

**ICANN
Transcription
RPM TMCH Questions Sub Team call
Wednesday, 26 October 2016 at 16:00 UTC**

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Coordinator: The recordings are now started.

Michelle DeSmyter: Great. Thanks, (Lance). Well good morning, good afternoon and good evening to all. Welcome to the RPM TMCH Question Sub Team call on the 26th of October at 1600 UTC. On the call today we do have Kathy Kleiman, Kurt Pritz, Paul Tattersfield, Philip Corwin, Kiran Malancharuvil, apologize, Edward Morris and Susan Payne. We have apologies from J. Scott. From staff today we have Mary Wong, David Tait and myself, Michelle DeSmyter.

As a reminder please state your name before speaking for transcription purposes. Thank you and I'll turn the call back over to Phil Corwin.

Phil Corwin: Good day all. Appreciate those who are joining today. I know we're all busy this week trying to clear the decks and prepare many of us for a long trip to Hyderabad. And so let's get going. Is there anyone on the phone line who's not in the chat room? Okay, so we'll assume for now, unless we hear

someone type in that everyone - that the folks in the chat room is the sum total of folks on the call.

Kathy Kleiman: Actually, Phil, sorry. This is Kathy. Paul Keating I believe is just on the phone.

Phil Corwin: Well we haven't heard his voice. Are you there, Paul?

Kathy Kleiman: He wrote to me separately and said he is going to be in a noisy area but...

Phil Corwin: Oh okay. Okay. Alright well he may be listening. Okay. If Paul wants to chime in we'll be happy to hear from him. So we're going to continue the agenda is to continue discussion of the charter and community questions and discuss next steps, next meeting which shall be the - not the subgroup but the full meeting, full group meeting.

And let me ask here, we have also on the right side these additional questions and issues. I believe these were from the other question portion of the appendix to the charter. But could staff tell me if I'm correct on that? And are these questions not covered in any way in the document we have before us?

Mary Wong: Hi, Phil. This is Mary from staff. And as Kathy indicated in her email, yes, the questions that you see regarding the providers that David has kindly pasted in the pod on the right-hand side, they are from our charter. They are from the section titled additional questions and issues. So they are not in the TMCH section. Kathy's suggestion was to add them to the TMCH discussion that we're having now I believe. And we have looked at the questions and figured that since they were aimed at all providers that this could be something that the group comes back to as a working group or it could be added as appropriate to each section as we deal with, say, URS and TMCH.

I see Kathy has her hand up so I'll cede to her...

((Crosstalk))

Phil Corwin: Sure. Why do we hear from Kathy?

Kathy Kleiman: You know, this is Kathy. It was interesting when I went through the charter to find that, unless I'm mistaken, this is not all the questions that were in that section, just all the questions that talked about providers. And since that's really what we're doing now with the TMCH, these charter questions as providers, it's more a checklist to see are we missing anything. And I think Mary properly noted in one of the emails, which I appreciate that, there is the question really about kind of expanding the procedures that probably is meant to address design marks. So I think that is a catch.

But it's more a checklist. Then I recommend that after we go through our current questions, or now, whatever you prefer, Phil, we just go down it and see whether we've covered all the bases. I think we have got it's probably good to look at it because this is exactly - these seem to be exactly on point both for the questions we're looking at now directly for the TMCH providers and also the ones that were kind of off shooting down to the sunrise period trademark claims and other purposes. Thanks.

Phil Corwin: Okay. So anyway so these questions that we are reviewing, let me just make sure I understand what our game plan is here. When you see the providers, you know, are we talking about the TMCH providers, about Deloitte and IBM?

Kathy Kleiman: I think...

((Crosstalk))

Phil Corwin: ... these questions that we are reviewing going to and what are targeting for getting them out? That's what I'm trying to focus on what this question.

Kathy Kleiman: The questions on the agenda...

((Crosstalk))

Phil Corwin: Are these just the questions we want to have our working group focused on, we're trying to distill them down for our working group purposes. Is that being here? Yes, Kurt, go ahead.

Kurt Pritz: Yes, no, these are the charter questions, the original charter questions...

Phil Corwin: Right.

Kurt Pritz: ...for this whole group. And we, you know, in the meeting we found some of them to be either vague or needing rewording in some way. So the small group was formed just to review the charter questions and put them in a form that was easily understandable and...

((Crosstalk))

Phil Corwin: Okay and understandable by our – so we're trying to basically combine and distill down the questions in the charter for the use of our working group. These are going to be sent out to a third party...

Kurt Pritz: Right.

Phil Corwin: ...and for a third party inquiry?

Kurt Pritz: That's correct. Yes, that's correct.

Phil Corwin: That's what I thought. I just wanted to make sure.

((Crosstalk))

Kurt Pritz: Before Susan talks I just want to say one thing. So, you know, thinking about this over the last several days I think a couple things. One is quite a bit of work went into the charter questions and some deference should be paid to them. So if we go through them I think we should, you know, if they're clear and they are, you know, we think they are the right question to ask I think we should kind of let it be sort of and only make changes were necessary.

And two is, we got a bunch of questions to get through so we should start - we should, you know, try to touch on them all so...

((Crosstalk))

Phil Corwin: Oh agree. Agree. Yes, and I agree we shouldn't try to rewrite every charter question but we did find out some of them were duplicates if were somewhat unfocused. Susan, why didn't you go ahead and then we'll plunge into these questions.

Susan Payne: Yes, it was just a really quick point just (unintelligible) what Kurt this thing actually which is just I think we party got a document with related questions than it and we probably will struggle to get through them all in the space of this hour. So could I suggest we work on the ones that we already knew we were going to be working on and then we can come to these additional questions that Kathy has highlighted at the end if we have time to see, as she says, whether they've been picked up. I'm not suggesting they're not important, I'm just saying they seem more overarching questions to be each of the sections. And so I think we should get going on the ones we...

((Crosstalk))

Phil Corwin: Yes, I agree. Let's get going on the document, and if we have any time last week and look at the other questions and see how they fit in. But that's something that we can also do in conjunction with staff after this call.

So let's go to the document, the original, let's start at the top, the original charter question, "Should further guidance on verification guidelines for different categories and marks be considered?" And the proposed edited question is, "Should the verification criteria be clarified or amended and if so how?"

Not a huge amount of difference there. I'm fine with the edited versions but I'm willing to hear any thoughts on this one. And then there's going to be a clarifying paragraph, I see, when we scroll down, which refers to the various public comments. And I'm not going to read all of this. You folks can all read.

So, what's the feeling of the group? Go with the revised question and the accompanying clarification as to what should be used by our working group? We'll let - as we go through this let me - to simplify things we'll see if anyone objects to using the revised clarified question. Otherwise we'll just assume that after all the work that's gone into it that we're okay with it. I hope that's an acceptable way to proceed. I think it'll be more efficient.

So on Question 1, I don't hear any objection so we'll go with the revised question and a clarifying paragraph to accompany with it.

Question 2, and I'm not going to read the source again, I'm not here to read everything. You can read on the screen. Original question, "What activities did the Trademark Clearinghouse undertake to communicate criteria? Does the TMCH apply when determining whether or not to accept marks and what to do when registrations are challenged?"

And I don't see any proposed substitute for that. So I'm presuming the group was fine with that question. David, go ahead. Mr. Tait, can't hear you.

David Tait: Hi, Phil. Sorry about that. Just took a second to come off mute there. And just to flag that this was a new question which the group agreed should be added in last week, hence why there's no proposed amendment. Staff were tasked

with formulating a response and this is the formulation that we came up with. Just to clarify where that's come from.

Phil Corwin: Okay, all right so we'll leave it to the subgroup to decide whether that original question needs to be tinkered with in any way. But it'll be a placeholder for now.

Moving onto the next one, original question, "How can that Clearinghouse provide education services not only for trademark owners but for the registrants and potential registrants who were equally impacted either services?"

And the suggested revised question is, "Should, and if so how, should," I'm not sure we need how should, I think how would be sufficient, parentheses, "The TMCH be responsible for educating - for education services for trademark owners, domain name registrants and potential registrants if the TMCH is not to be responsible, who should be?"

And, there's a comment that there was an additional proposal to substitute the word "guidance" for education, and that's still open. So, you know, again I'm going to generally go with the revised question reflecting the work of the group unless there's objections. Kathy and then Kurt.

Kathy Kleiman: And I wanted to ask staff and Kurt whether this is the group's revision or whether this was Kurt's revision, before last week's meeting. Just I was confused as I was going through all these tables. But I think it was a good idea, good thought to substitute guidance and whatever the other term was, but I'd stick with education. I think guidance can be -- education can be more neutral; guidance is kind of pushing people in a direction, sometimes it's viewed as that. I provide guidance to my clients for example. But I provide education to lots and lots of people's clients. So I would recommend we go with education. Thanks.

Phil Corwin: Right, and I'll get to Kurt in one second. Just commenting on this revision, the major change is that the original question presumes that the Clearinghouse was responsible, this starts with the question basically is a responsible and if it is how should it do it? And if not, who should be responsible, if that's the desirable goal. Kurt go ahead.

Kurt Pritz: Yes I just wanted to point out it was my suggestion that we reviewed on the last call, and the revision was for exactly that purpose you stated, Phil, was to ask should at first and then if so how should it.

And then, yes, and I vote for education too just because I imagined there was some discussion about what word should be in there the first time the question was formulated, and education is - I think it's more about, you know, proactive outreach rather than, you know, passive guidance, so I vote for education.

Phil Corwin: Okay. All right so unless objections are heard will go with the revision. That's our default position unless we hear objections on this call.

Next question, "Are design marks allowed under the currently adopted rules of the Clearinghouse? Should design marks be allowed and under which circumstances?" And there is no revised version yet. There is a notation that this question is from discussions at the start of the working group with the various parties. And this seems to be the right place for it. And then there's a lot more dialogue in that comment.

Okay, I'm not sure what was to do with all that additional explanation. But we've got...

Kathy Kleiman: No, the explanation was just explanation, it's not part of...

Phil Corwin: Right.

Kathy Kleiman: ...back to the working group. Thanks. This is Kathy.

Phil Corwin: Okay. And so that's a new question. There's no proposed revision yet. We'll go with the new one as a placeholder. I'm going to call on staff. And then Kurt and Susan, are those new hands, and Kathy as well or they left over from prior? I guess David took his down. Now it's back up. David, go ahead and then I'll see who's hands are still up among the participants.

David Tait: Thanks, Phil. Again, this is just from staff to, although you observe it just to flag that, again, in terms of the versions of the document that we are looking at, this was added in as a question after staff circulated a list - the version of discussions that took place on Friday, and the version that staff prepared when out on Monday. So this one out - this come from a later draft which I think (unintelligible) was prepared by Kathy.

Phil Corwin: Okay. All right. And let's hear from Susan and Kathy. Susan.

Susan Payne: Thanks. Hi. Just sorry, I couldn't remember how to get off mute, which you'd think would be instinctive by now. Yes, this one I think this has come from questions that we were putting together when we were in the subgroup that was looking at questions to go to the TMCH providers to ask them questions.

And I don't think that that's the same thing as a charter question. I don't think this is a charter question. I'm not suggesting that we shouldn't be considering this point. That was why we were asking the question of the TMCH provider. We wanted to ask them about, you know, what they do in relation to design marks and what their current processes are. And that we were eliciting that information, that doesn't -- I don't believe that needs to be a charter question.

I think the charter question is less granular than that which is just, you know, what marks are affected into the TMCH, and is this the correct balance? Or, you know, does this reflect the correct balance. And that's something, you

know, at a high level. I don't think we should be getting into the granular on our charter questions.

And indeed, I thought we had, you know, I thought this was already covered by what's...

((Crosstalk))

Phil Corwin: ...concerned about this question being in this document or are you okay with it?

Susan Payne: I'd prefer it not to be because I don't think – I don't think – I think this is a question we were asking the provider. This isn't a question that's – that's part of the charter for this working group. Clearly we have to consider the concept of design marks. But I don't think we need a specific charter question about design marks, which I think gives them, gives a sort of kind of - places too much emphasis and importance on just one of the many questions we are reviewing.

Phil Corwin: Yes, I will say, as a cochair, I do think that, I'm not opining on whether or not this particular question should be in the final document but I do think the criteria for being a mark that gets in the Clearinghouse is certainly within the remit of this working group, and so the question of whether design marks should or shouldn't be listed in the Clearinghouse is one that's within our jurisdiction under the charter generally.

Susan Payne: But I think my point was the very fact that when we were working out what questions to ask the providers, the TMCH providers, the very fact that we came up with a question which was asking them about this points to the fact that it's already in the charter. A group of us went to the charter questions and looked at them and then worked out what questions to ask providers to gather data.

So I'm saying I think it's within remit, I just think it's already there and we don't need to be specifically calling out design marks. I think there's a general point about us looking at, you know, what marks are allowed in the TMCH and are they, you know, are the categories correct if you like.

Phil Corwin: Okay, all right. I see Kathy's hand up. Kathy. And then I'll call on Mary.

Kathy Kleiman: Sure. And in this case I'm unequivocally taking off my hat as cochairs and saying I was shocked that the question wasn't there because it's come up so many times. I'm referring to a question now in the agenda notes, you know, from our charter. Are providers exceeding the scope of their authority? And any of the procedures they are adopting.

We were shocked, shocked, to find – several of us on the STI, I went to the whole group that had been NCSG's team, which was Konstantinos and Wendy Seltzer, and myself, and we were shocked to see the TMCH provider accepting design marks, because we thought they were barred. We thought that they were unequivocally barred.

So this is one that because it hasn't – so when we're asking the questions of the providers it's fair to ask, you know, what is it that's going – you know, how are design marks being reviewed because we had no idea, it's a big black hole. So I think that's a fair question to ask. But whether they should be at all is a threshold question and I – we – if we haven't gotten there it's so clear and certain in people's minds, I'm sorry it hasn't been communicated well, but it's a biggie. This is a biggie.

And whether we want to phrase it and asking whether other things have been adopted that shouldn't or other things are being accepted that shouldn't, e.g. design marks, that's fine. But I think we have to flag it because it is driving, you know, part of the people involved in this process completely nuts.
Thanks.

Phil Corwin: Okay and, Mary, your hand is up.

Mary Wong: Yes it was. And to note first that I've pasted the question that Susan was referring to that was developed by the other subteam to be sent to the providers. And part of that question seeks clarification as to the criteria for validating design marks that were submitted.

So the, you know, bearing in mind what Susan said, and looking at the sort of marks that I think anecdotally certainly people have said have been accepted besides design marks, I think the staff are a bit concerned about calling out specific types of marks. So in looking through the charter questions that we already have, further down under what we now have a balance category, we do have a question about whether the scope is too broad.

So one suggestion that we had was to note that the question of design marks has been raised. It is important. And following feedback from the providers, we can come back to this as Kathy notes, it could be a sort of including design marks. And in the sense of where it fits, one alternative is instead of having a separate question to add it to the breadth and balance section or the relevant question there. Thanks, Phil.

Phil Corwin: Okay. Okay. So we have some disagreement about whether this particular question should be in the final mix. I'm not sure we can – Kathy, is your hand up again? Oh, I'm...

Kathy Kleiman: It is. It is.

((Crosstalk))

Phil Corwin: ...additional discussion but I'm not sure we're going to be able to resolve whether or not this question should be in on this call. And I would like to try to get through the other questions.

Kathy Kleiman: Sure. Then I think we have to put in the question from the charter, “Are providers exceeding the scope of their authority in any procedures that they’re adopting.” And – because it’s not – we’re going to get to balanced later, whether, you know, categories of goods and services, overstretching the categories of goods and services. But this is – we’ll get to balanced but this is a factual question, what did the rules say and what are they doing?

Are they exceeding the scope of their authority? And maybe there are other areas as well. So I think it’s one or the other, the design question or the charter question. But I don’t think we can drop it. Fact. Thanks.

Phil Corwin: Okay. Susan, you have an additional statement on this?

Susan Payne: Yes, yes, honestly I wasn’t saying – I hope you haven’t heard me as suggesting that we aren’t going to be considering the question of design marks. I actually thought Mary’s suggestion was pretty helpful. You know, the question that she’s talking about, the first one in balance says, “Is the protection of the TMCH too broad?” And then, oh well, it’s being revised. But anyway, it talks about the balance between rights holders. It goes on to talking particular about things like descriptive marks, secondary marks with secondary meaning.

You know, we could easily say and, you know, design marks would also be, you know, something that needs to be considered in relation to this question. I’m not saying we’re not going to consider it because I just don’t think it needs a whole question all on its own.

Paul Keating: So this is Paul Keating. I’m sorry, I’m not online so I don’t have the ability to raise my hand.

Phil Corwin: Yes, understood Paul.

Paul Keating: Okay. I agree with Kathy in this one. And I think that it is a scope of authority, are they exceeding their – I think it falls in two places actually. It falls in are they exceeding the scope of their authority under the rules by accepting these types of marks? And then a second place is even if it within the rules, how is it treated from a balanced standpoint? So I think that this rule is – this question is extremely relevant in connection with both of those inquires.

I can see, you know, a design mark and how that's portrayed is a phonetic equivalent, numeric – alpha-numeric string is a judgment call. It's subjective in nature as to which is the pronounced portion of the design element. You know, I think that it falls within both places. It equally falls within the context how are they treating things like exclusions and carve outs of the trademark where there's an expressed disclaimer.

I think that those are all important. Those are important in terms of what is incorporated within the mark as a whole and the disclaimers are probably more appropriate in the context of balancing because the mark remains itself a valid registered mark but you've disclaimed almost the entirety - entire portion of the mark, is it fair to allow this to be included in the TMCH? I think that's a balancing question. But I think...

Phil Corwin: Okay.

Paul Keating: ...the question that is at issue here is a scope and authority question as well as a balancing question.

Phil Corwin: Okay.

Paul Keating: I'd like to see both of those as – both of those items, as Susan has mentioned, as described in charter questions and this can be underneath either of those charter questions.

Phil Corwin: Okay.

Paul Keating: I'll go on mute again though.

Phil Corwin: All right. Thank you, Paul. As chair of this call I'm going to state the situation we seem to have is strongly held feelings on both sides of the issue whether this question should be included, although there's a general agreement that the working group at some point is going to be discussing whether design marks are accepted, whether they should be accepted and if they are accepted what's the proper way to verify them. I would suggest in the interest of getting through the rest of this document we defer further discussion on that proposed question for Hyderabad and get back to the document.

So and proceeding down to the bottom of Page 5, next question, "Should there be an additional or different recourse mechanism to challenge rejected trademarks?" And there's no suggested revision so we'll go with that question for now unless there's an objection to the question itself.

Okay hearing none, "How quickly can a cancelled trademark be removed from the Trademark Clearinghouse?" And the revised question is, "How quickly should a cancelled trademark be removed from the Clearinghouse to avoid discouraging or losing domain name registrations?"

I'm going to ask for some explanation from whoever wrote this revision how removal would – I guess it would – that would be from the claims notice or whatever sunrise registrations, but I'm not sure how the discouragement would arise. I'd like some explanation of that.

I see Susan and then Kurt have their hands up.

Susan Payne: Well it wasn't my amendment. It maybe if it was Kurt's perhaps I should pass it to him first.

Phil Corwin: Okay.

Kurt Pritz: Why thank you, Susan. Yes so I thought that – I thought, you know, so if we asked the question how quickly can a cancelled trademark be removed from the TMCH, and we get an answer back that is – would not be fast enough to avoid claims notices being sent – a lot of claims notices being sent out where the mark had already been, you know, requested to be deleted, you know, just getting an answer back that the time is inadequate isn't necessarily, you know, a good answer for us. And so we, you know, the policy for us I would think is that trademarks should be cancelled in a speed, you know, so that registrations aren't discouraged.

So I'm being really articulate here. But, you know, asking the question how quickly can a canceled trademark be removed, you know, we might get a answer that we all say oh that's good or we might get an answer that says oh, that's not very good. But then we have no real recourse because we have our answer. So I was trying to – I was trying to pose a question that was more policy related than operationally related.

Phil Corwin: Okay. Speaking personally, I think the question of – the original question is operational. How quickly can it be done? The revised question is how quickly should it be done, which is more policy in nature. I can think of many other reasons, I mean, certainly getting it out to avoid generating claims notice is one reason, but I think another query is, you know, that if it's no longer a valid trademark it shouldn't be in the database of the Clearinghouse. It undermines the integrity of the database. So I would think we'd want them removed as quickly as possible.

So just speaking personally I think we might just say how quickly should a canceled trademark be removed from the Trademark Clearinghouse and just end it there with a question mark and then in discussing when the workgroup discusses the question all those other considerations of database integrity, erroneous claims notices, all that, can be raised in the discussion.

Susan, I see your hand up.

Susan Payne: Yes, I was going to, you know, similar to you, I suppose, I was going to say we could just keep how quickly can a canceled trademark be removed because it's useful to have that – to explore that actual practical question. And then is it, you know, is this satisfactory? I mean, we obviously – once we've got the information we need to do something with it. But if it's 24 hours, we may, you know, the answer to that may be oh, satisfactory.

Phil Corwin: Okay.

Paul Keating: Phil, this is Paul Keating.

Phil Corwin: Yes, Paul.

Paul Keating: Question. So I think just moving from Susan's earlier comment on the granular nature of questions, perhaps the question to be asked here is what is the process for removing trademarks from the database? Okay, now broaden, who has the obligation? I don't actually know that question, I'm ignorant. I don't know if it's in the rules if the trademark holder has the obligation to notify upon cancellation? How is cancellation being discovered?

And then what is the process? And how long does it take or how long should it take? Those – this is all within how is the trademark removed other than voluntarily. Right.

Phil Corwin: Yes.

Paul Keating: I think from a non-granular standpoint the question should be how are trademarks removed from the – or how should trademarks be removed from the database and then the rest of these follow as subsets. I'll go back on mute.

Phil Corwin: Okay. Thank you, Paul. And before calling on the other participants, I'm just going to raise the question, given that, you know, trademark owners tend to only register their more important trademarks in the Clearinghouse, is this – how often does a rights holder register an important trademark and then within the life of that trademark registration and the Clearinghouse cancel it. I would think that'd be a rather unusual situation.

But Susan, you have further comments here?

Susan Payne: I forgot my hand was up. No, I think I was going to comment – I don't think they do get canceled, the mark gets canceled that often but it obviously, as Kathy is pointing out, you know, it can happen. And clearly once it's canceled we need to be comfortable that there's a process for removal.

Phil Corwin: Yes, based on the discussion, so far it sounds like we're heading toward a question along the lines of how quickly can and should a cancelled trademark be removed from the Trademark Clearinghouse and whose responsibility is it to initiate the action? Something along those lines. Thoughts on that?

Paul Keating: This is Paul Keating. I still think it should be a question about the overall process of removal and the rest of these questions are subsets of that principle question. So how are trademarks removed from the database? And then it is on cancellation, you know, whose responsibility for notifying cancellation? How soon are they removed typically? How often does notification have to be provided? You know, how quickly does the notification have to be provided?

You know, is there an – should there be an obligation to notify the TMCH that there is a pending claim for cancellation? That current exists in the US trademark context. Any litigation has to be notified to the US PTO.

Phil Corwin: Okay. Let me say two things, Paul. One, I think when we say how quickly can, once we ask how quickly can it be done, the answer involves a

description of the operational aspects. And also these are – these questions are designed to spur focused discussion, not to raise every potential policy consideration that might arise in framing the answer.

So we're trying here to have short focused question that focus the policy discussion afterwards, but not necessarily every element that's going to arise in that policy discussion has to be put in each question.

Paul Keating: Okay. I'm not suggesting process versus - I'm not suggesting we use process over policy and terms of language. I'm fine with it should and those things, those types of descriptions but I do think that you pinged on a couple of related questions, which is whose obligation is it to notify.

Phil Corwin: Right.

Paul Keating: Who should be responsible for notification of cancellation and how soon should the database be updated?

Phil Corwin: Okay thank you Paul. I see Mary's hand up. Mary go ahead.

Mary Wong: Thanks Phil, and thanks, Paul. I'm actually just putting into the chat the current question on this topic. It's not exactly the same as what we are discussing. It's not exactly the same as what Paul suggested. But because some of what Paul suggested seems to me to relate to seeking information and then coming back to consider the more overarching question I thought it would be helpful to see the sub team's – the other sub team's question on cancellation, which asks how are the marks that are canceled handled and what is done TMCH process.

So I think...

Phil Corwin: Okay.

Mary Wong: ...the point here is we want to separate out what might be appropriate as an overarching charter question about the TMCH versus things that we first need to find out more information on and then come back to as part of the broader inquiry.

Phil Corwin: Okay. Okay. So that question is going out from the Data Team. Correct?

Mary Wong: Yes, that's right.

Phil Corwin: Okay. All right, well again my thinking is that the revised question that should part raises a necessary policy consideration but that the word "can" should be in there, "can" and "should" because can gets to the operational aspects. And so that's my proposal for how the revised question should read. Any objections to that? I just have, "How quickly can and should a canceled trademark be removed from the Trademark Clearinghouse?" Period. And then all these other considerations can arise when we actually discuss how to answer that question.

Paul Keating: This is Paul Keating. I think that's a great compromise, Phil.

Phil Corwin: Okay. Any objections? If not I'm going to move onto the next question. And staff, just take note of that. All right next one, original question, is at the bottom of Page 6, "Is the protection of the Trademark Clearinghouse too broad? Is the Trademark Clearinghouse providing too much protection for those with the trademark and a generic or descriptive dictionary word?"

The proposed revision is, "Does the scope of the Trademark Clearinghouse and the protection mechanisms which flow from it reflect the appropriate balance within rights of trademark holders and the legitimate rights of non-trademark registrant? In particular," oh this is a long revision, "A, where the trademark is granted a descriptive dictionary word," and then as a parenthetical, "B, whereas the result of a TMCH-verified entry potential registrants with legitimate interests in the domain name," another long

parenthetical, “loses or relinquishes the opportunity to register domain names due to a sunrise or claims notices.”

Yes, personal comment, I'm not sure if it's a valid trademark those holding the trademark, you know, get to participate in a sunrise if it met the criteria. I'm going to stop there. So there is a short original question and a much longer proposed revision. And I see Kathy's hand up. Let's have some discussion on this one.

Kathy Kleiman: Thanks, Phil. So this question was designed to substitute for other questions. So I actually - unless you object, before we get to the balance question, I wanted to get to some of the underlying factual questions that I think we have to - I think in the last meeting we agreed to kind of shut them off to other areas to be evaluated. But I want to make sure we're not dropping them.

And the balance question may be something we have to go back to all the way at the end. It may not be something we start with for the TMCH providers, but after we do sunrise and trademark claims and others, then we come back to the balance question.

But one of the underlying questions was, is the protection of the TMCH procedures too broad, too narrow or appropriate with some of the changes? And we had kind of suggested that we actually send that to sunrise period, trademark claims and others. So is the protection, and now I'm in the new column, the proposed actual rewrite for meaning on the far right side.

So is the protection of the TMCH procedures, and this is where I've modified it including the sunrise period, TM claims and others, too broad, too narrow or appropriate? Is that TMCH providing too much protection, too little protection or appropriate protection for those with the trademark on the word that is also generic term or a dictionary word? And then I go on to talk about generic terms, because I know there was some concern about that. But it does mean something different than dictionary word.

So I just want to make sure that we are - that we've agreed that we're sending that particular kind of fact-based question off to - before we do balance - that we're sending the question but that was designed to replace, the balance question, we're still sending the underlying question off to trademark claims, sunrise and other purposes.

Phil Corwin: Okay, Kathy. Susan. And then I'll call on David after Susan.

Susan Payne: Actually can I ask Kathy to explain that again? That was completely unclear to me. I'm not sure what you're suggesting.

Kathy Kleiman: The balance question that Phil raised does not replace the original question. If you look at the left column it's, is the protection of the TMCH too broad? Is the TMCH providing too much protection for those with a trademark on a generic or descriptive dictionary word? That's the far left column. That was the underlying charter question that we've been asked.

So asking if there is balance doesn't answer that question. First, there is a factual question, is the protection too broad? And we've been asked to make it more neutral. So too narrow or appropriate is a fair question to ask. And it was my understanding from last week that we agreed that that was more - that you can't evaluate the protection just based on what's in the database, the Trademark Clearinghouse database. You have to, which is a repository. You have to look at it based on how the database is being used. This was a clarification I think in the last conversation or two.

So I wanted to make sure, Susan, and tell me if this still isn't clear, that we're keeping the original question as modified and expanded, so too broad, too narrow or appropriate protection, and sending it off as we're sending other questions off to be value weighted under the sunrise period questions, to be included with the trademark claims questions. And to be included if we get to

other purposes for which the Trademark Clearinghouse database is being used.

So again, I do want to see this as a substitute for the question because I don't think the balance question replaces that. But if we - I think we have to keep both and I just wanted to make sure that's what we're doing.

Phil Corwin: Wait, Kathy, you're proposing that we keep both the original question and the edited version?

Kathy Kleiman: I'm proposing that we keep the original question as edited and also keep the balance question.

Phil Corwin: What's the - is this the balance question? I'm not sure what you're referring to, the balance question.

Kathy Kleiman: Okay. Does the scope of the Trademark Clearinghouse reflect the appropriate balance between rights of trademark holders...

((Crosstalk))

Phil Corwin: Okay, if that question lower down on this document or is that in a separate document?

Kathy Kleiman: Is not what you were just reading or my in the wrong place completely.

Phil Corwin: I'm reading the question at the bottom of Page 6.

Paul Keating: Kathy, it's in the fourth column. It's the final edited question...

((Crosstalk))

Phil Corwin: Yes, the balance is in the edited version, not in the original.

Paul Keating: Yes, so...

Kathy Kleiman: So your reading Kurt's version.

Paul Keating: Kathy, can I help – can I suggest...

((Crosstalk))

Kathy Kleiman: Yes, please go ahead.

Paul Keating: This is Paul Keating. I think the edited question is fine. I think balance by itself necessitates an inquiry as to whether it's overly broad or overly narrow or just right. And I would end the question before you get to the in particular part. I think...

((Crosstalk))

Kathy Kleiman: Is this Paul Keating?

Paul Keating: Yes, this is Paul Keating, I'm sorry.

Kathy Kleiman: Okay thanks.

Paul Keating: The - and I'm sorry to people that might be in the queue, I can't see a queue because I'm just on the phone. But I think that if you terminate the question right after the word "registrants" and forget all the rest of it because all the rest of it is basically incorporated within the question, right, there's specific instances that people would inquire about in the context of the overall question. I think that - and I think the nature of assessing a balance means you must, by definition, SS whether it's too narrow, overly broad or just right and in what instance.

Phil Corwin: Yes, I like that suggestion, I'll, speaking personally. David, chime in please.

David Tait: Thanks, Phil. Yes. Just to follow up on the discussions that were had last week, although the too narrow, too broad, just right phraseology was used last week I think going back to notes that we had from the call last week the determination was expressly not to use that language and instead just use the language of balance.

The other issue I just wanted to point out was to answer Kathy's starting question on this which was whether or not this question would be kept hearing this balance section and then also applied to the question specifically and specifically addressed to sunrise, claims notice and private RPMs.

As you'll see in the comment, Kathy, if you scroll down to Page 8 where the – this question as drafted at the end of the last meeting concludes, you'll see that staff have made a note this question is to be copied over into the - this specific question is to be targeted towards those three mechanisms.

((Crosstalk))

Kathy Kleiman: Hi, David. Which question are you referring to for that?

David Tait: Kathy, that's the question that as drafted – it's in the – not the column that you've added but the column that's entitled Final Edited Question. And although it's been titled laterally, titled Kurt, and that's not actually accurate because it's the question as we've noted it from having been drafted by the sub team at the conclusion of its conversations last Friday. And you'll see just if you scroll down to Page 8 that I've left a comment in there which should hopefully answer the concern that you've raised.

Kathy Kleiman: So we're moving the question, legitimate noncommercial, commercial and individual registrants, losing legitimate opportunities to register domain names in new gTLDs, that's the question...

((Crosstalk))

David Tait: Sorry, Kathy, no to come back in, no, as you'll see all the text is highlighted in red because the comment refers to - and it's just the formatting of the question as it appeared in the extra call a method in, that applies to all of the questions, not simply the sub clause B.

Kathy Kleiman: So we're going to take the balance question and put it into...

((Crosstalk))

David Tait: Yes, obviously it will have to be redrafted appropriately for the particular sunrise, claims notice and private RPMs. But it's it has been - the point you've raised as been expressly noted in the notes from last week's call.

Kathy Kleiman: So as modified. Thank you, David. I'll think about it now in light of your clarification.

Phil Corwin: Okay. Thank you, David. So with nine minutes left, let's try to put this one to bed. Again my bias personally is towards short focused questions and not trying to put every consideration in the question that the working group might want to raise in answering the question. So I'm kind of enamored with Paul Keating's suggestion that the edited question should be, "Does the scope of the Trademark Clearinghouse and the protection mechanisms which flow from reflect the appropriate balance between the rights of trademark holders and the legitimate rights of non-trademark registrants?" Question mark.

And then all the other stuff about when it's a generic word, you know, a dictionary word versus a unique trademark term and, you know, where someone might want to register the domain might not do so because it got registered in sunrise or they got a claims notice. All of that can be discussed from the question.

Kiran. Happy to hear from you.

Kiran Malancharuvil: Hi. Thanks. I think if this call goes on and on I becoming more confused about what exactly we are doing with these questions, because it seems to me like what we are asked to do is draft very neutral questions meant for information gathering. That information should then be inform or advocacy points. And it seems to me like the way that these questions are being drafted and redrafted seems to be aimed at actually starting the advocacy portion of this working group prematurely.

So either I'm confused, and I'm happy to hear if – I am, I mean, I wouldn't be happy to hear that I am but I would yet be relieved, but or I think that there is a lot of sort of premature posturing going on with the drafting. I don't think it's appropriate for us to be talking about legitimate registrants and balancing when we seem to not even be, frankly closed to that stage of the discussion at this point. Thanks.

Phil Corwin: Okay. Thank you, Kiran. And let me state here, I was somewhat confused at the beginning of the call. I thought I clarified, and staff, correct me if I'm wrong, that what we are doing here is we are taking the charter questions and saying okay, we are obligated as a working group to look at all the charter questions that we have the latitude to, one, combine repetitive questions into a single focused question; two, decide that some question just isn't worth pursuing; and, three, add additional questions even if they weren't in the charter or the Appendix 2.

So this is a document preparing focused questions for the use of the working group. Is that understanding correct Miss Wong? I see your hand raised.

Mary Wong: Phil and everyone, that is absolutely correct. That was the understanding. And that was why this group was set up. And the key word I think that was

used in setting up this group was clarification because it was felt that some of those - the questions that we started with were not entirely clear.

Phil Corwin: Right. So again the purpose of this is not to prepare questions to be sent to a third party. The purpose of this exercise is to clarify the questions that the working group is going to focus on. So...

Mary Wong: Yes, that's correct, Phil.

Phil Corwin: And that's why I've been an advocate on this call for short focused final questions that don't take one side or the other, don't tell the working group what it can or can't look at a raised the basic operational legal, technical and policy questions that the group should, you know, can get into in detail once the focus is on each question. Okay.

So at four minutes last, were obviously not going to complete this document. Mary, can you make it short? I see your hand up, Mary.

Mary Wong: I can. I can, and it was just to repeat a suggestion in the chat that if we agree to keep the questions short and focused for clarity so that the full working group understands what the question is when we get to it, what we can do as a result of this sub teams and the liberations, and starting with this table, is note for the record some of the specific instances, examples and concerns that have been highlighted and those can help inform the working group's deliberations at the appropriate time.

Phil Corwin: Okay. Thank you, Mary.

Kurt Pritz: Excellent, Mary.

Phil Corwin: So with four minutes left, I think we can - what's left on Page 8 I think we can knock off in about one minute because the next question there is no proposed revision. It's our legitimate noncommercial, commercial and

individual registrants losing legitimate opportunities to register domain names in new gTLDs.

And I will comment, personally I don't see that question tying it to the Clearinghouse or any other rights protection mechanisms, unless it's, you know, so it almost needs an addition due to the Trademark Clearinghouse rather than due to any of the RPMs. But we don't have a proposed revision so we'll go with that one is a placeholder.

Kathy Kleiman: I think we do have a proposed revision, Phil, just to send that off to revise that for sunrise period in the far right column, to send that off to sunrise period trademark claims, and other uses. That's more of...

Phil Corwin: Oh okay. I wasn't looking bear because those were generally comments and not the proposed revision in that last column.

Kathy Kleiman: So it's just that the question on the left side, revised to include through sunrise period, trademark claims and other purposes.

Phil Corwin: Okay. And in that revision, might I ask, I don't know who was the author of the revision, you may have been, Kathy. What is the term "private purposes" refer to?

Kathy Kleiman: Some of the private - the private purposes are the third category of users of where the - that we talked about kind of in some of those overview slides. This is my intention. When we were doing some of the overview presentations of the Trademark Clearinghouse database and how it's used there were three ways it was being used, the sunrise period, the trademark claims and then privately it's being used like the Donuts protected marks list.

So it looks like we will probably be looking at all three of those. So just wanting to make sure that the question is asked in all three applications if we go into all those.

Phil Corwin: Okay. Susan, let's hear from you and then we're going to need to wrap this. Go ahead.

Susan Payne: Thanks Phil. I guess I don't understand why we need to ask this question at all. I think the one above that we just spent ages talking about talks about reflecting the appropriate balance between the rights holders, you know, trademark holders and non-trademark registrants. There we go, appropriate balance. All done. This is too big...

((Crosstalk))

Kathy Kleiman: I thought we just crossed it out though. Sorry.

Susan Payne: No, no, we have the appropriate balance.

Kathy Kleiman: No, right, but about we just crossed out all the details.

Susan Payne: No, no not the sub details but the question. Are we reflecting the appropriate balance? That's it. You know, isn't this the same question or at least doesn't that - this question naturally get to be considered under that question?

Phil Corwin: Okay. Point noted. It is now the top of the hour so we're going to have to draw this call to a close and make some progress today. Staff, can you please revise the documents reflect any changes we agreed to on this call, and note where we - that when we stopped at the call we were at this little question on Page 8, and have not resulted yet. So when we take it up we can take up from where we went from.

And then I see hands up but I'm just going to say in terms of next steps and next meeting, let's hear from Mary on that, and our next steps...

Paul Keating: This is Paul Keating...

((Crosstalk))

Paul Keating: Sorry, this is Paul Keating. Mary, a request of Mary is, Mary, can someone on staff please number the questions at issue because we have categories of questions can you categorize this so it's, you know, Roman Numeral 1, question A or whatever or Category A, Question 1. It's impossible to discuss these questions amongst ourselves without exchanging, you know, what appears on my Page 8 may not appear on someone else's Page 8.

Phil Corwin: Yes, I think that's a good suggestion, Paul, to number these questions. It will make it a lot easier to get everybody on the same page. Mary, please enlighten us as to our next steps, next meeting.

Mary Wong: Thank you. And, Paul, we will certainly do as you suggest. So the original idea was for this sub team's agreed questions, we had hoped to complete it but we have not yet. But to present whatever we have agreed on to the full working group in Hyderabad. We may not have too much time to discuss it but that was the idea to show that we've made some progress and that's here some of the questions that we believe are now further clarified.

So from the staff perspective it seems like we do have enough to do that on a clear understanding obviously that these are not the full set of TMCH charter questions. So we want to seek clarification from this group that we are still good to do that.

Secondly, in terms of a next call, I think this is the same problem that the full working group has that if we follow the typical ICANN meeting scheduled and we don't have a meeting the week after, the week following that is Thanksgiving week in the US meaning that quite likely the sub team and indeed the full working group will reconvene in the last week of November. That help, Phil?

Phil Corwin: Yes, but so in Hyderabad it'll be the full working group meeting?

Mary Wong: That's right.

Phil Corwin: Okay. All right, I thank everyone for being on the call. The one personal observation I'd make is that, I know ever did he wants to get these questions posed the right way, but I would hope we could agree on a final set, with the knowledge that all the policy issues that are going to be contested are going to be able to be raised by everybody when we actually address the questions of the full working group.

So while I know it's important to get the questions the way people are comfortable with them, nothing in any question precludes anyone from raising any policy concern or bringing any information to the attention of the working group when we actually get into the questions. And let's hopefully keep that in mind as we try to agree on final versions of all of these.

And with that I will thank you. I see Kurt saying, yes, we'd like to have a final list of these questions before Hyderabad, but I just don't see how we're going to get it done. The clock has run out. So we'll go with Mary's suggestion I think for how we handle Hyderabad and we present the categories, tell people about the questions we've been able to agree on and try to finish this up on the next call post Hyderabad. Seems to be the way to go.

Okay, any comments on that? If not I'm going to shut the call down.

Kathy Kleiman: Thank you, Phil. Safe travels everyone.

Phil Corwin: Okay. Safe travel to everyone. And see many of you in Hyderabad. Bye-bye.

Mary Wong: Thanks, everybody. Take care.

Kathy Kleiman: Bye-bye.

Michelle DeSmyter: Great, thank you. The meeting again has been adjourned. Operator, please stop the recordings and disconnect all remaining lines. Have a great remainder of your day, everyone. Good-bye.

END