

ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group

Wednesday, 04 May 2016 at 22:30 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <http://audio.icann.org/gnso/gnso-rpm-review-04may16-en.mp3>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar#may>

Coordinator: The recordings are started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of All Rights Protection Mechanisms, RPM, in all gTLD PDP Working Group call taking place on the 4th of May, 2016.

In the interest of time there will be no roll call as we have quite a few participants. Attendance will be taken by the Adobe Connect room. So if you are only on the audio bridge could you please let yourselves be known now.

Doug Isenberg: Doug Isenberg.

Terri Agnew: Thank you, Doug.

Brian Hayes: Hi. Brian Hayes is here.

Terri Agnew: Thank you, Brian.

Renee Reuter: Renee Reuter.

Terri Agnew: Thank you, Renee. I would also like to remind all of you to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this I'll turn it back over to J. Scott Evans. Please begin.

J. Scott Evans: Thank you so very much. For the record this is J. Scott. I just want to welcome everyone. Good afternoon, good evening, good morning depending on your location.

As you know, those of you who have been following the list and those of you that were on the call last week, this is the second webinar we're having that has both participants and observers are able to attend this webinar because it is basically an informational webinar that's going to be presented by staff to lay sort of a foundation for everyone who may not have the same level of understanding or background with regard to rights – I'm getting an echo again – same understanding or background with regards to the rights protection mechanisms that are in place.

And so we've asked staff, and they have graciously put together what I think is a very thorough overview. This PowerPoint presentation will be posted and circulated to everyone, and we are recording today so for those that aren't here they can pick this up on the wiki.

So with that I think I'm going to turn it over to staff to start to lay out exactly what they are going to present to us today so we can get started because I think we have a lot of material to cover.

Lars Hoffman: This is Lars. Thank you, J. Scott. Sorry, I was just double checking that Terri is pulling up the PPT – the PowerPoint. I think Mary is going to kick this off. Sorry. Mary, please go ahead.

Mary Wong: Thank you, Lars. Thank you, J. Scott. And welcome, everybody. As J. Scott noted, this is going to be a presentation by staff. And this session is being recorded and the slides will be made available to everyone, members and observers, of this mailing list, of course also uploaded to the wiki.

You will note that we have plenty of slides to get through and not that much time. We also want to keep some time for the co-chairs to lead a discussion session so we will not be able to get through all the slides, but please make sure to use the slide deck as reference in the future and hopefully it will be helpful to you as we begin the scope of our work.

So the scope of this presentation, J. Scott has already noted, but we want to start with just a very small step back and ask in terms of Phase 1 of our work, which focuses on the rights protection mechanisms that were created for the 2012 new gTLD program round, why were these created, what were some of the issues and then go into each of those newly created RPMs with a look back to say the Uniform Dispute Resolution Policy as applicable to talk a little bit about what each of them is and how each of them works. So hopefully, like I said, this will be helpful to everyone.

So just swinging right into it, why did the new gTLD program round that was launched in 2012 also include the development of new RPMs over and above the existing UDRP? So if you look at this set of slides, the next one shows you some of the relevant dates and the background and some of you on this group will recall that the GNSO actually did a policy development process

that concluded in 2007 that led to a set of principles and recommendations governing that 2012 round.

And of course as some of you also know, there is now another parallel effort in the GNSO, a separate policy development process from ours, that is looking at those 2007 principles and recommendations in preparation for the next expansion.

So that 2007 set of recommendations was approved by the ICANN Board in 2008. And that then set off a number of community discussions about how all those principles and recommendations would be implemented in what was, and I think still is, acknowledged as the unprecedented expansion of the new gTLD program.

As part of that discussion, there was some overarching issues that were identified as needing to be addressed before we launched the expansion round. And one of these, as you see on this slide, is the need to ensure trademark protection.

As a result, following further discussion you see here that in March of 2009, the ICANN Board requested the formation of a team by the GNSO's Intellectual Property Constituency to try to develop some of the possible proposals that could address this overarching issue.

This team known as the Implementation Recommendations Team, if I got that correct, and several of you on this working group were members of that group and Caroline, if she's on the call she chaired that group. There was a draft report that was published and followed by a final report two months later in the middle of 2009. And that final report was then prepared based on the public comments that were received and the community feedback and questions that were asked about the initial propose from the IRT.

Fast forward then we have – I'm sorry, I don't know why this thing is scrolling so quickly. Give me a second to get this back. You have a number of proposals, if you actually took a look back at the initial report of the IRT, on how to deal with some of these overarching issues that were identified.

But like I noted there was a lot of community discussion and feedback over the proposals including some concerns over either whether they actually fulfilled the purpose of ensuring trademark protection or perhaps might have gone too far in some instances.

So as a result, a new community group was formed by the GNSO at the ICANN Board's request called the Special Trademark Issues Team, or the STI, to take a closer look at some of these proposals and to come up with a community-based consensus proposal for addressing these problems. And in December 2009 you notice that all this happened in the space of less than a year.

The STI submitted its final report to the GNSO Council and in that final report there were a number of unanimous recommendations. We highlight those recommendations in this slide because those really formed the core of what became the new rights protection mechanisms in 2012 and of course therefore forms the basis for what we're going to do in Phase 1 of our PDP.

In the meantime, or shortly following that, the Government Advisory Committee had also been following the discussions and in respect of some of the proposed new RPMs they proposed that those should be mandatory. For example, providing sunrise registrations and having a trademark claims notice process.

As I noted earlier, this was all part of community discussions of implementing the GNSO's principles in preparation for the new round. And on the trademark protection front, there was some additional work that we note in this slide that led to the development of detailed requirements for the

trademark clearinghouse as well as operational and technical requirements for registries and registrars to provide the now mandatory sunrise and trademark claims system.

The next slide shows you the dates and important timelines and milestones that happened thereafter. The important points here are of course that we saw the first new gTLD launched in late October, that's in the middle of this slide.

About six months prior to that, we saw the opening of the trademark clearinghouse and you see that in the six month period over 13,000 marks were submitted to the trademark clearinghouse and verified. And we'll go a little bit into what that means in a little bit.

You also notice that shortly around that time, the new Uniform Rapid Suspension Procedure was also published along with its accompanying rules. So on the GNSO front then, there was all this work that went on and there were some discussion over how and when we could take a look at these new mechanisms and what would be the most appropriate time to do that.

And so looking just in summary at all the discussions that went on, it was ultimately decided that somewhere around 18 months after the launch of the first new gTLD, which would be something like a year or so after the new Uniform Rapid Suspension Procedure had started, would be an appropriate time therefore the issue report that we talked about last week was published and of course that culminated in the GNSO Council chartering our group just a couple of months ago.

So not to waste any time, let's jump right into the different new RPMs. And we'd like to start with the trademark clearinghouse. The first thing that I'd like to say about the trademark clearinghouse is that some folks would probably technically say that it's not strictly a rights protection mechanism in the same way as, say, a sunrise registration or a dispute resolution under the URS.

And this is because of what the trademark clearinghouse is. It is basically a central repository or database of trademarks from all over the world that have been verified by the trademark clearinghouse operator, as being trademarks. And we'll talk a little bit about that in the next couple of slides.

So that's what it is, it's a database, it's a global repository. It has an operator that when you submit a trademark into the clearinghouse will verify that that is indeed a trademark, for example, a nationally registered trademark. Then you can use that verified trademark to support the associated rights protection mechanism such as sunrise registrations and the trademark claims service.

It's important to note also that the trademark clearinghouse does not adjudicate or determine trademark rights, it certainly doesn't grant them, and it certainly doesn't create new ones. It simply verifies that what has been submitted as a trademark is indeed a trademark. And then, like I said, it can be used as the basis for those further services.

We have on this slide in the graphic the latest information from the trademark clearinghouse operator where you see that over 40,000 marks have been submitted to the clearinghouse. And you may recall that in the last slide I noted that when the trademark clearinghouse was first opened in March of 2013, which would be something like three years ago, over a period of six months about 13,000 marks were submitted and verified. So that gives you a sense of the usage of the clearinghouse between the time it opened, in its first six months, and of course between that time and now.

There are more key statistics that are in some of the background documents to our work so I won't go into that. But it might be interesting also for those of you who are not too familiar with the operations of the clearinghouse itself to take a quick look at this diagram.

And you see that the rights holders, or the trademark owners, would be the ones that would be submitting their trademarks either by themselves or through a trademark agent, those would then be verified by Deloitte, which is the contractor that is doing this service. If verified they go into the TMCH database and then can be used to support the sunrise and claims services which are operated by IBM at this point.

And it is this middle section that comprises the TMCH, or trademark clearinghouse and of course ICANN's contracted parties that provide those associated services such as the registries and the registrars interface with the TMCH in order to do so. And that's why the technical and operational requirements were developed to enable that to be done more seamlessly.

We have a couple of slides about how the TMCH works. And I've already covered some of this. The basic question of course is who can apply? And like I noted, you have to be a trademark owner, either an individual, an entity, and that include assignees and licensees, or a trademark holder can choose to use a trademark agent, in which case then information and notices pertaining to say, sunrise and claims, would be sent to the agent rather than the owner of the trademark himself or herself.

Another very fundamental question is what type of marks can be accepted or will be accepted by the clearinghouse and verified. And here we have a list which is based on the initial IRT proposals as defined by the STI and that ultimately was the basis for this list in the TMCH.

And so essentially you must have a trademark that is either nationally or regionally registered because one of the early determinations was that not only should there be no adjudication of the merits of anyone's trademark but that there should be no discrimination across different types of trademark registration regimes. So as long as you're the primary register of a national or regionally registered trademark office you can submit to the clearinghouse.

Similarly, if you don't have a registered trademark but your particular mark is protected by a statute or a treaty that is in effect at the time you submit your mark, this can include, for example, geographical indications which may or may not be registered trademarks in some jurisdictions and designations of origin. Those are accepted as well.

A third possibility is aside from national or regional registrations, aside from statute or treaty protections, if your mark has been validated by a court of law or in another equivalent national judicial proceeding, those two can also be submitted to the clearinghouse, and this of course means that unregistered trademarks which may be known as common law marks, as well as other types of trademarks that may or may not be registered elsewhere, such as well-known marks, could be submitted as well.

And then other individual requirements may be set up by registries but the three categories that I've just mentioned are the sort of basic delineations of what can be sent to the clearinghouse.

This next slide then goes a little further and talks about what marks are not accepted by the clearinghouse. And for more detail on this you should look at the Website of the trademark clearinghouse provider, and we do provide that link at the end of this presentation. And you see that there are some very specific limitations to the type of marks that the trademark clearinghouse will accept.

The final background slide I want to present on the trademark clearinghouse is to just give you a few hopefully useful notes. Another basic question of course is how much does it cost? And the basic fee is \$150 US for one trademark record per year. There are other fee structures that can cover more trademark records, multiple year registrations and the like. But that's kind of the baseline.

Another important point that we thought important for you to note at this juncture is that since the trademark clearinghouse supports sunrise registrations it's important to note that in order for a trademark owner to have his or her mark eligible for sunrise through the clearinghouse he or she must also submit a proof of use of that mark. And this can be in the form of a signed declaration as well as a sample such as an advertisement. This is a very specific requirement but like we noted, it's pretty important.

Then if you're looking at trademark claims, as we will in a few minutes, it's important then to note that the standard or the match or the test that is used is that of an identical match of a textual element of the mark. So essentially what you're looking is a word mark, you're looking at the textual elements of that work mark and you're comparing it with the second level label of the domain name in question.

And an identical match is described in this slide and you see that there are certain provisions for special characters, hyphens, spaces and the like. And you note also that plurals are not considered an identical match.

Here we have a slide then of some of the issues that have been raised by the community in respect of the trademark clearinghouse and its current scope of operations.

We noted in the webinar last week that this list of issues is part of the charter for our working group and so our group will have to go through all of the issues pertaining to each RPM on that list at the appropriate time to either prioritize them or add to them or possibly drop some of them or combine them through consensus.

So we thought we would put this in here to remind you that for every RPM there is a list of issues and here are some of the ones for the TMCH which of course not exhaustive or complete necessarily.

If we move on from the TMCH to sunrise registrations, I'd like to start off this part of the presentation by noting that all of these RPMs that we're describing are the minimum that's mandatory.

So what you may already know is that there are some registries that are offering additional protections of their own volition in terms of what ICANN is prescribing as mandatory those would be the RPMs that we're talking about today for the new gTLD program. And that of course includes a mandatory minimum period of sunrise which is required for every new gTLD launch in this round.

So several key points here, including the fact that under the agreed requirements registries may establish other restrictions beyond the ones that were established by ICANN through the community.

What is most important here I think is to note that it's not just a question of offering sunrise registrations, it is important that they have each registry has a sunrise dispute resolution policy as well. And I'm sure that as we go into this particular RPM and the list of issues for this RPM we will look at the sunrise dispute resolution policy and various other issues too.

The other important point I'd like to highlight about sunrise is that there is more than one type and essentially they mostly boil down to two types known either as the start date or the end date sunrise registration. And on this slide you see the difference between the two. In terms of time they add up to pretty much the same time period but then how they work are very different.

For example, in a start date sunrise there must be a minimum notice period of 30 calendar days before that actually starts and the actual sunrise period lasts for 30 days prior to the time when the domain is open for general registration by others.

In an end date, there's no advance notice requirements but the service must be provided for a minimum of 60 days, again prior to general registration. And it's noteworthy that it cannot be done on a first come first served or other kind of time-based allocation basis.

It's interesting also that it would appear that the majority of the new gTLDs that have launched under the last expansion round or rather the current expansion round has chosen to offer an end date rather than a start date sunrise. And for your review, at the end of this presentation, here is a graphic that tries to show the difference in terms of operation of the two different sunrise types of registrations.

We thought that we might want to highlight that there are other early phase mechanisms that have been launched or adopted by different registries but it's important to note that these are optional in contrast to the minimum sunrise I just described. And these include the provision of limited registration periods for a certain type of group of registrants which are based on requirements other than having a trademark.

There was also an approved launch program service that was launched in November 2013. And, again, there the idea is to offer additional flexibility for the registries in terms of protections and marketing.

Shortly after that, the qualified launch program was launched in April of 2014. And this does allow up to 100 domain names to be given by registries to third parties prior to sunrise under certain specific conditions. So without going into further detail, again, the important point to note here is that these are optional and we have seen some registries offer some or all of these particular optional additional mechanisms. Here again is a list of the issues that were identified by the community that is in our charter that we will be looking at when we deal with the sunrise review.

And so moving on to the second associated RPM offer through the clearinghouse and this is the trademark claims service. The – probably most fundamental point to note about the trademark claims service is that we're really talking about two types of notices, the first which is, for many reasons, probably more common is the notice to a potential registrant of a domain name.

And this happens through the registrar of the potential registrant if the potential registrant wants to register a domain name that matches a record in the clearinghouse. And I hope you recall that we spoke a little while earlier about what matching means. And in this case it is the identical match standard that I mentioned a while ago.

The trademark claims period where this notice would be given to a potential registrant follows the sunrise for at least the first 90 days of general availability. And it is important notice because it does notify someone before they attempt to register a matching domain name that there is indeed a match with a trademark clearinghouse record. That notice is provided in a language that is in the registration agreement so that the registrant would ideally understand exactly what is being notified there.

And if the registrant looks at that notice, he or she will also see that it says very expressly that if he or she were to proceed to registration, the registration may or may not be protected by the laws of their country that protect registrants and legitimate uses such as fair use. So all that is contained in the notice.

If the potential registrant then acknowledges the he or she has read that notice and nevertheless wishes to proceed with registering the domain name then a second notice is generated this time to the record holder of the trademark clearinghouse record. And that's the notice of the registered name following the actual registration by the registrant.

And the purpose of this notice is to allow the relevant rights holder to determine if indeed he or she believes there has been (unintelligible) and to take steps accordingly. And those steps could include filling a Uniform Rapid Suspension or a UDRP complaint amongst other options.

So as with the clearinghouse, we include a number of key statistics. And in this particular case an additional feature applying only to the claims service that was added in October of 2013 and this addition allows a trademark owner, who is in the clearinghouse, to add up to 50 domain labels that have been found to be previously abused by either a verified UDRP proceeding or a national court proceeding.

And for the rest of this slide we provide the cost. But it's important to note that the additional labels have to have been deemed abused previously through one of these proceedings and that it applies only to the triggering of the claims service and does not apply to sunrise.

I notice that there has been some discussions on the chat. And I apologize for not being able to keep up with that. But at the conclusion of this presentation if there are questions that haven't been answered certainly go back to them and attempt to answer them.

This actually brings me to the end of the presentation for this part of the RPMs. So as of now we have covered the basic clearinghouse database mechanism, the two associated services for this offered through the clearinghouse which is sunrise and the trademark claims service, both of which are minimum mandatory offerings.

And on that note, looking at the questions again, in relation now to the trademark claims service that are in our charter, I will hand you off to my colleague, Lars, who will take you through the rest of the RPMs. Thank you very much and over to you, Lars.

Lars Hoffman: Thank you, Mary and welcome to this webinar on May the 4th, be with you. I thought I'd get in there. Terri overlooked it at the beginning.

Mary said I'm moving onto the RPMs, we're actually moving on first to the – taking through the slides there – to the UDRP, which as you know, is the policy that we're reviewing in the second phase of this working group but would encourage you – as we thought it would be good to give you just a very brief overview to, A, know what's in store once the first phase is over, and, B, also to have a basic understanding of the policy which we think will be very useful in reviewing especially the URS, which in fact is built upon the UDRP.

So the uniform domain name dispute resolution policy, slides of the tongue, was established in the late 90s, or developed rather by the then DNSO, now the GNSO, and it was adopted in August '99 by the ICANN Board. In December the first – '99 – the first complaints could be submitted. And the first proceeding started on the 9th of December, my birthday, 1999, and obviously, I wasn't born then.

The policy here, you can look through the (ethnical) disputes. Your domain name is identical or (unintelligible), so trademark or (tells) mark in which the complainant is right. And you have no rights or legitimate interest in respect of the domain name in your domain name has been registered as being used in that way.

The respondent then, when faced with this sort of complaint, will have to demonstrate that before any notice to you of the dispute, the use or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with the (unintelligible) offering of goods or services.

Or you have been commonly known by the domain name in that you have required no trademark or (serving mark) rights - service mark rights, I'm sorry or you're making a legitimate non-commercial or fair use of the domain name

without intent for commercial gain (unintelligible) the consumer to (tarnish) the trademark or service market issue.

I know there's nothing more compelling than listening to some legal words in a late afternoon Webinar, or whatever time (unintelligible), but we think it's important to kind of get a brief overview of the actual wording of these policy and we strongly recommend also that you go back and look through the actual wording especially when it comes to reviewing these.

Here then you see the questions that were submitted to the (UDRP). In the interest of time, I'm not going to read through these. It's just (unintelligible) the charter. They are non-exhaustive and non-authoritative.

The group may consider all and more are considered on at all or, that, I presume, is not going to be an option but it's up to the group to decide this, how and when to tackle these. And again, I urge you to go back to these in your own time.

Having said that, we're moving on to the URS, the Uniform Record Suspension procedure - it's (slightly better to) pronounce. And the URS complements the UDRP by offering a low-cost and (transfer pass) to the relief for (rights orders), so (unintelligible) infringement.

It's (unintelligible) expensive to see below (unintelligible) US dollars. It's usually in the \$300 area. It's for the determination of the complainant, the domain name is suspended and (look at the results to your) information (site).

It is largely registry operator procedure. These are key stats - by August 2015, with the latest we could (unintelligible) 250 complaints filed. The percentage of suspended domains is 87% in the default determination, meaning that no response was received from the registrant after the complaint was filed, is a staggering 91%, if I might say so.

The uniform (the URS) here, (unintelligible) taken from the policy. The first section shows what the complainant has to show in the complaint to the provider, the relevant or the domain names are identical or confusing or similar to (unintelligible) for which the complaint holds a valid national or regional registration that is in current use or that has been validated through court proceedings or that is specifically protected by a statute or treaty in effect the time the URS complaint was filed.

I think - I'm not going to read through the rest - additional issues that need to (be proved) and they need to be shown. If you then look at - I'm (unintelligible) the respondents and what they have to do in order to refute the claims (of bad faith).

They also (let) on the policy. You see below here this is taken from Paragraph 5.7 - before any notice to registrants (unintelligible) registrants (unintelligible) to use the domain name or a name corresponding to the main name and correspondence with (unintelligible) offering of goods and services.

And I'm not going to read through the rest because it's, in fact, very similar to the burden of proof that is also in the URS - UDRP, I'm sorry, you see how these policies are built upon one another.

There is, however, another set of possibilities for a defendant to demonstrate that the registrant's use of domain names is not in bad faith. These are separate from the UDRP. The domain name is generic or descriptive and (unintelligible) user base.

The domain name is operated solely in (contribute) to or (unintelligible) of the person or business that is found by the examiner to be (fair use). Registrants holding up a domain name consistent with an expressed term a written agreement and consider the disputing parties that are still in effect.

And, finally, the domain name is not part of the wider pattern or (serious abuse) of registration because the domain name is of a significantly different type of character to other domain names registered by the registrant.

You see here this is the Paragraph 5.8 from the URS and I said before, and I'll say it again, I urge you to look up the policy in full on the Web site. Oh, I'm sorry, I moved to one too far.

Just a few pieces of information here, the first URS case result was (unintelligible dot PW). I leave you all to judge how that might have turned out in the end. You can also look it up.

There are currently three service providers so they are accredited for ICANN - the National Registration Forum, the In Domain Name Dispute Resolution Center and NSSG in Italy. I really tried to look up what it stands for. I could not find it. That might be due to my lack of Italian but (unintelligible) look into that side.

In the complaint can be locked directly into the Web site of the providers which is true for most of these policies they were going to be looking at. Again, there's a list of questions that are going to the URS that I'm going to casually scroll through.

On this page here, and I didn't know where to put this, but these are some additional questions that are also raised in the chart but they're not necessarily directed at one specific policy but maybe a little more overarching or address other areas where (unintelligible).

But they're also something that the group could consider and is probably something they should consider for each of the different policies to see if any of the questions could possibly fit into the discussion of the group when I come to this.

And then finally, I know this is the last policy we're going to be talking about before Q&A, the post-delegation dispute resolution procedures, PDDRP, and these are the rights parties potentially have by the new gTLD's registry's conduct (unintelligible) complaint about that conduct.

And then it's (unintelligible). There're three of (these pages) - trademark, registration restriction and public interest commitment dispute resolution procedures.

Two dates, however, no complaint or filings in any of these procedures are taking place. And, as I said, (unintelligible) to review these later in the hope that a new complaint or two has been (passed) by then, although, (I said), obviously it's up to the group and the co-chairs how to move forward here.

The TMPDDRP, the Trademark Post-Delegation Dispute Resolution Policy, as the procedures will address, trademark rights (infringement) by registry operators. It addresses situations especially where it is the (unintelligible) registry operated infringing or at least participating in another infringement of trademarks in STLD.

This is performed by ICANN approved providers in the complainants are also permitted through (the Web site) of those providers. Sorry, one too many. There're the three providers. The first two - (unintelligible) forum, the domain name dispute resolution, it turns out the same as for the (unintelligible).

And then it's the WIPO - the World Intellectual Property Organization, is also a provider here for resolving disputes in this area. And I'm not going to go into detail for the other two because it's not really related to rights protection, so in the interest of time, we'll just get the information that is there.

You can go to the Web site also to look these up. And speaking of Web sites, here are a couple of links. I know you can't click on these in the AC room but

we'll make sure to send the deck around to the group so you can access but the hyperlinks relatively easily that way.

And that's another page with more links. And here is, finally, what we thought as a (portal) - I'm sorry - overview, you know, of the various TLDs and - sorry, DRP, Dispute Resolution Procedures, as well as the clearinghouse and the (fund rights) and the (unintelligible) and kind of see how this kind of flows from one another.

That I think with that, I will leave it there. The next slide, in fact, is the end and questions. So if you have any, we be happy to take some from the (staff side), but I think the chairs will be taking over this session and will be able to answer any questions you may have. And (Mary) and I and (David), of course, (are here to step in), if and when need be. Thank you very much. (I guess over) to you, (Jay Scott). Thank you.

(Jay Scott Evans): Thank you very much, (Lars), and thank you, (Mary), as well. That was a lot of information and I appreciate the very fact that you condensed it so that we would have a few minutes for discussion.

For everyone who was not on the call last week or have not participated in the Adobe Connect room, if you look above the list of attendees, there should be three buttons.

What is a speaker looking, then there's a telephone looking and then there's a little man raising his hand. And if you have any questions and you're in the Adobe Connect room, if you will just click that to say raise your hand, then it will fill you to the top of the participant's list and you can be recognized to ask your specific question.

If you are unable to do that, you can type it into the chat. And if you are simply on the telephone and are not in the Adobe Connect room, you just simply need to unmute and let me know that you'd like to ask a question.

So at this point, I see that we have one question in the chat from Jeff Neuman at (Validais). It says, question, would this PDP or subsequent round PDP, address the actual operations of the TMCH and how it interoperates with the registries and registrars?

So, Jeff, is that a question that you're having a discussion in the chat? Or is that a question you have generally? Question for all of us to consider. Okay. And which PDP - I guess you're asking whether we should develop a PDP that would handle issues with regards to the Trademark Clearinghouse.

I just want to make sure I understand your question. Okay, he's going to call in. So we'll have him call - is there anyone else that has a particular question? I see there's a question from (Maxim). I'm not sure if that's directed to me to say to the group or if he's having a discussion in the chat room.

Okay. Okay, so (Maxim) is asking, were there any kinds of audits of the damage done to trademark owners by a period of non-operation of the TMCH? I will - this is (Jay Scott Evans) and I'll give you my answer with regards to that question.

There - when you talk about the TMCH itself, so we're talking about the TMCH and not the sunrise of the claims service which are the rights protection mechanisms, I think that there were instances where, because each registry was offering some sort of rights protection mechanisms in both of the previous rounds, 2000 and 2004, but each of those had very different qualifications that they required a rights holder in order to qualify for whatever protection they were offering.

Some required simple photocopies of a trademark registration, some required certified copies, some wanted all your documents stapled, some didn't want staples, some wanted them submitted some way, some wanted them submitted another way.

And a lot of mistakes were made by, not only trademark owners, but also their registrars who were assisting them dealing with the new registries and getting whatever verified by them.

And so the idea was that it would be a much smoother and easier process when you were going from rounds that had, you know, under ten new gTLDs coming into the market into a mechanism where they were going to be - at the time these were designed 500 was a number.

It turns out to be much higher than that - that this would simplify the process and it would be less transaction costs involved in doing this rather than having a myriad of those.

So - oh, there were instances of periods with the teams they should not work due to technical reasons, so you're wondering do I - I do not know if there has been any study done with regards to that. I can ask staff or if (Phil) or (Kathy) are aware of any thing, I certainly am not.

I see that Greg Shatan in the chat room acknowledges that according to ICANN, some of the downtime didn't really affect the client notice services. And (Mary) is stating that she is not aware of any but we'll double check with the operations colleagues to see if there is any such information available. With that, I'm going to quickly turn to Jeff Neuman who has joined us by phone I think it has his hand raised. Jeff.

Jeff Neuman: Thanks. Yes, thanks, (Jay Scott). Can you guys hear me?

(Jay Scott Evans): I hear you pretty well.

Jeff Neuman: Great. Cool. So I should also state, for the record, that I'm one of the co-chairs of the subsequent round PDP so this is a question that may be addressed to the ICANN staff and one that the leadership of this PDP and the

leadership team of the subsequent round PDP should get together and discuss.

But for those of you that may remember, prior to the launch of the clearinghouse, there was a discussion - ICANN had initially proposed a decentralized model for the trademark clearinghouse meaning that the trademark clearinghouse would just be a body or multiple bodies that would validate trademarks.

And I'm probably not using the right term, but then the registries would be free to implement sunrises as they saw fit. We, through a team that I led to, condensed ICANN staff that that was not the best way to go about it, that there should be a centralized model.

And consequently, IBM took on that responsibility so that we didn't have any consistent implementation of the trademark clearinghouse. Anyway, there were a whole set of protocols and mechanisms to deal with how registries and registrars interoperate with the clearinghouse.

And that needs to be reviewed to make sure that we're doing this in the most efficient way and to make sure that, you know, we got everything right, to make sure that when the trademark clearinghouse goes down, there were models built in from a technical perspective to make sure that registries couldn't register names when the clearinghouse was down if it was during the claims period, for example.

So the question is, the long way of saying that that needs to be reviewed and recommendations need to be made based on that review but it's just not currently in any of the questions that I've seen for this PDP.

And it's not currently specifically for the subsequent rounds PDP, although there is, I guess, in this charter that says anything not addressed in this PDP could be addressed by the subsequent round. So that's a long way of saying

that I think this is a subject that should be reviewed and recommendations made. Thanks.

(Jay Scott Evans): Thanks very much. I appreciate that, Jeff. I think Mary Wong may have information that relates back to Jeff, so Mr. (Schreiber), (Graham Schreiber), whose hand was up next, I'm going to go to marry and then I'll come to you. Mary.

Mary Wong: Thank you, (Jay Scott). Thank you, and this is Mary Wong from staff, and thanks, Jeff, for the question. Not so much a response but I think this relates to a couple of things that, at the relevant point, this group would have to look at those lists of questions and to the extent that there are any that are missing that are considered relevant and important to address in this PDP, then those would make it to the list.

And like I mentioned earlier, there may be a question of reordering or prioritization that needs to go in. So I think at the appropriate time, the chairs and the staff will work with this group to figure out what is the best way, indeed, to get through that list of questions to either add to them or to amend them.

What we did provide in the charter in the final issue report simply all the questions that had been brought up to date, and as we noted, that was a non-exhaustive list.

The other related point is that it does potentially, not just for this question, but for some of the other questions that have been identified, get into a question of how much of this is to be dealt with as a policy recommendation and how much of this is an implementation detail.

And this is not an unfamiliar problem. We've had that challenge in other PDPs before, so again, at that point, it would be for the co-chairs working with

the group to really determine how best to proceed with either the already identified questions or the newly identified questions. Thanks, (Jay Scott).

(Jay Scott Evans): You're welcome, Mary. Thank you. Mr. (Schreiber). I do not see that - are you there? I see his speaker is on. I don't have my - there you are. Is that you, Mr. (Schreiber).

(Graham Schreiber): Yes, thank you very much. I got the right button figured out here. Just to - how, ICANN is letting the ADR forum allow (Centralnick), a dot com domain name registrant, to intervene and mediate between their dot com customers and people who own flat out (in rem in persona) names or brand names or marks inside dot com?

(Jay Scott Evans): Okay, I think I have a note here from Phil Corwin that would like to weigh in here. Phil. And Mr. (Schreiber), can I ask you, there's little bit of an echo. It may be picked up from your speaker, so if you could just go on mute again and we'll - if you would like to come back, we can recognize you again.

(Graham Schreiber): Okey-doke.

Phil Corwin: Yes, (Jay Scott), Phil here. Can you hear me?

(Jay Scott Evans): I can.

Phil Corwin: Yes, let me respond of it to Mr. (Schreiber) which is - and I'm familiar with some of his posts and it's clear he has a view that the activities of (Centralnick), which, as I understand it, and he can correct me if I'm wrong, primarily exists in regard to their sale of third level domains - UK.co- I mean, Domainname.com.UK names.

He can correct me if I'm wrong and if - but let me say a couple of things. Number one, this is - the rights protection mechanisms that are the province of this working group as set forth by its charter are the rights of trademark

owners which doesn't mean that domain registrants don't have rights but we're considering the balance between the rights of trademark owners and the general rights of domain registrants, just a general purview.

His concern appears to me to be between the rights of registrants of dot com domain names, the generic PLD.com, and third level dot com registrants in dot UK which is the ccTLD and I believe that other ccTLDs also offer dot com domains at the third level.

When I review our charter, I do not see that question of the rights if they are indeed in opposition between dot com registrants, second level and third level CC.com registrants as within the scope of our charter.

Beyond that, I would note that ICANN has no authority over ccTLDs. They are operated by national governments. Their participation in ICANN is strictly in ICANN and in the ccNSO, which is the country code, name supporting organization, it's strictly voluntary.

It is not compelled by ICANN. And whatever rights protection adjudication mechanism chosen by dot UK or other ccTLDs is entirely their own business under contract between them and a third-party arbitration provider.

So I don't want to, and any way - and I want to be respectful of his concerns, but unless I'm mistaken, I believe they're outside the charter of this working group and that they're also beyond the authority of ICANN to affect.

So that would be - I'm happy to have him respond and to have others weigh in on this, but I just don't see how that question is covered by the charter of this working group. If someone can make a compelling case that it is, I think we can look at that.

But on first impression, this is about trademark owner rights in the context of the domain name system and balancing them against the rights of domain

registrants who are not intentional infringers and when they register domains. So I'll stop there and I hope that was helpful to some extent and I'm getting a bit of an echo.

(Jay Scott Evans): Yes, I think Mr. (Schreiber) has come off mute again, so I think he wants to respond.

Phil Corwin: Okay, well he can respond. Sure.

(Graham Schreiber): Yes, thank you very much. Sorry about the echo. I don't know - maybe it's just my computer. UK.com is a dot com based domain name. It was purchased from Network Solutions, now (Centralnicks)...

Phil Corwin: You know, (Graham), we - on this call with four minutes left, can you put that in writing? I don't want to take up the entire time - remaining time on this call talking about one particular legal dispute.

(Graham Schreiber): Okay, I'll make it short and sweet. Why can a dot com domain name registrant negotiate outside...

(Jay Scott Evans): Can we have an operator mute that line?

(Graham Schreiber): Hello.

(Jay Scott Evans): There you go.

(Graham Schreiber): Yes, sorry. Yes, why can a dot com domain name registrant structure their own special rules?

(Jay Scott Evans): Well, I think, Mr. (Schreiber), I think Phil's raised a good point and that that point is you - that we have very limited time here and I think if you want that address, I think you should put that to the list in a written question because we just don't have time to - we've got three minutes left.

And we don't have - I will say this, that it's my understanding - I'll look to staff or Phil or (Kathy) or someone to correct me, but I think we are only concerned with protections on the second level because that is all that the ICANN contract with the registries and registrars govern.

(Graham Schreiber): Okay.

(Jay Scott Evans): So it would be outside of our purview to consider anything above that. Now, it may be that you're asking very valid questions but that is not within our purview. But I may not understand your question so I think it's much better if you put it in writing to the list and then we can look at it and make a formal response to the list.

(Phil Schreiber): Yes, okay.

(Jay Scott Evans): Okay? We have very few minutes left so I just want to sort of step through some of the things that are left on our agenda unless someone else is another point they want to raise really quickly or another question.

And if someone from staff would show me by either a raised hand or a checkmark, does the text - does the chat box, the public chat box get printed and sent around with the recording and with the PowerPoint so that people - okay, it looks like that does happen.

So those of you that weren't able to follow everything that was going on in the chat, that will be circulated as well and you can look at that. I believe, and I'll look to staff to raise a hand or step in if there's a problem, but I believe our next meeting is next Thursday.

So that is going to be the 12th and I believe that's at 1600 UTC so - and you'll be getting an invitation for that sent to you by ICANN so that - but just in case you haven't gotten that, and then I think next week we can talk about the

rotation because, you know, we've decided to do three at the 1600 hour and then one, I think, at the 2100 hour.

So every fourth meeting would be at a different time. And we'll make sure that we will go through that little bit more thoroughly when we have more time next week. So that's what (we're going to happen).

The next steps are your co-chairs, all three, are going to be meeting with ICANN staff this week to go over a draft work plan that will be presented to the group next week for consideration and discussion.

You know, this is a team effort. We're all working together as a team. And so you will have a chance to input, but we thought it was much better to provide a draft that had been thought through and presented to you and then have that as a discussion, rather than trying to wait board with a call with some 50 to 100 participants on the call.

So that's how we'd like to proceed and that's where we see ourselves going for next week and that's, again, Thursday, May 12th at 1600 UTC. And so with that, I'm going to thank everybody for their time. We're about - we've stolen a minute of your day beyond our time so I want to thank everyone for being here.

If you have any additional questions that you either felt like you did not have time to ask or didn't want to ask because English is a second language to you and you would feel more comfortable, please submit it to the group in writing and we're happy - the co-chairs will happily either find an answer or put it on our call for - discussion next week so we can get you an answer.

And with that, I think everyone for their attendance and we'll talk to you next week. Thank you everyone.

Woman: Thank you. Once again, the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END