Summary of TMCH Meeting
August 20-21, 2012[1]

Highlights

- **Meeting attended by front-end or back-end registries representing 90% of the ICANN new gTLD applications**
- **ICANN Agreement with Clearinghouse providers will be made public, but needs amending to include SLAs, fees, etc.**
- **Front end system for trademark owners to begin entering trademark data is scheduled to begin in October**
- **ICANN's planned implementation models for Sunrise and Trademark claims not supported by the new gTLD Registries because they are too complex and burdensome**
- **Neustar and ARI presented alternative implementation models which have significant advantages for both trademark owners and new gTLD Registries**
- **Deloitte/IBM open to considering a transactional fee model as opposed to fixed fee per TLD**
- **More work needs to be done by all sides; follow up meeting to be scheduled in next few weeks**

I. Purpose of the Meeting. On August 20-21, 2012, Deloitte hosted a meeting between the technical providers of registry and registrar services and the ICANN-selected vendors for the Trademark Clearinghouse (TMCH) service (Deloitte and IBM).

II. Who Attended? Representatives from front-end or back-end registries serving over 90% of the strings applied for were present or on the conference bridge including: Neustar, Verisign, Demand Media, Afilias, AusRegistry (ARI), GoDaddy, SIDN, Nominet, CentralNIC, JPRS, Google, CORE, ISC, MarkMonitor, Valideus and others.

III. Where are we in the Process?

1. Deloitte/IBM and ICANN have a skeleton agreement for the operation of the Trademark Clearinghouse where Deloitte is the prime contractor and IBM is a subcontractor of Deloitte. This Agreement apparently needs to be rewritten to include the final model, fees, SLAs and a multi-year term.

[1] See http://newgtlds.icann.org/en/about/trademark-clearinghouse/forum-on-technical-issues-13aug12-en.pdf for more information on the technical meeting.

2. On June 1, 2012, ICANN posted a Preliminary Cost Model projecting the potential fees to be charged to TLD registries and trademark holders to fund the TMCH.[2] The fees that were published $7-10k per registry and the $150 per trademark were "upper bands" of the fees.
3. According to ICANN, Deloitte will be doing all of the validation and authentication of the trademarks / use for Sunrise, while IBM will be the Database Administrator and will operate the Sunrise and Trademark Claims.
4. SLAs to trademark owners and to the TLD registries have not been documented yet.
5. ICANN still intends on having a "test phase" in early October for the front-end system for trademark owners to be able to start entering trademark information. Their intention is to hold a training session for IP Owners on how to enter their marks into the Clearinghouse at the ICANN meeting in Toronto.
6. All work on the interfaces and APIs with the Registries/Registrars has been "put on hold" pending the outcome of the ongoing discussions with the registries, registrars and the TMCH providers.

IV. Presentation by Deloitte/IBM (the TMCH)

1. A number of different API/modules are in the process of being developed or still need to be developed. They will have APIs to interface with the users (trademark holders / agents), internal APIs for the Validators (Internal), a Registry interface, Customer Support – Web ticketing system, a Dispute Resolution API within the Clearinghouse and a billing platform.
2. Project Plan
    a. Release #1 of the front end interface for rights holders is already being tested by ICANN.
    b. "A lot of work has been done on the validation and dispute resolution processes."
    c. When asked about the official timeline, ICANN still adamant about collecting trademark information in October, but recognizes that the system to integrate with registries will not be until early next year.
3. Fee Model
    a. The Fees that were posted by ICANN on June 1, 2012[3] represented the upper bounds of fees they anticipated based on the current distributed model for Trademark Claims[4].
    b. They are now open to considering other models including a transaction model whereby there would be a fixed set up fee paid by each registry (for each TLD) and a variable transaction based fee.
    c. According to the Clearinghouse, the fixed fee would cover work that they need to do for all registries including training sessions, webcasts, tutorials, support, integration and testing.
    d. The variable fee would cover the differing work load for registries include work load, 24X7X365 support during Sunrise and Trademark Claims, scalable hardware based on expected workloads.

[2] See http://newgtlds.icann.org/en/about/trademark-clearinghouse/prelim-cost-model-01jun12-en.pdf.
[3] See http://newgtlds.icann.org/en/about/trademark-clearinghouse/prelim-cost-model-01jun12-en.pdf.
[4] See Section VI below.

e. If a registry wants to extend the Trademark Claims period beyond the required 60 days, they are working on the fee models to accommodate that, but it may be that the extension will have no additional fees (other than for transactions if the transactional model is adopted).

4. Questions:
   a. Will there be reporting? Answer was yes, but no details.
   b. Will there be APIs for bulk submissions? Answer was yes, but no details
   c. Will there be public access to query the Clearinghouse? Answer given by ICANN and TMCH providers was "no." However, some believe that this answer is contrary to what is stated in the Guidebook.[5]

V. Discussions on the Sunrise:

a) Model Proposed by ICANN: Sunrise Codes
   i. Implementation model proposed by ICANN includes the distribution on Sunrise codes to each trademark owner for each trademark unique for each TLD.
   ii. After validation of the trademark information and authentication that the trademark is in use, the TMCH issues the trademark owner/agent a unique code.
   iii. Prior to the Sunrise period, the TMCH provides a list of all unique codes to the Registry.
   iv. A trademark owner that would like to register its name would provide its code to his domain name registrar who in turn provides that to the registry along with the other registration information. The Registry confirms the Sunrise code with the list of codes given to it by the Clearinghouse. If there is a match, the name is registered.

b) Drawbacks of the ICANN Model
   i. May not allow trademark owners entering the Clearinghouse after the beginning of the Sunrise Period to participate.
   ii. Pre-generation of Sunrise codes introduces a cost to all registries even those with little expected volume.
   iii. Registries are not provided any access to the underlying trademark information being used to secure the domain name registration. This means that registries that would like to restrict eligibility to certain classes of rights holders will not be able to do so based on information already in the Clearinghouse[6].

[5] Section 2.5.6 states that the Clearinghouse will "provide access to Registrants to verify and research Trademark Claims Notices." Section 4.3 o the Guidebook states "Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant." Yet this does not imply public query tool. See http://newgtlds.icann.org/en/applicants/agb/trademark-clearinghouse-04jun12-en.pdf.

[6] For example, if .africa restricts their TLD to only those located in an African country and would like to restrict the Sunrise Period to only those rights holders having trademark registrations in Africa, they would not be able to do so without setting up a completely separate process with the TMCH or validating the information themselves. This would result in increased costs for the rights holders and registries, when such data would be reasonably ascertainable to the TMCH.

iv. Some registries have expressed a need for allocation models that prefers certain jurisdictions or class of goods and the current TMCH model would not support this.[7]

v. Just giving codes to the registry without other information does not allow the registry or the registrar to see any of the trademark information to provide any support to the trademark owner when he or she applies for a domain name.

c) Proposed Model by the registries – PKI Method (Supported by ALL participants in the Meeting)

i. Using PKI encryption the TMCH generates and maintains a public-private key pair and transmits the public key to each registry. The TMCH signs the trademark information with its private key and distributes the digitally signed information to the mark holder or its agent.

ii. Registrar accepts this information along with the registration request. The registry verifies the signature with the public key and verifies that the mark matches the name being registered. Registry notifies the TMCH of the use of the digitally signed data.

iii. Benefits of PKI Method

1. This allows the registries and registrars to see the data being submitted to the registry enabling them to notify the customer and correct any issues or errors.
2. It also allows the registries to display Sunrise information in the WHOIS as has been done in previous Sunrise periods.
3. This also allows registries to have flexibility in Sunrise periods allowing discrimination between marks in Sunrise periods (ex. Limited to geos, certain classes of goods, prioritization, etc).
4. This model would only provide trademark information to registries and registrars IF the TM owner is applying for a domain name in that TLD (rather than trademark owner having access to the entire TMCH database).
5. This model does not require Trademark owners to have unique codes for every TLD.

d) Reaction by ICANN

i. ICANN pushed back because it was not the model they had created, nor was it the model they had been working on with the TMCH providers.

ii. They also pushed back based on privacy grounds arguing that rights holders did not want the domain name registries to have ANY information about the trademark owners' trademarks

[7] For example, for .abudabi, they have opened the Sunrise Period to all trademark owners around the world, but in the event of contention between two trademark owners of the same mark, a trademark registration in that locality would have preference over a trademark owner in another country. The ICANN model would not allow the registry to perform those obligations. Rather, this would have to be outsourced to the TMCH at additional cost and delays to the TMCH to customize implementation for each TLD. In addition, the Registry would have to blindly trust that the TMCH would perform those duties accurately (causing additional risk for the registries).

e) Registries Response to ICANN
   i. ICANN did not understand that the only information registries would have access to would be trademark information voluntarily provided directly to it by trademark owners. That information was only provided by the trademark owners if they wanted a registration in that TLD.
   ii. Registries would NOT be given any trademark information about any rights holder that did not want a domain name registration in their TLD.

f) Next Steps
   a. ICANN would like to initiate discussions on the model with Trademark Owners
   b. ARI/Neustar to revise initial written proposal to include more detail about its solution to formally submit to the community.

VI. Discussion on the Trademark Claims Process

a) Proposed Model by ICANN – Distributed Model
   i. ICANN has proposed a distributed model for the Trademark Claims service meaning that it intends to send a copy of the entire trademark claims database to each registry (albeit in an encrypted form).
   ii. When someone attempts to register a domain name, a combination of the domain name and the key provided by the TMCH to the registry is applied to reveal the trademark information of any claim that matches the string that was applied for (if any).
   iii. The Registry would then supply the claims information to the Registrar who would display that information to the domain name applicant alerting it that there was one or more trademark claims on the domain name he was seeking.
   iv. The Registrar would then collect an acknowledgement from the applicant that he saw the claim, wants to proceed with the registration, and the other required disclaimers. The Registry would then collect that acknowledgement, create the domain name and alert the TMCH, who in turn would alert the trademark owner(s) that the domain name has been registered.

Benefits of Distributed Model	Drawbacks of Distributed Model
Avoids centralized single point of failure and reliance on the TMCH when multiple land rushes would occur at the same time.	More expensive and complex for registries to build this system.
Takes the TMCH out of the critical registration path	Issue of data becoming stale in between shipment of TMCH data to the registries.
Allows registries to control their own destiny, provide support to registrars on the claims.	Privacy issues in that registries will ultimately have access to entire TMCH database regardless of whether or not anyone applies for those names. Creates aggregation problems that rights holders were worried about.
Locally stored database may be faster and not jeopardize registry SLAs.	Security issues in that each registry will have a full copy of the TMCH database making risk of breach and release of information greater.
Cheaper for the TMCH to perform.	Increases registry liability and risk because of privacy and security concerns.
TMCH has already begun work on this model	If there are issues with TMCH distribution of data, or corruption of data, or staleness of data, registry will have to provide support on those issues without having control of that data it receives.
	Small registries that will have low volumes of registrations unnecessarily given all data increasing its costs.

b) Proposed Model by Registries – Centralized Model

i. At a high level, the registries/registrars have proposed a new centralized model of running the claims service whereby the TMCH would be solely responsible for the storage of all claims data and only provide registrars or registries (depending on the final model developed) with the claims data it needs to display based on the names that were actually applied for.

ii. The registrar (or registry) would then display that information to the prospective registrant, who would acknowledge the claim and decide whether to proceed. If the registrant proceeds, then TMCH is notified and it in turns notifies all trademark owner(s) for the string.

Benefits of Centralized Model	Drawbacks of Centralized Model
Does not require distribution of the entire TMCH database to the registries or registrars, thus reducing the security and privacy concerns.	Creates a single point of failure in the critical registration path. If the TMCH goes down, then registrations during the claims period may have to cease.[8]
Privacy issues will be reduced in that registries will not have access to entire TMCH database.	TMCH System must be 100% available with rapid response times.
Mitigates Security issues in no registry will access to a full copy of the TMCH database making risk of breach and release of information greater.	Will likely be more expensive for the TMCH to build than other solution and may cause delay to implementation of the TMCH.
Much Simpler solution for the registries and registrars	Deloitte/IBM have never built this type of service in the domain name registration space.
Small registries that will have low volumes of registrations unnecessarily not required to build complex and expensive systems.	ICANN has not started working on this model.
No Issue of data becoming stale.	
Decreases registry liability and risk.	
If there are issues with TMCH data, those issues can be resolved by the TMCH.	

c) Reaction by ICANN

a. ICANN concerned about putting its vendors in the registration path.
b. Also concerned that any failures to perform by its vendors will reflect poorly on ICANN as an institution given other failures that have occurred.
c. Expensive and more complex for their vendors and not in original scope of services
d. May delay ICANN's implementation plan.
e. ICANN was defensive towards criticisms of their plan (pride of authorship).

d) Registries Response

a. We believe that the centralized system is not as complex as it is made out to be.

[8] Note: We are working on rules that would allow continuing to take registrations for which there are no claims, but only cease taking domain name registrations where the domain name matches a claim in the TMCH database.

b. These are the types of systems we are required to build and have maintained for years and any vendor selected by ICANN should be required to adhere to the same set of standards the current registries (and future registries) are required to abide by.

e) Next Steps:
   a. Discussion was not finished on actual implementation of alternate model.
   b. ARI/Neustar are flushing out its previous proposal to include details discussed during the meeting to get additional feedback.
   c. ICANN going back with the TMCH providers to map out how it would work.

VII. Overall Next Steps / Deliverables

a) Neustar/ARI to work with other registries on finalizing alternate proposals for sunrise and Claims over next couple of weeks. Then proposal will be submitted to the community for its feedback. Likely to be a session in Toronto on this.
b) ICANN
   i. ICANN to finalize negotiations with Deloitte and publish agreement
   ii. ICANN to distribute overall project plan with deliverables, milestones, etc. to launch the TMCH by the delegation of the first TLDs.
   ii. ICANN/Deloitte to refine the cost model to include transaction based pricing rather than fixed fee.
c) A follow up face to face meeting to be set up in a couple of weeks prior to Toronto.