

**ICANN Transcription - Marrakech  
Rights Protection GNSO PDP Trademark Clearing House Independent Review  
Thursday, 10 March 2016 1030 UTC**

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Karen Lentz: Good morning everybody. Hello? Good morning.

((Crosstalk))

Karen Lentz: Good morning. Good morning everybody. We're about to start if you'll take your seats. Thanks. So I'd like to welcome all of you to this session. We have combined a few different topics relating to rights protection and work that's ongoing and upcoming.

We'll start off with Mary Wong to - at the audience's right side of the table who will discuss work in the GNSO concerning policy on rights protection mechanisms, concerning all gTLDs - all RPMs and all gTLDs.

And then we'll move to another project that is getting started called - on the Trademark Clearinghouse conducting an independent review so Antoinetta Mangiacotti will describe that project.

And then Greg Rayford will go into detail about the methodology and the area as part of - for participation and we'll have some questions - open questions and discussion time for the audience. So thanks for joining us and I'll turn it over to Mary. Thanks.

Mary Wong: Thank you Karen and good morning everybody. As she said my name is Mary Wong. I'm from the ICANN Staff, the policy department supporting the GNSO, and it's a pleasure to be here.

So now let me test my slide advancement skills. Excellent except that I think the fonts are not showing up very nicely on the screen, so obviously I need to then enhance my slide preparation skills.

So we thought that it would be helpful to show you not just where we are in terms of the new policy development process that was initiated by the GNSO Council very recently, but also to give you a little snapshot of how we got here.

As I mentioned this is a new policy development process, the newest in fact PDP to happen recently launched by the GNSO Council. So where we are on that is that I am pleased to report that when the Council initiated the PDP at its last meeting prior to coming to Marrakech, just yesterday at the GNSO Council public meeting the charter for this PDP Working Group was also approved, which means that we are definitely formally and completely kicked off.

But how do we get here? Because some of you have been participating in these efforts and in this community for quite a while, you may recall that in 2011 there was an issue report that was done for the GNSO Council.

And at the time it looked at the state of the Uniform Dispute Resolution Policy, or the UDRP, which I think everyone in this room and Adobe Connect

and who may be listening to this feed years after this knows it's the longest standing ICANN consensus policy.

The upshot of that effort in 2011 was that in light of the then imminent kickoff of the new gTLD program, to hold off any review efforts until at least 18 months after the new gTLD program had gone into effect.

So that was what the GNSO Council agreed to do and therefore ICANN Staff recently issued an updated issue report, and in fact I should probably say it's a brand new issue report because this particular one covered not just the UDRP, but also all the various rights protection mechanisms or RPMs that were developed for the new gTLD program.

As I mentioned the GNSO Council then agreed to initiate this PDP last month and approved the charter for the PDP Working Group yesterday. We thought this slide would be helpful because while most of you would be familiar with the phrase or word RPM or acronym, it's a fairly broad term and so it's important at the outset to know what we mean when we say we are going to review RPMs in this particular PDP.

As I noted it would be the UDRP, the longstanding consensus policy and the new gTLD program RPMs and all of these are listed on this slide. So it's important to note that substantively this is the scope of the PDP that was initiated by the GNSO Council just recently.

In terms of process it's also important to note that because this is likely to be a fairly detailed and potentially complex PDP, what the Council also approved was a process that would do this in two phases.

Phase 1 would cover the new gTLD RPMs and Phase 2 would focus on the UDRP. It's also important to note that even though this is going to be done in two phases, the ultimate objective is to have a consistent framework for approaching the RPMs that were identified as within scope for this PDP, and

to therefore have a uniform and consistent framework for reviewing and improving these RPMs on a going forward basis.

So I won't go into all the little details and stages on this slide except I'd like to emphasize at least two other points. And one is a question or rather potentially an answer to a question that many in the community have asked the GNSO Council and Staff of course.

And this is what's going to happen in terms of the timing as between this PDP and another GNSO Council project, which is the PDP on the new gTLD subsequent procedures?

And that question logically arises because while this PDP reviews the rights protection mechanisms as I've just noted, a big part of it is the rights protection mechanisms developed for the new gTLD program.

To cut a long story short as a result of fairly extensive discussions within the GNSO and the Council, you will note if you look at the charter for this PDP as well as for the PDP on new gTLD subsequent procedures that this calls for quite close collaboration and continuing communication and coordination between both these groups.

And one of the express methods that were identified in the charters for achieving this is the appointment of a liaison between the two groups. And ideally it was noted that this would be a member of both working groups.

Congratulations to the community participant who is voluntold perhaps or perhaps chooses to volunteer for this. But the Council felt that this was an important point and therefore important step to take to ensure that in terms of keeping each other informed the two working groups would be working quite closely together.

The other point that I wanted to highlight is a fairly distinct feature of this particular procedural approach to this PDP that because the ultimate aim as I noted was to have a consistent uniform framework for all the RPMs generally speaking at the end of this process, the recommendation made by Staff that was adopted by the GNSO Council was to at the end of Phase 1 which you'll recall is the phase to review the RPMs just for the new gTLD program, the working group would issue a report.

That report ought to be published for public comment. And while that report could contain preliminary recommendations it could also note some potential issues for looking at in the second phase of the PDP.

So we are looking at something that will presumably develop and evolve as we go along, but that we're hoping that Phase 1 will not only inform Phase 2 but that taken together the two phases would be not just comprehensive but consistent.

So the next steps is that following Council approval yesterday of the charter for this working group, one of the other steps that the Council did was to approve a liaison from the GNSO Council to this PDP Working Group.

And I'm pleased to report that the liaison is here, and he is Mr. Philip Corwin who is sitting in the middle right here. And the other thing that was part of the Council's instructions from yesterday was that a call for volunteers be issued by ICANN Staff and circulated as broadly as possible, and we will do this not later than 21 days following yesterday.

And we'll get on that as soon as possible so please look out for that. And following that as is usual practice in policy development processes we will schedule a first meeting of the working group.

And while we have tried to look at a date obviously we will do this in consultation with Mister Corwin, and so the earliest possible date for a meeting is likely to be the end of March or possibly in early April.

So on that note I'm going to end my update on this PDP. We look forward to your participation and clearly to your feedback as well, and I will pass it back to Karen. Well maybe I wasn't supposed to do that.

Karen Lentz: Thank you. Thank you Mary. We have - before we go into the next section on the Trademark Clearinghouse independent review, are there any questions or feedback that anyone would like to provide on the topic of the RPM PDP? Okay if not I'll turn it over to Antoinetta Mangiacotti who will take us into the TMC independent review.

Antoinetta Mangiacotti: Thank you Karen. So I'm going to be providing a brief overview of the study, what it is, why we're doing it and what the goals are. So this review originated from a GAC recommendation in 2011, which asked for an independent review to examine the operations of the Clearinghouse and whether they would benefit from incorporating the GAC proposal.

So with this in mind this review is intended for those new processes pertaining to the Trademark Clearinghouse such as the verification process, the sunrise period, new trademark claims in combination with the GAC specified areas for review, which specifically asked us to take a look at the issue of non-exact matches.

So this would be whether the sunrise and Claims Services would benefit from incorporating - from including domain names that include a mark at the beginning or the end of a second-level name.

And the other issue was the one of extending the trademark claims notification service beyond the required 90 days by consulting with the

community on the benefits of doing this, and the research requirements associated with extending the notification service to potential registrants.

Some of the data sources that we'll be using to assess these processes include the Trademark Clearinghouse database, records of dispute proceedings, interviews with our Clearinghouse service providers and the key user groups of the Clearinghouse, WIPO data and overall of the Staff reports on the rights protection mechanisms review, which was published last year.

So we want to emphasize that the purpose of this review is mainly intended to help support the discussion on related rights protection mechanism activities, for instance to help inform the work of the CCT review team, which is charged with assessing the effectiveness of safeguards developed for the new gTLD program as well as the GNSO PDP and the review of all RPMs, which Mary just discussed earlier.

And we expect that it also may help identify operational issues related to the Clearinghouse that could be improved or other issues and for evaluation that could be included in the analysis of the Clearinghouse, and I mentioned issues that may be considered in future policy development work.

Now I'll turn it over to Greg who will provide you with more detail on the methodology and information on this review. Thank you.

Greg Rayford: Great. Thank you Antoinetta. Let's see how my slide changing skills are. They seem to be working well. So before we get into details on the project I just want to give you a little bit of a sense as to who's involved in the work.

So I'm Greg Rayford. I am a Vice President at Analysis Group. We're one of the largest private economic consulting companies in the United States, and we do a variety of litigation and policy related work.

Katja Seim is also involved in the project. She is a Professor at the Wharton School of Business. Her background is an economist and in particular in applied economics.

And then we also are working with (Jerry Lou) who's at the Center for Internet and Society at the Stanford Law School, and his background is really in intellectual property law.

So at a very high level our independent study, which has been informed by GAC advice, is going to focus on three primary areas although there are some other aspects that we're interested in as well.

So first the - there's the issue of non-exact matches and to the extent to which they might want or need to be expanded. We'll also look at the trademark protection provided by the Claims Service and also the trademark protection provided by the sunrise registration period.

To address these aspects our primary focus is going to be on using data that's being made available to us, so in particular we will be obtaining information on the trademarks themselves from Deloitte, notifications that are sent from - and we'll obtain those from IBM.

We have also obtained a UDRP and URS data from ICANN, and then finally we'll - we will be kind of marrying these data sources and some of our analyses to WHOIS data, and we're working with a company by the name of Domain Tools to obtain that.

I think it's important to note that not everything can be addressed with data in the context of our work, so another important aspect to our review of the TMCH is interviewing and sending questionnaires to various stakeholders and other groups within the community.

And I'll go into this in a little bit more detail later but we'll basically be using two phases of surveys and interviews. The first one - the goal of that will be to collect initial thoughts from the community, and in particular to make sure that we're focusing in the right areas and we're not missing any key critical components.

And then there will be a second phase that occurs towards the end of the study to address any shortcomings in our analyses and to add color to our work as well.

So just going into a little bit more detail on the three aspects I mentioned and we'll start with the matching criteria. So here the goal of these analyses is to begin to or hopefully assess the potential costs and benefits of expanding trademark-matching criteria to include other types of non-exact matches.

So to do so we were - our goal is to or our plan is to select a sample of trademarks within the TMCH. We won't be looking at all of them because there are a very large number of them, but we'll take a statistically representative sample of those trademarks.

And then for each of those trademarks as well as a variety of different types of non-exact matches we will using WHOIS data look to whether or not the trademark and the non-exact matches are registered in Dot Com, as well as all other gTLDs and then we'll determine who the registrant is.

Is it a trademark holder? Is it someone else? And that will begin to give us a sense for whether or not there are string variations from the trademark string itself that might be worthwhile to include in the Trademark Clearinghouse.

And then the last bullet on this slide notes that we'll also look at the extent to which some non-exact domain name matches are more likely to be involved in a UDRP or a URS dispute or proceeding.

In terms of the Claims Service the goal here is really to understand how trademark holders and potential registrants are affected by assessing how the value of the service varies by - across different types of trademark holders but I think importantly also to the extent to which it's a deterrent for potential registrants.

So here our primary analysis will rely on Claims Service and UDRP data to get a sense for how often notifications result in registrations being abandoned, registrations being completed but disputed at some point down the road or registrations being completed and no disputes occurring.

And then finally with respect to the sunrise period we want to analyze the extent to which trademark holders and perhaps different types of trademark holders of for example different industries or different sizes of the holder itself - how they use the sunrise period and whether that also varies across gTLDs.

So to begin to undertake this analysis the goal here is to examine the extent to which trademark holders register domain names during the sunrise versus the general availability period.

I've certainly heard from some discussions here so far that it sounds like there's not a lot of use of the sunrise period, but I think it will be interesting to see to what extent that varies like I said by different types of trademark holders but also for different types of gTLDs.

And the last bullet here is that - notes that if we find a significant amount of registrations by trademark holders, that would be an indication although not dispositive that trademark holders value the opportunity to have priority registration, and then as I noted kind of providing the broad brush overview of our work.

We'll also be collecting stakeholder public opinions. We'll be reaching out to specific entities within the various groups, and so in particular we'll be

reaching out to registrars, registries, trademark holders, non-trademark holder registrants and we'll also be publishing a Web form that will allow anyone that might want to provide feedback on the study to do so.

Excuse me. And as also I noted earlier there will be the first round of interviews and surveys, which we're just getting started on now to ensure that we're focusing in on the right areas and not missing any critical components.

But then there will be second round of interviews that will take place after the bulk of our data analysis is completed to address any shortcomings that might exist, as well as to add any color to our analyses that we think might be useful.

To give you a sense as to the expected project timeline - so as I noted we've just begun selecting some stakeholder opinions in particular at this meeting here.

We will - are in the process of collecting data and we're getting to the point where probably within the next week or two we'll begin to - we'll begin undertaking the bulk of our data analysis.

And once we've done so we'll begin drafting our report as well. My expectations is that this will continue into early and perhaps mid-Q2 2016, but we'll publish our draft report for public comment as soon as we can.

And then our plan is that in Q3 of this year we will publish a revised report that incorporates the public comments that we've received. And to conclude we've put together a couple of discussion questions to help frame the discussion here today but these are not - you shouldn't feel limited by these questions.

And, you know, part of the reason why I'm here is to get feedback from the broader community and so we would love to hear your thoughts and your questions.

But I'll just briefly read them and then we can open it up to questions. So the first question is, "Just in the context of the TMCH the original goal was to protect the existing rights of trademark holders without expanding or creating new rights.

And then in your view does the current TMCH system sufficiently protect the existing rights of trademark holders?" Second question. "In your opinion does expanding the matching criteria - would it be beneficial or costly for your organization or others and why?"

The third question. "Would it be useful to expand the claims notification service period beyond 90 days?" The fourth question. "Are there any other data sources that you think should be taken into account that you haven't heard me mention today?"

And then finally the fifth question. "How would modifying any of the TMCH services discussed affect your organization?" So with that I will at least for the moment stop talking and if you have any questions or thoughts you would like to share I would love to hear them. Thanks.

Amr Elsadr: Hi. Morning. My name's Amr Elsadr. I'm with the Non-Commercial Stakeholder Group. Would you mind going back to the slide on the focus of the study please?

That'd be great. The slide, you know, the focus of the study. I think it's one slide back.

Greg Rayford: So this is kind of the broad overview. Yes.

Amr Elsadr: Oh.

Greg Rayford: Are you...?

Amr Elsadr: Wait that was it.

Greg Rayford: Okay.

Amr Elsadr: Yes so okay. All right, thanks. Antoinetta you mentioned that the - one of the purposes of the study is to support the work of the GNSO PDP Working Group that is going to be convened following the call for volunteers in three weeks.

And I was just wondering, you know, from what I'm seeing here the focus of the study seems to be focused on half the purpose of this PDP, which is protection of the trademarks, that part of the reason this PDP is also being launched is also to evaluate the rights of legitimate domain name registrations for non-trademark holders.

But I don't really see that here in terms of what you plan on doing, but I was encouraged to hear that you plan on reaching out to actors like that during your outreach.

But I'm just wondering what your thoughts on that are and shouldn't you be incorporating more of that in terms of your research? I mean, if you are going to be supporting the PDP Working Group just support the entire scope of the PDP Working Group.

And there's very specific language developed by the Special Trademark Issues group, particularly the - and the definition of what the URS is for example or what its purpose is.

And part of that is to balance the rights of trademark holders with legitimate use of domain name registrants who are not trademark holders. Thank you.

Antoinetta Mangiacotti: Thank you. I think that we'll definitely take those issues into consideration. The - but the scope of this study is mainly to just assess how the Clearinghouse is operating, and the information that is collected from this review is intended as you said to help support the GNSO PDP and the review of all the - of all rights protection mechanisms.

But - and only to the extent of the - what the Trademark Clearinghouse offers in terms of their services so...

Karen Lentz: Thanks Antoinetta. This is Karen Lentz. That's exactly right and then - and I think that, you know, you're correct that the PDP, you know, covers a lot more topics.

It covers a lot more ground in this particular review of the Trademark Clearinghouse, but as Antoinetta has said we do see it as informational to that - to those discussions.

And we also, you know, to the aspect of, you know, there are questions to be asked in discussions of rights protection about, you know, legitimate uses of terms or domain names and so forth.

And one of the, you know, questions that Greg has been using in his discussions is, you know, concerns the particular balance that's applied in sunrise and claims and these various other processes so that's very much part of the work. Thanks.

Mary Wong: Again if I can just add really quickly to that. As Amr you said and Karen you confirmed the PDP does cover a lot more. And for those who are not familiar with the charter that was just approved, there is a very long list of issues that

is a compilation of many of the issues that they identified by the community to date for potential review in a PDP.

But what's important to note about that list is that that list is included in the charter but not something that the Council said, "You must look at this list and this list only or that you must look at this list only as formulated."

The working group has the flexibility of looking at that list and adapting those topics or adding to them as and when the case may arise. And so input like the sort of data and study that Greg and his team are doing we thought that at least at this point could potentially be very helpful to the working group in that effort.

Elaine Pruis: Hi I'm Elaine Pruis from Donuts. We operate 195 new TLDs so I've gone through sunrise and trademark claims 195 times so I'm intimately familiar with this process.

I have a couple of questions, and then if you wouldn't mind going back to the discussion slide when I'm done with my questions I have a couple of comments on that too.

Would you proceed maybe one more slide is it? Yes okay. So this one - it says, "The primary goal of the analysis is to assess the cost and benefits of expanding trademark-matching criteria to include non-exact matches." Is this just for sunrise or is it also meant for claims?

Greg Rayford: This is Greg and it's meant for both.

Elaine Pruis: Okay. So I'm wondering - I thought the whole process was to review the effectiveness of the current program. I'm wondering where the mandate came from to study expanding it. Is this a GAC thing?

Greg Rayford: So my understanding is that it is a GAC recommendation but the - I'm seeing non-intermittently some of the ICANN Staff so it seems my understanding is correct.

Karen Lentz: So Elaine this is Karen Lentz. That's right. I mean, the way that it's formulated was, you know, is - in this particular instance is going back to the GAC recommendation that there should be broader matching criteria applied.

And so, you know, the question is posed in the form of, you know, should we keep what exists or should there, you know, should - is there a means to have that expanded? And that's the reason that the question is posed the way it is.

Elaine Pruis: Okay thank you. That's helpful. So I have had the privilege of talking to Greg and being one of the persons interviewed for this study already, so I'm really glad that that's included in the process.

And as discussed with him and also Karen maybe a year ago or something, one of the things I would really love to see as a result of this study is some statistics on cart abandonment when claims are presented.

We don't really have a great way of knowing how many were actually shown to the registrants where the registrant did not register. So if we can find that data somehow - and I think that would really help inform the cost to users that are not trademark holders for this particular RPM.

So that's - I'm sorry guys I'm taking a little while here. So that's one point. Another ask I have is that you would examine the current use of the UDRP misspellings that's allowed for claims.

So if you have a UDRP ruling where a misspelling you wanted - a misspelling claim in UDRP you can include that label in the claims notifications.

And one of the products we have is a domain protected marks list where we offer blocking for trademark holders. And we were looking at expanding that product based on do they have misspellings in the claims domain name list and I could only find seven.

So before we expand beyond what we've got now and beyond misspellings, I would really like to see some data on how often people are using that particular opportunity for rights protection mechanisms.

So could you go to the discussion questions? I'm almost done. So the third bullet point.

Greg Rayford: No?

Elaine Pruis: That's okay. It says, "In your opinion would it be useful to expand claims beyond 90 days?" I also discussed this with Greg the other day. From my experience in launching 195 new TLDs and looking at registration data when names are registered, most of that happens in the first hour of a launch and then the first 30 days. So it would be fascinating to see some graphs that show claims presentation at day 60, 70, day 80, day 90. You know, the Trademark Clearinghouse does offer extended claim service where the mark holder gets noticed when somebody registers their mark. But without knowing like that (car) abandonment figure, we can't really tell if 90 days is too long or if we need more than that.

That's it for me today. Thanks.

Philip Corwin: Good morning. My name is Philip Corwin. I'm a member of the business constituency. I'm one of their two GNSO counselors. I am the person Mary named as being appointed yesterday by the council to be the liaison and interim chair of the new PDP working group to review all RPMs and all gTLDs.

So in that role, let me say, number 1, reiterate Mary's announcement and the 21-day period for volunteers to join the working groups started yesterday with Council's approval. And I would encourage anyone in the room or online who has an interest in this subject to volunteer for that working group with the understanding that it's going to be a substantial commitment over an extended period of time with, at least, I would imagine weekly calls. It's going to be two very complex - a two-step process with very complex questions before us but necessary exercise.

Let me switch to this now. I think while it's clear that this is addressing one very narrow question relating to the clearinghouse and probably not all of the questions that the working group will want to get into, it would be good if this is, even for that narrow question, this is a high-quality study that would help inform the worker, that working group.

Speaking personally, the Trademark Clearinghouse was established with fairly high qualitative standards. The trademarks had to meantime a certain level of quality to be entered into the clearinghouse. And then in the implementation stage, the community decided to adopt trademark plus 50 where confusingly similar variations of the trademark that had been subject to either a UDRP action or a trademark infringement, and a court could also be added which gave some members of the community some pause, but at least there was a history that, variation had, in fact, been used for infringing. (Unintelligible) for infringing purposes.

I personally would have concerns about going further than that and having the Trademark Clearinghouse being a database consisting of trademarks reaching a high qualitative standard, plus a lot of junk, generated by name spinning or whatever.

But here's my question: When you're looking at the claims notices and trying to determine whether or not they had - the receipt of the notice had a discouraging affect, how are you going to figure that out? I don't know the

current figures. I remember last year the community was surprised to see that there had been a very number of claims notices generated, several million. At that time it was a very high percentage of the actual total registrations in new TLDs and it's never quite been determined why the number was so high. But there was some conjecture that the registrations had been started not with a true intent to register a domain but other business-related purposes. So how are you going to parse it between registrations that were started for purposes other than a true intent to register?

And then for those registrations that were initiated with an intent to register a domain, how are you going to differentiate between the registrations where the registrant had an intent to infringe and was scared off by the claims notice and realized that was probably not a good idea? To the other cases where you might have had either unsophisticated registrants who didn't understand that a mere match to a name, particularly a dictionary name, is not evidence of an infringement without additional infringing evidence as well as those registrants who understood that but just didn't want to go into the expense of retaining legal counsel for advice or risking a potential UDRP or URS. Even where their intent was not infringing, they just said let's get a different name. We don't want to risk having the cost of that action.

So that's my question. How are you going to take the raw data and figure out what the intent was of unknown individuals who receive claims notices?

Man 1:

Thank you for the question. And that's a really good one. And I think the answer, unfortunately, is with respect to the data that we have available, it's going to be probably impossible to actually look at intent from the information that IBM has. It is something that we're hoping to pick up in the survey and questionnaire that we'll be providing to potential registrants or registrants.

But I think it's going to be difficult to come up with any statistically significant kind of understanding of the extent to which it's a deterrent for different types of activity or registrations.

Philip Corwin: So you're saying, basically, that it's going to be difficult to impossible to figure out the extent to which receipt of claims notices deterred potential registrations where there was no infringing intent and there would have been no infringing use?

Man 1: That's correct. I think - our hope is that we'll pick some of this in the survey, but I think that information will be more anecdotal, just because it's going to be difficult to find all of the registrants in these different groups that you mentioned.

Philip Corwin: Okay. Well, thank you.

Jeff Neuman: Hi. I'm Jeff Neuman with cum laude registrar. A couple of different questions.

Number one is: I'm not sure why this is starting with the GAC - or its baseline from the GAC advice. I think there were reviews contemplated, even as far back as the IRT and STI back in 2009, 2010. I would look back to those reports to see whether the Trademark Clearinghouse is accomplishing its goals. The GAC advice, while important, it should also be assessed as not - I think it's too limiting. I think that's my first comment.

The second comment is that to the extent that claims has been implemented, have you looked at the different activity of registrars in terms of when they had a default except for the claim or whether it was left blank or whether registrars may have automatically accepted claims that may or may not have been shown to registrants? And I think the only way you're going to know that is by interviewing registrars, because I don't think you can get that from just raw data.

The third thing is that there is only one Trademark Clearinghouse. Well, there are two parties that provide the different services; one that provides the validation and then one that does the actual technical services. It was always

contemplated that there could be additional clearinghouses. But right now we're faced with a monopoly provider of those services. That monopoly provider is charging a certain amount.

Will you look into the costs on trademark owners to see whether those costs are ones that could be reduced by competition, or ones that have been artificially set to achieve whatever the margins that they want to achieve? And the reason I say that is I know of entities that would like to apply to the Trademark Clearinghouses, either the back-end providers or to do the validations.

And I think that would result, as competition usually does, in lower prices to trademark owners. And I really that's an important study to do going forward so that we can assess whether the costs that have been imposed on the trademark owners are the actual costs as opposed to artificially set costs, again, to achieve fictitious or made-up number.

Thanks.

Man 1: So your second comment about needing to interview the registrars, I agree. And so that's one of the things that we'll be sure to include it in our questionnaire to the registrars and in our discussions with them.

On the third point about will we be assessing what additional benefits or costs might result if another provider or more providers exist in the marketplace. It was not something that we were intending to look at, but it is something that we could think about.

Jeff Neuman: This is Jeff Neuman, again. I would strongly encourage doing that because otherwise you're just starting with a base cost of \$150 or whatever it is and assuming that, that's the right cost going forward. Where I believe, and I know proposals were submitted back when the clearinghouse had an RFP as

to - or when ICANN has an RFP as to who should be the clearinghouse, I know that there were other providers that suggested lower pricing.

Heather Forest: Good morning. My name is Heather Forest. I'm a member of the intellectual property constituency and one of the IPCs to council members. And I had the privilege, I suppose, of volunteering for a small great within the Council along with two of the previous speakers, Amr Elsadr and Phil Corwin and my colleague, Paul McGrady to have a closer review of the charter, of the RPM PDP before it was voted on yesterday in Council.

I suppose we have a better understanding that many of the strengths and weaknesses of that PDP and the way that it has come about. I'm speaking entirely in my personal capacity. I think it would be helpful - I have two suggestions. I think it would be helpful as a starting point, I have some serious concerns about the overlap between this particular review and the PDP.

We were introduced to this review with the understanding that it was purely procedural and the questions before us strike me as very much going to policy, or potentially going to policy. So perhaps the suggestion would be that the first step in your work plan would be a very clear delineation of how this work intersects with and does not supersede the PDP and does not stray into policy development, because that is the role of the GNSO.

My second comment would be in your efforts to engage the community through surveys or questionnaires or however that's done. We in the GNSO have a rather rotten history with that sort of activity and a very selective approach to who gets asked questions, who is contacted. And I would encourage you to seek information from contacts as wide as possible within the community.

Thank you.

Wendy Seltzer: Wendy Seltzer. Thank you. I took a chance to talk with Greg yesterday. And I'll say, as I did there, that I think one of the valuable things that you can bring to this area is data-based analysis, because, unfortunately, a lot of the data is not transparent to - and users of the system. We don't know trademarks that are registered in the clearinghouse. We don't know numbers of users who are deterred from registration because of receipt of a claim. We don't know what the strings were and the likelihood that their use would have been not an infringement or an infringement.

And so digging into that and presenting not just the numbers but the - as much data to us so that we can repeat and challenge your analyses as science and repeat the analyses and draw our own conclusions from them would be valuable.

Elaine Pruis: This is Elaine Pruis from Donuts again. So two things: One, it would be fantastic if you looked at the labels in the clearinghouse that are dictionary words, super generic. We've seen quite a bit of the letter A, the letter B, the letter Ca, the color red. I mean, obviously, they've made it through the clearinghouse review so that - it's a trademark. But I think there has been a fair bit of scheming and that makes a difference to our registrants.

The other point I had is the bottom line there. How would modifying any of the services affect our organization? Whatever, we have to implement a new process. It costs us resources and it costs us money. Some of the policies deter general registrants from participating, whereas other policies encourage markholders to buy more product from us. So there is always a cost. And it would be great if we could figure out how to innumerate that.

Kurt Pritz: Hi. I'm Kurt Pritz speaking for myself. First I noticed that you said very carefully, as you should, that you're going to finalize all the data that's made available to you. And so I think it's important to also identify the data that's not available to you and say, we couldn't get to certain things because we did not have this data, either as a way of identifying data that we need to collect in

the further or something that we should be able to get our hands on so we can get to the answers we want.

So I think your report should include, not only we analyzed everything we could get, but this is what we really needed.

I have three points.

Second: For the last bullet on this slide and the costs of operating the clearinghouse. I think any analysis of cost need to include - it's not part of (unintelligible) now and I'm not so sure it should be. I think we should be focusing on how to protect trademark owners first and then analyze cost secondly.

To analyze costs, there is a lot built into the clearinghouse because it was built by the community by a consensus-based process. And now we can look back and see which parts of that sort of complicated construct added value and which didn't. And maybe we can skinny down some of the scope and make the clearinghouse operation more straightforward and more economical.

And then, of course, any analysis of cost would include not just the cost or the price of the clearinghouse, but also the register fee for Sunrise, the registrar markup, that whole string of costs and which contribute the most.

And then finally, it's the slide after this. It's the one that talked about Sunrise. Yes. So the third bullet. If we find a significant amount of registrations are made, you should look at the converse of that, which is more likely to be true. And that is that the Sunrise period isn't widely used. And that's just - use analytics or quants to identify the numbers, but you really need - we really need to understand why.

Of the Trademark Clearinghouse registrants, is it too expensive or are they not threatened by new gTLDs. Is there a general perception that new gTLDs are safe or safer? And so Sunrise registrations aren't required? For those of you who haven't joined the Trademark Clearinghouse -- and this might be outside your study -- but, again, is it regarded to be not a threat? What the heck is the new gTLD program? We never heard about it. Or is it some other reason.

I think to do that, you can't just rely on anecdotal evidence, but rather you need to do some sort of systematic word questions so that you can get further data.

Thank you very much.

Man 1: That's helpful feedback. And to your last point, in terms of getting a sense for why potential trademark owners are not ultimately using the Sunrise period, it's something that we'll be asking in the questionnaire and the survey. But it may not be as systematic as I think you're hoping for.

Coordinator: We have (Aaron Pace) from (Lyft) in the queue. (Aaron), you want to go ahead?

Karen Lentz: While we wait for her question, I'll - this is Karen Lentz. I'll just comment on a couple of the input that we got from the microphone. And I think Elaine and I can't remember who else - a few other people mentioned this, Phil and Kurt.

The question about the claims notice and how it's received by registrants, does it have a deterrent effect? Do people read it? Do people understand it? That is one of very hardest questions for us to answer based on data that's accessible to us, as Greg described. It's also one of the most interesting questions, and I think perhaps for the policy discussions, one of the more significant questions. But it's been a real struggle for us to try to find any meaningful way of approaching that from a study perspective.

As Greg mentioned, the closest, perhaps party to the registrants that we have to give some indication of how those notices are received are the registrars. And so in the past and in this study as well, we're reaching out to registrars but are really hoping to get at least some sort of sense of, do you get a lot of complaints about these notices? Do people not understand them? Are you getting a ton of questions? Or is it - seem to be working relatively smoothly.

I just wanted to get a comment at that point. And then we'll go to the remote question and then Greg.

Coordinator: We have two questions in each (unintelligible). One of them is from (Aaron Pace) from (Lyft). His question is: Does the TMCH protection also cover copyrighted source code?

Man 1: Sorry. Can you say the last part? Unfortunately, I didn't hear it.

Coordinator: Does the TMCH protection also cover copyrighted source code?

Man 1: I do not know the answer to that question. My guess is no, but I'm not sure.

Coordinator: Second question is from (Kristine Durane) from Amazon: I understood that the analysis group study was backwards looking regarding how the TMCH has worked until now. The discussion questions seem to ask for information about future changes to the TMCH or claims. Is the analysis group going to taking in public comments for further changes? And will they be making recommendations on future changes? If not, why are they seeking data that does not inform (unintelligible) TMCH effectiveness? Discuss your questions 2, 3 and 5.

Greg Rayford: So I think, at least a short answer to that question is that we will not be making recommendations as to changes to the TMCH. I think our goal is to really understand how it's currently operating and whether there are items

that we think are, for whatever reason, imposing additional costs or benefits on trademark holders, other individuals within the community, but we're not going to be providing ICANN with a laundry list of "here are the five changes you should make."

Karen Lentz: Thank you, Greg. And this is Karen Lentz. I'll just add to that in regard to the comment that Heather Forest made about the potential overlap between this and the policy development work. And, Mary, maybe you want to comment on this, also.

As Greg said, this review team has not authority or mandate to make policy recommendations. We see it as a study that is going to primarily delve into data that in a way that hasn't really been done. The questions about whether something is beneficial or not as some of the starting questions that we have. That's a question that we're looking for indicators based on the data that we look at as well as the discussions that Greg and his team are having with all of the stakeholders and groups.

The outcome of this report would be not something actionable in terms of making changes or imposing new requirements.

Mary Wong: This is Mary Wong from policy staff. I will agree with what Karen has said. And I will note, also, that while I can't speak for the working group or the Council since the interim chair and the counselor liaison is back at the microphone, I will say that subject to consultation and confirmation by him, our expectation is that there will be communication between the working group and Greg and his team, and that could, obviously, take the form, obviously, not just of written updates but of having Greg or a member of his team attend one or more of the working group meetings to have a discussion.

Woman: Okay. Back to Greg.

Greg Rayford: Thank you. Greg Shatan, President of the Intellectual Property Constituency. But I am speaking in my personal capacity.

First I want to underline the point that Kurt Pritz just made that I think it's important to understand non-adoption of the TMHC. I think it's no secret that adoption numbers were not what were expected. Why those expectations weren't met can be subject to interpretation. But at least an understanding of why potential adopters did not adopt; in fact, whether it's awareness or cost or perceived lack of benefit or something else, I think is important. I think a subset of that is scope of adoption.

I think many who put marks in the Trademark Clearinghouse selected only a subset of the marks that they own to put in there. And I think it's important to understand why they made that choice and whether they would have made different choices with different pricing, or whether it was based on, again, perceived lack of benefit or some other reason. Understanding how this is used and how those decisions are made I think it important.

On the other hand, I don't think that looking into, say, the quality, so to speak, of the marks in the Trademark Clearinghouse is - I think that's getting into dangerous territory for this review. For instance, a reference to highly generic terms as somehow lacking in quality for the trademarks as was made by Elaine from Donuts.

Clearly, marks can be generic in one context and highly protectable and valuable in another context. For instance, donuts are a food and, therefore, generic, but hopefully highly valuable as a registry.

Thank you.

Philip Corwin: This is Philip Corwin back again with a couple of quick comments. Number one: In looking at the discussion question, I just want to make the point that everyone's fine with ICANN taking note of and providing mechanisms,

whether it's curative rights processes or a database, qualitative database like this to protect existing rights, trademark rights. But ICANN has 0 authority to expand existing rights or to create new trademark rights. That's a job for national legislatures or multi-national treaties. It's not anything that ICANN has any authority to do.

Second: Getting back to the registrations, I think points have been made about you have to look at the pricing one, the pricing to register any name. And as I noted, there is that trademark plus 50 program which was added on where at least there is some basis in past GDRP or litigation history for saying this name - this variation has been abused. But there has been extremely little use of trademark plus 50 after all the debate within the community and the pricing or registration may be one of the reasons. (Unintelligible) little use.

Finally, putting back on business constituency hat, we have many members of the business constituency who are involved in trademark protection programs for major corporations, both U.S. and abroad. One of the reasons they have not taken advantage of the Sunrise registration period, in many cases after registering their names, is simply because particular registries have established very high premium pricing for registering their own trademarks in that particular registry.

So they've decided, given the potential cost benefit, and it may be a registry where the right of the dot term is not particularly relevant to their lines of business where they've just decided to not pay the price and to wait for general availability or just say if somebody registers that and they start infringing, we'll just file a UDRP or a URS.

So the pricing of registration in the clearinghouse and the pricing of registered Trademark Clearinghouse terms in the Sunrise period are very important data that you should be looking at in the study.

Thank you.

Elaine Pruis: Hi. It's Elaine from Donuts, again. I just wanted to reply to Greg's comment. So probably the best way to do that is to give an example.

When we started seeing very generic terms coming through Sunrise, I was curious about who owns a mark for the letter A; that's interesting. And when I delved into who the markholder was, what the registrant details looked like, it didn't take me very long to find correlations between some very generic terms and well-known domainers.

The request isn't just how is the Trademark Clearinghouse being used by markholders in a way that might deter general registrants from participating, but it's also a question about how our domainers taking a spot in the Trademark Clearinghouse or during Sunrise from maybe a more legitimate trademark holder.

Woman: Okay. I'd like to thank everybody for their responsiveness to these questions and their interest in this work. Any final comments or questions?

(Paul): Hi. (Paul Futy) speaking on (unintelligible) behalf. As an end user, why is it that the general public do not have access to this? I mean, surely the ability to go in and find the names of trademark holders and their sites would be really useful.

Woman: Thanks, (Paul). In terms of general public access to the clearinghouse, that was discussed quite a bit in the formulation of the proposal as well as the implementation. Most of the trademark registration data in whatever jurisdiction is publicly available and searchable. So in that sense, that's generally available to people.

When it came to the clearinghouse, we sort of took a conservative approach to start out with, given concerns that people could go into the database and use it to get competitive information or sort of aggregating of all somebody's -

or a company's trademark information globally in one place potentially. So there were some risks there.

That's a topic that was raised for discussion in the earlier staff report on RPMs that was published last year. So I think from the comment, that still seemed to be a concern about opening it up for access to every. That's where we are now.

(Paul): Is there no way of sort of creating a directory off of this that the public can access? Because that way, it would give trademark holders who want to use the Trademark Clearinghouse a bit more value. Because if it becomes a directory for the general public, then there is a real value in there other than just defensive registration.

Thank you.

Woman: Thank you, (Paul). There have been suggestions like that previously. And I think it would need to be a continuing discussion that we need to have.

Any other last comments?

Okay. If not, thanks, everybody, for attending and have a great afternoon.

END