
ICANN Transcription

Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP WG

Wednesday, 18 September 2019 at 1700 UTC

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TERRI AGNEW: Good morning, good afternoon, good evening. [inaudible] mechanism – RPMs – in all gTLD PDP Working Group call taking place on the 18th of September 2019.

In the interest of time, there'll be no roll call as we have quite a few participants. Attendance will be taken by the Zoom room. If you're only on audio – and Brian Beckham, we do note you're only on audio for the first 30 minutes. Anyone else in addition, please identify yourselves now.

Hearing no one further, 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 background noise. With this, I'll turn it back over to our co-chair, Brian Beckham. Please begin.

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BRIAN BECKHAM:

Thanks very much. Welcome, everyone. Let me first say I'm on audio only for the first 30 minutes, so do feel free to jump in. Staff is going to try to help manage the queue, so hopefully this will go [inaudible]. But in case anyone gets skipped, feel free to just jump in.

What we wanted to try to accomplish today – and first let me say, are there any updates to statements of interest or any questions about the agenda or any other AOBs to be added? Okay, hearing none, the objective for today was to try to see if we can't draw a line under question seven and eight, so this relates to certain types of marks being allowed in the clearinghouse for purposes of sunrise and claims and then some issues around GIs.

Without any real scientific formula behind this, [inaudible] try to stay as close to about half the time for each of those topics, and I think [half the goal is] wrapping up the discussions, and of course, if we feel that there's still things in the air, we can of course revisit them selectively. We don't want to cut off conversation, but we do feel as leadership and staff that we spent a good deal of time and we may be reaching a point where we have to recognize that we may not all agree on all of these topics.

I just want to check quickly, Jason Schaeffer, that you're on the call.

JASON SCHAEFFER:

Hi, Brian. Yes, I'm here.

BRIAN BECKHAM:

Good. Well, Jason, if it's fine with you – I don't know what's on the screen, I'm guessing it may be the updated Kleiman/Muscovitch proposal which was hopefully sent around, and I've got a printout of that with me. I don't want to preempt you, Jason, so I really want to leave it completely up to you how you want to present this and see what points to coalesce around or what questions we may still have for each other.

But as I was kind of getting ready for this call, I went over that proposal and Greg Shatan's proposal, and it seemed to me – and I don't know if everyone's had a chance to see the e-mail that I sent at 3:45 PM my time, so that would have been 9:45 AM East Coast time in the U.S. It looked to me that there actually was a reasonable degree of similarity between what to me felt like the core of the Shatan proposal and the Muscovitch/Kleiman proposal.

So I thought it might be worth spending a little bit of time to see if we can't come to some sort of an agreement on this, but I don't want to preempt anything. So maybe with that, I can turn over to Jason and then Jason, you and I with staff to help can take a queue on your presentation. So I leave it up to you if you want to spend a couple minutes presenting, and then we can open up for questions.

JASON SCHAEFFER:

Sure. Thank you, Brian. Thank you, everyone. As Brian indicated, we have two proposals out there. There may have been some confusion prior to the e-mails and calls, and last week's call was a subsequently removed compromise that was rejected by the IPC.

As a result of that, we are reverting back to the September 4th proposal which is on screen now presented by Kathy Kleiman and Zac Muscovitch, which addresses question seven.

Before I jump into this proposal, I will say that my recollection of last week's working group call was that we seem to be making some progress and I was guardedly optimistic that we could continue the dialog and reach compromise. However, it really became apparent over the past week that it seems like we're not making that compromise, although Brian seems to be opening the door up and I'm for a continued discussion. But let's get into this.

I think there are some issues that came up on the e-mail stream today as well, and as I go through the proposal, I think this will help crystallize the conversation and focus in on the issues. I think the issues where there may be a disconnect are coming up on what are the legal definitions of a wordmark, how does trademark law apply, and how does the UDRP work as well?

I think all of those are relevant, and I'm not necessarily sure that all of us are in disagreement on that. I think we're in disagreement on how we apply it to the TMCH and Sunrise. And what this proposal tries to do is to stick true to what the original STI report came back with, what the GNSO and the ICANN board agreed upon and what the AGB said, and also is consistent with world definitions of wordmark, text mark, INTA, WIPO, CIPO, the EUIPO.

As we go through this, I think it's important that we understand what is the implication of this, and I think this applies both to question seven and to question eight when you get down to, are

we in the business of expanding the rights? I think all of us would say no, we're not in the business of expanding the rights of parties, but rather, we are here to try to clearly define for registries, applicants, rights holders and the like, and Deloitte particularly, of what can and cannot go into the TMCH, what is appropriate for a claims notice and what is appropriate for sunrise.

So the rationale behind the Kleiman-Muscovitch proposal, as I said, is largely premised on the extensive work that the [FTI] group put into its final report and the IRT recommendations. It seems pretty clear that if you look at that [FTI] proposal where there's a link here in this proposal, it specifies that in section 4.1 that national and multinational registered marks, the TC database should be required to include nationally or multinationally registered "text marks" from all jurisdictions.

The [FTI] of course, as I had said before, also is itself not in the business of extending trademark rights, which we are not in the business either. The AGB ended up, in 3.2.1, specifying nationally registered wordmarks from all jurisdictions, which is consistent with what we're stating in this proposal. If you continue down in the proposal, you will see, as I said, INTA, WIPO, CIPO, EUIPO all discuss wordmarks, standard characters, their specifications for if a letter is – numbers are stylized or not stylized. This distinction between a text mark and a wordmark and a figurative mark.

All of us on this call understand that there are differentiation in law as to what is a design mark, what is stylized, what is not. I don't think we need to debate that today. So what ended up happening is we now have some clear understanding from Deloitte that they are in fact accepting into the TMCH under its own authority what

we'll call design marks. I know we're kind of going back and forth on what it is, but let's just say broadly they are accepting into the TMCH design marks.

So this proposal is saying that that is in violation and improper for Deloitte to be doing that. I will note, as counsel in many UDRP cases, that this is an issue in the UDRP and it does come up. UDRP panels are pretty consistent in how they treat a design mark and whether or not a design mark is extended and has the power to cause a registrant to lose their domain registration, and they're pretty clear that in those cases, they're not going to expand that right.

U.S. trademark law makes the distinctions, and I think we're now put in a position that without compromise, we have to go to what are these three – I'll jump ahead to the three potential changes to the rules, and what the Kleiman-Muscovitch proposal sets forth is the following.

One, if the applicant has a trademark registration in a national system which allows for wordmarks and other marks, they'll be required to present the wordmark for registration in the TMCH.

Two, if the applicant has a trademark registration in a national system that does not differentiate between wordmarks and other marks, which are stylized, design plus and figurative, they could submit evidence and from that national registry about the classifications and show that the registration confers rights over the words that are claimed and not limited to the word plus the other elements.

And then three, there's also a provision that would allow for if in such a jurisdiction a court decision confirmed that you have rights to those words as derived from the design mark and the other elements, then you could submit that as evidence that you have such rights.

And again, as I said at the outset, this is premised on trying to remain consistent and true to trademark law and what rights you actually have, as we do not want to expand beyond the rights that you have. And that is essentially the Kleiman-Muscovitch proposal.

To your point, Brain, I know you had said maybe there still is middle ground. I do believe there is middle ground, but again, we don't have a lot of time to go over that. So Greg Shatan's proposal does seem to address some of the issues, but I don't think it goes far enough, and I think that's where the issue and the dispute is coming up, because we are kind of circling around what is a design mark, whether it has primarily textual elements, whether it is predominantly image based and so on, and then how they should be treated.

So I don't want to reopen the door to the whole of last week's discussion, but I'm open of course myself personally to continuing the dialog to see if we can reach a reasonable compromise that is firmly grounded in what trademark law allows for. Thank you.

BRIAN BECKHAM:

Thanks, Jason. Before we take a queue, I have one question for you that I thought I might read a section from the WIPO review.

The question is on number two, I'm not entirely sure that I understand, there's a clause in the middle that says "Such as information from a national registry about its classifications." And I'm not entirely clear the relationship of the classification. I don't know if that's meant to refer to classes of goods and services or maybe a defamation in the national trademark office examining manual or legal understandings about the different types of design marks.

And then maybe it would be useful just to briefly reference a portion – since you mentioned the UDRP cases – of the WIPO overview regarding standing and marks with design elements. The consensus view there was that – and I don't know if Greg had referenced it in his proposal, but it says where design elements comprise the dominant portion of the relevant mark such that they effectively overtake the textual elements in prominence or where the trademark registration entirely [disclaims the] textual elements, i.e. the scope of protection afforded to the mark is effectively limited to stylized elements, panels may find that the compliance trademark registration is insufficient by itself to support standing under UDRP.

So that's where all of the words are disclaimed outside of the design, panels might find that there's not even standing to bring a UDRP case. If there isn't a disclaimer for all of the terms, then panels typically would say that there are "rights in a trademark" and then as you allude to, Jason, typically under the second and third elements – and this is for those who don't know, the rights of the Respondent and allegations of bad faith, panels would find

those criteria aren't met and [inaudible] coexistence and generic terms issues.

The second was just for folks' reference, and then the first was maybe Jason or Kathy, if you could help us understand a little bit what that clause about classifications meant, and maybe with that, I can ask Julie or Jason if you happen to see a queue forming.

JASON SCHAEFFER:

Okay. Thank you, Brian. To get to your point – and I think I do agree with you, your point in terms of the consensus – what you're reading there and what everybody heard there is that that is the point, and the point of dealing with design marks is highly subjective and based on an issue that you have to establish at the time of the arbitration or in court. And in the absence of the factual record, you're now in a position of trying to state that, okay, do you have a dominantly textual mark? Do you have those rights? Do you not have those rights?

And that is, I think, beyond the scope of what Deloitte and the TMCH can address. So what we're trying to do is stay true to that and say, okay, only in the cases where it's clear that you have such rights should you be granted the special provisions in the TMCH. If you do not have that, those expanded rights, then you do not get the priority of the TMCH, and in terms of the claims notice and sunrise, and you should not be able to just automatically preempt a registrant unless you do have those true textual trademark rights.

The first point, Brian – if Rebecca is on the call, she may be actually better able to speak to that question, the point two and where that designation came from.

REBECCA TUSHNET: This is Rebecca if you want.

JULIE HEDLUND: Okay, Rebecca, but I do note that Greg Shatan had his hand up first, if we could go to Greg and then Rebecca, and then Kathy.

GREG SHATAN: Thanks. Thanks, Zac, for going through the proposal. I can't find this proposal acceptable. I think it nukes a huge sector of trademark rights, and really throws a lot of babies out with the bathwater. I agree that the level of adjudication you're going to get in the UDRP case about trademark rights can't be replicated in a trademark clearinghouse, at least not on the intake level, perhaps in a challenge mechanism. But I think this just totally overstates the extent to which design marks, and that's a very broad term, and we've thrown everything that's possibly in a design mark other than a standard character into the design marks that grossly overstates the extent to which the rights on those marks are limited to the elements taken together. So I think I find this to be a very extreme proposal in that regard. Clearly not the most extreme proposal, but extreme. Thanks.

KATHY KLEIMAN: Can anyone hear anything?

JASON SCHAEFFER: We hear you, Kathy.

KATHY KLEIMAN: Okay. I'm getting silence. Is someone running the queue, please?

JASON SCHAEFFER: I think we lost Brian. So Rebecca was going to respond to Brian's questions on point two of the suggested edits.

REBECCA TUSHNET: This is just my compilation of terms I've seen used. I actually have no particular commitment to the concept. I think actually it's defined best by the negative of the wordmark definitions that have been circulated as part of the proposal. That's it. Thanks.

JULIE HEDLUND: Thank you. Then Kathy please.

KATHY KLEIMAN: Yeah. Thanks for the question, Brian, both substantive points and then some procedural points. And I'll try to make it as brief as possible.

So what we have broadly – and [inaudible] Zac was not in the middle of the night on a business trip to Asia and unable to

participate with us, but to remind you in the proposal that a case that I cited in 2017 – and it turns out Zac was one of the attorneys on – is talking about a mixed mark is the term that’s used in this case, and the word is Cabanas. And the finding in the UDRP decision was the protection granted by the registrant of a mixed mark is for the composition as a whole and not for any of its constituting elements in particular, thus the complainant is not correct when he asserts that he has a trademark right [inaudible] cabanas standing alone based on these mixed trademark registrations.

So as Jason has shared with us, and I thank him for picking up the ball with Zac being out of town, that we've got this question of these mixed marks, composite marks, and that the wordmark as the INTA definition tells us, for a word mark, mark includes only common punctuation or diacritical mark and does not include a design element. The letters and/or numbers are not stylized.

That’s what we’re talking about here, so this is about kind of going back to the basics. Number two, language – basically says if you're coming from the number one in terms of recommendations – but the problem is what we have in common, I think, and we’re sharing it across proposals, but the solutions are, as Brian pointed out, the many solutions that we can do – and I'm not sure we’re going to get to them today, which is why it’s probably a really good idea to put this all out for public comment, because we may get something really interesting in the public comment.

But the rules are simple. If you're coming from a system that differentiates wordmarks from other marks, present a wordmark to the TMCH. If you're coming from a system that does not

differentiate, then go ahead and provide information about your national registry about its classifications and show that the trademark registration, unlike what we saw with Cabanas, that the trademark registration actually confers rights to the words being claimed. And then of course, the court decision.

So it seems pretty straightforward, but again, after so many discussions, I personally am not sure we're going to come to agreement, but I think we have two strong proposals and I recommend putting them both out for public comment. Thank you.

BRIAN BECKHAM: Okay. Thank you, Kathy. I'm just getting on Zoom.

JULIE HEDLUND: Yeah. Thanks, Brian. We can hear you. Just to let you know, in the queue, now that you're in there, you probably can see there's Mary and then Jason.

BRIAN BECKHAM: Mary, please.

TERRI AGNEW: Mary, if you're speaking, we're not able to hear you. If you could please check both mute –

SCOTT AUSTIN: Brian, can I get in the queue, please?

MARY WONG: Can you all hear me now?

BRIAN BECKHAM: Yes.

MARY WONG: Okay, great. Thank you. I think I was triple muted for some reason. I'm on a phone. From the staff, and mindful of the fact that co-chairs would like to get to a point where we can [at least decide] whether there is or is not agreement amongst the group, so staff just wanted to briefly put in a reminder here, a placeholder, I guess, that essentially the question does seem to be what exactly does this working group believe is within the scope of the phrase "wordmark?" And that's the phrase that's been used in this and other proposals, and as Kathy said earlier, whether it does or does not include stylized words versus words that are just comprised of pure text – if you can define that, letters, numerals and so forth. So it seems to us that that is still the central debate; what is or is not a wordmark.

In that regard, and this has been pointed out by Deloitte in their interactions with us, it was noted in the ICANN Org report in 2015, there is no internationally understood single definition of the phrase "wordmark," and as noted in this and other proposals, different jurisdictions treat marks differently, including marks that may not exclusively consist of letters or numerals.

So in that particular regard, staff also wanted to put in a reminder that the trademark clearinghouse was designed to be a repository of verified marks, and so any rule or text or guidance that this group will come up with should not require the trademark clearinghouse validator or any provider therein to conduct substantive examination. If that happens or that's required, then obviously, that changes the nature of the trademark clearinghouse.

And thirdly and finally, because there is no internationally accepted definition of wordmark, and again, this throws us back to the central dispute here, the trademark clearinghouse rules have to be such that all marks from all jurisdictions, if they satisfy whatever the test is, can be accepted into the clearinghouse. So just a reminder there. Thank you very much.

BRIAN BECKHAM:

Thanks, Mary. And I note that there are a few people in the queue. I see Jason, Michael and Rebecca. I wonder if it would be okay, Jason, since we've already heard from you – and others, I apologize, I didn't follow the order – I heard Scott Austin on audio, I wonder maybe just for purposes of clearing the queue if Scott, you want to go, and then we can go Jason, Michael, Rebecca.

And sorry, just one quick comment before Scott goes – and Jason I see has put his hand down – is that I think we probably want to, in the next 10-15 minutes, see if we can't conclude as a working group whether we want to draw a line under this and say there are two different proposals. And apologies if my e-mail earlier today was unclear, both of those proposals would form some part of the

initial report for public comment, or whether we think we may still be able to close the gap on a consensus recommendation. So with that, Scott, Michael, Rebecca.

SCOTT AUSTIN:

Thank you, Brian. First of all, with regard to Greg's proposal, I like the fact that to me, it presents a go-no go approach based on, I think, easily discernible criteria. There's very little ambiguity. Basically if the [literal] elements of a design mark are fully disclaimed, it's no go. If there are things in the [literal] elements of the design mark are not disclaimed, in other words there's something there that is not disclaimed, then it's a go. To me, that's pretty simple and straight forward. I think Deloitte should be able to handle that.

Secondly, Kathy mentioned the Cabanas case, court case involving that as the disputed domain name. That case did not reach decision on prong one regarding confusing similarity. It was decided on other grounds, so I don't think that is the best case. And there's plenty of other UDRP cases dealing with what we would call design marks or device marks, marks that include the words plus designs, that clearly discount the design element because you can't type that in, and that's what a domain name is all about, is typing.

If we refuse to admit design marks, then we have left vulnerable the literal element of those design marks to be adversely acted upon by cyber squatters. That's all I'm saying.

BRIAN BECKHAM: Thanks, Scott. I think that's really the core issue that we're struggling with, is the mapping over of the DNS and offline trademark law. I think Michael was next, and then Rebecca.

MICHAEL KARANICOLAS. Hi. I was glad to hear your last intervention, Brian, because I think that that's where we're at, and I think that it is appropriate to draw a line under this in pretty short order. I think that the working group has general agreement that there's an issue, the working group has general agreement that something needs to be done, but we're divided as to the proposed remedy. There's been two proposals put forward, each of which has some support, and given that there is agreement that one or the other I think should be adopted, I think the logical avenue is to just put them out for public comment. And I think isolating the problem and having generated these two potential solutions is substantial contribution by the working group, and the next appropriate step would be to go to the community and to get their thoughts, and as someone mentioned earlier, it's possible that there'll be kind of new ideas of how to square the circle between these two camps as a result of that.

There's been this discussion of compromise. I think that Kathy and Zac went down that road. They proposed a compromised solution which was essentially rejected. We haven't seen any willingness from the proponents of the Shatan proposal to go beyond the four corners of that, and given that that's the case, I think that we've kind of reached the end of the road.

My own feeling is that because domain names are a pure text medium, it's appropriate to apply a strong standard with regards to

legitimacy of registrations, but I understand that there are people who feel different and who feel that there should be a higher premium placed on defending every single corner of every single potential trademark, and fundamentally, I think that there are differences of opinion, and the best way to resolve that is to put both of these proposals forward. Thanks.

BRIAN BECKHAM:

Thanks very much, Michael. I will note just for fun actually I've seen a few ccTLDs where you can register an emoji as a domain name, so maybe in five years we'll be having a different conversation and design marks – whatever you call them – will be allowed to be wput int oteh DNS.

Before Rebecca goes, let me just ask one quick question. I wonder, for those who are supporting the Kleiman-Muscovitch proposal, just as one last attempt to see if we can't get a recommendation in, would you consider – or maybe you've already considered and feel it simply doesn't go far enough – to accept the Shatan proposal, at least to get something in the record and then work from there. I think maybe the answer is no, but I just want to offer that up as a last attempt to get somewhere. With that, Rebecca.

REBECCA TUSHNET:

Thank you. Mary made a number of statements that concern me. First, she said there's no accepted definition of wordmarks, and this is just not true. No one has identified any material differences that would lead different jurisdictions to classify the same symbol

differently. We've identified a lot of different wording used to define a wordmark, but no differences in the standard, and by the way, if one jurisdiction did classify a symbol as a wordmark, then it should be eligible. We're actually agreed on that.

Mary also said the TMCH is supposed to be for all marks, and that is the crux of the issue. It's supposed to be for wordmarks. AGB says so, and we need to figure out what a wordmark is. In addition, Mary suggested there should be a uniform standard for acceptance, but actually, that's a mistaken conception of the problem, which is we're supposed to give national treatment. That is if the nation recognizes it, the TMCH recognizes it. That's a particular kind of uniformity. There's not supposed to be one international standard for whether the mark is valid. In fact, we're supposed to defer to the national classification.

Mary also says there's no examination. That is not true for sunrise, of course, which has already been suggested as a compromise potential. It's also not true in that Deloitte is already required to and is carrying out the process of identifying what the string is and whether it matches the thing that the applicant is claiming. So exclusive of certain characters, spaces and so on.

So given that, there's actually no reason why Deloitte couldn't look at what it's doing, especially for purposes of sunrise rather than, as it's told us it's doing, just seeing whether there's any text at all it can extract and put into the database. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. I have Jason and Greg. I'm going to see if we can't issue one last call for comments on this. If we stick to sort of half the time, we have about ten minutes left on this topic. I think Michael's comment is well noted, that we may just want to say that there are differing proposals, and put those out for public comment. Jason, and then Greg, please.

JASON SCHAEFFER: Thank you, Brian. Rebecca actually echoed some of what I was going to say, so thank you, Rebecca. I just wanted to remind everyone that the essence of this proposal is, if you read the proposal, going to what the definition of a wordmark is. So if you take the time to read the proposal and read INTA, WIPO's and the others' definitions, you'll see that's where that is proposal is derived from. So I'll leave it with that.

And I do agree with Michael that I think at this point, we should probably put these both out. There's enough support to get these out there for comment. But I too remain, as I said in the last call and at the beginning of this call, I do believe there is middle ground to be found. It's unfortunate that we have not yet found it, but there should be a way to clearly define what is meant, and in the case of a design or figurative mark or whatever term we're using there, it shouldn't be up to Deloitte to perform mental gymnastics and decide which gets in and which does not. And again, let's keep the dialog moving. Thank you.

BRIAN BECKHAM: Okay. Jason, thanks. I saw Kathy's hand go up and down. I only see Greg at this time, so Greg.

GREG SHATAN: Thanks. I think what we have here are not just different remedies for a problem. We have different definitions of what the problem is. And I think that's well pointed out by Jason. The problem that the Shatan proposal seeks to deal with is it's clear that there are no trademark rights in the words, and therefore should not be in the TMCH.

The other proposal seeks to clearly draw a line under which only standard character marks are wordmarks, and everything else is essentially unregistrable other than based on certain proof elements that I think – or having to secure a wordmark where you otherwise did not need to under your country's trademark laws.

So I think it's a very different approach. And just to answer Mike, I am open to at least hearing ways to extend the Shatan proposal to include other clear and noncontroversial cases where it's clear that there is not a right in the word that could be enforced against a third party. I don't know that we have any other definitions that could go there, but I'm more than happy to hear them. What I'm really not happy to do is to say that everything that is not a standard character mark is basically outside the scope of the TMCH. And that's ultimately where I think this ends up going in all practical circumstances.

The definition of a wordmark to me should be a mark with words. Whatever else is there, if it has words and if the words have

trademark value, that's where we should be. Now, if there are cases where that would not be the case other than disclaimers, more than happy, again, to try to fit them into my proposal, but these are very different. One of them basically intends to radically slim down the trademark clearinghouse and the other one – mine – just intends to get the stuff out of there that should never have been there in the first place. Thanks.

BRIAN BECKHAM: Okay. Thanks, Greg. I see Kathy. Kathy, please.

KATHY KLEIMAN: Thank you, Brian. As Greg just said, the proposals are very different, so thank you for the opportunity to merge them. I don't think we're there yet. For all the reasons that have been outlined as of the last few minutes and in the last few conversations that we've had of the working group.

So hopefully, we can close the gap in the future, but I for one would like to hear what the public has to say about what's intended, what the rules are. Again, to us, it seems – to those who worked on the Zac Muscovitch proposal, it does seem that wordmark has a very specific meaning and that we're going far beyond that.

But thank you for the discussion today, and I know in the interest of our timeline, at some point we have to leave question number seven. So reluctantly, it may be now or soon. Thanks, Brian.

BRIAN BECKHAM:

Thanks, Kathy. I'm not seeing anyone else in the queue. It seems like Jason and I are maybe a little bit more optimistic than some of the others. I think we're all sort of struggling with the same problem, this is why I tried to get in front of everybody some of the different terminology we had used for the different understandings around the world of stylized marks.

Clearly, we all see the same kind of core question, we're just coming at a way to solve that from different perspectives. I think if it's okay with everyone on the call, kind of taking a cue from Michael's intervention and I think the general discussion we've had, it feels to me – and of course, we'll confer co-chairs and staff amongst ourselves and we'll look for any feedback on the working group e-mail list, but it feels to me like it's time to put a pin in this and put the two differing proposals out for public comment in some way in the initial report and see what feedback we don't get and see if that doesn't help us move the ball further along after we reconvene after the initial report's put out.

Seeing no objections, I see one comment from Jay Chapman in the chat to agreeing to put out the proposals for public comment. So I think that's been our fallback all along. So with that, I think I saw Claudio in the list earlier. I know that Kathy had put on the list – I'm wondering what's coming up on the screen – kind of a proposed revision for 3.5. I'm wondering what's the best way to introduce this topic of question eight. Does it make sense for maybe Claudio to introduce the topic and then maybe Kathy can also add her thoughts on the proposed revision to the standards of inclusion to the clearinghouse? And we take a queue and see where we go from there.

Claudio, can I [inaudible] you to present the proposed way forward on question eight?

CLAUDIO DIGANGI:

Yes. Thank you, Brian. I just circulated a note to the list – hopefully it's gone to everyone's inbox – which basically just restates what I put in an e-mail and so hopefully circulated it yesterday, just tried to clean it up a little bit and add some clarifying language to boil things down in a very clear way.

The essence of what's in that proposal – and this is in an effort to find a compromise between proposal one and proposal two, which were somewhat in opposite with each other. And it's based on what is currently permitted in terms of policy, in terms of the actual RPMs, and the registry agreement. So what registries are required to do under the registry agreement and what they are permitted to do under the registry agreement.

So what the proposal really focuses on is, since we're focusing on the clearinghouse, not so much the policy right now in this part of the discussion is how to integrate the clearinghouse with the registry agreement and with some of the policies that the registries may choose to implement.

So I put two options in the proposal. One is to keep or maintain going forward GIs, geographical indications that are not separately registered as trademarks because they can be both. These are those that are not – we would have two options, and that would be to keep them in the clearinghouse and have them recorded separately and independently from the other trademarks that are

in the clearinghouse, or in the alternative, to put that into an ancillary database that would house them and that would allow the registries to connect to the ancillary database if they wanted to have – and this is [inaudible]

TERRI AGNEW: Claudio, it looks like your line actually dropped now. So we'll try to reach back out to Claudio and see if we can get him reconnected.

BRIAN BECKHAM: Thank you, Terri. While we're doing that, I don't know if people had a chance to see Claudio's e-mail that came in just a few moments ago. I think the gist of it was that he was proposing that GIs could still be accepted either in the clearinghouse or there was some reference – I can't remember the citation – to an ancillary database so that GIs could still be collected somewhere but that they wouldn't be eligible for sunrise or claims protection but they would be recorded for purposes of a registry who – let's say there was a .wine, which there is, wanted to have a special registration period for GI holders.

I think that's the gist of Claudio's proposal. While we get him back on the phone, I see Phil has his hand up. Phil?

PHIL CORWIN: Thanks, and I don't know if Claudio is back on and can hear this. Two comments. One, if we're going to say anything about what GIs can or can't – what can or can't be done with them, we need to agree what GIs are. There may be a standard definition, but we

need to have something other than geographic indicator, otherwise we're going to be arguing next review about whether that was violated because we didn't have a clear definition.

But aside from that, while I understand the point he's trying to make here, the whole point of the TMCH – as a personal comment, not as chair – is you record marks there for two purposes; to have access to sunrise if you can show use, and to generate claims notice. So to propose that marks be recorded in the clearinghouse which cannot use either of those RPMs doesn't make sense to me.

Now, I understand I have no objection to an ancillary database for TLDs that choose under their own commitment and model design –

CLAUDIO DIGANGI: Hey guys, I'm back on. Sorry about that.

PHIL CORWIN: Okay. Claudio, this is Phil, I'm speaking. And to quickly recapitulate what my first comment was that anything we do on this, we refer to GIs, we need to agree on some standard definition of what they are or reference something if that's widely recognized somewhere.

But second, I think since the point of accepting marks into the clearinghouse is to give them access to sunrise registration and generate claims notices that to permit any kind of mark, any kind of whatever to be recorded and not have access to those RPMs

doesn't make sense. It would make sense to have an ancillary database. I don't know whether Deloitte should operate that or whether TLDs that want to recognize other protections other than trademarks can set up their own system, but while I appreciate the intent of your proposal, I don't understand the point of accepting for recordation some type of designation without – when it doesn't give them access to the RPMs. The whole point of having a clearinghouse is to have something to examine submitted marks, make sure they meet the standards to get the RPMs and then give them access to the RPMs, and here there are no standards and no access to the RPM, so why put them in the clearinghouse, is my question. And that's all a personal comment. Thank you.

CLAUDIO DIGANGI: Great question, Phil. Brian, do you want to go?

BRIAN BECKHAM: I just wanted to mention very quickly to Phil's question about a definition, I don't know if you had a chance to see the origin compilation, and of course there, they mention some different types of GIs, you have AOP and AOC and that sort of thing, but that may be a question that we could answer.

Claudio, just so you know, Rebecca has her hand up in the queue. I don't know if you wanted to pick up or maybe see if she had a question that would help your conversation along. Up to you.

CLAUDIO DIGANGI: Yeah, Rebecca, why don't you go ahead?

REBECCA TUSHNET: Thank you. First of all, I want to agree with everything Phil said. Second, I don't think we should try to define GIs. It's out of our scope and out of most of our bailiwick. And since it's all voluntary, anything we said would, at most, be preparatory since these ancillary databases can use whatever definition of GIs they want unless we're actually going to make rules saying we have to use a particular database or definition, which seems like a bad idea.

So just to clarify, the key difference between this proposal and Kathy's – and I think Paul's – absent technical details which I don't think any of us can actually speak to – is that Kathy – and I think [inaudible] I apologize – both attempt to deal with the current problem which is [statute or treaty.]

Deloitte's current justification for admitting GIs is statute or treaty, they aren't admitting them under the category "other IP." So the GI problem is not going to be solved by this proposal unless we change the statute or treaty and direct them to adhere to it. They're going to continue admitting GIs which are going to continue to assess claims and notice. And I think we should focus on that in our discussion. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. And Claudio, I'll turn it back over to you.

CLAUDIO DIGANGI: Alright, great. And Rebecca, my proposal [inaudible] incorporating your last concern there because I have specific language in my

proposal that states that they shall not be registered during the sunrise period or during the claims period.

But I don't want to get lost with the legalese and the technicality, the semantics of what we're all saying, because it's more the endgame objective that I think is the more important thing.

To answer Phil's question, I thought John had circulated something that stated that there was a way for records to be in the clearinghouse that is independent from the claims or the sunrise services, but again, it's not really an issue or concern of mine because my proposal doesn't permit them to be registered during the sunrise or the claims period.

I guess I just wanted to say however we end up settling on that, it's fine with me because my proposal doesn't go to that. My proposal goes to the limited registration period which is under our purview as one of the rights protection mechanism. It's a pre-general availability period where registries can register other types of IP before the registry launches.

Currently – and this is really the basis of my proposal – they would do that through an ancillary database that Deloitte would create, and from what I understood from Mary's intervention on last week's call, those are each done separately by each registry.

So the only thing I am proposing – and I think it's an important proposal – is to decouple that element so that they can be recorded in one place just like all the trademarks are recorded in the trademark clearinghouse. We wouldn't have a scenario for trademarks where each registry had their own database, so why

would we do that for GIs? And this is something that if the registry wants to do it during the limited registration period, [inaudible] the database would support that.

So that's really the heart of it, and I think we could work through some of these other definitional issues, but it's just to allow them to be recorded in one place and have all the new gTLD [inaudible] simplify the limited registration period and any other RPMs that they voluntarily choose to implement.

So I hope that helps clarify where I'm coming with this. I think we both are on the same page and I'm just adding on this proposal to kind of allow them to be recorded in one place. Thank you. And I'm happy to answer any questions.

BRIAN BECKHAM:

Thank you, Claudio. I see that Kathy has her hand up. And Claudio, just for your benefit because I think you're on the phone only, I've asked Ariel to put up an e-mail from Kathy to the working group where that recaptured the discussion – I think it was from last week. I believe that we're all more or less on the same page. I'll let Kathy speak to this.

There was a proposal to strike one section of the standards for inclusion in the clearinghouse and then I don't know if it's an additional sentence which clarifies this issue of ancillary databases, but it seems to me that we're actually landing on the same page here. So with that, I'll turn over to Kathy and see if she can't help us along on this. Kathy.

KATHY KLEIMAN:

Great. Thank you, Brian, and thanks to Claudio as we try to work this through. So the language on the screen I think is the bigger picture, and I don't want us to lose the bigger picture of where we arrived at last week or where we were going last week. I don't want to say we arrived there.

But this is language that was captured, going through the notes in the chat, and we're going to get to a strikeout that's not on the screen that Ariel has mentioned in the chat which I really appreciate.

Okay, so what we're looking at here is the language of the applicant guidebook with suggested revisions, and [they're somewhat marked,] but let's go through them briefly.

So 3.2, standards for inclusion. 3.2.1, 3.2.2, really, that's the wordmark question, we dealt with that in question seven previously. So now we're looking at 3.2.3 which is a small addition. Any wordmarks specified in and protected by a statute or treaty, adding the words "as trademarks," [in effect] at the time the mark is submitted to the clearinghouse for inclusion, with a footnote perhaps that says by trademarks, the working group means trademarks, service marks, certification marks, and collective marks. So some real additional guidance and clarification to Deloitte.

The strikeout is 3.2.4 which we seem to agree last week had no business being there whatsoever. Other marks that constitute intellectual property. And Greg, forgive me if I'm misquoting you, but I think you said the trademark clearinghouse is for trademarks last week. So this doesn't belong here, but what we can do is

have this additional paragraph which again, based on chat room discussion and conversation last week, for purposes of clarity, separate or ancillary databases of the trademark clearinghouse provider or another provider may include other marks, but those databases should not be used for sunrise or trademark claims notices under the RPMs. We seem to have agreement on that. And registries may use those separate or ancillary databases to provide additional services but are not required to do so under the RPMs.

So here, if you want to have an ancillary database – by the way, no one's used this, even though the right seems to be out there. No one's used ancillary databases, so we're in somewhat new ground. But if you want an ancillary database for GIs, if you want an ancillary database for local trademarks in a geo, if you want an ancillary database for all the first names in a future .pizza and you want to put Joe and Jerry's in there even though they don't have trademarks, it is your right.

I'm not sure – and I can't understand why you have a single ancillary database, because I think this is based on the business models and the needs of individual registries, and also, we're going to hear about competition coming up. I know it was an issue when we were creating the initial rules that whoever would become the trademark clearinghouse, the future Deloitte that hadn't been hired yet, shouldn't be a monopoly and that we should be able to share some of these roles, hence this opening up where you can put your database wherever you want.

But that's what I heard coming out of last week, and also, there seemed to be general support, I thought, on the list over the week,

so thank you for the discussion and let me turn it back to you, Brian. Thanks.

BRIAN BECKHAM: Thanks, Kathy. I have Greg and then Susan.

CLAUDIO DIGANGI: Can I enter the queue after Susan, Brian?

BRIAN BECKHAM: Please, Claudio.

GREG SHATAN: Thanks. Sorry, I stepped away a little bit earlier, but I did hear Kathy's presentation. I think on 3.2.3, the words "specified in" are also new text, so that should be clear, because the current text is just "any wordmarks protected by a statute or treaty." So the idea here is to make it clear that the mark itself has to be specified in the treaty, such as Boy Scouts of America and the like, and make it clear that this was not intended to bring in classes of registrations of words in some fashion other than as marks.

And I think that's the other thing here. I'm of two minds about 3.2.4. Frankly, I think it could stay in, because again, it just goes to marks. But geographic indicators aren't marks unless they are protected as such, as they are in the U.S. And I am very concerned about the idea of suddenly creating, without any real work at all, a shadow clearinghouse of GIs that's initiated by the community and not by a particular registry saying, "Wow, we're

going to be doing Appellation Controlée or we're going to be doing national origin," this is, we're going to be doing an area like cheese or something where we really want to honor the GI concept and the Bulgarians can't get feta.cheese. Whatever it might be. And I actually quite like Bulgarian feta, but that's a different point.

So I just think that this was never intended to create a new database. At most, the right is for a trademark clearinghouse operator to basically leverage their work to create secondary databases to meet private needs. We've not done any work to establish what the public need is for GIs and nor how we would define GIs. There is no consistency across the world, there's no common treaty. At the very least, this would take some real hard work and not just this kind of last-minute creation of this whole new database, because once there's a database, somebody's going to look for a way to use it and promote it. I see the creep coming in. So it's just wrong. Sorry. Bye. Thanks.

BRIAN BECKHAM: Okay. Thank you, Greg. Susan, please.

SUSAN PAYNE: Yeah. Thank you. I'm troubled, I think, by the addition of the words "as trademarks" and then the kind of definition of that below in 3.2.3. I think that builds in yet more uncertainty, because then what do we actually mean by that? Is that intended, or will it be read by some to mean that those marks are then protected – when it says trademarks, does that mean they need to be

registered trademarks? My answer would be no, because of course, if they were registered, they don't need to come under that heading. They need to come under – they already qualify under 3.2.1. But if we think about something like Olympic or Red Cross, those organizations have many registered trademarks, of course, but they also have these statutory and treaty protections which go further than that and give them rights that are probably more extensive trademark rights for those specific terms.

So we in making this addition to the language seem to be attempting to narrow down that protection that they have under their treaty or statute in a way that I'm not sure we need. I don't see how it helps us. They're protected by treaty or statute, that's the point, and we already have marks. The first, the second word or third word, any word marks, we've already got marks referred to. I don't think we need the terminology as trademarks that's been added. I think it quartzes more uncertainly rather than less.

BRIAN BECKHAM:

Okay. Thank you, Susan. And I don't know, the formatting is a little difficult to follow on the screen there, but there was supposed to be a footnote which defines trademarks as “trademarks, service marks, certification marks and collective marks.” So it seems to put some boundaries on that. Jason Schaeffer, please.

CLAUDIO DIGANGI:

Brian, this is Claudio.

BRIAN BECKHAM: I'm sorry, Claudio. Yes, I forgot you were next and then Jason. Claudio, please.

CLAUDIO DIGANGI: No worries, I'm on audio only. I agree with Susan there. I think it can be strictly interpreted in a way that goes against the intent of what that provision is. On striking, I think it was 3.2.4, that could be the [catch-all] provision for the design marks and some of these other types of trademarks that are not specifically spelled out. If the argument on a prior discussion was that only wordmarks are permitted, 3.2.4 would allow design marks and other marks to be recorded. So I would support keeping that in just for clarification purposes.

And then I wanted to address Greg's concerns. I could sense that he feels strongly about it, and I want to clarify to him, at least, and to the group that there's no [inaudible] desire to do something shadowy or behind the scenes in some sort of hidden way. In fact, it's the opposite. I want to bring clarity to the situation, and we're struggling somewhat with the language on the position that Susan just noted, but I think we can [give policies on it that specifically says,] and Deloitte knows what geographical indications are, and we could give policy language that states that they shall not fall into any of those provisions.

In essence, all I'm proposing – and this is where my confusion lies with Greg's concern – is that the registries are already able to do this. Kathy noted that they haven't, but that is part of why I'm making this proposal, because registries have expressed a desire to do this, and in part, it's because of – my speculation is they

have to go out and do this on their own, work through the ICANN process to create a separate database, use their resources to do it.

All I'm proposing is that since this is already allowed and you can have them in the separate ancillary databases, to just allow them to be connected. We don't have to call it some huge GI database if that's the concern. It's simply to allow the interface between separate databases so you wouldn't have to record the same identifier over and over again. And not just TLDs that have a semantic relation, but the general TLDs. And [I mean] some in the last example with the .web, there's plenty of those general open TLDs where someone has rights under local law to essentially what is almost identical to a trademark. In the United States, GIs are protected through the system of our trademark law.

So there's some variation there, but essentially, they serve the same purpose and function in the market. So that's the policy rationale behind it. I don't think we have to reinvent the wheel about why we would want to do this. We know these indicators are abused in the DNS, they're protected under the ccTLD dispute resolution procedures. [There's a very extensive] history and legislative history about whether they should be protected in the UDRP under the WIPO process, so this is not anything new. There's been a long history about the abuse of these strings in the domain name system and really, the heart of my proposal is just simplifying things, allowing these separate databases to connect, and just keep cost down for the registry operators, for the IP owners, to just help the process function the way I believe it's intended to function. Thank you.

BRIAN BECKHAM: Thanks, Claudio. And I confess to sharing a little bit of confusion. I actually thought there was some agreement over the e-mail list today that your proposal in effect codifies what's already possible today. It would just shift it from Deloitte, including GIs in the TMCH as such to pushing those to the ancillary database which [is allowed for in the applicant guidebook.]

CLAUDIO DIGANGI: Yeah.

BRIAN BECKHAM: So that was just a comment from me, Claudio, to see if that wouldn't help the conversation. I have Jason Schaeffer.

JASON SCHAEFFER: Thank you, Brian. Thanks, Claudio. At the outset, I can agree with Claudio conceptually on the idea, just speaking from a registry operator's perspective in counsel to registry operators is it does make sense to have this system, and it's something that may in the future be a wise and efficient way to handle this, but I do agree with Greg that this is something that is fraught with many issues that I think we really have to flesh out before we get to that point, and since we are speaking solely with respect to GIs, there is a problem here that all GIs are not created equal, and GIs are not trademarks. They're not the same, unless they're specifically identified as such or given such rights. And as sit stands now, certainly in the U.S. and certainly in the UDRP, geographic

indicators are not going to be protected unless you have some additional rights attached to them.

so it creates this – and I know that we’re saying, “Well, we’re not looking to have a nefarious purpose here to get an end around and we’re just looking to do something to allow for an efficient registration,” but if they’re not going to be in considered in the sunrise and not getting these extra rights and not getting expansion of their rights, then I think we just need to pull back and think about this a little bit before we say, “Okay, this is a great idea.”

So I do have some reservations about this, and I think in the chat, we also have a debate going on on whether or not a GI is a mark, is not a mark. I'm coming on the camp it's not, but if it is specified and it does have trademark rights or that national jurisdiction provided that, then that's fine, and that's why the word “trademarks” that I think Kathy put in was there to help clarify.

Perhaps I think Susan Payne had some points that we were concerned about, but maybe we need to work on that slightly, but I think the intention there is to provide some specificity and to allow for the distinction between those geographic indicators that have achieved or are recognized with trademark rights and those that are not.

So I guess I'm coming back on both sides of the camp here, so I do agree in principle with Claudio's intention, I just don't think we're there yet and I think that from a registry operator standpoint, I do support the idea of having something that's efficient and easy

to use, but I also see some concerns about moving ahead at this stage. Thank you.

BRIAN BECKHAM:

Okay. Thank you, Jason. And it's unfortunate that Claudio's on audio only and unable to see the language from the e-mail from Kathy. I have Michael Karanicolas and Greg Shatan in the queue. I want to note that we have 15 minutes left. As I mentioned earlier, we were hoping to conclude both question seven and eight. I believe we've done that for question seven.

It feels to me that there seems to be pretty broad agreement on some hesitation on Claudio's proposal. At the same time, there's some recognition that it either codifies an existing practice or could be useful for registry operators, and of course, we have the e-mail on the screen with the proposal to amend the standards for inclusion language.

So I'm a little unclear where we're ending up on this, but maybe Michael and Greg can help us bring this to a close. Michael?

CLAUDIO DIGANGI:

Brian, can I get in at the end?

BRIAN BECKHAM:

Sure. Michael, Greg and Claudio.

MICHAEL KARANICOLAS: Thanks. Sorry, Kathy just – sorry. Just reading a thing that Kathy just posted in the chat, because I was actually just about to say, I think the language is quite good onscreen, but Griffin earlier mentioned something in the chat where he said that 3.2.4 is problematically vague, and I kind of wanted to echo that because that is my main concern about that. If there's one thing that I think I've learned from this process, it's that these things need to be crafted as tightly as possible to prevent this kind of creep or to make as little room as possible.

I'm wondering if it might be a good idea to just scrap 3.2.4 just because I see these other fairly well-defined categories and then I see this kind of fraud or catch all, and I think that that might be a good direction to go in. Thanks.

BRIAN BECKHAM: Yeah. Thank you, Michael. And unfortunately the formatting doesn't show on the screen, but that was exactly the proposal, to strike 3.2.4. I have Greg and then Griffin.

CLAUDIO DIGANGI: And Claudio.

BRIAN BECKHAM: Sorry. Greg, Claudio, Griffin.

GREG SHATAN: Thanks. First, as I've put in the chat – but I know Claudio can't read the chat, and anybody else who's on audio as well as

Claudio. So I'd like to propose that the working group could recommend that a working group or other study group or the like be put together to examine the potential protection of geographic indicators in gTLDs.

I'm not opposed to the work being done, I'm just opposed to leapfrogging that work, and I'm also opposed to codifying what is at best a mistake and not an intentional inclusion in the trademark clearinghouse.

So I think it should be clear – I don't mind the recommendation about GIs, it's just we can't just sweep them in here. And just a last point is my only thing that I'm really comfortable with in the changes here is adding the "specified in," and also response to Michael Karanicolas' remarks, I think John McElwaine put in some good background on 3.2.4 that at least gave some indication of clarity around that. Not that I'm going to become a 3.2.4 fanboy or anything like that. Thanks. Bye.

BRIAN BECKHAM:

Thank you, Greg. Claudio, John, Kathy. If I could ask – I hate to do this, just if people could keep it relatively brief as we're getting a little close to the hour. Claudio.

CLAUDIO DIGANGI:

Yes. Thank you. I appreciate what Greg just said and also what Jason [stated] in his intervention. And maybe I can clarify how to potentially address Greg's concern. The essence of what I'm proposing is not to allow something new and sweep in a new wholesale set of protections for something that we haven't

examined. It's simply based on what's already allowed to take place, and there's already a process, in fact, for it to take place, which is the limited registration period.

So I don't feel that I'm proposing anything new substantively in terms of IP protection. It's something I noticed, being in the industry, that certain registries based in Europe wanted to protect these identifiers because in their countries and their local countries, they're afforded protection.

And to Jason's point – and I hear what Jason is saying as well, I would be interested in hearing what registries feel about being able to link these ancillary databases together. My hope is that we could put it out to public comment and be able to get some input from the broader community about – would that cause any concern to a registry or a registrar if we allowed the ancillary databases to be linked together? Thank you.

BRIAN BECKHAM: Thanks, Claudio. I have John McElwaine, Kathy, and Rebecca. And we'll issue a last call. I think that's going to be getting us a little close to the end of our call. John McElwaine, please.

GRIFFIN BARNETT: Brian, I apologize, but my hand was up previously.

BRIAN BECKHAM: I'm sorry, I just saw you. Griffin, please.

GRIFFIN BARNETT: Sorry, I'll make my intervention very quick. So I put in the chat a proposed further revision to 3.2.3 for consideration. I won't read the whole thing out, but it's posted in the chat. And I think some of the confusion also arises especially when we're talking about 3.2.4 with the use of the word "marks," and I think perhaps something like identifier or designation may be more appropriate in that section.

And again, I think Mary put something in the chat to clarify that. Apparently, 3.2.4 was intended specifically to allow registry operators to consider extending certain of these existing mandatory RPMs to other types of intellectual property like GIs or perhaps others. So in that context, and perhaps if we clarify that what we're talking about is identifiers or designations that constitute intellectual property in that context, that may make a little bit more sense.

In any case, I'll leave my comments there. Thanks.

BRIAN BECKHAM: Thanks, Griffin. John McElwaine.

JOHN MCELWAINE. Hey. A very similar comment to what Griffin just said. I don't support removing 3.2.4's concept from the trademark clearinghouse guidelines altogether, so just deleting it I wouldn't support. We need to make sure that that concept gets baked back in. I think we could probably put it back in like 3.6 just clarifying that. I don't have it in front of me.

And secondly, I would remark – and it may have been discussed on another call – that we would probably need to expand the footnoted definition of trademarks, just because perusing some of the U.S. code sections on other – for instance, the Boy Scouts, that’s given an exclusive right to emblems, badges, marks and words. So I don’t want to be so selective with that definition that we take it outside the scope of what it was intended. So probably just need to expand that footnote one in this current proposal. Thanks.

BRIAN BECKHAM: Thanks, John. I have Kathy, Rebecca, and I think we probably want to call it the end of the queue and wrap it up with Rebecca. So Kathy, please.

KATHY KLEIMAN: Yeah. Thanks, Brian, and thanks for chairing this call. I really wish we were looking at the formatted language so that we could see what's proposed for deletion and what's not.

I think there's general agreement that 3.2.4 doesn't belong here. This is not a standard for inclusion in the trademark clearinghouse. These are not trademarks and they're other IP. So we want to put thoughts someplace else? Okay. But I don't hear too much disagreement that this is not what this is for.

So 3.2.3 is responding to this idea that we found out in our research with Deloitte, that they're pulling things out of statute or treaties that may not be trademarks. That could be a lot of other words or even symbols, as we heard.

I think – yes, I'm taking my chair's hat off, but trying to also understand where the conversation was last week and what belongs in the trademark clearinghouse.

So the proposal is “wordmarks protected by statute or treaty as trademarks,” because GIs are not trademarks. And I did a lot of research on this at one point. They're not trademarks. So if there are other places they can go, great. But how do we keep the trademark clearinghouse for what the scope is and then create other places to put other types of intellectual property? Thanks. And Greg, I'm at American University now. Thanks.

BRIAN BECKHAM:

Thank you, Kathy. Rebecca, and then we'll see if we want to draw this to a close. Rebecca.

REBECCA TUSHNET:

Thank you. It seems to me that Kathy's proposal actually does leave the ability to do 3.2.4, just makes clear that it really is separate. So if you look at the last [inaudible] for purposes of clarity in that proposal, it really does allow that. It's just very clear that it's not part of claims and notice and really shouldn't be.

I'm really open to pretty much any definition we want to come up with, but just for cautionary purposes, it's really easy to walk right back into letting GIs in. So if we want to talk about designating a specific source, for example, rather than a range of sources, we could do that. We could also just say, “Not a geographic indication.” And I'm coming around to the idea that that might be

the best guidance we could give Deloitte as part of our definition.
Thank you.

BRIAN BECKHAM:

Thank you, Rebecca. John McElwaine, is that a new hand or an old hand? Looks like it was an old hand, I've seen it go down. So I want to really lean on everybody here on the call, but it feels to me that we may usefully get a little bit of an exchange over the e-mail list maybe over the next week or so. It doesn't feel like we've really concluded this one as neatly as we did with question seven. Certainly open to suggestions, and of course, we'll have a call with staff and the co-chairs later this week.

So with that, I think congratulations, thanks everyone even if we have some divergences of opinion, that we successfully concluded for present purposes at least on question seven that we will have the two different proposals put into the initial report in some fashion for public comment, and hopefully, that helps us take that a little bit further.

Looks like we have maybe a little bit of work left to do on question eight. I know we're getting close to having some clarity around the schedule for our working group meetings in the upcoming ICANN meeting in Montréal. It looks like they'll be over the opening weekend. That's still a little bit up in the air, so we don't want to give you guys firm times just yet.

With that, I'll see if there are any other questions or thoughts before we end. And then of course, with our next call, we'll be picking up on the few remaining charter questions and hopefully

bringing the trademark clearinghouse discussions to a conclusion in the next week or two. Any last thoughts, questions, comments? Anything from Julie, staff?

Okay. Thanks, Julie. I see the comment. And I think from staff, I was wondering if I lost audio. Thanks again, everyone, for the productive call, and we'll look for your further thoughts on e-mail to help us in our call this Friday. We'll see you all next week. Thanks again. Bye.

TERRI AGNEW:

Thanks, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]