

Transcription ICANN Toronto Meeting
Intellectual Property Constituency (IPC) Meeting
Tuesday 16 October 2012 at 14:00 local time

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Coordinator: Excuse me. I'd like to remind all participants this conference is being recorded, if you have any objections you may disconnect at this time. You may begin.

Steve Metalitz: Thank you very much. Welcome to the meeting of the Intellectual Property Constituency. I'm Steve Metalitz, President of the Constituency. Our - space is at a premium as is often the case with our IPC meetings.

I would ask that the table space be reserved for IPC members so if you're not an IPC member and you're seated at the table please move to one of the other chairs so that - if there are any IPC members who are not at the table who wish to come up to the table. And I don't know if there are but let's please reserve the seats at the table for IPC members if we can.

I'd like the members of the IPC - we're not going to have time for everybody to introduce themselves so I will ask, of course, since we're being transcribed that if you speak you identify yourself for the transcript as well as for those of us who are in the room.

There are still some chairs over here for IPC members if people want to take them.

And I'd like to start by introducing the IPC leadership both the current leadership and the leadership that will be in a few weeks after our transition following our recent elections. So I'll start with myself; I'm Steve Metalitz, President and soon to be Vice President of the IPC.

Kristina Rosette: Kristina Rosette, current Vice President and President-elect of the IPC.

Claudio DiGangi: Claudio DiGangi. I work on staff for the International Trademark Association and Secretary-elect.

Mark Partridge: Mark Partridge. I am the Treasurer.

Ellen Shankman: Ellen Shankman. I'm the current IPC Secretary.

David Taylor: David Taylor, current GNSO Council rep, soon to pass the mantle to the gentlemen to my left which is (unintelligible).

Man: (Unintelligible). IPC councilor.

J. Scott Evans: J. Scott Evans, I'm former President of the IPC. Oh and I'm also our NomComm representative. Wow.

Steve Metalitz: All right thank you. It occurs to me that actually we may need to do a little bit of rearranging here because we are having folks who are coming to make presentations so I guess when that happens I can move out but they probably will sit here if they need to project slides so we might need another chair or two up here.

Okay. We have an agenda that was circulated well in advance. And it's been through a couple of iterations. You see it in front of you. Unfortunately we - with a lot of collaborative effort we weren't actually able to get it all on - in one

screen. But I think we all know where we are - where we are so let's just look at the agenda.

We are mostly - most of our time here will be spent in briefings and discussions with ICANN staff. This is our best opportunity for an in depth discussion with the staff on some of the issues relating to - matters of concern to the IPC.

And then by about four o'clock those will wrap up and we will then turn to any other issues. We had a good discussion - excuse me - of several issues today in our meeting with the Board that just concluded at 12:15 so I'm sure we'll talk about that. And I think we may have to talk about the status of trademark clearinghouse activities so we'll play that by ear when we get to that point. And then at 4:30 we will adjourn.

So let me ask first if there are any questions about the agenda or - do we have anybody who is willing to volunteer to take notes and we will then eventually turn that into minutes of the IPC meeting.

Claudio DiGangi: Steve, happy to do it.

Steve Metalitz: Thank you. We're actually running five minutes ahead of schedule so has anybody arrived from the Compliance team?

Maguy Serad: Yeah, it's Maguy.

Steve Metalitz: Oh there you. Okay. Maguy, are you ready to go? Can we bring you up here and we'll get started on the presentation. Thank you.

Maguy Serad: You now how to throw a party...

((Crosstalk))

Steve Metalitz: We do. And it's BYO.

((Crosstalk))

Maguy Serad: Good afternoon everyone. Good afternoon everyone.

Steve Metalitz: Good afternoon.

Maguy Serad: Do you have the slides? I sent them to you.

Steve Metalitz: Yes, we have the slides and we can get them.

Kristina Rosette: We circulated them yesterday.

Steve Metalitz: Yes we did circulate the slides so we'll get those. Does anybody have them accessible so that we can get them up? And, (Emily), you've got them also, right?

(Emily): Yes (unintelligible).

Steve Metalitz: Okay. All right.

Maguy Serad: So while we're waiting for the slides I'm trying to see - so many people - I'm trying to see where my team is. Oh there you guys, all right.

We'd like to do a bit of an introduction for the staff members who accompanied me to ICANN 45. And please be kind to them. As you see most of them have the green label on which means newcomers. So with me in the audience I have - if my team doesn't mind standing up please and wave your hand when I introduce you.

I have Leticia Castillo. Jacks Khawaja. Atif Beg. Sumi Lee. Victor Oppenheimer. And I'm missing my partner in crime, Pam.

((Crosstalk))

Maguy Serad: Okay, okay. I have Pam Little, you all know, has been here a lot longer than I have. And I have Paul Redmond also with me. So we have presented - what I've sent Steve is a very long PowerPoint presentation but I will only be speaking to a few slides. And I'm leaving the rest of the material for you and the appendix for reference. So if you have any questions after that presentation please let me know.

Yes.

Steve Metalitz: Great.

Maguy Serad: Great.

Steve Metalitz: Thank you.

Maguy Serad: So since I joined ICANN a year and a half ago we've put forth a plan so the expectations and the ICANN community can measure the progress for compliance. Compliance still is a very key strategic role within the ICANN community, within the ICANN organization.

And by reporting to you every meeting on our progress and next steps we hope that we are being transparent and if you have any questions or challenges or recommendations please bring them forward.

So on the three-year plan that you've been seeing we are in 2012. We are still in the transformation phase. By the end of this calendar year we hope to really have established a good strong foundation to take us into the future. So we did grow staff in number and expertise. Please refer to our Website; I have listing of all the staff members and a brief bio on them.

We continue to standardize on our operations. And you're going to hear a little bit - brief slides on the system enhancements progress. We have created a lot of global metrics to help us measure not only our current progress but also in preparation for the future to help us create those metrics and report back.

We have since last March when Jacks joined my team we launched into creating an audit strategy methodology approach which we didn't have at ICANN Contractual Compliance. And then we, of course, are preparing to start publishing an annual compliance report starting January 2013.

New gTLD readiness is definitely still on our agenda. We still have a lot of efforts underway and you'll see some of that stuff today.

As I just introduced some of the staff members joining me I'm pleased to announce we have reached the full 15 FTEs that we committed to do for 2012. And it does not mean that we stop here, guys. Please, I don't want you to think this is it. I know a lot of people are concerned how we're going to be scalable for the future.

At this point for 2012 this is where we are. At the same time we're working - as you all know resources are people, tools, processes. So we've got a lot of different venues underway. We will evaluate based on next year what additional staff members and skill sets will be required for us to continue and sustain the model.

So we can cover eight languages. And these are not second languages for us that we learned in high school; these are hard core cultural languages that we lived. English, to us, including myself, is my third language. So if I make mistakes in English come ask and I'll translate to you in a different language.

But the team - it's really critical for Compliance to be able to relate to the - not only the contracted parties but also to the complainants, to every stakeholder

at the ICANN multistakeholder model in the core language and the nuances of that cultural and diversity.

So we have that skill set. And we are now evaluating based on the new gTLD applications what - where is that evolving? You know, we all heard Fadi on Monday talk about internationalization and all this functional. That's been on our radar screen and we're going to continue to build towards that. But it will be built up based on what we learn from the new environment.

Okay. From an organizational structure wants the staff - the team around in this room here to know that today you don't see me publish work chart or anything because we really want to be flexible. We did not have the full staffing.

But the focus has been within our team in those three areas. We have, what I call, a core staff team that's - the focus is on registrant/registry compliance; about 12 team members. It's true I have certain subject matter expertise in certain areas. Our objective is to start doing what we call cross functional training and learning so we have the skill set to scale and shift resources as needed.

I do have the risk and audit management led by Jacks with support from the rest of the staff members but I also have performance measurements and reporting led by Paul. Also that helps in our operations.

Very, very pleased to let this audience know - because you all care a lot about Whois data inaccuracy. We had reported to you in - I think I announced this process of the three-step process that our consistent approach and process for compliance.

We started - we announced it in Dakar, got a lot of feedback, fine tuned it and then by Costa Rica we started rolling out the process. We do still have a lot of

fragmented tools but what we started to do is take the process into each application, each area that we have and manage complaints in and apply it.

The last one that we just accomplished is for the Whois data problem reporting system. In the past I put tentative numbers in here but we used to be consisting of five-step process; now it's down to three.

But the most important thing is it's not going from five to three is how effective and efficient are we in obtaining our fact-based material to help us make fact-based decisions. From the first notice that we sent out we are asking the registrars to provide us proof of reasonable steps.

And those things are the email exchanges - whatever it is but it has to be approved not just check, I sent it on or check, I did this. No, we want to see proof immediately. We validate and we take it to the next level if there is a need to or we close our ticket. So the process is now across all complaint types, all complaint tools we have are aligned with the compliance process and approach methodology.

This slide is not to scare you, please. The future is looking good. We - even though we still have fragmented tools on the left side the most important focus - after we did our feasibility study in-house we really realized that with the archaic tools we have or the different platforms we maintain our complaint management tools on - we realized it's better to align to the processes in our current tools if you are familiar with system integration and solutions.

What this has allowed us now is to migrate the data into a central solution without having to reinvent the wheel with every migration. So our objective is by December 2012, towards the end of December 2012, to start shifting the applications.

The first one we're going to start with is WDPRS because that is the most transparent and most problematic space for the ICANN community. We want

to immediately move it over and we start sunsetting the old technologies we have. We hope to, by middle of the 2013, we would have migrated all the tools, UDRP, the common complaint picket system referred to as C-Ticket - and any of the tools that we have today into one central complaint.

Why is that important? Because this main system we have a current, midterm and long-term vision. We want to ultimately start delivering towards that long-term vision where people can come in, check a complaint on their own or a registrar can come in and see their own dashboard.

So there are a lot of beautiful opportunities once we get to one complaint management tool for us internally and operationally but for also the community so we're working towards that.

Some of the future elements do include - I saw Jonathan; there's Jonathan. Jonathan represented this community and collected input about what are some of the requirements. We all, I mean, if you have logged a ticket I don't need to tell you what InterNIC looks like.

If you have not, please go before it goes into retirement from a complaint - compliance perspective. InterNIC will never retire; it's an integral part of the IANA system, you know, it's part of the domain name system. But it was used also to log and track - to send complaints to us. It's not user-friendly, there's no dropdown menus, limited functionality; a lot of those tools that were fine in 1998 or '99 when it was put together.

Based on input from this community and many others we will be implementing, by December, what we call multiple complaints per ticket, if you want to think of it that way. And Jonathan, like I said earlier, led the effort on behalf of this community so we've got a lot of new requirements.

So we will have one source. We will be more automated from a validation perspective and more integrated with the other tools that we depend on today. And we have to go and log into each one of them to validate.

Something nice about this is that - you heard, I think Fadi on Monday also mention Ed's back. Ed is the VP of IT that just came, about a month or so ago. And I keep reminding Ed that we are his favorite and only customers right now. So - and I'm really, I mean, we're really on track. We're still on track with our strategy to get the compliance tool. But we meet with him regularly, he understands the urgency of us getting to this solution and he's very supportive.

I just talked about improving user experience and scalability. Let me jump to metrics. This is a summary of the metrics. There are lots of slides behind the scene and there will be more presentations on this.

To this point we have - think of metrics in our space like a Rubik's Cube. We want to be able to access our data from different angles; anything from a top level domain to a region, to a country, to a registrar, to a complaint type to a date. So this Rubik's Cube is going to give us visibility and manageability of our department operationally but also for our reporting back to the community.

We will be announcing - we started actually in September - we held several outreach sessions with the Contracted Parties because we are launching the audit strategy in 2013. It will kick off in the fall - the latter part, in a couple of months, to launch it.

The audit strategy efforts we held a few sessions in September, like I said, with the Contracted Parties by professional courtesy because it's coming their way; they need to understand what's happening in that space, what are we doing but also collect their feedback and questions.

We started updating our Website on the audit Website page to start sharing with the community more and more as we develop and grow this plan. So the rollout is planned to start 2013.

And we want to have what we call an audit calendar where the community knows when the audits are starting and closing, who's being audited, what's the pass/fail rate, who are in remediation so all these plans are happening.

The - because of the complexity of our environment and the complexity of the model we all know there is no subject matter expertise in the audit of that space yet. Now it's not like (JSOX), it's not like a financial audit. So we really are inventing this model with us here, within our team and partnering with the vendors to put it together.

But the idea is to do this audit over a three-year plan and repeat it for the next year for the ones who did not get audited. So we're splitting our Contracted Parties in thirds. And if you know (unintelligible) and I've communicated that through all the Contracted Parties but new agreements will be included at the right time.

But we also have - we will be auditing again a similar registrar even if they went back - if they went through an audit we will probably come back and audit them if there are issues or reasons to audit them again. But the idea is to run the audit across the whole model once and come back only as needed.

New gTLD readiness, by the time we come to Beijing I will present you with - if I'm invited here, Steve, with more detailed plan of activities so you can track us - our progress. Efforts have begun, guys, a long time ago. And, you know, wake up - what keeps you up at night, new gTLD for us too.

The model is changing, it's evolving. Efforts started last - at the beginning of the year to assess the contract, understand it. Now we've ramped up our resources. I have Victor not to - please don't bombard him yet - but Victor is

leading that effort for us with of course partnering with Stacy who oversees the Registry space.

But he is so 100% job description now is new gTLD; that's his title, new gTLD Program. He is collaborating with the current gTLD efforts underway by, you know, that people are doing, developing, working towards. We have their project plan; we're putting a Compliance alignment to it. So by Beijing I will have a little bit more depth to that plan like our three-year plan so you can track our progress and know what we're doing when and how. Okay?

All I want to share with you is that the resources are on board so in addition to Victor I have Stacy, I have Carlos, I have Leticia from the core team. Of course the other core team members are being trained and we're sharing that knowledge. But the focus of this - these four - in addition to their other duties, with the exception of Victor, is to really dive into the new gTLD.

What we're working in the space we've assessed operationally, we're starting to look do we need more processes? What are the new complaint types we might be getting? What are the tools to supplement in the centralized solution. So all that stuff is coming together. Even Jacks has almost completed the audit plan for new gTLD. So there are a lot of efforts underway to get us ready.

The only thing that you see down there that still has an open square that's not - look like an arrow or a checkmark is outreach. Until we know what we're doing, how we're doing it, we cannot start outreach activities and finalize that so that's the last thing on our calendar but we will partner with the stakeholder group to be there for that outreach session.

The last thing I have for the team, please, if you are available tomorrow afternoon we have two sessions that are going to be focused entirely on those two topics. One of them is performance measurements and reporting. We have a little more in depth about the tools. But most important we're

going to do a live demo of the business intelligence tool that we have internally.

We're going to do a live demo. Some of the data will be generic in the dashboard format you will see. But the confidential data dashboarding at a registrar level or a registry we've created dummy data to show you that, right?

So that session is nothing but performance measurement, dashboarding, tools, metrics. The session at 3:30 is about the audit program, the plan, the timeline, all kinds of discussions. So please, if you are available tomorrow, come down, come up, I don't know where Room Queen is. But join us for those sessions to learn more about that.

With that, Steve, I would like to turn it over for questions.

Steve Metalitz: Maguy...

((Crosstalk))

Steve Metalitz: Thank you very much.

Maguy Serad: (Unintelligible).

Kristina Rosette: Just if you go back to Slide - I think it's Number 10 where you laid out the compliance audit schedule I'm wondering, you know, given that I think we're all assuming that as of Year 2 there will, in fact, be new Contracted Parties continually being added. Are they going to then be integrated into Year 2 and 3? Or are you not going to start auditing them until you effectively get to Year 4?

Maguy Serad: So it's yes to the first, integrated into the current plan. It all depends on the timing and how fast they come into the activities. As you know, in order for us to audit we have to have some history.

Jonathan Zuck: Maguy, hi. Thanks for the presentation and appreciate. As an occasional critic of the compliance function in ICANN I'm very excited about having a staffer named Oppenheimer; I think it seems appropriate. And I certainly plan on being in those sessions tomorrow. I'm surprised, given the report from the Whois Review Team, that you needed to generate any dummy data because there appears to be plenty already in the system.

But more constructively I'd like to - I'd like to talk about metrics a little bit. I was very excited to see a list of metrics. And I think there's a real inclination to present your plans from a plan and effort standpoint. And I think what a lot of people in the room would like to do is see your plans presented from a problem and solution standpoint.

And I think the way that that's best accomplished is by taking a look at the metrics, understanding what you believe the targets for those metrics should be, looking at what the numbers are turning out to be and, i.e. where are the problem areas and how the specific plans that you're proposing address what those flaws are and why you think they'll lead to a solution.

Because, again, it's not a compliance-only thing, it's an ICANN thing to say well we've resolved to spend more money on this issue and then at the end of the year we declare a success because we spent more money on the issue. And I think new metrics are a good anchor point for taking a different approach; a more here's a problem, here's our solution to the problem approach to looking at the problem.

Maguy Serad: Totally, totally in agreement. So let me address that. There are plenty of slides. And then the reason I did not put them here because right now as of

mid-September I truly can say I can start doing apples to apples comparison, right?

So I'm not making excuses; you know me better. We are now - if you look at the deck we are reporting in here metrics about how many are processed, closed, what status they are for process, how many are there.

And we will start reporting those. Again I want to migrate to one tool so I can have that off the top - I am capturing those. How - I'm not 100% comfortable with the data because I'm still migrating. But you will - tomorrow in our session we can talk more about some of those; you will see that.

Another example of metrics to - for you guys to know we were asked earlier about the question why are you doing the audit on all Contracted Parties over the three year plan? I want a baseline. I don't have a baseline.

We can do the baseline then we focus on the problematic areas. To Jonathan's point if you look at these metrics here that we collect we have been focusing on the transfer issues and the Whois inaccuracy issues. In September Pam - the transfer issues and the focuses are in a specific region. And we do not only depend on the stakeholder communities at ICANN to do our outreach anymore because we know it doesn't touch everybody.

So we leverage a stakeholder relations team, their contact information and we blast all the Contracted Parties. Pam led a very successful session in Chinese in September about the Inter Registrar Transfer Policy. That's a very huge area that is a lot of problem. Out of the 33 registrars in China 27 were represented, 40 attended; very interactive, very educational.

So to your point the metrics are being used to where are the problems. And we want to start turning into that proactive area of correcting versus just reactively just addressing complaints.

Jonathan Zuck: And setting targets.

Maguy Serad: Yeah.

Jonathan Zuck: Thank you.

Maguy Serad: Yes.

Steve Metalitz: Just remind everyone please identify yourself for the transcript.

Ellen Shankman: Thank you. Ellen Shankman. Fadi, in his opening remarks, talked a lot about the launch of myicann.org. I'm interested in knowing what of this information will be available there because it seems to me that you can get information to fit in and we can find out more about who you're tracking and information that would be valuable. Is that planning to be there?

Maguy Serad: Yes. And as you heard Fadi he just - it was just launched now and you saw the beta approaches. I will start putting some of those plans out there; we talked about it - and some of the complaint measures. I don't have a timeline yet but I'm exploring some is some of the data.

And based on the MyICANN what you pull it will be data relevant to you. But there will be area there for compliance.

((Crosstalk))

Ellen Shankman: ...were filed.

Maguy Serad: Please keep in mind no - the only time you will see names is when we publish a breach. Everything that happens - if you are not familiar with our process and all that please refer to the appendix. I'm trying to find the slide. This one. It's very important because I can never meet the expectation of this group if you do not understand at what point we publish what.

And the informal resolution phases - I've been saying since Dakar - we do not publish. This is the space where we collaborate with our Contracted Parties to come to a resolution. But it's measured, it's time-stamped, there are expectations, dates, fact-based decisions.

And as you notice on the bottom we also stop calling - we don't just do a siloed approach when we start looking at a complaint we look outside the box what else is a problem in there and we address it too.

So the only time we publish, Ellen, is when we issue a breach. We cannot publish before. And why? Because we all have some kind of business or you run your own business or whatever. You want that professional courtesy to resolve an issue not be accused of something because some complaints are valid, some are not.

So, yes, and we have published. If you look on our Website we started doing - I don't want to call it monthly newsletter; I want to call it updates. It's like a newsletter format. We generated for August and September and there is a list - not only a list of which registrar has gotten a breach but exactly what's the date, what's the breach for and you see it by breach, by provision or by registrar. So yes we're publishing what we can publish.

Steve Metalitz: Thank you. Let me see if there's anybody else that is in the queue - wants to get in the queue for a question or comment. Claudio, anybody else? I'll put myself in the queue after Claudio, thanks.

Claudio DiGangi: Thanks, Steve. Thanks, Maguy, for the presentation. I was just wondering if you could just give us a brief preview about the audit program; what it's going to consist of. Like, for example, Steve and I sent a letter I think it was back in 2008; we had identified that a lot of the registration agreements that the registrars used don't have all the proper provisions included, for example,

3.773 about accepting liability of harm if you're not the registered name holder, a lot of time that's left out of the agreement.

Are you guys going to be auditing the actual registration agreements that the registrars issue? Are you going to be auditing the domain name registrations to ensure the Whois is accurate? How's that going to work?

Maguy Serad: Just to respect the time on the schedule what I'd like to do is refer you to the appendix, Claudio. And are you able to attend tomorrow's session? So the selection of the provision was studied very thoroughly based on complaints, based on risks to the community, based on many things that we have heard since my arrival in addition to the high risk to the ecosystem for the Internet.

This is just a list here to share. Now will all of it be there or not? We will share more about what will be there but this is a very critical area you mentioned.

Steve Metalitz: Thank you. This is Steve Metalitz. Actually before I go to my question is there - have we had any questions in the chat room that we need - no, okay. And is there anybody on the phone now who is not on the Adobe and has a question to ask? Okay. Don't let me forget about those folks.

One thing that has changed, Maguy, since we last met with you, as Fadi announced yesterday is that you've - you now are the Vice President of Compliance and you report directly to the CEO. And as he mentioned that gives you complete independence.

I think I - this is my notes of what he said so hopefully I've got this accurately. Which I think all of us feel very positively about it. And I'm not necessarily asking you to comment on that although I'd welcome any comments that you have.

But he also said that you were looking into third party auditing of the work of the Compliance team. So could you say a little bit about that and what you have in mind, where that stands?

Maguy Serad: Gladly. For those of you who didn't read my bio I am Master Black Belt Six Sigma so it's all about audits, measurements, you know, that's why sometimes Jonathan and I either agree or disagree but we argue all the time.

But regardless so internal audits it's continuous improvement. Look at a continuous improvement, how do you measure continuous improvement? So for us we're looking at an internal audit for our activities. But again I've had that idea since I first joined ICANN.

But when we did a current state assessment it was not of any value for us to do an audit then because the report was going to reveal exactly what I had assessed when I arrived. I have - I've asked Fadi - I've been talking to Steve Crocker a lot so about that.

So I've asked Fadi to please give me the courtesy at least to finish 2012 and establish that foundation. Because we all know, I mean, I mean, it's very simple, when you're building a house before you move in they inspect it, right? So give me that professional courtesy to finish with my team has been amazing.

You know, we've been remodeling a house and living in it for the past year and a half, keeping the lights on and remodeling, taking huge risks so let us finish by end of 2012. We have our processes and templates. And we want to do our internal audit ourselves, you know, Jacks is certified for both.

So we want to start - we started that exercise on ourselves but Fadi is suggesting for the community's sake, for more validity, is to get a third party to do it, yes, so that is the plan.

Steve Metalitz: And would that be in 2013 or is it - is it known yet when that might be?

Maguy Serad: We have not talked the timing. I know what I would like.

Steve Metalitz: Okay. I think - do we have a question from the chat room?

Kristina Rosette: Just a comment actually. This is from Michael Graham. And he states, "Many of the metrics listed in your presentation would also be very useful for the review team as the metrics proposed by the Consumer Trust, Confidence and Competition Work Group. Hopefully your group and those putting together the review team will be able to work together on these."

Maguy Serad: Absolutely.

Steve Metalitz: Let me ask again if there are any other questions or comments that people want to make? If not I want to thank Maguy and all the members of her team. I'm struck by how many new faces there are, at least they're new to me. And it's great to know that you're at full strength. And I think everyone appreciates having a detailed presentation. And we also really appreciate your truncating it or summarize - condensing it so - just because of our schedule problems here.

But the full presentation has been circulated to the full IPC list. If you're an IPC member and you haven't received this let us know because you should have received it I think last night or yesterday. And there may well be other questions I'm sure. But we really appreciate all the work that went into the presentation and getting to meet more of your team. And thank you again for your time in presenting to us this afternoon.

Maguy Serad: Before I say bye and thank you for this opportunity we welcome feedback. We're very passionate about what we do. It takes a very passionate people to be in Compliance, guys. All we get is complaints. And look at the attitudes we have.

So send us your feedback; not complaints. Tell us what is - like what's keeping you up at night. And I'm sure, if it's keeping you up you have a solution or something in mind, right? We really welcome input and if we can do it we definitely will tell. If I can't I will explain why. All right?

Thank you again, Steve. And have a great rest of the week.

Steve Metalitz: Thank you. I saw Olof coming in and is Karen here? Okay. I know we're standing room only so let's take a minute here to readjust and then we'll continue with our agenda.

Man: Steve? Steve? Steve, while we readjust I've just got a message here. Can I just read this out? It's not - it's not - it's not for everyone. It's from a Mrs. Mary Partridge. She says please could we wish Mark a happy birthday.

((Crosstalk))

Mark Partridge: Thank you.

((Crosstalk))

Woman: Any time, any time.

((Crosstalk))

J. Scott Evans: ...bring in some local attorneys and IETA members to your offices just sit down and meet you. Just a meet and greet. Not a...

((Crosstalk))

J. Scott Evans: Yeah.

((Crosstalk))

J. Scott Evans: ...be able to - if we can get some people down there and start coalescing a group that you feel comfortable with that you could maybe use as like a last...

((Crosstalk))

J. Scott Evans: Is this helpful to you guys or...

((Crosstalk))

J. Scott Evans: ...rather than always - we can be proactive, yeah.

((Crosstalk))

Man: No, no I'm not going until - November, September...

((Crosstalk))

Man: Okay, okay perfect.

J. Scott Evans: I was just thinking if maybe we do some...

((Crosstalk))

Steve Metalitz: Okay thank you. Our next agenda item is a briefing on the trademark clearinghouse developments and Uniform Rapid Suspension program. There has been one plenary session - well mentioned in plenary sessions; there's been one plenary session dealing with some of the technical aspects of this and I know there'll be more later in the week.

But we've - we appreciate having the ICANN team, the ICANN staff team, that is spearheading this. And I think - should we start with trademark

clearinghouse? Why don't we start with trademark clearinghouse, Karen Lentz, and then we'll turn to Olof Nordling on the URS.

Karen Lentz: Okay can everyone hear me? All right. So thank you for this time slot on your agenda. The understanding I had was you wanted to have a kind of informal discussion here so I'll just hit on a few things that have happened this week.

There was a session yesterday that focused on the implementation of the sunrise and claims pieces of the clearinghouse - those processes. There were several questions discussed there in relation to alternatives to how those - that that could be done.

I've had a lot of notes from that and I'm sure you will (unintelligible) if you haven't already. There's also - tomorrow morning a more generally-oriented project update session where we'll go through some of the actual nuts and bolts of the clearinghouse that the (unintelligible) has been building as well as kind of looking at the big picture and where we are on the project.

I also - in advance of this meeting we published a couple of things for public comment. One was a memo on the proof of use element, which was something that was agreed upon as a requirement not for inclusion in the clearinghouse but to demonstrate eligibility for a sunrise name. So there's a memo on how that was implemented.

And then also there was a memo published on the matching rules which have to deal with taking the guidance that was in the Guidebook as far as what would be considered - would be incorporated in the definition of identical match and turning that into an operational process.

So I read your public comment. Thank you - thank you for that. I looked over it just a little bit before this meeting this afternoon. And the, you know, three areas were the general technical implementation and having a public comment period on that, the proof of use and the matching rules. So I'll start

with that and we can discuss any of the following or I can go into more detail on any of them.

Steve Metalitz: Okay thank you, Karen. Appreciate your opening this up to general questions or comments. I know Claudio was very involved in preparing those comments and he may have a point to make. So let me just see if there are people who want to ask questions or make comments about the status of the trademark clearinghouse.

Claudio and then who else? And? Go ahead, Claudio.

Claudio DiGangi: Claudio DiGangi. Karen, I was just curious if you had any questions about our comment? I mean, we raised a couple high level issues and from the beginning, you know, the clearinghouse was supposed to be sort of this neutral repository of rights and wasn't going to get into sort of subjective analysis of substantive rights; more of a fact checker.

And the whole proof of use issue, to us, looked like it would involve subjective determinations potentially. And so we suggested that those issues should be addressed at the registry level and not at the clearinghouse to maintain a neutral role of the clearinghouse. And I'm just kind of curious your reaction about that.

Karen Lentz: Thanks. So I - that actually was one of the questions that I jotted down in terms of the comment. So the - so you're correct that we've tried to design the clearinghouse to play a role that is, you know, focused on verifying factual information and not providing, you know, legal determinations or trying to make decisions about the scope of particular rights.

The - and the proof of use is - we've tried to implement in line with that. The, you know, the proof of use consists of a declaration basically from the rights holder saying that they are using the mark as they've set forth and then a

sample of use. And we've provided a list in there as to what would be accepted for that.

The intention really is to, you know, make it an accessible standard for rights holders around the world. And so, you know, we previously had published a sort of broad list of everything that had been brought up as something that might constitute a proof of use and we've tried to, you know, eliminate the maybe category in either of the things to, you know, we're pretty sure this would be, you know, acceptable such as - and there is, you know, things in a category like advertising or for commercial materials and, you know, to eliminate some that didn't seem like they actually demonstrated use.

So it is the intention to have as much as possible, you know, to sort of (unintelligible) rules are well understood published rules as to what's acceptable. And I - the point about addressing sunrise disputes, yeah, I would - yeah, I just wanted to ask for a bit of clarification on that.

So there's a couple of types of disputes that I can foresee around the proof of use. One is that the clearinghouse incorrectly accepted something. So you see that it's in the clearinghouse or you know somehow that it's in the clearinghouse and the, you know, sample that was provided or their declaration you, you know, believe is incorrect or you - the sample didn't meet the published requirements, right?

The other is that the registry, you know, that they don't really have an entitlement to that name, the domain name that they registered at the registry level. So you're kind of - you're either disputing the action that the clearinghouse took or you're disputing whether the party that registered the domain name appropriately was entitled to do that.

So I wasn't quite clear from your comment which (unintelligible) approach you were suggesting.

Claudio DiGangi: Sure, yeah, thank you for the opportunity to clarify. So I guess maybe if I use an example if somebody submitted, let's say, something to the clearinghouse of proof of use specimen and it was incorrectly - let's say the clearinghouse, for some reason, opened the email or somehow saw it was blank and rejected it so that could be one type of challenge where you could say I did submit the assessment; it's more of an objective issue.

Then we see - the other situation I can envision somebody sends in - and the whole proof of use requirement, I think, is to cut down on fraudulent registrations. So I'm envisioning a scenario where somebody sends in a fake specimen of use. What does the clearinghouse do in that scenario? How does it deal with fake specimens abuse basically?

J. Scott Evans: Yeah, Claudio, we discussed this. I helped (unintelligible) in preparing the comments. And, you know, first of all if somebody's in the clearinghouse - everybody can get in the clearinghouse so getting in the clearinghouse isn't a problem; you can have 100 people claiming the same string and be in the clearinghouse.

And you only have to present a proof of use if you want to assert it with regards to a sunrise. So you could still be in there with regards to the claims service and never do proof of use because you're not going to do a sunrise.

And it just seems that the most appropriate - if what you're doing is trying to keep subjectivity out of the hand of the runner of this then what it needs to be is it just needs to be when it has been asserted in a sunrise that one of the challenge procedures within that sunrise is that that - not that the specimen - because it's not going to be that the specimen is not - doesn't meet the criteria but that they're not actually using it. Right?

You know, it's not that well they're using it and they gave you promotional materials and they really should have given you not a Webpage but they should have given you a brochure because of the type of services they offer.

Because either way that's curable and they're going to still get the sunrise. It's that they're fraudulently done it and there's no use.

So it seems to me that if - you were trying to keep the clearinghouse operator neutral that what you would want to do is have the experts that decide trademark disputes already, because they're the ones that are going to be deciding these sunrise challenge procedures to look at that issue and just enunciate that that would be one of the claims that you could bring the viable - not only that it's no longer registered or it's in the wrong country or it's not a national registration.

Or, you know, because those have all been enunciated but also that the specimen of use is invalid because they are, in fact, not using it or something to that extent that you could - that that is an annunciated way to challenge and do it at that level.

Karen Lentz: Okay so the grounds for bringing a challenge is the market's not being used and this is decided not by the clearinghouse but by an expert panel is what you're - okay got it.

Steve Metalitz: Yeah, I think Anne had a question. Let me just see if anybody else wanted to be in the queue. There's one from the chat room. Anybody else in the room?

Anne Aikman-Scalese: Yes, Anne Aikman-Scalese with Lewis and Roca. And actually the topic that J. Scott just brought up is kind of related to what I wanted to ask. I know that concerning eligibility there is a provision in the trademark clearinghouse that states that if a market is in the opposition period it's not eligible to be entered into the clearinghouse; is that correct - in the opposition period?

Karen Lentz: Yes.

Anne Aikman-Scalese: And obviously there are - that differs from country to country, from jurisdiction to jurisdiction. And the grounds on which you can, you know, bring an opposition in the case of CTM, for example invalidation and revocation those legal issues vary from country to country.

And obviously specifically J. Scott's reference to use or non use, for example, in CTM the no challenge for non use until after five years after the initial registration, no challenge based on generic until after the registration occurs, etcetera, etcetera.

So when you're trying to account for varying laws from country to country and significant rights that go along with the eligibility of the trademark especially as to sunrise, for those in the room who may be concerned about defensive registrations, question number one is will those rules be published for comment? And I guess question number two being the issue of dispute resolution, what's the appropriate level for challenges since we don't want to make law in the clearinghouse.

Karen Lentz: So in terms of - and I asked (Vicky) to chime in here if there's anything you want to add. So in terms of, you know, the opposition period varying from country to country I think that probably something that is, you know, accounted for in the verification process when the, you know, when presented with a trademark record - submission that the clearinghouse is verifying that's one of the things that they, you know, the jurisdiction is part of what's submitted.

And that's one of the things that would be considered in the process. The, you know, with, you know, if there needs to be more detail into that. And that's something that could, you know, would need to be polished obviously.

And then the second question was - the second question was whether that would be published? Right. Okay thanks.

Steve Metalitz: We had a question from a remote participant, (Emma).

Michael Graham: Thank you. This question is from Michael Graham and he'd like to direct this to both Karen and J. Scott. And he asks, "What of a situation where a specimen is refused but the applicant believes it should be accepted?"

Karen Lentz: So there actually is, in the clearinghouse process, a - we call it reconsideration like process. So if somebody's denied and they want to, you know, have it looked at again, you know, present back thing, you know, you missed this or then that process is built in.

J. Scott Evans: Should the process - because they're not - they're only looking to make sure you supplied the stuff; they're just going through a list, Michael, so they're going to say did - provided the date it's registered, provided the country it's registered, provided declaration, attached to declaration was something that claims to be proof of use.

And if it's not a blank page and it shows the mark that they're claiming it's probably going to be accepted; it's going to be very perfunctory, very much like some people would argue - some trademark offices do - and they sort of leave it to the parties to dispute.

So, I mean, I think that's the answer is they're just kicking boxes to make sure you supplied the necessary information. They're not making a subjected - if it's clear - if it looks on the face like use they're going to accept it; they're not going to question it. Is that correct, Karen?

Karen Lentz: So it's - yeah, (unintelligible) to both your things; has there been a declaration? Have they submitted a sample that contains the mark and that, you know, is one of the samples that's...

((Crosstalk))

J. Scott Evans: You know, I can see a situation where you might click and have the declaration and you submit it and it's either not the mark or the mark says it's for radios and the advertisement is for socks and that's so clear on the face that it's not use with radios or whatever they would reject it. But as long as it meets a very baseline, minimum test it'll be accepted.

Karen Lentz: Yeah.

Steve Metalitz: Okay.

Claudio DiGangi: That means if the specimen is potentially clearly a false specimen in use the clearinghouse is not going to look at it and say this is - somebody just prints something out they're not going to get into that sort of subjective criteria and value because all the other information is objective in terms of the trademark owner that's meeting match with registration data at the trademark office level; all that's subjective. This just seems to be the on part that involves subjective determinations.

Karen Lentz: Yeah and it's, you know, it's harder to build in terms of creating a process that minimizes the discretion. You know, I think you can - you know, things - when they're submitted it may not be obvious that they are, you know, false or fraudulent and that's why you need a process to bring that to the attention of the clearinghouse at some point.

Steve Metalitz: Okay. Is there a question over here? And then I'm going to put myself in the queue after that. Go ahead. Come up to a mic and identify yourself please.

(Andrea Rush): (Andrea Rush) from Toronto. I'm sure a bunch of the Canadians.

Steve Metalitz: Closer.

(Andrea Rush): (Andrea Rush) from Toronto. I'm sure a bunch of the Canadians are thinking that in some jurisdictions, for example, advertising is not used and sometimes it is and sometimes it isn't.

That's just kind of a (unintelligible) principle. Is there a way to understand how the decision was made as to whether or not there was use so that somebody looking at the clearinghouse process would understand and possibly challenge, possibly not challenge but understand the basis for the (unintelligible)? For example in the case where the advertising might have been the decision may or may not have been the use.

Karen Lentz: Thanks. Kind of refute to our answer but I understood your question was, I mean, if it's not correct tell me. But the, you know, the intention is that the clearinghouse is not - the question they're asking is not is this mark used? You know, rule based on this evidence.

The task that they're asked to perform is, you know, has this declaration been completed and has a sample been submitted that, you know, fits all of these criteria. So certainly, you know, when you have a process like that and if something is denied, you know, there's some level of explanation provided as to the reasons why it was rejected. And then, you know, I imagine there's a sort of a reconsideration that's built in to it. Did that answer your question?

Steve Metalitz: Okay. Please come up to the mic and identify yourself so we'll have that for the transcript.

Is there - by the way, is there a mic that...

Man: There's one here.

Steve Metalitz: Okay could you pass that up here and we'll have that available.

((Crosstalk))

(Janet Furor): Is it on? Yes. Okay, my name is (Janet Furor). I'm with (unintelligible). The question I believe (Andrea) was trying to ask is in the case where a specimen is accepted would the rationale be provided as to why it was accepted? Because there are different standards in different jurisdictions as to why a specimen may or may not be accepted.

Karen Lentz: Yeah, that's correct. But the clearinghouse is not intending to apply the standard of any particular jurisdiction. They're intending to apply a standard that the clearinghouse has provided and published as to what they will use.

So in terms of whether a rationale is provided when something is accepted I don't know that that's typically done. But if it's a suggestion then we'll take that.

Steve Metalitz: Okay.

J. Scott Evans: Karen, all you have to do is put in your declaration a sentence that says that the - that the specimen supplied is sufficient use for the jurisdiction represented by the registration or something to that effect. And then I think that satisfied that problem because the declaration specifically states that on submitting it and it is considered use for the jurisdiction in which the registration is registered; something to that effect.

Steve Metalitz: Okay I'd like to - this is Steve Metalitz. And I'll just ask a question and then I think we need to move on to URS since we're running short on time. I'm sure within this room I'm probably somewhere in the lower half of the range on knowledge about the trademark clearinghouse; I'm somewhere below the median.

But I am dimly aware that a group of registries have come forward with an alternative model for structuring the clearinghouse. And I know there was - it

was the subject of a lot of discussion yesterday. We've had a lot of questions here about the exiting model.

And I guess I'd just like to ask Karen or others on the staff is there any - what level of consideration is being given to this alternative model? And how will the decision be made as to whether we use the existing model, the alternative model or some combination of those two models?

Karen Lentz: So thank you. That was the last point I wanted to make before moving on to this. So the draft implementation model that I think most of you are probably aware of was something that ICANN published in April. There is an alternative proposal both one each for sunrise and claims that was developed in the August, September timeframe.

So the difficulty that we've had in terms of, you know, putting something out there that's definitive is that the discussion keeps happening. And, you know, things that sort of get outdated. So we have a sort of side by side as to, you know, this is what this model does, this is what the other model does.

But in terms of how the decision gets made I think it's being made right now. The model that ICANN created tried to take into account the best we could, the best in fact that we got during the (IAG) process.

And then, you know, because the Registry proposal or this alternative model was so far as, you know, it was circulated and drafted among a limited group of people that we thought if we were going to, you know, change from the - from what we had said previously that there needed to be broader stakeholder knowledge and put in discussion of that.

So we tried to - I guess we did that yesterday. We thought that, you know, in particular this group's participation was really key to that. And so I think, you know, what we're looking for is, you know, are the views of this group on the

model of sunrise and claims that serves what the original goals were when the clearinghouse was proposed.

You know, we think that by raising some of the issues and questions that were discussed yesterday that that's - I think we're - we've moved a little bit beyond pick a model because they can kind of both be tailored according to the issues that we talked about yesterday like what data is accessed and what kind of data protection, you know, moves or controls need to be in there. So that's the attempt to really not pick one but develop something that's optimal.

Steve Metalitz: Thank you. Kurt, did you want to add something? Could you just identify yourself...

((Crosstalk))

Kurt Pritz: Yes, this is Kurt Pritz from ICANN. Thanks, Steve and thanks Karen. The Registry model sought to address a number of issues they had with the ICANN-proposed model in order to simplify a takeout cost making more reliable.

And so there are really a number of issues. So as Karen characterized it it's not about choosing one or the other but it's arriving at one model. So for example in our sunrise model we had proposed a method of codes that can be used.

At the end of the day there would have to be many, many, many codes and the Registrars thought it would be difficult to deal with that many codes. So it was pretty simple for us to agree on a way to simplify that.

There is also a difference in how we sent you to the code; whether it was a simple code or it was a - one of these keys where there's a public key or a private key.

Whether the registry got notification that it was okay for this sunrise registration, you know, to be registered in the domain because it was in the - the trademark. What they really revolve around is the data. So in sending the registry a file rather than just a code we would be revealing some of the trademark clearinghouse data.

Similarly in IP claims, you know, the issue also revolves around data. Will ICANN - will the clearinghouse push the clearinghouse data to every registry? And if it does will it be encrypted?

The conclusion that the whole community came to yesterday but that many understood before is that the information in the clearinghouse, because the clearinghouse is designed to send information out, the information in the clearinghouse will be public at some point.

And to those that really want to find out what that data is it can be pretty soon because the clearinghouse is meant to be accessed; the clearinghouse data is meant to be accessed. So what technical board members and other technical people brought to everyone's attention yesterday is - and I'm going to oversimplify this because I'm not smart in these issues - but that encryption is in a powerful - is not a powerful tool for protecting the data.

We came away from the implementation assistance group with two understandings and one of them was that the IP representatives wished to - as aggregated wished to keep the clearinghouse information private because as aggregated data it could be of different value to others than just each trademark registration, which is, which we already know is public.

So my personal opinion - speaking on my own behalf and nobody else's - is that the issue for IP is really about - is really about how that data is presented to registries and how it can be protected and especially given that it's becoming well understood that encryption is not a viable protection

mechanism and it'll kind of make ICANN look bad because we'll encrypt the data and then somebody will find it out in a month anyway.

So what I think the discussion for IP is about is how, with the knowledge that that data can become known what is the best way to protect it? And we were talking yesterday and I've talked in the past about whether there could be contractual provisions for those who can see the data, you know, what their obligations are to protect it and so on.

So in discussing these models and arriving at the best one I think that's where the interests are of IP.

((Crosstalk))

Steve Metalitz: Okay. Kurt, thank you very much. And thank you, Karen, for your presentation and response to questions. I would like to move on to Olof and the - unless there's something else that needs to be raised on the clearinghouse I'd like to move on to Olof and URS. Karen, you're welcome to stay too of course and everybody.

So, please, Olof, the floor is yours.

Olof Nordling: Thank you very much, Steve and all for inviting us. And I think given the origin of the URS it's in order to thank many of you for the efforts that actually led to its creation in two consecutive community groups where many of you were very active and so first of all thank you for that as well.

Now we reached a point where it's time for implementation and we reached that some time ago. And one could say and the realization dawned that, well, maybe this wasn't - it was intended to be a quick, lightweight and cost effective - low cost complement for trademark protection of really clear cut cases of infringement as a complement to the UDRP.

And, well, signals earlier this year - I wasn't involved in myself but I've understood that that was - concerns were raised whether it actually would be quick and low cost according to the objectives that were set for the URS.

So - and a session was organized in Prague to collect information and suggestions how it possibly could be changed if needed in order to fulfill these objectives. And there were plenty of suggestions brought in. We have grouped those in four different areas and those were also the subject for a Webinar to continue and review what kind of changes could be more or less appealing and which ones could be more or less effective in order to achieve the objectives stated.

But not only that we realized that time is in short supply, as always. And this little implement has a nasty tendency to only rotate clockwise. So the need for actually working on two tracks, at least, was pretty obvious.

So we launched a request for information on what was it, 24th of September, with a due date for (unintelligible) on the 28th of November, if I remember right, but don't quote me.

In order to test the market will this work and if not what is needed to be changed in a more formal sense, so directed to the potential providers out there. And we're hoping of course for good answers to that.

But we can't sit down and just pray that it will work out okay. So in the meantime we're looking in depth into the potential changes and trying to assess, well, which ones could be the most effective and are some, perhaps, even are necessary from a logical point of view.

And, well, also get the assessment from the community which ones are doable, acceptable, how do we keep the balance, which was in the original text if we need to change it.

So to that end, well, we also have invited potential providers to a session on Thursday, 11:45 here in Toronto, to give their views on necessary - least necessary alternative solutions that could be considered.

So I hope you, well, can provide comments right now to what we should do and we also requested the GNSO and the ALAC to provide whatever process advice on how we best advance any changes that would potentially have to be made.

So I think that gives a little glimpse on where we stand right now. And comments, questions, preferences, tomatoes, whatever.

Steve Metalitz: Okay no vegetables allowed. Heather, I think, wanted to speak. Who else would like to be in the queue? J. Scott. Kristina, thank you. Anybody else? Start with (unintelligible) and Kristina.

Man: Just a short and clear question. What's the new time limit? Yes, I mean, to have it on a plate.

Olof Nordling: We have a time limit that says that, all right, if we can go there we would be in February to have signed up providers, which is maybe deferred if we need to go full RFP but thereabouts, well, that's at least what we're aiming at...

((Crosstalk))

Olof Nordling: To be precise 2013, yes indeed.

Kristina Rosette: Kristina Rosette for the transcription. Olof, thank you for this. I think we established, perhaps it was on Sunday, that unfortunately the RFI neither identifies the cost as an objective for responses nor actually asks for cost information.

I've taken a quick look at the presentations that have already been posted for the Thursday session and it looks like (NAF) is helpfully already come out and said \$300-\$500; not a chance.

So what I'm curious is that given that cost really is a very key factor here, given that it has somehow slipped out of the information that ICANN has requested, what are the next steps on trying to kind of reach out and make sure that the importance of that cost factor is communicated to those who might otherwise be considering responding?

Olof Nordling: As part - reading the RFI on next week we have some - a conference call open for potential providers to clarify things and raise questions and answers. And, well, we trust that even without explicitly stating that this is what it must be we trust that very many of the potential providers are well aware of the discussions in the background.

And will - even if they provide cost estimates that are higher, well, that could be helpful as well because what we do have a little problem actually costing the process as it is right now so we need help with that.

And remember this is an RFI. Maybe we get all the information we need, maybe we can proceed immediately to the next step.

And perhaps I should also highlight that it is an RFI. And any information in that context is welcome.

Man: So in other words, it wouldn't just be potential providers who are asked to respond to the RFI. I could be other parties that have information that would be useful in costing for example or other topics.

Olof Nordling: And such information is welcome straight away to me, thank you.

Steve Metalitz: David let me see if anybody else wants to be in the queue. Is there anybody else? David go ahead.

David Taylor: Thanks Steve, David Taylor. Olof, just out of interest, if no provider is willing to provide the price that's on the table (with bringing) it to \$500.00, do you have a Plan B and a Plan C?

Olof Nordling: Well Plan B is to really accelerate the modification process and see what can be achieved. May perhaps add that in the letter from Larry Strickling explicitly asked for a (defort) solution rather than well (US has drafted). That may be an alternative for example.

Well if that's not a (do path), well we can - there was subsidization or voluntary Pro Bono approach as well, which of course if you can find that the costly part seems to be the examiners, apparently something like two thirds of the cost of the case.

If you can find good examiners for free, well then we may have solved the problem. What we wont sit down and pray for that neither. I was going to say that's Plan F.

No, that's Plan A+. I mean if we get a line of those, then all right, we'll - let's run it and...

Steve Metalitz: Sarah.

Sarah Deutsch: This I guess relates to...

Steve Metalitz: Could you identify yourself?

Sarah Deutsch: I'm Sarah Deutsch from Verizon. I guess this relates to, you know, the volunteer issue. But we're asking these examiners to make determinations based on a clear and convincing evidence standard. Which is a very, you

know, as a trademark owner, that's usually the kind of evidence that we amass, only after we see somebody.

So it's going to be very difficult for the brand owner to make that determination. It will be very difficult for the examiner to figure out, well why was this a preponderance of evidence under the UDRP? And I have to find something more?

So, you know, we filed many comments with ICANN urging that the standard be consistent with the UDRP. And of course we'd also love to see a transfer remedy so that the UDR - the URF becomes something that doesn't just get continually used over and over again as the next cyber squatter picks it up after the name drops.

Olof Nordling: Thank you Sarah. I note that as an additional suggestion for change. And by the way, I'm Olof Nordling for (direct) a bit late to say that.

Steve Levy: Hello, Steve Levy with FairWinds Partners. Has any investigation been done into both the cost and technical feasibility of perhaps automating part of this process to come up with what would be considered a clear and convincing case?

I know we've used, of course, the (sword) algorithm we're all familiar with. Is there a possibility to expand upon that and either incorporate something that would identify the content of a Website?

Or otherwise make the panelist's job a lot quicker and easier. And maybe bring down the time and the cost?

Man: Short and snappy answer is no. That is a viable suggestion. I don't think that (sword) at this point and time would be, well anything else, well a little help for somebody.

One cannot sort of use that for a (minor) decision, whether it is or it isn't. We have noted that before. In due course perhaps, but well it's well worth the thought. So thanks very much.

Steve Metalitz: Okay let's see. We have time for one final question. If there is an additional question for this one right here, and the mic is still there I think.

(Brad Bertolio): Hi, I'm (Brad Bertolio) from (Intrasponce) Incorporation. And I just wanted to briefly let the panel and committee and know that we will be submitting a response to the RFI.

And that we're looking forward to taking part in the panel on Thursday. We're coming from a background more in technology and legal process outsourcing, which is a little bit of a different perspective I think than maybe some of the other solution providers.

But we are convinced that we can do this for the cost target. And we're looking forward to talking more about how we can achieve. But there I think other options out there that we'll be talking about on Thursday. So just a solicitation to anyone that's interested, Thursday should be an interesting session.

Man: Thanks so much for that comment. And may I add that on - during the Webinar on the 3rd of October, there was a very good suggestion that well we should reach out to the Association of Arbitrary - Arbitration companies.

And so we've done that. We sent to I think ten such associations. And hopefully we can get a good response from, or additional responses to that. But thank you very much for that positive comment.

Steve Metalitz: Yes thank you. And Kurt did you have something you wanted to add before we wrap up this topic?

Kurt Pritz: I have sort of a solicitation. So we have a meeting come up on this later this week to discuss alternative solutions and partial response to Sarah.

When we developed the URS, you know, we made it for, you know, clear-cut cases of abuse. So we went to a higher standard that got the community seal of approval.

But you're exactly right. A higher standard needs more proof and more proof means more expense. And so a lot of the aspects of the URS make it as expensive or more expensive than UDRP. Some make it less.

And so we proposed in the URS session, you know, there's been alternative suggestions for how to address this issue. One is, you know, ICANN support of the URS in the short-term, there is proposals put on the table in this upcoming session that, you know, I would ask you to carefully consider and support the kind of change the paradigm for how much proof is required.

And can there be a default mechanism that makes it faster to get to a decision. But somehow also provides the protection from registrants that were in the earlier model.

So I know you're going to come. But to the extent you can support those, we think that's a possible way to get to the cost target.

Steve Metalitz: Okay thank you on those optimistic notes. We'll thank our presenters and close this portion of the meeting.

I seen Margie is here and I saw Becky before. She's right outside. Okay so why don't you guys, I mean we'll have a few empty seats, a couple here. I'm not sure - we'll find enough seats for you. And I don't know if you had any presentation you wanted to make?

((Crosstalk))

Steve Metalitz: Could we come back to order please? Could we come back to order please? Okay we have two more items on our agenda. And this is our last presentation. Thank you. Our sergeant in arms has spoken. No, let's move on here.

Our next topic is a discussion with the RAA negotiators. And we have several of them here. James has just arrived, Becky Burr representing the registrars, Margie, (Sam) representing the - representing ICANN. Kurt is still here.

We're going to take a volunteer to give up their chair so that James can sit down.

((Crosstalk))

Steve Metalitz: And I ask them in the interest of time to just dive right in. We had a presentation session on this yesterday afternoon. I know many of us attended. But I'll just say is there anything that any of you want to say to kick off or should we just jump right in?

Woman: We are happy to just go to questions.

Steve Metalitz: Okay let's take a queue for any questions. And oh Kurt did you want to say something?

Kurt Pritz: I've been asked to. I don't know if I want to. I just want to say that, you know, the negotiations are gratefully drawing to a close. (Unintelligible) set for us a target to finish by December when we told him we'd be done by February.

So he, you know, and if you remember on his bubble chart where the things he's thinking about. This was one of the items. And I'll tell you that, you know, we have a closing leadership meeting with him at 10 o'clock every night. And it usually goes from 10 to midnight.

And we spent the last two nights talking about this. And so it's a very high priority for ICANN. And how ICANN can close these negotiations with getting some real benefit.

And, you know, our scorecard is kind of on the law enforcement asks, you know, we're at 11 1/2 out of 12. And we can talk about that. We have sort of a, you know, we have a scorecard against the GNSO aspect, show about a similar score. But we want - we'll publish that as soon as we can to get some feedback in the next few weeks on that.

And so the issues at this meeting really have been, you know, that we're declaring our, you know, three-way negotiations among the registrars, ICANN and law enforcement kind of at an end that we are where we are on those things.

And that we have - ICANN asked that we want to negotiate. And there are some registrar asks that they have. And we haven't really gotten to the nub of those because they're kind of counterbalances to the law enforcement recommendations, especially Whois verification and data retention that we considered most important.

So we want to move ahead on those other things and give out bargaining chips until we got agreement there. So we think now, you know, it's just the two of us at the table.

And we're planning for, if we can, four meetings between now and the end of the year. And there's, you know, eight or nine weeks so. We've been given marching orders to be intensive about it and we will.

Steve Metalitz: So I'll just take the first question because this is I think a little different than what I thought I heard yesterday. So the issues of Whois verification and data retention have been resolved?

Kurt Pritz: So on data retention we have a central agreement with law enforcement. And I think everybody would say that. On the issue of Whois verification, I'll let the registrars talk to this.

You know, it really revolves around two things. Whether we do the Whois verification before a name is allowed to resolve or after. And there's not agreement, you know, law enforcement urged that it happened before. But seemed to be on the fence whether they would push that or not.

And the other issue is whether there would be email and phone number verification instead of one or the other. So those are the - (there is) a difference really between the registrar position and the law enforcement position that I think aren't really going to change.

Man: Okay.

Man: Okay, thanks Steve. Maybe I can shed a little bit of light on where we are. And for those who weren't in the update session was it yesterday? These days all start to run together.

Saturday or Sunday, but yesterday. In that I think that Kurt has a good synopsis on it. We are concerned about, from the registrar position, we are wanting to propose a verification scheme that would either be a requirement to verify the email address or verify the telephone number.

And I think most registrars have acknowledged that they would build the facilities for both and let the registrant choose which one would be more appropriate. That would hopefully, (even the minds) be impact or burden on the registrant.

And then secondly, the issue of pre-verification or verification within a reasonable time after domain name is registered. I think the latter is something that we have precedent for in the (CC) space.

And we can probably piggyback off some of those systems and procedures. There are models there. I think pre-verification is, as I stated yesterday, something that is new that is impactful to other stakeholder groups besides just registries and registrars.

And we would like to see that discussed in a broader context probably through a PDP if that is the insistence of the other side of the negotiating table. So that's roughly where our position sits. Did I capture it? Did I get it Becky?

Becky Burr: Yes. Just to add, I think that the fact that we've gotten 11 1/2 out of 12 of the law enforcement requests, which I just looked because I hadn't looked yesterday at the priority topic - high priority topics from the RAA final report.

And all of those are encompassed in that. And on this one you see the verification issue. There are substantial concerns about the benefits - the effect that this would have on contributing to Whois accuracy, which all of the registrars agree is the priority.

There is let me say at least deep skepticism about that. And concern about the way that the changes would impact the process by which registrations are made, impact access in some cases.

And so the proposal here is to let us take a first step. And I just want to make sure everybody understand, it was hard to get where we are. And not - you don't have to appreciate our (value add).

But I'm just telling you, we've - the registrar negotiating team, and I don't really have the dog in this place since I'm not a registrar, worked really hard to bring the group along on this.

And the consensus that we have is that we would take an initial step. We would gather data, real data about how that affects the process, how that affects accuracy.

It may be that, you know, if somebody does both, it has a terrific effect. It may be that it has no effect. And we just don't know. This is not a we'll never talk about this again step.

This is we have a real fundamental difference about the effect. We have no facts that can be brought to bear on it. And we think it is prudent and sensible to begin that process and collect the data and have that data for further decision making.

Man: And just to add to that, and thanks Becky for bringing it up. That process of bringing the entire stakeholder group of competitors that have very different interests and business models, bringing them along that process is ongoing.

Here even at this meeting and at this late stage of the game it is, you know, to say comparison to cat herding is probably - I'd take the cat-herding job in a heartbeat right now, so.

Woman: You have stronger opinions among cats.

Steve Metalitz: Okay thank you. Let's open the floor to questions or comments regarding the RAA negotiations. And Claudio and (Fabrisio) and anybody else at first - go ahead Anne.

Anne Aikman-Scalese: Anne Aikman-Scalese of Lewis and Roca. I don't know if it's a question really regarding the negotiations per say. But everyone seems to be acknowledging at the meeting that Whois is very important.

Whois data quality is very important. (Accuracy's if want to call it that). And there's talk about consumer trust and confidence and the consumer's need to have confidence in the Internet and be able to follow up if they experience problems in using the Internet.

And my question is a real practical one related to Whois, which is when I go to a registrar's Website and I'm looking for - and let's assume that I'm not a trademark lawyer. Let's assume I'm a consumer.

And I'm trying to find Whois data. And I'm trying to find that link. It's really difficult to find. I mean you'd have to scroll down to the very bottom. And it's in the teeny tiny print.

James Bladel: So I can admit that that's not part of the scope of what we we're negotiating. I know in our particular Website that we have, it's just as easy to find in some cases as searching for a new - maybe not exactly as easy, but pretty close.

I think that it is remarkable the number that the proliferation of Whois topics and efforts. If you look at what we're doing at the RAA, we're got a PDP that is now launching or being born for a transitioning to a thick Whois model from thin Whois, which could address a number of these problems. Because I think we agree that a lot of the issues associated with bad Whois data live in the thin Whois space (common that) and some other registries as opposed to some of the thicker Whois.

And then we have the Whois review team issuing their recommendations. The SVAC issuing a report. And by they way, all of this in the context of we're working on a successor protocol and system to replace Whois.

So all of these things seem to be kind of converging on this meeting. So I kind of share your confusion and frustration.

It is on some. It isn't on others. And I don't think that is a requirement to standardize would be the answer.

Anne Aikman-Scalese: Consumer trust and confidence, it would be helpful if it were easier for consumers to find the Whois information. Just a comment on best practices, not really a matter of RAA negotiations. Thank you.

Steve Metalitz: Okay Claudio.

Claudio DiGangi: Yes it's really just a, I'm Claudio DiGangi. Thanks Becky and James for - I know it's been an ongoing effort for a while. James just in regards to your last comment.

So just on terms of next steps, you guys are not actually formally - it wasn't the registrar stakeholder group sort of put you guys (forward) formally as the negotiation team?

I'm just trying to figure out what happens after this process is over. How does this move forward? How does the community provide input? How does that all come together?

James Bladel: That's a good question. So obviously it was impractical for ICANN to enter into bilateral negotiations with 900 or some accredited entities. So it was decided from the stakeholder group side that we would identify a cross section of the community, of our stakeholder group to represent other registrars. And I can tell you that that - arriving at that was a controversy in and among itself.

The next steps, once we agree upon some language in the draft RAA, the next steps anticipated would be that we would then take this back to the stakeholder group.

And I believe either formally approve it or adopt this as our new RAA. And then I'm sure that other registrars would likely take this back to their own internal councils for comment. And hopefully not mark up or addition at this late stage of the game. And that's the generally the approach that we would take.

Becky Burr: Just in terms of that, just to be sure that nothing's left out. It is clearly ICANN's intention to post this for public comment. And so it is not, I mean it's not - that is a step I think in a slide that Margie and (Sam) provided yesterday. There was a time period for the comment period.

And we understand that this is an issue of great significance to the community and interest. And so we would fully expect to have comments that we need to take into account.

Steve Metalitz: Do any of the ICANN staff want to add anything about on the next steps question? Since obviously it's not just the stakeholder, it's not just the registrar...

Man: Right. Just that we're exploring a series of incentives to bring all the registrars onboard. If you think about the last set of negotiations we did, we provided a set of incentives there. It would probably be different this time than a fee reduction.

But so we can get registrars onboard. And it worked remarkably well. We're up to 95% of all registrants, you know, within months. And there - but there is still say 50 registrars that haven't adopted the new RAA, although there's very few registrants across those registrars.

Steve Metalitz: Yes. I think - I do have a question about that. But let me ask (Fabrisio) I think was next in the queue. And let me - is there anybody else that has a question or comment? (Fabrisio) go ahead.

(Fabrisio): It's working. Thank you Steve. So it seems that the goal here with regard to Whois is to increase the accuracy and availability. But - and if we're at a loggerhead about both the system by which we try to increase that accuracy at the front end.

And whether that anyone of those two alternatives, mechanism wise, is even worth doing. Has there been any discussion or has it been thrown out to the community or law enforcement to think of the other way?

There's two ways of increasing or incentivizing accurate Whois, either at the entry or when you find it, you stop it. And so the question is has law enforcement or community been offered the option of having an exchange for verification?

Something akin to an airtight, quick way of dealing with false Whois so at the community when they see it, they can alert it and stop it?

Woman: So just to be absolutely clear, the language that was in the RAA that said you had to notify people that they were violating the terms of registration if you found false Whois data has been changed. To say that you have to suspend the registration if it's not corrected. So that I think is very significant change.

I don't think it's talking about of scope to suggest that law enforcement did talk about a regist - a centralized registry. I didn't see ICANN holding their hand up to be the provider of that. I

And frankly, I think the conversations that we've had about privacy would seem like a minor. You know, the notion that we're going to keep a centralized registry of anybody who is able to register domain names strikes

me as a conversation that's going to take a lot longer than the next two months.

(Fabrisio): So Becky would you say, or just to make sure I'm interpreting this correctly or receiving it correctly. You'd say you've already had the discussion with law enforcement. And you believe that the language for dealing with false Whois is faster, quicker and more airtight than we've had to date?

And that there's no room to better that because I'm just wondering if law enforcement would say if there is an opportunity to better that and make it a more effective tool, they may stop asking for verification. Because for all the reasons that the community, I've been hearing this week say, you know, maybe useless. But to verify to begin with that the data can quickly change.

Becky Burr: Okay so I definitely think, and I think we would all agree that there is no longer a language that says you just have to tell the person that they're in violation of the agreement.

You have to suspend their registration. That's a pretty big difference. And it's likely to have an impact.

Law enforcement did, at our last negotiation session, raise the concept of having a centralized pre-registration, you know, credentialing process. We did not spend a lot of time talking about it aside from the fact that it's very, very sort of arose very late in the day.

But also because no matter what you think about that, the political reality of being able to get that is just, I just don't think that we should talk about it very much so.

Man: Can I jump in on that one (Fabrisio)? So, and I have full disclosure here. I jumped in on the Whois review team when it was kind of already down the tracks. So I had to chase it for the first couple of months.

I'm sorry, did I say Whois review team. I was also on that. But the RAA negotiations...

Becky Burr: Oh God, please don't put me on that one.

Man: No, wrong brain cells firing there. But anyway, but this topic also came up on the Whois review team is if you can strengthen the back end checks, now you use the word airtight.

I'm not going to use the word airtight because there is a lot of gray area there. And we have a pretty aggressive internal team and some procedures to check Whois.

But, you know, at a certain point we would prefer back end checks and reporting and responsiveness. But I think that that was - it was not - it was never positioned to registrars anyway as an either or. It was a and pre-verification.

So, you know, I think that in much respect I would have liked to have had that choice. But I don't know that we ever really fully explored that as an alternative to pre-verification. I think that it was always positioned as here is what we're going to do in the front end. And here is what we're going to do on the back end.

And we've got the back end so that it wasn't really controversial. And now we're focused on the implications of the verification.

Steve Metalitz: Other questions or comments? I have one dealing with - this is Steve Metalitz. I have one dealing with this incentives question. Incentives to sign up to the new agreement.

And in the document that ICANN put out, the update, they have five or six bullet points on this. The last one is requiring use of the new agreement when registering names in the new gTLDs.

I think, you know, I remember we discussed this. I think I remember discussing it with Kurt two meetings ago in Costa Rica. And I think we probably talked about it last time.

The position that we've proposed is a little bit different from this. This says requiring use of the new agreement when registering names in new gTLDs. But our proposal was that if you want to register names in the new gTLDs you have to accept the revised RAA for all of the names that you sponsor.

So for example, in this case of Whois accuracy, the complaint if you have .com registration and a complaint came in on that. Then you would have to follow that procedure.

I'm not spec - I don't know what the procedure is exactly. But as Becky's indicated, it can lead to a mandatory suspension under some circumstances. But you would have to apply that - if you wanted to register names in the new gTLDs you'd have to apply that in the old gTLDs as well.

Is that what this bullet means? Or am I misreading what the bullet says? Or just is there anything you can say about where that stands in the discussions? And I'll open this to - I'll throw this to anybody who can respond.

James Bladel: Right so what that recommendation is is that for a registrar to serve new gTLDs, they would have to agree to the new RAA and the way to implement that.

I think, because we haven't proposed it, the negotiations that are discussed is that, you know, it's really a change to the registry agreement that's in the Applicant Guidebook like the proposed registry agreement.

And so that's sort of a - that would be the sort of public discussion that's a change to the Applicant Guidebook. In other words the requirement to - in order to insert that requirement you would put it in the registry agreement for new registries.

Steve Metalitz: Okay yes, I think I understand that. Maybe I'm not expressing my question very well. Let's assume you have a registrar who is in business now and is registering in the legacy...

James Bladel: Right, and so it was never - when we - well I just skipped over your question. But the way it was intended was just to apply the new gTLDs but not all gTLDs.

So that's what's intended when it was written. And you're saying back to me it should be for those registrars that sell to new gTLDs and the old.

Steve Metalitz: Well I mean there's really three categories here. Let's say you are a registrar. And you're selling new gTLD - in the old gTLDs now. And let's say on January 1 you become, you know, you sign up to the new agreement.

Well certainly if you want to register anything after January 1 in new gTLDs, you have to apply the new agreement. Presumably if you want to register anything in .com after January 1, you also apply the new agreement.

My question is what about the existing registrations you have in .com? And to the extent that there are obligations in the new agreement that would affect existing registrations.

I'm not talking about pre-verification. Obviously that's not an issue but if for an existing registration. But if you had an existing registration in .com and you had the complaint and whatever process happens. Would you have a mandate to suspend in that circumstance?

James Bladel: I think once you enter into a new gTLD, it does not follow registries - or I'm sorry, new RAA, it would impact all of your gTLD registrations that you manage. Am I missing something or is that?

((Crosstalk))

Becky Burr: Provision of registration services. It's not...

James Bladel: You would still have a legacy Whois problem, okay. That's not going to go away because it's still based on the intake. But this back end system I believe would apply to registrations that were not registered under the new RAA.

But it would probably, and this we haven't worked out yet, affect transfers. I mean transfer to a registrar. And it was the first time they were managing it under the new RAA.

So we would have to look at those questions. But I don't think that you would then say well, since com existed since 1998, and I signed it last week. I don't have to do this for com. It's not the (engagement). Now, well we'll just leave it at that.

(Sam): Yes I think, this is (Sam). I think that that's right. I agree with what James just said. There may be the occasion that there would be registrars who decide not to avail themselves to registrations and new gTLDs. And therefore don't move on to new agreement. And therefore stay on the legacy agreement.

But if a registrar moves to the new gTLD agreement, they won't have two agreements. They will have one and have obligations under that one.

Man: And then of course there is the other flip side of that possibility which is a registrar forms only to sell registrations in the new gTLDs. And (unintelligible).

Steve Metalitz: Okay thank you. That's a very helpful clarification. I appreciate that. Let me ask if there are any other questions or comments? Nothing from the chat room I take it?

Are any others - I'm not seeing in the back of my head. Okay well, Kurt had - Kurt, I'm glad to give you the last word on this. So go ahead.

Kurt Pritz: So how the big of a room did you ask for?

((Crosstalk))

Steve Metalitz: Bigger than this.

Kurt Pritz: Because where was that - where is that other meeting I walked in and you couldn't get in the door. And I had to climb over people to get to it?

Steve Metalitz: Every meeting seems to be like that so.

Kurt Pritz: I will tell you that I planned like, Steve and I planned like eight of these. And I would say in five of the eight, we've been in rooms that were at least 40 people under capacity. And we tell them every time we need at least 75.

Steve Metalitz: We asked for 100 this time.

Kurt Pritz: Yes because I counted 50 people standing up or sitting on the floor when I came in.

Steve Metalitz: Yes right. Okay I think we have one last question for Kurt here. I'm sorry that you extended your time here.

(Dawn Changman): (Dawn Changman), I'm - I am sorry I didn't have the opportunity to ask a question when (Karen) was here. But Kurt I am going to take advantage of the fact that you're here.

The URS, maybe I've missed it with all the discussions. So I would appreciate clarification. Is ICANN now at least firmly committed? I understand everybody's gun ho on getting this URS to work. But has ICANN formally committed to the fact that until the URS is in place, these new things are not being launched?

Kurt Pritz: Yes. Yes so let me ask a clarifying question. So we think it can be very coincident right because they'll be registries will sign agreements. They'll do pre-delegation testing. They'll go into a delegation queue.

They'll spin up their operations. They'll have a sunrise period. So we want to have the URS in place in time for the first instances of complaint, you know, of attempts to take down a domain name, an infringing domain name.

So we at least see it in the worst case some of those things happening in parallel, like the URS is spinning off the...

(Dawn Changman): Parallel, not pre-conditioned?

Kurt Pritz: Well yes, but pre-conditioned for what? So because they're going to be - so there can be delegation of a new gTLD and not any instance of a URS for some time after that.

In other words, one of the requests of the IP and the business constituency is to make the sunrise period 60 days long. So that's a couple months at least between delegation and the very first instance where there might be a URS.

So what our commitment is to continually manage that to make sure the URS is there, in place, in time for the first time somebody would want to use it.

Steve Metalitz: Okay thank you very much. And thanks particularly James for - because I know this conflicts with your registrar stakeholder group (mission).

Okay we still have a couple of other items of business to discuss here. I'll give (unintelligible)...

((Crosstalk))

Woman: I am always feeling like ICANN is a three-legged race. Thank you for coming.

Steve Metalitz: Okay, all right. Give people a minute to get out of here. Thank you. (Ken) is now our honorary - (Ken) is our honorary sergeant at arms.

(Ken): Yes.

Steve Metalitz: No, I asked the sergeant at arms to bring the meeting back to order. Thank you. Okay we had another - the last agenda items that are other issues arising from the seating with the ICANN board this morning. And other developments during the Toronto meeting.

I think there are two issues, at least, that we would like to discuss here. One is as most of you know, we presented along with the BC, a list of eight improvements to the registrar - eight improvements to the RPMs, which I'm sure will be expanded here on the screen, that we wanted to see.

And we presented these to the board this morning. I think the - and I think the board was - we certainly got a clear commitment that these would be considered.

And so one question I'd like to discuss briefly is what are our next steps on those? And the other that I think we need to weight in pretty soon is on this question of the two different trademark clearinghouse models. Because, again, I don't know exactly what the, you know, unlike the URS and that last question of the URS, you know, yes.

It might be if something's delegated in April. It might well be you don't actually need a URS until June or July or August or something depending on when it goes live.

But if it's - you're going to need a trademark clearinghouse before that. So if there are - if we have views on this question which model is better? Or which elements of the model should be adopted? I think we need to bring that forward quite soon, probably within the next couple of weeks.

So those are the two questions that I think we should discuss here. And let me ask J. Scott if he has comments.

J. Scott Evans: Well one of the clarifying questions that I think I need an answer to so I can come to a decision is whether one model or the other? A distributed model or a centralized model would prevent a registry from offering additional protections beyond that mandated?

In other words, if registry wants to offer common law marks. If they want to do stream plus. If they want to do plurals, is the fact that it's centralized going to be a block to that?

And so that's a reason it should be decentralized is those registries that want to do more will have that data and then can code it to do more? Or can they code it and reach in and grab the data even if it's centralized?

That's a big question because our hope is that some registries who like cash are going to give us more.

Steve Metalitz: Good point, good question. Let me, Russ and then (Ryan).

Russ Pangborn: Yes this is Russ Pangborn from Microsoft. I just wanted to say the same thing that J. Scott did. But kind of nuance the question a little bit. And that's that it doesn't mean that it entirely has to be a distributive model.

It just means that when a registry wants to offer more that that registry would then have distributed the information so that it could do wild carding instead of trademark plus or something along those lines.

So we're not saying it's an either or bifurcated. You have to have either central or distributed. But could it be distributed when there is going to be a registry that would offer more?

Steve Metalitz: Brian.

Brian Winterfeldt: I'm Brian Winterfeldt (unintelligible). I just want to definitely agree with J. Scott and Russ. I think that is a really important point. We want to obviously not be an obstacle to people who want to go beyond the minimums.

And I - my understanding is that you can set up a centralized model that would still make the data accessible to those who need it. And it could even be something that is an extra fee or an extra charge that they would have accessed that data to give incentivized to the centralized system to make more money if they are having the data accessed that way.

Steve Metalitz: So is it correct that this question was not asked or was not ventilated at the event?

Man: Yes it is correct. And another issue that we all need to start thinking about is a group that came up yesterday. And (Paul) and I talked about it a bit in the audience.

And I raise the question is what do you put in the clearinghouse? Right because there are a lot of people who believe you just show up with one registration that - and you put it in. And that gets it.

Well the question is well what if that doesn't? What - so if you had to put in your entire portfolio on Day 1. But nobody's answered that little question. So I think there's a real misunderstanding in the community within IP owners of what their obligation will be. And we need to know what that answer is.

Woman: And I think, I think unfortunately that's information that we simply don't have because in many cases the registry applicants themselves have not said with any degree of specificity. We are going to require that you have a registration for, you know, for (Dove) sport, that it covers sports or sport-related equipment.

Man: Okay.

Woman: And we don't know.

Man: Okay well then there needs to be a minimum - some sort of minimum procedure put into place. So that as those roll out, there is time to get information into the clearinghouse in time to meet whatever requirements because these are going to be rolling along for two or three years.

And if two years down the road they decide that all Internet companies with a Class 9 registration, and we didn't put that in. You know, or you're a new company that went to an e-commerce site, you know, and now you have e-commerce registrations and you don't have them in the clearinghouse and you're precluded.

So I just think there needs to be a baseline minimum for how that information will be released so we can react to that. And I don't think anyone's thought of that.

And given how half-baked some of the, oh, we're doing this in the last five minutes before we roll everything out. We got to get it right or we can't have new gTLDs. I don't want to be doing this again two years from now.

Steve Metalitz: I think Marc Trachtenberg wanted to...

Marc Trachtenberg: I think with regard to that question, I mean that's a decision that every trademark owner has to make. I mean that's just - there's some cost being a trademark owner. And that's a decision you have to make.

I mean, you know, is it going to - is having your big mark only in the US registered in the clearinghouse going to be enough? Maybe, I don't know. I mean I agree with you that there has to be some structure in place that gives trademark owners enough time to put additional marks in the clearinghouse.

They have to when a new registry model comes out. But other than that, I mean trademarks rights are territorial. So I mean, you know, the same string in a different country is a really different mark.

And so everyone's going to have to make that decision of whether to put anything in the trademark clearinghouse. To put your entire portfolio in or, you know, part of it in.

Steve Metalitz: Okay and let's please everyone identify themselves for the transcript.

Scott Austin: Yes hi, Scott Austin, (Border Race). One of the things, and I didn't ask this question with (Karen) here, when (Karen) was here. But I thought it had already been answered somewhere else. But I don't think it has.

And that is as a trademark lawyer, if someone does take their entire portfolio, that portfolio usually includes things like notice of allowance marks, supplemental registry marks.

Those aren't allowed. I mean essentially the way things stand now. But yet a lot of portfolios have things that are percolating or that aren't quite ready for prime time.

If you have a bunch of NOA marks and then suddenly you are ready to file a statement of use. How is that provided for?

And there is something else in those rules called other. And she mentioned to me that one of the things that's been put in under that rule, and I don't know whether it was to adjourn a committee meeting early or whatever.

There is things like German - regions in Germany was an example that was given. Well who makes those decisions? How much time will that take? And if it does go out to the registry level, does the then the central location become an appellate body that says okay, the registry said this or declined it.

Now can I go back to the central registry and get a yes or to overturn that decision? How do they interact if it is decentralized?

Steve Metalitz: Thank you, Jonathan and Kristina, you want to be in the queue? Okay does anybody else? Yes okay. Jonathan go ahead.

Jonathan Zuck: As a non-lawyer but in fact a software developer, I just want to speak up in favor of the idea of the centralized system to deal with some of the issues you're describing. Because this whole ideal of generating a file that's used for the sunrise with a key associated with it can be very easily regenerated at no cost to the system.

So to answer your question, be very easy to get a new file that's used for sunrises and new registries as they come online with incremental changes to the data. It's not like it will be something that's locked because the same public key will still work. It will just be generated a new private key. And that should work fluidly. So again, I think it's another reason probably to centralize the system.

Kristina Rosette: One of the points that I came away from yesterday thinking we really need to, as an IPC, provide some very specific guidance on is the question about whether using kind of the FMD file as the model.

Do we want to kind of at the outset say okay, for purposes of this data file that we want to have included in it all of the information that could potentially be relevant to a sunrise, to a trademark claims or to our URS?

For example do, you know, including the class, including the description of goods and services, because the other alternative is that you could potentially end up with a situation where if in you're at the 17th month after the first new gTLD launches.

You've got a registry launching that wants to run its sunrise based on information that you had not previously been including in the data file. You then have to go back to the very beginning right Jonathan, from a software perspective? I mean that was my understanding as a takeaway from yesterday.

Jonathan Zuck: I mean again, probably not.

Kristina Rosette: Oh okay.

Jonathan Zuck: In terms of the key system. So there's this public key which is going to be public that they'll be able to use. And what they're really doing is taking whatever data they're giving you and lunging it together.

And counting how many As there are, how many Is there are, etcetera, and coming out with a number that kind of uniquely identifies that text. So they could say okay, this is the data. And it came from us, etcetera. And it can be validated.

So even a change in structure to that file can be accommodated. Though they'll need to be changes to software at the registry level to read that file differently.

But one of the benefits of the file mark format that's being used, which somebody called XML, is that the old systems will probably be able to read their old information still. The new systems will be able to read that plus the new information.

So it's not really a breakdown in the system even to add new fields of data to that file. I mean I don't think that you - I don't think it's relevant to have data in it for the claims system. It's much more for the sunrise.

Kristina Rosette: Right. But then I think then in that case maybe the issue is really making sure that the data that is taken in through the interface at the clearinghouse level is...

Man: That's right.

Kristina Rosette: Broad enough to cover everything.

Man: That's right. What you're saying is...

Kristina Rosette: And that they have - because if they don't at the intake.

Man: We have that data in the database. And somebody changes it and they want to use a data point that's not been entered into the database. So you're right. The intake needs to be broad enough that people who are picking and choosing parts of a registration that are important.

And then that gets quickly changed because they're using the public private key and it's easier to do. But it's already in the database for them to extract. She's saying if you don't have a broad enough intake and they require

something else, you have to go back as a trademark owner and re-enter it into the system for it to even hit that form.

Jonathan Zuck: I think again, speaking in terms of ideals. That's ideal. But another argument for the centralized system is that an update to a new field, even in the intake system can be more easily done in a centralized system than a distributed one.

But that would still be possible for you to be presented with a form of the data you had already entered. And add incremental data. And the system should still function.

Steve Metalitz: Okay we've got Heather, Anne, Ellen, (Paul) and (Mark). And then we're going to see if we can wrap this up. Okay go ahead Heather.

Heather Dryden: It's just quickly to pick up on J. Scott's question. I think there's a fair bit of effort to be put into in terms of the strategy of which marks go in and which marks don't. Bearing in mind that some of these business models have used some sort of territorial nexus as an eligibility requirement.

And that then means sorting through 1,900 question 18s to figure out who that is. And even so, whether that territorial nexus factor has anything to do with trademark registration or whether it's physical presence or this sort of thing.

So it's an intense amount of work to figure out for the brand owner what needs to be done.

Anne Aikman-Scalese: Yes this is Anne Aikman-Scalese. And first of all in relation to that I think there was a question about what do you do with a mark that's in a notice of allowance phase?

And I just wanted to confirm with the group my understanding is that unless the registration exists prior to the award of the gTLD, it is not eligible for clearinghouse whatsoever so just to clarify that.

And, in fact it has to have been applied for prior to what - when the window opens. There's - there are two conditions. One is to have sort of an applied for prior to when the window opens.

And second that it must be registered prior to the award of the TLD. And also not in the opposition period, which is something else that we haven't seen yet coming out of the (GM) and (CH) rules.

And that's a different opposition period for every (second). But the question I have is really the first time that I've heard a lot of references to a registry deciding that it will only grant sunrise if your trademark registration is in the - in a certain class.

I've heard some references to that. So for example if it's, you know, .restaurant then - no, I mean but from a practical standpoint my question is this. You know, if you look on the register and you look at restaurant and services registrations, you're going to find some that exist outside of, you know, Class 43 that have been around for a long time.

So my question is how - as, you know, on behalf of trademark owner...

Woman: The registry will tell you when they get ready to launch. They'll say...

Anne Aikman-Scalese: No I understand that. But that may not be fair because your client may have a long-standing registration that's not actually in Class 43 that covers restaurant services.

Right, I mean they've been cleaning it up a lot lately. And everything is getting into, you know, more into...

((Crosstalk))

Anne Aikman-Scalese: But, you know, there are some very long-standing, very valid registrations that aren't necessarily in the right class.

Steve Metalitz: Okay let's continue in our...

Anne Aikman-Scalese: That's totally not fair.

Steve Metalitz: Let's continue in our queue here. Excuse me, I think we have (Paul) next and then (Mark). Sorry, calling the sergeant at arms.

(Paul): Another argument for the centralized approach is the ramp up of the data right. So to get our sunrise registration, all we need is the appropriate mark, probably from anywhere in the appropriate class.

Again, probably from anywhere. That's a small data set right? And as we ramp up into claims notice, now we're talking about giving individual potential cyber squatters notice in whatever jurisdiction that they're in right?

And so then part of the analysis for our clients will be what are our high-risk jurisdictions? If we don't have a bazillion dollars to put everything in, which ones are - which jurisdictions are we going to put in so that we're putting the right people on notice, you know, for the right marks right?

So that's a data set that continues to ramp up and grow. So the issue then is what's the trustworthy data set? And who gets the blame if a potential registrant doesn't get the notice that they want?

If we're decentralizing it and it's going out to 1,200 registries, and that registry doesn't do it, right. They - and the registration gets through that shouldn't

have got through, they're going to point the finger at the clearinghouse. The clearinghouse is going to point the finger at them.

It's going to be a mess right. And if we have a centralized, authoritative data set in a central location that we know is the right one, then the only party that can be at blame is the registry who didn't process it right?

And so I think from that aspect that's a very good reason to have a centralized point. Most because again, what you have in the clearinghouse is not going to be static. It's going to increase as we go. And it's going to increase as new registries roll out.

Steve Metalitz: And could you identify yourself for the transcript.

Marc Trachtenberg: Marc Trachtenberg from (unintelligible). I guess my first comment would be as far as, you know, what information is in that data file, you know, why wouldn't you want the maximum amount of information in that data file?

I mean well I'm asking because it's public information. I mean the concern was, you know, if you have your entire portfolio and that's accessible, and I agree that's a concern that you don't want people for strategic reasons to have access to your entire portfolio.

But since, you know, each mark and each jurisdiction is a separate mark and a separate entry in the clearinghouse essentially. You know, why do you not want to have the maximum amount of data?

Everything is in the clearinghouse for that one market in the data set. So you never have to go back and regenerate that file. That would seem to be the most efficient way to do it.

And then as far as the issue of, you know, it was raised before about, you know, what about like marks that are in the notice of allowance stage. Like they're not registrations. They're not going to be in the clearinghouse.

And in general, you know, you're going to register new marks if you're going to have a duty of the trademark owner to update what goes in the portfolio. So and that's like the burden that everyone's going to have to bear.

Not only deciding, you know, what goes in there. But of course updating everything, you know, once you continue to register new marks and change your portfolio.

Steve Metalitz: Thank you. We've had a good discussion here, a good listing of some specific questions. And next step would be what are we going to do about this? And how are we going to try to come, if we can, to a unified position?

Okay thank you. Okay. So...

Man: Group - a small group of five or six people to lift out some questions to ask about the implementation of this so that we don't end up in the same place I think the registries and registrars felt like they ended up.

And that is when the plan rolled out, they had all these questions. And they're like why didn't you ask us about how we could do this efficiently and effectively?

So I think it's our - if we want to be proactive here, the best way is to, you know, get together a group. Put together a list of questions that we can say to ICANN have you thought about these considerations? And what are your answers to these questions?

Steve Metalitz: And, excuse me, would these questions also be directed to the proponents of the alternative?

Man: Absolutely.

Steve Metalitz: Yes so that we can sort of compare. And I assume you would include - I mean I've heard two flavors of questions in the last few minutes. One are questions about how the different models would impact operations, you know, the operation of the clearinghouse.

So for example that initial question you raised J. Scott about what would be the effect on registries who wanted to go further, which we definitely want to encourage?

And then some are more strategy questions for mark owners that, you know, they need more information. But on the other hand they don't necessarily know right answer there, but something that you need to know in order to be able to advise clients and so forth, so Kristina your suggestion?

Kristina Rosette: Well no. It's just that as a follow on to the session yesterday, it was my understanding from Jeff Neuman and the guy from Affiliates whose name alludes me at the moment. That they would be getting to IPC leadership a list of the questions that they thought they needed us to answer in order to be able to kind of move forward.

So I think having - assuming we do in fact get that list and putting together our own list, I think we should be fairly confident at that point that once we get everything answered or posed, we will be in good shape.

Steve Metalitz: Brian and then Marc.

Brian Winterfeldt: I just want (unintelligible). I think we're trying to get one of them to also come meet with us on Thursday. So we can continue that discussion. And if people have questions they can aggregate in the meantime, I think that would be great.

And I'm happy to volunteer if they want to send them to me, I'm happy to put them together.

Steve Metalitz: Yes and before we adjourn, I do want to talk about our meeting on Thursday, Marc.

Marc Trachtenberg: This is a more general comment. I don't know if we're going to get to cover other items on this list. But, you know, I think with regards to Number 4 and 8 if, you know, there's any real interest in pursuing these, we need to immediately decide exactly the mechanism of how we want to implement this. Because I think (Fadi) made it pretty clear today that, you know, time's up.

He, you know, he wants to be able to implement anything that we come - that we decide on by January. So I think we need to immediately decide what the mechanism is. And we need to immediately reach out to the other constituencies because, you know, that was also raised that there's got to be buy in.

So, you know, whatever - however we're proposing to do 4 and 8, we have to make a decision on it otherwise they're not going to be there.

Steve Metalitz: Okay yes. Okay there's a comment behind me.

Woman: (Unintelligible) from GE and I'm glad we - someone finally mentioned Number 4. I'm a newcomer to the ICANN process. And it's overwhelming to say the least.

But I am here in my capacity as GE. I'm also the chair of IPO's Internet committee and it's a member of the IPC. We think Number 4 is very important. And that's the primary reason we came is to support a some sort of whatever you call it, famous mark, blocking list, do not sell list. Because as

the discussion has gone on this afternoon by people more knowledgeable than I am, it's clear to me that trademark owners are going to bear a cost.

Even if there's a perfect URS, even if there's a perfect trademark clearinghouse system. And those costs are just going to grow at this growth. And so we think a centralized sort of do not sell approach is one that should be very seriously considered and time is short. But this is a group of really smart people. So I hope we can do it.

Steve Metalitz: Okay we've already, thank you. We've already had a sub-discussion on the list, particularly about Number 4 and 8 actually. And it's - I think what we're talking about here, I think we probably need two teams, at least two.

But one would be dealing with the trademark clearinghouse model issues. And I think we've ventilated a lot of that anyway.

The second would be dealing with 4 and 8 on this list to try to put, if we can, more meat on these bones. And again, we've started some of that discussion within on the list.

I think what I would suggest is that people who are interested in volunteering for either of these teams should talk to Kristina and/or to me. And we'll make our - a list and try to fashion a team that can work on this.

And then we'll try to also, if we can in conjunction with the rest of the leadership, come up with some target dates for dealing with it.

My impression on, you know, this - having this all discussed on the overall list was there's a lot of good ideas flying around. But it's difficult for me anyway to kind of figure out whether we were making progress or just kind of circling back on the same issues.

But I think if we have a small team that can work against a particular target date with a particular goal. And then obviously have to produce its work product and have that reviewed by the full IPC, I think that may be the best way to proceed.

We have meeting scheduled on Thursday at 8:30 to 10:30. There are many, many conflicts with that time. And some of them involving the leadership. But it's certainly my expectation to be there.

And the meeting is at 8:30 in, I'm just - in this room actually. And it's a meeting for IPC members. No, it's a meeting for IPC members. It's a closed meeting.

And we actually our agenda dealt with a couple of issues other than this. And we will probably - we're probably going to revise this agenda. But I would like to talk about these two teams. The Item 4 and 8 team and whether we need to divide it.

And then the trademark clearinghouse model team. And so I'll just mention one other thing that we have on the agenda for that meeting at 10 o'clock will be having a visit from Sally Costerton who is the new stakeholder engagement person.

And she was introduced at the (primary). And I've met her and talked with her, very impressive person. So I think that will be also very useful for us. But that is going on at 8:30 and on Thursday.

And I - let me ask Ellen because she had another comment to make. And I think at that point we probably will be ready to adjourn.

Ellen Shankman: I just wanted, since we've had the elections and new leadership is going to be taking place, I'll be stepping down as Secretary. And I want to thank you for entrusting me with the position.

I also want to thank David Taylor for all the work he's done on the GNSO because he's stepping down as well and to wish all the best to the new leadership.

Steve Metalitz: Thank you Ellen. And I would also - we will miss you as part of the leadership. It's been good to have you. But you're definitely not off the hook here, I will say that much.

And I will also convey the same to David and just point out that David is one of our longest standing members of leadership. He's been three years on the GNSO Council.

He stepped in to fill an un-expired term that was - that opened up fairly abruptly I guess three or four years ago. And so we appreciate all of his service. And we are also not letting David off the hook.

So thank you and we appreciate everything you guys have done. And the meeting is now adjourned.

END