ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group
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The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page http://gnso.icann.org/en/group-activities/calendar#may

Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the review of All Rights Protection Mechanisms, RPM in all gTLDs PDP Working Group call held on the 1st of June, 2016.

In the interest of time there will be no roll call as we have quite a few participants. Attendance will be taken by the Adobe Connect room so if you are only on the audio bridge, could you please let yourselves be known now?

Hearing no names, I would like to remind you all to please state your name before speaking for transcription purposes. And to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll hand it back over to Kathy Kleiman. Please begin.

Kathy Kleiman: Thank you, Terri. And hello, everyone, and welcome back after our two-week hiatus. I hope everyone who is in Orlando for the International Trademark

Association meeting has a wonderful time, and that everyone is ready to get back to work because we'll be hitting the ground running at this point.

I want to thank Mary who sent out the agenda late last night and note that we are working on getting the agenda out earlier. But until then we'll be sticking pretty close to the work plan that we adopted at the last meeting. And so you can check that and see what we'll be covering.

We have – the first thing we should talk about is whether there are any update to the statement of interest. Of course these are important materials that provide us with a reminder of who people represent and what groups they're working for so does anyone have an update to their statement of interest that they'd like to share? Okay, if you have not filed a statement of interest please do because it is a requirement of membership.

Okay I'm going to add a slight modification to our draft agenda, which you can see listed under Agenda Notes on the right hand side of the screen, and that is kind of a 1a, old business. And the first thing that we'll look at is the outreach letter, which was finalized at the last meeting, and I'd like to thank, again, the drafters who did that.

And do we all have control of our screens? Is that something? So page down you'll see on the first – in Section 1 you'll see the outreach letter that was finalized and sent out to the SOs and ACs. And this was sent out on May 28 and we're expecting responses back by late July. But I wanted to make sure that you had the final text of that.

And of course we're asking the SOs and ACs for their general views, concerns and questions about the rights protection mechanisms that we'll be reviewing as part of Phase 1, the new gTLD rights protection mechanisms. Any issues or concerns relevant to our work that we should know about. And the third question is about data gathering. And that's something we'll talk

about today which is what types of data points would you advise the working group to pursue in its data gathering effort?

So hopefully we'll get responses from the SOs and ACs both at – to this letter but also when we're in Helsinki and we're there in person and we can talk about some of this face to face. And we'll talk about that later in the meeting.

The other update I wanted to give you to old business is that the liaisons to the New gTLD Subsequent Procedures Working Group is something that we're working to finalize and we have plans as cochairs to sit down with their cochairs in a phone call and talk about liaisons and other issues of communications between the two working groups because we get the feeling we'll need to be passing a lot of information back and forth throughout the long course of duration of both working groups.

Does anyone have any comments that they'd like to make to old business? Terrific, then we will move on to new business.

Let me review the schedule very briefly, the agenda very briefly, which is that first we're going to be talking about the trademark post delegation dispute resolution mechanism, otherwise known as the PDDRP. And then we'll be talking about data gathering for the trademark clearinghouse. It sounds a little odd to be working on both items at the same time but as we've discussed in the past, the cochairs have posited that we have a parallel effort.

One is to do a deep dive into a set of rules like the post delegation dispute resolution procedure, and the other is to be gathering the data for the upcoming work ahead and that gives us enough time to really reach out to providers and others that we want to ask questions to and see if we can get that data back. So we've got a parallel effort going on and at some times that may create parallel subgroups in other things, but not quite yet.

So first we'll be looking at the trademark post-delegation dispute resolution procedure. And we have a very brief overview and then a discussion of the proposed agenda, at least, for the next few meetings of what we want to look at and see whether you agree or disagree.

Okay so the overview, the trademark post delegation dispute resolution procedure was developed to address questions, situations, where registry operators use for operation of a gTLD led to problems with trademarks either at the top level or at – on a large scale at the second level. Really a TLD developed for cybersquatting.

And this was posited as a problem and this procedure was created to address that problem. Interestingly, it's never been used and that's going not create an interesting situation for our review.

There are two other post delegation dispute resolution procedures. One is a registration restriction one that applies to community marks. And the other is the public interest commitment dispute resolution procedure. Although it says here that was adopted in 2012, it was actually adopted in 2013. It came a little later.

And we're still thinking about how to address these two resolution procedures and we'll be talking about them – these last two ones – much more towards the end of Phase 1 than now. The cochairs had posited that we should start with the trademark PDDRP because that's core to the rights protection mechanisms and it's core to trademark protection and so we wanted to set that forth as the first one we would take a look at. I'm going to pause for a second and see if anyone disagrees with that approach. Okay, trademark PDDRP first and we'll look at the other resolution procedures later on.

Okay moving to the second slide on the trademark PDDRP, here's what we're proposing for the next two weeks. The first is that we stay in a full working group, that we don't divide into subgroups yet, and that we stay

together. And that in June – on June 8, which is our next meeting, which I believe is a later meeting, that staff have a briefing for us on the origin, scope and operation of the trademark PDDRP and applicable procedural rules. We'll really walk through what's set out in Module 5 of the application guidebook.

Let me pause for a second and, Phil, go ahead.

Phil Corwin: Yes, thank you, Kathy. I just wanted to note that when the cochairs spoke yesterday to plan today's call, we discussed the other two rights protection mechanisms, the registration restriction and the public interest commitments. It's not clear to us whether that's in – within our charter. They're not strictly trademark protections though they may function similarly. But we're going to coordinate with the new subsequent procedures.

We want to make sure that one of the two working groups is reviewing them and agree with them on which is the proper one so they just don't fall through the cracks. So I just wanted to mention that in passing.

Kathy Kleiman: Appreciate it, Phil. Thanks for the addition. Anyone else have – anyone else want to make a comment at this time? Okay. So next week we'll be doing an overview of actually really a deep dive into the rules of the PDDRP and we'll also be talking about questions we might have for the providers.

Interestingly enough, the – and interestingly enough the providers, again, have not had the chance to hear a PDDRP but obviously they've thought through what they would need to do in order to staff up and hold such a procedure. So on June 15 we're proposing to invite all three providers, the provider in Asia, WIPO, and NAF, have all signed with ICANN to be providers of the PDDRP. And so we'll have questions and invite them to address us, talk about their issues and concerns.

Currently we're planning to end the PDDRP review date on August 24 but that may come earlier. And as the slide notes and as Phil noted, and I noted, then we'll look at some of the other dispute resolution procedures.

I'm moving on to the next slide, which is that for all of the RPMs that we're reviewing, all the rights protection mechanisms, that we're reviewing, we're going to start in the same place, which is to go back to the charter and see if there are any questions that were laid out for us.

And in this case there's actually strangely only one and it's the question, is there a policy-based need to address the goal of the trademark PDDRP? And it's a very good question. And it's one we – that kind of can help us kick off our discussion next week and the week after.

As staff has noted in the slide, there are also a lot of general questions out there about dispute resolution providers, about their procedures, about developing and adopting new procedures, some of which are substantive, some of which are supposed to be procedural, there were some questions on that, consulting with stakeholders, training of the community of everyone participating in the process. Those questions are kind of under miscellaneous categories and so we'll be bringing those in as appropriate as well.

One of the things I wanted to ask to this group is what questions do you have about the PDDRP? Is there anything on your mind right now as we enter into this process of thinking it through that you'd like to share that we can put on the list of comments and concerns to help shape our thinking? And I'll pause for a second.

Okay is there anyone who has any concern? Go ahead, Mary.

Mary Wong: Thanks, Kathy. I just wanted to note that there is a question from Paul Keating in the Adobe chat, and a suggestion from Petter Rindforth. And just as I was starting to speak George Kirikos raised his hand as well. Thank you.

Kathy Kleiman: So from Paul Keating, "Is the purpose of the trademark rights to determine whether they are working and improvement?" Paul, can you come online and flesh out the question a little more? Okay, Paul is writing, "Things to address control over tech – ADR process by ICANN."

Paul, look forward to more detail in what you're saying. If anyone wants to come into the queue and flesh out some of the issues that Paul is raising. They sound important, and to Mary, can you create a list of the questions under notes so that we can keep track of these and return to them. And let me ask, Phil, I assume that's an old hand.

George, go ahead.

George Kirikos: George Kirikos speaking for the transcript. Just to reiterate the comments that I made in the chat room. When we're reviewing the PDDRP should we be considering the question of whether registry operators are, you know, indirectly profiting from, you know, from not directly from trademark infringement but from defensive domain name registrations that the primary purpose of the TLD appears to be for profiting from defensive registrations? Because none of the operators are obviously stupid enough to blatantly go after, you know, support cybersquatting, but, you know, an inference can be made if, you know, the vast majority of their revenue is derived from defensive registrations of trademark holders that, you know, obviously conclusions can be made of what their real purpose is.

Kathy Kleiman: George, can I ask you a question? So kind of is this – I'm not trying to bias it but are we talking about the working group in some ways conducting a PDDRP on an individual top level domain without a PDDRP actually being initiated?

George Kirikos: Right, we know that the process has never been tested and perhaps the process – the policy itself fails to recognize that, you know, nobody is going to

be blatantly supporting cybersquatting, that it might be, you know, something that needs to be addressed, that certain circumstances might need to be considered that weren't evident when the policy was being created.

Kathy Kleiman: To the extent it's a procedural issue, absolutely, I think we should definitely consider it. I – let me ask the cochairs – the other cochairs what they think. And, again, I would like to ask someone on staff to start putting in notes the questions that are being raised and the issues we are – that are being raised so we don't miss anything in case someone's not on a future call and we want to go back to the issues raised.

Phil, or J. Scott, did you want to comment on George's comment? Okay, again…

((Crosstalk))

Phil Corwin: I'm sorry, Kathy, I was distracted by a situation in the chat room. Could we repeat the question? This is Phil for the record.

Kathy Kleiman: Sure. George, I'm going to let you summarize because you did it well. Can you come back on please?

George Kirikos: George Kirikos again speaking. Just to summarize, we know that the PDDRP has never been actually used by anybody and so the question is whether we should be considering whether the policy is broad enough to capture abusive behavior that wasn't anticipated when the policy was being created, in particular, you know, business models for TLDs that aren't blatant cybersquatting but appear to have their primary purpose in soliciting defensive demeaning registrations from trademark holders.

Phil Corwin: Yes, well, George, I think it's – speaking for myself, of course the ultimate decisions with the consensus developed within the working group, but I think when we're dealing with a mechanism that hasn't been used we want to look

at why hasn't it been used, is there a problem in its design, does it still make sense to keep it, should it be modified in any way. And of course subsequent unanticipated developments with new TLDs since the policy was put in place can be looked at. So I think everything is on the table when we're looking at something which is there but has not been utilized. That would be my view.

Kathy Kleiman: And following up that and circling back to Paul Keating's comments in the chat room, Paul, yes, I think part of our job is absolutely to determine whether these dispute resolution procedures are working for the purpose that they're created, to protect trademark rights, but also whether they're fair and balanced. And certainly whether they need improvement and to that end, I'll look up to the slide and cite some of the public comments that were made to ICANN in 2015.

So one comment speculates that the procedures haven't been used because there are significant burdens to those who would bring them including a burden of proof, cost and remedies offered. So we should be looking at all of this. Someone is not on mute, is there someone who wanted to speak?

Paul Keating: No, it was me, Kathy. Sorry, I joined late.

Kathy Kleiman: Who's this?

Paul Keating: This is Paul Keating.

Kathy Kleiman: Paul, let me le you speak for yourself. Go ahead, please.

Paul Keating: Hi, how are you? I'm trying to figure out how to mute my laptop which is now running so I apologize to everybody, if that doesn't work. Okay so I have a couple questions. One is, if our purpose, as Phil has described, is open ended, then we're basically doing an examination of the UDRP, why should we start at the beginning as discussed?

Why don't we just – why don't we start with reviewing the actual UDRP and seeing if that accomplishes the actual goal if it's fit for purpose in today's world, and then as a result of that conversation then branch out to how do we – how do we address the various concerns that are raised because the concern that I have – given Phil's comment that this is an open ended conversation, if we are going – if we're going to investigate the trademark clearinghouse, etcetera, they were all created based upon the structure of the UDRP as it existed.

If our job is to review the UDRP and determine whether it's fit for purpose now and if not how do we change it then I think we should start there instead of starting further down the road.

Kathy Kleiman: It's interesting, during – and I'll respond and then of course I'll let Phil – I'm not sure J. Scott has been able to join the call. Paul, you raise an issue that, frankly, some people raised very strongly during the comment period on the issues report, which is that the UDRP is the trunk of the tree and everything else is its branches. And that we should look at the trunk or the foundation of the house before we look at the upper stories or the branches itself.

The response, and again I'll let others respond as well, the response was that in order to go forward with round 2, frankly, of new gTLDs, we would need to go through – we would need to have the review of the rights protection mechanisms created for new gTLDs done. And the UDRP review may take a long time.

And people didn't want to delay. The sense was – the sense was – the sense of the majority perhaps, I don't want to say consensus because obviously that was split, but the sense of the majority was that we should go forward with the review of what was more bounded, maybe a little bit more clear, certainly faster and that was new gTLDs and then go on to what may be a multiyear review of the UDRP.

Paul Keating: So okay but the – I have two questions, and I'm sorry, Kathy, is the majority of what, okay, are you referring to? And, does that decision mean that we're stuck with the trunk of the tree however it is?

((Crosstalk))

Kathy Kleiman: …the trunk of the tree later. Let me ask Phil and Mary…

Paul Keating: It's very difficult – it's very difficult to rebuild branches and then deal with the trunk of the tree, right? You're predetermining what the trunk is going to look like because then when you review the trunk of the tree using your analogy you're going to have to make the trunk fit the branches or discard the branches that you've already spent time creating.

I'm not trying to be a revolutionary here. I think the foundation of the UDRP is sound, okay? But it allows us to – if we examine the UDRP it allows us to deal with the conceptual philosophical issues such as due process, timing, control over the ADR providers, things like that, and then that will lead to control over the branches by ICANN instead of this nebulous house of cards that we have that exists now, which procedurally is difficult to deal with.

I give you one example, and I know you were involved in the original of this, and it's not a criticism, it's just that the UDRP was originally drafted with a very US-concentric viewpoint of the world, all right? The whole process of post-UDRP litigation, right, is very difficult to live with as a practitioner because there are very few jurisdictions in the world that will even recognize a post-UDRP claim of action, okay, cause of action.

Kathy Kleiman: Yes.

Paul Keating: So you're stuck in this – I have to file in the proper jurisdiction, that's been agreed to by the complainant but they don't recognize a cause of action, and that's my only recourse to stop the immediate transfer of the domain name.

Oh if I can't do that then what do I do? I've got $20,000 worth of expenditures and a TRO in the US, maybe, right?

Kathy Kleiman: Right.

Paul Keating: So my question is not – I'm not interested at all with throwing out the baby with the bathwater, okay? I like the UDRP. I think it's a good system. I think it needs some tweaks but I think that in order to understand where the branches are going to be built or reconstructed we need to understand and come back to the philosophy of the UDRP and what it is and what it isn't, okay? We need to deal with things like is the first element just a standing element that a worm could cross? Or is it more important? Okay? Is the – are the procedures this or the procedures that?

I mean, we've got WIPO doesn't, you know, if you're deadline falls on a Sunday and it's a WIPO action you've got to file on Sunday. If it's an NAF you've got to file Monday. I mean, this is, from a practitioner standpoint, this is ridiculous. It needs to be solidified and for that we need control. And how do we gain control? These sort of things, I think, should be addressed before we start building branches off of this thing. All right?

I'm not suggesting that we change the whole concept of this. I'm not suggesting a (unintelligible) approach to changing the UDRP. I'm just saying, let's go back, let's visit the foundation, let's see if it's sound. Does it need some changes here or there? We change the foundation a little bit. And we say, okay, now how does that change the projection for the tree? Because otherwise we're dealing with a discussion six months from now about oh now we have to change the branch of the tree because the trunk is bad.

Oh no, then that's going to put pressure on people to not change the trunk. And we need to have a solid foundation of some – the foundation is important, more important than anything, right? So from there I'll go offline and I'll go on mute and listen. Thank you.

Kathy Kleiman: Terrific. Paul, thank you, and thank you for laying it out so clearly so that people understand the issue which is that right now, Phase 1 is the evaluation, not just for the next six months, probably for the next 18 months, the evaluation to the new rights protection mechanisms.

And Phase 2 is dedicated to – which we haven't even mapped out yet except approximately when we're starting – Phase 2 is dedicated to the evaluation of the Uniform Dispute Resolution Policy, although, the new rights protection mechanisms of Phase 1 are by far the newer mechanisms and the UDRP is, by far, at 15 years, is by far the older of the consensus procedures. In fact, it is the oldest consensus procedure in ICANN.

So let me do this way. This is an issue that was discussed at length both during the issues report and afterwards, so let me ask Phil to comment. I'd like to ask Mary to comment and J. Scott to the extent, I'm glad you're with us and glad you got through the train safely and sorry to hear about the fatality in California, and to the extent that you can join us. Let's do that and then let's circle back to a larger discussion of whether this is something we should be putting on the table to rethink at this point.

But I'd like to know, again, people's thoughts, the cochairs' thoughts and senior staff's thoughts on why this was the order adopted and to what extent they feel we're bound by it. Thanks. Phil, go ahead.

Phil Corwin: Yes, Phil here. Yes, Paul, while respecting your view, this issue was considered in Council before the charter for this working group was finalized and the decision was made for multiple reasons, now I don't want to get into all of them because we have, you know, an agenda for this meeting, but a clear decision was made to – and our charter requires us to first address the new TLD RPMs and then to turn to the UDRP at the end of that process.

Now when that second phase, if at any point we want to reconsider anything – any decision we made in the first phase particularly on the URS, which is a supplement other UDRP and most directly related to it, we can do that. But we have no latitude under the charter to reverse order. We would have to collectively decide to request the Council to completely change the charter and give them a rationale for doing so.

I can tell you within charter there was some support for the notion of proceeding first with the UDRP within the Non Commercial Users Constituency and their members of Council. And I was on a subgroup with some of them that considered that and the only way to do that in a procedurally correct way would have been to not just consider putting it first but since there have been comments on the final report on rights protections, to not have any review of the UDRP, which came from WIPO and the International Trademark Association, the option of not reviewing UDRP at all would also have had to be considered in a Council re-visitation of the charter.

And the NCUC members decided in the – in light of that not to make a motion to proceed with the UDRP first. So I understand it. I think some of the issues brought up illustrate one reason why the decision was made is that as complex as our task is going to be in Phase 1 it's going to be more complex in dealing with the UDRP and – but again, under the charter we can't decide as a working group to switch gears and change order. Now we would have to go to Council and get the charter – the reversal approved by Council to take that course.

Paul Keating: Well, Phil, this is Paul Keating again, and sorry to jump in ahead of the queue, Kathy.

Phil Corwin: Yes.

Paul Keating: But in response to your comments, is it not possible then to deal with any second, you know, the second coming of extensions that we're facing now, is

it not possible then to essentially start again, basically grow another tree. So we look at the UDRP, we take what we want and we say, okay, here's our proposal, we have the – we conceptually as a group we build the UDRP and the way we want taking, again, I'm not advocating changing, you know, 98% of the UDRP, okay. Some things I would like to see changed.

But so we talk about building a new tree and we say, okay, with the assumption that this is – the UDRP – the dispute mechanism that we're going to use for this second, third generation of extensions now counting the original as the first one, so this is the – this is now. And now we're going to rebuild the UDRP from the ground up taking 98% of what we had already and we're going to build up and now does this all make sense this solution? And if this makes sense we're going to transplant it and graft it onto the old system.

So that everything now is adopted to a consensus, you know, consistent system so we don't have two systems, we have one. But the idea is that when we're talking about things like rights mechanisms on registration, on issuance, etcetera, we're talking about it from the same roots that we can all agree on as a group because otherwise, what I envision is a lot of people being resistant to certain things that are going to be proposed because they don't understand what the roots are going to look like of this process and therefore they cannot project what the branch is going to look like using Kathy's example, okay?

So for me I think there's enough room in what you said. What you said is our – this is our task is first to deal with the yet to come extension release, fine, now let's build it and we build it from the ground up and we take – this is not a new construction, it's a remodel. I'm going to take…

((Crosstalk))

Phil Corwin: Paul, can I just interject? I don't think we're building anything from the ground up. I think we're looking at everything we have and discussing when there

should be modifications of what exists. We're not talking about reinventing the wheel; we're talking about whether we should put on a – change the wheel from an 18 inch to a 19 inch or change the type of tire. I mean, we're talking about modifications in my mind.

The only new TLD, RPM that's directly related to the UDRP is URS. It's a narrow exception. We can look at that. In the second round we might decide that the UDRP should have a expedited mechanism and decide then to eliminate the URS and have some kind of fast track UDRP. That's within the realm of possibility.

But I don't – in either case I don't see us starting from ground zero and totally reconstructing things. We're analyzing what we have and discussing whether any of it should be modified. But again, I have to say while this discussion is interesting, we have no latitude as a working group to change the order and do UDRP first without a modification of our charter from the Council. We exist only as a matter of that charter and we have no discretion under the charter to make that change.

((Crosstalk))

Paul Keating: I'm not suggesting that we – I'm not suggesting that we change it but as I understood your description of our first obligation which was to address the concept of prior rights in the context of a new release of a new gTLD. Right?

((Crosstalk))

Paul Keating: That's the first thing that we have to deal with. So can we not deal with – what I'm hearing – you're not comfortable saying okay, before – so as a logical part of that we're going to grow the whole thing on the bottom of it. So you've told us that we need to build the branches but before we build the branches we're going to build the tree, we're going to build the tree and then we're going to build the branches. Stealing again from Kathy. Right?

Kathy Kleiman: Gentleman, I'm just going to – this is Kathy. I'm going to read in some of what…

((Crosstalk))

Phil Corwin: I'm going to step back. I think I've said everything I have to say.

Paul Keating: Phil, if I'm way – Phil, Phil, you and I know each other for years.

Phil Corwin: Yes.

Paul Keating: If I'm out of line tell me I'm out of line and I'll shut up.

((Crosstalk))

Phil Corwin: …bring up the suggestion, Paul, but I'm just saying we have no discretion under this charter.

Paul Keating: Okay but then…

Phil Corwin: …to delve into the UDRP first.

Paul Keating: Okay. As a group then I would request strongly that the chairman, chair-people, be very open and not allow the – not – it's – questions are going to arise about the foundational issues when we discuss things about the rights that are built and presumed to exist on top of it, okay? So what I don't want to happen, and what I'm very afraid of will happen is that we're going to build this branch and the branch is going to be so big that we're going to need a huge trunk to support it and the UDRP is not going to be big enough so we're going to have to add more rights to the trademark holders on the bottom.

That's what I'm absolutely afraid of, okay? And then after we've built this big branch out there then when practitioners come in for the respondent side of life and say, wait a minute, we need to build in these protections for respondents, I'm going to get a bunch of resistance because we're – I'm going to hear, oh Paul, for God sakes, we've already built the branch, bloody hell, we're not going to change the branch just to fit your trunk. No, I don't want to hear that.

If we're going to your way that's fine but I got – we got wide latitude to build the trunk again. I don't want to hear…

((Crosstalk))

Phil Corwin: Paul, it's not my way. Paul, it's not my way, it's the dictate of the charter adopted by GNSO Council.

Paul Keating: I understand that but…

((Crosstalk))

Phil Corwin: Can I, you know, I don't entirely agree that this is – UDRP is the tree and everything is a branch of it. I mean, I don't see any…

Paul Keating: Well, I think it's a good analogy.

Phil Corwin: I view the – for example, the trademark clearinghouse and the things that are associated with that as a separate tree which may have some relationship tangential to UDRP but they're not in any directly related. But can I – can I suggest that we take this discussion to the working group email list and try to get back on track for this call?

Paul Keating: Okay. And I apologize to the group for taking us off tangent.

Phil Corwin: Thank you.

Paul Keating: Taking us off on this tangent.

Kathy Kleiman: No, I think it's – this is Kathy and I think it's an important discussion. I'd like to ask that staff reflect it under notes and questions that an issue – a question has been raised about no latitude under our charter to reverse the order of the evaluation.

                 And that a request is on the table from Paul Keating that we be very open to the foundational issues as we go through the new gTLD RPMs, that there may be foundational issues in the UDRP that we should – and here I'm adding words to what Paul said, that we should add or flag or keep track of to make sure that we evaluate foundational issues that arise as we're looking at new gTLD mechanisms when we're looking at the UDRP.

                 So one proposal – and I throw this out to the group for consideration in hope that others will come up as well on the list is to have a running list and keep track of these foundational issues as they arise and make – and use that as we're starting our UDRP review and maybe keep things open as we're going back and forth. That's one idea. Let me throw that out.

                 So one of the questions for the email is in addition to the order question, what we can do to address issues that may be coming up for Phase 2 and Phase 1. Let me ask J. Scott, Mary, others are talking actively Denise Michel, are writing actively in the chat room. Would you like to come into the call? I could read everything but a lot has passed. Would anyone like to come into the call and summarize the issues that are being raised in the chat room? Mary, do you want to – would you like to summarize?

Mary Wong: Kathy, this is Mary. Just really quickly there's just some discussion in the chat about how the approach should be done and some disagreement over the

UDRP versus the other RPMs and what is and is not foundational, if I may summarize very roughly.

Just a note to everyone that this chat history is preserved so we can always go back to this. And, Kathy, as you've requested, we have tried to capture some of this in the notes on the right hand side as well. Thank you.

Kathy Kleiman: Thank you very much, Mary. J. Scott, glad you're on. Please go ahead. J. Scott? We are not getting you if you're off mute. J. Scott, your mic is not enabled as Terri is writing to you. Is there anyone else that would like to speak before – while we're waiting for J. Scott to come on?

Okay, J. Scott, whenever you can come on. In the meantime, let me read that you don't agree that the UDRP is the trunk of a tree and that our charter asks us to review the existing rights protection mechanisms and evaluate how they work, if they work and if they need to be revised to make them function to fulfill the purpose for which they were designed.

And that you don't view the UDRP as a trunk of a tree or the basis for all of the rights protection mechanisms, you see the UDRP as one of several rights protection mechanisms used at different times for a different purpose. So it sounds like we're going to have a very interesting discussion online and let's take that offline per Phil's suggestion and continue it there.

But I think this was a good discussion, an important one because it brings people up to speed on a discussion that had been taking place during the issues report and the chartering process. And why we're doing the order that we're doing.

Okay, J. Scott's hand seems to have gone down. Does anyone else have anything that they'd like to add before we leave Section 2, before we leave the discussion of the trademark PDDRP? Terrific. Let's go on to something easier. No, not really.

Reviewing the trademark clearinghouse, in this case the broad overview is that we're not at the trademark clearinghouse yet. We'll be doing that in detail after the PDDRP so probably starting in September. But per our two-phased approach now is a great time to start with the data gathering. And there is – we speculate, a good amount of data to be gathered, that there are questions that people have about the trademark clearinghouse provider, about the database, about this new process that was created.

So here is the cochairs' proposed approach. It's posted on the slide. This is something that we were developing and put this together yesterday, which in this case that we should have subteams. For the PDDRP we're staying kind of as one unit because we don't think there's enough work to go off into subteams. For the trademark clearinghouse we do think there's enough work to go off subteams, but we ask for your thoughts as well. To come up with thoughts on data gathering and identifying sources of data and information that are already out there.

Before, you know, we should be putting together questions about the trademark clearinghouse, questions that we have but how many of them are answered in existing information? That's a question we can't answer right now but we really should. And there is – there are some sources of information from data and feedback and a 2015 RPM staff paper.

There have been different presentations by trademark independent review groups that are looking at the trademark clearinghouse and asking a lot of questions. Their final report is not out but they've been, you know, holding discussions and presentations so there is material in those.

And so we're suggesting creating a subteam of 1-15 people, that would help us gather the data out there even as we're trying to get the big picture and detailed questions of what additional data we might need. So I wanted to see if people agree with that approach and if anyone would like to volunteer for

this subteam to go out and again look for existing materials that give us information and understanding of the trademark clearinghouse.

No hands raised. I will take that as – oh good, Scott, go ahead.

Scott Austin: Thank you, Kathy. Can you hear me?

Kathy Kleiman: Absolutely.

Scott Austin: Hello?

Kathy Kleiman: Hello, I can hear you.

Scott Austin: Yes, I just – I would like to volunteer to be on this and I don't know if the scope would include certain things that happened based on the protocols and the policies. And I apologize for my voice, I'm getting over a summer cold. There are some things that have occurred because of the arrangement of the trademark clearinghouse being that it does not create a block, it creates a notice protocol. And there's been instances where it appears that bidding has gone on or that certain domain names have been reserved under that particular scenario it seems.

And I don't know if that would be within that realm of the review of the TMCH, that is offshoots or things that have occurred because the process does not create an absolute block for those names that are registered with the TMCH but instead creates this notice protocol with sunrise and so forth.

So my question is, one, would those kinds of wars or bidding wars or premium names that are reserved and things like that, be included in a review of the TMCH in terms of effects of the TMCH? But regardless I'm still interested in serving on that committee – on this subteam.

Kathy Kleiman: Scott, thank you and I hope you get over your cold quickly. My initial thought is that you're talking about something that verges on issues we'll be looking at under the sunrise period but clearly everything is overlapping and we should be collecting concerns and issues as they arise. So let me ask others as well, but clearly what you're talking about is something we should be evaluating under which category I'm not exactly sure, the trademark clearinghouse itself or the sunrise period or the trademark notice. But it's clearly an important issue. And if we could add that to the notes and questions so that we can keep track of that as to where would be the appropriate place to – this is something we should be thinking about kind of what kind of lines do we want to create just to help with the data gathering and evaluation.

Catherine, let me let you speak. Thank you.

Catherine Douglas: I was just going to ask – say please add my name to the list but it looks like it's already added so thank you for your efficiency.

Kathy Kleiman: Terrific. Thank you. Any other comments?

Mike Rodenbaugh: Hey, Kathy, it's Mike Rodenbaugh.

Kathy Kleiman: Sure. Hi, Mike.

Mike Rodenbaugh: I'm not on the chat room today. It might be helpful to understand from staff where they are – where the consultants are with the independent review of the clearinghouse that's been ongoing for a few months now. I understand those people probably will have collected a lot of data also and I wouldn't want to see people in our group wasting their time duplicating efforts.

Kathy Kleiman: Well while Mary is coming on I'll just add that it looks like per staff work on the slide it looks like we can expect their report not until late summer 2016 so in some ways it's good the way that we put in that we're not encountering it until

later. We may be able to get some materials from them earlier hopefully. But let me see if Mary has anything to add. Mary, anything on the Analysis Group up in Boston?

Mary Wong: Hi, Kathy. Hi, Mike. Thanks for the question. This is Mary from staff. I don't have any further updates at the moment but just wanted to reiterate that the policy staff supporting this PDP as well as the GDD staff who are working on various parallel efforts including the TMCH independent review and the consumer trust and competition review team, do have regular calls. And I will bring it up with them as to whether or not there's any more specific or updated information that can be shared with this group.

I will also note that some of my GDD colleagues have joined our group as observers and some of them do listen in on our calls. So if there are any further questions I can certainly transmit those with their aid and get back to you as soon as possible. Thanks.

Kathy Kleiman: But, Mike, you raised a very good point, the less duplication of effort, the better and the more we can use other people's materials, other data that's already been gathered the better. Are you volunteering for the subteam, Mike? If so I don't see your name on there. Would anyone else like to volunteer for the subteam? And of course we'll put that out to the group as well and the many people from our working group that are not currently on the call to see who else would like to volunteer.

Quick note that all of the cochairs are kind of ex officio members of every subgroup so you may see us chiming in from time to time. And staff will set up a list – a special list for the subteam. And we'll be talking next week as well about data that we'll be interested in gathering.

So let's – so the next slide talks about questions from the trademark clearinghouse that are in the charter. And I think we'll find that there are actually other questions on the trademark clearinghouse that are – that seem

to be buried in trademark claim, sunrise period and more general questions so we'll be getting you a longer list.

But you've got the list of questions up that come in from the charter, that come in from the comments that were submitted. And so I'll ask – while Phil is talking I'll ask people to consider what additional questions you'd like the subteam to think about now and of course we'll be asking this question again and again over time. What additional questions about the trademark clearinghouse should we be thinking about in terms of data gathering. Go ahead, Phil.

Phil Corwin: Thank you, Kathy. Phil for the record. Just to elaborate on a couple of things, in terms of the basic data gathering, we want this subgroup to go out to the people running the clearinghouse, to GDD staff and any other potential source to know total number of – we want to know the basic data, how many marks were registered, where did the trademarks originate, how many people took advantage of the trademark plus 50, how many folks did the – have done the extended registration with the clearinghouse, which gives them notice of identical matches being registered even past the sunrise and claims generating period.

So all the basic data, so far as the study goes, we're going to have to wait until that study comes out late summer to see if it provides any useful data. And then on the question of the pricing of premium names, which have been registered in the clearinghouse, we're going to be – we're going to need to liaise on – and I noted Jeff Neuman's comment, with the subsequent procedures, I'm not sure that that's a right protection mechanism issue so much as one in Subsequent Procedures to decide whether there should be restrictions on such pricing ability.

But they're obviously connected. We're going to have to work out through the liaisons and through cochair to cochair discussions which working group has responsibility for which pieces of related issues and we haven't come to that

decision yet. So I hope that's helpful and just in explaining the initial task before the subgroup that's going to be gathering basic data on the clearinghouse. Thanks.

Kathy Kleiman: And, again, we'll be putting it out to the whole working group what kind of questions they have regarding data gathering for the trademark clearinghouse. And sending those on to you to see whether we can gather them. Another thing that might be of interest to the subteam is what the contracts are with the trademark clearinghouse providers. We're not quite sure what the limits are in terms of the data that we can gather and at some point we may be coming up against some of those so it would probably help to know them.

Let's see, are there any other comments on the trademark clearinghouse? Thank you to all who have volunteered. Let me read – Jeff Neuman has said one of the connections is that certain registries obtain the list of trademark clearinghouse marks and use that as a basis to determine which names should be premium. So that should be accessible; that does impact sunrise processes, the protection of data within the clearinghouse. Agreed, Jeff, agreed, that's an important insight. Thank you.

Okay moving on we've got about six more minutes, and we are – we have up some draft plans for Helsinki, which will be a face to face meeting but we'll also have remote participation. We're holding two meetings. This is part of the experiment of this new four-day ICANN meeting that is dedicated to policy development. There's a meeting – and most of the working groups are working this way as I understand it, they're having afternoon meeting that's designed specifically for cross community open dialogue. Our meeting will be Wednesday afternoon from 3:15 to 4:45.

And this is really designed to present what we're doing to the larger community. Of course they will have received our outreach letter. But it always helps to present it face to face. And so we'll be presenting the order

that we're working in, we'll be presenting the issues that we're working in particular in Phase 1.

And we'll be going through – we propose, and we ask if you have any disagreements or additions, and we'll be talking about this, again, before Helsinki. But we propose that we start and talk about the trademark clearinghouse, community feedback on what's working, what isn't. And also community feedback on what data people want, what, you know, a lot of people have a lot of questions, as we've already seen, what data can be gathered and of course the subteams, this will feed into the subteam work.

Similarly, with sunrise and trademark claims, we're looking for feedback from the community as well as input into data gathering and the same with the URS. That should keep us quite busy for an hour and a half. On Thursday morning at 8:00 am we then have a second working group meeting. And this is really a traditional working group meeting.

And so we'll take the input from the afternoon before and we'll have remote participation so that people can hopefully join us, may be in the middle of the night unfortunately their time. But join us if they want to participate. It will be a regular working group meeting but it will be open to everyone. It will be open to observers of this working group, it will also be open to anyone who chooses to join us. And so we'll see people coming up to the microphone and providing input to the meeting as it goes along.

Although in general, this is a pretty traditional working group meeting as we develop more material, but through the transparency of ICANN it lets people see how we work and what we do on these phone calls. But we'll be doing it in person.

So let me pause a second and see if anyone has any initial thoughts on these proposed plans for Helsinki. We'll be sending more details around. And of course the meeting will be recorded and transcribed.

And that was the note I wanted to make in closing, I'm going to ask staff to let us know to confirm the time of our next meeting in just a second. But in closing, I wanted to let you know that our sessions are all recorded and transcribed and the slides and materials are posted and we will send around, again, the link to the wiki. The wiki is really your guide to all the materials that you'll need in this group.

And we'll send around a link but it has the minutes of the meetings, it has transcripts, which I find very valuable, it has our charter, it has the questions in the charter, it has other background documents. It has any – it has our outreach letters. It has any mailing list material you might have missed. You should have gotten it but if something is deleted and you want to find our mailing list archives it's all there.

And we'll send around that link again so you can have it. I find it very useful. And if you have any trouble accessing it please let one of the cochairs know or staff know. And we'll work with you on that. But it is the base of all or our materials and drafts, everything gets put in there.

Mary, can you tell us about – can you confirm with us about the next meeting?

Mary Wong: I can indeed, Kathy. Thanks very much. And thanks to everyone with the volunteering and the questions. Hopefully we've captured all of that in the notes on the slide. But in terms of the next meeting, which would be next week on the 8th of June, this would be the first of the rotating meetings and so it will be scheduled for 2100 UTC I believe.

Kathy Kleiman: Great, thank you, Mary. Go ahead.

Phil Corwin: Phil here. Yes, on the time, the cochairs just became aware this morning that the Registry Stakeholder Group has a twice a month call at 1600 UTC on

Wednesday the same time as this call. We had not previously been advised by any Registry members of this working group of that call. So that's why we don't have some Registry Stakeholder Group members of this working group on the call today.

So we just became aware of that. The call next week is scheduled at 2100 which means that in two weeks again, if the Registries are having that call we'd be in conflict again. So I think we'd like some feedback from the working group as to whether we should do that rotation next week or postpone it until the 15th so we don't have a conflict. Doing that would still leave us with a once a month conflict.

The alternatives are not great. Moving the call up an hour would put it at 8:00 am Pacific time which would be not good for California or – and West Coast participants, most of them would be commuting at that time including one of our cochairs. Moving it an hour later would make it even more disadvantageous for Asia Pacific members.

So again we just became aware of that today. We're wrestling with how to address it and it's something that we can continue a discussion of on the working group mailing list and – but we're going to have to – I think we're pretty much committed to Wednesday calls so we're going to have to deal with that situation as best we can. Thanks.

Kathy Kleiman: Thank you, Phil. So, again, 2100 UTC, our rotational call for next week so we'll see everybody a little later or a little earlier depending on your time z one. Does anybody have any comments before we leave? Thank you so much for the discussion today. Appreciate it and now again, as I discussed at the beginning, we now begin our deep dive into some of the rights protection mechanisms that we'll be looking at and so thank you very much. No further comments? Thank you and enjoy the rest of your day. Take care, everybody. Bye-bye.

Paul Keating: Thank you, Kathy.

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

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