

**GNSO**  
**Special Trademark Issues : Trademark Clearing House**  
**3 December 2009 at 19:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Special Trademark Issues meeting on Trademark Clearing House held on 3 December 2009 at 19:00 UTC .

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/gns0/gns0-sti-20091203.mp3>

<http://gns0.icann.org/calendar/index.html#dec>

**Participants on the Call:**

gTLD Registries Stakeholder Group

Davis Maher - Chair

Jeff Neuman

Registrar Stakeholder Group

Jeff Eckhaus – Registrar

Jon Nevett- Registrar

Commercial Stakeholder Group

Paul McGrady - IPC

Mark Partridge – IPC

Zahid Jamil- CBUC

Non Commercial Stakeholder Group

principle participants

Robin Gross- NCSG

Kathy Kleiman – NCSG

Konstantinos Komaitis – NCSG

Alan Greenberg - At Large

Olivier Crépin-Leblond - At Large alternate

**ICANN Staff in attendance:**

Liz Gasster

Margie Milam

Gisella Gruber-White

Marika Konings

Amy Stathos

**Apologies:**

Wendy Seltzer –NCSG

Jeff Neuman - RySG

Coordinator: This is the operator. The recording has now begun.

Gisella Gruber-White: Thank you very much. Good evening everybody. On today's STI Trademark Clearinghouse call, we have David Maher, Jeff Eckhaus, Zahid Jamil, Jon Nevett, Kathy Kleiman, Konstantinos Komaitis, Olivier-Crepin Leblond, Alan Greenberg, Robin Gross. From staff we have Liz Gasster, Amy Stathos, Margie Milam and myself Gisella Gruber-White.

And we have apologies from Wendy Seltzer. If I can please also remind everyone, please to state their names when speaking for transcript purposes. Thank you. Over to you David.

David Maher: Okay. Thank you. This is our last teleconference before the due date of our first report. And I think looking at our chart we have substantial amounts of consensus (unintelligible) that we move right on to the numbers where there is no consensus unless there's an objection or if someone has something to say about Numbers 1, 2 and 3. I think we can -- okay, Jeff.

Jeff Eckhaus: Sorry. I just wanted to be clear. It's Jeff Eckhaus. I don't have an objection. I just had - just going back, maybe I don't know if I missed this, but David could you explain just what's expected or in what format

we'll be submitting this so that -- I'm just trying to figure out so what it will look like, what we're going to submit to the board.

And does it need to be drafted? Do we have time for that? How will that work? If you could just quickly go over that. I don't know if you have or if you were maybe saving that for later, I'll be quiet.

David Maher: No. That's a good question. As I mentioned in the last call, my understanding is that we owe some kind of report to the GNSO Council on Monday, December 7. Obviously there is not time for the group to have a teleconference or even in all likelihood -- pardon me -- there's not likely to be much opportunity for comments on the report.

What I'm expecting is that the staff will take the chart that we have here, this strawman proposal and invert that into a report item by item. And I hope that staff will be able to circulate that to this group this weekend so that if people see an area where either they disagree or need to file some kind of separate statement, they'll have some time to do that.

Having said that, it may be that Monday, December 7 is unrealistic and the council has already been alerted to the possibility that we will need some extra time. I guess I would not be surprised if we do need some time. But we really need to move ahead and unless staff has some comment on that (schedule) I think that's the way we ought to go.

Zahid, you have your hand raised.

Zahid Jamil: Thank you, yes. I just wanted to comment and since we're sort of doing a general discussion, I've just found something out and don't

(unintelligible) expected I've seen it yet but we've had some discussion in the BC and basically I just wanted time to (read) the Clearinghouse (looking) we have serious and very important concerns.

Some of them have been voiced by me earlier. Some of them are actually in the email that I've circulated. And basically just wanted to sort of add that we don't see this as a trademark solution at all. We don't see it addressing any of the right protection mechanisms and it's - the registries want this because it helps them, that's fine because it helps them in Sunrise and probably helps them in IP Claims because it will reduce the cost.

But as far as brand holders are concerned from a BC point of view, large brand holders are (impacted) in the last two days and other members of the BC, everybody feels that with the exception of that one aspect which doesn't really help trademarks or right protecting mechanisms but it's a functionality issue that's fine but it doesn't address the trademark issue.

And that is something that we would like loudly and clearly to be mentioned in the report from our perspective. And so we don't see this as a solution to any of the concerns. Thank you.

David Maher: Okay. I - you'll obviously have an opportunity to make that as a minority report. Alan.

Alan Greenberg: Yes, I just would like a clarification now or in writing later of whether they believe the staff proposal, not that it's on the table right now, but I'd just like to know did they believe that clearinghouse addressed the

issues or is it both of them and perhaps the IRT also that don't address the issues?

Zahid Jamil: I think that - good two questions. Does the staff proposal meet our concerns? No, it doesn't. Does the IRT IP Clearinghouse and the (unintelligible) with TPM and others and the (tapestry) of the IRT? Yes, it did because it was a compromise and there were other elements that did protect.

However this thing sort of standing alone out there in the wilderness on its own doesn't address the defensive registration pre-launch concerns of the trademark holders and that's the main issue. How do you address the trademark problem by this entire thing? We also see this as something we're going to have to pay for at least that what it seems like it's going to be.

And there's one other concern that somebody raised and I think this is as useful as that, if you're not in this IP Clearinghouse no matter whether you think it's useful or not, you could be actually finding yourself in the position where people say that, "Oh, so you haven't been vigilant enough about protecting your trademarks." That's the concern as well.

David Maher: Okay. Thank you. I think we ought to move on then to the areas where there is clearly - there's an absence of consensus at this time. And I - and looking at our chart it appears to me that is Number 4.

The question whether the Trademark Clearinghouse will be limited to nationally registered marks or will also include common law marks and

on the question where marks are registered in a jurisdiction where there's no validation. Does anyone want to comment on that?

Kathy, go ahead.

Kathy Kleiman: Sure. Is Jeff Neuman on the call?

Man: No...

((Crosstalk))

Man: ...he's not.

Kathy Kleiman: Oh, okay. Because I was wondering if we could continue the discussion of the email that Jeff was having -- Mark was it with you and kind of hear where that is. It's a fascinating discussion.

David Maher: Alan.

Alan Greenberg: I was basically going to raise the same issue that there was a discussion started on will registries have to use the ones from jurisdictions that don't do verifica - don't do validation. And I also asked the question of can the clearinghouse definitively identify which jurisdictions do and which don't and will it be allowed to put that in the claims notice.

So I think we need some answers before - from the IP people before we can understand what it means to say "include all registrations in the clearinghouse."

David Maher: Paul, go ahead.

Paul McGrady: I don't think Mark's on so I think it's up to me today. So I think the short answer to Jeff's question would be -- and again, I've not run this past the IPC but this is what I think -- that it would be what we've talked about in the past for Sunrises which is a registry could choose to use it or not use it for Sunrises based upon their charter restrictions.

So say for example somebody wants to launch the .europe and they are only going to allow people who live in Europe to have a .europe domain name then we think that it's perfectly fine for that registry to exclude all data except for European registrations having national (spec), whether that's a CTM registration or one at a national level.

The second question has to do with IP Claims, the second question. And in that situation we would say that it is monumentally -- wo. That's not me. We would say that it's monumentally unfair to put out and IP Claims notice that a potential registrant would look at and have it not be as complete as possible such that they think, "Well, okay, I've looked at the IP Claims, this seems safe to me." They register a domain name and they're immediately sued in Europe or some other emerging market where perhaps they did not do the kind of analysis that we do in the U.S. or Canada.

And so we think that the better position is to include all the data and, you know, if we want to beef up the notice in some way that says, "You know, listen, not everybody examines at the same level of specificity and that could affect your rights and you may want to see council." I mean I have no problem making that notice as helpful as possible and I think that's the way to handle it.

David Maher: Okay. Thank you. I - just from the stand -- it's too bad Jeff is not on. But from the standpoint of the registries we don't want to be in a position of determining which jurisdiction conducts an examination of marks and which jurisdictions just register anything that comes in in the mail.

From a registry standpoint we'd like to have an automatic process that doesn't put us in the middle. Jeff you had your hand up.

Jeff Eckhaus: Yes I do. Thanks Dave. I just want to echo your point because I actually - because my question was even simpler. Maybe I know - you know, Paul I'm sure you have like experience and you know, you know, you guys internally say, "Oh, this country does a substantive review. This one doesn't."

I mean I don't think that there is like a publicly available list that says, "This one does. This one doesn't." And there's no, you know, there's nothing that states what it is and it would be tough as David said as, you know, for the registry or for somebody who is not knee deep in this to say, "Oh, this region does or this region doesn't."

And I don't - maybe it's changing all the time so I think it would be very difficult since there's no - let's call it -- I'm putting air quotes around like "official list" that says what's substantive and what isn't. So unless there's something that some people publish - I don't know maybe -- is there something out there?

David Maher: Not that I'm aware of. Alan.



Alan Greenberg: That comes close to what I was going to say. I specifically asked the question, can the clearinghouse identify and flag it so the registry doesn't have to make a decision based on the name of the jurisdiction. However, I'll point out that whoever is suggesting that we only register ones from places that do validation, I would like to know how they think that clearinghouse will get that list as such a list doesn't exist.

Otherwise we're having a moot discussion if we're saying the clearinghouse should make a - should allow or disallow certain marks based on the jurisdiction but we can't tell you which is which. Clearly the UDRP providers and the URS provider must have a way of finding out whether validation is done or not. But that's on a case-by-case and judgment call basis perhaps. So if we can't distinguish between them, it's a moot discussion. And if we can, is it something we can rely on and won't be sued over?

David Maher: Kathy.

Kathy Kleiman: We know this is the big issue and it's been the big sticking point and CFC. And we've taken this back. We've taken this offline. We've really thought hard about it. So we wanted to share with you where we are on this which is that we are -- first, the answer to Alan's question is I think among attorneys who do a lot of this work their - the lists are already there. They're in their heads. I think it can be something that can be formalized quickly and fairly easily and in fact I'm going to try to go ahead and do that.

But with a few minor changes which I think everybody will find fairly minor, we're willing to go ahead and CFC is willing to go ahead and

sign off on the nationally registered marks from all jurisdictions. Here are the very few changes.

One is I think the word - words of including countries where there's no validation. I think the word we've been using is "substantive review." I think validation means a lot of things including just getting the trademark. So I'd like to go back to the word "substantive review." Where someone - you just pay a fee and basically if it's not already there, they give you the trademark.

((Crosstalk))

Alan Greenberg: Why do we need the clause at all in that case?

Kathy Kleiman: I think it helps explain things. Okay. Second thing is the distinction that Paul just made about Sunrise versus IP Claims and that the registries will have the discretion to work with those jurisdictions that do conduct substantive review.

Paul, unless I'm misinterpreting that, that was okay to - for the registries to make that kind of choice, the kind of choice Jeff Neuman was asking for?

Paul McGrady: I would say that it's okay as long as that corresponds to a charter restriction. Let's say for -- does that make sense?

((Crosstalk))

Alan Greenberg: No. It doesn't address Jeff's question.

Jeff Eckhaus: And it doesn't make sense to me either.

Alan Greenberg: He doesn't want to have to do a Sunrise on someone who is - who has registered the name in a place where you pay your \$12 and you get the name.

Paul McGrady: Are we talking about IP Claims or are we talking about Sunrise?

Alan Greenberg: Well, he asked...

Kathy Kleiman: Sunrise.

Alan Greenberg: The issue was both...

Kathy Kleiman: Sunrise right now.

Alan Greenberg: ...and he was asking for answers on both. Sunrise is clearly the more critical one.

David Maher: Jon.

Jon Nevett: Yes, I would have significant concerns Paul with limiting it to a charter. For example if you look at, you know, David's registry .org, there's no charter that it has to be a nonprofit. It's a generic tld.org and if that org when it rolled out said that it only wanted to use, you know, this clearinghouse list for whatever countries that it wanted to for whatever reason it wanted to, it should be able to do that.

Paul McGrady: Yes, my concern is just liability for the registries if they pick and choose like that.

Jon Nevett: But that's the registries choice, right? The registry chooses to use everything in their clearinghouse because they don't want to pick and choose, that's fine. If they choose no to have - if they choose for whatever reason they don't want to have trademarks that aren't, you know, that were approved by a country that they don't feel has a substantive review process, then they choose to do that. It's up to them.

Paul McGrady: So I mean we're talking about potentially excluding, you know, 500 million Europeans.

Jon Nevett: That's not what I said. I said, you know, it's up to the registry. And you're saying it's up to the registry only if they have a charter exemption for that.

Paul McGrady: Right...

((Crosstalk))

Jon Nevett: And I'm saying that's too limited.

David Maher: I'm...

Paul McGrady: In addition...

David Maher: I think I agree with Jon. It should be the choice of the registry as to how to use it. From my standpoint as a registry, clearly the safe thing to do is to take everything that comes in from the clearinghouse and pass it along. And we'll...

Paul McGrady: Where would...

David Maher: ...use it...

Paul McGrady: I'm sorry.

Jon Nevett: Are you talking IP Claims or Sunrise David?

David Maher: Well certainly for IP Claims.

Jon Nevett: Yes.

David Maher: Sunrise I think is a somewhat different situation where regardless of the charter provision, a registry should be able to make it's own choice as to how to use it.

Paul McGrady: And -- this is Paul again -- and would that include a choice not to use it at all?

David Maher: Well, registries in the past have had very successful Sunrise processes. And I look at this Trademark Clearinghouse as strictly a source of data. So it seems to me that when a new registry proposes a Sunrise process, they will undoubtedly look to the successful models in the past.

They may have to tailor them to their particular needs. But it seems to me at that point a registry should be able to look to the clearinghouse simply as a repository of useful data and it would then be used in

accordance with the particular procedures of the Sunrise of that particular registry.

Paul McGrady: Yes. That -- yes, this is -- you know, I hate to do this but this is the problem with cutting out the Globally Protected Marks List because without the Globally Protected Marks...

David Maher: Paul...

((Crosstalk))

David Maher: Okay.

Paul McGrady: No, now let me finish. I - let me finish please. Everybody else got a chance to talk. Without the Globally Protected Marks List this creates a loophole. So if I'm a registry I say, "Okay, I have to choose between an IP Claims Service or a Sunrise. I choose Sunrise and I choose only to accept registrations from Thailand." Which then results in no pre-launch protection for trademarks at all in that sense except for unless you happen to have a registration in Thailand. Does that make sense?

David Maher: Okay. Paul...

Paul McGrady: And so if...

David Maher: No.

Paul McGrady: ...if there's no restriction on what can be excluded, we have a loophole and without the GPML we have no protection for brand owners in this (unintelligible).

David Maher: Well, I...

Paul McGrady: There's nothing left.

David Maher: I'll tell you...

Paul McGrady: That's why I think it has to be based upon if there is a charter restriction. If I'm .berlin and I say, "I'm only going to allow people who live in Berlin to have a .berlin," then it makes sense. Then I'm only going to take registrations from Germany where there's a Berlin and Ohio where there's a Berlin, right, places like that, wherever there's a city called Berlin, then I'll take those and I'll exclude everything else. A charter restriction makes sense. A wide-open loophole makes no sense.

David Maher: Well, introducing the problem of the GPML I have said previously it's not out of scope but I think it's beside the point here. The GPML is not part of the board or the staff proposal. There's no way to introduce it except in a minority position which you're welcome to do. But I don't think it is relevant to the question of how the eligible marks question is being asked.

Paul McGrady: It's not.

David Maher: But we have a lot of...

Paul: Yes.

David Maher: ...hands up. Kathy.

Kathy Kleiman: I would - thanks. I had one more thing which was so can the changing of wording for substantive review the resolution of this issue that we're debating now. And the third was that Paul and I - Paul agreed to go offline with me again to revise the notice so that we can put in some of the language that he was suggesting into the IP Claims notice to notify people about jurisdictions that do review and jurisdictions that don't. Just kind of wanted to finish the thought there.

David Maher: Okay. Jon.

Jon Nevett: I'll pass for now.

David Maher: Okay. Alan.

Alan Greenberg: A couple of things. Right now if a registry does a Sunrise, they compile or at least set the rules for how the database is compiled that's used in the Sunrise. So they at this point can pick and choose if they take Benelux registrations or not to include in their list.

I am presuming if they can do that independently today, they can do the same thing -- I understand the Thailand issue but in practice they could do it with no problem. So I don't think this changes it as long as we don't make rules against it.

With regard to raising the issue of the GPML, that was raised at one of our early meetings. I sent out some questions which nobody has addressed, certainly not in the IPC. The GPML was a much wider thing than we're talking about here because it was post-launch also.



If someone wants to propose the concept of a GPML hopefully with a new name that is applicable only to pre-launch Sunrises that must be used by all registries...

David Maher: Well, Alan...

Alan Greenberg: ...then they should put some words on it.

David Maher: Alan, we're getting way off the point.

Alan Greenberg: Yes.

David Maher: I mean I don't...

Alan Greenberg: No, no, I'm just saying if someone wants...

David Maher: I don't want to...

Alan Greenberg: Okay.

David Maher: I really don't want to get into a discussion of the GPML.

Alan Greenberg: No.

David Maher: There's a clear lack of consensus...

Alan Greenberg: No, David...

David Maher: ...of the people who...

Alan Greenberg: Sorry, David. I'm agreeing with you. I'm just saying if in the minority report or offline they want to do it, they shouldn't use those words, those letters which had a much wider meaning. Talk about what they're looking for in the Sunrise or pre-launch issue.

David Maher: Okay.

Alan Greenberg: Sorry.

David Maher: Zahid.

Zahid Jamil: First of all I think that if they're (unintelligible) they can choose. If registries today can do this, there are fewer of them. If it's a new gTLD it's going to go (lighter than 100) that's what people are saying. If that's the case, then we need to make sure these rules are pretty rigid and we can't have that much disparity across the gTLDs and the registries.

I see ALAC, IPC and the BC (unintelligible) and I'm saying that now want to talk about the GPML. I would think that that's not a clear lack of consensus and these guys aren't a minority. They are three very important representatives here who want to talk about it and I think that they should be able to.

One thing I'd like to propose if it's not going to be GPML and a trademarks list, could we talk about a (victims) list? Could we talk about somebody who can actually show and it doesn't have to be trademark and brand holders it could be for consumer protection purpose, those people who have been abused against previously. And if they can show that, could they be on a list and could that work?

David Maher: Okay. We're really getting far from the point. It's all -- I have no objection to people in their minority reports suggesting new approaches but we have to remember that we're subject to some constraints here.

Either we have a consensus on something different than the staff proposed or the staff goes back to its default position. And the - in a minority report you're welcome to tell staff that they ought to do things differently but that's not the framework in which we're working. Paul.

Zahid Jamil: I'm sorry can I respond to that.

David Maher: Sure.

Zahid Jamil: This is Zahid.

David Maher: Go ahead.

Zahid Jamil: My understanding from the GNSO function in Seoul was that staff had said that it is not a default position, that the staff proposal is not a default position. If somebody on staff could clarify that, maybe I'm wrong. But my understanding from the GNSO (unintelligible) was that it's not a default position.

David Maher: Margie, do you want to respond?

Margie Milam: Yes, I wanted to refer back to the letter from the board. The board letter did not say that it was a default position. It said that it would consider -- I'd have to look at the exact language but it said something

else. You know, consider all the input and make a decision. So I think that's right.

David Maher: Okay. Well I stand corrected. One, just before Paul speaks, Margie, could you make sure that the word "validated" - "validation" is changed to "substantive review."

Kathy Kleiman: Thank you David.

Margie Milam: Okay.

David Maher: Paul.

Paul McGrady: And this is just for the record, I know it's obvious. But there is no consensus on the part of the IPC to a process that does - that would allow registries to exclude from Sunrise Processes trademarks unless it was tied to a charter restriction.

David Maher: Okay. That's clear enough. Anyone else?

Jeff Eckhaus: Yes, it's Jeff Eckhaus. You know, I'm sorry Paul can you -- I guess I'm naïve -- can you explain what you mean by that charter restriction, that last piece. I'm sorry. If you...

Paul McGrady: Sure. That just goes back to what I was saying about -- if there was something in the charter that is geographic in nature or say it was along product lines, say I was launching a .shoes. I could say, for Sunrise purposes since my charter will only allow me to have registrants that are in the shoe business I will exclude all trademarks that are not in International Class 25, for example, because there's not

point in considering those for a Sunrise because people can't own my domain names anyway. That's perfectly acceptable and it makes sense.

But the wide open - the registry can pick and choose from which trademark registries they will take data or not accept data without any sort of limitation at all, that's not acceptable.

Jeff Eckhaus: Okay. Thanks for that clarification.

David Maher: Okay. Kathy.

Kathy Kleiman: I just - I wanted to -- putting my thoughts together. In our agreement to go forward with nationally registered marks from all jurisdictions, the NCSC did ask me to specifically to support what Jeff Neuman had put forward.

And, Paul, I'm not sure, there may be a middle ground here which is that we support the idea of a difference between the Sunrise and the IP Claims. That's something that's been talked about before, the different uses that all the marks be used in the IP Claims and that we take care of it in the notice and Paul hopefully you and I can write some language for that and bring it back to the group and finish that.

On the Sunrise we do support the ability to differentiate based on charter the .shoe is the one we've talked about since the beginning of time in the STI. But Jeff is proposing -- I've gone back to his email -- and he's proposing that not a broad ability to differentiate but here's his language, "We should not be forced to give recognition in the Sunrise

period,” he has in IP Claims period too, “in the Sunrise period to registrations and countries that do not undergo substantive review.”

And I wanted to see whether that narrow requirement, restriction, discretion would be okay with the IPC and the BC because it seems to make sense to me that if you’re talking about reserving domain names, this reservation of domain names in the Sunrise, that you have that ability to make some amount of choice over - not choosing Thailand necessarily but not choosing Benelux either.

David Maher: Does anyone want to respond to that?

Paul McGrady: This is Paul. I’m happy to. The problem is where do we draw the line? You know, we say “that don’t undertake substantive review.” What does that mean? In whose opinion?

Are we prepared to exclude almost 500 million Europeans because we take the position that (OM) does a bad job compared to the United States or Canada in reviewing their marks? It creates a loophole that is bigger than the RPM itself.

David Maher: Zahid.

Zahid Jamil: I think this is going to get struck down by the (gap) and have to be sent (unintelligible) reaching a consensus it’s got to make sense to other people who are going to be involved in the process of making - getting it implemented.

We know that the governments won't like this, that's just one. I mean I would like to echo what Paul had said and in addition add something that I'd said earlier. We need to be careful here.

David Maher: Alan.

Alan Greenberg: I would really like to know if the Sunrises that have happened to date have excluded all European countries or not. I mean are we just making up those words or is that strongly felt by registries? You know, I've heard some people say all European countries and some people say Benelux registrations. And I'd really like to understand the difference and what real Sunrises have done.

David Maher: Konstantinos.

Konstantinos Komaitis: Yes. I'm not sure and I don't want to speak on Jeff's behalf but I thought that he was saying that they excluded the Benelux and I really could not understand why we need to exclude the whole of the European Union.

The European Union is conducting substantive reviews when it comes to their community trademarks and I can basically confirm that (being) locating the European Union there is not even a question of whether the review is substantive.

And when the community trademark was introduced especially to the European Union, the European Union said that substantive reviews would be undertaken in order to determine whether a mark is valid or not. So I don't think that we are talking about 500,000 or million Europeans here.

David Maher: Paul.

Paul McGrady: Then we need to define it because the European Union does not examine on relative grounds. They only look to see whether or not the trademark can function as a mark. They do not compare it against the registry to see if somebody else is already on the registry.

And so they may conduct a substantive review but it's not as substantive as the U.S. or Canada and so we have to draw the line in the sand somewhere. We have to put, if we're going to do something like this which I don't think we should but if we are, we need to define what it is we're talking about. Because if we do it loosely, we could end up excluding 500 million Europeans when all we really want to do is exclude Benelux.

Kathy Kleiman: And (Tanesia).

David Maher: Well, I - at this point I think -- Kathy, go ahead.

Kathy Kleiman: Would there be agreement that -- would anyone disagree that registries should be able -- could in a Sunrise choose between countries, maybe national regions, that conduct any type of substantive review versus those that you just pay your fee and you get it as long as an identical mark is not already registered? Is that something we can agree to? I don't think that's disenfranchising Europe. And we can write it that way. There's no intent to do that.

David Maher: I have a...



Kathy Kleiman: This is -- this all has to do with those of us who lived through the race to (Tanesia) where you paid your fee and you got it. There was no use. There was no evaluation. There was no nothing.

David Maher: I need to check something here. I have the feeling that we're getting far away from an area where there really is consensus. My understanding of the consensus as of today is that all nationally and internationally registered marks and common law rights will be entered into this database. Is there any disagree...

((Crosstalk))

Konstantinos Komaitis: David, sorry. This is Konstantinos. I don't think we agreed on the common law rights.

David Maher: Okay. Is it common law rights that have been court validated?

Konstantinos Komaitis: Yes.

Kathy Kleiman: Yes.

Konstantinos Komaitis: Correct.

David Maher: Okay. I'm sorry. That's what I meant. If we agree on that, do we at this point have to make a decision about how a particular new registry uses this database?

((Crosstalk))

David Maher: Shouldn't we say that there is a consensus on what goes in it and have a separate issue as to the way it's used? Does that make sense?

Man: Sure.

Kathy Kleiman: Yes.

Konstantinos Komaitis: Yes.

David Maher: Okay. Mark.

Mark Partridge: Sorry to be late. Yes, I think that's a really good approach David.

David Maher: Okay. Let the notes reflect that. Let's move on then to the identical match question.

Margie Milam: David, it's Margie. Can you repeat that one more time so we get it right in the notes?

David Maher: Okay, that the nationally registered and internationally registered marks from all jurisdictions (and pren) including countries where there is not substantive review, will be included in the database. Also common law rights that have been validated by a court decision will also be - may also be included.

Margie Milam: Okay. Thank you.

Alan Greenberg: I think we also have agreement, maybe not, but I thought we also had agreement that all of these rights would be used in the IP Claims...

David Maher: Well, wait a minute.

((Crosstalk))

David Maher: Wait a minute. Wait a minute. Wait a minute. Wait a minute.

Alan Greenberg: No, no. Okay.

David Maher: That's use. That's different.

Alan Greenberg: No, no. I was trying to add another area...

David Maher: We're just talking about...

Alan Greenberg: Okay, sorry.

David Maher: Yes, let's hold off. Identical match is the next box. The question excluding the business community, business stakeholder group. Does anyone want to comment on this? Do we have a consensus then as to the -- Zahid.

Zahid Jamil: Thank you. One of the things I did over the last few days was actually speak to other IRT members, some of them who are brand holders and they remember, and I just want to clarify for the record, that there was a difference between what was expected to be covered in the narrow definition of identical match for the GPML and that was fine because it was going to be much narrow and the understanding that the IP Claims definition of match would be very different.

I think this may not have come through but it's something that when I spoke to other people, they agreed with what I had said. And I'd just like to reiterate that you could easily (gain) this by simply doing this (postmark) in the first 30 seconds.

David Maher: Kathy.

Kathy Kleiman: I just wanted to say that when we drafted - when Jeff and I went through this and worked through it, we did go back to the IRT report and the clearinghouse sections. So there may have been things that the IRT hadn't documented and Zahid has talked to me about some of these but I just wanted to share, that was our point of reference when we started.

David Maher: Anyone else? Do we have a consensus then on the question of identical match, the meeting of identical match? Apparently we do. Then let's go to the question of mandatory pre-launch use. Is there still an open question on that? I don't see any hands so apparently not.

Jeff Eckhaus: It's Jeff Eckhaus. I just have one question. Is this -- I'm just looking at the boxes here (unintelligible) just note, I'm sorry, (unintelligible) minority position that people are going to put that in themselves. We're just saying that we're coming to consensus on this, correct? That it's mandatory?

David Maher: Yes.

Jeff Eckhaus: Okay. Thanks.

David Maher: That's my understanding. Alan.

Alan Greenberg: I think we need to note that there's substantive disagreement, not compromise on the - on how the clearinghouse would be used for Sunrise.

David Maher: Okay. Then the next issue is the voluntary use of a Trademark Clearinghouse. Do we have a consensus here?

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

David Maher: Please, go ahead.

Jon Nevett: Thanks. We might want to call this something else because if we read what we write here in the column that talks about the proposal or the consensus, it's not really voluntary use of the clearinghouse itself, right? We're talking about it doesn't bar the service provider or other providers to offer ancillary services that are outside the clearinghouse.

David Maher: That's my understanding. Anyone else? Jeff Neuman.

Jeff Neuman: Yes, hi. Hi guys. We may want to explain what we mean by ancillary services. It's not -- we understand what it means because we've been talking about this. But (who just) picks up this document they're not going to know what that means at all.

David Maher: Do you want to propose some language?

Jeff Neuman: Well I want to hear from the group as to what services they were thinking about because I wasn't really involved with this part. So whoever came up with that language, can you explain that?

David Maher: I don't see any hands going up.

Jon Nevett: Yes, this is Jon. I didn't come up with that language by any means but in the past in these calls we've talked about, you know, common law rights for example. If they want to have - if this same service provider wants to provide information about common law trademark rights, they should be able to do that. If they want to provide information about post-launch activities like many do now, they should be able to do that.

Alan Greenberg: It's Alan. If I can interrupt, Jeff Neuman just is on the Adobe (room) setting joined, is he also on the call?

David Maher: Yes, he is.

Alan Greenberg: Okay. Thank you.

David Maher: All right. Jeff, go ahead.

Jeff Neuman: Yes, so the question I have though is it says that -- I guess so we can put those in as examples, that's probably a good idea just so when someone picks this up and reads it they understand what we mean.

It also says that information needs to be stored in a separate database. Do we want to be -- the IRT is much more strict about this. Do we want to basically say that they can only use the data to the extent that others can use that data? Or, I'm sorry, they can only use the data in the clearinghouse to the extent others use the data in the clearinghouse.

In other words they should not have some sort of (unintelligible) right over the data that's in there and they can't use that data in the clearinghouse except as anyone else would be able to use that data. Does that make sense?

David Maher: No.

Man: So you don't want to give them a competitive advantage because they're also the clearinghouse provider.

Jeff Neuman: Right. So in other words - for example Neustar is the No.1 North American numbering portability administrator. We maintain the registry of phone numbers if you will. But we can also be a user of that database but we can only be a user of the database to the extent that everyone else is allowed to be a user. We have no superior rights to use the database just by virtue of our being the database administrator.

So similarly...

((Crosstalk))

David Maher: Oh.

Jeff Neuman: ...if you are the clearinghouse, you should not have any right to use the data in the clearinghouse above and beyond the rights that other parties have to use that data except for performing the functions that we mandate here.

So in other words if they want to provide a trademark watch service and they want to use the data that's in the clearinghouse, they can only do so to the extent that any other provider could come in and use that data that's in the clearinghouse just like they can.

David Maher: That makes sense. Jeff Eckhaus.

Jeff Eckhaus: Okay. Well first off Jeff, thanks for clearing that up. That actually does make a lot more sense. And here's my question on that is, I know this is silly, but if you're saying that - like let's use your Neustar example, you would still be able license that data and charge a fee to access that database, is that correct?

Jeff Neuman: You mean as a number portability administration? No, we...

Jeff Eckhaus: Let's use your number portability or let's - or some of the other like the watch services. So you're saying that if I want - if I'm - you know, if Jeff's Clearinghouse decides to - is the one who wins this service and I want to offer a watch service and then say Kathy also wants to offer a watch service, I can license her that data you're saying but it would have to be the same exact data that I'm using, correct?

Jeff Neuman: Yes. Being a little careful here because you'd essentially have to give it to them for free just like you. In other words Jeff's Clearinghouse gets the clearinghouse. Let's say a subsidiary of Jeff's Clearinghouse wants to offer Jeff's Watch Service. Jeff's Watch Service would have to license that data on the same terms and conditions that anybody else would have to be offered the same terms and conditions. So I didn't...



Jeff Eckhaus: Okay, yes. No, that's what I was getting it. That's what I meant. Yes. So but you would be able to license it out to other people but if I decided to do it I would have to pay that as my own subsidiary would have to pay the same terms and conditions and I would have the same access to that database as everyone else who licenses it, nothing proprietary that I could hold back is what you're stating, correct?

Jeff Neuman: Yes. And I would add though in most cases that data would have to be given out for free instead of a paid license because in this case you would have a monopoly provider, someone's going to control the pricing of how you license out that data. So either it's for free or it's a set price that's established and approved by ICANN or whatever. But you can't just let them charge a huge amount, you know, unregulated.

Man: Can I get in the queue David?

David Maher: Yes, go ahead. Well Mark is ahead of you.

Man: Oh, I'm sorry.

Mark Partridge: I just wanted to look at this from the principle of making this a cost-effective system from the user. So I hope we accomplish the goal that there is one place that data is put and if that data is relevant to another registry in the future, it doesn't have to be resubmitted but it's in the database so therefore it's cheaper to be used.

David Maher: Okay. Thank you. Zahid.

Zahid Jamil: The BC would support that position. I think that creates competition and I agree with the (pet) pricing but I'd also like to caution that, yes,

the price should be reasonable enough to be (able to be) used. Thank you.

David Maher: Alan.

Alan Greenberg: Two very short comments which reflect to what Mark said. I assume there is going to be an annual renewal fee or something like that, not just necessarily a one-time fee.

The other question is we're talking about the clearinghouse licensing the data perhaps for free to other people. That presumes that every mark holder that registered has already allowed it to do that which I'm not quite sure it's going to. So it might be a hypothetical discussion.

David Maher: Jon.

Jon Nevett: Yes, I think this is a level of detail we absolutely do not need to go in. The principle that I think that what Jeff articulated which is a good one is that the provider of the Trademark Clearinghouse should not be in a competitive advantage to any other provider in providing these ancillary services.

I mean we could word that better obviously. But I mean that's all we need to say I would think in the report and we don't have to get into the detail of pricing or anything else that we've just been talking about for the last few minutes.

Amy Stathos: This is Amy, if I might David.

David Maher: Go ahead.

Amy Stathos: Yes and I would agree with that completely Jon. Thank you. I was just about to jump in on this. I think we should avoid the discussion of the pricing and the principal concept of making sure everyone is on an equal playing field is fine, we just - we should avoid any discussion of setting prices.

David Maher: Yes. Kathy.

Kathy Kleiman: To take it in a totally different direction for just a second. One of the things I wanted to make sure that we had agreed -- I think we've talked about and to see if there's any disagreement and then whether we should put it in writing is another use of the database which is that- and particularly in IP Claims notice - that the registrant who is being provided with notice of these trademarks have the right to access them and hopefully even the links in the claims notice, the links tot access those specific registrations, those specific forms within the clearinghouse I would think at no cost, something that they could click over and reference.

Is that something that anyone would object to putting language in that the clearinghouse should on a case-by-case basis make this available to the registrants for access and use in their researching their domain names?

David Maher: Anyone want to comment on that? Jon you have your hand up.

Jon Nevett: Sorry. I'll take it down. But to answer your question Kathy, it would be - to me it would be depending on cost. If it's not cost prohibitive, sure that makes sense.

David Maher: Alan.

Alan Greenberg: Yes, that's also somewhat related to something we talked about a very little bit before of using the clearinghouse to give the URS provider information about the mark of the claimant.

David Maher: Okay. Kathy.

Kathy Kleiman: I know -- I don't know what Paul was thinking when we drafted it. I know when I drafted the notice, this was something that - actually we talked about it in Seoul at the big panel on Wednesday in Seoul and -- who's the chairman of the IRT? Christina seemed to like the idea as well of accessing things -- she's one the one who called it a case-by-case basis of registrants going in so that they could check and verify the data within the database within the clearinghouse.

So I know I drafted the notice with that kind of access in mind. And presumably not access for cost. So you can kind of go forward and pull out a few records in the clearinghouse even if the whole of the clearinghouse wasn't made public that you could pull out those records that are being referenced in the IP Claims. So again I drafted the notice with that in mind.

David Maher: Okay. Thank you. And we move along then to Item Number 7, the voluntary use of the trademark clearinghouse post-launch. And I see consensus in the first box. Okay. Zahid.

Zahid Jamil: Yes, I've said this on previous calls as well, we support post-launch as well as I just mentioned earlier otherwise it doesn't help us putting

domains in the IP Clearinghouse. So as I said the two main concerns were post-launch and the narrow identical match. And so we wouldn't provide consensus (in this).

David Maher: Okay. Thank you. Then moving along...

Alan Greenberg: David, it's Alan. The notes are talking about the clearinghouse should not have an advantage under the voluntary post-launch whereas I think we were talking about it also pre-launch. I think we were talking about it under Number 6, were we not?

David Maher: Oh, yes. I think you're right on that.

Man: Yes, we were talking about it for any ancillary services.

Alan Greenberg: Yes, so...

David Maher: Yes.

Alan Greenberg: ...post-launch and pre-launch.

David Maher: And the notes will now reflect that. Thank you. Okay. That - we get to Number 8, Kathy and Paul, do you want to address this, the required elements?

Kathy Kleiman: Go ahead Paul.

Paul McGrady: Sure. I mean I think the draft notice that we sent around attempted to accommodate everything in the third column. We didn't hear any negative feedback from anybody.

And so other than the tweaking that Kathy and I need to do to point out that not all jurisdictions examine the same that we talked about earlier today, I think we're done with this unless someone has an objection to the draft.

David Maher: I see no hands raised, which is a good thing.

Kathy Kleiman: David.

David Maher: Yes.

Kathy Kleiman: Paul, how did you - what were you thinking of in terms of access to the clearinghouse by the registrant when they get the IP Claims notice? Were we thinking link - were you thinking links over to that as well?

Paul McGrady: Well we were thinking that the goods and services - there needed to be a link to the goods and services because those would - unless they were just a few items would easily exceed the field size that we anticipate in the notice because we don't want the notice to be 50 pages. We want it to be, you know, one or two, something useful. So I guess there is some access back for that.

Kathy Kleiman: Does anybody opposed putting that in writing? Some access back so that we can have a very clear, brief notice and then someone can get the full details from the clearinghouse.

David Maher: Is there. There are a couple of hands up but is there any objection to that?

Jeff Neuman: Well I think -- this is Jeff Neuman and my hand it raised and this also relates to my point. I'm not so sure -- I mean I'm fine with providing access to registrants, let me put that out. But I'm not so sure that we should -- in the draft that you guys put forth you guys have a click here if maximum character count is exceeded. You have things in there that are really implementation details.

I think those types of things should really be for the clearinghouse to figure out how to implement. I think we're a little too prescriptive on how they should do things. I think the notice at the beginning, the language at the beginning, I think that's right. And I think afterwards we should probably say that they should list these things, these categories for every mark.

But I think other than that and dictating how short it should be or which part are links and how they link, I think we should really leave that to implementation of the clearinghouse.

David Maher: Okay. Alan.

Alan Greenberg: Yes. I'll make my standard comment that we have to factor in language. Both the registries may be working in a lot of unusual languages and I don't know whether on IP Claims if it's done through registrars or directly with the registry. Maybe someone can clarify - Jeff can clarify on the one that's already been done.

Jeff Neuman: So on the one that was already done, it was done through the registry.

Alan Greenberg: Okay.

Jeff Neuman: But that doesn't mean it has to be done that way in the future. There are other ways it can be done.

Alan Greenberg: Okay. Certainly registries are going to work in different languages and if it's done through registrars, the registrant, potential registrant may be working in a different language than the registry and we have to make sure that that's not forgotten as we go forward.

David Maher: Okay. Kathy.

Kathy Kleiman: Alan raises a good point. Just asking the note taker to reflect that the drafters of the notice did envision links to the clearinghouse for further detail, kind of an abbreviated material on the IP Claims notice and then the link to get the full data.

David Maher: Thank you.

Jeff Neuman: Or instead of saying links just should have access to the full data it's in theory possible to do that in other ways other than links. So that's -- I mean we should set the principle that they should have access to the full set of data and then let the clearinghouse figure out a way to implement that.

Kathy Kleiman: Great.

David Maher: Okay. Moving along then to Number 9 where I think there is consensus. The effect of filing, it's clearly stated that inclusion is not proof of any rights nor does it confer legal rights. Do we need further comment on that?



That brings us to the tenth point, the cost of operating the clearinghouse. Kathy your hand is up, is that...

Kathy Kleiman: I'm sorry. Let me take that down.

David Maher: Oh, okay.

Kathy Kleiman: Thank you.

David Maher: There's a question mark here. Alan, go ahead.

Alan Greenberg: Yes. I think we just - we last time made a clear statement that no - that we do not expect ICANN to put any money into this process at all. So we are not construing as ICANN as one of the users, one of the parties utilizing the services. And we may want to say something in the opposite also that we're not expecting the clearinghouse to provide funds to ICANN but I'm not sure that's as important.

David Maher: Okay. Zahid.

Zahid Jamil: I'm just wondering and I could be wrong but I think that there was some discussion previously about finding out what the costs usually are associated with registries doing, you know, pre-launches, et cetera. And if we could get that information that may be helpful in deciding who bears the cost, et cetera. And I'm just wondering is that information available, one.

Secondly as in the email that was circulated earlier, some of the views that are in there show that the BC would obviously have trademark holders want a sharing of the cost because they feel or if you could

think (minus in New York you know) any commission that comes forward that registries also gain from this.

David Maher: Jeff, go ahead.

Jeff Neuman: Well at the risk of sounding like a broken record, I disagree with Zahid and so did the IRT. So I think that the users were envisioned to be the trademark owners, not the registries. The registries were being forced to implement this.

If the costs were being borne by the registries, then presumably the registries should be able to charge extra for it. But one of the whole purposes of this was to lower the costs for trademark owners. So again I strongly object to what Zahid is saying and, you know, the IRT rejected Zahid's point as well.

David Maher: Alan.

Alan Greenberg: Yes, I sent out a note a while ago on this. The IRT report said that certain services should not be borne by the registries. It didn't say anything about who does pay. And I have a strong concern that if the trademark holders pay once or annually for putting their mark in the clearinghouse, there is no billing that's proportional to the number of launches that there are, whether there's 2 a year or 4000 a year.

And although the registries should - perhaps shouldn't pay any money out of their own pocket, they may be the right way to bill the trademark holders, you know, going through them. I can resend my note if someone wants to. I just think that there's an untenable situation if the

registries aren't involved in the process whether it's passed through or sort of out of their own bottom line.

David Maher: Zahid.

Zahid Jamil: Yes, thank you. First of all I'd just like to thank Alan for that comment, I'd agree with him about the IRT's language. I'm looking through it now to get more information on that so I can share it on the list.

However, let's not forget the IRT, The IP Clearinghouse was actually adjunct to the GPML and so it's a very different ballgame right now. So the reasons for which they may have a consensus within the IRT do not necessarily apply today.

David Maher: Okay, Jeff Neuman.

Jeff Neuman: Well, but that's not true Zahid. The cost of the clearinghouse being paid by trademark owners have nothing to do with the discussions we had on GPML. You can't just say that because we're not adopting everything the IRT did that everything the IRT said is out the window.

I mean, the clearinghouse team did consider this. And the other thing we really need to consider also is that part of the reason we're introducing new TLDs is to ensure there's competition with .com, .biz, .info, all of the others.

And if you're going to handicap registries, making them pay for this clearinghouse, forcing them to increase the price of their registrations, I really feel like you're going to be hampering new competition and that really needs to be considered.

David Maher: Okay, thank you. Mark.

Mark Partridge: I had suggested this concept last time and I'll suggest it again. Maybe "utilizing" isn't the right verb, but it seems to me in principle that it's fair for parties who benefit from this should pay and to the extent brand holders, obviously they benefit, but I don't know that we need to decide. But I think that it may be the case that registries, registrars, and perhaps others benefit and it would be fair for them to pay to the extent they benefit.

Man: And URS providers if they provide a service to them.

Man: And ICANN. ICANN is one of the biggest benefits of this clearinghouse if you think about it.

David Maher: Okay, Jeff Eckhaus.

Jeff Eckhaus: Yes, I guess I'm a little confused as to as a registrar how am I beneficiary? If somebody could just explain that. I'm a little unsure of why - what the benefits are, how I'm a beneficiary, and why I would need to pay. If someone could just explain that.

Mark Partridge: I guess I use the word and I don't know that you do benefit. If you didn't benefit, you wouldn't need to pay. But I think the principle is that the people do benefit would be the ones who pay, not necessarily utilize, people might have to utilize it, but it's no benefit to them.

David Maher: Mark.

Mark Partridge: That was Mark.

David Maher: Oh I'm sorry. Zahid.

Zahid Jamil: Thank you. Just two points. If Jeff you could point out in the IRT report where that was said about the costs should not be borne by the registries, that would be one, just a question.

Second, I think that on the previous call I think somebody mentioned saying lower administrative costs, lower consulting fee costs, things of that nature. Somebody mentioned that as I think it's on record. So unless that's not true and I think somebody did say that maybe we would look into the costs associated with launch for registries, maybe somebody can bring us some information on that.

Jeff Neuman: To answer Zahid's question of where in the report, unfortunately I'm not - I don't have a report up in front of me, but I know that it says that in at least two different places in the clearinghouse section within the first couple pages. If you want I could - when I get to my computer I could find it. I know Alan saw it as well.

Alan Greenberg: I think it was in my - I think I pointed to the paragraphs in my email also.

Zahid Jamil: That would be great Jeff. Thanks.

David Maher: Okay. Well, we've arrived at the -- just -- somebody want to speak?

Margie Milam: Yes, I just wanted to clarify where did we end up on Number 10?

Man: Divided.

David Maher: Well, the statement costs should be completely borne by parties utilizing the services and the statement ICANN is not expected to fund costs of the clearinghouse and the clearinghouse is not to fund ICANN. I think we have consensus on that. We have no consensus on the meaning of the phrase "parties utilizing the services." Any comment on that?

Jeff Neuman: Yes, I -- this is Jeff -- to the extent that parties utilizing the service includes the registries, yes, I object to that. And the registries object to that.

David Maher: Speaking as a registry, I concur. Alan.

Alan Greenberg: Yes I need some clarification. I keep on raising the issue of - that there's going to be a cost to the clearinghouse roughly proportional or increasing with the number of launches that there are.

How does the registry - how does the clearinghouse get remunerated for that? I would have thought it makes sense to charge the trademark holders, but do it through the registry because that's - they're already doing bill - they're already, you know, it's one transaction per registry instead of 1000 or 100,000.

It's still the trademark holder paying the bill, but doing it through the registry seems to make more sense. And I'm not hearing how that would work.

Jeff Neuman: Well, it wouldn't work through the registries, right, because if there are ten registries that launch all around the same time that have a Sunrise period then you're saying charge the trademark owner ten times? I mean, how would you do that?

I think to get the information in the clearinghouse it's a one-time charge and I think we need to provide the, you know, and in an RFP (for a) clearinghouse, the clearinghouse is going to need to come forward and explain how it will be funded.

In using the rules that it's not through, you know, so it's going to have a business model. It's going to have to an analysis. But we - it can't be through the registry because you know if you have, like I said, ten launching at once, how does that work?

Alan Greenberg: But they're going to have to deal with ten registries if there are ten launches.

Jeff Neuman: That's not what I'm saying but the trademark owner is going to get charged ten times for the same thing. And that was one of the things we were trying to avoid.

Alan Greenberg: If they get ten Sunrises out of it, that makes sense.

David Maher: Zahid.

Zahid Jamil: Thank you. I'm looking at the IRT report and I'm looking at Page Number 3. And I'm looking at one section saying, "Benefits for trademark owners." I'm looking at another one which says, "Benefits for new gTLD registry operators." And it says, "The clearinghouse will

reduce the registry liability and (unintelligible) impact on the (unintelligible).” So, I mean, there’s a whole paragraph on that.

It also talks about the benefits for registrars. So I would concur with Mark’s phrases of, you know, characterization of benefits. And I think the benefit’s right there. I mean - and I think when you say you reduce liability, it has a cost implication.

Jeff Neuman: Zahid, you need to read a little further down where it says that there is no cost to the registries.

Zahid Jamil: But there is a benefit, right?

Jeff Neuman: There’s a benefit for ICANN, there’s a benefit for registrars, there’s a benefit -- I mean, I do not necessarily agree, I mean, David, you asked before -- this is Jeff Neuman. I do not agree that we should put a statement in saying ICANN should not pay. I’m not necess - I don’t think we should rule that out. And I’m not sure why this group would be doing that.

Zahid Jamil: This is Zahid, can I just respond just very quickly? Okay. When you reduce liability, doesn’t it reduce a whole bunch of things in financials and insurance coverage and a whole bunch of other things?

Jeff Neuman: Sorry, Zahid, was that a question? I missed part of it?

Zahid Jamil: Yes, that’s a question. It says here it will reduce registry liability. And I’m just wondering doesn’t that have a financial implication?



Jeff Neuman: Zahid, this was all considered by the IRT. I hear what you're saying and that was all brought up and the IRT as a group decided no.

David Maher: Well, I think we may have arrived at an impasse on this so there is clearly a lack of consensus and so I think the views are pretty clear and they'll have to be expressed as minority statements.

Jeff Neuman: Hey, David, I'm sorry. David, this is Jeff. Page 15 of the IRT or final IRT report, the IRT intended that each of the services described below, which is the clearinghouse, shall be provided by the IP clearinghouse at no charge to the gTLD registries or registrars that are required to interact with the IP Clearinghouse to implement their recommended RPMs.

If a new gTLD registry decides to implement an RPM above and beyond those recommended herein, any incremental services necessitated thereby shall be provided on no greater than a cost-plus basis to the new registry. And then there's another place that talks about that as well.

David Maher: Okay. Thank you. Well, I think we now have a pretty clear statement of what the IRT said. That doesn't necessarily resolve the problem here today in light of what Zahid is saying.

So I'll go back to my statement that I think this has to be the subject of a minority statement and there are - I'll have to withdraw my statement that part of the consensus is that ICANN is not expected to fund costs, as though we don't have consensus on that either.

Jeff Neuman: So what do we have consensus on because I don't agree with the word "utilizing." Again, ICANN was the one that created that language in there in a DAG or not the DAG, in the memo that they did, but that was not the language the IRT used and so I don't think there's even consensus on the word "utilizing."

If I'm wrong, let me know. If everyone else agrees that there is consensus on that, then A) we should explain what we mean by "utilizing." And then if I need to draft a minority statement, I will.

David Maher: Well, Jon.

Jon Nevett: I'm fine with the word "utilizing," you could delete the word "completely," "the cost should be borne by the party utilizing the services" and I would leave it at that. You know, I don't think we need a bunch of minority statements but Jeff if you feel like compelled to do that, go for it.

It seems obvious what that means to me and if you have a position that, you know, you want a specific reference that registries won't bear any costs, then, you know, that probably won't get consensus either.

We should just leave it the way it is there and, you know, it's vague, high-level and, you know, any cost borne by the registry is going to be passed on anyway, so to me this is an irrelevant issue.

David Maher: Okay. I don't see any other hands raised. I think at this point we have to turn it over to the staff to do a draft report. And the sooner we can see the draft, the better which is I'm sure obvious. We'll have to get something either in a rough draft or a - perhaps even a final report in

the hands of the GNSO Council on Monday. Failing that, we'll ask for a little more time.

Alan.

Alan Greenberg: David, do we want to tentatively schedule a meeting for Monday or Tuesday in case we need it. If we try to do it on Monday, it will be too late.

David Maher: What's the -- Jon.

Jon Nevett: No, I just wanted to ask if we could get consensus on that last point. I mean if we had a high-level statement like that, do we have a significant number of the groups that would approve that?

((Crosstalk))

Jon Nevett: You know, I see in their notes that they've lacked a consensus on costs. I'm not sure if that's true or not.

Jeff Neuman: Well, Jon, you said if I could ask one quick question. You said it's obvious what the parties utilizing means, in your mind does that mean registries and trademark owners?

Jon Nevett: Well everyone's -- obviously they'll be some cost -- maybe I shouldn't use the word "obviously." There will be some costs in this whole system borne by registries, right? They'll be internal resources, setting up the systems, all the other stuff that you would have to do to work with a Trademark Clearinghouse.

You know, I wouldn't be comfortable saying that registries should (unintelligible) costs. Any costs that you as a registry would bear would be factored into the price (unintelligible) and that's just pure economics.

So from my perspective, costs should be borne by the parties utilizing the services. I'm not sure what's objectionable to that.

Jeff Neuman: I guess we're talking about different things (that would) cost. I agree with you as far as internal costs that a registry has to develop in order to interact with a clearinghouse, that's a registry's costs. But I was thinking more in terms of paying the clearinghouse a fee for the data or for the right to connect. That's what I'm afraid is meant by that statement.

Kathy Kleiman: Even a basic servicing fee, Jeff? This is Kathy.

Jeff Neuman: Yes, my -- in reading that statement, the first thing -- I actually didn't even think about it from the angle that Jon just said which is that registries should bear their own costs to interact with the clearinghouse which I agree with that.

What I don't agree with is that the registry should have to pay, you know, for each let's say registration that someone does, that the trademark owner pays and then the registry has a transactional fee and it pays to the clearinghouse. I don't agree with that. And that's what I'm worried about the statement being interpreted as.

Jon Nevett: One question -- Jeff. This is Jon. One question that came up in the last meeting - call that I think you weren't on was, you know, what's

happened in the current marketplace in the last, you know, five or so launches? What - does the registry pay Deloitte or the provider that it has used or is it as Deloitte's fees only come from the registrants?

Jeff Neuman: Most -- well, I -- the ones that I've implemented with Deloitte is that Deloitte has charged a fee -- that everything was collected through the registry. Now remember there was no clearing - central clearinghouse so each registry had to procure its own validator.

The registry collected all the funds, but the registry generally did not mark up the fee that Deloitte charged. So Deloitte charges a validation fee and then the registry passes that through.

But if there's going to be one clearinghouse and one validation, then there's no need to get the registry involved, then the registry is just doing an ordinary registration and that's it.

The whole reason behind this was to avoid excessive charging and avoid practice, you know, trademark owners should only have to pay once to have their stuff validated and that really, basically it's just a regular registration fee for Sunrise anyway.

David Maher: Zahid.

Zahid Jamil: So I was just wondering, I understand what Jeff was saying under that do we let the IP Clearinghouse charge whatever it wants, the per transaction, per query, for - against the registry - the new gTLD, sorry. What about cost recovery basis, charging on the basis of cost recovery?

Jeff Neuman: Who charging on the basis of cost recovery?

Zahid Jamil: The IP Clearinghouse charging the registries.

Jeff Neuman: For what costs?

Zahid Jamil: For recovering its costs.

David Maher: It seems to me that just changes the amount, it doesn't charge the principle. Jeff Eckhaus.

Jeff Eckhaus: Yes, let me just jump in. I would very much - I would caution against any sort of cost recovery plan because there is such an issue of people gold plating or - what's a needy - stacking up what their costs are and then that would need audits and other pieces so I please caution against from any sort of cost basis, cost recovery sort of model because it will tend to spiral into a complete nightmare.

David Maher: Alan.

Alan Greenberg: Yes, I guess I'd like a statement from Jeff or someone on how the clearinghouse could ever be imagined to be a viable operation if they charge a one-time fee for the registration to the trademark holder and then have to deal with as many registries as may exist over the next couple of years on a regular basis? That doesn't seem to be a sustainable model. And I'm...

Jeff Neuman: Sure it is...

Alan Greenberg: Maybe I'm missing something, but...

Jeff Neuman: Yes, so if I can answer that. I didn't say they couldn't charge a renewal fee every year. And basically, Alan, that's how a registry works, right? In the domain name world, the registry charges the registrar a one-time fee for registration that - and then one time again upon renewal and the registry has to deal with as many registrars that come to it. It's - that get approved by ICANN. That's a nature of a registry.

Alan Greenberg: I understand that, but here we have a clearinghouse that is going to be working with a variable number of new launches a year and I don't understand how they can sustain that load without having a charge that increases as the load increases. But maybe I'm just dumb, okay.

David Maher: Margie, you had a comment?

Margie Milam: Yes, actually I was going to say something similar to Alan that I mean from an implementation standpoint we may have difficulties with identifying a service provider who's not willing, you know, who is only willing to provide it on a cost-recovery basis. So I mean it's really up to Kurt and Amy and that team. But I'm, you know, that may be a concern of theirs.

David Maher: Okay. At this point I'm - I'd like to address that issue of having a call on Monday. For one thing I'm not available on Monday. Also I personally believe it's a mistake to have a further teleconference on this. Our job right now is to produce a written report.

We're going to have a draft. It's pretty clear that on some significant issues there are going to be minority statements. I think it's much better to get the draft, have people look at it, offer revisions, prepare

minority statements where necessary. This procedure is pretty clearly not going to come to an end with our initial report to the council.

I'm not sure where all this is going. It wouldn't surprise me that probably following the holidays there will be further proceedings. ICANN appears to have adopted a pretty flexible approach to these complex issues. Some of you may be aware of security - a high-security program in the zone final access where the normal procedures have been totally disrupted by the formation of new expert teams.

I just (offer) that parenthetically, but it appears to me that we've done what we can do by teleconference. My suggestion is that we concentrate on our first report which we owe to the council. And I think at this point it's best to just go ahead and do that. Any comments on that?

Jeff Neuman: No, I can live with that.

David Maher: Good. If that's it, then over to you staff we anxiously await your draft.

Margie Milam: Yes, I'll be writing away.

David Maher: Okay. I just wanted to be sure you hadn't fainted dead away.

Margie Milam: No, no, no, I know that. I do have a question though. We had talked about this before, you know, is it just consensus, no consensus, or can I try to break it down through, you know, consensus, broad consensus, rough consensus, a little bit, you know, of nuances or would you just prefer me to, you know, keep it simple?



((Crosstalk))

David Maher: I would prefer a simple, but Zahid go ahead.

Zahid Jamil: Yes, just wondering, I mean how does that work if the BC hasn't agreed to the - anything, does it assuming that if it's the only one (that's no) consensus and would that be represented as the word "consensus"?

David Maher: I think we ought not to get into that Margie. I would suggest there's either consensus or there's not. This is an area where people will be able to file minority statements and try to multiply categories here I think would be a big mistake.

Margie Milam: Okay, but I still need clarification because what is consensus? Unanimous or roughly, you know, 3/4s of a quorum...

David Maher: Well...

Margie Milam: I mean, what are you guys saying consensus is? I just need to understand that.

David Maher: Well, I think as you look through these boxes that we've look at, it's pretty clear where there is consensus and where there is not. Zahid.

Zahid Jamil: Sorry, just my point that my view would be that if one of the members of this group doesn't agree then that there shouldn't be a consensus.

David Maher: Yes, I would be inclined to say that. But you can't say there's a consensus where - whether it's the business stakeholder group or the

IT stakeholders or the registries or registrars or non-commercial is objecting. Paul.

Paul McGrady: Do you think it's okay to say in this where she says no consensus and then list the stakeholder groups that have rejected the...

David Maher: Yes, I think that's reasonable. Jon.

Jon Nevett: Yes, I -- can you hear me?

Man: Yes.

Jon Nevett: Oh, okay. I'd like to disagree with that David, I think in the recent history of GNSO discussion group policy discussions, consensus didn't mean unanimity and to the extent we want to give vetoes on consensus to every group I think it's a problem.

So I think, you know, if we talk about consensus if it's every group but one, you still have consensus, you still note that, you know, a group disagreed with that, but it's - we should not make consensus unanimity. I think that's a big mistake and inconsistent with what we've done in the GNSO in (little) less things that I've been involved in.

David Maher: Robin.

Robin Gross: Thank you, yes. I just wanted to agree with that statement that, you know, we've always been told that consensus is not unanimity and I'll, you know, I'll give for - as an example the new gTLD policy that went through the GNSO a couple of years ago. The non-commercial users

do not agree with it and we were repeatedly told that it would still be called a consensus policy that consensus does not mean unanimity.

So unless we're changing that standard now, then, you know, we should have that discussion, but otherwise it seems to me that we need to stick with what we've done in the past in terms of what consensus means and it is not unanimity.

David Maher: Okay. Margie, what if you make a judgment. Where you believe there is consensus, say so. (Unintelligible) that still allows minority statements. Does that work?

Margie Milam: I'm hearing some background noise. I do have a question though.

David Maher: There is some terrible interference on the line.

Margie Milam: Okay. Well, what I was going to say was that working group guidelines that we've been putting together got several (unintelligible) on the - it's (unintelligible) unanimous (unintelligible) consensus and then we've got strong support and no consensus, but those are the categories that have come from the working group guidelines. Is that an appropriate approach to take with this report?

David Maher: After hearing the comments, that's fine by me. Mark, I think your - you had your hand up. Well, apparently Mark is off. Alan.

Alan Greenberg: Yes, I was just...

((Crosstalk))

Mark Partridge: I'm sorry. Go head Alan, I'm sorry, I was on mute.

Alan Greenberg: Okay. I was just going to say something similar to what Margie said. I think it's useful to the board and staff if we could flag the ones that are truly unanimous as unanimous consensus. And I'm not sure we need to differentiate between the other kinds as much. But it certainly would be useful where there is unanimity to say so.

David Maher: Okay. Zahid.

Zahid Jamil: I'd agree with what has just been copy/pasted on the chat by Margie that that's a great approach.

David Maher: Okay. Jeff Neuman.

Jeff Neuman: Hi, I got dropped for a sec, so I don't know if this point was raised. But remember it's just - Margie just be careful in this because not all of us have gotten our constituencies, you know, completely on board with all of this stuff. We're working as individuals hopefully effectively representing our constituencies. But just make it clear that it will be a consensus of this group as opposed to a consensus of the Internet community.

((Crosstalk))

Margie Milam: Yes.

Jeff Neuman: Or as opposed to -- like, I don't want my voice to be, "Oh, well, Jeff agrees so therefore the registries automatically agree." And I'm sure the others feel the same way.

David Maher: Okay. Jeff Eckhaus.

Jeff Eckhaus: Yes, two things. One, I do - I agree with what the comments were going around, but I'm assuming that isn't there something in ICANN policy for always working on what we call a consensus policies that there's an official definition of what consensus means within somewhere within, you know, so the ICANN storeroom somewhere of what that definition is?

((Crosstalk))

David Maher: Go ahead Margie.

Man: Can I have the link?

Jeff Eckhaus: And wait -- yes. And if there is not, then why don't we just, you know, use the defini - put the definitions in the front in saying, you know, rough consensus, unanimous consensus even though I do believe like the official definition of consensus is an agreement to move forward, not unanimous, but...

((Crosstalk))

David Maher: I think Margie has already answered that.

Margie Milam: Yes. It's in flux right now because we're changing in - as a result of the restructuring. So, you know, that's why the working group is looking at it and coming up with guidelines. But I could certainly clarify what I'm, you know, what standards I'm using.

And I will clarify to answer the other point that it's not a consensus of the Internet stakeholders, it's just simply the, you know, the participants in this group because it's still going to go to the GNSO for their vote.

David Maher: Yes. Okay. Thank you. We're now out of time, but Mark and Alan have your hands up.

Mark Partridge: I'll withdraw. Just some (unintelligible).

David Maher: Alan.

Alan Greenberg: I was just going to make a comment that the fitting end, ICANN has the same definition of consensus as we do for stakeholder in constituency as many times as we use the word, that's how many definitions we have.

David Maher: Okay. Jeff, you have your hand up. One last word.

Jeff Neuman: Oh sorry, I didn't put it down from before.

David Maher: Okay. Well, thank you all. We have a lot of work to do on the report and we'll talk tomorrow on the URS.

Man: Good luck Margie.

David Maher: Yes.

Margie Milam: Bye.

David Maher: And thanks, bye-bye.

Man: Thank you.

Man: Bye everybody.

Kathy Kleiman: Thank you David. Bye-bye.

Woman: Thank you. Bye-bye.

Man: Thank you. Thank you.

Gisella Gruber-White: Thank you (Sandy).

END