CR - Rights Protection Update
Wednesday, March 14, 2012 – 11:00 to 12:00
ICANN - San Jose, Costa Rica

KURT PRITZ: Good morning, everybody. Can we take seats? Thank you for giving some of your valuable time to come to this session on the progress made in the implementation of rights protection mechanisms. We hope it's informative. You'll have the ability to ask questions at the end. It will describe work that's occurred in preparation for the launch of the new gTLDs and the implementation of the rights protection mechanisms and the work that's going to occur. Specifically, we're going to discuss the implementation of the trademark clearinghouse, which includes a trademark validation service and also database administration service and provides sunrise and IP claim services for new registries; the Uniform Rapid Suspension system, which is a rapid take-down process. And, finally, we're starting with esoteric acronyms that almost exceed the ICANN limit for letter number. But post-delegation dispute resolution process, which is a remedy for those seeking a remedy directly against new registries rather than individual registrants that's operated under very careful standards.

So does this sound okay? Maybe it's just the speaker I'm standing next to that sounds so bad. That's better. Thanks.

So this crowd, I think, pretty much knows that this new gTLD program was founded in accordance with GNSO policy recommendations that were thoroughly debated over a period of 19 months and many meetings and resulted in, ironically, 19 policy recommendations. And one of those recommendations was that new gTLDs should not infringe the legal rights of others. And, in the implementation detail, the guidance we received from the GNSO, it was determined that the legal rights to be protected were mostly trademark rights. They weren't rights such as rights against defamation or something like that. And so

it's this recommendation and the associated implementation advice we received from the GNSO that caused us to start this.

And then, in order to -- in order to flush this out -- many of you know the history -- but ICANN created an implementation recommendation team comprised of intellectual property experts from around the world. They met in face-to-face meetings several times, had multiple, multiple conference calls, thousands of e-mails. They resulted in a suite of rights protection mechanisms that are in the guidebook now.

Oh, so here's the -- that -- the recommendations of that IRT were published for community discussion and comment. And ICANN, again, in its bottom-up style, created another community, special trademark issues review team that was not just comprised of intellectual property experts but rather broad-based constituency representation of all constituencies in the GNSO and also ALAC.

And so the new requirements from that group are reflected in the new gTLD registry agreement. I should say that what's not on the slide is then those rights protection mechanisms were discussed thoroughly among ICANN board and Governmental Advisory Committee members. And, as a result of that interaction with governments, the trademark protection mechanisms were enhanced.

And so the suite of these trademark -- this is a slide you've already seen before, so you might be experiencing deja vu.

This suite of protection mechanisms can be divided up to cover the lifetime of a registry. So there are a set of protection mechanisms that are prelaunch. And those have to do with the trademark clearinghouse and trademark claims and sunrise, recognizing that trademark claims goes a little bit past lunch now, he said in a footnote, and then the other sets of trademark protection mechanisms, the new ones come into effect after registry starts operations.

So that's the rapid take-down process. The post-delegation process, the aforementioned PDDRP, the new requirement for thick WHOIS, and UDRP, which already exists, of course, all come into play once a registry has established ongoing operations. So these sets of protection mechanisms augment the existing one.

So that slide kind of reflects what I just said with regard to that graphic. So I'll just leave it there for a second and go on. So I think, already in this meeting, we've heard concerns from the community on several of these implementations. We've heard, of course, that it's very important for the implementation to be timely, that the implementation to be done well, that these mechanisms work and they be implemented in a way that realizes the goal set out by the people who work developing these concepts and then worked on implementation plans for these concepts.

So the trademark process should be reliable. It should have global reach. The sunrise processes and especially IP claims should not get in the way of registrations in a TLD, so be managed in a way that is effective and yet maintains registry business models, that the URS realizes the goal of being significantly cheaper and significantly faster, and that the roles for the PDDRP are clear.

So we're marching along to project schedules on all of these. There's more to say on the clearinghouse, because that's further down the path than the others.

But we want to tell you where we are.

So I'm going to turn this over to Karen Lentz, who is ICANN's director of policy and operations research. She's going to take us through the status and our future plans. We also have Amy Stathos here, ICANN's deputy general counsel. She's here to help answer questions you might have afterward. And she's done a lot of work, too, on the implementation of the URS and UDRP and all the trademark protection mechanisms. So, with that, I'm going to turn it over to Karen and thank

her very much for doing this. And, again, thanks for coming to the session and for your attention.

KAREN LENTZ: Okay. Thank you very much.

Can I have the slide clicker? Okay.

So I will review for you the work that's occurring on the trademark clearinghouse. Actually, with the session, we're a little bit longer, because there's a lot of work going on and a lot of issues that come up with this. But I will try to go through as much information as we can manage within the session.

So, just to review what the trademark clearinghouse is, it is a repository for trademark data that supports rights protection mechanisms offered by the new gTLD registries.

The clearinghouse is expected to be operated by a third party, be an agreement with ICANN, and replaces the need for trademark holders to be in as many different databases as new gTLDs are launched. So it's intended to have a streamlining effect and create efficiencies.

It has, as Kurt mentioned, two main functions. One is to authenticate and validate trademark data that's submitted to it. And the other is to provide the data to support the trademark claims and the sunrise services that are offered by the new gTLDs.

To go a little more into detail on both of those new requirements, the sunrise period, which is a prelaunch phase and it provides trademark holders an early opportunity to register domain names in a TLD before the registration becomes generally available to the public. In terms of eligibility for sunrise, there is the regular entry of the data, the trademark data, into the clearinghouse. And there's an extra step requiring that those rights be validated for proof of use before the mark can be used for sunrise registrations.

The sunrise period is mandatory in all new gTLDs, and it needs to occur for at least 30 days. Something new in this sunrise process that's envisioned is that, once a name is registered during the sunrise period, the relevant trademark holders who have put data in the clearinghouse would receive a notice of that registration based on a matching rule that we'll talk about.

Then the trademark claim service is also a new requirement. And that's intended to generate a real-time notice to a party who is attempting to register a domain name if it matches a trademark that's been recorded in the clearinghouse.

The claim service also provides a notice to a trademark holder that has put data in the clearinghouse, if a domain name is registered that matches the marks that they have put in there.

Any trademarks recorded in the clearinghouse are eligible for the trademark claim service. The trademark claim service is also mandatory and needs to last at least 60 days.

This is kind of a simplified representation of how the claim service would work. A person goes to begin to register a domain name. There's a query that takes place to the clearinghouse as to whether it matches a record that's in the clearinghouse. If there's no match, then the person can complete the domain registration as usual. But, if there is a match, that generates a notice to that prospective registrant advising them that these rights have been recorded in the clearinghouse and asking them whether they wish to proceed with the registration, which, if they do decide to proceed, there is a notice that gets generated to the relevant rights holder.

I think I -- okay.

So, in terms of how ICANN is going about implementing the clearinghouse, there are two basic tracks of work going on. One is the selection of providers to operate the clause and to provide those

services. And the other is to develop the supporting processes, the trademarks claims and sunrise processes that the clearinghouse uses. Those have a lot of parties involved in them -- the registries, the registrars, trademark holders, the clearinghouse, people who are registering domain names. So there's a lot of detail in working out the best way to create those processes.

In terms of provider selection, we published a request for information in October, received a number of very good detailed submissions from that, reviewed those, held discussions with many of the candidates. We're currently completing that section process. I expect to be able to announce the provider shortly.

And then, in terms of the process development, I wanted to mention we had -- in the previous two meetings in Singapore after the new gTLD program was approved and then in Dakar, we had very useful discussions with many people in the community that provided a lot of advice that helped us to shape the implementation plan and set up how that -- you know, how these processes could work. And so we tried to continue that by forming the Implementation Assistance Group, or IAG, which started to work in November 2011.

It was an open group, open to anyone who was interested in volunteering to work on these things. The purpose of the group was to provide advice on the key processes, high-level technical implementation issues. They weren't given the task of design and complete solutions for the clearinghouse, but to provide advice on each of those issues.

So the goal is, then, out of that process, for ICANN to deliver a set of business requirements to the selected providers.

The IAG has just about completed most of its work. We had a fairly large group of people. There were about 50 total volunteers. Not everybody was involved in every issue.

But there were -- we worked via -- posing issues, describing some of the options that are available in terms of how something could be implemented and asking for a comment. There were both written submissions. And then we had a series of conference calls where some of that feedback and some of the options were discussed. So we're now -- we've completed the cycle of calls and the issues that were proposed for discussion. We're now involved in compiling all of that input, doing analysis to create a strawman model. We expect to be publishing that by the end of the month. And, if you're interested, the link that's at the bottom is a Wiki page where all of the IAG materials are published. It has the recordings of conference calls. It has the briefing papers and the mailing list discussions as well.

And that, you probably can't read. But that's just a list of all the topics that were discussed in the IAG. They included both technical issues and business process issues.

So, going into some of the issues that were discussed and that have been discussed over the last few months, I'll just review, briefly, the criteria for inclusion in the clearinghouse. This is material that's already published in the applicant guidebook. But just review.

The criteria are that something should be nationally or regionally registered word mark from any jurisdiction, a word mark that's been validated through a court of law or a judicial proceeding, a word mark that's protected by a statute or treaty that's in effect at the time of submission, or other marks that constitute intellectual property.

So, as I mentioned, one of the prime functions of the clearinghouse is to do authentication and validation of the trademark data that is submitted to it. In designing the authentication and validation processes, the goals that we had were that the rules for these processes should be clear, should be specified, should be available prior to submission. So, before anyone goes to submit their trademark data, they know in advance what processes will be used to review that.

We want something that will yield consistent and predictable results. And, obviously, we want an efficient process, something that is relatively easy to use and then it is available to all global regions.

And, just to clarify the terminology -- because we use these words a lot -- how we use authentication is kind of as the baseline. So, to be in the clearinghouse, all the rights data needs to be authenticated, which just means that the clearinghouse is established, that the information presented is genuine, and that that trademark does belong to that mark holder.

When we talk about validation, we're talking about another step. The validation is -- includes establishing proof of use, which we will talk about later as well. Or validation is also used for looking at rights based on a statute or treaty or a court proceeding.

So, in looking at the authentication process, again, the idea was to create something relatively simple. The elements that were discussed are here on this slide. Obviously, there's a name of a submitter. There's contact information, which, you know, based on the number of notices that need to go back and forth for this contact person, there was a recommendation that, as a minimum, there be an e-mail address verification to make sure that the contact information -- that contact information is correct.

There's also a declaration someone makes when submitting a trademark data that the information is true and correct, has not been supplied for an improper purpose. And then there's the registration number in whatever jurisdiction that might be.

And then the work that the clearinghouse would do would be to confirm that the numbers do match the authoritative information whatever jurisdiction is relevant.

So, you know, we're aware that -- you know, many jurisdictions have this data available online in terms of what trademarks have been registered in that jurisdiction and there are others that do not.

In either case, the goal is that the process should be simple. And the way to say it, I guess, is equivalent treatment. So, whether your jurisdiction has data available online or not, the process should still be relatively simple and straightforward.

And then, looking at validation for proof of use, the goal here was to have a single standard that is available to everyone prior to submitting their data for validation.

Again, there's a declaration here, you know, in addition to the one that everyone makes, that the trademarks and the submission are currently in use in the manner in the accompanying specimen and that the submitter will notify -- will provide notice if the mark is abandoned.

The other piece of this is submission of a specimen of use. Some examples would be labels, tags, containers, brochures, things like that. There's a longer list of things that were considered.

But the model that is contemplated here for validation is simply the declaration and the provision of a specimen of use.

Another subject that occupied quite a bit of time in the discussions was the trademark claims process and, specifically, how the notice gets displayed in cases where there is a match and this number is being displayed to a potential registrant.

So there was, you know, some assumptions going in that -- well, I guess, people had different ideas of how they envisioned that it would work. You know, some people were envisioning an e-mail message going to the potential registrant.

And what came out in the discussions was that the probably least intrusive way and most efficient way of doing this was to display the notice on the screen during the registration process.

The -- as I mentioned, there were a number of parties involved in it. And there was some discussion about the roles of the registry and the registrar in doing that query and providing that notice to the registrant.

And then there was also discussion about how to make sure sort of tracking and logging -- you know, if there's a question at a future time, can we go back and verify that the notice was displayed, the registrant did actually acknowledge it before they registered that name.

So this is, you know, obviously, a complex process. There was some concern expressed by registries and, I think, registrars about having, essentially, a new step in the registration process that could potentially -- you know, if it didn't work right, create a bump in what should be a smooth process for the registrant. So, you know, that's being taken into account in the design.

You know, I mentioned that there is a straw man model being created and this is one of the things that -- you know, that's kind of been one of the requirements that we've worked with is, you know, how do we make sure that things don't get slowed down because of this -- this stuff that's in the process.

Okay. Matching rules is another -- is actually the last topic that we discussed, I guess just last week. Looking at the existing definition that's in the guidebook and that was, you know, arrived at in the community discussions, the sunrise and the trademark claims based -- are based on this definition of identical match which is -- the name consists of the complete and identical textual elements of the mark, spaces and hyphens can be replaced or omitted, special characters, if they are in a trademark, can be spelled out with appropriate words, for example, the ats, the "@" symbol. And then punctuation or things that might be in a trademark that are not valid characters and domain names can be

omitted, replaced by certain other characters. And plurals and marks contained not -- are eliminated from that definition.

So the topic of discussion most recently, and which I think is still open for feedback and comment on is, is how this rule B can be implemented in many different languages. So if you take a trademark that has, for example, the "&" sign and are spelling it out to determine a match, the question, you know, comes up in which language, or languages, am I doing that. You know, if my trademark is X & Y, I can do X a-n-d Y. If I'm in Costa Rica I can do X e Y. So there's a range of issues there with determining what language is relevant, and so that's still being worked out and open for discussion.

Another topic that came up in the discussions was dispute resolution, realizing that in each of these processes there are going to need to be mechanisms for resolving complaints or, you know, where it's appropriate looking again at a certain action. And the -- you know, the sort of broad stages you can look at are 1, a complaint or an issue having to do with actually recording data in the clearinghouse and then there are issues having to do with sunrise which are contemplated in the guidebook and then there are issues having to do with the trademark claims service. So you probably can't read all of the small writing on that slide, but these -- these are also -- either are or will be posted. And this is just to illustrate, you know, that this -- this is the chart that we were looking at at the time we were discussing this issue a few weeks ago, I think it was. The -- you know, what we tried to come up with was what are all the possible types of disputes that could come up in these processes, what would be the basis of what someone was disputing or complaining about, who would be the initiating party in each of those cases, and then what would be the appropriate mechanism to consider those issues. And so, you know, for most of them we had a -- at least put something forward as what we thought would be workable in the -- in terms of the trademark claims, we just noted that a lot of those would be dependent on which party ended up with the responsibility for sending a certain notice. So as we're still working out that technical model, those pieces are kind of dependent

on how that works. But this is also a topic that has occupied a bit of attention.

In the discussions I also want to bring out -- mention certain principles that are -- or themes that seem to come out again and again and how we looked at issues and how we considered what the best solution would be. One of them was what we called closeness, meaning that the parties involved should generally communicate with the parties that they already had a relationship with, so, you know, if I'm a person who registers domain names I probably expect to go to my registrar and be able to interact through my registrar. And if I'm told I have to go some other place to do a -- a certain step, that's not really a good outcome, or if I'm receiving notices from a party that I have no familiarity with, that's also not the ideal situation. So we tried to keep that -- keep that principle in mind when designing these systems.

Also, data access was discussed quite a bit. Obviously the -- as a database there's a large amount of information that's contained in the clearinghouse. If you look at it as a whole, there were concerns -- some concerns expressed from rights holders about the risk of many parties having access to aggregated data that could be used for competitive or for abusive purposes in some way. So we also arrived at the principle that each party should have access to limited data. Only the data that you really need to perform your function in the system should be accessible.

I touched on this as well. We also, you know, had a goal that submission and renewal of clearinghouse records should not be a burdensome process. And then finally, that implementation work for registries and registrars, a lot of this depends on implementation by registries and registrars but that that should not be -- you know, they shouldn't be burdened with excessive implementation projects in terms of how you create these processes. Obviously there will be some, but the -- the comments seem to be that that existing protocols and existing processes should be used wherever that was possible.

Finally, this is not something -- clearinghouse cost. This was not something that was discussed in the IAG, but it's a question that's come up quite a bit this week. As a reminder, the -- what the model in the guidebook states is the costs are expected to be borne by the parties using the services so the trademark holders would pay at the time they are recording data in the clearinghouse some amount. The registries would pay for the transactions of claims in sunrise as appropriate. And registrars and others who might be involved in the model would also pay in that way.

So the pricing model is something to be worked out with the service provider, understanding that there's a lot of interest in getting some more detail on this, and so we're working on getting that to be able to publish it as soon as possible.

Okay. So that concludes the clearinghouse. Do you want me to -- okay. I will continue with the URS. As was mentioned at the beginning, we looked at these projects kind of in a chronological order as to when they needed to be in existence, so the clearinghouse is something that needed to be in place at the time of start-up for all new registries. And so we kind of have devoted a lot of resources to that one. First of all, the URS would then need to be in place once people are registering names in new TLDs and then the Post-Delegation Dispute Resolution would also be available at approximately the same time.

So just briefly, the URS is meant to be a complement to the existing UDRP. It's meant to provide a rapid and efficient mechanism to take down names that are clearly infringing. In the case where it's very clear that infringing is -- sorry, an infringement is occurring. A successful URS complaint would result in the suspension of a domain name and this is a process where compliance with results are mandatory in all new gTLDs.

So in terms of the project plan for this one, we are working at the -- working on the RFP for URS providers which is about -- you know, fairly advanced and should be published shortly. The costs that are targeted in the guidebook, there's an estimate of $300. Obviously that's

something that will need to be worked out with the provider and, you know, in terms of how we progress on that project plan, we'll of course engage the community in developing those processes as well.

Finally, we have Post-Delegation Dispute Resolution Procedure. This is also something we're in the process of developing. What it's intended to do is provide trademark holders with an opportunity to seek redress from a registry operator where there seems to be systematic issues with registration of infringing domain names. So where there's a bad faith intent to profit from that, there can be a -- a complaint filed and reviewed against the registry operator. Here we envision that complaints would be filed with a third party, with a dispute resolution service provider who would review the case and could recommend a remedy if the complaint is successful. The remedies vary according to what the provider would -- or the panel would decide and they go as far as actually terminating the registry agreement for very serious cases.

So that is a review of the work that's gone on in terms of implementation of these rights protection mechanisms. We'll -- we have some time left for questions, if anyone would like to approach the microphone in the middle or submit a question via remote participation. I also have my colleague Amy Stathos here, so we will answer any questions or take any comments you might wish to make.

JOHN BERRYHILL: Yeah, hi. John Berryhill. From following the -- the IRT and the STI and all the other alphabetical characters that were involved in these various mechanisms from a couple years ago, the trademark clearinghouse as -- and maybe I'm crazy, as I originally envisioned it or was presented was a database, a tool on top of which a policy layer could be built. And I'm a little curious how this -- this concept of a database that could be used to support any number of policies that could be narrower policies or they could be broad policies, turned into a set of policy prescriptions, and let me give you an example. You were talking about character correspondence rules where, you know, it would be identical match only and no plurals. Okay. And we've seen some sunrises in dot info

and dot CO and some other places where, you know, they pretty much adopted various character correspondence rules.

In an environment where you're going to have multiple languages, where you're going to have, you know, market-specific TLDs, I don't see why having a database of trademark data available would -- why that becomes prescriptive of whether a TLD, maybe they want to go broad, maybe they want to provide, you know, plurals. If I'm running dot shoes, okay? And there's a trademark for Jim's Shoes, okay? And a lot of trademarks are of that form, they will include the gooder service as part of the service because not all trademarks were registered in anticipate of this trademark clearinghouse. So if -- Steve's going to love me today.

[Laughter]

If I'm running dot shoes and I want to have a sunrise rule that says we're taking identical match trademarks for all you people that think, you know, Coca-Cola is going to be interested in people looking up Coca-Cola dot shoes. But in my sunrise for dot shoes I want to say, if your registered trademark includes the word "shoes," we'll let you have Jim's because your trademark is Jim's Shoes and it's for Jim's Shoes and it's in the class of shoes and, I mean, I don't understand -- I thought the point was to have the database upon which intelligent policies, you know, could be designed or run. I mean, have I just been completely off on another planet somewhere all this time, that the clearinghouse itself is going to prescribe the matching rules so that I can't give people even broader protection than, you know, than is prescribed by this narrow set of correspondence rules. I just kind of don't get that. If it's Sony Pictures and I'm running dot pictures, great, the clearinghouse let's them get Sony Pictures dot pictures and some other idiot can come along and register Sony dot pictures, which is their mark.

So I would kind of be interested in where this idea of policy prescriptions grew out of a database design and what planet I was on at the time. Thank you.

KAREN LENTZ: Sure, thank you. First of all, just in terms of the matching rules, those were -- you know, those exist in the guidebook. You know, these are the matching -- you know, the definition that's of identical match that's already been established is what we started with. The issue of flexibility and what registries want to do has come up a lot, not just in that, but, you know, also in sunrise, for example. You know, we have these minimum requirements but suppose I want to have other types of sunrises. So that's been discussed and the challenge is to design a -- you know, a sunrise model that is flexible enough, you know, that it does what it's required to do according to this. You know, to what we've been given and also allows registries to be able to implement, you know, things that they want and need to do in their own TLD.

JOHN BERRYHILL: Okay, and I guess -- I'm sorry, that was the piece I was missing, if perhaps I was understood. You will provide at least this, because some TLDs are going to be more contentious than others and there are going to be people, you know, going for, you know, dot movies and we're going to hear a lot, you know, from Steve about that. And, you know, it sounded as if you will do this and no more, but I think it needs to be made very clear that the database will support, you know, broader concepts that are appropriate to, you know, what a TLD is at least semantically targeting. Thank you very much.

KAREN LENTZ: Sure, thank you.

>> Yeah, I guess I'd underscore John's remarks because I think they're actually quite good. If you look at this there are a lot of arbitrary sort of things in the applicant guidebook, for example, 60 days, the contains and that sort of thing. It seems like it would be a great opportunity, I mean you're changing a lot of other pieces of the Applicant Guidebook that it would be a great point to relax that and allow greater flexibility, so that was my comment. Thank you.

KAREN LENTZ: Thank you.

WERNER STAUB: Werner Staub (indiscernible). My question is about why we have confidential or limited access database in the sense that we're documenting rights that are supposed to be valid irrespective of where we are. People are supposed to know that and they say no, we're not publishing this, we're restricting the access to the database.

Now, if the abuse can be committed, can we have examples of what kind of abuse that will be, and then could we have some way to match the abuse that we're actually fearful of to the restriction to the access?

The related question is we're doing a centralized database where it would not need to be centralized. It could be a system of pointers just like the DNS system itself. It works fine. It is decentralized and of course it has the advantage of being quite easily and fast accessible.

KAREN LENTZ: Okay. Thank you. The first question, I think, is about why there needs to be access restrictions on the database. You know, a lot of trademark data is publicly available. And I think there are probably trademark holders in the room who can describe examples of the concern better than I can. But, you know, what was expressed anyway was that, you know, having information on one trademark is not necessarily harmful to anybody but if you have access to a whole set of that data you might be able to discern strategies or, you know, be able to use the data for some other purpose that's considered abusive. So that's -- that's an example of the -- of what was expressed.

In terms of, you know, centralization and distribution, you know, how this works technically, I don't know. Francisco's in the room, but this is something that we've considered and in terms of, you know, how you create something stable and, you know, efficient and usable, reliable. You want to comment?

FRANCISCO ARIAS: Sure, thank you. This is Francisco Arias, ICANN staff. So we are working on developing the straw man proposal on how the trademark clearinghouse could work technically, and we are considering this issue. This is one of the main issues we are trying to solve and the straw man is expected to come at the end of the month but one of the things we're considering is to use, for example, DNS as a way to convey the data so the (indiscernible) could have a copy of the data, and in order to solve the issues that was raised by IP holders of not showing all the information to a specific party, we're thinking of using, for example, NSEC3 which solves precisely this problem for the DNS.

So I just wanted to reiterate, we are thinking on this issue and are trying to have the clearinghouse outside the way of the registration path. Thank you.

>> One of the remote participation question, this came from Ruben, I hope I'm saying his last name right, Kuhl. If a brand TLD implements a free URS equivalent system does it still need to rely on ICANN URS?

KAREN LENTZ: So the URS is required in all new gTLDs meaning that, you know, when decisions are made concerning names and their TLD, they need to be implemented accordingly. I guess this is similar to the previous question about, you know, can registries do -- you know, design specific things they want to do in their TLD. So, you know, I guess I would refer to the registry agreement for, you know, anything that would be relevant to that.

>> I have a second question, and this one is from -- I want to say the name again -- Imran Ahmed Shah. I would like to ask a question for understanding that if an organization or company do not have an international IP, however, in its own country they have registered trade name and trademark, what kind of rights he has in the context of a new

gTLD application? How is his case will be dealt with while there is no known conflict of an international brands?

KAREN LENTZ: Well, I'll answer that a couple of ways. It sounds like the question is about, you know, rights in the context of the application evaluation process, and I would just there point to the objection process on legal rights that's available in Module 3 of the guidebook.

In terms of -- in terms of the trademark clearinghouse, you know, the -- you know, the design goal of it is to be available to, you know, people who own rights in jurisdictions all over the world.

ANNE AIKMAN-SCALESE: Hi, Anne Aikman-Scalese. I'm with the intellectual property constituency but I'm not asking questions on their behalf. These are just questions -- I have two questions on behalf of my clients. And the first is in connection with the IAG discussions was there any discussion about possible verification of proof of use, for example in connection with sunrise, based on verifying a statement of use that's already on file in the country of origin of the registration or was it considered that that might be old and not valid somehow? Was there a discussion of streamlining in that method?

KAREN LENTZ: So that's -- if I recall, came up earlier, again, before the clearinghouse was even completed or the, you know, before the -- during the develop of the idea. You know, the model that was arrived at for a number of reasons was, you know, the submission of a declaration and a specimen. And I think -- I don't know if you want to add anything, Amy, but one of the issues that was -- was discussed was that, you know, we are talking about many different jurisdictions who might have different practices and what we wanted to provide in the clearinghouse was something relatively simple that everyone could do and, you know, be using the same ruler essentially for marks where -- for data according to -- you know, no matter where it came from.

ANNE AIKMAN-SCALESE: And the second question relates to dispute resolution, and I'll do a hypothetical again with the sunrise period. If I have a client, for example, that there's a verification of the registration but if the trademark clearinghouse rejects the specimen of use and if there's, I think I saw on the chart an appeal from that process, but my question relates to what is the ultimate appeal from the final decision of the trademark clearinghouse, for example, if my client does not -- is not able to secure the sunrise registration, where -- where does it go from there?

KAREN LENTZ: Well, I think it would depend on what the circumstances were. You know, the clearinghouse is really intended to be as much as possible, you know, performing an administrative function so they're not making any sort of legal ruling on the person's rights and then, you know, as we had up there in sunrise, there are a number of reasons why a sunrise, you know, registration might have been rejected. And so there was a process for looking at that.

KRISTINA ROSETTE: Hi, Kristina Rosette, IPC, sometime member of the IAG for calls that weren't in the middle of the night. Your answer to Werner was excellent. I just wanted to elaborated on a couple more points that he might find useful to know.

The first of which, it is generally the case that trademark registration data is publicly available, but it is not generally the case that it's available online. In, I'd say, probably 70% of the countries that information is not available online which means you then have to hire local counsel to physically go to the trademark office and get it.

Just to give an example, some of the cost differentials, if you had a trademark owner that had registrations for one mark in 80% of the countries in which you can secure a trademark registration, to obtain from a commercial firm a report of all of those registrations would cost

about five working days and about $20,000. So the concern here is that it is certainly not the intention to create kind of not only an end run, something that competes with those commercial services, but more of greater concern would allow a party with access to the system to basically replicate the portfolio, to exploit it either to identify upcoming brand strategy or what is a fairly significant problem is to identify where the trademark owner may not yet have a registration, secure one there and then essentially extort them for it. So those are really kind of the driving concerns there.

KAREN LENTZ: Thank you.

CHING CHIAO: Thank you, Karen. This is Ching Chiao from dot Asia, and also one of the -- -- I'm the participating entity for the TMCH providers. Actually, Kristina covers one of my questions. I have other two quick ones. So actually it's related to the cost which just brought up, and do you envision that one of -- I mean, any of the TLD applicant need to indicate or to have an estimate of how much is -- a particular registry will spend on using or utilizing the TMCH -- I mean, services. I mean, kind of -- so I'm given this point of time we don't have, you know, sufficient information to have an estimate of the costs from a registry to use the TMCH service. So that's one. And my -- I probably would like two.

KAREN LENTZ: Okay. So the question, I think, is -- has to do with gTLD applications and, you know, putting together the financial information, how you would account for the cost of using the clearinghouse, not what they are. And I think the guidance that we've given on that is just, you know, to provide an estimate and explain what the basis it for the estimate, explain how it is accounted for in the model.

CHING CHIAO: Sure, okay. So thanks for that. The second question is actually pretty much a conceptual one is that you've mentioned a -- a great and

comprehensive process of having 9 bits to be -- having submitted in this process and actually number of IAG calls and, I mean, conferences has been made. So the question that I have in mind, I mean, seeing your presentations and some other comments is the centralized model at this moment 100% the goal or you still have a -- some second thoughts or some other backup plans that may be whole or partial -- part of the -- I mean the structure, I mean, either the database part or the validation part can be decentralized?

KAREN LENTZ: So thank you. The -- and I guess it depends what we -- what we want -- how we want to define what a centralized model is. You know, certainly it's the goal that the clearinghouse and these services are accessible and are -- you know, have a high -- service level high quality availability in all the regions. You know, that's one of the requirements that has been built in. In terms of how -- you know, what's the best way to implement that, right? Is it, you know, one, you know, sort of centralized body overseeing all the operations or do you sort of distribute it in different ways? So I think that I wouldn't say that it's 100%.

CHING CHIAO: That's a fair answer.

KAREN LENTZ: Just like most things but, you know, certainly the requirement to provide global access is --

CHING CHIAO: Thanks.

PHILIP CORWIN: Good morning. Philip Corwin, counsel of the Internet Commerce Association. I'm mostly standing here to express the hope that we really will see something start to happen in terms of implementing the URS next month. I had asked Kurt in Dakar when we would start to see

some implementation of URS, and he said in about a month. And now five months later, the same answer, in about a month.

So -- so far as the cost, we were always very credulous that $300 was realistic, given what IP attorneys charge for their time plus administrative costs. A very similar process implemented by NAF for the XXX registry called RES. They're charging essentially the same price as UDRP. The main difference is rapidity of the process.

And finally, on the elements of the URS, we hadn't commented on the first round on defense of registrations because the ICANN notice made it quite clear that the question was about the top level, but many folks in the trademark community used it as an opportunity to suggest further changes in the URS would essentially turned into a cut rate UDRP which it was supposed to be a supplement, not a substitute. So we will be weighing in on that. But again, the main thing we'd like to see is some steps starting to be taken as soon as possible to implement the URS in an affordable way but in a way that makes it a credible process that gives real due process treatment to both complainants and registrants. Thank you.

KAREN LENTZ: Thank you.

And it's correct, unfortunately, that you haven't seen much on URS, but we have been working on and considering on that particularly in regard to the cost and to securing and discussing, you know, with providers who could potentially be able to provide that.

RICHARD WEIN: Hi, my name is Richard Wein, and I am coming from you Austria, dot AT.

Thanks for the update. I have a questions related to the trademark clearinghouse. I think these new procedures will or may have a huge impact to the whole technical infrastructure, and of course many procedures from a registry or back-end registry perspective, how could

it work to describe these procedures on time -- that means before April 12th -- if you or ICANN publish it at the end of March or even later?

So in other words, is it necessary to describe these new procedures, trademark clearinghouse, in the application or not?

KAREN LENTZ: If I understand the question, it's in regard to preparing a gTLD application and how the clearinghouse being in developmental stages, how that can be accounted for.

I don't think the application really requires that you illustrate how the clearinghouse will work. You know, it is required that all registries, you know, provide the sunrise and provide the trademark claims.

So -- You know, but in terms of the operational details of how it will work, I think the thing to show is how you're prepared and how you're committed to implementing those.

RICHARD WEIN: Sorry, there are clear question that you have to describe every single procedure, how you will fulfill it. And if you don't know how the persons will work, we couldn't describe it. So that's a chicken-egg problem.

KAREN LENTZ: Okay. I see.

So, you know, and I'm not a -- I don't want to proscribe advice here, but the instruction in all of the questions are to be as complete as it is possible to be, where there are things that are not defined to explain the basis for why you establish something or arrange something in a particular way.

So we're a little bit over time. I'll get to you in a minute. Sorry.

So we'll have Paul and then we'll have the remote questions and then we'll end the session.

PAUL FOODY: Authentication, Karen.

My question relates to Kristina Rosette's explanation for why the trademark clearinghouse is not going to be online. And if I understood her correctly, she seemed to be saying that it's in order to protect the fees of lawyers. Is that correct?

KRISTINA ROSETTE: No.

PAUL FOODY: No?

KRISTINA ROSETTE: No.

KAREN LENTZ: I don't think so. I think Kristina was speaking about existing jurisdictions and how some of them have trademark data available online and some don't. And that many times people will engage attorneys or search services to go out and scout that data.

PAUL FOODY: Because this idea of putting it online enables people to discern the strategies of companies who may or may not be going one way or the other, we've had 15 years where the incident has been doing just that, and for 15 years, the guys who have been registering domain names have been declaring their strategies. And now ICANN is in a position where, given the very poor existing use protections given to domain name registrants that I've seen so far in this document, that anybody can come along and pull the rug from underneath the guys who are

operating existing or planning existing operations based on the current dot com registry.

>> Hi. I have two questions. One is from Hong Xue. I hope I am saying y our last name correctly: I am not sure if it has been addressed.

Can we know the current status of the trademark clearinghouse provider selection process, how many have been sorted, sort of short-listed? For those bidders who were not selected, could the reasons of rejection be provided?

KAREN LENTZ: Okay. So the question is regarding the selection of providers, which I covered in an earlier slide. And I really can't comment on the process other than to say that the verify process was published. We received the number of submissions, and we're currently completing the selection and hoping to be able to announce something soon.

>> And this is the last question. This one is from Samantha Demetriou.

I have a question about sunrise periods. Is it my understanding that all new gTLD registries must provide a sunrise period? But I am curious whether ICANN will consider amending that requirement for new gTLD registry operators that plan to operate single registrants or closed gTLDs, such as a brand owners that apply for a dot brand gTLD and plan to use it solely for internal purposes and do not plan to allow registrations by outside parties.

KAREN LENTZ: Thank you. In brief, the sunrise period is a requirement for all new gTLDs. In regard to that specific question, I believe that's one of the frequently asked questions or there's a knowledge base article on the gTLD customer service area. So you might want to refer to that as well for some discussion of that.

With that, I'd like to thank everybody for coming. I hope the information was useful and I hope you enjoy the rest of the day.

Thank you.

[Applause]