

**GNSO – ICANN Sydney Meeting
GNSO Open Working session
IRT Report (IRT Members)
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Note: The following is the output of transcribing at the IRT Report Meeting held in Sydney on Saturday 20 June 2009 at 11:00 Local time. 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.

>>AVRI DORIA: It is an Australian rule, if we don't start our breaks on time, they will take our coffee away. It is also an Australian rule, if we don't start lunch on time, they take our lunch away. So we have to get started on time because otherwise we get no coffee, we get no lunch. That is in the record now, correct? I will turn meeting over to whoever is doing the presentation.

>>MARGIE MILAM: Should we have Zahid do it? Do you have the presentation up?

>>AVRI DORIA: Zahid, you are going to start with the presentation? Okay. When we come to points of questions and answers, do you want to handle the queue of people asking questions or would you like me to do that for you? How would you like to proceed with this?

>>ZAHID JAMIL: I think we would be happy to let you do the queuing. What we are intending to do is have the presentations a lot of substantive stuff and take questions at the end.

>>AVRI DORIA: Including clarifying questions. Okay. Thank you. In which case, are we ready?

>>ZAHID JAMIL: I got it.

>>AVRI DORIA: Who is putting the slides up? It is still connected to you?

>>MARGIE MILAM: Is it the one you sent out this morning?

>>AVRI DORIA: Okay. As soon as the slide shows, Zahid, the floor is yours.

>>ZAHID JAMIL: Great. Thank you, ladies and gentlemen. This a presentation on behalf of the IRT, which is the Implementation Recommendation Team, set up by the board -- the ICANN board. We will look at the recommendations on right protection mechanisms today in the new gTLD. This is a summary. My name is Zahid Jamil.

Can we, Margie, go to slide 6 first because I would like to introduce

the team. These are the members of the IRT. If I could request them to stand up and we'll just go through the list. Can all the members of the IRT in the room stand up? I promise I took their approval before I did this. And there is one here. Thank you very much. Thank you. Thanks a lot. If all of you could identify yourselves.

Thanks. The IRT team is someone from Denmark, a lot of people from the U.S -- that's Number 4. There's me from Pakistan; someone from Argentina, Hector Manoff, Number 6. You will see someone from Israel at Number 10; France, David Taylor right here, and from Mexico, Kiyoshi, et cetera, so there is a pretty fairly diverse team of individuals there. There were representatives also from the registry, Jeff Neuman; registrar, Jon Nevett, and the ex officio members for them from the IPC.

Could we go to Slide 2 now.

The agenda for the presentation today will follow three basic points. We will look at the IRT mission and the modus operandi. Two, we are going to look into the specific recommendations, the substantive recommendations of the IRT. I will just read out a few of the major recommendations. The first set is the IP clearinghouse, we will explain that, the globally protected marks list which was previously sort of known as a reserve list, the IP claims. You will have the URS, the Uniform Rapid Suspension system, the post-delegation dispute resolution mechanism, recommendation with regard to thick WHOIS being implemented in the new gTLDs, the expansion of tests for string comparison during initial evaluation also. And then we are going to discuss why is the IRT itself moving further and what are the next steps beyond the IRT report and recommendations. Thank you.

The IRT was basically set up by the ICANN board. At the last meeting in Mexico, a board resolution was passed by the ICANN board which sent out says, We are comprised of an internationally diverse group of persons with knowledge, expertise and experience in the field of trademark, consumer protection or competition law and interplay of trademarks and the domain name system to develop and propose solutions to the overarching issue of trademark protection in connection with the introduction of new gTLDs. That's basically what IRT looked at. Next slide, please.

Going to talk a little bit about the experiences and the reasons and what it was -- the problems that were faced by the IP owners and why this was the necessary.

Domain abuse is part of the IRT report. Domain abuse is a business with lower overheads, no barriers to entry and few risks. This is something that's identified by the IRT report itself.

In the WIPO reports, it's been stated that 8% increase in the UDRP cases in 2008 was noted. 27,000 domain names disputed since 1999 have

taken place.

All the five brand owners on the IRT, the member of the IRT, face at least one new domain name infringement each and every day.

Next slide, please.

They have experienced registrar failures. We've seen that happen. We have seen termination and compliance problems -- especially compliance problems of contracts between registries and ICANN. We've seen some ccTLDs registries being systemically abused, not just the gTLDs. Serial infringers, we have seen them falsify WHOIS data and details. They hide behind proxy registrations, is one of the things that brand owners are very concerned about that we really cannot get to the person who actually is trying to register domain names. And paper click is being used as an abusive form by using proxies.

Consumers get confused and then sometimes get cheated so there is a lot of phishing, et cetera, and cybercrime that's linked to this. Cybersquatters play the system. I'm going to move now and hand over to J. Scott for the next slides.

>>J. SCOTT EVANS: So as Zahid said, the IRT was constituted in the meeting in Mexico City and the IPC was charged with putting together the members of the IRT, which there was a process between March 12th and the 23rd. You see there a timeline. It was very compressed. The timeline was given to us by the board of directors.

Our first face-to-face meetings were in Washington, D.C., April 1st and 2nd. We had an initial draft report which was published for public comment on April 24th. May 11th was a consultation with entities that had put forth comments to the draft applicant guidebook and so they were asked to come. There was a broad range of people that were invited. There were -- the Internet Commerce Association was invited. Trademark owners such as Verizon. Dispute resolution providers such as Nominet was there. The WIPO came. So there was a sundry group with diverse interests that were asked to come and present. One reason that these people were identified is because they had all put together concrete proposals put forth when they had made comments to the DAG.

The final report, as you all know, came out May 29th. I believe the current deadline for comments on that is July 6th. It has been extended so that folks would have time after this meeting to consider their comments -- their public comments.

We are having some other consultations that will occur. One is July 13th in New York City. The second is July 15th in London. And then there are going to be some informational consultations in Hong Kong and Abu-Dhabi. Those consultations, just so you know, are not completely IRT focused. They will be on the four overarching issues of which the IRT proposals cover one of those issues. Next slide.

This is how we worked. We had weekly two-hour conference calls for two months. We broke into small work teams. These teams had additional calls, sometimes multi-week calls a week. There were thousands of e-mail. We had two face-to-face meetings. And those meetings went from 8:00 to 6:00 every day, along with keeping us locked in for lunch.

We had one full day of consultations with the entities that I have mentioned forward -- in the previous slide. We reviewed comments from the -- from all of the comments that were put forth on DAG1 and DAG2. We looked and read all of those.

We also reviewed all the comments that we received to our April 29th - or April 24th version. Even though we had a cut-off date, we considered comments that kept flowing in even as we were meeting in San Francisco. And we amended those proposals and issued our final report on May 29th. Next slide, please.

We had a group of guiding principles that we set out in our D.C. meeting, which here they are. You'll see what the harms that are being addressed by the solution. Will the solution scale? Does it accommodate territorial variations and trademark rights? Does it confirm -- conform to the extent of actual legal rights? Does the solution work in light of IDNs? To what extent can solutions be gained and abused? And when we say that, that test was applied to both overaggressive trademark owners as well as overly aggressive speculators.

Is it the least burdensome solution for everyone involved? Is it technologically feasible? How will the solution affect consumers and competition? And what's the costs of the solution? And who would pay that cost? So those are sort of the checklists we used.

The final proposals are grouped into five areas. The first is the IP clearinghouse globally protected marks list and IP claims and standardized sunrise. The IP -- you will hear about these in more detail. The IP clearinghouse is merely a centralized database for the gathering of information with regards to trademarks. You will see that it is broader than trademarks when we drill down to the actual details, but that's -- it reduces the time and expense for both registries, registrars and trademark owners in trying to gather the necessary information to run RPMs or prelaunch RPMs.

The globally protected marks list, this was an idea again that came out of some white list or reserved names list as they were called in the draft applicant comments that we saw to the guidebook. The very strict eligibility requirements that we are still working on putting together, to be very clear, this is not a famous marks list. This is not a well-known marks list. This is a mark -- these are objective criteria, not subjective at all, based on numbers that we believe make

you a globally protected mark.

The IP claims is a prelaunch notification to trademark owners and to applicants on the second level. It only has to do with identical matches.

Standardized sunrise is merely just a -- it's just a minimum level of sunrise protection. It's the floor, not the ceiling. So that those that come up with innovative and creative solutions they believe are beyond that minimum level are certainly free to do so. Next slide.

We have the Uniform Rapid Suspension System, or URS. This is an immediate take-down for the clearest, most undisputable cases of infringement. And there are -- again, this will be addressed more particularly in the slides. We have a post-delegation dispute resolution mechanism. This came out of the fact that the first DAG had a placeholder for this. In February, WIPO put out a proposal. We looked at that proposal as one of the charges of our group because it was one of the proposals of rights protection mechanisms that was already in the ether, so we looked at it and came up with our version of that we think is best for everyone. Next slide.

Then we came to the conclusion that there should be a thick WHOIS model for all new gTLDs and universal WHOIS for all generic top-level domains is something we believe should be explored.

We talked about and looked at the algorithm method. We saw a lot of comments. We believe that using the algorithm as a way to knock out top-level domain streams was a mistake. It should just be used as a tool that identified those strings that required further consideration, and you would do an aural and meaning analysis to those that are identified by the tools. So the tool is only a tool. It is not a mechanism. And we truly believe based on things that we ran in the room that this will push more applications into the system than it will deny because we ran a great deal of example; and it was very, very preclusive, the tool was.

It identified things that none of the people in the room felt were necessarily problematic.

So I think I'm turning it over next to the next presenter, which I think is Kristina.

>>KRISTINA ROSETTE: Next slide. I'll be talking about the IP clearinghouse, the globally protected claims list, and a little bit about standardized sunrise.

It's important to understand from the outset that the IP clearinghouse is a database, it's nothing more than that. It's something that we proposed as a centralized mechanism because in the past, trademark owners that have wished to participate in rights

protection mechanisms that have been offered by new gTLDs have found themselves in the position of having to submit over and over and over and over again to each of the different registries through their various registrars the information and documents necessary to participate, and a number of the public comments called for a more streamlined process to do this, and when you think about going from something like seven new gTLDs on to something like 500, you can imagine what kind of nightmare, frankly, you're dealing with at multiple levels of that system.

So the clearinghouse is intended to be a central entity with which all the new gTLD registries and possibly the registrars -- depending upon how it's structured -- will interact. We anticipate and we recommend that the clearinghouse have functionality relating to the globally protected marks list, the IP claims process, and the URS. It will be an information repository for specific information collection and data validation services.

In terms of the principal features of it, data will be submitted by trademark owners either directly or through a registry or registrar for a fee. The clearinghouse will be responsible for validating that data not only initially, but also annually.

Trademark owners will also have interim obligations to update the data as circumstances warrant. They gain a new portfolio, they lose an infringement action, they have no longer have rights to a trademark, et cetera.

We anticipate that in terms of structuring how the data gets into the clearinghouse and what the -- the legal structure is, this was a subject of extensive discussion and what we ultimately decided was that the trademark owners that wished to participate must grant a nonexclusive royalty-free and sub-licensable license to that data to ICANN, which will, in turn, then grant a sublicense to the entity that's operating the IP clearinghouse.

Access to and use of the data will be severely restricted and limited solely to the purposes for which it's collected. We understand that this is potentially a very valuable commercial resource, and a competitive resource, and it's important -- it was important to us that we make sure that no one have a position to abuse that.

We believe it must be an outsourced entity, not something operated directly by ICANN. And we also think that the entity that operates it must not be one that is currently in a direct contractual relationship with ICANN.

We've recommended that there should be an initial contract term of five years, with an option to renew, obviously subject to performance, and that the unusually contract must be awarded pursuant to an open, competitive tender.

Anything else frankly would undermine the integrity of the clearinghouse.

Equal access will be required. In other words, the IP clearinghouse will not be able to deny access to registries. Next slide, please.

In terms of the additional features, we also expect and will require that the IP clearinghouse should be able to function on a 24/7/365-day per year basis, so that it is constantly available. It must be scalable, able -- and what we mean by that is not only able to accommodate records of identical marks owned by different parties -- for example, to the extent that there are multiple parties that own rights in the same mark, either in the same country for different goods or services or across countries for different goods or services -- that the data needs to be structured in such a way as to recognize that, and that it can recognize certain limitations on marks, whether it could be something that at least in the U.S. might be subject to a concurrent registration, that it would identify the classes of goods or services for which the mark is registered because that's obviously scope on the protection of the mark and that's something that needs to be reflected in the IP clearinghouse so that it can be carried over to the various rights protection mechanisms.

It's also important to us -- and we spent a fair amount of time on this -- that it should be able to accommodate all types of registered marks, including those that contain or list of non-Latin markets, which was particularly important to us as ICANN moves forward towards IDN gTLDs. The IP clearinghouse must be able to deliver fast, accurate information and do it in a standard format, which is a primary reason why we recommended that the IP clearinghouse, that there only be one. We understand and did read several comments that were submitted on the first draft that suggested that there should be more than one. And the concern that we really had is that it really must be a standard format for all of these functionalities to interact. And the more players you have in that, the greater likelihood for deviation.

In terms of the cost to the trademark owners, it was our recommendation that those costs be reasonable, and that the costs of including a trademark owner's entire portfolio should not be prohibitive. In other words, if the cost of adding information on a per-mark basis is so high that no -- that a trademark owner with an extensive portfolio would essentially be priced out, then there's frankly no point in doing it.

Next slide.

The globally protected marks list. This was, I think, among -- based on the comments that came in on DAG 1 and DAG 2 this was the single most frequently proposed solution, although with a twist.

The comments that proposed it proposed it in the form of a reserved name list, so that names would be completely taken out of the root, or a white list, and it was the conclusion of the IRT that that type of system was neither fair nor feasible.

What we also wanted to avoid, keeping in mind what we were trying to do -- in other words, to try and have some system that would allow for those marks that really were truly globally protected -- to provide them some additional protection, simply because as a practical matter, if you got global protection, you've made a significant investment in your mark, and that should be reflected versus someone who may only have rights in one country or a couple countries.

What we ultimately decided, because we did not want to go down the road of the famous and well-known marks list was to come up with what we deemed to be very objective criteria.

Namely, that you would have to meet these certain numerical thresholds in order to participate. And we believe, frankly, that the eligibility requirements should be strict. This is not something that every mark owner is going to be entitled to, and there are a number of mark owners that aren't really thrilled about that, with you that's not what we were charged to do was, you know -- it was not our intention to come up with a trademark owner wish list.

So where we are now is that the requirements are that the ownership must be by the trademark owner of a certain number of trademark registrations of national effect, for the applied-for globally protected mark that have issued in at least a certain number of across all five ICANN regions with a minimum num of registrations in each region. For those of you who read the first draft, we'd originally recommended ownership of 200 registrations in 90 countries and decided that if we were really going for globally protected marks that we really needed to focus not so much on the number of registrations, which may, in fact, be important, which is why we have a placeholder for t with you more importantly on the number of countries.

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There was extensive discussion within the IRT about having data points against which we could measure, and as a practical matter, it simply wasn't possible to accumulate that data and have it stripped of identifying information, and what I mean by that is that the folks on the IRT didn't want to know who was going to have how many registrations in how many countries. We don't know who is going to be eligible beforehand or not. It was very important to us that we not know.

It's my understanding that ICANN staff is currently working on that information collection, and that should be available soon.

All the trademark registrations must have issued by the date on which GPML applications are first accepted and must be based on trademark registration applications filed by November 1, 2008. This was intended to avoid gaming by folks who might try and, if they really want to make the investment, to try and go out and file new registration applications for the sole purpose of getting it on the GPM.

This is a recommendation that we noted in our report, in terms of the dates that if it's adopted we would suggest that the dates be tweaked in future rounds, obviously.

And finally, the third requirement was that the second-level domain for the GMP's principal online evidence but [inaudible].

One of the requirements that we did drop, in recognition of the comments that came in on the first draft, was a requirement of a certain number of second level domains in a certain number of ccTLDs. That was a requirement that after having read those comments we decided was something that we could -- we could afford to drop, and it wouldn't impair the integrity of the recommendation.

Next slide.

GPML will have protections -- different protections at the top and the second level. At the top level, they will be in the pool against which applied-for strings are accomplished for confusing similarity. They're simply being added to do existing TLDs, reserved names and other applied-for strings. In other words, to the extent that ICANN has reserved for itself and its current contracted registry parties that privilege that this privilege to also apply to the owners of GPMs.

If the applied-for string is an identical match or confusingly similar to the GPM, it should fail the initial evaluation and the application should not proceed unless and until the applicant participates in a reconsideration process and that process is determined in the applicant's favor.

This is a new provision.

We think that all applicants that fail the initial examination on this ground -- string confusion -- should have the opportunity to request reconsideration. So whether it's a finding of string confusion against an existing TLD or a reserved name or GPM, we think that option should be extended to all applicants.

The request for reconsideration is going to be the opportunity to provide additional information. I mean, to clarify, not to provide additional information.

So it will really be, to the extent that there's information that's contained in the application that would allow the panel to conclude,

for example, that the applicant may, in fact, have legitimate rights in using this TLD, if that information is in their initial application, then that may be a basis on which they prevail in the reconsideration process. If it's not in there in the first place, they're not going to be able to add it.

If they do prevail on their request for reconsideration, based on some such representations, whether it's about scope of rights or certain restrictions on use of the TLD, we feel very strongly that that restriction and provision should be then incorporated into -- if the applicant is ultimately successful -- the registry operator agreement, which would then, in turn, trigger the post-delegation dispute resolution mechanism which one of my colleagues will be talking about.

In terms of prevailing for the request for reconsideration, we believe that the standard should be that the applicant has to demonstrate either that the applied-for TLD string is not confusingly similar, so as to be likely as a matter of probability and not mere possibility to deceive or cause confusion, or that it otherwise has legitimate rights to use the applied-for TLD.

Much of the language in that standard is language that's already in the DAG, and we've just tweaked it a little.

Next slide, please.

At the second level, it's our recommendation that the GPM marks be subject -- that initial blocking -- initial blocking -- of domain names that are an identical match to a GPM be provided; that the applicant for such a name can still register it if they want to participate in a dispute resolution process and demonstrate that its use of the applied-for domain name would not violate the trademark rights of the GPM owner.

Given that we didn't see the point in reinventing the wheel, it was our recommendation that the standard be applied -- be the one that's currently in the UDRP for determining whether the domain name registrant has a right or a legitimate interest in the name next slide.

The IP claims service would apply to all registered marks that are not GPMs, so GPMs are not going to have both. They'll have one, and IP claims will be for the other.

Under this service, which was closely modeled on the RPM used by dot biz at its launch, the registry will provide notices to potential registrants of domain names that are identical matches to marks that are in the clear house and the owner of that mark will also get a notice someone else [inaudible].

It's a notice. It is not a block. The registrant can proceed with registration if they opt to proceed after having acknowledged that they've received notice, that they make certain representations and

warranties about their intended use the domain name, and acknowledgments of what the ramifications are for breaching those reps and warranties.

Next slide.

Before we get into on you the URS will work, I'll just talk a little bit about standardized sunrise.

It was our view that one of the things that has been difficult for trademark owners in the past is trying to keep track of what each sunrise -- what each registry operator's sunrise procedure has been, what the requirements are, and the like.

So we thought that it would be appropriate to make recommendations for if a registry elects to use a sunrise process, that there be certain minimum requirements, that that process meet.

Principal among them being that they would have to insist that trademark owners -- that there be ownership of a registration of national effect, that had issued by the date of the registry operator agreement and that was applied -- and that that registration had resulted from a trademark application applied for before the date that ICANN had published the list of applications received in whatever the particular round was.

And that the -- it be a strict identical match between the mark and the sunrise participation, and that there also -- that this be something that's documented in the IP clearinghouse and that there also be a standardized dispute resolution process where a third party wishes to pursue a claim, that the sunrise registrant was not, in fact, eligible under the process.

So I will now turn things over to my colleagues colleague.

>>RUSS PANGBORN: I'm Russ Pangborn from Microsoft. One of the biggest issues that brand owners have been voicing concern about the rollout of the gTLDs is the potential of the increase in volume of enforcement necessary at the second level, much more so than at the first level, and in looking at this, the IRT recommended a uniform rapid suspension system that would try to address these concerns.

The aim of this is to give a fast, cost-effective means for taking down the most egregious abuses of domains in the system. It would require a -- it is not -- let me first state that this is not something that is intended to be a replacement for the UDRP system. This is something that if successful for the brand owners would result only in the freezing of a specific domain through the duration of its registration.

Again, it is clearly in those cases where there is abuse at issue.

The initiation of the -- the process would go through the filing of a complaint that would be a form complaint that was appended to the IRT report.

There are two methods through which you could do this. If you participated in the IP clearinghouse, then you will have your information in that database and it can be fed into this system. In the context of a non-registration -- or I'm sorry in the case of no preregistration, you would also be able to pursue this simply by filling out the form, but not having the streamlined benefits of having participated in the IP clearinghouse.

The form of the complaint would require the complainant to include the WHOIS information and a snapshot of the Web site that is the offending domain. Once the complaint is filed, the chosen domain dispute resolution procedure, as chosen by ICANN, would, within 24 hours, notify the registrar of the complaint, at which point the registrar would freeze the Web site. And by "freezing," we talk about not allowing it to be transferred. We're not talking about shutting it down within 24 hours. At that point, the registrar would notify the -- the registrant of the complaint by e-mail, and then subsequently follow up with a certified letter to the registrant, also notifying them of the complaint and then a second e-mail a week later would also go out. These three attempts to try and get notification out there is to ensure that notice would be had by the registrant. Once that initial notice had been issued by e-mail, within a 14-day period, we would then have the answer deadline for the registrant.

The registrant, of course, would have the ability to state his case as to the lack of the infringing nature of the domain. However, if in that 14-day period there is a default, the registration would be frozen -- the domain would be frozen unless and until a default answer submitted, and we have built into the process the ability -- anytime during the course of the registration of that domain, a registrant can file that answer, at which time the Web site would go back up and the process would continue, where examination would happen.

In the course of examination, the -- the dispute resolution provider would be looking at whether or not the domain was effectively identical or confusingly similar, whether it -- the registrant lacked any legitimate interest, and whether or not it was registered in bad faith. And again, using the "bad faith" definition that exists with UDRP as it exists today.

If those factors are found, then, in fact, the domain would be frozen for the duration of that registration. This is, of course, an appealable process. Ultimately, if the complainant or the registrant succeeds, the other has the ability to -- to appeal that.

Alternatively, we are not looking to undermine any other existing

processes that are in place for the complainant, so if a complainant wanted to bring a separate UDRP action de novo, that available -- that option is still available. And again, in the context of the URS, the complainant would not be getting ownership or transfer rights of the domain to them. That is something that is reserved for either a court action or the UDRP.

Again, also the complainant has the ability to go to court, as does the defendant or the -- the registrant in this particular case, if they do not succeed.

The costs of any appeal would be refundable to the successful party.

One last thing I wanted to point out about this particular process is our concern about abuse of the system. We were, again, represented by brand owners and by registry and registrar folks in the IRT and had some very good discussions about concerns about abuse on both sides, and so one thing that we had built into the URS was the ability for us to shut down abusive trademark owners who file abusive complaints, and in the -- in the system we had said if a trademark owner were to file three abusive complaints it then they would be shut out of the system for the period of one year. And with that, I'll turn it over. To David.

>>KEN TAYLOR: Hi. David Taylor with Lovells. So I'm going to confer the post-dealings dispute resolution ran where this has come from. Well, again, it's from the numerous public comments which we saw calling for such a mechanism, and also WIPO. They put together a proposal back in February to tackle breach of rights protection mechanisms and a bad faith intent to profit to profit from infringing domain names.

So what was our wish with this? It was to limit the possibility of using the system but really to limit it to systemic abuse by bad actor registry operators. We're not aiming here to go after registry operators which have a few domain names in there that are infringing, it really is going after the bad actors and making sure there's a mechanism in place to deal with them.

There was also a suggestion that trademark owners should have more of an active role [inaudible] to trigger the mechanism, so the way it works is that under the post-delegation mechanism, a third party can submit a claim to ICANN and it prepays a fee to do this.

This fee can be refunded later on if it's -- if it's a worthwhile case.

ICANN investigates this, and decides on whether there's been a material breach or not. If there is a breach, then there's the various enforcement mechanisms as contained in the applicable registry agreement and ICANN must utilize these.

These can be the monetary sanctions, suspension, or termination of a contract.

If it's unresolved, then we'd go to initiation of the post-delegation procedure and we'd go through an investigation by a neutral party and where it's a neutral party, we'd be having three-member panels, which is one of the things.

So next slide, please.

What are the applicable disputes? Well, it's where the registry operator's manner of operation or use of the TLD is inconsistent with its representations in its TLD application, and where the operation is likely to cause confusion to the complainant's mark.

Or it's where the registry operator is in breach of specific RPMs, rights of protection mechanisms, as it's specified in its own agreement and such breach is likely to cause confusion. Again, with the complainant's mark.

Or where the manner of operation or use of the TLD itself exhibits a bad faith intent to profit. Now, here again, from systemic registration of domain name registrations therein. And again, here where there's identity or confusingly similar to the complainant's mark, where it takes [inaudible] impairs the reputation or creates a likelihood of confusion.

Next slide, please.

As for the decisions, well, the panel can find for the complainant and provide a certain remedy. The panel can find for the registry operator and provide a remedy. The panel can find for the registry operator and also state that the complaint was without merit. Here, we're looking at without merit being an abuse of the procedure, i.e. the brand owner themselves was seeking paragraphs to harass the registry operator or whatever. That would then be defined without merit and there would be a penalty fee applicable.

The panel may also find for the complainant and decide that the defense was without merit.

The enforcement tools, again, the panel recommends to ICANN the same section -- the same remedies as we said earlier, monetary sanctions, suspending pending cure, including the suspension of accepting new domain name registrations, looking at group liability where we've got serial misconduct by registries when they're affiliated with other registrars and registries. And here we've got a balance put in if the - the complainant would be barred from further filings if it was found without merit on three separate occasions.

As for the fees, we've put in there some model fees. Basically,

we're looking at a penalty fee which is meaningful to deter abusive claims. We've suggested here in the areas of 10, \$15,000 but these are purely suggestions. The main thing is that it's a meaningful amount, and so we may have a loser paying a certain amount and without merit there.

So that's me, and I'll hand other to the other concerns.

>>ZAHID JAMIL: Yes. Hi. With regard to WHOIS, the recommendations, the issue that the IRT looked at was basically not having enough information with regard to the registrants and how to go after them in other forums, et cetera. So even in this, it would be difficult if there wasn't an available thick WHOIS. So the proposal was that there should be a central registry level database created. The registry agreements should include an obligation that all registry operators for the new gTLDs must provide registry-level WHOIS under the thick WHOIS model currently in place. For instance, in the dot info and dot biz registries.

In addition, it was also recommended that there be a universal WHOIS, something that the -- that ICANN actually could set up, and the recommendation talks thoughts were an immediate exploration by ICANN to look at setting up a central universal WHOIS database to be maintained by ICANN.

Next slide, please.

The next issue was with regard to the algorithm that was already provided for and recommended in the DAGs, and the IRT recommended that analysis of the string flagged by the algorithm should also include aural and commercial impression, which means it wasn't just a visual match but beyond visual, it should [inaudible] meaning.

>>KRISTINA ROSETTE: Given the time frame that we're working in, it was very clear to us, as soon as we got through all of the public comments that had been submitted on DAG 1 and DAG 2, which the boardman dated that we review first, that there were going to be a whole lot of things that were important to a whole lot of trademark owners that frankly we just weren't going to have the time to get to. So we made at the outset a strategic decision to really just focus on the five items that have now found themselves to be proposals. But we did want to make clear that there are certain things and other recommendations that came out of those comments that we wanted to make clear, that we thought merited further consideration and frankly if we'd had more time, we probably would have developed recommendations on them.

And this is kind of a condensed list of those.

The first being the development of universal standards and practices for proxy domain name services. The ability for applicants, including dot brand registries, to include more than one character string in an

application, meaning, for example, if they're applying for a particular TLD in ASCII, then to also include in the same application perhaps that same string in Arabic or Cyrillic or Kanji, so that you don't have to go through the entire application process again.

Third, to afford community and dot brand TLDs the same authority as currently enjoyed by certain sponsored TLDs to select which registrars access the registry.

And finally, to include a provision that would require, quote-unquote, charter enforcement or eligibility dispute resolution processes, where the TLD applicant has specified in its application that the registration -- that the TLD is intended for a particular community and that registration will be restricted to that community.

So of course, you know, there were many additional proposals that we simply didn't have time to get to, but these are ones that we think would merit further consideration. So I think we'll now open the floor to questions. Avri.

>>AVRI DORIA: Okay. I have one name on the question list already. Adrian. Who else? And then I have Chuck. I -- okay. I see Liz. Who do I see? Richard. Okay. And Philip. Okay. And Tony. Phil -- Eric Brunner-Williams. Okay. And Amadeu. Okay. It's a good list for now. Oh, and Wendy. And there's another hand in back I do not see and then I'll stop for now. Who was the behind? But anyhow -- okay. Adrian first, though.

>>ADRIAN KINDERIS: Thanks, Avri. Adrian Kinderis.

First of all, I'd just like to say congratulations to the team. I think you did an awesome job in tackling what is a tough, tough task.

But my question is about the -- first question is about the clearinghouse. And if this is in some documentation somewhere, please just direct me. I won't take up too much time.

But who -- who owns -- who is responsible for the clearinghouse? Maybe I can start my question there. And I'll have a follow-up, depending on that answer.

>>KRISTINA ROSETTE: The intention is that it would be developed or that it would be operated by an entity external to ICANN that is operating under a contract with ICANN.

>>ADRIAN KINDERIS: So ICANN would -- sorry. So ICANN would provide a tender as such?

>>KRISTINA ROSETTE: Absolutely.

>>ADRIAN KINDERIS: Okay. So they would then be contracted to ICANN.

>>KRISTINA ROSETTE: Correct.

>>ADRIAN KINDERIS: So IIC would pay for it?

>>KRISTINA ROSETTE: Indirectly, yes.

>>ADRIAN KINDERIS: Indirectly?

>>KRISTINA ROSETTE: Well, I mean, in the sense that the trademark owners -- well, I guess -- I don't know that we actually got into how the money would flow, but the -- the bottom-line principle is that trademark owners are going to have to pay some cost for participating in the clearinghouse.

>>ADRIAN KINDERIS: So --

>>KRISTINA ROSETTE: Let me add to that --

>>FABRICIO VAYRA: In doing the recommendations we actually did suggestive costs so say we put out intent of saying the costs should be non-prohibitive to brand owners but I think the intent was that in the tender out to the vendors, it would then be determined what exactly needs to be done to actually have the brand owners when they pay in actually paying for the system. Now, that's not -- it's not out of the question that ICANN, you know, as part of their overall infrastructure possibly supplement pay some, but the real thought is that the applications into the clearinghouse would be the main payment for the system itself. And that's why we shied away from putting a dollar value, because we can't tell what it would actually cost to run the system. We can just tell what the intent is.

>>AVRI DORIA: One thing -- I'd like to remind people to give your name before you speak.

>>FABRICIO VAYRA: Fabricio Vayra from Time Warner.

>>JEFF NEUMAN: So Jeff Neuman. I think just to answer, as well Adrian's question. The task is really ICANN's task, and ICANN -- the thought by the group was that it be more -- like a subcontractor arrangement with this clearinghouse provider so ICANN would oversee everything that the clearinghouse provider does. We have some language in there about -- which I think you might be getting to next about the data within the clearinghouse, so there is some provisions in there that talk about the data is owned by the -- obviously first and foremost by the people who submit the data in, and then it's a real strict license to that clearinghouse provider to only use the data for the limited purposes of the clearinghouse.

So I think that's kind of where you were going.

But also, it was left open to -- for the potential bidders for this clearinghouse to propose different pricing mechanisms and models, so maybe it's a lump sum. Maybe they propose a lump sum payment. Then they could do it for a fixed annual fee. Or maybe it's per mark, in that we didn't kind of want to go into those models as they were saying.

>>J. SCOTT EVANS: And just one point we want to stress because we keep talking about trademarks. The IP clearinghouse, in the provision, says it should be set up so that it can accept any rights, so that if there are those registries that want to recognize rights beyond trademark rights, such as in dot eu, there are some particular rights that are -- Europe has for like family names and business names, that they wanted to include, that the database be able to take in, not just trademark information but additional rights information so that it -- all it could do -- all it is, actually, is a funnel of the information back to the registry.

So it's just a collector, an aggregator of information that registries can plug into and then fill whatever rights protection mechanism they put in place.

>>ADRIAN KINDERIS: Yeah. So I guess I'm looking at also just from a commercial entity, being in the registry business myself, you know, trying to work out, you know, is this something I would want -- if you understand -- to see whether it's commercially viable, because obviously it has to be. You're running some infrastructure, you know, that's going to go around. So I'm just kind of computing, you know, the commerciality of running this clearinghouse from a -- from a --

>>AVRI DORIA: Thank you. Chuck was next.

>>CHUCK GOMES: Let me start off by a process question here. Would we be better off sticking, for a little bit, to one of the topics, like Adrian started the IP clearinghouse, and getting all the comments on that, and then moving to the others, or is everybody okay with jumping around.

>>AVRI DORIA: I think we only have a half hour for people to ask their clarifying questions WebSphere -- I mean, there's going to be many other discussion points, so I think people should ask their questions when they get on the list and then go from there.

>>CHUCK GOMES: Okay. Here goes. I'm going to cover three areas. I'll start off with the IP clearinghouse.

How would registries and registrars be indemnified for using the clearinghouse. And what would be the source of funding for that indemnification?

The -- depending on how it operates, I guess one question is would a registry be required or -- and/or a registrar -- to query the IP

clearinghouse database every time a registration is done? What -- what happens if the IP clearinghouse is down? Do all registrations have to stop? We're talking with some fairly serious implications in those sorts of things that I think need to be addressed in that regard, because they could have significant consequences. And maybe I'll pause there. I have two other areas that I want to address, but maybe I'll pause there, in case there are any responses.

>>KRISTINA ROSETTE: I can take those, and I would also just note, for those of you who may not have a chance to have your questions answered, there will be briefings by the IRT at every single constituency meeting on Tuesday, as well as the session on Wednesday afternoon is devoted in half, I think, to the IRT.

So getting to Chuck's questions, starting first with indemnification, I think ultimately that is going to have to be a contractual issue between ICANN and the clearinghouse provider. It was, again, kind of keeping in mind that -- that we were trying to kind of set out the most concrete proposals we could in the time we had, that was not something - - although we talked about it, we didn't have the to be able to get into really specific details.

It was the general tenor of our discussion that registry operators that did, in fact, design their systems to communicate properly with the IP clearinghouse, et cetera, that there was really -- and did, in fact, follow whatever the process was, that that should, in fact, be considered to be a mitigating factor in terms of any liability for that registry or registrar. Realize that's not a specific answer to your question, but that's as close as we got good to that issue.

In terms of how often they would have to query, absolutely they would have to query for every registration. That would -- that's implicit in the IP claims process. That's implicit in the --

>>JEFF NEUMAN: (Speaker is off microphone).

>>KRISTINA ROSETTE: Okay. Well, Jeff's going to jump into that in a second. And in terms of what happens if it goes down, that was frankly something that was operationally, to the extent that we talked about those level of details, it was our kind of general understanding that there would be backup systems in place, such that frankly it wouldn't really happen. But I'll turn it over to Jeff on the queries.

>>JEFF NEUMAN: Yeah, I think, Chuck, 2 sounds complicit from your question that you're assuming the clearinghouse system would work with a realtime registration as opposed to the preregistration sunrise periods that have been done in the past have all been not realtime necessarily.

In other words, the validations never occur at the exact moment that someone tries to registrar a name. So that's a question really for a

registry when they implement it, if they want to try a realtime system with a hookup to the IP clearinghouse, that would be something new. In theory, they could try to do that.

It almost sounds like your question is assuming that realtime connection where something needs to be validated initially. I'm not sure that's big of a concern.

>>CHUCK GOMES: Isn't the clearinghouse, though, intended to be used for multiple purposes, not just sunrises? That's the way I read it. It would go well beyond sunrise periods, or am I misreading that?

>>JEFF NEUMAN: It can be used as a registry wants to use it. If there is a way it could work out something with a clearinghouse provider, could do an ongoing basis to validate other types of rights, other authentication mechanisms, in theory it could be used for that. But really most of the uses that were talked about of the validation rights would mostly -- and people can jump in -- is really in a prelunch mechanism like a sunrise or an IP claims-type thing. Unless you chose, and then you are going to talk to the clearinghouse provider to see what they can and cannot handle and then design your system around that.

>>CHUCK GOMES: Okay. That's it. Go on? By the way, let me throw in one real brief comment. My own recommendation would be is that you avoid using the term "universal WHOIS" and use "centralized WHOIS." They are two very different concepts historically. Universal WHOIS being -- including ccTLDs. And I think those of us that have been around for a while think that may not be something that will happen. So that was just something a little side comment.

Let me go to the URS. And the final report talks about there being this standard page being posted. And it is not at all clear to me how that would happen and what authority would be given. Registries certainly don't have any control over the content of registrant pages. In fact, we don't even have a relationship with registrants, whether we're thick or thin.

Who would give the authority there? Now, some registrars do hosting services, but some names aren't using registrar hosting services. So where -- how does the authority flow to post this web page? How would it be done? It's not something we as registries could do. I certainly could speak that. Sometimes a registrar might be able to, and sometimes they wouldn't.

And the same thing with regard to the WHOIS record, is that expecting a change in the WHOIS requirements there? Does it require a new EPP status because, as I understand it, there is not one EPP status that could be used to literally do what you are calling freezing. It might be a combination of statuses.

There are some complications there that I'm just raising. I don't expect questions to all of these -- answers to all of these right now. But those are really important issues and maybe the more important one is that posting of that special Web page. I'll pause there if somebody wants to respond to that. Otherwise, I will go on to my last thing.

>>J. SCOTT EVANS: I think it was our -- I mean, the entire relationship between registrant and whomever they deal with is a contractual one. So, therefore, your answer is if this is a requirement that ICANN says that those that participate within new gTLDs will have to have contractual provisions that cover these issues - - so in other words, the registrant contract with whomever they buy from will have to give who they are buying the name from the ability to redirect that page in the event there is a URS decision that's negative to them.

Similar to the way it does with the UDRP, the contract says that you as a registrant with whomever you deal with, that the contract says that if there is a UDRP decision against you, you agree here that we have a right to comply with that decision. And it would be a similar contractual frame.

>>CHUCK GOMES: That part I understand, J. Scott. But when you're actually talking about posting a page, the registrar may not have any connection there at all to do that. If they're hosting the services, they could do it. But if they're not the hoster of the services, it may be an ISP or just a Web hosting services provider.

It is something that needs to be thought through. There are plenty of cases where the contracted parties wouldn't have any ability to influence that even if they agreed to do it if they had the power. That's what I'm pointing out. Okay?

>>FABRICIO VAYRA: Fabricio from Time Warner. We had extensive conversations about this and what EPP was and what standards. It was definitely thought out. I think you get the concept of what it is that we're trying, and I do think that further work needs to be done on it. Maybe the answer is throwing out there that maybe it is the registry who has to point -- I mean, these are all -- I think it does need to be fleshed out. But what's important really is the concept -- the ultimate intent, and there was definitely tons of conversation about it. We understand there are technical requirements around this.

>>CHUCK GOMES: That's all I'm doing, is pointing out this is an area that needs some work. So that's fine.

Last of all, on the PDDM, this bad-faith intent to profit is terribly broad in terms of -- and open. And it seems to me that registries could easily be forced into responding to allegations of bad faith and go to considerable expense and time in responding to those. So it seems that there's a really big hole there in terms of this bad-faith

intent. And I know your intents were -- it was very clear that you were trying to bound it. I'm not sure you succeeded in that regard.

It would be very easy to abuse it, and you have procedures for dealing with that. But in the meantime, registries are having to respond to go to expense and time and so forth to do that until somebody shows a track record of abusing the system. And I think that's -- that's a problem that's probably pretty hard to solve. But -- and I'm not necessarily looking for a response here, just pointing out that I think that that's a pretty big hole there on that particular process.

>>AVRI DORIA: Thank you. Liz, you were next.

>>LIZ WILLIAMS: Thanks, Avri. Liz Williams. Kristina, just a couple of questions. With all of the suggestions that were made, is it your expectation that all of the suggestions would be adopted and that they are contingent on each other? So you can't pick and choose one or other of the suggestions that you've made? First question.

If so, then were all of those suggestions applicable in all national jurisdictions that cared about trademarks? And I was interested to hear about Chuck's sort of implementation questions.

So those two first. Then I have got two others that I just wanted to seek some clarification on.

>>KRISTINA ROSETTE: It was absolutely the intent of the IRT that all of these recommendations be interdependent and adopted as a group. And, in fact, it is part of the reason that in the report we refer throughout to this as a tapestry. And part of the reason it is important is that there were certain decisions that were made or not made about directions to go with some of these because of recognition that there was another provision. Let me give you a particular example.

When we got comments back on the first draft, most trademark owners said for GPML, well, having an identical is great but I want to be able to have either typographical variations or the nouns associated with my mark because that's where I'm going to get typosquatted, et cetera, et cetera.

And we spent hours talking about, Can we do this? How do we do it? How do we say it? What are the unintended consequences of it? And we ultimately decided that we weren't going to go that direction. And a big factor in making that decision was the fact that the URS is available as a backstop to catch those particular names that might go through as the second level.

So in that way, you can see kind of how we were trying to intend to make sure that everything balances out. And in terms of applicable on all national jurisdictions, that was certainly the intent. I mean, we

obviously didn't have the time, the resources or the personnel to do any kind of international legal survey. But that was also part of the reason that it was so helpful to have folks from different legal systems available on the panel. So that was certainly our intention.

>>LIZ WILLIAMS: Avri, would you mind if I just asked my two remaining questions because they are related? Is that okay? I can hold them off because I know there is a long list.

>>AVRI DORIA: Chuck did it.

>>J. SCOTT EVANS: It is the Chuck rule.

>>LIZ WILLIAMS: Thanks, Chuck. Good job.

The two supplementary questions were if it is the intent to implement them as a tapestry, then the analysis of the integration into the evaluation process was really important, so whether that had a bearing on the timing and the cost and the practicality of evaluation.

And then was there any intention -- because some of those mechanisms that you described were not an integration of a new gTLD. They are issues at the second level, and then there would have to be a staged integration of applying those things to TLDs who are actually operating.

And then was it any intention to have a review of the effectiveness or the validity of the proposed tools at some point post-evaluation to make sure that they are actually appropriate and actually worked and were actually not overly burdensome to one party or another?

>>KRISTINA ROSETTE: I'll let others speak to the first question because I don't want to be the one hogging the mike. But the second point, absolutely. And, in fact, you'll see in some of the footnotes in the report where we've acknowledged that we perhaps did not go as far as public comments called for, that we specifically said, Here's an area where we think it's important that there be some -- two, three years out, some examination as to, did we achieve what we intended to achieve? Did we get the balance right?

And so the first question?

>>LIZ WILLIAMS: The first one was integration in the process, whoever is going to take -- I noticed Kurt was sitting there, but he's now not sitting there.

>>AVRI DORIA: They had to go off to some meeting. They'll be back.

>>LIZ WILLIAMS: Then hold it off because it is their impact, if you want to hold it until later.

>>ZAHID JAMIL: Just following up on what Kristina said -- sorry, my

name is Zahid Jamil, member of the IRT. One of the footnotes, 19, if you read that, it specifically mentions there will be review of the effectiveness of many of these measures. One of the discussions in the GPML was whether this should be at the second level just an identical match of the GPM or should we also have associated names attached to that GPM as well. And it was decided maybe not at this stage but maybe subsequently. So that's in the footnote, and that gives you an example of where review has been called for subsequently after the first initial new gTLDs are issued.

>>J. SCOTT EVANS: Just so everyone is clear, there's going to have to be some evaluation on effectiveness because this is a compromise. There are people on one end who don't like it because they are in a business that have profited of the ambiguities that we have now, both good-faith actors and bad-faith actors who don't like it. And there are trademark owners who think it has not gone far enough because it is not harsh or restrictive enough.

So whenever you come to a compromise, it is always best that you put into that a fact that you are going to go back and look at the effectiveness and see that some of the critics who had problems, if it is implemented, if, in fact, their criticisms were valid or not and if there needs to be adjustments made so that the compromise continues to do what we want it to do which is provide balanced solutions.

>>AVRI DORIA: Thank you. So I had Richard next.

>> RICHARD TINDAL: We had three questions on the GPML.

Could we go to the slide that lists the benchmark threshold of all of the GPMs? So the principle here is I think the RPM should not expand existing rights under law. Our understanding of trademark law in the U.S. and many jurisdictions is that there is a posting -- a post-infringement enforcement approach to trademark law. Or said another way, I've got the right to infringe and then the law says that the trademark owner has the right to come after me.

So with respect to the GPML, we see that as breaching this fundamental threshold requirement that the IRT has spelled out in that the GPML seems to create a pre-usage approval burden as opposed to a post-usage enforcement of the mark.

And so my question is, does that creation of a pre-usage approval burden on a registrant, does that, in fact, bridge this threshold requirement for all of the RPMs?

>>KRISTINA ROSETTE: No.

[Laughter]

And the reason is twofold. First, the right to infringe, I would

respectfully disagree with that interpretation of trademark law. In fact, in any country that has substantive examination of trademark registration applications, there is going to be a preregistration evaluation which in many countries is based on simply an intention to use a mark, not an actual use. There's going to be an evaluation of whether or not there is, in fact, a likelihood of confusion. So first off, I disagree from that perspective.

But, second, that is a big reason why we wanted to make sure that marks that go on this list are, in fact, globally protected. In other words, the global scope of protection is so broad for these marks that it really eliminates to the extent possible the possibility of saying you're giving protection globally to a mark that is perhaps only registered in a quarter of the countries of the world.

That also came into play in what we've proposed. At the top level, the GPML, there is a right of reconsideration. That's something new. That's simply not available in the current evaluation. And that was something that we thought was an important protection; that if you are, in fact, going to extend that string confusion analysis, that you do it in such a way that there is a safety valve. In fact, there is a fairly detailed footnote that identifies some of the circumstances under which we think applicants could overcome and could prevail with that request of reconsideration.

At the second level, it is an initial block. It is not a permanent block, no appeal. We have some very clear ideas of the opportunity for applicants to ensure they do, in fact, have an opportunity to use that domain name. So I think with this particular mechanism, we've done frankly a good job of making sure we're not going beyond the scope of protection and the scope of legal rights. I mean, if we were to sit here and say there should be examination for -- initial examination and no opportunity for reconsideration, then perhaps I might agree with you.

Similarly, if we were to say that the GPM at the second level meant that no one except for the trademark owner could ever register an identical match -- and it is identical matches -- then, again, I might agree with you but we were very careful to make sure we were very balanced about it.

>>J. SCOTT EVANS: I think one of the things, Richard -- this is J. Scott Evans from Yahoo. One of the things you have to take into consideration is that all trademark systems have an ability for a prior rights holder to object prior to anyone establishing rights in the mark in a registration system.

Unfortunately, domain name registration does not have that ability. So the fact that the two don't jibe, we put the burden on a trademark owner to come forward, go through the ICANN clearinghouse, meet all the recommendations so that there's -- we're trying to -- because registrars don't want to have a -- it's a balance. They don't want to

have someone register a name and have a period of time when trademark owners could then come forward and complain before it registers.

So we are giving you a tool whereby it's done, and the party that believes that they're interested enough in the name and have rights in the name have a mechanism to say, Trademark owner, you shouldn't have this block.

And so the parties and the registrar's left out of it. The registry is left out of it.

>>FABRICIO VAYRA: Richard, Fabricio from Time Warner. We heard these comments a lot. From what Kristina and J. Scott have mentioned, clearly our intent isn't to establish rights that aren't there or to expand brand owner rights.

The two issues we hear a lot are one class of service and the other territory. And class of service, obviously we've tried to deal with that by the rebut. So obviously in the case of a brand where it's very narrowly tailored to certain class of service, it wouldn't take much to rebut. I could come in and say, I want to use it for this. It clearly does not infringe this class of service, and you have got the domain.

On the jurisdiction territory question, we obviously left open our description that somebody who wants to have even more restrictive mechanisms could do so.

So in the case where you might say -- or a registry might say, I don't think the jurisdiction issue has been addressed and that this overly extends rights during sunrise period, you actually could make it more restrictive and say, "Listen, I don't just want to do the GPML. I only want people that have rights in say, Germany, because I see myself as a German-focused registrar, registry." At that point, you could actually deal with that problem as well.

We actually welcome people to put even more restrictive mechanisms, say, in sunrise that would apply to trademarks.

>> RICHARD TINDAL: The key data element that's missing from the report with respect to GPML is the number of trademark registrations in the number of countries. That's been omitted from the final report? So given that that number is entirely subjective, in fact, arguably arbitrary, how will any of us decide what that number should be?

>>J. SCOTT EVANS: Right now we're going to tell you what that number could be. The problem is in the short amount of time we had, we didn't have time to draw that data together. So it was either not have a proposal out in time for the GAC requirement of having things out three weeks before a meeting and meeting our deadline as the board did it or getting that data point. We are trying to collect that data as we speak.

Unfortunately, that requires that we rely on relationships with other service providers that we have because we don't have this data ourselves. We are having to get it.

>> RICHARD TINDAL: Understood. But I think that's heart of the problem. You are taking a reverse an engineering approach. You are saying Coca-Cola, how many marks do they have and then you are looking at Microsoft and then you are looking at Yahoo. And then you are looking at the data for those brands and then you are going to reach conclusion about where the cut-off should be.

My point is you are making a judgment already about which brands should and should not be on the list and then you are setting the criteria based on that.

>>J. SCOTT EVANS: We don't know -- as Kristina said, one of the things we've taken great pains to do is to not know who owns the trademarks that are being evaluated. We don't know who it is. We don't know if it is Coca-Cola or if it is Microsoft or if it's Yahoo because we are not going to them. We're using an outside vendor that's using a list and then they're providing us just with, Here are -- of the mark we looked at, here are the matrices, the number of regions, the number of countries and the number of registrations they have. We don't know who that information belongs to.

>> RICHARD TINDAL: When the data is available for that list, someone is going to make a cut-off point that says this mark on the list is in and this mark is out. How will that decision be made?

>>KRISTINA ROSETTE: We are never going to get down to the detail of which mark is in. We don't want to -- that's not a decision we want to make. The decision we are going to make is what's the minimum number of countries you have to have registrations in, and within each of the ICANN regions keeping in mind that, for example, in ICANN land, North America has, you know, eight countries. Well, only four of those actually have trademark registries. Kind of slicing and dicing that data is something -- that's the data we are going to slice. And we won't know until after the fact who applies -- who falls within it and who doesn't.

>> RICHARD TINDAL: That's my question: How will you decide where the cut-off is?

>>KRISTINA ROSETTE: What we are planning to do is once we see what the dispersion is, figure out what will be the acceptable median and mode. Personally, I would say anybody who doesn't have -- I mean, personally, anyone who doesn't have registrations in 75% of the countries, that's not a globally protected mark.

>> RICHARD TINDAL: I think that's the heart of the problem. That's

your personal opinion. I think there is going to be thousands of personal opinions, and I don't think we'll be able to reach a conclusion.

>>KRISTINA ROSETTE: That may be, but I think we need to see the data first.

>>AVRI DORIA: At this point, we have sort of moved beyond asking clarifying questions to having a discussion and we only have about seven minutes left.

>> RICHARD TINDAL: Okay. I'll cede.

>>AVRI DORIA: Philip, you're next.

>>PHILIP SHEPPARD: Thanks. Just quickly on the issue we just discussed, a number of my members who are trademark owners globally also discussed this issue and they didn't feel, in fact, a conclusion that you are trying to reach now is impossible. I think some reasonable attempt has already been made of that in the draft and that's being revised. So I don't see it much as a problem at all.

I had two quick questions of clarification really. One on the IP clearinghouse. Obviously this needs to be kept up to date, but the recommendation in the report is annually rather than anything perhaps like two years or three years. I would like a discussion in terms of the practicality of annual renewals on that.

>>KRISTINA ROSETTE: We realize that it's not something that is going to be -- we realize that it is going to be an obligation on the trademark owner. The validation is going to occur annually, but there will be an ongoing obligation on the trademark owner to update the records in the event of new registrations, in the event of registrations that expire and lapse.

It was our thought that as a practical matter, anything less frequent than annually could really skew the protections that would be afforded given how we see the functionality of the IP clearinghouse playing out.

>>JEFF NEUMAN: Can I add to that? I think it was kind of the analogy of the WHOIS. You require registrants annually to confirm that that's their information. This is kind of a corollary to that. Now we are requiring annually trademark owners to confirm that that's their information.

>>PHILIP SHEPPARD: That's reasonable and parallel.

Same question was on the globally protected marks list. You mentioned identical or confusingly similar. One of my members raised a question in terms of does "confusingly similar" also work for names that sort of contain the mark but may be clear from that? Was it your

intent that domain names that would contain the mark but wouldn't be identical to the mark would count for that confusing similarity test as opposed to confusing similarity to the mark itself, if you understand my question?

>>KRISTINA ROSETTE: I think I do, but I'm not 100% sure. So if you could give an example.

>>PHILIP SHEPPARD: Let's take Lego is in the room. Lego might be confusingly similar. Say the domain name is Lego bricks. That contains the name Lego. Would that pass the test of confusing similarity in the way it's being thought of?

>>KRISTINA ROSETTE: The confusingly similar with regard to GPMs only comes into play at the top-level analysis. So in that context, yes. At the second level, it is limited to identical. Again, this is the very extensive debate we had once we saw comments on the first draft. Do we extend it? How do we extend it? Ultimately, we said, no, we are not going to extend it. It will just be identical and people will have to rely on the URS.

>>AVRI DORIA: Okay. Tony, you were next and you may end up being the last.

>>TONY HARRIS: That's a very bad role to play actually, but I will try to make it very short. I have just a question and then a very brief concern, which is only a couple of sentences.

Speaking as a perspective new applicant for a new gTLD, I'm a little confused about the concept of the GPML, the globally protected marks list. If you are a new registry and you institute or implement sunrise proceedings, I'm not too sure what I would do with the GPML, with the list. It says here you block -- initial blocking of domain names that are an identical match to the GPM.

That sounds like a reserved names list, which is okay, but is that forever? I mean, what do we do with that list? When we open sunrise proceedings, I'm not quite sure how we interact with that list. What does it do? What are we supposed to do with it? Those names are not available. They're not available forever. The owners of the names, they are not obliged to buy them. I've read the document, and quite honestly I'm not objecting to the concept. I just can't understand it.

And there's concern -- I will get rid of that so we don't have to do it later. It just seems that the scope of change as proposed and the discussion and approval would appear to be a threat or severely delay the implementation timeline that ICANN has announced. And without discussing the fact that they're valid points, it would seem to require quite an effort to get all these things implemented if they are approved.

So the question is still on the table.

>>J. SCOTT EVANS: I guess the comment with regards to the GPML is it does not relate to the sunrise period at all. The clearinghouse that has the information of who is on the GPML list and also has any trademark owners rights are all the same. And it would be those other trademark rights that the clearinghouse would give you in your sunrise provision.

But as for the globally protected marks, they're not going to be involved in the sunrise because they are blocked. Identical marks are blocked, and they are blocked not just for the prelaunch mechanism but forever. Just like ICANN is blocked. Just like IANA is blocked.

>>JEFF NEUMAN: I'll just respond. Hey, Tony, it is a reserved name. It's a reserved name on a list forever, essentially, but yet you're right, registry operators are going to have to work out some mechanism by which the actual owner of that name can come to the registry and get that name. So there does need to be a mechanism to do that. That wasn't proposed in the -- in the draft as far as the mechanism to do it. There are ways it could be done. It's been done in a number of TLDs that have launched that have reserved names for either -- like a number of ccTLDs have done it, have reserved it for national -- dot us, for example, we did it for U.S. agencies, right?

We had to put it on a reserved name list and block it, but then we developed a mechanism for those true owners to come us and get them. So there are different ways that you can actually do it, but it's intended to be easy on the registry operator, as far as it's just a reserved name list. It's blocked just like any of the other reserved names would be.

>> (Speaker is off microphone).

>>JEFF NEUMAN: What's that?

>>RICHARD TINDALL: (Speaker is off microphone) -- for jumping out of the queue, but this is not what the report says. The report says that if "time," for example, is on the GPML, that if there is another trademark holder for the term "time" that that other trademark holder has equal rights in the sunrise process to the GPML. In fact, that other trademark holder could be the GPML holder during sunrise, depending on the sunrise methodology.

>>JEFF NEUMAN: Correct. I don't see that actually disagreeing with what I said.

>>RICHARD TINDALL: (Speaker is off microphone)

>>JEFF NEUMAN: We could talk about the mechanisms, Richard, but you're right -- well, just -- sorry.

The point is that during a sunrise period, a trademark owner could get that name. We could talk about mechanisms after this.

>>AVRI DORIA: Okay. I apologize for all those who are on the question list who did not get a question. We've now overrun the -- the 12:30, but I understand that this is going to come up, as it was said, in every constituency and in every meeting, and I -- and I do apologize. I probably should have held everybody to just one question. I didn't.

>>LIZ WILLIAMS: Avri, can the questions be submitted to a central place for those people who missed out and to any other questions that were raised?

>>AVRI DORIA: I don't know. Is there a place that one could submit questions to a central place?

>>J. SCOTT EVANS: I would suggest -- Margie, can they submit it to the -- isn't there a Wiki set up for new gTLDs, and they could submit it there, and then --

>>MARGIE MILAM: I think so.

>>J. SCOTT EVANS: I believe there's a Wiki set up for new gTLDs, and I think IRT has a section on there --

>>AVRI DORIA: Yeah. If there's a specific section for IRT --

>>J. SCOTT EVANS: -- and I would suggest that if that's available, that's where you do it, and we will look at staff and try to address them.

Also, please come to the forum on Wednesday, where we are going to take additional questions, and we are around -- members of the IRT are around all week and we are happy to speak to anybody about anything that you may want to bring up.

>>AVRI DORIA: So again, I apologize for cutting the question list. We now basically -- there's a -- I guess there's a council meeting lunch and presentation, but we have to go somewhere to get our lunch.

>>GLEN de SAINT GERY: It's just outside.

>>AVRI DORIA: Oh, it's just outside. So I guess we have to go outside. Now. Before they take it away.

And then we come back in here and then we'll have a presentation on picket fences and consensus policies and what's in and what's out and how to recognize the difference. Thank you.

And again, apologies to those that didn't get to ask their question.