ICANN Transcription – Abu Dhabi

GNSO Intellectual Property Constituency (IPC) Open Meeting Part 1

Tuesday, 31 October 2017 15:15 GST

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On page: https://gnso.icann.org/en/group-activities/calendar

Man: October 31, 2017 GNSO Intellectual Property Constituency Open Meeting, Capital Suite 1, starting time 15:15.

Greg Shatan: Hi, this Greg Shatan. We'll be getting started shortly. Thank you.

Kiran Malancharuvil: For those on remote participation, we'll be starting soon. But the room is really empty. There's still a lot of attrition from the last session. So stay tuned.

                    (Andrea), if you are on remote participation, can you please send out an e-mail to everybody that this meeting is supposed to have started already. I think people will think it might be 3:30. Thanks.

                    Just another minute and we will begin. We have a few more people trickling in and sitting down. Thanks for your patience on remote.

((Crosstalk))

Kiran Malancharuvil: Okay. I think we should get started. Thanks, everyone, for being here. If everyone could just have their seats in the room. I think we're still looking a little light on attendance at the moment but we do have to start at some point. So I suppose we will start now.

And we will begin by - with a welcome and roll call. And the Adobe Connect just went down in the room. Okay, it's back up.

So, Greg, I think you - I'm answering your question about what's happening in the room. I would like to introduce a slightly different format about this meeting. I will be your in-room chair for this meeting.

For the record, this is Kiran Malancharuvil, IPC Secretary with Winterfeldt IP Group. Greg, IPC President, will be chairing remotely through the Adobe Connect room.

So Greg, would you like to give the welcome? Oh, and I will be circulating a sign-in sheet in the room so that we know who all attended and we don't need to do a roll call of the people in the room, I don't believe. Thanks.

Greg Shatan: Hi, everybody and welcome. Thank you, Kiran, for kicking this off.

Kiran Malancharuvil: Greg, we can't hear you at all.

Greg Shatan: Can you hear me now?

Kiran Malancharuvil: Yes.

Greg Shatan: Okay. So anyway, thank you Kiran for kicking this off. Apologies for not being able to be with you live but we have a great team on the ground of course. And Kiran in particular will be the eyes and ears in the room. And of course, we have President-Elect Brian Winterfeldt as well and also Treasurer-Elect John McElwaine in the room from leadership and Heather Forrest as well.

Kiran Malancharuvil: So just a clarification, we don't have Brian Winterfeldt, incoming IPC President, in the room yet but he will join us, thanks.

Greg Shatan: Okay, very good. Unfortunately, this is not one of those rooms with the little robot camera that aims itself at whoever is speaking at the moment. I literally do not have eyes on the room.

So why don't we begin with the roll call. As Kiran indicated, we don't need to go around the whole room although we sometimes do. But I would like any new IPC members to - who are in the room to identify themselves and give a very brief self-introduction.

Kiran Malancharuvil: Okay. So if there's anybody in the room who are new, let's start with new members, Heather, and then we'll go to the NextGen. Any new members who just would like to acknowledge themselves and just give their name?

Oh, there you are. I'm like, where's Syed. Thank you.

Syed Abedi: My name is Syed Abedi. I'm a new member. I work at Seed Intellectual Property Law Group in Seattle, Washington, USA.

Kiran Malancharuvil: Thank you. I see some others. Okay, here's Chris.

Chris Casavale: Chris Casavale, Nelson Mullins, who needed a group and I'm looking forward to working with everybody.

Kiran Malancharuvil: Okay, we have a few more coming to the mic.

(Nicolas Umbria):   Hello, everyone. I'm (Nicolas Umbria). I'm online markets protection manager at LVMH.

(Pridine Munet):   Hi, everyone. So (Pridine Munet) from Le Giton, IP manager for Internet (unintelligible) in Paris.

Kiran Malancharuvil: We have the fashion - Parisian fashion contingency coming to the mic now. It's my favorite.

(Maria Groviza):   Yes, I'm (Maria Groviza). I'm IP legal counsel for L'Enchant in Paris as well.

Kiran Malancharuvil: Great. And I think that's it for new members. Are there any other new members? No. Okay, so next I will hand it over to Heather to introduce the NextGen participants.

Heather Forrest: Thanks very much, Kiran. I'm going to let them introduce themselves if that's okay with you.

Heather Costello: Good afternoon, everyone. Heather Costello for the record. I'm a final year law student at Murdoch University, which is on the - in Western Australia in Perth. I'm a NextGen participant at ICANN '60. I'm currently writing my honors thesis on the definition of a well-known trademark using ICANN policy and the expansion of the DNS as the vehicle for that definition.

Sophie Hey: Hello. My name is Sophie Hey. I'm also a final-year law student and also a business student from the University of Tasmania. I've completed my honors thesis on the enforceability of reality television contracts.

Pierre Dordhain: Hello, everybody, Pierre Dordhain for the record. I'm also a final-year law student. And I have a very strong interest in intellectual property so I'm very flattered to be here. Thank you.

Salvador Camacho: Hello, everybody. My name is Salvador Camacho. I'm from Mexico. And this is my second ICANN meeting, second time as a fellow. And I'm the CEO and co- founder of Kalpa Proteccion Digital, the first domain names consulting firm in Mexico City.

Heather Forrest: Any other fellows in the back? One more.

Amanda Lu: Hello, Amanda Lu for the record. And I'm originally from Taiwan. I'm not a lawyer. I don't have any knowledge of the law but I'm very interested in intellectual property. This is my first ICANN meeting. I'm a fellow for this time and, yes, looking forward to learn from you all.

Kiran Malancharuvil: Welcome. You do not have to be a lawyer to join the IPC and in fact, it may be a breath of fresh air if you're not.

Just - and know that we'll be sending around a sign-in sheet. It asks for your name and your affiliation and your e-mail address. If you're an IPC member and we already have your e-mail address, I do not need it. But for others, you are welcome to give us your e-mail address for future communication. Thank you. And I will hand it back to Greg.

Greg Shatan: Thank you, Kiran. I should mention there is one other new IPC member in the room, which of course is the Winterfeldt IP Group. While the Winterfeldt IP Group is new and a new member, Brian and Kiran and (Sarah) and (Griffin) and (Phil) are well known to many of you. So it's a little funny to think of Winterfeldt as a new member but in fact the group is a new member and an exciting development for ICANN for the IPC.

I should also mention that Flip Petillion has also become Petillion law. I'm not sure of the exact name of his new firm but he is also flying his own flag and again, another exciting transition for the members.

At this point, I will turn the microphone over to Heather Forrest for a report from council and a review of motions, not many motions but other interesting things happening at council. Heather, please go ahead.

Heather Forrest: Thanks, Greg, very much. Heather Forrest here. As Greg has noted, we do not have much by way of - interestingly enough, we don't have a very full

agenda on Wednesday so council, as it normally does, will be meeting on Wednesday.

And we have only one motion on the table. It's not likely to be contentious. It is in relation to the Standing Selection Committee's appointment of Julf Helsingius as the GAC liaison to replace Carlos Raul Gutierrez who has served in that role.

Carlos, if you're not aware, have been appointed by the NomCom to represent the contracted parties in the upcoming term. So Carlos will come out of his seat as liaison. That's traditionally held by someone who's not a counselor.

We have (Lori) to thank very sincerely for our representation on the Standing Selection Committee. So again, that is the only motion on the agenda for part one of tomorrow's meeting.

There are in fact two parts to tomorrow's meeting. And the reason for that has to do with the council election and the seating of the new councilors. So what will be discussed for the remainder of part one… And I'll put the link in Chat or if someone's quicker than me. In fact, I can probably do it very quickly. Link to our agenda is here. You'll see that on our agenda for tomorrow, we'll be talking about the GNSO Review Working Group.

Sorry, before we get to that, SSR2 and RDS Review Teams, we're talking about those generally and there have been issues that have been raised in the course of today and indeed in the CSG remarks to the board that happened just a few hours ago in relation to how do we as a community ensure that we have the right composition on the groups and diversity on those groups and skill set and how do we handle scope setting and this sort of thing.

So I suspect that will be a very open discussion. It will be difficult to pull this out of the very specifics of SSR RT2 and the board's intervention in that this week. But I'm sure we can do that.

The GNSO Review Working Group discussion will come after the SSR and RDS Review Team updates. And here will be - look, we're at a point of being midcycle in terms of review. The ALAC has just completed a review and I suppose it's - SSAC has completed a review. And we're mid-go.

You might remember that the recommendations from the most recent GNSO review went to things like diversity and so on. And I think we've done some efforts to advance those. But that will be an update to help us in that regard in preparing for the next cycle.

We have a discussion with ICANN Finance on our agenda. And the purpose of that is that Ed Morris of the NCSG has suggested, prior to leaving council, that it might be wise for council to form another standing committee, this one in relation to finance.

I think this has kicked around the agenda for a little while for a number of reasons. Number one, much of the work that we already do, as (Marilyn) actually noted this morning at NCSG, much of the work that we do in relation to finance comes from the stakeholder groups and constituencies. And we of course have a strong presence in those things here in the IPC with sincere thanks to (Lori) and others who lead those efforts.

How much we want to do within council I think has to do with the fact that the new bylaws and the GNSO's participation in the ICANN - in the empowered community give us a role in terms of submitting formal rejections of the budget. So hence those discussions are in line with that.

So that's part one of tomorrow's meeting.

And then what happens is the old councilors, outgoing councilors -- we're all old -- the outgoing councilors are thanked very kindly for their service. And the incoming councilors take their seats.

And the very first order of business is the GNSO Council chair election. And I am currently the - well, I shouldn't say currently because the nomination period is closed -- I am the only nominee for the chair. And from the Q&A that happened on Sunday in the council's weekend working sessions, it seems fairly clear that our friends in the contracted parties are very happy for me to have that role. So we just have to count on our friends from the NCSG.

So there we are, an actual report from council. Paul might be sleeping. It's a horrendous time for him. If you have any questions, I'm more than happy to answer. Paul and I are keen to be responsible.

One thing I should say that's only just come to mind is this. I have at the end of meetings, at the end of council meetings, prepared high-level notes and circulated those around because I thought it was very helpful for… They're not pretty but they're immediate and they come, in some cases, a week or more before the minutes come around. And I'm - I've been very, very happy to do that. And I'll do that in any other function that I can serve for the IPC.

But I know from stepping in for James on a few occasions over the last two years that it's impossible for me to do that and run the meeting at the same time. The multitasking is the back channel and the chat and the queue and everything else. It just makes it too hard.

So please forgive me, I'm - you will not get nearly as fulsome notes from me. I'll still keep action items and big ticket items but - and I'll work with staff very closely to support me in that effort. But I'm afraid you won't get my fulsome notes as they were because if we did, then I wouldn't - my chairing of council would be atrocious. So forgive me for that in advance. Thank you.

Paul McGrady: Hey, this is Paul. I hate to have stayed up all night long and attended all these things remotely only to have you guys think I was asleep. So I am here.

A couple of things from the agenda. One, the - it looks like we intend to beat the dead horse of the SSR2 kerfuffle. It's found its way on to the agenda which is fine. You know, unless we have instructions from you guys, I think Brian said it just fine in the meeting with the board that the IPC supports the concerns raised by the BC.

I think that to the extent that there is to be like a sort of public flogging of anybody, we should let other people do that. We've expressed our unhappiness. And so, again, unless you guys feel strongly that the IPC needs to, you know, go on the record at council level too, I think that it makes sense for us to play that a little bit quiet and let those that are more concerned - I shouldn't say more concerned but more vocal about it, let them have their time at the microphone.

The other item that's on the list and we can't get to it today but this issue of the how a community GTLD changes its - or puts in for a change to essentially its eligibility criteria, things like that. That's also going to be discussed again at the council meeting tomorrow.

It will eventually percolate up into some sort of vote. I'm not really sure how that happened since the policy development work on it was done by the GDD in connection with community GTLD registry operators and it was labeled not policy.

And so, again, but there's - it's sort of this odd hybrid where they want it to be implementation. They don't want it to be policy but they still somehow want the GNSO Council to bless it.

So that issue will percolate - we'll talk about it this time around but just a heads up that that's coming down the path and, you know, the IPC can start

thinking through it now, what it thinks about that process, whether or not there's anything to worry about there or if it's all just fine. And so we will - we'll maybe have a chat about that in our next regularly scheduled call.

That's all I have to add on to what Heather had to say.

Greg Shatan: Thank you, Paul. And thank you, Heather. And Heather, congratulations.

Paul, there's a question in Chat for you from Steve Metalitz. Paul, what is the implementation issue you refer to?

Paul McGrady: So what they - and again, this is after having stayed up all night long so if I mess up on some of the details… The implementation issue is that it looks like some of the community registry operators want to change their eligibility requirement to make it easier to I guess join the community, to get a second-level registration that's different than what was in the applications.

And I guess, in some cases, will be - it would have - I suppose be even scored differently, which may have - if they had the eligibility criteria that they want today back then, maybe they wouldn't have scored high enough to be considered a community application. Therefore, they would not have jumped the queue over everybody else that was in their contention set.

And so - but they want to make changes to Specification 12 essentially to memorialize the changes to eligibility requirements.

But it does sort of beg the issue of, you know, do we want that to happen. Do we want somebody to be a really strong community, come application time get the registry and then change their criteria, thus defeating - you know, getting themselves out of the auction that everybody else has to be subjected to?

So it's an interesting question. They keep pointing to Specification 13 as a change that was driven by not the council. It was driven by potential registry operators. But of course, there was already policy out there that new GTLDs should respect brands essentially, you know, respect trademark rights. So I don't think they're the same thing. They are - that's part of their messaging that it is, essentially they're doing what got - brands did.

And so I guess we just have to decide, you know, do we care. Do we care, you know, if this is how changes are made? Does a community need to maintain the same eligibility requirement that it had on day one for the rest of the registry life?

There's a reasonable argument that no, things change. But I am concerned in the long haul about gaming to avoid auctions because the auctions are such a horrible idea and so expensive that people may want to find ways to cleverly get around them. And somebody playing the long game could use this process for that.

So anyway, lots to think about. There's going to be a conversation about it in tomorrow's call but no motion so no decision right now. Thanks.

Greg Shatan: Thank you, Paul. Are there any other questions for Heather or Paul?

Kiran Malancharuvil: There's one from (Lori) in the chat. This is Kiran. I can just read it if you…
It's a process question about whether when Heather becomes Chair, whether we have a seat to backfill or whether she's still considered our councilor.

Heather Forrest: And I'd like to respond that, if that's okay. I think it's very important that we understand this and I would like it on the record so that it's very clear that we understand this.

So my seat, I remain a councilor of the IPC. We do not backfill a seat. We do not get an extra seat. So as it is now, the registrars have three seats, of which James holds one.

That said, I'm - I am in a position, according to the bylaws, where I have to vote for the best of the council. So I am - I will take instructions and I will still be in a position to receive instructions.

But if there are times when I believe in the interests of the council that I shouldn't follow instructions, what I can do -- we've never really been in this position before -- but I will come back to you and explain. I'll try to do that as far in advance as I can. I'm going to hope that that doesn't happen often. I'm going to hope that it doesn't happen ever. But the bylaws specifically give me a responsibility to consider the interests of council.

So this is something we discussed in the election two years ago and the election process. And to the extent that anyone has any concerns about that, I'll be more than happy to flesh that out.

But hopefully, you know, over the years, you've - well, you've gotten me this far so you don't think that I'm going to do anything crazy. But that - we need to be very clear that the bylaws give me a different responsibility now. Thank you.

Greg Shatan: Thank you, Heather. If there's nothing further on council, we can move to the next…

Kiran Malancharuvil: So Greg, I have my hand up. This is Kiran.

Greg Shatan: Oh, Kiran, your hand is up.

Kiran Malancharuvil: Great. Thanks. So I just want to note that I think that it's a real bummer that it's really hard to get anything done in council on behalf of the IPC with

two active councilors that are free to sort of freely advocate for the IPC position and the fact that you have to remain neutral as a chair in a PDP working group would is super unfortunate for the IPC.

If there's nothing that we can do to change that immediately over your term…

Woman 1:   It's not an immediately working (unintelligible), only the council…

Kiran Malancharuvil: Right. I was using that as an analogy. So to be clear, I was saying similarly to the chair of a PDP working group where they have to remain neutral, I see that Heather is asked to remain neutral in her capacity as a council chair. And I think that's unfortunate.

So I think there's an action item for the IPC with regard to this where we have to really step up and support Paul to make sure that he can essentially do the work and perform the advocacy of two councilors as one. Sorry, Paul.

So we - I think that might be an action item for Brian Scarpelli and me, participation and policy group and IPC leadership to develop an actual plan and/or a group to, you know, support Paul and make sure that he has what he needs to be able to appropriately advocate as essentially our single councilor on that. Thanks.

Greg Shatan: Thank you, Kiran. That's a very good point. Paul McGrady certainly can rise to the occasion. I don't think he has very far to rise at all in order to advocate forcefully for IPC's position twice as often. But yes, he will need more support from the rest of us and we should do that. Thank you, Kiran.

Let's move on to the next item in our agenda, which is - unless, Kiran, is that an old hand or a new hand? Old hand. So let's move on next to discussion of IPC policy positions and issues and public comments. This space is reserved here for any hot policy topics, setting aside those from the working group which we'll discuss after the coffee break. So if there are any particular policy

issues, we can bring them up now. And also we can go over the public comments that are open and ongoing.

So I'll take a queue for policy issues that people would like to raise separate from the reports from the working groups but of course there's a lot of overlap so don't feel constrained. And after we go through the queue, we'll look at the open public comments, a couple of which need significant attention. Steve Metalitz, please go ahead.

Steve Metalitz: Yes, thank you. This is Steve Metalitz. I just wanted to - I think this is an appropriate point to raise it. We need to be preparing the IPC questions that we want ICANN to pose with regard to the Hamilton law firm opinion on GDPR.

I think I heard - I want to commend Patrick Charnley for his efforts to try to get Goran to commit to a timeline on this. And I thought I heard Goran say offhandedly, well, we have to do this in the next couple of weeks so - although he refused to characterize that as a deadline. But I don't think we have a lot of time.

So I wanted to ask what will be the process for developing those questions. I know we have a mailing list within the ICP that's looking at GDPR issues and that may be an appropriate mechanism to use. But I just wanted to raise the question of how we will prepare and vet and ultimately submit our questions that we want ICANN to pose regarding the Hamilton opinion. Thanks.

Greg Shatan: Thank you, Steve. That's a very important point. I don't know if anybody wants to follow up on that. Of course, we'll take follow-ups on the list as well.

Kiran Malancharuvil: Patrick Charnley here in the room has his hand up.

Patrick Charnley: Thanks, Kiran. Yes, Steve, I think that's right as reluctant as he was to give a deadline, it is in about two weeks. And it seems to me that the most sensible

thing to do would be to use that existing GDPR list that we have, people to, you know, put questions in as soon as possible. And then we can look at any overlap and come up with a list of questions.

And perhaps, you know, if we aim to do that, I think if we set an internal deadline for, you know, within the next week to circulate any questions and then we can finalize the list and get them over, if that makes sense to people. Thank you.

Greg Shatan: I see Heather has her hand up.

Kiran Malancharuvil: And after that, Jonathan Matkowsky.

Heather Forrest: Thanks very much, Greg and Kiran. Just to note that I've put a few posts into the list this week, following up on discussions that (Patrick) and (Alex) and I had with some folks from Registrars, particularly (Micaeli) and James to work on some issues around the margins of these things. And we will keep you abreast.

I think it's important that in-council is having to respond to (Aukra Metallah's) letter in relation to whois conflicts that we have good solid representation on that drafting team. And I thank those who've already volunteered via the list, so much appreciated.

Kiran Malancharuvil: Jonathan Matkowsky is next.

Jonathan Matkowsky: I just wanted to get a better understanding regarding handling whois conflicts and whether that is a consensus policy. It doesn't look like there's a place necessarily on ICANN's Web site where all consensus policies are necessarily listed. It seems like that it is a consensus policy even though it's not listed there. It seems that it came out of the Whois Task Force back in 2006 by the ICANN board.

And I wanted to just have - invite some discussion, whether today or at some point in the near future, to discuss the consequences of not following that consensus policy as that has come up in relation to GDPR. Thanks.

Kiran Malancharuvil: Any other hands in the room? Call for hands in the room.

Greg Shatan: I see Steve Metalitz in the Chat. Steve, go ahead.

Steve Metalitz: Yes, thank you. Just in response to Jonathan, it's correct, this is something that was adopted - the policy was adopted by the ICANN board. And then the staff developed this procedure to implement that policy.

And all of the back and forth that has happened over the last couple of years, including within the council, which Heather referred to again just now, has to do with the procedure and whether the staff-created procedure is consistent with the board-adopted policy.

So that's - you know, it actually is relevant to the issue Paul raised about, you know, what is the role of the GNSO Council on an implementation question because the procedure is an implementation question. Now, a lot of this predates the distinctions that have been made between policy and implementation and the whole working group that was set up to look at that and so forth. You know, because we're talking about things that happened ten, eleven, 12 years ago, we may not be using these terms entirely consistently over time.

But in fact, the policy that says that ICANN should seek to - that if there is a conflict with local law or a perceived conflict with local law, ICANN should seek to preserve the whois system to the greatest extent possible and have a procedure for dealing with such issues if they were to arise. That was all adopted by the board as a consensus policy.

I don't know if that answers Jonathan's question but hopefully it sheds a little bit of light on how we got to this point. Thanks.

Greg Shatan: Thank you, Steve. That's very helpful. I understand - is there anything else on this particular topic?

Jonathan Matkowsky: Hey, Greg. This is Jonathan Matkowsky.

Greg Shatan: Yes, Jonathan.

Jonathan Matkowsky: I don't want to monopolize the conversation so maybe I could take - I want to get a better understanding from Steve on some of these important issues. Like some of my notes here about consensus policies seem to be like if a procedure is set forth in the ICANN bylaws and by due process, you know, then perhaps it's a consensus policy even if it doesn't raise a contractual obligation.

Is there a way we can sort of create a mechanism within the IPC to really discuss these issues? I think they're really important. I don't want to monopolize this - you know, this meeting on it but what is the proper vehicle to really figure this out, where we stand on it and what we can do about it.

Greg Shatan: Thank you, Jonathan. I don't (unintelligible) but in any case, certainly something at the end of an incoming year (unintelligible) taken to (unintelligible).

Jonathan Matkowsky: Because if there's a binding consensus policy, then its implementation would also be binding. I would think that's - for example, the UDRP rules. It's an implementation of the UDRP policy. So everyone would be, you know, obligated to follow that.

So could we put this on the agenda for - on the policy call or? Is that something we can do to figure this out?

Greg Shatan: Certainly.

Kiran Malancharuvil: I don't think Jonathan's in the Chat so I'll just read this out. So Jonathan, Steve Metalitz said that he's glad to pursue this offline with you…

Jonathan Matkowsky: Perfect.

Kiran Malancharuvil: …as well. So if you want to e-mail Steve, I think he would like to engage with you further on that.

Jonathan Matkowsky: Excellent. Thank you, Steve.

Kiran Malancharuvil: Greg?

Greg Shatan: Yes. Why don't we - I understand that Brian Beckham wants - will switch policy topics and move over to RPMs for a moment. So why don't we turn this over to Brian Beckham.

Brian Beckham: Thank you, Greg. Brian Beckham for the record. I think there's, in the Rights Protection Mechanisms Working Group, and we're currently in phase one which has a lot of - you know, has been dragging on for some time now, there's discussion.

It seems it's already been decided -- how that came about is not entirely clear to me nor others that I've asked -- but to move from looking at the trademark clearinghouse sunrise and claims phase to the URS phase.

And I wanted to raise a concern first on a very practical level. If we're going to park work on the clearinghouse and the related RPMs because we're seeking survey data and start to look at the URS, it raises a question of what do we do with the work that we've undertaken on the URS when the data comes back on the trademark clearinghouse and the sunrise and claims.

Do we park that, move back and then we're sort of leapfrogging back and forth between different rights protection mechanisms? To me, that seems somewhat efficient.

But the concern I wanted to raise was more how the URS discussion relates to the UDRP. Frankly, I think it's naïve to think we can discuss the URS without getting into the UDRP to some extent. Looking at the mechanisms, they're almost identical except when it comes to some of the rules and the result that's obtained in favor of a successful brand owner.

I've mentioned on the working group on a number of occasions whether we could move the URS discussion to phase two to have a more holistic assessment of the URS and the UDRP, how they relate together. They were meant to - the URS was created as a complement to the UDRP. The idea was that it was sort of a lighter, more efficient, less costly, more quick version of the UDRP for a different type of case.

And in that regard, I wanted to read for you a quote. If - many of you remember back in 2011 there was a discussion around whether the UDRP should be reviewed and the kind of common wisdom at the time was the UDRPs are coming, this is the one thing we know that works, let's not mess with it please. And there was a discussion about whether we should just look at the procedural aspects of the UDRP and not mess with the substantive aspects.

At an NCUC session, Milton Mueller, and I'm going to quote now, he says, "If it were well before July 15th, we would be able to say let's suppose that we discover that all of these serious changes we're proposing actually could be spun as procedural. Then we could go along with the flow and say okay, we agree with all of these people who are afraid of substantive changes, let's make it a procedural change."

I think the same risk is very much at play when we're looking at discussing the URS now and operating under some sort of a fiction that it's not going to impact discussions on the UDRP. Maybe that ship has sailed in terms of the co-chairs of the working group deciding that we'll move ahead with the URS.

But I just want us to kind of collectively be aware of the potential ramifications of discussing elements of the URS and what that might mean for the UDRP review that's down the road. And then again just to reiterate the question whether it might be advisable to and if this would require seeking a blessing of council to, you know, rejig the charter, so be it.

But to potentially move the URS discussion into phase two along with the UDRP, that may also have the side benefit of alleviating some of the pressure that I understand is being put on the working group chairs by other discussions in the community, for example the Subpro Working Group, to convene work on rights protections so that subsequent rounds can launch. Thank you.

Greg Shatan: Thank you, Brian. Are there any follow-ups to Brian? I see a hand from Paul McGrady. Paul, please go ahead. Paul, we can't hear you yet.

Kiran Malancharuvil: He went to unmute himself and it looks like he dropped. But he's going to type it. Anything in the meantime while we're waiting for Paul? Anything in the room? Any questions? Anything else you want to identify as important coming up, Brian?

Oh, okay, we have John McElwaine.

John McElwaine: So Brian, it's a really wise idea. I mean, I think there are certain elements of the URS that will impact significantly discussions on the UDRP.

I hesitate a little bit though and I think we need to talk about it because it was pretty much our idea to split the two into two tracks there. So we need to make sure that we, you know, message that right in terms of making that ask.

Kiran Malancharuvil: Oh, it is? Okay.

Greg Shatan: Thank you. Paul, you had a - your hand is up.

Kiran Malancharuvil: So wait, Paul, before you move on, Paul's question is in the Chat so I'll just read it out. Brian, what -- and to mean that's you -- Brian, what then happens to the working group while we wait for the data? If URS is pushed off to phase two, does the working group take a holiday? Oh, you wish, Paul. But we'll let Brian Beckham answer.

Brian Beckham: I think -- thanks, Paul -- it's a good question. I think frankly the working group is already on a holiday. A lot of people have dropped off from participating. The discussions have been going nowhere for 18 months. We've debated endlessly fundamentals of the trademark laws.

Maybe we could turn to discussing things like the trademark claims notices or the sunrises. It feels to me that we need a bit of a breath of fresh air. And so maybe taking a pause and coming back to this might not be the worst idea.

Kiran Malancharuvil: Worst holiday ever. Darn him. (Unintelligible) on a holiday.

Man 2:   Get a refund.

Kiran Malancharuvil: So we have - we want a refund on our holiday package, please.

So we have a queue. The queue from the timing that I noticed between the Chat and then the room is Heather Forrest, Susan Payne, Jonathan Matkowsky and Paul McGrady. So Heather.

Heather Forrest: Thanks. Kiran, it's Heather. And I couldn't agree more with Susan's assessment about the soul-killing nature of RPMs. For our process point of view, if we're going to do this, we need to get it on the council agenda. And ideally, I would think it needs to come from the - which is a challenge. But it needs to come from the RPM PDP.

And I don't know - I mean, we could certainly put it on the council agenda for November. We do actually have two council November meetings, one at the end of November. We could put it on there as a discussion item and take the temperature. But I'd like to think that maybe we can reach out to some of our folks in the other SGs and Cs to see what kind of reception we get for that.

I'd like to think that maybe if we're going to try to attempt changing the charter that we have some support from the contracted parties as a minimum before we get down that road because that's the only way to do it sadly, is we're going to have to amend the charter. And it has to go through council.

So you have a think. There's a council meeting at the end of November and then there's a council meeting on the 21st I believe it is or 20th of December. So those are the next two coming up. Thanks.

Greg Shatan: Thank you, Heather.

Kiran Malancharuvil: Next is Susan.

Susan Payne: Hi. Susan Payne for the transcript. Yes, I'm not against - personally I'm not at all against the idea of moving the URS into the UDRP and thinking about them together given the comments that Brian made.

But I know that we have talked about this in our sort of kitchen cabinet group. In recent weeks, we had quite a long discussion about this. And the mood from that call was not favorable to this.

So whilst I'm not suggesting we shouldn't have the conversation again, I certainly don't think we should be… Given that not everyone is probably taking part in this call, I think it's something that we would need to revisit because there definitely was a very strong sense the last time we discussed this to - of the contrary view.

And then I'm going to go kind of devil's advocate thing on what I know we will get back to us when we - if we were to suggest other things that we could do while we were waiting, you know, what we could do with the holiday period.

I mean, you know, we will get the results that we can't look at the claims notice wording because that's one of the data gathering tasks is to get the claims wording in front of various rounds of individuals and see what their reaction to the claims working is.

You know, we can't look at the sunrise dispute process because we haven't yet - you know, identified the extent of the problem with the gaming issue.

I - you know, I could go on and on. And they're not my views, I'm just saying. So I think it would be a significant challenge. I'm not saying let's not do it but I think we need to - we do need to have sort of the conversation internally to make sure that everyone who's going to be on this and has expressed a contrary view previously, you know, takes a different position because I think it - you know, I'm not sure we're even aligned on this within the IPC let alone once we try to go externally to get support to change the charter.

Kiran Malancharuvil: Okay, next is Jonathon Matkowsky.

Jonathon Matkowsky: Jonathon Matkowsky. I'm not advocating a position in this regard. I think it does require careful thought. And some good points have been made about how they might overlap but there's - there are plenty of ways in which they clearly do not overlap.

And there are unique issues related specifically to the URS that could be addressed fairly quickly that probably also would be of interest to the CTTRT Review Team of how the most compelling and abusive uses of the DNS not related to content are not properly being allowed for in the forum. And that's in relation to the rules regarding screenshots of content.

So there are probably examples like that where it's clearly not related to the UDRP. So maybe there's a way to break them out in that regard.

Kiran Malancharuvil: Okay, thanks Jonathan. And we have Paul McGrady next.

Paul McGrady: I should have took my hand down. Susan made the point that I wanted to make, which was we can't just go in and say that, you know, we should take a holiday because you're already on a holiday. So we would have to do some thinking about what the group (unintelligible) in the interim period between now and when we get the data. (Unintelligible) the ideas can get (unintelligible). Thanks.

Kiran Malancharuvil: So we have closed the queue on this issue. But I see that Anne Aikman-Scalese has her hand up. So I think that we will take your comment, Anne, but quickly because our next guest is in the room, please.

Anne Aikman-Scalese: Yes, it's Anne. Really quickly just in terms of procedure, I remember that we lobbied hard to get UDRP into phase two. And in subsequent procedures, the charter requires that we take into account the results of phase one I think of this review.

And so I just - I wouldn't want to risk somehow having subsequent procedures be able to proceed. It would be good if Brian could give us advice on how to limit the issues in the URS discussion. I certainly don't really want to have UDRP somehow rolled into phase one as a result of this request. I mean, that was our big goal at the time. So if we could get, you know, some

direction to folks on how to address URS issues that might be the safest course.

Man: Well maybe, just taking advantage of the next guest coming up to speak, I think a lot of valid points have been raised. I think, you know, the process shouldn't be the tail that wags the dog on this.

In terms of the questions Susan's raised, to me there's a real chicken and egg element of why we can or can't discuss aspects of claims notices or other things that we're waiting on data for.

To me these data exercises are a complete fishing expedition. There's been a lot of questions raised in the working group about how to even meaningfully identify survey respondents.

When it comes to the URS and UDRP, obviously brand owners may be looking for a transfer remedy under URS. If that's the case then that necessarily implicates discussion on the UDRP.

So again, and to your question about how this relates to subpril and process, you know, look if it's not the kind of collective will of the IPCs then so be it.

But I thought it was important to raise because these mechanisms do overlap. They're intended to work together and it seems logical to discuss them in tandem. So thanks.

Kiran Malancharuvil: Great. Thanks everyone. (Andy) saw your hand up or is that old? Okay. So next here in the room we have a discussion about the Trademark Clearing House and the new (TRX) service.

So I'd like to welcome (Peter Funder vil). In my phone he's listed as (Peter) Trademark Clearing House. And (Vicky Folens) who will give a presentation. Susan you said you viewed the presentation earlier, right?

Anne Aikman-Scales: Yes.

Kiran Malancharuvil: So it should be loaded up.

Anne Aikman-Scales: (Unintelligible).

Kiran Malancharuvil: Okay. Coming. Great. Awesome. Welcome. I turn it over to you.

(Peter Fundervil): Okay, thank you. My name is (Peter Fundervil). And first of all I wanted to thank you for allowing us on the agenda and given some time to speak about our new service the TMCH TRX which is short for Trademark Registry Exchange.

But we wanted to make it sound hip so it had to be a dinosaur. So if you could move over to the next slide. These are currently, you all know the TMCH, these are currently the services we are providing.

So our core service is the sunrise service, verified in the TMCH with an active proof of use (unintelligible). We don't have the claims notices prior to registration in the first 90 days of general availability which you all know.

And then the claims notifications which are sent out to trademark holders to inform them of an active, of a valid registration. We continue on the claims notifications. So the ongoing notifications, this is additional service at no cost with a registration at TMCH.

And this is basically a continuous notification system. And we also allow for some variations to be included there, so that, just a variations for the notifications.

But yes in two weeks' time we're going to launch our new service, the TMCH TRX which follows-up with it on the strategy that we've been building on from

day one. And that is to create an additional value for the trademark holders in the clearing house.

The main driver for this is that we sort of, that both in sunrise but also in general availability, registration by trademark holders in the new GTLD program have been overall very low.

According to our estimations, we see about in 90% of GTLDs, 95% of trademarks haven't been registered. So this means that there is still a lot of exposure for trademark names in the new GTLDs.

We can move over to the next slide please. We know that there are similar services in the market like the DPML and the MPML which have been well received.

So the past year you're going to have, we've been on a continuous conversation with both trademark holders, their agents, registry operators and registrars to see how we can position something which builds on top of those different, yes, trademark protection mechanisms to basically design something similar which creates what we call an additional layer of protection.

And to ensure that the domain names matching trademark terms are no longer generally available. So the TMCH TRX would be available just for the SMD verified marks in the clearing house. Next slide please.

It would work for exact matches as defined by the matching rules and it would bundle a coverage across multiple TLDs. It's a bit of a complex product on our end because we need to connect with a lot of different registry operators.

They all have their technical backend system which uses different mechanisms so we will be adding TLDs to the service as we roll it out. There are some override mechanisms in place in there which would release a name from the TRX protection for active usage.

But that's only after the rights have been verified for that name. And we're currently pricing it at $4 USD per TLD per label per year. So which means with the TMCH TRX we would offer a, some kind of restriction on general availability at a very much lower price than the general registration price which would ensure grant holders the names are no longer generally available.

We'll be launching in about two weeks. We've been quite busy here in Abu Dhabi. We're signing some contacts with numerous registry operators. We're planning to launch about 50 to 60 TLDs in our first year. We've got the support of the registry operators both from Africa.

We've got (Minds and Machines) who will partner with us. We've had very good support from the (GO TLD) in all our conversations. They were also very interested in something which therein is also of good use. And, yes, we will, will continuous conversations and try to get as many TLDs in there as we can.

We're also trying to go beyond GTLDs. We also are talking with (CC TLDs) and different TLD registry operators. Our goal would be to get a single product in the market which allows trademark holders to purchase a restriction on the general availability of those names.

So that's in short the TRX service. It would be available for all (trademarks) in the TMCH. We would promote it exclusively through our agents, most of whom you know. And it comes adjacent to a standard TMCH registration.

So if there are any questions, feel free.

Kiran Malancharuvil: And so (Mark Trachtenberg). Anyone in chat? No. So (Mark), go ahead.

(Mark Trachtenberg): Mark (Trachtenberg for the record. So is there any way that a third party that's not using TRX is able to overcome the block?

(Peter Fundervil): Yes, so a third party that has been verified can overcome a block?

(Mark Trachtenberg): How do they get verified?

(Peter Fundervil): If they have an (MFD) file. They're also verified in a TMCH. So if you have two marks, two entities with the same mark name in a TMCH, one could release a (TS) protection from another.

(Mark Trachtenberg): I guess I should have clarified. Someone outside of the TMCH? So for somebody that doesn't have an (MFD) file, is there any way they can overcome the block?

(Peter Fundervil): Simply speaking, no. There is one exception that we've been talking to with a few of the (GO TLD) operators where they refer to local rights. There is an override mechanism in there but that requires a written consent form of both registrant and the registry operator before releasing the names. So the override clarification is quite stringent.

(Mark): And also is there an option for the trademark owner who is using the TR service to be able to register in one of the TLDs that is being blocked by the TRX service?

(Peter Fundervil): Yes, they can release their own name. We are not charging any override fees for that. So in all our conversations with the registry operators, it was clear that they, everybody wants more usage. So its usage is relevant but we want to make sure its verified and we're not charging an override mechanism.

So you can, if you purchase it now for, we are envisioning this as allowing trademark holders to buy time to assess how they want to work with these

new GTLDs. And then if they want to activate one of these, they can easily override it and put it into use.

(Mark):   And last question. Is it a package deal or does the trademark holder pick and choose which TLD?

(Peter Fundervil):   It's a package deal.

(Mark):   Okay. So its $4 times whatever number of (unintelligible)?

(Peter Fundervil):   So we'll start I think with 60 TLDs so it will be $240 for (sale).

(Mark):   And then, sorry, one more question. What happens if, I mean you're going to be adding partners so what happens, let's say the trademark owner signs up with you. You have 40 partners and then you sign up 20 more partners.

(Peter Fundervil):   Yes, so like I said, it's a bit of a complexity involving the new GTLDs because they all have to go through their own process of evaluating the product also from a technical point of view. So we don't know where we'll be in a year's time.

We're assuming that we'll grow the product but at a certain moment, we're not, let's say if we file 500 TLDs, then we're looking at a product of $2000. Then we might take a look at bundling or creating different packages but normally we would grow the product over time and inform our agents of the coverage.

(Mark):   Sorry. To clarify again, what happens if you sign up and there's 40, you have 40 partners? And then you onboard another hundred partners. Does, the (unintelligible) charge the difference? How does that work?

(Peter Fundervil):   No, so the first year is going to start at 60. If we add 40 more next year then the package will be for 100. So the coverage just grows.

(Vicky Forms):   (Vicky Forms) here for the record. I'm going to try to add a little bit to that. So we're going to start with 60 but (grow) to 240, right. Next year we'll normally have more TLDs.

We're going to upgrade the package but at that time there's going to be a new pricing. So we're not going to do it before the first year. So the TRX is only available for one year. So after that one year time there will be an upgrade package possible.

(Mark):   What did you sign up for towards the end of that first year though? So if you sign up towards month 11 of that first year and then the next year you onboard another 100, what happens to that trademark (unintelligible)?

(Vicky):   The trademark you're holding, you'll pay the difference of the add-on.

Woman: Yes, Susan.

Anne Aikman-Scales: I'm now very technical but can you kind of explain to me how it works? I mean we buy the TRX from you. And then how does, what's the involvement of the registry in that? How does it sort of, how does the technicalities of it work?

(Peter Fundervil): So we work with what we call two (reps). So you as an agent, you purchase the TRX through the existing interface. So the interface will be upgraded, both the API and the (rep) interface. And then you can order it through the service (rep).

You will be provided with estimated coverage where we compare the different files and premium lists to see what coverage would apply across the bundle. And then we are connected to the different registry service providers.

And they either put it on their reserve list or otherwise, and at the second technical (track), we would register them to the name of the TMCH to a registrar. And then they would have to be a specific registration which would result.

Kiran Malancharuvil: Great. Any other questions? Comments? For (Vicky) or (Peter)? Anything else? No. Okay, back to you Greg.

Greg Shatan: Thank you Kiran. And thank you (Peter) and (Vicky) for coming and telling us about the TRX service.

Next item on our agenda is a visit from both (Brian Shilling), Consumer Safeguards and (Jamie Hedland), Compliance. And as long as they're both in the room, they should come up to …

Kiran Malancharuvil: They are not. Okay.

Greg Shatan: Is that a new hand?

Kiran Malancharuvil: No, that's an old hand of Susan I think.

Greg Shatan: I was hoping it was new.

((Crosstalk))

Kiran Malancharuvil: Everyone can meditate for a couple minutes while we wait for Brian and (Jaime). Oh (Vicky). I'm recognizing (Vicky Folens) to fill the silence.

(Vicky): Just wanted to see, has anybody actually heard about the TRX before the presentation today?

Man: I have not.

Woman: I have not.

((Crosstalk))

(Mark):   Since we have time? Are you working with any of the large (unintelligible) companies? Because when you talk about the alternative technical track of registering, re-circuit registration, it would be kind of a knowing to have all those registrations show up on a brand monitor report and have to filter through them. Does that make sense?

By doing a re-circuit registration if you scratch your brand monitoring service, like a brand monitor (CSC) and then all of a sudden 100 registrations pop up and you have to filter through them, it's just more noise in an already crowded report.

So you might consider if you're doing that (unintelligible) to work with the registrars so that they can identify those registrations and either filter them out or somehow segregate them. I mean they're not going to be happy about that additional administrative overhead but, you know, at least they have an option to view that.

(Vicky):   So it's going to be listed under TMCH TRX and then who is we need to filter out. But we can definitely take a look at that and see what the possibilities are. But it's already going to be marked as a separate ID.

(Mark):   My point is just depending on the service, you know, it's not always visible when you put the registrant in this. And so, you know, now you're creating extra steps for the trademark owner and that has a potential adverse effect, unintended consequences you might consider and try to take some preventive action and avoid that.

(Vicky):   Thank you.

Kiran Malancharuvil: So we have (Terri) helping us try to figure out where (Jaime) and Brian are. I'm sure they (unintelligible) and are just running a couple minutes late but we have sent a note to try to figure out where they are.

Are there any further comments, questions, concerns with (Vicky) or (Peter)? Okay, then I guess we'll adjourn for a couple of minutes. Don't go far because we'll reconvene as soon as they get here. So this isn't an official coffee or tea break or anything but there is a bathroom next door.

So yes, unless (Mark) wants to ask another question about Trademark Clearing House? Well the problem that we have with the agenda is that the next agenda item is a coffee break and I guess we could do reports from the working group. But the …

(Mark):   (Unintelligible).

Kiran Malancharuvil: Okay. Great idea. Okay. So let's do the RPM Working Group 1 done while we wait for (Jaime) and Brian. Thanks. Great suggestion (Mark). Susan. I will recognize Susan.

Susan Payne   Hello, I'm Susan Payne. So I didn't, I don't have a formal sort of update from the RPM Working Group particularly. But we, obviously we've been talking with Brian already about, you know, some of the challenges.

The group at the moment is about to kind of embark on a data gathering exercise to try to answer various questions on the sunrise and the claims. It's going to be quite an extensive task. A number of us in the working group are not totally convinced that it will be, we'll get the data that we're going to look for but, you know, we are where we are.

And the group as a whole which, you know, is operating by a kind of consensus. The group as a whole has agreed that this is a task we have to do. And consequently there is a sort of small subgroup who, we're working on

how to shape that quest to try to help inform the RFP process where they put it out for a supplier.

And so that's really what the RPM working group is, the sub-group is working on. And then as Brian pointed out, we literally have just started thinking about looking at the URS in the interim while we're waiting for this data request to be put out for RSP, to appoint a supplier, to do the work, to get the results back.

I can stop now because I can see that our guest is here.

Kiran Malancharuvil: Great. Thanks Susan for filling the space. I'd like to welcome (Jaime Heartlands) who's in the room now, the Head of Compliance. And (Brian Shilling) is not here yet but he's on his way. (Unintelligible). Sorry.

So I will turn it over to (Jaime) I guess to introduce himself and then back to Greg who is managing the agenda and questions for Compliance.

(Jaime): Thanks. Just to say it's good to be here. I don't know if you all have questions on the agenda but happy to talk about anything that may be on your mind. Rather than listen to me, I thought it might be better to answer any questions you may have.

((Crosstalk))

Kiran Malancharuvil: Greg, I have no idea what that was on the audio. But if you're not speaking and you're joined remotely, please go on mute.

Greg Shatan: This is Greg. We don't have any kind of prepackaged questions for you (Jaime). Compliance is a constant concern. I don't know if you have any perspectives on the GDPR driven compliance relaxation process but it would be interesting to hear your perspective on that.

(Jaime): Sure. There's been a lot of discussion in other meetings about ICANN's approach to the GDPR right now. And I will try not to repeat that and just say too much of it. And say that we, you know, there's an ongoing process. We've put out one memo. I've seen the IBC memo. I have not yet read it.

You know, released a second memo and we are looking for specific questions from the community that we can send back to the Hamilton Law Firm in Sweden to, you know, drive further the analysis and understand what it is that we need to do in the long term when, you know, developing a new policy that may be required, modifications of an existing policy.

But also in the short term with contractual compliance needs to do or not do in light of a changing lens. We don't, you know, as an organization we don't know precisely what the impact is of the (EBR).

As Kiran said, many times we don't know if it is going to have any impact. We just don't know exactly what it is. It is not going to be, we are very confident it's not going to be the whole (unintelligible) of who is but it may be something different than it is today.

So encourage all of you, you know, obviously who have to contribute to, you know, the ongoing community efforts to really help us nail down exactly what we should do in the short term as well as drive the community discussion long term.

Kiran Malancharuvil: Great. Thanks (Jaime). Anything in the room for questions? We have some in the queue. So we'll start with (Paul McGrady) who's hand is up in the chat and then next will be (Jonathan Matkowsky). And then (Susan Parks). Oh no.

((Crosstalk))

Kiran Malancharuvil: Oh, oh, okay. Susan's withdrawn herself from the queue. That was a mistake. So Paul and (Jonathan).

(Paul McGrady):   (Paul McGrady) here. (Jaime) you said that GNSO, I guess I don't know what that is. Are you referring to GNSO the supporting organization? GNSO the council? I've not seen anything from the council on GDPR. Can you clarify what you meant?

(Jaime)   Yes, and I can even clarify. I thought it was the GNSO council. It's the (Wilson Macine) memo.

Paul McGrady: Got it.

(Jaime):   That's from a working group, not from the GNSO council.

Paul McGrady: Okay. I misspoke.

((Crosstalk))

Kiran Malancharuvil: I'm sorry. Go ahead Paul.

Paul McGrady: Thanks. I just wanted to make sure that (I didn't miss something).

(Jaime):   And there is a distinction (unintelligible) individually. That memo (wasn't meant to be looked over or anything like that. It's just one working group's point of view.

Paul McGrady: I guess from the council, the working group's point of view. Thanks.

(Jaime):   Fair point. And others who are, you know, actually do the response will note that and will note that it's not a, will note the progeny of the memo. What's important is the, you know, is, not for just that memo but for any input is that

we get sophisticated legal review, legal analysis that can help drive, you know, the development of the right policy.

Kiran Malancharuvil: Great. (Jonathon).

Jonathan Matkowsky: Jonathan Matkowsky for the record, Risk IQ. I just wanted to first just applaud (Jaime). Like you and I worked regularly together and I just notice a real improvement and I'm not actually critiquing any past performance as well as raise the bar in terms of performance and contractual compliance.

And really appreciate your hard work. And continue to look forward to working with you in that regard. Lots of questions and conversations I have on my mind.

And this might be a good time to ring up some of them but I don't want to monopolize again the conversation but I do want to give everybody visibility into some of the issues that we've discussed and just sort of open a dialogue on them.

So, you know, I'm trying to still get a better understanding of a lot of the dashboards and some of the metrics that were released just before the meeting. I haven't wrapped my head around all of it yet but one thing on my mind generally is just in terms of the visibility of the informal part, the resolution process.

And I know it's generally confidential but in what regard, can we get more visibility into that and maybe on a registrar level, visibility a little bit more into the resolution process.

Another thing on my mind is just key complaints, whether that we might be able to raise the bar ion terms of how long we wait for response on that. Like compliance waits a certain amount of time. It's more than the duration that

needs, before the registrar has to respond to up the ante there a little bit in terms of how long we wait to get back to them.

Some other things, I guess like having a matrix of the (PIX) obligations. You rely on the community basically to have visibility and awareness of compliance issues.

So is it, would it be helpful to the community to create some kind of dashboard that leaves out the (PIX) obligation so that the community can make you aware of when there's an issue in that regard?

I also want to get your feedback on some of the new things coming out of the CCRT review team. I know there's a minority opinion in that regard in terms of this new procedure and how you view that.

So those are, I think that covers basically everything on my mind for now. Thanks.

(Jaime): Thanks. That's a good question, I actually meant to talk about introduction to make sure people saw that there have been enhancements to transparency generated by recommendations from the CCT review team. Full disclosure, I serve on that as well.

And, you know, we're very, (Maggie) and her team have done good work in creating or making available even more data. Where we have struggled in the past, I think are two places. One is in making data available and then two, explaining what that data means.

And so this is an ongoing process from our perspective. And so very much look forward to you and others who consume the data about what's not clear, what enhancements could be, you know, the suggestion that you just made.

And so you can put those in writing and then you can have a public letter that we can post. And them, you know, that helps a lot. But it is, you know, we made some changes. We're very happy about those. We're happy that others here are happy.

But it's not the end by any stretch. On your question about the minority view, you're talking about the review panel? The review, the …

Jonathan Matkowsky: (Unintelligible).

(Jaime):   Right. So as an ICANN employee I did not take a position on that within the CCT review team there was concern among the review team members that there wasn't data to support the need for an expensive third party process.

It came up late in the, you know, in the cycle of review so there wasn't a whole lot of time. So it's not to say it's a bad idea or it shouldn't be considered further. It didn't generate consensus before.

There are other, what I'm saying is that recommendation, in dealing with registries, registrars who have systemic, what appears to be systemic abuse and how do you deal with them?

There's some other things, there are other recommendations that could also help different contractual terms, different reporting requirements that they may get out without having to go to a third party review panel.

But I suspect it's something that will be taken up in the next CCT.

Jonathan Matkowsky: Okay.

Kiran Malancharuvil: Before you go to the next person, (just wanted to recognize (unintelligible) so any questions directed at Bryan can also queue up. And we have three people in the queue so actually Bryan, if you have an introduction to give, if

you can introduce yourself in your role just briefly before we take questions from the queue that would be great.

Bryan Schilling: Sure. Thank you. I apologize. I got delayed with the BC and then really realized how big this hall is getting from one end to the other. So as you mentioned the Consumer Safeguards Director was at ICANN in June and had the opportunity to speak with you in Johannesburg.

And since that time, we put together a summary of current safeguards within ICANN's remit derived from the Articles of Incorporation, the bylaws and the contracts with registrars and registries.

And we used that summary to kick off discussion through a webinar at the end of September about the safeguards and raised some questions about if there's gas within those safeguards, what are some areas of abuse that the community would like to see us all focus on?

We also clarified, I don't know if (Jaime) did already, that this is a new department within ICANN that is separate from contractual compliance. So safeguards are always an enforcement role.

We're not in a capacity to add or do more of what contractual compliance is doing. But it is a role to facilitate discussion within the community about areas of abuse that the community wants to talk about.

It's also a position to kind of be a research assistant so that if there are questions the community has, we can go out, do the research and come back with facts so that we can facilitate fact-based policymaking process pursuant to the bylaws.

And then third prong that I really want to touch with IPC today is one about educating. In some of the discussions I've had, I've been learning a lot about all the efforts that you go through to address infringing activity.

And, you know, not that it's automatically going to the registrar already, to the registry to address something. There's a process behind addressing the issues and we spoke with registries and would like to see if they're open to talking about what they do on a voluntary basis to address issues of abuse and activity within the DNS.

So we're kind of thinking we don't want to force anybody into it but if there's the idea of, you know, let's get out there and tell our story so we can educate the community what's happening in our space, we would really like to foster those discussions and education more broadly. Thank you.

Kiran Malancharuvil: Great. Thanks. So back to the queue platform to ask questions to (Jaime). (Griffin), was your hand, your hand was up. Oh, you were just saying hi to me. That's cool. So (Alex Deacon), you're next.

(Alex Deacon): Hi, I'm (Alex Deacon), (Jaime). I had a question about the (who is) compliance deferral. I think it was deferred for 180 days and I hadn't had a chance to kind of dig into all the details.

But is that, when does that role start? Does it start immediately for 180 days? Or does it start at the end of one of the milestones within the (unintelligible) (who is), planning.

(Jaime): That's a good question. I don't know what it starts. I mean it's effective now but I don't know what the start date is. I'd have to get back to you on that.

(Alex Deacon): So it's effective? So it started is what you're saying?

(Jaime): Yes, because the Board passed a resolution on it.

(Alex Deacon):   Okay, so it's, I got it. Okay. You've answered my question then. Okay, thanks.

Kiran Malancharuvil: Okay, great (Alex). Greg, you are next. I will just note the time. It's 4:50. This session is only scheduled until 4:55. We can maybe go into the tea and coffee break a little bit. Do you guys have a hard stop at 4:50?

Woman: No.

Kiran Malancharuvil: Okay. Great. So I will go to Greg. Thanks.

Greg Shatan: Hi. First, I'll note that the actual coffee break runs from a quarter to the hour to the top of the hour. We're actually already in the coffee break which we had to do given (Bryan's) and (Jaime's) schedule.

So it may make sense to, if Bryan and (Jaime) can stay a little bit after the coffee break, it may make sense for people to break before the top of the hour or else there may not be anything out there. Just quickly I wanted to …

((Crosstalk))

Kiran Malancharuvil: Okay, Greg, I'll just note that that's not possible for them so I will literally buy a bag of chips for anybody that's that pressed for a snack. But let's stay here and use our time with Compliance for today.

Greg Shatan: I think that's more important. So (Jaime) just a follow-up. When you mentioned the (Wilson Mancine) document, there seems to be some misconceptions about that. Not only was it prepared solely with the RDS working group in mind, it was not really seeking legal advice.

As you know, legal advice, you can only refer to the questions that are asked. And sometimes the lawyers have to help the clients ask the questions. These

questions were just the questions that were asked to the data protection authorities in Johannesburg.

And then we just asked the same questions to (Wilson Mancine). We just didn't ask them anything like, how can we achieve the maximum liability towards (who is) when they're the GDPR? All we did was ask them the same questions we asked.

So I'm think this is legal advice from the same as the (Hamilton) memo is or frankly the (Taylor Westing) memo now that the IPC Commission is incorrect. It was never intended to be a problem solving legal memo. So I just wanted to point that out. Thanks.

(Jaime): Thanks. And the reason I brought that up in the other memos is not whether or not they were prescriptive or determinant but because that they provided input that would be, you know, considered appropriate or not as, I mean we're obviously not going to look at something that doesn't purport to answer a question that wasn't asked.

So the bigger point is that input is what we, I think ICANN and the community needs in order to figure out, you know, how to strike the balance between complying with GDPR and the (who is) system as we have it now.

Kiran Malancharuvil: Okay. Thanks. So next in the queue is, well was (Paul McGrady). Paul are you not interested in the queue anymore?

Paul McGrady: Yes, I got my answer.

Kiran Malancharuvil: you got your answer. Okay. (Alex), is that an old hand? It is. Okay, so it looks like there are no questions in the queue. Anybody in the room? Okay. I have a question that is probably for (Jaime) and for Brian.

So as you probably know, I was part of a coalition bringing those two files to (PCRP) against the .feedback registry operator. And we have been working diligently with Compliance in a really open way, for (Maggie) and (Jennifer) and in a mostly constructive way as well to sort of resolve some of the remaining issues that we have with the (PCRP).

And I think I just wanted to highlight for you guys some of the themes that we've identified that might probably be characterized as challenges within compliance. And I think this is an issue for Brian as well just because the (PCRP) specifically, what we filed really is a consumer issue.

And it's a really, it really demonstrated the interplay between the contract, the (PCRPs) and why it's important to inforce them in a certain way for a consumer safeguard purpose. That TLD in particular targeted consumers with what we have characterized as fraud.

The sort of remaining themes that we have yet to be able to satisfactorily address are issues related to transparency not necessarily with compliance's process but just in the prescribed processes that have been written around the ways in which we address contractual compliance through your office.

So for example, the adverse party got all of our filings from the (PCRP) and we got none of theirs so we had no way to even understand, you know, what they sent back, what compliance evaluated, what was remedial steps, appropriate remedial steps taken to address the limited breach?

We also had, we also experienced a situation where actions were taken by compliance, by the ICANN organization or staff as we used to call it without being transparent to us as a party to complaint such as giving an instruction and interpretation of the (PCRP) that frankly was a question.

I mean interpretation of contract is not in black and white and that's why there is a contractual compliance in the first place, is usually a question about what

these terms mean and how it can apply. Yet an instruction was given to the panelists in the (PCRP) that sort of unequivocally put a stake in the ground about whether or not (unintelligible) was appropriately addressed in the (PCRP) which completely changed the findings of the panel and that was acknowledged in the panel's decision.

And that's problematic from a consumer safeguards perspective as well because without the (PCRP) there's really no way for us to address fraud at all with the registry beside from litigation which is costly and ridiculous.

And those of us that drafted the (PCRP) of which I was really an observer, not a drafter, but those of us that were around from when the (PCRP) was drafted very much understood that things like concrete and unequivocal evidence of fraudulent behavior would be addressed in the (PCRP).

And whether or not our situation was fraud, the fact that there was an instruction that the (PCRP) wouldn't address fraud whether it was present or not was really disturbing.

So I'd love sort of your thoughts about how we, not on the substance of the (PCRP) but those (areas) within your office or let me call them challenges, those challenges in your office is what I really mean. So those challenges, how we can better address them.

Because I think we're in this sort of circular conversation with (Maggie) and (Jennifer) about these things. And we were sick of circling the drain on these issues. We've got to come to a conclusion about whether or not there's going to be a change with transparency.

Whether or not, you know, both sides of these complaints are going to be treated more fairly. Thanks.

Bryan Schilling: Okay so I was only (partly) involved with that one and most of it happened before I started so I'm not anywhere near briefed enough on it to chime in on the way that was handled or is being handled even.

But again, I can't say this is going to be at all satisfying but, you know, (Goran's) directive to me is to increase transparency in compliance. And so we are looking in lots of different ways of how to increase transparency.

And we made some steps and I think there's probably, and I know there are lots of other steps that we can, that we can do. And the more concrete, you know, suggestions that we have, that we can consider, the better it is, the more likely it is that we will be able to deal with those, to deal with those appropriately. You know, so, I'll just leave it at that.

Kiran Malancharuvil: Great. I'll also just add it seems like after the (PCRP) decision was rendered and there were, there were still issues with names that were problematic to (brand names) that were resolving and active with problematic content, it was communicated to us that there were several other steps we could take within compliance.

We could ask for this sort of review and that sort of review and give this sort of complaint and I personally found it really difficult. I was at (Marked Monitor) at the time. And even as a contracted party who has a lot of interactions with compliance. I'm not with (Market Monitor) anymore but even in that capacity I found it very difficult to try to figure out what all is available for us with compliance.

And I know you can just email somebody a question and they'll figure out where it appropriately belongs but if we have more information about what we can actually accomplish with compliance or what questions we can ask, I think that people will be more comfortable engaging with compliance in a constructive way on behalf of, you know, the issues the important issues we have and the consumer issues that we have.

So I would just encourage, to your point about this transparency stuff to look at the processes and proceed as you most commonly, you know, engage in and maybe post them in a really obvious site on the compliance website. Not just things that require web (form) which are easier to find but the other kinds of questions you can ask compliance to encourage people to actually utilize your office.

Not that you're trying to fill your office with more but I think that compliance is actually a much more useful part of the organization than you might think if you haven't engaged with them at the (unintelligible).

Bryan Schilling: Thanks. Any suggestions for like an FAQ that you think would be helpful that we could definitely take a look at that and post responses.

Kiran Malancharuvil: Anyone else have any questions for Bryan or (Jaime)?

Bryan Schilling: And I'm not trying to blow this off. I mean you all are consumers of our services. And so this kind of, this kind of input is incredibly helpful but, you know, it just, you know, we're going to all walk out the door and forget what day it is.

And so, you know, if you can send me, send us the stuff, send it to compliance, whatever, that would be really helpful.

Kiran Malancharuvil: Great. (Jonathon).

Jonathan Matkowsky: (Unintelligible). Can you just comment on your options when it comes to the registrar agreement? Like if you can get like five times your, five times the cost of the investigation into enforcement of the registrar agreement, it says that in the registrar agreement when would you invoke that and how does that, has that ever been invoked? Or is it under discussion?

Bryan Schilling: I'm not aware that it's ever been invoked or looked at as a real means. There are things like if we do an onsite audit of an entity that has an affiliated registrar or a registry that is an affiliated registrar, then we can charge for the audit.

Even though there's few compliance complaints, they highlight the worse cases in some way. So you would have visibility years before those kinds of studies into the issues with these registrars, whether it's (unintelligible) or now happening. Thanks.

Kiran Malancharuvil: Great. Thanks. And I think with that we will close the discussion with compliance. And thank you (Jaime) and Brian.

Bryan Schilling: Actually I sort of misspoke. The 180 days is from the effectiveness, effective date from when they were supposed to get particulars. So 180 days is from May 2018 and February 2019.

Kiran Malancharuvil: Great. Thanks. Thank you so much for being here.

Bryan Schilling: Thank you.

Kiran Malancharuvil: Have a good rest of your meeting. Okay, great. It looks like we might be able to take our break now. So it's 5:05. We originally scheduled the break for 15 minutes. I think since we already jammed through our PMs, we can still take our 15 minute break since it literally takes 15 minutes to get anywhere in this conference center.

But that's okay. So let's reconvene at 5:20 please. Okay. Thank you.

END