<p style="text-align:center">

ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Wednesday, 25 September 2019 at 17:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.
Attendance and recordings of the call are posted on the agenda wiki page:
https://community.icann.org/x/640CBw
The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:
https://gnso.icann.org/en/group-activities/calendar

</p>

ANDREA GLANDON: Good morning, good afternoon, good evening. Welcome to the review of all rights protection mechanisms in all gTLDs PDP working group call held on Wednesday the 25th at 17:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please let yourselves be known now?

Hearing no names, I would like to remind all participants 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 will turn it over to Phil Corwin. Please begin.

PHIL CORWIN: Hello, everyone, and welcome to today's call in which we're going to either close out the TMCH issues or get very close to doing so. Any updates to statements of interest at this time? Okay, hearing none.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

I see that my co-chair Kathy Kleiman is on. Is Brian Beckham with us yet?

KATHY KLEIMAN: And Phil, I have my hand raised, not for an update to statements of interest but for a quick point of interest for everyone.

PHIL CORWIN: Go ahead, Kathy.

KATHY KLEIMAN: Okay. Sorry to interrupt but I noticed that we have some open microphones on. For people new to Zoom, you have to mute yourself when you come on via the Zoom room. So I just wanted to let people know so that they could mute their microphones. Thanks.

PHIL CORWIN: Yeah. Thanks for pointing that out, Kathy. I was hearing some background noise as well, and we don't want to be distracted. So let me just quickly review today's agenda and how we're going to proceed. We're reviewing the agenda now, that's item one. We've already asked for statements of interest updates and there were none.

We're going to conclude discussion of charter question seven and eight. Actually, unless there is objection, I believe we finished on seven last week and agreed that we would put out for comment from the community on the question, the issue of design marks,

the so called Kleiman-Muscovitch proposal and the Greg Shatan proposal to inform the working group and we can return to that issue and try to reach a consensus on a proposal for the final report.

We're about to launch into discussion on question eight on design marks. There's been a lot of very constructive discussion and compromise and information exchange on the working group list, and hopefully we can coalesce around a proposal today. If we can't get a complete agreement on that, if there's some remaining questions, we can put those additional questions out for community comment.

And then on the remaining so-called deferred questions, staff has reminded me that back when we originally dealt with these, there were no specific proposals on these deferred questions. We're going to revisit each of the categories today and see if people want to discuss them. If anyone wants to make a proposal to address any of these open deferred questions, we're going to provide an opportunity to do so with a deadline of 12:00 noon pacific time, 3:00 Eastern so that would be 19:00 UTC on Tuesday, October 1. That's in deference to Monday September 30th being the first day of the Jewish new year. We don't want to set a deadline on that date.

So we're going to revisit all of these deferred questions. If anyone thinks they're important enough to address a proposal, we're going to give working group members close to a week to put that on the table. So that's our agenda for today. Is there anyone wanna be suggest that we discuss other business at the end of the call at this time?

Okay, hearing none – and Kathy, is that your old hand on the open mics, or a new hand?

KATHY KLEIMAN: That is an old hand. I'll take it down. Thanks, Phil.

PHIL CORWIN: Okay. With that, as I stated, it's my understanding we reached agreement on charter question seven last week and we're going to be putting out two proposals on design marks for public comment. Does anyone think there's any additional need for discussion of question seven at this time? Go ahead, Greg.

GREG SHATAN: Thanks. I guess what I'm concerned about is the proposals are not kind of comparable. One of the things that hasn't really been discussed in the two proposals on question seven is any – [inaudible] any countervailing definition of design marks other than the design mark definition that's given in the Kleiman-Muscovitch proposal.

So I think the concern there is that there should be some perhaps level of choice baked into my proposal on that point as well, because otherwise, we haven't really opened up the question of whether specifically the definition that's being given as design marks in paragraph one of the Kleiman-Muscovitch proposal is right, wrong, has any alternatives or the like. So I'm afraid we may miss kind of a very elemental point in the whole discussion that

actually is masked rather than revealed by just putting up two "competing" proposals. Thanks.

PHIL CORWIN: Yeah, thank you, Greg. Before hearing any additional comments on that point, let me inquire staff. We're deciding now to put these two proposals out for comment and they'll be in the initial report, but when we draft the report, we often provide background and context for these questions we're putting to the community. So let me ask staff and then I'll hear from Rebecca about whether it'd be normal practice and appropriate to provide some of the type of context that Greg is suggesting is needed for the community to submit informed comments on these two choices.

Is there anyone from staff who wants to speak to that? Mary, I see your hand up. Let's hear from you, Mary, and then we'll hear from Professor Tushnet.

MARY WONG: Sure. And I hope you can hear me. I'm actually in L.A. County and the hotel connection here is not great. if I drop off, Julie can certainly continue. And you're right, Phil, that when we put out initial report and especially if recommendations or proposals are ones which the working group believe will benefit from some additional context for the purpose of public comment, we do put that additional information and context in.

For the phrase "design marks," as staff has noted previously, there's no single universal accepted legal definition of that phrase "design marks," although obviously, as the group has discussed,

there are multiple jurisdictions that distinguish between what in the United States you might call a standard character mark and other types of marks such as the appearance thereof of the mark.

For this purpose, for the initial report, we can certainly refer to the working group's discussions around the standard character marks, figurative mars and so forth, and certainly, the working group can come up with language that they feel adequately represents what they mean by the term "design marks" even if it's not a single definition. I hope that's helpful.

PHIL CORWIN: Yeah. I found it helpful. Thank you. And now Rebecca, go ahead, I see your hand up.

REBECCA TUSHNET: Thank you. I actually think this is an entertaining diversion. The Kleiman-Muscovitch proposal defines wordmarks and offers actually a bunch of differently worded but fundamentally the same standard uses of wordmarks across various categories.

We don't actually need to define things that aren't wordmarks, because that's not what goes into the TMCH, so why waste energy on it? We should focus on the definition of wordmarks, and I believe the proposal does that. I'm not sure what extra it gets us to try and define stuff that admittedly the TMCH doesn't take in. Thank you.

PHIL CORWIN: Okay. Thank you for that viewpoint. Greg, your hand was up first. Why don't you go ahead first, and then we'll hear from Susan Payne?

GREG SHATAN: I think the point here is these proposals were not prepared, and not until the very end was it seen that they would be kind of sitting side by side. So my proposal is – I'd like my proposal, if you will, to be more directly comparable. The Kleiman-Muscovitch proposal does in fact define what it considers to be design marks in the first paragraph. It probably should also – if this is not a proposal of the working group, shouldn't begin with "We the working group," and maybe neither proposal should begin with that sort of thing. We'd need to amend these to make it clear that neither of these have consensus and that we're essentially putting them out for discussion.

But I think that in my proposal, there is an implicit definition of wordmark which needs to be made explicit, and it's not the same definition that's being put forward in the other proposal. So this is not an entertaining diversion but this is actually an elemental issue of putting the question properly before the public in the public comment. So I think this needs to be resolved since we are resolving this in a way to kind of put out, if you will, two competing proposals or two proposals to be compared and contrasted needs to be managed appropriately. Thank you.

PHIL CORWIN: Okay. Thanks for this further input, Greg. Susan.

SUSAN PAYNE: Yeah. Hi. Thanks. Greg's largely made the point, but I just was reacting to Rebecca's comment about the not needing to define design marks. I disagree. Irrespective of what we all sit on, where we should or shouldn't go into the trademark clearinghouse, the fact remains that we are asking the community for their views on that topic, so we're not just talking about wordmarks. We may end up in an outcome where only what you guys call standard character marks is all that's in the TMCH, but we are actually asking for input on wider than that.

Just as a practical matter – and this may not be [inaudible] but I wonder, Greg, would the solution be for you to explain in more detail, to amend your proposal so that it explains in more detail the different types of marks and therefore it's clearer to people? Or better yet, I suppose, we have in the past – and I'm sure staff have circulated a number of times – had some visual examples of what is a standard character mark, what is a mark ... I can't remember all the terminology, but a mark in cursive script, a mark where there's a wordmark and an entirely separate device element, a mark where all the words are incorporated into the device.

And we perhaps need to be giving the community that kind of visual, because we are ultimately saying to them, where do you think the line is supposed to be drawn?

PHIL CORWIN: Okay. Yeah, thank you, Susan. I'm going to momentarily take off my co-chair hat and just express a personal view. Ultimately, the

working group will decide what the language of the initial report is to put these questions, these proposals in context, but personally, I think if we're going to ask the community since the question is how are design marks currently handled by the TMCH provider, and since there are so many different gradations of design marks and since many of them include words, I think we're going to have to, in my personal view, provide some background to the community so that they can understand the full context in which these proposals are made.

That's a personal view. The final decision will be made by the working group. And we're getting a lot of discussion on this question. I thought we were done, but clearly, we're not. Zac is next, followed by John McElwaine. Oh, followed by Kathy and then John. Go ahead, Zac.

ZAC MUSCOVITCH: Thank you. I'm satisfied with both Susan's and Phil's proposal. I hate referring to it as this, but the Kleiman-Muscovitch proposal includes a definition of design marks in the proposal itself and includes in the rationale definition of wordmarks.

So I'd be satisfied if Greg were to propose revisions to his proposal to include whatever definitions he believed appropriate. Or alternatively, as Phil mentioned, perhaps this can be dealt with through some introductory paragraphs in the final report subject to working group approval at that time. Thank you.

PHIL CORWIN: Thank you for that, Zac. Kathy, go ahead.

KATHY KLEIMAN: Yeah. Clearly, Mr. Muscovitch and I haven't had a chance to talk, because it's a new question. I think I agree, Phil, that there should be some background. We have very good examples of what Deloitte is doing, and I would use what they're extracting from design marks.

The Kleiman-Muscovitch proposal was updated to include the definitions, to include the clarity. Mr. Shatan was given the same opportunity. I think he was satisfied with his proposal.

So with that background, I think we've got two proposals going out, as Greg said, two different ideas, but we spent a lot of time on this, we've given people the chance to revise. I think now it's a matter of context. Thanks.

PHIL CORWIN: Okay. Thank you, Kathy, and I'll just remind everyone who's spoken to put your hands down after speaking. John McElwaine is next and then Greg wants to speak again, and then we'll see if there's anything further if we can close out question seven discussion. I'll try to summarize at the end. John, go ahead.

JOHN MCELWAINE: Thanks, Phil. I agree with Kathy. I really think we've got two different proposals. So Zac's proposal tries to define what a design mark is and that's a fine concept to go down that path. My belief is that it's impossible to do.

On the other hand, Greg's proposal basically says, "Look, we're going to accept – we're not going to try to define what a design mark is, we're going to put it back on to the applicant to swear under oat hthat the trademark they are presenting contains a word in which they've got trademark rights in it. Might not be stating it exactly correct and all that. Greg, come on and correct me if that's in fact the case, but I do think we have two sort of divergent proposals to deal with an issue that everybody kind of recognizes is out there. So I'm kind of in Kathy's camp with putting them both out and see what comments we get. Thanks.

PHIL CORWIN: Thanks, John. Appreciated. And Greg, you wanted to speak again to this. Please go ahead.

GREG SHATAN: Thanks. My point is that like to consider how there could be more of an apples to apples comparison, and I have to say that it was not until very recently we decided these proposals would go out in tandem. So I've not had the opportunity until now really to consider and discuss with the group how to deal with that.

The Kleiman-Muscovitch proposal includes not only a proposal but it includes a preamble, a setup. It asserts a case or a problem, but there's no other assertion of that problem. That's not an assertion that we've agreed to. So maybe we need to think about whether that statement is really part of the proposal or not, and if it is, then the statement of the problem needs to be – I need to consider how that needs to kind of read through to my proposal, the proposal I

EN

made. I think that's, again, by having one proposal that defines design marks, the other proposal doesn't say that that definition is not the one that's being used when the word "design marks" is being used.

So I think there needs to be the ability to compare and contrast and put out something that can be understood and not procedurally try to keep the proposals where they were when it was an idea that the proposals would be either/or or neither, but not both. Thanks.

PHIL CORWIN: Okay. So Greg, you're concerned about the preamble part of the other proposal, which is kind of a teeing up the actual proposal contained in the proposal from Kathy and Zac. Is that correct?

GREG SHATAN: I think that's a fair statement. I'm not able to scroll and see the whole thing, I don't have a second copy, but yes, I believe that would be a fair statement to the extent I can see stuff. Yes, now I see more stuff.

KATHY KLEIMAN: Could you say that again, please? Sorry.

PHIL CORWIN: What was your request, Kathy?

KATHY KLEIMAN: It sounded like you were recommending a change to the Kleiman-Muscovitch proposal. And if that's the case, could you repeat it again? If not, I misheard. Thanks.

PHIL CORWIN: I was confirming with Greg that his concern was about what he labeled the preamble to your proposal. And actually, when I read the proposal, there's more in it about Deloitte not doing the proper thing than the actual proposal is at the working group by consensus can change the current rules but it doesn't actually propose how they should be changed. Am I correct in that, Kathy and Zac? I want to make sure I'm not misstating anything.

KATHY KLEIMAN: We're all reading something that's on the screen and we can't scroll it.

PHIL CORWIN: Just quickly – and staff can maybe scroll down when I'm done reading this – could you scroll back up so I can read the beginning of the proposal? It says, "We have found a problem," I think properly, the parenthetical, RPM working group should be taken out of this if it's going to be put in as a proposal. That's a personal view because we haven't reached any consensus or even wide agreement yet on what the working group has found or wants to do about it.

But then part one says Deloitte's accepting all these things, and two, that this goes beyond the rules put forward in the applicant

guidebook, and three, therefore Deloitte's not following the rules put out in the applicant guidebook through the prior process, and then it says four, whether the current rule – so basically, it says we want to stop Deloitte from doing that and then the working group can determine whether the rules should be changed.

So I guess the import of this proposal is that Deloitte shouldn't be accepting anything beyond wordmarks and therefore shouldn't be accepting – if we could scroll back up – yeah, shouldn't be accepting the words of design marks, composite marks, figurative marks, stylized marks, mixed marks and any other similar combination. And then that is how this proposal defines design marks.

So the proposal is summing up – and you can correct me, Zac and Kathy if I'm wrong – we're going to tell Deloitte to stop accepting all of these things, which means we're going to enforce the current rules so we're not going to change the rules, we're going to enforce them.

I think that's the thrust of the proposal, but if I'm incorrect in that reading, I invite the authors to intervene and set me straight.

KATHY KLEIMAN: Looks like both Zac and I are in the queue, so whenever you're ready.

PHIL CORWIN: Yeah. Before we do that, let me say this. Just so we can contrast these proposals, and since people can't scroll, let's look at Greg

so we know what the apple looks like and the orange looks like. Greg actually is proposing rather than enforcement of the current rules a change in the guidelines so that an applicant to the TMCH must include in its application a sworn statement that the trademark registration does not include a disclaimer as to any portion of a mark, or if it does, that this portion is not disclaimed in its entirety. And then when it isn't disclaimed in its entirety, the mark is not eligible for recordation or registration in the clearinghouse.

And then it goes on to say for marks that are text marks that do not exclusively consist of letters, words, numerals, special characters, the recorded name of the trademark will be deemed to be an identical match to the reported name as long as the name of the trademark includes all those things collectively defined as characters, and all the characters included in the TMCH record.

And then it goes on. I'm not going to read all of this. One saying that they have to submit applicants for recording their marks in the clearinghouse must include a statement regarding the extent to which they disclaimed anything in the mark. That's part one, and then part two is that the clearinghouse should not accept for inclusion marks where all textual elements are disclaimed. Let's continue down if we can. [And as said, you're only protectable as per the] entire composite mark. And then the third part of Greg's proposal is that there be new grounds for a challenge procedure to be added to assess whether the underlying trademark registration was obtained in bad faith as a pretext solely to obtain a sunrise registration. That's on a subject that's somewhat

different than design marks, but it is part of his proposal, although, again, I don't want to mischaracterize it.

So to sum up very crudely, the Kleiman-Muscovitch proposal says we have current rules, let's enforce them, and anything in these things we've defined as design marks that Deloitte is accepting now should no longer be accepted.

Greg's approach is different. It actually proposes to amend the rules or guidelines in a way that requires a new statement in regards to design marks and forbids the recordation of marks where the entire text is disclaimed.

So that's the contrast. They are different approaches, and I'm not sure whose hand was up first. Well, let me start with Kathy first and then Greg, so same order as the proposals that we've just reviewed. Kathy.

KATHY KLEIMAN: Both proposals speak in the name of the working group, and I guess this is a good catch. I'm looking at he proposal submitted by Greg Shatan, so number one, the working group recommends. Number two, the working group recommends. Number three, the working group recommends. Whereas this is an individual proposal.

And similarly, at the start of the Kleiman-Muscovitch proposal, we the RPM working group have found a problem. So Phil, I think I can attribute this to you, but apologies [inaudible] to just leave the "We have found a problem" and take out "The RPM working group." And then make a similar change to Mr. Shatan's proposal

where it's not "The working group recommends" but "I recommend."

So to put these much more in the first person so that these are proposals from individual working group members, which seems to be where the chat room is going as well. I could definitely support hat type of change provided it's consistent across both proposals, but also, I defer to the coauthor on this. Thanks.

PHIL CORWIN: Okay. And Kathy, let me say, point well taken. We can approach this in one of two ways. We can either leave the current wording in of both proposals while reminding the community that neither of these represents a position agreed to by the working group at this point in time. They're just proposals for what the working group should eventually come together on, or we can make the language more neutral where it's simply a proposal without "we" or "working group" or anything, it's just a straight proposal.

So Greg, let me hear from you, hopefully final comments on this, and then I'll propose what I hope is a way forward.

GREG SHATAN: Thanks. First, I agree that these should be anonymized and not put forward as an "I" or a "we." Secondly, the gist of the proposals is in a sense stated to the extent that they are directly comparable is not stated in either proposal in a way that's comparable to the other.

The gist is really a very different definition, if you will, of what a wordmark is and what a design mark is, and a drawing of a line between what an unregisterable registration, if you will, versus one that is registerable. So for instance, I think that the extent that Deloitte is accepting things that it shouldn't, I don't think that there is agreement that that includes things like stylized marks and any combination of characters and designs.

Basically, it looks to me like – and getting back to the wordmark thing more directly, that the basic proposal of the Kleiman-Muscovitch proposal is that anything other than a standard character block letter registration for a mark claiming nothing other than the string should go into the TMCH and that everything else is outside the circle, and the gist of my proposal is very different. And basically, wordmark is more broadly defined than that and would include a number of things that is put into the list as a design mark.

But yet I have no stated definition of design mark, and my proposal frankly is a little bit – as opposed to being a high-level conceptual proposal that could be kind of easily read, it's more of a down in the weeds proposal to change the wording which requires some skill, some time to understand kind of the gist. So for that reason, I feel it doesn't get to the point that we want people to look at in a kind of competitive or comparative situation.

So while I'm supportive of putting out two proposals for the public to consider, I think the public needs to have issues in front of it to consider in a way that they can compare different treatments of the same issues and discuss that, because otherwise, it's not

even apples and oranges, it's apples and ... I don't know, staplers. Thanks.

PHIL CORWIN: Let me just ask you, Greg, just so I understand, are you suggesting that the coauthors of the other proposal need to revise it? What are you requesting here? That's what I'm trying to understand.

GREG SHATAN: I don't know if I'd be so bold as to suggest that they revise it, but I think it's clear – maybe number two needs to be clear that what they mean by wordmarks is standard character marks. Maybe that's clear by having defined design marks as everything else. But maybe not, because again, that's probably not an exhaustive list of things that are more than standard character marks, especially given different regimes and what they call things.

So maybe there should be a rewrite that gets to the gist of it, which is that the Kleiman-Muscovitch proposal wants to limit the TMCH to standard character block – no claim made as to anything but the string, registrations, and my proposal is different. Thanks.

PHIL CORWIN: Okay. I have thoughts on a way forward, but before I disseminate them for the working group's consideration, I see now that Brian Beckham has joined us and has his hand up, so Brian, please go ahead.

BRIAN BECKHAM: Hi Phil, hi everyone. Thanks. I'd like to respectfully suggest, picking up on what Griffin said in the chat, that we move on on today's call. I thought we had closed this off last week. We're not getting anywhere. We're trying to wordsmith by phone call and it's not working, so I propose that we see what the staff pulls together and take it from there. Thanks.

PHIL CORWIN: Yeah, and I'm seeing that hold on that Mary said – is Mary still with us? No, that was a private message so let me not get into that, and I'm not sure if Mary is still on the call. She was indicating she'd have to drop off soon.

Let me hear from Michael Karanicolas and then I'm going to, I think, take the suggestion given my surprise that we've had this extended discussion, I'm going to suggest a way forward but then we can move on to question eight depending on the working group's response to my suggestion. Michael, go ahead.

MICHAEL KARANICOLAS: I'm just on a train so apologies if I cut out. I think that the context surrounding the proposals is important, and I think that portraying the differences of opinion around the problem is also important. I think that rather than asking Zac and Kathy to rewrite their proposal to bring it into line with what he wants, Greg should take that initiative and add the contextualization that he needs and the way that he sees the problem in justification to his proposal so that

people can move forward on that basis. I think that's the most appropriate way forward. Thanks.

PHIL CORWIN: Okay. And Griffin. I hope this is the last word, and then I'll speak. Go ahead, Griffin.

GRIFFIN BARNETT: Thanks. Yeah, I just was going to reiterate some comments I've put in the chat and which Brian Beckham spoke to a moment ago, which is to divert slightly from what Michael Karanicolas just suggested in terms of next steps.

I tend to agree, again, with my original comments and with what Brian Beckham suggested, that we have staff prepare what their suggested language is to try and conform the proposals into a format that makes sense for the initial report, which per my suggestion would kind of try and get down to the very barebones substance of what the proposals are getting at, and that we review what staff circulates once they perform that exercise, and also part of that exercise would be to develop introductory contextualizing language to clarify that these are sort of individual proposals that have some support within the working group but are not consensus proposals or recommendations of the working group, etc. along the lines that others have been discussing. That would be my suggested path forward. Thanks.

PHIL CORWIN: Okay. Let me just ask you, Julie, as I think Mary has left the call. Is that something staff could do? Oh, Mary is still with us. but either one, what Griffin just said, is that something staff can undertake for the next meeting?

JULIE HEDLUND: Hi Phil. And Mary's on but she's just about to drop. Yes, we can. It's typical when drafting the initial report that staff will assist the working group in developing the language for that report. That includes all of the deliberations, a summary of those, all links to transcripts, links to the proposals so that the proposals will be able to be accessed in their full verbatim state as they exist on the Wiki now, and then also just a summary of where [as the proposals themselves,] their levels of support, and also providing the context around those as well.

So that is typical of what staff would prepare for an initial report, and you could see it if you looked or instance at SubPro and then the reports that were drafted there. Thank you.

PHIL CORWIN: Alright. And I see Zac's hand up. Zac, go ahead.

ZAC MUSCOVITCH: Thanks. Just briefly, as I mentioned before, I would support staff supporting the contextual into, but I don't think that staff should get into the weeds of trying to encapsulate the gist or the wording of the respective proposals. This is just a recipe for further disagreement, and the wording of each of the proposals has been

approved by the respective authors already. So I would leave it at that. Thank you.

PHIL CORWIN: Alright. Thank you, Zac. I'm going to try to close this out now. The co-chairs will be on a planning call with staff Friday morning, so we can discuss this with them further and clarify what, if anything, we want to do. And we've got one of the authors of one of the proposals on that call.

I would say what I would propose is that based upon today's discussion, which I found surprising but it's good to get this out in the open now rather than later, is that if the authors of either proposal want to make any further modification, that they have the coming week to do so, and with the same deadline I just announced for proposals on the deferred questions which is 19:00 on Tuesday October 1, but if you can give us a heads up in advance that something's coming without the actual text, that would be good. You're not required to, I don't think we've ever required proponents of any particular proposal to conform to the same approach. I'm a little nervous about asking staff to rewrite proposals.

But the other thing I would say is I think there's agreement on all sides that this is a rather complicated and esoteric subject about wordmarks, design marks and what they are and where they are, how they overlap and the different national approaches on them. so I think it's clear that to tee up these proposals for meaningful comment by the community when we put out the initial report, that we're going to have to provide a fair degree of information and

context for the questions, and I would state now that would be my intention as co-chair to make sure that staff, when they're writing that context, work with the proponents of both proposals to make sure that the language teeing up the two separate proposals on design marks is acceptable to all. the proponents that I think believe it fairly provides the community with the background information it needs to make meaningful comments on these two separate proposals. And Greg, I recognize you for one last comment and then we're going to move on to question eight. Go ahead.

GREG SHATAN: Thanks. Briefly, I'd like to propose – not on the call – a brief addition to my proposal that would allow the reader to kind of more clearly compare and contrast the two. I think the other things can all be taken care of in context, so I want to keep what I change to a minimum, but just kind of so there's a little bit more comparability. And I think frankly the Kleiman-Muscovitch proposal is probably straightforward enough. It doesn't need any changes. That's not to say they shouldn't change it, but just that the thrust of my intervention was not to get them to change the way their proposal's expressed but to kind of just get the apples and oranges looking at least like two pieces of fruit. Thank you.

PHIL CORWIN: Yeah. Okay, Greg. And as I just proposed, both sides have some extra time to make any final changes to these proposals. I have no objection to that. if anyone does, let's hear it now, but otherwise, we'll look forward to receiving your suggested modification by next

Tuesday 19.00. You've already given us the heads up that it's coming, and we can return to this subject and hopefully close it out on the next call. Okay?

So now we're just past the halfway point for this call. I didn't expect so much discussion on question seven, but again, better now than later. Let's move on to question eight. I think there are proposals here. I'm not sure which one is up for consideration. Maybe staff can remind me, but there's been a lot of very constructive and informative interchange and dialog on the working group the last few days on this. Professor Tushnet's been very active, Claudio DiGangi's been very active, I think some other members have chimed in, and I think we're close to agreeing on some proposal in regard to geographic indicators. They may not be complete agreement, but the remaining issues, I think we may be close enough to put out a general proposal and then if there's some loose ends, to put out some clarifying questions associated with it.

I see my co-chair Brian Beckham has his hand up, so Brian, please go ahead.

BRIAN BECKHAM: Thanks, Phil. I wanted to just pick up on your questioning of where we are on this. I could be wrong but I think that possibly the last series of interventions, there was a proposal by Rebecca and then some replies from Claudio, so just wondered if that might be a good starting point. Otherwise, I'm a little lost.

PHIL CORWIN:	Yeah. Let me ask Rebecca and Claudio since they've been most active, and also staff whether that's an agreeable starting point for our discussion today, is the last proposal put out by Rebecca, as Brian just suggested.
CLAUDIO DIGANGI:	I'm happy to get in the queue.
PHIL CORWIN:	Okay. Claudio.
CLAUDIO DIGANGI:	Okay, so on the first topic, I think it's 3.2.3 which is the wordmarks protected by statute or treaty. My proposal is we keep the current language and that we add in basically a disclaimer that says the GIs and appellations of origins are not incldued within that definition. So maybe just putting in a comment that says "But shall not constitute geographical indications or appellations of origin," because I think we've been struggling with trying to come up with new language and I think if we just keep what's there and add that in, it'll go to the concerns that folks seem to have.
	And then I could go onto the other elements as well unless there's any [inaudible].
PHIL CORWIN:	Before you do, Claudio, let me ask staff, if we're going to be discussing the current standards and potential changes, do we have a proposal to do that that we can focus on as this discussion

EN

continues or something we can look at that has all of them at once? Because where I'm looking right now at the screen has just part of the current text in the applicant guidebook. It's really not helpful as we're trying to follow this discussion.

JULIE HEDLUND: Yeah, thanks, Phil. We've just left that document up because as Ariel notes in the chat, she's trying to locate the e-mail. The problem is there were several e-mails coming in quick succession. There was not time given that they came up until very near the time of the call for staff to be able to try to extract the language and put them in separate documents. So instead, we're trying to see if we can find the latest of those e-mails and post it in the room.

PHIL CORWIN: Okay. Looks like we may have it here.

CLAUDIO DIGANGI: I had sent one of those around, I had included in my e-mail yesterday text that would go to this issue, and then Rebecca replied pointing out some concerns with what I had suggested, which I think are valid, so I'm now modifying it. I'm just trying to boil it down, keep it basically at its simplest form for all of us to come to agreement, and that is simply adding in geographical indications and appellations of origin do not fall under that provision that's already there for wordmarks protected by statute or treaty.

PHIL CORWIN: Okay. While staff is working on text to present, is there a comment on what Claudio just said, particularly from Rebecca? Since we're primarily focused on your last proposal. And I see a hand up. Please go ahead.

REBECCA TUSHNET: Thank you. I think that's my point number two, but sure, put them together. If there's something additional than putting them together, I would have thoughts about that, but yeah, that seems fine.

PHIL CORWIN: Okay. So let me ask this; I'm hoping we have something we can put on the screen that can actually be – I think we're close to agreement on this, but we need to see at least a draft proposal for discussion purposes. Maybe the best thing would be if staff could just put up the current points in the applicant guidebook and we can make clear what we're discussing striking and amending, and see if we get agreement on that.

REBECCA TUSHNET: Phil, can I come in? Is that okay?

PHIL CORWIN: Sure. Let me just say Greg has his hand up, let's just hear from Greg and then you can take us through.

GREG SHATAN: Thanks. Just briefly, and then I'll expand more, but let Rebecca come in. From what was written on the screen, I can't tell – and I had some trouble following the whole thread because I had to work on other matters. As part of this proposal we're debating the idea of actually setting up a GI database as an affirmative step, because I have no problem with the first couple of things that Claudio said, that GIs aren't trademarks and don't into the trademark clearinghouse. To my mind, that's the end of the proposal and we can leave it to the commercial marketplace to decide whether anybody wants to set up any kind of other database to do any other kind of parsing of applications, whether it's book titles or surnames, or whatever.

But if the proposal is that we should somehow stand up a database of GIs because we implicitly believe that they should have an RPM of some sort, therefore there should be a database that feeds that, we have jumped over so many carts and horses to get there, it's not funny. The lack of analysis is stunning and we're just not there yet. I'm not even willing to say whether I –

CLAUDIO DIGANGI: Greg, that's not the proposal. So I can just alleviate the concern.

GREG SHATAN: Okay. So let's see what the whole of the proposal is and where the whole ancillary database discussion goes, because any discussion of the ancillary database draws concern from me. Thank you.

EN

PHIL CORWIN: Okay. Thank you, Greg. Brian, go ahead.

BRIAN BECKHAM: I think Rebecca maybe was first.

PHIL CORWIN: I think Rebecca wants to take us through her proposal.

BRIAN BECKHAM: Okay. Sorry, I was –

PHIL CORWIN: And I'd like to focus on [trying to see] where we agree and disagree as a group. So that's why I'm taking your comment first.

BRIAN BECKHAM: Sure. I was actually going to do something similar. What I was going to do, not to put Claudio on the spot too much, was to say as I read it, the kind of quick summary of Rebecca's proposal is that the TMCH is for trademarks and there's a definition for that. GIs aren't included, but GIs can be the subject of ancillary services or databases but that they would not be eligible for sunrise or notice, and that for me was sort of the nuts and bolts of it.

So I wondered if maybe the best way to kind of tackle this today would be to see, Claudio, if that as a kind of starting principle was

acceptable. I believe that everyone's sort of onboard with that and frankly I'm a little confused what we're hung up on.

CLAUDIO DIGANGI: Yeah. Brian, absolutely, I completely agree with you. I do agree with those parts of Rebecca's proposal. And all I was doing, I think, is putting it into textual form because in a certain way, a lot of times we're talking conceptually about the issues, but then either staff or somebody has to put it down into text that would then go into the guidebook and then that could cause misinterpretations. So I do agree with those elements of her proposal, and I think I largely agree with her entire proposal, but there were some elements of her proposal that I thought were incongruent with what the current rules are and so that was just where I wanted to kind of spend a little time further fleshing out with input from Mary if she's still on the call.

BRIAN BECKHAM: Got you. Thanks.

PHIL CORWIN: Okay. Let me turn to Rebecca now and ask her to present this, but let me say I think one of the great principles I've always adhered to is always take yes for an answer. I think we're pretty much in the yes position on what we want to do under the geographic indicator issue. We've got a proposal from Rebecca which is verbal and probably what we need – and I don't want to spend time wordsmithing on this call – is a proposed amendment to the

existing applicant guidebook provisions that puts this proposal into specific mandatory language to the current rule.

So Rebecca, why don't you speak, say what you want to say, and taking us through this, let's make sure that everyone is – let's hear you out, see if there's any significant disagreement from what you're proposing, and then if there isn't or if there is and we come to agreement, agree that we will look to the working group e-mail list sometime over the next week to see actual proposed and mandatory language to the current guidebook language that would put this proposal into "statutory" language. Is that a way we can proceed, Rebecca?

REBECCA TUSHNET: Thank you. So I guess I do not think that Deloitte needs to be called out on the carpet in any public way. However, I just want to be super clear, I think this all directly follows from the applicant guidebook. Certainly the other IP stuff does. So just internally at least, I think we have to admit that Deloitte just blew past what it was supposed to do, certainly in terms of what it's telling people on other IP.

I certainly understand the potential uncertainties about statute or treaty, although I think they're actually easily resolved, and I'm definitely willing to draft something that speaks in the language of the applicant guidebook, but to be super clear, I don't think that I'm proposing a single change in the applicant guidebook. At best, clarifying a misunderstanding and hopefully issuing directions to Deloitte to stop doing two things that they're doing.

So those two things are –

PHIL CORWIN: Let me just interject. The reason I asked for that is I know in our discussions of this issue, there's been proposals, there's been visuals of the existing guidebook language and proposal to strike at least one part of that. I believe the one referencing other forms of intellectual property. So I just want to make sure that what we put out for community comment is clear not only to what the proposal is but what the consequences would be for the guidebook if it's adopted.

REBECCA TUSHNET: Right. So perhaps ironically, I think the language doesn't need to be struck, it just actually needs to be understood in the context of the cross references. So somewhere along the lines, people stopped – and the other IP comment is actually placed pretty badly. I see what happened, I just think it's a clear error.

Anyway, so I'm happy to do something trying to translate it into AGB-style language, but just to give you the two key points, first, GIs shouldn't be registered pursuant to the statue or treaty, or they should be in the TMCH if they are because they are registered as trademarks, court recognizes trademarks for protected as trademarks not as GIs.

Second, other IP shouldn't get claims or notice. I feel like there's actually pretty good consensus about that, unsurprisingly, since that's what it says pretty clearly in 7.1 and 7.2 of the AGB.

In terms of where there is divergence, at this point I definitely can't speak to Claudio because I saw at least one proposal to create a mandatory claims service for GIs. So obviously I'm not there. I also think we shouldn't put a bunch of stuff about what the ancillary services should do in. We definitely shouldn't mandate that they only be provided by Deloitte or that Deloitte be given a leg up.

So Claudio and I, I think, do disagree, so I probably shouldn't try to represent his position. It seems to me that we perhaps agree on the things that I've talked about and he wants to do more and I don't. So I think that's where we are.

PHIL CORWIN: Alright, so if I could summarize, I believe what you're saying is that your proposal, which is currently on the screen in front of us, basically states that there's no need to revise the current applicant guidebook provisions but that Deloitte is not properly understanding and implementing them and that we want as a working group for Deloitte to conform its behavior to the current guidelines with these understandings. And the main understanding is that geographic indicators that don't also have trademark status are not to be recorded in the main TMCH database and are not eligible for claims or sunrise protections. And then there's some other lines about ancillary services.

So I think there's general agreement. Is that a fair characterization of your position, that we don't need change in the guidebook language, that we need to tell Deloitte to interpret it properly or what we believe is the proper interpretation?

REBECCA TUSHNET: I actually agree with Susan. To the extent that we call it an amendment for clarification, I think it's irrelevant. I don't think you need to do a public shaming, but I just want to be clear on these policy points. Thank you.

PHIL CORWIN: Yeah. It's not shaming to say, hey we're not saying they're evil but we want them to change the way they're doing things. So I've said enough. Brian, is that an old hand or a new hand? And then Jason has his hand up.

BRIAN BECKHAM: Sorry. Old hand.

CLAUDIO DIGANGI: Phil, can I get in after Jason?

PHIL CORWIN: Yeah. So Jason and then Claudio.

JASON SCHAEFFER: Thank you, Phil. I believe what Susan and Rebecca in the chat room and what Rebecca's stated seems to indicate what we've discussed on multiple calls. I just want to state what I see to be the obvious issue, is although as I said before, I do agree in concept with Claudio's idea that there could be ancillary

databases that are of value to registry operators, the very fact that we're having this extensive discussion on Deloitte's ability or inability to handle the TMCH properly, we shouldn't be expanding what Deloitte is doing and certainly we shouldn't be giving them a monopoly on ancillary databases or this type of service.

So I think we tried to address this during last call. I think Greg Shatan raised the issue of if we wanted to talk about creating ancillary databases and giving Deloitte expanded powers, that's a whole other discussion that I think is derailing what we're trying to get here which I think we do have consensus on, is on how to treat GIs, how to deal with other IP, and how to clean up the TMCH which I think we're all in agreement on in the absence of having transparency with Deloitte. We do see that there are some issues. We really don't know the full extent of it and I think we should kind of move on here and go with what we agree on. And I'm sorry, on the ancillary database issue, they're permitted to do that and let's move on. I think that's where we need to kind of close this off. Thank you.

PHIL CORWIN: Jason, can I take it you're in support of putting out as a proposal the language that's on the screen now?

JASON SCHAEFFER: Yeah, I'm in support of what Rebecca has just articulated. However, one caveat is that I think Susan has expressed – and I think Rebecca's now in agreement, I'm not sure how we're getting there, whether it's an actual amendment or not, but we definitely

need to clarify and have some clear guidance. Whether it's amending the AGB or not, that's another issue. I don't know if we have consensus on that. But it's clear we have a problem and we spent many hours trying to address it, so let's work on that and let's not expand the problem.

PHIL CORWIN: We could put this proposal out for public comment and ask as an additional question whether members of the community believe we need to actually amend the guidebook language to provide absolute certainty that this interpretation is going to be followed.

So we don't have to do the entire job now. The purpose of the comment period is to get more feedback and then circle back to these issues for the final report.

Rebecca says that she's okay with amending. Greg, you have your hand up. Go ahead, please.

CLAUDIO DIGANGI: Phil, this is Claudio.

PHIL CORWIN: Oh, Claudio. Yeah, sorry. Claudio is next and then you, Greg.

CLAUDIO DIGANGI: I'll let Greg go first.

PHIL CORWIN: Alright, Greg. Claudio has deferred to you.

GREG SHATAN: A strategic deferral perhaps. I'm fine with the first two paragraphs of Rebecca's proposal. I have some problems with three. I don't think we should pick out GIs as the only thing. Maybe we should either be more general or specify more examples, but I don't want there to be an implicit idea that GIs are the next big thing.

I understand why it's being dealt with in the context of the discussion, but I think we either don't need to say it at all, or if we do, we don't want to jump the gun on any discussions of how and whether GIs would be protected. Anything could go into an ancillary database.

The other thing is that I think while by and large, Rebecca's done a great job of avoiding words that only the initiated can understand, ancillary services is probably obscure by itself, and maybe we can explain [what we mean,] private databases, databases that are privately used by registries for other types of preferences in terms of streams, or whatever, that's a terrible phrase. Don't use that. But it's not clear what ancillary services means. It's completely opaque to the reader and the rest of us are just too well educated in this world to recognize that.

Because I think the point that I want to get to on that is that the ancillary services are basically private arrangements made with this or some other database provider, and I'm in violent agreement with kind of the antitrust concerns that are implicit, if maybe not explicit in Rebecca's preparation. We don't want to favor an

incumbent. If anything, we would want to level the playing field between incumbents and potential new entrants.

I'm not sure whether we need to say that they're not subject to sunrise or notice. Maybe that's just stating the obvious, but if we get to the point that they're just private things that are used for other services and are not used for RPMs at all, not even trademark and sunrise, they're not part of the RPM system, they're just a side hustle for Deloitte. Thanks.

PHIL CORWIN: Okay. So Greg, just let me clarify, on point three, there's this phrase, "Like other things that are not trademarks." Would you prefer to see that stricken, or would you prefer to see other examples of things that aren't trademarks that might be the subject of ancillary services enlisted? I'm just trying to understand your point on that one.

GREG SHATAN: I'm agnostic. I think it would be easier to just say things that are not trademarks can't be the subject of ancillary services and leave it at that, because I think if we start putting in a list, everyone's going to want to either put in or take out things that they have feelings about, whether it's book titles or the names of saints, or god knows whatever else there could be. So I just feel like that could be a rabbit hole. So probably better off minimizing –

EN

PHIL CORWIN: Alright. Then how about in the next point, number four, [we start to have GIs and other subject matter and ancillary services?] We have to recognize that this whole discussion has been around Deloitte putting in geographic indicators and making them eligible for RPMs they weren't intended to be eligible for. Are you objecting in point four the reference to GIs, or just in –

GREG SHATAN: Yeah, I would object there as well. I would flip it and just say that sunrise and notice are only for trademarks under the existing RPMs. Something along those lines. I think Rebecca could write it better. Or I could write it better in another circumstance.

PHIL CORWIN: Alright. Jason has his hand up, and then I'm going to make a suggestion for how to bring this to closure.

CLAUDIO DIGANGI: Phil, can I get in?

PHIL CORWIN: Oh, yeah. Sure, Claudio. Jason first.

CLAUDIO DIGANGI: Yeah. And I deferred to Greg. It was somewhat strategic.

PHIL CORWIN: Oh, that's right. When I see hands up, it gets confusing.

CLAUDIO DIGANGI: I totally understand. I wanted to hear what Greg has to say and make sure I can address his concerns, and it was also helpful hearing from Jason and Rebecca earlier as well, because I think we are all basically in agreement. I think there's some confusion about maybe what I proposed because I'm trying to parse through what both Greg, Jason and Rebecca said and they each said things that are not consistent with my proposal, so I'm hoping that when they get the benefit of my clarification now, they'll feel more comfortable with it. And I wanted to just start by providing some context that, yes, we have been spending a couple calls on this, but it's not really disproportionate to the way this issue is treated generally in the real world. There's a great amount of conflict in the outside ICANN environment about geographical indications and how they are protected in different countries.

So the fact that we're not easily coming to a quick solution I don't think is surprising. And to give one example in the ICANN context, with the .wine, .vin new gTLD that came out of the 2012 round, that gTLD actually got held up, I think, for several years because of the concerns around geographical indications.

So there really is a long history around this particular issue, going back all the way to the first WIPO process, because unlike some of the other forms of intellectual property, these are source identifiers that identify particular products or goods, and they could be easily registered and they are registered as domain names in abusive ways. So it creates the interplay between the domain name system and this form of IP, is particularly distinct, different

than patents, let's say for example, or other forms of intellectual property.

So I just wanted to provide that context, Phil, just to explain why.

PHIL CORWIN: Okay, Claudio. Sure. Understood, but I need to ask you to be concise. We've got 12 minutes left.

CLAUDIO DIGANGI: Alright. I'm trying to. This is the first time I've been really able to talk [on this call.]

PHIL CORWIN: I'm going to propose a way that we don't have to make a decision today. Clearly, we're not going to.

CLAUDIO DIGANGI: Okay. Alright. That's helpful. So what I wanted to clarify is that I agree that they're not subject to the mandatory claims or sunrise notice. I'm not suggesting that they're mandatory, that Deloitte needs to set up a separate database for them. I'm not suggesting that Deloitte has a monopoly over the ancillary database process, and all I was trying to suggest was that when a registry seeks to do this voluntarily, which they are allowed to do and some registries have sought to do this, they put out statements and things along these lines because they're based in jurisdictions where geographical indications are not protected as trademarks but there's a separate register for the geographical indication.

The registry wants to protect them, and in the guidebook, there's a limited registration period before the gTLD launches for general availability when the GI can be registered. And that's completely voluntary, up to the registry to do.

So the TMCH has a process where you could create an ancillary –

PHIL CORWIN: Okay, Claudio, please bring it to conclusion.

CLAUDIO DIGANGI: Yeah, I'm getting to the end. That the TMCH can create an ancillary database and the GIs can be registered in the ancillary database, but the heart of my proposal is simply saying that because Mary said it in an earlier call that limited to one string, to one gTLD, it's gTLD-specific, and all I'm proposing is if the registry has multiple new gTLDs and they want them to all connect to that database or other registries want to connect to that one database, we shouldn't put up a barrier. And I think that's what Rebecca said in her proposal, that we shouldn't put up a barrier. Whether they're in the same database or different databases, that's not something that we should be concerned about. So I'm in large part agreeing with –

PHIL CORWIN: Yeah, I think there's agreement on that, Claudio.

CLAUDIO DIGANGI: Okay.

PHIL CORWIN: But Jason, your hand is still up. If you have a comment, make it brief, and then I'm going to propose how to proceed on this.

JASON SCHAEFFER: Thank you, Phil. I'll try to be extremely brief. I think to Greg's point, the issue of GIs I think is an important issue. I agree that there may be some better language we can do here to not single out just GIs. However, I would say that over the past number of weeks, I think we made a lot of progress. GIs are a problem, we do need to be very clear that GIs are not trademarks.

I think we have come to agreement on that. The UDRP also supports this, and I think we've got to be very clear that what Deloitte is doing needs to stop, and in the future, GIs, unless they're subject to trademark registration or national trademark rights, which is under the purview of any state or country to do that, if they're not in that category, they do not get in, they do not get claims notice, they do not get sunrise. It's inconsistent with the UDPR, it's inconsistent with trademark law, and I think somehow, we do need to make sure that we have come to agreement on that and let's make sure that it's clear and specifically delineated somewhere. Thank you.

PHIL CORWIN: Okay. Thank you, Jason. Here's what I'm going to propose, subject to comment or objection. We're very close here, it seems we have general agreement on what should be done on this issue. It needs a little more work and then I think we have something that

already has wide support, will have wider support and has excellent chance at becoming a consensus recommendation, a final report.

We've got a group that's very interested and knowledgeable on this. Forgive me if I've missed anybody. We've got Rebecca, Claudio, Jason, Susan Payne, Greg. Again, I hope I haven't missed anyone.

We could have them exchange views on the full working group list, but I'm not sure we need to. What I'm going to suggest is that the working group members who want to refine, who want to work with Professor Tushnet because we're working off her proposal to try to refine it a little bit more and come back with something final for consideration next week, let her know and copy staff and work together over the next few days, kind of an ad hoc subteam to agree on final language for this proposal and consider whether we need to have it accompanied by – and I know Susan feels strongly about this, so maybe she can take the lead. The professor said she has no objection to considering a mandatory language whether there's accompanying amendments to the current guidelines that should be proposed in tandem with this general proposal.

So that's my proposal to the working group, that the interested members of the working group contact each other, copy staff to let them know – and for the purpose of final revisions of this language that are agreeable to everybody, and certainly have to be agreeable to the professor since it's her starting point, it's her proposal, and consider whether they can agree on a mandatory language to the guidelines and come back next call – get it to us

by that deadline next Tuesday as a topic for discussion next week. I think we can probably do that and come back and have something that's final and agreeable. Is that an okay way to proceed on this? Any objections?

CLAUDIO DIGANGI: Phil?

PHIL CORWIN: Yeah, Claudio?

CLAUDIO DIGANGI: I completely agree. I think it's a great idea. I just wanted to add that I also submitted multiple proposals on this topic. I revised them and so that should be treated just as equally as Rebecca's proposal as well.

PHIL CORWIN: Yeah. Claudio, you can be part of this ad hoc team and hopefully we can get agreement on everything, and from my viewpoint as a co-chair, if there's one or two items that we can't get final agreement on, we can put that out as additional questions to the community. But I think if we can't get 100% agreement, I think we can get like 95% and work out the rest for the final report.

So let's proceed that way. We have five minutes left. We're obviously not going to be getting into the deferred questions, but can we just bring them up? Because what I want to do is just bring them up to the working group's attention. I'm going to ask staff to

put out an e-mail to everybody on the working group right after this call.

Can we get those deferred questions up? Okay, so let me just find my e-mail with the agenda so I know that I'm referring to the right questions. So the remaining deferred questions that we can revisit if the working group wants to – and again, staff reminded the co-chairs that when we last discussed these, there were no proposals put forward on these. We've got question 12 – and I've got to say, most of these questions are not proposals. They're kind of very open ended questions somewhat subjective in nature.

So we've got number 12 about operational considerations and whether single provider is desirable. Let's scroll to 13, it's going to be a very quick revisiting. 13, costs and benefits among all parties. There's an open ended, completely subjective question. That's the nature of these.

Number 14 is closed out. 15, what concerns are being raised about the database being confidential, I think our prior discussion on this, there were strong views and opposing views. I'm not sure we can ever get consensus on this. Let's go to 16.

The scope of the clearinghouse and protections mechanisms which flow from it reflect the appropriate balance. Another subjective question. I think to some extent, our discussion of both design marks and geographic indicators has really touched on this question even though it's not directly addressing the question.

And then there are some questions about education, who's the right party to educate folks out there about the RPMs and the

clearinghouse, and then we had verification questions. They're all in the agenda. We've got two minutes to go so I'm not going to read all of them.

So some of these are more specific. Here's your opportunity, working group members. Those are the deferred questions. If anyone feels strongly about any of them and wants to propose something for the working group's consideration or response to any of them, here's your opportunity. Draft something up, put it on the list by 19:00 next Tuesday, and we'll discuss it on the next call, and resolve it one way or the other, either reach agreement or not, or develop it further.

If no one has specific proposals on any of these questions, then on the next call, we're going to declare them closed out. So everybody has fair, equal and open opportunity to propose anything they want in response to any of these questions. We didn't have any proposals the last time we touched on them, but we're at a much later point in our work and people may have ideas now they didn't have then.

So it's now one minute to go. Are there any comments on that or anything else that anyone wants to bring up before we shut down the call? Obviously on the next call, we're going to be coming back on question seven and eight and wrap them up, and if there are any proposals on the deferred questions, we'll address them as well.

Anyone want to speak? Alright, I have exactly the half hour mark. I think we made good positive progress today. I think on question seven, we're close to having questions and an understanding of

how to put them out so that the community can make an informed response on those two differing proposals, and on question eight, I hope that we can come back next week and have something that has very wide support and a good chance of being a consensus recommendation after community comment and subsequent modification.

So thank you, everyone, for being on a very good call, and enjoy the rest of the week. Thank you.

CLAUDIO DIGANGI: Thanks, Phil.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines, and have a wonderful rest of your day.

[END OF TRANSCRIPTION]