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ICANN

**Moderator: Glen DeSaintgery-GNSO
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Coordinator: Excuse me. This is the operator. I'd like to remind all participants that today's call is now being recorded. If you have any objections, you may disconnect at this time.

Man: There were like 400 exclamation points at the end of it as well. So I know it was pretty exasperated.

Alan Greenberg: That sounds like my message.

Man: If that's Alan, yes it was.

Alan Greenberg: We've tried to convey the feeling here. And thank you for interceding on my behalf or our behalf.

Fadi Chehade: So for those of you already on the new line remotely, can you hear me better now? Are you getting a better clarity on our voices here?

Alan Greenberg: So far it's fine.

Man: (Unintelligible).

Fadi Chehade: Okay.

Man: Much better.

Fadi Chehade: Okay. So I guess we at least got this right. So now we need to confirm when most of them or all of them are on.

Alan Greenberg: There was quite a wait with the operator but people seem to be coming on quickly now. The other advantage is Glen or someone can - actually can see a list in front of them of who's on.

Fadi Chehade: Okay. So where we left off before the break and apologies for the technical difficulties. We were - Jeff had asked for clarification. I think he - if I could paraphrase Jeff you were specifically also asking for clarity on the last bit of this statement, which says with - quote with appropriate safeguards for registrants with a legitimate (unintelligible) interest in.

I appreciate the tone of the question also because it was really just okay, help us understand how you would suggest we do that. John Jeffrey.

John Jeffrey: I just wanted to point out that when this new call started, it - we're also recording this all now. So I think that we need to be aware of that. Just from a warning level if anyone does not want to be on a recorded call, then they need to get off.

Fadi Chehade: Thank you JJ. Appreciate the clarity. (Kristina), you want to take it from here?

(Kristina): Sure. And I think the answer is that what originally was for as set out in the consensus proposals during the course of the past several weeks and the work teams that have been trying to come up with ways to develop implementation recommendations, that has now morphed into two types of - two different recommendations.

One would be the limited defensive Sunrise registration, which I think is probably best analogized to the dot triple-X Sunrise B. In other words, trademark owners eligible for Sunrise don't intend to use it.

I think kind of the key point that is perhaps implicit here -- and again with apologies we've spent so much time over the past three weeks working on this that we've kind of lost track of what we've said and not said -- is that it really would need to be a more centralized rather, you know, perhaps utilizing the clearinghouse structure to enable that process to have the efficiencies that I think are really necessary for that.

So and then the second component of what originally came out of Number 4 was what we referred to as an enhanced trademark claim service, which really is covered by Number 8. So I think what we'll do is once we take - and that's where there, you know, you've got the additional character string, the safeguards and the like.

So what I would suggest is that once we take questions on four and everyone's kind of - we can close off four that instead of moving to one that we move to eight before one and take it that way given that we've already at least started the discussions at some extent.

Fadi Chehade: We'll have to wait a little bit. Just is your question answered?

Jeff Eckhaus: It sort of is.

Fadi Chehade: This is Jeff (unintelligible).

Jeff Eckhaus: Yeah. This is Jeff back on. So I guess I think it's sort of - so what you're saying is that the part that says with appropriate safeguards for registrants with a legitimate right of interest will now be pushed to Number 8. Is that what you're saying?

(Kristina): Correct.

Jeff Eckhaus: Okay. And then if - so when we get to that then if you could walk us through an example on that, I think it would be helpful.

(Kristina): Absolutely.

Fadi Chehade: Actually if you could walk us through an example now. Walk us through a use case, say X happened. Walk us through it.

J. Scott Evans: Okay. This is J. Scott Evans. I think that first of all the first part is by delaying any sort of block to the second Sunrise or the second step in the Sunrise is that those people who have a legitimate right because they own the identical mark, they would be able to participate in Sunrise.

So you're holding off on pulling it from the market until you give an opportunity. So for instance if you were ACME and ACME 1 wanted to register something in a Sunrise, they definitely could. They could get it. You wouldn't be able to block them from doing that.

Then if...

Man: (Unintelligible).

J. Scott Evans: Right. They meet the Sunrise qualifications whatever registry they are seeking to get a Sunrise registration they get the identical mark. Then in Sunrise 2 it says, okay, if you're not going to use it but you still qualify for Sunrise, you get to now block it for a fee. Okay. And then there's that.

So if you don't choose that, then I think the enhanced claims service comes in where it says that if - the claims service would kick in. And the enhanced claims service let's say - because this doesn't qualify for AKME...

Woman: (Unintelligible).

J. Scott Evans: ...A-K-M-E, because you don't have an identical registration. So neither Sunrise is going to get you there.

But if one of the ACMEs had a court case where it was found that someone had registered AKME dot whatever - dot let's say com, then you could add that as a DNS label in your clearinghouse notification so that when someone went to register AKME.web, they would get a notification that says please understand there's been adjudication on this name by ACME rights owner.

And we just want to - before you go forward to alert you to know that they're claiming rights on this. Because under the current structure the DNS label for AKME is only going to match to ACME if that's what your registration holds.

So those are - is that it provides - if you can meet a level of it's been abused in the past, it would do that. But it still allows the person to go forward should they choose to go forward.

Fadi Chehade: Is the clarification close? Are you - do you feel your - not yet.

Jeff Eckhaus: Then I do have - sorry. One other and this is another - then how does that sort of - and then maybe you want to go through it after. How does that thing jive with or sort of match up with Number 2, which is extends the claims notices for an indefinite period because then that would be sort of three different things going off.

Then it would be simultaneous so that your enhanced claims and then regular claims going on simultaneously. So I'm still trying to figure that part out. But I'll sort of put that down for a second.

Fadi Chehade: Okay. Okay. But one last try for Jeff.

J. Scott Evans: They're not two different things. I think what the enhanced claims service, and I was not on that working team, is proposing is that the regular claims service that we have envisioned would be enhanced by allowing you to add in DNS labels for strings where you can show they were previously abused. You have an adjudication that shows that they were previously abused.

So that's the enhancement they're talking about is that - so if it's - for example, your real world example; if it's Yahoo, Y-A-H-O-O-I--T-T-I-E-S, (yahoitties) or or (yahoohooters) or (yahookers) and we have a decision that says (yahookers) was an infringement of Yahoo, under the current claims service we don't map unless it's someone tries to register yahoo.web.

But in our enhanced version, which is the same claims service, it's just that the Yahoo mark now protects Yahoo, (yahookers), (yahocams), (yasexhoo)

because we - if we need a threshold that shows that they were previously adjudicated as abusive.

So they're just add into that DNS label. So like you have for M&M, which has the ampersand and has a variety because of the identical match rules, DNS labels it will map to, here you meet a qualification of abuse, you get to add that in into the DNS label.

Fadi Chehade: Okay. Thank you for that. And I think we're done with this question. Now Kathy and Alan had their hands and then Robin and then Antony. Okay, one thing before. These are all clarifying questions that we all have. Okay. Great. So let me (unintelligible).

Kathy Kleinman: Great. Can you hear me Fadi?

Fadi Chehade: Yes.

Kathy Kleinman: Thank you so much. And thank you for the much great clarity of this call. I know it was frustrating for you and frustrating for us. So let me as a clarifying question only because I was losing every other word for the presentation.

Is there a slide you can pick up and you can put up and do I have all the elements of the new - of the revised Number 4? Because a lot of - the vast majority of what I was hearing isn't in the Number 4 that's posted here because I was reviewing in preparation for this.

So let me double check but the revised Number 4 is a second Sunrise that I need to show that I still don't understand; a blocking mechanism a priority where something then has prove a right or assert a right before they can register. And that there's an expansion of the UDRP for being a one on one

dispute policy where we're looking at context and individual acts in bad faith or good faith to some kind of trademark right.

So if the UDRP involves AKME, A-K-M-E and there's been an ACME, A-C-M-E and they've had a fight over it and then they have an ACNE, A-C-N-E as in a skin disease, that somehow that - if all of these have been involved in this one on one UDRP disputes that now this all comes back into a Trademark Clearinghouse protection that would go in under AKME, A-K-M-E.

Do I have the whole - I'm just trying to figure out if I have the whole scope here and if you have something you can share in writing. Thank you.

Fadi Chehade: (Kristina).

(Kristina): Kathy, we will be sending something around in writing. We hadn't before because this has really been a significant work in progress. So we will be sending something around shortly after this meeting probably tomorrow I hope.

But just getting back to - so you're right in terms of what you see on one through eight. What we did is we took Number 4 and we put BC and IPC work team together and said how can we come up with something that is implementable that would try and accomplish this goal.

And when we started doing that, we ended up into dividing it into two sections. One is the additional Sunrise that could run simultaneously frankly. And it's quite candidly very similar to what ICM did with Sunrise B.

In other words, it's trademark owners who would already be eligible for Sunrise but they know that they will never actually make a productive use of the name. So they are opting to get a inactive defensive registration.

The idea here being that if it's centralized through the Trademark Clearinghouse and the cost could be for some of the administrative costs could be lessened, then it would be more cost effective. So it's essentially a twist on Sunrise.

With regard to the enhanced claims service, let me just be clear. As you know, the claims service does not prevent the potential domain name registrant from going forward with the registration. So there's no block, there's no additional right. It's merely a notice.

And the idea is that the notice would extend to strings that were previously determined, whether it's by a court, whether it's by a UDRP proceeding, whether it's by a kind of corresponding ccTLD process or URS to have been abusively registered or used.

So that if someone thought to register a domain name that then matched one of those strings, they would simply get a claims notice in very much the same claims notice that they would if they were seeking to register a domain name that was an identical match to a mark. And that's really kind of been the major difference here. So there - I just - I don't think it's accurate to just characterize it as an expansion of rights.

Fadi Chehade: Okay. Thank you (Kristina). I'm going to ask (Alan) on the phone to speak next.

Alan Greenberg: Thank you very much. It sounds - in the current Number 4 that's on the screen it says prevent second level registration. It sounds like you're now talking about not preventing but you're assuming that Number 2 has been done, that is the claims notice keeps on going forever. And it will be a claim notice that will warn people about registering, not prevent. Do I get that - do I have that right or am I missing something?

(Kristina): Alan, it's partially right. We took four and think of four as just dealing with a limited defensive registration where the trademark owner is eligible for Sunrise anyway and just knows that they will never use the name. So kind of substitute in your head for what I just said with what's Number 4.

Alan Greenberg: Okay. So that I understand. My worry was when you use the word prevent, it went back to the process that was outlined with the GPML where to override the trademark claim you would have to essentially do a reverse UDRP, that is you'd have to file with an adjudicator and prove that you had valid use. You're not talking about that here. You're talking just about the claim notice.

(Kristina): Correct.

Alan Greenberg: Okay. Thank you.

Fadi Chehade: Robin.

Robin Gross: Thank you. This is Robin Gross with the Non-Commercial Stakeholders Group. Yeah. I just - I had a couple questions. I'm wondering on this example we talked about Time Warner.

How would somebody register to criticize the trademark in those instances? If you've got a trademark owner is able to say no, how will a person who wants

to criticize a mark be able to do that? Or will they get the notice as well that says this particular mark has been infringed before? So that's my first question.

And my second question is on this - if a - this standard of if a trademark has been found to be registered or abused - used abusively, so if there's a default decision in any UDRP case then this trademark goes on a list and then anybody who wants to register that would get notice that that has been previously registered before. Am I understanding that correctly?

J. Scott Evans: There's no such thing as...

Fadi Chehade: Assuming this is J. Scott. Yeah.

J. Scott Evans: This is J. Scott. There's no such thing as a default decision in a UDRP. It doesn't exist. There has to be a decision on the merits by a panelist or a panel of three whether the respondent shows up or not. So you - (complaining) defaults, someone doesn't show up, they took that risk. And they didn't show up and they didn't defend themselves.

The whole way the system is set up is the people who have legitimate rights generally show up. And I think when you look at statistics, the people who have generally rights the decisions and (saver) respondent is much higher when the other side shows up.

It's the people who have no interest and don't want to pay \$1500 to defend an illegitimate use that don't show up. It's a numbers game. So to say that there's the default but yes, if there has been a decision found and whatever that threshold would be, one, five, ten, whatever against the string, it would be

added to the DNS label that would then say to them there's been a previous adjudication with regard to this string; you just need to be aware of that.

Now how would someone go about registering to criticize is they would read that and they would think I'm not using it abusively; I'm going to go ahead and register. And then they would use it as a criticism sight, not a porn site, not a phishing site, you know, not an illegitimate site. Because again, I get a little confused and I want to make - we are not talking about censoring anyone's content on their site. Right.

If you want to say I (unintelligible) trademarks and you have a list of trademarks, you want to talk about Yahoo and GE and (Travelers) and (unintelligible), you certainly have a right to do (that). If you want to do that Yahoos.com, that might be a problem.

((Crosstalk))

Fadi Chehade: Sorry.

Robin Gross: Follow up on that?

Fadi Chehade: Yeah.

Robin Gross: If you've got a (decision against) Person A who was engaging in bad behavior, then that decision is going to in a sense apply or create a (unintelligible) effect for other registrants down the line. But they don't - I mean trademark while it has to do with this particular fact, these particular people, this particular case, it doesn't speak generally about whether or not when somebody else wants to use a trademark whether or not it's infringing.

So I'm wondering how does this match? How can - just because there was one found to be an abusive registration means that every other use of that word subsequent to that would be put on notice since that isn't really what trademark does?

J. Scott Evans: Well I think we're going - we're drilling down into (unintelligible).

Fadi Chehade: Yes. We're getting into some...

J. Scott Evans: ...on the level of questions that - and a quick answer to that is you set a threshold to such point that it's very clear that it is repeatedly been used for ill purposes. That's one cure for that. Now I'm not - but that's drilling down into a lot of details. Do I think that there are fixes to you concern? I think that - I think there are fixes.

Fadi Chehade: (Unintelligible) understanding her concern?

J Scott Evans: I understand her concern.

Fadi Chehade: Okay. That's good. That's good. I think that's what we need to do. And then we'll come back on the how but I think it's good at least that there was clarity on your (unintelligible). Antony, you're next.

Antony Van Couvering: Thank you. This Antony Van Couvering and I have a very quick clarifying question. With regard to the permanent claims notice for a string that has been previously found to be abused, you're talking about an exact match on that previously abused string. So it wouldn't be - there wouldn't be a penumbra around that. Is that correct?

J. Scott Evans: That's right. So if it was (yahootitties), right, it wouldn't be (yahootities) Y-S, it would be I-E-S. All right. Because it's a DNS label and so it would - I'm not asking that you generate a list or spinner that puts out every variant. It would be the exact second level string.

Antony Van Couvering: I have one other question. With regard to these four that are competent to have decided these, you talked about core cases and perhaps UDRPs and so on. Do you think this has any implications for how ICANN needs to be involved in these four making decisions?

So what I wouldn't want to see is - which occurs to me immediately is a business idea. Let me set up a forum so the people can complain really cheap and get all their names so that basically we're flooding the registration path with notices about this, that or the other thing because - so I'd like your - have you considered that? And if so, what do you think about that?

Fadi Chehade: Thanks Antony. (Kristina), do you want to (or J. Scott, you) want to answer that because I have you in line after (Martin) and Jeff. But if you...

(Kristina): Oh no, it's okay. I'll wait my turn.

Fadi Chehade: Does someone want to address Antony's question.

(Kristina): Sure. I understand the concern but I think, you know, we've got a couple things going built in is that, you know, you already have reverse domain hijacking still tends to be UDRP. Once we get into the detail of the enhanced claim service and maybe after we wrap up these questions we should do that.

You know, we've built in something similar in terms of, you know, a way to put a check on that. There's also already something like that built in to the URS.

I am not in a position to suggest that - well, we did not discuss whether or not it would be appropriate for ICANN to start reaching into the ccTLD realm to that extent because quite candidly, we were spending the last 2-1/2 weeks trying to come up with something that would be implementable, documentable.

And one aspect of this is that any trademark owner that was purporting to claim the benefit of enhanced claim services would have to provide documentation of whatever decision it is they were relying on. And then that would have to be verified or validated by the claims - by the clearinghouse.

So it's not kind of oh I sent us cease and desist letter to someone and I got the names back. That's not what we're talking about here.

Fadi Chehade: Antony has a quick follow up.

Antony Van Couvering: Yeah. I think you misunderstood the question. There are various providers of UDRP services for instance. And they are in competition with one another. And there's a certain amount of - inevitably a certain amount of forum shopping going on and some are quicker than others and some are cheaper than others.

What I would not like to see is a business that sets itself up as a super quick and super cheap way to, you know, provide decisions that turn out to be favorable to one side and the other and that is used as a way to sort of generate claims notices. And that is my concern.

Fadi Chehade: I think Antony makes a fair point and it's noted. And I appreciate it. But I think that's getting into a little bit some of the side things that could happen if we move forward. We're not there yet.

I have four people in the line and then after that I really will need to go to the next point because we're already at 11:15 and we haven't touched on many other points on the list. So the next four people are (Martin), Jeff Neuman, Sarah Deutsch and then (Papick). Okay. So (Martin) from HSBC.

(Martin): Thanks Fadi. I'm looking at this particular point in question and I think from a closed registry I've got no real issues. But I do want to clarify something really about the principle. We've heard some intangible benefits and I'm just trying to make sure that we understand the full benefits or the ramifications of something like this where we could be preventing a whole raft of second level registrations for a good purpose and in terms of the model.

And, you know, from a closed registry model I don't think it's going to impact me at all. But in terms of open registries, is there any issues there in terms of what happens with perhaps proposed revenue streams that were anticipated? Therefore is they are not going to impact in terms of registrars even (unintelligible) and from those revenue streams.

And actually if some of the benefits that come out of this can they be articulated in a tangible way that actually offers some response to the criticisms laid out in the (unintelligible). So those are questions in terms of if there's sort of an impact analysis that has been done or should be done irrespective of this particular case because I can see that being a real impact on some of the registries.

(Kristina): I mean I did not. I certainly deferred to the brand owners at the table and, you know, I think (Jerry) gave us some very specific numbers on what they've already spent on dot triple-X type defensive registrations.

So I mean the idea here is to really make it more efficient, more cost effective (unintelligible). And quite candidly I am troubled by what could be an unintended implication of your question namely that some of the new gTLD registries are in fact planning to build revenue streams around some Sunrise because, you know, if I'm understanding that it's something (unintelligible) off topic here.

Fadi Chehade: Neuman. Jeff Neuman.

Jeff Neuman: (Unintelligible) a question. (Unintelligible) and, you know, (unintelligible) is that this is only - or the question is is this only intended for (unintelligible) - understand exactly what your proposing. So all we're saying here - all you're saying is that there'll be some - the clearinghouse will generate a list. It's not any business object that registry has to do to figure out these names.

But it's just a list - another list that the registries will get that would have to compare to either for the Sunrise or for the enhanced claims. And I'm seeing people saying yes. So that's good.

The second thing is I just want to make sure with the claims that there's nothing additional for registries or registrars have to do. This claims process is exactly the same. There is no collection of additional information. No additional terms of conditions that a (unintelligible) sign off on. It's exactly the same as regular claims. Just the only enhancement I think as J. Scott said is that it applies to a different set of marks. Is that right?

((Crosstalk))

J. Scott Evans: What it is is if you met a threshold and you prove and that was validated then your mark that has already been previously validated would cover additional DNS labels that you would then download when you download those labels. So just - it would just for Yahoo be Yahoo. It would be Yahoo and whatever string, DNS label is how you all have called it met the threshold.

Jeff Neuman: Okay. And then registrar, everything else is the exact same claims notice, great. Okay. Thanks.

Fadi Chehade: Okay. We go back to Sarah Deutsch, Verizon.

Sarah Deutsch: Thanks Fadi. I just wanted to clarify that the claims notice itself is good for the community. It's not intended to be chilling. It's intended to be educational and I understand that Kathy Kleinman and Paul McGrady negotiated very neutral wording that's just tells a potential registrant that they may or may not be the (unintelligible) registrar may or may not be, you know, conflicting with someone's trademark rights here or their trademark.

You may want to consult with an attorney. So I think it's very neutral and it will save everyone a lot of heartache and better to educate people but I don't see it as chilling.

Fadi Chehade: Thank you Sarah. We go to Fabricio.

Fabricio Vayra: Yes. I actually raised my hand originally to address Robin's point and then along the way...

Fadi Chehade: Okay.

Fabricio Vayra: ...what (Martin) brought up will kind of fill in an almost dovetailing off of what you...

((Crosstalk))

Fadi Chehade: ...cede then your place to Kathy?

Fabricio Vayra: No. No, no. I just wanted to say...

Fadi Chehade: Oh, okay.

Fabricio Vayra: ...so Robin...

Fadi Chehade: I tried.

Fabricio Vayra: Yes, no. So I guess, you know, with the whole chilling affect and the notices and, you know, what does that do, I guess well if you look at four and then we'll get more into eight, what we're trying to solve is to stop the alternative and the alternative you don't even get a notice. You just never get a chance to register the domain name be it, you know, out of a URS, a UDRP, a court decision or just a Sunrise.

And if you look at how these things stagger, we're basically trying to do the exact same thing over and over again. The brand owner enough comfort so that they can just walk away from it and let the name space be what it is just not an infringement. And if it turns into an infringing use, you have some mechanism that makes it easy enough to get rid of that infringement. So it's like a clean space.

So a (second thing), I assume from a NCUC perspective you would want the customer to get a notice and be educated this might be a problem and then move on if it's not as opposed to that's it. There is no space. And (unintelligible) you were asking for examples. This is a great real life example.

When we were doing the spin off of Time Warner Cable, our domain name portfolio now came to - we had LifeDigitally.com. And so the company (unintelligible) owned Life, our domain name manager came up and said, "Hey, why was this in their portfolio? Was this an accident?" Because they were thinking as moving Life, the magazine digitally entirely to Web site it should (have been) Life Magazine.

And the reality of it is (no), cable was using it for LifeDigitally and how do we do a digital home using cable services. Now had we won that in a URS or done a UDRP or anything like that, cable would never (access) to that name. Whereas in the alternative you would just put a claims service which would give me comfort.

I don't have to told onto it. I don't have to spend money for no reason. And then the cable company could use it. And that's really the purpose. And as J. Scott said, we may not be getting all the details right, I mean we don't have everything but the point we're trying to make is a good sound one.

Fadi Chehade: Okay. We're going to take one last comment please and it's Kathy who's been waiting but that's it. Please, we really need to (unintelligible) on this list.

Kathy Kleinman: Okay. Am I off mute? Sorry. I'm having trouble hearing. Am I off mute please?

Man: Yes, we can hear you Kathy.

Kathy Kleinman: Okay. Thank you so much. A comment and a question. First I believe that was Fabricio who was just speaking. And - is that right? And I wanted to share that of course NCUC is actually very, very concerned about the trademark claims and we'll be talking about that with Number 2. And very, very concerned about the chilling effect and legal liability of expanding them, so permanently.

There was an agreement to have it for a short period of time for a very specific set of reasons. So I just wanted to get that because a representation was just made which wasn't correct.

But let me go back because I'm still trying to understand. Sorry guys, I've been a lawyer for 20 years. I need words. So let me see if I understand what we're proposing. A second Sunrise that would allow someone not to register a domain name but to block it from everybody else and then expanding the UDRP to some kind of new string that would go into the Trademark Clearinghouse regardless of the circumstances of UDRP.

So two questions. First are we elevating - the UDRP works with a lot of common law marks. The Trademark Clearinghouse is only for registered federal trademarks at some kind of national level. Are we somehow expanding and taking common law trademarks and putting them in the database?

And also let me walk through a scenario and if you could just tell me if I'm right or wrong. So let's say someone did a Goggle, G-O-G-G-L-E is registered in the U.S. Trademark office. Let's say someone did a typo. Pretend the company doesn't exist call Google, G-O-O-G-L-E. It's a typo of Goggle and that's exactly how they used it and that's exactly how the UDRP came done on it.

Would a trademark claims notice for Goggle now go out for Google regardless of the fact that a new company has come in that's really is Google? Thanks for walking through the scenario for me.

Fadi Chehade: Okay. So J. Scott and (Kristina), do you want to answer the two questions please and then we'll be done with this point?

J. Scott Evans: Right. I can answer the first question is that the string can't go in that has been found previously abusive. We registered - can't map - it maps to a record in the clearinghouse that has met it according to the guidelines that are set out in the guidebook.

So it is either a registration from one of the jurisdictions that are identified or a common law mark that has been adjudicated as a trademark or one protected by statute that was in place in June of 2008 or treaty. So it maps to that, not - it doesn't create a separate record. It is just another flag that throws a notice for that record.

(Kristina): Yeah. Okay. And just to follow up on that and Kathy perhaps to be a little bit more specific, if you're asking whether or not what we're suggesting would allow the owner of a common law mark that has not been adjudicated and that would not otherwise be eligible for inclusion is the clearinghouse to be able to use this as kind of an end run around that because they go and get a UDRP, no. That is clearly not our intention. And in fact that's not what we want to have happen.

And with regard to your second question would the - if the owner of Goggle had filed UDRP against - regarding the domain name Google and had gotten a finding that the name Google dot let's just assume com had been registered

and used in bad faith and that documentation was then in the clearinghouse, yes.

If a company named Google wanted to register Google, that would then show up as a claims notice. But again, it is a notice. The own of the new entity Google that is now applying for Google dot whatever would be able - would have the information in the claims notice that you and Paul had drafted to be - that would enable them to make the informed decision that their use would not be in bad faith and they could proceed with the registration. It is not a block.

Fadi Chehade: Okay. I think we're good. We asked enough questions. I'm sure there are many others. I really welcome (Kristina)'s offer in response to some questions to write this up not in hopefully 20 pages, more like half a page for me. That would be really helpful if we could take the small paragraph and maybe expound on it a little bit so people appreciate the nuances. If it can be done in the next few days, that would be very helpful.

Man: Fadi, in that write up, is there value in providing an example in the write up?

Fadi Chehade: Oh yes. Yeah. I'm very big on examples, use cases for those of us who are, you know, not as focused on the words as some of you may be. The examples always help. So please, please if you could, that would be great.

Jeff, you wanted to be?

Jeff Neuman: Yeah. I would just say we can get something because tomorrow we're meeting from a technical perspective and some of this is a significant design issue. So at least a (high level) outline if any of this is going to be adopted, we need this tonight so we can, you know, kind of get on the white board tomorrow if this is (enough).

Fadi Chehade: Understood. And as I said in Brussels, we may - we still have to go through well is this a policy that needs to go through the policy process or is this an implementation issue? But even though that may be the case, understand what might (be) policy in a year would be good for people implementing systems today.

It's just it helps. We'll adopt (unintelligible) it'll become policy or not. When we're designing systems, I'm sure (Chris) and Jeff and others would say the more we know the better. The more we know that there are potential things that will come, then we'll design a better system all together.

So again, if it's possible to have this today again, we're not looking for the final list, final word, final - we're looking for clarity. That's all. A little more clarity would be good.

I'm not going to make my opinion public yet. Let's just as I asked everybody to hold their opinion, I will hold mine. But I heard some very good things that actually helped me understand the point and why you brought it to the table and I appreciate very much what you did.

Now your order (Kristina) next was which point?

(Kristina): I think it makes sense to skip down to Number 8.

Fadi Chehade: Okay.

(Kristina): Because to the extent that we have not covered some of the more specific details of the enhanced claims service that I think have come out during the

discussion, I think it would be helpful to just kind of dot all those Is and cross those Ts before we move on.

Fadi Chehade: Okay. And one thing that I'm sure some people around the table are thinking of, these are not independent eight points. Some of these points are dependent. They're dependent between them. So to the extent there are dependencies it's good as you get into another point.

You say look if we don't do four, then eight is either irrelevant or has to change or just if you could walk us through the logic as you connect the points. You clearly put them in a priority order for a reason, not just because they're more important because they feed on each other (unintelligible). So to the extent that you can do that, we'd appreciate it.

(Kristina): And I think in that case if we're going to turn to substantive discussion of eight, I'd turn it back over to (Katherine) and (Jerry) again.

Fadi Chehade: So (Katherine).

(Katherine): Okay. So this is how the working group that I was part of, we envisioned an enhanced claims service. The scope would be the strings that exactly match eligible marks and variants and we've had a lot of discussion about that that have been previously adjudicated to have been abused.

So specific variants, not variants plus. Only variance where there ahs been a UDRP, a URS, a court case or something equivalent where the mark has been found have been abused. And we are proposing that the proof of abuse necessary would be a minimum of one successful legal action.

The potential registrant would get notice as we've also been discussing upon attempted registration that this mark or variant is under the enhanced trademark claims service. If they go ahead and register it and they use it in a way that is not in accordance with what - that's an infringement then the trademark owner has the right the trademark owner has to bring a UDRP or to challenge it in some other way.

If the trademark owner challenges it, then that would be what would happen. The registrant safeguards we talked about were a reverse domain name hijacking exclusion that strings found to have been subject to that are not eligible for enhanced claims by that trademark owner.

And entities that have been specifically adjudicated to have been - to have engaged in reverse domain name hijacking are excluded from bringing this for any string if they've done - if there's a party that's engaged in this repeatedly that that entity would be barred.

And so I think that we've talked a lot about this. I'm not sure (Kristina) I have a lot more at this point to add on this.

Fadi Chehade: Okay. Okay. Let's take questions. I start with (Jerry). We have Kathy and well, sorry Jeff - Kathy and then Jeff. We'll let - and Antony. So Kathy you go first, then Jeff Eckhaus and then Antony.

Kathy Kleinman: Actually, sorry Fadi. I hadn't taken my hand down. I didn't realize we were supposed to do that manually. So I'll go back in the queue later when I talk to my questions. Thank you.

Fadi Chehade: Okay. So Jeff then Antony.

Jeff Eckhaus: Thanks. This is Jeff Eckhaus here. I'm going to preface this again with my point of that I'm not being a lawyer. You said that there would be a legal decision. What would constitute a legal decision? I'm unclear of what that is so I just - if you could help us understand that.

(Katherine): Okay. I am a lawyer so I'm sorry. I think by that we mean a decision that is to - that is made by some body that has authority to adjudicate rights whether it is WIPO and - or whether it is a court in a competent jurisdiction, whether it is - whatever the dispute resolution processes set up I think basically that are official recognized.

It is - it's a formal - it's a formal decision. It is not I sent a cease and desist letter and the other side rather than fight decided to withdraw. It is some third party independent recognition or judgment. Does that help you?

Jeff Eckhaus: Yeah, it does. It sort of clarifies it. So one other sort of clarifying question. If James who is sitting next to me - him and I have signed an agreement and we had said if we have a disagreement it would go to a third party arbitration panel and that third party makes that decision, would that then be a legal decision? I'm just trying to figure out how wide this is expanded or how narrow it is.

(Katherine): Your agreement with him would not be. But if you go to arbitration I think and the arbiter issues a decision, then that would be. So there are a lot of consent agreements companies enter into or individuals. Those would not count. It would be when an independent third part adjudicates it.

Fadi Chehade: That's very clear. That's very clear. Thank you. Antony.

Antony Van Couvering: Thank you. This is Antony Van Couvering. I understand that the current claims notice wording is in the guidebook. But I heard earlier that there have been some negotiation with Kathy and other people on a different wording.

J. Scott Evans: No, that's the wording. The wording that's in the guidebook.

Antony Van Couvering: That's the wording.

J. Scott Evans: That's the wording.

Antony Van Couvering: Yeah.

J. Scott Evans: It was negotiated.

Antony Van Couvering: Thank you.

Fadi Chehade: Okay. Jeff Neuman.

Jeff Neuman: Thanks. And on the legal decision that would - would that include - I'm assuming that would include default judgments. And the reason I (unintelligible) as an existing operator of .biz and .us we often get times we get a lot of law firm that file cases against hundreds of names. The defendant never shows up. And there's a decision against all those and then we're ordered to transfer the names.

Unlike what J. Scott as saying with the UDRP where there's decisions on the merits, the defaults judgments in the U.S. courts aren't necessarily based on the merits although the plaintiffs do sometimes get to write an order and sometimes there's, you know, that's documented in the order.

What I'm a little concerned about is that in the case of a default where it's not necessarily adjudicated on the merits that those now 1000 names that were used by someone illegitimate in China let's say didn't show up that now those 1000 names are on the list of previously adjudicated marks and it makes that list grow exponentially. And there's a number of law firms that have a good history in doing these cases. So I've seen ones where literally there are 1000 names attached to it.

Also, sorry. Next point it does this include subpoenas where we get or actions from the U.S. Government let's say to take down names either for pharmaceuticals or others. We often get orders in the form of an executive action as opposed to a court adjudicating it. Would those be included as well?

Fadi Chehade: You would be speaking for President Obama, (Katherine).

J. Scott Evans: Once again I think that we're drilling down into a lot of detail here beyond. I mean that's an - that needs to be talked about since that...

((Crosstalk))

Fadi Chehade: Fair enough. And J. Scott, if you feel for example because clearly people are starting to push and ask questions on your intent with, you know, with the definition of what would be the form of the - something that would stop them from moving forward.

So if you do have an answer that is simple and crisp fine. If you think you need time to get back to refine this with us, that's fine.

(Katherine): I think we did discuss this. And I think in answer to the first part of your question, a default judgment is a default judgment. It's by a court and I think that would count.

I think what we did discuss in our working group whether or not an order from the Department of Justice or things of that sort, we can. And I think we concluded there it wouldn't - it would not. And my - is that right group? I think that's where we came out on that.

(Kristina): I would want to - with regard to the first point on default judgments, agreed. With regard to the second I want to go back to my notes because I - yeah.

Fadi Chehade: Okay. Thank you. Kathy and Alan online. We'll let the lady go first. Kathy.

Kathy Kleinman: Thank you very much. Now I do have a question. So here again a lawyer trying to think in terms of words. Could you give me a two-sentence summary again of exactly what Number 8 now means? I would really, really appreciate it.

And then do we have the same limitations as we talked about for Number 4? Are we only - are we elevating common law marks now, the type that are in the UDRP to the Trademark Clearinghouse or is it the same limitation that has to start in the Trademark Clearinghouse?

And just wondering, was there discussion in your group that this elevates particularly the UDRP to a use and a policy that was never every intended by its drafters? Thank you.

Fadi Chehade: J. Scott.

J. Scott Evans: The answer is that all the discussion we had in the last 45 minutes with regards to four applies to eight. Okay. Because we were talking about the fact that it was one Sunrise, second Sunrise and then an enhanced claims service, which is eight. Okay.

The enhancement is that if you have a mark that qualifies under the rules and the guidebook, that mark would get to add additional DNS labels that would be downloaded to the registries to ping against to find out if there's a match to send - to trigger a claims note. Okay.

So with regards to your second question with regards to the UDRP, the UDRP was envisioned as a way to offer the community a low cost solution to a nagging problem to the system's legitimacy.

And I would say that this - adding this in at whatever threshold level is decided is a continuation of that goal is to add to the community a solution to a nagging problem that recognizes rights but also offers something that's not currently there and that is a heads up to the innocent infringers, which will reduce costs for the - for everyone involved. It takes away a cost.

For those people who believe they have legitimate rights, they absolutely get to go forward even if they believe illegitimate (leads) that they have legitimate rights they get to go forward.

But what it does do is it provides the innocent person the way to go away and remove the cost to businesses of having to chase those which takes a significant pool of people out of the enforcement picture.

Fadi Chehade: Thank you. (Kristina), you want to close this?

(Kristina): Well, just to answer also Kathy's question about the common law. And I apologize if my earlier answer wasn't clear enough. No. It is not our intention at all to allow the owner of a common law mark that would not otherwise be eligible for inclusion in the Trademark Clearinghouse to use the extended claims service as an end run around that requirement. Absolutely not.

Fadi Chehade: Okay. That's helpful. Alan.

Alan Greenberg: Thank you. Just a quick statement regarding the claims notice and some earlier statements made that the claims notice we have worked out carefully by Paul and Kathy, which is correct. But it was agreeable to the people on the STI given that it was a pre-launch claims service, not an ongoing one.

The ALAC in fact filed a minority statement on the STI saying that we're quite favorable to ongoing trademark claims in perpetuity but we had some very serious concerns over the chilling effect with the claims notice as worded and we would want to see a lot more evidence or, you know, whether it's tests or focus groups or studies to make sure that that - the chilling effects weren't large on the innocent reasonable user.

So claiming that it was an acceptable claims notice pre-launch does not map exactly to an acceptable claims notice post-launch. Thank you.

Fadi Chehade: Very good. Thank you Alan for the statements. Fabricio is next.

Fabricio Vayra: So I just wanted to put some context to what J. Scott was saying as far as notifying the innocent infringer or the unwitting or whatever - however you want to label that person. I was mentioning to James last night that often we

find - we do searches for Time Warner, Time Warner Cable names and they end up being domains by proxy.

When we send a notice to Go Daddy and say, you know, hey listen, we need to contact these people, Go Daddy does the right thing. They let the user know that they're going to pass private (unintelligible) information over to us. I can tell you that about 80 to 90% within the first six hours of that happening before we can even contact them, contact us.

My paralegal (Stone) will have tons of messages from people saying I had no - I was just notified that you have a trademark right in this. I had no idea in that I either read an article that I (backup) things with Google and make money or what have you. And they say I didn't mean to trample anyone's rights. By all means, you know, you can have them. I wasn't - I had no idea.

And I just wonder, you know, want to say that's true or not or what not. I just wonder how many of those hundreds of people that we will get in touch with would have never registered these domain names had they been actually just informed that there's a process and there are laws around this.

Fadi Chehade: Fair point. Fair point. Is Kathy's (unintelligible) back up or is this - it is back up. No.

Woman: No it's not.

Fadi Chehade: Okay. So Sarah, please you go.

Sarah Deutsch: I guess I just - I mentioned this in the Brussels meeting but one of the problems is that this isn't just an issue for confused consumers, you know, pre-launch. They're confused every time they seek to register a domain name they

go on registers - registrars' Web sites and they use something called domain name spinner tool to see what's available.

And I, you know, I mentioned this but they search for Verizon Wireless, it'll say no, that's not available but look at these 20 variations that are available. Here's why they drive more traffic to your Web site.

And another thing on those Web sites warns the consumers that they might be infringing, so this claims service really is going to be the only remedy that we have out there. To me it's not even enough. I think that practices need to change in the selling of domain names to begin with. But this at least will provide something to them - a heads up that they could be running into trouble.

Fadi Chehade: Okay. Thank you Sarah. Appreciate the clarification. I think we're done with this point. And lunch is being set up, so if it's okay we can squeeze through one more point.

J. Scott Evans: I think at least we can go - why don't I go to Number 1.

Fadi Chehade: Yeah.

J. Scott Evans: Talk about the rationale of Number 1...

Fadi Chehade: Exactly. That would be good.

J. Scott Evans: ...real quick.

Fadi Chehade: That would be good.

J. Scott Evans: Because I think that's one - and we - but I think one is one that we could - it's simpler. We can take - go through it and just the rationale we don't have to have discussion. And we can take a break for lunch and come back for discussion.

Fadi Chehade: She may not even be ready then so we'll do one more. But let's go...

J. Scott Evans: Okay.

Fadi Chehade: ...one quickly. Please.

J. Scott Evans: Basically the idea with one is as we expressed in Brussels is that there are going to be a tremendous amount of these things going live under any system. Okay, 20 a week, I don't - and it's a lot to keep up with. And a 30-day window when 20 registries are going live is a lot to do when you've got to evaluate.

Do I have the right things in the clearinghouse, you know, because companies operate on a quarter-by-quarter basis? And to not overwhelm the clearinghouse as well to make it intake of information we thought a longer clearinghouse. So it's all about having time.

Now what came up in Brussels was well what if we kept the Sunrise period the same but we had a minimum notification period where each registry had to at least 30 days before they began tell you what they are going to require.

So in other words, you still get 60 days. You only have 30 days you can file but you at least will get 60 days to make decisions and get things in the clearinghouse because the clearinghouse is a validation period. So you can't just put it in and it go live tomorrow to use.

And the way they've designed it as I understand in the (law) is you can put something into the clearinghouse for claims notice and then later on decide it's more appropriate for a particular Sunrise, click that box, submit your use like if they're trying to make it more robust and easier.

So we're just asking for some way and one of the things that Fadi had talked about was having a portal Web site that gave a timeline for where each application was so that you could follow it. And as part of this say at a minimum you have to have your Sunrise eligibility qualifications out at a minimum 30 days before you go live with your Sunrise period.

It could be 175 if you're a very entrepreneurial registry and want as many Sunrise as you have. But at a minimum for new players they couldn't do it 15 days before because that's just not going to work.

So it's an issue of time and notification. And that is the rationale for why we asked for that and I believe that there are some solutions that would solve the problem. The problem is managing a huge amount of these and understanding where you need to play and if you are ready to play when it goes live. That's the challenge. That's the problem.

Fadi Chehade: Okay. So the point has been presented. I have Fabricio, Antony and then Jeff. Fabricio.

Fabricio Vayra: Thank you. So for those who weren't in the room in Brussels and a kind of reminder for those who were in the room in Brussels, just wanted to point out that this has massive implications on implementation of Trademark Clearinghouse meaning the more certainty in time you give brand owners to decide where they need to be ready to play and how the advancement is to do that is going to really dictate the strategies of what large brand owners do.

So if - with the less amount of time the more likely you're going to get everyone dumping their entire portfolio into the Trademark Clearinghouse whereas with more time you can actually pick and choose what you absolutely need. And I assume that would be less burden on the clearinghouse, the registries, the registrars, et cetera down the road.

Fadi Chehade: Fair enough. Thank you. Antony.

Antony Van Couvering: Hi. Antony Van Couvering. I appreciate what you're saying J. I think it's absolutely true. And the - this is one where I don't have any significant objections. And not to foreshadow a further discussion, I don't believe this is really a policy issue.

I have run several Sunrises as a registrar for brands. And I think you should consider another thing, which is have a (hecrit) required extension of two weeks that you don't tell anyone because my experience is that nobody puts anything into it last minute and then you have to have an extension anyway. But we'd have to swear the entire room to complete secrecy about this.

Fadi Chehade: And all of you on the phone as well.

Antony Van Couvering: Exactly.

Fadi Chehade: And your cousins and your aunts. Thank you Antony. Jeff.

Jeff Neuman: (Unintelligible) with 30 days notice and then 30 days Sunrise, that in your mind would satisfy this Number 1?

J. Scott Evans: I said that it was offered as a solution when we expressed that the problem we had was notification and time to make strategies. And so I can't speak for everyone. I'm saying that it seems to fall in line with what the justification was originally.

Fadi Chehade: Okay. So please go ahead Jeff.

Jeff Neuman: Yeah. I mean I would just love to - because Antony kind of - I think this implementation and so I would love to actually nail it down here in this room today. It's okay if we finish this one, then we can move on. That would be - this seems like one we could do that with.

I also wanted to point out, and you might too Fadi, Fadi also talked about ICANN running on myicann.org or some similar place a one stop shop where - and I'll leave this over to Fadi to talk more about.

Fadi Chehade: Yes. So again let's leave the decisions and the solutions till later. In fairness because I - we skipped - some people really had some things to say about first point and we agreed we'll - in the afternoon we'll go through them. But I appreciate your willingness to say this right now. I have Matt Serlin on the phone. And (unintelligible).

Matt Serlin: Thanks Fadi. Thanks J. Scott for the explanation on the 30 to 60 days. But I'm just curious about what the last part of this then means with a standardized process. Are you talking about the standardized process being the publication of the Sunrise dates and requirements in the standardized process or the actual Sunrise process itself?

Fadi Chehade: (Kristina).

(Kristina): Matt, we're talking about that whatever type of extension whether it's an actual extension or a required notice period that it be uniform against - across all TLDs.

Matt Serlin: Okay. So the - you're not talking about the actual Sunrise requirements being standardized. You're talking about the publication of the communications.

(Kristina): Correct. Or the actual physical extension, whatever it is we (unintelligible).

Matt Serlin: Okay.

(Kristina): As long as it's (formed) across all gTLDs that's what we care about because making it non-uniform will frankly just give us an even bigger headache.

Matt Serlin: Yeah. Agreed. Okay. Thanks for that.

Fadi Chehade: Jon Nevett.

Jon Nevett: Jon Nevett. Could you explain that a little more because I want to understand what you mean about making it uniform across all registries? And the second - my original question was if you change Number 1 to what we just - what J. Scott just mentioned, which was 30-day notice, 30-day Sunrise, do you think that requires a change to the guidebook?

(Kristina): With regard to your first point, if the decision that is ultimately taken for example is to extend the duration of the Sunrise period to 60 days that that 60 day Sunrise duration applies to only new gTLD registries. In other words, it's uniform. It applies to everybody.

If the decision is that Sunrise - the duration of Sunrise will stay 30 days but that all registries, all new gTLD registries are required to post wherever, it ultimately ends up being a complete copy of their Sunrise policy then that would apply to everyone.

The idea is we don't want to have - having a situation in which there are different iterations for different new gTLD registries doesn't really solve the problem. And to a certain extent it might actually make it worse because then you really will have - actually in most cases it's going to be paralegal saying I can't figure out which one needs which.

And given how much my time is per hour, it's cheaper for us to just dump our entire portfolio into the clearinghouse and let them deal with it. That - and that I think is not a productive use of resources.

With regard to the whether we need a change to the guidebook, I mean, you know, to some extent I would have to defer to ICANN on that. But I think we've already seen a couple changes. I mean this whole new prioritization (unintelligible) is technically, you know, I would call it a change to the guidebook.

You know, one of the decisions that came out of Brussels, namely to add fraud is a basis for Sunrise challenge is a change to the guidebook.

Fadi Chehade: We have Jeff and Marilyn.

Jeff Eckhaus: Thanks.

Fadi Chehade: And you are now standing between us and lunch.

Jeff Eckhaus: Yes. So I will be quick. And this - mine's actually very simple. It's Jeff Eckhaus here and it's a simple request that I'm still unsure a little bit of the standardized I guess with the messaging that you're requesting or you're asking because it's not now - it's not the process.

If you - when you send out the documentation if you could send out an example of what your - of what you're asking for and what you need, I think it would be helpful. Because I'm still a little unsure and I guess maybe if my brain isn't working on conceptual ideas and I need a literal example. So if you could send that as well I think it would be helpful.

Fadi Chehade: All right. We have Marilyn Cade.

Marilyn Cade: Thank you. Marilyn Cade. I just want to reinforce to me for the Business Constituency participants who worked with the IPC on this consensus document, we were hearing from our members big concerns about the volume that they had to deal with and the complexity across so many gTLDs that are coming 20 a week. Right.

And I just want to reinforce the fact that I think what came out of Brussels was already a compromise to what we had asked for. But we're supporting that compromise. And I would just reinforce what I think (Kristina) said. I actually think it's we will need to update the guidebook but I consider it implementation not policy.

If we want the guidebook to be the definitive place that people go and not have them having to go to different places, I would say probably the guidebook does have to be updated.

Fadi Chehade: Okay. Alan will be the last comment here before we close this morning session. Alan.

Alan Greenberg: Thank you. Just one comment. If we're going to get examples in the small document we're going to get, please make sure to include the concept of foreign - of languages other than English. The existing trademark claims notices will be delivered in English in the language of the registration agreement. It's silent and therefore presumably the same rule applied to the actual text of the trademark.

But I think we need examples to make sure we all are speaking the same thing because there are substantive differences if we're talking about people who are not English speakers. Thank you. Or for that matter for an English speaker with a Hungarian trademark.

Fadi Chehade: Okay. (Kristina) you want to...

(Kristina): Yeah. Alan, I might...

Fadi Chehade: And you may answer in Hungarian if you prefer.

(Kristina): Which I wish I spoke but I don't. I'm not sure I'm understanding your question but I'm going to answer the question I think you're asking. And that is the trademark owner is limited to the actual mark that is registered. In countries in which - I mean I have clients that have trademarks that are registered in English and Cyrillic and Hebrew and Arabic and Katakana and Mandarin and so on and so forth.

So that's what goes into the clearinghouse and is the subject of the claims notice. It is not if I'm understanding you correctly that if I have a trademark

registration for mouse that that would generate a trademark claim for whatever the Hebrew word for mouse is if that's what somebody applied for. And again, maybe I'm not understanding you but maybe we should chat (unintelligible).

Alan Greenberg: I'm less worried about what the trademark is than the description of the services that it applies to, the class of trademark, the locality it applies to, things like that. Again, if someone's going to receive this message and it's not going to have a huge chilling effect, they shouldn't have to go to a linguist to find out what it means. That was the substance of what I'm saying. So examples will help.

Fadi Chehade: The claim, right Alan. You're talking...

Alan Greenberg: The claim notice.

Fadi Chehade: The speaker.

Alan Greenberg: And one we hope is not showing.

Fadi Chehade: Let's hear Alan. Alan, you are - we are trying to make sure we are understanding what you're saying. Are you saying that the claim itself, the language that someone would see who's not an English speaker needs to be - we need to think how we present this to them. Is this what you're saying?

Alan Greenberg: The applicant guidebook already says this is some - a battle that I fought and won during the STI. It already says it will be sent in English. I believe it says in English and the language of the registration agreement for the registrar that the person will be working with.

So if you're working with a Hungarian registrar and a Hungarian registration agreement, the notice would be sent in Hungarian. But the trademark claims, the specifics, presumably are not or are they. I don't know. We were silent. We didn't specify that so I don't know how it's being taken right now.

Fadi Chehade: Okay. J. Scott from the Yahoo world will attempt to answer and close.

J. Scott Evans: The notice itself will be in English and in the language of the registrar. The information that is in the clearinghouse will appear in the language that it is in the clearinghouse. So if a registration certificate is all in Japanese, it would show the goods and services presumably in Japanese.

If it is an English registration either from the U.K. or the Cayman Islands or the United States, then notice might be in Hungarian and English but the goods and services fields within the notice would be in the language of the registration, which is English.

Alan Greenberg: Okay. Thank you for the clarity.

Fadi Chehade: Thanks Alan. So what we're going to do now is as follows. I will just take a minute to explain to you what Jeff was alluding to so you can leave to lunch thinking about this as to what we discussed in Brussels. Then what I'm suggesting is it's 12:05 in Los Angeles now afternoon.

Why don't we grab some food and sit back here at the table at 12:30? So if you eat quickly you'll be done. If you don't then bring your food to the table. And let's restart at 12:30. Huh. Yeah, I know. So is that okay that we restart at 12:30 so we keep this going? I think this has been a good morning and a great exchange.

The point I just wanted to make quickly if I could. What I described in Brussels so everyone is clear on that and by the way, the design of this is already on my whiteboard so we're already moving in that direction.

We're going to design - it's actually a very nice portal that will allow anyone to go in and see in a timeline fashion what is coming and where it is in the process. So you literally be able to select the green TLD, the whatever TLDs you want and the chart will automatically show you where every TLD is.

And you will be able - I don't know if we'll do this is V1 but I asked them that you'll be able to go in that chart and click on any event and say alert me when this event will happen. And it will automatically create alerts for you.

So we're designing the timeline around this. Yeah, he's killing me. But so that's the intent. And again, I'm trying to respond to a very important request. And I think all of us would agree on this.

The request is give us more clarity so we can make clearer decisions. I think that's it. Give us clarity. I'm not trying to side with one group or the other. I think our job at ICANN is to give you the most clarity we can. And then, you know, the rules and the market will drive it.

But we should give you the clarity. We should give you the chance to look at these things and decide what you want to do without haste and with enough visibility. That's the intent. The intent is good and we're there and I think you want to - now we need to (Akam) to get it done. And so we'll take it from there. Let's enjoy lunch. We'll meet exactly at 30 minutes after the hour.

(Kristina): So we'll be restarting in about two minutes.

Fadi Chehade: Okay. If we could settle back in to our chairs. It's a minute after 12:30. (Jesse) we're okay online. People seem to be still online. Okay. We have a camera pointed - a Web cam on the cookie tray. It's online for those of you who've gone for your third dipping. Public now.

All right guys. Let's try and all get back into our working mode. (Kristina), what's the next point you will cover just so we know? We did one, four - well we did them in the order of four, seven or four, eight and one.

(Kristina): We did four, eight, one. Probably move into two or three.

Fadi Chehade: Okay. And is this generally affecting your side's sense of priority?

(Kristina): Generally speaking I would - I think in that case let's move three up and three probably would have been...

Fadi Chehade: Okay.

(Kristina): ...right after four.

Fadi Chehade: Right after four.

(Kristina): Yeah.

Fadi Chehade: Okay. All right. So let's talk to two and three now.

(Kristina): Okay.

Fadi Chehade: Kind of as a group. Is everyone okay to start?

Man: (No, we did one).

Fadi Chehade: No. We did one. (Ikee), it'll be okay to go from your perspective. Okay. All right. So back to (Kristina). You may choose - just turn off your microphone if you have to.

(Kristina): Actually I'm going to key it up to Fab and (Bryce). Wait, yeah, we're talking about Number 3 URS.

Fabricio Vayra: Okay. So thank you. Fadi in Toronto when we had that brief discussion you heard me say that of everyone that I've spoken to in the brand community, they see the URS as being the silver bullet solution as much as can be said for brand protection in the new space.

And the reason being is that if you get something that's fast, that's cheap, the practical affect it will have on the bad actors is it puts the economies on - economics on a (tent), right, meaning if I can take a mass squatter and take them, you know, suspend their domain names for less money than it took them to register and faster and they can make a profit, this literally will have a ripple affect much like the 25 cent restocking fee had when (cason) came around.

And so that's why people are really focused on this because if you can accomplish that it really will change the market. So we had a working group internally and this really built off a lot of what ICANN had already (started) with extensions on the URS, hearing that providers might not be available for the cost that were put out.

You know, ICANN put out an RFI and concurrently had sessions on well what happens if the RFI answers. It'll come back in a positive. So some of the

things that we had talked about - (Bryce), I don't know if you want to go through some of these or you want me to keep going. Okay.

So we put together a group including folks like Phil Corwin who is, you know, is ISA- ICA for the Internet Commerce Association, and went through some of the proposals that had been thrown out by the brand summit that we had sent a letter to the Department of Commerce on, NTIA and some of the things that have been floating around in proposals.

And so here's kind of where we came out to. Assuming the RFIs don't come back in a positive way, some of the things we thought might be helpful. So there was general agreement within our group that a Trademark Clearinghouse would automatically tie to a URS just to streamline things.

We were very careful to note that the tying of those two functions would only port over whatever as actually validated. Meaning it wouldn't port over like some of the things we talked about here, an example enhance claims wouldn't port over (plus) firms or (plural). It'd be exactly what you validate. So you have to validate again at the URS.

There was agreement generally that default judgments might be something that could be entertained. And the caveat there within the group was to make sure that a default judgment, and it's almost a misnomer because they wouldn't be defaults just like J. Scott had mentioned early.

There would be some level of review of what the actual claims were meaning it wouldn't be that just because I filled out the entire form, you know, the person couldn't answer I win. There would be an actual check of the standards meaning yes I am Time Warner and yes I own Time Warner. That would already be validated that the claims were tied.

And yes Time Warner is in the domain name and yes they use it on the page.
And we actually reached out to the NAS and asked if there was something that they could actually do based on the discussion they had in Toronto.

And they told us yes, this is something they can actually hire someone internal to do these checks and it would be a lot less expensive for them than having to hire panelists to do this kind of very, you know, obvious kind of de facto check.

The - let's see, the other one was on fees. So there was agreement within our group that if there was no response the complainant would have to pay an administrative fee as opposed to a full blown fee if there was a panel that had to review what kind of response.

So in this case by way of example, if we said that \$300, you know, \$50, \$300, whatever it was that was the administrative fee you would stick with that. And then if there was a response and the panel had to be addressed, then, you know, there might be a higher fee.

Fabricio Vayra: Yeah. Exactly. And then this built into the - one of our final points, and I'll jump to that real quick before covering the other two, which was this notion of loser pays. You know, a lot of people have said in this tiered effect we don't really care what the fee ends up being if there's a full loses pays mechanism, meaning that both parties put up whatever these adjudication cost is and whoever prevails gets their money back.

Currently the guidebook says that it's only - that only applies - that system only applies when there are 15 or more domain names at issue for one

registrant. And we tried to get around using real life examples of things we've see in UDRP where parties keep coming back and back and back.

It's the same party that people keep trying to (unintelligible) and said look, we understand the purpose of having 15 or more domains at issue an in adjudication because that gets away from - Jon Nevett and I talked about this in the - during the IRT quite a bit, which is what happens with the new landscape if someone wants a domain name - we used Delta Pizza I think was the example.

And in the new landscape it's not just like dot com, net or they may actually go through and click more than three. They may click 15 and say I want my new business name to use three TLDs and not know that they're infringed or they're going into an infringement.

So keeping with that we had kind of (bantied) about what if you kept the full loser pays only if it buys 15 or more domains. But if you can prove, and this can be a checkbox, that that person had already lost a proceeding (on the backs of it), they were (recivitious actor) that then full lose pays the price of them.

And that would disincentivize people to continually do this or put in just kind of Mickey Mouse per se responses to keep the, you know, the proceeding going to make money. So that ties into the - kind of the administrative fee versus full lose pays and tiered system.

There was agreement within our group that, and this kind of goes to the Antony the question you asked about enhanced claims, which was if something had been adjudicated under URS as being an infringement that that

would be a perpetual instead of a just a one time suspension - a perpetual suspension but just for that - that actual domain.

So if I had won timewarner.web, it wouldn't block timewarner.shoe or timewarner.green. It would just be for that timewarner.web. It would stay in perpetual suspension.

And then the last one that I think Fadi you've heard plenty, which is that we really do need to keep this at a low to no cost type of service and that if need be that ICANN should at least subsidize or underwrite as Jon once said to - at least at the beginning phases to make sure that this works up to at least the review of the RPM. I think it's scheduled a year after these things are here in play.

So those are the kind of things that we threw out that the thought could be solutions to maintaining the, you know, the gist behind what the URS was meant to do.

Fadi Chehade: Okay. Thank you Fabricio. Any other clarifications from the IP side on this point or Fabricio because I thought you mentioned (Kristina) multiple people present. Are we good at this point? (Bryce) yielded to you? Okay. Thank you (Bryce).

All right. So we'll go now to the part where people ask questions. And I see Jeff and Antony. Jeff - I'm sorry. No, Jeff then.

Jeff Neuman: Thanks. I guess my question's pretty simple. I think these changes were made or proposals under the assumption that someone can't do it for the 3 to \$500.

If someone does come forward and say, you know, we can implement this exactly as it is in the guidebook, which I think there's one applicant that said pretty much they could do that, assuming they're credible, I mean are you still asking for these changes to be made regardless of whether they can make it for 3 to 500 or are you saying only if everyone comes back and says we can't do it for 3 to 500 that you'll want these additional changes?

Fabricio Vayra: This is Fabricio Vayra. So this is where I excuse myself to the restroom and let (Bryce) answer. No. Look. I think we were trying to do what ICANN's been trying to do, right, which is to not get to the end of an RFI and just be nowhere, right.

Have somebody who can't come up with what we've got in the guidebook and now we're starting from scratch at the last minute. So I guess the answer to your question is, you know, assuming that the RFI comes through, you know, I guess that answers the question, right.

But if the RFI doesn't come through and doesn't satisfy, I think that a lot of these things should really be looked at because in speaking to folks like the NAF and speaking to people who represent mass domain holders and things like that, they all seem to think that this would be a good way to lower the cost and streamline the process without expanding, you know, anything or having any kind of bad collateral affects.

Fadi Chehade: Kathy Kleinman, you have a question?

Kathy Kleinman: Yeah. Again, are there a set of bullet points that someone can put up on the board so we can actually see the writing on this? It's a lot of material that was just presented, which I appreciate that but it's a lot of material. So that's one thing. If not, could you again just kind of do the highlights?

Here's a question. On the default, are you saying that the default has to be decided by a trademark attorney or do you want to process it through an administrative assistant? Just let me refer you to 6.3 of the URS where all default cases proceed to examination for review on the merits of the claim.

And of course it was an understanding there when we wrote that and discussed it extensively that it proceeds to full examination by someone with attorney credentials to understand fair (unintelligible), free speech, freedom of expression, generic use, descriptive use, all the balances of the trademark system. Is there a proposal to change that?

And then could you talk about perpetual suspension again particularly in line with same generic words? Thank you.

Fadi Chehade: Okay. So on her first request just (Kristina) if we could add to the earlier request that we get with Fabricio it was fabulous if you could just get it in writing so people can reflect on it to be really helpful. But please go ahead and answer her two questions.

Fabricio Vayra: Thank you Kathy. So this is Fabricio. So on your first point, the answer is no. We are not proposing any change to the guidebook or policy. Actually one of the specific questions that Phil Corwin had asked when reaching out to (Christine) at NAF was can you do this basically with an attorney. And their answer was absolutely that yes.

So we don't envision they would change something. We also envision that an attorney could dispose of checking whether it's not just to fill the blank but it's actually met the standard fairly quickly as opposed to having to go through a full panel.

And then with regard to your second question on perpetual suspension, the proposal would be if someone wins the URS, the exact string that was at issue during that URS would instead of being suspended for the life of the current registration. It would just be suspended period. Does that - I hope that makes sense.

So instead of, you know, we go - say Time Warner follows a URS for 50 domain names against a registrant and prevails and all those domain names had issue were only registered for the one year, instead of dropping off at the end of that year and becoming available again, they would just go in perpetual suspension.

Kathy Kleinman: Thank you.

Fadi Chehade: Okay. Antony please.

Antony Van Couvering: Yes. Fabricio, thank you. I'm not really understanding how perpetual suspension would square with the other point that you made earlier which I quite liked, which is that you don't want to take names out of circulation that might be useful to a legitimate user.

So can you speak to that point? I mean presumably if there is a URS suspension, it has to do not just with the name but the party also. So if there's a different part for the same name, that might not be the same facts.

Fabricio Vayra: I very much appreciate what you're saying. And so I guess this just highlights how interconnected all these things are. And so I assume if you were to ask people around the table, they may have different views on how necessary a

perpetual suspension is based on how different or from a brand owner perspective how strong something like an enhanced claims service is.

But you're right. And the reason for this is because we had (kind of on this a) quick time turnaround. We had basically three, four different groups running at the same time and had to come up with thoughts before the meeting. So you're right though.

Fadi Chehade: I think Alan you have the last question here for the team if you could go please.

Alan Greenberg: That seems to be a pattern. There was an awful lot of discussing during the STI about the concept of venue shopping and we talked a lot - I don't remember how it exactly came out. But we talked a lot about semi-randomization of examiners and panelists to try to make sure that there was no concept of venue shopping where you go to one provider because you know they're sympathetic to you.

Having in house counsel even if it's legal counsel do the preliminary work starts moving the direction where that becomes problematic again. So I'm just sort of waving a flag saying we're going to have to address that concept if that kind of thing were ever implemented. Thank you.

Fadi Chehade: Fair statement. Thank you. Is there something in the chat room we should respond to? Or is this older? I think they're older.

Fabricio Vayra: Yeah. With the exception of the very last one but, you know, that was Kathy's and I wasn't actually paying attention. So I don't know...

Fadi Chehade: No problem. Kathy, is this a - she's typing again.

Kathy Kleinman: Oh, I think - I was just going to say I think Fab answered the question. So thank you. Time.web would never go back in the pool.

Fadi Chehade: This seems - are we clear on the ask here? And I want to be clear on one thing. The answer to Jeff Neuman's question was that if we can indeed get the right response for the RFPs all these asks would be off the table. Did you say that when he asked?

Fabricio Vayra: I mean I think it's an ICANN decision at that point, right, because we have something in the guidebook. Both ICANN and the community are trying to solve it. This was our attempt at solving.

Fadi Chehade: Yeah.

Fabricio Vayra: And, you know, so if you get something that you think matches it, I think...

Jon Nevett: But there's a mandatory review after a year, so.

Fadi Chehade: Okay. Jon Nevett.

Jon Nevett: Yeah. Jon Nevett, sorry. There's a mandatory review after a year in the guidebook. So it's not off the table. It's just one of the issues we'd look at in the year's time.

Fabricio Vayra: And Fadi and to your point, this might be good to keep in mind as you've always said whether it's V1, V2 or I think you said in Brussels V Santa Claus, we should build the system knowing what it is - to Jon's point, knowing what it is that we anticipate coming.

And so if the entire community and the vendors, et cetera, are generally saying say default judgments should be there, we should build a system that anticipates that.

Marilyn Cade: Maybe I want to defer to Sarah because I think she - if you're going to address the URS and the enhancements. I just wanted to maybe - I guess I understood Fab that when we talked about - I just want to clarify this that when we talked about improving its usefulness, we were talking about - I think we're now calling it the default judgments.

But once - if we recovered a name due to URS and it has been flagrantly abused, I think that is a change to what the guidebook now calls for. So I wouldn't have said just because a bid comes in...

Man: (Unintelligible).

Marilyn Cade: Right. I wouldn't - to me as the BC I don't think it eliminates the need for those additional improvements.

Man: (Unintelligible).

Sarah Deutsch: Yeah. I mean speaking just for Verizon, the two problems we had with the URS go way beyond, you know, the issue of price. I think that the problem with it is that if brand owners don't use it and don't trust it, it's not going to be a meaningful remedy.

And the two issues that I would flag are one that be clear and convincing - bring the proof remedy is something that, you know, we're worried about. We don't know what that means above the preponderance of evidence standard in the UDRP or what would be required.

And second, and this goes to the perpetual suspension that because you cannot get a transfer under the UDRP, people are going to be, you know, reluctant to spend money if they feel that after all of this it just drops back into the pool and another cybersquatter grabs it.

So that was the real reason to try to fix that issue. If you can't get the transfer, at least make sure that you're not, you know, playing whack-a-mole even with smaller amounts of dollars on an endless basis.

Jeff Neuman: Thanks Sarah. And the reason I asked the question is, and I don't disagree with any of the points you've made or any of the points that Fab made or Marilyn. My only issue is that these were put on the table - the only reason there was an opening here for the URS to talk about it was because we had providers that came back and said we can't do it at the price that you mentioned.

And that's was the whole concern. That's what kind of opened the door. And it's okay that you're asking for additional things. That's fine and we should consider it. But I think when you started out the conversation saying because the providers can't do it at this price, we're going to ask for these things.

And I think that last thing about permanent suspension again not to put down the merits at all but that doesn't affect provider costs at all. That has nothing to do with responses you're going to get back from the RFI because that's no cost to the provider. That's really just a cost to registries.

And again, I'm not putting down the merits. I may be great and then may be something. But I want to be clear as to why we're doing this. If we're doing it because we want to add additional protections for trademark owners because

they really feel like they need it in the new gTLDs, then great, let's tackle it because of that. Or are we doing it because we want to help with the costs with the provider?

Fadi Chehade: I think I'll answer this on behalf of Fab. I think he was clear when I asked him the question that they are just giving us a view as Jon Nevett also said that look, you know, even if it goes through and we get at \$300, we have other concerns. He sounded pretty clear that they're not pushing for these necessarily immediately and now they're just saying these are concerns. And we have them. We're putting them on the table.

Whether we address them in a year, we address today, this falls through, they're on the table. But I think that's a fair presentation of these things and thank you for clarifying each of the points, which I didn't understand as well before. Thank you for that. So that's precisely what we needed to do here to understand the logic behind each of the proposals should this URS process end up being in a different place or not as Marilyn said.

So I still have J. Scott. I think if you could be the last this time, really the last, then we could move to the next point. J. Scott.

J. Scott Evans: We have mentioned the tie in to the Trademark Clearinghouse as a cost lowering measure. But I don't think it should be required. In other words, they should say if you're in the clearinghouse you get a reduced fee. If you're not in the clearinghouse, you have to pay a higher fee. Because what we want to make this is available to anybody who wants to use it.

And you don't want someone who may have no need for any of the other things going on to feel like they have to get in the clearinghouse because they might eventually want to do the URS. So the idea is if they want to do a URS

later on, they'll just have to be validated by the provider and they'll pay a higher fee.

Fadi Chehade: That's a fair clarification. That's good. We have a moment of silence here. This is good. Are we - can we close on this point and move to the next one. So (Kristina) back to you. And it's now 1:00 just to give you a sense. How many points do we still have there?

(Kristina): The only one that we're really going to discuss in any detail is Number 2 because five, six and seven we're going to talk on very briefly. But otherwise we've covered everything.

Fadi Chehade: Okay. So can we agree that we'll try to go through two and quickly touch base, tell us your thoughts, rationale behind five, six and seven quickly and finish all of this by - before 2:00 pm?

(Kristina): We can try.

Fadi Chehade: Okay. Let's try and target that in terms of our questions and how deep we go. So go ahead.

(Kristina): Well with regard to two, which is extending the - it's really extending the claims notices for an indefinite period. The concern is, and we talked about this briefly in Brussels but in a more peripheral context. There's a real concern both that registrars will not participate in the registration process until after the period for providing the claims service has ended.

And second, that, you know, the harm that the claims notice and the claims services intended to address frankly doesn't disappear after 60 days. So, you know, the concern really was that by having 60 days at that period although

certainly better than zero is certainly short enough that it would be easily circumvented through a party that frankly wanted to just calendar it and come back. You know, 60 days is only 60 days.

And so the concern was that if we can extend that, and I know that we had originally talked about extending it indefinitely. We have heard from several registrars that it's actually in some cases going to be more expensive to disconnect than to keep it going. So I think that would certainly be something that would be interesting getting additional input in - from.

But the idea would be that the claims notice would extend until the GAC study or the study that the GAC has called for, namely, you know, the study that'll begin one year after the 75th new gTLD is launched.

I think what we have considered in light of the new drawing proposal, which I think makes clear that it's more likely than not that your first 75 will be IDNs that perhaps we would treat that to be that, you know, the claims process would continue until the 75th non-IDN gTLD has launched and that study has been conducted. So the idea would be that it would be kind of co-terminus and simultaneous.

Fadi Chehade: Jeff Neuman.

Jeff Neuman: Yeah. Just a real quick clarification.

Fadi Chehade: Alan Greenberg after.

Jeff Neuman: Okay. And I'm not - this is not really in the substance but there's a second part to that sentence that says ensure the process is easy to use, secure and stable. Is that implying any changes or that's just kind of a motherhood statement,

which I agree it should be easy, safe to use? Are you requesting any changes or is that just...

J. Scott Evans: We discussed all that in Brussels and I think I told you that I was head of that working group and what we came up with was we thought that was answered by the centralized model.

Jeff Neuman: Thanks. I just wanted you to make - because not everyone here was...

(Kristina): So the short answer to your question is no. It's more along the lines of motherhood and apple pie.

Fadi Chehade: Alan.

Alan Greenberg: Thank you. Like a clarification. The STI report said no post-launch trademark claims. The applicant guidebook says there'll be trademark claims for 60 days after general registration is available. I've never found those terms defined anywhere. So I don't know if those two terms conflict or overlap. Can someone explain what the relationship is between those two terms so we know what we're talking about here?

(Kristina): Alan, I can't answer that specific question. What I can...

Fadi Chehade: I can.

(Kristina): ...tell you is that - okay. Fadi can. So he's...

Fadi Chehade: So we had quite the discussion precisely about that in Brussels. And we asked a bunch of you to actually go on the site and come back with some thoughts on this.

So were you able to - those who were - I think JJ you were going to work with a bunch of people here to focus on that. And indeed I just want to clarify Alan is very correct here. We do not have a good definition of general availability. And I think if we get that we might be able to deal with your issue.

The core issue you have is people sitting it out. And then starting to do things after that 60-day period. So how do you define when that happens? I think we all agreed in Brussels it needs to be defined. Any progress on that that is worth sharing now? And if not, that's fine. We'll come back to it later this afternoon.

Man: More work to be done there.

Fadi Chehade: There's more work to be done there.

Man: Yes.

Fadi Chehade: Okay.

Alan Greenberg: The origin of my question is that we've been told that registrars don't want to implement it and I think someone used the expression here they will sit it out until after the 60 days. But I don't understand the concept of general registration is available to the man in the street if registrars aren't participating at that point. And yet according to ICANN rules, you can only do registrations through registrars. So I'm confused.

Fadi Chehade: You should be. So I think your confusion is shared. It's incumbent upon us to solve this with better definitions. But I don't think it'll take much more than that to get people in line and avoid the quote unquote gaming that could

happen here. And ICANN wants to make sure there is no such gaming. It's not the right thing. It's not what we want to happen here.

But I think it'll take some better definitions. We need to be clear on what general availability is and how somebody would start counting the 60 days. So (Kristina), you want to add something to that?

(Kristina): Well I would just want to note that certainly that will go a significant way to addressing the concern. But, you know, the fact remains that the harm that the claims notice and the claims process is intended to address doesn't disappear after whatever that 60 day period is.

And so that's really the reason for, you know, again although we initially proposed it as an indefinite in working through it through the working group trying to come up with something that, you know, we thought at least based on the input we were getting was implementable. That's where we landed.

Fadi Chehade: Fair enough. Okay. So that's heard and understood. I see three hands online. By the way, does this system list them in the order they - okay. So I shouldn't be letting ladies go first or anything like that. Okay. But Kathy, you still go first.

Kathy Kleinman: Thank you very much. And I'll try to speak more slowly per Mikey's request. Has the harm that we're talking about that the IP, that the trademark claims was supposed to address has it somehow changed? And let me go back to the members of the IRT team, which of course I wasn't on.

Let me read two things because it seems to me I feel like there's a shifting here and I was hoping you could explain it to me. So in the IRT report it said a pre-launch IP claims service will notify new gTLD applicants and trademark

owners that a current validated right exists for the identical term being applied for at the second level.

And then there's a footnote that said the IRT considered whether the IP claims service should also extend to the post-launch period. The IRT concluded it was unnecessary to extend the IP claims service post-launch because of the protections afforded by the URS that the IRT also recommends herein.

So whether it's pre-launch or let's call it early launch where we are in the first 60 days, I thought the harm was in that kind of chaotic period where the trademark owner still is trying to decide whether to register or not. And that's what I always thought as a member of the IRT is that - as a member of the SCI that the IRT was instructing us and helping us and guiding us to look at.

So this permanent seems to me to shift what the harm is and what the trademark claims was designed to address. And if someone could comment on that that I'd really appreciate it.

(Kristina): Kathy, I'll take that one and anyone who wants to jump in can. I mean I think it's probably kind of important to recognize the IRT report in context namely first off even at that point ICANN was thinking that maybe it would be lucky if it got 300 new gTLD applications and we have oh, significantly more than that.

And quite candidly I think there are probably plenty of folks in the trademark community that were going - that would be of the view that if you want to go back to the (unintelligible) trademark claim then let's go back to URS as we envisioned it and throw the GPML in too. And I kind of doubt that that's the direction you want to go.

Kathy Kleinman: Fadi, may I follow up just quickly?

Fadi Chehade: (Unintelligible).

Kathy Kleinman: Which is just that again when we did the evaluation of the chilling effect and also the legal liability that incurs when you go on past that trademark notice because at that point you could be found to be a willful infringer instead of an innocent infringer even if it's kind of a gray area.

A huge part of the analysis of the STI had to do - we spent a lot of time on this with the short-term nature of it. So as we go into a permanent assessment, I don't know, I'm just wondering if other people kind of share the concerns. But it sounds like not. Thank you.

Fadi Chehade: Thank you. Fabricio has a comeback here.

Fabricio Vayra: So Kathy, luckily I don't have that part of the hierarchy memorized and that didn't stick with me. But I think towards the end of the statement you said that the IRT decided it wasn't necessary in light of the mechanisms or something to that extent. The protections are available.

And to (Kristina)'s point, this entire - the IRT in context was one big compromise. And the one thing that you'll see in the opening statement about it and every road show that (unintelligible) with not extending things beyond that point because they were just tapestry. One mechanism linked off the other.

So what we have today is something that many of the pieces of that tapestry were stripped out. And so to refer back and say we are okay then, we were

okay in the context of a GPML and blocking and all this other stuff. But those things don't exist anymore.

So if you couple that change landscape with this scaling landscape of being told, you know, 250 TLDs to 500 TLDs, now we have 1900 (unintelligible) and applications, it's a completely different. So the concern hasn't changed. The landscape changed.

Fadi Chehade: And fair enough. So before I go and ask James and Jeff and others to finish, please repeat one more time the rationale. I don't want to go necessarily to the history but to the rationale. Why is this important?

(Kristina): The rationale is that the trademark claims notice provides a very valuable function both to potential registrants to prevent them from inadvertently infringing and that is a function that is not replicated anywhere in the commercial landscape today.

And frankly it also provides a post-registration an opportunity to the trademark owner to give them notice so that they can decide what action if necessary is appropriate. The need for both of those doesn't just disappear after 60 days.

And I just wanted to take the opportunity to clarify. Kathy, I don't know whether maybe I wasn't speaking very clearly but, you know, again although Point 2 started off as something indefinite, it did more during the course of our implementation work.

So what we were suggesting is that the claims process continue until - and I want to apologize. I want to pull the exact wording up so I don't get it wrong. That it should be included - it should continue at least until the review of new

gTLDs that the GAC has recommended be done one year after the 75th new gTLD is introduced.

We have tweaked that in recognition of the new drawing proposal, which would put IDN's first and say that it should continue until one year after the 75th non-IDN gTLD is launched.

Fadi Chehade: Appreciate the clarification. James.

James Bladel: Hi. James speaking. And I think it's a minor point but you mentioned that some registrars would feel it be more expensive to have a limited claims period of 60 days than to operate an indefinite period. Is that - did I understand that correctly? Was I mishearing that?

(Kristina): We've been told independently that - I want to make sure I phrase this right. That it is more expensive to kind of disconnect and stop performing the function than to continue performing it.

James Bladel: Okay. So from our perspective most of the costs involved in supporting this are going to be in addressing all of those questions and support calls that are going to come in as a result of the attempts or the inadvertent encounters with this trademark system.

So I don't see how that could - I don't think I could ever make the case that this would be cheaper to just leave this thing running than to actually have a finite and defined period of time that provides some certainty but we can ramp up a team, train them and then move that team off - onto something else during a 60 day window as opposed to leaving that indefinitely, so. Sorry.

Fadi Chehade: Sorry. We're going to go to Jeff Neuman in order.

Man: Right. But we can make that point.

Fadi Chehade: And (unintelligible). Okay. Sorry about this. So Jeff Eckhaus then Jeff Neuman and Marilyn Cade and Robin Gross.

Jeff Eckhaus: Okay. Thank you. It's Jeff Eckhaus.

Fadi Chehade: Sorry about that.

Jeff Eckhaus: Yeah, no problem. So the first thing I want to say is I want to just echo James statement that I know as myself as a registrar and I think James combined probably that's about 60 million domain names under management. Both have stated that it would not be the case of being more expensive. But totally be (running).

But that's not my point. My point was that I've heard a few times that we keep hearing registrars sitting out trademark claims is a bad thing. So I'm not understand why that matters and hopefully you can explain it to me. If the abuse comes from users or, you know, whoever that would be, why does it matter if a registrar sits it out? There's choice, competition among registrars. You know, there's a lot of people.

So if for example eNom, Go Daddy, Network Solutions, smaller registrars, larger decide to wait 90 days or other ones to implement that, why is that necessarily a bad thing? I'm still trying to understand that and why, you know, you can't force somebody to go into a certain business at a certain time.

It might be a decision I might make because it's more expensive or I might say I want to see if this TLD is successful before I integrate it into my system. So

why is that a bad thing and it's sort of - it keeps getting pushed ahead. I'm trying to figure that part out.

Fadi Chehade: (Kristina), when you answer this question if I could guide. Please focus on what you're worried about rather than why it's good or bad. Why are you worried that if they indeed - a whole bunch of them sit it out? What is your worry? What could happen?

(Kristina): Because depending upon how many of them and depending upon their market share, it could basically be a way to do an end run around the claims service.

Jeff Eckhaus: End run by whom? Infringers?

(Kristina): I mean it would basically create a situation where the claims services wasn't offered. If you had large enough registrars and a large enough number of registrars that it simply would never happen.

Fadi Chehade: Okay. So if you're not clear, ask but let's not debate the point.

Jeff Eckhaus: Okay.

((Crosstalk))

Jeff Eckhaus: ...the point.

Fadi Chehade: ...or you're not clear what she means.

Jeff Eckhaus: I just - I wanted to point out that, you know, we have, let's say, a set ability to add a certain number of TLDs to our product offering every year. And I'll just say that it's smaller than the number that we'll be getting under this program.

So I don't think that which ones we just, which one - how we prioritize that, because we're at very limited shelf space - let's say it like that - is really going to be an internal decision and not necessarily because one that we want to do an end around of any types of programs like this. It's really driven by what our customers want.

James Bladel: If I could, Jeff. This is James. Do you see - so I fully understand what you just said. I mean, business has made their decisions. They, you know, and (shelves) - I like the way you put it, I mean, and store decide that they're not going to carry certain brands because there's just not enough shelf space. I understand that and I hope all of us do. But do we also appreciate the concern that if somehow - and I don't know how - but if somehow, everybody sits it out and waits for this clock to run, and I don't know how that would happen, frankly, but all of them somehow we could (lose) because that's, in a way...

(Kristina): Then there're bigger issues, but yes.

James Bladel: Okay. But you see, what happens, is when we talked about the definition of GA, we - this is where I think we might solve this issue, that GA is not just a clock. Certain things have to happen for us to stop the clock. And these have not been well-defined. They're not clear today. If we clarify when that clock starts and ensure that when the clock starts, there is a registrar or somebody go do something as opposed to everybody's just doing this.

Then maybe that deals with your concerns, but again, I don't want to debate it. Do you understand at least what they're concerned about, whether you think it's feasible or not is a different story? But do you appreciate what they're worried about?

Jeff Eckhaus: I do understand that. I mean, if 90% of coverage or something, then, effectively we designed the system, it's going to sit on the shelf and no one's going to use it. I would say that the folks who are going to gain it in that manner are probably - share a lot of commonality with the folks who are going to ignore the claims systems as well. They're bad actors and they're going to try and gain the system whether it's through a cooperating registrar or an uncooperative registrar.

Fadi Chehade: Thank you James. That was helpful that at least we understand the concern and we also appreciate that, as businesses, you have decisions to make. I have just - moving next - Marilyn Cade, Robin Gross and (Jay Scott), you still need to same something? Should I put you in line? So you think about it. Oh, and we have Sarah Deutsch. So I'll put Sarah after Robin Gross. Jeff Neuman, you go.

Jeff Neuman: Thanks. I think, Fadi, you were just part of it. I think the concern is not necessarily whether a registrar - we had talked in Brussels about registries gaining that as well, and so coming up with a definition of general availability, I think will go a long way to make sure that people are comfortable.

So that's point one. Point two is I just want to ask a clarification question. It says that there are, number two, that extends the trademark clearinghouse and claims notices for an indefinite period. And I understand the modification that (Kristina) said about at least the year. But I just want to throw on, does that apply both to regular claims and these new enhanced claims? Or are you only talking about the general trademark claims?

Man: All right, so we go to Marilyn Cade.

Marilyn Cade: Thank you. Marilyn Cade speaking. My original comment was going to be a question that I didn't understand in response to what we got earlier. Since we're in what I would call a rolling thunder introduction, having worked for AT&T computer systems and done that a few times, I don't - the trademark clearinghouse is not going away. Even if it lasts for 60 days, it is going to be relaunching for 60 days with every new 20 names.

So I don't understand the idea that either registries or registrars would be discontinuing. You might be proposing to and sending notices at the end of 60 days, but you're still going to be engaging for 1900 X nu- or whatever the 1400 gTLDs are for the entirety of that rollout, so the trademark clearinghouse is not going to - you know, if we were originally going to have 300 strains and we were going to have a trademark clearinghouse for a period of time and then it was going to end, that's not what's going to happen now with the rolling thunder.

Fadi Chehade: So I appreciate the comment and I will speak for James. I think what James was saying, which I appreciate but I had not understood this point before, was the cost they're talking about it is not the technical cost of maintaining an implementation they did for 60 days and every time one of these notices will show up on a screen, there is a good chance that the person who sees it will pick up the phone and call the registrar saying, "What is this? I don't understand what this means."

And so he's simply pointing that the bigger cost or the cost he's more - I'm putting words in your mouth, James, so tell me if I'm wrong, that the cost he was highlighting, and that's a new thing I had not through about, is not so much the technical implementation costs. It's the cost of servicing and supporting all the users that will have questions about what they really - we were also worried, as you know, that some of these notices will be huge.

Somebody - some user may see 40 notices on the screen and they will, I think, if I - if it's me or my mother, you know, she'll pick up the phone and call the registrar and say, "What is going on here? I can't read all of this."

Marilyn Cade: (I'll just finish). I really understand that because part of the business I ran for AT&T computer systems, was a healthcare business. So I - we ran a service desk, so I really got what the cost is going to be. It's going to be the inquiry. But I still, in full support of what we have said earlier, the need for the trademark clearinghouse notices are not going to end at 60 days.

The only other point I was just going to make is I really think that general availability is very important. The lack of available registrars to serve this market, is the legitimate part of the market, is really going to be viewed widely by the GAC and by many others as being a gap in our fulfillment.

Fadi Chehade: That's a fair point. Okay, I have Robin Gross who's been waiting patiently, next.

Robin Gross: Thank you. Yes, I wanted to take issue with the indefinite use of the claims services. Folks have been talking about it like receiving these claims is always a good thing for users, information is always a good thing for them, but that's not always the case. Oftentimes, receiving these notices will then put you in a position of legal liability because then you've been arguably provided with notice that you are infringing and, therefore, continuing to do that which you are a willful infringer.

And we have triple damages and all sorts of additional kinds of liability pile up on you because we may have created this policy of sending out these

indefinite notices so, I mean, you know, Fadi, you talked about your mother getting notices and she's going to be confused and I think that's right.

And the problem is, is that now she may be considered a willful infringer if she continues to do what she's done simply because she's perceived as notice. So I think that we have to realize that it's not always a good thing to be sending out notices that this could be an ICANN policy that creates legal liability to users when they receive this (policy).

Woman: Yes, well, just to clarify the importance of registrars participating, most of the companies Verizon has sued over the years have been registrars who have been infringing by registering our domain names in their own name. So if I were any of these entities, I think I would opt out so that I don't have to send myself a claims notice. But it's still - it's very, very important. You have good and bad actors inside this ecosystem.

Fadi Chehade: As with any ecosystem obviously. I mean, there's always that but thankfully I think the majority of the actors in this ecosystem are good. We're obviously going to try and deal with the ones. So Jeff Eckhaus, you're next and then J. Scott.

Jeff Eckhaus: Thanks. Just one point of clarification. I think there's a big difference here on sort of people saying the claims notifications, you know, need to continue. They need to go longer because I know for - I'm going to go step - take off the registrar hat and just put on an applicant hat and just say that we've had a thing that a process would be sort of - call it a claims notification that people can get - the registry can get the notification but the registrants would not have to go through the process of accepting, you know, say, it's a blog.

You know, permanently they would have to go through and accept, you know, 140 claims or whatever it is on that term and go through that process. But there are also outside services that provide watch notices saying, okay, somebody read - you know, the zone files are going to be open so somebody could say, "This was registered in your - you know, this domain was registered in this TLD," and you can sign up where your marks would be viewing that.

So is it that you would still want that the registrants would agree to all these claims permanently or is the bigger concern that you would not be notified of this and is there a way to split that apart?

Woman: The former.

Man: The former.

Woman: Because that's the GAC. No one does that. No one can do that now.

Fadi Chehade: Okay. You got your answer. So, all right, so we have J. Scott and then (unintelligible).

J. Scott Evans: I think, Fadi, you put your finger right on the pulse of it, is that we found in Brussels that there's very broad interpretation of what is meant in the guidebook and that needs to be nailed down. Secondly, again, I point out to you that the reason we're all here is because the self-regulation model has the obligation to show that when it has identified an issue, it reacts to that and then it's nimble enough to do so.

And I think that when we talk about this notice being scary and we've discovered all of it, well, then we need to decide that we're going to take that

notice on and we're going to fix it so that it doesn't do that, and, you know, there are a lot of people in this room that want to say, "Well, that means we have to change the guidebook."

Well, I'm getting sick and tired of hearing people tell me that any change to the guidebook is a policy, but when it comes to, like, when the objection period is going to close, and this is two weeks after an initial evaluation that's changed, and when it's the allocation of how domain names are done through the metering process, that completely changes so I think this tree, the issue is going to be very clear because you're - the predecessor chairman of the board promised the GAC and promised the trademark communities, is they had all these tools, that this wasn't a big deal.

You didn't need to worry about all these domains because we're offering you all these tools. And if we see a tool that won't be used, that is going to greatly affect the reputation of this as a self-regulating body. And if it comes out that that was brought up and people decided, well, we just weren't going to go there because it was a messy discussion, I think that is where we get ourselves - we had repeatedly got ourselves into trouble.

And I say we, because I've been at this table negotiating with everyone for a long time and I'm glad we're doing this and I'm glad we are going through this but I think we all need to keep that very clear that if it's scary that there's a notice and if that is a concern, right, let's fix the scary notice. Let's not say no notice. Let's fix the scary notice and make it less scary.

Fadi Chehade: Right, so thank you J. Scott and I want - (unintelligible), I'll go to you in a second. - I want to say that I promised that we will make sure that ICANN and the ICANN community does the right thing. I promised. And we will do the right thing.

I know there are procedures and I know there are processes and I know there are ways to do the right thing. But the right thing must be done. How? We'll follow the process. If the process is X, we'll go through it. But we have to be courageous. We have to be courageous. We cannot hide behind the process. We just can't.

The world will (adjust) very badly if we do. It doesn't mean we don't follow the process. But that's different from saying we always blame the process and kick the can down the road. And many of you must have seen - well, actually you haven't seen because it will be on the Web site on Monday but, okay, so I'll - I just remembered that I've seen it because it's inside.

But, okay, there are some important things that will be shared, showing that the - in this new season, no kidding, there's a far more courageous approach to dealing with the issues. Not just by staff, by the board as well, all of us. We're starting to stop and say, "Why are we doing this? Why don't we do the right thing and do it now?"

So I appreciate the comment. Having said that, that doesn't mean we (get around) the process. That means we simply face the issue and put in place a process to fix it and stop kicking the can down the road and hide behind the process. So I'm with you on that, J. Scott. So Fabricio and then Antony.

Fabricio Vayra: It's hard to follow that statement. It's very impactful. So what I'm going to say (doesn't) come anywhere near as nice as that. But, you know, building off of what J. Scott said, yes, I've been trying to listen to everyone because I think there are valid concerns, right.

So when James says we're going to get a bunch of phone calls and it'll cost us money, that's probably something that needs to be considered. When Robin and you, Fadi, say people are going to get scared by the stuff, I think that's not the intent, so it needs to be fixed.

In listening, everything seems to fall - I'm generalizing here to hopefully move things along, it does seem to fall on kind of what J. Scott was saying. It's a messaging issue. If the proposal - the policy (unintelligible) doesn't seem to be the problem, it's how we go about doing that.

And I was thinking as Robin was talking, you know, if I walk up to my 15-month old daughter and I say, "Good job (Amelia)," and then I come in and I say, "Good job (Amelia)," I'm going to get two different responses from her, right? Because the second one she's probably going to look at me and say, "Holy crap. I don't know what dad's saying but it doesn't sound good."

Man: Yes, were you at ICANN today or something?

Fabricio Vayra: Exactly. And so I think it comes down to messaging. And I think that there are a lot of smart people in the room that we can come up with something that accomplishes what everyone's goals are and, you know, and not be scary about it.

Fadi Chehade: Remarkably there's - at least I'm sitting here at the middle of the table - I feel there is the remarkable (finance) agreement on the - on what we want to do. It's just the how. We need to figure out how to do things well. So at least - disagreement on the hows or on the whats. That's right. You're right. So we'll come back to that. So Fabricio, you're done. Antony.

Antony Van Couvering: Thank you very much. And I also hear a lot of spirit of trying to do the right thing around the table. But I'd like to take issue with you a little bit about doing the right thing in the process. One of the ways that we do the right thing is the process.

Fadi Chehade: Yes.

Antony Van Couvering: Hiding behind the process is, I think, and certainly some of it I do propose a sort of hurry up process around expression of interest. I share the frustration of people who feel that process is being used as a roadblock. But the question is not should we do the right thing or not. The question is what is the right thing?

And you may not know this but there is a history of a great deal of distrust around the table. I'm sure you're had indications of that. And so I very much appreciate that the building up of exchange of ideas and I appreciate your moderation in this.

But I remain concerned that we have, over the years, spent a lot of time getting to where we are and, you know, we don't want to be a bull in a china closet. So I just wanted to repost a little bit.

Fadi Chehade: I think this is well said and I agree with that. What I mean by hiding behind the process is not synonymous to skipping the process. Hiding behind the process is when we, frankly, see something that needs to be done and it's the right thing to be done but we avoid doing it by blaming that - some process took place so let's move on.

So you are spot on when you say let's first figure out what is the right thing and then let people of good faith find a way to get it done with due process, but let's figure that out together.

Antony Van Couvering: And I'd like to follow on with that to say that I actually have absolutely no problem with some kind of notice to people about the use of domain names and what is good and what is bad and what they may be. What I'm concerned with is that it's one-sided. And I think I can echo Fabricio here.

You know, there are a lot of legitimate uses in fair, you know, of names that may otherwise be trademarked and there're different classes of trademarks. There's a lot of room here for legitimate use of names that may be trademarked with someone.

If those are spelled out as well, obviously I have a lot less of a problem. So the wording is crucial and the presentation and how that presentation is done. Is that done on a registrar by registrar basis? Is that mandated in a certain way by ICANN, you know, et cetera, et cetera? So I think those details can mean a lot.

Fadi Chehade: Yes, I second that. And (Bryce), you will be the last to speak about point Number 2.

(Bryce): Yes, I mean, I would just agree but I just - I think one of the (thrusters) behind the...

((Crosstalk))

(Bryce): This is (Bryce). One of the (thrusters) behind this issue is that that concern is the same on day 59 as it is on day 61. And that it's our concern whether it's

giving more information to consumers or whether it's your concern about consumers having a balanced amount of information. Those are the same on day 59 as they are on 61.

And those are not really a nexus between the 60 day time period and the purpose of this RPM or even if we think about it as a mechanism for consumers. And so I think that's one of the threats that we, you know, one of the reasons why we suggested initially that it be, you know, indefinite and now we're pegging it a little bit more to the review. But that's, you know, that's why.

The second thing I just wanted to sort of mention quickly is just that to go to the issue of the cost built in for registrars. I mean, I hear that concern but I would just say, again, because - if you view this as a service, at least on some levels, to consumers, you're also stopping certain people from proceeding with the registration.

That then might cause brand owners to go after them, and there was, I would imagine, a significant support cost to dealing with those people that then you're (alleviating) and you're just shifting that. So you're not creating necessarily an additional level of support. You're just shifting it to folks you would have to support with a registration versus folks you now have to support with respect to a claim notice or a URS or whatever the case may be.

Fadi Chehade: Okay, and Antony just wanted to comment on your first comment.

Antony Van Couvering: Yes, I spent a lot of time with ccTLDs in the early days and one thing I can tell you is to some extent it's not really just what you say, it's how often you say it that can be a deterrent to users. There's - to the extent that the

registration process is complicated or lengthy, you will see fewer and fewer people use it.

And if you look at, say, the difference between France, Spain and Sweden, which have quite restrictive policies versus very open policies like Britain or Germany, you will see a lot of complaints in the former and a lot greater use of the domain names in the latter. So we need also not to just think about what it says but how streamlined that process is, if we are indeed to take the point of view of the consumer.

Fadi Chehade: Fair point. I think we are done with this point, (Kristina), so I'm going to go back to you. And it's 1:33. If you could just quickly touch on five, six and seven, and again, we're not going to debate these in depth but at least we're going to get clarity beyond a sentence on what these are.

Man: Basically there has been a debate for many years on number five and that, we believe that the majority of ill-used domains are used by people who provide false contact information within their registrant details. And we believe that if it was verified upfront and checked upfront, and if it didn't verify, that it wouldn't register, would pull out a lot of the problems. So we wanted that for a long time. Also it means that people were actually in there, that you could rely on that information and it was actually accurate.

Fadi Chehade: Okay, number six.

Man: Number six...

Man: (Unintelligible) a question because you said verify - validate and those are two separate definitions that we've arrived at during our RAA negotiations with the validation of the information versus the verification.

Man: Okay, well, validate. Anyway, to know that it's accurate information that can be relied upon.

Man: So you do mean verify?

Man: I mean validate is what we've - that's our consensus word.

Fadi Chehade: Why don't you, J. Scott, try to at least, or some of your team members, explain what you mean by validate?

James Bladel: Can I put forward our definitions and see which one kind of comes closest to what you mean? Okay, so...

Fadi Chehade: And this is James Bladel speaking.

James Bladel: Sorry, James speaking. Validation of information is to say, for example, that the field is required, that it is not blank, that it is not returning gibberish data, that - verification goes a step further and says I have tested this email and it's not just string, at symbol, string-dot-string. That's validation. Verification is I've spent...

Man: What we want is verification.

James Bladel: Okay. So all right. Secondly...

Fadi Chehade: This - when maybe tonight as we suggest attending, please help us.

Man: Next is a way to incentivize registrars who sign on to the new RIA. We think a way to incentivize is to say if you want to sell in the new gTLDs you have to

adhere to the new contract. It's just an (incentivation). And then is enforced compliance of all regist...

Fadi Chehade: There's a question from John Nevett.

John Nevett: Have you considered - you know, I understand it looks like a good incentive, but have you considered the anti-competitive effects of that where if you went down that road, essentially registrars are faced with the decision of, well, if I don't want the obligations of the new RAA, all I have to do is just sell the existing TLDs and I won't sell the new TLDs and the impact that may have on new TLD applicants and consumers.

Man: Well, I mean, if you're asking me, I don't think consumers want new GTLDs anyway. So I don't think that's (an argument).

((Crosstalk))

Man: Five, six and seven, what we said was we think they're already being handled. You just wanted to know where we - what our reasoning was, correct?

Fadi Chehade: Yes. Fair enough. So let's stay within the right space. I think you made the point about making sure that the new RAA is a requirement for people to sell new gTLD domains. John made a good point as well that you do this, you have to accept the fact that it means there will be less choices for people because there will be less people offering these. And that's fine. These are both valid comments. Antony, you had your hand up on this point before we move to number seven, please.

Antony Van Couvering: I have a point about number seven.

Fadi Chehade: Well, he didn't get - so let's let him cover that. One second, then, please Antony. Go ahead, did you want to - explain to us number seven please.

Man: Yes, that simply that you enforce all of the registry's commitments that they make in their applications that are wrapped into the contract. Those were wrapped into the contract. There are a lot of things that people have committed to in the application. But there is no - and I think this came up in the GAC meeting in Toronto - that you have not given us a pathway of how that's going to find its way.

You know, in other words, the community has said or the evaluators have said you get to go forward and it's based on this holistic application. And there needs to be a way to get that into the contract so when those commitments aren't fulfilled, there's some compliance mechanism.

And I don't think you can go back and say, "We said in your application," because they're going to say, "Well, we didn't say it in our contract." So that's what that means, is that somehow that needs to find its way into the contract so that you've got an enforcement mechanism.

Fadi Chehade: Okay, any - there's Antony and then Jeff Neuman with clarifying questions on this - number seven.

Antony Van Couvering: Thank you. With regard to Number 7, what process is this being - you said that five, six and seven are being handled by other processes. Can you tell me...

Fadi Chehade: I'll answer this if I could, Antony, in a (second). So I think - and I welcome that but in a way you're taking these three points off the table for the purpose of this effort for the next two days. And so that's, you know, we don't have

eight points, we have five points. They're not giving points, they're simply saying there are other (parts).

So let me explain what are these venues. So number five, needless to say, you'll hear more on Monday. How about that? Okay, so there'll be more on Whois on Monday that will start (unintelligible) because the (team) will be officially responding to the Whois review team's recommendations and laying the path forward that is courageous on how we're moving forward with this. So we will hear about this Monday.

And then there's a series of activities that we'll start addressing at this point. And then point number six, this is, in my opinion, really something that has to be (enacted) as part of the whole RAA negotiations so I wouldn't - it doesn't fit here.

We're going to have a separate track dealing with this if everyone is okay with that. And again, I thank you guys for agreeing to just take this off the table for the TMCH discussion. And then number seven is a big (one) and it's one that I think I need JJ's help on and one where we have to think through the (acrom) and our team, how we're going to do that and the GAC has made a very specific request for clarity on that. So we're under a clear request to understand what it means to take - there're sections in the app and translate them into enforceable contractual clauses.

Again, not for this team and not for this discussion. We appreciate you threw it in here but it doesn't belong really for the TMCH discussion and I accept your willingness to take it off for now. Did I answer you, Antony, though, as to the processes? And then I'll got to Jeff Newman and John Nevett.

Antony Van Couvering: So to be clear, with regard to number seven, it's not that there is a community process going on but this is under consideration by the board?

Fadi Chehade: Yes, well, the GAC has to be able to look into how they tend to, in a way, waterfall these things from the app all the way to a compliance level. We haven't responded yet, so the board is working with us to figure out how and if we could do this in responding to the GAC.

So in a way, all I'm saying is it doesn't (fit here). There's a bigger track going on. Right, JJ? Is there something you want to add? Does this pretty much...

John Jeffrey: No, I'd just say if you look at the GAC communicate from Toronto, there's GAC advice that we're asked to deal with the specific for the...

Fadi Chehade: It's very specific to (that type of information). Okay, so Jeff Neuman, John Nevett and Jeff Eckhaus.

Jeff Neuman: Yes, so number seven, I think is actually pretty instrumental for us to talk about in this room or at least in the community. I think it involves a lot more than just the GAC advice and I'm not sure, you know, especially the scope of this and actually this is a subject that there's some disagreement even within the registries.

I have taken one position which may not be the most popular position within the registries but certainly there's no agreement there. For example, my opinion is that anything that someone committed to in questions 28 and 29 with respect to rights protection mechanisms and mitigation malicious conduct, I think should be enforced.

Again, that's not a universal view within the registries. But certainly, there is agreement that question 18, which is not being evaluated other than it's being publicly posted and may be used in an evaluation process in a year from now. I think question 18 should be off the table because no one knew going in that that would be something that would be - they'd be held do. It was more like a mission statement or a forward looking vision like how do you see your TLD being used?

So I think in that respect, I'm sorry, this is probably a debate, so just a clarity is, the question is do you mean - when you say all commitments, do you literally mean every single one including hardware, software, including everything that we say about the technology including everything that Yahoo says, for example, as their current board of directors, everything, all registry (commitment) or is there a subset of commitments that you, as intellectual property owners and business owners are concerned with?

Man:

We're concerned about at TLD like dot travel that says it's going to only market itself to the travel industry and then they decide that they're all the sudden going to open up and take anyone's registrations. We're concerned about, you know, things that have told people all along, for instance, it's been in my tenure here that the example always is dot apple, right?

So somebody doesn't file an objection based on representations that were made on how this is going to be used and why it doesn't conflict and then they don't ever enforce in that. They're running it as an open TLD. Those types of things, not the ministerial things that go to FLA because there are different things that ICANN's going to be worried about that and that's your software and your technical background.

I'm talking about consumer facing promises or - not promises. Maybe that's not a good word - representations that were made that people evaluated whether to file legal objection, whether to, you know, and all those things that considerations were made. They need to waterfall in somehow because when they don't start doing it, ICANN is going to be hard pressed to say, "Well, you said in your application," and they say, "Yes, but I'm fulfilling my contract."

Fadi Chehade: Okay, so we're going to close this point Jeff and then I have to go to John.

Jeff Neuman: So I guess my clarity is that (New Star) said in our question 18 that we were going to use it for our own products and services but let's say someday, dot (New Star) we decide, you know what? I want to give that to all of my customers, that change. That's the type of thing that I'm a little concerned with as part of dot (New Star). I want to make sure that I'd want to cover all the obligations that they made for, like, 28 and 29 for rights protection mechanisms. But I want to make sure that businesses have the flexibility to make legitimate changes without being the threat of breaching your agreement.

Fadi Chehade: It would be hard to disagree with (unintelligible) and I'm going to be direct here. What you just said, Jeff, is very logical and I don't think these guys want you to limit your ability to do business. But if you've made commitments that left to the granting of this team, they're asking that these commitments be met.

And I think we're in agreement at that level. Now, of course, we shouldn't debate this now because they took that point off the table for now. And we'll have another forum to do that. The good news is this is one of these points where it's time for the urgency to get back to the GAC. I'd like to give you this next year. We have a few things ahead of it and planes to land (earlier)

here we could deal with that. It's not that urgent in the next 60 days. But, okay, John has been very patient, then Jeff Eckhaus then Robin Gross had her hand up. John, sorry.

John Nevett: Oh, no worries. Thank Fadi. John Nevett. I was going to say something very similar that let's not debate the point now but what I would ask, because I think it's a very reasonable request, that the IBC and BC I've made on this point that we should consider it, but I would ask that applicants be included in that discussion process and it's not just coming down.

This is the provision that we have a give and take and discussion about that because it is our contract and with the other side to that contract so I would really encourage us to set up another process for that and then obviously put it out for public comment and take it from there.

Fadi Chehade: So you're seeing how I'm dealing with issues. I will be doing this as often as needed to the point where by the time the meeting in Beijing, no one wants to come because we got our business done. But really, this is very important and I said this yesterday to the SSAC meeting. We need to work together like this, like we're doing here - often and more so, so that we don't wait for the three times a year for business to happen.

That's more work for the ICANN staff and for you but you know what? It'll make our meetings far more effective and we'll be able to get to the issues much more quickly. So you have my word on this, John, that this will not be done again in the backroom and you will be involved in this discussion. So please, Jeff Eckhaus

Jeff Eckhaus: Okay, it's Jeff Eckhaus here. And I have, going back to, I guess it's points five and six and I just - I guess it's sort of a question. You said that this is

being discussed in other areas so are you putting this on sort of hiatus and waiting to see what the decision comes out in that front? Are you saying there's a negotiation that's going on in the RAA, whatever is decided there, we're okay with.

Or is it we're waiting to see what happens and then we'll make our decision. I just want to be sure we're sort of...

Fadi Chehade: I'll answer for them. They should not - they should still have their points made as this process is happening. And all of us will be in this process. I mean, no one will be excluded. I will make sure as I learned by lesson the first time that everyone will be included. We'll listen to everybody. We'll participate I think in fairness to them.

And I'm sorry, I'm not siding with them here. I'm just - in fairness to them, they're being reasonable. They're saying, look, there are other places this is being discussed. Let's take them off the table. So we now have five (unintelligible).

We have five points. Let me summarize if I can. I think the five points are ordered in the following order of, say, priority. And it would be great if we, when we get kind of a new document from you guys, even if it's draft and not fully polished tonight.

It would have the five points in the order now that you have given us with point number four being now number one, right? Point number eight being now number two. Point number one being now number three. Point number two, right? It's number two that's next. Number three now, sorry. Point number three which is the URS being now number four, sorry. You changed these? Okay, that's fine. I don't...

Man: We went with one before lunch just because we thought it was the easiest so I think you would say number three is number two on the list.

Fadi Chehade: Fair enough. Okay, understood. And that's great. And maybe you could do this as we go here, just with these so we can all see it. That would be really (great) so why don't I let Robin Gross finish the discussion. We have six minutes left. Then we'll take a little break. (Karen) will be also fixing these. And quickly just with the same language it is on now.

No change of language but she'll remove this and reorder the five so when we come back we see them in that order. Robin Gross, you can close this discussion.

Robin Gross: Thank you. Yes, I had my hand up before Jeff made his comments but actually I wanted to say something along the same lines that he did with respect to point number seven, and that is I think it's important that material terms in the application should be something that continues through the contract but things that are not material that we need to leave room for flexibility, we need to leave room for innovation in these businesses.

I mean, I don't think we can realistically expect an applicant when they're filling out their application to really know all of the potential uses and all of the potential ways in which they could grow their business legitimately, lawfully in the future.

And so I just think that we need to leave space for that, but at the same time, I understand the concerns with respect to material representation. So if we could - when we do have that discussion, maybe focus in on that.

Fadi Chehade: Again, I'll make a comment I made earlier and got some flack for it. I see we're in (violent) agreement on this one. John, do you think we are? On this one I think we are. When we get to the point where we're deciding what is material in the application and what is best effort, whatever we call it. We'll get to it and I don't think we'll have difficulty.

It is pretty obvious to me that some representation really make sense to carry through and others would be business - require flexibility to accommodate business as they - and remember, these apps were filled when - a while back and it's - a lot's changed in the world since then, so we appreciate that. But the commitments that were made should be maintained.

Okay, with this, it's - we finished before 2:00. I think what we just did, to be clear, we spent since about 10:00 a.m. because we were late and I took some time and then we had some delays so we spent a good chunk of the day, I believe, listening and I really appreciate the clarity. I appreciate a lot of this was being baked very quickly I could tell and I appreciate very much you guys coming to the table to give us this view.

We would really appreciate the document later today with a little more clarity, use cases, as Jeff Eckhaus said would be good. They would help us. Now we're going to get into the tougher points of trying to figure out how to assess these things. And I'm going to ask you, as you take a break here - we're going to come back at 2:15, 15 minutes after the hour - if we could keep in mind the dialogue that Antony and I had about doing the right thing.

Let's keep that in mind. Let's not be debating what was said, what was said now, what is - let's, for a moment, look forward to the new world we're creating and say what would be the right thing to happen here? Now after we

decide what is the right thing, we may all decide that the only way for us to do this right thing is a process and that process would take a year.

Or we may say, look, we all think this is the right thing. Let's take care of it now. And how would we do it? So - but first let's talk towards what is the right thing? The world is judging us. And there are many people, many people who would like to see us be clobbered here, this group. You know, yes, there is maybe some lack of trust, lots of frightening time. And when I found out how much time we spent on these issues over the last year, it's remarkable.

It's just unbelievably remarkable. But, please, let's focus our minds here. We are - this is the end line. There're no more years. The first gTLD will be delegated, the new gTLD in the next six months and we have a lot to get ready and we have a whole world of people who'd like to see us fail just because they'd like to see us fail and they'd like to (point it out), say, multi stakeholder, my foot. These guys can't get anything done.

So we're under that, and believe me, at the IGF I saw that in a very black and white play. It wasn't (unintelligent), right. They want to see us, multi stakeholder - I mean, I'm not going to remain the person, but it would be a very senior person I'm talking to from the UN who (literally told me), don't you (unintelligible). Here the (company) can decide everything.

This is a senior UN official. I said, "Yes, I can see that." This is especially after the president woke me up and told me to come to his home in the morning to meet him. I didn't want to mess with him because I knew I was being listened to.

But it's - there are many people who would like to see the multi stakeholder model fail, really fail, on its nose so we have an opportunity here to show

them otherwise. We really do. And we don't have years. We have a little bit of time here. So we're going to all have to come in 15 minutes ready to do the right thing, please, and ready to put yourself in the other person's shoes, which is what we did very well in Brussels. So now we have an active reference point.

We were in Brussels. Many of you were with us and we moved on some points. People listened to the other person and understood that, okay, we've got to move on our point here, okay? So with that, let's meet again - or sorry, this is (Jerry). Go ahead (Jerry).

(Jerry Depardo): (Jerry Depardo) of (Travelers). Two points to your point that you made very eloquently, first of which is I don't know that in my community, the business community, the Fortune 500 folks that I interact with every day, every week of the year, who run our businesses and use the Internet now as an integral part of how we do business, I don't think anyone wants to see ICANN fail.

What - the unfortunate cloud that hangs over this whole program is most people in the Fortune 500 for right or for wrong, don't know why, feel like it just was forced upon them. So it's a non-sequitur in some respects to say multi stakeholder model, right, so that's part of the oxymoron associated with why people are saying, huh, you know, that makes no sense, right.

Because the folks who use and empower the Internet now, today, different from ten years ago who run their business by the Internet, had - didn't have a real voice, right. So that's one piece. Again, no one wants anyone to fail. We just, I think, that's just a cloud that hangs over now that has to be dispelled. How do you dispel it, right, because the reality is it's here?

So the second piece - I would tell you that we, again, the business who are busy running our businesses. We're not busy spending a lot of time, you know, interacting with ICANN and with all the mechanics behind what's happening, is getting information to us, to the business community, the folks, again, who are trying to do business in the world in a way that people can understand what's happening and when.

So you mentioned a couple times, we got planes that we've got to land. We've got things we've got to launch. We're on a tight schedule. It would be wonderful. And it may be on your Web site and I haven't looked as of the last few days. I don't know.

Fadi Chehade: No, don't look.

(Jerry Depardo): But lay out in a very, very clear fashion on your Website would be a great place for it - what's happening, what's the timeline, what are you trying to accomplish when? And the big, big items, because I'll tell you, it has failed to, even now it still has failed to get a whole lot of traction. (Reveal) we got was a big awakening for a lot of folks, kind of a 2 by 4 to the head for a lot of people but - a lot of companies, but still to have it in a place where a CEO of a company can just go on that Web site and just look at it or anyone in an organization in an IT function or in a function that's dealing with protecting domain names or trademarks, et cetera, can go there and know what's coming when, what ICANN's plan is, may help to get that sense of urgency because you're going to want, again, you're going to succeed.

You don't want to have - and how do you succeed? When you succeed, there're no surprises from the people who are really counting on this as a stakeholder.

Fadi Chehade: Thank you (Jerry). I promised in Toronto that I will lay out to the community what I'm doing from now until Beijing and I published that and that's my scorecard. I'm promising you now that within a week, I will publish a document with my team that actually lays out the plan from now until the first new gTLD is delegated.

So - and it'll be a (slide). It'll be something you literally can print and walk to somebody and say, "This is what's happening. These are the (positions) being made. These are the hurdles that," - and I may not be able to put every day in a week. If you give me a month, I can put days but in a week, I could at least give you the steps. Say, these are the things that are being decided so that we can implement this for you between now and the first new gTLD. Does that help?

(Jerry Depardo): And it'll also help participation because any of us need to go to our CEOs and say, "We have to engage because, look, it says right on their chart, they're going to do this by this date." It'll be very clear that if they have an interest in, you know, influencing the process or helping to educate folk's involvement in implementing the process, et cetera, that they will at least have had a chance to do that, so.

Fadi Chehade: In return, will you take all of our insurance portfolios and give us better rates?

(Jerry Depardo): Well, you know.

Fadi Chehade: Okay, let's take a break. Fifteen minutes, guys.

Fred Feldman: Hello? Hello, it's (Fred).

Man: Hello?

Fred Feldman: Hello, it's Fred.

Man: Who is this?

Fred Feldman: I'm sorry. I think I must - this is Fred Feldman.

Man: Who am I speaking with?

Fred Feldman: Fred Feldman.

Man: Are you part of the (ISTPP) call?

Fred Feldman: Oh yes, I'm sorry. I mixed up the lines here so I apologize.

Woman: Is anybody there?

Alan Greenberg: I am, Alan.

Woman: Hi, Alan. Okay, so we're still connected.

Alan Greenberg: Well, I'm connected again but other people are typing. Still here about to come back from break. People are still not here. My guess I another five minutes of so. I'll announce when it starts.

Woman: Okay, then I'm going to take another five minutes to talk to my family. Talk to you soon Alan.

Alan Greenberg: Bye-bye.

Woman: Bye.

Fadi Chehade: Folks, we need to start so please take your seats. We have - if we could tell the folks outside the door if they come one in please. Someone - (Francisco), ask the folks outside to come in. Ask the folks outside to come in please. Okay.

Okay, please folks, if you could take your seats because we're ten minutes late, please. Okay, we're going to do two things. Margie, from our policy team, will walk us through the three I mentioned to you this morning. Before we do the three, I asked (Karen) to put up the five points in the order we believe is correct. J. Scott, if you could take a good look at either the screen in front of you or this, just make sure that these are the five that are left on the table and they're generally in the order you believe is most critical. This is not compromising on which will happen. It's just these are the most critical.

And it's in front of you if you have, of course Adobe Acrobat - Adobe, I mean, Connect. Can you make the side a little bit bigger? Yes, there you go. Much better. Thank you. We didn't touch the wording, right (Karen)? Okay. Okay. So just switch two and three. Okay, she's doing it quickly.

Alan Greenberg: Fadi, it's Alan. I thought that the trademark claims for an extension for an indefinite is a prerequisite for some of the others.

Man: Yes, he said that he thought that the trademark claims extension was a prerequisite to some of the others. And that is not the case.

Alan Greenberg: Okay, thank you.

Fadi Chehade: (Kristina), we're checking that these are the right order, if you could help us as well with J. Scott.

Man: What do you mean? Because number two talks about how long - the last - number five. I don't know what you're asking, John, because they're separate.

Man: What's listed as number three up there?

Woman: (That's) number two.

Man: Which is the new number two.

Woman: Correct.

Man: Is that dependent on number five?

Woman: No.

Man: Meaning if there're not claims for more than 60 days then how do you - so you would just do that for the first 60 days as well?

Man: For however long the claims service is, we want number eight and number five.

Woman: Okay, I think it's one, three, two, four, five.

Man: Okay, so we're just going to switch two and three. Okay?

Man: All right, we're done with that. Now, let's put up the slide from Margie and Margie, can you speak up so we can hear you?

Margie Milam: Yes, does this sound good?

Fadi Chehade: Okay, how much time do you have before your plane takes off?

Margie Milam: Well, I have to leave the house probably in about 40 minutes, so hopefully we can cover - I don't think we have to spend that much time on this anyway.

Fadi Chehade: Okay, then I'm trying to give you as much time as you need. What we need you to do is to walk us through the three, which is about to come up here on the screen and to the extent you can, to walk us through the five points in the order that was just conveyed through the three if you've already done that analysis and based on what we heard today, okay? So look at the three and see - and again, I want to clarify, unless Margie, you say otherwise, this is not an exercise that frankly even I've gone through.

We just asked Margie and team after Brussels, if you recall, we told them, "Hey, can you guys just to think and give us some thoughts on how can we go through the distinction between a policy and an implementation issue." So - and this could be right, wrong. Let's not attack it. let's help it be solid as best we can. Okay, Margie, you go.

Margie Milam: Okay, thank you. Yes, and that is correct. We had Marika, David Olive and (Kurt) and myself sort of brainstorm and try to put on a single sheet what is the, you know, the process as the committee as you know, there isn't a lot of this documented and so this is kind of how we, in looking at different examples, you know, think that the process currently works.

And as Fadi mentioned, you know, this is certainly a draft and can certainly be, you know, clarified afterwards. But I think it's a good starting point. With respect to the different items, the list of items and where they fall, we had

some brief conversations on it so I'll share some insight but it's no, you know, in no way firm even among the people that developed this chart.

We just sort of discussed, okay, here's the chart. Here're the elements. How would we apply them to some of these points themselves? You know, with that in mind, you know, and we're certainly hoping to hear your perspectives on that.

Okay, so as you look you look at the chart, what we tried to do is really understand what's happened in the past and see if we could logically flow it - provide a flow for it. And the way we start, essentially, is to look at the element of change to see whether it's - the element to be changed was, in fact, part of a policy discussion.

And that's an important factor. And if it is, you know - if it isn't, does it materially change the approach particularly as a community proposed approach? And if you look at it and see that it wasn't really a result of a policy discussion, and in fact, was really more of an implementation detail, so we go through what we call the implemented change process which is on the left-hand side of this graph.

And essentially, the process, as you're all more or less familiar with, is that that process usually includes public comments. And you'll usually see some sort of analysis from staff on what the, you know, the proposed approach is and try to really glean from the public comment, you know, what are the different concerns about it.

And there's a link there to the procedure as it applies to the applicant guidebook. So that's what we kind of consider the implementation change.

Essentially that's not a material change and it really doesn't affect something that came out of the policy discussion.

And then, you know, there's also the safeguard in the sense that it turns out that enough people in public comment really feel this is indeed material. Then, you know, it's probably appropriate to send it over to the other processes I'll provide an overview of now.

On the other hand, if the element is something that really affects the policy recommendations, particularly one that may have been endorsed by a supporting organization or an advisory committee or affects multiple parties or constituencies, then you probably need something a little more robust on the implementation change.

And so we call that the policy guidance approach. In other words, we need to go out and some guidance with respect to the policy issue. That doesn't necessarily mean a PDP is required, though. It just means that there's probably a little bit more robustness in the process and we have a different prong depending upon, you know, what the issue is.

So for example, if it happens to be something that's going to develop a consensus policy, something that would be an obligation on all registry and registrar agreements, then that's where you would go through the traditional PDP process. And there's the bylaws process as many of you are aware of that really lays out the procedure for doing that.

But if the change you're talking about really affects limited parties or for a limited period or really affects new inform- you know, it's really new information that comes aight as the implementation process has, you know,

developed, you might want to try this policy guidance approach. Or it might be the case whereas the original approach wasn't workable.

And certainly there've been examples of the new gTLD program where that's actually happened where we go back in and try to get a little bit more clarity from the community on, you know, on what to do with this particular change. And generally, we look at the policy guidance as something that wouldn't change the overall intent of the original policy.

And then that guidance process typically involves some sort of working group being formed by the SOs or ACs that happen to be interested in the issue. And then, you know, the working group would usually come up with some sort of report or recommendation as part of that process where it would be a public comment.

And then there would be some sort of formal consideration by the SO or AC where they would approve or endorse the recommendation and send it up to the board and then the board or, you know, in the case of the new gTLD program, it would be the new gTLD committee would then consider it and approve that recommendation.

And so that's kind of how we laid out the different, you know, the different types of processes that have happened over the development of the new gTLD program and, you know, and just if you look at, you know, things that have happened over - issues that have been addressed, the STI, for example, that was a policy guidance approach.

There was a working group that was put together to try to deal with some of these issues. If we think of morality and public order, that was another one. There was a series of issues that were dealt with through the policy guidance

approach. And, you know, and that's something that in the case of the GNSO council, would've convened a working group or a drafting team.

Sometimes that might be a joint group if that's appropriate but in the end, you know, some sort of report is produced with public comment and then it goes up to the board or the new gTLD committee to consider. So before we kind of go into the actual recommendations, I just want to stop here and see if this seems like, you know, it's an accurate description of what's happened over the last couple of years.

Fadi Chehade: Okay, we have a list of people who have their hands up for you. Jeff Eckhaus first and then Antony.

Jeff Eckhaus: Thanks. It's Jeff Eckhaus here. So there's one group I see missing on this and I think I was looking where it says, on the new issuer is says what affecting all registry and registrar agreements, long lasting, affects multiple parties. Where - and oh, just even in general, I don't see where registrants come into this where if, something affects registrants as sort of the registration process or where that is on this sort of decision tree. I just want to where that is missed because they seem to be an important part of this to overlook.

Margie Milam: Yes, good question. And when we referred to parties, we didn't necessarily mean contracted parties in ICANN. I think we probably should change that to be stakeholders because that, you know, wasn't the intent. It wasn't to make it specific to just contracted parties and obviously in the ICANN ecosystem the registrant's point of view is very important.

Fadi Chehade: I think that's a good change if you could make it Margie.

Margie Milam: Okay.

Fadi Chehade: Antony, if you could, please.

Antony Van Couvering: Yes, I noticed a note about changing contracts. I assume that refers to existing contracts but to what extent is changes to the guidebook reflected here or do you look at that as a different issue or it's just you're thinking of the guidebook as the memorialization of a bunch of, you know, existing agreements?

Margie Milam: Yes, that I think is how we looked at it, that you could affect the guidebook change through the implementation change process or even through the policy guidance process. There're two prongs there. And, you know, and that's essentially what has happened in the past with respect to issues.

So it could be the guidebook - this diagram is really trying to address a lot of issues not just new gTLD specific issues so that's why we didn't look with only on the applicant guidebook.

Antony Van Couvering: The reason I ask is that I think for many on (this) side of the room, if you will, you know, we applied based on our understanding of the guidebook so even though we haven't signed a contract yet, that was certainly sort of the set of the ground - the framework, the set of promises, although those are not in stone and so on. Thanks.

Fadi Chehade: Yes, and I want to recognize the point Antony just made. As we - part of the concern in us continuing to change the game's rules, is that there are a lot of businesses, the systems, those capabilities, those expectations, there're all kinds of things based on the set of rules that were laid out.

So I second that. I understand that and I hear it. And at the same time, you know, as with everything, as with every game we play, you know, there are things that happen along the way that allow us to really think about certain things and adjust them.

But we can't be heading east and then be heading west. You know, we have to know. We have a lot going on and a lot of people invested as I'm learning, a kind of effort based on the guidebook and based on what the applications ask for. So I'm hearing both sides on this and I'm very cognizant that there's a lot of nervousness by the people who are applying for these gTLDs about change.

But I urge also that same side to appreciate that some things may need to be changed but we have to be careful and very cautious and very wise in these changes. And they have to be needed. So John Nevett.

John Nevett: Yes, thanks Fadi. John Nevett. I'll would go even farther than that. If you look at Module 6 of our guidebook, we signed an agreement already now that we - as applicants. Now that we filed out applications, paid our money, we have a contract with ICANN. And if you look at the ICANN terms of conditions, terms of use, whatever you want to call them, you look at Section 14 where it says, yes, you can make unilateral changes but if it causes financial hardship to the other side, there has to be a mitigation process.

So it's not - we're not in policy development mode anymore. Now we're in operation mode and yes, I really appreciate that you talk about the cognizance of that issue. Thank you.

Fadi Chehade: Okay. Any more comments on the general (tree) that was laid out very quickly after Brussels, to just give us a way to then run these? And Marilyn has her hand up.

Marilyn Cade: Thank you Fadi. Marilyn Cade speaking. I don't have specific comments on this because I'm looking at it for the first time. I know that staff had - you had asked folks to put it together. We're all seeing it for the first time. I do need to ask, however, I need to circulate this to the BC as a document. And not to add additional work, the explanation that Margie gave will be very helpful for people to understand it I think.

But I think this is going to have broader implications, right? So we're using it here as a tool to help us. But I think it actually has potentially very broad implications and that is going to mean we're going to need to circulate it and come back with questions. Maybe tomorrow but maybe even after that.

Fadi Chehade: So here's what I suggest. Let's not circulate it because this was really done to help us work. But we should take your advice, and by the way, the board and many people had been, since I arrived, talk about this, but I - this is the first time I actually see a visual that I can go through and say does that work? Does not work.

But I do think you're invitation that we take this beyond this exercise and actually get it out to the community for discussion, get it out to the (board) for discussion, it's about time we did this. It really is important that we do that. So Margie, that's homework for you and David Olive to take but again, let's not publish it now because if we do then immediately there will be a debate that we're not ready to have. \

Let's use it as a tool and let's learn. In the next hour or two, if it's a decent enough tool or if it's broken, we'll probably improve it in the hour to come. Mikey, please go ahead.

Mikey O'Connor: This is my first actual content comment. I really want to amplify what Marilyn just said. The PDP process is the result of the PDP process itself. There was a PDP to develop a PDP. And while that sounds a little bit silly, it's very important to the fabric of this place. And so if we're, you know, essentially what's in the middle of this tree is something called the policy guidance working group. That's a new term for us all and hasn't been reviewed by the community.

There're a whole lot of interconnected parts here that need to be taken a look at before we embody this (screen). It needs to go through some sort of (unintelligible).

Fadi Chehade: Couldn't agree more. Just, Margie, could you tell me, given that I'm the new guy on the block here, you know, my understanding is that this slide reflects things that have been happening that were never formalized which is - I don't know which is worse. But the reality is we've been doing these things but they've never been formalized.

And I think clarity on this slide and agreement in the community on this slide will do two things. First, I think it will stop us from having the kind of debates that frankly lead us nowhere. No, that's policy. No, this is policy. I think it'll start - it won't be perfect and there will be disagreement sometimes but it will start getting us to - listen, let's not debate this because this has to go through this line of this decision tree and there's a process.

Let's go do it. We may agree or disagree but let's go do it. The second thing it will do, I think, is it will get us to finish our work faster because if something really belongs under, you know, like number three then it'll go there and get done as opposed to spending six months debating what it is.

It's an important exercise. It doesn't end here. It practically just starts here.
We're going to use this tool and just I'll call it a tool for now.

Woman: I think we just lost audio. Am I the only one that lost audio?

Man: No, all us poor people on the phone lost audio.

Woman: Oh great, great.

Man: No, it's all gone.

Man: But since you're supposed to be speaking they may notice.

((Crosstalk))

Margie Milam: Am I that boring? They're all asleep.

Man: Hope you're flying somewhere warm Margie.

Margie Milam: I'm going to LA actually although I'm not going to see you guys tomorrow.

Man: Probably warmer than you are.

Margie Milam: Yes, it was close here in Boise this week.

Woman: Margie, you just did that whole presentation remotely?

Margie Milam: Yes, I'm at home in my office.

Man: Margie does most of her work like that. You never knew?

Woman: I don't think so. Great job.

Margie Milam: Yes, it's not bad, except it seems like the day never ends.

Woman: No, because the sun never sets on some place that's in the ICANN jurisdiction.

Margie Milam: Yes, we actually had the GNSO council call at 4:00 Mountain Time. So I've been working since basically 3:30 because I got up to prepare for the council meeting.

Woman: And because I was on the Brussels call, I distinctly sympathize. That's exactly the time we started too. My family thought I was nuts.

Margie Milam: It's horrible.

Man: We're all nuts. Isn't that a premise?

Woman: I guess so. So, Margie, now you're flying out?

Margie Milam: Yes, and I'm trying to take the day off tomorrow to take my daughter to Disney Land, so we'll see.

Man: Neat.

Fadi Chehade: Okay, so do we have the - while you dropped, we decided that on this tree, there's enough beer involved, everything will move to the right. We just ordered three cases of beer. They're on the way. Okay, no, we didn't withhold any meaningful conversation until you came back so we'll - I hope you heard

- did you hear Neuman's last comment? Did you all hear (unintelligible) comment?

Woman: No. No.

Fadi Chehade: All right, so did anyone else want to say something about this tool? (Jerry) was next and then Marilyn Cade. Please, (Jerry).

(Jerry): I just have a question as well. Not being familiar with the vernacular of ICANN and not being involved with this as a lot of folks around the table have been, when I look at this and I see policy guidance and I see implementation change, I just have a question. What does policy mean? Is that the same thing as, like, a requirement? So you have, like, a requirements (doc) and then you have an implementation, the details of how it's supposed to get done? Or is a policy something higher level and I just wanted - or is it equivalent - just want to understand what policy means.

Fadi Chehade: Margie.

Margie Milam: Gosh, that's a tough one. We could spend hours talking about that. You know, policy can be a lot of things. It can be contract. It can be high level principle that gets, you know, implemented. So I don't know in the bylaws or in the GNSO policies development manual whether there actually is a formal definition of what the policy is, so hopefully that answers your question.

(Jerry): So just to clarify then, the policy is what it is we're supposed to do and the implementation is how we do it. Is that correct?

Margie Milam: Right, and that can be done through various ways. It could be done through the board taking action. It could, you know, directing staff to do something. It

could be a contract change. And it could be what we call consensus policies which are policies that are potentially, it's a policy that the contracts refer to and if there's a policy adopted that is considered a consensus policy, then it would be binding on all contracted parties. If you have to follow specific procedure and the topics that could be covered under that kind of policy are spelled out in the contract itself.

Fadi Chehade: I mean, for example, (Jerry), I learned yesterday at my first in-depth review of the RAA agreement internally where people were just bringing me up to date that the RAA agreement was structured so that after we assign it and get on with the business of it, if a policy is fast, it's automatically a contractual obligation on the people who signed the contract, right.

So these are things I didn't understand, that even though they sign an agreement and they get on with the business, if five days later, a policy is fast, they are pre-agreeing - a consensus policy. Obviously they have to implement, so that's why it's a pretty important tree, you know, things that fall on that side have serious implications on important, you know, business practices. So Marilyn had one more question.

Marilyn Cade: Marilyn Cade. Margie, it really is just - we're using the term policy guidance working group. And I apologize. I was listening to you but I'm not sure I fully heard you. Would that not be a policy implementation working group rather than - because if we're trying to use the terminology we have been using, we have had an implementation group that have looked at PDPs and worked with the staff to come up with implementation guidelines.

We certainly did that when (Bruce) was the chairs. Things have become more formalized. But it seems to me that policy guidance doesn't - to me it doesn't fully convey the mandatory sense of policy. And to use the distinction of

policy is what you do and implementation is how you do it. I think this one is kind of in the middle - policy guidance working group. I was thinking that might be a policy implementation working group, but maybe I'm...

Fadi Chehade: So from my perspective, I'm going to answer this with my little knowledge. There cannot be a working group for implementation. Even if there was in the past, there can't be. I built systems for 30 years. We can't. I built businesses for a long time. You can't. Let's be candid. And so - but what we're doing here today and tomorrow and the other day, is my informal attempt to ensure that as we're doing things, first of all, we're learning from people who are in the implementation business.

To my right, there're a whole bunch of them. I mean, I've gotten to know (Chris) a little bit and seen how he can help us in ICANN build things. So we will work with you. We will learn from you. And we will engage you. That's natural.

For me, frankly, that's natural and ICANN should do this. But I don't frankly intend to formalize it. The board is doing the same thing with me, by the way. So we are already seeing the board members argue amongst themselves. Now you're telling Fadi how to do things. That's not our job anymore. We told him what he needs to do. It's up to him how he and his team do it.

And - but I need to win your trust. I mean, this is not something that will happen overnight. We - it's our job to implement and we cannot have consensus implementation. It just doesn't work. It's not my opinion. But we listen and we take input. That's very different from consensus implementation.

We don't want to do - we want to leverage all of the good will and good knowledge in the community. That's what we're doing in this room, right? That's different on the policy side. On the policy side, things are not gray. They're black and white. You know, we cannot make policy. ICANN doesn't make policy. You make policy. We implement policy. Is that too simplistic? And if it is tell me? Staff - I mean, staff. Not ICANN. We're all ICANN.

Marilyn Cade: I just want to come back on, however you take input on implementation and the fact of implementation decisions on stakeholders, I'm not trying to say it has to be a working group. I'm just saying this chart, you're saying you intend to take that comment in one way or another. I don't see that on this chart which might be okay. I was just pointing that out.

Fadi Chehade: Fair enough. No, that's a good point and to that point, Margie, if you could on that side of the chart, add that staff, as needed and when needed, will involve the community to ensure that implementation, that we leverage the community's knowledge and the community's input to ensure that we deliver the best possible implementations. But I can't (unintelligible) and I think we're (in synch) on that. Okay, so Mikey, you had your hand up? Yes. And who else? Alan on line. Okay.

Mikey O'Connor: Alan's actually first. And why don't we let Alan go first. And Alan, please read your comment in the chat because I think it's actually - although you made it as a joke, I think it's actually true, so let Alan go first and then I'll follow.

Alan Greenberg: I'll read it. It's humorous. It's not a joke. What I said in the chat is my working definition is that if you want the change, it's implementation. If you're against it, it's policy. And sadly, I think that has been the modus operandi sometimes.

Anyhow, that's not why I put my hand up. I'm commenting on Marilyn's comment that the thing that was labeled policy guidance working group or policy guidance group is really implementation and I do disagree strongly on that.

A PDP is necessary if it's consensus policy if we want to try to essentially bind the board. Not bind, but make it more difficult for them to refuse something. The GNSO is charged with creating gTLD policy. It doesn't say they have to do it through a PDP.

So if something does not require a PDP for some other reason and typically if it's a less onerous issue, as Margie has implied, it doesn't need a PDP according to our bylaws. And therefore, some other form of working group should be sufficient. It's a judgment call of course. But I don't think we want to say that if it's policy, it must go through a PDP. That's puts a huge workload on us that we'll never meet. Thank you.

Fadi Chehade: Alan, fair comment and if I could (table) that comment to the broader discussion of this issue when we get to it. But it's a fair comment and I think we heard it. So I'll finish on this slide with Mikey because we're going to lose Margie and I would like to get her, at least personal assessment of how the five remaining points - did we distribute the five points to everybody? So we printed the five points ordered properly so you have it in front of you as we go through Margie's assessment then at least you have them in front of you and we can all go through the exercise. Mikey, your last comment please.

Mikey O'Connor: I just want to amplify a little bit of what Alan said. I think one of the things that has got us all (unintelligible), this middle leg has the one that's called

policy guidance working group, there - Margie pointed out that there've been a few of these and there's been a lot of trouble with those.

And so we need to do a little learning from the trouble that we had when we did those and we won't have anywhere near time today to go through those. But we have to be careful.

Fadi Chehade: Fair enough. With this, I just want to issue an edict. You will have no beer or wine later if you are sharing information on what's happening in this room outside. So I'm getting some reports back that there is some information leaking, so we'll withhold the beer and the wine, so please withhold the urge to chat outside.

Let's just stay here together for a couple of days and as I promised, we will issue a comment statement, all of us, that describes what we've done. So please, thank you. Okay, with this, Margie, why don't you take the five points which we are all now staring at, the first one being what was number four if you still remember it, implementing a mechanism for trademark owners to present second level registration of their marks, exact matches, plus character strings, previously determined to have been abusively registered, to use across all registries upon payment of a reasonable fee with appropriate safeguards to registrants with a legitimate right or interest.

Now there's a lot in that sentence. We also had quite a bit of debate today about its meaning. I wouldn't say debate. I mean, we went through its meaning. We now understand what they have in mind when they made that statement. Your assessment, Margie, as to where this goes into our doodle.

Margie Milam: Your (unintelligible) went first. Okay...

Fadi Chehade: You know that it's a doodle. It's not a tool anymore. It's down to...

Margie Milam: Sure. Okay, so if you look at the actual policy that came out of the GNSO, the policy was very high level. It basically said something to the effect that strings must not infringe on the existing legal rights of others. And all of the GNSO recommendations that came from this - for the new gTLD program were like that.

There were, like, I don't know, 10 or 12. (Karen) probably has them memorized. But they're very high level statements and so if you look at, you know, is that change inconsistent with that policy that came from the GNSO PDP? I would say no. It is consistent. You know, maybe others of you disagree but then you can go a step further and say, "Okay, well, what's happened since the GNSO council came up with a fourth with its high level principles?

Well, there was the IRT and then there was also the STI and the IRT proposed the globally protected (marks) list. So it's consistent with that. But then the GNSO council STI, you know, rejected that. So there's a little bit of back and forth on that issue.

You know, it does affect trademark holders, registrars, registries and registrants. So there're a lot of people that are affected by it. And then if you look at my chart, you know, do we have any new information available since those recommendations came out?

Well, certainly the number of applicants that were received, I think from many members of the community, might say that the sheer number of applications is a new fact that really wasn't, you know, fully explored when all those

recommendations came up so my - you know, you read all that. I think it could be the guidance working group to do that.

And the other thing I want to point out, just because we, you know, you may do a policy guidance working group, that doesn't stop the GNSO council from conducting a PDP. That, you know, just to look at what's happening right now on the Red Cross IOC and IGO issue, we've got a separate policy guidance group that's working on specific issues that are short term for the first round of applications yet there's also a PDP underway to deal with those issues. So it's not mutually exclusive where you have to have a PDP and only a PDP. You could actually have both things going on at the same time.

Fadi Chehade: Okay, before we lose you, walk us through the other four and then in case we lose you, we'll debate it amongst ourselves. Thank you for number one. Number two, which is expand TM claims service to cover at least strings previously found to have been abusively registered or used.

Margie Milam: What number was that originally?

Fadi Chehade: That originally was number three.

Margie Milam: Oh, okay. Oh, it wasn't number eight? It wasn't originally number eight?

Fadi Chehade: Margie, can you hold? Sorry to interrupt you. We have a question from (Katherine).

(Katherine): Yes, and I've just been conferring with my colleagues. I just want to be totally clear. I'm having a little bit of a hard time following you on the phone. And are you saying in the first one on the list is you would put that into the

category of a policy guidance working group? Is that what we heard you to say that's where that goes in your estimation?

Margie Milam: Yes, that is correct.

(Katherine): Thank you.

Margie Milam: Okay, so should I proceed now to I guess it was...

Fadi Chehade: Folks, that's staff's opinion. But it's good. I mean, let's hear it. I mean, she's been living through this for years, so let's hear her opinion but it doesn't mean even I'm accepting it. I'm listening to her as much as you are. (Kristina) has a quick comment.

(Kristina): Yes, thanks Margie. I just wanted to make sure that I was clear in that it sounded as if when you were categorizing it and absolutely in all fairness to everyone in the room who didn't have access to our briefing notes, that you were discussing it more in the terms of a kind of a clause (IT PML) mechanism which we significantly backed away from and really more turned it into kind of a summarized variance. So I just wanted to make sure that we were talking apples to apples as opposed to apples to oranges.

Margie Milam: Thank you (Kristina) and I wasn't trying to be very specific on the recommendation itself. It's just kind of the concept of if you look at what the STI looked at, it looked at a lot of very substantial issues. And this is not unlike the substantial issues that the STI looked at. You know, it's just variance on some of the things that were explored at that time, just kind of - and in IRT as well.

(Kristina): Thank you.

Fadi Chehade: Okay, Margie.

Margie Milam: Should I move on to number two?

Fadi Chehade: (Explaining) the claims service to...

Margie Milam: Sure. Thank you. Number two, you know, it's essentially the same analysis on that one as well. I would recognize that that would be a policy guidance process. You know, again, you're talking about is it consistent with the original GNSO high level principle that you should, you know, not have strings that infringe on the existing rights of others.

Again, it's consistent with the kinds of things that STI dealt with so I put that in the same camp as something that could be done to policy guidance process. Does that make sense?

Fadi Chehade: (Number three), the URS?

Margie Milam: URS, again, the same thing. The URS could be a policy guidance process and if you think the URS, in particular, that was something that was originally from a policy guidance process. It was the STI and the IRT that originated those recommendations. It wasn't something that came out of the GNSO council's PDP. So I think that that's, again, consistent with the policy guidance process.

Fadi Chehade: We see a pattern here but let's go to number four, extending the sunrise launch period.

Margie Milam: Okay, on this one actually - and I spoke to (Kurt) about it, our recollection is that there was not specific GNSO council recommendation on the length of the sunrise period. And so we thought this was more likely to be an implementation process as opposed to a policy guidance process.

Fadi Chehade: Okay, and the last one. Sorry, there was a question. Oh, so she did say that number four on your printed list would be an implementation change because there wasn't an actual number of days in the GNSO policy originally. So at least her view is that that could be an implementation change. So the last one, Margie, the - expanding the TMCH and claims notices for an indefinite period.

Margie Milam: And again, this one where it's, you know, again, you know, consistent with the overall principle that strings should not infringe on the existing rights of others. It does affect the STI IRT recommendations but it seems to be consistent with the overall purpose.

And then with all of these, then these facts appear at least, you know, as I mentioned before, the number of applications that, you know, that were actually received is something that the community didn't really appreciate when some of these recommendations were made. So, again, on that one I would have that be a policy guidance process.

Fadi Chehade: If I were to summarize what you told us, all five in your opinion, based on the arguments you made, could be satisfied based on this doodle with the policy guidance process, the same one Mikey said has caused issues in the past, except for number four, which he felt could be a - number four being the sunrise period, could be a change that would go down the path of an implementation change. Is this what we heard you say Margie?

Margie Milam: Yes, that is correct.

Fadi Chehade: You have a few minutes left, so if we could do - get questions now that would go straight to some of her arguments before we lose here. Jeff Neuman.

Jeff Neuman: Yes, I just have a question. To the extent - and this may come up later but, Margie, to the extent that this - the people want this imposed or any of these on existing operators, would that, in your mind, convert those to PDPs?

Margie Milam: You mean, the dot com or dot biz?

Jeff Neuman: Right.

Margie Milam: Yes, absolutely. If it - because of a contract relationship, at least in my view, we would have to go through the policy development process.

Jeff Neuman: Thank you.

Fadi Chehade: So let me start with - oh, Sarah, please go ahead. This is Sarah with (unintelligible).

Sarah Deutsch: Sarah Deutsch. Just a question, Margie, since I'm not that familiar with the policy guidance process, what is the timing on that?

Fadi Chehade: I think this is the one we measure in decades or in centuries? I don't remember. Which one is this one?

Margie Milam: This is the middle path. There's no defined rule for it. That's part of the problem. You know, normally there's public comment and an initial report and a final report, so just on past experience you're talking maybe three to six

months. But there're no firm rules on it. The PDP, which is the more formal process has very specific rules and taking a bit longer.

Fadi Chehade: And so the three to six months is an estimate based on when that process or that route was taken in the past?

Margie Milam: Yes.

Fadi Chehade: Okay, Marilyn Cade has a comment.

Marilyn Cade: Thank you. Margie, thank you for that information. I will save my questions about whether I agree with your rating until later, but I just want to make a comment. The only fast track policy development process we have done was done prior to the formalization, the new PDP process.

And staff has done a fantastic job of trying to adequately resource the policy guidance process. The three to six month time will be dependent on increased staff support and increased community availability. Just - yes, just to point that out because the only way we've made the fast tracks in the past had been sometimes forcing intercessional discussions or additional time commitments so I think it's important for us to keep that in mind.

Fadi Chehade: That's an excellent point and I will not commit to this promise I'm about to make but I do believe that if we continue to these types of meetings, we're going to see these things go faster.

I think when I analyze why sometimes it takes us too long, I feel that the three meetings per year end up being the gating factors to a lot of work getting done. So the more we do work in between, but again, if we start doing more work in between, I'm sure there will be a lot of hands raised and concerns

about, well, are we - you know, are we following process? How are we doing these things in between?

But we have to find a way and we have to find the right way but we cannot keep saying every time, people say this is a policy guidance thing. We need to do it before we launch a multi hundred million dollar industry. And we say, well, you know, it's going to take six years. We just can't. We can't be in that mode anymore. Mikey, please comment.

Mikey O'Connor: Actually I don't have a comment but Alan does.

Fadi Chehade: Alan, would you please speak?

Alan Greenberg: Yes, thank you. A question and a comment. Number three, it's (unintelligible) is deemed to be policy - requiring a policy. We're assuming changes have to be made, I'm assuming. If, indeed, the suppliers come in and say we can do it for \$300, then I'm assuming we don't need a policy group to do that. Is that a valid assumption?

Margie Milam: I believe so because it's already been implemented. I mean, assuming implementation passes at that point.

Alan Greenberg: Okay, but I just wanted to clarify that there's a fork in number three depending on the results of the RFI. I want to give a different answer to how long the policy guidance workgroups take. And it depends, to a large extent, on the circumstances under which they're created.

Several times we've had board threats perhaps, is the best word, saying you have to complete this within a certain amount of time. The FTI group was given two months. It took us two weeks before we got organized, so it had six

weeks to do its work and it did deliver. So under the right incentives, or threats, things can be done quicker. Thank you.

Fadi Chehade: Fair comment. Mikey.

Mikey O'Connor: I have a trivia question that (Sarah) and I were just visiting about. So, Margie, when you're thinking about the policy guidance working group, are you thinking that the output of that process goes through the GNSO council or not?

Margie Milam: It depends on the issue, right? So if it's something that relates to gTLDs, assuming the board would ask the council for the council's opinion or staff, I guess - however, the process gets kicked off. And - but if it's something that's maybe not specific to the GNSO, you may not necessarily need the GNSO's approval on it. It just depends on the issue. This is kind of the, you know, this particular chart is covering all the issues, not just new gTLD issues.

Mikey O'Connor: But in terms of the five points that the - that are on the table today, would it be your assessment that if we did expedite a process that those decisions would then go through the council? They'd have to, right?

Margie Milam: Yes. Yes, so it would be the GNSO council forming a drafting team, if you will. Like imagine the IOC issue we dealt with earlier. The drafting team would come up with a report. There'd be a public comment. They would send it out to the council. The council would vote on it. And then it would go to the board.

Fadi Chehade: Margie, every time you bring up the IOC, people need a blood transfusion around here. At least Jeff does. So Jeff, you get the last word before I do a

(stoke hold). He gave up. That's how bad his blood was after you mentioned the IOC. I'm going to do a quick straw poll. Help me out here.

How many people vehemently disagree with her assessment that number one is a policy guidance (root) issue? If you vehemently disagree, raise your hand. Yes.

Man: Before we raise our hand, one final question. And I think Margie said it but I just want to be clear. If something is a policy guidance, does that mean it cannot be a PDP? Are those mutually exclusive or can it be both? I wasn't sure. I thought she said that that they weren't mutually exclusive, they could be both. But now I want to - I just want to be clarified on that. Or is it one or the other?

Fadi Chehade: Margie?

Margie Milam: Oh, it could be both. And, in fact, we are doing that now on the IGO issue. So there was a - not to mention Red Cross again, but there was a drafting team for IOC Red Cross. It came up with the recommendation. That was essentially that was the policy guidance working groups. And then there's also the PDP. There was an issue report, the whole, you know, boat. And that PDP has just been kicked off. So you could be dealing with this issue simultaneously in two different groups.

Fadi Chehade: Okay, thank you Margie. Jeff.

Jeff Neuman: Yes, I just also want to say that even if - if it's a policy guidance working group, I think we're still saying that the protections need to be in place to make sure it's a bottom-up process, to make sure we get consensus, to make sure everyone's got their say. So it seems like people are a little bit scared of

the term policy guidance working group because they feel like it's not going to be as protective as a PDP. I think it can be as protective.

Fadi Chehade: It will be.

Jeff Neuman: Or better yet, it will be, so I just wanted to say that because it's not meant to circumvent any of the protections.

Fadi Chehade: Absolutely. And - yes, so well said, Jeff. Before - someone wants to say something before we take a quick poll. (Jerry).

(Jerry Depardo): Hi, (Jerry) from Travelers. Just a question so that I understand the implications of this from a business perspective, and I trust that the folks around the table are going to implement this to the best of their ability but the implication of one definition versus the other, does it mean that if it's one it will not be implemented before the rollout of gTLDs, and if it's the other, it will be? Or is there some other - I just don't know how to vote because I don't understand the distinction from a business perspective.

Fadi Chehade: That's a very good question and I think that it is very unlikely that if things go to a full PDP process, that it will happen before some of the new gTLDs are released. Having said that, as Margie just said, we could have something happen on both tracks.

So without divulging, again, things that I have to always keep in mind what is out, what is not out, but there are some things also going on right now where there will be some policy guidance that affects certain things happening. In the meantime, the PDP process is happening. It's just we're - we might do some things in the meantime in order to make sure we do the right thing but also allow the process to take its course.

So the answer to your question is (muddled). I'll give you an example so I make it easier, (Jerry). The GNSO council is going through a process of deciding, say for example, whether they should be protecting the UN special agencies at the second level - should these names be protected or not protected?

They will go through a process. They will debate it. My opinion is it will take them many months. It's not going to happen in many weeks, but many months. So if, in the meantime, either this policy guidance process maybe says, look, the working group decided that in the meantime maybe we should put these on hold temporarily while a full PDP is developed. So that could happen.

So - and that could happen in different - for different decisions. So I don't want you to raise your hand in this non-official vote. It's just a straw poll I'm trying to do because if we find that we're vehemently in agreement on some of these then, you know, it'll be easier to move towards a solution.

But I'm just letting you know that it's not that black or white. We could decide that this should go to PDP but we should do something in the meantime. Okay, Antony then Jeff then Robin and then let's do the straw poll, guys, before Margie leaves.

Antony Van Couvering: Yes, I think I can help with that last point.

Fadi Chehade: Please.

Antony Van Couvering: As I look at these, I think some of them are pretty clearly a policy issue. But I also think we can find agreement on them very quickly. I think

that the spirit in this room has been very useful and there are some things that I don't really have strong opinions about but I do believe that other people need to weight in. However, if people in this room come to an agreement, I think that will inform the rest of the community as well.

Fadi Chehade: I like this guy. That's well said, Antony. Thank you. Jeff.

Jeff Neuman: Sorry, one more clarification here and Margie, this goes back to something you said. So now I understand they could - they're not mutually exclusive to policy guidance in a PDP. But I think you had said - and this is in response to Jeff Neuman's question, that if some of these get decided , for it to affect existing TLDs, they would have to go through a PDP process. So does that mean that if something went through the policy guidance process, it could affect only new TLDs and not existing and there would be, in my mind, sort of an imbalance? But for - and so does that make sense that if it went through policy guidance, it could affect new TLDs but not existing TLDs, and for it to affect existing TLDs and new TLDs, it would have to go through a PDP? Hopefully I didn't confuse everyone there.

Fadi Chehade: Margie, do you have a quick answer?

Margie Milam: Sure, yes. I don't want to get - you know, (into) a statement because you can always amend contract too, right? So there's that other aspect. But that's the, you know, that's the course. The course is to do PDPs for changes to, you know, across the board to all registries or registrars. And that's how it works. So - and that's what's built into the contracts. So that's, you know...

Fadi Chehade: Thank you Margie. Robin, were you next - Robin Gross?

Robin Gross: Thank you. Yes, I just wanted to raise an issue about the straw poll and that is the imbalance of interest that is in this room, so when you take that straw poll I hope you will take that into account.

Fadi Chehade: Yes, absolutely.

Robin Gross: So there are 12 representatives of the CSG that were invited to participate but only two from the non-commercial stakeholder group. So just take that into account when you do your straw poll.

Fadi Chehade: That's very fair. I agree with that. And I think, frankly, the straw poll is simply - it's for me more to find out if there is vehement agreement on one side. Then we could at least get these points moving into the right direction quickly. Then where we are not sure, let's delve a little bit deeper.

So let's go through it very quickly and very formally and very cognizant of Robin's point, right. And those of you on the phone, how would they do this, Mikey?

Mikey O'Connor: For those of you on the phone, go ahead and use those little green and red tick mark gizmos next to your name and I'll sort of expand that part of the thing so we can see everybody. It'll show up.

Fadi Chehade: Okay, so should my question be - and help me out here - do you vehemently agree with Margie's assessment or do you vehemently disagree with her? Vehemently - pardon. No, on each of them. Should we be doing a poll on who vehemently disagrees with her assessment? Okay, let's do that. So who vehemently disagrees with the assessment of Margie? Margie, you're definitely on the spot here - that the first point, number one, is something we could resolve as a community to the policy guidance (root)?

And I'm not going to vote and I would ask the ICANN staff not to raise their hands. So who vehemently disagrees with her on number one? Who vehemently disagrees? So one, two, three, four, five, six, seven, eight, nine, ten-ish. Okay, fine. It's approximate.

Now, how many people - how many are we in the room, by the way? Who ordered the beer? They should know. There're 35? And how many people are online, Mikey? There're about ten of them?

Mikey O'Connor: It's hard for me to tell, but ten's a pretty good (guess), yes.

Fadi Chehade: Ten? Okay, sorry sir.

Man: Please don't count us. We are going to vote anyway. Yes.

Fadi Chehade: Yes, so IBM and Deloitte will not raise their hands. So there're probably 30 people here and ten people online, so plus or minus, we're about 40 people? I'm just getting a sense, guys. And there're ten that raised their hands that you vehemently disagree with Margie. How about the people online, Mikey? Are you getting a count? How many people vehemently disagree?

Mikey O'Connor: Alan, why don't you jump in because I wasn't...

Alan Greenberg: My comment in the chat was if it's not clear for your question, if the people who are disagreeing think it's implementation or PDP. You see who they are so you may be able to guess, but we can't.

Fadi Chehade: I purposely didn't ask this.

Alan Greenberg: Okay, thanks.

Fadi Chehade: Do you vehemently - do you disagree vehemently that she is way wrong on this? Or are you willing to even work with us on this?

Alan Greenberg: Yes, but it would be useful knowing which side they disagree.

Fadi Chehade: Okay. Then let me ask the question differently then. Who are the people who believe this must be - must be, unequivocally with out any possibility of wiggle here, this must be a PDP? Number one, we're only talking about number one.

Woman: And number one as we described it this morning, not as how it's on the (unintelligible).

Fadi Chehade: But it must be a PDP. So we have one, two, three, four, five, six, seven. How many people on line believe it must be a PDP?

Man: Anybody online, if you want to tick your green tick mark I'll count them for you.

Kathy Kleinman: Wait, can I ask a question Fadi? This is Kathy.

Fadi Chehade: Go ahead, Kathy.

Kathy Kleinman: Okay, this is not asking a question I don't think I've delved into so I was thinking policy versus implementation so I just wanted to let you know some of us are silent because we're still thinking.

Fadi Chehade: Kathy, if this isn't just a process on how to vote question can you hold it? We're just trying to get a - we're just trying to get Fadi's tick marks in. You know, I don't want to go into anything complicated.

Just - if you're online and we can't see you just use your tick marks next to your name so that you can join the Fadi emphatic...

Kathy Kleinman: I understand that but I still think it's a little - it's a hard question, thanks. I'll vote for it.

Man: Kathy, votes...

Fadi Chehade: So she emphatically agrees that this requires a PDP. And anybody else online want to join Kathy in that? You? No, that's it. There's one.

So we have - we said seven in the room, plus Kathy, eight. And I just got confirmation from around this table there are 20 people who are raising their hand or not if we exclude staff and vendors.

And online probably ten people, five to ten people. So we're 25 people here. And of these eight, I think that this must be a PDP. Okay, that's a good - and how many people really in this room believe one can be handled through an implementation decision?

Okay, so one, two - okay, so most of the IP community think this is an implementation approach really.

Man: And Kathy, do you want to your take your tick down and if anybody online wants to say that this is an implementation thing please use your tick marks.

Man: Okay. All right, let's go to a second - there's somebody who...

Man: Yes, Fred Feldman agrees that this could be done with implementation.

Man: Fred as well, okay. So we have probably 12 people then. Yes, please go ahead.

Man: I have to abstain typically because I know the reasons why the registries are - or the applicants are voting one way and I'm an incumbent registry. And I don't want to sound anticompetitive. So it's best for me to just abstain.

Man: Okay, Fabricio?

Fabricio Vayra: Yes, I mean if I could suggest - I mean some people may actually somewhat agree with what Margie said or some version of it. So I think the really only question that matters is who here things it's a PDP?

Right, because some people may think, yes, some version of a working group that actually tries to do the right thing before TLD is launched is acceptable. Your only real question is who needs to go into the PDP, right? I think.

Man: Yes, and I think - sorry, you go ahead, Antony.

Antony Van Couvering: It may be helpful to explain my vote. I really do not understand what this policy guidance thing is. And therefore, I won't vote for it. I don't know how it works.

I don't know what it means. I don't believe this is just an implementation issue but absent my understanding of how that thing works I'm not going to vote for it.

Man: Yes, I think this is the part that I'm trying also to understand. Are we picking PDP versus policy guidance because - in some cases we have the impression this will take time and it will ensure everybody involved and the other side is picking implementation because they want the fastest possible way to get it done.

In other words, are we falling on both sides of the (unintelligible) largely because we don't want - you know, new Gs to be out without some of these "protections" in place and we don't want these protections to be slammed without proper vetting.

I think that's what's happened, right?

Man: No.

Man: Okay, so Jeff (unintelligible).

Man: And this is the point why I think Jeff Neuman abstained is because for me I think that - one is I'm a - not weary but the policy - sorry, policy guidance working group, I could go with it except it wouldn't affect existing TLDs. And I'm in the camp that if any new rights protections mechanisms come along they should affect across all TLDs existing and new, which was sort of put out by the NTIA and others.

So if the only way it can be is a PDP then that's why I'm voting for the PDP.

Man: That's a very important point that was just made. So let me repeat that (unintelligible).

Man: A fourth (unintelligible) involved.

Man: But that's a (unintelligible) where we actually (unintelligible) and the other side (unintelligible) that it actually goes through both. In other words, that we would say this is too important to not do a PDP for and it has to cover the entire industry.

But if we don't take care of it now we have a part of the community that is affected. We believe the right thing is to take care of it now but we cannot impose it long term on a part of the industry. We have to make sure this affects the whole industry.

So we do something either temporary to protect or complete to do the right thing but then parallel it with a full PDP process that may end up revoking the policy guidance or affirming it. Could there be a double path, a dual path not a double path? Antony?

Antony Van Couvering: I don't think that's a bad approach but it's going to depend on what the question is. Some of these really refer to launches or could just refer to a launch period in which case doesn't make a lot of sense.

Man: Good point, yes. Some of these - it may be almost immaterial. If you send them anywhere to this site, to the PDP side, it's too late because it should have been launched. Fabricio and then (Kristina) and then Marilyn on this side.

Fabricio Vayra: I wish there was a way to codify - well, I guess we're on recording. So Antony and I absolutely agree a lot today and I think it comes down to the question.

But I'm thinking, and hopefully this isn't sleep deprivation taking over, but the real question is the PDP on - should all these things that we've been

talking about, the policies under which now you need guidance, should these things be extrapolated to all TLDs including legacy TLDs?

And that can run up the same path that you're giving guidance to the policy. So then at the end you don't kill the working group. Basically it's how the working group result is applied.

Fadi Chehade: Yes, yes. (Unintelligible) as well and is also in the maturing of the industry that's going on and discussions with existing TLDs that are happening frankly as we speak - to have them, you know, play along and do the right thing. There have been very good discussions that are going on in parallel.

Okay, I'm going to insert Jonathan Robinson, the Chair of the GNSO Council who's still up in London and following us. So I'll insert him and then I'll come back to you, (Kristina), and I'll add Sara Deutsch to the list. Okay, go ahead. Jonathan?

Jonathan Robinson: I guess my point is one thinks that - (unintelligible) problem I'm having in answering this is that when I think about a PDP - I mean there are two issues here.

One is the definition of the process itself and clearly one of the bug there that people have with a PDP is the time which it may take. And in fact, in some of the issues that we're facing we simply don't have the time if they're to be put in place, which is why the PDP process contradicts - you know, goes against the speed with which we have to work.

But the second is that if something is to be binding on existing operators it has to go through a PDP process. So we are stuck with that process if it is to be binding on existing operators and it's the only way we can work.

So I guess we're grappling with speed and so I'm - it's difficult to vote black and white on this when you just look for a quick answer - are we talking about the speed of the process or whether or not it's binding. So I haven't been quite as clear as I'd like to be but it's getting a little late for me. Thanks, Fadi.

Fadi Chehade: Thank you, Jonathan. (Kristina)?

(Kristina): First with regards to your suggestion about a dual track, it has some appeal. I - my - what concern I would have about it is whether or not you'd be able to get people from the community to do basically the same work twice.

With regards to Jeff's point, Jeff (unintelligible)'s point, I don't necessarily disagree but I kind of think the whole application to existing registry operators is pretty much a red herring except for URS.

I mean I can't imagine that VeriSign is going to have a new sunrise for .com or net or that, you know, Newstar is going to have one for .biz.

So to the extent that that is the rationale I'm not clear as to how it would apply here.

And with regard to why I think it's implementation, you know, maybe we didn't explain it clearly enough but it's basically a sunrise registration that the trademark owner says from the outset, I'm not going to use it. I want to pay for it for five years. I want to do it through the trademark clearing house. And I'm just not going to use it.

So, you know, under the guidelines that it merges that for us in terms of, you know, for example with regards to number four, when she said there was just

a statement that there had to be a sunrise, we didn't talk about how long it was. I mean using that same reasoning that's why I am of the view that that is implementation. For what that's worth.

Fadi Chehade: Okay, did you want to answer directly on. You've seen both of you (unintelligible).

Jeff Eckhaus: Yes, I don't think - from what I understand, I don't think number one and number two...

Fadi Chehade: This is Jeff.

Jeff Eckhaus: Jeff Eckhaus. Number one and number five are part of a sunrise. Those are - you know, these are blocking mechanisms and these are - and to be truthful, most of the abuse you guys have seen have been in coms.

I don't know why you wouldn't actually want it in there but I don't see that these are - that it's a red herring. I think these affect all registries and existing ones as well. And I don't think that it's a red herring. I think it makes a big difference and you're sort of hobbling the new ones versus existing ones by saying it doesn't.

Fadi Chehade: John Nevett.

John Nevett: With that said, I agree with you on number four that we wouldn't need a full PDP for a sunrise because that wouldn't make sense. So when we did the straw poll that was - we started with number one and I suspect the vote might be different on number four.

Fadi Chehade: And we'll get to these votes if you let me but I will quickly go to Marilyn. Do you have something to add Marilyn?

Marilyn Cade: I think I do. I think I'd like to understand - you know, I think sometimes when we use language like red herring we're actually off-putting each other. So I'm not going to use that language.

I was really pleased to see that there was interest on some of the parties' parts to talk about solutions that we could get to. And that also means a parallel track.

A parallel track means we're going to commit ourselves to dual work and we're going to commit the staff to dual work. And I'm not going to look at Karen because she'll never speak to me again.

But I did want to ask John a question, if a legacy provider - legacy registry provider voluntarily agreed to implement this - A, is that binding? And B, would that take the concern I'm hearing from some of you that it's an unbalanced world off the table?

Secondly, I would just remind you that we've been told that we must have (unintelligible) because all the good real estate is gone. I agree that the existing legacy LTDs had huge numbers of defensive registrations in them and problematic registrations in them.

We're trying to prevent that. You guys have told us you don't want that bad actors as - so let's see if we can find the commonality here. And if it means dual track or it means something else I think we've got to figure out quickly how to roll up our sleeves.

Fadi Chehade: Yes, I also think dual track - I can't remember, someone on this side said dual track will end up really feeding on each other. So yes, dual track is not dual work entirely.

As people go down on a faster path to think through the issue, I think that will benefit immensely the PDP process. This will not be sequestered groups. You know, there will be cross pollination between the ideas. And it will end up feeding the PDP much better.

But anyway, with that I think next I had (Brett). You had your hand up and I saw it went down because you hadn't spoken all day. Do you still want to come? I'm inviting you if you wish to speak to go ahead, if not, we'll pass.

(Brett): I did and people have talked around the issue a little bit but I also voted against because I had some uncertainty about this policy guidance working group and what it was.

Now I appreciate the irony of this because I happen to think I'm sitting in one right now. So - but it's not - it's not a formal process. We don't know how - if this is the by laws.

And, you know, if - in the old days, sometimes the GNSO would come up with a very vague policy and staff would have to go implement it. And staff would sometimes get it right, sometimes they'd get it wrong.

But it would be much better to have a policy guidance working group so we could actually interact with staff and try to get it right. So if policy guidance work is an improvement on what used to be a closed staff process, that's great.

Fadi Chehade: I think that's what it is by the way. I think from how (unintelligible). It wouldn't be very different from what you're saying here but (unintelligible) implementation. But anyway, your point is well taken.

(Brett): I guess I saw it as a more robust implementation mechanism rather than a lighter policy mechanism. And I think that's an important distinction because one becomes binding on contracted parties and one is not.

But, you know, I guess I would have a greater comfort level with that prong if we had some more dialog around what it would be and how it fits into the whole policy structure.

Fadi Chehade: Okay, (Brett), that's very helpful. I had Sara next who's been waiting and then I'll add Mikey and Jeff Neuman.

Sara Deutsch: Well, speaking of comfort level, some of us have to go back to our corporations and report to them on, you know, all these urgent protection mechanisms that we've been seeking and what happened as a result of this meeting.

So I guess my question is what assurances do we have, you know, if we go back to our companies that if this goes through a working group process that, you know, ICANN is not an organization that is unfortunately often friendly to businesses or the word trademark is almost a curse.

How do we know that this isn't just another (unintelligible) exercise where, you know, we're going to spend months and months working on something and in the end result we're going to get nothing and - you know, versus having something that can clearly be implementable.

We worked for weeks to try to get many of - options including, you know - I agree with (Kristina). There seems to be little difference that it's okay to pay for something in the sunrise period, that's find, but then, you know, after the sunrise if you want not to pay for - to defensively register that's suddenly a new policy.

So I'm just kind of struggling with how we're going to explain this to you - you know, our general counsels, CEOs, etc. when we leave this meeting.

Fadi Chehade: Okay, appreciate that. And I can imagine these difficult discussions happening. We'll go to Mikey and then Jeff. And then we'll take a straw poll on the other four quickly. Go ahead, please.

Margie Milam: Fadi, it's Margie if I may.

Fadi Chehade: Go ahead, Margie.

Margie Milam: Yes, I have to leave so I just wanted to say goodbye and if you want to send me some notes afterwards on what I need to follow up on I'll be happy to do that.

Fadi Chehade: No problem, we'll have the dartboard with your picture ready for later when they're drinking but thank you very much, appreciate your (unintelligible).

Margie Milam: Okay, thank you everybody, bye-bye.

Fadi Chehade: Have safe travels, thanks.

Mikey O'Connor: This is Mikey. I'm a big fan of the PDP as you all know, that's all I do. I don't do any of the layers that you all circulate in. and one of the things that I think

we ought to put a little energy into is seeing whether we could shoehorn this into the PDP.

Because if you look at the list of things that have to happen in PDP, a lot of the stuff that's issue report, blah, blah, blah, you know, might be able to essentially expedite the process, just lay it out.

Marika Konings is - when she's not doing brain surgery and when she's not leading an international rock and roll band she takes time out to help us with policy stuff in the GNSO, put together a little chart that says that the minimum amount of time to do a PDP is 263 (unintelligible). So it's kind of a little end to end list.

But the first half of that is the issue report and the public comments on the issue report, etc., etc. So there's a project management puzzle in here too which is that maybe you could do an expedited PDP and then hit the middle ground, that's just a little wiggly thought to throw out there.

Fadi Chehade: Okay, Neuman? Neuman?

Jeff Neuman: Come on, I'm waiting for someone to go hello. Okay, yes, two comments. One is kind of (unintelligible). The unfortunate thing about the PDP and this kind of given to us by the Board is that recently the Board basically said any time you have a comment period you have to have a (unintelligible) 21-day reply period.

So adding that reply period, while it was certainly warranted by the accountability and transparency review team recommendations, that added basically three months on to any PDP process simply because you need a reply period because - you know, certain mandatory comment period.

That's one of the reasons it takes a very long time, I'm not sure if we can get around that, maybe get the Board to say we're okay with not using those timelines. But that's one of the reasons why a minimum takes eight months.

But I also - the second point I want to make that - what I found most persuasive about what Margie said is - especially on number one and some of the others is that it was a policy process, not a PDP, but it was a policy process that put these roles into place.

Whether it was the activity of the IRT, the SGI, those are all policy processes. Those weren't implementation discussions although the IRQ is called the implementation review team but that was a misnomer in title.

The reason why I think it needs to be a policy process to implement any of these and not implementation is because they were created by policy in the first place.

Again, I think we can do policy quicker than it's been done in the past and I think there are safe guards that we can put into place. But I think to call it implementation would not be doing a service to those that initially develop the policy in the first place.

And number one, when you talk about exact matches, I mean the policy process whether it was the STI, whether it was later policy processes, those were all done - it said exact match. And I'm not disagreeing whether it should be more or less, but they were policy processes.

And so to change that would in my mind require a policy process. I think we can do it quickly. And I think that we can do it with (unintelligible) but I don't think we should overlook that part of Margie's explanation.

Fadi Chehade: So if I could ask as we - I'm listening (unintelligible) to what you - we have a hand up first, okay. So I think J. Scott and then Alan. And then I'll speak.

J. Scott Evans: I'm speaking on just - as a person who's been here for a long time and the others here can shake their head no. I don't think we care what you call it as long as you fix the problem and you do it before you launch a new gTLD.

I don't care if you call it let's all stand one foot and put - play hokey-pokey. I don't think we care. You know, you call it a PDP, you call it a policy work group, you call it implementation work group, we don't care.

What we're saying is before the first one goes live these issues need to be resolved. They have not. The condition to change because of the volume, the condition to change - things have changed. We've seen the allocation process change. We've seen when the objection period changed. All based on the fact that this is not two to 500.

Fadi Chehade: You beat me, this was the comment I was going to make but you beat me to it. So I will - if I could, Alan, I'll speak ahead of you just to say this.

Alan Greenberg: Yes, go ahead.

Fadi Chehade: I did say - Alan, earlier I did say and someone corrected me that we shouldn't hide behind the process. We should be courageous to recognize what needs to be fixed. That doesn't mean ducking the process or breaking the process.

When Jeff says that policy led us to this, right, we need to fix it. They're saying if we're in agreement something's got to be done.

And Antony I think was indeed - to use the word I used many times today, was courageous when he said, look, some of these things I hear you, we need to look at them. We're now starting to argue on how, how do we get to solve the problem.

And I would almost - well, understood. And we need to go through each issue and either agree or disagree whether - what is the right thing. We haven't done this. I was trying to say, first let's focus on what is the right thing to do. And then second, let's agree how do we get it done.

I was trying to do a very quick straw poll before she left but she's gone now to figure out whether we're in vehement agreement on - or disagreement on one of her paths but I think we need to then dial back and start focusing more on what is the right thing to do.

Because as we just heard from James, I mean we may not be in agreement this is the right thing to do. So let's talk about that first. And then once we figure out what is the right thing to do let's figure out as a community what is the best path to solve it.

So maybe we should (unintelligible). We heard what staff said based on (unintelligible) objectively look to this and they think, well, none of these things according to Margie (unintelligible) process.

But (unintelligible) didn't say - except for number four, that these things - we can just flip a coin and go through today. She said there's work to be done to bring the community together around them.

The people on the left here, on my left meaning mostly the ITBC community are saying we frankly - we're not arguing if it's a policy or if it's an implementation. We're arguing that this is important and we need it to be looked at, again, because of changing situations, complex conditions before we launch.

No one on this table - and certainly we should (unintelligible) registrars here who have hundreds of millions of dollars lined up and (unintelligible) to launch a market. And you all know investors, they have investors. And these investors are breathing down a lot of necks here, right.

(Unintelligible) and so I'm glad you have investors although most of you are investors in them because you have enough money to invest. But they have - I've lived their lives, I've had BCs, I've raised \$150 million over the years, and these people breathe hard down my neck daily as I'm sure all of us understand.

So we have to appreciate, this is not a time game. We cannot push this to the point where everybody's breaking down. We have to respect the timeliness of this. But we have to also give this a listen and we have literally a day and a couple of hours left because after that we need to get to work, we have a lot of work to do.

So why don't we - I'm going to let you speak Antony in a moment but I would like us to attack these by focusing on what is the right thing to do. And I will guide this discussion a little bit on each of them. And if we can agree on a couple of right things, even a couple, that will be a good starting point.

And then we will dig into each of them deeper. And then we will go back to what is the right way to deal with this - in this little chart. And as - I think it was (Brett) who said, I just don't understand what is this little thing, right?

I would ask you to just - you know, hold a little bit because I don't either and say, whatever it is that little thing, it's just a process that will - could maybe differently than a PDP allow us to get the results that we in good faith think is the right thing to do.

So let's just leave it for now and we'll come back to it. But let's focus on the right thing a little bit. So we'll have Antony and then Alan and Kathy and then we really need to shift to attacking at least a couple of (unintelligible).

Antony?

Antony Van Couvering: Thank you very much. I think it may be useful to - in the spirit of getting something done and in no other spirit to call out a couple of elephant in the room.

I believe that from this side of the table there is a fear that if we go down this road these are just the leading edge of a series of handcuffs that will be put on our business, will cost us a lot of money in order to afford comfort to IP people.

And I think on the other side, they believe that without these kinds of safeguards there are just loopholes you could drive a truck through to continue to exercise or allow registrants to exercise the kind of behavior that has cost them a lot of money and time and so on.

Now in this situation - now I don't believe looking at these things there's nothing here that's unsolvable. The issue is rather different. The issue is one of trust.

Now I haven't known you very long but you're already doing a very good job of presenting yourself as a trusted third party. And if that is achievable, if you can fill that role or that role can be filled by somebody else I think we can make a lot of progress here.

I really believe that I know from my own side that I'm not in the business of trying to, like, extract a lot of money from sunrise registrations and so on. And I'm sure on their side they don't believe that they're trying to - you know, write trademark law without consulting anyone, just sort of getting it done.

So - and everyone kind of knows that but there's always the worry that there's some rogue party who's just going to push ahead or really thinks that they (unintelligible). So (unintelligible) kind of need a referee. And if you can fill that role or ICANN can fill that role I think we can make (unintelligible).

Fadi Chehade: It's what I'm here for. James, you want to say something?

James Bladel: Well, that referee though in some respects has to have some degree of authority because if the referee makes a call, you know, there can't be a video replay booth with another referee going on and on and on with someone reviewing him and him and him you know what I mean. At a certain point some of these issues have to reach the end of the train.

Fadi Chehade: Yes, the only certainty is that we have a day and two hours left, that's a certainty. And I hate to put it but I - we're jeopardizing everything if we do

not come to some consensus on some things in good faith in the next day and a half, we really are.

We don't - I mean the vendors - I met with the vendors yesterday, they were screaming at us. They said you guys are nuts. You know, you're asking us to have a live system ready to roll for people to log their trademarks in January and it's now 16 of November and you're still debating things.

There's just - it's ridiculous. We spent six years writing the policy and we want engineers to build the system in six days. You know, we need to get to an end to this, right. It's time to get to an end to this. So good or bad, as Antony said, I'm what you've got now. So we're going to have to figure this out, right.

And we all have to rise to this. This is not just about me, this is about all of you rising to say, look, I believe this but if this is really what you're worried about let's work on something that makes this move. We need to move on the needle here and be done.

And you all need to also accept on this side of the house that if some of the things were debated ad nauseam before and for one reason or another because we thought we'd only need 300 gTLDs but now there's 1,000 we think this requires a revisit, that we can't also on a dime ask everybody to move on a dime.

So we have to accept that some of these things are difficult to do last minute because I know that - for example, if GE and Travelers and all the good people who really are here to protect their consumers, to protect their brands, to do these things, if they were involved in that process for the last six years we wouldn't be here.

But - and you couldn't have been, you couldn't have been. You were not in that process for six years.

(Katherine): I actually respectfully disagree with that because we may not have been personally in the room but we are members of organizations that were involved. And I have not been involved, I come as a bit of an outsider, but my understanding over the last several years is there were many proposals made in the spirit of compromise from the IP owner's front and they were rejected.

We have tried - from my understanding and others in this room can speak to this more than I can, over and over again to be reasonable and to compromise and to be shut out essentially.

And so the reason GE's in the room today is because this is very troubling with the process it's been. We're glad that you're addressing it but I think your characterization of what's happened in the past isn't accurate - does not agree with my understanding.

Fadi Chehade: No, let me - but (Katherine), you have been heard (unintelligible). I mean there were people representing you and a process - I mean unless we are thinking that the process was rigged or that people were shut out, which - this is a normal consensus process, not everybody wins.

And it is here today is all I'm saying. I'm not accusing you of - you know, because you weren't at the table you - no, you were at the table. The process led to this. Maybe not you personally but, you know, people - we're here. So we have to accept that, we're here.

Good, bad, process worked, didn't work, we're here today. And what we need to do is just look at these things and try to put (unintelligible) on the other side just a little bit as I'm asking you to do as I jump into the first and second and third and fourth and fifth one now.

I'm asking everybody to understand that we got here through a process that I wasn't part of, that (Katherine) wasn't part of, you know, personally. But the constituencies were a part of. And they arrived to this point today, here's where we are.

So we need to do what we can today with the time we have got left (unintelligible), that's all we can do. It's all we can do. We're not going to do this for more than this day and a half.

So let's do our best. And some of the best minds in the industry are sitting here around this table and around this phone. So let's try and get this done.

So I'm going to go for the easiest one, all right. The easiest one we have...

Woman: Wait, Fadi, some of us have had our hands up for a while. May I?

Fadi Chehade: My apologies. Alan and Kathy. It's 4:00 pm here and I'll ask you to speak but I'm going to ask you speak very quickly so we can - pardon me?

Man: Can we do a five minute break perhaps?

Fadi Chehade: Well, let's let them speak because when I start - when we come back we're going to just be drilling through the five.

Man: I just have some ideas that I'd like to share with you and maybe we could take a - just a quick break.

Fadi Chehade: You want the quick break now?

Man: Yes, yes.

Fadi Chehade: Okay, quick break now.

Man: Can I ask that our hands not be forgotten though?

Woman: Wait - okay, it wouldn't be appropriate to - if we've been sitting and listening for a long time.

Man: Let them take their break. Anyone still here?

Man: We are still here.

Man: Good.

Fadi Chehade: Okay, as soon as everyone grabs a glass of wine or beer and sits down we're going to let the debate start, okay. So please get yourself - we don't have stronger drinks but at least we have something. And so for those of you on the phone - yes, and we'll start by listening by listening to Alan and Kathy and then we'll let the debate start. Some people are leaving tonight.

As a reminder, today was the only day we could deal with these things. Tomorrow we're into implementation. So I would like us to get through these five points and to talk about them. I will set some ground rules, I thought

about - hopefully you can accept them and then we're going to have a vigorous debate.

And hopefully before we all leave to dinner or to airports we have some solutions on the table. Did everyone get a - I will not drink, I think if I need to be useful here I will pass on the drink now but I will later when we're all sitting.

So everyone is here. Please, Alan, then Kathy, then we get to work. No - we'll work obviously through your comments as well but please go ahead, Alan.

Alan Greenberg: Thank you. Two comments. In waiting to speak I've added some more thoughts sadly for you. You made a comment earlier that no one was shut out. I've been doing this for six years now and I have to say people may not have been shut out but they have been shouted down.

So sadly, some people have been - you know, have not been able to get their message across despite in theory the opportunity to present it. And that's one of the problems that these things live on forever because they're important to some people and ignored by others sometimes.

In terms of a process for how to fix this, I - like I said, I've been doing it for six years now and I was one of the people in a group led by Jeff Neuman to who rewrote the PDP rules.

The PDP rules are very much designed on the premise that there is vast disagreement and lots of people are going to have different opinions and will not like what's coming out of the process. And so it's built with lots of checks and balances on lots of comment periods and lots of review of these periods.

If we can do the kind of things you're talking about, Fadi, and actually address the problems and come up with workable solutions, the PDP process doesn't need to take that long.

The current one we have in the bylaws is going to take nine months because there's virtually no way to short it - shorten it. If we believed we could address some problems in the spirit of good faith and come up with answers we could rewrite a fast path PDP, which would take an awful lot less time.

And I think that's something we need to think about because we need the formal process but we need to work faster, thank you.

Fadi Chehade: Okay, Kathy, please.

Kathy Kleinman: I've been told that I'm very difficult to hear. Is this better?

Fadi Chehade: Kathy, we can't hear you now very well.

Kathy Kleinman: Okay, is this better.

Alan Greenberg: Yes.

Kathy Kleinman: Okay, no, that was Alan. Somebody in the room, is this better?

Fadi Chehade: Yes, yes, we definitely (unintelligible).

Kathy Kleinman: Okay, thank you. First, I very much wish I was in the room with you. I feel like I'm a disembodied voice that you're hearing. But I have been in the room so many, many times.

It was interesting to hear another (Katherine) - and I'm actually a (Katherine) saying that she felt that there hadn't - I'm sorry if I'm mischaracterizing it, but that we haven't listened to some of the concerns of the intellectual property community.

And I have to say that from my perspective for many years that's what we've been listening to, the concerns of the intellectual property community as we're going into the new gTLDs.

And from my perspective we took these concerns very, very, very seriously and that's why there is a trademark clearinghouse, a trademark claims process, a sunrise in every single one of these new gTLDs, the uniform rapid suspension, the trademark post delegation dispute resolution procedure, the legal rights objection, and more.

And I was very involved with many of these including on the STI where we really worked very, very hard. And frankly, we touched on - more than touched on, debated so many of the things that are now up on the list of the top - of the top five, let's exclude number four; one, two, three, and five.

These are issues we debated, what should be in the string that the trademark claims post, for what period does it post, who should the URF have a transfer or permanent suspension or temporary; all of these things have been discussed and debated.

So part of me shares another elephant in the room, the frustration that we've actually been here before for many of these issues. And I wanted to share that from my perspective, thank you so much.

Fadi Chehade: Thank you, Kathy. Antony, please go ahead. Do you want to start the debate? Because I wanted to set some ground rules if you're about to start the debate.

Antony Van Couvering: I was going to, yes.

Fadi Chehade: Okay, please, hold on one second. Here's what I'm going to ask for, this is a big ask, please do not concern ourselves right now with how we're going to do the right thing. Please, we will worry about that immediately after.

Step one, what is the right thing to do. Step two, how the hell do we get it through the system. Let's worry about that second. It doesn't mean we're ignoring it, it simply means we - I want to separate these two discussions. So we threw up what Margie did because you asked us to in Brussels.

And frankly it led us to exactly where I thought which is - you know, when I asked you on the one and most important issue to raise your hands, we kind of got polarized right away because we were focused on the process.

So let's take the process out of the equation for the next hour, please. We'll come back to it, I'm not - second, ground rule, and this is maybe unfair of me but I'm going to ask the people on my right here to work with me. I know that it's central to the new gTLDs that we are asking them to do things that the existing TLDs are under no obligation to do unless we make a PDP happen.

And it just seems unfair. It seems like we have a competitive framework that is just unfair to some of you here who happen to be the new gTLDs. So I'm going to ask as I - it's a big ask, I'm just asking you again, for the next hour put on the side that issue.

It doesn't mean it's going to go away but I'm committing to you that after we come up with the right solutions and after we come up with the method to implement this right solutions, we will go full head on with the existing new TLDs to discuss this with them and to explain that it's either going to go through PDP and you will do it or we do the right thing here.

We have to get to that discussion. It's going to be a tough discussion but right now in the next hour, if we keep making decisions based on it's an unfair field we're not going to get to the right decision. So please put that on hold as well. I know that's a big ask but, please, if we could put it on hold.

Now, with these two things, the how we implement it within the ICANN community consensus system and the fact that this is improving an unfair thing on existing TLDs versus new TLDs, let's proceed with the debate, okay. So we need to get solutions. I'll start with Antony and Jeff Neuman.

Antony Van Couvering: Well, I think that - this is Antony. I think that - I would like to propose something - I'll just throw it out there.

I'm not saying that I wouldn't - I would necessarily agree to this without, you know, the appropriate buy-in from different parties and so on, but one thing that I've noticed is - and I would be willing to pursue rather vigorously is to come up with a permanent claims notice that doesn't just have scary language for people who do wrong things but also includes a rather fuller explanation of a registrant's rights.

So you can't do some things but you can do other things. You can't register someone's trademark if you are planning to infringe them or use it in bad faith but, you know, if you have a beef against the company or you want to use it in

a space that that company is not involved in or anything else, that's a legitimate use.

If the illegitimate and legitimate uses were listed out - and that was just a normal part of the registration flow, I would be perfectly happy to go forward with a permanent claims notice.

Fadi Chehade: You're breaking new ground. This is excellent. Thank you, Antony. I'm going to ask one of our staff to - on this white board behind me, start writing these new ideas, these new solutions. I'm going to start using the term solution. I see someone is online, I'll get to them, right.

Sorry, you're writing them, Mickey's writing them okay. So Mikey, you're going to grab this very particular - and again, I think in fairness to the rest of the people here, James and others, I think that Antony was speaking - right now we need to be aware that we are throwing real solutions on the table.

So be clear if you're speaking for yourself or that you've discussed this with the rest of the people in your constituency. Thank you, Antony. Neuman and then Bladel. They all love that new name by the way. I think we're all going to call you Neuman from now.

Jeff Neuman: Been with me my whole life.

Fadi Chehade: You're new today Mr. Neuman. All right, Neuman, let's go.

Jeff Neuman: With the wine, this is helping. I think another thing that seems like it's pretty easy that we could kind of - a number of us have talked to, if we take number four and make it what J. Scott had said earlier, which is a 30-day notice as a 30-day sunrise, I think we're done.

I don't even know if we need to discuss that anymore. Let's just put that in the done column. It's something we throw off to the community and say this is what I think we all agree on.

Fadi Chehade: Who vehemently disagrees with Neuman's proposal? Who has a real issue with it? Anyone on the phone? Okay, so I think we just - we're down to four, okay. We're down to four, let's keep moving. Do you have something - one more. Then go. He's on a roll. Neuman is on a roll. Give him another beer.

Jeff Neuman: Number three, which is the URS, I think on this one - I think we all support that kind of notion of making it low cost. I think on this one we're all - the way we talk about is we're comfortable that - we're just waiting to see the RFI response.

If someone could do it for the \$300 to \$500 I think we're done with that one. If someone can't then I think we start a working group to immediately resolve those issues fairly quickly to see how we get it into the right range. I think that's as far as we should...

Fadi Chehade: Okay, let's follow this through. I don't know - this is the next area I'm supposed to learn about and I haven't had a chance yet because I jumped on RA first. But on my right here knows that process very well.

When I asked them how did we end up with, you know, \$1200 I think is the number I heard, and why aren't we at \$300, the message was that we have piled on so many things on top of this that it ended up being expensive.

So someone mentioned earlier today kind of a tiered approach to the URS, right, that we would do some basic things and then this would be at the lower

cost and then we would kick into the higher cost if we have to, right. Someone mentioned that, I think it was (Kristina) or you.

So if we can talk about this just for a few minutes, not too long because we don't have a lot of time, because Jeff suggested maybe that's something we do outside this room.

But just to give me guidance more than anything, the things that were "added" to make this a heavy process, is there a way to tier them so that we can come out with - if we have the (unintelligible) process that can solve this core issue? You go first and then Antony. This is Fabricio.

Fabricio Vayra: Yes, Fabricio. Yes, I think you can tier them. I think that's why you'll see in the proposal that we discussed that we'll circulate the points.

A lot of what we're seeing here is what you heard from the providers and it deals directly with cost, this kind of default judgment, which - again, this misnomer that actually looks at the standards but doesn't bring in a panel to review would lower costs we've been told.

Doing a tier in pricing based on defaults that where a panel is enacted, there's a higher price and then there's a looser pay system would do that.

And then by the way, the only thing I would add to Jeff is that the RFI - and I'm thinking of something that Kurt told me a while ago, which was I asked them why are we doing this whole process going through if we already just put an RFI.

Shouldn't we wait to see what the RFI said? And he came back and said, well, you don't want Tow Trucks R Us coming in and bidding a good RFI based

solely on cost and having a junk URS that doesn't protect your rights or those of the public.

And so the question that I guess - to clarify kind of where we ended up on this position is I don't think cost should be the only determination as to whether we evaluate the URS. It's this tiered function of - yes, price is a factor but also are they doing things that protect consumers, brand, etc. and that's when we should go back - we have to crack it open to look at all these things.

Fadi Chehade: Antony had his hand up, Neuman and then (Brett). And then the people on the phone. Okay, let's go fast guys because we're not going to finish if - please, Antony.

Antony Van Couvering: Very quickly, I think that in addition to the default judgment, number of panelists and so on, the other determinant of cost is gathering up the information. So to the extent that some of them in the trademark clearinghouse, that's a cheaper way to go.

So people who have not done that should pay more. And people who have done that should pay less, you know.

Fadi Chehade: This is a good point. Jeff, quickly, and then (unintelligible).

Jeff Neuman: I agree that the URS should leverage people on the clearinghouse and that that could save a lot of money. So I always assumed that that would be the case from the very beginning, it's what the IRT recommended. I think that is a very positive development.

And the second thing is, not to disagree with Fadi at all, but I would make the assumption that...

Fadi Chehade: You mean with me or with Fabricio?

Jeff Neuman: Sorry, Fab. That...

Fadi Chehade: You can disagree with me too but I think you meant him.

Jeff Neuman: Sorry, I would not make the assumption that just because someone has a low cost that they're not qualified or there's not quality. I would really love for ICANN when they get the responses in, make a judgment on the quality.

If they come back and say, look, we got this third party that bid, they're really low quality, then we disqualify them, go back to NEF, get them, and (unintelligible) to get them to sharpen their pencils. I think we can do it.

Fadi Chehade: Okay, I think - James, please if you want to go next.

James Bladel: So Jeff I think kind of beat me to it. It's number three and number four I think are really becoming noncontroversial but the other ones I do believe that there is something to be said for those - and that they should go through a PDP but really honestly it doesn't matter what I think because it affects people materially that aren't in this room.

And so it really doesn't matter what we can or can't agree to or what we believe the right approach is or something. It's not how ICANN is supposed to work.

You know, we've been talking already just as a side, we've got to go out and defend this model at some point here and we can't be doing that with one hand and then circumventing it with the other. So...

Fadi Chehade: I appreciate it. We'll come back to the how later.

James Bladel: Sure, sure. And I also believe that what I'm hearing is risk, a lot of folks are saying that they are spending a lot of time and effort to protect their marks in the current environment that if that's going to grow that that expense will grow.

The applicants, they have a lot of money on the table, they don't know that their TLDs are going to be successful. My concern, my risk is that in everyone's effort to make everyone feel more comfortable with their own risk that all of this is going to land on the laps of the registrars.

So let's not assume that there's two sides to all these issues. There are sometimes three or more and that we're going to end up holding the bag regardless of whether these things come down. So that's my concern that I'm (unintelligible).

Fadi Chehade: That's a fair point, thank you. And Alan, you're next.

Alan Greenberg: Yes, thank you. I strongly support Antony's comment about the claims notice, that was exactly the substance of the ALAC minority report on that. The whole issue is making it usable by real people, not just IP lawyers.

And I strongly support what Jeff said, the people in the STI who came with the URS, we had real panelists there, we had real people who are very experienced with it. We weren't just loading features on ignoring the price. So I think we need to look very carefully at it and not make changes randomly just to fix the price.

And as one example, we carefully said only one panel, only one person. And yet we keep on talking about panels of three people and that was never there. You know, I don't know what the people are responding to in the RFI but we better make sure that they're responding to what we specified, not what they imagined we said, thank you.

Fadi Chehade: Thank you, Alan. (Brett)?

(Brett): Thanks, I continue to think that ICANN ought to be able to get a low-cost URS and this is a place where I think we're going to have to count on ICANN to - not lean on her but work with the established providers to come in on budget.

And I know that they've said that, you know, once they've docketed it they've already spent the \$500. I have to think there's some easier way of establishing electronic filing mechanisms.

And, you know, once you get these things out it literally takes no more than 15 seconds for me to decide that TravelersInsurance.link with two Ls ought to be decided for Traveler's, right. It's trivial.

Fadi Chehade: I agree with you and I have a solution to this number three but I want to listen to Jon Nevett first. He had his hand up.

Jon Nevett: Thanks, I agree with (Brett) and Alan. We shouldn't be looking at the protections we put in there. It's really just a cost issue. We should look at them in a year which is what we have in the guidebook, which says let's review the URS in a year, see how it's working.

So it's just a question of finding the right providers, plural, that could provide the service at a reasonable price because the whole point of the URS - when we drafted the URS it was low cost for trademark holders to get takedowns.

And that was a big protection and a big part of the negotiation, a part of the compromise that we reached was making it quick and easy for them. We put (unintelligible) some more protections in the STI and that's fine.

And if those protections cost a little more let's get it done. We think we can get it done with the current provider if we have to underwrite something for a little bit - for a year until we review it, not the end of the world.

Fadi Chehade: Very well said. (Kristina), you get the last comment and then I'm going to propose something for this area.

(Kristina): Yes, I just wanted to follow up on something that I raised when we were all in Toronto, namely we're talking about revising this issue once we know what the RFI comes back with.

But as drafted the RFI didn't set out what the price expectation was and didn't ask for the responders to actually provide a price. So if that hasn't been corrected, kind of going around in circles at this point.

Fadi Chehade: Okay, there's some instance on Kathy and Olof. Olof, you go first and then I'll have Kathy speak.

Olof Nordling: Thank you, Olof Nordling. Just to respond quickly to (Kristina)'s comment, which we took on board very clearly when we're there - had a question-and-answer session on 23 of October due to prospective respondents where five organizations in attendance.

I would clearly stated - and we've also posted that on the URS webpage that, all right, deviations from the existing URS process - well, please provide justifications and also what you'd need to do in order to achieve the target fees, which we've already talked about. So it has been corrected and we expect the respondents to adhere to that.

Fadi Chehade: Thank you, that's a good clarification. Kathy?

Kathy Kleinman: Can you hear me?

Fadi Chehade: Kathy, we can hear you.

Kathy Kleinman: Hi, can you hear me? Great. Okay, I'm not - first, I wanted to express support for tying the trademark clearinghouse into the URS, that's a good idea. I'm not sure it was ever officially endorsed by the STI. It makes a lot of sense.

And here - on my next comment I am speaking on behalf of the NCSG Executive Committee, we did discuss it as a team, and we are deeply, deeply, deeply worried and concerned and opposed to permanent trademark claims.

We believe the process is going to be - and that you can't, that it's going to be inherently confusing, chilling, difficult, legal liability. And the idea of trademark law in one foot and trying to explain the nuances and difficulties, not just of one law, good luck with that, but across the spectrum of international laws, impossible. So thank you.

Fadi Chehade: Okay, Antony, please?

Antony Van Couvering: Yes, normally I completely agree with Kathy on many issues but on this one I don't because I think if the IP people are willing to move a little bit away from the trademark claims as a mechanism for asserting a particular claim by a particular group on a particular mark and move that to a more general explanation.

That there are trademark rights that people may have them and couple that with a discussion of what legitimate uses are then everyone will have a notice and be on notice that they may be violating a trademark without naming what it is. And it can go for every single string.

If it is general in nature it doesn't have a chilling effect. It's an explanation of the trademark world with regard to domain names, what you can do and what you can't do.

Kathy Kleinman: Wait, wait, question. May I, Fadi? Are you saying that it wouldn't - Antony, you wouldn't produce the trademark string itself and the list of 40, 50, 60 trademarks, jurisdictions, descriptions of good and services across multiple classes?

Fadi Chehade: One second, Kathy, Antony will finish his thought.

Antony Van Couvering: Without regards to the difficulties of different laws and different jurisdictions there is nonetheless a great deal of ignorance among people who register names about what a trademark is, what it - how it functions, how it can function, how it gives certain people rights, and where those rights don't exist.

Now I believe that while this doesn't serve the purpose that the (unintelligible) put that particular name on notice so that when they go later to claim it they can say, that registrant was actually on notice.

If instead we re-envision that to say, okay, here's a way of explaining to people what they may or may not do, it might well cut down on the - yes, the people who do it, you know - as Fabricio said, you know, if you called them up they immediately give it back.

Fadi Chehade: I'm going to do something here a bit unusual. Antony, thank you. We have now three of the five points in play. I think we closed on number four and I heard James also say he's fine with that. So I think we're okay on number four.

On the URS I'll come back and give you the solution but since you've launched into the debate again on the claims notices going for longer period, let me ask this side. And I'll start with you Fabricio or whoever, I mean what do you think about what Antony just said?

Fabricio Vayra: Yes, I think that's going in the right direction.

Fadi Chehade: Okay, I'll come back to you. Just - let me see this side. I want to hear a little bit because I think - I'm not saying that Antony spoke for all of you here but I'm saying he made a comment, let's see here. How about you, J. Scott?

J. Scott Evans: I think that something like that might work if you were willing to put a link in there if there wasn't specific marks so that they could then have a tool to do further exploration if they wanted to learn more about it because what you're trying to do is have the initial notice not scare them to death.

But if they want to do further digging, if it would lead them to the information in the clearing house, if they could either take it to their lawyer or make a self thing. But it's not all in this huge 17 pages, I don't know. That's just a...

Fadi Chehade: More comments, (unintelligible) and then I'll come back to you, Antony. How about you, Bryce?

Bryce: Yes, I would just agree - this is Bryce Fox. I would agree with J. Scott and also I think that would solve some of the problems we have just in terms of implementation about what that notice looks like.

I mean we're going to - it could be potentially so long and so complex and with all the goods and service that providing a link in that way might allow consumers to do that additional...

Fadi Chehade: So my mom doesn't start running outside the house and then say, what the heck just happened, okay. Any more comments on this side before I hear this side? Sara and then (Kristina), please.

Sara Deutsch: Yes, I mean I think the notice doesn't have to be so specific but it has to be specific enough to know that they're getting the notice because the name that they're trying to register may be related to, you know, a trademark that's close in terms, you know. If you just say - otherwise there's no point in sending a notice.

You could tell every registrant on your webpage be careful of trademark rights you might infringe but I think we do want to give them enough information to know that they could be getting in trouble with that particular name.

Fadi Chehade: I'll get back to you, Antony, in just a second. I know you're itching to respond but (Kristina) and then we go to this side. And I want to come down this side and hear everyone. So please, (Kristina).

(Kristina): Yes, I would have to agree. I think if it's just a generic notice that everyone gets my response to that is why not just put it in - you know, make it a requirement in the RAA. But if you have - as an alternative, I don't want to start another discussion.

But if you have the specific link then there's at least a flag to that potential domain name registrant, like, look, this is kind of a broad notice but in this particular instance here's a link for more information that you might want to look at, that's...

Fadi Chehade: Okay, I think that's a fair point. Antony, and then we'll come down this side.

Antony Van Couvering: Yes, what if that link was not to a mark - one mark, but rather a link to the trademark clearinghouse where you could begin to do searches on what marks have been deposited there? So it does allow people to see what they might be violating but it doesn't serve your purpose of putting them on notice with regard to your mark.

And I think that is (unintelligible) of what the chilling effect is that other people are talking about. It might get you a long way to where you're going without introducing that chilling effect, particularly if it was there for every single registration.

You register a name, click here, here's a link, go browse the trademark clearinghouse, see what might be violating yours. You know, you may want to consult a lawyer, you may want to do this or that.

Jeff Eckhaus: So - sorry, it's Jeff Eckhaus. So I think - you know, I just want to get back to, you know, we have this issue about - let's talk about what the problem is and a solution to solve it.

I mean I'm going to ask - if I could flip it back to this side, do you really believe that - and like, for somebody who registers, let's call it Verizon Wireless with two Zs is an uneducated person who needed this claim to know that this - thank - now I understand this with two Zs is now a trademark.

Is that really going to solve your problem? I mean I want to go about the problems and solutions. Like, do we really believe that how much of the people who are infringers and who are these bad actors really don't know what the - that they're registering these trademarks.

And is this general information really going to stop them from doing so?

Fadi Chehade: That's a question. I want an answer to just that question. Fabricio, you go, just the question.

Fabricio Vayra: Yes, that's why I gave the example of domains by proxy. We literally will send domains by proxy a list of over 200 Time Warner and Time Warner cable names.

And within half a day of having the notice - the address or the contact information revealed to us those registrants will actually contact us and say, not that they didn't know it was a brand, but that they didn't know there was anything wrong with doing that practice because they've read an article that told them that they could make money off of registering these things.

So it's not so much they're unaware of Verizon Wireless, it's they're unaware that the practice could lead them to trouble.

Fadi Chehade: Okay, I have Sara, then Kathy, then Robin Gross.

Sara Deutsch: Yes, well, so I just searched for Verizon Wireless with two Ns on GoDaddy and it's not only there but it's on sale for \$9.99 from \$14.99. And then there's listed variations you might also consider and premium Verizon names.

So again, the problem is not just with the notice. The problem is the practice of selling them. We need to fix both issues.

Man: (Unintelligible).

Sara Deutsch: (Unintelligible) 99. It's crossed out, 9.99.

Man: (Unintelligible).

Man: Just buy it Sara.

((Crosstalk))

Fadi Chehade: Just kidding, just kidding. Kathy, Kathy, please go next. And in fact, James just bought it to you. He's going to send it to you for Christmas.

Sara Deutsch: It's a pretty shopping cart on this.

Fadi Chehade: Okay, sorry, sorry. We're going to start getting - it's really all of us, it's late. Kathy, please, quickly.

Kathy Kleinman: Sorry, I think I hadn't taken my hand down.

Fadi Chehade: Please, I can't hear you well.

Kathy Kleinman: No, no, my hand was raised from earlier, thank you.

Fadi Chehade: Robin Gross.

Robin Gross: Thank you, yes, I'm a little bit concerned about a notice being sent because it doesn't indefinitely - because it doesn't address the concern about creating legal liability on the part of the recipient.

So, you know, ICANN can say this notice isn't intended to create legal liability but the court doesn't have to agree with that particular reading of it.

The court could say, look, you received a notice that there was a potential issue here, that somebody complained about this, that means you're a willful infringer. So I'm not sure that this notice addresses the concern about creating liability for recipients of them.

Fadi Chehade: I did like something Antony said about the explanations that would go into this notice. He called it the registrant's rights. Giving the registrant more context to understand, not only what they shouldn't do, but also what their rights are.

I don't know how we can get there but if we can get there - if we can get the language that at least makes the registrants informed, there may be something to that. But I also hear Robin saying that legally the court will - and again, I think that's the intent here, right.

The intent on this side is to make sure that when somebody passes this notice and still does it that there are legally now - there are legal implications to that, right. I mean I think that's - in a way that's your intent. So J. Scott has an idea.

J. Scott Evans: No, I'm just going to read you the language of the notice. Second paragraph, you may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademark listed below.

Bold, your rights to register this domain name may or may not be protected as non-commercial use or fair use by the laws of your country.

Woman: What more do you want?

Woman: I think that's very difficult for people to understand and I helped to write it, guys.

Fadi Chehade: The language - we can make the language easier, better, clearer, that's a different detail. I think the concept here is that we would show some - so let me tell you where I am on this point right now. We have a - please.

Man: I don't want to be a wet blanket here but...

Fadi Chehade: No, that's fine, please.

Man: Someone's got to make the argument.

Fadi Chehade: Yes, yes.

Man: Hear the other side. I don't think we should be renegotiating the notice, that was negotiated by a bottom-up consensus building process where we reached agreement on that. We reached a lot of agreements. And if we do a little - I think a history - a little history is worthwhile in this.

I think you already heard already, you know, that at the IRT we talked about claims and that was a pre-launch process and it was supposed to be either sunrise or claims was - you know, up to the registry. You could do one or the other.

And that was a pre-launch process where if you look at - right after the sunrise process there's typically what's called a land rush process, which is general - it's available to anyone but you apply for it.

It's not like you go - like, Sara just went to GoDaddy and put it in and get - you could buy a name automatically, it's an application process for lack of a better term. And that was where the claims process was supposed to be effective as recommended by the IRT.

It went to the STI after that where they agreed - we agreed, I was on that as well, we agreed on the language and we also agreed through consensus - not unanimous but consensus including the IPC saying that that would be also not permanent, that it would be an initial evaluation - initial RPM, not permanent RPM.

IPC agreed to that. The BC did not. There was a minority report on that. So it was - you know, what we call rough consensus.

Then it went to the GNSO Council. GNSO Council approved that report unanimously including the IPC representative at the time.

Then we went through the GAC Board process where they changed the - either sunrise or claims to make it cumulative, to make it both. So it became trademark and claims. And that's where the 60-day process came in and we always assumed that that was also the land rush process because that's typically a 60-day process reply.

And that registrars - the biggest beef that registrars had during both - all these three processes was that we don't want to build - incur the costs and to building into our sales flow and causing customer confusion in the sales flow for these claims process where we could do it during land rush.

Because it's more of a manual process, it's more of a process where you're used to dealing with the customer back and forth because it's an application versus just going to GoDaddy or Network Solutions or (unintelligible) or any other registrar and buying it on the site.

So when we look at this permanent claims, that's a huge leap from what the bottom-up consensus building process had recommended two times.

Then it went to the Board GAC process where they agreed to make it cumulative but no one from - at least from the registrar perspective, and I was representing registrar at the time, thought that that would be during first come first serve on our website where we have to build a whole bunch of new stuff for that.

So - and then it - so having gone through four processes that - seeing it for the first time again in Toronto really raised a lot of concerns. That was the only one that really raised a lot of concerns out of this list that we talked about it, it

was rejected. It was recommended by the same people who recommended the opposite now three - two times.

And then we talked about it and again, through a bottom-up process we all reached consensus. So it's really problematic thinking about perpetual claims and then you throw in - I know you don't want to talk about it.

But then you throw in the idea that if we agree to it now it would only apply to new TLDs and not existing ones which is - makes it even worse because then the registrars have to do this costly development and process and it would only cost them that process for new TLDs and not existing ones. So there's a whole groundswell of concerns with that.

Now on the other hand, what we also recommend is on the claims process in the IRT and STI was do a watch (unintelligible). You know, use the - not an IP claims or trademark claims but trademark watch service.

So you could use the clearinghouse where the trademark holder gets notice any time anyone applies and registers a name that violates a trademark. And you could do that pretty broadly. And you don't have to worry about the language, the scaring, the costs, the change in the sales flow, the change to the consumer development. So there's...

Fadi Chegade: (Unintelligible) explain to me what is this watch?

Man: So you divide it up. The two parts of the trademark claims is the trademark holder gets notice that someone registered the name and then the registrant, the consumer, gets notice as well.

So we had that - both parts happening in the first - in the pre-launch and the launch - initial launch process. Going forward there are already private services that provide the notice to the trademark holders. We recommend that we could use potentially the clearinghouse as a free notification for these guys.

And then they could send whatever notices they want to the registrant.

Man: (Unintelligible).

Man: That's the watch versus the claims. So we might want to analyze it separately between watch and claims.

Fadi Chehade: So let me try and - thank you, (Jonathan). This is very hopeful for me. And I - I'm going to try to - while appreciating all the history that got you here, I'm going to try to focus us on what's the right thing to do because at the end of the day even before the guidebook there was a policy and that policy - I don't know the words of it but when I read it clearly says that the policy needs us to protect these trademarks. We have to do it.

Now the how is developed as you explained to me very well. But I have to keep my eyes on the prize, we are compelled to protect, that's what we're compelled to do.

Now I think Antony had - (unintelligible) something that I wanted to go to for a minute. Because at the end of the day, you know, you - what is - if you ignore all the history, (Jon), what is it that you are most concerned with?

You're frankly - I mean I think what you're most concerned with if you agree with the policy, which is to protect trademark holders, is to not over burden

your businesses with more costs that you hadn't planned on, right? I mean I heard that from James and I think that's fair - a fair point.

And secondly, to ensure that the flow - the process by which a registrants gets a - doesn't become so burdensome but they - you know, they walk away or they don't finish the process and frankly that's lost business for you, right? I mean I think at the end of the day that's what it is that you're really holding back on saying, of course, we'll give them a notice for the next, you know, decade.

(Jon): Yes, I mean we burden our business and our location as everyone - a lot of people have noticed already and have said today where a lot of the protections that people are asking for because we think it's the right thing to do, right. We've gone well beyond what the minimum requirements in the guidebook.

So I'm - this is one, however, where we don't think the cost is worth the benefit.

Fadi Chehade: Yes, so I appreciate that. That at least - okay, so it's cost benefit for you, you're saying that - you're being asked to do something - you don't believe it's going to stop the bad guys as one of you asked earlier if we stop - but it will stop 90%.

I mean I'm fascinated by that number, 90% of the people who called them said, take it back, I don't want it, you know, this is not what I thought - I didn't know.

I mean most people don't know trademark law, most people don't, they just have no clue, you know. So they think it's cool, I got TimeWarner.green, you know. Yes, and they could do that.

Man: (Unintelligible).

Fadi Chehade: Right, so what I suggest we think about - if we are to stick with the policy I'm going to suggest a solution that is somewhere between all of this and don't scream quickly, just take it in for a second.

One solution could be that there will be a - kind of a Phase 1 and a Phase 2 whereby in Phase 1 - and I'm making this up now by the way, I haven't thought about this before. I'm listening to you.

Phase 1 would be to do what has been contemplated so far, which is to - for a period of time, I'm not going to argue if it's 60-days, 90 - for a period of time, not a long period of time, we do the normal stuff.

We send - we put a notice, the notice is clear, it explains all the things we agreed on already. As Jon said, it tells them which are the trademarks that may be infringing. So kind of - let's call it the full notice that we've agreed to.

And then after that period, for another period of time to be determined we could do the light version that (Jonathan) - that Antony suggested whereby we just display a generic notice that says, listen, just be aware - no, I mean we will - I mean the folks that - the registrars that we'll be selling these will be displaying a notice that is not complex, that is not necessarily linked to a million different things, but simply says you may be infringing.

It's the same notice we had but very - pardon? We're not going to get into this now because - yes, we can't get into validating. But my obligation and your obligation is to stick to the policy and I'm asking you to think about this.

As Antony said, there is some valid (unintelligible) to letting my mom know that you may be unsuspecting, it's now three years later or whatever period that is, there maybe something there. And it doesn't have to be scary notice, it doesn't have to be a long notice. It could be a very simple notice that says, be aware and that's it.

Yes?

Man: So I just have a quick question on that. So if the people - if you're worried about the registrants and for the IP holders that - you know, in addressing their concerns, why wouldn't they be able to sign up for a service that the registrant - they would send to the registrant this notice.

Somewhere within the five day window, the domain being registered, and it would be - the burden would be on them to send it. And if the registrant said, I want to delete it, then they could delete it and it would be within the five-day grace period and they would not be charged for it.

Why couldn't this be an additional service that those people could sign up for after the fact and not in the registration path, which is what the big issue was?

Fadi Chehade: Okay, why not?

Man: So talk about confusion and increased call center costs, you - I mean do you want to see the kind of notice that we're going to send to somebody if we're ones who are charged with sending someone a notice saying you're now infringing and now they have to call you to get their money back? That's going to blow up costs like crazy if that's really your concern.

I mean the point is to try to educate someone so that they don't get a scary notice from Time Warner or they don't - you know, right. It's to stop the problem. Again, it's not to create the problem and try to find a workaround after the fact.

Fadi Chehade: Jeff, what do you think about that?

Jeff Eckhaus: Yes, so why couldn't we - in the same way that we would have the community or whatever come up with the notice that the person would see - before they were registered, why wouldn't they be able to do the same one that they would be sent afterwards, instead of some scary notice that Time Warner put together?

Man: (Unintelligible).

Jeff Eckhaus: Yes, we have a standardized notice that gets sent afterwards that, you know, they would - it's the same way that you would want everyone to have input into what gets sent before. Why not have everyone have input - what would be sent after so it's not some scary notice?

Man: Register the name and then immediately after it's registered an email goes out with those notice. You have five days to withdraw it.

Man: But - it could come from the clearinghouse and I'm sure there would be services that would sign up in a second, I'm Deloitte and others would be happy that - would want to sign up for this service to make this service available to right holders where they could immediately send the notification to the registrant of the domain name.

Fadi Chehade: And let (Kristina) speak and then we'll pass it back to - and then Jerry. And people on the phone, we have Jonathan and Fred Feldman.

(Kristina): I mean - a few points. First, you know, from our perspective one important component and frankly one of the most important purposes of the claims notice is to give the potential registrant before they register the domain name the information that they need to make a determination as to whether or not they are going to infringe or not and quite candidly, absolutely.

If a registrant gets a potential notice that they are registering a domain name that's an exact match to - you know, a mark and they go ahead and use it in bad faith I'm absolutely going to rely on that.

You had decisions coming out of it IP claims for .biz that found exactly that. So my concern is kind of a couple fold - is first with regards to (unintelligible) grace period, you guys are going to go outside of current policy exemption for the fees in literally a day.

Second, I think...

Man: That's an assumption. We don't know that. Yes, you're assuming that 10% of my volume or whatever that number is I'm doing tens of thousands of registrations - that's a big assumption.

Man: No, the industry's paying for that.

Man: Yes, let's just - that's a big assumption, let's get past that.

(Kristina): So I mean - second, there are commercial watch services so we don't - we're not trying to replace that, that was very clear and that's in fact why the IRT

noted that the clearinghouse could provide a watch service but we did not recommend that it be offered.

Third, if a trademark owner actually feels it's necessary after the domain name has been registered and they believe it's infringing it's incumbent on them to provide very specific information to the domain name registrant. So I don't think you're going to end up with a community negotiated notice that frankly is going to be worth anything.

Fadi Chehade: Please, (Jon) and then Antony.

(Jon): IRT report...

Fadi Chehade: And I need to get to these people on the phone lines.

(Jon): The IRT believes that an IP watch notice service would be a highly useful tool for trademark owners. Because similar services already exist in the market the IRT does not believe that the IP clearinghouse should be required to - or exclusively provide such a service.

Nonetheless the IP clearinghouse should be - should not be prohibited or preventing from offering such a service.

Fadi Chehade: Yes.

Man: But it's a useful tool.

Woman: And it already exists. And that's - if an IP claims form in its current iteration provides something that is not - and cannot be provided in the marketplace, namely advanced notice - potential registrant that they are seeking to register a

domain name that is not an identical match as of right now to what's in the clearinghouse.

Fadi Chehade: Antony and then it will be Jonathan Robinson, Fred.

Antony Van Couvering: Yes, I'm just trying to find a little common ground here. I heard Fabricio say if you tell people that they're doing something wrong 90% of them will turn the name in.

Fadi Chehade: Yes.

Antony Van Couvering: So from my perspective it doesn't make any difference for that 90%, which is after all the bulk of it whether that happens before or after the registration. It could be an email, you know, it could be a lot of things.

And particularly within an add grace period where you get all your money back if you turn it in, I'm really struggling to find out - to understand exactly what - why that doesn't accomplish a lot of the goals that you want to achieve.

Fadi Chehade: Fab?

Fabricio Vayra: Yes, so the answer is it doesn't accomplish the goal because it doesn't address the question that James came up with originally I think of cost centers - call cost centers, right.

I don't know that a consumer who gets something and can come back and get a refund isn't going to call and ask where do I get my refund, why didn't you tell me this to begin with.

It also doesn't address the cost for brand owners because the brand owner now is going to sit and counter every domain name that they got a notice for and have to go back on the thousands of domains that could be registered and wait five calendar days.

Then go back and see if they've gone through the process. And then go back and see if James has done the refund yet because a they could get - a brand owner - or registrant could get a notice all because the refund hasn't just gone through yet or the name hasn't dropped, right. That's why I think beforehand makes more sense.

Fadi Chehade: Jonathan Robinson from London.

Jonathan Robinson: It's Friday here. I have heard what (Kristina) and Fab has just said and, you know, I could have withdrawn the comment based on that. But it strikes me that there's been these carefully negotiated...

Fadi Chehade: I can barely hear you. Please repeat what you said and speak up.

Jonathan Robinson: All right, how is the quality of the sound there? Is it okay?

Fadi Chehade: It's a little low but...

Jonathan Robinson: I'll speak right into the mike and how's that?

Fadi Chehade: Yes, better.

Jonathan Robinson: All right, you know, I heard that there are some reservations with the kind of compromises to which we're trying to head now. And there are some - the challenge here it seems to me is that with things like the claim service as it's

been negotiated, these have all been worked all over many, many iterations as people have said.

So the challenge is how to find a way outside of the main sort of consensus processes in the very short time scale.

And it seems to me that a lightweight generic notice out of flow together with a watch service from the trademark clearinghouse and a cost effective URS, the combination of those three whilst it isn't exactly what people like (Kristina) and Fabricio are after, it could make still a significant impact on ongoing basis.

So my suggestion is to give serious consideration to that out of flow notice, post registration notice, plus watch notice going to the right. So now - plus a cost effective URS.

And that combination of three, whilst I full acknowledge isn't exactly what the rights owners are after, feels like a significant step in the right direction.

Fadi Chehade: Mikey, did you capture his notices? These are very important what Jonathan just went through because he in a way made a proposal that solves even the URS issue. So...

Mikey O'Connor: Yes, Jonathan if you could do it one more time just a little slower, I was going as fast as I could but I can...

Jonathan Robinson: So Mikey, this is the point. If - an ongoing trademark notice in flow is a serious problem for registrars. And I would expect them to dig their heels in on that especially if it's a substantive form of notice that lets in the initial period.

So my argument is keep the delicately organized compromises that have been set up already in terms of the 60-day claims period and so on.

But introduce by way of implementation and using the trademark clearinghouse an out of flow notice together with an ongoing watch service and the cost effective URS - a combination of three; out of flow generic notice, watch notice from trademark clearinghouse, and cost effective URS.

Fadi Chehade: Okay, thank you, Jonathan. I'll hear Kathy and then I'll go back to Marilyn and then I'll go back to (unintelligible) and Fabricio and (Jerry). Go ahead.

Kathy Kleinman: Can you hear me? Can you hear me clearly?

Fadi Chehade: Yes, we can.

Kathy Kleinman: Thank you so much. I just - I wanted to respond to two things. This is Kathy Kleinman. One is what Fab said about how 90% of the people turn in their domain names when he contacts them and that's exactly right because it's Time Warner contacting an individual or a small business or an entrepreneur.

And I just wanted to say for words like Time, Life, People, Fortune, Money - yes, many people will turn it in and not necessarily because they don't have rights but because they don't to go head to head with Fab.

And that's one of the reasons I'm here and have spent so many hours because for 15 years I've been trying to help people respond and protect their rights. So this - I want to share is that often people turn things in because they're scared.

So intimidation. That said, somehow my fear level is going down and I thought I owed it to you to share that as we're moving towards the two stages of notices.

This - something like what Jonathan said I think might work, multiple stages. There are different ways to share the information and not intimidating ways, thanks.

Fadi Chehade: Wow, okay, Marilyn.

Marilyn Cade: My comment - it's Marilyn Cade. My comment is going to be about ICANN's unique role. I like many of the things I've heard but I do not agree with giving sole source service that ICANN as a - ICANN manages a shared space and that means that you are the franchisor to franchisees.

And that is a unique place. Right now there are competitive watch services and I don't agree with adding a watch service function into what we're talking about because I think that is actually competing with competitive services that are out there. And I think we have to be very careful not to centralize things in this particular case, Fadi.

My understanding from reading the previous material is that the database of information that is gathered should be open and available for others to build competitive services on.

So the only thing I'm disagreeing with is the idea of centralizing a watch service because, again, if ICANN does that they are going to be - I think, putting - we're going to be putting ourselves in the sites of the competition authorities, of the European Commission, and the US FTC. So I would just be cautious about those kinds of issues.

(Chris): It's (Chris) here. There already is a centralized watch service as part of claims, it's built into the process. The early argument here is that currently - the watch service only runs for 60 days.

So it's only an argument of whether to extend it or not. The watch service is built in the claims, it's there, that's what claims is. Claims is a watch service.

Fadi Chehade: Okay, Alan, you've been patient, go ahead, please.

Alan Greenberg: Yes, thank you. When Jonathan made - first spoke I thought I was agreeing with him 100%. When he replayed it for Mikey the second - the longer term claims notice became - I don't remember, the out of flow notice which I think implies the registrant would then have to cancel the registration and get a refund, which I think is a far too complex process for a whole bunch of reasons.

You know, I think it's going to be far easier for a registrar to implement an inflow claims notice than handle the refunds afterwards and the timing problems that ensue from that.

And, you know, what if the five days is exceeded because of a weekend or a holiday? It's just a horrendous thing to think about but with an inflow one I think I support that a lot because I think that gives the kind of protection at some level that the IP folks want and something that's implementable. And if Kathy says it might be acceptable we've made great strides.

The last comment I'll make is it is something we can measure. We can measure how many people say they're going to apply but after they get the

notice they say, no, I'm not going to bother. And that's an important metric to tell us whether this is being successful or helping or not. Thank you.

Fadi Chehade: Okay, I need to go to Fred. Jonathan, you raised your hand. Are you trying to answer Alan? And if so I'll let you...

Jonathan Robinson: Yes, Fadi, I did. And I put a comment in the chat to that effect. Essentially having thought about it a little more, an inflow generic notice for ongoing service may well make more sense than the out of flow one. So I tend to agree with Alan.

Fadi Chehade: Thanks, that's very helpful. So next I have Fred and then (unintelligible).

Man: And Jonathan's remark just clarified for me so I'm actually good.

Fadi Chehade: Okay, a generic simple notice that shows up forever when people go to register a domain name.

Fred: Yes.

Jon Nevett: Excuse me, is it any registration or registration which has a hit in the clearinghouse?

Fadi Chehade: Of course, a hit in the clearinghouse.

Jon Nevett: Okay, sorry. There was someone else earlier who had suggested that everyone get one of those notices, that you may infringe. So I just want to clarify, thank you.

Fadi Chehade: I think we were definitely talking about those that have a hit. And Jon Nevett was just asking to confirm - I'm asking Jonathan Robinson. What you're suggesting here is that you are okay with registrars displaying a generic notice?

By generic I'm going back to the definition of Antony much earlier, kind of something that may have a link, may not have a link, but does not, you know, go into listing particular trademarks and doesn't scare people and is not ominous. Is this what you're thinking about, Jonathan Robinson?

Jonathan Robinson: I guess so. I mean I implemented this in another life in a traffic light system which simply had a green, amber, red. You may or may not be - you know, yes. So I guess that makes sense.

Fadi Chehade: Okay, (unintelligible) but again, it's not my decision. I think this is a reasonable middle ground but I've finished the list. Fred Feldman, you're next in line.

Fred Feldman: I - my concern was answered by Jonathan.

Fadi Chehade: Okay, very well. I will go back to the room. I have Fabricio is (unintelligible) (Jerry).

(Jerry Depardo): Yes, so (Jerry Depardo).

Fadi Chehade: And then (Martin) is next.

(Jerry Depardo): I just wanted to share an experience we had at Travelers with regard to watch services and why - you know, it's driven us to conclude that the system's broken.

And with - particularly with respect to the vast expansion now that we're going to see in new TLDs that it's going to be just tremendously exacerbated and what we saw was we had a service, we paid a lot of money for a service to watch every time someone tried to register Travelers.

And we would get - now it's a word in the English language, right, so it's not an uncommon word. Every day thousands - I mean we would get an email so we would have a separate email box set up and we'd get thousands upon thousands upon thousands of email every day.

We had a person full time just managing that inbox to figure out what it was all about and to try to ascertain from the weak information that they had whether this would be a risk to us or not a risk, should we send a letter, should we try and contact them, should we - so there was a huge burden on trying to go through the process.

And so when you lay that - eventually we had to shut it down because it was just too burdensome. And so who wins and who loses there? Well, I think it's a lose-lose, right.

So the consumer loses because if someone does get one that's going to divert traffic and cause consumer harm or confusion they lose, we lose because we get in trouble by the government because we didn't do the proper thing in their view.

And so that doesn't appear to be a proper solution. When we go to the new world, which is many, many, many more, it would seem appropriate to have, you know, the personal applying to at least be able to indicate, you know - yes, I'm going to use it for proper purpose or I'm going to - you know, I'm

not going to be infringing, etc. so that we have something that comes to us that makes it clear that - we have some comfort that were not (unintelligible) infringed upon and our consumers aren't going to be in trouble.

Fadi Chehade: I'm going to go to (Martin) and Jeff. Then I'm going to close on this point. I'll close - I mean I'm going to help us close on this point. I'll let Robin go through as well. Please, (Martin).

(Martin): Thanks, Fadi. Just to go back to this out of flow sounds a bit concerning in terms of going back to sort of a grace period scenario and anything that is post registration is always harder to recover and things will happen adversely is what we want to stop.

Just to go off Alan's point, in terms of metrics I think that would be a really valuable one and even on the inflow type of thing, we could still get metrics, what's the dropout rate. If we get the 90% dropout before they even both registering the domain name, that's useful information to take away.

Fadi Chehade: Jeff, you've been patient. Go ahead.

Jeff Eckhaus: Thanks, and I thought - I was kind of hoping (Martin) would say something about this but I think we need to take the out of flow off the table. I think that proves as a significant security risk. I think anything that's sent out of flow with a link in it is just asking to be subject to a fishing attack and then copied.

So we have to take that off the table. If it's not inflow I don't think we can do it. Otherwise, like I said, it's going to be disastrous. I mean (Martin) has seen it with HSBC on a number of different occasions where, you know, you're just asking for it.

With the inflow, I think there are some - from a backend provider perspective, I think there's some implementation risks there. I think it's going to be difficult to keep track and make sure that every registrar knows whether it's within the first 60 days of a TLD versus whether it's outside the first 60 days.

And then giving a different notice depending on where it is, I'm not saying it's not (unintelligible). I'm just saying there may be some implementation issues with that and we need to - before we can agree to doing something like that really see and test it out maybe tomorrow to see whether it would pose some risks.

Fadi Chehade: Okay, thank you, Jeff. Robin and (Ben).

Robin Gross: Thank you. Yes, I'm a little concerned that we're getting a little too caught up in whether or not it's a scary notice or whether or not it's a friendly notice with respect to whether or not it creates legal liability.

I mean we can send out the friendliest notice we can imagine and wish the recipient good tidings and have a good day and all these other things but at end of the day that notice still creates - there's a liability.

So I'm a little bit uncomfortable with just saying, well, we'll make it less scary when they receive it and that will take care of the issue because it doesn't in fact remove the liability issue.

And I also wanted to raise a point that Kathy just raised with me and she said that she - her previous comment, she didn't understand that it was based on the requirement of a permanent connection of the registrars to the trademark clearinghouse.

Fadi Chehade: Okay, thank you, Robin. (Ben)?

(Ben): Yes, just going to pick up on what Jonathan said earlier because actually I think it was Jonathan and I that have implemented this before. We had one of our frontend systems connected to a couple of trademark databases and we told people when we felt they could be infringing on another mark, not by exact matches but actually capturing the key words within a longer string.

So we can first - I think we can pull out data on how effective that was. But I seem to remember that we actually switched it up because it was a good way of people gaming and finding out how to register against marks by using domain searches on our site first if that makes sense.

Fadi Chehade: Did you hear that?

Man: (Unintelligible).

(Ben): All right, I was going to say, at (NetNames) (Jonathan) and I implemented this before. We connected to trademark databases and we told registrants when they were applying for names if they either infringed on someone's mark or contained someone's mark.

So I can go back and I can get the information as to how many people carried on and how many people dropped out. But I know we've since switched it off because it was just ineffective.

Yes, ineffective as in people either went and registered the name somewhere else. We found out that people were using our system to check against various trademark databases to go and register domains elsewhere because you wouldn't want to pay 75 pounds for a .com with us.

Man: Yes, so - if I can continue with that, I mean it goes beyond 60 days and I think this is something you - trademark holders usually think about, that which of the marks that you care about and you want to protect are the ones that you're going to put it on claims.

How are people going to find out if you care about those claims and if they're worth something to you? They're going to do checks against to see if there's a claim against it and then they're going register it anyways, those are the bad guys, those are the ones you really have to worry about.

If it goes permanently they will go, they'll see there's a claim against it, they're going to register it anyway because as I said, if there's Verizon Wireless with two Zs, they know that's a bad one and they're going to do it anyway. But now they're going to know these are the ones they have paid for, they've put claims against, they care about. And these are the ones they're going to register anyway.

People in these - in certain countries, they don't care about the notice, they don't care about these things. They're doing this. And now they will know this is a defined set of terms that the mark holders care about and they're going to go and register those regardless.

Fadi Chegade: Okay, thank you. This actually was a revelation. Let me just bring this to hopefully conclude and this is the hard part. Please, let's listen a little bit.

Are we - I'm talking to the IP side. Are we trying to solve for the bad guys or for the good guys who are (unintelligible)? Is it my mother or is it the bad people? She's bad on some days but...

- Man: It's both, because when you acknowledge and go forward you've acknowledge your not - you're going to use it for a non-infringing purpose.
- Fadi Chehade: Understood, so let's talk to the bad ones. Do you sincerely believe that somebody sitting in a bunker in (unintelligible), you know, and is playing the game who's a bad guy is going to care if we show him any notice? What do you think will happen?
- Woman: They may not but the fact that they have received a notice and proceeded anyway hopefully will make the action whether it's a UDRP or URS easier and less expensive for the trademark owner - and documented.
- Fadi Chehade: Okay, so let's stick to that a little bit. Do you want to add something, (Martin)?
- (Martin): If I leave my house and the door open, the windows open, opportunistic will go in and steal anything. If I close them, I mean at least lock them up, then they're unlikely to do that. It will be those that have got the inclination, the want, desire to break through they'll break through.
- Fadi Chehade: Understood, but once they break through anyway what (Kristina) explained is that the value of showing them the notice ahead of time is that you have the legal instrument now to say, look, you did it knowingly. You can't say you - now, if we switch to the good guys, now this is my mother who's 87.
- Okay, so my mom logging in, trying to buy that domain, and she doesn't know she's buying - you know, my son worked at IBM, let me buy IBM.Egypt or something, okay.

So she gets a notice that says - in English or whatever language. She reads French and says, you know, there may be a claim here. You believe that claim will stop her, that would be the 90% Fabricio talked about.

Woman: In my experience and our expectation is that, yes, it will.

Fadi Chehade: Okay, if we didn't do the claim and within five days she got a letter that said, you bought something bad, you need - you did something you shouldn't have done.

I frankly think at that point she's really freaking out. She's saying, oh my God, what did I just do. She'll be running to my door and saying, you know, I didn't mean to do this. I just got this letter...

Man: (Unintelligible).

Fadi Chehade: In my opinion, if it happens later, especially after she went to her bridge club and told all her friends she got IBM.Egypt and she'll proud of it and now she gets a letter, you want to help me with this (unintelligible)?

Man: I think it's a psychology thing. And I think that - yes, you're right, it is more frightening to get it afterwards. Also it is more angering because as a consumer you're likely...

Fadi Chehade: She told all her bridge friends, I got that, right. Okay, so for the good people, okay, are we - do we believe Fabricio's statistic? Is it 90% of this is good people? What do you think, Antony?

Antony Van Couvering: I think if you phrased the notice right you can prevent 100% of any registration. It is really - the language is pretty important, you know.

Fadi Chehade: Understood. So Jeff and then Jeff - Neuman and then Jeff.

Jeff Neuman: We actually did this in .biz so let me give you the actual statistics.

Fadi Chehade: Read me the actual statistics.

Jeff Neuman: Okay, so we had 30% did not proceed but out of the 30% we couldn't verify why they didn't proceed because some of the notices - I would say 20% of those notices didn't even go out because we were blacklisted because we did it by email.

So I - if it's somewhere like 90% because of Time or Time Warner, that may be one thing but for everyone else the number's a lot lower than 90%. I would say you'll be lucky if you get even the 30% that .biz had.

So we had 80,000 claims in .biz. We had hundreds of thousands of names that were registered within the first 60 days and like I said, only 30% dropped out. But again, we can't attribute why those 30% dropped out.

Man: (Unintelligible) an apples to apple comparison because what we're talking about is 90% of those who did proceed, once educated responded. And to Kathy's point it's not because I called them and I'm scary, it's just simply because GoDaddy said Time Warner wants to know your contact info because they want to get a hold of you, that's it.

So this statistic is saying how many people didn't proceed. I'm saying of those who do proceed and then they're educated, those are the ones who reply. But this isn't an apples to apples...

Man: Okay, fair enough.

Man: Okay, Jeff Eckhaus.

Jeff Eckhaus: So - yes, so here's - I want to go again to the problem again. I understand your point about saying the good guys but are you worried about those good guys. Let's say it's Fadi's mom is going to register IBM.Egypt, right.

Are you worried about her and she's going to put a fan site on there to him that he worked at IBM? Or are you going to worry about those bad guys who are going to mislead consumers and send them to something that they think is an IBM site and they're going to try and steal their information?

I mean what is the real concern you're worried about? To me it would be you're worried about the bad guys who are going to mislead people, make people think it's your brand, try and sell them things, phish them, do those bad things. Those are the people that I think would ignore the trademark claims, the notice, and register it anyways and do the bad things.

The good guys, yes, you know, that they might register it accidentally, the 90% that Fab's talking about, those people maybe want to do fan sites, maybe do other stuff, but those are not the real people you're worried about and are misusing your brand and are using it for advertising and doing it. I mean I think it's the bad guys.

Fadi Chehade: It's a service - I'm sorry, my mom is probably going to kill me tonight, it's a service to my mother to let her know before she does something that you're about - to be a mistake. She doesn't know. She has no clue. I think it's a service to her.

It really is. It's - now as Antony though said it's how we tell them.

Man: (Unintelligible).

Fadi Chehade: Sorry? Go ahead, (unintelligible).

Man: We could talk about that, right. So if someone registers doughnuts.TLD and we have a trademark on the word doughnuts it's a violation and they don't need to necessarily put on notice unless they start selling domain name services and then they would conflict with us, right.

So there's certain business services for trademarks, and there's some unique brands, and these guys will tell you more about trademark law than I could obviously. But we have to think that there are (varied) names for other goods and services, other purposes, and (unintelligible) not necessarily a service you're (unintelligible) if she doesn't want to use that word that infringes on their marks.

Fadi Chehade: Okay.

So let's (unintelligible) into (John)'s point, which is a fair point. It may be a fair use. You all said all day you want to protect fair use.

(Kristina): Yes. But you also - I mean just to give you a more concrete example. A client for whom I do enforcement work, I've recently had to send a cease and desist letter to a guy who it turned out was clearly living at home, so I had the letter go to his mom. And he had...

Fadi Chehade: It wasn't my mom by the way.

(Kristina): ...he had registered - no. He was a college student and registered stake - thinking after reading something online that this was perfectly legitimate, and he'd blown \$2500 on domain names that he either had to turn them over or go through a UDRP.

So having that notice ahead of time would have basically allowed him to avoid essentially that \$2500 loss.

Fadi Chehade: But how do we deal with (John)'s...

Man: Well the only thing I can...

(Kristina): (We just send a notice). It has...

Man: Yes. I...

(Kristina): ...(unintelligible).

Fadi Chehade: (Unintelligible) had somehow explained to my mom...

Man: Yes. And...

Fadi Chehade: ...and I'm using her as an example because she's that - it has to tell her, "Listen, (Rhonda), you can - you shouldn't do that because IBM registered IBM, even though IBM in her dialect may mean...

Man: But (Fadi), the point would be however, you can use it for fair use and/or free speech purposes. So if you want to create a fan site, as you were - Jeff, you were talking about, she would say, "Oh, that's what I'm going to do." And (unintelligible).

Fadi Chehade: So (to) answer that back, because you're the one I think who put this table.
What if the notice precisely was what we heard? (What does this say)?

Man: So my whole - yes. So my whole point was that I know there's - you know, that it's more of what are we trying to solve? Is it - are you guys really concerned about Fadi's mom spending the money and not getting a refund? Or, are you worried about people using...

Fadi Chehade: Both. They said both.

So solve it one at a time.

Man: Yes. It's - but the thing is, you're not solving one at a time. What I'm trying to do is solve for what is the real concern? I mean, it - that they have? And I think that - and what I'm saying is by doing the claims on - that was the thing that (Ben) had said and I'm sort of also saying, that doing the claims on this notice, you're giving concrete information to the bad guys about what are the claims you care about?

So by doing one, you're sort of exacerbating the other. So you're not solving for both.

Fadi Chehade: So that point, by the way that (Ben) made, really threw me off. I actually had not thought about that. And, we need to come back to it, okay. But it is a very interesting point you make. But let's focus - keep focusing on the issue you've been bouncing here. The good guy. My Mom. If she is told prior to making that registration very innocently that, "Look. There's an exact match of the trademark."

But if - and if we explain to her fairly that if she's using it to do A, B, or C, or any other use, than - and we are careful on how we explain this to her, back to Antony's - it's all in the words. It's all how we do this.

What - isn't that helping my mom? I actually think this is going to immensely help her because she'll think through this and then say, "Yes. I'm doing this for bridge club. I'm going to sign it up."

So (John), you're itching to (unintelligible) and then I'll move to (unintelligible).

(John), please help me.

(John): I'm just trying to figure out what's changed based on the volume of TLD applications because when we first looked at this issue, we weren't looking to help your mom after lunch, right. No, we weren't. We agreed unanimously that we would not have claims going forward.

So, we wouldn't put your mom a notice. But what we would have was the URS to protect us if she does infringe. We would do a quick, cheap takedown. And then a second process, same thing. Quick, cheap (takedown). So what you...

Fadi Chehade: Excuse me. Before give up on this point about my mom. Does everyone believe that a cheap URS is the tool to do it?

Man: (Unintelligible).

Fadi Chehade: (Unintelligible). Okay, so I'll press on with my mom.

If she got that notice. I mean honestly, (John), ignore the past for a minute. If this were your mom, and I hope she browses the Internet as well and buys names, but if she - but if someone you know who's unsuspecting went and bought that, don't you think letting them know before they move forward is going to save them headache later?

And by the way, save you headache later. You're going to get the call that I think won't be fun. "Give me my money back. You lied to me. You told me I could buy this. It turns out I can't buy it. Why didn't you tell me. Who is this people? Who are..."

And Jeff made an excellent point; Out of Flow notices are going to be a bigger issue because, "Is this really a real notice? Who's this that's sending me this?"

Yes, (please).

(Jim): So here's, (like is I said), going back and saying you're worried about Fadi's mom and those people. If we had on the registration path that before you clicked to purchase, well right above the button that said, "This domain could," you know whatever, and had that information, there was no link to your specific you know trademark or nothing. Just a general (unintelligible)...

((Crosstalk))

Fadi Chehade: Yes. That's what we (said).

(Jim): That concise. A paragraph that was on every single one that everyone had to click through to through, would that be - satisfy?

Fadi Chehade: No. Not on every single one, (Jim).

(Jim): No. On...

((Crosstalk))

Fadi Chehade: We said only on the ones that had a match.

(Jim): Okay, the ones that have an exact match, would everyone be okay with that?
Just a generic notice that was a paragraph that somebody had to agree to?

They would just...

Fadi Chehade: Yes. Yes. If they're talking to us.

Man: It would be nice to have...

(Jim): Say like - say four sentences. Something simple and that was it.
(Unintelligible)...

((Crosstalk))

Fadi Chehade: Hold on.

Man: Well, let...

Fadi Chehade: I need an answer on this. Sorry, (unintelligible).

Man: As I understood on (Jonathan), we need to be very clear. Because what I understood (Jonathan) to say, or what was proposed is after the first 60 days, this...

Fadi Chehade: Yes, this is after the first 60 days. We're talking - we've been discussing a Phase 1 and a Phase 2 solution.

((Crosstalk))

(Jason): Okay.

Man: This is after the first 60 days.

Fadi Chehade: This is the Phase 2 solution.

Man: Yes, I could live with that as Phase 2 solution.

Fadi Chehade: Okay. So we're getting somewhere guys.

Hold on. Hold on. Phase 2 solution that may work - and I'm not putting words in your mouth Jeff. Phase 2 solution that may work is we give a generic notice after Phase 1. And I would add something, Jeff, even though they may agree to what you suggested. I want to go back to what Antony said.

So a generic notice, but still a link back to the trademark clearinghouse. Something that allows them to go research it so they're not stuck, "Well, what is this notice? What does it mean?"

I'm not saying a specific link to their stuff, but a generic link, which is what Antony said, and that would be in Phase 2. So this would be the same thing that you'd show to anyone after a certain period of time when there is a match, and we have IBM raising their finger feverously.

Man: That would mean making the trademark info in the clearinghouse available to everybody.

Fadi Chehade: Yes.

Man: Yes.

Man: Yes. What's wrong with that?

Man: I do - yes.

Fadi Chehade: Yes. Yes.

Man: Would it speak to the guidebook.

Man: Yes.

Fadi Chehade: And that's fine.

Man: Yes.

Man: No.

Fadi Chehade: Oh, sorry. You're saying you suddenly (unintelligible)...

((Crosstalk))

Fadi Chehade: (Unintelligible) and it can go to the trademark clearinghouse.

Man: (Unintelligible).

Fadi Chehade: And the dollar numbers go up here. So that's why he's - okay, but thank you IBM for pointing that out.

JJ then (Fab). Sorry, you guys have both been patient.

John Jeffrey: I just wonder if there isn't an opportunity with what we're talking...

Fadi Chehade: Guys. Guys. Let's talk - I know we're tired. We sent people to get us food by the way. So just hang in there.

John Jeffrey: So just an idea, but maybe there's an opportunity with what we're talking about right now. Because what we're talking about now is a different service than we've been talking about up to this point.

Fadi Chehade: Yes.

John Jeffrey: And if we're actually going to have that service, I think you know, there's a good argument that Robin's going to raise that there is a chilling impact at that point. But there is a huge benefit to having the notice there. But a notice that's effective and provides real information would be a much better notice.

I mean if you talked about your (mark) money on Money Magazine, right? Money has a lot of different uses. You can think of a whole bunch of marks like that. And if your mom is looking at Money.whatever and it's a useful mark for her, and she's going to run her new business on it, it may have nothing to do with his mark.

And so if she's got some notice that actually says what that mark is about that's against her, then she's got useful information that she could act on. If

she's just getting a general notice, she's going to be afraid. It's Time Warner. It's a big - you know, it's a notice. She doesn't know who's behind that.

But if we're actually providing more information that's effective to the consumers and it's explained well, then it actually provides a benefit.

So I wonder if we're talking about a new service, you know, maybe we should be talking about how we're defining the information that goes into that new service so that it's the most beneficial.

Man: So that's no longer a generic notice then.

Fadi Chehade: Yes. That's what JJ is saying.

Okay, so Fabricio back to Sarah.

Fabricio Vayra: Yes. I don't know that what JJ's saying is against what - I mean, I go back to what Antony was saying. It's kind of in the same vein. It's crappy that it's a middle of the road.

Fadi Chehade: Yes.

Fabricio Vayra: It's not nothing and scary, and it's not a dictionary and scary. It's somewhere in the middle. And you know, something that tells the registrar what their rights are. There may be an issue. For example, the trademark clearinghouse had a hit. [Click here to see more](#). And, it leads you back to the information. It would be great.

And I'll tell you - I mean, I know you like real life examples, and I think this will answer Jeff Eckhaus' question.

Fadi Chehade: Yes. Jeff made a very...

Fabricio Vayra: (Unintelligible).

Fadi Chehade: Yes. That's - no.

Fabricio Vayra: I mean, and who are we trying to solve and who are we trying to get at? Anyone can look this up on the public database. We ended up having to file a UDRP against a gentleman named (Richard Rebarbisol), and when - and he registered I think somewhere in the range of 30 to 40 domain names -- I'm looking at it now -- and they're 3D Time Warner. 3D Time Warner Cable. Time Warner Cable 3D TV. All variants.

And when he called me, here's what - actually what he told me. "I went to," and he was really angry by the way, so if we want to talk about call center costs. If I wasn't the one sending one, or you got a post response - here's what he said to me. "I went to a seminar where I was told this is how I can make money." He went to a seminar hosted by someone in the industry, told how you could make money, and he was dead set on the fact that this was something that was legitimate. And for him, the most upsetting part was, like (Kristina)'s story, he had spent whatever, 40 domain names times the registration fee is to him, and he had been told it was legitimate.

And I think what we're trying to get at is for unassuming (unintelligible) who's been told it's okay or doesn't know any different, they're told what their rights are and that there may be a problem so they can question it.

For those who (unintelligible) - for those who are going to do it anyway, they are, and that's what the notice is there for so that then you can enforce against them.

Fadi Chehade: Sarah.

Sarah Deutsch: Yes. I agree that the notice has to be equally applicable to - you know, to (Rhonda) and to the bad guys because don't forget again in the - if we're going to use the URS, we have to make our case by clear and convincing evidence, and this would be very helpful to show that they got the notice.

Also, I would point to US ISP's as a role model for sending notices that work. We've begun to send copyright warning notices to people who receive notices of infringement. And just the notices we've sent thus far show that 70% of those people don't get a second notice.

So you may want to look at the wording. We have Web sites that explain to them in a very neutral way. We don't accuse them of infringing. We just say we received this notice. But it may be a good, you know, mapping exercise to look at what we've done, and we think it works.

Fadi Chehade: Okay. (Brett)?

(Brett): Here's another problem, and I'm a new registrant and I'm at GoDaddy, my registrar of choice, and I'm trying to register say a travelers.guitar. We've got .guitars and I think it's called (Travel Owners) guitars that people carry. That's fine. It doesn't infringe (unintelligible). He doesn't care about that.

But every time I try to register it, I get this notice that now I realize I can register travelersguitars.com and I don't get a notice. So I'm just going to register that.

So you know, you're creating these things that look like legal issues on the new TLD's, but .com I don't get it.

Fadi Chehade: Yes. And I said before, I'm with you 100%. We have a huge issue there. We have a huge issue there. And our only stick there, to be honest, is going to have to be that we first agreed to do the right thing, and then we decide what we're going to do about it, and we go talk to them. And, there's going to have to be some stick with them that I'm raising internally.

We have to find a solution. We cannot keep asking you to do things. Just not do it. Not - it is not (unintelligible) at 500%. I competed for 30 years with my businesses. I would not want to be in that position.

No I can't tonight solve this. This is more complicated than that, but we can stop from finding a good solution that works for good people here trying to solve it just because the people who are obstinate are not in the room and we're going to wait for them to agree. I will find a way. We'll find a way either through the policy process or through other means to get these people to start doing the right thing. I can't do it today, but I'm with you. I'm hearing you. I haven't forgotten this piece, and we need to address it.

But let's keep focusing and find the solution. So Robin and then - and really, let's try now - I'm going to ask those speaking - I think both sides have made their points multiple times now. If you have the solution, please speak up. If you have a way - just like frankly Jeff did, just like Antony did earlier.

If you have a way to advance - inch forward towards a solution, please help us here because I think we've heard the argument. We're worried about people getting scared away. I heard that. We're worried about costs to the people who have to display complicated notices that would also make people walk away from the desk - from the purchase. We heard that.

We heard the fears on this side in the good arguments on one side of frankly telling people later, including Jeff making it a point that telling people later is also complicated for other reasons that we had not thought about.

We heard (Ben) make a very good comment on an experience - a real experience in the UK of people then using the fact we're telling them about a match to do something, okay. But, that's the bad people.

What I think we need to do is solve around the first, and then go to the bad people, and then we're going to start inching towards a solution. Let's solve the - let's address the unsuspecting people.

And I still think that like the first few which got us all jittery 20 minutes ago, that there could be a two-phased approach where we carry on with everything we've discussed today, the strong notice and all the stuff we're - an initial period of time. 60. 90. Whatever - I don't know what the period is where we'll agree. But a period of time. A short period of time that we - in the spirit of what we agreed on today.

And then after that, to do something slightly different. Slightly different but still hopefully achieving some goals, but with that - I mean Jeff inched forward. He told you, "What about the generic notes?" Antony in earlier for the room (unintelligible) said a generic notice with maybe a generic link. IBM

scared me and said, “Hey. You know, I have millions of people hitting on that database.” That’s a different model. That’s okay.

So - but we’re - this is the spirit with which we need to finish this conversation. Inch towards a solution rather than take us backwards because we heard all the arguments.

Robin first, then (Ben), and then Antony.

Robin Gross: Okay, thank you. I wanted to go back to the example of your mother who gets the notice and she says, “Well, this doesn’t apply to me because I just want to create a fan site for my son, and so I'm not worried about legal liability.” And, she goes ahead and she does that. And thinking that she’s got no legal liability.

And then you know, down the line, she wants to sell raffle tickets for her bridge club at this Web site, or advertises her bridge club at this Web site, or something like that. And at which point, the situation changes arguably and now she’s in a position of potentially being an infringer of somebody else who’s trademark - and then having had received that notice, she’s now a willful infringer of these things, which creates additional liabilities and additional damages to her.

So, you're not actually doing her any favors by giving her that notice. You're creating greater liability down the line for her by giving her that notice, so that’s my first point.

Fadi Chehade: What if - Robin, what if that notice is generic enough that it does not necessarily stand the test of a legal instrument for the unsuspecting good

people like my mom? But at least lets her know, "Hey, (Rhonda), just FYI."
What if...

Robin Gross: Well, I think that's kind of a key point is how generic of a notice is this? Can this be - will a court look at this notice and say, "You've been provided with notice that you're now on notice that you could be infringing?" So I think this is an important...

Fadi Chehade: We'll provide a generic notice as Jeff suggested to my mother in this case. That - if you will all agree will not stand the test of the true necessarily legal instrument, as JJ said. But would at least stop an honest-acting good person from moving (unintelligible). This is in Phase 2, remember. This is not Phase 1. This is now a way down. My mom is unsuspectingly going to buy this generic notice. "Hey, (Rhonda), just FYI. You just hit on a match in a trademark clearinghouse."

That's - would that stop the 90% (unintelligible) who have called you? Who have called these guys for their money back? Would that do it?

It's not the legal - let's agree that this is not a good legal instrument. You cannot use it in a court. But I'm not talking about the bad guys. Only talking about good guys now.

Jeff Eckhaus: I see everyone on this side of the table staring at me intently.

Fadi Chehade: It's okay.

Jeff Eckhaus: So yes. So I'll - I have to say...

Fadi Chehade: We'll beat you later.

Jeff Eckhaus: I think it probably solves this front-end part. Not the back-end part. But, I think it would go a long way to the educational piece. Yes, absolutely. And I will say just off the record, (Chris) and I were coming back from the restroom...

Fadi Chehade: No. No. No. You cannot tell us what you did in the restroom.

Jeff Eckhaus: No, I was coming back from. That's why I (unintelligible)...

((Crosstalk))

Fadi Chehade: Okay. Well, just (unintelligible)...

((Crosstalk))

Jeff Eckhaus: A quarter way down the hallway actually.

Fadi Chehade: Okay. What did you do then?

Jeff Eckhaus: And, we actually talked about how this could be this middle-of-the-road discussion or example of the - that Antony had come up with that gave someone something that wasn't scary, educated, and led back to if they needed to or wanted to read more about the mark and provided a business model that (unintelligible)...

((Crosstalk))

Fadi Chehade: But are you okay that this is - and it's not...

((Crosstalk))

Jeff Eckhaus: (Unintelligible).

Fadi Chehade: Are you okay with that in Phase 2?

Jeff Eckhaus: (Unintelligible).

Fadi Chehade: If it's not going to be a good legal instrument, too.

Jeff Eckhaus: I'm okay that it solves the first part, because I don't know that it helps on the back end with the guys who are...

Fadi Chehade: Bad guys.

Jeff Eckhaus: ...the real bad guys.

Fadi Chehade: Okay. Can we switch to the bad guys? Are we done with the good guys for now?

Jeff Eckhaus: On the first part?

Fadi Chehade: Yes.

Jeff Eckhaus: With that notice? I think yes; that deals with the good guys and now you have to deal with the bad guys.

Fadi Chehade: So let me summarize what we said about it. So (Rhonda) will go now to get - this is after Phase 1, which we'll define. This is afterwards. After the rush and

everybody wins and did whatever they needed to do. 60 days; whatever we agree on.

It's now a year later. (Rhonda) goes to .whatever - .something and buys IBM - tries to buy IBM. Right before, as Jeff described it - right before she buys it, she has a generic notice that says, "Hey. Just letting you know this name you just picked matches something in the trademark clearinghouse." Admonitions. Very simple box. And then, "You can still buy or you can move forward."

She's not clicking anything. She's just buying, but the admonition is right in front of her. This is Phase 2. Will this take care of the good guys in your opinion? I think it does. (Unintelligible) kind of said he thinks it does. Can we agree on this? That this would stop a lot of the good guys? I think it would. I think it will.

I think it will stop - at least it will make my mother stop and think before she presses purchase. It won't scare her, but it will put her on notice and she might actually - what will happen unfortunately is that she'll call me. This is when my phone will ring. "Do I push or not push (unintelligible) to me?" And I'll say, "Mom, you know I should wait until I come home and look at it with you."

But that's good. In a way, that's good because I - or maybe she'll say, "Oh, you know, I have nothing to do with IBM. This is just for my fan club. I'm going to do it." What do you think?

Woman: I have a question. Is there going to be a link in that generic notice that takes her back to the reference? Because to go back to the donuts example, if I want to register donuts in some gTLD because I'm making wonderful donuts, and I

get a notice; if I can see what they're doing, I say, "Okay. That's not a problem for me."

So I think that that's an important part of - even of a generic notice, and I'm unclear on where we landed there.

Fadi Chehade: So this is an important nuance. Antony why don't you speak, and then I'll say something.

Antony Van Couvering: Yes. I think I can maybe propose something that - you know, split the baby in half again, which is a link, but not necessarily to any particular trademark record, but rather to a list of names that say, have the first three letters of that.

So it's not really saying this is the particular mark you may be infringing, but here's some marks that are - have the same characters that you're doing. And you know, you might want to browse these.

Woman: You know, the problem with that is if it's GE, you're going to get a list of hundreds, and hundreds, and hundreds of names, and that's not going to be helpful for the person who is, you know, an individual trying to do - make a small - do a small business. I actually think you do a greater service to link to what the actual mark in question is if there's enough context around what they need to be thinking about.

Fadi Chehade: Can the link be there to the actual mark? Can we put the link to the actual mark but leave it at that? In other words, not put - can we just put a link to the actual mark and leave it at that?

Jeff Eckhaus: But that's permanent claim.

Fadi Chehade: Because that's the current process is what you're saying?

Jeff Eckhaus: Right. With the exception of the one representation that they have to check a box or something and say, "I promise not to infringe." But essentially, it's the exact same thing.

Fadi Chehade: And so if we removed the requirement that they check something that they read, that they - it's still the same thing. It's just without the acknowledgment let's say - the legal acknowledgment that I read it and I understand what's there.

Jeff Eckhaus: It's - from almost every aspect, it's the same exact thing.

I mean if you're going to do that, you might as well do the same thing.

Fadi Chehade: (Katherine), I would suggest to you (Katherine) from GE, I think that - I know that if my unsuspecting parent looked at this notice and just read that I just hit on a match in a trademark clearinghouse, I think she will stop. I think she will either stop or she will think enough about it and say, "Oh. IBM. You know, what am I doing with this?" Or, she would say, "Oh, I'm getting IBM because it means something to me."

I think - and remember, this is not Phase 1. This is way past Phase 1. We're now a year and a half into this and she unsuspectingly goes through that. I think it's good that we give her a note and I think it will stop her. She will think about this before she does it.

And if she still does it, then we're getting into either she's silly or she's a bad person and we need to get to that in a minute. We haven't gotten to the bad person.

(Katherine), you kind of see what I'm saying a little bit?

(Katherine): I do absolutely see it, and with IBM it makes sense. But, there are a lot of marks that are trademarks that will be in the clearinghouse that are not as clear as IBM. And so if someone gets a notice that they can't register Apple for apple growers or apple pie makers because Apple's in the clearinghouse, they will not be able to understand necessarily the context, for people like your mother who might have a legitimate interest.

And I'm speaking again for my own company's interest really, but I think it doesn't give enough information and it will have a - the chilling impact that others have talked about. I don't understand why the - I mean, I don't understand why giving a link with additional information is so problematic.

Man: Two things, one - (unintelligible) the one is that it's the amount of work that needs to be done that's problematic. It's not a simple solution.

But the other thing is that I think you're saying sending that - giving - I keep - sorry Fadi, your mom is just - you know - that - if you shared that information and - let's - I want to be realistic about it. If you send somebody, Fadi's mom, whoever, somebody who doesn't know and they get a link to the trade - to the clearinghouse and it says something there and it says class -- I don't have no idea about what classes are -- class this, registered this, and it's this thing; do you think that information is going to solve it for somebody who's not fully aware of trademark law?

I mean I don't think that information about what the classes, when it was registered, and it's this kind of mark it's going to stop - is going to help that person and they're going to be like, "No I'm educated. Now I understand it."

Please, (Ben), help me out here.

(Ben): Can I just suggest we are probably looking at the wrong thing completely, because we're talking about exact matches in the trademark clearinghouse.

So if we address Point 1 in terms of blocking mechanisms, and I know I won't make myself popular here, this all becomes irrelevant because - well, (unintelligible) put stuff in the trademark clearinghouse essentially means you're probably going to go and register or participate in a launch of a TLD somewhere.

You can monitor for other matches and string matches with other provider that will provide a far better service than the trademark clearinghouse in terms of notification of someone registering a term under your string. So why don't we focus on Point 1 but we'll just - this will carry on going round and round in circles about being notified of exact matches. But the domain is registered in the first place, then it all becomes irrelevant.

Fadi Chehade: Go on.

Man: I mean, premise number one, we were talking kind of offline when you gave us that opportunity; that was the - I think what we clarified is that's the point we're trying to get away from is that we don't want to have every brand registered and every TLD at the second level. So it's - this is kind of why we're getting to the notice part is, is there a way to avoid a mass defensive

registration strategy by relying on something that educates people that avoids the need for the defensive?

Because the only reason people are applying defensively, again, isn't because they want to use it. It's because the - of the alternative. It's the going back and chasing them down and then (unintelligible) is calling leaving personal messages on my counsel's phone saying, "I was told I could do this. Why did you win the UDRP?"

(Ben): Yes. But you're not going to get notification of those registrations unless they're exact matches of your trademark. So the 3D in front of everything, 3D behind it, you're not going to get notification of that.

So you know - I mean - and listen, I'll put a notice up to that effect tomorrow. I mean, it serves our purpose as well. But whoever reads the terms and conditions? No one.

Man: Yes. Exactly.

Fadi Chehade: 27 pages every time you hit a button.

(Ben): Yes. So this is more about where we display it, and then that gets into dangerous territory where all of us start getting itchy.

But of course we'll display it. I don't mind doing that. I don't mind putting it in the terms and conditions, and I'll happily do that tomorrow. But will anyone else do it?

Man: So then can we...

Man: So this is great. So I always think it's just kind of like verification of WHOIS, for example. There's a way to solve it at the front end, and there's a way to address it at the back end. The claims is the only (unintelligible) at the back end because we're being told a lot that the front end is just a non-starter. Is there a way to address this at the front end?

To give someone - you know, we heard earlier in the side conversation that defensive registrations for donuts and (mind the machines), et cetera, is this much of their business. They don't care. It might be as much hassle to set up a sunrise as it is the benefit they get back. How do we set up a system where you don't have to deal with that hassle and there's an assurance or some comfort for brand owners that they don't have to engage in defensive registrations?

Because if you can solve that, a lot of these points all disappear. I think everyone here - raise a hand here - do people agree or are we just too tired to raise hand?

(Unintelligible) - I mean seriously, this is - the crux of all this discussion starts from how do we avoid mass defensive registrations that are useless for everyone both in the ecosystem and for the brand owner? If you do that, you knock out Points 1, possibly Points 2, possibly Point 5, and (unintelligible).

(Ben): So why don't we - I mean, why don't we look at it this way, then? There's obvious anxiety about looking at those points of implementation. There's further anxiety from your side about it being a PDP because it'll take too long and the horse would've bolted. But we actually checked with the applicants whether or not they'd be willing to implement something like this. Surely, that's the quickest way to find out how many people willing to offer a blocking mechanism and stick to it? And who aren't?

Man: (Donuts).

(Ben): Yes. So donuts are, but they're not - well, you know, they're one-third of the open ones. But, you know, you already know that people do it. I think it's the point about whether or not they'll stick to it and make sure that they do.

So - I mean, maybe ICANN can engage with the applicants in some way and ask them would they be prepared to implement this so it didn't go through a PDP. And if they are, would they be willing to sign something to do it?

Fadi Chehade: So leave the PDP bit out, and I think you pushed us in a new direction here with refocusing us on the blocking side.

And so James and then (Ann).

James Bladel: So just a quick comment. It sounds like, you know, all these years we should've maybe not focused on the trademark clearinghouse and focused a little more on a takedown clearinghouse or something that developed efficiencies on the back end of that because it seems like that's where those could've been something of benefit.

I was just thinking a little - a way to make the mass defensive registration strategy work more intelligently. And something like that would be you proceed with the trademark clearinghouse with some sort of a blocking approach.

And I think this goes back to your PKI model where if the brand-holder or the person who controls the entry in that clearinghouse wants to register that string, exact match, it can take that token to a registrar and the registrar will

prompt for that token to essentially say demonstrate that you are the individual that controls this record.

However, there could be a secondary path that says if you believe you have rights to this, and you do not have the token, then click through this agreement, and then that essentially would be - the scare tactic is show me that you - you know, demonstrate that you were the one who put this into the clearinghouse, or agree to this - these terms and you can proceed.

And I think - you know, it's almost like a forked path in the purchase path of the domain name.

Man: An I'll - sorry. I feel like I'm hijacking the link, but I'll defer to (Katherine) and (Jerry) who were on the working group for this, and this type of concept - and Sarah - this type of concept at some point did cycle through, right?

I mean quite literally, it's the comfort factor. It's how do I avoid registering while still knowing that if someone runs down the bad path - the bad guy, not (unintelligible), the bad guy, how is there a way to ensure that they were informed and they did it anyway, right?

So I pitch it to you guys. What do you guys think on that?

Man: Yes. No, I think that it did come up. We did talk about it and the concern was that it might not fly with the larger audience. So yes, I think that could work.

Man: Sorry. Can someone please clarify what "that" is?

Fadi Chehade: That's - where you?

Okay, I think it was (Ben) who just walked out who did the “that”, but okay, I'll let James do that again.

James Bladel: So, it's kind of creating a - you know, a blocking list at the front end with the trademarks - am I on the right track with this here?

Woman: Yes.

James Bladel: Yes. So the trademarks essentially that would be put in there, exact match, would be blocked effectively across all TLD's and all uses in all markets, which is what they don't want to do.

However, there is an alternative path if you don't have the token to continue with the registration. By affirmatively acknowledging that you were notified or something like - and that you acknowledge that you did not have the tokens, that you did not - you were not the person who put that...

Fadi Chehade: So I'm a bad guy and I go in to register (travelers.greed), I don't have a token because he's got the token. And so it pops up the screen. It says, “Listen, you know, you...”

Man: Just say I'm a bad guy. Say the more I believe that this doesn't (unintelligible)...

((Crosstalk))

Fadi Chehade: I believe that I have fair use here and I should have it.

Man: There's a lot of things that (unintelligible). First of all the tokens are only supposed to be used for sunrise, but let's say we get around that, right.

Fadi Chehade: Yes. We're now talking again back about sunrise, almost go back to Phase 1.

Man: So during a sunrise period, we're now saying that you can apply during sunrise if you have the token, or if you're going to agree to click on this agreement that all these...

Fadi Chehade: That's what was proposed.

Man: And I think that - I think sunrise still has to be restricted to just people with trademarks, otherwise it's pointless.

Fadi Chehade: So let's assume you're right. That you're saying...

Man: Happened after.

Fadi Chehade: Afterwards.

Man: All right.

So now what you're saying is every registrar somehow needs to have a way to - when a domain - when a name is being registered, figure out if that name is in the clearinghouse. And if that name is in the clearinghouse, display a certain agreement that must be agreed to. You just invented claims again.

Man: If I thought - you just invented - it's just claims. You just described claims.

Fadi Chehade: And what's wrong with that? and what's wrong with that, (Chris)? Hold on.

Man: But it supports claim processing.

Fadi Chehade: So that's what claims - yes. You just - that's claims, okay. And what's wrong with that, (Chris)? What if we did that?

Man: That's claims.

Fadi Chehade: Okay.

But what's wrong with doing that?

Man: Nothing's wrong with doing that for 60 days. If you do that perpetually, all you just did is you just made claims perpetual.

Fadi Chehade: And what's wrong with that?

Man: Well, okay.

Fadi Chehade: Oh, no. I mean, really. Because that's I think what James was suggesting was that. So I just - besides the fact that oh, my God, claims is now perpetual, what - I thought what James suggested was very thoughtful. He said, "If you have the token during sunrise period, you will get the name. If you don't have the token during sunrise period, you are saying you should not let them in because that's sunrise period. You don't have the token, you're out."

Man: Yes.

Fadi Chehade: Okay. We're past sunrise. We...

James Bladel: Yes. But I don't think that's exactly what I was saying, (Chris). Because, I was saying even if you did limit this to just sunrise...

Man: Yes?

James Bladel: I think what I'm hearing over here is that they don't want to cover all TLD's for all - you know, and that's overkill. They want this to be a little more intelligent and targeted to the TLD's where it makes sense.

Man: Yes.

James Bladel: So, we're essentially putting that ball back in the court of the registrant, which is saying you know, "These guys have cast a wide net. It's up to you, registrant, to (unintelligible) now with - to be that you are not applicable here or..."

Man: But, that's claims.

James Bladel: It is. But, why does that have to be perpetual?

Fadi Chehade: I'm so sorry. (Unintelligible) claims for 60 days, which is where we started.

Man: Yes. Which is what we started with.

Man: No. No. There's a difference between claims and a (unintelligible) claiming would not allow you to - you can register regardless. This is saying that you would have to agree to - sign to an agreement before you register. So it's a different kind of question.

Man: That's a claim.

James Bladel: Well it must be something that - because there's (unintelligible)...

Man: (Unintelligible).

Fadi Chehade: Antony.

Antony Van Couvering: Look. What I don't want is big scary notices that chase all my registrants away, okay.

Fadi Chehade: Yes.

Antony Van Couvering: If I am able to charge for this block with a reasonable fee...

Fadi Chehade: Sorry, Antony, can you hold that thought?

Antony Van Couvering: I can.

Fadi Chehade: Can we say goodbye to these people?

Antony Van Couvering: Goodbye people.

Fadi Chehade: All right. Thank you (J. Scott).

Man: Thank you.

Fadi Chehade: Thank you (Katherine). Appreciate it very much. Thanks.

Sorry about that. Okay.

Antony Van Couvering: No problem.

So here's the thing. If I am able to charge a reasonable amount for this semi-block if you will, such that it's not something that everyone can buy easily and block out my whole TLD so that it's pointless and useless. It's cost a reasonable amount of money, right, so it's not available to everyone.

Now when someone comes in to register something and they see that it's claimed by someone, all right...

Fadi Chehade: Yes.

Antony Van Couvering: All right. This is not claims in the sense that it's really easy to do. You just stick your thing in the trademark clearing house and it's free.

Fadi Chehade: Yes.

Antony Van Couvering: It's a cost to these guys.

But the other side is when someone comes to claim that and they say - you know, it either says you - this belongs to somebody else, or you think you have a fair use, click here, you know, that's fine by me because it's not going to overload my space.

Fadi Chehade: That's exactly what I think James suggested.

Antony Van Couvering: The trick...

Fadi Chehade: I think that's exactly what James suggested.

Antony Van Couvering: One of the keys here is first of all the pricing, and secondly the notice that they get. And if those are done properly, I think that's a workable solution for me.

Fadi Chehade: Yes. I think we're on to something guys, here, so let's keep drilling down deep on this one.

Man: But I think Antony - so here's a question to you, and I think what you're saying is you want to have a reasonable feeling that somebody is not going to block out all of the generic words in your TLD. So you want discretion, correct?

Antony Van Couvering: So what I'm saying is if a trademark owner cares enough about say Travelers, I'm looking at you, that they're willing to pay a fee that your average guy who just wants to scam a name is not willing pay, I'm not going to have all these name blocked out of my space because its just - I just go get my (unintelligible) registrations and do it across all TLD's. They have to come to my TLD because they are concerned about my TLD and they're going to pay a reasonable amount that not everyone's going to pay.

And still if someone comes in and said, "No. I have a fair use in this and I claim that fair use," and it goes through anyway, that's (unintelligible). I'm good with that.

((Crosstalk))

Man: So that is - I know in our application I've put that in. That is in the sort of blocking proposal. And I think we're in agreement that's not what they're okay with.

Man: As a registry, you want discretion. And on fair use and other things, that's not what they're saying - that's not what the proposal is.

Fadi Chehade: I'll get to Kathy in one second.

But, so is that true? Are you not going to pay is what I just heard?

I mean, speak for yourself. It's okay. We'll hear from...

Man: No. No. I'm not - I'd love to just walk through - I mean, just make sure that we're in agreement so I fully understand before I have to agree.

Man: Sure.

So you're Time Warner, right?

Man: Are you talking about sunrise period or post sunrise period?

Man: This works for both.

Man: For both. Okay.

Man: And you took - put in TWC, okay, for instance. Time Warner.

In the sunrise period, that gives you the exclusive right to apply, unless somebody else has a similar trademark, the same trademark.

Step 2, that morphs a little bit. Now instead of only you being able to do it, other people can as well as long as they click something that says, "Yes. I get

it. That's Time Warner's trademark, but I believe I have a legitimate exception to that.”

Man: And in fact, one, is that perpetual?

Man: Could be.

Man: Okay.

And then two, if they click through to this, “I think I'm okay with it,” is it - I mean, what language are they getting?

Man: They're getting language that - you know, they're going to get - and I mean, I think the language and the price are the key things here. Like, how much does it cost in the first place so that not everyone in the world comes in and does this.

But, the language is going to say something that - something along the lines of you know, Time Warner has a trademark. It covers these classes, you know, and so on and so forth, and this percent. I'm now stipulating that I'm not going to use this in a way that infringes on their trademark. I'm going to use it in a different way. It's either I'm going to criticize them because I hate them, or I'm doing something that is completely in a different space and whatever.

Man: And where does the - and what they click through, is that posted somewhere I can download? Does that come to the brand? Or, how does that...

Man: (Unintelligible). I would think you would get notice of that and what they clicked, and then they would get a copy in their email box and you're off to the races.

That's not going to prevent - in my opinion, that's not going to really depress my sales significantly because you're going to pay a decent amount of money to do that, so not everyone in the world's going to do that, and it's a legitimate trademark.

And as you say, I don't want to be - or pass it off to (unintelligible) dealing with the back office part of that. So, I'm okay with that solution.

Man: I mean, this is sounding very clear for the second time.

Man: Yes. Yes.

Man: What am I missing? Why are you still shaking your head?

Man: Well, I want to...

Man: Hey, (Chris), does this solve your question that we were coming back with having the data local?

(Chris): Is this still just claims?

Man: Like it doesn't matter. Like you can dress it up any way you want. You can change the content of the claims notice to say however you want to word it. But this is just claims. The only difference with this one now is that you've changed it from claims being every mark in the clearinghouse to only people that pay an excessive fee. Or well, I shouldn't say excessive. To only people that pay an extra fee...

Man: Yes.

Man: ...that have this claim.

Man: Exactly.

Fadi Chehade: But that's okay. That - I'm still not hearing - help me, (Chris), what is the issue? The fact that it's still the claim but with the twist that we charge people so we don't have everybody willy-nilly this, do this?

(Chris): So the fundamental issue with claims from the retail side, the effect that it has on the sales per se in terms of if could insert into the sales process a fork if you like in the process where different forms have to be displayed and clicked off. Regardless of what those forms say, different things have to be displayed.

Registrars have to go and develop these things.

Now if claims are (unintelligible) 60 days, they'll develop them a certain way, right. A throwaway way, or they'll come up with an offline process of dealing with it and so forth because they know that 24 months from now this will be done. They'll be out and they'll be back to their normal systems.

If claims turned into something that lasts perpetually, (unintelligible) and more expensive cost on them because now they're going to have to go and develop - build it into their process. He's building something on the other side of the balance sheet (unintelligible).

Man: Actually I'm not. It's actually...

((Crosstalk))

Man: (Unintelligible).

Man: ...I'm not. It's all on him, and I think that's (something) that ICANN can should consider.

All I'm saying is that although I agree with you, (Chris), this is not a difference in kind. It's a difference in degree. I think it makes a very big difference from the registry point of view about whether I'm really scaring off a lot of legitimate registrants.

Now I don't disagree that that puts a cost on you, but that's a different issue.

Man: I think that's what it is, so I - what (Chris) is saying is yes; for - just from a registrar point of view, it's that we still have this constant cost and the change in process. We're actually now receiving any of the fees to offset this. It's just also flowing to the registry and that is an issue.

Fadi Chehade: Listen. I mean we had those pockets. If you have (unintelligible), the attitude is (unintelligible). Somebody would bear that cost. You will back it down to the registrant. So let's not scream about extra costs. We have a million reasons why we all have extra costs in our business, and we (unintelligible) you pass the costs.

So what we all need to be aware of is this happens. We're making the cost of this to the registrant at the end of the day potentially more expensive. That's going to happen. We have no choice.

Man: But - and I'd be remiss if I didn't circle you back to the legacy issue and tell you that we don't want to create such costs that my name has not gotten more expensive at the .com.

Fadi Chehade: Yes. It's - so that to me is a more substantive issue, frankly, than saying it adds cost. Well of course, things add cost. We do policies at ICANN all the time unfortunately that add costs to you, but you build your - this model adjust for this.

I'm more worried about what you said, right.

Man: The more reason to have that dialog Fadi.

Fadi Chehade: Yes.

Man: With the (unintelligible).

Fadi Chehade: Okay.

Kathy has been waiting very patiently. We really need to give her the floor. And it's very late in New York and she's still with us, so Kathy, go ahead please.

Kathy Kleinman: Yes, it is very late. And so I'm trying to figure out where the bouncing ball is. I've heard a lot about blocking. Blocking is of course something that was raised a lot of over the years and deep concerns about that.

Now I'm - are we at a perpetual trademark claims notice, but instead of being for free it costs? And if so, all of the concerns about perpetual trademark claims notices, and that ongoing legal liability for people are raised. I don't - I have a lot of concerns about what Antony said. I mean, a lot of concerns out here in trying to figure - in trying to follow the bouncing ball. Thanks.

Fadi Chehade: Thank you, Kathy.

Fabricio and then I need to stop and then we need to assess where we are and we're going to go from here. Yes.

Fabricio Vayra: So to address Kathy's concern - well, first Antony for proposing this.

To address Kathy's concern, I guess let's always look at the alternative. And the alternative is you're never going to have access to time, life, money, fortune, people, et cetera, because we'll just have them at sunrise and be dissatisfied about it.

And then to answer your question, which I never did, as the old Caesars used to say, (unintelligible).

Fadi Chehade: Okay.

Fabricio Vayra: So yes, I think it's good.

Fadi Chehade: Okay.

So it seems like we're getting somewhere with Antony's proposal as a potential solution. So I know he's backed up and ready to fly out. Can I ask you to be very gracious and for the third time, walk through your proposal.

And, I would like us to listen very carefully to what he's suggesting. And if it makes sense, we should be starting to move towards closure on this. And then, I'll come back very quickly to the other points.

He's making a proposal that (unintelligible) happening -- I'm just reminding everybody -- when it was brought back to the table that maybe what would solve everything, as Fabricio said, is some mechanism to deal with the block.

And then you came up with that. One third time. This is third time you're doing it, so...

Antony Van Couvering: And correct. You're...

Fadi Chehade: And there might be a next - sorry.

Man: I'd just like to inject myself into this to slow you down so that I can actually write - exactly write. So if you're okay with the peanut gallery sort of chiming in and saying, "Whoa. Hold on. Do it again," that'd be great.

Antony Van Couvering: So realize this is of course half-baked, but it starts from the - my concern - what I don't want to have happen is that there's some kind of notice thrown up that confuses people and it gets them to abandon their legitimate registrations.

I'm also concerned, and I don't want to have happen some kind of blocking mechanism that is so readily available that given the fact that there are trademarks for virtually any word that you can think of somewhere in some jurisdiction that I don't just end up with selling a bunch of blocks and never actually following through with my business of being a registry.

So what can we do about that?

Well, I think that the trademark clearinghouse holds some of the answers. If a mark is deposited in the clearinghouse, call it Time Warner, they will receive

a token that allows them to register that name during the sunrise. That's what we have already and that's good.

What I'm proposing is that post-sunrise they still have that token, but what happens - and they - if they haven't registered the name already, and someone searches - say on Time Warner, they would receive a notice that says, "This name has been - is - it's got a defensive," it'd say, "I'm sorry. It has the - is a trademark of Time Warner." It doesn't mean that you can't register this. It means that they have certain rights in this name that you cannot violate. Here's some of those rights.

"If you think that you still qualify, please click," go and register the name. And if they do, they're registered.

At that point, Time Warner gets a notice saying someone registered this name and they, you know, agreed to this thing and now it's up to them to defend their mark as they see fit or not.

Woman: Fadi, may I?

This is a perpetual trademark claims with all of the chilling effects, all the legal liability, and everything that Robin and I have been raising, and others, for the last two, three, four, or five hours. So it sounds nice when you say it, but that's exactly what it is. A perpetual trademark claim with all the liability as you go through and click that, which was intended for the launch - the early launch period. But, not as an ongoing hurdle that my children or Fadi's mother would have to go through.

And, all the generic marks, all of the ambiguities, all of the gray areas; no, we - that's a huge liability to impose on the registrant population in perpetuity,

not to mention the cost to registrars and registries. I think we're back where we were. I don't see how this is any different.

Fadi Chehade: So we have a registrar and James, so Antony and James have suggested the solution, right?

So James, please clarify what you said before.

James Bladel: No. That is the proposal we're discussing. There's a lot of detail (unintelligible)...

((Crosstalk))

Fadi Chehade: Understood. Understood.

James Bladel: We're just spitballing here, but...

Fadi Chehade: We're at 30,000 feet still, but high level...

James Bladel: I mean, there's still a question of whether this is a sunrise function or a post-sunrise function. I think that's a legitimate concern.

Fadi Chehade: Fair enough.

And what we agreed is at least during sunrise, we would only let the legitimate owners do it, as (Chris) was saying.

Post-sunrise, what Antony's suggesting, is we still allow these people to get it, but we give them a note, and it's the same note as we've discussed all along, right.

But, you want to make sure - the twist you have Antony, which you're the only one who came up with - so far with, is that not everyone will have these. They have - not every trademark holder will stop everybody, and they won't see these claims notices except from people who paid some fee. That's the twist you said.

So let's say Travelers say, "I'm not going to pay fees for these 500 trademarks I own, but for these 10 I'm going to pay an extra fee so that if somebody after sunrise still wants to get at this important subset, I'm willing to pay a little more, but show them the notes." I think that's your proposal. Am I understanding?

Antony Van Couvering: Yes, absolutely.

And I'd share with the registrars if that came to that - I mean, I'm trying to buy some fees here.

Fadi Chehade: Yes. Okay.

Man: So a quick question. So what you're saying, and I just -- this is a clarifying question -- is that if somebody puts their mark in the clearinghouse and it - and they don't want it in sunrise, for them to participate in claims beyond the 60 days, they would have to pay an additional fee to have that.

I just want to be clear.

Fadi Chehade: Yes, that's what he's been suggesting all along guys.

Man: Just want to clarify that, because - yes, because it...

Fadi Chehade: And if he pays that extra fee, the part we haven't agreed on is where this money goes. I mean, maybe that money should be shared somehow down the line so that people who have extra costs also cover them. But that's to be decided. Leave the cost thing aside guys.

Man: So just to be clear, operationally, and implementation-wise, this is just perpetual claims.

Fadi Chehade: It is.

Man: All you're doing is reducing the number of trademarks included in a perpetual claim.

Fadi Chehade: Correct.

Man: Okay.

Fadi Chehade: That is exactly what was proposed. That the number will be in my opinion immensely smaller...

Man: Yes.

Fadi Chehade: ...because not everybody will go pay the extra money.

Man: That's right. But all the operational extra to be done.

Fadi Chehade: Yes.

Man: But I fail to see how this addresses any of the operational concerns for ongoing claims; the thing that we've been arguing about for the last five hours.

Fadi Chehade: But I did hear James say very clearly much earlier that the real costs -- this is like three hours, five hours earlier -- that the real costs are not acknowledging from the (patient) costs. The real cost is in people picking up the phone and calling your expensive humans to get answers.

Now I think that if we reduce these costs by limiting this to those who are willing to pay something, which we will agree together where that something will go, they'll pay something - some fee, and that fee will define that their limited names will show up.

Then, I think - again, leaving aside the technical costs, which you're more aware of than anyone, the support costs will be limited accordingly and we'll have less people doing this.

And remember, these are not my mother. The people who will click through all of this are people who are intending to get that name, right, and they won't call your support to be honest. These guys won't call your support.

Man: No.

And I'm - again, proceeding cautiously here...

Fadi Chehade: Yes.

James Bladel: I'm trying to bridge differences.

Fadi Chehade: I appreciate that, James.

James Bladel: (Chris) is trying to paint me into corners.

So - but the key difference I think, and it one, and it's very - it's nuanced, but one of the key differences is really going to be what is that notification saying? Is that driving support costs, or is that encouraging people to say, "Hey. You know, you may have rights to this. Go ahead and register anyway."

You know, and I think that that is a - you know, that is a key point of inflection between that and the permanent claim system, which - where the permanent claim says, "No. This name's taken. Someone has it. You're doing something bad right now. Stop. Turn back."

Fadi Chehade: Yes.

James Bladel: The other approach is more along the lines of you know...

Man: Information.

Fadi Chehade: Information.

James Bladel: Information...

Fadi Chehade: Education.

James Bladel: ...as opposed to...

Man: Completely agree. Completely agree.

Fadi Chehade: Okay.

So...

((Crosstalk))

Man: (Unintelligible) of a notice, right?

Fadi Chehade: Yes.

Man: Operationally, it's the same (unintelligible) business.

Fadi Chehade: Exactly.

((Crosstalk))

Man: The number one and number two here, are there going to be the two people biggest effected by it. So if you two say you're cool with all that operational cost, then I'll shut up. I don't care.

Man: Yes. So that's one...

Fadi Chehade: Okay. So guys, we are close to a solution here. I know everyone wants to talk and I have ten names.

((Crosstalk))

Man: (Unintelligible).

Jeff Eckhaus: No because I think...

Fadi Chehade: Okay, Jeff.

Jeff Eckhaus: One of the things - so James has said that for him it's a people cost. I'll say for me that it is an operational cost. If I know I'm going to build two different systems. If it's a 60 day system or if it's a permanent system, there is no doubt - even though you say it's rolling and it's going to go to different things; I'm not going to choose to do every single TLD.

So if I choose to only offer four, and it's only going to be on a short-term basis, I'm going to do in an offline different model, and I'm going to do (unintelligible)...

((Crosstalk))

Fadi Chehade: Jeff, let me be candid, and (Chris) knows - he and I had these chats before.

Jeff Eckhaus: Well wait, one last thing. Wait (unintelligible)...

((Crosstalk))

Fadi Chehade: No, let me (unintelligible)...

((Crosstalk))

Jeff Eckhaus: Can I just add one last thing to that?

Fadi Chehade: Okay.

Jeff Eckhaus: Is that here's the other part is that if I also have to do it, and if I said - I know you're saying you're going to build it anyway, but it adds a lot more complexity and cost if I have to bifurcate it and say, "This is for new TLD's. This is for existing."

Yes, the costs go down and it gets a lot simpler if it's going across all TLD's.

Fadi Chehade: Understood. So I got the point about the old TLD. I'm there, but we agreed - baseline rules, let's leave this for a moment on the side.

Look. We've all built - many of us around this table built it...

Alan Greenberg: Anyone still here?

Hello?

Woman: I'm still here.

Alan, did we get disconnected?

Alan Greenberg: We seem to have.

Coordinator: No. the conference on the ICANN office (unintelligible) disconnected. I'll be connecting right back.

Testing?

Okay. We're back on the call.

Kathy Kleinman: Thank you. Kathy's here.

Coordinator: And it looks like they're having a short pizza break.

Kathy Kleinman: Thanks. Me too.

Fadi Chehade: We're back online. We're just going to give a minute to the very hungry people here who are grabbing some pizza. So sorry Kathy, and Alan, and everybody still on the line. We're just allowing people a minute, but they're not taking a break. They're coming back to sit down.

Man: Which smoker do you want?

Smokey's Mountain 8-1/2 - 18-1/2 and a Smokey Mountain 2-1/2.

Woman: (Unintelligible).

Man: This is (unintelligible), right.

Woman: (Unintelligible). They said you wanted it?

Man: (Unintelligible).

Woman: (Unintelligible).

Man: Where does the smoke come from? Where does the smoke come from?

Woman: The circle.

Man: There's a fire somewhere.

Woman: (Unintelligible).

((Crosstalk))

Man: And you don't get different smoke from different (unintelligible)?

Woman: (Unintelligible).

Woman: Are we still online?

Man: Yes. You are still on the line.

Fadi Chehade: Okay. (Unintelligible) all sit down so we can restart. And I will declare that I finally succumbed and I have a glass of wine. (Unintelligible) much of what I say from this point forward.

Man: How do we get our glasses?

Fadi Chehade: I must get everybody back on site here. We have agreed on the following. We're going to close on the points that we've discussed so far, which are three out of the five, and then we're going to all stop and think what we're going to still do tonight or tomorrow. But, let's close on these three points because I do believe we have made some major headway in the last couple of hours.

Well, I do think at 30,000 feet we've made some headway, but I want to tell you something that just happened on the wine line.

On the wine line we just - (Vickie), who has a lot of experience with this from Deloitte, told us that she knows for a fact from her experience that when you tell bad people that there is a trademark against this match, and you give them

all the classes, that they go immediately and register (unintelligible) and start causing problems.

So, there's actually a counter-benefit to - after a period of time to keep telling the bad guys, "Hey. Let's feed you some information where you can go and get some," - it helps them, okay.

So - and I think we shared this with (Kristina), and I want to share it with the other folks on the IP side; this is real, I mean, this is coming from experience. So there is a balance. I know we want to tell everybody everything, but frankly, it might come back and bite us more because the bad guys will have now a very nice cheap way to find out how to go and do bad things.

So I come back to a balanced approach. I think here's where I am. And I may be wrong. And I'm not trying to make friends here. I'm trying to solve the problem. But I feel that during the sunrise period we're all in synch. We may be arguing it's 60 days, it's 90 day. But look, we're in synch. During a certain period of time, a trademark holder will be able to basically secure their mark, right. We're all in synch there. No issues.

It's after that period where today we have nothing pretty much, right, and you guys came to the table asking for perpetual everything. These guys have been listening now for many hours and they have come back and said, look - and this is what Antony before he left said. And I think I heard on this side, and I don't want to put words in anybody's mouth, but we said, "Yes. We're willing to show something."

Kathy and Robin - did Robin leave?

Oh, Robin had to leave. Okay, Kathy's still with us though, right?

Yes, Kathy's still here.

So Robin and Kathy have the - still have on the table their concern that perpetual things may not be fair to people, right? May scare them. May chill them. May make them - so I'm acknowledging this. But I - and I'm acknowledging the comment that was just made by Deloitte which I think resonates on this side I believe that...

Look. If we give them too much information in the interest of telling them, you know, all the classes they're breaking, we're letting the bad guys -- now this is way past sunrise -- who are sitting there trying to get all these names, we're giving them all the data they need to come and bite you in a different way.

The good guys, my mother, bring her back into the picture - she doesn't need all the classes. She won't understand what that means anyway. She - you know, it won't matter if you tell her - let me - or you just tell her, "Listen. Before you push this button, be aware that there is a claim. There's an exact match to what you're doing.

So I'm falling on the side of claims notice happen -- I'm not going to say perpetually -- for a period of time after sunrise, but happening in a - with lighter text. Lighter text that goes in the middle between telling the bad guys too much so that they can go and hurt the IP owners, and telling the good guys too much so that they walk away from doing business with you. Somewhere in the middle. Something that's reasonable.

And, I also don't think it should be perpetual, by the way, because - I mean, (Chris), if you recall right before the break, you were saying, "If I'm building

a system for 60 days, 90 days, 100 days, you know, it's something. If I'm building something perpetual, my engineering team is thinking very differently now. My costs are different. My approach is different.”

Now there may be again something in between here. We're not talking about 60 days. We're not talking about ten years. Maybe there is something that says, “Look, there is a Period 1 called sunrise where we're going to do X. And, there is a Period 2 called Sunrise B.” You had used that term earlier; Sunrise A, Sunrise B. “And during that Sunrise B we do something lighter in the text, but still stopping the good guys like my mother and giving you some claim that the bad guys saw the claim.” Which is kind of what James was describing when he said, “Show them this. You still don't have the token and you want to do it. Listen, you can do it but you're in it.”

Are we - is anyone violently - and I'm going to ask Kathy to hold because I know Kathy still has an issue with anything being shown, and I'll listen to her one more time. But before we go to you Kathy, do the rest of the people here feel that a Sunrise A, Sunrise B, where Sunrise A is everything we discussed today; Sunrise B is a limited time period, not perpetual, that was a lighter notice that does what I said earlier (unintelligible). Who doesn't agree - who has a vehement issue with this at this level.

You said many times Jeff Eckhaus, this is a 30,000 level description. We have to get to the detail.

Jeff Eckhaus: What a fine question. The sunrise - just so to be clear. When you say Sunrise B, but general registrations and other things would be going on at that time?

Fadi Chehade: Yes.

Jeff Eckhaus: Well, okay. So that's not a sunrise.

Fadi Chehade: No. No. So I shouldn't call it sunrise.

Jeff Eckhaus: Just want to be clear. Yes.

Fadi Chehade: Let's call it sunrise and - okay. Even before that. So we haven't define it, but it's lighter, less intrusive, less scary, maybe even - but not going all the way to telling them the million claims and having them also hurt you in a different way.

Please (John).

(John): Sorry. One issue we never talked about, well we haven't yet but we need to, is I think there's something like 40,000, 50,000 resellers that sell domain names. Everyone from Yahoo to - you know, everyone else, right.

So...

Fadi Chehade: And mom and pop, you know.

(John): Exactly.

So that was the other reason why we constructed a 60 day or an initial launch of claims because we - you know, we have a reseller issue where every reseller would have to build this. Whereas if you have the 60 day land rush, it's again a process that is more - less...

Fadi Chehade: Onerous, okay.

(John): Onerous I guess, and it's more of an application for that, and therefore the registry would have a bit easier time to give notices during that 60 day period to anyone who's applying to buy...

Fadi Chehade: Fair enough. (John), the large resellers, the Yahoo's of the world, I think that - I'm less worried about them. I'm more thinking about the (unintelligible)...

((Crosstalk))

(John): From the other 49,000. Right.

Fadi Chehade: Tens of thousands of little guys.

Now between you and me, these little guys, if they (unintelligible) for the sunrise...

(John): But they won't.

Man: They won't. They won't.

(John): They won't.

Fadi Chehade: They won't. So these guys are the bad group. They'll (unintelligible) sunrise.

(John): Yes, they won't sell it yet. They'll be competition through other resellers and through other registrars, but they just won't do it.

So there's a reseller issue, and that's one of the reasons why we recommended originally that it's just a prelaunch RPM.

Second issue is based on the last two hours, there's a lot of issues and a lot of study that should go into this, right? We're trying to make policy on the fly and this is the whole point of a PDP process is to get the research, do the study, understand the issue, and then make a policy recommendation that would apply to everyone.

Fadi Chehade: I couldn't agree more. But again, I'm trying to keep out how we're going to get this done. I'm trying to stay on the right thing. And I believe the one issue you raise which I hadn't thought about is the resellers, so let's talk about this for a minute because it's very important.

(John): But I just want to raise the issue that you're - I think to some extent approaching it backwards in that the PDP is not necessarily a means to an end. We don't come up with the end and then try to justify it with however we're going to do it.

Part of the PDP process is to understand the issue, study the issue, understand the cost and inputs to the issue, the impacts of the issue, and then make a policy recommendation. Not make a policy recommendation and then try to justify it after.

Fadi Chehade: Yes.

But in fairness, (John), we started this effort this afternoon with the premise of - look. We have gTLD's to launch in six months. We have legitimate concerns of bad guys and good guys operating in that market. We're going to have the world on our back if this thing ends up being a bad bonanza. We don't even know what could hit us from governments, from the world, from lawsuits, from - we don't know.

So I think right now, all we're saying - and I'm very cautious with this because I've been warned by Robin and Kathy to think carefully before I say this. But - and by many of you in fact. But, I do believe that the request that's being made by the brand and IP owners is that we give notice for a period of time longer than the sunrise. It is good for the consumer. It's good for the public interest.

The bad guys will do the bad things anyway, but - and I know that Kathy will argue the opposite of what I'm saying here, but I do believe this is good for the good (unintelligible) consumer. It will help, and it will make our case with the people who come on ICANN's case and your case, and everybody's case - it will make our point stronger. We took care of the public interest. We said, "Listen. We'll let people know if they're trampling on people's rights. We won't stop them. We won't make in onerous. We won't scare them."

Now how do we go do this, (John)? If we go and end up saying, "Look. It's a good idea. We all agree that this is the right thing to do, but listen. There are a million questions and the PDP process is the best way to nail these questions and the value - and the plusses and minus." Then, maybe that's what we will do, but I'm not there yet.

I'm first trying to say is this the right thing to do? And I'm now of the objective opinion, not being part of any of your businesses, that having the second period post-sunrise where we still show good people a notice and bad people a notice that is a limited, more reasonable notice that does not slow down your workflow or your (unintelligible) is a good thing - is a good thing.

I don't know what is in that notice. We'll need to agree. We're just - but it's a good thing. It's not a bad thing. It won't hurt my mom. It will help her. And

the bad guy at least will be on record, as James said, to have pushed the button and said, "I don't care. I'm going for it."

And without too much detail, because the last thing we need is too much detail - too much detail will hurt you (unintelligible). I think it will. I think the bad guys will get that detail and go after you. It's a balance.

(John): It's a balance.

Fadi Chehade: It's a balance. That's right.

Okay, (Chris)?

(Chris): I want to ask IP people a couple of questions and just get some quick answers because that's framing what I'm about to put forward.

If I understand correctly, the whole point of claims is because you don't have a way of defensively blocking the registrations of marks. Is that correct?

Man: It's because you want to avoid having the defense of (unintelligible)...

(Chris): So if a mechanism existed whereby you could block the registration of a string across all TLD's, you could eliminate claims.

Man: Well that - I think that's what the limited defensive (unintelligible)...

(Chris): Yes. Okay.

So if we solved that problem, we could throw claims out the window and not have to worry about it. Is that right?

Woman: You - I mean you could, but just so you understand kind of the scope of what you're talking about, yes.

(Chris): Okay.

So what if there was a mechanism by which when you put your mark in the clearinghouse you were able to select that mark to say, "This mark should be blocked across all the TLD's," as (unintelligible) proposal here.

Now the pushback that you got from that earlier today was from the people here talking about people having marks across - or in jurisdictions that allow them to get marks for things they shouldn't necessarily get marks for, and we don't want to have TLD's that are just big black holes because - so what if the costs for doing that - for ticking that box when you put your mark in your clearinghouse was significantly higher? Let's call it in the order of \$100,000.

Now let's say that \$100,000 cost enabled you to block all your marks? So it wasn't \$100,000 per mark, but it was \$100,000 for - and maybe there's a sliding scale. Maybe \$100,000 for your first 1000 marks, and then...

Fadi Chegade: A high cost. Right. It's very high cost.

(Chris): A high cost that we can figure out, right?

Basically, making it a barrier to those other people that potentially have those marks that they shouldn't necessarily have the rights. Or the people that sort of - the small businesses and stuff that we were talking about earlier today, right?

So they can't create the black hole in our TLD because it's too expensive for them to do it. But you guys that have this legitimate concern and have the money can do that.

And then, we come up with a mechanism -- I'm not really sure how it would work -- but where the fees that you pay for that are distributed to the registries to compensate them for creating those smaller black holes that you guys create. What would be that number that you would see as that's a fair number for us to pay for us...

(John): Whoa. We cannot talk about that. We cannot talk about pricing in with a group of competitors. We cannot go there.

Fadi Chehade: Yes. Thank you, (John). I was just - stay out of the price.

Man: Who's competing with who here? There's one trademark clearinghouse?

Fadi Chehade: Absolutely we cannot talk about (unintelligible). Right now we (unintelligible) - ICANN has (unintelligible).

I think we make - it's a very interesting proposal. Let's follow it.

(Chris): Okay.

Fadi Chehade: You were saying what if there's a huge fee, huge (unintelligible), significant fee so that you would pay once - say (Jerry), I'm going to ask you this question. And Travelers can block Travelers' marks across all TLD's. All at once. Boom. Done.

Of course, you know, it depends on the fee. It's a big fee. We're not talking about two grand.

(Jerry): Right. Right.

Fadi Chehade: But, we're talking about a fee.

(Jerry): Depends on the fee. It depends on how much it is.

(Unintelligible).

Fadi Chehade: Well, Kathy should be screaming at this point, if she's not.

Kathy Kleinman: Yes.

Fadi Chehade: Okay. Because if she's not, we should have a new sign next to her name that is screaming.

Okay, let's hear HSBC, Jeff, and then (Kristina).

(Martin)?

(Martin): Thank you.

Just to be careful here, because it's not always just brand owners, and maybe some brand owners have deep pockets and are able to pay for this. But you know, across the ecosystem here, there's NGO's and others that suffer from their terms being used and abused and will not have the ability to pay for something like that.

And also, you know, from my perspective, I would - they're towards reasonable costs, but on the proviso of what was just said beforehand.

Fadi Chehade: And this is not very different in my opinion from what Antony proposed. Because what (Chris) is talking about is post the normal sunrise period, which we've all agreed on, there will be a mechanism for you to pay a fee. Antony didn't call it a huge fee, but a fee that would allow you to either block or to ensure that a very ominous notice is shown. That's what Antony proposed by the way. That there's still a fee for you to do that after.

He I think was pulling it even further saying pay a big fee once and we're done.

Man: (GPML)? Isn't that the exact - I mean but what you're proposing, (Chris), is the LD - the limited defensive registration, which is exactly what the working group said. I mean, it was - one of the solutions to defensive registrations was to do across-the-board a fee that's lower than having to do each one, but still high enough to compensate people, right, and then it's not in use. So it's almost like a XXX version across everything.

(Chris): Right. So I'm not necessarily saying that the fee would be lower than what it would cost to block - because I'm bundling (unintelligible) - well, I guess it would be lower than what it would cost to register all of your marks in all the TLD's. So yes. But...

Fadi Chehade: Okay. Let's move to Kathy because I'm sure she's (unintelligible) if not screaming. We can hear from New Jersey by now. And then we'll go to (Brett), and then we'll go around - and (Kristina).

Okay, go.

Kathy Kleinman: This is Kathy. I'm sure the entire continent can hear me screaming at this point, right, because we've just - first, the blocking was already part of a massive discussion that took place in Sydney and others. It was part of the IRT and it didn't go forward.

And the reason why is a trademark is not a string of letters, guys. I'm an old programmer. I know how to match strings.

But what we're creating is a beautiful new system of new gTLD's. Remember, there's an artificial scarcity in .com, and some of us fervently believe that that Delta Faucets, and Delta Airlines, and Delta the fraternity, and Delta the Change, the mathematics society that's using it as the word Change, and Delta, the girl's name, all should have their place in the new gTLD system.

And the fact there's a trademark is not a string of letters. It is bound to its category of goods and services. I - even if it's famous, it's still bound somewhat to that because Time, Life, people, these are all registered dozens of times. I can send you all the printouts, and that's just in the US trademark office.

I'm sitting with my (unintelligible) here on trademark law. Trademark law - first, it's bound to commercial use and not non-commercial use. And remember, a lot of these new gTLD's are looking at non-commercial use as well.

And so this idea of blocking across all string - if you want to - I know we heard concerns from large business owners, if you want to see a (SOPA)-like

battle, go down this path, guys, because this is not - the world is going to wonder how we ever distorted trademark law so deeply. Thanks.

Fadi Chehade: Thanks, Kathy, and I think we hear you loud and clear. We'll go to (Brett), then (Kristina), then Alan.

(Brett): I want to go back to what happens after the 60 day publication and if we take forever off the table, and I heard it suggested that that was going to come off the table, which is a much easier problem to solve.

You know, still there's an infinite amount of time between Day 60 and forever, but there's a lot of middle ground there. I mean if the proposal was let's increase it by 50%, from 60 to 90 days, I think that can be done in a blink. And, I don't think anyone's going to have any - there's going to be any friction around that.

So you know, if we can talk about maybe a reasonable extension that accommodates people's concerns, I don't see that as a difficult issue to solve.

Fadi Chehade: That's very helpful, (Brett), and I sensed this earlier when I suggested that we should perpetually just create all kinds of things in people's heads about (unintelligible) and operations, and I don't think that's what we necessarily need. But, we need some more protection after the 60 days.

Let's talk more in a minute about timing, but I appreciate your opening on that.

I go next to (Kristina).

(Kristina): Sure. A couple things. (Chris), picking up on your idea, I don't want to talk pricing, but I think you know it wouldn't be that hard if you really wanted to sit down and try and figure out what kind of - what the perfect range would be where you'd take into account on a per-TLD sunrise basis per mark, add in administrative costs of paralegals having to get things in the clearinghouse and so on, and so forth, you could figure that out without too much difficulty.

Frankly, I would kind of encourage you to do that.

With regards to the perpetual claims, and I just want to clarify it - and I apologize if we weren't clear earlier, but when we were talking about our various points, it was certainly - although we started with the idea that it would be indefinite, what we are actually proposing is that it continue until one year after the 75th non-IDN gTLD is launched.

Now by my not great math, I'm thinking that's maybe about you know a year and some months. Can we pull it back? I think we would have some concerns about that, but I think we - what we want to make sure is that we find that right amount of time after 60 days where it's long enough to discourage the folks who will just kind of sit out and watch the calendar.

And if that's 180 days, I think - you know, I think we're open to that. But - and we certainly recognize that perpetual is kind of a non-starter, and that's why we worked so hard to try and come up with something that we thought had some basis.

Fadi Chehade: That's very helpful, (Kristina). Thank you.

I'll go to Alan - oh, sorry.

Man: All right. But with all the respect, the text that is here says indefinite period.

Fadi Chehade: (Unintelligible). But when they started today, frankly, they backed off that. But, we didn't change the text because we agreed we'll leave the text as is. They were supposed to - if we give them any time tonight to give us the new text, but they had already earlier today started time limiting this. Of course, you know, is it seven years, or is it 180 days? We have to agree. But they have already gotten off the perpetual.

Alan, you go next, and then I'm going to declare that we're going to have to agree on some common ground and then - okay.

Alan Greenberg: All right.

I put my hand up largely for the same things as Kathy talked about. But, I think any solution we have has got to allow for fair use. Has got to recognize multiple trademarks. And for that matter, if it's a real claims type notice, has to recognize that we're not just talking about someone getting a claim for Time Warner and it's one. For many names, they're going to get perhaps hundreds of hits.

Man: Just a little bit...

Alan Greenberg: Any of the solutions have to factor in that kind of reality. Thank you.

Fadi Chehade: I - frankly, I did not catch what Alan said. If someone did you can repeat it, otherwise I'm going to ask him to do it again.

Okay. Alan, if you could try again, but just please speak slower a little bit.

Alan Greenberg: I will speak slower. Are you hearing me now?

Fadi Chehade: Yes, we can.

Alan Greenberg: Okay.

I was just reiterating partly of what Kathy said that any solution has to allow for fair use, has to allow for - recognizing that many trademarks - or for many marks, there are many different trademarks registered under - for the same string of letters. And if we're - when and if we're talking about real trademark claims, as we were in the original trademark claim format, we have to remember that for any given generic word, we may well have not just Time Warner showing up, but perhaps hundreds of hits around the world.

And, we just need to remember that - you know, we need to master reality and we can't only talk about the simple cases. Thank you.

Fadi Chehade: Okay, Alan, thanks.

Go ahead if you must, Fabricio, please.

No go ahead. Go ahead. Because I'm about to get on the whiteboard and draw something.

Fabricio Vayra: So it sounds like - just to summarize where we are and hopefully bring - so you know, obviously we have sunrise. There's the proposal (Chris) just brought up that I think mirrors one of the proposals we had actually put up almost identically.

And then, the only question really - and then the URS, we've come to this kind of let's see what the RFI comes up with and weigh it on its merits and whether other improvements need to be done.

So the only question you have left is the claims service. And the one thing I keep trying to poke (Chris) to bring up that we keep talking offline about is, you know, there are two different classes of people when it comes to claims service. There are brand owners who really don't want them. They don't want notices. They feel like it puts a burden and duty on, just like Robin was saying that the person who receives that notice has a duty; their brand owner should feel like it is an overly burdensome duty to get all these notices.

So, you're going to get a huge camp of people who don't want notices at all beyond 60 days, or 30 days, or at all, right, because they think it's a worthless endeavor.

But for those who do think it's worthwhile and do want something more robust, something I've proposed to (Chris) and others, and (Kurt) a while back during Toronto is this; for those who want that service, this might solve just Jeff Eckhaus' question about cost. What if those people are willing to pay for that perpetual, more robust claims service that also offers them a lot service?

And because we have decided in Brussels that it's a decentralized model of data, the registrars could directly key off of the decentralized data, offer that claims-plus, or whatever you want to call it, for a fee and the registrars could get paid directly for that?

Fadi Chehade: Fair enough.

Jeff, you get the last comment.

Jeff Eckhaus: So what if we throw out a proposal saying, "Fine. We'll extend claims on exact matches to something like six months," and then drop all the other stuff of the exact match-plus, all this other variation? What if we were able to go back to our communities and sell something like that? Would that solve the issues with the plus other marks? Would that drop? Or, is this just step one and now you want these other things?

So what if I threw that out concretely?

Fadi Chehade: Jeff just made a new proposal. He for the first time used a date. He said six months.

Woman: So I want to make sure I heard you correctly, because I'm actually frantically trying to scrub documents to send everybody.

So in exchange for extending the duration of the trademark claims, that we would give up our request for claims to extend to variants previously determined to have been abusively registered for use. Is that right?

Jeff Eckhaus: Now I'm not saying it's exchange. I'm just saying that it - can we just walk away if we come with the proposal or we extend claims for an additional - that was two months initially, so now it's just six months and that's it. That we'd walk away from all the other proposals.

It's not an exchange. It's not let's - sorry. It's not an exchange. It's not let's make a deal. It's just I want to - we want to put this to bed and we think we can sell it.

Or, are you saying now it's got to be six months plus blocking, plus all these additional marks? Are we just on Step 1 now here? So I mean I think some of us want to know that.

Woman: I don't think we ever - I mean, you know we ranked them in priority, but I don't think I'm in a position to give you a definitive answer right now. Of course, as any brand owner that wants to speak is free to do so. But just in terms of you know the scope of the discussions that we had was, you know, obviously in terms of the priorities.

James Bladel: Yes, that's a tough one because we really struggled with the variation issue. It really was something that really burdens the industry. So to just do a quick yes on that is just too hard.

Jeff Eckhaus: All right. What if I were - what if they were fighting something? What if I reverse it and I say as long as we get a defined list of these variations, the claims period still lasts 60 days, but we somehow develop these enhanced claims so it's an additional seven marks. I'm just throwing out there.

These guys are saying no, but...

James Bladel: But - just that the variations issue to me is almost - and I know this is not a negotiation, but I'm just pointing out that, you know, when you have to draw lines and say that certain things are just technically and operationally a non-starter, that's one of them.

So you know, I'm putting out there that this is - you know, that I don't know that I could agree to that for any length of time or trade that for any number of days, Jeff.

Woman: Now - no James, let me just follow-up on that, because I want to make sure that we're talking about the same thing.

What we're not talking about is kind of I've put in my mark mouse, and every variation that could come up with some algorithm. That's not what we're talking about.

We're talking about that if I filed 20 UDRP's against, you know, 40 domain names that are some variation of mouse that were determined to have been registered or used abusively, that that's what would go in the clearinghouse.

So in other words, it will be a defined, finite list as opposed to any requirement for any kind of name spinning or any kind of algorithmic generation.

James Bladel: Yes. Very specific.

Man: It helps thing to have a definition.

James Bladel: I mean that narrows it quite a bit.

Man: Yes.

James Bladel: But is it - yes, exactly. But how much is this list changing? Or, is this something that you would provide a...

Fadi Chehade: Well, it couldn't be changing too fast if it's (unintelligible) a UDRP.

James Bladel: Right. I get - and I - does that then become the string that we're checking against?

Fadi Chehade: Yes.

James Bladel: Or, is it we've got marks in Column A and variants in Column B...

Fadi Chehade: No. No. That's not what she's saying.

((Crosstalk))

James Bladel: (Unintelligible).

Fadi Chehade: No. No.

Man: I think we could support this requirement fairly easily...

Fadi Chehade: I think so.

Man: ...if we make it a - put it as a burden on the trademark clearinghouse. So effectively when you register your mark, (unintelligible)...

((Crosstalk))

Fadi Chehade: (Unintelligible).

Man: ...you get your exact matches, plus then you have to give the trademark clearinghouse a list of, "Here's all the other ones that we put," - they do whatever validation (unintelligible)...

((Crosstalk))

Fadi Chehade: (Unintelligible).

((Crosstalk))

Man: And then, the list that the registries get that we're checking against to see if the labels match a claim, simply include those now.

And if you guys need to change that list, you change it with the clearinghouse. There might be fees for you to change it. We don't care.

Fadi Chehade: I know.

Woman: This is what we were proposing.

Fadi Chehade: Okay.

Woman: This is exactly what we were proposing.

Fadi Chehade: Okay.

So I think we're all - we're finally in the place we wanted to be for the last three hours.

Jeff, do you want to go off that place or keep us on that place?

Jeff Eckhaus: I want to keep us in that place.

Fadi Chehade: Okay.

Jeff Eckhaus: I definitely like this, but my point is that we just can't say yes to everything. All these things kind of add up. So if we go on the priorities, what I would say is you keep claims at 60 days, you add these variations. I think we're getting somewhere to a proposal, but what I'm hearing is - or that's what I'd like to hear. I'd like to hear along with the priorities, that if we said we could do this enhanced claims with these enhanced names, we'll keep it at the 60 days and we'll - not the blocking.

I mean, I'm just trying to figure out where we (unintelligible)...

Fadi Chehade: Okay. I'll tell you where we are. I think you got us somewhere earlier with some additions. I'll let you say something because you've helped me before.

Jeff Eckhaus: Well, okay. Let me...

Man: Technically it is very possible, but you can't do this for January.

Fadi Chehade: We can't do this in January?

Man: Yes. We - yes, okay.

Fadi Chehade: This part is not for January, right? This is post-January?

Man: Yes. I mean, this - just for development efforts...

Fadi Chehade: (Unintelligible). By the time...

Man: There might be a timing issue.

Fadi Chehade: April/May I hope.

No. But it's not January. This is not part of the January effort, right? This is - we're talking about something to follow-up.

Can I just say that...

((Crosstalk))

Man: (Unintelligible).

Fadi Chehade: Yes. Thank you, (Ben). This is - thank you (John). This is exactly why I want to get done today because if we don't get done today, then these dates start slipping. This is exactly what we're trying to solve.

(Ben), you go last, and then I need to summarize. Yes.

(Ben): Okay, I was just...

Woman: Wait. Fadi, there are people who have been raising their hands, especially when we talked about strings and now going to the UDRP, we've had our hands up for awhile. Sorry about that.

Fadi Chehade: (Unintelligible) the solution, so I'm going to let (Ben), Alan, and Kathy - yes, Alan was gracious enough to remove his hand, so (Ben) and Alan speak - and Kathy speak, and then we...

Alan Greenberg: My hand was up from before. I left it up, so I give my position back.

Fadi Chehade: (Unintelligible). (Ben).

(Ben): I was just going to say that fills me with dread. I don't want to go through two or three different development iterations to - for the trademark clearinghouse implementation on our systems. So if we agree to something that should be what we agree to. And we should be given the right amount of time to implement it.

But from a registrar standpoint, trademark clearinghouse standpoint, not a halfway house, and then change it again afterwards. That's not how we work, and we can't work like that. We can't keep on playing catch up. You can't say it's open. Off you go to these people, because it's going to take us six to eight weeks to implement anything anyway.

Fadi Chehade: Right. But then - I mean, you don't expect the software to be stable - not stable, to be steady - same features for the next five years. I mean software changes. API's evolve. You need to (talk) to an API that's richer.

(Ben): That's fine.

Fadi Chehade: Yes.

And (unintelligible). We need to (have you) again.

(Ben): Yes. Well, look, I mean I went through the new launch we were faxing documents, so that's no problem. (Unintelligible).

Straight to (Vickie) again. But what - I mean you know, as I said to (Karen) before, and we pointed out before, you know that's why we want to see a development roadmap. We - that's - and this - we'll cover this tomorrow. But let me just say anything that you - anything that we think we can table now we need to have an eye on implementation.

Fadi Chehade: Good and fair point. Actually, I agree with you. I mean, we cannot just continuously see these things changing. And then, it adds to the real cost. I'm with you on that.

Kathy, you go next.

Kathy Kleinman: Thank you, and I'll try to speak slowly and clearly.

And it's very late out here. And so let me try this. First, I'm concerned. We heard a presentation this morning where we were asked to listen. And one of the things we didn't get to respond to was concerns we might have about expanding the trademark claims service to include strings that had been somehow found in the UDRP not to have been properly registered, and then had been taken away.

We decided then - we went through an exercise where we decided that these - this was policy because we decided on exact matches from the trademark clearinghouse. And part of it was because we had a discussion about what happens? Side effects. Inadvertent effects. Problems when you extend beyond those strings.

So we haven't even had that discussion here, and it's really a discussion that belongs as part of the policy process. But let me give you a little bit of insight because we've had no opportunity to do it and we're going down a path of agreeing. And since I'm now the only non-commercial representative, an attorney of 15 years working on fair use, and free speech, and trademark law, let me try it.

Which is that the UDRP has three requirements, guys. Only one of them has to do with the string itself. Your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. And, you have no rights or legitimate interests in respect of the domain name, and your domain name has been registered and is being used in bad faith.

We're taking away now two elements of the UDRP that have to do specifically with what happened vis-à-vis the context, the registrant - how the registrant is using it. And we're now taking a decision that had three elements and we're reducing it down to one, that there was a string involved.

We're not looking at context. We're not looking at registrant misuse. And, we're not following the UDRP the way it was created. This has got to go to policy guys, because it has so many potential side effects. So many undiscussed effects. So many - the easy cases may be easy, but the hard cases are going to be hard, and we haven't discussed it. And the results could be disastrous.

And I'm saying that as someone who helped draft the UDRP and we never, never assumed that the strings would be taken out of the context that they're found to be abusive and suddenly made into the abstract of the string that now needs to be protected.

Thanks.

Fadi Chehade: Thank you, Kathy. Thank you. And I really appreciate the - you're one, but your voice is heard. I want you to know that we're not ignoring the fact that you're alone standing here and trying to make a point of - as you said, the 15-year investment of a lot of passion and a lot of time to make a point. And it's the - it's appreciated and heard here.

I'm going to ask Fabricio to speak, but then really, it's getting late for all of us. It's been a long day, so I need to move us towards a straw man solution, and that I can at least - we can all sleep on. And then let's agree what happens tomorrow, if any.

Fabricio Vayra: Thanks, Fadi.

So I was just going to say hopefully the comfort that Kathy can have is that for a string to get into the trademark clearinghouse, to then get it claimed just to let you know that this might be a problem, it has to go through all three steps and have been adjudicated under those standards to even get to that point.

So we're not eliminating one or - we're actually running them through all three to get to that point.

And to help the straw man thing, I had said to Jeff, you know, if we're all - if we're talking about claims and it's okay under - of course we're saying if we're talking about claims, then we can get the additional strings put in, and it's all done off of a list, it sounds like the only thing that we're discussing back and forth is really the time limit.

So (Kristina) has thrown out 75 - after the 75th TLD. Jeff has come back and said six months. I'm assuming that if people said somewhere in between there, like a year, that we we're kind of done. So at that point, we've got the sunrise, we've got the limited defensive registration that runs across. We've got the claims service that runs for a certain amount of period with additional terms, and then the URS is up for when the (unintelligible).

Fadi Chehade: So is - if we went for a year - if we for a year presented someone who has a match to the exact string, or a match to one of these, you know, characters for the strings that have been abusively registered and went through the three steps of this process, what happens to the rest of your list?

We would have solved Number 1. We would have solved Number 2. We would have solved - the URS, leave that aside. And Number 4, we've already solved today. And Number 5 would have been solved.

Fabricio Vayra: Right.

And the only - thing to be preventing the Number 1 was this offer that (Chris) had thrown out that for a certain high priced bulk fee, you've got across the TLD registration. So you - basically you have is someone can do a sunrise for a single registration in a single TLD, or they can pay bulk (unintelligible) fee that gets a certain amount of brands blocked across TLD's. And like ICM, they would just not be used, right? They could - that would be your offset, right? It would just be taken off the shelf.

(Chris): I don't think there was agreement on that Number 1 one, so aside from that, I think you have 2, 3, 4, and 5 covered, but I threw that idea out there. But, these guys all hated it. So I don't think that went anywhere, so you can't count that one.

Fadi Chehade: So for Number 1, if we extended the claims period to a year, or six months to a year, looking up six (to the number) now - six months to a year, do we generally solve 2, 3, 4, and 5?

(Chris): Well, 4 is solved through another process. We solved 2, 3, and 5.

Fadi Chehade: Yes. 3, let me just - let me close on 3. We're going to get initial responses from the URS providers next Tuesday. (Unintelligible) with them the week after. Indications right now is that we're going to do what (Brett) earlier talked about. We're going to do the right thing and get these people where we need them to be. And if they can't get there, then we need them to push them to tell us how they can get there.

So (unintelligible) get focus time with Olof on this. I will - and we'll get there. So let's do (unintelligible) what we did earlier with 5 - 6, 7, and 8, which is take it out of this, let me go focus on it with Olof and team, and I promise you that when I come back with the R5 responses, we'll do another even call - or I don't know that it deserves all of this another time, but maybe a call with all of you, or all those interested, and we'll go over this.

But I'm committed to work on the URS piece. And, it would be (unintelligible), but it will be a very solid (unintelligible) that allows us to go back to a cheaper way to solve this. So let's take that off the line.

So now if we extend from 60 days to some number between six months to a year and a half, which is kind of where were, whatever that number is, we'll come to it in a minute. But a longer period than 60 days. Can we knock of 2 and 5?

Man: (Unintelligible)...

Kathy Kleinman: What are the strings, Fadi? What are the strings that are being protected? Exact matches or something coming in under the UDRP that was judged in context one-on-one, the registrant and the trademark owner?

Fadi Chehade: No. It's both, Kathy. My - what I was stating is for both.

Now let me - Jeff - so Jeff, would you be okay if we extended this period?

Jeff Eckhaus: If it's the claims that is written now for a year, absolutely not. It does not address the reseller issue that we've discussed, you know.

Fadi Chehade: Okay. Fair enough.

Jeff Eckhaus: Not the major issue. And I still think that it still has that same effect that Kathy has brought up. I guess you would call it the (unintelligible) thing, and that would last for a year.

Fadi Chehade: Okay. Good. And that's a long time.

Jeff Eckhaus: Yes.

Fadi Chehade: Okay.

If I said six months, you would have been in a different place?

Jeff Eckhaus: No. What I was thinking -- and I'll just sort of - let me throw this one out there -- is that we had the original 60 days with the claims process as it is.

Fadi Chehade: Yes.

Jeff Eckhaus: With the claims as it is. After that, for some - you know, maybe - you know, another 120 days or whatever that period is after that, maybe even longer, have that - what we called earlier that generic-like claims after that. I think that is something...

Fadi Chehade: You are better with that.

Jeff Eckhaus: Yes, for the longer period. Because it's an easier limitation and it's less stress on the clearinghouse because we wouldn't have to make that call to the clearinghouse for every registration and every domain availability check every single time at - you know, for the next year or six months.

Fadi Chehade: Okay.

And are you still with Antony that you want to charge people some money for that service after the 60 days?

Jeff Eckhaus: You're asking a business guy if I want to charge money?

Jenny Chow: Well, that's okay. I - be nice now. Put yourself in their feet. Do you believe as someone who's helping solve a solution here that it would be necessary to tell someone like them - because remember, Antony was very worried about people just going around the registry and things in the (unintelligible), and causing us all kinds of limitations for the business you could have.

So I thought there was some merit to his idea that we should charge something past the initial period so you don't have everybody doing this. You have some people who really believe they have legitimate marks and they want to pay money to protect them after a certain period.

And it'd still be like our notice, because they agreed that a very ominous notice with all the classes invites the bad people to do worse then.

Jeff Eckhaus: So I think there's a little mixing of different things on here, but yes; I think that if it was just that light notice - paying more? I'm actually sort of

indifferent on that when it comes to the generic claims, because if there's a generic claim with no link to any other information, there's no real difference on there.

Fadi Chehade: Right.

Jeff Eckhaus: But if you have to do the other work and if - I think that's where it becomes with the additional costs. So I'm saying no. If it's a generic-like claim, then no.

Fadi Chehade: But remember, Jeff - remember, your costs that James also talked about. Because if you have far less of these, because very few of them will actually pay the extra fee. So now we have far less people calling you saying, "Wow. What is this thing? And before I sign..." So I think you would want people to have a step to go through before everybody comes at you with these things for another year.

Jeff Eckhaus: Yes. I have to implement it anyway. If I have to implement it, I have to implement it. And if there's a high volume or low volume, it's...

Fadi Chehade: But James' concern about more people calling saying, "What the hell is this thing? I don't understand -" Because my opinion, it would reduce the number of callers by 90% - 95%.

Jeff Eckhaus: I think that if you had a generic - I think if you had that generic-like claim, you would reduce the number of calls because you wouldn't have the people going, "What the hell is a Class," I'm making up a number, "73? And you know, what does that mean?"

If we just said this was there, I think we'd have a lot less callers with that generic-like notice.

Fadi Chehade: Fair enough. Okay, fair enough. I appreciate the answer.

Okay. So we - does anyone want to say anything anymore? Alan, do you want to say...

Alan Greenberg: It's Alan. Just one quick question.

Fadi Chehade: Please.

Alan Greenberg: Yes. Jeff in his last discussion said a light notice is easier because you don't have to make the - you don't have to do the calls on the clearinghouse. And if we're only issuing this light notice if there is a hit, then we still have a call in the clearinghouse.

So either he meant something else, or I misunderstood.

Jeff Eckhaus: Yes. It would be a - Alan, it would be a call - the way we have it set up in the alternate model, it would be a call to the registry because the registry would have the DNS label, so it's fine.

Alan Greenberg: Okay. (Unintelligible).

Fadi Chehade: After the clearinghouse. Yes. That's...

Alan Greenberg: Okay, thank you.

Fadi Chehade: Okay. So I'm going to propose a solution. You ready for that? Okay. (John)'s holding a sharp object. That's funny.

I think here's where we need to go to solve a lot of the concerns. I think we need to extend the sunrise period a little bit, and I'll get to what is a little bit. So it's not quite 60, and it's sure to me not a year.

Man: (Unintelligible) sunrise or claims?

Fadi Chehade: I'm saying the sunrise period itself after - no, sorry - the sunrise period - the claims period, pardon me. So you need to extend this a little bit but should have it, as we said, much earlier today into a two-phased claims period. There should be a phase where people get the full notice, intense, frankly potentially some scary (unintelligible) be-careful-what-you're-doing-here type of thing.

I do think we need to go to a secondary period of claims, and I do believe that secondary period should not be indefinite, should be a defined period that we should agree on in high-level kind of numbers. And during that period - during that period, you know (unintelligible) in order to get that secondary period, the trademark owners will have to pay some fee. It's not in the order of what (Chris) was talking about, but some fee.

And the some fee, I'm still stuck to what Antony said. The some fee will at least limit these two what I would call legitimate holders, people who really are not playing a game. They really have some legitimate reason to want that secondary claims period.

And that secondary claims period will occur for a period of time during which people will get a generic claim. It'll be just a generic claim, and it will just tell somebody, "Look, you are" because we've got a match, or I'm going to add to

that - a match or one of these, you know, variations that we talked about that have gone through the three steps, which from your perspective, as we said, shouldn't matter. It's just a list. You'll get the list. It's the same list.

(John): (Unintelligible).

Fadi Chehade: It's not indefinite. That's true too. That's right, John. (Unintelligible) develop as we go beyond this presentation I'm making. But high level, I think that's really a fair middle ground for all of us. Sorry John.

(John): (Unintelligible).

Fadi Chehade: Yes. But okay, so I (unintelligible).

(John): (Unintelligible).

Man: For those on the phone, Fadi's whiteboarding this.

Man: There's this concept called video cameras that connect to computers that we should investigate.

Jeff Neuman: So this is Jeff. I'm going to narrate. I'll do some color commentary (unintelligible).

Man: You don't like my idea, Jeff.

Jeff Neuman: So he's got Claims Period 1. I can't see from back here, so I'll let someone else narrate.

Man: (Unintelligible).

Man: It's full notice.

Jeff Neuman: The full notice during Claims Period 1.

Man: With classes during - and this is all under the heading of Claims Period 1. And then there's a dollar sign demarcation, and then after that it says, "Claims Period 2, generic notice."

Man: Right.

Man: And then before that (unintelligible) talking 30-day sunrise.

Man: And prior to that it's what 30-day notification.

Man: (Unintelligible).

Man: Okay.

Man: (Unintelligible).

Man: Yes, you should have started on the other board. Fadi's also wearing like khaki ensemble with a casual business shirt.

Man: (Unintelligible).

Man: (Unintelligible) that's great.

Man: Don't forget the shoes. Shoes are important.

Fadi Chehade: So I'm going to describe what I wrote. I drew it, because John was right; it's better we all see it. We're going to have a 30-day notice period, which will be communicated through an ICANN portal along with other things even before that is my view and my vision and that we don't just, you know, we give you a full view of people going through from everything from the prioritization draw all the way to delegation and then they put in their dates for their notice period of 30 days.

Then you know it's going to happen. You start strategizing. You bring your team together. You think, "Okay, what am I going to do? This is happening in 30 days." You put a plan together, and then you have the sunrise period of 30 days. You do all of the things we discussed here.

After that sunrise period there is a claims period. One, as we're calling it. During Claims Period 1, you see the full notice. You actually understand that you're getting into quote unquote, you know, a potential legal situation and it gives these folks what I call a strong legal instrument to say, "This person understood he's breaking this class and that class and that class," infringing on all these things that he clicked on and he went for it.

Right? That's what this is. And if you all want more to be (unintelligible), and again, I want to clarify that I'm not talking about, you know, hundreds of thousands of dollars. I'm talking about a reasonable fee. And my idea, and I don't know if you guys want to do that, because this could be money, depending on where this fee goes, is maybe that's something they could pay like a subscription, a yearly fee.

If they want to renew it, they don't want to renew it, if you guys think - if we can trickle that money somehow so everyone gets it, do we want to make that a subscription where they say, "Okay, I'm going to subscribe now for a yearly

additional protection fee that says that during that year, every time somebody gets a match, and oh, I didn't put that down."

Man: So it's not a match (unintelligible) match not (unintelligible).

((Crosstalk))

Man: Variations.

((Crosstalk))

Man: Well, not variation, we called it a...

((Crosstalk))

Man: ...a...

Woman: (Unintelligible).

Man: ...a (bew).

Woman: Ensuring previously determined to have been abusively registered or used.

Man: What's the acronym for that?

Man: Evil key word.

((Crosstalk))

Kathy Kleinman: We're back to strings previously - we haven't even discussed the downside of that. We haven't - we're just adopting this now? This is Kathy, of course.

Man: (Unintelligible).

Man: Yes, yes, we (unintelligible).

Kathy Kleinman: Sorry, I couldn't hear the response, if there was one.

Man: I don't think there was one.

Man: Yes, she's right (unintelligible).

Man: Not clear they heard the question.

Man: (Unintelligible).

Woman: Well, what is the duration of claims (unintelligible)?

Man: Okay, what we're going to...

Woman: Okay, okay, I just wanted to make sure I hadn't...

((Crosstalk))

Kathy Kleinman: Fadi, I've got a question. This is Kathy.

Fadi Chehade: So first, John Nevett, then Kathy.

John Nevett: (Unintelligible) of the reseller issue in Claims Period 2?

Man: (Unintelligible).

Man: (Unintelligible).

Man: It's generic. It should be frankly - especially if...

((Crosstalk))

Man: ...that you said earlier to me that they may not do it even (unintelligible).

((Crosstalk))

Man: (Unintelligible).

Man: Yes, somebody who has (unintelligible), I will tell you that they would solve it in Claims Period 2 if they knew - if it applied to all TLDs because they knew they would have to do it.

Man: Yes.

Man: For every TLD they would work on that, and if it was that light notice, it's a much smaller effort...

Man: Yes.

Man: ...than in Claims Period 1.

Man: Yes.

Man: And if they knew it went for everyone, they wouldn't have to say this one or that one. So yes, I think it would be a lot easier if it applied across all TLDs and it was a lighter generic notice. Yes, I think it would help to solve that issue.

Fadi Chehade: Okay, okay. All right, so we address your question, John. Are we - do we have a solution or...

Man: (Unintelligible).

Man: ...what - oh, and Kathy didn't speak. So let's...

Kathy Kleinman: Yes, I've got a question. Claims Period 2, the generic claim, not full notice, match or variation that have gone through the three steps, I never understood Fabricio's response about the variation that have gone through the three steps. I raised the three steps as something you have to prove. In the UDRP it's three steps, but there's an identical string that there's no legitimate rights and interests and that's it's been registered and used in bad faith. And that what we're doing is we're extracting a string out of the three components and taking one component that it's a string that somehow has been abused.

But we're taking it out of the context in which it's been abused and suddenly now making all registrants in the world king of liable for that string's abuse. And I said that didn't make sense. So the variation that's gone through the three steps to me doesn't make sense. That's all we're saying there is that there's a UDRP finding, but that to me we haven't even had the discussion that that makes it any type of string. We haven't had - that this makes it any of type of string that we want to change the consensus on and expand the Trademark Clearinghouse in this way.

We haven't even talked about side effects, inadvertent effects, negative effects, overreaching, any of these things.

Fadi Chehade: John, John, please - so she can (unintelligible).

John Nevett: I was just wondering if, you know, you guys maybe know how many UDRPs are there and what's the volume of names we're talking about here?

Man: (Unintelligible).

Woman: (Unintelligible).

John Nevett: Two thousand a year or...

Man: (Unintelligible).

John Nevett: I mean...

Woman: (Unintelligible).

Man: Do you know Jeff?

Jeff Neuman: No, I'm just thinking that if we're not just limiting it to UDRPs. The UDRPs are a fairly finite bunch. You could pretty easily calculate that. My fear is that it's also applied to all of the court decisions and default decisions and all of those. So that exponentially increases.

Woman: I mean...

Man: Can we limit it to UDRP...

Woman: No.

Man: ...just in this second period?

Woman: I don't think so, and frankly I think the number of domain names that will be eligible here. Restrictions under UDRPs is far more than what (unintelligible) simply because of the tremendous cost differential between filing a UDRP than filing a lawsuit.

((Crosstalk))

Man: (Ben), do you have some insight?

(Ben): Yes, (unintelligible) types of those are 24,717.

Man: Ever.

(Ben): Yes, so...

Man: Yes?

Man: (Unintelligible) I've gotten court orders that have a thousand names in them.

Man: Yes.

Man: Just so like - and that's not just one. I mean you look at all - just take one law firm, Greenberg Traurig, which is one of the biggest filers of them, you have thousands and thousands of names, and that's just one law firm on behalf of a couple clients. So I mean I'm not saying no. I'm not saying it's a bad idea or

anything. I'm just saying that I think the list is actually probably a little - a lot larger than (unintelligible).

((Crosstalk))

Woman: (Unintelligible).

Man: It's not a thousand. I mean it's thousands that already are registered as a record in the TMCH.

Man: (Unintelligible).

Man: (Unintelligible) variation.

Man: No, it would be a - no, no, no, no. It would be another label that would - master record that already exists in the TMCH.

Man: Okay, let me give you an example.

Man: That's in our proposal.

Man: So the last...

Man: I just want to be clear about that.

Man: Right, so let me just point to an example. So I got an order for NFL.

Man: Yes.

Man: And NFL, the order was actually never involved NFL.com, but it was a thousand different variations of NFL football jerseys, NFL football jerseys New Jersey, NFL football jerseys Jets, like all these different variations. Are you saying it wouldn't include? Because none of those are going to be in the clearinghouse except for NFL.

Man: If NFL is though. That's my point, yes.

Man: Right, so all of these marks I've been talking about, the thousands are all related to you are (unintelligible) the biggest ones, NFL, Gucci, Polo, all of these, huge numbers. Again, I'm not trying to be difficult here. I'm just saying there are literally thousands and thousands of them that I've seen these orders, and then I get them. And it's okay - look, I'm not saying it's bad or good, because I don't want to argue with you, I'm just saying that these are the numbers.

Man: Right, but earlier we heard you say, if you have a concrete static list that was easy to do. And what we're saying and poor John - John's solution of a certain cutoff date, we're saying this is a list that you get that is static. That's it.

Man: (Unintelligible).

Man: So I mean we're hearing two different things now. We're hearing one, we can do it if we have a list, and then we're hearing, "Well, not if that list grows, then we can't do it."

Man: As a backend registry operator, we could do it with a list. Doesn't necessarily matter how large that list is. I'm just addressing comments raised from the applicants.

Man: (Unintelligible).

Man: (Unintelligible).

Woman: And I think - I don't think this one can be solved in two minutes or on the back of a napkin. This is a big one. We're massively expanding the Trademark Clearinghouse. We're massively expanding what registrants are going to be seeing. A typo in one context is a real word in another context.

We're changing the level of confusion of these notices to registrants, and we may not even be showing them anything that makes sense outside of the context of the trademark infringement action that it took place then outside of the UDRP and the specific evidence of bad faith that took place there. I think the potential for side effects here beyond anything we're thinking about now is enormous. This is what the policy development process is for.

Man: (Unintelligible).

Man: Yes, so one thing, so I'm agreeing here about the point that this is going to be a large expansion, because these aren't names that are in the clearinghouse. Let's be clear. What we're saying is that if these had, for example, a default judgment against it like the NFL ones and somebody put up an example if it was like cheap jerseys, and that was in the default judgment, you're saying that would now be there. And I've seen some of these lists too. Some of them are thousands of names long, and that's just some of the U.S. ones.

So let's be clear; this is going to expand it, and the numbers are going to be huge. It's not going to be just names that are in the - it's not the terms you're putting in the clearinghouse. It's anything - you're saying anything that's been a default judgment against it; correct?

Woman: No, no, no.

Man: No, no, I don't think...

((Crosstalk))

Woman: This has to be...

Man: Please clarify this, because that's starting to worry Kathy and them.

Woman: It has to be tied to a mark that is already in or eligible to be in the clearinghouse.

Man: So give us an example (unintelligible).

Man: So for example...

((Crosstalk))

Man: Like give us...

Man: So say you get an order, you know, with 1000 different names, 100 of them are - include NFL somehow, right. So it says NFL jerseys, NFL tickets, whatever. Then you might have some that just don't include NFL still in the same order. Maybe it says, "cheaptickets.com" or "cheapjerseys.com." You would - you could include anything that includes NFL if NFL was already in the TMCH or eligible to be in the TMCH. You could not include any of the things in that order that did not include that mark.

Man: (Unintelligible).

Woman: Okay, I've got a question.

Man: ...clarify and I think this was where Kathy's going in the direction. The notice is going to be no different. This is really just use of the trigger term. So in the examples that (Bryce) was giving, NFL jerseys, NFL shop, NFL whatever, those are going to be triggering terms. The notice you're going to get is exactly the same notice that we've been talking about.

It's going to basically say whatever the notice already says today trigger it off of the brand NFL, and that's that. It's not going to - it's not going to take out of context, "Oh, by the way, you tried to register this and NFL jerseys is what's going to come up to in the claims service." It's not. NFL jerseys is going to trigger the claim, because it's in the database, but it's not going to give you anything different than what you would have gotten for...

Kathy Kleinman: It may give you false and misleading information. Let's try it this way. Let's say you've got typos. We're not talking about Yahoo Financial or Yahoo - I don't know, there was some expressive one used earlier today. But let's say the word is time, and there's confusingly - and there's a UDRP action where there's an S added to time, and then X added to time.

But the Web site themselves are Time Magazine takeoffs, and now what you're telling me is the Trademark Claims is going to tell me it's a registrant that not only is Time registered to Time Warner but Times, T-I-M-E-S is registered to Time Warner and Timex is registered to Time Warner. Guys, it's false and misleading. It's not right.

(Bryce): Kathy, that's my - this is (Bryce) again - that's my point. It's not going to tell you that at all. It's actually just going to tell you that Time Warner owns the brand Time and has all the buzz words in the paragraph that you had in your claim. It's just going to trigger instead of exact match when someone tried Times or Timex or whatever, you know, the other examples, it'll trigger the exact same (unintelligible) as you would have had. You'd had time-dot-whatever, and again, it's not going to stop the registration. It's just going to educate the consumer.

And then when it gets to the extended period, it's going to get even less. It's just going to give an educational that says, "Hey, by the way, did you know that, you know, the - I don't know - (unintelligible) using this (unintelligible)."

Woman: You know, (Fab), I appreciate it. But we were all in Toronto together. You could have brought this to us so - with examples, and we could have thought about it. And we could have talked about it, and we could have talked about side effects and unintended consequences and really sat down and researched it with you and talked about it with you. This is a massive expansion with massive potential for unintended consequences here.

I don't - it's not nearly just because, again, the UDRP - and I was part of the design team as was J. Scott - the UDRP was intended for something entirely different. I believe we're completely distorting it and taking it out of context.

Jeff Neuman: I have a question here. It's Jeff (unintelligible). So I am not agreeing to - you know, I'm not saying I agree. Let's just - I'm going to give - let's say you say we're going to put these at default - you want to include these default judgments. I'm not in any sense agreeing to this.

Can you guys walk me through in a process (unintelligible) how because - and what you had said as long as you have the registry as the label they can do it. Walk me through in your mind how this would be entered into the TMCH, how it would be verified and then how that - and then how they would sort of generate these labels. Just I'm curious about that process. I don't know how that would work through. So if you could walk me through that.

Woman: Sure.

Man: (Unintelligible).

Woman: Yes, definitely interrupt me where I get it wrong. So currently when a trademark owner wants to enter a record for a trademark registration, there's already kind of a window where the trademark includes special characters for which there are potential substitutions, whether it's hyphens, ampersands, whatever. And those are all tied to the same - let's just take (M&M)...

Man: Yes.

Woman: ...right. So you - the mark is (M&M), but it also - the trademark owner can select additional labels that meet the matching requirements of the clearinghouse.

So under this idea, the trademark owner would deposit or request in the entry of the record for their mark. They would identify as the additional labels all of the domain names, the second-level names, that were the subject of previous determinations that they've been abusively register used.

They would also have to provide the clearinghouse with documentation of that claim of the basis for their - I hate to use the word claim - but for lack of a

better word - whether that's a copy of the UDRP decision, whether that's a copy of the CCDRP decision, whether it's a copy of the ultimate (unintelligible). They would have to provide documentation of it, and it would have to be tied to a mark that was already otherwise eligible for inclusion in the clearinghouse.

Man: Like travel is two Ls.

Man: (Unintelligible).

Man: This is not (unintelligible).

Man: Sorry, (unintelligible).

Man: Yes, they'd have to validate each one of those (unintelligible)...

Woman: Right, right, yes.

Man: ...they were legitimate. (Unintelligible)...

Woman: Yes, I mean you wouldn't necessarily - I mean I don't think they would be adverse to paying an additional validation fee. I mean if it was the same fee for each name and the same UDRP decision that would be - but no.

Man: I don't know where we are on the queue, but, you know, this - to me, there's a big difference between court cases and UDRPs. UDRPs, we just easily found out the number. Easily we could find out the names in there and easily put them in the clearinghouse, I suspect.

Court cases in every jurisdiction all over the world in every level of government with default cases, there's no control over that in that we don't know where they'd be coming from the volume. It's very concerning that the volume would be very high. It could be gameable, depending on the jurisdiction, and that we don't know that they met the certain standards that need to be met in the UDRP. So I think maybe we should draw a distinction between those two.

Fadi Chehade: And I would invite you to consider this for a minute, because remember, we had - the variants were not even on the table. We're now saying we're willing to look at all the UDRP variants, the variants that went through the UDRP process. That gives you I think a good cover, not quite what, you know, the thousand that would come from Greenberg and others would be. But at least it gives us better coverage than just the exact match, and it gives John what he said.

Because I can imagine that the UDRP has been just show this in a nanosecond. They have a pretty well-defined process, and we know who's in there. The numbers are clear. We already know what systems to build around 24,000 versus, you know, 24,000 to 5 million. Each are different things. And it solves at least the problem with the things that went through the UDRP process. So I ask you to consider that for a moment.

Woman: No, I understand that, and I think it's something we would certainly need to not - we couldn't make a decision right here. I...

((Crosstalk))

Woman: ...consideration that there certainly are some trademark owners that because of the significant difference, because you can get injunctive relief at least in the

U.S. judicial system, they only file a - you know, court actions. They don't bother with UDRPs.

Second, I think there's the optics, particularly with regard to the GAC of telling them that the UDRPs count but, you know, proper litigation that's followed the appropriate judicial rules within their national law don't. And, you know, I have to say I'm having difficulty reconciling what seems to me to be - well, never mind.

But anyway, those are kind of the two points. And, you know, could have a paralegal check and tell you how many ACPA actions there are by tomorrow? Yes, I can do that.

Man: Yes, but - and really back to the GAC for a minute, very few national governments trademark offices really protect much more than the exact match, very few outside the U.S. Outside the U.S., very few.

Woman: I mean almost every country has got laws under which you can enforce your trademark against confusingly similar marks.

Man: Yes, but then you have to go and file these for each one of these, right, and generate so...

Woman: Well, (unintelligible) would be a lawsuit, a law - I don't know maybe I misunderstand.

Man: Jeff?

Jeff Neuman: I mean just to talk about variations, I mean just so we get a context. There's one case in 2000 that was filed by Jim Bikoff and the Olympic Committee.

There's 1800 names in there and just scrolling through the list, I would say at least three-quarters if not more have the word Olympic or some other term that they would have statutorily protected or would be, you know. And that's just one case. I mean there's a lot of volume here, and I know that's probably pretty rare that it was 1800. But there are a number of cases like that default judgment.

So it is a pretty large volume we're talking about of court orders, especially defaults and others where people just don't show up, and there's default judgments on the books.

John Jeffrey: But (unintelligible).

Man: And just so I understand, JJ you speak (unintelligible).

John Jeffrey: I was just going to say, you know, a solution to this might be rather than leaving it open-ended as to number to put some rational cap, you know, attached to the mark. So if it's Olympic, maybe it's, you know, 50 names or 100 names passed on that mark, that way it's not, you know, 1800 with every filing looking for default expansions of it. But it's some rational tie to the real trademark.

Fadi Chehade: I see.

Woman: Wait, is this a variation still tied to a UDRP action or a court action or an arbitration or random variations?

Fadi Chehade: (Unintelligible) the answer is yes here. It tied to something like the list you just gave, yes.

Man: Yes, I mean I would just say that that seems consistent with the matching rules that are already built into the TMCH in terms of - for example, if you go back to the (M&M), well, I mean you get a certain number of choices, right, that capped about what those variations are going to be. And you can...

((Crosstalk))

Man: And it's not the 1800.

Man: No, and it's certainly not 1800, right. So I - it seems like that might be actually a way that is already consistent with what's going on in the TMCH already.

Fadi Chehade: So I don't think I should let JJ go then. He seems to have good solutions. We'll keep him onboard.

Man: (Unintelligible).

Man: Yes.

Evan Leibovitch: Speaking of letting people go, this is Evan Leibovitch. I haven't spoken much, and it's partly because on one hand Alan and Kathy have been doing a very good job. On the other hand, I find myself in a really strange place in this. You guys are aware that it's 15 past 11. If the intention is to do decision-making through attrition, this is a really good way to do it.

I'm really, really disappointed with the way things have been going here, and I really - if the intent was to get a good consensus on basic things, there's a couple of things I've heard here that definitely need to go to something a little bit more deliberative than two days in a closed group.

Fadi, I'm really sort of counting on you. You had mentioned that you had a formula for determining what was policy. There's a couple of things in here that clearly still are policy. A number of things I think can be moved forward on, but there's a few things that just listening to the way things have been going on and to little (negly) details or whatever that are clearly not in a position where they can be nailed down.

And, you know, I'm really hoping that - I understand the pressure to do some of these, but perhaps you can identify some of the things that need to be done faster than others and really put the guns to them and look at a couple of the things like, you know, well, is it going to be 361 days or 362 days of, you know, of the claim period or whatever. Does this all really need to be done in a closed two-day meeting in which, you know, half of your constituency is off in another time zone listening to very, very bad audio and trying to make heads or tails of this? I'll leave it at that. Thanks.

Fadi Chehade: Thank you, Evan, appreciate it. Okay, if I could just capture what JJ proposed for a minute and write it down, and with appreciation of Evan's concerns. But I think, Evan, it's very, very hard obviously to follow, and you've been very patient, you and Kathy and all the people on the line and some of - it's 11:15 for you. Some people it's almost dawn, and they're still up in Europe. So it's been hard for everybody.

Man: Fadi, I'll point out that GNSO counselors started 17-1/2 hours ago.

Fadi Chehade: I realize that, okay. And many people sitting here have been on it, indeed, you're right. So again, the amount of commitment everybody's putting to make this happen is deeply appreciated. But we are advancing, I think. That's the feeling people have here.

We are advancing, and if I look on the board behind me, I think everybody in this room has already given up on positions that were here a few hours ago. That's the way things work towards finding a solution. That doesn't mean the solution is adopted or its policy or - we still have another major hurdle to deal with, which is what do we do with the solution that even under duress we felt works.

And so let's try and finish the solution with acknowledgement and respect for what you said, Alan. So going back to what JJ said, the concern around expanding it beyond UDRP was the numbers. The concern with limiting to UDRP is a slap to the face of all the, you know, legal machinery on the planet that comes up with decisions. It's almost like telling them none of this counts. You know, we're only going to look at UDRP.

I don't think anyone on the side of the registries, registrars, applicants is upset with looking at things beyond UDRP. Their concern is, you know, 1800 Olympic variations. That's - I agree with them, that's not sustainable. That's starting to really take away their core business.

And so I think (J.J.)'s idea was to put a limit, which you seem to be open to. Is - what is that limit? Is it 10 per? Is it - yes?

Man: Per mark.

Fadi Chehade: Per mark.

Man: Yes, just so we can answer...

Fadi Chehade: Just put a cap.

((Crosstalk))

Man: So drawing from the pool of both the history of UDRPs and (unintelligible)...

Fadi Chehade: Correct.

Man: ...(CPA), a cap on the mark itself.

Fadi Chehade: Correct.

Man: Okay.

Fadi Chehade: Well, what would that be?

Woman: Well, 50 sounded good to me.

Fadi Chehade: Fifty sounded good to you? Fifty? Yes, we will actually - and remember, there is a tiered approach, but there's going to be a fee. If people want to put 50, fine, they pay for 50. And later we'll decide where that money goes, because I - you know, I think that money should cover the costs of the people doing that. This is not money going to ICANN. This is not - this is money that will be, you know, used to cover your costs.

So if we do go with 50, which I think is a brilliant solution, so I'm going to keep you on the payroll. JJ, thank you. If we go with 50 (unintelligible) now that 50 applies in Period 1 and Period 2, right? This is the way we define the cap, and it's not just UDRP, as I wrote on the whiteboard.

Man: (Unintelligible).

Man: You're cutting out. I can't hear anything on the audio.

Man: (Unintelligible) 50, and he's trying to figure out what to - of UDRP and what to call the others. It's court, adjudicated or...

Man: Court action.

Man: Yes, court action.

Kathy Kleinman: Fadi, I'm afraid I'm going to just keep expressing my objection. And I come to this with the objection of the NCSG community. We published on this. Very, very concerned about these variations.

Man: (Unintelligible).

Kathy Kleinman: And 50, wow, just...

Man: (Unintelligible) and that (unintelligible) Kathy...

Man: Can I just make a point? I think hopefully it'll make - ease Kathy's concerns, because I understand them. Is that what we're working on here, unless I'm mistaken on this, is still sort of a straw man and not necessarily - well, nobody's making final decisions. And everyone can still comment and just knock this straw man down and blow it apart. But that's the idea of the straw man, and that's what we're working on here.

Fadi Chehade: That's all we can do, and then once we're done with the straw man, we'll put it on the side. We all need to sleep on it obviously, and we'll agree in a minute on next steps. But at least, you know, on taking hours of banging both sides to

come back with a straw man. I think we now have on the whiteboard behind me the straw man. The only thing missing is the time, right? (Unintelligible).

Kathy Kleinman: And may I, Fadi? I don't think we've banged on this variations problem. I think we kind of accepted it and moved forward with it, but I don't think we've banged on, again, its unintended consequences, the fact that if it's a typo and the typos - it's a typo in context in the UDRP, the way you're using it and the Web site, you can see that the Web site really means Time Magazine. But you registered Times, T-I-M-E-S.

This may - the - we may wind up - and I think we're going to wind up with detailed trademark claims that make no sense to the registrant, because it's - we're bringing up a trademark and the goods and services of a trademark that has nothing to do with the string that's trying to be registered. Because the string that's a typo in one context is a real word in another context, and now it makes no sense whatsoever.

((Crosstalk))

Kathy Kleinman: We haven't even explored these unintended consequences. This is huge, I think.

Fadi Chehade: Kathy, noted, and I'm going to actually on the whiteboard put an asterisk that when we take that straw man to the next level, we should attend to this point you're making about the potential for typos being construed in this model. I'll take note of that, and I presume you will trust me that when we get to the next level, we will get into that detail and make sure that we take care of the concern you have around this particular - on the variants and the possible scenario you describe. But...

Kathy Kleinman: And more than typos, all sorts of unintended consequences, please.

Fadi Chehade: Others and others, fair enough, fair enough.

Kathy Kleinman: Thank you for both this and the generic claims, exact match and generic claims and that way I won't be crucified when I go back to my group. Thank you.

Fadi Chehade: So noted, noted. Let me add the - sorry, John Nevett, please, John.

John Nevett: Thanks. In Claim Period 2 I want to make sure that we're all clear that that would be applied to all TLDs. Just like in the NTIA letter, we talked about our new RPM (unintelligible) all TLDs, because that's beyond launch at that point that...

Fadi Chehade: By all TLDs - sorry - do you mean all new TLDs...

John Nevett: No.

Fadi Chehade: ...or existing and new?

John Nevett: Exactly.

Fadi Chehade: Is this what you mean?

John Nevett: All gTLDs.

Fadi Chehade: All gTLDs.

((Crosstalk))

Kathy Kleinman: (Unintelligible).

Fadi Chehade: Right, (unintelligible) understood. But they're asking for that. They're asking for that. So here's what - I'm going to take note of this, because I promised you that we'll come back to that. But it will be, again, I mean I'll - we'll put the straw man, and then we'll say noted, you know, Kathy's saying and noted that we need to go to all TLDs and do this. And I know that Larry will push us on that. I - he's very keen that we don't (unintelligible) rules and not (unintelligible).

Alan Greenberg: Fadi, it's Alan. One clarification, when you suggested a subscription model with an annual fee, that would imply that the claims could go forever if they're willing to pay forever, correct?

Fadi Chehade: So I suggested this at some point, but it - I don't have it on the whiteboard. Let me close (unintelligible) and then go to the dates. Do we want to offer - well, do you want and then do we want to offer - do the claims holders want the ability that this Claim Period 2 becomes a subscription model that you say, you know, for a year do this and then hey, next year, I'll pay again?

Man: I'll throw something on - so pros and cons.

Fadi Chehade: Yes.

Man: The benefit is that we get to reassess it each year from our perspective too, because it may turn out that it's just not working for us. So why should we keep paying?

Fadi Chehade: Right.

Man: That's one option...

Fadi Chehade: Yes.

Man: ...with that benefit. The other - the flipside is if as long as it's working you continue to pay. So...

Fadi Chehade: Correct.

Man: ...as opposed to paying this - as opposed to paying maybe a larger fee that goes on for however many years, whatever that second period was supposed to be and (unintelligible)...

Fadi Chehade: Have a year then you have to go through a process.

Man: Having an unknown return.

Fadi Chehade: Okay (unintelligible).

Man: I mean so I would say from my perspective...

Fadi Chehade: It's kind of a...

Man: ...I think there's a benefit.

Fadi Chehade: Okay. How about you, Jeff, what do you...

Jeff Neuman: Well, no, I was just going to go back - sorry - to the last point. I mean I know John Nevett is requesting that. (Unintelligible) decide whether that needs to go

to a PDP (unintelligible). There's a lot of technical implications of putting this claims period into an existing TLD that aren't inherent when you start from a launch. So I just want to put that on the record that there's a lot of issues there.

Fadi Chehade: Understood, but I think the...

Jeff Neuman: (Unintelligible).

Fadi Chehade: ...core philosophical issue that is being brought here is you're imposing something on new TLDs. Some thinking has to go through why are we on this plane that is not competitive with these existing TLDs? Is it a fee? Is it do we impose the same rule? Is it we do something else? I don't know. But it's noted. That's all.

But let's go back to the subscription side. What are your views on the implementation side of this? If they're paying you a fee and you're getting some money from it, would you like to offer this quote unquote indefinitely for a yearly subscription fee?

Man: I think that is something that I know, as I'm going to put an applicant head on, we have put in as a potential service. But I think that should be something that is on a registry-by-registry basis. They get to decide if they want to offer that service in their TLD. I don't know that it should be mandatory. I think that should be a business decision that you can contract with the clearinghouse, get the information and do it.

Fadi Chehade: So then maybe we should get out of it here at ICANN. We should put a period of time on Period 2, and I'm sure any registry can contact these trademark holders and say - but they don't want to go - probably sign subscriptions with 1400 TLDs.

But we could still do it through the Trademark Clearinghouse. We could still do it as a service and...

Fadi Chehade: But...

Fadi Chehade: ...do it (unintelligible).

Fadi Chehade: But - yes, but I don't think, for example, Travelers might not care and want to pay and want to get all this information in certain TLDs like - you know, I can't remember some of the more obscure ones - but they might say, "These are the ones we care about, and we'll pay for those. I don't want to pay some fee for all of them across the board. Why not let me just - like I don't want to 1400." You don't - I'm - nobody wants 1400 TLDs (unintelligible) anyway.

Fadi Chehade: Yes.

Man: You just want the ones you care about. It's...

Fadi Chehade: But why don't (unintelligible) just - sorry, (Chris).

(Chris): Because this is a registrar doing it, not a registry. So if a registry elects to do this ongoing, are they just going to contractually force registrars to keep doing it? Is that how it's going to work?

Man: (Unintelligible).

Jeff Neuman: That would be - as a registrar you would say that would be one of the thoughts to say, "I want to carry this TLD or not," as if I want to go through that. And

then the registry would say, "If you do it, there'd probably be some sort of revenue sharing." And these are all business decisions...

Fadi Chehade: Yes.

Jeff Neuman: ...everyone can make.

Fadi Chehade: Yes, I think that's a fair point that Jeff makes. However, for our purpose here as ICANN's implementation, I think frankly we're looking now too far out. Whether these business models will work, will not work, I don't know, to be honest, and I think we're stepping far now.

Let's for now say that there's going to be a Period 2, and in a moment we'll agree on the final dates for the straw man. And that Period 2 - maybe after that Period 2, we'll come up with a new business model that says they could buy selectively subscriptions to additional TLDs for a year at a time. Let's deal with that then. I think for now we will say that Period 2 is a limited finite period of time. They will pay a fee once. They will get the additional protections, and then we'll see what happens later, because we already are now way in the future.

So before I go to the days, do you - are there any final comments on this straw man? Fabricio?

Fabricio Vayra: When you say pay a fee once per (unintelligible), are we still talking pay a fee once across all TLDs?

Fadi Chehade: Yes.

Fabricio Vayra: Okay.

Fadi Chehade: For Period 2, the way it's designed now. Should I write this down? All TLDs.

Man: You're right about going into the future, in half-an-hour it's going to be tomorrow.

Kathy Kleinman: All right, sorry, pay a fee for what? This is Kathy. Kind of lost the thread.

Fadi Chehade: Please go ahead.

Kathy Kleinman: What are we paying a fee for to go across all gTLDs?

Man: Extended to keep light trademark claims.

Kathy Kleinman: Okay, thank you.

Fadi Chehade: Please this is James from...

James Bladel: So...

Fadi Chehade: Okay.

James Bladel: Maybe - I'll hold off. I'll wait. I'll wait till next steps.

Fadi Chehade: Okay, all right. So in terms of dates, we have (unintelligible). I think these we've agreed on. Yes, Martin?

Martin Sutton: Sorry, just going back here. And that is getting a bit late for me now.

((Crosstalk))

Martin Sutton: It's just on the number side of TLDs, there's going to be so many closed registries...

Fadi Chehade: Yes.

Martin Sutton: ...that, you know, that will probably reduce the number very significantly.

Fadi Chehade: Correct, correct, the closed ones would be closed. Yes, okay.

Man: (Unintelligible) baseball, yes.

Man: Yes.

Man: The baseball, I mean it's got to be in there for - I mean just because you're a brand, it doesn't mean you're not going to infringe on someone else's (unintelligible) granted yes (unintelligible) yes. But I think as a control, it's a good control.

Man: Yes.

Fadi Chehade: Currently Claims Period 1 in the guidebook or at least in - what is it today - 60, 60? Is 60 enough? Do we - guys, your friend Jeff wants six months. I think that's too long. I think six months is too long. Can we split the difference between (Jeff)'s 6 months and the 60 days on Period 1?

Man: (Unintelligible).

Fadi Chehade: Yes. Can we come up with something a little bit broader than 60 days?

Man: What are the dynamics at work here, just so I understand? Why is six months too long? Why is a - just so I understand from a registry understanding.

Fadi Chehade: Well, I mean Kathy will tell you this is - remember in Period 1 we had this ominous notice claims. It's intent. It's really to try and stop people in the first X days and put them on notice and give you a very strong legal instrument.

Man: Right.

Fadi Chehade: I think 60 days is a tiny bit short. I do think six months is a bit long, but there should be...

Man: But is there an operational driver? I'm just trying to understand.

Fadi Chehade: Well...

Man: It would - whether it's 4 months, 5 - whether it's 8 months, 12 - I'm trying to understand.

Fadi Chehade: Yes, no, I've never been a mediator, no. (Unintelligible)...

Kathy Kleinman: The driver is probably the...

((Crosstalk))

Man: ...straw man, let's say three months and leave it at that for now.

Fadi Chehade: I do think - I do think 60 days is a period people could for a variety of reasons wait out, not long enough, but let's lengthen it a little bit but not - I don't think Jeff, I mean you were maybe generous and your folks here will kill you later.

But Neuman will be dead tonight. But aside from that, I think somewhere between two months and six months. How about if we agree on a - I'm sorry? Neuman, do you want to pick a number in between?

Jeff Neuman: Sixty-one days.

((Crosstalk))

Jeff Neuman: ...I think we're adding to the scope of this with enhanced marks. So I think...

Fadi Chehade: Okay, so you - because when you proposed six months, in fairness to you, there was no Period 2. There was no period...

Jeff Neuman: There was no Period 2, but it was only exact matches, and it was...

Fadi Chehade: Okay, can...

Jeff Neuman: Yes.

Fadi Chehade: ...you give me an extra 30 days or something?

Jeff Neuman: It's not up to me. I'm looking over...

Fadi Chehade: Can you go 90 days?

Man: (Unintelligible)...

Jeff Neuman: I don't think that I can give an answer now, but I think if you said - I don't know. I mean I think 60 - if anything - I don't know. I think 90 days may take a lot of coaxing and there might be some other gives that we'd get. But I think

we can - we might be able to get to that, but I think that would require some other gives on this, because it's a big change for registrars.

Remember, and as I said, this reseller issue, please don't think that it's a niche issue, because I would guess probably 40% of domain names are registered through resellers.

Fadi Chehade: Yes.

Jeff Neuman: So this is a major sales channel and avenue for domain registries.

Man: So then the balance, just so I understand it, is between when a reseller can inject themselves into the process because of the logistics of the process.

Fadi Chehade: Yes, and someone like (unintelligible).

Man: Right (unintelligible).

Fadi Chehade: A lot of his business comes from that.

Man: That's on one side of the ledger, and on the other side is the concern of brand owners that the bad guys are going to wait just long enough till the window closes and now they'll go on where they don't have to acknowledge. And now the strength of that is very weak. We probably can't use it as much for URS, not as valuable. It's more of a protection for, you know, so your model - whatever it would - the good guys really. It's not so much for the bad guys.

Man: So you're just saying then the bad guys are just - so in your - it's like - so what you're going towards is you're saying oh, they'll just wait longer. But in

(unintelligible) they're just going to wait longer. That's the whole thing is like you're just saying they're going to wait longer. So it - you're saying they're just going to wait. That's the whole thing is they're going to do this anyway. I mean it's - you're...

(Kristina): Can I...

((Crosstalk))

Man: It's just a question.

Fadi Chehade: Okay, okay. I think...

((Crosstalk))

Man: I was waiting...

Fadi Chehade: ...we're all passed the (unintelligible). But fair enough.

Man: I was just waiting for a verb there, Jeff. I think what he was trying to say...

Fadi Chehade: Yes, the verbs were missing.

Man: ...(unintelligible) 1 day is they'll wait 91 days.

Man: Yes.

Man: So wait 101 days...

Man: Yes.

Man: ...because if they're engaged in the strategy of waiting it out, I don't really think it matters.

Man: Yes.

Fadi Chehade: Okay, (Kristina)?

(Kristina): I have a clarifying question for Jeff Eckhaus and then a suggestion. With regards for purposes of the straw man, can we just - I hate to use the phrase - flip the baby and for purposes of this discussion, just say 120, which is right in the middle?

Fadi Chehade: One-twenty on what? On...

(Kristina): Claims 1.

Fadi Chehade: On Claims 1.

Man: Yes, I think if you want to get a straw man that I think you are going to get - try and get acceptance that people won't freak out, I'd say put in 90. I think once you go past the 120 it - it's...

Fadi Chehade: Okay.

Man: ...a longer period. I just - I want to get - I don't want to get a straw man that everyone's just going to be like destroy it and (unintelligible)...

Fadi Chehade: Okay, guys, we're now between 90 and 120. So...

(Kristina): Okay.

Fadi Chehade: No, I'm saying we're arguing about 90 to 120.

(Kristina): My...

Fadi Chehade: Frankly let's just keep it simple.

(Kristina): And my clarifying question is really I guess what I'm not sure I'm understanding is if the - I'm not clear as to whether the issue is with regard to resellers that they're just not going to do it at all or that once you go past the 100 - past 60 days then they won't do it. I just need a little clarity there.

((Crosstalk))

Man: ...keep resellers out of this first period entirely is what we're saying.

Man: (Unintelligible).

Man: (Unintelligible).

Fadi Chehade: Yes.

Man: They can't tell her (unintelligible).

(Kristina): Why.

Fadi Chehade: (Unintelligible).

Man: (Unintelligible), no but after...

Man: Because we can't control - at least what we're saying is we are giving up the ability to control through our agreements with resellers and through our API that exact match and acknowledgment function. So we're going to delay the release of this to reseller network, and what we're saying is that that's why it's - you know, I mean every 30 days is hundreds of thousands of dollars in revenue per day. So I think that's why we're saying let's pull that back and then let's - that we're saying we're giving exclusivity to direct registrars initially.

Fadi Chehade: Fabricio, you have a thought on this in terms of (unintelligible) on your experience?

Fabricio Vayra: I don't. I mean at this point, to be honest, it's a straw man, right, so 120, 90. I mean it - the notice is what it is, and I think there's some valid points.

Fadi Chehade: So we're pushing these guys with 90. We're pushing. So I think because they talked about 60 for a long time, and as he said, there are thousands of resellers that will be very quote unquote - I'm not going to use it - bad word - but they will be very upset with them, because they are sitting it out, because they can. They're small. They don't know how to - it's too much imposition on them.

Having said that, we're balancing the need for these people for a period of time to make sure these trademarks are protected. So I think let's stick with 90 for the straw man, but that's it. This is - if anything this will go back down. So let's stick to 90 for now for the straw man.

Now if we do 90 here and these people then come back, a very small (unintelligible), in my opinion, will pay an extra fee. And we'll make sure that fee is not hundreds of thousands of dollars, but it's not 10 bucks either. I mean

it's something that will prevent a million little guys to just be silly and (unintelligible).

So this will have some fee. It will be very reasonable but not huge but enough to cover the costs of these people. That's it. We might need to cover their costs. We need to make sure these people get a fair fee so that (Chris) doesn't have to explain to (Adrian) why the hell he just added 100 grand of development costs. (Unintelligible)...

Man: It shouldn't be a deterrent. It should just be to cover your costs.

Fadi Chehade: Exactly, exactly, it's to cover the costs and at the same time it becomes a deterrent for - (unintelligible)?

Man: Yes, (unintelligible).

Man: There's a big part missing from Claims Period 2 (unintelligible) I mean it was mentioned before briefly, but I believe we lost it.

Fadi Chehade: Which was?

Man: Which is that if you do generic notice for Claims Period 2, the Trademark Clearinghouse now needs to offer a public interface. That is they're accessible by anybody so they can get in there and (unintelligible) and et cetera, et cetera. And that was mentioned...

Fadi Chehade: No, I thought we removed that. We removed the need to do that.

Man: So (unintelligible) the notice to say. Hey, you (unintelligible)...

((Crosstalk))

Fadi Chehade: Yes, yes.

Man: ...has no link, has no anything.

Fadi Chehade: But only if there was a match, right?

Man: Wait...

Man: (Unintelligible).

Fadi Chehade: That's what we agreed on.

Man: Could we just...

Fadi Chehade: That's it.

Man: (Unintelligible).

Fadi Chehade: Okay?

Man: But...

Fadi Chehade: I think that's - so let me - sorry - James, please go ahead. You want to say something?

James Bladel: I was maybe off for a minute there. But...

Fadi Chehade: No problem.

James Bladel: ...have we established the time period for the Claims Period 2 and...

Fadi Chehade: We're about to.

James Bladel: ...(unintelligible) shorten that to...

Fadi Chehade: We're about to.

James Bladel: ...extend Claims Period 1?

Fadi Chehade: Yes, maybe, so let's talk about Claims Period 2. Claims Period 2 is...

((Crosstalk))

James Bladel: ...went from 60 to 90, why can't we shut...

Fadi Chehade: Let's define this now, James, and maybe after we do we may go back and say it's not 90, it's now 60. So...

Man: But can I ask a clarifying question, which I think will impact what our response on this side of the table is (unintelligible) Claims Period 2 on the line (unintelligible).

Fadi Chehade: Please.

Man: In addition to the generic notice that will go to the registrant, does - is that also coupled with the notice that's going to go to the brand owner as well if registered in the same (unintelligible)?

Fadi Chehade: Yes.

Man: Okay.

Man: (Unintelligible).

Man: Right, yes. Fine, fine, fine.

Man: (Unintelligible).

Man: Right, it would still operate in the same way that the normal claim - that's what I wanted to make sure.

Man: (Unintelligible).

Man: Right, right, but it - you only get a notification of the brand owner if it's registered. Got it.

Man: Sorry.

Man: We call it the notice of registered name, NORN, just so it's consistent with the way we're technically designing it.

Man: That's the acronym used in the community alternate whatever model is the NORN. So...

Fadi Chehade: I think we should start charging for acronyms in the ICANN community. It's just unbelievable. But that helps. At least I have a word that you all appreciate and understand. Okay, (Ben), you wanted to say something?

(Ben): Yes, I was just going to ask, who's going to be responsible for sending the notice in Claims Period 2? Is it going to be the agent or the Trademark Clearinghouse?

Fadi Chehade: The TMCH.

Man: (Unintelligible).

Man: Woe, woe, woe, woe...

Man: Sorry, can you please use the mike? I can't hear you down here

Fadi Chehade: She has all that chocolate between her and the mike.

Woman: I said I believe that it's the registry that needs to provide us the file so that we know that the domain name was registered so that we can notify the trademark holder or agent as in the clearinghouse.

Man: Right, so the registry will provide the file of what names are registered to the clearinghouse. The clearinghouse sends out the notice to the actual trademark owner.

Woman: Correct.

Man: Yes, but what do you mean no?

Woman: No, trademark holder or agent, but the customer is the clearinghouse.

Man: Yes.

Fadi Chehade: Whoever put that trademark in the clearinghouse will get a notice whether it was done by...

Man: Yes.

Fadi Chehade: ...Travelers or a Travelers' agent, they will get the notice.

Woman: Yes, yes.

Fadi Chehade: That's what you meant. I think we're clear. Okay, so let's (unintelligible) as we're just a short distance away from that straw man being wrapped up. We now need to discuss the proposed period for Period 2. So if we go 60 to 90 days on Period 1, I'm leaving it open as James suggested, then people come back and say, "I'm willing to pay a fee that will cover your costs for another period of time." The only reason we care how long that time is is Kathy. Well, I mean Kathy and the - right?

Is there are any other reason you guys care? If you're being paid, registries, registrars, what do you care? Somebody's paying you. Well, the other reason you should care about it is this is years not months. You're still building very different systems. If it's months you're building certain types of systems. If you're building something that should last for years, you have a very different system to build.

(Chris): Fadi, aren't we working on the assumption there's going to be new launches and new rounds?

Man: Right.

Fadi Chehade: Yes, that's correct, but that's - and, you know, these things start piling up in all the new launches. Then you have volumes. You have different things to deal with over time versus some rolling window of these that comes through their systems. But anyway, I - between us, I frankly think, (Chris), this is a minor point. If you're being paid, you'll build the systems. That's what you guys do.

So let's focus instead on the real beef here, which is the longer this period is, you're going to have people in the non-commercial side saying, "Look, you're extending the period when you are sending a generic notice to people for too long and it might scare people. It might cause people to be uncomfortable with it on a longer period of time."

But now that the notice is very generic and is not even requiring the acknowledgement, it's something that the - as they're paying, they see a little box that says, "Look, just be aware you just hit the match."

Man: And we'll have a statement about, you know, you may have fair use and free speech, right?

Fadi Chehade: Yes, absolutely.

Man: So it would clarify that.

((Crosstalk))

Fadi Chehade: ...have the balance statement...

Man: We have the balance statement.

Fadi Chehade: ...that does the rights with the registrant. Now I ask you, Kathy, do you care if this is six months or a year? Do you care if this is long or short? I mean of course you don't want it to be forever. We agreed on that. Fabricio, you speak first, and then Kathy then - okay, then Kathy.

Fabricio Vayra: Yes, I mean it's a different question. If it's free, it's a different question. But if I'm paying, yes, I care how long it is. I mean if I have to go to my - if I have to go to each one of my business (unintelligible) and say, "We're going to pay for this. The notice is going to drop, and it's really just going to - you're basically paying for a public service announcement that then gives you a notice on the backend once they go ahead and register." Yes, I need to justify what we're paying.

So it would be easier to go in and say, "I'm going to do this just like I do the commercial availabilities today and do an annual registration subscription." Pay once, it goes for the year. You can renew or not or whatever the business model is. It dies or doesn't. But I would say an annual subscription model.

Fadi Chehade: James?

James Bladel: Now aren't we back into defensive registration?

Fabricio Vayra: If I'm going to pay for Period 2...

James Bladel: Yes.

Fabricio Vayra: ...I'm paying...

James Bladel: (Unintelligible) because maybe I'm not.

Fabricio Vayra: ...I'm paying for Period 2. And so what I'm saying is I don't think we should be having a discussion in a vacuum. If there was no payment for Period 2, then we can sit around and horse trade all day long about 60 or 90 days. But if we're going to pay good money as determined by the market for a value...

James Bladel: Yes.

Fabricio Vayra: ...then that value should also (unintelligible)...

Fadi Chehade: But Fabricio, that's why I'm saying - I was saying earlier, I took the liberty of saying I don't think they have an issue. They're being paid. They'll do it. But the issue is really on Kathy where she's saying the longer this period is, she has an issue with it. And that's why I was inviting her to...

Man: Well, I have (unintelligible) - not an issue but it's like if at a certain point if this string is - I mean isn't there a tipping point where you're just like, "Yes, I'll just register the thing defensively?"

Man: Well, this is across all gTLDs (unintelligible).

Man: It...

Fadi Chehade: Yes, that's a good point (unintelligible).

Man: Okay, okay.

Man: That's the difference.

Man: So the difference is is this is...

Man: Across all...

Man: All right, so we want to make sure that that fee...

Man: Right.

Man: ...is less...

((Crosstalk))

Man: ...hundred times...

((Crosstalk))

Man: Yes, we'll do the math, yes.

Fadi Chehade: Yes.

Kathy Kleinman: I'm here whenever you want me, Fadi.

James Bladel: Or not. You know, as much as we, you know, look, we have 50 million domain names. I don't know how many of them are defensive, probably less than 1%. We don't - want to make sure that we don't establish the Trademark Clearinghouse now as the defensive registration center or something like that where...

Man: Neither do we.

Man: Yes, exactly.

Man: Neither do we.

Fadi Chehade: Fair enough, that's a good point, James, yes. So let's - can we let Kathy speak, and then we're going to put clothes to this and move to next steps. Kathy, please?

Kathy Kleinman: Yes, I think we want to put in a fixed period here, because we've already agreed we don't want it to be permanent. So the idea of renewing it year after year is kind of a nonstarter I think however much money is involved in it. And also we're talking about something that's going out across all gTLDs regardless of the category of goods and services of the trademark, the chilling effect, whether there's legal liability or not may still come into order.

As Robin said, however you draft this, courts may find something different. So let me throw out 90 days, because now we're at the 6 months that we were talking about. Six months' notice should be long enough for everything to shake out, for trademark owners to decide what they want to register and to deter the types of actions that you're trying to deter. Thanks.

Fadi Chehade: Okay, thank you, Kathy. Can I say the number that's in my head now?

Man: Before you do, let me just throw one other thing out.

Fadi Chehade: Okay.

Man: Remember we talked about good guys and bad guys. I think this is really about the good guys, right. This is about the public.

Fadi Chehade: Yes, this is - this second one is...

Man: This is about...

((Crosstalk))

Man: ...in public - doesn't know trademarks. All they know is, you know, they don't want - they don't want to step on anybody's toes. They're just trying to register a name, and they got this notice. And so pick another one is probably what, you know, many folks may just do. But anyway.

Fadi Chehade: So I think that if you pay a reasonable fee, which we will have to think through as we develop this, I think that if Period 2 lasted for a year, that's not unreasonable. I think 30, 60, a year or 30, 90, a year with their - I think I'm getting sensitive to the resellers that - and I mean Jeff is being quiet here. But Jeff's entire business is with resellers almost, and we're telling him put all your market on hold for another month. That's expensive for him.

If we get the year on the Period 2, are we okay with 60 days, given that we've gotten a notice we prepared? I'm asking that we think through this. If you don't think so, then fine, I'll leave the straw man at 90. Earlier we talked about 90, but we weren't talking about a year on Period 2. We were talking about something shorter. I'm willing to - I'm willing - I'm proposing that we push to a year, because that gives you a nice period of telling the nice guys to give them notice. So (unintelligible)...

Man: You're - Fadi, you're talking about a year after the first period or a year total?

Fadi Chehade: (Unintelligible) Period 2 being a year for a fee. So I think a small subset will go for that, but it will be - okay, so let me go - there are many hands. Marilyn Cade, (Chris), (Jerry), (Kristina) and then John Nevett and then Kathy

Kleinman. So sorry - and James, sorry. Okay, let me write these down. It's getting late. I'll forget. Go ahead please.

Marilyn Cade: (Unintelligible).

Man: So...

Marilyn Cade: (Unintelligible). Marilyn Cade. I guess, you know, I'm looking at we had asked to stand for an indefinite period than we had compromised I think rather considerably. I guess I'd prefer to see at least 90 days on the initial Phase 1 even if this Phase 2 is limited to 9 months for a total of a year. That's just my personal view on this, because I do think the early days of the launch are going to be heavy with risks.

Fadi Chehade: Fair enough, good. (Jerry)?

(Jerry): I know this is a straw man, so whether it's - as (unintelligible) would say it was 90 or even if we go back to 60, and the other is a year. I think that one thing from a business perspective that would be very helpful going forward is that if we, whatever number you box in, is that there is a mechanism where we in the business community can come back to ICANN and say, "This isn't working. We are having major problems. We need a path, a process," because we're crystal ball (unintelligible).

Is it 60? Is it 90? Is it a year? Is it - we think a year is going to be good for - maybe it turns out it needs to be two years. But we'll have data. We'll have a process, and we'll say, "You know what we found after we've gone through this process for a while that this is killing us. This 90 days is too short. It needs to be six months."

Fadi Chehade: So, you know, so I hear you. The flipside that I'm sure these guys if they were more awake now would tell you is look, I mean we're building systems. We're building operations. We're building processes. We're building - I mean it's a very complex operation. I've visited some of their shops. This is not, you know, it's complex for them to have this needle in doing this.

Having said that, this is the first round. ICANN is - you know, it's not - we just need to move in a certain direction and be smart and agile and continue to talk and make sure that (unintelligible) we don't do this. We say, "Sorry, you told us. We're done." That's hiding behind the process. That's not being courageous. That's not being responsible. That's not the regime we're running here anymore.

So long as I'm still standing and this team's still standing and the board is supporting us the way we are these days, we will listen. The next few months - I mean I am the CEO of the new gTLD program. This is how I'm functioning. I'm handing everything else to everybody else so that we can focus and get this through.

So if this hits the fan, we're going to sit down and talk about it, but we have to be cognizant that people are building businesses and massive systems around things we decide at ICANN. It's very complex. So long as you appreciate that, and I appreciate your concern that if this goes up in flames we need to stop and think.

(Jerry): Yes, and it's critical.

Fadi Chehade: Yes.

(Jerry): I think it's very, very critical that when we bring this back to the Fortune 500...

Fadi Chehade: Yes.

(Jerry): ...and we talk about what happened and the process, et cetera.

Fadi Chehade: Yes.

(Jerry): And we understand all the concerns on the business side of these folks who are trying to run a business and so are we that there is a mechanism that says, "Yes, if there is - if there are issues with the way that got nailed down, that there's a process." And it may take a year to get the data and to have all the - you know, whatever it happens to be.

Fadi Chehade: (Unintelligible).

(Jerry): But the point is to go back to management and be able to say that this is not one time, that's it. It's over. You can never change these times again. It can be fixed, and there will be a process in place to listen...

Fadi Chehade: Absolutely.

(Jerry): ...and fix it.

Fadi Chehade: I mean...

(Jerry): So...

Fadi Chehade: ...I'll ask you, (Jerry). You've worked with ICANN before myself and our team came onboard and since.

(Jerry): Well...

Fadi Chehade: Have we been listening differently?

(Jerry): I've worked more since you've been here. I've not - I've (unintelligible) the stories of before though.

Fadi Chehade: You need to appreciate we are sitting with you. We're listening. We're engaging. We're making sure that your concerns are heard, and we're doing the same on this side.

(Jerry): Right.

Fadi Chehade: We have to be cognizant. These guys are running an industry, and they're - you've seen them.

(Jerry): Right.

Fadi Chehade: You know, they're listening too. They've sat here all day listening to your concern.

(Jerry): The message that I have to bring back to the GAC representatives and the people who were saying, "How are you managing consumer issues?"

Fadi Chehade: Certainly.

(Jerry): I've got to be able to tell them, "Okay, they nailed down this number, but there's a process that we..."

Fadi Chehade: Yes, yes.

(Jerry): "...can go to." And I would say I...

Fadi Chehade: I agree.

(Jerry): ...to the point in which we put a footnote there...

Fadi Chehade: Agreed.

(Jerry): ...because this is...

Fadi Chehade: Yes, this is not cement.

(Jerry): ...there's a process for - yes, yes.

Fadi Chehade: It's not Jell-O either.

(Jerry): And we realize...

((Crosstalk))

(Jerry): ...build a system and let's say it's 90 days you build it for 90 days. But if for some reason there's a consumer problem or whatever, you know, it has to (unintelligible) a certain larger number...

Fadi Chehade: Sure.

(Jerry): ...(unintelligible) figure out a way to do that. So...

Fadi Chehade: Jeff, did you want to comment on that? I mean you, you're Mr. GNSO.
What...

Jeff Neuman: Oh and now that's not a great title. No, I'm just saying like I understand your - you have to go back to your businesses. We are businesses too. We have a - some very significant issues about having to change things midway, test it out. Some solutions may have absolutely nothing to do with extending the claims. There may be some other solution outside of this process.

I just want to emphasize what Fadi said, what we come up with has to be concrete, that right now what I'm telling you is that whatever we come up with first of all has to go out to the community and the applicants, because there's 1400 of them or 1900 of them that aren't here - well, minus donuts, which is 300 of them.

But (unintelligible)...

Man: We got five.

Jeff Neuman: There you go. You have some applicants here. So...

Fadi Chehade: Okay, guys, let's keep going.

Jeff Neuman: But...

Fadi Chehade: (Chris) - go ahead Jeff (unintelligible).

Jeff Neuman: Yes, I just want to say like we're all going back to management. I don't want to - let's put the straw man out there. Let's get it out there. Let's do it.

Fadi Chehade: So (Kristina) please?

(Kristina): Just, you know, totally agree with what (Jerry) just said. Given the differential between the notice in Claims Period 1 and Claims Period 2 and given the dual purpose of the notice, I would be include to say that generally speaking brand owners would rather have a 90-day Claims Period 1 and a shorter Claims Period 2, because it really is essential that you get that acknowledgement for purposes - for the purpose for which...

Man: (Unintelligible).

Fadi Chehade: So for 90 days and 6 months rather than...

(Kristina): Yes.

Fadi Chehade: ...60 days and a year.

(Kristina): Absolutely.

Fadi Chehade: Fair enough. Olaf?

Olaf Kolkman: I have to respond to (Jerry)'s concerns. Once upon a time there was a PDP establishing the new gTLD program in 1987 it's (unintelligible). And among the recommendations was that - and that was adopted by a board as well that there would be a review of the new gTLD program at a certain time of the launch. I think it was something like two years or within that time period. So

in general sense it's foreseen to be reviewed in all (unintelligible) and the magic.

Man: The AoC requires a one-year review. So that's even quicker.

Fadi Chehade: Very good. Next on the list is John Nevett. At least you're okay, John, now?

Alan Greenberg: Fadi, could I break in for a minute? It's Alan. Are you going to be sending out a copy of this once it's done tonight?

Fadi Chehade: Yes, I will - if it seems...

Alan Greenberg: Then I'm going into my 19th hour, and I think I'll say goodnight and I'll see you tomorrow.

Fadi Chehade: No problem. Thank you. Thank you so much. Much appreciated. Thank you.

Alan Greenberg: Okay.

Fadi Chehade: Okay.

John Nevett: No, I was - I would push for the 60-day Claims 1 Period, because that's within the guidebook. So from an applicant perspective, obviously not every applicant, but from an applicant perspective, I think extending that by 50% is going to be a harder sell. Might be easier to sell a new Claims Period 2, especially if there's a fee for that.

Sixty days is what's in the guidebook, and then we get to that, you know, material hardship, because again it's just another month where resellers aren't going to be selling your product. Some registrars might not participate. They

might wait it out. We don't know. I mean there's competition obviously. And some registrars will take the bait and try to sell them and go scoop.

I would think the brand registrars will sell right away, which is probably good for this group. But every 30 days, especially compounded with the 30 days - you know, that additional 30-day delay compounded with the 6 months of delay already that we've had is weighing on applicants' minds, you know?

Fadi Chehade: Thank you, thank you. Kathy had her hand up, but it's gone. Is there anyone else who wants to add - and James will speak for Kathy tonight?

James Bladel: No, no, no, would never presume. So interestingly enough, we're talking about that there's a fee associated with Claims Period 2 - really talking about who's selling this. And I think that we should consider that perhaps registrars could have a channel for the Trademark Clearinghouse in selling trademark. This will help registrars obviously build a business model and build a value proposition around this for their customers, especially corporate registrars. You should be kicking up your heels at this one.

But I think the idea here being that, you know, it takes the registry out of that particular equation, because this is across all registries and it can be part of that comprehensive end-to-end proposition that would replace defensive registration. So just a thought there for the straw man.

Man: And James, just to be clear, the registries are still doing the match, right?

James Bladel: Yes, well, what...

((Crosstalk))

- Man: The registries are still uploading the file to (unintelligible)...
- James Bladel: You're querying the same database, yes.
- Man: Right. So just be clear, it's not all the registrars - a heavy burden on the registrars but not all.
- Fadi Chehade: They still need to send you the match when they inquiry them, yes. Okay, and (unintelligible).
- Marilyn Cade: But I have a question (unintelligible), and I'm glad John is here. But my understanding is that nothing has changed and the interface to the registrant is still the registrars and the new gTLD program, right?
- John Nevett: Marilyn, I'm not sure. Yes, I...
- Fadi Chehade: And Marilyn, sorry. I need you to...
- John Nevett: What's your point?
- Fadi Chehade: ...try again.
- Marilyn Cade: Sorry, I'm just harkening back to my days on the council, but my understanding is the interface to the registrant, we have someplace in our agreements that the registries cannot compete with the registrars on selling, right, on doing registrations. That is probably...
- Man: If this is a Trademark Clearinghouse registration...
- Marilyn Cade: Right.

Man: ...not a...

Marilyn Cade: Okay, so you're thinking - okay.

Man: (Unintelligible) not a registry (unintelligible).

Marilyn Cade: Okay, no, no.

Fadi Chehade: I think the folks on the registry and registry side - registrar and registry side, I don't hear them worried about six months to a year on Period 2. It's not going to make a difference to them. You pay a fee. They'll do it. This is (unintelligible) place. I do think that's - that if we go to a year they might want to think a little harder about the kinds of systems they're building.

So six months - so I think, John, if you would permit me - this is contrary to what you suggested - but I think that a 90-day, 6-month solution is a good middle ground. It gives these guys a little more protection, but it shortens the time this is going to have to live. It also addresses Kathy's concern, if she's still awake and alive, that the longer these periods are, the more we're putting burdens on the general public.

So I'm going to suggest that we leave the straw man at 90 and 6 months. And I know not everyone is happy about this, but just hang with me. This is just a straw man. I think somewhere we can end this very, very long marathon today.

I'm exhausted. I don't know about you, but this - but frankly feeling good. I'm feeling good about where we are. At the end of a discussion like this we look at what's on the whiteboard and one could say, you know, we could have

drawn this 10 hours ago and would have been easy. But it wasn't. I mean we got here because we listened. We understood the various pieces, and I think we have a straw man.

Now if I look at the five, I just want to make sure this straw man plus the URS is what we have on the table now as a solution plus the URS bit, which we're going to address through the ERS process plus the other three that we'll address with Whois and RAA and so on. But I'm saying of these five, we're - am I - is this incorrect?

John Nevett: Well, I mean it's - I'll turn it over to this side, but Number 1 is not addressed with this stuff.

Fadi Chehade: Well, it is partly, no? Not at all.

John Nevett: That would be the - that would be the position that (Chris) mentioned and it matches the limited defensive registration. The...

((Crosstalk))

Fadi Chehade: This is the hundreds of thousands of dollars to the (unintelligible).

John Nevett: Yes, per a certain amount of - across TLDs.

Man: (Unintelligible).

John Nevett: Well, that - we're just - I'm just answering the question of - well, you're right. Just like the GPML, it just kind of went away. But the question - the point is whether everything's addressed, and I'm saying to cut two down to five, yes, is addressed. Number 1 isn't unless we explore something else.

Fadi Chehade: Number 1 is just a blocking mechanism, right? This is what it is. It's providing a mechanism for you to block earmarks across all TLDs with some safeguards for some registrants who have legitimate type. And when Margie walked us through this, she said, if I recall, that this has been - this has gone through a number of iterations and was taken off the table through the policy process to date. There is no blocking policy component at the moment in anything we have; is that correct?

John Nevett: Only voluntary, so, you know, like donuts proposed a voluntary for their TLDs, but there's nothing in the guidebook about...

Fadi Chehade: So John, how did your company come to the conclusion that's a good thing to do, because there's a business model behind it that said, "This is good"? We collect a certain fee and we protect these people." I mean I presume you put a business that said, "This makes sense," and you announced it voluntarily to...

John Nevett: I've spent three years working with folks on trademark protections and yes, we...

Fadi Chehade: And you conclude...

John Nevett: ...decided - we - and we've been getting a lot of grief for it from the other side of the, you know, debate where it's pretty restraintive (sic) trade and it's free speech and all of that stuff. So you kind of, you know, damned if do and damned if you don't. But yes, that's exactly what happened.

Man: We weren't impressed with that approach.

Fadi Chehade: So what about a voluntary approach to this? You think this should be more than voluntary, right? You would like everybody to have that option. Yes, and so if, again, if Kathy was still awake - I'm not sure, and I have to speak for her if she's not.

Kathy Kleinman: Oh, I - but please go ahead. You can speak for me, and then I can speak for me.

John Nevett: Mention (unintelligible).

Fadi Chehade: Okay, thanks, Kathy, for acknowledging. I just wanted to make sure (unintelligible).

John Nevett: Yes, one thing I failed to mention was that we (unintelligible) by not being mandated where we have to come up with rules as a group, we could come up with rules such as - because we're doing TrademarkPlus, right, but we're not going to do everything with the letter O in it, because there's a trademark in it with O. I mean we could come up with rational rules ourselves without having to negotiate that with a community and make one-size-fits-all.

What makes sense for a registry our size might not make sense for a registry of a - you know, a single applicant or something.

Fadi Chehade: Yes, the reason I asked you if you put a business model around it is because I think most people in the registry business are smart. And they're going to think through their business models and if it makes sense for them, I would think they will copy these guys sooner or later, because they can make money. I mean I can see that happening, but okay, I also understand that if it's set from the beginning as something everyone has to do, then you're not at the mercy of people coming up with that as an option. Marilyn?

Marilyn Cade: Fadi, I just want to go back to what one of our concerns is that drove us to proposing this mechanism. We're talking about brand holders facing - paying - having to register non-usable names for defensive reasons to protect the public, to protect consumers. And, you know, we did talk about the idea of a reverse release mechanism, fair use, all those kinds of things. But, you know, it may be - I don't know that the business model, in fact, does incent the registries to offer this, because if we have to register defensively, they have a steady stream of revenue even though we can't use the name.

Fadi Chehade: Yes, guys, on the right here, how important are defensive registrations for you I mean quite frankly, quite frankly?

Man: As part of the business model, it's very, very small.

Fadi Chehade: So who really benefits - who has benefited from defensive registrations that are making these people so nervous?

Man: Now who has benefited?

Fadi Chehade: (Kristina), are you leaving?

(Kristina): (Unintelligible).

Fadi Chehade: Thanks again.

(Kristina): (Unintelligible).

Fadi Chehade: Thank you, thank you. Much appreciated. Thank you. Yes, and we're going to finish in exactly 18 minutes. So 9 - 30 minutes after the hour we're going to

stop. The two things we still need to do is to finish just five more minutes on Number 1 and then we need to move on next steps and tomorrow. Go ahead. Sorry, you were explaining this?

John Nevett: So it - so one thing is that it is not a - it for - I know for in our business model, it is not a significant - it's a small portion of revenue, because for one we believe that people wouldn't want to register them, because, you know, people saying, "Hey, we're registering them in com now. So we're going to do it again," but we don't believe in TLDs that have absolutely no traffic - TLDs that have no visibility that people are going to go through and register all - across all of them especially ones that aren't germane to what their...

Fadi Chehade: Yes.

John Nevett: ...actual mark is.

So if I have a specific one that is - for example, one of the TLDs we applied for is dot actor. I don't think Verizon or I don't think, you know, Travelers Insurance is going to going to get travelersinsurance.actor. I don't think these are ones that they're going to try and register. So these aren't ones that we thought are going to be big parts for our - you know, for our TLDs.

We can't assume what people have done in dot XXX, which is a very special case, is going to be what's going to happen across these very specific niche TLDs.

Fadi Chehade: I'm sorry, James and then (Chris).

James Bladel: Reconsider posing that question to Matt Serlin who is...

Fadi Chehade: Is he still up?

James Bladel: ...(unintelligible) - yes.

Man: Yes.

James Bladel: And (Ben) who just walked out. I mean the corporate registrars are the folks who are going to probably (unintelligible) better (unintelligible) on that.

Fadi Chehade: Okay, so we're moving.

Matt Serlin: Yes, I'm still here. And James is right. I mean, you know, historically our clients are the ones that ultimately are registering defensive domain names. But I just, you know, and (Ben) will echo me here. But, you know, our methods to them all along has been that continuing to register defensive domains as they have in the past isn't feasible. It's barely feasible in today's environment. I mean we're - you know, you're talking about 22 gTLDs, but then you get out into the ccTLD world, and it's impossible.

And we've got clients - and frankly we've got some of them sitting in the room - but we have clients that, you know, 97% of their domain name portfolio is defensive in nature. And it's not scalable, and it's frankly not the business that we'd want to be in. So - but yes, historically a lot of the defensive registrations come through the corporate brand focused registrars.

Fadi Chehade: So Matt, would you - just to put you on the spot - would you be in favor of the - of taking what John Nevett's company decided is a good idea to do at his level and at least coming up with some straw man solution like that for all registries? Are you in favor of that, Matt?

Matt Serlin: Yes, I mean I think ultimately that's probably the right thing to do, but whether or not we can do that amongst this group without factoring in all the other concerns of other pieces of the community is definitely a - you know, a concern. But yes, I think, you know, from our clients' perspective, absolutely. You know, we had frankly the number of defensive blocks that we had in dot XXX far exceeded the projections that we had.

So I think there is a desire on the brand holders' perspective to have that notion of a - of, you know, a ten-year-long block where frankly they can, you know, do it this year and cross it off their list for the next ten years and not have to worry about it.

Fadi Chehade: Okay.

(Chris): Yes.

Fadi Chehade: Who - this is (Chris) (unintelligible).

(Chris): So I believe what we're talking about now being a walk across all the registries is different, subtly different to what is requested here in Number 1. And the reason is because when we discussed Number 1 before, the key part, the subtle difference is the part that says that appropriate safeguards for registrants will be legitimate right or interest.

And what we discussed that being that essentially these names go onto a list that says, "These are blocked unless somebody can demonstrate a legitimate right or interest..."

Fadi Chehade: Yes.

(Chris): "...in the name," right? And the mechanism which was proposed to make that happen was essentially that the registrars via some mechanism, probably the registry, would know that somebody's trying to register a name, which is on a list where they then have to display a page to them that says, "You confirm that you have a legitimate right and interest to this name," and you go ahead. That's claims.

Right, so you actually have that. You have exactly what you want for Number 1. You have it right now. It's called claims, and it's on the board. All that changes is the text that you have. So at the moment the text that's in the guidebook doesn't convey that message. All you need to do is change the messaging in that text from a, "Hey, you're about to register a name that matches some marks. You might be infringing," to a, "Hey, you're about to register a name that matches some marks. If you don't have a legitimate use to this, don't do it." And that's effectively what you want.

Man: One immediate thought is time. There's time limits.

(Chris): Right.

Man: (Unintelligible).

(Chris): So - but that's different. That's your argument Number 5 now, right? So if you accept that that claims implementation with that right notice, solves 1, then you're just back to debating time.

Fadi Chehade: I think Marilyn is saying no. Please quickly explain so we can get...

Marilyn Cade: Yes, (Chris), they don't want just to receive a notice. They want to securely understand that names they're concerned about and they're willing to pay a

fee for it are not going to be registered by anyone else unless there's a legitimate process that releases the name. So we're not just talking about a claims notice. We are talking about a form of a block list.

And let me just say that the study that I did with (Mark) monitor and (unintelligible) with Mason, with just 5 industries, 92% to 97% of the names are defensive. That includes crossing...

(Chris): Yes.

Marilyn Cade: ...30 to 50 cc's as well. None of the clients that I have, the companies that I've talked to assume they're going to duplicate that. But they are assuming that it is going to be 50 to 100 to 200 to 300 open gTLDs that are going to be highly risky for them.

(Chris): Yes, got it. Not debating the reasons why you want it. Right, not debating those at all. Trying to understand the implementation mechanism that you want. So you want a block list but you want to allow people to get names that are on the block list under certain conditions. What's your proposal for first of all how they communicate those conditions? Who evaluates those conditions that go, "Yes, that is legitimate use on - that isn't a legitimate other use." And how this all works in the registry-registrar model. What's the (IPT) proposal to how that works?

Fadi Chehade: I think that's a very good question unless (unintelligible). If we want and we're going to allow people with legitimate use a way out, how do you suggest this will be done? I'm presuming you do - how do you this today quote unquote in the real world? How do you determine legitimate use today? No, no, and they're not in domain names, you know, in the real world.

Somebody goes and registers Traveler XYZ in Morocco. How do you determine that's a legitimate use - go through that process?

Man: Well, we have to find them.

Fadi Chehade: Yes.

Man: And...

Fadi Chehade: So let's assume you're watch people tells you in the trademark (unintelligible).

Man: Yes, so they - we look at their content and we see whether their content is infringing upon us.

Fadi Chehade: So then (Chris') question is how are we going to do this a thousand times a day?

Man: At time of registration before their content doesn't exist.

Man: Not that they have a business plan, right. They have a - they know what they're registering for.

Man: Maybe not.

Man: Not necessarily.

Man: (Unintelligible).

Fadi Chehade: They may be dreaming up that they will start the business in Morocco called, you know, Happy Travelers at Morocco. But how do we do this? I think (Chris) is asking a legitimate question. So he's not agreeing necessarily with what you're asking, but let's assume he is. He's then saying, "How do we do this? How do we implement this?"

Man: And (Chris), I'm not intellectual property. I'm flawed risk area. But in terms of the physical world with trademarks, a lot of them there is a period of time that these challenges are allowed to take place in. So there is a delay before they can come into use so challenges can take place. Okay, we need built in here...

Man: I have a question, Alan.

((Crosstalk))

Man: Yes, how does that challenge take place? Just give us an example for these names that are blocked, because I'm with (Chris). I - I'll tell you so on our applications we also did - we also proposed a block list as well. But part of it was so that we knew since we had the rule saying, "Hey, if somebody -" I'll give you an example. Somebody won a UDRP. There's a clothing store, Jeffrey, right? Somebody had Jeffrey and - but - and then I - and then that was so they won a UDRP case.

But let's just say I own dot family and should Jeffrey-dot-family be blocked because somebody won a UDRP, you know, in that? Probably not, but it's - as the registry for dot family, I'm able to make that decision. When it goes to these broad scales across all TLDs, we lose the mechanism for discretion. So what (Chris) is saying, how does this discretion now come into it and who makes these decisions and how does that work?

Fadi Chehade: Yes, that's a fair question he's asking, to be honest. And I know we will go in circles, and it's late.

Kathy Kleinman: Fadi, I'm also out here, Kathy.

Fadi Chehade: And Kathy, before you speak, I'll just share a thought. What if you said that you can block a name but after you've put some very stringent tools, for example, if that name is a registered trademark in 50-plus countries?

Kathy Kleinman: No.

Fadi Chehade: Why don't we go with that?

Kathy Kleinman: No, I can tell you why.

Fadi Chehade: (Unintelligible). I'm just saying if we go some - and it's in use and, you know, it's (unintelligible)...

Kathy Kleinman: Because the vast majority of names that are registered across 50 countries are technical. They're telecommunications. They're niche. I mean Motorola has trademarks registered across 50 countries and in certain of their satellite areas. Is that the reason to block across all top-level domains? They've got no right in dot family or in dot stocks or in dot baby. Doesn't make any sense. It's so outside the bounds and the limits of trademark law that it defies belief, and that's why the GPML and the blocking generated more controversy in ICANN than anything I've ever seen since the founding of ICANN. I mean it really blew the lid off of Sidney in 2008.

And so here we're coming back to something that has been so much a part - I mean if policy is about what the community had concerns about, what the community has discussed, debated, torn their hair out over, we gave up everything else because we hated blocking.

Man: (Unintelligible).

Kathy Kleinman: We took all the other things. We worked on trademark claims. Thousands of hours have gone in to helping create these trademark mechanisms, but the blocking...

Fadi Chehade: Kathy?

Kathy Kleinman: ...the blocking is terrible.

Fadi Chehade: We must solve the issue of defensive registration.

Kathy Kleinman: Fadi, there's no one else left on this line except me. Everyone else has gone home. It's been 12 hours. This is no longer fair. I don't think we have to do this now. We've now strayed into an area that hundreds of people have talked about, screamed at microphones, thrown pens down. This goes back. This issue strikes such...

Fadi Chehade: (Unintelligible).

Kathy Kleinman: ...a pulse, such an artery, vein in so many within ICANN that this isn't fair that I'm the only one here to tell you how much blocking across all gTLDs doesn't make sense and how in the history of trademarks and non-commercial speech, I've never had to justify to anyone what I name my kid.

Man: (Unintelligible).

Man: Actually she's not the only one here, Fadi. I'm still awake past midnight. I can't say - I can't say much of what Kathy's saying better than she is, but I'm pretty well in the same mind.

Fadi Chehade: Okay, Kathy and (unintelligible), I think. Let me just be clear, I'm not belittling the work that was put. Ton of effort on a lot of things. I look at the fruit. So the fruit we have today on how we deal with something ugly in our industry called defensive registrations is a non-fruit. That's what I look at.

I'm not suggesting what is the exact cure. What is it? The reality is we look like an industry that is allowing people or forcing people to do - to spend money on non-valued (unintelligible). That's what we're allowing. That doesn't make us look good.

This only reminds me of things that happened in Chicago and in Brooklyn where I lived for many years. This is not good for our industry (unintelligible).

((Crosstalk))

Fadi Chehade: I'm from Brooklyn, so be careful. I lived there for many - but - so we don't want people running around feeling that this ICANN community is forcing people to spend millions of dollars for nothing other than to block people from doing the wrong thing.

Now I'm not saying I have the cure or the solution, but we can't keep saying we've spent time and we got nowhere. Well, (unintelligible)...

Kathy Kleinman: No, we spent time, and we did get far. We spent and we specifically jettisoned one recommendation blocking, because it didn't make sense. Doesn't make sense across 1900 gTLDs. Because you have a trademark in a certain category of goods and services does not give you the right to register in everything else. It never has. It never will. Having a screen where someone has to claim some right, we're talking about new goods and services, new companies. They're creating these things out of whole cloth.

That's why we created the trademark claims notice so that people would have some indication of what other people's trademarks were and then decide whether to go forward. We've done all of that. But this type of blocking across - I mean it really - this - it's hard to believe that we're talking about this at 12:25 Eastern time. This is huge.

We listened this morning, but we didn't respond. We didn't tell you how long the debates on this particular issue have gone on, and I don't think people have to register defensively in things that have nothing to do with their category of goods and services. And I don't think that blocks should be - I think we've gone a long way to addressing defensive registrations. Let me throw out there, I'm not sure we have to go any farther. We've done a lot.

Fadi Chehade: (Unintelligible) (Mike), he needs to speak. Jeff has his hand up. I think we heard you. We appreciate the comment. Please, (Mike).

Mikey O'Connor: This is Mikey. This is a process thing. Fadi, when Kathy is talking, she can't hear you.

Fadi Chehade: Understood, but...

Mikey O'Connor: So as a result, we're sending a signal to each other. Kathy, you and the folks online need to not interrupt, because when you interrupt, the people in the room then can't speak to you. So we're going to have to get a little bit more disciplined in the way that we use the telecom, because what we're - what's going on now is we're making each other mad, because we're sending each other a signal that we don't know we're sending.

Fadi Chehade: Thank (unintelligible).

Mikey O'Connor: So we need to get a bit more disciplined on calling people. That's to Fadi.

Fadi Chehade: Thank you.

Mikey O'Connor: And the people on the wire need to get a little bit more disciplined about waiting to be called upon.

Fadi Chehade: Thank you. Thank you, Mikey. So Jeff, please, you've had your hand up. Go ahead.

Jeff Neuman: Thanks. So one of the things - first point I have is on blocking across all TLDs, and I'll tell you just as the operator of - the applicant for dot NeuStar, I do not want blocking. I believe that there are - in my TLD I will have, for example, office-dot-neustar. That's a Microsoft trademark. I'm not going to use it in the way of the trademark sense, but damned if I'm going to block it, because Microsoft has Office. If I want to list my offices there, I'm going to do it.

So I just want to make sure the one element that I think was introduced by the IP owners, which was kind of missed is that it's only if you're otherwise eligible to get a mark in that in the first place. You can only block if you're

otherwise eligible. So I want to keep that component, because I think that's important.

Now the other problem I have is you brought up Brooklyn, which is great, because we also are the applicant for that - well, we're the backend provider for dot NYC. And I don't want Brooklyn to go to a defensive registration. Brooklyn-dot-NYC to beer - there's a beer called Brooklyn. I don't want it to go to them. I actually want people to use Brooklyn to build up the community and for whatever else we point in there.

So this kind of supports Kathy's argument in a sense, not as passionately as she has. But there are many uses of these marks that have nothing to do with the trademark with the - for the reason whichever trademark initially. I think it's a very important issue.

It's one we cannot solve here, but we cannot prevent the legitimate uses of - for example, even (Fab)'s, you know, golf. Golf-dot-sports should not be blocked simply because (Fab) has golf. And I understand this problem of let's say I'll register that defensively in the sunrise. But actually I would say he can't, because I reserved that as a premium name and wouldn't even have it in that sunrise. So there's whole other issues there.

Man: (Unintelligible).

Fadi Chehade: Okay, (Fab), did you want to speak? No?

Evan Leibovitch: It's Evan. I just wanted to add one more thing to that. I mean to keep on going if you have a generic word like office, you know, that's not just a matter of office-dot-neustar. Even if it's an office-dot-food, it doesn't necessarily mean that it's infringing on what Microsoft is doing. It could have a totally different

meaning. So I mean just one more voice in favor of the danger of doing something across all TLDs.

Fadi Chegade: All right, thank you, Evan. We're going to close. It's 9:30. The Item Number 1 remains open. We're just going to leave it open for now. We cannot solve obviously tonight with everybody's frankly staminas finished now.

I think we've - we're done with the rest of them based on the straw man. Now we need to take this to the next step, next level. Let me just propose something. So tomorrow's an implementation meeting. We're supposed to then turn our focus entirely to how are we going to get the Trademark Clearinghouse up and running in January.

She's already thinking February, but okay, January. We have a straw man that could at least guide a little bit our understanding of new things we may need to build, we may need to do. That gives us a chance to think about these as we - so tomorrow should be purely an implementation discussion.

What we didn't get to today is really going over the contractual piece of how this will work, and we'll just have to push this to tomorrow, as opposed to today. But it shouldn't take us long. My sense is tomorrow we could cover the contractual piece relatively quickly, which also will change depending on how the implementation ends up looking like. But in general, we have a new view of how the contractual work and how fees will be charged.

The straw man will be shared by Mikey with all of you who are not here and here. He'll email it to everybody. I propose that the straw man does not get sent outside of the people here. It is really not intended to raise alarms with 1400 applicants, because it's just a straw man. And I think that what we will do with it in addition to maybe some additional discussion on Number 1, is we

will put together something that we can then share with the wider community and put out.

I do think that what I'm hearing today will necessitate some thinking as to whether we - what kind of process we will need to push things through. Looking at what's behind me here, I think we need to think how we will push this through. So I'm going to spend some time with JJ, with David Olive, with some members of our board, discuss a little bit how we're going to respond to the community's concern that we make policy if that's the case.

Are we making policy here or are we implementing? Do we need to do a workgroup? I don't know. So the answers to the three we discussed today I need to take internally and get back to all of you with these. I don't know the answer. I have no presumption of an answer. So - please John.

John Nevett: Yes, John. What's your timing for this? You know, many of us are representing other people here and...

Fadi Chehade: Yes.

John Nevett: ...they're going to be - I'm going to be - I'm already getting lots of emails.

Fadi Chehade: Yes.

John Nevett: What's going on? What's going on? I want to be able to share the straw man with the people I represent as quickly as possible.

Fadi Chehade: My sense is probably - tomorrow I won't have a chance to do that kind of work. So Monday, Tuesday, latest, before Thanksgiving I'll send - well, I'll send a note. Now we are going to - we had planned tomorrow evening to share

with the community what we've done for these two days. Given that I would need to go back and check some things, maybe instead we send something out to the community on Tuesday. This way we get all of this put together in a document. We'll have had some answers internally.

I may need to call on all of you for a phone call sometime on Monday or Tuesday to chat with you just on a phone call for an hour as to what I've seen, what I've heard, what people are advising us to do and get your opinion on it. I don't know the answers today, but is Tuesday okay, John, or is that too late? Is Tuesday next week okay? Is that too late? You were hoping for tomorrow?

Man: (Unintelligible).

Fadi Chehade: Well...

Man: (Unintelligible).

John Nevett: I mean the stakeholder groups, we - I mean this is just our thoughts, but we have to go back to our full stakeholder group who has a huge diverse group and (unintelligible)...

Fadi Chehade: So here's a thought. Here's a thought maybe that will solve that so you don't have to worry about this. Why don't we all agree that by tomorrow evening, we will get the straw man and the discussions we've had around the stakeholder in a document out to the whole community with the caveat that we agree as a group that all we're doing is discussing a solution. We had not discussed whether this solution will warrant a PDP process, a - is it just an implementation decision and if not, what. And that we will do that by a certain date.

Man: (Unintelligible).

Fadi Chehade: Well, pardon me?

Man: (Unintelligible).

Fadi Chehade: Or (unintelligible).

Man: The straw man.

Fadi Chehade: The straw man.

Man: Yes.

Fadi Chehade: Yes, this is still - so - but that's at least what we came to as a possible straw man or as a straw man. That's what a straw man is. It's nothing. It's just a straw man, okay? Marilyn?

Marilyn Cade: Fadi, it's Marilyn. I think that would be very helpful. I happen to be here as a chair with three representatives, but - and (Kristina)'s an incoming chair. But for many people, their chair had to go through a - their ex-common chair had to go through a process.

Fadi Chehade: Understood.

Marilyn Cade: Right? So if we could go with some kind of a - you know, here's a status report and go as far as we can on it and identify the decisions that are made, that would be very helpful. The second thing I would say though is if we are going to have a call on Monday or Tuesday, I would prefer we schedule it

tomorrow and cancel it than try to schedule it next week when we're all probably overwhelmed with other work. If that...

Man: (Unintelligible).

Marilyn Cade: And so tentatively...

Fadi Chehade: That's a fair point. That's a fair point. Okay, so what we're agreeing to do here is we have a straw man that solves 2, 4 and 5. We have an agreement that 3 and the old 6, 7, 8 have been shelved because they're being dealt with in other - yes, that 3, 6, 7 and 8 will be dealt with in separate processes dealing with URS, Whois, RAA, et cetera.

Man: (Unintelligible).

Fadi Chehade: Right?

Man: (Unintelligible).

Fadi Chehade: Seven, you have a history. We always hit on this three as we will deal with it in the URS process, which is separate, right, because this straw man doesn't solve the URS. It solves Number 2, Number 4 and Number 5 on this list, right? We agreed that Number 1 remains open. If tomorrow we have time we'll address it, but I doubt it. Tomorrow we should really shift gears to implementation and systems and make sure we're not behind on the things we have to do.

I think this Number 1 is something where we - maybe we'll tell people in tomorrow's report we just couldn't reach an agreement on it. If you guys get a

good night's sleep and wake up in the morning and have good ideas that won't get many people upset, let's talk about them.

I just - I told you my feelings. I feel that we should think of defensive registrations as a - as something that is not a good mark on our industry. At the same time we should think on this side of, as you suggested, that there are legitimate uses that we don't have a mechanism, as (Chris) said, to solve.

We haven't heard you come up with a mechanism and frankly I can't think of one. What is the mechanism by which these people in good faith can actually allow legitimate rights or interests to move through? I don't know how we do that systemically. I just don't know. So we need to figure that out. But let's sleep on it. We're all too tired now to come up with any reasonable solutions to it.

Did I summarize what we did today okay? And we are agreeing that by tomorrow evening we will release like I did last time, something on my blog that says we all met. This is what we discussed. This is what we did. We came up with this straw man, something to the effect...

Man: Will we see a draft of that (unintelligible)?

Fadi Chehade: Yes, it's exactly what - as I said this morning, what I want to do differently this time is try and get us to agree to it, as opposed to us rushing afterwards to write it and send it. And I felt bad that you guys didn't look it before I sent it, but I hope it's reflective of what we did in Brussels.

Man: And I do have one other question is that we - I - the straw man, I'm in agreement on that. Where - what is on that our straw man's going to come out. What were the next steps on the slides and the discussion that Margie had

gone through about the policy guidance versus a PDP? I'm not sure where we left off on that.

Fadi Chehade: Two things, first that we gave Margie and the policy team an action item that is not a short-term action item, an important action item to actually take this initial slide they did and turn it into a community discussion, which as Mikey said, may actually end up being a PDP itself. But that is a long process, and she's going to take that down the path.

As to how will we then take the solutions we are building straw men for here and turn these - take these to a process that defines how we make them part of what we do, I think I said that I will take that into consideration. But I won't make us wait too long.

So, you know, at the latest in the next week after this Friday, we should have some kind of answers to all of you. Let's say we assess these and we believe these are huge changes to the policy and they need to go through this or we assess these, and we think they're within the implementation definition or some other thing to be determined. Does that answer your question?

Man: Yes, that sounds good. Yes, that does answer the question.

Fadi Chehade: Okay, and I think we're exhausted. The people on the phone, a million thanks for hanging in. Really I really appreciate it. I know it was very hard for you to participate from afar, but thank you very much.

For those of you in the room, raise your hand if you're here tomorrow. (Chris), you're here tomorrow? Okay, all right, so most of us are here tomorrow. Okay, and I presume many of the people on the phone will join us

for the implementation discussions. Okay, thank you. Thank you very much.
That's all I can say. Thank you. Thank you. And...

END