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BEIJING – Trademark Clearinghouse

Thursday, April 11, 2013 – 09:00 to 10:30

ICANN – Beijing, People’s Republic of China

KAREN LENTZ: All right. Good morning, everyone. It's 9:00 here in Beijing and we're going to go ahead and get started. We have a full agenda today and a lot to get through.

So this is a session on the trademark clearinghouse. This is one of the intense and interesting projects that we've been working on at ICANN for quite a while.

So we'll take you through where we are.

I have a team of people here with me today from Deloitte, CHIP, IBM and ICANN, so I've asked people to introduce themselves quickly, starting with Don, if you can start at the end of the table.

DAN FANCHER: Don Fancher with Deloitte.

JAN CORSTENS: Jan Corstens with Deloitte.

VICKY FOLENS: Vicky Folens with Deloitte.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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JAN JANSEN: Jan Jansen with CHIP.

FRANCIS WERQUIN: Francis Werquin from IBM.

DIRK DE BEVERE: Dirk De Bevere, IBM.

GUSTAVO LOZANO: Gustavo Lozano, ICANN.

KAREN LENTZ: And I'm Karen Lentz from ICANN.

So our agenda today, I will do a brief review of the project status, where we are in terms of the implementation of the clearinghouse and the clearinghouse processes. Deloitte will take you through the verification system which was launched as of a couple weeks ago.

We'll do a status update on claims -- sunrise and claims and implementation, looking forward to those processes going live, and then I'll review the rights protection mechanism requirements which is a document that we published a draft of which is intended to specify all of the requirements that registries need to abide by when they're implementing their sunrise and claims services.

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And then hopefully we'll have time -- plenty of time for discussion and Q&A.

So the intention of the trademark clearinghouse was to create a repository for trademark data that would support rights protection mechanisms offered by new gTLD registries.

With the introduction of the new gTLD program, several new rights protection mechanisms were introduced, and the trademark clearinghouse is a database that was intended to support those.

The clearinghouse is intended to replace the need for rights holders to go through and register in many databases or have the same data verified over and over again as new TLDs are launched, and so we've established this trademark clearinghouse which is being operated by Deloitte and IBM via an agreement with ICANN.

So the primary functions that the clearinghouse provides, one is they verify trademark information. They take in submissions of different types of trademarks, review and confirm that the information is accurate and authentic, and then it's recorded in the database.

They also administer and make sure the database is up-to-date and support the sunrise and claims processes for registries to make that data available to support those registration processes.

So because the functions are split among several entities, we get a lot of questions about who does what or where to go for questions about X or Y, and what particular part of it, so I'm going to go through and try to clarify that a little bit.

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The gray boxes that you see, there's a trademark clearinghouse user interface, so someone's going in, they want to put their data in the clearinghouse, they're entering it in the online system, or a working agent, and the trademark validation function is then performed.

Both of those services are offered by Deloitte, and so they provide customer support to all of those users.

Generally speaking, the rights holders are our customers for that function.

There's also a possibility that in the future there would be additional validators who also verify data and put data in the database.

On the orange shapes there you see are maintenance of the clearinghouse database and providing the sunrise and claims interface. Those services are offered by IBM who support the registry and registrar customers.

And then you have ICANN, who has agreements with Deloitte and IBM for performing of these, as well as has agreements with registries and registrars for compliance with the requirements.

And in terms of where we are in the project plan looking back to all of the kind of measured work streams that we had to get the clearinghouse up and running, the first obviously was securing providers who were qualified to do this, and we're very pleased to be partnering with Deloitte and IBM on this.

In parallel, we've been working for quite a while on the process development and implementation, so that's included development of

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the verification standards and processes in conjunction with Deloitte, establishing the support resources for the -- for that function, and developing the technical model for the sunrise and claims services.

A couple of major pieces of work that are ahead that we still are working toward completion on are, first of all, the registry requirements for -- around the sunrise and trademark claims and then the testing, the actual go-live of those services.

I'm going to hand it over to Vicky at Deloitte, who will take you through some of the highlights of the verification services.

This launched on March 26th, and so we're excited to hear about how it's gone since then. Thanks.

VICKY FOLENS:

Thanks, Karen.

So today we have a lot of topics on the agenda, and in the first instance, we want to give you an overview as to what has already happened or how many people have already registered with the clearinghouse since we opened up, and we also want to go over some important items, some common mistakes, frequently asked questions that we keep on receiving through our customer support, and we want to provide some more detailed information about that.

We are also just going to highlight again the fee structure, because it has changed a bit.

Also, what next steps that we plan to do with the clearinghouse.

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And we're going to talk a little about the content of the SMD file and the content of the trademark claims notification.

So before we start about how many people have actually registered with the clearinghouse or what the status is up-to-date, before we went live -- and that was on the 26th of March -- we actually had 18 sessions all over every time zone explaining to people about the clearinghouse eligibility requirements, so that everybody was aware of the fact what information needed to be submitted, how they needed to submit it, when additional documents could be requested.

So those sessions took place.

As of the 26th of March, we went live, and today we have 71 active trademark agents, meaning that they have completed the three-step process which consists of registering with the clearinghouse, uploading and signing their contract, and putting the prepaid account or wiring the amount of the prepaid account to the clearinghouse.

There are also 323 trademark holders that have successfully created an account with the clearinghouse, so they have also done all the necessary steps to register with the clearinghouse.

There are still about 140 trademark agents that are in the pipeline, meaning they are -- either they haven't uploaded their contract or they haven't wired their amount yet, and still about 100 trademark holders that are waiting for registration due to the fact that they haven't accepted the terms and conditions.

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And approximately 450 trademark records have been submitted, as of today.

In going over some important items, so instead of going over -- through the whole list here, I will talk about the topics as they come along.

In the first instance, what does it mean, registering with the clearinghouse?

So before you can submit any trademark record, you actually have to register and create an account with -- or create an account with the clearinghouse.

We check to see that the trademark holder or trademark agent, the information that they provide is accurate and complete.

We do a sanction review.

We also check to make sure that the e-mail addresses lead to either the trademark holder or trademark agent.

And in case we see that this is not the case, then we do an additional verification check. We contact either the trademark holder or trademark agent to make sure that all the information is correct.

One of the questions that we are receiving a lot of times is what is really the difference between the trademark holder versus trademark agent.

In the first instance, the trademark agent is an individual or an entity that is submitting a trademark record and receiving notifications on

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behalf of a trademark holder. That means we interact with the trademark agent and not the trademark holder.

In order to be a trademark agent, you need to upload and sign the terms and conditions applicable for trademark agents and you need to make a deposit of 15,000 U.S. dollars.

This 15,000 U.S. dollars is a prepaid account and not an extra charge. It's important to note that all the fees when you're submitting trademark records will actually be drawn from that deposit account.

And when you terminate the contract with the clearinghouse and there's still an amount available on your account, then it will be refunded to you. But with this deposit, we are actually ensuring that the trademark agent certifies that he will do the necessary tasks and, indeed, take care of his clients when he's also interacting with the trademark clearinghouse.

JAN CORSTENS:

So we received a question -- so this is Jan Corstens. So we received some questions from people that said "We can act in the capacity as an agent but that 15,000 is too high for us."

The answer to that is that we had decided to put up a threshold for a couple of reasons.

Number one, just, yeah, to put in a threshold so that not just anybody could step in and say that they can represent somebody else.

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Secondly, this also represents some volume because of the fact that we have to do extra work for agents.

As Vicky mentioned, we are investing in putting up an API for each agent, and next to that, there is also some additional controls that we need to do just to prove that you can actually represent a number of your clients.

So there is a procedure that we're setting up, and for which we will release some more communication in the upcoming weeks where 10% of the population of an agent -- or for 10% of the population of an agent we will ask for some extra proof that you can actually -- that you can actually represent that client, which gives some more assurance on the accuracy and completeness of the data that we hand over.

So, yeah, that's a decision that we -- that we took and that I think stands at this moment.

There are agents that are currently working with us that came up to us and said, "Well, listen, for these lawyers that have a very small population that they represent, we have solutions for that. We foresee standardly things in our interface, so we will happily introduce you to some of these agents that can help you if you are having too much difficulties with reaching the 15,000."

Just to give you an idea, this 15,000 represents about 50 trademarks for three years, so the threshold, on the other hand, is not that high either.

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VICKY FOLENS:

When you register with the clearinghouse, you can actually choose between three types of accounts or profiles.

The first one is an agent. Secondly, you have the trademark holder that also can work through a prepaid account, so for trademark holders that have a large portfolio they can also choose to work through the prepaid account.

And then you have trademark holders that can pay by credit card, and that is the trademark holder online payment.

We note that there are a lot of trademark holders that do not change -- or do not look at this type of account and then they actually register by selecting "Agent" and then they come back and say, "We didn't know that we had to pay the 15,000 U.S. dollars."

That's correct. You don't have to pay the 15,000 U.S. dollars if you wanted to pay by credit card, but you need to select the correct type.

What is also important that we also receive a lot of questions about is the credit card payments, so there is the matter of the fact that you can do -- submit 10 trademark records per credit card transaction. That doesn't mean that you're limited to one credit card -- or, sorry, that doesn't mean that you have to use multiple credit cards for submitting trademark records.

So it's just the transaction is limited to 10 trademark records, but you can do multiple transactions.

When submitting the ones you have registered, you can then submit actually a trademark record.

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There are three types of marks that are accepted by the clearinghouse. Again, the registered trademarks, court validated trademarks, and trademarks protected under statute or treaty.

You can register a trademark for a period of one, three years, or five years. After those period of times and you still want to renew that trademark record, that is possible.

Unregistered remarks. We have received a lot of questions about, "I have an unregistered trademark. Under which category does this fall under?"

This falls under the category court validated marks. Sorry. So a copy of a court order must be submitted.

Questions that we receive about the detailed description of goods and services.

So we have in our interface a field where you can actually select the different classes, and these classes include different descriptions that corresponds with those classes.

These descriptions are -- correspond with what is provided in the newest classification description. It's not a detailed description, it's a highlight description.

If your trademark certificates provides the same description as we provide in the interface, you do not need to provide with an extra detailed description of those goods and services.

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It's only when your trade -- your description of goods and services that is on your trademark certificate differs from what has already been provided to you that you need to complete that second field.

For proof of use, again we've already had multiple questions about proof of use and this has been a quite -- a topic that has been discussed multiple times.

Proof of use is only necessary when you want to participate in a sunrise and you want to submit a registered trademark.

The proof of use consists of a declaration of proof of use, which is downloadable through the Web site. It's a -- it's a version that was also provided in the proof of use memo as provided by ICANN. And you only need to provide one sample of proof of use.

So even if you have a trademark that is registered in multiple classes, you only need to provide one sample.

And it's important to note that the name of the submitting party as we request to be completed in the declaration is the name of the trademark holder and is the representative of the trademark holder that must sign the declaration.

And we've also had -- we also put in place a declaration for trademark holders and a declaration for trademark agents, so if you're a trademark agent, please ask your trademark -- your clients to complete the form that has been provided to -- for agents.

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In relation to the matching rules, so as you know, the labels that are generated through the interface need to be an identical match to the name of the mark that has been recorded in the clearinghouse.

Now, as already stated multiple times, we know that trademarks have a -- some -- sorry, have sometimes special characters included. Those special characters or spaces can be either omitted or replaced by a hyphen, and then according to the matching rules, ampersands and the "at" sign can also be translated in the language or -- official language of the country in which the trademark is protected.

How did we put that together?

Well, we looked at the Part 3 of the Technical Reference Manual for the Standardization of Geographical Names, United Nations Group of Experts on Geographical Names, and we checked to see what the official languages in those countries, and then we reached out to our network to see that we could provide a translation for the ampersand and "at" sign.

This list will be also published on our Web site shortly.

When you submit a trademark record, you actually also have a portfolio that you can look at the different status of our trademark records.

You have five different statuses.

The first status of a trademark record is a "new" status, so when you submit your trademark record and you have paid the fees that are due, the trademark record receives the status "new," which means it is in our queue to be verified.

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At that moment, you cannot edit anything on your trademark record as it's already in our queue being picked up by a validation -- or sorry, a verification agent to check that all the information is correct and to check that the eligibility requirements are met.

If that is the case, the trademark record changes to "verified." At that moment, that means that all the information is, indeed, accurate and correct.

When the information is not correct or some information is missing, the trademark record will change to the status "incorrect." That means that you can actually log into the system and you can correct the information.

We have also a comment field that is linked to your trademark record where we actually state what has gone wrong with the trademark record, why it cannot be verified, and what information is missing.

So that is the correction process. Again, it's free of charge to correct the trademark records, but the free of -- this is -- you can only correct it one time.

Once you have corrected the information, the trademark record will change to the status "corrected," and again, that means it's in our queue to be verified once again.

In the event that the trademark record is still not correct, then your trademark record will turn into -- or change into the status "invalid."

And you have -- for the "incorrect" status, you have actually 20 calendar days to correct your trademark record.

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At this moment, we do not send automatic notifications when the status of your trademark records change, but we are implementing a notification or an e-mail notification when your trademark record will change to "incorrect."

The available documents we -- based on the questions that we also receive on customer support, we see that a lot of people do not know that there are a lot of documents already published on our Web site, so in the first instance the clearinghouse guidelines have been published. The clearinghouse guidelines provides an overview of the eligibility requirements and provides also a high-level overview of the verification process.

The API documentation that trademark agents need to read before implementing the API. The API documentation is currently not up-to-date. We will update that as of next week so that a new version will be published.

We also have a short manual provided on our Web site, how to register with the clearinghouse, so this is information of how to set up your account.

We also have a manual about how to submit a trademark record, how to reset your password.

A copy of the terms and conditions for holders and agents have also been published on our Web site.

There's no need to download these there because they are also provided through the interface when you actually register with the

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clearinghouse. But those terms and conditions are provided for information purposes.

The fee schedule is also provided. There has been an update -- I think it's about two weeks ago that the update took place -- so there is a new fee schedule available.

The payment terms and conditions are also available on our Web site.

The list of the official online databases, so we have provided an overview of the countries in which we actually have access to the official online databases.

If you submit a trademark record that is not listed in that country -- or not listed in that list, we kindly ask you to provide us with a copy of the trademark certificate when you submit a trademark record.

As I said in the beginning, we provided several Webinars about the educational -- we call it educational training Webinars. A copy of this presentation is also provided on our Web site, and you can actually see it as a summary of the clearinghouse guidelines.

The dispute resolution process has also been provided -- or published on our Web site, so there's a full document there of how you can lodge a dispute. And all of this is, of course, published on trademark-clearinghouse.com, and under the section -- most of the documents are published under the section "Help/Downloads" or "How-to's."

Downloadable forms. As I already mentioned, the proof of use declaration is downloadable through our Web site. Again, through the "Help" section.

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We have also provided for the users assignee and licensee declarations. So if you're a licensee or an assignee, you don't have to provide us a full copy of the license agreement; you can just download and complete the licensee and assignee declarations and we will check that information.

For trademark agents, we have also published on our Web site a list of trademark agents, so if you are an agent that has an active account, you actually receive an e-mail from us stating that you can publish your logo on our Web site. It's not an obligation, but a lot of agents like to have their logo on the Web site, and a lot of trademark holders are also requesting this because they would like to know who's already registered as an agent so that if they want to submit their trademark records through an agent, they know who to contact.

Contacting the clearinghouse, there are two ways really to contact the clearinghouse, and if you're not a registered user, there is phone support during European and U.S. business hours. However, it's -- this phone support needs to be used when you have technical issues registering with the clearinghouse.

Once you're a registered user, we kindly ask you to provide the technical questions or technical inquiries to the customer support interface that is provided through the interface, so that we can log it and provide also the correct technical explanation to that.

If you're not a registered user, you don't have access to customer support through the clearinghouse user interface, so we have set up a general inquiries form, but again, we do ask registered users to use the

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customer service user interface that has been provided through the interface.

DAN FANCHER:

Yeah. One of the things that we have received a number of questions about is trying to have more availability -- this is Don Fancher, by the way, for the record -- to have more availability around customer support, personal calls, so we are trying to accommodate that as much as we can.

Currently, the primary capabilities around both the technical efforts as well as the interface efforts reside in the United States as well as in Europe, primarily in Belgium.

So we're asking for the interface with the individuals to be during those business hours. We recognize that we may need to add customer support in the Asian part of the world, other parts of the world, such as here. We don't have that at this point, but hopefully with the pretty large time zones we can cover between the U.S. and Europe, we can accommodate that.

But specifically, it really is better for us the more we can get on line, have a true record that we can track, that we can follow, make sure that we have the ability to respond in a timely fashion, and then keep a record of the issues that we're dealing with, and try to upload those -- upload those onto our Web site so that we can also provide that to others who may be having similar issues.

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VICKY FOLENS: I want to add as well that we have a frequently asked question page also on our Web site that consists of questions, now about 150 questions. So the questions that come up through the customer support more than once, we do add them to the "frequently asked questions" list.

JAN CORSTENS: Quick update on the fee structure. I think most of you have seen that on our Web site. So there are two types. There is a basic and advanced fee structure. The basic one available is for the parties that register themselves as a trademark holder where there is a price, as you can see for a one-, three- and five-year registrations. And then there is an advanced fee structure for the ones that register themselves as an agent. It is a little more complicated. It is not that difficult.

For each record that you buy, you get a number of status points. And depending on the number of status points that you have, your price is actually dropping and you see what the thresholds are on this slide.

For a one-year registration, you will get one point; for three, you get four; for five, you get seven. And if you register during the period that is advancing the actual start of the launch of the new gTLD program -- and I guess we'll all hopefully know by tonight when that is going to be -- then you get even more points to get to your discounts faster.

VICKY FOLENS: I just want to add at this slide, we talk here about basic fee structure and advanced fee structure. In the beginning, I talked about the

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different types of profiles that you can have as an account. Basic fee structure corresponds with the online holder profile. Advanced fee structure corresponds with the holder prepayment or agent prepayment.

What next steps are there for the clearinghouse and for our interface? Well, we need to implement the SMD file so when you know the trademark record is verified, a signed and marked data file will be generated that allows you to actually register your labels with the TLDs.

And this is currently not implemented yet. We are still working on this.

Also, the implementation of the strawman model for inclusion of previously abused domain names, we still need to discuss the requirements and we need to implement the requirements as they come in.

We also need to discuss together with ICANN how we're going to present the 30 days advance notice of sunrise. So ICANN has, according to the strawman model, the obligation to provide the 30-day notice. And we still need to know how we as trademark clearinghouse, how to provide that to you as a trademark holder or trademark agent and how we can do that in a constructive manner.

At this moment, we plan to publish the start of the sunrise 30 days in advance after we receive the information. On our Web site, we do not plan to send out an individual e-mail for each sunrise that we will launch. We will have a banner on our Web site. And if registries like to provide more information on our Web site, we will actually create a registry page so that they can provide the sunrise policies as well so that

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the trademark holders and trademark agents actually just need to go to one place to collect the information.

Also, the text for the rights holder notice of registered names still needs to be discussed -- or it needs to be drafted. What is this? This is actually the notification that you receive as a trademark agent or trademark holder when a domain name registrant, sorry, has registered a domain name in a TLD during the trademark claims period that matches a trademark that is in the clearinghouse.

The content of the SMD file, here we are giving you a highlight of what will actually be in the SMD file. I understand that not all of this information is obligatory. Some information is optional. But we wanted to give you an overview of what information could be in the SMD file.

And that brings me to the end of my presentation.

FRANCIS WERQUIN:

This is Francis Werquin, IBM. Next I want to give you some highlights of where we are on the sunrise and claims services and the timelines of when we can implement this. This chart shows you the same overview as Karen showed us at the beginning. So we see actually three parts in the services which are being provided: The validation function provided by Deloitte. Second, there will be the central database function which IBM will be hosting and out of which different services will be available.

And then third, that's the next part to be developed, the sunrise, and claims services. The services that IBM will provide for this -- the claim services will be provided directly to registries and registrars. As you

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know obviously, the validation function went live last month. The central database function will be available as of this month, as of which we will also start to collect the validated trademarks from Deloitte.

And I will come back in the presentation on the timelines for the sunrise and claims services.

Currently, the central database is hosted in Europe in a high-available setup. In order to support the requirement of the live query function for the sunrise and claims services, we'll be adding two more locations: One in Singapore and one in the U.S. Again, each of them will be in a high-available setup.

In order to provide appropriate security services, we will be using our control centers. There were nine of them. And they will work in a follow-on principle so we can provide these security services 24/7.

In addition, obviously there will be a help desk available 24/7 for global reach which will be located in eastern Europe.

The sunrise and claim services, we will start to implement them as of this month. And this will be based on the current version of or latest version of the TMCH functional specifications. We understand there might still be some updates to be done and if I'm not mistaken ICANN also provided an updated version today of that document.

In addition, we will be providing an onboarding guide. We are currently working on that together with ICANN to make sure that it's also clear how to obtain access to the service, so how you can get your credentials for the interfaces that will be made available.

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In addition, we will also make sure that it comes clear how to submit your I.P. addresses for the users which will have to receive access to our services.

IBM will also be providing support services. And we will provide support obviously to the authorized user from both registries, registrars, ICANN and the validators. Support will be available either through Web ticketing or by phone, so both services or both feedbacks will be possible. And it will be depending on the type of questions or the severity of the incidents.

In addition, we will also be providing an application manual which should allow to answer to most of the how-to questions. And we will be providing a questions and answers information to the Web related to the sunrise and claims functions. Obviously these will be updated as we go through the first months and as we learn from the kind of questions which will be coming from registries and registrars.

In addition, and similar to what happened for the validation function, we will also be organizing Webcasts to allow you to subscribe to these and get additional information and also get responses during these Webcasts. The schedule is still to be confirmed. We will plan on the first year we will do these weekly, biweekly in the second year and monthly as of the third year. Again, the schedule is to be confirmed and we expect that we can announce the first group of Webcasts by mid May and for the first months before we go live. Sunrises will be scheduled in agreement with the registries and with ICANN. This will be depending on the readiness of the registry and bandwidth availability.

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On this slide, you see the current project plan for the implementation of the sunrise and claims services. So as of this month, we will start to implement all of the infrastructure in a central data center. The central data center is in Singapore and the U.S. At the same time, we will start a development of the application based on the current functional requirements for which we will plan to finalize them in two releases. After the proper testing ourselves and do performance testing and security testing, we will make that available for testing by the registries. The first part will be for registries to test the sunrise function, which should be possible as of mid June and to plan a go-live of the sunrise services by beginning of July.

We will provide testing capability as of mid July to the registrars for the claim function and then have the claim function itself to be available by beginning of August.

Thank you.

KAREN LENTZ:

Thank you very much. Last Agenda Item that we are going to talk a little bit about is the RPM requirements. A couple of opening remarks with this document. So specification 7 to the Registry Agreement provides the rights protection mechanism requirements and it states in there that registries are required to implement the trademark claims and sunrise services in accordance with, blank, an URL to be specified. So this document is intended to serve as that reference. It is intended to incorporate the technical and operational requirements that registries need to follow in implementing those services.

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We did publish a draft version of that for feedback and discussion at this meeting. We do intend to post it for comment as well.

Balancing that we did in drafting this document, there are a couple of things happening. One is what we're trying to implement here is a mandatory sunrise. It is a more standardized type of sunrise than has existed previously. So in the past, each registry, you know, sort of has traditionally done something like a sunrise but they've all done it in different ways and phases. And we don't really want to get in the way of that. But we are trying to make the sunrise fulfill the function that it was designed for, which is to be a rights protection mechanism and to provide some sort of priority for rights holders.

We did -- the kind of balancing we went through in drafting that was we've always said registries should have discretion to schedule their startup phases according to their business plans so long as the rights protection processes are honored. So that's the balancing that we tried to do. There's been some feedback already and we hope to get more during this session as we continue to hone that.

I will touch on a couple of -- a few areas that are covered in the draft. The first one it starts with is testing and credentials for registries. It provides that once the registry is assigned, the registry has access to the test environment for the clearinghouse. Upon delegation, they have the ability to go and schedule the startup processes.

And then there is a requirement for 30 days' notice of startup information to ICANN. That's also something that's a little bit new. People were very supportive of the idea of a 30-day notice and of sort

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of centralized reference for publishing here's the TLD, here are the dates. Here are the sunrise requirements.

And because we're taking on that function, there's also some additional kind of consistency and terminology that's being sought. So we are working on how that should work. Also, in this document, it introduces the concept of what we are calling a limited registration period. A sunrise is a required period of 30 days. Claims is a required period of at least 90 days. And there's a straight-forward case where a TLD opens, they do their sunrise and then they close that and then they do their claims period.

And then there is the additional cases that we anticipated where registries would want to have additional sort of priority periods or periods where other certain types of requirements were established. So we called those limited registration periods. But we've put them after the sunrise so that the mandatory sunrise is still the priority and then the additional periods can be provided in the interim before the claims begin, period begins.

Also, describes sunrise eligibility requirements. This is something we've gotten a lot of questions about for a while. So the guidebook includes the sunrise eligibility requirements that the clearinghouse uses to confirm that a trademark is eligible for sunrise registration. A registry can choose to just accept any trademarks and sunrise that have -- where that eligibility has been established. The registry also has the ability to establish additional requirements related to the purpose of the TLD. For example, if they are in a particular industry, they can require that

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those eligibility requirements be met as well, that the registrant is in a certain industry.

They can decide to impose date restrictions, say the trademark has to have been issued before some date to be in my registry. What we said they cannot do is to establish other sunrise requirements that are unrelated to the purpose of the TLD, which is really aimed at something that's trying to circumvent or sort of make the sunrise less meaningful by adopting requirements like, I don't know, only companies that start with C can be in my TLD. So it's trying to allow the registry to create requirements that can serve its purposes without being able to kind of hollow out the rights protection intention.

Also covered in the document are the expected fees. This is something that ICANN has worked on quite a bit with IBM. ICANN decided to take on the account setup and invoicing functions which help to reduce the cost of participation.

The way that we implemented this process, the registry has access to a list of covered domain name labels for the claims service. And the registrar then does -- uses a live query service to get relevant claims information. So there's services being provided to both. ICANN is covering the cost of the -- what would be the registrar fees for participation. In terms of registry fees, there is a setup of 5,000 per TLD a transactional fee of 30 cents for each successful domain name registration during the sunrise and claims periods.

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Those fees are passed through, so the registries will pay according to an invoice from ICANN and that will be passed through to be paid to IBM for those services.

A couple of other subjects covered in this document, and one that we've talked a lot about is the allocation processes that registries use. So if you take a straightforward case where there is a first-come, first-served, they get their sunrise registration where they get the claims notice and they register the name. There is not really an issue but we expect that registries will do things like auctions or RFP or other processes where you apply for a name.

And so the questions that we've considered are how long should some of the steps take.

So, for example, with the sunrise period, the registration occurs based on a SMD file. We've tried to establish sort of a validity period for that. Also, in terms of the claims service, there's a few steps happening. There's a registrant -- potential registrant being presented with a claims notice. There's the acknowledgment of that notice, if they do acknowledge it, and then there is the actual registration of the domain name.

And so we're posing the question, what's the right validity period for that acknowledgment before the name is registered.

And the last piece that's included in here is the terms of service. This is the -- kind of commercial agreement that would be entered into for access to the sunrise and claims. It is intended to establish basic guidelines for how registries and registrars use the database.

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The goal of it really is to encourage the use of the database for the services that it was intended for and discourage sort of improper uses and abuses of it.

And the draft is also part of the -- part of the document for people to review and comment on. It's based on commercial terms for similar Web sites and services that are being accessed.

I think last slide.

All right. So we move into the questions and discussion portion of the session. And if you pause for a minute, I'm going to make a logistical switch.

All right. Is this on? So we feel like we are in another country back there. So I thought I would come up here and have discussion. I know we have several remote questions. We've got a queue up here. So I will start with Jeff.

JEFF NEUMAN:

Thanks. Okay. This is Jeff Neuman. I'm sorry to actually see this only be until 10:30 because there are a lot of comments and you are probably going to hear a lot of them.

So I think the first order of business is we should schedule a follow-up call for next week. That's longer time to allow everybody to really participate because this is just not conducive to that.

First thing, in the terms of service, I know you say that it is based on commercial terms, but it's wholly unacceptable to any critical service

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provider. There is no service levels from IBM. There is no warranties. There's one-way indemnities. There is no confidentiality. There's nothing except a one-way click-through agreement. That's going to significantly need to be redone.

The two -- the couple other issues I want to bring up more substantive, or three others, first is on the testing. You said access to registries for testing will be contingent, I guess, on signing agreements. I think you really need to reconsider that because there is only a two-week testing period that you had on there before the sunrise goes live.

And I think testing is two purposes, not only for a registry to interoperate but for the clearinghouse to actually learn and fix bugs or anything in there. Two weeks, only available to those that have already signed contracts, is not fair to any of the other registries. So I really encourage you to rethink that, allow all registry operators to test.

On the substance, the validity period that you have up there is an issue of asynchronous registrations or registrations that don't come on a first-come, first-served basis. Without going into too much detail, the rules that have been set by ICANN pretty much, arbitrarily, we believe, really restrict and limit the business models that registries have had for years and restricts the ability to innovate on a going-forward basis.

To give an example, basically what you are saying is if anyone does a sunrise period where they collect sunrise applications up front and then they allocate 60 days later based on if there are multiple applications, they do a sunrise, because the validity period is less than 60 days, that registry would then have to go back to the registrant somehow through

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a mechanism that's never been done before and reverify that SMD file with the registrant.

It has never been before. There is no mechanism to do it.

My recommendation is you either get rid of the expiration of the validity period or make it a year so that registries can actually have business models based on their own plans as opposed to what ICANN wants to do for them.

The next thing is on --

KAREN LENTZ:

Jeff, sorry. Would you say for the claims period as well?

JEFF NEUMAN:

Both, yeah, sorry. Both, the claims period and the sunrise.

And then the rules in the sunrise document that you put out basically say that a registry may not reserve names or allocate any names prior to the sunrise process beginning, meaning that trademark owners trump everything. Trademark owners trump every possible use or every possible name. So let me give you some examples of things that will not be allowed.

Consider this situation, that a dot charity, they cannot reserve a name like united.charity for use for the United Way because they will be forced to do a sunrise. If United Airlines gets in there, they want to park their name, then United Airlines will get it.

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Example B, and this is actual requirement -- or actual thing that's in the application. It's publicly known. The City of New York actually requires that New York City names go to governmental entities and New York City-approved vendors prior to any sunrise period. Under the ICANN rules, that's not going to be allowed.

Example C, many registries that have launched in recent times like dot co, dot mobi, dot asia, they have launched things call a founder's program where they basically want to go out and find anchor tenants that will use the space to promote and market the space.

What they will do is they will issue an RFP. They will say, Hey, whoever wants a name to come in here first, tell me how you are going to use it, make certain reps and warranties that you won't violate intellectual property rights, and come in and if you make a good proposal we will give it to you. Those types of founders programs not allowed under the technical requirements document that's out there.

A last example is premium names. This is pretty much understood in every single registry that's launched in the last decade, that registries generally reserve premium names. So for New York City, think of pizza, think of theater, think of entertainment, Broadway. These names under the technical requirements can't be reserved and allocated later because basically what the requirements doc says is everything must go through a sunrise period first. And, of course, many of those will be parked.

And then -- yeah, so basically to sum it up, all of these rules are being done through a technical document without really ample time for

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discussion by the community and they really restrict business models. And I strongly encourage everyone to have their voices heard on this subject because we don't want the inflexibility of requirements to restrict the ability for innovation and for registries to be able to promote and market their space.

[ Applause ]

KAREN LENTZ:

Thanks, Jeff. So, you know, I said at the beginning, it's certainly not the intention to restrict business models. I mean, this version is a draft. We expected to get quite a bit of comment, and we have, about the many sort of variations of things that people are trying to do, not all of which are, you know, necessarily antithetical to the rights protection goals.

So we're taking that feedback. It's -- in terms of having time to discuss it, it's, you know, obviously not going to be completed here at this meeting. We are certainly open to having a call if there is interest in that and then to have a full public comment period on this as well.

Peter?

PETER DENGATE THRUSH:

Thanks, Karen. Peter Dengage Thrush speaking in a personal capacity. Just to endorse, I guess, everything that Jeff said including that call for a call next week. There is a lot to be sorted out.

Three quick questions. First of all, this concept of notice of sunrise which has just emerged, there seems to be some assumption that the

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clearinghouse is going to be involved in that notice. But we don't really have any idea of what you mean by notice. To all the people in my country? To all the people in my industry? To all domain name registrants? And if so, how? If it is through the clearinghouse, is it the people who are in the clearinghouse who have indicated an interest by filing proof of use that they want to participate in sunrise? Is it all trademark owners who put something -- you know, to whom is this notice intended to go and how? So I think we need to get that clear.

The second one is, if you go back to your slide, which shows the priority period following sunrise, I think you need to agree that they can be the other way around. And I guess I'm picking up on the point that Jeff made. I haven't read yet, it only just came out -- your recent technical document. It is quite clear that the rules don't say that the mandatory sunrise period is the first priority period. The rules just say the trademark owners must have an early opportunity to register.

I'm very concerned at the suggestion that's been substituted for the first and effectively the only and predominant right to register. Sunrise is an early right for trademark owners to register. If we are going to change that to some supervening trumping rule over all other cases, I think we have got a major policy changes. I think Jeff covered the rest of my points, and I will stop there.

KAREN LENTZ:

Okay.

Thanks, Peter. So just to answer your first question on the notice. The requirement that it's sort of talking about is a notice to ICANN so when

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a TLD is starting up in advance of -- at least 30 days in advance of when its sunrise begins, it's supposed to provide notice to ICANN and then ICANN is creating this informational resource. What Vicky mentioned in terms of Deloitte, you know, they have the interface with all of their

So they intend to provide a communications function as part of that as well.

JEFF ECKHAUS:

Jeff Eckhaus. I have two questions about the fees for the registries here. With the ICANN mandate that the trademark claims period be extended from 60 to 90 days, which to me would be a 50% increase in time. Has there been a thought about a reduction of the 30-cent fee to a 20-cent fee to go along with that -- to decrease those by 50% in accordance with the extended time from 60 to 90 days?

My second question is also on fees, is about the \$5,000 per TLD. I see that there is some sort of bundling or bulk discount for trademark applications for multiples.

Why has that not been afforded to TLD applicants or registries that are going to have similar TLDs with similar rules? And why would they need to pay \$5,000 setup fee per TLD because once they are set up, why would they need to keep paying that fee to the trademark clearinghouse? Thanks.

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KAREN LENTZ: So I think those are both suggestions. One is to consider the fees in light of the 90-day period, and one is whether there is any kind of bulk mechanism. So we will take both of those. Thanks.

Chris?

CHRIS WRIGHT: Chris speaking for ARI Registry Services. First of all, we support all the comments made by Jeff Neuman. They are important issues, and we would like to work with ICANN to help get them resolved. But I would like to add a few more if that's possible. First one is reporting on information that's in the clearinghouse. There hasn't been much talk about reporting to registries on what information is actually in the clearinghouse.

As an example, I would like to know how many of what type of trademarks in certain languages are in the clearinghouse because that will affect my decision on how long I run my sunrise period for, for example. In an Arabic TLD, if there are any four or five Arabic names in the clearinghouse, then I will only run for the mandatory 30-day period. If there are thousands of names in the clearinghouse, then I will run for an extended time to allow those people to get in. So I would like to see more information about what sort of reporting and statistics we are going to get.

Next is the prohibition on registrars that are not accredited with the clearinghouse for participating in sunrise and land rush. That doesn't seem to make too much sense to us because a registrar is going to use the registry to determine if there's a claim for a name, and if there's no

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claim for the name, nothing stops the registration from going ahead. So a registrar doesn't need to have an interface to the clearinghouse for those registrations. So the prohibition should only be for names that there are claims that they are not allowed to be the sponsor for, not all names, full stop.

The 30-day period is -- for notification is after delegation. Just wondering what the tie-together is between why that 30-day period can't start until after delegation and why it has to be beforehand. It's effectively another 30-day delay now before I can launch my sunrise.

The restriction on overlapping periods doesn't seem to make too much sense where we don't understand the rationale for this one. So we're hoping that we can get that removed.

And the last part is with the inclusion of previously-abused names now, the wording of the claims notice actually doesn't make sense anymore. So when there's a claim that matches a previously abused name and doesn't directly match a trademark, the claims notice is actually nonsensical now. And that needs to be addressed. Thank you.

KAREN LENTZ:

Thanks, Chris. So on the reporting and statistics, there are -- I think it's monthly reports that Deloitte will be providing to us. There is a schedule for releasing them, but I think we've said that we would work with Deloitte in terms of looking at what we could provide.

What else? The -- the -- on the 30-day delegation or the -- you know, only providing 30-days' notice once you're a delegated TLD, we kind of

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struggled with that as well. And mainly it was because the -- because we are trying to create a function where there is reliable information. And if you have a sort of hypothetical TLD that's in some stage of doing something that you're not really sure how long it's going to take, it's hard to provide, you know, certainty as to these are actually -- this is when the sunrise is actually going to happen. So that's that part of that.

The claims notice I looked at in terms of the abused names and I don't think I -- I thought it needed much editing, but that's another -- another point to update. So thanks. Jim.

JIM PRENDERGAST:

Good morning, Jim Prendergast. I think the 9:00 a.m. scheduling of this session for the second meeting in a row after the gala is proof that ICANN doesn't like trademark attorneys.

Three quick questions. I'll ask them one at a time so you can answer them. The board resolution that the ICANN board recently passed allocated \$4 million for the trademark clearinghouse cost but I only saw \$2 million worth for the expenditures on the slides. Can you explain where the additional \$2 million will go? It's 400,000 a year for five years. That's 2 million.

KAREN LENTZ:

I'd have to look, but I think it's intended to cover the registry and registrar portions of the fees. There's a minimum amount.

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JIM PRENDERGAST: So there's the 400,000 a year and then additional fees that go to the operator. Okay. The registrar fees are covered for five years. What happens in year six?

KAREN LENTZ: Well, our agreement is for five years so --

JIM PRENDERGAST: Okay. But some of the -- I think some of the applicants have pledged in their applications to run trademark claims indefinitely.

KAREN LENTZ: Okay.

JIM PRENDERGAST: So that's something that probably needs to be clarified.

KAREN LENTZ: All right.

JIM PRENDERGAST: And then marketing of the trademark clearinghouse. The first applications to launch are IDN applications. I'd be curious to hear what the trademark clearinghouse is doing to market its services and its benefits outside of this bubble, outside of the bubble of agents, more specifically to small and medium size enterprises in the IDN markets that are going to be first up.

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KAREN LENTZ:

Anybody want to comment on that? Marketing?

What exactly do you mean with this bubble? Can you be a little more specific?

JIM PRENDERGAST:

Everybody in this room is familiar with the trademark clearinghouse, but you walk a half mile that way, nobody has any clue what it is and there's -- in this city alone there's probably three million small businesses that could take advantage of it but have no idea it's happening.

JAN CORSTENS:

So from our side we have definitely started working on some marketing. We've started -- we've started hiring a PR agency. We've definitely reached out to as much journalists as we could already to have specific interviews on the topic. And I think in the first two weeks we had more than 60 newspapers. So there is quite some room that we've -- that we've organized and that we've been paid for. But I'm not saying that we're doing as much as we can already. We are currently, for instance, talking to some people that could help us in promotion in the Arabic markets, and so that's in the pipeline. It's not fine-tuned yet, but at least that's the idea. Europe and U.S. are obviously covered. I mean, that's probably the bubble that you also talk about.

JIM PRENDERGAST:

Yeah.

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JAN CORSTENS: And we have started talking to our local Chinese firm to see how we can also do some extra promotion there. But it's a very good point, and we would really like to bring this more into the emerging markets, and we're going to try to do our best to make that happen.

JIM PRENDERGAST: I think everybody has got a vested interest in this being extremely successful, oversubscribed as full as you can be both from a trademark protection standpoint and a registry operation success standpoint as well.

JAN CORSTENS: Correct.

DON FANCHER: And to some degree we're relying upon the trademark agents, the law firms and that, I agree, is more for the developed world but we are relying upon that as well and we're counting on that and we're having lots of conversations in that regard and we're happy to and continue to be working with the law firms, working with the trademark agents. For example, we will be in INTA in Dallas in just a few weeks, having as many conversations as possible, making ourselves available. So we're doing all that we can within the -- within the community to try and accomplish that. But as Jan said, we're definitely focused as well on the developing world.

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[ Speaker is off microphone. ]

DON FANCHER: You'd be surprised. They actually don't. No, but it's been interesting that there have been a number of parties that you would believe would be very educated and actually they've not been as educated as you might think. So I think a lot of our marketing, even within the developing world, has been very valuable in that regard. But I agree, from a develop -- a developed world, in the developing world we do need to continue that process and we are working with other parties to try to accomplish that.

JAN JANSEN: Next to that we have a few videos that we are still trying to put online. We also have marketing material that can be tuned to any language that agents actually want to provide us information with. So we have a number of brochures that can be translated in any language needed. We have a number of videos that can actually be prepared for agents for their specific market. So we're open to communicate with anybody that will help us to (indiscernible) and to focus on markets that the agents want us to focus on. And we're hoping the agents will help us there to broaden the market and to actually reach out to everybody worldwide.

JAN CORSTENS: At least from our side we'll see what we can do. If there are registries that are launching IDNs feel free to contact us. We'll see -- I mean, I can't promise the world but we'll do our best to help in certain regions

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then at certain moments to help create a buzz around this and awareness around this.

KAREN LENTZ: Thank you. So Chuck, is it okay if I take a few online questions? I know there's quite a long queue. Wendy.

WENDY PROFIT: Thank you. This is Wendy speaking on behalf of the remote participants. There's about 16 questions in the queue. I'm just going to split them up with Naela. Maxim Alzoba. I hope I didn't mess up your name. When do you plan to upload TMCH data to IBM?

JAN JANSEN: Well, I think there's a few -- you're asking us a few steps in the future now. We'll have to start by getting specifications from ICANN so we can start implementing services for the registries and registrars. And as soon as those specifications are ready we'll come out with a timeline and of course when the timeline is available we'll be able to provide access to the database. So it's --

KAREN LENTZ: So I think that was one way to interpret the question, but (audio problem) clearinghouse already exists. You know, IBM has been supporting Deloitte for a while. They're building this, you know, full functionality database that will support multiple validators which is due

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to be online this month and then we talked about the next timeline for sunrise claims.

WENDY PROFIT: Next question from EnCirca, Tom Barrett. When do you anticipate the SMD files will be available for verified trademarks?

KAREN LENTZ: Do we have a date on that?

>> Actually there's a -- we didn't -- we're taking the next step to provide a secure medium to generate these SMD files. As soon as that secure medium, if ICANN and IBM can agree on what the secure medium exactly will be to provide these SMD files, we will make them available. But I'm imagining that this would be probably in the next few weeks.

WENDY PROFIT: The next one is from Andrew Sullivan. It would be extremely useful to know what exact match means. Is there any kind of Unicode normalization going on? For instance, do precomposed and decomposed versions of the same abstract character match?

KAREN LENTZ: So the matching rules, at least the way we are using the term here, are defined in the guidebook. They were being developed kind of by community discussion about what constitutes an exact match. So it's --

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it has all the same characters plus a few variations. So I can point you to that.

WENDY PROFIT: Speller is the next one. Question, it would be useful to have functionality to allow alerts to be sent to multiple parties in addition to submitting party. Are there plans for this? To clarify by alerts, I mean, you know, RN notifications.

KAREN LENTZ: So the question I think is about the notice, does that go to rights holders in the clearinghouse once the name has been registered? I think there's a -- an option anticipated, right, where you can get a digest or individual notices.

VICKY FOLENS: So there will be an option implemented to receive the updates of the trademark records as a weekly report or to receive updates in your -- per e-mail per update. There is no option for seeing to send notifications to different parties.

WENDY PROFIT: Tom Barrett question. If a ccTLD would like to conduct their own sunrise period would it be possible for them to accept TMCH SMD files from trademark owners?

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KAREN LENTZ: Sorry, what was the last part? Accept what?

WENDY PROFIT: Accept the trademark clearinghouse SMD files from trademark owners.

KAREN LENTZ: I don't see why not, but it's something that we would want to sort of work out with -- with our providers here.

WENDY PROFIT: When will the technical specifications for registrars display claims notice be published, and that's a question named Kelly, questioner.

KAREN LENTZ: The registrar display claims notice?

WENDY PROFIT: When will the technical specifications for registrars to -- I think I'm missing a word here, when will the technical specs for registrars to display claims notice be published?

GUSTAVO LOZANO: That's already part of the European requirements document. So if you read the European requirements document, at the bottom of the document you will see how you need to display those trademark notices. And there's an example on how different elements of the XML are using the ending itself.

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WENDY PROFIT: Thank you, Gustavo. Again from Kelly, question, will the fact that dot jobs and other existing TLDs now proposed to use TMCH start the early bid period early or will this start from the first new gTLD launch?

KAREN LENTZ: Early bid period, is that what you said?

WENDY PROFIT: Will the fact that dot (audio problem) existing TLDs now proposed to use trademark clearing (audio problem) start the early bid period early or will this start from the first new gTLD launch? I think sunrise period.

KAREN LENTZ: How early bird?

WENDY PROFIT: Sunrise period.

KAREN LENTZ: I don't think that the -- you know, we've announced an intention to work with dot jobs as a sort of pilot for the sunrise processes. It's, you know, obviously a real sunrise for them, but I think we haven't announced the details of that.

WENDY PROFIT: Okay. I'll do one more and then I'll get back in the back of the line again. This is from Tommy Ho. Question, does a trademark record

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reflect a particular status when proof of use is in queue and when the same has been verified?

So the proof of use indeed has also the status verified or incorrect or correct and that should indeed be reflected in the interface.

KAREN LENTZ: Okay. Chuck, thanks for waiting.

CHUCK GOMES: No problem. Chuck Gomes from VeriSign. I'm going to ask a question that's very closely related to what Jeff Eckhaus suggested, but I am going to put it in the form of a question. Why is the one-time setup fee the same for the same registry services provider after the first setup? Doesn't make a lot of sense.

KAREN LENTZ: So we -- we tried to figure out a way to do it according to, you know, one operator with, you know, a varying number of TLDs. We ran into a couple of challenges with that. One was, you know, we don't have -- ICANN doesn't have an agreement with a back-end service provider or even in all cases necessarily know who it is and also, you know, those can change. So we kind of wanted to find a way to distribute the fees across -- across each TLD where there's a defined period that it can be measured.

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CHUCK GOMES: Well, Karen, you have an agreement with the registry operator that can be required to flow down those requirements. I don't -- that one doesn't gel with me too much. But we don't need to belabor that here because there are a lot of people in line. I think that's a concern, like Jeff mentioned. So I'll leave it at that.

KAREN LENTZ: Thank you.

CHUCK GOMES: Secondly, with regard to the terms that registries and registrars will have to sign, having just seen the first draft of that and I understand that it's out for public comment, I think one of the things that surprised me, and I think others as well, is that the terms seem to protect the providers and ICANN pretty well. There didn't seem to be much effort to look out for the interest of registrants and registries and registrars. And again, to reiterate a point that I made on Monday, registrant fees, through registries and registrars, are covering 95% of ICANN's budget. I would expect that ICANN would try to look out for those parties because your budget is dependent on them very heavily. And of course I understand that we can comment on that, but I think it is disappointing that more effort wasn't made to look out for those parties. Thanks.

KAREN LENTZ: Thank you, Chuck. Claudio.

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CLAUDIO DiGANGI: Hi, Karen. Claudio DiGangi from the International Trademark Association. Just a couple of process questions and comments. I agree with Jeff and Peter that, you know, these sessions are extremely valuable, being able to engage with the staff and the providers. But the time allocated in the Q&A is not sufficient. We've been asking for a comment period for years really on the implementation of the clearinghouse. So I was happy to hear that you said there was going to be a comment period and I was wondering what exactly was going to be posted for comment and what that comment period was going to be about?

KAREN LENTZ: I was referring to the RPM requirements document that was just posted in draft.

CLAUDIO DiGANGI: Jeff used an example about dot charity. I think you had a slide up there about some of the flexibilities registries will have in terms of limiting the scope of the sunrise period. So for example, dot charities, if it's limited to charities, United Airlines would not be able to come in and register dot united, they wouldn't meet the eligibility criteria. There's also another slide -- there was a slide up there, Karen, that you had indicated the registry could restrict the dates of eligibility for the trademark registration date. And I'm not understanding where that's coming from. So if you could clarify how that -- is that a guidebook provision or how -- does the registry have the ability -- for example, if the registry said any

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trademark that was registered before two weeks ago is not eligible. I'm not understanding that specific provision.

KAREN LENTZ:

Yeah, thanks. So in the guidebook there's a -- in the sunrise dispute resolution procedure there's a -- one of the grounds is that the trademark was in the applied for before a certain date or issued before a certain date. So there is that concept. But the idea behind it was to avoid gaming. So if I'm starting up in January, I can say I need trademarks registered in the last six months. I'm not going to take -- because I think they may have registered just for the purpose of this, right? So the registry doesn't have to do that. But the language in the draft says they can impose limited date restrictions for the purpose of, you know, addressing gaming.

CLAUDIO DiGANGI:

Okay. So it's just limited to the sunrise eligibility.

KAREN LENTZ:

Yes.

CLAUDIO DiGANGI:

There is -- we had this session in Toronto, you put some slides up about what marks are eligible for inclusion in the clearinghouse, and I asked you about marks that were still in the opposition period because there's a provision in the guidebook that specifically says that if the trademark is still in the opposition period, even if it's registered, there's a lot of

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jurisdictions, to give you an example, that register marks on absolute ground, so they look at the trademark and they look if the trademark can function -- if the applied for term can function as a trademark, is it generic, but they don't look at prior rights. So they register the mark and then they put it out for opposition. And the guidebook says that those marks are not eligible to be included in the clearinghouse but that rule didn't seem to carry over into the guidelines in Toronto. I think you indicated it was an oversight. But then we saw the guidelines published. That rule is not in the guidelines. So right now trademark owners can be submitting those trademarks to Deloitte. They're not eligible for inclusion. It's nowhere on the Web site. So I'm wondering why that issue is still open and what's -- what -- is there going to be new guidelines published or how is that going to be addressed?

KAREN LENTZ:

So in terms of the opposition period, this goes back a little bit to the discussions in developing the clearinghouse on how you treat different jurisdictions. You know, at one point we had the idea of substantive review and so forth. And, you know, it came to be a really important principle that you're treating similarly-situated marks holders the same way, regardless of what jurisdiction they're in. So we looked at the opposition period language and we looked at the declaration that the rights holders make when they're putting data in. It seemed to be covered by what was already there, if a mark is not -- you know, there's some opposition periods that happen before a mark is issued, right? So if it's -- in that case it's not registered so it's not going to be accepted. In the case where, you know, it has been registered but it wasn't been

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canceled or revoked or expired or whatever, then it is, you know, recognized as a mark according to what --

CLAUDIO DiGANGI:

Right, but there's certain jurisdictions, let's use Germany as an example. Germany evaluates trademarks on absolute grounds. Then the mark gets registered and it gets put out for opposition. Other rights holders could look at the registry, and this is again to maintain the integrity of the trademark register because there's fraud committed on the trademark register just like there is on demeaning registries. So to minimize and maintain the integrity of the register, the registry posts the registered marks for opposition, and the opposition period might be 90 days. This enables rights holders to object to marks that are not valid marks and the guidebook said if it's -- if there's a -- Germany has a 90-day opposition period for the registered marks. Those marks cannot go in until that opposition period is over. So Deloitte would have to build that into their clearinghouse. They would have to know what the opposition period is for every jurisdiction, and then after that 90-day period concluded, then that German trademark is eligible for inclusion. But until it's not, the rights really haven't fully vested because that's not how that jurisdiction has set up their laws. So that was why -- and this was an issue the GAC picked up on. And it's in the guidebook so it's not -- I'm not understanding -- I'm not really clear if you're saying staff took discretion to remove this rule or why this rule, which is in the guidebook, which was supported by the GAC, is now no longer in the process.

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KAREN LENTZ: So it's -- you perhaps didn't explain it well enough, but it's -- in our understanding it's sort of implemented in what's -- what's already there. I think that there was a specific concern around that language, which is, you know, which is noted and sort of, you know, held for -- for a review.

CLAUDIO DiGANGI: Okay. Thank you. We'll follow up. Thank you. And to Jim's comment on the IPC and I think the business constituency, I wanted to thank Deloitte. They have been doing a lot of outreach to groups like INCA, the International Chamber of Commerce, and the intellectual properties constituency is going to be supporting them and getting the outreach out and IDNs and all the different variants. Thank you.

KAREN LENTZ: Thank you.

AMADEU ABRIL I. ABRIL: Okay good morning. Amadeu Abril I. Abril from CORE. For the sake of time I will not repeat many of the concerns that Jack, Chris, John, or especially Jeff at the very beginning have addressed, but beyond those, Jeff's point that we have serious problems with other parts of the RPM, RTM CH requirements document that are published this week. We especially thank Karen and Gustavo for being available for discussing these concerns. We know that some of them, it's a question of understanding, so staff is understanding something in 233 where it says no specific sunrise all the restrictions when launch periods tend to be about tighter restrictions, general availability. That you understand a

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different thing that we understand about equal treatment or the community specific restriction in 2.3.1.2 or 3 or something. And there are other -- and this specific restrictions are allowed. There are many other points that I don't want to go one by one. If you just want to raise the point that this is really critical. There are two that are especially critical you have not mentioned. The first one is on this equal treatment, the question about not being able to give priority. For instance in dot sport, international federations over national federations over local clubs. This is impossible for a community TLD that wants to have a launch period remains some meaning. But also for any TLD that has a specific geographical scope. It is not only what we call geographic names as per the string but as per the purpose of the TLD in the guidebook. Not being able to have some priority for the local trademarks, the trademarks having local effect over those that don't have local effect can only have one of the two extremes. One, that we may pass completely the trademark procedure by any other way, and there are ways of doing that. I am happy to explain those that we will not use. Or on the other hand, that we completely exclude any foreign trademark which very often will be, you know, beyond the scope of the real purpose of the gTLD. But if we have to do it exactly the same way, that's impossible. We need to layer it levels of priorities in the sunrise because it's exactly about that.

Now, beyond this point I have one general question, one specific question for Deloitte.

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The specific question, first because perhaps I have not -- I mean I asked that twice and I have not understood the answer, perhaps, is my problem.

One of the possible jurisdictions we have for the trademarks is WIPO. That is, international trademarks. But international trademarks are not valid in all jurisdictions. They're valid in given jurisdictions according, you know, to procedures of the Madrid agreement, et cetera. Now, this is important for eligibility criteria.

Is there a way beyond WIPO to specify the individual jurisdictions in which that international trademark has valid effect? Because I'm not sure on all that.

And the real important question, because I want a clarification, because somehow the outreach has been done in something from this vicinity. The message is only trademarks in the trademark clearinghouse will be available for sunrise. If we define "sunrise" as trademark clearinghouse validated trademarks, well, that's a tautological definition that the answer is yes.

If you mean by this that only trademarks validated through the trademark clearinghouse can be accepted in a launch period, even at the top priority level in concurrence with those in the trademark clearinghouse, then we have a serious problem because this has never been the case. And even if that doesn't make sense for registrars in the global scale to validate trademarks also in the global scale, for those that have a specific geographic purpose, there is no way to avoid

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accepting trademarks that have local effect, even if they are not through the trademark clearinghouse. Thanks.

[ Applause ]

KAREN LENTZ:

Thank you, Amadeu. So the first point you mentioned I think was about prioritizing different types of trademarks within a sunrise, which isn't really addressed in the document one way or the other, so that's a point that we'll look into.

In terms of making the clearinghouse a requirement for a sunrise, that is the intention that there's a sunrise period that's based on data that's been verified by the clearinghouse.

And then I don't know if Deloitte wants to address the question on WIPO trademarks.

VICKY FOLENS:

Yes.

So in relation to the WIPO trademarks, it's correct that you can only choose the jurisdiction WIPO.

We do understand that the WIPO is indeed a -- trademarks that are filed and registered in different countries. However, the WIPO certificate or the information provided by WIPO only provides the information of the basic registration, and that is why we have stated that we need to check that that trademark is still valid or registered.

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The WIPO certificate does not provide all the registration number or application number of the different -- to check to see that that trademark is indeed registered in all those different countries, and if we would have to do that, that would also have an impact on the pricing because it's not one trademark that we're looking at anymore, it's a trademark that we need to verify in each different country.

AMADEU ABRIL i ABRIL: So the point is for WIPO jurisdiction, it is okay for IP clients but if you want to participate in a sunrise that may have -- may have local eligibility, you better submit them one by one anyway, right?

But more importantly, Karen, I haven't understood your answer regarding the question of trademarks which are not validated by the trademark clearinghouse and launch periods.

Can you explicitly say that this, yes, is allowed?

KAREN LENTZ: Yeah. As currently drafted, yes, the sunrise period as we've defined it is based on marks that have been registered and verified by the clearinghouse.

AMADEU ABRIL i ABRIL: But this is not the only RPM mechanism, right? So there could be a parallel mechanism, then, that is for other rights protection?

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This is specifically said in the guidebook, in all the document, and in Specification 7. Correct?

KAREN LENTZ: Sorry. I'm not sure I understand the question. And just to -- I'll answer your question, but we have, I think, under 10 minutes left so we need to finish the queue.

AMADEU ABRIL i ABRIL: This is an important question and I won't leave the microphone without getting an answer.

KAREN LENTZ: That's fine.

AMADEU ABRIL i ABRIL: Because what's being said in public is that only trademarks in the trademark clearinghouse are allowed into the launch periods of the registries, and this is not warranted by any discussion in any document so far. In the guidebook, Specification 7, or any document in IRT or any previous group. And the general understanding is trademark clearinghouse is a great way to facilitate validation so we are mandated as registries to accept anything that come from the trademark clearinghouse as being a trademark and then we apply eligibility. And we all agree on that.

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But nowhere is it said that this is the only thing we can accept as rights. And even as Specification 7 says, you can have -- you must have this as a minimum, which means we then cover other things. And these other things could be corporate names, can be shop signs, can be, you know, signs protected by any other law you state as being public signs, but can also be trademarks that are not through the trademark clearinghouse.

Do you agree?

KAREN LENTZ:

So I -- no. As currently drafted, there is a sunrise period that is based on data from the clearinghouse. The agreement does say that the registry, you know, cannot require people to use anything -- any alternative clearinghouse, or words to that effect.

AMADEU ABRIL i ABRIL:

No, no, no. It's not about requiring anybody to use anything alternative. It's having other things.

Okay. Let's call sunrise only for Deloitte validated trademarks. Perfect. Empowered with that, we have the dawn. It's not the sunrise, okay?

And there you have local corporate names, for instance, for dot Barcelona that will never go through the clearinghouse. It's impossible. Or shop signs that only have local validity.

KAREN LENTZ:

Yeah. So that's --

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AMADEU ABRIL i ABRIL: And then you can have also local trademarks there.

KAREN LENTZ: Those are the scenarios that we're trying to work out, but --

AMADEU ABRIL i ABRIL: Okay.

KAREN LENTZ: Thank you. Werner?

WERNER STAUB: Werner Staub, also from CORE.

I have two things. One small one, and a big one.

The small one is about the pricing by -- shown today by Deloitte and IBM.

It is competition distorting. That would be okay if we didn't have a monopoly, but right now we have a trademark clearinghouse that's a monopoly. It's a public service, and price is being differentiated between big and small agents. That is inappropriate. Some of the small agents will have to pay higher than the sales price of their bigger competitors. That's not a thing that you can do. But that's a small point. We can handle that.

The bigger one is the fundamental misconception that I see in the entire idea that is proposed by this trademark clearinghouse, and Abril

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mentioned one aspect of it, but I find also that the entire concept is based on the idea that a domain name is always owned by someone. This is not true. Not all the domain names are owned by someone. There are two well-known examples, one of them very well known, IANA.org. It is not owned by ICANN. It is registered to ICANN, but it is not owned by ICANN. Internic.net was actually even the subject of controversy and it was a question of who really was entitled to operate it and finally it was entrusted to ICANN.

Now, in the launch of new TLDs, this is a very important question, and for many of them, there will be a large portion of the namespace where the domains will not be owned by someone but entrusted not as ownership but as a mandate to parties that have to perform a function.

Now, this has nothing to do with the sunrise. There's nothing that should stop these essential functions from being performed.

So the rule that said that nothing must be allocated would actually essentially wreck the launch phase of the TLDs and actually wreck the entire TLDs because if you do not launch them correctly, they will not work correctly.

KAREN LENTZ: Thank you. Next?

CALVIN BROWNE: I'm Calvin Browne from the za central registry. I'm going to be following up on Amadeu's comments.

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Some of the language that has been put into the agreements around the trademark clearinghouse seems to go towards preventing other trademark registries, for instance, as set up by governments and required by local legislation to be used by the citizens of that country, be they corporate or natural, and it moves to prevent them from using those as local laws would require.

So if you're saying that the trademark clearinghouse is the only game in town, you're shutting down all those registries from jurisdictions where those things are requirements and you really need to look at that very carefully.

KAREN LENTZ:

Thank you. Yeah, that's a comment we've gotten frequently this week, so we're looking at that.

NAELA SARRAS:

Hi. Good morning. This is Naela Saras reading questions from online. The first one I have is from Winfrey.

When a third party is trying to register a domain name using a trademark, will the agent/RH be notified before or after the domain is registered?

KAREN LENTZ:

After.

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NAELA SARRAS: Okay. Second question from Tommy Ho.

Will the fee structure for additional domain names be applied to the implementation of the 50 shades of previously abused domains?

[ Laughter ]

VICKY FOLENS: That will depend on the requirements and the verification process.

NAELA SARRAS: Okay. Question from Tom Barrett, EnCirca. It's a question for IBM.

Regarding scheduling sunrises, what is the upper number of sunrises you anticipate being able to support per month?

JAN JANSEN: Currently What we're expecting is that we should have the capacity to launch all of the TLDs within the first year or first 18 months, so as long as we don't go faster than that, we should be okay.

NAELA SARRAS: Okay. Question from Ed.

Does the RA prevent a voluntary alternative trademark mechanism, i.e., not mandatory?

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KAREN LENTZ: Yeah. It says that the registry -- I'd have to look at the -- but it says that the registry can't mandate you, so an alternative should keep going, yep.

NAELA SARRAS: Question from Winfrey.  
  
Is there a definite list of new gTLDs?

KAREN LENTZ: There's a definite list of applications --

NAELA SARRAS: Okay.

KAREN LENTZ: -- that you can find on the ICANN Web site.

NAELA SARRAS: Okay. Question from Tom Barrett with EnCirca again.  
  
Will a registrar need to complete any sort of OT&E with the TMCH before being allowed to participate in a sunrise? What about claims? Will they need to pass both OT&E for sunrise and claims before being allowed to participate in a sunrise period?

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JAN JANSEN: Currently we expect the testing to be optional, obviously highly recommended. I don't think there will be a required test.

NAELA SARRAS: Okay. I have a comment. Should I read those out?

KAREN LENTZ: Well, we're a little bit short on time, so --

NAELA SARRAS: Yeah, let's go to the questions.

KAREN LENTZ: -- let's go to more questions. One minute.

NAELA SARRAS: Okay. Sorry.

Maxim Alzoba question.

Could you clarify the reason for TMCH to have no SLA, no any responsibilities under current RPM requirements?

KAREN LENTZ: So they do have SLAs and they do have responsibilities.

They have those in their agreements with ICANN.

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NAELA SARRAS: Okay. From Michael Berkens.

I wanted to point out to all that there is a trademark game play to acquire the best generic domains in each new gTLD. If anyone doubts that, just think of dot EU. ICANN is aware of TM game playing.

Okay. I guess that was a comment. Sorry.

We do have a question from Hong Xue.

Does TMCH identical matching rules take into account IDN variants?

KAREN LENTZ: So the matching rules are specified in the applicant guidebook and we have implemented those as they were agreed upon. We had quite a bit of discussion about variant characters and how those are applied as we implemented this.

You have a little bit of the same issue that we have now with domain registration, in that whatever registry has IDN tables and has variant rules and practices, so that state has continued so that the clearinghouse itself does not have a centralized variant -- set of variant rules, but the registries are free to continue to apply theirs.

NAELA SARRAS: Okay. So how are we doing on time?

KAREN LENTZ: I think we're done.

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NAELA SARRAS: We're done?

KAREN LENTZ: Yeah.

NAELA SARRAS: Okay. There's more discussion and questions.

KAREN LENTZ: Yeah. We can forward the -- well, we'll post the chatroom.

NAELA SARRAS: Absolutely.

KAREN LENTZ: All right. Thank you, everybody, for being here. I'm sorry that the time was sort of short, but hopefully it was a good discussion and you got some good information. Have a good rest of your Thursday.

[ End of session ]