ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call
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Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of all Rights Protection Mechanisms, RPMs, in all gTLD PDP Working Group call held on the 18th of January, 2017. 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?

Steve Levy: This is Steve Levy. I'm on the audio bridge but I'm also logged in to Adobe just for the visuals.

Terri Agnew: Thank you. Hearing no further 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 back over to our cochair, Kathy Kleiman. Please begin.

Kathy Kleiman: Thank you so much, Terri. This is Kathy Kleiman and I'm the temporary chair of today's meeting until Phil Corwin joins us. Phil, have you joined us yet? Okay. And to apologize, Terri and Mary, if you might add J. Scott Evans who is doing another presentation at this moment. So we have Heather, Rebecca and now J. Scott. Oh, we also have apologies from Paul Keating who has sent responses to some of the questions that have been raised but won't be on this call.

Okay do we have any updates to statement of interest? Okay, hearing none we'll go on to the first item agenda, and again, waiting Phil if he's joined us. So we've done roll call so the second agenda item is overview and discussion of the TMCH charter questions Category 1, Education.

And so let me just provide some background in that we have three Education questions, which we will be reviewing. And as we look at these questions and launch into the TMCH charter question discussion, this is really our first deep dive. We spent a lot of time defining what the questions are. We're now going to look in detail at three of them. Questions that come to mind for me are, what further questions - naturally arise from the questions that we're seeing from the charter? What data do we need to gather? And then in what form should we be gathering it?

So let me throw out that we may get to a question where we want to invite the TMCH provider Deloitte to come in and answer or we may be just wanting to solicit them and see some written responses. So again, what further questions do we have? What data do we need? And in what form should we be trying to gather it?

We've decided not to form subgroups at this point, that was a decision made last week that we're not yet in a mode for subgroups. So we'll be working as a full working group on this material.

It looks like some slides, which have not yet been circulated to the chairs have been posted and that we're all in control of them. So, Mary, do you want to give us a quick overview of the slides? I'll launch them but it looks like we've got the questions and then some criteria that you've developed. So if you want to just give us a quick overview maybe without walking us through because it looks like we have to spend a lot of time on the first main page of this. If you're there could you come on for a second?

Mary Wong: Sure, thanks.

Kathy Kleiman: Thanks.

Mary Wong: Yes, I'm here. Hi, everybody. This is Mary from staff. And as Kathy notes, staff has prepared just a couple of slides that are aimed as a more sense of introduction, if you like, of some of the basic informational resources we were able to find in the hope of kicking off the discussions of the working group. Kathy, I just sent you and Phil and J. Scott a set of the slides. I apologize because they were only done by request this morning. And of course we will post these slides to the working group wiki space.

I want to just start off by saying that obviously this is not in any way shape or form staff attempting to answer the questions for the working group or suggesting any form of answer even on a preliminary basis for the working group. It really is just a sense of the kind of information that someone would be able to find if they were looking for information, where that is and as Kathy noted, to the extent that we will likely require some further assistance or input particularly from Deloitte and/or IBM, the two providers of the Trademark Clearinghouse services, then we should probably agree on what additional questions or requests might be.

And so as Kathy notes, this is Category 1, which in the agreed list of TMCH charter questions, it is labeled Education. And we have three questions. So on Question 1, there are three different types of information that we are

asked to look at to see if, in the view of the working group, these are being clearly communicated by the TMCH.

The second question is basically a question of who should be responsible for educating various stakeholders about the Clearinghouse services, and those stakeholders include rights holders as well as actual and potential domain name registrants. The question is, again, on certain specific types of information, what's available, where it can be found.

And so we tried to look for information on each of these questions. And essentially what I've just done is put in a number of links that may already be familiar to many folks. And let me just say here that obviously we do have trademark agents, trademark holders, and service providers as members of this working group so if you know of any resource that is there and that is easily accessible that we haven't yet put in, please do let staff know and we will add that.

As I noted, I think in the email I sent to the working group last night, staff is starting to gather a page on the working group wiki that lists the informational resources that one can, as a member of the public, look at for Trademark Clearinghouse services.

So in relation to Question 1, what is the information out there for trademark owners that want to submit into the Clearinghouse? What can they do? Who can they turn to if their submissions either don't meet the criteria or are rejected for some other reason? And thirdly, what happens if someone wants to challenge an entry in the Clearinghouse or recordal in the Clearinghouse labels?

And I'll come back to the third point when we get to the third question. So like I said, there are a bunch of links. And...

((Crosstalk))

Kathy Kleiman: Mary, thank you for the overview. I think probably we should give it back to Phil maybe to go question by question.

Mary Wong: Certainly, Kathy. Phil, I noticed you've joined the call.

Kathy Kleiman: Okay.

Mary Wong: So welcome. And please take over.

Phil Corwin: Yes, thank you and good day everyone. Sorry I'm late joining the audio but as you can see from the chat many people have experienced the same thing where the - you call in, the recording starts, then it stops and 10 seconds later you're dropped from the call. But I'm on now and hopefully will not be dropped. So what's next to go through, staff? We've...

((Crosstalk))

Kathy Kleiman: Phil, this is Kathy. We were just getting an overview of the slides from Mary since we hadn't seen them before the call. And no one had seen them. So really it might be going question by question starting with Charter Question 1, maybe reading it with everyone and then there's a slide on the types of data and links that Mary has found that might give us some guidance to Charter Question 1.

But also the working group may have additional input on, you know, is the question complete? Are there further questions? Is there additional data that we need? And in what form might we gather that data? Would it be asking Deloitte to come in and talk with them? Would it be submitting written questions? Would it, you know, in what form should we kind of gather the data? And since we've decided not to work in subgroups this is a full working group experience.

And then similarly with Question 2, there's a slide on data for Question 2 that Mary has prepared...

Phil Corwin: Right.

((Crosstalk))

Phil Corwin: So maybe - thanks, Kathy, for that background. Mary, do those slides have the questions on top of each slide? So can we go to those slides?

Mary Wong: Phil...

Phil Corwin: Because if they don't have the questions we're going to need the questions...

((Crosstalk))

Mary Wong: They do.

Phil Corwin: Yes.

Mary Wong: The full questions are on Slide 2 but each slide does have at least a summation of the scope of the question and well the question and question.

Phil Corwin: Okay well maybe we should go to those slides and get into it.

Mary Wong: Would you like me to take the group briefly through the slides, Phil?

Phil Corwin: Sure, that's fine. Fine. Brief journey through the slides and we can get into...

Mary Wong: thank you. And I'll make it really brief because the discussion is obviously the most important. And as I was saying, these are really a bunch of links that staff found and the idea is if somebody wanted to know what the Clearinghouse is, what it does, what they can do if they have questions what

kind of information they would get through a quick search either on the websites if they know where the Clearinghouse Website is, ICANN's micro-site or a Google search, something like that.

So these are just some of the information that you would get in Question 1. And again, we're not trying to answer the question for the working group about communication and the clarity of that from the Clearinghouse but really just where can you find the criteria, where can you find the options? And what I'll just say here is that the criteria for submission is laid out quite clearly in the TMCH guidelines in Section 2.

And when we come to verification I'll note here that Section 5 of the same guidelines does tell everyone how the verification is done. There's also some information in the form of an overview and in the support page and in a number of the manuals provided by the TMCH trademark holders are provided with assistance and various channels as well as information on how to use those channels for assistance.

What we were not able to find in our initial fairly I guess quick sweep is what happens if third parties wanted to challenge an entry in the Clearinghouse and I said - I have a note on this that I will return to when we come to the third charter question in this category.

In the second question, again this is about education, what we have seen in some interviews and presentations from Deloitte, and this maybe something to clarify with them, is that it views its primary audience to be trademark holders and their agents. So our presumption has been that much of their outreach and materials have been directed towards these stakeholders and their service providers. So again these are some of the basic informational links that we found that we think are helpful for - find may be helpful for Question 2.

And finally, in terms of other types of information in this particular case, the services offered by the TMCH, the TMCH contracts with private parties and with whom and for what purpose does it share its data, we were able to find again, you know, some fairly easily accessible information about the first category not so much about Roman 2 or Roman 3.

And on this point, and in fact going back to Question 1 in terms of, you know, information for third parties who are not trademark owners or agents who might want to challenge an entry in the Trademark Clearinghouse, what we did manage to find is that I think as most people know, the database is not a public archived database that's searchable by just anyone. Secondly, the - even the use of the database by both providers is governed obviously by the contracts of ICANN and the attached statements of work.

And perhaps just as importantly for this working group as we go on to other charter questions, the access to the database by both registry operators and registrars is also conditioned and limited by a number of terms and conditions and agreements that we've listed here.

So again, this is just a very initial sweep providing some basic information for the working group and hopefully this is helpful as you go through your review of the Trademark Clearinghouse and these three specific questions in Category 1.

Phil, hopefully that does the trick and back over to you.

Phil Corwin: Okay. Thank you for taking us through that, Mary. So I gather our job now is to go back up to Slide Number 2 and go through each question and see if the group believes the question is properly framed and if not, how they would modify it. Am I correct in that assumption of our goal here?

Kathy Kleiman: Phil, this is Kathy.

Phil Corwin: Yes.

Kathy Kleiman: I think as a working group we probably accepted the question.

Phil Corwin: Right.

Kathy Kleiman: But really how do we go about exploring it?

Phil Corwin: Okay.

Kathy Kleiman: And diving deeper. And Paul Keating, I'm not sure he sent it to the whole list but sent it to some, have sent some ideas, inquiries, and others may have it as well kind of how do we go deeper and figure out the answers or gather the data we need to figure out the answers. I think that's next step now.

Phil Corwin: Okay so it's what we should be doing as a working group to go forward on these questions.

Kathy Kleiman: Right.

Phil Corwin: So let me read Question Number 1 and then let's open the queue for - excuse me - referencing what's on the next slide for what's available to the general public whether - how we should go about answering Question 1.

                  So Question 1, "Is the Clearinghouse clearly communicating, one, the criteria it applies when determining whether or not to accept marks for entry into the Clearinghouse; two, options for rights holders when their submissions are rejected," that is how do they come back if they think they've been wrongly rejected, "And three, options for third parties who may have challenges to or questions about records in the TMCH," which I would think would raise the question of how - if those third parties or anyone but Deloitte or IBM or contracted parties how would they even know about those recordals if the database is not open to the general public.

Let me stop there and open question 1 for comments and the comments pertaining to how do we - how should we proceed given that the - there is access to the TMCH guidelines, to the overview, and to all the manuals, FAQs, FAQ sheets, etcetera, all of which are available from ICANN or the Clearinghouse. Any comments on that on how to go forward? Yes, Kathy.

Kathy Kleiman: I hope other people will jump into the queue as well. For sub-items 1 and 2, the criteria applied by the TMCH when determining whether or not to accept marks for entry into the TMCH database, and then options for rights holders when their submissions are rejected. I believe these come fairly from the charter questions, I think this was a consolidation of several charter questions.

So I was wondering if there were people on the working group that have experience with this process, with rejection or with not understanding the criteria or having - is there anyone really on the working group with direct experience or frustration with trying to put something into the TMCH database? If so, can we draw from them what some of the concerns were so that we can gather more information? Because, as Mary said, general information about what goes into the TMCH, but I think somebody - some type of frustration appears to be driving the charter questions.

As for Number 3, subpart 3, options for third parties who may have challenges to or questions about recordals in the TMCH, Paul Keating has said that - and I'll just read this comment. He says, "I have no comment on 1 and 2 but as to 3 there should be a method for challenging the registration given the brand spectrum of the use empowered the registration not only to secure exclusivity to domain name registrations but to potentially chill the registration of domain names in cases in which such registrations do exist."

I'll urge him to post this to the whole group. But certainly, Phil, as you know, not knowing what's in the TMCH database makes it very hard for third parties

to ask questions as to registrations, as to scope, and other issues. Thank you.

Phil Corwin: Yes, thanks, Kathy. I see - oh good, we're getting some participation now. So Beth and after her, Susan. Go ahead, Beth.

Beth Allegretti: Hi. It's Beth Allegretti. We've had issues not with submissions but with acceptance of evidence of use. I don't know if that is part of this. But that wasn't very clear. So I don't know if that's all Number 1 here or if it comes later but I did just want to bring that up. That was one issue we had - we really had a hard time getting clarity on that.

Phil Corwin: And, Beth, let me ask, was that the lack of...

((Crosstalk))

Phil Corwin: ...the lack of clarity was that about why you were rejected or lack of clarity about what to do to challenge the rejection and were you able to get it corrected?

Beth Allegretti: Actually both. Actually both, but I have not gone back - this happened a while ago and I should go back and check these links, and I'll do that just to see if it's clear or (unintelligible). But I did just want to bring that up. The other thing I wanted to talk about was Number 3, the options for third parties wishing to challenge. Wouldn't they find that they tried to register a mark and weren't able to because of the trademark in the TMCH? I mean, wouldn't you notice then - why would they need to be able to comb through the database to find out what marks are in there that they might possibly want to challenge?

Phil Corwin: Yes, you know, I was thinking, and I welcome input from others that a rights holder, if they try to register their mark and it was rejected as having already been registered, would gain some knowledge that the mark was already registered. But of course, the same mark should be able to be registered by

various parties for different goods and services. There shouldn't be a class there. But we'll see if there's any real world experience with that. Did you have anything to add, Beth, or should we go on to Susan?

Beth Allegretti: No, I'm done, thanks.

Phil Corwin: Okay. Thanks so much. Susan.

Susan Payne: Yes, thank you. I'm just finding the right email. I - whilst I personally don't have sort of (unintelligible) contact in putting marks into the Trademark Clearinghouse, I have colleagues who I work with who do because Com Laude is a (unintelligible).

And their comments were that generally as an agent to the TMCH they felt that they had pretty good information provided so they got fairly clear instructions provided, there were sort of webinars which were quite helpfully provided by the Clearinghouse and generally I think, you know, as an agent you also tend to have a kind of - like a customer contact person that you can call up if you are encountering problems.

Now if you're a sort of an individual brand owner who is just putting a couple of marks into the TMCH you maybe don't have quite the same access certainly to the persona contact, but as an agent their comments were that, you know, they felt they got very good information.

I think there can be some problems potentially where a mark is being rejected for some reason. Particularly one of my colleagues commented that sometimes the mark is not accepted for some reason and then they go in and try and sort of fix the problem and they'll fix one problem and then they'll get yet another comment back from the TMCH saying, okay you've fixed that but now, you know, we still can't accept your mark because you now need to do something else.

And so there was a comment that it would be quite helpful for anyone trying to put a mark or evidence of use into the TMCH so kind of all the issues to get flagged at one time rather than have this kind of piecemeal drip by drip approach to trying to fix, you know, to trying to work out what's wrong and kind of fix it.

Phil Corwin: Okay.

Susan Payne: That was kind of all I had for now.

Phil Corwin: Okay. Thank you, Susan. Lillian, please go ahead.

Lillian Fosteris: Yes, I agree with basically both points that Beth and Susan mentioned. We've had similar experiences. I would say a lot of it basically this piecemeal approach as well as in some ways across the board treatment specifically with proof of use. With proof of use similar to what Beth said, we've had proofs of use rejected in like certain examples that would work for some trademarks but not others.

It's been a while so I don't remember exactly if the issues were resolved or not, or definitely the path of escalation. But a specific type of proof of use would be accepted for one mark but not another so it was inconsistent. And then to Susan's point, I second the whole piecemeal approach where you correct one, you know, whether it's the address or the holder and then they come back to you and say actually this is also wrong. So there I think is issues with - or there's room for improvement with regards to how the marks are reviewed and accepted. And I would prioritize specifically the proof of use component.

Phil Corwin: Yes, thanks. So what I'm hearing so far is that the communication of the criteria is pretty good but the actual practice when there's a rejection is falling short for two reasons. One, they only identify one reason for rejection at a

time so you have to keep coming back if there's multiple reasons and correcting and correcting again.

And two, that there are inconsistent approaches where something that suffices for proof of use for one mark one week will be rejected as adequate the following week. So from what I'm hearing so far it's less about education than actual operational implementation of the criteria that have been communicated. And let me stop there. If anyone thinks I've mischaracterized, mis-summarized what we've heard so far please chime in. Jonathan, please go ahead. Jonathan, we're not hearing you, have you unmuted? We're having an audio problem with Jonathan Matkowsky.

He's just put in the chat room that he's not muted but I'm not hearing anything. I don't think anyone else is hearing you so I don't know what the problem is. Maybe we can - okay and then someone - Maxim typed in that Adobe users, people connecting by Adobe may have been disconnected by the bridge, another audio problem.

So, yes, Jonathan, yes, he's on Adobe. Apparently some people on Adobe are having problems suddenly with the audio. Yes, Jonathan, type your question in and as soon as you do we'll address it. And...

Terri Agnew: And, Phil and members, this is Terri from staff. Jonathan, your mic is not active on Adobe. So to activate your mic on the top toolbar select the telephone icon and follow the prompts. Otherwise, again, this is Terri Agnew from staff, you can private chat me and I can have the operator dial out to you on the telephone.

Phil Corwin: Yes, so, Jonathan, if you go up to that phone icon on the top bar you can activate the audio, that might fix it.

Jonathan Matkowsky: Hey, Paul, I think you can probably hear me now.

Phil Corwin: Is this Jonathan?

Jonathan Matkowsky: Yes.

Phil Corwin: Yes, we can hear you fine.

Jonathan Matkowsky: This is Jonathan.

Phil Corwin: Good. Glad we cleared that up. Go ahead.

Jonathan Matkowsky: Sorry for that inconvenience. I appreciate the help getting connected. I wanted to second the general sentiment during the call that there needs to be more transparency in the process in terms of exercising discretion in terms of what is an acceptable use specimen, so to speak. So that people can learn from each other's experiences and there could be consistency in how the standard is applied.

Similar I think to the way it works when prosecuting a specimen of use in the United States Patent and Trademark Office where there's precedential records available to draw from so that we can ensure that there's consistency in how decisions are made.

And I also think there probably should be a bit of a better job being done educationally to explain to applicants what is and is not an acceptable specimen to support the application.

Phil Corwin: Okay thanks. So we're getting pretty consistent feedback here that the major problem is not educational - the criteria but is operational and lack of adequate consistency. And we can discuss in a minute what we can do about that.

Kurt Pritz, please go ahead.

Kurt Pritz: Hi. This is Kurt. So well first I want to disagree with your last statement, Phil, that this category is about education and so there's a lot of parts in here about outreach and educating the general universe of trademark owners and making them aware of the Trademark Clearinghouse and of TLDs in general. And so I think we should, after this discussion, focus on that and whether, you know, the TMCH should be compensated in some way for educational activities.

But the point I wanted to make is that the original purpose of the proof of use requirement was really to prevent abuses of the TMCH that dormant names would be registered in the TMCH just so people could register names early in these new TLDs. But in fact, you know, we found that a number of sunrise registrations is pretty low.

And we're also finding out through this discussion that, you know, proof of use is kind of problematic. It's sort of an invention and is difficult to implement. And from what I understand it's a pretty costly part of the TMCH operations because it's manual and those costs get passed on to, you know, the trademark holders that are registered in the Clearinghouse. So I wonder if one of our inquiries isn't, you know, whether we could do without proof of use and that would reduce costs with probably not making a, you know, an increased risk of abuse.

Phil Corwin: Yes, Kurt, let me respond to a couple points you made. And now I'm getting an echo. Now it's gone away. Number 1, yes, I know this is - I noted before that we're discussing questions about education but most of the responses were not about the education but actual experience so far as more compensation for the Clearinghouse to undertake education, personally I would want to - I don't know if it's publicly available, I'd want to see the contract between ICANN and the Clearinghouse and see what its obligations are under the current contract based on the current compensation before I would - I think we could make any decision about something like that.

And finally, so far as about whether proof of use should continue to be required, we know that it was put in there originally to prevent gaming of the Clearinghouse. That's also a different topic, that's not about education but whether this group would recommend that any of the current criteria be deleted or any new criteria be added for Clearinghouse registrations going forward. So let me stop there. I see Susan has another comment and then Kathy.

And, Jonathan, your hand is still up, if you're not - if you're done speaking we'd appreciate if you could put your hand down. Thanks. So, Susan, go ahead.

Susan Payne: Thank you. Yes, it's Susan Payne. Yes, I've got actually a couple of comments now, one of which has occurred to me while you've been speaking. But the first one I just - I've noticed in the notes that there is - the second point down it says, "Are there any troubles for multiple registrations of the same TM by multiple TM holders?"

For the purposes of this discussion talking about recording marks in the TMCH, I don't believe there should have been any trouble with multiple registrations. And I'm not aware of anyone having reported there being problems with that. The TMCH will allow, you know, provided that the mark is a valid mark, the mark can go in the TMCH. It doesn't matter if there are multiple trademarks of the same term.

The - how that then gets applied to, you know, only one person can get the sunrise registration in a particular registry, for example, so that's a different matter. But for the purposes of putting the mark in the TMCH, I'm not aware of anyone ever having reported there being a problem with multiplicity. So that was just a quick comment I wanted to make on the notes.

But then what I really want to say, and I alluded to it in the chat, was to the extent that we're gathering examples of experiences and issues that people

have encountered and so on, I think that's really great. But some of this also was done during the staff report on the RPMs. And wouldn't that be a very good place for us to start to go back and look at the feedback that staff have already gathered and the issues that people identified?

And, you know, as a really good starting point of already some of these issues have been captured. And it seems to me that some of this work has been done already and we're not looking at it.

Phil Corwin: Susan, when you say "staff" which staff are you referring to? Are we talking about policy staff, GDD staff...

((Crosstalk))

Phil Corwin: ...or Clearinghouse staff?

Susan Payne: I think it was policy staff but I can be corrected. But it was the staff-led review of the RPMs that was conducted in a roundabout 2015 and essentially predated the issue report that led to this PDP.

Phil Corwin: Okay. Okay so it's - there's some information previously submitted but it's getting a little bit old now, if it was 2015, it's at least a year and a half old and there's been a lot more utilization of the Clearinghouse in those intervening 18 months.

I'm also going to note, before calling on Kathy, that Mary's noted that the TMCH contract is not published but there's a summary framework that she's going to try to find. We'll see if that summary is useful at all, I guess, once we get hold of it. But it - some of these questions are going to be difficult to answer if we don't know what contractual responsibilities have been placed upon the Clearinghouse by ICANN in their relationship.

Kathy, go ahead.

Kathy Kleiman: Thanks, Phil. Thanks, everyone. So first to Kurt's question about education,
                   I'm really looking forward to moving onto Question 2 to talk about that more.
                   Regarding Susan Payne's comment that there are materials that are out
                   there that we should have maybe Susan could work with Mary to select that
                   portion of the report and share it with the working group so that we can have
                   that for the next meeting and review it ahead of time.

                   But I wanted to go back to Part 3 of Question 1 and highlight it a little more.
                   And first, thank everybody for bringing out some of this discussion of proof of
                   use and some of the questions from people's experiences. But Number 3 is a
                   question that was in the charter and reflects a lot of frustration that we have
                   heard from the community, options for third parties who have challenges to or
                   questions about recordals in the TMCH.

                   So I just wanted to see if, you know, this is really a question of how third
                   parties can find out what's in, you know, what's in the TMCH database and
                   challenge as appropriate just as they can do, say, in the US Trademark Office
                   database if they think something has been registered inappropriately or is
                   about to be registered inappropriately. I don't want to lose that in some of the
                   other discussion. And I'm not sure how we dive into that properly but it is an
                   important question before us.

                   And looking forward to talk about education. Thanks, Phil.

Phil Corwin: Yes. Kathy, thanks. And I think what we're finding as we go through these
                   questions is that most of the responses relate not to education but to
                   implementation or difficulties in knowing how to answer the question. As you
                   noted, trademark registrations in the US, and I presume in most countries,
                   are public records and there's a challenge period. But Clearinghouse
                   registrations are not generally public.

And but that's a different question that we'll reach later in this working group. It's not about registration, it's about whether that confidentiality of the Clearinghouse database should remain. I know that some mark holders feel it's important because even though the trademarks are public records, the - the public knowledge of which ones have been registered would reveal the importance that the holders place upon them. But we may be hearing views for the opposite point of view that is insufficient for maintaining the confidentiality and we'll get to that in our work on the Clearinghouse.

Mary's had her hand up for a while...

((Crosstalk))

Phil Corwin: ...so I want to call on her and then we'll take further responses. Okay? Mary.

Mary Wong: Thanks, Phil. I just wanted to go back to Susan's comment about the staff paper on rights protection mechanisms, Susan, you were right, that exercise was done in 2015. I want to say that a draft was put out for public comment at the beginning of 2015 with final report coming out in September or thereabouts. And, Phil, you were right, that predates our work and this PDP.

But it's important to note two things, one is that that paper, as well as all the public comments that were given on the draft of that paper, were actually referred to and taken into account in the issue report for this PDP.

So in fact, the initial set of charter questions that we all started with for this category and for all the others, and as I think we've mentioned before, is basically an unedited long list of all the questions and feedback that were raised by the community not just to our issue report but to previous work including the 2015 paper. So to that extent, the concerns that were expressed there were captured in our PDP through the issue report and we've now refined some of those questions.

The second point is that then in refining these questions for the TMCH, and maybe the charter sub team members can recall better than I can, we did identify some of the questions which folks had questions about in terms of where they came from and what the source was so that there is a table somewhere that the sub team used that does contain a reference back to the source. And I recall that quite a lot of the sources were again the public comment to the staff paper that Susan referred to. So hopefully this is helpful. Thank you.

Phil Corwin: Okay. Thank you, Mary. And noting that we're 3/4 into today's call and no other hands are up, I think it's time to move on to Question 2 and hopefully deal with that before we terminate today's call. And again, Question 2 is whether the TMCH should be responsible for educating rights holders, domain name registrants or potential registrants about the services it provides, if so, how? And if it's not responsible, who should be?

And then on the slide relating to that question we note that Deloitte has said its primary audience is likely to be trademark holders and their agents so Deloitte doesn't see potential registrants or the public as its part of the primary audience, that's it's undertaken some presentations, webinars and other information materials available on its Website.

And so basically Deloitte appears to have a somewhat narrow view, although it's certainly its approach toward education about the Clearinghouse and what it provides seems to be more passive than proactive. That is, if you're interested, go to their Website and all this stuff is there and you can read it, and get - and intake that information and know more. But I don't know if they undertook proactive outreach efforts at the beginning of the program but right now it's pretty much they have a Website and if you're interested and want info you go there but nothing proactive. So and that's all just personal opinion of myself.

And let's open this up about - and what do people think about the only information for answering this question seems to be what's available at the Website, the Deloitte Website and what's available at ICANN's new TLD micro-site. So that's where the data is, the educational data. And what do - do people think there's other information out there and do they think that what Deloitte and ICANN are doing are sufficient or that we need more active approaches going forward?

Let's not stampede each other rushing to answer this question. Okay, and I see a comment from Kurt in the chat room that there's been some proactive activity that the Clearinghouse conducted webinars for agents and also for individual TLDs in advance of their sunrise periods.

Kristine Dorrain, please speak. Thank you.

Kristine Dorrain: Hi. Hi, this is Kristine from Amazon. I'm just, you know, sort of in the spirit of thinking about what's the harm we're trying to address or what's the problem here. I'm trying to think about if I were the Trademark Clearinghouse provider, what is the message that I would be asked, required or want to communicate to registrants. Registrants are not my customers. I'm - I'm intaking data that I really don't, you know, have, you know, I'm kind of neutral about.

And I need to provide technical information to my quote, unquote customers, in order to allow them to submit their data to me. So I need to provide that technical documentation. I need to give them some insight into the processes. And it sounds like from some of the speakers that that's a problem. Oh someone says my volume is low. I'll put my mic a little closer, maybe that'll help.

And I think that the - I'm just trying to imagine, can anybody suggest some types of education that one might expect a Trademark Clearinghouse provider to give to the rest of the community? I'm just struggling with ideas.

Phil Corwin: Okay. Was that it, okay, Kristine, thank you. So Kristine raised a question at the end which others can address. Lori Schulman. Go ahead.

Lori Schulman: Yes, can you hear me?

Phil Corwin: It's a little muffled.

Lori Schulman: Can you hear me?

Phil Corwin: I can hear you, it's a little bit muffled but go ahead, it's - I can make out what you're saying.

Lori Schulman: All right, I'm moving the mic close, the phone bridge is not so great today either. I'm sorry, I don't have an answer to Kristine's question, but I will respond to something in the chat that George says, yes, the TMCH has come to (unintelligible) has had meetings with trademark owners, I believe they've had a booth, I don't know remember if it was one last year but I believe they have in the past.

                  But (unintelligible) education has two (unintelligible) right? To educate those who are actually going to use the service and to educate those who are receiving these notices because I would imagine too that the notices from the user's perspective may be very confusing and frightening. And in fact, you know, the user has some options at the end of the day. And I wonder if that kind of surpasses (unintelligible) to be focused upon. Because it helps all sides to understand what information is being conveyed.

Phil Corwin: Okay. Thank you for that, Lori. I'm just going to note we've got 9 minutes to the top of the hour. Susan Payne is next and then Kathy.

Susan Payne: Yes, thank you, it's Susan. And apologies, I'm afraid I didn't hear what Lori was saying so I hope I don't just suddenly repeat exactly what she said. But I was just going to respond to what Kristine had posited, which is what would

the TMCH be - what would it be that the TMCH is telling domain name registrants. And my personal view is that it's not the role of the TMCH to educate domain name registrants in a general sense. I mean, it's the role of the TMCH to be educating the people who are likely to be using its services.

And so that is the agents that will be placing marks in on behalf of brand owners and the brand owners and the registries and registrars who are going to be contacting the TMCH, you know, in the course of their registration of sunrise marks or in relation to the claims services.

I'm not sure what role the TMCH has in education of the community at large. I think that's a role, if we feel that the community at large needs education about new gTLDs then that is a role for ICANN, I believe, and not the TMCH.

Phil Corwin: Okay, thanks, Susan. And personal comment, you know, I agree the primary most domain registrants don't need to know about the Clearinghouse unless they receive a claims notice when they try to register a domain in a new TLD and have to decide whether to continue the registration or abandon it. We'll be dealing with that - the language of the claims notice when we get to it.

I don't recall whether it has any referral to the Clearinghouse that would help a registrant who wants to understand the situation go to it and see what this Clearinghouse is all about. And I think we should note that for when we review the claims notice and discuss whether the language should be modified in any way.

And that's all I had on that. And, Kathy, go ahead with your comment.

Kathy Kleiman: Hi. Kathy Kleiman and again, channeling Paul Keating who said, "IMHO, in my humble opinion, the TMCH has been less than stellar at education and relies too heavily upon registries and registrars and other third parties to do so. This is not surprising given the background of its founders who launched dotEU and dotBE. In addition, and not in place of the TMCH effort, ICANN

should ensure that adequate information is published and that launches are accompanied with adequate information of not only the impact of TMCH registrations but include information on how to challenge such registrations."

So Paul Keating thinks that there does need to be more education and I just want to add that the Non Commercial Stakeholder Group is on record as early as London - the London meeting of complaining bitterly that there's no information for registrants, none, zero, on trademark claims notices. So if you get it, what do you do? What is it? What do you do? What are your options?

Obviously the trademark claims notice wants to be as clear as possible, but people are going to have questions and so where can they go? Should there be links? As Phil mentioned, this may be something we deal with when we get to trademark claims. But we also have the issue of IDNs, internationalized domain names. If you're working in a different language, how does that work?

So, yes, there's a lot of people out there that would like to know a lot more about the TMCH and I'm hearing from registries, registrars, and registrants who are button-holing me in the hallway and on email as recently as last Friday and saying where's the education for everyone else other than trademark owners? So there is a call for that and I think that's why we have this detailed question. And if it's not the TMCH who should be responsible for all of the education of everyone, who should be and how do we buckle that down? Thanks.

Phil Corwin: Yes, thanks, Kathy. Noting here that we've got quite a few representatives of registries and registrars on the call today and we'd welcome their input. I just wanted to comment on what you read from Paul Keating in terms - I think the challenge to a registration in the Clearinghouse would probably be more by a mark holder than by a potential registrant. I think the main issue for potential registrant is not whether a registration in the database is valid but whether their intended use of the domain they're seeking to register could be challenged as infringing. And but we'll get to that.

Jonathan had his hand up, put it down and then just put a very long link in the chat which I'm not sure what that link goes to. But...

Jonathan Matkowsky: Hi, can you hear me?

Phil Corwin: Let me know. We've got four minutes left in the call. Jonathan - Jonathan had his hand up. Jonathan, why don't you go ahead and then it probably doesn't make sense to start on the third question with three minutes left so this will be the last statement on Question 2 unless someone else - we probably have time for one more statement after Jonathan. Go ahead.

Jonathan Matkowsky: Yes, so the link I put in the chat, sorry for the long link, I didn't copy it correctly, but you should still be able to get the new gTLD Trademark Clearinghouse sunrise and trademark process summary of input from the Implementation Assistance Group. So I can (inform) that - the IRT in 2009. And in that document regarding education, it specifically emphasized that the Trademark Clearinghouse should be doing extensive education so that the registrars and registries understand what to expect regarding the sunrise model but didn't mention registrants.

I think - and I might be reading through the lines - the implication there was that the registrars or registries would be - registrars would be educating registrants on how to use the TMCH, whether that is a well-founded assumption or if something needs to change since this recommendation was made. I think it's just an interesting point of reference for a discussion or to give further thought on this.

Phil Corwin: Okay thanks, Jonathan. Did you say that was back in 2009 or was it 2012?

Jonathan Matkowsky: The - the - it formed the IRT in 2009.

Phil Corwin: Yes, but...

((Crosstalk))

Phil Corwin: ...this document I see in the link it says 26 September '12, which would indicate - yes and Mary says 2012 so that was the expectation for five years ago now, my how time flies. John McElwaine, you're going to be our last commenter on today's call and then we're going to discuss our next call. So go ahead, John.

John McElwaine: Yes, I'll be quick, Phil, thank you. John McElwaine for the record. I was glad that Jonathan found that document. I was on the IAG as well, the Implementation Assistance Group, for the Trademark Clearinghouse. And it also, in that document, goes to why there was a decision not to make the Trademark Clearinghouse searchable.

I recall discussion of there being concerns that it would give away too much information concerning what brands were important to a brand owner. So I just think when we're going over that topic we need to balance the concerns, which I think are legitimate, in needing to have some information about what marks are in the Trademark Clearinghouse with what has already been determined to be legitimate concerns concerning sort of trade secrets and proprietary information concerning businesses. Thanks.

Phil Corwin: Yes, thank you, John. And we'll, now that document has been called to our attention, we'll take a look at it. I just downloaded it. So we're going to stop here. Question from George Kirikos with ICANN staff away next week for their retreat, are we having a call? And I'd add to that right now we have a call scheduled for next Wednesday the 25th. I know that I will not be able to be on it because I'll be traveling back from NamesCon. I believe other members of this working group have the same situation.

So I guess are there strong objections by anyone to holding a call next week or for the sake of keeping on schedule and with the ability to review the notes

and the MP3, should we just go ahead with it? And noting Mary Wong put that staff will be able to pop out of the retreat and staff the call, but NamesCon is another problem.

John, did you still have your hand up or were you done?

John McElwaine: No, I'm done, sorry about that.

Phil Corwin: Okay. And George has just agreed to something, I'm not sure what he agreed to. But why don't we do - we have a default schedule for the call next week. If members of the working group, because they're going to be at NamesCon, have a concern about that and think we should skip a week, why don't you put that on the email list and - but I think right now we should proceed with the assumption that we have a call next week to finish Question 3 here and then move on to review of registry operator responses to the data gathering request.

I think if we can - we have sufficient attendance to do that we should - and with the ability to submit questions or comments in advance with people knowing the agenda, that we keep the 25th call for the sake of trying to stay on schedule rather than falling behind here. So and, Mary, what time - is that the late call next week or is it the same time as this call? Oh it's 0400 UTC, which is - I guess it's Tuesday night in the US.

Okay so that may affect participation, those - it'll be 11:00 pm Eastern Time, it'll be 8:00 pm Pacific Time for those at NamesCon, but anybody at NamesCon will probably be at dinner or an event that night at that time and unable to join. So well with that, since it would accommodate more of our Asia Pacific people, let's just stick with it but open up discussion of that on the email list.

So I'm going to thank everyone who joined us today. I apologize for being a bit disorganized at the beginning after the frustrations of trying to dial in and

then catch up to the discussion but I think it was a useful discussion. And hope the rest of your day goes well. Bye to all.

Terri Agnew: Thank you. Once again the meeting has been adjourned. Thank you very much for joining.

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