

**ICANN**

**Moderator: Gisella Gruber-White  
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11:00 am CT**

Coordinator: Excuse me. I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Chris Chaplow: Thank you. Good morning, good afternoon everybody. This is the BC call on Thursday, the 25th of October at 1600 UTC. And specifically to talk about the reports from the Clearinghouse Task Force.

On the call at present we have Elisa Cooper, Chris Chaplow, Marie Pattullo, (Elizabeth Sweezy), Phil Corwin, Andy Abrams, Steve DelBianco, (Bob Ruwana), Bruce or Bryce Coughlin, Gabriella Szlak and Marilyn Cade just joined.

((Crosstalk))

Chris Chaplow: Shall I hand over to the Chair Marilyn or directly to Elisa?

Marilyn Cade: I'm only going to say - I'm going to say two things as the Chair and then hand over to Elisa if that's okay. This is a call that is probably a preliminary call to

work we're going to need to do early next week as well that Elisa will be coordinating for us.

So we're going to have updates today on the work that's gone on that Elisa's been coordinating with three working groups. But we may need to prioritize discussions with members early next week as well. So I just want to give that heads up in the event that happens.

We also have three or four companies and associations that are sending in applications to join the BC. If they are received in time, then we will invite them as guests. It's preliminary to do that now but if they do send their submissions for applications in, we may invite them for guests if Elisa coordinates a second call.

And can I had over to you now Elisa.

Elisa Cooper: Yes. Thanks Marilyn. So first of all let me begin by saying I apologize for the multiple invites. Originally this meeting had been sent to the public list and then I sent it to the private list. At any rate, apologies for that but let's go ahead and get started.

As Marilyn mention, the purpose of this call today is to receive an update from each of the three working groups who are working on these improvements that were presented to the Board, these eight improvements.

And the first working group, which as led by J. Scott Evans, was really focused on the Trademark Clearinghouse technical implementation. And also to sort of did additional work on the Sunrise and claims extension that we've been asking for. And also talked about the inclusion of abusively registered terms into the Trademark Clearinghouse.

The second working group was led by (Avricio Vyra) and that was really focused on the URS and making the URS more effective and also if necessary underwriting that - the URS enable to meet that 3 to \$500 price range.

And then the third working group, which was led by Brian Beckham and Claudio Di Gangi, was focused on an implementation of a blocking method for second level registrations.

And so in today's call Steve is going to take us as well as any others who want to add anything - take us through that first working group sort of where they're at right now, what it looks like they're going to be proposing.

I will go through where we are at with the second working group and Phil Corwin who's also online and has been very active in that particular group and I would invite him or any others to add onto my explanation.

And then finally I don't know if Susan Kawaguchi is on the line yet but she's slated to give an overview of Working Group Number 3. So I'm going to turn it over to Steve and maybe you can give us an update of where we're at with the Working Group Number 1.

Steve DelBianco: Thanks Elisa. Steve DelBianco here. Now Bryce Coughlin and Chris Chaplow are both on the call and can chime in as well. This first working group is a moving target. We've had two one-hour calls and several hours of email interchanges. Today in a few hours we'll have another call to review the draft document. Elisa, was that draft circulated to the members of the BC?

Elisa Cooper: No but I can send it out now.

Steve DelBianco: May not need to. It'll change in the next few hours.

Elisa Cooper: Okay.

Steve DelBianco: I can just run through it quickly then.

Elisa Cooper: Okay.

Steve DelBianco: But thank you.

Marilyn Cade: Steve. Steve, it's Marilyn. It's such a great concise document. Do you think it's going to change a lot? Because if not, might be good to have it.

Steve DelBianco: Well, you know what, I'm fine with you sending it.

Marilyn Cade: Elisa, could you...

Steve DelBianco: It would be on the private list Elisa. Elisa, if you can send it to the private list, it would be great.

Marilyn Cade: Right. BC private.

Elisa Cooper: Okay.

Marilyn Cade: Yeah.

Steve DelBianco: Thank you. This is Team Number 1. It's call the Clearinghouse Task Force or Team 1 or Group 1. But the two RPMs or rights protection mechanism improvements we addressed as Elisa said Number 2 and Number 8 in our list.

And I'll quickly go through our preliminary conclusions with respect to those two.

Item 2, which was to extend IP claims notices indefinitely. We get five rough conclusions. The first is there's a significant benefit to registrants continuing to do the TM claims notices.

You see a registrant might not even know that the string they're asking for could potentially infringe a trademark holder's rights. And they prefer to know that before they take the time to register, spend the money and then maybe even begin to build out their Web site and their business.

We also said in that first point that if you shut this down on Day 60, it's not as if on Day 61 that there's (enough) substitute mechanisms that would do the same work of claims notices. Many people have said that there's watch services in the marketplace today.

These watch services are probably quite useful to a trademark owner who learns at the end of the day or at some point about registrations that came up that were close to their trademark.

But a watch service does nothing to tell the registrant in real time just as they're registering that they may actually have selected a sting that could infringe. It's way better to do the trademark notices in a way that the registrants sees it in real time that just simply tell trademark owners at the end of the day.

Our second point is that businesses understand that it might add some incremental expenses to extend the trademark claim notices indefinitely for longer than 60 days and that we were willing to pay a reasonable cost as part

of the annual clearinghouse renewal fee, which is already anticipated although we don't know what the dollar amount will be.

The third point -- again we're still under extending trademark claim notices -- is that we think an extension could prevent the gaming that would occur if registrars, resellers or even registrants waited until Day 61 to start registering domains that they intended to use in bad faith that might be awfully close to a trademark term.

And, you know, this is a little dicey for us to say this. We don't want to imply there are people planning to do it on bad faith. We don't want to impugn registrars and resellers. But we did want to say that somebody with that intent can wait till Day 61 and escape getting a notice and therefore can claim they didn't know after they've collected traffic or potentially sold a cybersquatting domain.

Our Point 4, pretty standard here. We said the whole community benefits in trying to keep the DNS clear of abusive registrations and enhances consumer trust and confidence.

And then finally on that one we said the IPC and BC think that the extension of claims notices should be studied - could be studied in this comprehensive independent review of the new RPMs that the GAC asked for.

The GAC asked for it in its communique of March 2011 that one year after 75th new gTLD is launched that ICANN needed to undertake an independent review of the new gTLD expansion with respect to the RPMs.

And we are going to suggest that that is a great date to hang something on. If we have to say indefinite that's our goal; indefinite extension of trademark claims.

But a fallback position might be at least extend it until the conclusion of a GAC review of RPMs because that conclusion may well say that trademark claim notices are working beautifully and should be kept alive.

Now we did say that one year after the 75th new gTLD is probably not a good way to run the shot clock here because the first couple of hundred gTLDs are likely to be IDNs because they're first in line.

So this was a Marilyn suggestion. We said it should begin one year after the 75th non-IDN is launched. But again, that's the GAC's point of view and we may need to go to the GAC and get them to change their recommendation.

I'll stop there on Item 2. I'm over half done so I could go into Item 8 next. But are there questions on Item 2, the extension of TM claims?

Marilyn Cade: Steve, it's Marilyn. I want to get in the queue on that point you just made but put me in the queue after others speak.

Steve DelBianco: Bryce and Chris, anything to add on extension of TM claims?

Chris Chaplow: Steve, Chris here. Just a - it did occur to me the origin of the 60 days was it supposed to be trade and, sorry, and Sunrise of 30 plus 30? Any idea of where that came from?

Steve DelBianco: Well this wouldn't happen until after Sunrise was over Chris. And I don't actually know where the 60 came from. Any others on the call?

Marilyn Cade: I'm sorry. You mean extending Sunrise to 60?

Steve DelBianco: No, no. Why did the trademark claim notice in the guidebook require it only for 60 days?

Marilyn Cade: That was - it's Marilyn speaking. That was originally - I'm (probably) what I'm going to say because I know this is being transcribed. Probably what I'm going to say is a bit challenging. But that was Chris reflective of a total lack of understanding of the needs to trademark holders.

And since some of the applicants as new gTLDs only wanted Sunrise to be 30 days, they only wanted Trademark Clearinghouse to be 60 days, it wasn't based on information ever that we provided. We had always provided broader - a need for broader dates. But those were ignored initially.

Steve DelBianco: Okay.

Chris Chaplow: Okay. Thanks. (Can I)...

Steve DelBianco: Anyone else then?

Gabriella Szlak: So if - this is (Gabby). I have a question. So if the Trademark Clearinghouse extends its period then they will accept new trademarks. How will the process of including new trademarks will be?

Steve DelBianco: (Gabby), please understand, the Trademark Clearinghouse is a database and it accepts registrations. We aren't talking about extending the clearinghouse. We're talking about extending the trademark claims notices which (unintelligible).

Gabriella Szlak: Oh, okay. Okay. Yeah. Sorry...

((Crosstalk))

Steve DelBianco: There's an assumption...

Gabriella Szlak: Yeah.

Steve DelBianco: ...that the clearinghouse will stay open at least until the last Sunrise and the last trademark claim notice is required.

Gabriella Szlak: Yeah. Sorry. I got confused, yeah.

Steve DelBianco: I have a feeling it would be very awkward for them to shutdown the quote unquote clearinghouse database. There are...

Gabriella Szlak: Okay.

Steve DelBianco: ...anticipated to be annual renewal fees paid by trademark owners to keep it running.

Gabriella Szlak: Okay. Sorry. I got confused.

Steve DelBianco: Not at all. Everybody says the word Trademark Clearinghouse and sometimes they mean the registration of a trademark, sometimes they mean Sunrise registrations in a zone and sometimes they mean notices to registrants and it all gets - it all gets confusing.

Man: Yeah. Steve...

Steve DelBianco: Marilyn, you're to say something about the GAC's 75 IDN gTLDs.

Marilyn Cade: Right. I think we need to separately write a informational document for the GAC laying out the BC preferences and trying to get endorsement from others.

The - when the GAC called for the number 75, they did not at that point - I know this because I've talked to them. They did not take into account their call that IDNC prioritize and support that was coming from other parts of the community that IDNC prioritized.

So the number 75 was not magical to them. They were trying to achieve as far as I can tell Steve a reasonable timeframe that would assess the effectiveness of RPMs in a generic way. But...

Steve DelBianco: Got it. And the further this moves out - the further this moves out, the more it starts to coincide with the affirmation of commitments review, which is supposed to begin one year after the first gTLD is launched. So are we still looking at two reviews? One that the GAC requires of an independent outsider and the second being an affirmation, which is a review done by the ICANN community.

Marilyn Cade: So my thought - it's Marilyn again. My thought would be as probably the most informed players in this we ought to write a one-pager Steve that gives to the GAC. So here's what might work. (It) consistent with you call for 75, we - there is an affirmation of commitments. We want a review that is effective. And let me just say a word about effective.

To me it's not going - we're not going to be served by having a review that is primarily IDNs and community facing gTLDs. Generic words that are in - sorry, I need the right word her. Multiple applications for the same phrases, they're going to be moved to the end.

So I think maybe we need to within the BC stand up a different discussion with your guidance Steve on - and then go back to the GAC on what the right approach would be. So an evaluation actually - because if we did an evaluation of RPMs only related to IDNs and community facing gTLDs, we wouldn't show cause as we need to. We wouldn't show the failures. Right?

Steve DelBianco: Okay. I don't want to use too much of the time for only one of three teams and I'm only halfway through.

Phil Corwin: Steve, can I make a very quick comment?

Steve DelBianco: Phil, I think that's you, right?

Phil Corwin: Yes, yes. Just real - I'm in general agreeing with everything you said with two caveats. One, extension doesn't bother me as long as what generates a claim warning is under a system that's designed to minimize rather than maximize false positives. And second, I don't want to deal...

Steve DelBianco: (Unintelligible).

Phil Corwin: ...with it - I don't want to deal with it now but just the fact that one has received a claims warning shouldn't be determined as in a subsequent URS or UDRP on the issue of bad faith registration, that the review should be broader than...

Steve DelBianco: Okay.

Phil Corwin: ...just giving a warning and going ahead.

Steve DelBianco: All right. So I'm about to progress to that. That was Item 8 Phil.

Phil Corwin: Okay.

Steve DelBianco: Which is with regard to extending an IP claims notice to strings that are not an exact match but that were previously (and have) adjudicated to be abusively registered or used, here's what the task group concludes.

So now we're to the point of the notices. The first part of this is simply extending it. Now we're discussing an RPM improvement where notices would go to more than just exact matches. Exact match plus the dash, ampersand and slash. So we have again four points to make on this and Bryson, Chris please weigh in.

The first point is that we said that for any domain name found to be abusively registered or used and found to be a means by an arbitrator like WIPO preceding the UDRP or U.S. (unintelligible) court.

For any domain name that's found to be abusively registered or used, the complainant in this case should have the option to register the second level part of that domain name in the Trademark Clearinghouse so that trademark claims notices would be issued for attempted registrations of the identical adjudicated string across all gTLDs. This isn't news. The Business Constituency approved this particular item a little over a year ago. I just tired to give it voice here.

Item 2. This is what the team is saying that to minimize costs and delays, trying to be team players here, to minimize costs and delays we would wish to implement these additions to the clearinghouse by using the data model and the workflow that's currently being planned for the Trademark Clearinghouse registration process.

And from what we understand the second level part of an adjudicated domain name could be (entered) by a trademark owner as an additional map string that's attached to one of their verified trademarks already registered in the clearinghouse.

This is much like the way that a trademark owner can add with or without a plus, spell out the word plus, with or without an ampersand, spell out the word and, and with or without a hyphen.

The process that ICANN's already designing allows the trademark owner when they do the registration to specify multiple variants on their trademark just in handling matches on the plus, the ampersand, space and the dash. And we're saying that this would be in addition to that. It'd also be able to enter other strings that were adjudicated this way.

Now we acknowledge that it might be necessary to add fields to these Trademark Clearinghouse matching records in order to store information about the adjudication or legal proceeding that found the domain to be abusively registered or used.

So they're not actually submitting a trademark at all. They're submitting information about an adjudication or legal proceeding. And we had realized that that may need to be stored along with whatever string they'd like to enter.

Number 3 is that we come right up - and Chris quite appropriately said this is a philosophical point. Not a technical point. This is a philosophical point that there's no intent here to create new IP rights for domain names that are found to be abusively registered or used.

Any adjudicated second level domain names would be attached to an otherwise verified trademark as additional matches. These additional strings would not automatically acquire or imply any verified trademark rights. That music to your ears Phil?

Marilyn Cade: I think actually...

Steve DelBianco: I've got Phil speechless. He's still amazed...

Phil Corwin: All right. I had to take my phone off mute to speak. You know what. I want to see the details. I mean (unintelligible) letter to Congress last month said something, you know, said they- ICANN sought adding trademark plus generic terms was creating rights. I want to hear more discussion on that.

Steve DelBianco: Right.

Phil Corwin: My one other caveat would be what's you - is this going to - are these terms going to generate locks or - you put in a second level...

((Crosstalk))

Phil Corwin: Okay.

Bryce Coughlin: We've got to be very clear.

Phil Corwin: Okay.

Steve DelBianco: ...Bryce. Thank you Bryce.

((Crosstalk))

Steve DelBianco: ...you tried to set this up very carefully. This is only about claims notices.  
Okay.

Phil Corwin: Okay.

Steve DelBianco: There is another team looking at blocks. So let me finish the fourth point. The fourth point is, and the last point, is that in order to minimize costs and delays, we want to implement these additional claim notices by using the same data model in the process that's currently being planned for the trademark claims notice service.

And from what we understand the list of strings that are subject to a claims notice would be generated in the same way that these plus, ampersand, space and hyphen strings will be generated from the Trademark Clearinghouse.

We go on to say that it will be likely - it'll likely be necessary to create a separate trademark claim notice for a registrant who's attempting to register one of these domain names that was previously adjudicated to be abusively registered because we don't really believe the notice would be the exact same text that you would show when a registrant tried to register an exact match.

Gabriella Szlak: And that was exactly my question. Is it going to be that same kind of text or a different kind of text because it's different?

Steve DelBianco: That's right (Gabby). So we did anticipate that the notice would be drawn perhaps from the adjudication information that we specified a moment ago that would be entered whenever the trademark owner's putting in these additional strings. And presumably that would generate the text.

This argues for a centralized live query model so that the trademark claim notice warning would be generated from one set of programming from one single location under ICANN's full supervision. So there's tweaks and changes to the message to be done one place instead of several hundred different registries and registrars.

I should first let Bryce and Chris add to this and again tell everybody that this is subject to change in calls that the work team is having today.

Marilyn Cade: And as we do that, can I just check time? It's Marilyn. Should we - maybe at 12:30 we wrap up this topic Elisa and...

Steve DelBianco: Definitely.

Marilyn Cade: ...go to the (unintelligible).

Steve DelBianco: Definitely. Bryce and Chris, anything to add? Five minutes here.

Chris Chaplow: Yeah. I've nothing really to add Steve to that explanation. Thanks.

Bryce Coughlin: I mean I - this is Bryce. The only thing I would add is just that, you know, we of course are committed to - in striking the right balance and I think this document does a good job about doing that.

I think the one concern that's been raised, and this is where we're likely to see some possible change in this document, is sort of the administrative viability for lack of a better word about having the proceeding put under as a matching string just because of the way that these UDRP or URS decisions might be actually worded and how or how they may be actually linked to a particular mark or frankly not linked to a particular mark.

And so it actually raises some problems on that end. So I think we're trying to still be creative about figuring out a solution to that problem.

Steve DelBianco: And Bryce, to you credit, you also brought up the point that the XT, the complainant who filed the UDRP or URS might be a subsidiary or an affiliate of the trademark owner and the clearinghouse. There has to be some discussion of how do you link those two entities together as well.

Bryce Coughlin: Right.

Steve DelBianco: That was a great point. Any others in the queue here? Great. So please don't circulate this document. It is only a draft. It is being changed as we speak. And we do realize that there is some conflict, some clash in that this potentially could happen between us and one of the other teams. Because one of the other teams is looking at the idea of doing blocks on previously adjudicated strings.

That may argue for a slightly different technical database model than what we are suggesting here. Principles are the same but the technical implementation could be different. I'm done. Elisa and Marilyn, back to you.

Elisa Cooper: Thanks Steve. So I was on Working Group Number 2 along with (Angilee Hanson), Gabriella Szlak, Camille Stewart, Phil Corwin, Mark Sloan and then Matt Cohen also joined this group as well.

So let me go through what we focused on. We were really focused on Item Number 3, which was completing the URS as a low cost alternative and improving its usefulness and if necessary having ICANN underwrite the URS for an initial period of time.

And so we began the working group by focusing on a number of different ideas that actually came out from a session that some of the IPCers had met and discussed previously in terms of how to make the URS more useful. And so (I'm going to) tell you what those different recommendations were and then give you an idea just sort of how much consensus we had on those different recommendations.

I will say that we are still working to identify where we have consensus or where we need to refine the recommendations and our plan is to meet either tomorrow or now that we have some additional time to meet next week early.

So let me go through these and then of course - and I think there are a number of participants on the phone who are also part of this working group. So I'd ask them to also add any additional information.

But let me start off with the first recommendation which was that the Trademark Clearinghouse automatically tie into the URS with an easy to use interface that brand owners only need to validate their marks once and not have to do some kind of validation when filing a URS complaint and hopefully this somehow makes the URS simpler and less costly to process.

And so while there was some agreement there were also some concerns about, you know, exactly, you know, that some of the claims might trigger a warning in that they might be different from what is actually infringing. And actually I'll let Phil kind of - because this is really Phil's argument, I'll let him - Phil if you want to kind of clarify this point.

Phil Corwin: Coming off mute. I don't know there's argument. You know, my understand - the utility here is that one of the things the complainant has to put in their complaint to pass an initial administrator review is that the domain is identical to or confusingly similar to our mark and allowing them to refer to the registration of the mark in the clearinghouse, which already proves that the mark exists and is in use makes it administratively easier to meet that element.

So there's no need to go beyond the trademark for this purpose of meeting the administrative review in the U.S. It's different than a judgment on the - whether infringement exists. It's just clearing the first administrative threshold and making it unnecessary for the complainant to submit additional documents to prove the validity of their trademark.

Elisa Cooper: So then maybe I misunderstood. Did you not have - so then are you okay with this point?

Phil Corwin: Well I'm not sure which - I thought we had discussed - yesterday we had agreed that you really only needed to refer to the mark because the benefit here is to ease the administrative burden on the complainant and documenting that element - the first element that they have to prove in the complaint, which is that there's a mark that's valid and in use. But...

Elisa Cooper: Right. And so then are you okay with somehow utilizing the data that's already in the clearinghouse for the...

Phil Corwin: Well for what purpose? I'm not sure what purpose we're talking about now.

Elisa Cooper: well just for streamlining the process of submitting the complaint.

(Angilee Hanson): Just to...

Phil Corwin: Well...

(Angilee Hanson): ...show that you own the trademark and that it's in use, right? This is  
(Angilee).

Elisa Cooper: Right.

Phil Corwin: Yeah. I have no problems because that only involves...

Elisa Cooper: Yeah. (We're already in agreement) on that.

Phil Corwin: ...that only involves the registration of the base make itself and there's no - I've  
no problem with that. Why put an additional administrative burden on the  
complainant.

(Angilee Hanson): Right.

Phil Corwin: Yeah.

Elisa Cooper: So maybe we're actually more in alignment on that one than I thought.

Phil Corwin: Yeah.

Elisa Cooper: Okay. The second recommendation was that default judgments must not warrant panel appointments. And I know Phil you felt that there needed to be a prima facie examination. And I think some others felt that didn't need to occur. I don't think we're in full agreement here. And...

Phil Corwin: Well let me state the case there and also note that several other members of the task force came down in favor of some type of appointment of an expert to do this. And the reason is quite simple.

To the URS model right now states that to prevail - for the complainant to prevail and for the domain to be suspended, there must be a file name that there's a valid mark in use that the name is identical, confusingly similar, that the registrant has no legitimate rights and that, you know, (it assumes) the UDRP with a higher burden of proof. It clear and convincing evidence.

So - and in the applicant guidebook description of the URS, the detailed description that's in effect now it says that the administrator review of the complaint is solely to determine that all the initial administrative requirements have been met by the complainant and that the complaint is complete and in no way - it's right in there.

I don't know the exact wording but it says in no way does the (unintelligible) administrative review constitute any finding of prima facie infringement. So the administrative review determines nothing in regard to whether there's infringement right into the level of clear and convincing.

So I think you have to have some further examination to result in the suspension. Otherwise you're basically saying we're not going to - we're going to do away with any finding on these elements and just presume that the

complaint is valid if there's no response. And I don't find that acceptable, nor do others.

And in the course of our calls we got more detailed feedback from (Christine Durant), a national arbitration forum about the prima facie examination that they're proposing and that will be in their RFI response on the URS, which is something less than a - it certainly does not entail any review of the response because there is no response. It's basically similar to what you do in a summary motion judgment.

And it's a truncated review but it's still a review that is performed by someone with expertise in trademark law who's making sure that it looks like all three elements had been proven and it shouldn't be that expensive. And that's the (unintelligible) they can provide that within the cost target.

So I don't think there's any reason to eliminate examination completely on a cost basis. And it certainly - it raises very big due process issues. Obviously it can maintain it's just an administrative tweak of the URS. It's really doing away with a very substandard portion of the URS. End of statement.

(Angilee Hanson): This is (Angilee). So I think what we seem to be coming to a consensus on on that one is that a default judgment cannot be obtained just by showing up and filing a complaint. There has to be at least some modicum of review. And I think where the working group isn't sure yet is what that review would exactly entail.

But it did seem like several people thought a trademark attorney would be required because it is not just trademark. It's also, you know, if it's confusing to the public that standard which is gray area.

And that leads me to a different question. So if there is - if part of the test is whether there's confusion, how could that then be that if you've filed for your exact trademark that - in the clearinghouse, that that would - only the identical trademark in that case would apply? Am I making any sense?

What I'm trying to say is is the Trademark Clearinghouse limited to - you're kind of limiting it to identical trademarks with some other...

Phil Corwin: Let me chime in and try - the reference to the clearinghouse for the administrative portion of the URS is only to make it easy for the complainant to demonstrate that they have a valid mark in use that they need that element...

(Angilee Hanson): Right, right.

Phil Corwin: ...of the final requirement.

(Angilee Hanson): Right.

Phil Corwin: The standard for URS is whether or not the domain is identical or confusingly similar to that mark. So you look at the confusing part in the substantive review part of the URS, not on the initial administrative review.

(Angilee Hanson): Right, right. I know. I think - so under - well, this is getting more substantive. But under what circumstances would an identical trademark be confusing - I mean is the Trademark Clearinghouse going to be limited to just identify trademarks like to the actual trademark?

Phil Corwin: I don't think we know yet. I think that's what's being discussed.

(Angilee Hanson): Right. And are we making recommendation though on that? Maybe not our working group but is there like...

Phil Corwin: Well Steve that's what you just went through...

(Angilee Hanson): Yeah. I think I...

Phil Corwin: ...on your working group.

(Angilee Hanson): ...came in late. I'm sorry.

Phil Corwin: Okay.

(Angilee Hanson): I'm sorry. And I didn't quite follow it. So...

Marilyn Cade: Elisa. Elisa. Elisa, could you and Steve - it's Marilyn. Could you and Steve maybe summarize what's being asked for in the other two groups related to (Angilee)'s question?

Elisa Cooper: So (Angilee), I think what you're asking is what will be allowed to be submitted to the Trademark Clearinghouse. Is it exact match only as a trademark, which is what the guidebook says today or will it be some combination of terms that could be based on either a word appearing in the trademark description or some other generic words?

I think what you're asking is like how do you look at what's in the Trademark Clearinghouse and say okay, this particular, you know, how do you saw well this particular trademark is being used in a domain and, you know, this is a domain that is, you know, is confusingly similar to a trademark belonging to someone else.

The trademark doesn't - I mean in order to, you know, have a successful URS or UDRP, you don't necessarily - it's exactly the same trademark. You show that within that domain name that domain name is containing, right, that belonged to others in which the registrant has no legitimate right of, you know, being used - well for UDRP it's being used in bad faith.

(Angilee Hanson): Right. Okay.

Elisa Cooper: Yeah. So it's not saying that (these things are)...

(Angilee Hanson): Okay.

Elisa Cooper: ...exact match. It's saying this mark is being used in a way in a domain name.

(Angilee Hanson): Right. Okay. So the URS does go beyond the identical trademark.

Elisa Cooper: Right.

(Angilee Hanson): Yeah. Okay. Yeah. I...

Elisa Cooper: Right.

(Angilee Hanson): Sorry. That's kind of an element request (to it).

((Crosstalk))

(Angilee Hanson): I can get confused in this ICANN stuff rather rapidly I have to say.

Elisa Cooper: I'm sure you're not the only one.

Woman: You're not the only one.

(Angilee Hanson): Especially when I can't do it full time, you know. I wish.

Gabriella Szlak: So I wanted to add something. This is (Gabby). I think also we have like a possibility to think about transparency using more technology for this URS system in the sense that maybe this prima facie review, what (unintelligible) talking about is more like a form they will have to fill some kind of points in which when they are failed then this is like indication of some kind of a (requisite that are failed and are) (unintelligible) URS even though you don't have a respondent answer anything.

So I think that technology can be used in a better way here and I'm not sure if this is the task of the group to talk about this or not but at last to propose some modern use of technology for means of transparency and for adding more accuracy to the complainants when there's no - when there's a default case I mean.

Elisa Cooper: Like some definitive criteria?

Gabriella Szlak: Yeah. So points that have to choose and it doesn't have to be someone so much with a great expertise but it will have to choose in some points based on the experience of the UDRP that we can use for a model. And then you can have all these options.

And when there's like for instance have 50 points and then when it's over 45, then the complainant - they complain even if you have a default and you can still have a complaint that you consider valid, something like that. But...

Elisa Cooper: I think we should talk about that in our working group meeting if we do have some kind of basic review if there is a basic review, you know, some ideas about, you know, criteria that must be met.

Woman: We're...

Phil Corwin: Can I jump in and just add a couple other quick points. One is that another reason why some of us think there needs to be some minimal, you know, at least minimal review on the elements required is to prevent potential for abuse of the process that people know that allegations are going to be automatically accepted without any further look if there's no response.

But let's think about how this is really going to work. Right now in UDRP practice, 70% of cases there's no response. It'll probably be higher in URS because it's complainants are really targeting domains that are black and white instances of infringement. They've probably been registered by bad actors who will not bother to respond. So it'll probably be higher than 70%.

So this is what's going to be the standard practice in most URS cases. And the examiner's going to look at well, the complainants met his burden; then look at oh, well does the registrant have legitimate rights. We have no idea because they didn't respond. I don't think they're required to make enormous inquiry into that.

Was it registered in (bald face)? Again, it's hard to know because the registrant hasn't provided any response. So you don't know what was in their head.

So you're really looking at the domain and, you know, if it's related to a trademark for a computer maker and the page is being used in some way

related to computer technology, it's pretty to me - easy to make the determination that there's a bad faith use going on, which is pretty much what it's going to come down to.

Elisa Cooper: Yeah. All right. I think we need to kind of go through the rest of ours so we can leave the last group some time. So kind of quickly, I think those are all good comments and like I said, we still have some work in this group to do but I think we...

Phil Corwin: And I'm going to be dropping off in one minute. I've got a 12:45 appointment that...

Elisa Cooper: Well I want to get through in case there's anything you want to add.

Phil Corwin: Sure.

Elisa Cooper: So the next item was that the loser of a contested URS proceeding must bear the URS filing and adjudication fees. And I think we have some concern about, you know, whether or not we want to drop this down. So this doesn't really exist today because if there is a complaint that has more than 15 domains registered by the registrant, then it is a loser pays model.

So what we're talking about now is dropping that threshold down. And a point that Phil had made was, you know, actually when we started off with this loser pays model, I think it was actually if you had more than 26 domains or something that you - that it was a loser pays model. And then ICANN dropped it down to 15 and now we're kind of proposing, you know, even one and we're not in agreement here on this item yet.

Phil Corwin: And let me chime in real quick because then I have to leave. Besides my concerns at this - would deter a lot of registrants from responding if they faced a double hit on potential (costs) of responding.

Gabriella, I have similar concerns particular with that income disparities between the developed world and the developing world and that 3 to \$500 is not a big amount for a large corporation. It could be half a month's income in Latin America.

But the policy right now is to target - to put in place loser pays on bad actors, it was dropped from I think 26 to 15 by the Board. Right now it says 15 and a single action and the middle ground we were discussing in the working group was whether if a registrant in the aggregate has lost 15 or more URS cases, it wouldn't have to be in a single action.

That would prove that they are a serial cybersquatter. And if they're going to respond they should bear both costs if they lose. So that's kind of the middle ground proposal that's before the group.

Elisa Cooper: And my concern there was that with these bad actors when they're doing a registration that's being used in some infringing manner, you know, they often change the registrant name on each registration. So it's very difficult to show that it's in fact the same entity that (unintelligible) for the registration. So we have a little bit of work there to do I think.

The next one is that -- and this kind of goes back to the need for having the prima facie case -- that if the respondent does not respond that the brand owner should only pay an administrative fee and there should be no fee where the proceeding - I'm sorry. There should not be a fee required in contested proceedings where a panel is appointed.

So I think here again there's an issue that there should be a prima facie case made and that there would a cost for that but it would be lower than a full panel appointment.

The next item on the list was that the URS should operate on a low or no cost basis. And I think some people feel well it shouldn't be no cost but it definitely shouldn't go beyond the price range that ICANN had proposed and if necessary it should be underwritten or subsidized.

((Crosstalk))

Elisa Cooper: I'm sorry.

Marilyn Cade: Sorry. It's Marilyn. We don't use the word subsidized. We say underwritten.

Elisa Cooper: Underwritten. And then the final one was that - and this kind of goes back to a couple of the other working - well, the other points on the list of eight. And that is that success - in terms of trying to make the URS, you know, more effective or more useful that suspended names should become ineligible for future registration in perpetuity. And that names that were suspended once they - the suspension ended that there would be a permanent block.

And what we still need to determine is, you know, whether or not we also need a method to allow registrations in a block name if, you know, maybe the registrar or potential registrar can show legitimate rights.

And so that in essence - that's where we are. Like I said, the plan is that we're going to - we're going to sort of lay these items out. We're going to put them

in a grid. We're going to see where we have some consensus or where we need to make some changes so we can gain consensus.

And I also just wanted to thank - I wanted to thank (Angilee) for doing a great job of taking notes and sort of get us - getting us moving in the right direction. So thanks (Angilee).

(Angilee Hanson): Sure. No problem.

Elisa Cooper: So now I've only left 11 minutes to the last group and I don't know if Susan's on the line but Bryce is on the line.

Man: Susan isn't. Bryce is.

Bryce Coughlin: Yes.

Elisa Cooper: Bryce, would you (do that)?

Bryce Coughlin: I am.

Elisa Cooper: Okay. Would you be able to give an overview of where things are with Working Group Number 3? I'm sorry to put you on the spot like this.

Bryce Coughlin: Working Group Number 3?

Elisa Cooper: I'm sorry. Do I have that backwards? I'm sorry. I do. I'm sorry. I meant Andy. I'm sorry.

Bryce Coughlin: I was going to say I could try but I haven't been part of the working group so it might not be that accurate.

Elisa Cooper: You're both...

Andy Abrams: Hi. This is Andy. Yeah

Elisa Cooper: ...like second on the list so - whatever. Anyway.

Andy Abrams: I can try yeah. We're, you know, as the other people in the working groups know, things are really - it's really a moving target. But we just had our call - our daily call and it looks like it leads with the Eligibility Group, which I'm on. We have some sort of consensus.

And this is the block list. And I think - I hesitate to call it a block list because at this point it's looking more and more like an enhanced claim service. The Safeguards Group, which Susan is heading up, it looks like they do want to allow safeguards for legitimate registrations.

So if a registrant tries to register a name that's on this block list, they can go through a scroll down menu and pick various, you know, non-commercial, commercial uses, which are legitimate uses. And then it looks like it may be up to some sort of dispute mechanism run through the clearinghouse if the trademark owner wants to challenge that legitimate use.

So going to the eligibility standards, the general consensus is that this should be a repeated harm list. So we need to show a pattern of harm for the trademark owner. And so the goal that the group is going for is two or more UDRP or other equivalent actions. So they could be court actions URS or a particular trademark. But the fallback is something like three or five proceedings.

And then this goes along the lines of what Steve was talking about with the claims service. So for all variants that are specifically abused, and so those could be typos or trademark plus generic. If you can show that that particular variant has been specifically abused by submitting the UDRP complaint, that particular string will also be placed into the block list. And again, it's a block list but it can be - there are safeguards for legitimate uses.

Let's see. What else? And then finally there's an exception for reverse domain hijacking. So if a trademark owner has engaged in reverse domain hijacking, that particular mark will no longer be qualified for the list. And if that particular entity is the subject of three or more domain hijacking proceedings then that mark owner is no longer eligible.

Man: (Unintelligible).

Andy Abrams: So that's what I had for now and we have another call at 10:00 my time. So in a few minutes I'll - I'm sure there'll be further updates.

Marilyn Cade: Actually it's Marilyn. Can I just ask a question about that? My understanding was it was not the trademark holder that would be banned but the particular string.

Andy Abrams: This is the reverse domain hijacking issue?

Marilyn Cade: Yeah.

Andy Abrams: Yeah. Again, this literally came up, you know, 30 minutes ago. But I think the consensus on our group was that in addition to the particular string. So you're right. It's the particular mark that's banned. But in addition to that there's sort of a three strikes rule. If that particular entity is engaged in repeated reverse

domain hijacking then that whole entity can be subject to dismissal from the list.

Marilyn Cade: (Thank you).

Gabriella Szlak: Can I add something? This is (Gabby).

Andy Abrams: Sure.

Gabriella Szlak: Like a very general comment. And I'm not sure if I'm doing the right comment here but one of my concerns of course is about registrants that are in good faith in developing countries and doesn't know anything about this and maybe their professionals, they're lawyers, whatever also doesn't know anything about all these processes.

So I would think about suggesting as well specific materials that will be in the six UN languages available to all and that any time there's a claims notice that this material will go with these notices as well. Like very simple videos that come online or PDF materials that would explain what is going to happen to these registrants that maybe they just don't understand what's going on. So that's what I wanted to add.

That (unintelligible) of course if we do this and this will get more acceptance in general from other groups.

Andy Abrams: That's a really good point. Thank you.

Marilyn Cade: Yeah. Yeah. (Gabby), it's Marilyn. But I think that falls into our communications plan. Not, you know, each of the groups could comment on the need for this if you - if you have identified but that falls into the need for

us - not for these groups to do it but for ICANN to support that kind of communication material.

Gabriella Szlak: I would agree with that but I would add that when you are talking about these particular solution system that is online, one of the standards for these particular solution systems to be legitimate is that it would include any specific information about how the process is going to be and that it will be easy to understand to everyone that's involved - every party.

So I'm not sure if this is exactly communications but also part of the process and due process. That's why I am talking about this.

Marilyn Cade: So Elisa, could you - everybody that's on the BC is on this call but as our coordinator, could you also maybe send an email to the rest of the groups saying that whatever the outcome is that the BC's recommendation is information needs to be widely available and in the six UN languages? And have easy to understand materials both in video and in text.

Woman: (Unintelligible).

Marilyn Cade: I think we'll take that up in our communications plan but I think coming out of these groups to (Gabby)'s point, that would be very useful as well.

Elisa Cooper: Okay.

Marie Pattullo: May I ask a very basic question? This is Marie.

Marilyn Cade: I think that's to you Elisa.

Elisa Cooper: Yes, of course.

Marie Pattullo: When you're talking about the list, this - if you're calling it a blocked list, whatever you're calling it, how will you populate that list? Will it start by taking all of the names are in the clearinghouse and then trademark them as being able to add anything else? Or what? How will you populate that?

Andy Abrams: Yeah. I can answer that. This is Andy. That's exactly the intent. It's all of the marks that are in the clearinghouse database and then in addition to that trademark owners can submit their UDRP complaints or their other proceeding complaint.

Marie Pattullo: Okay. So can you also submit marks that you haven't put into the clearinghouse but haven't been subject to a UDRP so long as you've got them registered somewhere?

Andy Abrams: I'm not sure I understand the question. So no, I think the block list or the enhanced claims list will only encompass trademarks that are already in the clearinghouse.

Marie Pattullo: (Okay).

Andy Abrams: And in addition to that you can show that it has been repeatedly abused through UDRP or other proceedings.

Marie Pattullo: Thank you.

Elisa Cooper: Okay. I think we're at the top of the hour. Are there any other issues that we should discuss? Marilyn, anything you want to discuss?

Marilyn Cade: You know, I just want to say how impressed I am about the amount of work that is going into this and the diversity of the BC members. This call is being transcribed and will be sent to all of the BC members. The working groups are not being transcribed so we are really dependent on those of you on the working groups to share information.

And Elisa, could I maybe ask you to do a quick summary after this call about how we see things proceeding after the conclusion of the working groups so that everybody in the BC has an understanding of what happens next? There will be a face-to-face meeting.

You'll see an email from Elisa and me trying to lay out - it's a very narrowly attended group. I've asked (everybody) to allow video participation or dial in participation from the working groups. But I think you need to assume that there's going to be three stages of work on this. And we're going to need to keep the small groups together and have reoccurring BC calls in parallel with the rest of the work of the BC.

So you're going to get lots of other requests for work. Chris is sending a few. Steve's sending a few. Don't ignore that rest of the work you need to do. This priority is short term and profound. And Elisa will continue to drive it with the support of the rest of us.

But Elisa, I'm assuming we're going to have final read outs from these three groups after Friday of this week. Right?

Elisa Cooper: Well not from our group I don't think. Not from Number 2 since we now have some additional time at least as we're understanding it. We're planning to meet on - well either tomorrow or possibly early next week. And I can't speak for the other two groups.

Marilyn Cade: So why don't - so why don't we do by email if you don't mind. You and I can talk about this with Steve and others. And we'll give the members a deadline on when to expect final reports from the groups. Is that okay?

Elisa Cooper: Yeah. I'll ask them when they expect to have a final report.

Marilyn Cade: Okay. And then we will give you some feedback on what we've been able to organize. If we've been - if we're able to get dial in participation from the working groups into a meeting that (unintelligible) is organizing, we will come back to all of you on that.

It's not looking - we seem to be the only group whose asked for that. The IPC has not asked for that. We have. The other groups have not. But we're going to do what we can here.

Everything is going to have to go out for public comment. So even though people may be thinking we've achieved solutions by having these small groups, Fadi has said we will follow the - Fadi Chehade, the CEO has said we will follow the ICANN process.

There's likely to be a very short-term public comment process that you're going to - you're going to then pay attention to and respond to. But the Executive Committee, Steve and Elisa will be guiding your awareness of those states and we'll come back to you.

Elisa, thank you for organizing this update and for all of the members who are actively involved in the working groups. Thanks so much for what you're doing. It's quite unique in the ICANN process to have this short-term process and really, really important.

So we'll look to you Elisa to give us an update on a next stage discussion and what the commitments are from the three groups if that's okay with you.

Elisa Cooper: Yeah. I think we should plan on, you know, once we receive word by when the three groups think they will have a sort of final document. We should await receipt of those documents and disseminate them to the entire group and then meet to discuss them.

((Crosstalk))

Marilyn Cade: Right. Chris, did you have anything you wanted to add?

Chris Chaplow: It was to welcome and add to the transcript Mark Sloan, James Baskin, Angie Graves and (Angilee Hanson) who joined a few minutes after the original roll call. Thank you.

Marilyn Cade: Thank you. And thanks so much to all of you for this fantastic work. I think we're - now we have to make it real. I just wanted to say one other thing. You guys that came to Toronto had the opportunity to interact with a number of other companies.

And as a result, some companies at your urging are thinking about becoming BC members. So if they send in their applications and they actually apply, we'll be coming back to all of you to add welcomes to them.

So I'm going to say one final thing. I'll send something out publicly. You all have noticed that Benny is on family leave. Benny and her partner (Natalie) have twins; (Owen), a boy and (Noah), a girl joined their family on Monday and Benny has - I'll send a formal notice but Benny has asked me to just

advise all of you that while she misses you, she's quite occupied with the twins.

We will be - we will be in touch more formally later. Thanks so much everyone. Elisa, thanks to you for your organizing of this.

Elisa Cooper: Yeah. No problem.

Chris Chaplow: Thanks Elisa. Bye now.

Elisa Cooper: Thanks. Bye-bye.

Woman: Thank you.

Woman: Bye-bye.

END