

**ICANN  
Transcription  
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working  
Group call  
Wednesday, 05 October 2016 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. The audio is also available at: <http://audio.icann.org/gnso/gnso-rpm-review-05oct16-en.mp3>

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Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms RPM and all gTLD PDP Working Group call held on the 5th of October 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 were only on the audio bridge, could you please let yourselves be known now?

Darcy Southwell: This is Darcy Southwell. I'm only on the audio.

Terri Agnew: Thank you Darcy. Hearing no further names, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I'll turn it back over to our chair today - Phil Corwin. Please begin.

Phil Corwin: Yes thank you very much Terri and welcome all our working group participants. And let me first ask as always, does anyone have to update their statement of interest?

Okay, hearing none and seeing no indications, if staff could put up the questions we're reviewing regarding the Trademark Clearinghouse sunrise and claims, our aim is to finalize which questions the working group agrees to review, which need to be synthesized or combined with others, and which should be put off or consigned to eternal purgatory and not considered.

And let me remind you what we're trying to get a lot done today. We will not be meeting next week on the 12th. Our next meeting after this will be the 19th. And I think we may not - staff could you just put in the chat whether or not we're meeting on the 26th? That's immediately before many people are departing for Hyderabad.

But let's get to the questions. All right, and okay, yes staff indicate - yes, so we have this meeting, then one more meeting in October on the 19th and then - although I guess we could schedule one on the 26th if there's a need to do so, particularly to organize ourselves for Hyderabad. It's not on the schedule now.

And then we'll be meeting in Hyderabad in less than just about a month from now. Also could staff remind me what progress if any we made on these questions at the last meeting? Did we agree on anything final or should we just proceed de novo on these? I don't recall any decisions being made. Mary or (David) any guidance for us on that?

All right well I'm going to start. Let's see what progress we can make, say let's start with Trademark Clearinghouse. Let's review - all right please keep your phones on mute. Just got an echo there. We're going to - we've got 11 charter questions, 6 community questions from the Helsinki meeting. That's 17 questions.

Let's try to at least knock those off and decide which should be - which must be reviewed, which should be combined, and which are secondary and should be put off or consigned to the circular file.

First question, do we need further guidance on the verification guidelines for different categories of marks? Let me do this. Let's go through the charter questions and then I'll open it up to anyone who wants to speak to any of these questions and then we'll go on to the community questions - same procedure.

So first question, further guidance on verification. If anyone thinks that they're too stiff or need to be strengthened, we'll get to that in the Q&A discussion.

Is the TMHCH protection too broad? All right, well that's a basic question. Third question, should Trademark Plus 50 be reversed, that is I guess done away with?

Are legitimate non-commercial, commercial and individual registrants losing legitimate opportunities to register domain names and new gTLDs?

Five, how should the clearinghouse scope be limited to apply only to categories of goods and services in which the generic term in a trademark are protected? I'm going to comment there at least in terms of the - if you got the mark, you can register for sunrise. And if you've registered the mark, everyone who tries to register an exact match is going to get a claims notice.

I guess the question will be whether it should only be for categories in goods and service, but that's revealed in the claims notice, what marks it - what goods and services the mark is registered for.

Okay, should the matching rules be expanded to include portals, etcetera? Should there be additional or different recourse mechanism to challenge rejected trademarks? So that's one that relates to verification guidelines I think.

It's about getting into the clearinghouse. So let me stop there and suggest that one in seven are candidates for combinations around the general question of what do you have to verify to get registered in the clearinghouse?

How quickly can a cancelled trademark be removed from the clearinghouse? I think that's another one relating to verification and presence in the clearinghouse.

Nine, how can the clearinghouse services be more transparent in terms of what is offered pursuant to ICANN contracts and policies versus what is offered to private and new gTLD registries pursuant to private contracts? I'm not sure I understand that question in terms of what the clearinghouse is provided. Maybe someone can shed light on that.

Number ten, should there be a review on accessibility to Trademark Clearinghouse for individuals, private trademark holders and trademark agents in developing countries? I'm not sure what the accessibility issue is, if there is one. Let's keep that open for discussion.

Can the clearinghouse provide education services not only for trademark owners but for registrants and potential registrants equally impacted? My impression is that all the Trademark Clearinghouse, at least the seminars, are open to everybody.

So let me stop there. I have opined that one, seven, and eight kind of deal with the same question about getting into the Trademark Clearinghouse and the standards for doing so.

Number two, I guess two and four could be combined because if the clearinghouse is too broad, it might be affecting the issues raised in number four.

And number six also is on the flip side of that. It's proposing that the protection be expanded. And that in turn relates to Trademark Plus 50, which is the existing ICANN approved program that lets something other than the exact match of the mark be registered. In that case, variations that have been won in UDRPs or in the trademark infringement litigation.

More transparent - again I don't understand that question number nine. And I'm not sure what the problem is in ten. So let's stop there and I invite the opportunity to combine questions and narrow the field. So I'd appreciate some feedback here. Anyone want to weigh in? Please indicate so by raising your hand. And Mr. Evans, our co-chair, thank you J. Scott. Go ahead.

J. Scott Evans: Yes and I'm not speaking as a co-chair here. I'm speaking as a member of the committee and a person who helped draft, just as a member of the IRT. I'm not even sure how an accessibility issue is an RPM issue. I think that there's something that would be more for the Subsequent Procedures Working Group.

I mean, I thought what we were supposed to be is looking at what the RPMs themselves do. Now I understand that there is some issues with regards to the cost involved that maybe we want to look in, but on accessibility issues in third world countries and things like that, I don't think it's really for this RPM working group.

I would say that's really more for Subsequent Procedures because that's really sort of the administration of it on an administrative level, not a substantive level that affects rights protection mechanisms. That's just my two cents.

Phil Corwin: Okay. Well thank you J. Scott. I see Mary's hand up, so I'm going to quickly call on her and then get back to the queue. Mary, go ahead.

Mary Wong: Thanks Phil. Hi everyone. This is Mary. So not really weighing in on any of these questions but just to note that Phil your question (unintelligible) is something that we would need to do because that is what is part of (unintelligible), that we look at these questions, edit them, refine them, delete some, add to them.

And so in that respect, in some of these questions it's a bit opaque. The explanation for that is that these have not been edited at all. They were simply collected and collated from various periods of feedback that ICANN conducted, including from the issue report as well as the RPM review and a number of other recent exercises.

Phil Corwin: Yes thank you Mary. And I'm going to suggest that to the extent we get through this list today, that since we've got a two-week break before the next meeting, that the co-chairs work with staff looking toward combine related questions on this list and recommend if any questions should be deferred or recommended for deletion and come back with that to look at on the meeting on the 19th. That's my suggestion here. Beth Allegretti, please speak up.

Beth Allegretti: Hi, I have a question about number five. And I don't know if anybody can really clarify this. I'm just not sure what that means, limiting to only the categories of goods and services covered by the trademark. So I'm just wondering if anybody remembers why we put that question in and sort of how it would work.

So if I have a trademark registration in the clearinghouse that covers classes 9 and 41 and somebody wanted to register a matching mark for something - or use it for something pertaining to clothing, is that the kind of thing that we'd be looking at here? I just wasn't sure how that would work. Does anybody know?

Phil Corwin: Thank you Beth. You know, these questions are here because they were submitted when we had a previous staff report on the RPM review. That was a predicate to the establishment of this working group.

My own opinion - there's two things as we know that flow from registration in the clearinghouse. One is the right to do sunrise registrations. And one would assume that a mark registered for a particular class of goods and services, that the rights holder would have an interest in a sunrise registration in two instances - one in a general purpose TLD or two, in a vertical where the label on the - to the right of the dot matches in some way their goods and services.

But we don't limit where they can do sunrise registrations. We leave that to the trademark owner.

For the claims notice, my recollection is that when a claims notice is triggered, it identifies the goods and services for which the mark has been registered to give the potential registrant some guidance as to whether their intended purpose might be infringing.

So I'm not sure what we could do beyond that. But I'll stop there and Caroline Chicoine is next in the queue. Caroline?

Caroline Chicoine: Yes I just was going to go back to ten and, I don't know, Mary maybe knows better the intent behind this one. But to me it kind of gets to my issue and my little pet peeve about how for trademark owners who maybe one or two (off marks), you know, the only way to really enter to the Trademark Clearinghouse then is to go through a third party vendor because they

typically don't either have the resources or say even knowledge or sophistication to, you know, put in the names themselves.

And so for me that's what that issue for me would get towards in terms of accessibility to being able to use the service in the first place, given that they have to deposit things that in some respects is kind of a barrier to some trademark owners who don't necessarily have, you know, a portfolio of 100 marks.

Phil Corwin: So Caroline that would be an accessibility issue for any holder of just a few trademarks, not just those in developing countries. It would just be - it would be just as applicable to a trademark holder in a fully developed country in terms of what they have to go through to get registered.

Caroline Chicoine: Right, that's what I'm saying. So I'm not sure if ten was meant to address my issue. But I think that if we - I'd love to see that addressed somewhere, and I guess it could be in here if we didn't necessarily say developing countries. But I would agree with J. Scott that the developing countries part may be a little bit broader than...

Phil Corwin: So perhaps we should recast that question not just for developing countries but for really small businesses or holders of a limited number of trademarks. Okay. Greg Shatan, please go ahead. Greg are you on mute? We're not hearing you. Okay I'm going to pass on Greg, go to Kathy Kleiman and we'll return to Greg if we can figure out the audio problem here. Kathy?

Kathy Kleiman: Hi Phil. Can you hear me?

Phil Corwin: I can hear you fine, yes.

Kathy Kleiman: We should never pass on Greg but wait for him (unintelligible) said. But I'll go ahead and ask my questions. One is I'm going to respond to some things I've



heard about number five and number ten and then pose a new question but it seems to flow directly from some of these other questions.

Okay, so for number five, I think there's an underlying question here about the purpose. I think number five is very relevant to what we're doing about the purpose of the Trademark Clearinghouse.

And when the SCS finished its work, it very much was of the goal of the mind of - and I believe the IRT also but I can't speak for the IRT - was very much of the mind that we were trying to create an efficiency mechanism so that there wouldn't be 1000 different databases that trademark owners would have to register in but also that we were trying very hard not to create any more rights for trademark owners than they have under existing law.

And I think some of these questions go to did we succeed in that or are we creating more rights for trademark owners such as allowing them to apply for sunrise periods in gTLDs that are clearly outside the categories of goods and services in which their registration takes place, thereby not allowing a registrant who might have a more direct function for example, more direct connection to that gTLD, to register.

I think it's a very legitimate question. I think it runs to the overall goal of the TMCH. For number ten, I'm glad Caroline clarified because I was going to put out the question does anyone have any background on why number ten was created, because I'm sure we have most of the drafters of these questions on the call.

So I was glad she clarified, and I think that is an important issue. Somebody's off mute because I'm getting an echo so I'll wait. Terrific. And then I think there's an underlying question both in the charter questions and the community questions so I'm going to go ahead and bring it out for discussion, which is the privacy of the TMCH database itself.

And like J. Scott - I'm sorry, I'm not speaking with my co-chair's hat on, but as a participant in this working group - there's a privacy, even a secrecy of the registrations in the TMCH database. And that's hard to understand and it makes a lot of the questions we're asking difficult. We're dealing with a lot of unknowns.

And so the ability to answer a lot of these questions now and in the future would be much clearer if the TMCH database were public as trademark databases are generally public, as consumer trust is a public issue.

So I'd like to add as a refinement this additional question - should the TMCH database entries be public so that people can easily determine what's out there and what categories of goods and services are being sought to be protected. Thanks so much Phil. Back to you, and I wish Greg was still (in there).

Phil Corwin: Kathy, yes, Greg's hand is down. But, you know, but I guess I'm seeing in the chat room that some people could hear him. Now his hand is back up. Are we having an issue, staff, where some speakers can only be heard in the chat room but not on the phone line? Because that makes - for those of us on the phone it makes it challenging to switch back and forth.

I'm going to - since Greg got passed over, can we try to get him on and then I'll get back to J. Scott?

Greg Shatan: This is Greg. I'm on.

Phil Corwin: I can hear you now fine, Greg.

Greg Shatan: Yes I was trying to go through Adobe Connect audio, and apparently there is a continuing problem today with Adobe Connect audio. I had an earlier call this morning with the same problem. So perhaps I shouldn't have tried Adobe Connect audio this time, but I did to my chagrin.

In any case, this list is - I'm glad to know how this list was collected because it is kind of a motley list. And I think that, you know, some of the issues here relate to the TMCH directly. Some of them deal with issues that are about the database itself and others about kind of the management and operation of the TMCH business and technology.

And some of these really have nothing to do with the TMCH itself but relate to substantive aspects of the rights protection mechanisms themselves or the claims notices and sunrises themselves. And I think we need to be a little more careful about recognizing what we're talking about.

I think it's, you know, fairly clear as the discussion goes on, you know, when people are talking about substance, you know, of the sunrise periods or the claims versus the TMCH.

But - and the other thing is - so I was glad to hear you mention as you went through the list the flip side of at least one of these questions because most of these questions are stated by people who seem to have had a very clear point of view one way or the other about trademark rights, right protection mechanisms, Trademark Clearinghouse, etcetera.

And a lot of these questions could be said to have an equal and opposite question or at least and perhaps a neutral question as someone pointed out for number five beginning, "How should the TMCH scope be limited?" That clearly assumes a lot.

You know, one should also ask how should the TMCH scope be broadened. But again the TMCH itself is supposed to be - is a tool that is utilized in rights protection mechanisms. In a sense it's not a rights protection mechanism itself. On the other hand, it's clearly - and I'm not sure exactly where our job ends with regard to the TMCH and the Subsequent Procedures Working Group's job starts.

You know, J. Scott raises an interesting question in that regard but in one group or the other, you know, I think we do need to deal with these, but I don't think - I think it will be good to get these questions refined. Maybe they could be put in a Google doc or we could find some other way to deal with them because right now it's a terrible mish-mosh of leading questions and some, you know, questions rife with assumptions and one-sided questions.

And I would like to see something a little bit more if not neutral at least balanced in terms of how we approach these things. And there's, you know, all sorts of other underlying assumptions I think we need to discuss. And perhaps these questions will be triggering them.

But, you know, just discussions about limitations to classes of goods and services and how - you know, how that might be utilized goes way beyond the question of what the Trademark Clearinghouse is.

Last, on accessibility I think, you know, whether we discuss that here in subsequent procedures I think that's important. You know, maybe the first time around it was necessary to set it up in a way that there were substantial technological barriers to dealing with it, maybe just due to time.

But the - you know, basically, you know, turning, you know, every potential person dealing with it either into a customer of an agent or a customer of a software developer, you know, was, you know, in retrospect perhaps not a very bright decision. Maybe it was necessary, but that's something that needs to be explored. Thanks.

Phil Corwin: Yes. Hey thank you for all of that Greg. I want to remind everyone that this list is a non-exclusive list, and that if there's any member of the working group that believes that there's an important question that isn't here, now is the time to bring it up.

To remind you, going forward, we're in basically setting the stage portion here where we're going to refine, we're going to prune this list. We're going to rationalize it, combine similar questions and related questions and then adopt that as a final blueprint for the work on each of these subjects.

So this is all preliminary to getting into the heart of our matter. I'm going to take chairman's prerogative and before calling back on J. Scott I'm going to hit these other community Helsinki questions because I can do this in one minute because many of them repetitive.

Number one, does the TMCH, is it procedurally and substantively fair to effectively balance the rights of rights holders versus normal Internet users? I'm kind of offended there's no reference to abnormal Internet users but I think that it replicates one we already have.

Does it create a tendency to perpetuate the status quo? I'm not even sure what that means. I'll leave that to others. It certainly creates a - it's certainly meant to perpetuate the rights of rights holders and protect them while, you know, not expanding them beyond existing legal bounds.

Another accessibility question that's repetitive to one we've already gone over, number four, should TMCH remain a single provider or should there be other providers? I know Jeff Neuman has raised this question a number of occasions. And it's not repetitive. It's certainly one we should look at.

But I'd also want to know is it practical to have more than one provider of what's supposed to be a unified database.

Are the costs proportionate to the benefits? I guess, well you know, to some extent that's decided by each rights holder when they decide whether to utilize it. But we can think about that one.

And good chilling effect versus bad chilling effect, I would think that most relates to the claims notice. And we've already discussed that quite a bit where we have agreed that it's good to deter intentional infringers and it's bad if we spook and scare away innocent registrants who have a non-infringing purpose in mind but don't want to go to the risk and legal expense of employing legal counsel to advise them on a registration.

I will stop there. J. Scott and then Jeff Neuman after him. J. Scott?

J. Scott Evans: Okay, a couple of things. I do agree with some of the points that Greg Shatan raised about the way the questions are phrased. They seem to assume a pile. Again, I'm speaking not as chair of this committee but in my individual capacity as trademark counsel for a large trademark owner of famous trademarks and also for a former president in the International Trademark Association, and a member of the IRT.

I don't think the information should be public, and I think that was thoroughly discussed. And as Jeff Neuman raised earlier in our discussions when we were talking about things in the PDDRP, I don't think we were going to - our job is to go back and revisit the issues that were already decided.

It was decided that the reason that that shouldn't happen is because it would be giving very valuable information to would-be bad actors. In other words, of the 2750 marks I own, you would know the ones that I thought were valuable because I did not register all 2750 trademarks in the clearinghouse.

And so it would let you know which ones that you could then seek to abuse, just like it let people who wanted to do gouging prices know exactly what they needed to do in order to do nefarious activities when the information was misused. So I don't think it should be public.

Yes the information is public in that it is on the registers around the world, but so are my other 2600-and-something marks. And so you have to sort of figure

out and work. I'm not handing you that sort of information. And I think that is very valuable. We've discussed that, and I don't think we need to go back and discuss it again.

I think also when we talk I see a lot of things from George Kirikos in the box, and I guess I would argue that yes we do need to be asking the IPC or at least trademark owners in general what the value is to them because these were designed for trademark owners. That's who they were designed for. That's their tool.

Now we can also ask registries, registrars and others if there has been a problem. But the efficacy of them and the effect of this is - should be the audience to whom use them. And that would be trademark owners, registries, and registrars.

If there are users who feel like they've been affected by the efficiency or by this mechanism, their voice should be heard, but they are not the audience for whom these were created. So that is the audience that we should be addressing we look and who we're going to discuss.

And also with regards to Kathy's point - and I get a little frustrated with this - just because someone registers a dot whatever and I have XYZ registered, and I want to get a TMCH (unintelligible) to tell me that my goods and services because they're computer software and entertainment don't qualify for dot whatever unless the registry has said this is a specific domain only for real estate agents.

It will only be used for real estate agents so if I'm Adobe and I don't have anything that pertains to real estate agents, then the charter pulls me out and I don't get to get a sunrise registration. And I do believe that the registries have the power to create those additional circumstances that would not allow me to get a sunrise registration.

But if somebody in the civil society group is going to tell me well Dot Peace is for everybody who wants to talk about peace. And so you shouldn't be able to get Adobe Dot Peace with a sunrise registration because that's just fundamentally unfair because it inhibits free speech.

I don't buy that argument because there's no one policing that to make sure that Adobe Dot Peace isn't being used to sell malware, counterfeit software, pornography, things that I have to battle to protect my consumers.

So I just think there are a lot of assumptions built in here and there are already mechanisms for handling some of those concerns. And I want to make sure that we're very clear when we discuss this because it gets very emotional and we start making a lot of assumptions.

And I think you can see that in the questions. And I would ask whoever we get to put this list together that they make sure that they are very objective in doing so. Thank you.

Phil Corwin: Okay, thank you J. Scott. Before going on to next speaker, I want to make a couple of observations. We're 33 past the hour. We have 27 minutes left. We have five hands up. And the aim today is to get discussion on which of these questions are repetitive or of lower priority or irrelevant.

So I'm going to ask each of the remaining speakers to try to limit what they say to no more than two minutes each - I hope that's sufficient - with the aim in the last quarter of the hour to agree on a procedure going forward for the immediate priority is to refine and finalize or - you know, nothing's ever completely closed here - but to agree on an initial list of questions that this group is going to focus on and really get into making policy decisions and based on available data or data we're going to go after.

So with that I'm going to call on Jeff Neuman and then we'll just proceed down the queue. Jeff?



Jeff Neuman: Yes thanks. Can you hear me okay?

Phil Corwin: Hear you fine.

Jeff Neuman: Great. This is Jeff Neuman for the transcript. I do want to agree with J. Scott on the notion of, you know, a lot of people unfortunately are coming into this group with very strong predetermined positions on certain issues. And it's starting to reflect in the comments that they're making, which is fine. We understand that people have their own backgrounds that they're coming from.

But when we ask these questions - as J. Scott said - we should be very neutral in asking the questions. And we should not make predetermined judgments based on the questions and always understand the context behind the questions.

So yes as J. Scott said, the TMCH and all the RPMs were created for trademark owners. It was already determined that there was a problem (prior to) the 2012 round that needed to be addressed. And these are the policy mechanisms that have come up that were debated and were agreed upon by the community to implement.

So, you know, there are some that are arguing while the law doesn't give you these rights and whatever. Everyone has to remember this is a policy determination that was made by a consensus of the community in order to address real problems that existed.

With that, I want to turn to question four that we just talked about - should the TMCH remain a single provider. And it's just something - Phil you kind of gave your own editorial comments on it, which I sort of disagree with, and I want to make sure to clarify on the record that...

Phil Corwin: I was just raising a question Jeff.

Jeff Neuman: Right, so number four is - it was my question. I don't believe it does make it more complex but we also have to remember that TMCH is actually two parts. One part is the part that does the verification of the trademark and then the other part which was (IBM) does really the purely technical function.

It's my belief that the costs were artificially high to trademark owners because they were combined in one single provider, and I know that there were cheaper alternatives that are out there. So I really do believe it was a problem. I do believe the trademark owners have paid way too much for registrations in the clearinghouse and for sunrise and other mechanisms.

So I think it's important that we make sure that number four - and perhaps I could think of how to rewrite it - but to make sure that it refers both to those that validate the trademarks and then of course the technical back end centralized registry. Thanks.

Phil Corwin: Yes, thank you Jeff. And I just want to make clear my comment about number four. Number one it wasn't in any way - what I'm trying to say - we shouldn't look at it. I think it's a unique question and it's clear that there's an interest in looking at it.

I just wanted to make the point personally that one issue I'm going to want to see explored when we do look at it is whether it's practical to have more than one provider. And my mind is open on that question. Ed Morris, go ahead please.

Ed Morris: Thanks Phil. Try to keep this brief. J. Scott, you've argued that hey we've looked at this last time. Nothing to see here. Hey guys, the title of this working group is a review of RPMs (unintelligible) at past decisions is exactly what we're here to do.

And in terms of trying to keep this little database of TMCH private because oh my God it could threaten trademark owners' interests? ICANN is now a private corporation, and if you want to go out into the real world and argue we should have secret databases in an organization that only responds to trademark holders, I'll show you an organization that's been privatized that will soon be back in the public sphere. Bad optics. Bad policy. Thank you.

Phil Corwin: Thank you Ed. Lori Schulman, please go ahead. Not hearing you Lori. Are you on - have you unmuted? Is anyone hearing Lori?

Lori Schulman: Hi, can you hear me?

Phil Corwin: Yes, now I can hear you. Go ahead.

Lori Schulman: I'm sorry, the mute seems to have a delay on my system. I want to answer a few things. One, it was mentioned that trademark owners and maybe someone like INTA should be asked for data. And I do want to go on record that INTA is collecting this data. To collect this kind of data in the amounts that needed to have any meaningful impact on any discussions will take (a lot) of time.

But we hope within the next few months to have data to help these discussions move forward. I think that's important to know we're not sitting back idly. We are collecting data that will help the conversation, number one.

Number two, I do absolutely - as you would imagine - support the comments made by J. Scott, Jeff, and Greg. But the TMCH was created as a mechanism to smooth a way for an efficient way to register ahead of time as people know. I'm sorry, I'm not speaking clearly. I apologize today.

The bottom line is this. There are trademark concerns that have been recognized since the inception of ICANN that if it can be addressed in a cost

effective way with a balanced approach - and I do believe that there are many (unintelligible) balances in this TMCH that we can talk about later.

But this is certainly a good way to keep the processes open and transparent. We know the processes all along the line. We know there is a registration for owners. We know there are claims. We knew there's only a limited amount of actions you can take with those claims.

So I don't - the stupidest thing - I don't know that I buy it necessarily to the point that again these records are public all over the world. The fact that it's being collected is to know what is a proprietary database to protect trademark owners with a recognized right.

I don't see this as (unintelligible) anything. And, you know, I see in the chat where people say we should ask the registrant, which is Greg's point. Trademark owners are registrants, and we're the largest trademark owners and own tens of thousands of names and portfolios.

So we contribute a lot to the entire economy of the domain name system. And I really get upset sometimes when I hear that somehow we're not contributing, we're only taking when in fact we own millions of names. And we support this system at a very deep level, and that's all I want to say now. Thank you.

Phil Corwin: Thank you Lori. Kathy, please go ahead.

Kathy Kleiman: Hi. Kathy Kleiman, and hm, a lot of interesting things being said. But I think the truest thing that was said -- and I don't remember if it was from J. Scott or Jeff - is that our backgrounds are showing.

So of course J. Scott and Jeff Neuman were on the IRT. And I'm sure as everyone knows now, I was on the STI. And there was a group that came forward in response to the IRT proposals and said no, no we think this should

be more fair and balanced for not just trademark owners who we respect greatly and all of us buy your products and services.

And trademarks are extremely important but so are the rights and protections for current and future domain name registrants. And we are the first review team to look at all the rights protection mechanisms and all gTLDs. That's the name of our charter. That's the name of our - that's our goal.

And no one else has had the ability to look at these new mechanisms created only a few years ago and say are they fair and balanced for everyone.

Part of the obstacle to this evaluation is indeed a closed database of the TMCH database. And it's very difficult. As we look ahead at the questions it will be very difficult to analyze some of these because we don't know the data in there. And I'm not sure J. Scott - with great respect - I'm not sure we made the right decision there.

And so I think it's a very valid decision to review should this database be entirely private or should it be public, especially in light of the array of purposes for which it's being used - and the array of questions that people are bringing to it. So fair and balanced for both trademark owners and domain name registrants present and future, thank you.

Phil Corwin: Okay, thank you Kathy. Before calling on the next speaker, I'm just going to say - taking off my co-chair hat and just speaking personally for a second - my own view is that - and this is not in regard to any particular question we've been discussing. And clearly we've gotten into some substantive discussion today beyond which of these questions should be combined and addressed.

Is that the RPMs were designed in anticipation of a round where people thought there might be 500 applications. Instead we got 1900 applications, 1300 unique. We have now the experience of seeing the market acceptance

of new TLDs, the amount of infringement, the benefits, beneficial registrations.

So my own view is that just because a question was addressed back in 20 (unintelligible) necessarily mean that we can't look at it again and reconsider it. It also doesn't mean that we got the answer wrong the first time.

But our job here is to review all the RPMs for whether they're being effective and operating in a balanced way. So I'll stop there. Steve Levy I'm going to call on you and then we're going to discuss how to proceed with narrowing down this list. Go ahead Steve. Not hearing you Steve. Are you unmuted? Anyone hearing Steve Levy? Because I'm not.

So we got another - let me mute my phone and turn on my speakers. Yes, go ahead, Steve. Steve this is Phil. I hear you through my speakers, not through the phone line, so we have a technical issue here. Yes, Steve we can hear you on audio. Go ahead with your comments.

Okay, thank you Steve. Okay Greg I see your hand up. Can you make this short? We've got 13 minutes left, and I want to get a decision here on how we're going to proceed in refining this list.

Greg Shatan: Yes just quickly.

Phil Corwin: But go ahead Greg.

Greg Shatan: I'm sorry this is a bit of a tangent. Greg Shatan again for the record. I think we should probably ask the current TMCH operators, you know, and folks, you know, to come and meet with us and perhaps, you know, discuss some of their, you know, observations and concerns.

I know that they've reached out to various sectors of the community to be more engaged. So I think, you know, questions like the one, you know,

George just answered don't have to be asked in a vacuum. I would think that we would want to engage with them in discussions on the TMCH, especially as we get to kind of, you know, the business of the TMCH as opposed to, you know, issues about the database itself. Thanks.

Phil Corwin: Okay, thank you Greg. All right, let me - let's discuss how to go forward. We've gone over the TMCH questions. We haven't gotten beyond that to the sunrise and claims notice questions. We need to start getting this list narrowed down, integrated, balanced in the way the questions are asked ASAP so we can get into the heart of our work.

I can think - I said before that co-chairs would work with staff. Thinking about that a bit more, I don't think it should just be the co-chairs. I think there are two options here, and I'll open the floor to what anyone has other thoughts and then we can get the sense of the group.

We could either have volunteers for a small subteam to look at these TMCH questions over the next two weeks and advance - I think we should aim for at least several days by the Monday before the next call. So the next call is on the 19th so by Monday the 17th, to put out a shorter combined list that for the group saying these are the subteam's recommendations.

Or we could do a Google doc and let everybody work on it with ultimate decisional authority after reviewing the comments going to the co-chairs working with staff. So could we have discussion for the next two/three minutes on which of the - whether there's another avenue I had failed to mention and which of those avenues would be the preference of this group.

And I think, you know, if it's successful we're going to use that for the other list of questions to boil them down. We're going to have to go through the same exercise of simultaneously narrowing down lists of questions while getting into substantive discussion for what the answer should be to those questions.

So anybody - I think some old hands are up, unless those are on what I've just raised. Anybody want to speak to how we should go forward procedurally in narrowing down and rationalizing this list of questions on the Trademark Clearinghouse?

Steve Levy and Greg Shatan, are those old hands or do you want to speak to this? We have no hands up. Kristine Dorrain and then Marina Lewis. Go ahead Christine. Please keep down on the last ten minutes.

Kristine Dorrain: Hi, thanks. So Kristine from Amazon registry. I'm going to suggest that we not set narrowing the list as a goal. I think clarifying is the correct answer. I think (Jeff Wart) said something earlier. We need to take the questions and make them neutral.

I mean I read that question 5 and kind of did that already. Instead of saying, "How should the trademark scope be limited," the first question is, "Should the trademark scope be limited, and if so, how?"

So I think the group, whoever drafts - whatever the drafting team - you know, whoever they are, they need to take those questions and really make them completely neutral for consideration. And then break them out into subparts if needed because I think some of these questions would have maybe two/three/four subparts when you actually dig into them. And I think that should be the goal of the drafting team. Thanks.

Phil Corwin: Okay so I take it that you'd prefer a small drafting team to look at these and recommend a final list which is - one would think shorter and also clearer in what we're asking the group to consider. Is that correct?

Kristine Dorrain: Yes I think that would be probably the simplest. I mean, even the five of us on this small TMCH subteam, you know, it's considerable (unintelligible) to get even five people to agree on how best it should be worded.



Phil Corwin: Okay, Mary Wong from staff, please go ahead.

Mary Wong: Thanks Phil. Not so much the how - because that's for the group to decide - but from the staff side we just wanted to put in a reminder about where we are and the overall timeline.

We're coming up to the Hyderabad meeting. We are in the last few months of this year and while we don't want to hurry our work, one of the things that we should be doing is completing the initial review of the trademark PDDRP soon and then starting on the TMCH.

At the same time, the TMCH subteam that Kristine mentioned should be coming back with their report soon as well. So basically whichever mechanism the working group decides to adopt - and it seems to us that we're going along quite a good path here for clarifying the questions as Kristine suggested - that should probably be done within the next say month or so at the outside. Thank you.

Phil Corwin: Thanks Mary. I'm getting a bunch of background noise. Could you please mute your phone or computer if you're not speaking? All right, any more feedback on how we should proceed to rationalize these questions?

Okay, I'm going to suggest this. I'm leaning personally toward a subteam approach. Kristine has indicated a Trademark Clearinghouse subteam has sort of started this, but we need more than sort of. We need a real plan that's going to get us a near-final list for group consideration and adoption in two weeks.

But I think the - what I suggest the co-chairs consult among themselves and with support staff and put out a proposed way of going forward the next 24 to 48 hours for the whole group and then start moving in that direction. And I see a hand up on that Caroline? Oh, hands down.

Okay we've got six minutes left. I think we've - oh Caroline was agreeing with me there. Thank you Caroline. Let me just start reading through the sunrise questions. Again, you know, we're not going to first (unintelligible) to rationalize the Trademark Clearinghouse questions. Let's just go through them and see what's out there on the table for sunrise and then we'll wrap in five minutes.

Should the availability of sunrise registrations for only identical matches be reviewed? Two is the notion of premium names relevant in a review of RPMs? And should it be defined across all gTLDs?

So three, following from question two, should there be a mechanism to challenge whether a domain is a premium name? I'm not sure premium name other than the way it may reduce use of sunrise is an issue for our group. We'll get into that. Again, we're just listing the questions now to see which ones are important and which ones are repetitive.

Should there be a specific policy about the reservation or at least the reserve names? Okay, number five, should there be a public centralized list of all reserve trademarks in any given sunrise period, for any given sunrise period?

I'm not sure how that relates to the debate we just had about public access to the Trademark Clearinghouse database itself, but we can discuss that.

Should holders of TMCH verified trademarks be given first refusal once a reserved name is released? I'm assuming in the general availability period that needs to be clarified.

Should sunrise periods continue to be mandatory? If so, should the current requirement suppliers, should they be more uniform such as 60-day end date periods?

Question eight, whether and how to develop a mechanism by which trademark owners can challenge sunrise pricing practices. I think that seems repetitive of the premium names question which is generally about pricing.

Number nine, whether more can be done to improve transparency and communication about various sunrise procedures. I'm not sure that's an issue but we can take a look about where there's confusion about sunrise procedures.

All right, well I'll finish reading the last eight questions. That'll take us to the end of the hour.

Woman: This is the end of the hour.

Phil Corwin: Excuse me? It's not the end of the hour yet. It's 57 minutes past. Three minutes to go. So I'm going to finish up from working group discussions. First question about any relevance of human rights discussions to this PDP, I'm not sure there is, but that's a unique question.

Question two, technical how often (SMB) file is compromised and has to be revoked. Is this a problem, a prevalent problem? That's a technical issue with the database.

Three, confirm there's no data on how many LRP registrations were made available and in which registries. Is there no data on additional voluntary mechanisms? I'll confess I'm blanking out on recalling what LRP and ALP stand for, but we'll get to that.

And then question four, the ALP and QLP periods in need of review. Question five, can we expand the charter questions? Yes, we can always expand the charter questions if there's consensus to include some of the underlying TMCH questions concerning - well, let me revise that. We can't expand the

charter. We can expand the questions - go beyond the questions appended to the charter.

Subpart one of question five is another one about fairness to non-rights holders and subpart two is about limiting to categories of goods and services. We already saw that in the prior questions about the Trademark Clearinghouse. So here we've got some overlap.

Six, is there any evidence of gaming, of registering a number of valuable trademark names to which registrant doesn't have additional traditional legal claims. I guess that would go about to whether the verification requirements are stringent enough to be able to exercise that sunrise registration right.

Seven, relations between premium pricing and trademark rights, that's again repeating. We've seen that pop up before.

And further - last question, further explore use and types of proof required. That gets to - that could be combined with verification. So there's opportunity in all of this to combine some of these into more comprehensive and more balanced questions that are - point us in the right direction for where we should be spending our time.

It's the top of the hour. Does anyone have any final comments? And if not we're going to call the call to an end. And the co-chairs will get back aiming to do that before the end of the week with a decision on the way forward to refine the Trademark Clearinghouse questions so that we have a shorter, more balanced list of questions available for final discussion in the meeting two weeks from now on October 19.

And hearing no one and seeing no hands up, we're going to call this call to an end. I thank everyone for the vigorous and well-informed discussion we had today. Thank you. Bye now.

Terri Agnew: Thank you. Once again the meeting has been adjourned. Thank you very much for joining. (Kate) the operator if you could please disconnect all recording lines and to everyone else, please disconnect all remaining lines. Have a wonderful rest of your day.

END