutions

Craig Goren - CEO, Clarity Consulting, Inc.

Steve DelBianco - Executive Director, NetChoice

The latter two witnesses were interesting folks, who were primarily there to testify that small businesses overwhelmingly support paying more for domain registrations because the proposed increases permitted in the contract is not a lot of money. That of course, depends on whether you are on the paying end or the receiving end. Imagine, for a moment, that Verizon decided to tack on a couple of extra dollars on their long distance bills, oh, just because they felt like it. Would it be the end of the world for their customers? Probably not. But Mr. Goren and Mr. Delbianco thundered away that an extra couple of dollars for domain registrations will make the internet work better, and will end Cyber Squatting, DOS attacks, and probably cut down on illegal immigration, tooth decay, and attacks by wild bears.

Many of the usual suspects were in attendance, including Marilyn Cade; Michael Palage (noted private citizen and conscientious abstainer); Jeff Neuman; an ICANN brigade consisting of John Jeffrey, Kurt Pritz, and Dan Halloran; Marc Ostrofsky of IREIT.

John Jeffrey provided much-needed comic relief, by "clarifying" the fact that the ICANN-VeriSign Settlement does not actually require VeriSign to increase prices, but merely permits them to do so, should they believe that a price increase in .com is desirable...

http://icannwiki.org/Congressional_Hearing_on_ICANN-Verisign_Settlement

"I'm also happy to answer any questions for you. My perspective wasn't that the price hike was arbitrarily reasonable and therefore should be approved, it was that this issue was before the small business committee, and although there may be reasons for congress to not approve this private contract, it should NOT do so in the name of small business pricing."

Craig Goren

Settlement on Capitol Hill

A hearing was held on the price increase component of the ICANN-VeriSign Settlement.



.EU Landrush Begins

By David Taylor

On April 7, 2006, the .EU Top-level Domain (TLD) opened for general registration to all businesses established within the European Union, as well as to natural persons resident within any of the 25 Member States. This is the most heavily regulated TLD ever, governed by EC Regulations, Rules and Policies.

There were over 700,000 registrations in the first four hours of the Land Rush Period as European entities and European citizens raced to claim a piece of virtual European property. Within just one week of launch some one and a half million domain names had been registered on 24 June 2006 this is approaching two million .EU domain names.

However, not all of this virtual land was available on April 7, 2006. A somewhat complex "Sunrise Period" preceded the April 7, 2006 opening, commencing on the December 7, 2005. Running for a period of four months it was designed to protect existing intellectual property rights holders and allowed those eligible applicants with Prior Rights as defined to stake an early claim in the virtual .EU world matching their existing rights in the physical world. During the Sunrise Period, a total of 346,218 applications were filed for 245,908 different domain names.

SUNRISE PERIOD AND VALIDATION

As is now fairly standard with launches of new top-level domains (e.g., .BIZ, .INFO, .HK) a Sunrise Period was put into place for .EU in order to give rights owners the opportunity to register their names before unscrupulous parties.

The Sunrise Period, which opened on December 7, 2005, was divided into two phases, each lasting for two months. During phase one (from December 7, 2005 to February 6, 2006) only domain names corresponding to:

- registered European Union national trademarks, community trademarks or International trademarks covering one of the European Union Member States; or
- geographical indications or designations of origin, could be applied for (leaving aside certain rules applying to public bodies). Phase one itself was a clear success, over 100,000 applications were filed on the first day alone.

Phase two of the Sunrise Period began on February 7, 2006 and continued until midnight on April 6, 2006 before giving way to the opening of the Land Rush Period at 11am CET on April 7, 2006. In addition to the phase one rights referred to above, domain names corresponding to other rights protected under the national law of the Member State could also be registered, for example; company names, business identifiers, distinctive titles of protected literary and artistic works, unregistered trademarks and trade names.

During the Sunrise Period, a total of 346,218 applications were filed for 245,908 different domain names. The extra number of applications is perhaps an indication of the potential for domain name disputes, as it means that in numerous

instances two or more parties claimed a prior right in relation to the same domain name.

The European Commission can be commended for creating the obligation for all sunrise applications to be physically verified. Indeed, in previous sunrise periods the process was automated with the result that entities with no relevant rights sought and sometimes succeeded in benefiting from the sunrise period in question. Accordingly, supporting documentation is a requirement for all applications during the .EU sunrise period.

However, the Commission made the task of verification and thus validation a potential nightmare by creating an extremely wide definition of prior rights. While a registered trademark can easily be verified with an online search and proved with one simple certificate, the verification of the other listed prior rights is infinitely more complicated. Under Italian law for instance, in certain circumstances the local use of trade signs and unregistered trademarks can prevent others from using national trademarks registered after the beginning of such use. This principle is expressed in Italian trademark law (Royal Decree no. 929 dated June 21, 1942, as amended) which specifically protects unregistered trademarks ("marchi di fatto") giving the owners priority rights in the use of such trademarks. As such, they can seek to obtain a preliminary injunction against owners of registered trademarks, effective only in the geographical area where the unregistered trademarks are used (and known) for the relevant products. Difficulties arise already in Italy in evidencing prior rights in the use of unregistered trademarks (e.g., evidence of the commencement of use, local advertising, local/public knowledge of the signs).

The verification of existing rights is compounded by the fact that such rights are not uniformly recognised across the European Union, for instance, personal names are not protected in the United Kingdom as they are elsewhere on the continent. Thus a critical element of applications made during the Sunrise Period is the validation of prior rights. EURid is proceeding to register the first application in the queue for a particular domain name received, subject to validation of the prior right claimed. Once an application has been approved, all remaining applications are automatically rejected. In order to qualify for acceptance, the relevant documentary evidence proving the existence of the prior right must have been submitted to the validation agents, PricewaterhouseCoopers, within 40 calendar days of receipt of the original application.

The documentary evidence required for each application depends upon:

- the prior right concerned; and - the country where such prior right is held.

If the required evidence has not been received by the deadline, the application will be considered to have expired and the next application in the queue will be considered. Although this is certainly very helpful in what is a complex area, it remains to be seen how many issues arise in connection with incorrect applications, questionable validations and future challenges.

Many applicants did not understand the nature of the Prior Rights claimed. In the rush to file an application during the Sunrise Period, it was not enough to file an application with a registrar and then try to find a matching and eligible Prior Right within the 40 day deadline. One should have carefully checked the eligibility of all potential Prior Rights and carefully selected the appropriate one to match exactly the desired domain name. This Sunrise Period was an Intellectual Property event, and a clear understanding of IP rights was essential to success. Importantly, for instance, pending trademark applications were not considered as valid Prior Rights for applications in the first phase, and device marks are only accepted where, the documentary evidence provided clearly depicts the name for which the prior right is claimed.

A clear understanding of the Sunrise Rules was therefore essential prior to making an application in order to obtain a successful registration.

The fact that there was no specific cut-off date for trademarks to be registered meant that those entities who, having reviewed the Sunrise Rules in detail and realising that their brand may not be protected by an eligible Prior Right, could file for a word trademark to match exactly the domain name they desired. In many cases where entities had received legal advice they filed trademark applications early on in 2005 and these were registered before the launch of the first phase of the Sunrise Period on December 7, 2005. Again, where entities were well advised and time was of the essence, in appropriate circumstances it was possible to make use of the accelerated registration procedure under the Uniform Benelux Trademark Law. This allows an applicant to request an accelerated registration of its trademark, without waiting for the results of the examination of earlier rights or of absolute grounds for refusal. As such, a Benelux trademark can be obtained in 24–48 hours. It is clear that it proved very popular to those “in the know” prior to the .EU Sunrise Period with a significant increase in Benelux filings in November and December 2005.

The problem of there being no cut-off date for a trademark to be registered combined with the possibility of accelerated registration procedures means that such a process is not just open to genuine brand owners but also “creative” parties looking to find away around the system by obtaining eligible prior rights and thus file for .EU domain names based upon those rights. In many instances, Benelux trademarks have been registered for “creative” trademarks such as ALUMI&NUM, AN&AL, BARC&ELONA, etc. The subsequent .EU domain name applications may well lead to a number of disputes.

The fact that .EU domain names applied for during the Sunrise Period have also been allocated on a first come, first served basis means that a number of well-known companies have already failed to obtain their preferred domain names. For instance, the domain name <polo.eu> was applied for by car maker Volkswagen, as well as by fashion house Ralph Lauren and confectionary manufacturer, Nestlé. The domain was awarded to Volkswagen whose application beat the other two by a mere three minutes and 24 seconds! This underlines the importance of carefully selecting the registrar and ensuring a high queue placing with the registrar, so as to be the first served. Similarly, the Discovery Channel won the battle for

<discovery.eu>, beating the application by Land Rover (the Ford Motor Company) which was second in the queue.

However, it was not just a case of first come first served. Although this was clearly important during the Sunrise Period, the required documentary evidence is also critical. If the documentary evidence submitted by the registrar is incorrect, then even if the application is in first position in the EURid queue, without appropriate and correct documentary evidence the application is liable to be rejected. EURid has so far validated some 103,000 applications but rejected over 35,000. With some 25 percent of the Sunrise Period applications currently being rejected, presumably as a result of incorrect documentation being supplied, this highlights the importance of having obtained correct legal advice at the time of making the Sunrise Period applications, to ensure that they were based upon valid and eligible intellectual property rights.

The validation of rights in the .EU namespace will prove a more difficult task than that encountered in any other sunrise period to date. The challenge of correctly validating a variety of national rights – registered and unregistered – across some 25 Member States is significant enough given the scope for genuine competing rights in 25 jurisdictions. However, the attraction of .EU to cybersquatters will mean that we can also expect a considerable number of dubiously claimed rights and matters are complicated even further by the need to accept supporting documentation in 20 official languages. EURid have indicated that the bulk of validation will be complete by September 2006 but one can expect that there will be some stragglers through to the end of the year. In any event, we can expect difficulties down the line when the ADR panels consider whether the validation has been correctly carried out and also the existence of the rights and whether or not the registrant has a legitimate interest or is acting in bad faith.

THE ALTERNATIVE DISPUTE RESOLUTION PROCESS

The Alternative Dispute Resolution (ADR) process, despite being modelled on the Uniform Domain Name Dispute Resolution Policy (UDRP), has subtle yet significant differences. Its aim is to dissuade abusive and speculative registrations, or at least resolve any disputes over such registrations in an efficient manner.

Regulation (EC) No. 874/2004 sets out the public policy rules concerning the implementation and functions of the .EU top-level domain, including the revocation and settlement of conflicts. The relevant Articles are 21 to 23, which deal with speculative and abusive registrations, ADR procedures and the selection of providers and panellists for ADR. The .EU ADR Rules clearly reflect this Regulation, the provisions of which were modelled on the Uniform Domain Name Dispute Resolution Policy (UDRP) and Rules, introduced by ICANN in 1999.

There are in fact two possible ADR routes, one during the Sunrise Appeal Period against a decision of the registry, EURid, named ADR I here, with a second route only available after the Sunrise Appeal Period is over, this time against the registrant, named ADR II here.

Sunrise Appeal Period and ADR I against the Registry (EURid)

Once a decision to register a domain name has been taken, it will only be activated after a period of 45 calendar days, i.e., five days after the expiry of the 40-day long “Sunrise Appeal Period”. During this period any interested party may initiate an ADR procedure against EURid on the grounds that its decision to register a domain name does not comply with the two European Union Regulations dealing with the implementation of .EU (Regulations (EC) No 733/2002 and No 874/2004).

In the event that an ADR panellist concludes that EURid’s decision to register a domain name is contrary to the Regulations, then EURid will decide whether or not to register the domain name in the name of the next applicant in the queue, in accordance with the Sunrise Rules. The Czech Arbitration Court 11 is the ADR provider for .EU related disputes both during the Sunrise Appeal Period against EURid itself (ADR I as referred to above) and against the registrant after domain names have been activated (ADR II described below). To date, it appears that the validation process has been carried out rigorously by EURid. As at 22 June 2006 There have been 27 decisions issued by the Czech Arbitration Court concerning EURid’s decision to accept or reject an application, in 12 of these the panel have ordered that EURid’s decision be annulled.

ADR II against the Registrant

The UDRP is designed to serve as a simple and cost effective remedy for obvious cases of cybersquatting. It applies to certain generic top-level domains (gTLDs) such as .COM and .NET, and has also been adopted by various countries to apply to their country code top-level domains (ccTLDs). The UDRP has proved popular with some 28 countries adopting it in its classical form, whilst another 20 have adopted a variation of the UDRP.

In the classical UDRP, Complainants have to prove three elements, namely that:

- the disputed domain name is identical or confusingly similar to their trade or service mark;
- the respondent does not have a right or legitimate interest in the domain name; and
- the respondent has registered and used the domain name in bad faith.

Paragraph B11(d) of the .EU ADR Rules provides as follows:

“The Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in ADR Proceedings where the Respondent is the holder of a .EU domain name registration in respect of which the Complaint was initiated that:

- (i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either

- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; or

- (iii) The domain name has been registered or is being used in bad faith”.

At first sight, these three conditions appear to be identical to those of the classical UDRP. However, the .EU ADR Rules are deceptively similar and in fact considerably wider than the UDRP.

Some thoughts to end with

It has taken a long time for .EU to be fully realised, but with one in 14 people in the world living in the European Union, a population equivalent to the combined populations of the United States and Japan, potential applicants eligible for .EU are numerous and the future for .EU appears a bright one.

The Sunrise Period is only just over and the Land Rush Period has commenced with a flood of registrations in April, no doubt catching out rights owners who did not take advantage of the Sunrise Period.

It is still early days though and with the validation of prior rights under the Sunrise Period still ongoing, there will no doubt be further disappointed applicants as well as further opportunities for cybersquatters during the current open registration period, as well as the upcoming Mini Land Rush Periods.

Intellectual property rights owners across the European Union who were advised and aware of the upcoming launch and eligibility requirements of .EU were able to make timely and comprehensive applications during the Sunrise Period based upon their intellectual property rights. The result is that many secured their domain names of choice. Entities outside the European Union were able to meet the registration conditions pursuant to Regulation (EC) No 874/2004 provided they had a licensee of their relevant trademark rights based in the European Union.

However a large number of rights owners ran into trouble during the Sunrise Period due to a combination of having received poor advice plus either the rights owners or their registrar making errors in the .EU applications. In addition, any system is open to abuse, and the .EU Sunrise Period is no exception with some entities filing hundreds of Benelux trademarks in order to be able to participate in the Sunrise Period. Some of the resulting domain name applications will run into potential conflict with existing rights owners.

<http://icannwiki.org/.eu>

.XXX Decision Leads to Lawsuit

ICM Registry LLC, an adult entertainment domain distributor, has filed suit against the US Department of Commerce and the US Department of State, whom it claims pressured ICANN to rule against the creation of the porn-related TLD. They are seeking the release of previously redacted documents which may prove that the US Government unduly pressured ICANN to reject the domain.

http://icannwiki.org/.XXX_Decision_Leads_to_Lawsuit

.mobi Seen as Savior for the Wireless Web

There's a big push for the adoption of .mobi as the TLD of choice for providers of content for mobile devices. Microsoft, Google, Vodafone, Nokia and others are pushing adoption of .mobi. Mobile Top Level Domain opened registration on Monday for the new TLD, and thousands of organizations have already bitten.

http://icannwiki.org/.mobi_Seen_as_Savior_for_the_Wireless_Web

INames Launches!

NeuStar and Cordance have launched the iNames Global Registry, which will allow individuals and businesses to establish and protect their online identities with a single, unified identifier.

http://icannwiki.org/INames_Launches%21

Nominating Committee Seeking Volunteers

The ICANN Nominating Committee is seeking volunteers for ICANN leadership positions. Positions to be filled this year are: three board of directors, two ALAC, one GNSO, one ccNSO. Interested individuals are invited to submit a statement of interest and encourage others to do the same. See the Nominating Committee website for more information.

http://icannwiki.org/Nominating_Committee_Seeking_Volunteers



ICANNWiki Staff at Marrakech Conference

The ICANNWiki booth at Marrakech will be manned by Brandon C.S. Sanders, Ray King and Ian Schray, shown above. Stop by to pick up t-shirts, bookmarks, a copy of ICANNWiki Quickie and of course your very own caricature by Rhoda Grossman, Digitalpainting.com. If you haven't had your caricature done yet, stop by the ICANNWiki booth and have your picture taken. In a day or so your very own caricature will appear on ICANNWiki.

http://icannwiki.org/ICANNWiki_Staff_at_Marrakech_Conference



ALAC Makes Use of ICANNWiki

The At-Large Advisory Committee (ALAC) has used their page on ICANNWiki to coordinate and communicate their message. It's truly a model for how organizations can make the most of their presence on ICANNWiki. Check it out at the URL below.

<http://icannwiki.org/ALAC>

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