ICANN
Transcription
Sub Team for Additional Marketplace RPMs Meeting
Friday, 08 September 2017 at 16:00 UTC

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Coordinator: The recording has started. You may now proceed.

Michelle DeSmyter: Thanks, (Theresa). Well good morning, good afternoon and good evening to all. And welcome to the Sub Team for Additional Marketplace RPMs call on the 8th of September, 2017. In the interest of time there will be no roll call; attendance will be taken via the Adobe Connect room, so if you happen to be only on the audio bridge today would you please let yourself be known now?

J. Scott Evans: I am only on audio bridge, J. Scott.

Michelle DeSmyter: Thanks, J. Scott. Okay and as a reminder to all participants, please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I will hand the meeting back over to Paul McGrady. You may begin.

Paul McGrady: Thanks very much. I appreciate. Hello, everybody. We are, I think, in the home stretch here so welcome to our usual Friday call but it may not be so usual in the upcoming future.

I think this is a fairly short agenda on the right, if anybody has anything to add, if you could put that in the chat and we will be sure to add that. And I think we should just get right underway with Item Number 1, which is discuss Claudio's proposed changes, as sent to the mailing list.

Claudio sent an email suggesting some changes to Question 5 and I saw one response from Kristine Dorrain on the list essentially agreeing with Claudio's edits. And I didn't see any counter responses disagreeing with Claudio's edits and so I'm wondering if that means that Claudio's proposed edits are okay? And I see that we've got – I'm going to see if I can get out to the actual email here that Claudio sent. I think he had a very targeted suggestion about what to – how to reword Question 5 just a little bit.

Apologize for not having the email up. I know that there was a question – staff has the question from Claudio over – underneath the agenda but I think that he had a specific editing. Okay so the question there, Mary, maybe you can save me, I see your hand is up. This is an additional question that he wanted to tack onto Question 5 specifically where did he want to tack that on? Thanks.

Mary Wong: Thanks, Paul. Hi, everyone. This is Mary. Paul, I think that Claudio had suggested rephrase Question 5 in the – with the text that he suggested, and that text for the benefit of those on the audio bridge only, he had suggested to ask, "How and to what extent does use of the protected marks list affect the utilization of other RPMs?" And I believe that on the list Kristine Dorrain had supported that rephrasing.

And as Kristine is pointing out in chat as well, it's basically about 70% or 80% the original question, what Claudio did was to add the phrase, "to what extent" in the middle. Thanks, Paul. Paul, are you still there?

Paul McGrady: Sorry about that, my lovely mute button was preventing you from – everybody hearing how brilliant I was. The other thing that I think came from the back

and forth on the list was that Kristine Dorrain suggested that Question 5 be moved to the top. And Kristine, is that correct?

Kristine Dorrain: Yes, this is Kristine. Thanks, Paul. Yes, that's correct. I know that ordering questions is actually one of our topics or tasks coming up here so I didn't want to jump the gun but I just want to – I guess I'm just going to keep reasserting that 5 should be at the top until we get to that conversation. Thanks.

Paul McGrady: Okay. Thanks very much. So we can put a placeholder there. So let's do this, let's first deal with the question of does anybody have any concerns about Claudio's edits to Question Number 5? I'll open a queue on that. Okay, terrific, no hands.

So I see here the text, Kathy says, "Edit's fine." Susan Payne is typing. Susan Payne says, "Happy." All right. Terrific. So we will make those edits to Question Number 5 and we will move onto the next issue which was in our action items list for the list which I didn't see anybody react to on the list. But there has been a – essentially we need to deal with the question of what to do with deleted questions that ultimately are deleted because we think they may be outside the scope of what we're doing here.

We had agreed to archive at least one question earlier. And there's sort of a general question about should we be doing this for all deleted questions? I'd like to open a queue on that, I someone feels strongly that – let's phrase it this way, and it will reveal my particular point of view, for which I apologize. But if anybody feels strongly that we should not archive these deleted questions at the end of the document, that we – if they could get in the queue now and raise their hands and speak to why we shouldn't.

Brian asked, "What is the point generally of archiving questions?" I think the point of archiving questions is to draw attention to the fact that they were – they were under consideration to be asked, but that our group decided for

whatever reason not to ask them. But the concept would make – therefore make its way back to the main working group without individual members of this group needing to remember to do that.

So essentially I think the point of archiving the questions at the end of the documents really is more about keeping track of things or at least that's how I'm – how my point of view on it or how I'm reading it anyways. I'll be quiet now. Kristine, your hand is up. Please go ahead.

Kristine Dorrain: Thank you. Kristine Dorrain for the transcript. I oppose archiving the questions for a few reasons. One is in the other groups we wanted to make sure that we – that when we altered a question we saved the original charter question. That was for background and for context and so that we kept what GNSO Council asked us to look at even though we were sort of modifying the wording of that; we wanted to make sure we were able to go back and reference it.

This sub team and this document was entirely created by – it was drafted by the cochairs but it was created as a result of questions that came from people in the working group. This was not sort of a charter question document or anything like that. So we don't have a history of allowing working group members, cochairs or otherwise, to submit a database of questions to staff to just archive for us so that we don't have to forget our points later.

And so I'm opposed to the idea that some questions are considered so valuable that they should be archived for future discussion. I think that we have this team has been tasked with coming up with a list of questions the working group should consider. I think that if there are members who wish to bring other points up, they certainly can, but I think we're really starting down a slippery slope if we're now expecting staff to archive everyone's great ideas for six months or a year from now. Thank you.

Paul McGrady: Thanks, Kristine. Phil, your hand is up. Please go ahead.

Phil Corwin: Yes, thanks Paul. I'll be brief on this. With all respect to Kristine, I think it's somewhat silly not to archive and to send back to the full working group a report from the sub team which says these are the questions we decided to keep as we rework them, and these were the ones we set aside because we thought they're outside the scope of our charter or whatever other reason. I don't expect a big, you know, attempt to revive any of those rejected questions, I have no plans to do so.

But I think it's silly because everyone on the working group knows the document that was sent to this work team and can readily compare that document to what comes back and say, well where'd that question go? So it's not like you're going to keep it a secret that something wasn't adopted by the work team, so really what is the point of not including that in the report back to the full working group saying – just noting we decided this question wasn't in scope or wasn't relevant or wouldn't yield useful information, period. That's it.

Paul McGrady: Thank you, Phil, appreciate that. I see in the chat Susan Payne says, "Strongly agree with Kristine. We have old versions of the document available in the wiki should anyone desire to look at it. And Phil also noted that if we don't archive these that the working group members could say, you know, hey, where did that question go so presumably they have access to the old question as well.

So that's – to Susan's point there is a different place to find these. Greg, please go ahead, your hand is up.

Greg Shatan: Thanks. It's Greg Shatan for the record. I'm opposed to archiving just for the sake of convenience. I am, however, thinking that it might make sense to archive or maybe even archive isn't the right term, but to specifically indicate that these questions were rejected by the subgroup and we could, you know, we could provide specific reason, or we could just say they were rejected as

either being out of scope or improperly drafted or seeking information that was, you know, not appropriate or unnecessary.

I mean, because this is the slush pile; this is the – these are the cuts. So if they are archived they really need to be reflected as rejects so that's how I see it. Thanks.

Paul McGrady: Okay thank you, Greg. Appreciate that. Susan, your hand is up. Please go ahead.

Susan Payne: Yes, thanks, Paul. I think maybe it's a problem with the term knowledge in a way, I mean, I think we do have an archive of the rejected questions, which was the point I suppose I was making in the chat. But, you know, there are multiple draft documents that have been created as we've been doing our work and I'm assuming that those don't get binned, I mean, they still sit somewhere in an archive. So there's an archive of our conversation and it's possible to see what's been deleted.

But I think including them at the end of the document gives them a kind of status that, you know, they – as Kristine was saying, I mean, it's not as though they were charter questions given to us by the Council that we're rejecting. These didn't exist. So they were just, you know, they were produced as a straw person. I think it would be strange to keep the rejected aspects of the straw person still in the document that's the final version. It seems odd to me – seems to give too much status to the questions that we've all agreed aren't relevant and there is an archive.

But to archive them at the end of the document seems odd to me. And I love – I'm not trying to hide what we've rejected and what we've accepted, but I love Phil's comment that he can't imagine anyone will want to reopen them because actually all I can imagine is that we'll then have to spend another six months talking about the things we've rejected.

Paul McGrady: Thanks, Susan. And I see that the title of the section, "Deferred for further discussion" as to any missing issues that may need to be addressed if the question is deleted certainly does give the impression that these are, you know, they're topics for discussion at some point whether that's for us or whether that's for the full working group as opposed to it being truly sort of ministerial (unintelligible) which is, you know, these are being sent to some archive somewhere.

So maybe – how this section is labeled is part of the angst, not all of it obviously, but part of it. So, Greg, I see your hand is up but I though Kathy was ahead of you in the queue, I'm not sure how that happened. Would you mind if I gave Kathy – oh okay Greg's hand is down. All right, terrific. Kathy, please go ahead.

Kathy Kleiman: Great. Hope it's a beautiful day in Chicago, it is in DC. This is Kathy Kleiman. And what's interesting is that the title you just read, Paul, because not all of the questions are rejected, not all of the questions are dismissed, and not all of the questions are relevant. I thought that there were some questions that we took and – hence the reason we created this category in the first place, was because they weren't questions to be answered by sub team – the sub team, they weren't questions that involved data gathering, they were questions we were sending back to the full working group.

I remember at least one or two of these types of questions because it was a policy question that belonged to the full working group. So I think we have to look very, you know, closely at this. I also – I, you know, I just – I don't see what we're concerned about showing what we accepted and what we rejected, I think that's part of the transparency of our process. Thanks.

Paul McGrady: Thanks, Kathy. And I see Jon Nevett's hand is up. Jon, please go ahead.

Jon Nevett: Thanks, Paul. I guess – I think Mary might have it right that we just create a page on the wiki where we list these questions but we don't put it – and we

could put it in a report back to the full committee, here are the ones we're going with, the other ones we rejected. But having it documented goes out to the public is unacceptable from my perspective.

Paul McGrady: Thanks, Jon. So that they would be truly archived and not advertised, necessarily. Okay. Got it. And Mary notes that there are two additional sections currently in the document, one is deferred by sub team agreement at Kathy's request a few weeks ago and its fate still needs to be determined. And Mary, can you clarify which one that – which one of those is still a live issue?

Mary Wong: Hi, Paul. This is Mary. Sure, thanks. It is the one that was originally Question 2. And we've put that label in brackets because obviously the main text has been moved around and renumbered. So that is the one question under the heading, "Deferred for further discussion," that was original Question 2. And that's different from a question that – a separate question that this sub team had agreed to delete from the main text but had considered archiving. So I just wanted to point out that there's two separate questions and with two separate treatments at the moment.

Paul McGrady: Got it, okay. That makes sense. And I see that – I see that distinction now in the document which makes it a little easier. Okay, so since Jon Nevett has offered a compromise which is to archive these on the wiki, but not to include them in the document, and I have a – I'd like to really – I'd like to get there on this question today so that we can move forward on substantive things in the time that remains.

But can I have a – I don't know if I need a full queue. I'll open a queue just so that everybody can be heard – a queue on Jon Nevett's proposal of these being archived in the wiki but not as part of the report document that we send back to the working group. I see a checkmark green from Susan. I'm taking that as yes, Jon Nevett's proposal works for her.

Kristine Dorrain gives a checkmark. Checkmark, Brian. Checkmark David. Lillian, green checkmark. All right, Greg Shatan, Mary, Phil Corwin has his hand up. Phil, can you please go ahead?

Phil Corwin: Yes, Paul, as I just wrote in the chat, I support Jon's proposal with what he stated when he proposed it, that there's a link in the document to the place in the wiki where the rejected questions can be found.

Paul McGrady: Okay, so we have a slight amendment to Phil's – to Jon's proposal.

Jon Nevett: Yes, and that wasn't my proposal, Phil. Just to respond. If it's going to the subgroup or the main group that's fine, but the one that's going out to the public, no, no this is a questionnaire; we're trying to collect facts. And if there are questions that – were viewed as inappropriate it shouldn't go out to the public in that questionnaire, be it in the link or in text.

((Crosstalk))

Phil Corwin: Well just to clarify, Jon, all my comments on this call have been in regard to what's reported back to the working group.

Jon Nevett: Oh yes, then I'm okay with it.

Phil Corwin: Okay.

Jon Nevett: Thanks.

Paul McGrady: Okay. So I saw lots of green checkmarks on Jon's proposal. Any – let's do the green checkmarks again. Jon's proposal as slightly modified by Phil to include a link, let's see, does that get us there? All right, we've got green checkmarks all up and down. Great. Okay, that's terrific. Oh, I see a red checkmark from Jon but I don't think he means that since it's his proposal. Great. All right, thanks, Jon.

Okay, so deleted questions will be archived. There will be a link from the main reporting document and I see applause and smiley faces, thank you, guys. And – but we will – yes, we'll work on how that looks, but we have agreement on the concept. That's terrific.

Okay now the good stuff. Hopefully Mary can get us started on where we left off. I know we have this deferred question, the original question Number 2 and we have some other stuff to file through. Mary, your hand is up. Please go ahead.

Mary Wong: Thanks, Paul. This is Mary from staff. I think where the group stopped last week was what is now Question 7 in the document and the discussion last week was whether it would be possible to rephrase this question particularly subpart C and subpart D to make it more neutral, I think was the comment that a few people made. Or if that's not the will of the group, whether it should then be deleted potentially archived in the way that we've just described.

Paul McGrady: Terrific. And I do think we made some progress on that but we, unfortunately, ran out of time. So looking again here at 7C and D, 7C, how – rather, "Are these services separated from the ICANN-mandated and supported services? And if so, how?" And D, "Are these services supported by the ICANN contract and fees?"

And I would – I wish I could remember who was advocating for what. So we'll – unfortunately we'll start again on this one a little bit. Folks with objections to 7C and D as currently written. Anybody want to object to C and D as currently written? All right, Kristine, hand – I see your hand.

Kristine Dorrain: Thanks. This is Kristine for the transcript. Yes, I think last week we were really confused about what C meant. Are these services, I'm assuming the additional marketplace RPMs, separated – and I'm not sure what "separated" means – from the ICANN-mandated and supported services, and we don't

know what's – (unintelligible) if that meant – I mean, I don't know because ICANN doesn't support really the TMCH. Anyway, and if so, how?

So I know all three chairs are on the call and perhaps one of them would be able to interpret C for us. Thank you.

Paul McGrady: Thank you, that's a great idea. I see that Phil and Susan have their hands up, let's hear those comments and then if we can get clarity – oh, Phil, your hand is down, terrific. Susan, if you can go ahead and then we'll take up Kristine's suggestion that we put one of the three cochairs on the spot to explain C to us.

Susan Payne: Okay. I'm going to try. I may be completely wrong here but I'm wondering if perhaps the reason we're all confused is because of the fact that this whole document uses a kind of catch all term of "additional marketplace RPMs" and I'm not trying to reopen that as such. But I wonder if actually what this question is trying to ask about is services that the TMCH operator is providing. So the kind of – the ongoing claims or something like that.

And if you're asking this question about the ongoing claims it maybe sort of makes sense but doesn't seem to me to make much sense or be very clear as – if you're interpreting this question as asking about, you know, registry-specific offerings on protected marks lists. So I'm wondering if this is what the cochairs had in mind, and perhaps it's one of those situations where we actually need to be a bit clearer about what additional marketplace RPM we're talking about.

Paul McGrady: Thank you, Susan. I promised we would cut to putting one of the cochairs on the spot, but we'll go ahead and hear from Greg first. And if the three cochairs that are on the line could, you know, get ready to address what it was 7C was all about, that would be terrific. Greg, please go ahead.

Greg Shatan: I'm going to try as well, although I feel like I'm on some sort of a game show, what's my question or something. But in any case I think this refers to a part of the authorization of the TMCH. And I'm not sure exactly which document it's in and that should be cited. That allows the TMCH to offer additional services and to maintain additional databases in addition to the TMCH mandated database for the mandated sunrise and claims services but that if the TMCH does kind of do business on the side, that it has to segregate or separate that additional database and service from the TMCH database.

And I guess the question here is basically are you breaching this provision or not? Not saying it's an agreement but, you know, are you following this or not? So I think that is what in fact this is referring but, but I think we need to go back to the primary source document and draft using the terms that are there. Unfortunately I can't tell you what primary source document that is. Thank you.

Paul McGrady: Thanks, Greg. So we have a couple of working theories on what 7C was meant to be about. And so I will ask any of the three cochairs who were involved in drafting this question to hop on and tell us what the goal of Question 7C was. Okay, J. Scott, I see your hand. Please go ahead. And Mary, I note your hand is up too, but we'll hear from J. Scott first.

J. Scott Evans: Can you hear me?

Paul McGrady: Yes, sir.

J. Scott Evans: I think it's very much along the lines of what Greg – the point that Greg was making was are these services distinct and separated from those that are run through the – with the ICANN-mandated services? Or are they comingled in some way in how they function and how they're run. I believe that is the point of the question, although I can see from when you have other parties look at it, I can see where the – there is some confusion with regards to some of the wording in here and how it, you know, points to things that are conceptually

not how ICANN views itself nor the role it plays with regards to these things, which only causes more confusion when trying to get an answer from someone, the "and supported services."

So that – I think that as the purpose of the question, I'll look to the other two cochairs for any comments they want to make, but I believe that was sort of the genesis of the – what we were trying to ask.

Paul McGrady: Thank you, J. Scott. Phil or Kathy, any comments?

Phil Corwin: This is Phil. I'll try to be helpful here though. This was not a question which I had much of a hand in drafting. I think we're just, again, we're trying to find out the relationship of the additional protections offered in the marketplace, their relationship to the mandated protections that all new TLD registries must offer. And of course one of those is the Clearinghouse, so the first part of the question is trying to determine the extent to which these marketplace RPMs, and that's the term we're using so that's the one I'll use, are based upon accessing the SMD information in the TMCH. We just want to understand the relationship.

I think the second part of the question wants to make sure that that's being done and consistent with existing policy. This might even be helpful to answer this one to the private offers, if we found that there were some impediment which might block a service they wish to offer in the future. But again, I think it's just a basic factual question, review the language of the policy and make sure there's no impediments there.

And I think the third one – my presumption would be well, I guess that's – it might be better phrased, you know, are they – is there a cost involved when they access that and could they get the same information that a similar cost from other sources about, you know, a private – I would think a private operator – although they have offered DPMLs up to now based upon a mark being registered in a – in the TMCH, I don't know of any impediment to a new

registry operator saying hey, we'll provide that for any registered trademark meeting these criteria to provide this documentation. So it's just a comparison.

And then I'm going to leave it maybe Kathy to add the – answer the last part which – about the other stakeholders along the value train, that seems to be the most nebulous part of this question for me. But I hope that was helpful. Again, this was not a question which I had great involvement in drafting, but it's basically trying to determine to what extent these existing marketplace protections are based on accessing the TMCH database and whether there's anything that might block a future service because of policy language. Thank you.

Paul McGrady: Okay, thank you. Mary, thank you for your patience, if you could please go ahead?

Mary Wong: Not at all. Thank you, Paul. This is Mary from staff. This is just to continue some comments that staff made last week. I think our concern here is to try and clarify who this question is directed at. From the tone of the discussions it seems like this question would be an appropriate one for the Trademark Clearinghouse providers and not ICANN. And so in terms of, you know, 7C and D, in particular C, I just wanted to confirm that ICANN does not support the provision of the additional RPMs by the registry operators or the TMCH. So just seeking a clarification not just of the terminology but as to who this question is directed at because from the ICANN perspective the answer from our end is, no.

Paul McGrady: Okay thank you, Mary. I see from the chat that there is, let's see here, Kristine says that she believes that Question 2 gets at 7C. Greg suggested earlier that if nobody knows what the question means it should go to the reject pile. J. Scott says, "I tend to agree with Greg, that the question raises too many questions or is open to interpretation I think the flaws point out that

it should be eliminated." Jeff Neuman says, "Agree with Kristine. This is Question – this is covered in Question 2, I move we put this in the reject pile."

And then David, you may need to explain this, maybe (unintelligible) away with Occam's Razor. Occam's Razor of course, I believe, is that the simplest solution is usually the correct one but maybe you can tell us – maybe cutting it away is the simplest solution, is that what you're proposing? That is – okay, perfect. I'm so glad I took all those classes, I didn't know how to apply them later, because I finally did. All right.

I see Kathy's hand up. So I think at this point there seems to be a lot of discussion on the chat about eliminating C – 7C. And so if we could have some reaction to that on the list as well. But Kathy, please go ahead and tell us what was on your mind. Thanks.

Kathy Kleiman: Yes, Kathy Kleiman for the record. And I actually think Greg prefaced his comments with something about a game show. If it were a game show he'd get the grand prize because he did get to the core of exactly what C is for, which is – and this is a question to the providers, and note Number 2 is a question to the registry operators.

So a question to the providers, and perhaps to ICANN, and again to what Mary said, we've said it a million times, even if there's a simple answer it's worth putting it on the record and on the table as part of our review. So if ICANN does not think that they are paying for or even subsidizing or unintentionally subsidizing things that are outside of ICANN consensus policy, that's an important piece of information for the review team.

So C, as Greg said and as J. Scott said, we're looking – what role does the TMCH provider shall play in servicing the additional marketplace RPMs? And are these services separated from the ICANN-mandated services? And supported services just means, you know, paid for services. And we can make that clear.

But exactly the original rules, exactly as Greg said, require separation between primary services and ancillary services, between consensus policy mandated and supported, meaning we pay for it, ICANN pays for it. Consensus services, and services that are being offered on the side. And so this seems to me to be a very straightforward data question and I think the working group would be surprised if we didn't come back with – if it's a simple answer, great, if it's not a simple answer all the better; this is kind of pretty pure data gathering. Thanks.

Paul McGrady: Sorry, mute button again. Thank you, Kathy. Jeff, your hand is up, please go ahead.

Jeff Neuman: Yes, thanks. I don't think this is – sorry, Jeff Neuman. I don't think this is simple data gathering. This question is actually asking for a conclusion as opposed to asking for data. If you were to ask for data you say the TMCH provider, "What service do you provide? How do you provide it?" Then the group makes a conclusion as to whether it is separate enough to comply with the policy; you don't ask the provider a conclusion statement like this. You make that determination yourself from actual data that they provide based on the services that they provide. The other thing that's – which I think you can get from Question 2.

The other thing I think that's kind of a, you know, weird about this question is that when you ask the provider if you were to ask them this conclusion, first of all I don't know that the provider is bound by the policy that the GNSO set. They're bound by a contract with ICANN, we can look at the contract with ICANN to make sure it's got a provision that includes what the policy is, which I think is probably a good thing for us to gather that kind of data.

So – but a provider – again, is just going to say, everything I provide is in accordance with my contract and, you know, we can ask them and to verify

that. But again, this is asking for a conclusion, it's not asking for data.
Thanks.

Paul McGrady: Thanks, Jeff. Susan, I see your hand is up, please go ahead Susan.

Susan Payne: Hi, thanks. Really quick point, I mean, it's not to be taken as supporting
keeping the question in, but if this does stay in as a question to ICANN with
the comment that it's valuable to still asking questions we know the answer
to, I think we agreed on a previous call or we certainly discussed on a
previous call, and I thought we'd agreed, that if that was the case we were
also going to include some kind of a reference to make it clear that we
already knew the answer and so we didn't then at a later stage or the full
working group at a later stage didn't go around like, you know, seeking data
and seeking answer to a question that we all know on, you know, now, we
can answer straight off, Mary's already answered it for us.

So I just wanted to make that point because I thought we'd had that kind of
agreement that we were going to do that if we were going to ask a blatantly
obviously question that we already have the answer to.

Paul McGrady: Thank you, Susan. All right, Kathy, I see your hand is up. Please go ahead
and then we'll try to see if we can figure out what to do. Thanks.

Kathy Kleiman: Sure. Hey, Paul and everyone, this is Kathy. I still don't understand how this
is – I don't understand Jeff's response or why this isn't a basic data gathering
question. Are the ancillary services separated from the ICANN-mandated
services? That seems as cut and dry as any other data gathering question
we've asked. And in this case we're asking it to the provider and not to the
registry operator because the provider is providing these services.

Seems like basic data gathering for these additional marketplace RPMs. And
one kind of core to our mission of review given that the rules mandate a

separation. So again, don't see why this is hard, don't see why this one is redundant and don't see how we've already answered this one. Thanks.

Paul McGrady: Thanks, Kathy. Before we get to Jeff, I guess I – do we have the language in the contract that mandates that separation? And I think it might be very helpful to have that in front of us because if the contract already mandates that then I guess I understand a little bit better what Jeff said, which is really isn't this question just an elaborate way of saying are you complying with your contract?

If – so I don't know oh Mary says, "@Paul, give us a moment, we will look it up." Okay, so let's give Mary that moment to look it up. Thank you, Mary, as always. Jeff, your hand is up. Let's keep working on this while Mary looks that up.

Jeff Neuman: Okay, thanks. So I used to work at an employer, many of you know who that is, that was heavily regulated by the – essentially the Federal Communications Commission. We got audited on neutrality every single year. They did not ask us, "Are you neutral?" They got facts. So this is what I'm saying, we collect the facts, what services do you, the TMCH, provide? Number 2, how do you provide those services? Three, do you use any data from the TMCH database?

Those three questions then, when they give us details, would allow us as a working group to determine whether they are, quote, separated from the ICANN-mandated and supported, or whatever the language is in the contract. It's not basic data gathering, it's actually a conclusion. So let's ask – and I think all these, by the way, are asked in Question 2 in different ways, but again, that's not data gathering, that's actually asking for a conclusion. Doesn't make any sense to me. Thanks.

Paul McGrady: Thanks, Jeff. Phil, your hand is up. Please go ahead, Phil.

Phil Corwin: Yes, thank you, Paul. And let me readdress this. I must admit in my previous comments I got confused by the discussion, I was actually referring to Question 2 so if anyone was confused by my prior remarks that's because I was confused.

In regard to Question 7, number one, it seems to me that this is a question going to Deloitte and IBM. This is a question for the TMCH provider. And in the context of an inquiry into private protection, so I think to make it more focused that Part A which reads now, seem to refer to any Website and webinar service should be refined to reflect just whether anything on the Website or in the webinars is – references private protections. So it's within the scope of this particular work team and not the broader Website and webinar services, that providers may be providing.

Part B, what support? I'm not sure I think we need to replace support with something different because I'm not clear on what support means, whether it's – it can mean a lot of different things. And I'm not sure that the registrant referral here in the context of looking at private protections makes sense because generally the TMCH provider is interfacing with registry operators who rely on the registration data and with mark owners, registrants are only affected after the fact by the claims notice.

So I think this has to be refined in some way to refer to what services or whatever the proper word is does the provider provide to registry operators in support of the private protections. I think the third part I guess within this context if it's going to the TMCH operator is really – should be refined to say, is your provision of whatever support services for the private protections delivered separately or concurrently with support for the mandated services, the sunrise registration and the claims notices.

And I think rather than the word "supported" in D, the word – at least supported should be changed to "consistent." And I'll let others debate whether we should just be looking at the contract or whether the inquiry

should be to fees as well. I do support looking at whether the provision of any of these services is consistent. I'm assuming it is consistent and I don't expect we'll find anything different. And I think registry operators should be happy that we report that back to the full working group or that we report it back to the public when we issue a report.

So those are my Question 7 focused comments. I hope those are helpful. Thank you. And all made in a personal capacity.

Paul McGrady: Okay, thanks, Phil. Okay, so Mary has put into the chat, "@Greg, is this more or less what you had in mind from the final TMCH framework published in the final Applicant Guidebook? The Clearinghouse will be required to separate its two primary functions, authentication and validation of the trademarks in the Clearinghouse, and serving as a database to provide information to the new gTLD registries to support prelaunch sunrise or trademark claims services. And Trademark Clearinghouse service providers may provide ancillary services so long as those services and any data used for those services are kept separate from the Clearinghouse database.

So I see some people typing in the chat. Phil says, "To sum it up I think Question 7 should be refined and clarified, not discarded." J. Scott is typing. Okay, while J. Scott is typing I hope I don't get in trouble – oh, J. Scott says, "Query, is an additional registry operator RPM an ancillary service of the Trademark Clearinghouse?" That's a very good question.

And then ancillary service, as far as I know wasn't defined anywhere. Mary Wong says, "@J. Scott, no not under its contract with ICANN." Susan Payne says, "No." So additional marketplace protections are not ancillary services, then the separation contained in the Applicant Guidebook, unless I'm reading it wrong, doesn't seem to apply. And Mary Wong says, "There is only one approved ancillary service at this time, the TMCH provision of extending claims services."

So J. Scott says, "It seems to me that those would be service offered directly to trademark TMCH registrants and users from the TMCH provider." Jeff Neuman, "Is ancillary service a defined term in the contract?" Okay, so we are – we're well into contract interpretation with 10 minutes to go.

So yes this is – unfortunately this question is just, you know, 7C and D that we are having to dig into the details of the Applicant Guidebook and trying to parse contract language then 7C and D as written are not ready for primetime. J. Scott says, "In my humble opinion this just goes to show this question should be deleted."

All right so we've got quite the queue, we have 10 minutes left. And we'll hear some more voices on this. I was hoping to get to original Question 2 but it doesn't look like we're going to be able to do that so we'll have at least one more call. Phil, your hand is up, is that an old hand or a new one? Old hand.

Okay, Jeff, Susan and then Kathy and then we will see where we go. Jeff, please go ahead.

Jeff Neuman: Yes, I guess the reason I raised my hand, sorry it's Jeff Neuman, is because there were a number of people that jumped to the conclusion really quickly that the new – an additional RPM offered by a registry is not an ancillary service. That's why I kind of raised the question, what's the definition of an ancillary service because I don't know what it is but apparently a lot of people jumped to that conclusion.

I think we need to see what the definition of an ancillary service is, but all of that said, that's for the working group to know the definition of an ancillary service. Again, if we're asking questions externally we should ask for what are the services you provide and how do you provide it, maybe even add a couple extra of who your customers are and where you get the data from, whatever it is, just straight factual questions for which we as a group or the

people evaluating it make a determination as to whether it's, quote, separate as defined in the policy. You don't ask that of the TMCH. Thanks.

Paul McGrady: Thanks, Jeff. Kathy, please go ahead.

Kathy Kleiman: Yes, I agree with Jeff, I don't – the definition of ancillary services is one we should be talking about because it runs to what services have to be separated by the TMCH providers. I don't think it's that complicated. And it won't necessarily – ancillary services at least as defined in the original rules did not mean anything ICANN approved. It meant – there was nothing that limited it to something that ICANN would have to approve, in fact the thinking at the time was mostly that ICANN would work with RPMs – consensus based policy, but that ancillary services would be those private – those private protections that people might try to use.

So one example was a dotPizza and this was talked about many times a few years ago, that a TMCH provider, we now know that to be Deloitte but it wasn't Deloitte at the time, might want to do pre-registrations for a dotPizza since many of the registrations in dotPizza would expressly not be trademark protected because they have to do – a lot of pizza places have names that are places or names that are proper names like Joe's Pizza is a big one in my area. So ancillary services expressly at the time meant those private services TMCH might provide to registry operators. Thanks.

Paul McGrady: Thanks, Kathy. Susan, your hand is up and then I think I'm going to do – call for a little consensus vote here with green arrows – green checks and red X on this particular question. But let's hear from you, Susan, I don't – I want to make sure everybody's heard from. Please go ahead.

Susan Payne: Hi, yes, I mean, actually I thought – I think I'm saying what Kathy said. I mean, my understanding way back was that, you know, it was decided that there were some mandated RPMs but that if, you know, if Deloitte wanted to build a database of, say, non-registered marks then they could do so, if some

registry, you know, if enough registries were going to want to access that non-registered mark database to offer say, you know, a subsidiary RPM, but the whole idea was they were going to have to keep that somewhere in a separate database.

But I think I'm sure we've asked Deloitte this question already and they've already told us they haven't done any – they haven't done that. So I just feel like we're going around in circles spinning our wheels.

Paul McGrady: Okay thank you, Susan. So here's what I propose to do, let's have a vote on whether to keep 7C and D however, with the caveat that if there are – if 7C and D are voted away, that if anybody who are champions of 7C and D or at least the concepts underneath 7C and D that we – that maybe these questions don't get to but are out there, that they do a proposed new 7C and D on the list during the week.

And if anybody comes forward with a new proposal of how to get at 7C and D in a way that doesn't require us to know what ancillary services means, and, you know, is more crisp language and everybody can get behind that, terrific. If there are no takers on the list during the week then 7C and D will just be deleted and that will be that.

So let's try that. If you are for deleting 7C and D but with the caveat that, you know, the list is open to people with new ideas of how to phrase these things, can I have a green checkmark? If you are opposed to deleting it entirely, can I get a red X? And I suppose a third option – even though I hate third options – are – would be delete it, no chance to resubmit something on the list. So that would be step away.

All right, I'm not getting any feedback on that. Green checkmark, delete but open to the list; X, keep and delete, no chance to resubmit on the list, would be step away. You guys can choose from the dropdown menu. All right, so J. Scott says, "Delete, step away." Phil says – Susan Payne, "Delete, step

away." Phil Corwin says, "Keep." Kathy says, "Keep." All right, folks, we're at two and two.

Phil Corwin: Yes, Paul, this is Phil. I just want to note I put in the chat I'm supporting keeping them at this time, but if – but acknowledging the need for them to be rephrased to be more focused. Thank you.

Paul McGrady: Okay, all right well we have essentially – we're at two and two. We're at three and two, okay Griffin says, "Delete, move on." J. Scott, Kristine, Griffin, Jon, "Delete and move on." All right, last call. All right, Jeff, your hand is up, I don't know how to interpret that but maybe you have something to say. But we do need people to express an opinion, so this is the point in the call where participation is extremely important because we have two minutes left. Jeff, please go ahead.

Jeff Neuman: Yes, I'm not sure how to answer it. I provided some possible questions you can ask to the TMCH or ask – sorry, IBM and Deloitte and then the working group decides whether this is compliant. So I mean, I think it's already in Question 2 but that would be my solution. But if I had to pick one of your choices I would go along with deleting the question.

Paul McGrady: Okay. All right, so we are at 1, 2, 3, 4, 5, 6, 7, 8 delete and move on. We have essentially two keeps; and one keep but work on redoing it. So that looks to me like the delete carries the day. And so 7C and D will end up on the archive with the link to them in our final report. Okay.

All right, well that should take us to the next call which will then focus, I believe, on the original Question 2, so if everybody could read that during the week and also do some thinking about what order these questions should go in, there's already a proposal to move 5 to the top. Take a look at the questions. And see where you think things should go, are they are in the right order? And hopefully we'll be able to end our work next week.

Mary, your hand is up, please send us off.

Mary Wong: Thank you, Paul. So just to note that we will arrange for another call same time, same day next week. But a question for the group to consider if there's any report that you want to send to the working group before next Friday that that's something that we can assist with doing as well, for example, with the questions that you've already agreed on.

Paul McGrady: Thanks, Mary. Let's have a discussion on that on the list. Being so close to being able to do something final, my reaction is not to do something interim. But let's have a discussion of whether or not we should do that on the list and let's say good-bye so that everybody can get onto their next call. Thank you all. Have a great week. We'll talk to you soon. Bye-bye.

Mary Wong: Thanks, Paul. Thanks, everybody. Goodbye.

Michelle DeSmyter: Thank you. Meeting has been adjourned. Operator, please stop the recordings and disconnect all remaining lines. Have a great day.

END