New gTLDs 21

Commentary

who found the web pages, but did not publicize the information about upcoming public hearings

outside the core government and intellectual property communities.

and ccTLD which accepts such registrations through a single process. The going rate for this service is apparently less than US$10,000.

41.Some persons have registered domain names similar but not identical to the domains held by high-profile individuals or companies. Some of these have sought to capitalize on the similarity,

to submit to, and be bound by the administrative dispute policy (WIPO-ADR) unless there is contrary judgment of a competent court. Final Report, paragraph 162, 196, 220(ii).

46.Furthermore, all registries would be required to

a.agree to adhere to decisions of the WIPO-ADR panels unless these were contradicted by a competent court, and

principle and in practice.

58.Compared to my ideal, the Final Report leaves quite a bit to be desired.

a.Privacy protections in the existing open .gTLDs (.com, .org & .net) falls to zero.

ase of abusive registrationT. However, it remains

registrant pays this seems acceptable. It may be more unfair to make loser pay in a proceeding involving a famous name, however, since the complainant gets to have an “evidentiary

used by the Usenet Volunteer Vote-Takers, or the procedures currently being developed for membership in ICANN. In at least some of these there would be no need for the sort of administrative dispute procedures advocated by WIPO because the uses were purely non-commercial (with, perhaps, some sort of policing or challenge mechanism to prevent abuse) or because access was carefully controlled by a responsible body.

Zero Privacy

area. That is ICANN's responsibility and ICANN's duty. The WIPO report represents merely a

93.The job of trying to find appropriate and definite criteria is a thankless one, as the inability of

automatically block the registration of a domain identical to the trademark in any new gTLD. This exclusion fails to reflect the fact that the international consensus on the protection of famous and well-known marks extends only to protection against commercial use of those marks. Whatever protection these marks are entitled to under treaty extends only to protection against others making commercial use of the mark.

98.Similarly, although the laws of many nations provide protection against dilution of a trademark this too can require commercial use, albeit not necessarily a showing of likely customer confusion. For example, the U.S. federal Trademark Dilution Act specifically excludes non-commercial use of a mark from its coverage. 15 U.S.C.

would have an incentive to be cautious about whether marks are sufficiently famous to qualify, for fear that over-liberality in the initial decisions would leave out more deserving marks whose owners were slower to request certification. An initial ceiling could be 500, 1000, or even more,

well-known issued by WIPO Standing Committee on Trademarks, Industrial Designs and

fails to ensure that the respondent will given sufficient notice as to the case which he has to answer.

113.*What is "misleadingly similar"*? WIPO's Final Report does not define the term "misleading similar". While one could profitably attach some sort of definition to the name (it sound as if it has some relationship to the US idea of "likelihood of confusion" except that in the context of a famous mark one would expect more a dilution than a confusion test), thus perhaps lessening the ill effects of this proposal, I think it a fundamentally unprofitable exercise because the entire idea is founded on a misconception. In the US, and I suspect elsewhere as well, it is not seriously

prove optimistic. Furthermore, WIPO suggests at several places in the Final Report that the

means of review, since that act limits the court’s review to

"(1) Where the award was procured by corruption, fraud, or undue means.

Bob was doing which would have been the subject of the case but for the WIPO-ADR. It is not

name registration, is an infringement is to see what a competent court says. Whatever one may

c.Nothing in the rules requires that the complainant make any effort to contact the