

ICANN

**Moderator: Gisella Gruber-White
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10:00 am CT**

Benedetta Rossi: Thank you very much (Tonya), good morning, good afternoon, good evening this is the BC members call taking place the 30th of November 2013. On the call today we have Lanre Ajayi, Janet O'Callaghan, (Elizabeth Sweezie), Susan Kawaguchi, Andy Abrams, (Yvette Miller), Phillip Corwin, Mark Sloan, Bill Smith, Ron Andruff, (Angelie Hanson), Steve DelBianco, (Marie Petrillo), (Camille Stewart), (Brice Carolyn), Gabriella Schitteck and Marilyn Cade.

And we have apologies from Lynn Goodendorf, (Olga Yagis) and (Mark Conchiglie) and John Berard - thank you Marilyn and over to you.

Marilyn Cade: Thank you Benny and I really appreciate that everybody is joining what is a interim discussion call and I just want us to all understand that is what we're - we're not dealing with the broader issues but we have a few priorities and this call is trying to address some of the priority issues. So there will be another call that I think probably Steve will be chairing since I'll be in Dubai for the next two weeks.

I just want to try to deal with the priority issues related to the RPM address ATRT, I heard you just say that John is not on the call for the ATRT, is that right?

Steve DelBianco: Marilyn John Berard - this is Steve, John Berard had conveyed his status earlier this week, he's on a panel right now in New York City.

Marilyn Cade: Okay I'll just - I did have a call with John to talk about the ATRT, I'll come back to that. What are - I think the priority issue is for the ICANN (tell) that we need to focus this call on is the discussion on the RPM. Steve would you - do you and (Elisa) think that's right?

Steve DelBianco: Yes and if it's convenient people could use the report card as a guide and everyone who participated could talk about - and answer questions from members about where we go next.

Marilyn Cade: Right and if I could just turn the RPM discussion over to you to lead if that's okay with you - you and (Elisa), I was there but I think you and (Elisa) are - maybe we could use the report card as the basis of the discussion for at least the next 20 minutes, is that okay?

Steve DelBianco: Fine by me, (Elisa) do we have you on the call yet?

(Elisa): Yes I'm here.

Steve DelBianco: Fantastic.

Marilyn Cade: So Steve just kick this off - it's Marilyn, if I can just kick this off, the business constituency led the creation of ideas on improvement to the RPMs, the RPMs were not satisfactory and we wrote - we developed improvement - an

improvements document and then led to a consensus document with the IPC endorsed by the ISP on some extent.

You and (Elisa) did a great report card on what we got and what we didn't get and if we could just focus on what we got and what we didn't get and then think about the strategy of moving forward because the reality is going to be I think a grass roots reality if I can say that, but I'm going to turn to you and (Elisa).

Steve DelBianco: Okay thanks Marilyn, okay so for folks on the call we circulated a one-page report card on the eight RPM improvements and that report card included notes from the last call with Fadi Chehadé and staff, but it also included a detailed description on this limited preventative registration which is Item 4 on the report card.

All of you are probably very familiar with the eight items so I thought it would be helpful for (Elisa) and I, we could walk through how we came up with the grading on that report card and on each one we'll stop and answer questions for members of the BC on status and where we go next. So the first item on that report card was to extend the sunrise period from 30 to 60 days and to use a standardized process that would work the same across all of the TLDs.

So we have given ourselves a B+ on that particular item because Fadi agreed that we ought to in the Strawman extend a 30 day advance notice period, not quite the same thing as a 60 day sunrise but it accomplishes pretty much what we needed in terms of lead time so there'd be a 30 day advance notice period before each gTLD starts at sunrise and better still is that Fadi himself declared that, "This falls clearly in the realm of implementation," taking it sort of off the table from making it a PDP or policy matter.

And this Strawman that I keep speaking of is a document that Fadi and staff put together which they are endeavoring to put out for public comment and it's meant to include proposals and you'll see in this list of report card items that a few of the proposals are being considered implementation. I know that the public comment period could still show pushback from opponents of any of these measures who would claim that it wasn't implementation but rather should be sent back for policy.

We know that's coming and there have already been objections like that lodged by Jon Nevett so it's no slam dunk that just because something is in the Strawman as implementation, there's no slam dunk that it will get through. But at least it has the backing of a chief executive of a company who at this point is trying to put his stamp on the new gTLD program and make it all about implementation excellence.

I would say that Fadi's main priority is getting the clearinghouse up and running in January so that registrations can begin and he is clearly focused on operational deliverables and meeting deadlines right now.

So I think if he puts something in the Strawman, it has the likelihood of getting implemented because I think a lot of staff is going along with that. So I'll stop there - (Elisa), Marilyn, (Brice) all of you who are participating - anybody want to add anything to that or take...

(Elisa): Along with - yes this is (Elisa), along with adding the 30-day notice Fadi also made a commitment to developing a portal that would clearly define all of the registry launch dates, all of the eligibility requirements, all of those things that I think a lot of brand owners are very concerned about in terms of knowing

whether or not they can actually meet the requirements when the Sunrise starts when it stops, all of that.

So it wasn't something that we could ask for specifically but it came up in conversation and something that he said he's committed to doing.

Steve DelBianco: So everyone's clear during the Sunrise registrants would only be able to do a Sunrise, preemptive registration, their exact matches plus substitutions for things like a space, a dash, ampersand and they of course would be paying for these - they would be paying whatever price the registry wants to charge during the Sunrise. So it would, I mean...

(Elisa): But they, yes...

Steve DelBianco: ...our main objective was - for this one our main objective was to have a longer period of time - go ahead (Elisa).

(Elisa): And I was just going to add, but at the baseline registrars must meet the basic eligibility requirements for that registry, so they must first meet in order to qualify for a Sunrise registration you must first meet the eligibility requirement of the registry and then if you have the matching trademark you would be eligible.

Steve DelBianco: And (Elisa) isn't the requirement to earn a Sunrise, ICANN is also saying to earn that you must also have proof of use of the trademark.

Marilyn Cade: Not...

(Elisa): Yes that's correct.

Marilyn Cade: (Elisa) it's Marilyn, we need to really discuss what proof of use means because, you know, proof of use is really different from in the US then it is in Europe for instance.

(Elisa): Yes so they've actually - they have given some examples of what proof of use are and I believe that was - it actually went out for public comment when they were asking about the matching criteria. So they've given examples of what would be considered proof of use like packaging, data sheets, collateral and they've given some examples of what would not qualify and those were things like business cards. So they have given examples of what that would be.

Marilyn Cade: And (Elisa) it's Marilyn, I think we need to be really careful about this - this is a really important reflection from a business constituency that is not just about US centric positions.

Steve DelBianco: The document they've circulated for comments, there are two things as (Elisa) just described, you have to have a signed declaration that you're using it and at least a single sample showing that you currently are using it. And they recognize that use requirements vary across jurisdictions, "however consistent procedures and rules must be applied by the clearing house regardless of the jurisdiction where the trademark was issued."

So ICANN is saying I don't care about your multiple jurisdictions for use, we have two criteria, you have to declare that you're using it and give us a single sample of current use.

Marilyn Cade: And Steve it's Marilyn, I just want to be - I just want to mark something for us to come back to for you and (Elisa), later we're going to talk about public comment on the improvements, so can I just hold on other comment on that?

Steve DelBianco: Any other questions from BC members on the Sunrise?

(Chris): Steve, (Chris) here.

Steve DelBianco: Go ahead.

Marilyn Cade: Yes (Chris) sorry, so Steve can I just summarize the difference between what you - what you're providing - it's Marilyn, what you're provide is the difference between what was discussed on Sunrise and what Fadi is now proposing, which is a two phased approach on Sunrise, right? And...

Steve DelBianco: That is the only difference - that is correct and we got into the proof of use as a reminder to people that you must satisfy the proof of use to be able to get a Sunrise. We also clarified that its exact matches only with the dash, ampersand and plus.

Marilyn Cade: But I think we need to be really careful also to understand the 30 days portal - the 30 days notice - the requirement of the 30 days notice and the 30 days of a - and then special portal that we committed to. So those are - we can't loose sight of that, so whatever other comments we take can we come back to how they affect those three aspects?

Steve DelBianco: Okay, go ahead (Chris).

(Chris): Steve there's a point that I've been thinking about a few times and it's slightly off the side, but imagine I'm a small hotel called Apple and I've got a trademark for my hotel in Ireland let's say, it doesn't really matter. Now I'm not interested in spending that brand worldwide, I would just want to be able to register apple.hotel when it becomes available and do so in Sunrise.

So if I've got to go into the clearinghouse, my brand is then sending notices out through the system when everybody - when anybody tries to register Apple in the second level. And I'm just wondering whether there's any virtue in not having it to be mandatory that we're sending out notices for somebody who just wants to register in Sunrise or there should be an option to - like the old system where you could register in Sunrise on a piecemeal basis but not go necessarily in the trademark clearinghouse.

Marilyn Cade: I'm sorry I need to respond to this Steve, (Chris) if there's - do you have a conflict of interest on such a comment?

(Chris): A conflict of interest?

Marilyn Cade: Well I just need to understand - it's Marilyn, I need to understand is this hypothetical or a real question?

(Chris): Well it's more hypothetical.

Marilyn Cade: Fantastic so we can deal with hypothetical but, you know, we only have an hour of call, could we park the hypothetical really important questions and maybe Steve could gather those to deal with?

(Chris): Okay.

Steve DelBianco: Yes happy to do that (Chris), it's a great question to say whether I want to do Sunrise participation but I don't necessarily want to generate trademark claims and notices, do I have a choice? That's to answer your question - any other member questions or comments on report card Item 1?

Marilyn Cade: And Steve I think this is a great gathering of examples, I don't want them to be - they're examples right? What (Chris) just gave us was a good example, I thought it was really fantastic but we're going to have to pick that up - is that okay?

Steve DelBianco: That's right and I'm asking if other members have other questions that I should note now and if not hearing none we'll move on to Number 2, Number 2 was to extend the claims notices indefinitely instead of shutting them down on Day 61 and to make sure that the claims notices are easy to use to, secure and stable. We give out a Grade C on that because Strawman proposal extends it from 60 days to 90 days as an implementation change but Fadi said, "Making claims permanent would be a policy change not an implementation item."

So we asked for indefinite, we couldn't understand why you wouldn't always do claims notices and Fadi said that going from 60 to 90 is fine, so that's a minimal improvement. The Strawman also created a claims to process and I would really look for (Elisa), (Brice) and those of you who were in the room and Marilyn on that Thursday to explain the sort of the genesis of how we came up with the Claims 2.

But before you do that I'll simply explain to the members on the call that the Claims 2 is a proposal where for a period of say 6 to 12 months after the 90 days TLDs, operators, registries would have the option of making a lightweight notice about trademark claims, so it wouldn't necessarily identify the sort of chilling affect language, it would have to be softer language. And that notice was given to registrants but only on exact matches and only if the trademark owner paid an additional fee to have those soft notices for another 6 to 12 months.

And any members of the BC and IPC are not very enthusiastic about the Claims 2, the notion of having a weak notice that you have to pay for only 6 to 12 months, we didn't want to create the impression that that was an adequate substitute for having the strong notice indefinitely. And I'll stop there and take a queue, (Elisa), (Brice) anything to add - Marilyn?

Marilyn Cade: It's Marilyn, I'm going to wait for (Martin) and others to comment on this, I, you know, if I can, is that okay?

Steve DelBianco: Brice...

(Elisa): This is (Elisa)...

Steve DelBianco: Go ahead (Elisa).

(Elisa): Well I, you know, I think initially I heard about it, I wasn't on that call when it was first brought up as a possibility, I think when I initially heard about it I thought maybe that was a good thing and after some additional thinking and speaking with others I actually don't see great benefit in the claim, you know, in the additional service that's being offered. One, you know, brand owners are going to have to pay for it, you know, two, we don't know the cost yet so it's really hard to say, but I'm actually not that excited by it.

I think also the fact that the language is much softer and possibly couldn't be used in support of, you know, further UDRP filings or in litigation, like all of that I find problematic and for those reasons I'm not really that excited about it.

Marilyn Cade: So - it's Marilyn, can I just - I think Jerry's on the call and others, the BC had put forward certain - I just think everybody on the call needs to understand

that the BC - I wrote the - Marilyn, I wrote the initial draft of improvements to go to the - so the BC wrote the initial draft and went to the ICC and (Elisa) and others drove our ability to have changes of the eight points were already a compromise for us but understanding what the eight - the implications of how those eight points are implicated and energized and implemented, big deal.

And so (Elisa) just identified - (Elisa) if you don't mind my saying this, you've just identified a - here's an idea but the way we implement it is really, really potentially difficult for the BC.

Steve DelBianco: Let's take a queue, anyone else want to speak to Number 2?

(Brice Carolyn): Yes this is (Brice), I mean I would just say - I would actually just say that I mean I completely agree with all the comments that have been made so far, but I would say the flip side of that is that depending on how it's implemented it actually could be a tool that is useful to brand owners.

So I'm not sure, I mean I think it's just a matter of words missing in it a little bit, but I'm not sure if it's necessarily coming up, you know, sort of against it so much as sort of reserving our opinion a little bit about it depending on what some of these details that (Elisa) has raised, you know, turn out to be, like price, like what the language of the notice is, I mean those are really important details.

Steve DelBianco: (Brice) may I ask you a question, if we were satisfied with the price and we thought the notice was sufficiently strong to be helpful, well then if it ended after 12 months we wouldn't be happy with it. I mean if it's working why would we ever shut it down so that registrars no longer get the benefit of the warning and wouldn't we still have a concern that it was simply optional and a part of a TLD registry?

(Brice Carolyn): Well I mean I think one of the things that was brought up at the meeting and I'm not endorsing this position at all, but I think one of the ideas was that if you are building a system - if the registrars are building a system where they're going to have to put this in a place for a period of at least 12 months then that's going to be a longer term, robust sort of system that then - and also by the way if they're charging for it, it actually might create an opportunity in the marketplace.

Steve DelBianco: It might keep it running if the fees that you were charging cover their cost, right?

(Brice Carolyn): That's right, that's right.

Marilyn Cade: Okay I - it's Marilyn, Steve can I get in the queue?

Steve DelBianco: (Brice) did you have anything more?

(Brice Carolyn): I just - just to clarify that last comment was not my personal view, I was just responding to, you know, your question about where that sort of came about and that was where it came about, mostly from the registrar's side of the table and registry' side of the table.

Steve DelBianco: Right thank you, Marilyn go ahead.

Marilyn Cade: I think we have to be really, really cautious and I'm going to be, you know, I'm not really happy to hear Fadi talked in the meeting I was in about market opportunity for the registries and market opportunities for the registrars and market opportunity blah, blah, blah, blah, I have to tell you guys, you know, my personal view is there are providers of services that do include the - some

parties in the business constituency but the vast - I think we got to be really careful that we're not focused on what the market opportunities are.

ICANN needs to - the business constituency thinks if you go look at our model and our charter, we think that we're not about creating market opportunity, we're trying to create an environment that is sound and stable to protect your interest as businesses within the ICANN broader portfolio. And I'm just really concerned, I sat through two days in LA and 30% to 40% of the discussions had to do with how people create business opportunities out of the role and functions that ICANN is responsible for and I got to say I'm really concerned about that.

Steve DelBianco: Marilyn let's move on to Number 3, Number 3 was to complete the URS - Uniform Rapid Suspension as a low-cost alternative and to improve its usefulness. We even added the point that if necessary ICANN could underwrite for an initial period, the grade on this is incomplete because as Fadi keeps saying, that was pushed off because it will be worked on I guess next week is when he will begin attacking the URS with the same kind of vigor that he put into the trademark clearinghouse, but he clearly wanted to first get the clearinghouse in order.

So that's an incomplete item, we're going to need to work on that very hard to make sure the URS is useful and affordable as a means of taking down domains, registrations that are abusively registered or used. Is there anyone that wants to add anything to URS? Take a queue.

Marilyn Cade: Only that...

Steve DelBianco: Marilyn (unintelligible)...

Marilyn Cade: Only that Fadi will be in - Fadi is returning from...

Steve DelBianco: Dubai.

Marilyn Cade: So he won't be able to focus on this for a few days.

Steve DelBianco: Are you in Dubai now Marilyn?

Marilyn Cade: I am.

Steve DelBianco: So I imagine we've caught you at a really tough time and a lot of jet lag as well.

Marilyn Cade: Not yet.

Steve DelBianco: Okay anyone else have a question on URS? Great let's go to Number 4, 4 on the report card was to implement a new mechanism where a trademark owner could prevent a second level registration of a mark and we had said for exact matches or for strings that have been abusively registered or used. And we felt that this mechanism sometimes referred to as blocking would work across all registries upon payment of a fee and there would need to be safeguards of course if a registrant had a legitimate right and he should not be blocked for the use of a trademark term that they were using legitimately.

Now we don't like to call it blocking and we have worked very hard to come up with a preventative registration - limited preventative registration and I attached to the report card a two-page description that's led mainly by the IPC but BC members contributed to it on how this might work. Fadi has resisted this one strongly, so I gave it a grade of F so far, we have failed on this one

because it's not in the Strawman proposal that Fadi advanced on the Monday call.

And he said, "Because any concept of blocking was removed from the Strawman for lack of consensus at the November 16 meeting in Los Angeles," implying that if there was not consensus he didn't put it in. But on the 26th call which was Monday of this week we had quite a bit of pushback on him on that, so he added, Okay fine, I'll put it back in the Strawman but only for purposes of continued discussion." He did not suggest that he would put it in for purposes of implementing it, but only for discussion.

So as a follow-up to that the BC and IPC circulated that LPR document, it's the last two pages of the report card, we haven't seen much in the way of reaction to that. And Fadi did not yet put out for public comment his Strawman and nor has he sent a request for guidance to the GNSO Council which he also promised to do. So there's been some delays and it might have to be with Fadi traveling to Dubai for the (wicked), but staff you would of thought would of followed through on that.

For instance there was supposed to be a call this morning to discuss the IBM contract on running the service bureau for the trademark clearinghouse but that's been deferred and might potentially be as late as December 11, so I'll stop there and give a chance for comments and questions from others on Item 4, take a queue.

Ron Andruff: Steve this is Ron, I'd like to be in the queue please.

Steve DelBianco: Ron go ahead.

Ron Andruff: Thank you, this is certainly disconcerting, the issue - if you look at these points and they're all very important points, the fact that second level is where a lot of this damage is going to get done and it's going to, you know, really impact businesses (and large), it's very frustrating to see that there was no consensus. Can you expand a little bit about that, like where is the - or can someone who was there, I'm sorry for that second part of the meeting expand on where is the lockage? Who is putting up a fight on this one and is there a battle that can be won here in this short time we have ahead of us, thank you.

Steve DelBianco: (Brice) and (Elisa) can you help us with that?

Marilyn Cade: Steve is John on the call?

Steve DelBianco: No we've discussed that, John's not on the call - (Brice) or (Elisa) can you help us?

(Brice Carolyn): Yes I mean I can say that I think the resistance to this particular issue came from two different places, I think Number 1 the non-commercial folks were very visibly upset about this particular issue. And then they were joined in that really by both the registrars and the registries I would say.

Part of the reason for that - I mean part of the reason that they're - that they express their concern with this is they're worried that it is overly broad in the sense that if, you know, a trademark owner can go in and say they have a, you know, say they have a trademark they can block it or not block but, you know, have a limited preventative registration across all the TLDs that might give them a greater right than they would otherwise have by virtue of their trademark.

So for example, you know, if someone, you know, was registering a domain name with a particular word by virtue of whatever the TLD was that actually gave that second level a different meaning or a slightly different connotation that could really impact, you know, free speech and the ability for people to engage in other businesses and they just felt like it was overly broad I think is the bottom line.

Marilyn Cade: I'm going to intervene, it's Marilyn, you know, (Brice) has given a very clear description of the statement that the reality is there was no real - and (Brice) I need you and others to come back and comment on this, it's Marilyn, that is what they said but they did not present factual reality and factual statements. But I think we need to be really careful not to let narrow aspects Steve on we have eight elements right and we got to focus on what are the priorities and so could you just take us back to what the priorities are for those eight elements because we're going to run out of time on this.

Steve DelBianco: Any other comments on this blocking or LPR? Good we'll move on to Number 5, Number 5 on our list of 8 was to validate contact information for registrants using Whois, the grade on that is incomplete, that was sort of taken off the table of the Strawman item because it's part of the general discussion of Whois accuracy that's wrapped up in the registrar accreditation agreement amendments discussion.

And that work was also deferred so that Fadi could focus everyone on items that were on the critical path of lighting up the trademark clearinghouse because this would not be a trademark clearinghouse item. So the BC feels strongly about it and will continue to work on Number 5, that's incomplete as of now. The same thing is true on Number 6, Number 6 on our list was that all registrars who were going to sell new gTLD domain names would have to adhere to an amended RAA across the board.

We've continued to assist on that for over two years now but that one again is being deferred as part of the RAA negotiation. Number 7 on our list was to enforce compliance of any registry commitment for regular applications, so the GAC early warnings went out earlier this week and if an applicant meets with a particular GAC member in tries to persuade their concerns for registrant verification or sways their concern over exclusionary practices, those promises need to not only update their application, but they need to be enforceable (at) ICANN.

And the only way that works is if they make their way into the registry contract, so the BC has been the leader on this point to say that any material promises have to make their way into an enforceable registry contract with ICANN. Not too many people disagree with us on this and GAC has stood strong with us on. This is a grade of incomplete because it's not part of the Strawman but I'm confident we'll continue to work on this one.

Now finally Number 8, this is a fascinating one here, we had said that the trademark claim notices, the service itself should cover at least strings that were previously found to be abusively registered or used so that if PayPal, I think Bill Smith's on the phone, one of his best is examples is paypal which looks like PayPal but is not PayPal, it's not one of its trademarks but it's used effectively if phishing attacks to entice people to give up there PayPal ID and password and that's real money when that happens, that's fraud.

So if PayPal had recovered paypal in a previous UDRP or court case on the basis that it was abusively registered or used we would of wanted PayPal to be able to allow that string in addition to its trademark string and to issue trademark claims warnings to registrants. It doesn't block the registration, it would be a warning so that if somebody tried to register paypal in any new

TLD they would get a warning saying that this string was previously adjudicated to be abusively registered or used, it might even indicate where it happened and that kind of a warning is supposed to have a chilling affect on the registrar.

So let's give this a grade of B- because the Strawman documents prepared by Fadi and staff considers this as an implementation item which we were all quite pleased with. But Fadi went on to say that, "I will seek guidance from GNSO Council before proceeding with a limitation on it." And the way that the proposal in the Strawman would read is that each trademark clearinghouse registration, which is to say each trademark that makes its way in could add up to 50 variant domains on that.

So for instance Bill with Smith's Company would register PayPal for which they have a trademark but they'd also get 50 other variant strings on that that have been previously abusively registered or used. There would be an additional annual fee for Bill to have that in the database and Fadi claimed that working with their vendors Deloitte and IBM they felt they could get that fee down to single digits, so let's call it \$10 a year for 50 extra - each of the 50 extra strings and it would trigger trademark claims.

But I put in parenthesis here that we're not sure how long those claim notices would run, would they run only the Claims 2 period of six to twelve months or would they run permanently and I think that's a fundamental concern or distinction on this one. If we do get a letter from Fadi asking council for guidance we can expect a very lively discussion on council mailing list as well as a discussion at the council's meeting - teleconference meeting on December 20 on that.

Some of the registries have already come out against this being an implementation item and of course the NCSG has objected to it as well. I'll stop there and take a queue and this again is the final of our eight items on the report card, who'd like...

Marilyn Cade: Steve before you take the queue, it's Marilyn, could I just say I want the members on the call, you know, this is being transcribed but Steve has just a phenomenal summary of issues that are before us, but we're going to take your comments and Steve if it's okay you and (Elisa) will be then driving forward on what BC members are saying because we are going to have Fadi moving forward on public comments.

So we're going to listen today but then if I could ask you and (Elisa) right, you're going to take our - all other comments going forward, is that - and one of the things we need to understand is individual companies are going to probably to provide their views on some of the issues. We won't go into great detail on that today but you and (Elisa) would come back to them, is that okay?

Steve DelBianco: That's a great point, everyone the business constituency of course would file a comment if they ask for public comments and the BC would be active on council if Fadi asks council as he said he would. But that will be of limited effect if we're not also getting backing from the companies that are BC members or even friends of BC members because individual members filing comments will definitely add an echo chamber to our concerns on this.

So when the time comes for those comments we'll do our best to coordinate talking points and distribute them to all of you in the hopes that you can put it in your own words and file comments on your own behalf - who else wants to be on the queue on Number 8 or any other comments on the report card?

Susan Kawaguchi: This is Susan, I'd like to be on the queue.

Bill Smith: This is Bill, I would as well.

Steve DelBianco: Great so Susan Kawaguchi of Facebook you're up.

Susan Kawaguchi: So I - in the call on Monday, you know, I looked through then to Fadi's call and I was really concerned, the same topic that Marilyn brought up a few moments ago about Fadi, you know, he keeps pounding on the industry creating market services to solve these problems, what I would of said to him if it wasn't such a big, you know, large call was, you know, where are all those services in the last 12 to 15 years?

They're not there because the market services, the registrars and registries have created - have been focused at the domainers or cyber squatters. So I think there's a mindset there that we really need to educate Fadi and make him think about this a little differently. Also I was really concerned about his comment about the - using the UDRPs and litigation as the criteria for the preventative list.

You know, he sort of made this quick comment about oh, you know, 99% of the companies will not have 50 to list in the trademark clearinghouse which I think is very naive on his - from his point of view. So I think we need to maybe come up with some statistics that shows him at a very brief glance, you know, there are a thousand companies out there that will have more than 50 and that's just, you know, a very quick look at this. So maybe those are the types of things if we have an opportunity to comment that we add those two elements in.

Steve DelBianco: Great I've got that written down Susan and may I ask if - you're one of the most organized folks when it comes to this, would you be able to come up with a list of the strings that Facebook would want to put in and so...

Susan Kawaguchi: Oh yes, yes.

Steve DelBianco: We wouldn't share it, this is...

Marilyn Cade: Steve it's Marilyn, actually (Elisa) - (Elisa) is going to I think own driving some examples on putting Facebook and various other - if we could just move forward with - but Susan just raised a really, really serious concern and I need to make sure that everybody understands I didn't have any expectation of the - actually that's not true, I've been given a different expectation of the interactions with business going forward.

And maybe Steve after you go through this really important identification of our concerns we could come back to what are we going to say to ICANN and Fadi about why business needs to help - why they need to understand and work with business - could we just come back to that at the end of your call at this section?

Steve DelBianco: Great thanks Susan, so (Elisa) before we move to Bill Smith (Elisa) what's your understanding of the exercise we're going to do to build the statistics on these adjudicated strings - just picking up on what Marilyn said.

(Elisa): I can do some research and look at, you know, UDRP filings and the number of names listed on the filings and try to do that, but I think it would be great if Susan if you have some of those statistics for your brands that we could share, I mean the more the better.

Susan Kawaguchi: Right and maybe this is where we get INTA involved because if we could come out with, you know, I mean we need to be very careful about this because what we don't want to do is scare them off from offering this service.

So, you know, if we come up with 10,000 companies that want 50, that's going to, you know, Fadi right now maybe he's playing this to registries and registrars and saying, you know, oh very few are going to be doing it with the - and maybe with the clear understanding that maybe he's wrong but he can make that statement. I don't know if he would...

Marilyn Cade: Susan that - Susan I...

Susan Kawaguchi:...(unintelligible), but...

Marilyn Cade: It's Marilyn, this call is being transcribed but I'm going to be indiscrete and tell you do not assume he understands, you know, I'm trying to think of how I say this...

Susan Kawaguchi: I can understand you, so what I think we should, you know, I mean we want - we should think about this a little harder about what we want to provide - what information we want to provide, maybe we want to keep that close to the (desk), maybe we want to make a big point, but I think we could quickly get companies that are involved with INTA, maybe INTA could do a quick survey and, you know, something on that line to say no, no, no this is a big problem and you're still not addressing it fully with the 50, so...

(Brice Carolyn): This is (Brice), I'd like to get on the queue on this actually.

Steve DelBianco: Great.

(Brice Carolyn): Great so yes, the notion of whether 50 is adequate will be helpful but I believe that's something we want to hold back a little bit longer on, it's more important for us to establish the need for this and then when the time comes on figuring out the specifics we'd be able to create data showing that 50 isn't adequate. And again if there's going to be a fee in the single digits for each string, I don't know why it would matter at all whether the number was 50 - for you it was 75, for Facebook it was 112, for PayPal - why would it matter at all?

Susan Kawaguchi: Right.

(Brice Carolyn): So we'll make that argument I think at the right time, but it's essential to have a handful of examples of companies that have more than 50, that would be so useful. Is there anyone else on the BC call right now that could volunteer like Susan to quickly do a count of how many strings they might want to submit?

Marilyn Cade: Well I just want to be clear Steve, I think (Elisa) you volunteered, is that right? You would agree anyone who wanted to give you examples they could come to you and we could put together a sort of a quick listing? I have input from - it's Marilyn, I have input from AIM, we could send that all to you so Steve, (Elisa) could gather examples of why 50's not right, is that okay?

(Elisa): Yes that sounds great and I can coordinate with Steve and...

Steve DelBianco: Right I just asked on the call if any other BC members want to volunteer to give it a shot so that (Elisa) and I know who to follow-up with that's all, anybody else?

Andy Abrams: Hey Steve this is Andy at Google, I can look to see what strings we would enter.

Steve DelBianco: You're the best, thanks Andy.

Andy Abrams: Sure.

Steve DelBianco: So we have Andy, Susan - I bet I can count on Bill too, right?

Bill Smith: Your probably can though actually I'd ask Susan if she might send an email to (Olga) copying me asking for this.

Susan Kawaguchi: We can take care of that for you Bill.

Marilyn Cade: And I'm just going to branch on here I think Verizon and AT&T - but the point is Steve, you know, we'll get like - I think this is - we'll get our - also our Canadian allies, but the point is they're going to go to (Elisa) for input, is that correct?

Steve DelBianco: Marilyn that's fine, we'll take care of the routing, don't worry yourself over that, but it's important for the companies on the call and folks like (Marie) who have access to multiple companies in the European vein...

Marilyn Cade: Right.

Steve DelBianco: ...to try to get the data we need, that's all I want to do there and we...

Woman: (Lisa) I'll help you with that, whatever.

Steve DelBianco: Great - Bill also you're in the queue and then (Brice).

Bill Smith: Okay so Susan just quickly on this, Andy from Google their trademark guy would probably be somebody broke into this I think.

Steve DelBianco: Andy just volunteered Bill a minute ago.

Andy Abrams: Yes I'm on it.

Bill Smith: Sorry Andy.

Andy Abrams: It's all right.

Steve DelBianco: Time to pay attention to the call here - okay you're in the queue, so

Bill Smith: All right I want to second Susan's comments around, you know, the Number 50 and I think we need to diplomatically find a way to let ICANN know that while it may be true that less than 1% of the registrants will have more than 50 such names, the standard deviations right on this is going to be very large, they're going to be, you know, a relatively small number of registrants.

But PayPal, Google, Facebook, you know, Twitter - a large number of others will have a very large number that they would like to protect because we've gone through UDRPs - a number of them and are protecting a very large set of names at this time. And the other thing is, Marilyn asked why they should listen to business, you know, why ICANN should listen to business on this is this is one of those negative externality things again right that the domainers whoever can go out, these names get registered then they are used for fraudulent purposes.

We have to go spend thousands of dollars, hundreds of thousands of dollars tracking this stuff down and then doing something with the names. And, you know, the math on this adds up literally to billions of dollars if we have to protect all of these things doing the current mechanisms, this scheme that

ICANN has put together and the community has put together does not scale with the new gTLD program, it only flawed in this regard.

Steve DelBianco: Bill that's - okay and so while I understand the view that we need for than 50, it strikes me that our first battle will be getting this into the implementation bucket instead of the policy bucket and only...

Bill Smith: I agree with you, I'm just going - this is I think is an extremely important issue...

Steve DelBianco: Got it, it's very clear that it's a high priority, it's really an accident Number 8 on our list because of very high priority for the BC and we get that, but let me just relay way Fadi said on Monday's call, "GNSO policy requires us not to infringe on the legal rights of others," and he quoted that a few times in the sense that he'd gone back and read what GNSO policy was. And he cited that term as the reason that some things could be implementation and don't require going back in for policy.

But what he really confused us is when he got to what he called the third bucket on matching strings, he said to include domains that were previously abusively registered or used, I'm not comfortable saying that this is implementation, I need to ask council for guidance on that question. But it looks as if the first question council will deal with is, is this implementation of previous policies or is it new policy and that's a battle we'll have to fight both in public comment and on Council and the thing about Council is getting the votes, one of the biggest challenges we'll have.

Marilyn Cade: Steve, Steve...

Steve DelBianco: (Brice) you're next in the queue - (Brice) and then we'll go to Marilyn.

Marilyn Cade: Actually I just need to be first, I want to absolutely change the agenda for our call to just make it only about these topics if you don't mind Steve.

Steve DelBianco: That's fine.

Bill Smith: Marilyn this is Bill, I mind.

Marilyn Cade: Well I...

Bill Smith: (To define) the order - we have an agenda.

Marilyn Cade: ...just want to give it more time.

Steve DelBianco: Right, let's move on - (Brice) let's get - we're almost done, we're on Number 8 right now, we're at 57 minutes, let's keep moving - (Brice) go ahead.

(Brice Carolyn): Yes I just want to address this Number 50 issue because I think there's a little bit of a disconnect about how this would actually work in practice, the way that this was envisioned to work is actually not just 50 - 50 labels that would match (an outfit and that's the cap), it would be 50 labels that would - per record that you put in the TM Clearinghouse, okay.

And it wouldn't be separate record in the TM Clearinghouse, like you put the UDRP decision and the map would (test) it's own record with, you know, whatever strings and if there's more than 50 than your out of luck. It - you have to have already put in a TM into the clearinghouse and then you can specify additional labels under that TM - under that record in the clearinghouse. So...

Steve DelBianco: That's right (Brice), I think we understand that but it's still would indicate that if PayPal had more than 50 variants on the word PayPal they would run into a limit and Facebook would...

(Brice Carolyn): Not - wait, wait, wait, not necessarily because they can put in more than one TM record into the clearinghouse to the (marked) PayPal. They may have PayPal in Class 25 in the US, they may have it in Class 9 in Europe - those are two separate records in the TM Clearinghouse...

Steve DelBianco: Oh really?

(Brice Carolyn): ...and that is a total of 100.

Steve DelBianco: They could (unintelligible) 50 also?

(Brice Carolyn): Yes that is an issue that is undecided at this point and frankly the way it is written actually allows that and envisions that. So I don't think we should automatically assume that with 50 as a cap per mark - it's a cap per record as its written right now and frankly most brand owners are planning to put in more than one trademark for - especially for being name brands.

I mean when you get to the point of talking about brands that are going to (ID) in the plus - 50-plus adjudicated string for a particular mark, these are likely to be, you know, larger brands. It's very likely that they are going to have more than one record in the TM Clearinghouse for a particular mark, just because of jurisdictional issues, class issues.

So I'm not really sure, I think there's some room there and I completely agree that the Number 1 issue is making sure we get the RPM in the implementation bucket, but I do think that we actually have room the way it's written now to

address some of the concerns that are, you know, on the table about the Number 50.

Steve DelBianco: That's a great insight (Brice), so we can keep that alive while we're at the same time doing the research to support more than 50 - that's a great observation, thank you. Folks that winds up the discussion on the report card and it would be fine at this point to move to general questions on that or get back to the regular agenda.

Susan Kawaguchi: Steve this is Susan, if we have two minutes to spare today - which I know we're at the hour, I would like just to give a blurb about the Whois review team recommendations and the Board's actions.

Marilyn Cade: Actually Susan you are - that is where I want to go next but I - can I just do one thing here? Steve, I want to be really clear for the people on the call and Benny will send out the list of who was on the call. We've been in - I'm trying to think about how I say this, Fadi to have (ease) as a new CEO wants to do the right thing, he's new and we're doing the best we can but we are going to have to also say no to him when no is the right answer.

Steve if you don't mind my, you know, you and (Elisa) if you don't mind my saying this, you and (Elisa) are going to help us understand when we should say no and when we should say yes. We're going to close this call off, I want to - the Whois issues are really important and I want to go to that topic but the rest of the topics we haven't discussed, having nothing to do with preparation for the council calls, etc., Steve will drive some - another call on gTLD policy issues and the rest of the issues we haven't addressed, I think you guys need to understand we're going to have to say yes and no to Fadi.

I'm mindful of the fact that the transcript is going to reflect this, you need to advise that where we're yes and where we're no and in some circumstances Steve I think we're going to have to come back and ask members to really come back to us and you on the answer is no, we're not going to accept or we will - if you don't mind my just parking that and having you come back on that.

Steve DelBianco: That's fine, Susan why don't we turn to you next on Whois review team implementations and Bill Smith I know you had an item you wanted to add as well - Susan.

Susan Kawaguchi: So we've been, you know, we had a call a couple weeks ago with the Board or several members of the Board and Fadi and Bill I think was on that phone call, I was actually on vacation. I know we stayed on for about half an hour, but the board was very, you know, seemed very up and felt like it, you know, they gave the attitude was that they were moving forward, going to implement our recommendation, you know, some were definitely - would require PDPs.

But when we saw the actual written report - at least myself, I was very disappointed in the results and they're basically taking the weight of the (F-Fact report) and giving it more - they're giving it more weight than they are giving those review team reports. They've provided a chart with which supposedly shows how they're going to implement but it's - to me it does not - is not clear at all that any of these things are - any of our recommendations will be actually acted upon.

And that, you know, in my opinion it's going to be status quo until after they've created a expert Whois review team or team of some sort to study the need of Whois in general or what is Whois and what should it be used for. So to me we're now taking another step back, let's wait three or four years to get

something implemented, let's go through the PDP policy process and I'm not happy and most the Whois review team members are not happy, but we are no longer a team.

So we've decided to take an action where we'd ask for clarification from Fadi because he has made this one of his key issues to work on and the Board has also endorsed that. So we've asked for a phone call with Fadi to clarify, we're trying to handle this very sensitively and I mean my first reaction would be, you know, Fadi what the hell, this is ridiculous but we won't say that to him unless he reads this transcript...

Steve DelBianco: Could you share with the BC...

Susan Kawaguchi:...and so...

Marilyn Cade: Wait, wait, wait, wait, wait, it's Marilyn, Susan I want to say three things because it's important for us to have three comments, okay. The business community has had three really - we've have had you and Bill and (Lynn) on the Whois group - the (wiz) work and I think your input is new to us - I just want you to understand your input is new to us. If you can - you and Bill and (Lynn) can give the business community, the business constituency a short view on your concerns I suspect we can affect that in the meantime...

Steve DelBianco: Marilyn I'm going to step in there, Susan would you please share a copy with the BC of whatever proposal - whatever letter or request went into Fadi, it would be great for us to see that and to be as supportive as we can be, but...

Marilyn Cade: (Unintelligible) I'd feel better...

Steve DelBianco: Marilyn I'm stepping in now, Marilyn just relax - Susan is there anything else you wanted to add to that and then we'll go to Bill Smith?

Susan Kawaguchi: No I mean we do have a list of bullet points that we're considering using in the call, we have made no formal - we've made a formal request via phone calls to Denise Michel but we have not created a letter or any written communication. This is more of a...

Marilyn Cade: So Steve let me just intervene for just a minute...

Susan Kawaguchi: ...but I could provide the bullet points Steve.

Steve DelBianco: That would be great Susan I'd appreciate that and then we'll turn to Bill, go ahead Bill.

Marilyn Cade: Wait a minute, wait a minute Steve can I just intervene for a minute - it's Marilyn, the business constituency probably should be thinking about the larger issues of the integrity and this is what - this is not a - this is a chair issue, the larger integrity of it the ATRT and the subsequent groups are not satisfied then - so I just want you to come back to us if you might.

Susan Kawaguchi: Definitely.

Marilyn Cade: Yes.

Susan Kawaguchi: Definitely and now, you know, how the process works with the ATRTs and how it's worked with the Whois review team reports and recommendations to me is different. They haven't treated us the same and that is one of the key questions we're asking is what was the process.

Marilyn Cade: It's really, really - it's really important and I don't - the reason I intervened was, you know, we're just struggling right now because we have to create the next ATRT representation and, you know, these groups are really unique and you and Bill and (Lynn) - I just think it's important to understand that we have - these groups are really unique and we need to figure out how we support them.

Steve DelBianco: Got it, Bill Smith please go ahead.

Bill Smith: Sure, so as Susan said we were on a call with the Board, the - they appeared as you indicated rather upbeat about their - the resolution that they had passed but we had no knowledge of what that resolution was or what their actions would be, they did not - I don't think - I don't believe they in any way picked their hand as to what the - their actions would be really other than, you know, they were going to do a two pronged approach as I recall.

And they told us in general terms but we heard nothing specific as to - also as Susan mentioned there was the - there was a table that is referenced from the Board resolution and that is actually - they provide - or that table provides the specific set of actions that ICANN the corporation staff will be implementing is my understanding.

Steve DelBianco: Bill this is Steve, are you saying - does two prong mean do the SSAC prong of reevaluating the purpose of Whois but at the same time implement the review team recommendation?

Bill Smith: Well that is how the Board described it and that actually is - if you read the resolution, the resolution indicates - does indicate that. Okay, I believe those are sort of the facts on the ground, that's what the Board told us, that's what the resolution says, that's what the table says.

Steve DelBianco: I...

Bill Smith: Now speaking as a member - sorry as an independent expert into the review team, I looked at what the resolution said, I read the material and I am - I was not pleased with the outcome. The - let me continue, I was not pleased with the outcome, I sent a letter to - individually to the chair, the president and copying I believe the chair of the review team I think that was - oh I'm sorry, the vice chair so expressing my displeasure.

We had a - we did some exchanges, things were - I consider them private exchanges, I accepted the responses to my questions/challenges in the sense that I understand what the Board is saying. They believe they have addressed the Whois review team recommendations, okay and I believe that they consider the matter closed. As Susan has pointed out and as I have pointed out, there appear to be both I think process and principal differences between how Whois was treated and the ATRT and SSR were treated.

And I believe that those issues need to be addressed somehow and I think though, you know, they need to be addressed diplomatically with sensitivity, but I do think there are some issues.

Steve DelBianco: Bill, may I add...

Marilyn Cade: Steve...

Steve DelBianco: There's one thing, the only way we're going to know whether the Board in fact took decisive action comparable to the ATRT and SSR where they accepted all of the recommendations save one with the ATRT for a timing issue, you know, and there wasn't similar language in the Whois recommend - resolution.

So the only way we will know on this is probably as Susan points out two to three years in the future...

Marilyn Cade: And actually Steve - it's Marilyn, as the chair I want to reemerge if we could really what the purpose of this call is and then we can pick up - if you don't mind, the - I think we have some really significant discussions that have emerged, Whois is one of them but we got to get back on track because the call has already - do you mind if we could say that you could - Steve if you could take up a broader discussion on Whois and particularly because we have this new initiative and if I could just move that into a - you and I will have a private discussion, the larger issues.

And I think this is a really critical issue, frankly - it's related to the discussion we were just having, but if we could move Whois and Steve and Bill and others who were part of the Whois discussion, maybe we could have a particular discussion about that. I'm really concerned that Fadi is moving ahead very quickly on different topics, let me see if I can move us back to what this call was about and then if we could ask Steve and others to help us have a couple of other heavily - sorry calls that are specific to topics that we're going to have to make decisions about.

Steve DelBianco: That's fine with me, then go ahead - we have 14 more minutes Marilyn, so please dive into what else you wanted to cover.

Marilyn Cade: I actually think we've identified stuff Steve that we can't discuss on this call, we have to have you and (Elisa) lead a discussion on a couple of topics, if that's okay with you.

Steve DelBianco: It is, yes.

Marilyn Cade: For today - and I just want to open the call to anything that members want to talk about, but I'm thinking we're going to have to have a couple of additional calls Steve that you and (Elisa) would lead in the next two weeks if that's okay with you.

Steve DelBianco: It is, it is, but let's move on to the rest of the agenda please.

Marilyn Cade: So let me just open this up to what haven't we discussed that - is there anything - let me think about this okay. You guys might need to think about the next two weeks, is that...

Steve DelBianco: Right, I circulated a policy calendar to everyone that indicates some of the things that are going to show up on the GNSO Council meeting on December 20, the agenda's not posted and only one motion is posted for that so we don't have any counselors on the call so we didn't feel it was particularly useful to deep-dive on that. Suffice to say that there will be quite a bit of discussion on what to do about Red Cross and the Olympics second level protections in this round.

And overlaid on that is an action that Board new gTLD committee took just two days ago about expanding that protection initiative to include these interim governmental organizations, roughly 30 things like UNESCO and WIPO that want similar protections to Red Cross and Olympics. So we have the gTLD Committee suggesting that the Board wants to make that happen but there was also a motion to recommend protections as a PDP in the Council and those are sort clashing - they have the same objective in mind but they're dramatically different ways to get it done.

So I'll wait and see what motions have been noticed for voting and I will let all of you know before the December 20 Council call so that we can give our

counselors the best guidance as to how to vote and how to discuss those items on that call.

Marilyn Cade: I think fantastic and maybe we just close this call and do the rest of the work online Steve...

Steve DelBianco: That's right, I think that's best for you and for everyone - so any other closing comments from BC members on the call? Great, thank you all for your patience and for reviewing the documents we sent out, I look forward to getting these follow-up items all of you. Have a great weekend everyone, thank you.

Man: Thanks Steve.

Woman: Thanks.

END