
PRAGUE – Trademark Clearinghouse
Wednesday, June 27, 2012 – 11:00 to 12:00
ICANN - Prague, Czech Republic

Karen Lentz:

So welcome everyone this is a session on the Trademark Clearinghouse, to give you an update on the work that's been occurring to implement the Clearinghouse that will be operational for the new gTLD space. If you've been to our past updates on this project, you'll know that there are essentially two passive work taking place to implement the Clearinghouse; one of those being to secure and engage service providers to perform the major Clearinghouse functions of validating trademark data and operating the database to support sunrise and Trademark Claim Services.

So we're happily joined today by some of our partners that we've engaged to work on that, and then also developing the processes that support the Clearinghouse. The primary function of the Clearinghouse is to maintain the database of trademark data that has been verified. We're kind of introducing a new term here in this presentation.

We in the past spoken about authentication, meaning review of rights data that is submitted to make sure that it does exist in whatever jurisdiction. And then we've used the term validation to refer to the extra review of proof of use which occurs in some cases. And those terms tended to be confusing for people and generate a lot of questions, so we've tried to simplify this by referring to both of them as verification. All of the data that is submitted to the Clearinghouse is

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verified and then where the proof of use step is relevant then that is just referred to as proof of use.

And then as I mentioned the data that is entered into the Clearinghouse will support the sunrise which happens prior to the launch of general registration in TLDs and then the trademark claim service which is operational once a TLD is open for general registration.

I said in the beginning that we work with the community to come up with the – to advise us on some of the key issues that we arrived at in trying to implement these processes with the Clearinghouse, and I'll just review some of the principles that we used in trying these processes.

The first being that there's a concern about over exposure of data that it could be the data in its aggregated form could be subject to abuse or misuse and so one of the principles that we've adopted is to try to limit or minimize the exposure of data.

Another principle is to avoid a single point of failure in the domain name registration process, so make sure that the registration of domain names can continue to be available.

Minimize the number of parties interacting for simplicity and efficiency in the process.

Closeness saying that the parties interact with those closest in the chain, that really goes to maintaining the existing domain name registration process as much as possible, not creating a disruption by instituting a clearinghouse that would add extra steps or create more confusion about who's supposed to be communicating with whom. So we've tried to maintain the existing chains of communication that exist.

And then finally we've adopted as a requirement that whatever design that we come up with needs to be consistent with the community developed framework for the clearinghouse, that is reflected in the Applicant Guidebook, so those – you know that framework was subject to a great deal of community consultation and input and discussion. And so we're maintaining a consistency with that as we continue.

This is a high level look at the project schedule. You'll see we started last fall to try to develop the requirements in conjunction with the community, while in parallel we you know worked to secure and find qualified service providers. So if you see where we are now just at the end of Q2, we are trying to complete the set of requirements and go into designing and building and integration.

There is also sort of phased testing, open testing that's called for in the project plan and which you'll hear more about in this session.

And then finally the goal is still for the clearinghouse to be able to launch operations in Q4 of this year. And just in terms of the schedule we just looked at what we've accomplished since the last meeting we had in Costa Rica, we have engaged a provider team of Deloitte, IBM and Chip who are here with us today.

We did as I mentioned follow a process where we collected community input on some of the key issues, beginning quite a long time ago, and that took the form of presenting a question, presenting some option, collecting feedback and then using all of that to develop a draft implementation model which was published in April. And we've continued to get comment on that draft model since it was published in April and continuing forward up to this meeting.

So where we are now is trying to refine the technical requirements that we have with the providers. In terms of developing the support for registries and registrars who will incorporate the clearinghouse processes into their existing processes, we are doing a couple of things there. We're working on developing some EPP extensions to be used and we're also have instituted an engineering mailing list which is focused on the technical details of how the clearinghouse and registry interact and pass data back and forth.

As I mentioned there is a testing phase which the first piece of which is scheduled to begin in July, so next month. And the launch again is targeted for fall of this year. I will hand it over to Jan Corstens who will take you through some of the – Jan and his team will take you through the process and functions of the clearinghouse in greater detail.

Jan Corstens:

Thank you Karen. Good morning everybody, we're very happy to be here today and finally be in the open to present to you. Our objective of today is to at least give you really an initial understanding of where we are with the implementation of the clearinghouse, to explain to you how it will work, what features are included and to which extent we're going to interact with a number of people in order to get some feedback.

We understand and we picked up already during the last few days that there are quite a number of concerns and questions and I think that is definitely normal. You haven't been able to ask any questions, but you also have to understand that we started working two, three months ago. We got the first set of requirements and we have been starting

working on that. And we also needed some time to digest ourselves what was coming our way.

But here we are and as from today we mainly wanted to introduce to you also the team that sits behind it. You see a number of people here on the table. We also have a few people in the room and perhaps they can stand up so that you see what the team is that sits behind it, and feel free to ask questions afterwards.

Don Fancher:

Thank you Jan. So what Vicky and I thought we would do for a few moments, this is Don Fancher, Vicky Folens sitting next to me. We thought we would take a few minutes and walk you through some of the high level processes that we are currently thinking, the way we are currently envisioning the Trademark Clearinghouse to operate and clearly give you an opportunity to understand that a little bit better which then helps to inform the community and give the community opportunities to give us feedback as well.

So one of the first things that I'd like to share a little bit about is the team that has been put together, and you can go ahead and put the next slide, why don't you. The team that has been put together with Deloitte and IBM as well as Chip is very much a global team. Being a global team really gives us the opportunity to enact the clearinghouse in what we believe the most effective way possible. We have the opportunity to put teams in place, and as I start to go through the verification process you'll understand a little bit about how we plan to use our teams. But by having a global team, we have people that are in

various jurisdictions that understand the jurisdictional rules and requirements around trademarks.

We also have the ability to, we believe process this effort more quickly because in essence we're able to operate 24/7, because we will have teams in different parts of the world. Our plan is to take the information that is submitted to the Trademark Clearinghouse which will come to us through a web interface, put that data into one secure database, and then we are going to have two teams that review all of the data that comes in to perform the verification. We call it our four-eyes process.

In essence we will have the first verification group or the primary verification group that will have the first level of access to all of the data that is brought into the clearinghouse around the trademark record. That team which we are currently in the process of developing the standards, the expectations, the training, the protocol for each of those teams so that there is a continual and consistent set of efforts that are taken by each of the teams that operating.

That primary team is going to look at all of the data and the information in the record, compare that to the trademark databases and the information that we have in order and necessary to do the verification and that group will verify that all the information is correct.

Assuming that does happen, then a second team or the secondary verification group will then have access to the data, will obviously be using this where they have access to the same record and file, but again they're going to repeat the process, go through all of the same steps, follow all of the same protocols and then determine and verify that all

of the information is accurate. This way we are eliminating any mistakes, the redundancy in the process which can be handled very quickly and effectively but still make sure that our data is properly reviewed.

Assuming both of those teams go through the process and the information is correct, then a record becomes active. We verify that the trademark is accurate and the record is active and we move on. We have found though in our experience and that's another valid point around the team that's up here on the table today. We've done this before, we've done this for smaller clearinghouses, but we found in our experience that up to 40% or more of the records when they're first input into the clearinghouse have inaccuracies or input data that doesn't match up.

We don't want to just say you're done, gee sorry you didn't get that information in there properly, good luck, try again next time. Our goal in fact is to work closely with the trademark holders or their agents to make sure that they get all of the accurate information in the file. And I know that from some examples would just be the address is incorrect, the address that's provided by the trademark holder or their agent may be incorrect relative to the address that's in the trademark databases, or the name of the entity, especially with so many multiple entities and intellectual property holding companies and the like that may have ownership, the information is put incorrectly into the information – what else have we seen or have you seen Vicky that might be examples for the audience.

Vicky Folens:

Other examples are when some people actually make a mistake on the spelling of the trademark, others the country of projection is incorrect or they have filled out an incomplete registration number. These are all items that make it difficult to find the relevant information behind it. So at that point in time we allow the trademark holders and agents to correct that information.

Don Fancher:

And so the process would be that we're certainly not going to add additional cost to the process, we're building that in; it's part of what we expect to occur. We will certainly and we'll talk in a few moments about some of the user support and the registry support to hopefully overcome some of this, but we know it's going to happen. So it's part of the process and we will work with the trademark holders and their agents to help them get the information accurate.

We imagine that would be through email and through interactions. There may even be an opportunity however if necessary to talk by phone, we're happy to do that. But the point is, we want to make this as easy as possible to make sure that we do everything we can to get the trademark holders to accurately complete the information. We're certainly not going to give information to them that would help them to falsify their efforts by any means. But we're also just not going to say you have a problem.

If we know it's an address problem, we'll let them know. The addresses don't match, can you please correct line item on your form, for example. There is a limited time period from our perspective on this, and we have seen at certain points in time when we have responded

back to trademark holders or their agents where there's just no response. And so at some point in time, right now we have it at about a 20-day period of time, at some point in time the record will expire. It certainly is not eliminated from the database, the record is still there, and if at some future point in time, the trademark holder wants to re-initiate the process that is available. They don't necessarily have to recomplete all of the forms and information, but because we've set it aside and we have to at that point re-initiate our own processes, we would expect that the initial fee would be paid again, if they are past that expiration period.

One of the other things we wanted to talk about a little bit this morning is registry support. We know how important it is for us to be working very closely with the registries for the trademark clearinghouse to be accessible to the registries, for us to be able to create an effective interaction between the registries and the clearinghouses, so we are very focused on that, making sure that we accomplish that.

We also want to make sure and ensure that the minimum ICANN requirements are met as the registries are going through this process. So we're working on some thoughts around training, integrating of the testing process which Vicky will talk about in a few moments. We're even contemplating as part of that initial fee and I know there's been some discussions around the initial fee for setting up the registries but as part of that process a full day of consulting, other types of support. So just very important that the registries know that we understand the need to make sure that there's solid interaction and communication between the clearinghouse and the registries.

Clearly the same would apply for users. So any user such as a right holder, agents, other third parties that have been given access, we want to provide user support. We are working again to set that up right now. Currently we've envisioning an inquiry template or what in other countries, the US, we might call that an FAQ or frequently asked questions, but something in a series of data and information that users can have access to in multiple languages, easily accessible and available to given the opportunity to understand better what they need to do and to allow for them to answer whatever questions they may have.

If they have a need and they need to reach out to us, we certainly will be available, we're hopeful that that can primarily be handled through email, but if again at certain points in time if we need to pick up the phone and have a telephone conversation or something like that, we can do that well. We're still working on other types of user support helplines and the like, but again we want to make sure that we provide all of the necessary user support that is possible. And again have a global team having people in global jurisdictions I think will help with that, language skills will be available for Arabic, for Chinese, and so again while it's available in the template in those different languages, we also have professionals that are easily capable of having those conversations with anyone around the world.

Vicky Folens:

So as Karen already mentioned the purpose of the clearinghouse is a database of trademark rights. Now the services that the Trademark Clearinghouse will provide are two primary services, our sunrise services and Trademark claim services.

Now sunrise services, the clearinghouse will facilitate the sunrise periods for the TLD extensions and as you see here we have outlined a very high level overview of the process. So once a record has been verified and proof of use has been verified, a sunrise code will be generated through the clearinghouse. This sunrise data will be submitted to the registry and the trademark holders and agents will be able to access the sunrise codes through the clearinghouse.

Now when we say that the sunrise data will be submitted to the registry, that doesn't mean that the registry will automatically register the domain name. You still as a trademark holder or agent still have to go and apply for your domain name through a registrar and provide that registrar with that specific sunrise code.

Once the registry has been provided with the domain or the request of the domain name and the sunrise code, he will check it with the data that he has on file. If the data matches the domain name and the sunrise codes, then the domain name will be created, the registry will notify that the clearinghouse that the sunrise code has been used and the clearinghouse will notify the trademark holders that the sunrise code has been used.

If the registry cannot make a match with the record that he has on the file and the domain name request and the sunrise code, then there won't be a domain name – the domain name will not be created and the registry will notify the trademark holder hereof which is then the domain name applicant.

Secondly, we have the trademark claim services that has actually a two-fold – it kind of folds in two ways. In one instance the domain name

applicants they receive notification that a specific trademark that matches the domain name that they want to apply for has been recorded in the clearinghouse. On the other hand trademark holders are notified when a domain name is registered that matches their trademark that is listed in the clearinghouse.

The next slide will provide with a little more information about the process itself. So when a domain name applicant wants to register a domain name within a specific TLD extension, he will again go through a registrar and the registrar will check to see if there are any trademark claims within the registry.

If there are no claims, meaning there is no trademark that is an exact match to the domain name applied for, the registry will confirm this and the domain name will be created. If there is a trademark that is recorded in the clearinghouse that matches that specific domain name, a notification will be sent to the domain name applicant. The domain name applicant has then a choice to acknowledge the fact that there is indeed a trademark recorded in the clearinghouse, but that he still wants to register that particular domain name, or he can say that he doesn't want to register that particular domain name anymore, and then the process ends.

In the event that the domain name applicant does still want to register that particular domain name, then he has to send an acknowledgement to the registry, the registry confirms this acknowledgement and will create the domain name, but will pass that acknowledgement onto the clearinghouse, which the clearinghouse will then notify that particular trademark holder or holders that a particular domain name has been

registered within the clearinghouse – sorry, that the domain name has been registered within that TLD extension.

Now we know that it could be that domain name applicants will for some reason want to dispute the fact that a trademark has been indeed recorded in the clearinghouse and when we talk about a record that is recorded, we mean a record that has been active, so verified in all of the steps. So we will allow third parties to dispute particular decisions, but more details about how third parties will be able to file for a dispute within the clearinghouse will be provided later on.

Now we've gone over a high level overview of the different process and functions of the clearinghouse, not due to the fact that the clearinghouse is a quite complex issue, and there are a lot of parties that are willing to participate in the clearinghouse, we have established a plan to actually roll out the clearinghouse in different testing phases.

In the first testing phase we're going to allow trademark holders and agents to work with the clearinghouse to give their advice and comments to the clearinghouse and see how what their feeling is about the clearinghouse. We plan to release a first testing – or the release of the clearinghouse in mid-July. The purpose will be that anybody who wants to become a user or a tester of the clearinghouse can register by email, but we will limit the number of users ourselves. We would allow the first testing to take a duration of about two weeks where then we would actually talk with all the users individually to get constructive feedback. We will take the feedback into account and see what we can change to the clearinghouse, what is necessary to change to the

clearinghouse, and we will try to already adapt that in the second release for August.

Now the second release for August is also for the registries concerns, the sunrise services and trademark claim services will also be released in that particular phase. And then as of September the release three, all of the above, so the first release with the modifications, the second release with the modifications and the customer support will all be added into one last testing model where again anybody within the community can come and request to be a tester and a user, and we will take into account all constructive feedback and then we hopefully – we will be able to go live as of October.

Jan Corstens:

Well, I hope this already explain to a certain extent how we're planning to operate this. I'm sure there are many more questions and we'll try to do our best to answer them. I can't guarantee that we can answer all questions already today, but we'll do our best.

How does it look going forward? Well you heard that we will be doing some testing, and there will be some test groups identified. Yesterday already during the gTLD registry stakeholder meeting, it was agree that they would come up with a group of individuals that would interact with us. Likewise we're going to do the same thing for the trademark holders and/or their agents. And so we will follow the test plan as identified.

There are a number of documents that are in process of being finalized, they will be published and they will be open for public comment. So you'll see that coming through the ICANN website. Karen already talked

to you about the technical implementation mailing lists that are being set up. And then we know that we can create something but the user still needs to learn how to use it and we are going to have sessions around that. We plan to do that at the end of September, beginning of October and the idea is obviously is that we will create a number of let's say webcasts that we will do sessions, that we will organize; we'll probably do a road show. I mean the plan for that is not final yet, but it is definitely the idea that we will do a lot of effort to reach out to the community to educate the community and to send out communication.

Now, last but not least we also picked up this week, there are quite some questions around pricing. Most of you will probably know that there was some pricing indication mentioned already or communicated already some month ago. You have to understand that when we did that it was also for us not yet clear what all needed to be implemented. I mean the cost for this is dependent on quite a number of factors, what type of support do you need to set up, what support is required 24/7, what incident management is required 24/7, how many languages do you need to support, and how many languages do you need to provide documentation. All of these questions were not clear at that moment and obviously have an influence on the cost that we will have.

So what was communicated is in my view maximum prices and we're going to work in the next month to fine tune that pricing and making sure that it is to the extent possible in line with what the expectations are. But you'll definitely hear more in the next few weeks, there is not that much I think at this moment that we can add to that.

Well, I think that ends our presentation.

Karen Lentz:

Thank you Jan, well now we've got about a half hour for questions or comments from anyone here in the room or remotely, if you could before you speak, just remember to state your name. Thank you.

Jeffrey Neuman:

I'm Jeff Neuman with Neustar and I want to thank you guys for coming all of you, it's great to see such a large team, so thank you for showing up and making time out.

So I just want to ask a couple questions and not all of them need to be answered now obviously, but you know I'm glad to hear that there is going to be some coordination between the groups. One of the things I've been asking ICANN for about four months is a technical summit, which is a little bit different than your consulting day, so I appreciate the fact that you'll do some consulting.

What I was actually hoping for was actually some give and take and some actual dialogue between the registries, registrars and service providers in order to refine the processes as opposed to a consulting day, which sounds to me more like you have the definitive model and you're just going to educate and train. So I think it's a little bit different than what I envisioned. I was hoping that we would have some input into the actual system since we need to integrate that with all of our systems and all of our processes.

Putting those diagrams up there shows that there's a lot of work that needs to be done by the registries and registrars, it's a lot of work for you all, but a tremendous amount of work for us, and changes to the

way that we, the registries and registrars do business. So these things take a long time, which brings me to my next point which is the development cycles at registries and registrars are months long. They're not weeks, they're not days, but up there you have in your schedule a testing period to start in August, so that's just a few weeks away. That's a problem with a lot of us because you know in order to test we have to develop the things on our side.

So again not knowing what the registries have to implement and the registrars have to implement, that's a very big problem for us. So we would probably want to revisit that testing schedule so that we can all have a chance for input at least to the service providers.

As far as developing EPP extensions...

Don Fancher: Jeff, do you want us to address that particular issue quickly?

Jeffrey Neuman: Yes, I do but I want to get my questions out so that...

Don Fancher: Okay.

Jeffrey Neuman: Sorry, it's just two more. One is on the development of EPP extensions we brought this up at the GNSO council meeting, or sorry the workshop, to me it's kind of amazing that the EPP extensions are written – are being written not by registries and registrars that implement it but by

consultants that ICANN has hired. From my perspective, that's sort of a waste of a lot of money since there's a lot of expertise here in the room. And I'm not just saying Neustar, but all the registries and registrars we all work with EPP every day. So please you know before you submit it, please consult with us, because even though you're submitting through the IETF process, that process takes months. And that process is not going to be completed before you launch, so really the chance for us provide feedback is next to nil, and that's a problem.

And on the fees, I don't want to comment so much on the amount of fees which I've explained before to you guys is a problem for registries like dot Neustar, I don't know why I should have to pay \$7,000 to \$10,000 or anything even remotely close to that when yes, I have to have a sunrise but only Neustar can register in it and you know frankly you guys aren't going to do much with us on that.

So my question is how set in stone is the fixed price model as opposed to going through a transactional model? So it's not on the price itself, which I understand those are maximums but on the model, is your contract with ICANN is that model set in stone or do you have flexibility to go to a completely different pricing model? So those are my questions.

Jan Corstens:

Okay, nice thought. So the first question I think was with respect to the technical summit, we only came with that idea yesterday, and I think we were open for that. It will be set up; I think that we agree with. I see it being different from the consulting days that we mentioned. The consulting days, it needs to be clear that when we start working with a

new gTLD, you're rightfully stating that there will be some that will need the clearinghouse a lot, and some that will not need it that much and that there will probably also be new gTLDs that need a lot of support. So in order to be able to pay for that that is the price for same. That's in my view different from what is before. And so we also didn't mention that it was the same.

We mentioned that we will interact with registry group. We haven't totally worked out yet how to do that, but I can promise you that we will. And so as soon as you have your group identified, let us know and we'll start.

Don Fancher:

And I think that's what we had talked about yesterday was to have the registries put together a small working group that you can then bring to the clearinghouse providers and we will work together to accomplish that.

Jan Corstens:

On the other hand of course there are requirements set; we were taking them into account, that's clear. I assume that has also been and I know there has been quite a lot of work in those requirements already and that a lot of the people that are in the specific groups have been able to provide feedback, so I can only assume that it is a lot in line with what is expected already, but okay, we'll see, we'll see.

On the EPP extensions, I don't know whether you think that ICANN wants to take it.

Francisco Arias:

This is Francisco. So on the EPP extensions I think I mentioned this before in some forum, the idea is not for us to tell you guys how the EPP extension will be. They are just to put a draft there for registries and registrars and I want to emphasize new registries, because this is for the new registries to implement – for them to comment and provide input, and so we can build together on a specification that work for everyone. We just don't want to start with a blank sheet of paper. We have also released this proposal for discussion.

The idea is to use the proper (inaudible). We are not intending to understand that stuff (inaudible) because we know how the process in the IETF takes. So this is just to use. The [relationship] is already there, where registries and registrars are already subscribed and there are obviously some other experts on the EPP protocol. So I hope I'm not missing something else.

Oh, so why we are contracting someone to this. What we – we certainly would like to have participation from the community on help in this, but we also want to have someone whose job is to make this happen and that's why we contracted this person to help us with the building of the specifications but again this is something that we expect to be built together. Thank you.

Jan Corstens:

On the pricing I mentioned I don't think there is a lot we can add today. The only thing that I can mention is also what I mentioned yesterday during the IPC is that we're not going to charge for not having to do

anything. I mean we assume that if we ask somebody to pay for something, that we effectively had to do something.

And yes, there might be brand TLDs that are not going to do a massive sunrise or not one at all, we understand that. But there is still a requirement for trademark claim service and the service there is not to the registry but it's to the trademark owners who need to have a guarantee that you're not registering one of their trademarks during the expected claim period, trademark claim period. So that is the case.

Well, we're going to look into it, Jeff, and as I mentioned it's not final. The principle remains, we assume that we would still have to do something and then we will probably charge something, will that 7 to 10 K, if that's a light forum probably not, no. And we will look into that.

Jeffrey Neuman:

So just to clarify, my question though was in your contract with ICANN, now all of our contracts are visible and viewable and commented on by everyone, yours are not available and that's a separate item.

The question I have is, is the model fixed in the contract. Is it definitely a fixed fee to registries, or can that be changed to a variable? That's the question, not how much.

Jan Corstens:

I can't – I don't know right now. We have to look into that. We have to look into that.

Jeffrey Neuman: Okay.

Karen Lentz: Go the side, Michele.

Michele Jourdan: Hi, Michele Jourdan reading for the remote participants. This question is from Rubens Kuhl. Is the setup fee asked from registries a cost recovery fee or a business model fee? If it is cost recovery, shouldn't it be charged only once per backend registry provider and then a smaller closer to the cost of registering one mark fee be charged when new TLDs are added to the backend provider, whether it's a different registry or not?

Jan Corstens: Long question. Again, same answer I think we're going to look into what the costs are going to be, again what we communicated were maximums. We received a lot of feedback, there are a lot of things only becoming clear for us right now, and we will come back with more details soon.

Don Fancher: Can you ask the first part of that again – state the first part of that again, though.

Michele Jourdan: Is the setup fee asked from registries a cost recovery fee or a business model fee?

Don Fancher: I'm not sure how to – the difference between a cost recovery versus a business model fee, I think the reasonable answer to that is we are providing a service and there are fees associated with that services. Some of the fees go to cover costs. Some of the fees go to cover the time and the expense of the individuals that have to perform those services just as any other business model. So I think it's probably a business model approach, but one that takes into account the costs as a significant component of that. Would that be reasonable, Jan?

Jan Corstens: Yes.

Karen Lentz: Anything else to add on that? Okay, I see we have new microphones now in the back, so I'll go to...

Alex: Alex (Inaudible). I have a question to you. The primary source of information is actually trademark, patent and trademark of this database. And (inaudible) right now okay. So basically you just need to build a bridge to those databases to make sure all information is correct. So there is no authentication and other processes and costs associated with those processes. So basically for the customers it will be much more affordable solution I believe than the registry now by themselves, and proving who they are and whether they have right to

the – so why do we choose this model, I mean interacting with applicants rather than with databases?

Jan Corstens: I think you're questioning the reason for the existence of a Trademark Clearinghouse and...

Alex: No. No, no, the reason is clear. There must be one place to apply to, but why this clearinghouse does not build bridges to those databases in national jurisdictions? I mean why for example you don't take data from USPTO rather than collecting data from applicants who apply to USPTO to register their trademarks and then proving they are what they claim they are?

Don Fancher: In essence, first of all not all trademark databases are online, certainly the majority are, but all are not, there are some countries, some jurisdictions where that does not exist. So in those situations it will have to be a physical review of data that's either provided by the trademark and then verified by an individual to go to that trademark office.

For the majority of them, yes, you're right, they are online, but to build a bridge would mean that we would have to have direct access between our system and the USPTO, the EPO, any other type of jurisdictional government agency. That's not going to happen in all likelihood. What we're trying to do is put a process in place that we will certainly use

those databases, it makes it a very easy and convenient methodology for performing the check, and we'll access those as any public entity can, but to actually, if I understand your comments correctly to build a bridge and download the data, that's not something that I think most jurisdictional governments would allow.

Alex: I think they will because they have to protect their trademarks, they will. I think so and actually just affects the cost and this is a big issue, you know the cost.

Jan Corstens: Well, we also will accept unregistered trademarks and they are not in a database, and it's clear that the cost that we propose for a trademark within the database or for the record is an average cost...

Alex: But...

Jan Corstens: If I can, yes, thank you. So you could choose to make a different pricing model between records that are in a database and records that are not in a database that is possible, I agree with that. But there are always consequences of every choice you make and every pricing choice also can have another form of discrimination. I mean in this case we've chosen for an average price, because we believe it's the most fair, it's also because it has the least administration with it, but what we've also seen is that where do we have to do work? Well, we have to less work

if something comes in that is standard versus something that is nonstandard. Well the nonstandard stuff mostly comes from the emerging markets which mean that we're going to have to charge a higher price for records coming from Africa, records coming from South America and Asia, and we have chosen to keep it a globally fair price.

Alex: Well, it's questionable, okay, thank you.

Karen Lentz: Thank you, we'll come back around to this side.

Male: My name is (Inaudible) and I'm a technical consultant for registration services including EPP. And my question relates to the model or to the requirements for this trademark. I've seen when you create domain name that applicant needs to acknowledge that he has read the concerns and the claims and that he anyway wants to registrate. This is only applied at the [initiation] of the domain name or the creation of a domain name. I haven't seen anything in the update of a domain name, for example if the owner of a domain name changes, I could imagine that a similar requirements for applicants and for trademark holders, can you elaborate a bit on this?

Karen Lentz: So this is Karen Lentz from ICANN. The requirements that we are working with in terms of the trademark claims model you know are about registrations of names that occur within that 60-day period.

There is nothing currently that addresses future transactions that might occur.

Male:

Then the second question is about there is some requirements protecting the trademark holders from getting the information out of this database, but at the same time there is a functionality to check for these kinds of trademarks that they're in place. Isn't that kind of contradictory that you have on one side you say you protect the trademark owners, and on the other side you have like a [clearing] mechanism for this?

Karen Lentz:

So if I understand the question it's in regard to the protections that are around the clearinghouse data, and you know the purpose of the claims service is to provide notice to a potential registrant when there is a match to a clearinghouse record. I think the question is about why isn't there some sort of search service that people can find that before they go try to register a name?

So again what we're trying to build is the service that was designed in the model that was agreed by the community. The concerns I think around a search capability like that had to do with what people might use it for, you know if all of that aggregated data was really available to anyone, it could be used in an abusive or an anti-competitive way. Philip?

Philip Sheppard:

Thank you, it's Philip Sheppard a former participant in the TLD and development policy process and now as a consultant, a victim of it. I fully support the concept of a trademark clearinghouse and one of the things that as business providers you have the benefit of, of course is pragmatism and sense, which doesn't always come out of our process. And one of the things we didn't fix in the process as you'd be aware is to do the closed registries, the [brown] registries and others, who have no intention of registering anything within their new TLD except for internal names and not trademark names. And Jeff was hinting about that in terms of the transaction model for pricing, but I just wondered more generally are you thinking of some sort of more pragmatic model for that, now that you have the opportunity to address that rather than pursue blindly something that actually has no effect and imposes cost on you and them unnecessarily.

Jan Corstens:

Yes, so I think the question falls in line with what Jeff was asking already. Again, we're not final in that. I do think that there are brand TLDs that will use a lot of external parties to allow them to – that will allow a lot of external parties to register domain names. So it's not all the same. That's makes that you can't just say that all brand TLDs will be the same. So that's would be a complexity, and that is also one of the main questions that we had for ourselves and with ICANN on, is there a possibility to differentiate.

So again we don't have the answer right now, that's why we're also (inaudible) because there are a number of questions. Again, the principle will be if we need to set up a connection and there will be

activities then we want to charge something and again what are we thinking of, probably something with a light forum and like a full support version and a light support version, something like that. That goes into the direction, but to be honest, yes, don't shoot me for it, because we just want to get the time to work, to get some interaction and then to come up with something that makes sense.

Philip Sheppard:

Yes, I agree with that and I think you're right, you can't per se determine what any TLD is going to do purely because of its nature, et cetera. I mean one determinant will be if they're planning on selling outside of the corporate entity as third parties or even giving away and maybe that and that wouldn't even be something that they declare, like we're not going to do this. And once you get that from them, you can then do something different.

Don Fancher:

That's one of the things we've discussed is perhaps an early declaration as the intended use and then if the owner makes a change in their decisions as to how to utilize that from a business perspective then they have to come back and would go through for example perhaps the more full based process and start over again in that regard. But that's certainly an option to consider.

Philip Sheppard:

Good.

Jan Corstens: It's not out of our (inaudible) or something, we just didn't have the time to fix this already in the short time frame that we have.

Philip Sheppard: Thanks.

Karen Lentz: Thanks Philip. So we're nearing the end of the time of our session, so if I could just remind everyone to try to be brief in your questions and comments, we'll cut off the cue over after Werner and after Michele, oh, there's more in the back, okay. So everyone who's already at the microphone can speak but please remember to be brief and those of us up here please try to be concise in our answers so we can interact with as many people as we can. Michele you're next.

Michele Jourdan: Hi Michele Jourdan reading for the remote participants. This question is from Mark Trachtenberg. I apologize if I didn't get that last name right. How will the users who are participating in the testing test the sunrise and trademark claims functions when there are no delegated TLDs in which to conduct sunrise or claim service?

Vicky Folens: As for the testing the trademark holders and agents will be able to test meaning that they will be able to create an account, submit information, see how the validation process works. The sunrise code as such, it will be a false code that will be generated that can't be used, but it's really how the agents and holders start to play around with it and

see what it feels like and what they want to change it. So that's the purpose. Thank you.

Karen Lentz: In the back.

Caroline Perriard: Hi, my name is Caroline Perriard from Nestlé. I have a question regarding the use of the clearinghouse for and in relation to the sunrise services. If I agree to pay you know to have my trademark and the domain name during sunrise period, then I agree to pay more for this. But then if I use the Trademark Clearinghouse system then I already pay at this point, what other discussion with the registries that they will not charge as much as they are used to or they plan to for the sunrise period because they're really for using the data from the Clearinghouse?

Karen Lentz: So just to clarify your question goes to the price that a registry might charge for a sunrise registration?

Caroline Perriard: Right, you mentioned before that you are in contact with the registries discussing how to implement the Trademark Clearinghouse, and for me there is also this implication that you know if you have a system in place that is let's say global, then the registry also need to play by the rules and then not charge let's say the same price as they would without the Trademark Clearinghouse.

Vicky Folens: So in terms of pricing, generally a registry sets its own pricing for a domain name registrations and whatever services they offer. There are a few provisions in the registry agreement, having to do with notice and price changes and so forth that would apply.

Caroline Perriard: So it's not like ICANN is really pushing to have those prices down.

Vicky Folens: I'm sorry I didn't hear you.

Caroline Perriard: The idea would be if the brand owners agree to like submit and use the Trademark Clearinghouse, this is going to very expensive so we would expect some push from either ICANN or you know the runners of the Trademark Clearinghouse, so the sunrise period are so less expensive for the trademark owners.

Vicky Folens: I see, thank you.

Karen Lentz: Next please.

Alexander Mayrhofer: My name is Alexander Mayrhofer from nic.at we are going to be a backend operator for a number of TLDs. And I understand that release two of the system will incorporate already the registry clearinghouse interaction. So two points about that.

One point would be I've heard the testing will include data interface for the trademark owners to register, I would ask of course the implementers to also provide test data for the registries of course.

And my second point with regard to this is as Jeff has said before registries have quite long development cycles for quality assurance and so on and so forth. Registrars have sometimes even longer cycles because they depend on the registries. So I would appreciate if that person who is charge of getting the EPP extension specified or at least creating a draft specification of that would get their work done or at least part of the work done for the August release of the service so that we could also test the full chain. And I would also appreciate if the community of backend operators could participate in this process.

And my concrete question to Francisco is is there any timeline for the release of the first rough version of the EPP extension?

Francisco Arias: Yes, in the upcoming days we are about to release it.

Alexander Mayrhofer: Okay, perfect, thank you.

Elaine Pruis:

Good morning, I'm Elaine Pruis from Minds & Machines and we are applying for 92 top level domains, several for ourselves, and several for clients. I have a couple of points, you don't have to answer now, but I would like to have these addressed at some point. First of all the idea of the Trademark Clearinghouse was to make trademark protection during sunrise less expensive, so when you do establish a pricing model, if you would consider what people have paid before and try to get it underneath that, then that would mean you've actually been successful and address that point of this entire policy.

Obviously since we're applying for several of these, and we're using the exact same technology as the backend, we would really appreciate having an initial set up fee for the registry operator and then a pay per use fee for each individual TLD. That would be ideal for us and I think because the majority of applications are coming from I think at like 15 different registry operators. I think that would probably appeal to most people in this community. If we do pay per check model where anytime someone comes and checks to see if that's a valid trademark or not I would like to see some sort of bottleneck, because I've already heard about people who have said things like well, if I want to put you out of business then all I have to do is check, check, check, check and we're paying a per transaction fee for every check, that can definitely be abused. So we need to build in some sort of maximum number of hit list or something like that. So please consider that.

Two more points. I haven't heard because I haven't been in the IPC. What is the suggested amount that each trademark holder would pay to have their name put in the database and how often is that data checked or refreshed.

And then the last one is are we allowed to store this data locally or do we have to constantly check your database every time, thanks.

Werner Staub:

My name is Werner Staub from CORE. The Trademark Clearinghouse is in a sense the ultimate registry, if registries were banks you know the Trademark Clearinghouse would be the central bank. It's really the thing that has an influence in all of them. So this is a registry and it worries me a little bit that in two aspects there is a lack, not of sunrise process [but of] sunshine. First of all in the way the contracts are being negotiated and the technical specifications has not been developed, I think we should as quickly possible get that to an open process. I think the contracts associated with the Trademark Clearinghouse must be a public record and published. It is a public concern for everybody and we cannot have such an important development out of public review.

The same thing applies with respect to the key word that we heard in the beginning about over exposure of information. I think in an organization that is concerned with accountability and transparency, we should be extremely alarmed when we see that the concept of a registry that is supposed to affect the entire activity of the domain name system is supposed to be essentially secret. Secrecy should be the exception and especially we should be very careful about the implications of secrecy because as soon as something is secret, some people they will have access to it, some people will gain, gain in the system to take elicit advantage. So whenever possible avoid the avoidable confidentiality.

[Applause]

Karen Lentz: Thank you, not seeing any other comments. Thank you for all the questions and comments. We'll be around after the session if anyone has follow up questions or comments they'd like to make. Thank you everybody for attending.

[Applause]

[End of Transcript]