

**GNSO**  
**Special Trademark Issues : Trademark Clearing House**  
**30 November 2009 at 18:00 UTC**

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Coordinator: Welcome, and thank you for standing by. At this time, I would like to inform all parties this call is being recorded. If you have any objections, you may disconnect at this time. Thank you Ma'am, you may begin.

Glen DeSaintgery: Thank you. On the call we have Zahid Jamil David Maher, Alan Greenberg, Mark Partridge, Jeff Eckhaus, Robin Gross, Kathy Kleiman, Tony Harris), Konstantinos Komaitis, Olivier Crepin-Leblond, Jon Nevett. And for staff, we have Liz Gasster, Margie Milam, Amy Stathos, Marika Konings and Glen DeSaintgery. Have I left anybody off?

Thank you, David. Over to you.

David Maher: Okay, thank you. All right, we're starting out - for those of you who've just joined, you'll be getting notices about the next two meetings, which will be held Thursday and Friday of this week. And, my understanding is that we have to have a report in the hands of the GNSO Council by December 7, which I believe is Monday. And, I presume that the staff will draft a report for us and circulate it so that we can finalize it over the weekend. Is that agreeable?

Alan Greenberg: David, its Alan. At Council, there was an understanding that if we really needed an extra day or two, or three, we could get it. They would prefer not. If we delay it another three days, they would only have one calendar week, and they really prefer ten calendar days. But, they would be understanding if we thought we were just that close and needed an extra day.

David Maher: Okay, good. Well, I think we should shoot for getting it done over the weekend, and then...

((Crosstalk))

Alan Greenberg: Yes, defiantly.

David Maher: If it turns out we need a day or two we'll take it.

Okay, then going down our Strawman proposal on the Trademark Clearinghouse, we are clearly doing very well, and I apologize for not being on the meetings last week. I'm - I'll just go down the numbers - the name that we have consensus. Kathy?

Kathy Kleiman: Yeah. I just wanted to preface some comments. I'm sorry. I just sent an email just before the meeting, so people might not have seen it. But, kind of just to preface NCSG comments before we start. We found that there were a number of new issues raised in the last Clearinghouse call, and we were a little surprised to find that consensus (unintelligible) on things that hadn't been - that we hadn't seen really raised before. Not in the common ground paper, and not in the Strawman before. So, we're going to rate the questions on a lot of things in red print because

we were kind of surprised about some of them. So, just letting you know.

David Maher: Okay, understood. Okay, no comments on name.

Kathy Kleiman: No.

David Maher: Number two. Function of the Clearinghouse, separate the validation from database functions, but leave the implementation detail on whether they can be the same provider. Any comments on that?  
Robin?

Robin Gross: Yeah. We were concerned - NCSG was concerned about allowing these databases to be used for other purposes. And so, we feel it's important that part of - one - a public interest policy prospective that should be put into this policy is that it needs to be separate from any other uses.

And so, there was some talk on the last call that they shouldn't be separate, but this is actually, you know, a really important point to us because you know, it's - this data could be used or misused in all sorts of ways. And so, we think it's important to build in these kinds of protection about how the data could be use and the way the databases can work together.

David Maher: Okay, any other comment on that?

Alan Greenberg: It's Alan.

David Maher: Go ahead.

Alan Greenberg: Yeah, I guess I would like to see an escape clause that says they cannot use it for any other purpose without ICANN's explicit permission, and perhaps a process named - in that I can see uses that are related to post-launch facilities where it would benefit the trademark holders and all parties that use the same information. And, I would like to see that done with all - you know, with due process.

I'm very worried that the Clearinghouse is not a viable business as we're describing it right now, and I think we need to give them whatever options they might have to make it a viable business without taking any of the risks that Robin was describing.

David Maher: Okay, Mark.

Mark Partridge: Yes. I understand Robin's point; we don't want this information to be misused, but I would hope we could have enough flexibility to do what Alan's suggesting, and in particular, that perhaps mentioned that this might be used in connection with the URS process. If there's one place for filing claims - filing information about the rights you claim, and then that could be fed out to the URS process. That would make the program cheaper.

That was explicitly in the IRT, and I assumed it was still here, but maybe not.

Alan Greenberg: I think it might not be assumed to be here because the staff didn't include it.

Mark Partridge: Wow.

David Maher: Okay, Kathy.

Kathy Kleiman: I think - David, I think you were trying to take us down one square at a time, and I think we may have jumped to the fourth square under Number 2 in some ways. So, is that okay to jump down there?

David Maher: Yeah, I see what you mean. I think we have...

Kathy Kleiman: So, if you wanted to take it down one at a time, that's where I'll raise my objections, within Number 2 of course.

David Maher: Yeah. Okay. All right, let's stick with square Number 1. This is the separate the validation from database functions, but the implementation detail to be decided. Any comment on that, specific. I see hands up, but - Mark, did you want to comment on that?

Mark Partridge: Oh, sorry. No, I've put it down.

David Maher: Okay.

Kathy Kleiman: (Me, too. Got to go down).

David Maher: Then let's jump to box - the second box under Number 2. Must utilize regional marks, validation service providers directly or through sub-contractors to take advantage of local experts. Any comment on that?

Okay, then we'll jump to box three. Registry connects with just one centralized database.

Okay, then we'll jump to four, where there is I believe some comment.  
Kathy.

Kathy Kleiman: This is a big concern of course, as Robin has mentioned. We are very concerned that we - and I talked about it at great length on the last call, that we, through the ICANN policy process, and through the STI, and then through the GNSO, we are creating a Trademark Clearinghouse, and it will have certain data in it. And, we're working very hard as a group to define what that data is. We're creating it for efficiency purposes, and we've defined it to be federally registered marks. And that's what goes into the database.

Since Alan has - there are a number of implementation - the idea that it's an implementation detail. What else would be in this database? We have gone back and really thought about - we've talked to technical and database experts, and I have found in talking to my database experts, that content is never an implementation detail. Content is the fundamental principal of what the database is about, and then how you implement that is something else.

So, we really want to go back and say that this is about the content that we are defining together through this process, which will be changed -- as Alan had said -- through this process. But, we really, really want to stick straight with the federally registered marks. If there are other databases created through the private process, fair enough. That's great. Let the marketplace dictate that.

We also think it's a very, very viable business model because here, we're using this new Clearinghouse for all new top level demands, and

it has been a viable business model for when new gTLD was created,  
much less...

David Maher: Kathy?

Kathy Kleiman: ...two thousand - yeah?

David Maher: All right, excuse me. I'm looking at Number 4 on our list, marks eligible  
for inclusion. Have you...

Kathy Kleiman: It's partly...

David Maher: Have u...

Kathy Kleiman: ...right. The common law, right. The common law mark, verified by a  
court. You're right. That's a little broader than I thought.

David Maher: Have you jumped ahead to that, or are we (unintelligible)...

Kathy Kleiman: No. No. No. This is just a concern that - here it says, "The trademark  
database is not required," back in Number 2, fourth paragraph.  
"Trademark database is not required to be separate from the database  
the provider may use to provide ancillary services that are not  
mandatory." So David, what had been raised here was that a database  
might be created for common law marks.

And, we're saying if that happens, that's fine. It doesn't belong here,  
and it can't - we're not - we've kind of gone through this whole process  
of separating out the common law marks. If someone wants to create a

database of pizza restaurants for a pre-launch clearance, that's okay, too, but it's not through this process.

And we don't want to databases merged, and that's what appears to be coming in through here, is this merging of data. So, the data...

David Maher: So, you're saying that the TC database is required to be separate from any other?

Kathy Kleiman: Yeah.

David Maher: Oh.

Kathy Kleiman: Yeah, thank you.

David Maher: Okay. Konstantinos.

Konstantinos Komaitis: Yes. What I would like (to try is), and Alan can correct me if I didn't understand correctly, that we are trying through these paragraphs to ensure that a market that we don't know whether it is going to work is actually going to work. I don't think that this is our job, to be honest with you. I mean, we were given a very specific instruction.

The instruction was to create a database for the business purposes for Registries, as well as to assist trademark owners during the pre-launch registration period. Whether the system will work or not, it's completely outside our mandate.

And I think that because we have a very specific description of what we're supposed to do, that's what we did when we defined that only



registered marks and marks that are validated through code should be included. So, I really do not understand why we're discussing - where it fits in our job Number 4. Thanks, David.

David Maher: Okay. I'm looking at the notes that are being taken. Would it be fair to say at this point that we have a consensus that the TC database is required to be separate from the database the provider may used to provide ancillary services?

I'm not hearing an objection to that. I think that should be noted.

And Alan, you have your hand up.

Alan Greenberg: Yep. The IRT report explicitly -- if I remember correctly -- said the data that's collected for this purpose must not be used for other purposes, but there's nothing to say the operator cannot run under other businesses, or words to that effect. One of the questions is, since they will have established a communication path with registries, can that communication path be used for other things, assuming other data is stored in different databases?

David Maher: Okay. It would seem to me that communications are open.

Alan Greenberg: That's what I would've thought, but there were some words that were mentioned in previous meetings and (unintelligible).

David Maher: Hmm. Zahid.

Zahid Jamil: Thank you. I wanted to wait for my turn to say this about the TC database not being (unintelligible) separate from the database. If those

are two databases that are being maintained by this provider, that's fine, as long as they can utilize it for various purposes that they wish to.

But, I don't want this to be misinterpreted as our silence and consensus on the fact that since we're being silent, you shouldn't interpret that we think that the database should only have - or, the TC should only have one database and should only use that and no others. If it has other database -- and I think I'm echoing some other people's comments -- you should be able to utilize that depending on the registry's rules, requirements, and procedures.

On a second note, because I have been listening to a lot of things. I think we have in the BCU, a pretty good concern, and this is going to the issue of, you know, is this going to be a credible market? Do we want this thing to work? And, I think (it was) a point made earlier about whether or not we want this to be -- how shall we say -- our mandate? It's so small that we don't want to go into whether this is going to be a (more simple) thing or not.

So, I'd like to just - the fact that I am losing sight from our perspective, and the BCU, as to what is the function of the IP Clearinghouse? How effective is it in actually addressing the concerns of trademark holders? And, I'd just like to sort of (sit and say), and take another ten seconds and make a general point.

This is a solution to a trademark problem. What we're losing - at least, for our interpretation side of it, what problem is being addressed, which was in the comments to the DAG, et cetera, which that solution is

trying to address. It's only identical match. It's only registered trademarks. It's only pre-launch. And, it's only a notice.

So, to what extent it addresses many of the concerns that trademark holders have, we have a concern, and it seems like we're creating a whole system, going to use a whole bunch of things without changing many of the (unintelligible) and many other things. But, not addressing the real concern (unintelligible). Just wanted to make that general point. Thank you.

David Maher: Okay, Mark.

Mark, you have your hand up.

Mark Partridge: I'm sorry, I was on mute. Let me just follow-up on Zahid's point and then turn to another one. One of the big concerns and the goals of the Clearinghouse overall was to deal with defensive registrations. And, I think we should recognize that this - that this really doesn't deal with defensive registration. That was - the globally protected marks issue dealt with that, and was really the only proposal that does. So, there's a hole in this aspect of the overall plan.

But, as far as what this Clearinghouse should do, it should be a place - a central repository of information so that people don't need to keep filing, so that there's less expense every time, and that registries and registrars don't need to keep reinventing a new database. So overall, it should be efficient and effective as a cost savings mechanism, and hopefully, a mechanism that will help us avoid disputes.

Going to the idea of what's in the database. Should it only be one database or should there be ancillary ones? I think if you apply that premise of efficient, effective dispute avoidance, you could have a database that was separate, but that should not preclude the central repository from having separate databases that would avoid duplication and added cost. And, I hope that NCUC is - that that isn't contrary to their principal.

I think you could have a separate database on the trademark, and still have ancillary databases at a central facility, central location, and not compromise those concerns, that Kathy and her team have expressed.

Kathy Kleiman: Thank you.

David Maher: Thank you. Jon.

Jon Nevett: Yeah, thanks, David. I'd like to agree with what Mark just said - the last part of what Mark just said about the ancillary services. I think I'm hearing close to consensus on that part, that you know, the provider could provide. And, if it's important to folks that it be a separate database versus a combined database, that probably, technically could be worked out.

What I do want to challenge is the hole that Mark mentioned, in that this proposal that came out of the IRT - this Clearinghouse proposal was intended to help all trademark holders, and convince them that necessarily between the URS and this pre-launch Clearinghouse that you'd - you know, the secondary registrations and the defensive nature might not be necessary. And, that the GPML would only have protected the top -- let's say -- 100 brands. We never came up with an

exact number. But, the very tippy top brands. And, everyone else below that would've been protected by the other parts of the tapestry that the IRT recommended, including the URS and the Clearinghouse in that.

So, I don't see much of a hole here. It's just, you know, whether the top - tippy top brands would get an additional protection or not is the only thing that the GPML provided. But, every other trademark (although) would have the same level of protection that the IRT recommended.

David Maher: Thank you. Zahid.

Zahid Jamil: Thank you. I think that we have been given paths by the Board to look at reaching consensus on these solutions, some of which have been proposed by the Board in their letter. I don't see, and maybe I've missed it, but any boxing us in by the IRT report for instance. There were different views on the IRT. Some people had differing views.

Although, what happened eventually, and - was that there was a consensus I guess to some extent, how -- at least by some people -- because it was compromised on many things. Some things didn't work for somebody, but the others balance it out. Now that we've - that tapestry is gone and the balance (is out), the question that arises; is it good enough for reaching - you know, addressing the concerns of various stakeholder groups or constituencies?

I for one think that it hasn't at least addressed the concerns of trademark holders. Here's how I see it in addressing the hole that is being discussed. Is this an identical match? And, I as a trademark holder have to follow a (US UDRP) anyway, and all this does is tells

me that Facebook dot whatever the (UCLE) is there and the notice is sent out, my problem is I can do that my MarkMonitor and other services as well, and they will give me more than just the identical match. They will do a lot more for me for the small amount of money that I put in.

So, at the end of the day, it's - the notice of the IP claim service just sends out a notice? My question is how does that help us? In any case, the small trademark holder, especially which are small in size, and those which are from developing countries, are probably not going to be there in the IP Clearinghouse, because they wake up with these things as things go along. They probably (wake up) the new gTLDs as the new gTLD is launched. This is going to be (gained) in the first 30 seconds of the new gTLD being launched.

So, for the small trademark holder, the developing country trademark holder, we aren't figuring out to really -- in my mind at least -- does not provide for - you know, a remedy. So there is a massive hole there. And I don't want to be -- at least for my purposes -- be boxed in by what the IRT did, when they're trying actually to achieve a workable solution. Thank you.

David Maher: Thank you. Mark.

Mark Partridge: I'd just like to add to what Zahid said. I'm sympathetic to the views he expresses, and I'm not contradicting those. But, the Clearinghouse is contemplated through the consensus process that we're developing here. It does have a value in giving notice of potential objections to the applicant, and putting that applicant on notice and giving them the chance to say, "Okay, that's right. This is not something I should do,"

or, "Yes, I do have a good faith basis for using that." That has value that we'd like to keep.

David Maher: Okay. Kathy.

Kathy Kleiman: Following-up on what Mark said, that it's beyond just notice - notices for the trademark claims, but these - this Clearinghouse will also be used for Sunrise, which becomes the right to register of - for the trademark owners. So, and it's beyond a mere identical match. It gives lots of variations, actually, of the trademarks. So, I thought it was -- again -- much more than notice, but also Sunrise.

I wanted to respond just a little bit to everybody, Zahid, and Mark, and Jon - that we hear the concerns, and we appreciate your hearing our concerns on the non-commercial side, especially the concern about (chilling) effects. So you know, this process has been - this SCI process has been very important -- I think -- to hearing concerns on both sides. And so, I think we do have something that will be hopefully useful and very efficient, save trademark owners a lot of costs.

And, just responding to Mark's question, I don't think we have any opposition to ancillary databases, you know, provided they're created through the market. We'd like to see an open process where a registry can go to anyone to get the database, not having to go through PricewaterhouseCoopers, if that's -- for example -- the provider of the Trademark Clearinghouse.

But, no. We kind of expect that there will be other databases, and trust that communication systems will be open so that people can share

what's been created. No opposition to that here, just opposition to mandating it.

David Maher: Thank you. Alan.

Alan Greenberg: One of the issues that I mentioned earlier that I - as I said, I thought was assumed -- maybe it isn't -- is the IRT had said one of the functions, and presumably one of the money making functions of the Clearinghouse, was pre-validation for trademarks. That is, the URS would not have to validate a claimed trademark if it was already registered in the Clearinghouse. I'd like to know if NCSG still feels that is reasonable, or is that one of the functions that the data must not be used for.

David Maher: Kathy, are - can you answer that, or...

Kathy Kleiman: I think I may hand it - Konstantinos, do you want to answer the...

Konstantinos Komaitis: No. Can you repeat that, Alan, please? Sorry.

Alan Greenberg: One of the functions envisioned for the Clearinghouse in the IRT report was providing validations - pre-validation services to the URS, so that when a trademark owner submits a - creates a URS or submits the URS, they could use their existence in the Clearinghouse as - to show that they do have a valid trademark, as opposed to the URS process validating it independently. Is that still - is that considered a valid use of the information in the Clearinghouse, or are you saying that's not allowed either.



Konstantinos Komaitis: No. I think that this makes sense, as long as it's not the determinative factor that will determine whether the URS - the (complaint) will be successful or not, just of course, the list in the Clearinghouses. That's why we also insisting a NCUC in registered or common law (validated) marks, because if you have the registered of common law value data, you can actually go to the URS and say, "Listen, you know, I am listed in the Clearinghouse. We think however, the Clearinghouse is not meant to acknowledge new rights. However, these rights also exist as my - you know, are recognized by my (Nation/State).

David Maher: Any thought, Kathy?

Kathy Kleiman: Yeah, I'll follow-up with Konstantinos, and agree that we can understand the URS might not want to use this, but that makes sense. We're just surprised that there hadn't been a more substantive discussion on that before it wound up in the Strawman. But, the marks - it would be nationally registered marks from jurisdictions that conduct substantive evaluation.

As you know, our concern is expansion of trademark rights. We want these to be - you know, if this is a verified database, particularly if it's going to have other secondary uses like the URS, let these be marks from jurisdiction - national level jurisdictions that do effect tentative evaluation, as the IRT had recommended for the URS. And again, limiting the common law to the court validated marks.

So, let it have some level of authority and then use it.

David Maher: And, Alan.

Alan Greenberg: My understand from what we discussed last week was there was a general consensus -- forced or not -- that we were going to accept all registered marks, not necessarily only those validated. Presumably, the URS process would not accept a Clearinghouse statement that a Benelux trademark is valid for its purposes, because it's known that they do not validate.

But, I thought we decided that within the Clearinghouse, we would accept all national marks, validated or not. I think we - we can't keep on going back and forth. We need to make a decision and stick with it. We only have two more meetings.

Kathy Kleiman: David?

David Maher: Kathy.

Kathy Kleiman: Yeah, I - we were floored when we saw that as consensus, so I've - since this is the - one of absolutely the critical issues for us, what data goes in this database? And now again, we're talking about secondary uses that we're blessing. So, I'm not sure it should be up to the URS panel, to try to go back and (understand)...

Alan Greenberg: I didn't say the panel.

Kathy Kleiman: The URS examiner. I thought that's what you were saying, is now the URS...

Alan Greenberg: Nope.

Kathy Kleiman: ...has to decide whether the Benelux trademark is...

Alan Greenberg: I said the URS Rules, or what I should've said. In other words, Benelux is one of the examples that doesn't validate and that we don't - they're not included there.

Kathy Kleiman: We didn't think there was a consensus last time because - for weeks, we've been talking about federally registered marks that come from jurisdictions that do a substantive evaluation - again, hearkening back to the URS language in the IRT report. So, that was the assumption that we had made all along, and if that assumption's going to be opened up as it was in the last call, we're going to keep debating it because we think there's a huge issue.

The (race to Tunisia) 12 years ago, under Network Solutions (dominion) dispute - not you, Jon, but the other one. You know, the older -- was just nasty. That's not - you don't want to be able to go and get something for \$100 and be able to use it for the type of rights we're talking about here.

David Maher: Yeah, I remember that very well. I don't think there's a disagreement here. I - although, does anyone else have a comment on it?

Okay, well let's move along then. Then, the final box under Number 2 is the submission entry point to the database to be regional entities or one entity, provided it can demonstrate - it can accommodate all the language, currency, cultural issues. The trademark holder only submits to one of them if it has multiple registration covering many regions. If multiple entities are used, ICANN will host an information page

describing how to locate regional submission points. Any comments on that.

Margie Milam: David, its Margie. Can we go back to the part of the discussion - I just want to make sure I understand whether we reached a consensus or not, on the issue of whether or not we're including - the (jurisdiction) has substantive examination.

David Maher: So, I believe the consensus is that we are only allowing federally registered marks, or nationally registered, as opposed to state, provincial, or other. And the only marks that are allowed are those that are registered by a national entity that conducts some examination. That would exclude Benelux and Tunisia, as examples.

Am I stating that correctly? Does anyone...

Jon Nevett: This is Jon. You know, I - when we Chairing - when I was Chairing the call last week, had the exact opposite statement, and heard no objection. I don't carry the weight. You know, it's really up to the -- in my (unintelligible), it's up to the registry to decide whether - if they want to include, you know, the countries that don't provide the examination. But, let's be clear that - you know, which way we're going on this. Because you know, again, I made the same exact statement David said, put the exact way, and heard no objection last week.

David Maher: Thank you, Jon. Mark.

Mark Partridge: Well, I'll say that the point that was made last week is that we think it's unwise to get in the business of the - of having ICANN determine the value of registrations of particular countries. And, that if it's a nationally

registered mark, it should be in the - be entitled to be in the database.  
And dealing with marks that don't have merit or value would be part of  
the challenge process.

David Maher: Kathy.

Kathy Kleiman: Jon - I wanted to respond to Jon. I didn't hear that summary statement  
last week. I had a lot of noise. They were clearing leaves and things in  
the area that I was in. So, I didn't hear it, but it just seemed to go  
against kind of the grain of where the conversation had been, which -  
and I thought Mark even moderated it last time, although, I'd have to  
go back and listen - and kind of coming up with a middle ground on  
this.

But, again, NCSG has (fought) all of them that we were talking about  
substantive evaluation, and we got that idea from the IRT and was  
recommended to be used in the URS. So, this we think is really big,  
and not for a challenge process, but for what goes into this very  
important database.

Jon Nevett: This is Jon. I'm sorry. It doesn't mean that we can't have the same --  
(unintelligible) -- it doesn't mean that we can't use that IRT  
recommendation for the URS. Just because it's in the database  
doesn't mean that the URS has to recognize that in with the litigation  
context. But, it could be in the database so that the registry could use  
that - those marks if it so chose to do so.

Woman: (Unintelligible).

David Maher: Alan.

Alan Greenberg: Yeah. Jon just said half of what I was going to say. And, the other half is clearly we can make a distinction - I think we could make a distinction between those jurisdictions that do no validation, and those that do some. To try to define and measure substantive, I think it's really into the rat hole that Mark was talking about.

But, the URS and the URS providers, and/or the URS examiners can have rules and process which do cover that, as Jon said.

David Maher: Anyone else?

Kathy Kleiman: Yes, me.

David Maher: Kathy, go ahead.

Kathy Kleiman: But, going back to the question Alan asked us -- what -- a few minutes ago. Are we willing to use what's in the Clearinghouse as pre-registration for the URS? And, so that's what we're being asked to do. That was your question. And, the answer's no. If we're going to put all this data that's unverified and unsubstantiated into the Clearinghouse...

Alan Greenberg: Well, I think...

Kathy Kleiman: ...and you can't use it for the URS, and we don't think they should be using it for Sunrise and trademark claims either.

And again, the way David phrased it was our understanding across all these weeks.

Alan Greenberg: I see this, we leave this as one of the things that we're not coming to closure on at this meeting and go on, or we're never going to get through this. We're allowed to submit something to the GNSO and the Board which doesn't have complete unanimous consensus.

David Maher: Yeah, that's true. Also, I'd just like to point out from my own experience that there are some marks registered in Tunisia that are valid. They're not all automatically invalid. And by the same token, there are marks registered in the United States Trademark Office that are invalid. It may take a court decision or some later activity to render them invalid, but the fact remains that even for the rigorous procedures of the USPTO, not all marks registered there are in fact valid, and that fact would certainly come up in a URS if for example, a claim is made that a mark has been abandoned.

I think - I don't have a solution, but the problem I think is more difficult than it might appear on its face. Mark.

Mark Partridge: I was going to suggest an approach which would be to say that the Clearinghouse takes registrations of national or multinational effect -- the phrase from the IRT report -- that the registries, in creating their policy for the use of the information, could take into account the needs for substantive review or geographic scope in what is relevant to their registry. And, that there should be a challenge process to deal with marks that may not be substantively valid. As well as a time limit, or a deadline so that it couldn't be gained after this came into effect in getting registrations in countries where there's no technical or substantive review at all.

David Maher: Margie.

Margie Milam: Yeah, I wanted to ask just a general question as we're getting into the details of the consensus. Do we have a definition for what we mean by consensus? Do we want to use different terms such as full consensus, broad consensus? I'm just you know, thinking that as we're starting to, you know, hone our positions, that we might want to distinguish those different categories, or at least open it up to you guys to discuss that.

David Maher: Well, my personal preference is that we just stick to consensus. I think having degrees of consensus is inviting more non-substantive discussions where there is no - where there is a distinct minority position that can be expressed, and then I'd rather just leave it at that. But, if anyone disagrees? I'm happy to say I don't see any hands raised.

I think we should move along. We're at a point where we're - will have run out of time. I think down to the final box of Number 2. Is there any comment on that? The submission to be regional entities or one entity?

Okay, I'm not seeing any hands.

Mark Partridge: I think the concept we had talked about, and I thought we had consensus on, is that there would be one place to submit something, but then it could be outsourced to regional validators to try to keep the - so that people only need to go to one location to make their submission.

David Maher: Yeah. Well, I think that's what this says as I'm reading it. Trademark holder only submits to one of them.



Mark Partridge: Oh, no. But, they might - if they have rights in different regions, then they might need to submit to different regions. And, the idea is you just submit to one place, but if it needs to be validated by a region, then it's outsourced. So, I think it's a little different than what's said here.

David Maher: Okay, Kathy.

Kathy Kleiman: Mark, I think the way it got processed was that a trademark owner -- per se -- would only submit to one place, but that there may be regional locations that can accommodate the language and work with the smaller trademark holders in kind of a closer way than maybe some place based in Europe. So, that there's one place every trademark owner could go for all of their trademarks, but it's not necessarily the same place.

Mark Partridge: Maybe if we put in here the idea that there's one portal for submission. The goal is to make it very simple, so that there's just one place to go to submit your information, and then that portal could send the information out. And, it sounds like we're on the same page on this, from what Kathy just said.

Kathy Kleiman: No. No. But...

David Maher: Yeah.

Kathy Kleiman: I don't think so.

Mark Partridge: No?

Kathy Kleiman: No, because in that simplicity, you may lose that language ability to communicate. So, would it be terrible - so, I thought that what you were (eating) at Mark, was that if you're trademark owner X, and you have trademarks across the world, you want to go one place to submit all those trademarks.

And I - we heard that and it made sense, but does it have to be one place for all languages and all? It seems to make sense that there could be different portals taking the same information, but perhaps offering language services that are a lot closer to the region, and then providing the information that then gets validated.

So, it can - one place for each trademark holder. They can go to the closest place to the, but not necessarily one for all.

Mark Partridge: Well, that's why I suggested the portal, because that could be in different - you could have different versions - different language versions of the portal. Click on a flag.

David Maher: Oh.

Mark Partridge: The idea is to have a central Clearinghouse where you send the information in, and registries go to get the information.

Alan Greenberg: David, can I get in?

David Maher: Yeah, go ahead.

Alan Greenberg: Yeah. I think we have to think in a mode that is not what we're looking at today. We're looking at an IDN world where we're going to have full

IDN domain names, and it may not be practical to have everything go to the single portal if you're going into a fully Arabic domain name that's associated with entries at a Clearinghouse. You don't want to go to the next screen where you then have to click on Arabic.

And, we're talking about real details of the structure of multiple Web sites linked together and feeding the same database. I really don't think it matters, and I think if we tried to put rules in -- think it must be a single portal -- that we're going to put implementation problems in the way that do not need to be there. We're saying that someone with multiple trademarks can register them at a single site. We're saying they all have to feed into the same database. I don't think we need to dictate the exact structure of the Web site.

David Maher: Okay, Zahid.

Zahid Jamil: Yeah, so I'm thinking from a trademark holder's in-house counsel, or as an attorney. If I have different registries, or not registries, but (PDP)s -- whatever you want to call it -- validators all over the different parts of the world, and I have to go to everyone's Web site separately, I could miss something. I do not know where to go. There could be difficulties because I may not be as savvy as many IP attorneys. I may not be as savvy as many people involved in ICANN, or with registries.

So, it adds a level of complication. But if have say one portal where you can go to, and if you want Arabic, you click on the script of Arabic, or the flag as Mark mentioned, and you click on that, and then you go - you're routed to whichever validator, which is separate. Maybe if you want to put it on a different Web site, that's fine, but at least you can go to one entry point, you get all the information there, you can choose

from whether you want - and this may happen for trademark holders who may wish to register in Arabic as well as English, because that might happen.

So, you've got to give them a certain level of uniformity on one Web site where they can then decide where to go. So, I just like to sort of mention at least a first entry point needs to be a little unified to make it easy for people. Otherwise, it'll be (grueling).

David Maher: Alan.

Alan Greenberg: Yeah, I'm getting lost. I mean, one of Zahid's statements was someone who has multiple markets may not know all the places to go. We've already said they only have one place to go. I think we already covered that.

David Maher: (Unintelligible).

Alan Greenberg: Because, we're debating Web structure and that really shouldn't be our business.

David Maher: Jon.

Jon Nevett: Yeah, I think I'm hearing a concurrence of - I think people are just using words that are not precise, and I think from a trademark holder perspective, they want to be able to go - put all their trademarks in one location so they're not contacting various places. I think as a principal, we're all in agreement with that. A trademark holder can file all their trademarks in one location - with one entity in one location. Right?

They may have a choice of which of those locations they use, meaning there's specific ones that are in language to a certain - in a certain region or a certain language; that's fine, but they have a choice as a trademark holder to put all their information in one place. And, I think we have a consensus on that, and I know we have consensus on the fact that it not be one specific place. That there are choices, and there are other providers where you could put your information in whatever location you want, or with whatever Web site you want.

And, I think Alan's right, that we don't have to get into that. As long as we have the principal, that trademark holder could go to one place, and that there are opportunities for different portals -- if you will -- for those trademark holders to put their information in.

David Maher: Okay. Thank you. Okay, I think we can move along then. The next item, Number 3. The validation service provider will adhere to rigorous standards under contract with ICANN. Do we have comment on that?

Anybody? We seem to have a consensus. The next - second box under that same number. A centralized database with a formal contract. And then, there's an issue in red. The contract will include indemnification for errors such as false positives. I'm wondering how an indemnification would work without proof of damage. But, if it's assumed that in some cases, damage can be proven, then I suppose the indemnification would be a value. Are there any other comments on that?

Okay, then I can move along to Number 4. The marks eligible for inclusion. We - from what I've heard, we seem to be very close to consensus that it's nationally registered marks, and internationally

registered, which would cover European systems. No comment (unintelligible) except for court validated common law marks, and with appropriate fees. Alan.

Alan Greenberg: Yeah. In discussing this with at large, it became obvious that we're using the term validated in two very distinct, very different ways in the same sentence. We are talking about court validated marks, and then talking about fees for a validation, which meant fees levied by the Clearinghouse, for the Clearinghouse doing its validation.

David Maher: Yeah. I think that...

Alan Greenberg: And we really need to have two different words if we're going to use them in the same sentence.

David Maher: Well, or some dependant clause which identifies which validation we're talking about.

Alan Greenberg: Whatever. We need...

David Maher: But, I think...

Alan Greenberg: ...we need to be clearer than we were in that (unintelligible).

David Maher: Yeah. We do need to be clearer. That's...

Mark Partridge: I - this is Mark. I just suggest maybe on the data side calling it authentication. We're - the Clearinghouse is simply authenticating that the data that's recorded in the Clearinghouse is data that was submitted to it.

Alan Greenberg: Fine.

David Maher: That seems like a very positive suggestion. Okay, the second box --  
Kathy.

Kathy Kleiman: Again, except that this is what's - this is the data that's going to be used - it's going to be deemed verified because ICANN's running this database, and because we're going to be using it. This isn't just a notice provision. We're using this data for Sunrise. We're using it to give trademark owners the right to register their marks in the Sunrise period. And now, we've been asked to use it for the URS as a pre-registration.

So, there's a lot that's going in. This isn't just data coming in. This has been the premise of all this, is that there's some level of verification and validation of the nationally registered marks going into this database. So, if that's...

Alan Greenberg: Then call it verified, then.

Kathy Kleiman: ...not going to be the premise -- I'm sorry?

Alan Greenberg: Then call it - in this case, call it verified by the Clearinghouse, as - this particular sentence discussion is just on the word we use, not going back to what trademarks can be used for what things.

David Maher: All right.

Kathy Kleiman: Then call it...

David Maher: I think that's a fair comment.

Alan Greenberg: I mean we still have that as an issue that we - either needs to be settled or not settles. But right now, I'm just suggesting that we don't use the word validation for the two different ways in the same sentence. If authenticated is not right, then verified.

David Maher: Any objection to using...

Alan Greenberg: One can use a made up word. I don't care.

David Maher: Any objection to the use of verified?

So, let's use verified then on the second instance there. With appropriate fees for verification.

Okay, the next box. Identical match means the domain name consists of the complete and identical mark, but a separate - as a separate service, the Clearinghouse can provide marks contained, but this is not mandatory. Any comment on this? Kathy.

Kathy Kleiman: Yeah. Harkening back to earlier in Number 2, fourth paragraph. The function of the Clearinghouse ancillary services are not required, are not mandatory. And I put this all under that category of ancillary services that may be created by - so, looking at the TC can provide - the Trademark Clearinghouse has - I think we've all agreed to the very limited mandate, so that these ancillary services may become something the market creates.



David Maher: Okay. Konstantinos.

Konstantinos Komaitis: Yes. Again, and just to add on what Kathy has said. I think that if we give this option to the Clearinghouse, we're just giving away too much discretion. And, I think that it basically will complicate more things than the ones that it tries to resolve. And, it will be open to gaming, and it will be open to - it's either identical marks, or you know, we cannot possibly give more discretion to the Clearinghouse to decide whether they want to include things or not.

David Maher: Alan.

Alan Greenberg: Yeah. My understand is what we were talking about here was not giving any discretion to the Clearinghouse, but giving discretion to the registry. And what I envisioned by this statement is the Clearinghouse would have the right to say to the trademark holders, "For another \$500, if the registry offers such a service, we will also produce your trademark when they're asking for, you know, names embedded."

So in other words, if Yahoo registers Yahoo, and they pay the other \$500, and the registry wants to know about partial matches, then Yahoo would be produced if someone was trying to register in an IP Claims Yahoo Sports. But, it requires the registry to do it, and the trademark holder to say they want to opt in, presumably for a price. The question is, is that within the bounds? And I think that's what was envisioned.

David Maher: Kathy.

Kathy Kleiman: Again, that seemed to be a big surprise to us last week. So Alan, would you be opposed to saying not that the Trademark Clearinghouse can provide this, because the Trademark Clearinghouse is really a database, but that the company that administers the Trademark Clearinghouse, or any other company can provide ancillary services, including this one, as the market and the registries may request?

Alan Greenberg: My answer to that, Kathy, is they already have the ability to do that. The question is, when someone is registering a trademark with the Clearinghouse for the standard Clearinghouse purpose, does the Clearinghouse have the ability to say do you want to add an optional service at the same time.

Kathy Kleiman: We - no, because it's not - we NCSG doesn't agree. That this - this is a massive expansion of this particular database being created pursuant to this GNSO STI process. Then, any ancillary services private created fine, but we're talking - if you're talking about this database - this Trademark Clearinghouse, then...

Alan Greenberg: Well, that information can be put into a separate database. It just can't...

Kathy Kleiman: No.

Alan Greenberg: ...is it kosher to be negotiated at the same time?

Jon Nevett: This is Jon. Is everyone in the queue? Because I'm not able to raise my hand electronically.

David Maher: Go ahead.

Jon Nevett: Okay. I hear you (guys) said the (station) without a difference. Right now, you know, registrars are credited to sell registrations - domain name registration services. That doesn't mean we can't sell hosting, or SSL, or any other services that we sell at the same point. So you know, that's fine that we could say it's a separate database. But I don't think we should be in the business of telling whoever the service provider is -- and I think Kathy's language is fine with me -- whoever the service provider is may, you know, engage with the registry to sell other data or other services, and that should be fine. And, we should not be trying to preclude that. It just doesn't make any sense.

And, you know, with ICANN precedent out there it's clear that ICANN accredited either registrars or registries can sell other services to the public, or to you know other providers. So, you know let's not go down. You know, Kathy's language seemed fine to me. That, you know, these - you could say it again, Kathy, but the services providers can provide ancillary services. So, it's not the Clearinghouse, but it's a - you know, the entity that holds the contract to provide Clearinghouse services - you know, is not precluded from providing other ancillary services, and let's leave it at that.

Kathy Kleiman: Exactly.

David Maher: Okay. The next box has to do with contextual elements, and I haven't heard any criticism of those. Any comment on that?

Good. We're now down to Number 5. Mandatory pre-launch. I - apparently, we still have some questions. Zahid?

Zahid Jamil: Sorry, just going back one step. I think we talked about - is that identical (unintelligible) that we just moved on from?

David Maher: Yes.

Zahid Jamil: Right. So sorry, just wanted to add - yes, the BC has a lot of concern about the fact that this is the exact match. I think this has been part of the (unintelligible). I'd like to raise it up again.

It limits -- as I said earlier -- what basically, the benefit we get from the IP Clearinghouse, and therefore, we would not agree to that.

David Maher: Okay. Kathy.

Kathy Kleiman: And somehow in this section, the very last sentence of Number 4, it's been - the same issue has been added here again. The database be structured to allow registry to expand coverage to include marks contained, although use of this expanded version would be voluntary not mandatory. I think that's just covered by the language. Jon helped us come to some resolution on, which is the database would not be structured to allow, but other databases -- perhaps even provided by the same service provider -- would not be barred.

Does everybody see where I am, right after D?

David Maher: In other words, that they would be unofficial. They would not be - could not be used for a Sunrise. It would not be mandatory...

Kathy Kleiman: Exactly.

David Maher: ...for Sunrise.

Alan Greenberg: I'm not sure this sentence is needed in light of the previous discussion, but if it is there, making it databases instead of database, I think addresses it.

Kathy Kleiman: I'd just assume delete the sentence and leave it to the earlier, because here it's not really an identical match issue, I don't think. Is it - Alan, would it be okay to delete the sentence, and...

Alan Greenberg: It's okay with me. I think we've already addressed it in the previous sentence. That is, it's another service the Clearinghouse could offer in conjunction with the registry.

Kathy Kleiman: Zahid, that okay?

Zahid Jamil: Okay.

David Maher: I think we can move along then to the mandatory pre-launches. Comments on that? So - Kathy, your hand is up. Is that for the...

Kathy Kleiman: Actually, I do have a question. Does this mean, given what we're saying, if (Caseman) moved in the direction of putting in marks from national authorities that do not search, validate, or verify, does that mean that we should add a provision here that registries do not have to accept marks in the Clearinghouse from authorities that do not verify, or validate, or search, or conduct a substantive evaluation? Should we put that provision in here, that registries have that choice?

David Maher: Well, speaking from a registry standpoint, I think I would prefer it to be automatic. The registry would not have to make judgments about this. Any other thoughts on that?

Alan Greenberg: Yeah. It's Alan.

David Maher: Okay, Alan. Go ahead.

Alan Greenberg: Again, this is one of my non-lawyer questions. Is it well understood which jurisdictions do some validation and which do none? I mean we've heard about Tunisia, and Benelux. Are there others, or is it a very short list, too?

David Maher: That's a very good question. I - when you get into (unintelligible) and some of the African nations out of - frankly, I have no idea since - are there any international experts on it, Zahid?

Zahid Jamil: Well, I wouldn't say I'm an international expert, but I'm just wondering, the way they're sort of bleeding certain countries from, you know, a mix of approved or unapproved people whose marks are going to be accepted. I don't know. How's it going to play out in the GAC?

David Maher: I'm sorry. What is the question?

Alan Greenberg: How is it going to play out in the GAC?

Zahid Jamil: (On unity), GAC won't be - some of the members won't be impressed by the fact that some of the countries are being characterized as not sufficient for their trademarks to be entered into the IP Clearinghouse.

David Maher: Alan.

Alan Greenberg: Yeah. We certainly don't want to be in a position where the registries have to recognize Country X and Country Y, which do one thing or another. I can see value, but again, I don't know how - what the reaction would be to having the Clearinghouse understand which jurisdictions do any validation and which do none, and flagging them appropriately. We cannot be in the business of judging whether they do sufficient or rigorous validation however, in my mind.

So, having a (flag) saying zero or some, I think is a reasonable thing, and I don't mind, although there may be some other legal minds who understand the issue better of giving the registry jurisdiction - rather, the option of accepting or rejecting the none for its particular Sunrise or IP Claims. Now, I don't think we can do any further than that.

David Maher: Kathy.

Kathy Kleiman: I had a question of what the IRT meant when it wanted to use federally registered marks in jurisdictions that conduct a substantive review -- I don't have that - that's a paraphrase -- when it wanted to use that for the URS. Did the same discussion come up in the IRT of which jurisdictions are kind of known or well regarded for the substantive evaluation?

David Maher: Mark.

Mark Partridge: Well, to answer Kathy's question, on the URS, the idea was that there could be pre-registration of marks that had already undergone

substantive review, and that that would be appropriate at the URS level where you're requiring a higher level of proof.

The substantive review doesn't show up in the IRT's recommendation about the Clearinghouse on - in what we're talking about. What the IRT recommended there was national - marks of national or multinational effect, and largely for the reasons that - of the concerns that have been expressed here were how can ICANN be in the business of telling countries you're not going to be - your registrations aren't going to be included?

And again, I said it before. I think the way to deal with this is through the challenge process, not by being a gatekeeper and telling countries their registrations are second class.

Kathy Kleiman: But, how does a registrant challenge? How do registrants become experts in International Trademark Law?

Mark Partridge: Well, you only - when they - if they get a notice, they can challenge it. Or, if they have a claim for a mark that they'd like to register and somebody's in line, they can challenge them. Again, the - it's a real problem I think to start telling - saying that we're only going to include rights of -- for example -- the United States and other developed countries, and not include registrations of the rest of the world. A large part...

Alan Greenberg: Undeveloped countries like Belgium.

David Maher: Alan.



Alan Greenberg: My facetious comment was undeveloped countries like Belgium. I think what it comes down to here is we can't be in the position of judging sufficient, and I tend to agree with Mark that we shouldn't be in the position of judging yes or no. How we're going to word the URS to make sure that we're using a properly validated trademark is a discussion for tomorrow, I guess. But...

David Maher: Mark.

Mark Partridge: At this point, I tend to agree that for the Clearinghouse, we shouldn't be having this debate.

David Maher: It's too bad Jeff is not on the call, because he's had a lot of experience with the Sunrise process that I think would shed light on this. I agree. My personal view - I think Mark has a very good point. Neither ICANN nor any registry is in a position to make a judgment about the quality of an evaluation of a registration by any given country in the world, whether it's the US or Tunisia or anyone else.

Mark, your hand is up, or...

Mark Partridge: Oh, I'm sorry. I made my comment.

David Maher: Okay. Well, if there's nothing further on that, let's move to Number 6. The voluntary pre-launch use. Any comments on that?

I think we've pretty well covered it.

Kathy Kleiman: This is Kathy.

David Maher: Kathy, go ahead.

Kathy Kleiman: I think we've edited some of this, right. Voluntary use by registry of the database to support common law rights, including marks included for pre-launch protection. We've decided that that's going to be an optional service, right. So, that goes out. And, no bar on - not on the Trademark Clearinghouse, but on the company or other companies providing ancillary services.

And I'm not sure about the recommendation. It would be beneficial for trademark owners to go to one place, so I'm proposing that Number 6, the first sentence goes out, the last sentence goes out, and then the second sentence, Trademark Clearinghouse is changed to the service provider or other service providers.

Alan Greenberg: I suspect when Margie is editing this she may find this whole thing is redundant.

Konstantinos Komaitis: Yes, I think we should -- this is Konstantinos -- sorry to be jumping in. I think we should incorporate Number 6 into Number 5. Is it Number 5? Yes.

Margie Milam: Yeah, I think that's right. I made sense when I had a distinction for marks contained, but I'm not sure it makes - you know. But, the (diction) is necessary now.

David Maher: Okay. Then, we can move along to Number 7.

Margie Milam: So, we are deleting the last sentence? That recommendations - that would be beneficial for trademark holders to go to one place?

Alan Greenberg: That's a value judgment. It doesn't fit here anyway.

Margie Milam: Okay. So, I got that out.

David Maher: Okay, Zahid.

Zahid Jamil: I think (unintelligible) surprise everybody. We in the BC would like to see this as a mandatory requirement of post-launch. The reason being that if you're a bad actor and you're going to be registering all of these, we just want to avoid IP Claims or Sunrise. All you do is wait for the first 30 seconds of the launch, and then just register, register, register, and all the money that the trademark holder have paid to be in the IP Clearinghouse, you know, becomes redundant. So I just wanted to raise that point.

Although, I noticed that there is language now that says that it may provide (unintelligible) (so) you can have the separate launch with that service. But then that creates (disparity) over - across the board in the different registries. I just wanted that point.

David Maher: Okay, thanks. Alan.

Alan Greenberg: Yeah, I understand why post-launch is a good thing, and I actually support it myself, and I have large support that - but, it's really out of our scope, and the most we can say is note that it's one of the added services that could be offered. I don't think we can do anything more to that without way - stepping way, way out of our scope.

David Maher: Konstantinos.

Konstantinos Komaitis: Yes. Again, I think that making something mandatory and something voluntary is a big mistake for the Clearinghouse. We really need to - we are tasked to decide what the Clearinghouse will be all about. It's unfortunate that Jeff is not here, because I am sure that he would be able to explain why they didn't do - they decided against holding an IP post-claim - post-launch - an IP Claim service post-launch. And I just think that if we are - I mean the Clearinghouse once again is meant to be consistent. I think would create a problem. The question are what will happen with existing domain name registrations.

I mean, I am sure that a lot of legitimate remaining holders might find themselves trapped with an IP Claim because this thing is post-launch, and they already have spent money, time, and resources on creating legitimate Web sites. So, I really think that the post-launch will create more problems - even more problems.

David Maher: Kathy.

Jon Nevett: This is Jon. Can I get in the queue?

David Maher: Oh, Jon. Yeah, go ahead.

Jon Nevett: Great. Thanks. So you know, I think Jeff provided some comments on this on mail this - it looks like yesterday or last night, Eastern time. But, you know, I tend to agree with him in that I would just fold this into the - maybe we have a catchall (space) talking about the ancillary services that are - that the service provider of the Clearinghouse can provide, and they are not precluded from providing. And, I think Jeff refers to it as you know, a watch service versus an IP Claims. If they want to

provide a watch service, that's fine. There are plenty of folks in the marketplace that do that right now.

David Maher: Kathy.

Kathy Kleiman: Let's see. In Number 7, for the first sentence, voluntary use as a pre-registration process of the URS. There seems to be disagreement about that, so I'm not sure we have consensus. The second sentence, no requirement that the TC be used to support post-launch IP Claims. I think there's consensus on that. And then the third and fourth sentence, I think - the third sentence, I think Jon has revised nicely about the optional, not just - not the Trademark Clearinghouse -- again -- but the service provider and other servicers may provide these services.

And then, I'm not sure that the last sentence is - that the report should indicate that registries should consider providing post-launch IP Claims protection. I think that should be defined as who's requesting that. There's certainly a strong call and we hear it loudly, and it's very persuasive of people in this community - you know, on our call, but I'm not sure there's consensus on this. So, since it is kind of an optional idea, I think it should reflect the constituencies requesting it.

David Maher: Alan.

Alan Greenberg: Yeah, I agree with that. I think what we're saying all along, but the language doesn't always reflect it, is that for something like post-launch claims or in fact the names embedded, the Clearinghouse entity is going to have to offer it as an optional service. The registry is going

to have to opt in, and presumably, the trademark holder has to be willing to pay extra for that additional service.

So, all of those are going to have to be true before its used, and under those conditions, as long as we're not precluding it in the rules we're setting up, it is something which the market may end up using. And, I appreciate Jeff's comments about how difficult it might be, and there may be a chilling effect too, to it, but we should not preclude it because of that right now. The world changes.

David Maher: Zahid.

Zahid Jamil: Perhaps I would just echo Alan's comments. I completely agree with those. Just a question to Jon. Would this watch service that we're discussing, would it be to a notice to the registrant, and would it possibly you know, offer affirmation? Is that a possibility open with this Web service, or is it just a notice to the trademark holder?

Jon Nevett: Yeah, I mean in the marketplace today, you have a watch service where, you know, if anyone has registered a name with your trademark that isn't in, you get notification, and you could provide notice that a - to the registrant. So, it could be used for that purpose. Or, it could be used for just providing you notice so you could watch it.

I mean, so it doesn't preclude a notice. It wouldn't be the - it wouldn't be an ICANN accredited entity providing that notification like in the IP Claims service, but it would be, you know, the trademark holder, or it could be the third party provider.

Zahid Jamil: Thanks, Jon.

Jon Nevett: Sure.

David Maher: Mark.

Mark Partridge: Yeah, I have a question about Kathy's comment on the first sentence of seven. As I understood it, Kathy, you said that there's not a consensus on this, and I thought there was. What we're simply talking about is that it would be efficient and useful for the URS to be able to refer back to already -- what are we saying -- verified rights when somebody submits a complaint.

So for example, Yahoo submits a complaint against Yahoo Sports that's being used for an infringing pay-per-click site, and when they file their complaint, they rely on their trademark registration, and it refers to the record in the Clearinghouse, and that makes the - you know, that saves people steps, and makes it cheaper all around. And, I don't see why that would be a problem for anybody. It's - you know, it's just simply more efficient processing of data.

David Maher: Kathy, if you want to answer that.

Kathy Kleiman: Yeah. I wouldn't have had a single problem with that, Mark, if we had stuck with the original - with what NCSC's understand was of federally registered marks in jurisdictions that conduct a substantive evaluation. Here - again, I thought the standard in the IRT report for the URS was that requirement that you come into the URS with kind of verification validation of that right.

Here, we're now talking about a mere kind of administrative process there.

Mark Partridge: Well, if...

Kathy Kleiman: And so, we've taken away some of the levels of protection, so now I'm concerned about automatically using that to verify your rights in the URS.

Mark Partridge: Okay, if I could respond. The IRT recommendation was that it be rights that have a substantiate review, and that doesn't necessarily mean that everything in the Clearinghouse meets that same standard, but it means that the pre-registrations that you rely on for the URS would meet that standard.

Kathy Kleiman: Can we modify this accordingly?

Mark Partridge: That voluntary use as preregistration process for URS of registered rights having substantive review?

Kathy Kleiman: Sure.

Alan Greenberg: Can I suggest this belongs in a URS discussion? (The word's missing of the words).

Kathy Kleiman: Although before we get there, this makes sense to me, Mark.

Mark Partridge: Yeah, I agree with Alan that we can work it out under the URS, but it sounds like we've got a consensus on the point, anyway.



David Maher: Okay.

Kathy Kleiman: Could you repeat the wording, Mark.

Mark Partridge: I'd just add it at the end of registered rights having substantive review.

Kathy Kleiman: Mm-mmm. Great. Thank you.

David Maher: Okay. Can we move along?

Alan Greenberg: It's Alan. I'd like to add one more thing.

David Maher: Go ahead.

Alan Greenberg: Yeah. I think what we're saying here is the Clearinghouse has the right to pass information on to the URS process. Whether the URS process accepts it blindly or not, the URS process is going to use the exact same discretion it would use in going out and validating a trademark on its own. Some countries it would ignore; some countries it will take at face value.

All we're putting in here is the right of the Clearinghouse to contribute that information -- presumably for a fee -- to the URS process. What the URS does with it is something that the wording - that we will have to define, but it's not the Clearinghouse's problem, or nor does the Clearinghouse make any promises of anything to the rights holders.

David Maher: Okay. That brings us to Number 8. The required elements of the IP Claims notice. I know that a draft has been circulated. I think Paul

McGrady, who is not on the call so far as I know, sent that around. Are there any comments on it?

If not, I think we can move along then to Number 9, the last item. The effect of filing with the Clearinghouse should be clearly stated that the simple inclusion of a reviewed mark is not a proof of any right, nor does it confer any legal rights on the rights owner. Any comments on that? No? We appear to have a consensus then.

Oh, then there's Number 10. Costs should be completely borne by the parties utilizing the services. That is the brand holders and registries.  
Alan.

Alan Greenberg: Yeah. This we defiantly do not have consensus on, despite the red word. Jeff made these - sent out a notice on this pointing to the IRT. Now, the IRT in a couple of places says that the registries do not pay. It doesn't say who does pay, and I think we need a little bit more clarity than that. I'm really worried that if the rights holder are the only ones who pay, then presumably, the rights holders pay once or once per year, or something like that. Yet, the Clearinghouse's business is going to be substantively different if there are three new launches a year or if there are 3,000 new launches a year -- in the extreme. And somehow, I think the business model has to factor that it in.

I'm assuming when a name is used in a Sunrise process, the registry charges, not the Clearinghouse, to the trademark holder. And if so, we have to factor in the radically types of uses that will be made of the Clearinghouse depending on the number of launches. So, I don't really care if the registry pays or not, but the model - we do need to say

something about who is paying for the service, and in what mode. And, I suspect Jeff would say a lot if he was here.

David Maher: Yeah. And, I - Jeff Eckhaus.

Jeff Eckhaus: Yeah. Thanks. I just wanted to say that I don't think that if the person paying or bearing the costs is not going to be the trademark holder. It's also going to be the registrants, (unintelligible). Because those kinds of costs usually get passed through for the registration costs during the Sunrise period, so - or, other periods. So, I wouldn't say that if it's not the registree, then it's going to be 100% of - will be the person submitting to the Clearinghouse.

And, I'm still not sure that - why we need to define the business model at this time. Why can't we just say that - I mean it has to be paid by one of these parties. There is no - it's not like you know, some benefactor is going to come in and pay. So, why don't we just add that in - leave it at saying they'll be there and then have the business model worked out by the parties?

David Maher: Margie.

Margie Milam: Just to answer the question there. The reason that came in as Number 10 was because we went through the questions that the Board asked in the letter to the GNSO, and one of those questions was who bears the cost. So, I think it's not something we should leave silent. We, you know, need to clarify, you know, the registrant does a pass through that's fine, but I think we need to probably add a little more information here.

Jeff Eckhaus: Well, I thought that those questions were also - again, I'll go back to that those questions were consideration. Not questions that needed to be explicitly answered, but questions as guidelines for answering of - you know, of the overall piece of does - what the GNSO came up with - I forgot the exact working for it, but we weren't asked to say please define each one of these questions and give an explicit answer for each one of those.

Jon Nevett: This is Jon. Margie, could you read the question, because if I remember correctly, it was a yes/no question. Should the cost be borne by those who use the service? And, it was pretty generic like that, and can't we just...

Margie Milam: Okay, let me - I'm pulling it up right now.

Jon Nevett: Perhaps we could just say yes.

Jeff Eckhaus: Thank you.

Margie Milam: It says who assumes the costs of -- sorry; I just lost it. Okay. I have it up. Who assumes the cost of the Clearinghouse? Should the Clearinghouse be funded completely by the parties utilizing its services? So, that is the question - this is the language from the letter.

Jeff Eckhaus: Right. It's Jeff here. I think that nobody has stated that people who don't use this service should pay. I think the decision is yes; people who use the service should pay for it. I don't think we need to allocate how those payments are made or who pays what amount. But, of course - I mean to me, it's sort of a nonsensical question. You know,

then should people who don't use it have to pay for it? I mean, I don't know if that really makes sense.

So I think - I said, I don't know if that was Jon that said I think it is sort of a yes/no question saying, "Yes. People who use it should pay for it." It's not saying which amount and how it's split up.

Margie Milam: Okay, so in Number 10, I just delete the parenthesis? Is that what you guys are suggesting the consensus is?

((Crosstalk))

Margie Milam: Oh, I'm sorry. It's (where I clarified who) - let me go back now. Okay, so now you should see it now. The last page, Number 10. The cost to be borne - completely borne by the parties utilizing the services, and then I had in parenthesis, i.e., brand holders, registries. And, I'll just delete out the parentheses. Is that correct?

David Maher: Alan.

Alan Greenberg: Margie, read what you have before my comment.

Margie Milam: Okay.

Alan Greenberg: Costs should be borne...

Margie Milam: I have - okay, so I have costs to be completely borne by the parties utilizing the services. And then, I had written before, and in parenthesis, i.e. brand holders, registries. So, my suggestion is we delete the parentheses.

Alan Greenberg: Okay. Jeff's comment was echoing what was in the IRT report which explicitly seemed to say that the registries not be a contributor for this process. Now ultimately, there's only two sources of money. The brand holders and registrants. Anything charged by registrars or registries ultimately will get passed through to the registrants, presumably.

The real question is, do - he was saying that as the IRT report, we should be explicitly saying registries do not pay for certain services. You're saying something that they may pay and the business model needs to be worked out. I'm fully - I fully support what you're saying, but I suspect he may come back on the next meeting and say there's a problem with that. And I - so, we can have the discussion no in his absence, or wait until he gets back.

David Maher: Okay. Robin.

Robin Gross: Thanks. Yeah. My view is that the brand holders - that the trademark holders are the ones who should bear the costs exclusively for this service. This is a service that is entirely designed and intended to - for the purpose of benefitting their private financial economic interest, which is fine. There's nothing wrong with that, but that also means that they bear the costs of it.

Because, I mean as Alan was just saying. Anytime you try to push it over on to registries or registrars, you're ultimately going to end up passing them on to the registrant. So, I think that it's incumbent upon the trademark holders - the brand owners to be the ones who exclusively bear the costs since they're the ones who benefit from the

service. And it's been created entirely for their economic benefit. That's my view.

David Maher: Zahid.

Zahid Jamil: Right. As a trademark holder whose (represented) and - I think that since first of all, we're not completely convinced that this actually is working in our favor - that's one concern. So, another thing is if this is there, and instead of - as a service, then the question can be asked in different jurisdictions and before a (court), "How come you guys weren't in that Clearinghouse?"

So, what it tends to be, a situation - maybe it's an inarguable point, but "Why weren't you in there? If you were so concerned about the trademark you should be in there." At the same time, we don't see a benefit of being in there, so maybe you're being forced in there. I'm not saying that the trademark holder shouldn't have to pay for the service. They should defiantly. But at the same time, this is going to be used for Sunrise as well, which means it makes up for great cost reduction even for registries.

Now, that means the amount of money that say Jeff spent on administrative costs, so for the Sunrise, or - sorry. For the IP Claim and others, and other registries at Sunrise is going to be drastically reduced because this is available. So, I think from that perspective, the registries and their cost reduction, and the trademark holders, their benefit to be equally shared.

David Maher: Okay. Alan.

Alan Greenberg: I think one of the problems here is we're ignoring the fact that during the Sunrise process, the registrant is the trademark holder, and so we have a crossover between these two sources of money. And, if you as a trademark holder register a name during the Sunrise, you pay a certain amount to the registry for that name. Zahid is correct that the registry has lower costs if there is a Clearinghouse, and therefore, can lower the cost. But at that point, who is paying for that Clearinghouse service?

Either the Clearinghouse goes back to the trademark holder and says, "You just registered the Sunrise. You owe another \$100.00." Or, they do it through the registree, which I think -- in terms of mechanics -- makes a lot more sense. But, the fact that the registry - that the registrant is the trademark holder during the Sunrise process is - I think is something we have to understand.

So yes, the registrant pays, but also the trademark holder pays. They're one in the same, and I think we're ignoring that in this discussion.

David Maher: Robin. Robin, was your hand still up, or...

Robin Gross: Sorry. I had just forgotten to take my hand down. I'll do that now.

David Maher: Okay. Jon.

Jon Nevett: Margie, I would delete the parenthetical.

Margie Milam: Okay.



David Maher: But, can they...

Jon Nevett: Consensus should be altered to factor in the fact that Jeff - at least Jeff has not agreed. And, I believe he's saying that on behalf of the registry constituency.

David Maher: I believe so.

Jon Nevett: Yeah, if you delete the parenthetical, I don't know if we have a - if...

David Maher: I'm sorry? Can you repeat that?

Jon Nevett: If you delete the parenthetical, I don't know how - what his position would be.

Alan Greenberg: No, I don't think anyone's arguing about transparency.

Jon Nevett: Yeah, I think that because you specifically mentioned registries in the parenthetical. If that's deleted, and the principal is that the cost should be borne by the parties utilizing the services, he might be fine with that.

Alan Greenberg: Oh, okay. Sorry. I thought you just meant removing the parentheses, not the whole parenthetical. All right, then all we're doing is pushing on to someone else the decision of who's using the services. I'm happy with it.

David Maher: Yeah.

Alan Greenberg: It doesn't - it isn't what the IRT said, but I'm happy with it.

David Maher: Robin.

Robin Gross: Yeah. I actually - I'm not happy with it, because that doesn't really say anything at all, unfortunately. And, I think we need to be clear that the costs should be borne by the party who benefits from this service, which is the trademark holders - the brand holder.

Alan Greenberg: It does say something in that it doesn't - it says that ICANN is not contributing a significant portion of the funds required.

Jon Nevett: Right. Exactly. And to follow-up my point, that is the question asked by the ICANN Board. Should the cost be borne by the parties utilizing services? Yes or no. And, our response is yes. And whether it's gray - whoever does it, it's going to end up in the registrant in this case, which would be the trademark holder. Whether it's the registries or the registrant, it's going to blow down to the registrant.

So, I think you're - I think we're all covered.

David Maher: Okay. Zahid.

Zahid Jamil: I see that - I also see that that language may be misinterpreted to mean that it's only the trademark holder who should pay for it. Because depending on how you read that - I'm sorry, I mean I think Jon's got a point that it may be misinterpreted as we go along, and maybe the Board could - at times, we haven't had an ability to directly correspond or talk to the Board and explain what we meant. I already sort of did not have that opportunity.

So, they need to be clear on that. At least put in the comment that I made as far as (unintelligible). The answer should also be the registries, or at least one of our group thought it should be the registries.

David Maher: And, I think it should be noted that the registries don't agree.

Zahid Jamil: Oh, I absolutely agree with that. I agree with that also, (this) aside.

David Maher: Okay, anyone else?

Kathy Kleiman: Can I ask a question, David?

David Maher: Go ahead.

Kathy Kleiman: Who's borne cost to date on Sunrises and IP Claims? It's just a question because I don't know.

David Maher: Say that again, please.

Kathy Kleiman: How have the costs been allocated to date? Who's borne the cost for the creation of the databases for the Sunrise and the Sunrise process, as well as for (dot) business IP Claims? I know Jeff isn't here, but maybe someone knows who - how have the costs been allocated? Have trademark owners paid for the whole thing, or has it been shared with - between trademark owners and registries to date?

David Maher: Well, I think the registries have had the burden of creating the Sunrise process, so that initially setting it up. The registries pay something, whether it's time of staff members or consults, or what have you. But

then, it was factored into the cost so that ultimately it was passed along to the registrant.

Alan Greenberg: But, did they charge the trademark holder for registering in the database?

David Maher: Well, I don't know. I don't think so, but I don't know.

Jon Nevett: I mean, though it's included in the charge that that was assessed to the trademark holders for participating in the Sunrise process and getting their registration.

Alan Greenberg: Hey, remember, in that case, the only people hurt - in the case of a Sunrise, the only people that are going to register are those who intend to use it. So, the registrant and the trademark holder are one in the same at that point. So, different for IP Claims.

David Maher: Yeah, well, I...

Alan Greenberg: Well, Kathy's question makes a good point, which is traditionally, the registry has had to create the infrastructure, and that with some expense. Now, they would try to price it and hope that that buy charge people to file net IP claim or charging people for a Sunrise registration that they would cover those costs. But, I suspect that they didn't always cover those costs, particularly, in some of the less successful launches.

And maybe rather than utilize, and idea is that the cost should be borne by those who benefit financially as well as those who utilize it.

David Maher: Well, I think we're at a point where we're speculating about some areas where we need more facts, and I'll try to get more information for our next call on that. Zahid, do you have something?

Zahid Jamil: No, just that I think - that's exactly what I wanted to say. Maybe we can ask staff or somebody else to give us more information. And just a follow-on on that, it gets difficult to say, "Well, you know, it was factored into the costing on the financials." When you're doing that, sometimes when you're - when you have a customer you could say, "Well, I'm passing these charge off onto them."

But at the end, this is a question that has to be answered whether the charge that you are charging to the trademark holders for registering or (commune) to the (fund-like) process. Was it higher than the entire cost that you (suffered) or lower? And I think that I agree that there is a question that's you're going to need more facts about. So, I just wanted to thank Cathy. That's a very good point.

David Maher: Okay. Alan.

Alan Greenberg: Yeah, just for a bit of clarity. Ignoring the IP Claims for the moment and just looking at Sunrise, ultimately the only source of money is the trademark holder. Whether it's in pre-registering with the Clearinghouse, or obtaining their domain names during the Sunrise process. The real question here is not where does the money come from. We know it's the trademark holder.

The question is who does the Clearinghouse -- the separate entity -- bill? How does it reclaim the costs? And the question - and that therefore drives the question of what does it make sense for them to

charge the various parties they are having interactions with? The only ones they have interactions with are the trademark holder and the registry. And, that's really what ends up having to be defined. Not the source of the money, but who does the billing get - the invoice get sent to?

David Maher: Well, okay. I think we may have exhausted the subject of - for this call. Unless someone has some (advantage) of further comment.

Zahid Jamil: Very quickly. Since there have been different entities of interacting with that would have to have a contract, and so they would have to have a charge (proclivity) of contact, so yes. A very important question.

David Maher: Okay. Anyone else? Okay. Our next call will be Thursday, I believe.

((Crosstalk))

David Maher: I'm sorry. Our next call on the Clearinghouse I believe will be on Thursday. (Unintelligible) call tomorrow on the URS. In that case, thank you all for participating in this one.

Alan Greenberg: I'm sorry, David. Do we have a time for Thursday? I mean, if that's been communicated yet.

Mark Partridge: It hasn't been, but it's 18:00 UTC, I believe.

((Crosstalk))

Mark Partridge: Two thousand.

Glen DeSaintgery: Hello, can you hear me?

((Crosstalk))

Glen DeSaintgery: It will be at 20:00 UTC on Thursday. Is that all right? That's what people put on Google as being the optimal time. It doesn't say (unintelligible). No, Zahid. No zone (unintelligible) yet from the Google.

David Maher: Yeah. I - that's my understanding.

Glen DeSaintgery: And the next call that you are -- it's the second URS call -- will be on Friday at 16:00 UTC.

David Maher: And, tomorrow's call on the URS is at...

Glen DeSaintgery: And tomorrow's call on the URS...

David Maher: Nineteen...

Glen DeSaintgery: Yes. Just let me look me look at that for you. It's at 17. 17:00 UTC.

David Maher: All right.

Glen DeSaintgery: And, you will be sent reminders about the Thursday and the Friday call.

Mark Partridge: Great, thank you.

David Maher: Thanks. Okay, thanks again and talk to you all tomorrow.

Mark Partridge: Thanks, David.

((Crosstalk))

END