

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working
Group
Wednesday, 07 December 2016 at 18:00 UTC.**

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Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of all Rights Protection Mechanisms RPMs in all gTLDs PDP Working Group call held on the 7th of December, 2016.

In the interest of time there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe Connect room so if you are only on the audio bridge, could you please let yourselves be known now? Hearing no names I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this I'll turn it over to J. Scott Evans. Please begin.

J. Scott Evans: Hi, everyone. This is J. Scott. Good morning, good evening, good afternoon depending on where you are located in this lovely place we call home, the world.

You notice here we have a proposed agenda that I think was sent around and I didn't hear any objections to so we're going to proceed with this, so we're on Point 2, which is review and discussion of the charter questions as edited by the Charter Question Sub Team. And that's what is up on the screen.

So I know there has been some discussion today earlier today with regards to these, with regards to at least one specific question. But why don't we work our way through the questions and just see if – do I need – so I note someone said that it's very quiet. That's Paul. Can you – am I still coming through too faint? I can pick up the handset if that's what you need. Okay. Until I see something in the chat box I'll continue.

So we'll start with Question 1, which you see is, "Should the verification data be used by the TMCH be clarified or amended? And if so, how?" So are there any comments, concerns on this particular question? Okay. I see Kathy Kleiman's hand is up.

Kathy Kleiman: Hi, J. Scott. This is a comment more by way of a question. There looks like something under the discussion in the working group from Rebecca Tushnet. And I was wondering, since I see her online, whether she wants to come forward to discuss – and I don't know if she's on the bridge – to discuss some of the comments that she made that are in the third column? Thanks.

J. Scott Evans: I see here she says she's not sure her audio is working. So we'll come back to that if we get the audio worked out or if – she says that she'd like to hear the perspectives of others on the meaning of this question, though. So does anyone else have some – Greg Shatan.

Greg Shatan: It's Greg Shatan for the record. It looks like – I read what Rebecca put and it seems rather different from what's in the second column regarding, you know, referred to administrative challenges. So I think a – maybe there needs to be a clarification about what's meant by verification criteria. Before we worry about clarifying whether those criteria should be clarified or amended we should know what those – it would actually be helpful to know what those criteria are, you know, and have, you know, either a reference or a link to where they can be found so that we have some clarity.

You know, I read it the way the second column does. And don't think there's a question about design marks or stylized marks is part of this verification criteria question. Thanks.

J. Scott Evans: Thanks, Greg. Mary's hand has gone down so I'll go to Susan Payne next.

Susan Payne: Thanks. Yes, we did talk in the sub group about this question quite a lot. And that was where we ended up having that second column with the comments from the sub team because we felt it would perhaps be helpful for people when they're – when we come to actually talk about the substance of that – when they can see what we understand to be the background to it.

I think in terms of what the verification criteria are, I – my assumption I think would be that clearly if one is going to be reviewing as part of our work, the verification criteria, then part of that review would have to be to look at what they are in the first place. So, yes, that's kind of implicit.

And we did also have a separate sub group that completed its work a little while ago, which asked various questions of the TMCH providers and others. So I think that part of your concern, Greg, is hopefully covered off or implicit in the work to be done.

And I think, yes, I mean, I think there is certainly somewhere and whether it is in this question or in another one, Question 4, for example, you know, I mean,

it's clear that there have been some questions raised about design marks. And clearly we, as a group, need to look at that. And whether that comes when we're answering Question 1 or Question 4 or whether we organize our work so that we do both of those at the same time in order to ensure we don't duplicate, I mean, I think that would be one way to do it.

J. Scott Evans: Thank you so much, Susan. Might I suggest that I like Greg's idea of if we could put a hypertext link where it says "verification criteria" so we have that as a link and that leads to someplace that lays out what the TMCH uses as its criteria, whatever that may be. Because I know that there are some threshold criteria that all the registrations have to meet in order to be considered valid for the clearinghouse.

And so it'd be great if we could just put a link so when – should the verification criteria, and you can click that and it would say take you to a page that sets out not drafted by this committee, but an educational material that's already preexisting out there what those criteria are.

Mary, do you think that's something we could do? Yes? Okay, I would suggest we do that. I think that's a great suggestion, Greg, thank you so very much for offering it.

I think that Susan, I do understand it's implicit but I think if we can be expressed in any ways we can it helps. Kathy.

Kathy Kleiman: Sure. Thanks, J. Scott. This is Kathy Kleiman. I like the idea of linking to the Trademark Clearinghouse and its criteria. I also like the idea of keeping this paragraph in Column 2. This is what we called in the sub team kind of clarifying paragraph.

At least it was our understanding of where – of where things were and what kinds of questions at least were being raised. Because in some cases we're seeing a consolidation of a number of charter questions into one question

because we thought that they were related but we want to make sure in the clarifying paragraph and so I'm recommending that it stay with the underlying question that you see kind of the full scope of the type of questions that people were asking. And certainly design mark, which Rebecca points out, is one and there may be other issues.

I also wanted to point out the very last line of the – this clarifying paragraph and Column 2 for Question 1 reads, “design versus work mark.” And of course that's “word” mark – W-O-R-D. So thanks for that change, staff, Mary and David, thank you.

J. Scott Evans: All right. Unless I see some wild red Xs going along, I'm going to say we just adopt Kathy's request that we keep that. I personally don't think we can ever give people enough information to help guide them, provide us with valuable information that will assist us in our work. So I would suggest we just go ahead and accept that.

And let's move to Question 2 now if possible. Greg Shatan.

Greg Shatan: Just briefly, Greg Shatan again for the record. It notes that the Column 2 says, “But one noted the need to define what quote unquote different means.” However, “different” is not referred to or the word “different” is not used earlier in Column 2 or in Column 1 so that doesn't make sense. Thank you.

J. Scott Evans: Any suggestions for what we need to do to fix Greg – Greg, do you have any suggestions for how to fix what you've pointed out?

Greg Shatan: Well, since it's referring to a word that's not actually used anywhere here I would just delete it.

J. Scott Evans: Okay. So we would just delete...

Greg Shatan: I see Griffin's comment in the chat, that "different" was in an earlier formulation of the question so this is a vestigial comment kind of like Cheshire cat smile that's still here.

J. Scott Evans: Okay I'm fine – how about we replace it with his quoted question, which I think work. "Should further guidance on the TMCH verification guidelines for different categories of marks be considered?"

Greg Shatan: J. Scott, that's a whole another question. And that's an earlier version of this question that this question morphed into. So I don't know why we'd ask both questions or are we going to ask both questions?

J. Scott Evans: Yes, I see no, that was the original question so is that saying that was the original question and we decided not to go with the original question and to go with this form of the question. So I see that Phil is in a place where he can take over. So, Phil, if you'll notice Kathy has her hand up and Mary has her hand up. I think Mary's hand was up first. So with that I'm going to turn it over to you.

Phil Corwin: Yes. Thank you, J. Scott. And I apologize to everyone for my late entry. For some reason it's always worked before but the chat – the room wouldn't open in Chrome and then I went to use Firefox and that had to update. And then it told me I needed to add the Adobe Connect connector, which I thought I already had so it took a long time.

With that technical thing, Kathy, and then Mary.

Kathy Kleiman: Actually I'd be happy to wait for Mary because she may have some background. Thanks.

Phil Corwin: Okay. Okay. Thank you.

Mary Wong: Thanks, Kathy. Thanks, Phil. So I think my comment in the chat was I don't actually see the word "different" in this refined question from the sub team. As Griffin points out, it was used in an earlier formulation. The word "different" appears in the next column under the clarifying comments. And in that regard, it merely replicates as an example some of the comments that had been offered in public comment to the – some of the papers that preceded this report.

So we're not sure if anything actually needs to be deleted from the question and we hope this helps.

Phil Corwin: Okay thank you, Mary. Kathy.

Kathy Kleiman: Rather than editing this on the fly, since Greg did point out that there is a reference and it's missing and Griffin pointed out that it does come from one of the underlying charter questions that was kind of combined together.

My guess is this isn't going to be our only week looking at these questions, so why don't we, you know, if the sense of the room that the question with the clarifying paragraph and the new links and additional information that J. Scott talked about is all a good way to go that we accept that and go forward and make a note that we have to come back and just kind of figure out what different is, whether it should be deleted or whether it references, as Mary says, a set of comments that perhaps now we need to provide in a little more detail because it's pretty shorthand here.

And if there is a concept that there is something people are, in the charter, have asked us to dive into let's just figure it out before we delete it and just see if there's something there that provides even more guidance and clarification. So I would recommend that we're like 90% there and that we tie it up and tie it up next week. Thanks.

Phil Corwin: Okay. Yes, thank you, Kathy. I think that's a good suggestion but let's hear from Greg. He has his hand up on this.

Greg Shatan: Thank you. Greg Shatan. I think we need to know exactly what the verification criteria are before we edit either the first or the second column because otherwise we're kind of working blind or at least half blind. Thanks.

Phil Corwin: Okay, Greg, so I take it you would agree with Kathy's suggestion that we circle back to this one next week after some additional work?

Greg Shatan: Yes, I think there's – yes, absolutely.

Phil Corwin: Okay. Then unless there's objection I'll move on to Question 2, which there's no commentary on it. The question is, "What activities does the Clearinghouse undertake to communicate the criteria it applies when determining whether or not to accept marks? And what they do when registrations are challenged." Any comment on this question? Mr. Shatan, please go ahead.

Greg Shatan: Greg Shatan once again. Just briefly, I think this perfectly illustrates the first question or the issue we were just having with the first question because I don't know what activity they undertake to require the criteria but I've been using a well-known search engine beginning with a G and have not found any indication that they have publicized or communicated their criteria that we could even use to try to round out our understanding of Question 1. So well asked.

Phil Corwin: I take that as saying you're okay with the way Question 2 is formulated. But it reiterates the need to flesh out Question 1 and specifically reference the criteria. Is that correct?

Greg Shatan: Yes.

Phil Corwin: Greg, is that a correct reading of your comment that you're okay with the wording of Question 2?

Greg Shatan: Yes it is. Thank you, Phil.

Phil Corwin: Okay. And next – and I'm afraid I'm probably going to mutilate this name with the pronunciation – Vaibhav. I apologize, I'm sure I tortured that.

Vaibhav Aggarwal: That's okay, Phil. Good morning, good afternoon and good evening. It's 11:30 in the night. Vaibhav Aggarwal for the record. And I just want to – I just want to understand there is the question of even empowering TMCH, you know, this – I've been very quiet on the list and I've been understanding everyone's views. But, I'm sorry, pardon me for being lame here, but I'm not able to understand a very simple thing.

All marks are backed by their respective registrations and certifications. How on earth is even TMCH authorized to have a shadow legislation to even decide the criteria with marks to accept or not? And how on earth would TMCH do or undertake any activity, even when registrations are challenged? Because I think that's the job of the attorneys. That's the job of a qualified person to comment on the trademark registrations and the duplications and the challenges therein in the respective jurisdictions.

TMCH is not even a authorized legislative body or some kind of an authority in any jurisdiction for that matter. How can just – how can just TMCH exist for their own selves? How – and, you know, somebody pointed out...

((Crosstalk))

Phil Corwin: ...specific comment on this question? It seems to me you're challenging the very...

((Crosstalk))

Phil Corwin: Excuse me. It seems that you're challenging the very concept that there should be any criteria applied to the TMCH for...

Vaibhav Aggarwal: Absolutely.

Phil Corwin: ...registration of marks.

((Crosstalk))

Vaibhav Aggarwal: ...is very simple. It's a...

((Crosstalk))

Vaibhav Aggarwal: ...you either have it or you don't. Where is the criteria that TMCH has to decide?

Phil Corwin: So you're not commenting on the question, you're challenging the very concept that the TMCH should have any evaluative criteria.

Vaibhav Aggarwal: I'm – on this I'm sticking...

Phil Corwin: Is that correct?

Vaibhav Aggarwal: ...here to question Number 2.

Phil Corwin: Well there are criteria...

((Crosstalk))

Phil Corwin: ...for acceptance of a trademark into the TMCH. You seem to be – this question gets at whether that criteria are being effectively communicated.

And there's an echo here. Someone has their speakers on or put your phone on mute or something.

((Crosstalk))

Phil Corwin: And the echo, please. That's a totally different issue and is really reopening the entire policy that was worked out for the Guidebook. But I'm going to – can you complete your statement on this if I've misinterpreted in any way and then we can take some other comments. Thank you.

Vaibhav Aggarwal: Yes, so okay legally there is no local standard for TMCH to even have draw up a criteria to decide what marks to accept and what not to accept. As simple as that.

Phil Corwin: Okay thank you for that contribution. Susan Payne please.

Susan Payne: Thanks. Yes, hi it's Susan Payne here. As a member of the sub group I wondered if it would perhaps be helpful to go back to the beginning and just remind everyone on the call of what the work of the sub group was which was basically there were a number of charter questions which were already set out and given to us when the GNSO Council agreed to convene this PDP. And on reviewing them a number of us felt that some of them were incomplete, difficult to understand, badly drafted or, you know, in some cases quite sort of biased and kind of presumptive of a conclusion.

And so the work of the sub team was just to go through and try to make the questions understandable and even-handed. And so our discussion here today is just to look at that and make sure that in doing that task we've done a good enough job and produced a set of questions that as a working group we can then take forward and actually address in real terms.

Our conversation here today is not to talk about the actual answer to these questions, it's just whether these questions are reasonable ones for this

working group to be considering and have we addressed, you know, have we expressed them well enough to be able to move forward with our work.

Phil Corwin: Thank you, Susan. Are there other comments on this question, Question 2? Okay, well with that, you know, noting the statement by the gentleman who questioned the authority of the Clearinghouse to apply any criteria in determining whether or not to accept registered marks, I'm going to – all right, I was going to say I presume the question is okay but I see George has his hand up. George, go ahead.

George Kirikos: George Kirikos for the transcript. I'd asked this earlier in the chat room, but we kind of skipped it. Is Number 2 referring to already registered trademark registrations that are challenged or also refused registrations that get appealed? I wasn't clear from the phrasing of Number 2 which registrations are being challenged. Thanks.

Phil Corwin: I believe the second part of the question, I stand ready to be corrected if I'm incorrect, is what happens if a mark is accepted into the Clearinghouse and subsequently that mark is successfully challenged and is no longer a valid trademark. That's my understanding of the question. I invite other comments on that if anyone thinks that's an incorrect statement.

George Kirikos: George Kirikos again. So Number 2 isn't considering the possibility then where marks are refused and the applicant is appealing that verdict by the TMCH?

Phil Corwin: That's not how I read it, but I invite commentary from other members of the sub group that put these together if they want to opine on that. I don't see anyone chiming in on that.

Can I get a sense of the group of whether you think Question 2 is acceptable as-is or needs further work? Greg, go ahead please.

Greg Shatan: I agree with what Griffin has put in the chat and clarification is needed for what registration means is that the underlying registration or is it the registration in the Clearinghouse? So that's I think an ambiguity that might contribute to understanding of what's going on, although I'm not sure – yes, that's enough. I'm done.

Phil Corwin: So let me suggest a clarification that would – where the second part would say and, ii when to do when underlying trademark registrations are – I would add successfully challenged. The fact that a registration has been challenged, in my opinion, probably shouldn't matter much unless the challenge is successful because nothing is changed until that point.

Greg Shatan: Actually, Phil, this is Greg again. That's not what I thought this referred to.

Phil Corwin: Okay.

Greg Shatan: I thought it referred to a challenge by the TMCH to – whether the – whether it could be registered in the TMCH but not, you know, say, a cancellation proceeding at a trademark office. That's kind of – I think that's, to some extent, handled in a different question. But so that's exactly – you've hit the ambiguity on the head and together with Mason, you and I have a different idea of what's even being asked here. Thanks.

Phil Corwin: Okay. Well I guess it would make more sense, since the thrust of the question is about the application of criteria for the acceptance of marks into the Clearinghouse to have the second part focused on what to do when a mark is accepted. I think what's – what's throwing us off here is the word "registrations" which I was reading as trademark registrations. Maybe that word means when such acceptance is challenged because that would go to whether someone – a third party challenging the acceptance of the mark into the Clearinghouse.

J. Scott and Kathy after him.

J. Scott Evans: I'm sorry, Phil, I think your second formulation is correct. I think what the question is asking is, and I guess using – this is where terminology becomes so important – by using registration you're confusing everyone because we're talking about certificates of registration that have been accepted by the Clearinghouse. So I think what we need to do is just look at the wording because it's causing confusion.

I think what the question is trying to ask is, one, do we undertake the communiqué – the criteria the Trademark Clearinghouse uses to accept marks into the Clearinghouse? And, similarly, do they communicate out what you do to challenge the acceptance in the Clearinghouse? In other words, are you providing those communities, one, trademark owners; and two, Internet stakeholders, the information they need to operate within the Trademark Clearinghouse?

Phil Corwin: Yes, I agree J. Scott. And again, my original incorrect interpretation, I was thrown off by the word “registrations” where when I see that and immediately in this context I, you know, it means to me trademark registrations rather than their acceptance of a particular mark by the Clearinghouse. Kathy.

J. Scott Evans: If you'll look down in – Susan Payne suggests a word that is usually used in a law – in the law when you talk about using certificates of registration, you talk about a recordal of them. So perhaps recordal or something like that is a better term.

Phil Corwin: Okay. Kathy.

Kathy Kleiman: Yes, I just wanted to go back, as – and this process is really, really helpful because the sub group did try to consolidate a number of questions and so going through with the full working group what these mean and what's missing is really important.

There was an underlying question in the charter, there were multiple questions, one is, should there be an additional or a different recourse mechanism to challenge rejected trademarks? And this is what we were trying not figure out was what rejected trademarks meant. Was it trademarks rejected in some way by their origin – by their originating trademark office, perhaps invalidated or canceled? Or does it mean some kind of rejection by the TMCH?

So it sounds like we're moving towards a rejection by the TMCH, I think. And maybe the clarification either is recordal or I'd use the word TMCH when we're talking about any kind of registration or recordal so a TMCH registration...

Phil Corwin: All right.

((Crosstalk))

Kathy Kleiman: Thanks.

Phil Corwin: Kathy, it seems to me you raised another point now which may argue for some substantial rewriting of this. I mean, there's the application of the criteria that are set forth in the Applicant Guidebook by the Trademark Clearinghouse to determine whether or not a particular mark will be accepted. Then there's the possibility that they reject it and the trademark holder believes that the rejection was incorrect, do they have a challenge procedure?

And then if it's accepted, and some other party, not the trademark owner, thinks that the acceptance was incorrect, can they challenge it? And is that ability communicated? And the process communicated. So that would argue for a third part of this question, it would seem. And let me – having said that, let me hear from Greg here.

Greg Shatan: Yes, I'll say what Susan Payne notes in the chat which is that there is a question under other sections about canceled registrations, in other words, registrations that become nonexistent. So...

Phil Corwin: And, Greg, just to be clear, we're talking about the original trademark registration.

Greg Shatan: Well in that case, yes, about canceled registrations.

Phil Corwin: Right. When we say registration we're meaning the registration of the mark.

Greg Shatan: Correct, yes, so an underlying...

Phil Corwin: Okay.

Greg Shatan: ...the underlying national registration gets canceled, the one that it's based on. So there's the second question under Category 2 is about this. The last question – I think there's at least one other question about canceled actual trademark registrations, underlying registration. So I'm still not actually sure what this is asking about.

And also, there's an extreme passive voice problem here, what to do? What who should do?

Phil Corwin: Yes.

Greg Shatan: The trademark owner or some third party, the TMCH? A registry? It's – the question doesn't have an actor attached to it. Thanks.

Phil Corwin: Okay. And I note that Kristine Dorrain in the chat room chimed in saying that the thrust of the question is about the Clearinghouse is communicating of the criteria and the challenge procedures to both trademark holders and other parties. Susan.

Susan Payne: Thank you. Yes, Susan. Yes, look, there two parts and they're meant to go together. So it's one, what are the criteria in getting your mark accepted into the TMCH? And, two, what about if it's refused? So it's meant to be recordal or some other term, it's not meant to be trademark registration. It's meant to be getting the mark into the TMCH or getting it refused and to what extent are they communicating adequately? That's what the question is meant to be about.

Phil Corwin: Okay. But again it seems, Susan, there's two possibilities. One, when the Clearinghouse refuses the attempted recordal, let me use the correct term, and the trademark owner says it qualifies under the criteria. The other would be when it's accepted and the third party communicates to the Trademark Clearinghouse their opinion that it shouldn't have been accepted. Okay. Mr. Aggarwal. I hope I haven't butchered...

Vaibhav Aggarwal: Yes, thank you, Phil. Absolutely you didn't. Vaibhav Aggarwal for the record. I think I can suggest here, I was part of the sub group as well, and I see that the larger group has certainly some views which can add value to the entire question. So, A, I may suggest we can add certain velocity to the questionnaire, which will allow the readers outside this group to actually understand this and in a better format.

So instead of modifying and in the interest of time instead of modifying the entire list and entire questions and so on, we could have certain pointers and we could add those glossaries to it as to let's say, for example, we have to understand the question Number 2 then the definition could be added like in any document. When I make a nondisclosure agreement I always add definitions to it or when I make a contractual agreement I would always add a glossary to it.

So that is because I want to keep my language simple and straight. So perhaps this could be considered by the group.

Phil Corwin: Okay, thank you. And noting in the chat room that Mary has said that staff is going to make some suggested clarifications but clearly that won't be ready in the next minute. I'm going to recognize Greg and J. Scott and then hope we can – hope those are rather quick comments and that we can, as in Question 1, put this aside with the understanding we're going to come back and look at some new language next week and move on to Question 3.

So Greg and then followed by J. Scott.

Greg Shatan: Thanks. Greg Shatan again. I'll try to be brief at least by my own criteria. Question 2 begins, "What activities does the TMCH undertake?" So this seems to be a fact question which could probably be answered best by the TMCH alone. The next question asks, "Should the TMCH be responsible for education services more generally?" Then Question 4 asks, "How are design marks currently handled by the TMCH?"

So what we have here is a mixture of questions that are asking for facts that, you know, should be available and that are, you know, actual facts. Then we're asking for kind of more judgment questions. And I'm not sure, first off, that's kind of an overall issue as we bounce back and forth on these questions. But do we want to ask what should the TMCH undertake to communicate these specific things or is that captured by the education services issue or is – and of course not exactly clear what's meant by education services.

So, you know, more generally I think we should look at how this whole questionnaire is put together as being kind of an odd mix of kind of judgment answers and fact answers and answers for how we'd like things to be changed and answers for how things actually are. So I don't – and there's not really a clear relationship between the two so maybe overall read with that in mind would be helpful. Thanks.

Phil Corwin: Yes, Greg, while I agree that it is – there are different types of questions here because the task of the sub group was to review and consolidate and clarify community questions and the community, some of the community submitted questions were very fact-oriented and some were more opinion-oriented.

And I don't know that we want to make a decision that all – only factual questions or only opinion questions should be asked even if only factual questions are asked people are going to have opinions about the answers we get. But I've said enough on that. J. Scott and then we'll move on to Question 3 and have a fuller discussion noting that it is more of an opinion question.

J. Scott Evans: This is J. Scott. I just wanted to tell Mary and David that I'll work with them on formulating 2 into something to present to the group next week.

Phil Corwin: Thank you. Thank you. Appreciate that. And let's move on to Question 3, setting Question 2 aside and hoping to get at least one of these agreed upon before the hour expires.

Question 3, "Should the Clearinghouse be responsible for education services for trademark owners domain name registrants and potential registrants?" I'm going to stop there and say that the term "education service" it's not clear what the scope of that is envisioned to be.

Then the next sub part, "If so, how? That is if they should be responsible how should they either communicate or provide those education services?" And then, "If the TMCH is not to be responsible who should be?"

So all right, let's open discussion. I see J. Scott's hand up.

J. Scott Evans: That's an old hand but I'll take the opportunity.

Phil Corwin: Okay.

J. Scott Evans: With regards to this question I just think we could take “service” out. “Should the TMCH be responsible for education,” and then “for” to “of” – “trademark owners, domain name registrants and potential registrants?” And I think that solves it all. And if so, if they're responsible for education, how? That’s what I would suggest.

Phil Corwin: Okay. And let me ask you, J. Scott, when you see the word “education” education about what? Just about the function of the Clearinghouse and how it operates? Is that – are we being clear enough about that?

((Crosstalk))

J. Scott Evans: ...to say here’s what is available, here’s what you need to do to apply, here’s what you need to do to oppose, that kind of thing. It’s just education about the whole process.

Phil Corwin: Okay.

J. Scott Evans: And I think a lot of the materials you’ll find when you stumble through the ICANN Website are written for about 25 people on this call, which means we all know the background and we all understand, we may not like it, we may not be thrilled it but we all know it. And I think what this question is getting to, how about the new players that come to the game? How about the new domain registrant who’s just trying to get a domain name or how about the new registry that’s trying to figure this out?

And I think that’s where we need to find out if that’s happening or not and if it’s not or if it is, how it’s happening and if not how it should happen.

Phil Corwin: Okay. Kathy.

Kathy Kleiman: Hi. I agree with J. Scott that we're talking about new players and old players. I think we're not just talking about the Trademark Clearinghouse database

registration here. I think in general this question is going even broader to the sunrise period, the trademark claims, the underlying charter question, or at least one of them was, how can the TMCH provide education services not only for trademark owners but for the registrants and potential registrants who are equally impacted by their services?

So here we're talking about the rights protection mechanisms as well as the database itself. So that's why – and in the sub group – in the sub team we had a discussion of well, the Trademark Clearinghouse clearly provides a lot of education for trademark owners. But is it providing for others? Is it supposed to be providing for registrants? If not, who should be?

And the sense of the sub team was, and that's why you had the full- - both questions here, is that if, full stop, the Trademark Clearinghouse if the providers tell us it's not their job, it's their job to provide education or to continue to provide it say for trademark owners, but not for current and future registrants. Then it is a logical question we thought for the working group to say well, then who provides that? Because clearly, as we discussed earlier, it's fair to have balanced communication, it's also fair to have balanced education.

So if it's not the TMCH's purview, whose is it? And that seems to be within our bailiwick as a working group. Thanks. So I recommend the full question with that one small edit that J. Scott put in, education services. Thanks.

Phil Corwin: Okay. Thank you, Kathy. Let's hear from Greg and then I'm going to have something to say on this. Go ahead, Greg.

Greg Shatan: Yes, Greg Shatan again. Just briefly on the underlying the point earlier, you know, should Questions 2 and 3 be more similar to each other if we're going to ask about education in all of its aspects, should we ask about education in all of its aspects in Question 2 not only with regard to the two specific instances, with regard to what they do in particular or if there's a reason they

should be different I think we should know, is there an underlying concern with Question 2 that somehow these two particular things are particularly poorly disseminated?

And if so, then I think we need to be clear about that because otherwise this just looks like a communication question that picks two random examples. And lastly, the word – using “education” in 2 and – “education” in 3 and “communication” in 2 again creates this kind of odd mismatch of questions that are almost the same but not the same. And so you kind of – it blows the mind as to how to try to think about those two things together. Are we asking about education and communication in both or only communication in one and only education in the other?

And I realize this isn't a question there that's going to go out to a million people, it's our own kind of worksheet, at least unless I misunderstand what we're doing with this. But yet, and still, trying to, you know, create a consistent thread and especially a consistent connection between what is and what should questions I think will be really helpful in the long run. Thanks.

Phil Corwin: Yes, thanks, Greg. I'm not personally I'm not that troubled by the fact that Question 2 is targeted at one particular aspect of the Clearinghouse, which is the validation criteria and possible challenges to their use by the Clearinghouse. And Question 3 is broader.

It seemed to me that Question 3 is missing a key aspect is which is what educational information is the Clearinghouse already providing to trademark owners and domain name registrants and potential registrants? And that it kind of – when we ask if it should be responsible it's almost implied that it's not doing it now; that it needs to be doing something it's not. And yet we're not asking what's already being done and whether more – it would seem to me it'd be better to ask what is it already doing and this need to go broader in terms of what's conveyed and who it's targeted to. I'll stop there.

But so on Question 3, it's hard with all the silence for most of the people on the call to know where the consensus is. Is this – I think we need some tweaking of this question. But do we have something near final here or do we need to put this aside too and circle back in a week?

J. Scott Evans: This is J. Scott. I think we're making some of this too complicated. I think we take out the word "service." We leave it as it is. With regards to Kathy's aspect, if they don't mention anything with regards to Trademark Clearinghouse or sunrise as education, that's an answer to our question. SO I just think we're making some type of – over thinking these things. I just think to take the word "service" out so you don't confuse someone and they think what's an education service and you just say private education on 1 and 2. And then move on.

Phil Corwin: How about this, J. Scott, how about let me just read this out, a possible formulation. "Should the Trademark Clearinghouse be responsible for education," – I'm ambiguous on whether the next word should be "for" or "of" but either way, "trademark owners, domain name registrants and potential registrants? If so, how?" And then I'd propose saying, "and what is it already providing?" And then have the last part unchanged.

J. Scott Evans: Sounds perfect.

Phil Corwin: Okay. All right. Mr. Aggarwal.

Vaibhav Aggarwal: Okay thanks, Phil. Vaibhav Aggarwal for the record. I think why don't we just keep it simple and say awareness? "Should the TMCH be responsible for awareness of services for trademark owners, domain name registrants and potential registrants? If the TMCH is not to be responsible then who should be?" Plain and simple.

Phil Corwin: Well, you know, I would say in response that the word "awareness" just means, to me, aware that there's a Clearinghouse. And the word "education"

to me, means going beyond awareness to actually providing detailed information about how the Clearinghouse operates and what benefits it provides and what procedures there are for dealing with the Clearinghouse and the consequences of the Clearinghouse registration.

Mary.

Mary Wong: Thanks, Phil. So I just wanted to note for the working group, especially those that were not working on the data gathering sub team that the data gathering sub team has sent out some questions about the sort of outreach efforts and the type of activities, time and resources that was spent by the TMCH on educating trademark owners and registrants. So that may be helpful to this question.

And then in relation to the next question, there were some specific questions for input from the provider on design marks as well. So all of this is to say that these questions are meant to guide the working group as we move into the review of the TMCH. So it may well be that, for example, after we get feedback from the TMCH providers and possibly after we've gone through some initial part of our review, we might need to either revisit or reorder some of these questions.

But that it would be important basically just to have a set of questions that the working group understands so that during the review we can add to them, edit them or find what gaps are missing based on our own review and information from the providers and others. Thanks, Phil.

Phil Corwin: Okay. Thank you, Mary. I'm noting in the chat room considerable support for retaining the word "education" for that last oral formulation I read out, which I'm presuming staff got. So I'm going to take – call chairman's prerogative and declare that reformulation, which can be looked at next week, to be the end of discussion of Question 3 for right now.

We've got three minutes left. I'm hoping we can just agree on Question 4. Question 4 is simply a question of how are design marks currently handled by the TMCH provider, which is basically are they accepted or rejected in a consistent fashion. It's not determining whether they're doing the right thing, it's just asking what they're doing now. So I hope we could agree that that's a simple factual question and we can do whatever we want with the answer we get back.

I see John McElwaine's hand up.

John McElwaine: Hey, John McElwaine for the record. I'll be real brief. And I just – I think we'll just enter it into the chat room. But I think when we're getting at design mark we're probably getting at what the Trademark Clearinghouse is referring to as the device or image mark and their rules on Page 20. If that's what you're referring to I'm in complete support. I just say like with respect to 1 let's just clarify that. But I don't have any problem with the question. In fact my post may actually answer it. Thanks.

Phil Corwin: Okay so you're going to post something. So basically you're okay with the question but you think it needs a bit of clarification about what – how the Clearinghouse defines design marks, is that correct?

John McElwaine: Yes, I mean, I think if you ask the Clearinghouse what the – a design mark is, I think what we're getting at is what they're referring to a – either a device slash image mark on their Website or in the Trademark Clearinghouse guide marks that do not exclusively consist of letters, words, numerals, etcetera.

Phil Corwin: Okay, so you're suggesting it be reworded to say how are device slash image marks currently handled by the providers since that's the terminology they use?

John McElwaine: Exactly.

Phil Corwin: I don't see a problem with that. Anyone else want to comment on that?

Greg Shatan: This is Greg Shatan.

Phil Corwin: Yes, Greg, I see your hand up. Go ahead.

Greg Shatan: Just briefly, I think we should link or footnote or somehow link to what John is looking at and we may also want to think about other places where links are useful if we're, you know, doing fact investigations or even if it's just underpinning because, you know, anything that helps with context is going to be real useful. Thank you.

Phil Corwin: Okay, thank you Greg. Kathy.

Kathy Kleiman: Are we already – I'm wondering if we're already finding the answer when – and we may be jumping the gun. I think the underlying question had to do with design marks in the real world, marks that are designs that are registered with trademark offices and how they're being handled by the TMCH. I think everything you're talking about is part of the answer to that question, a probably part of the answer to that question.

But the underlying question I think should be in the most approachable language, not necessarily the language of the TMCH, but the language that other people would recognize because that's how it was asked in the charter, which is design marks. Thanks.

Phil Corwin: Well, Kathy, how about if the question read, "How are device/image marks," with a link to the Clearinghouse guidelines for that. And then in paren it could say "commonly referred to as design marks." So that would reference both the technical term used by the Clearinghouse but also for people who are not steeped in Clearinghouse language would make them more aware of the thrust of the question. J. Scott.

J. Scott Evans: I was going to suggest something very similar. You've added something in the parenthetical that I can live with but I think if you did somewhere where you, you know, if you just want to say design marks and highlight that they can click on it, it takes you to what the Trademark Clearinghouse says about device marks and combination marks. Or you could do what you suggested, Phil, either one, I think...

Phil Corwin: Yes, it could go either way. It could say design marks and then have the Trademark Clearinghouse term in paren with a link. But it would capture both the common term and the specific terminology that it uses in its guidebook. So maybe we can have – I think there's general agreement that with that change it would be acceptable. Let's have staff make that change and have an updated version to look at next week. And I note it's one minute after the hour so I'm going to draw this call to a conclusion.

Anyone have any – when's our next meeting, staff? I believe it's next week one hour earlier?

Mary Wong: Hi, Phil. This is Mary. I believe that is true because we're in the rotation so it would be 1700 UTC. And if I may, I'd just like to take this opportunity on behalf of ICANN and the policy team to thank David Tait for his great work with us. Some of you may already know this, David is leaving ICANN to do some very exciting work including on the legal implications of Brexit for the UK government. And we will miss him but I wanted to let everyone know as I know that you probably appreciate his work as much as we do. Thank you.

Phil Corwin: Yes, thank you, Mary. And this cochair greatly thanks David for all his great work and contributions to this working group. With that I'm going to call this call to a close. I'm going to ask staff on the first four questions to based on the conversation and working with the cochairs to prepare updated versions to look at at the beginning of the next call.

And I'm also going to – and then to circulate that updated list to all members and hopefully we can get some online comment on the question in advance of next week's call which maybe can facilitate more rapid progress through the questions if we can get any clear concerns out on the table in advance of the call.

And any last statements from the cochairs? Well if not, thank you all for participating and we'll talk to you all in one week from today at I believe it's 1700 UTC, one hour earlier than today's call. Thank you all. Bye-bye.

Terri Agnew: Thank you. Once again the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines. And have a wonderful rest of your day. (Phil), the operator, if you could please stop all recordings?

END