
ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs) and all gTLDs PDP Working Group

Wednesday, 07 August 2019 at 17:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the Review of all Rights Protection Mechanisms (RPMs) and all gTLD's PDP Working Group taking place on the 7th of August 2019.

In the interest of time, there'll be no roll call. We have quite a few participants. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please identify yourselves now? Hearing no one, I would like to remind all to please state your name before speaking for transcription purpose and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

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With this, I'll turn it back over to our co-Chair, Kathy Kleiman. Please begin.

KATHY KLEIMAN:

Thanks so much, Terri. Hi, everybody. This is Kathy Kleiman, and I've heard that Phil and Brian are co-Chairs around the call as well. Thank you so much to so many people for joining us in the dog days of summer. This is great. Hopefully everybody enjoyed the week off last week. And now we begin a new section of our work going to the structure of the Trademark Clearinghouse, the last part of Phase 1. I will talk about that in a little bit, but first let me see if there are any updates to the Statements of Interest. Does anybody like me switching hats over the summer? Let me pause. Okay, hearing no updates to Statements of Interest, let me do a quick overview of the agenda and then hand it over to Phil Corwin for the second item.

The agenda today is two different subjects covering different aspects of our work. The first is a brief discussion – not a deep dive but a brief discussion – into our process for determining individual URS proposals that we want to include in our initial report. Some questions have been raised about this, Phil will outline it, and we'll have a brief discussion of where we might go with that.

And then we begin the background into our deep dive on the structure of the Trademark Clearinghouse, our review of 2017 discussions and data gathered and other materials. Staff has begun the process of summarizing that material for us and they'll introduce us to it. But let me ask if anyone has anything for agenda item #4, Any Other Business?

Anything we should [inaudible]. Okay. Hearing none, let's proceed to agenda item #2, the brief discussion of individual URS proposals. May I hand that to you, Phil?

PHILIP CORWIN:

Yes, you may, Kathy. And the word is brief. I think we can probably get through this in five minutes unless the working group wants to speak longer on it. This is something I've raised before in the working group in our discussions with council. I discussed it with the co-Chairs, they thought it was worth bringing up with the full working group, the decision on what if anything to do with this will be up to the working group and it won't be determined on this call today. It really shouldn't be determined on a call just by call participants via something that goes out on the e-mail list to the full working group and get as much feedback as possible.

But where we left the individual URS proposals I believe in Barcelona, we had about three dozen of them. We didn't really test support levels for most of them, what we kind of threw in the towel on that. And it's my personal view, which others can agree with or disagree with, that by putting about three dozen individual proposals out – and I haven't reviewed the substance of them – my recollection that some strengthened URS, some vitiated it, however you want to characterize it. But there are a lot of things there probably didn't have wide support within the working group and would be highly unlikely to ever reach the consensus support level. My own view, which I've shared with the co-Chairs, is that we really haven't done our job without some further consideration of those and some paring back so that we're not asking

the community to comment of three dozen proposals, most of which have little or no prospect of ever being in the final report and to make the whole comment – if we can pare it back to those which have some reasonable level of support to whatever we determine the standard to be within the working group and ask the community to comment on fewer proposal, some of them may be able to be consolidated, that the comment period would be much more meaningful and some of those proposals based on comments might be modified where they actually make it into the final report.

That's really all I have to say. If we do this paring back support testing exercise, it would come after our full consideration of the Trademark Clearinghouse. Questions. We're not talking about doing it now before TMCH. It would obviously would that a few weeks depending on how we structure it which would delay getting to the initial report, but it would result in a much more targeted and focused comment on individual URS proposals in the initial report.

So I'll stop there and I open it up for dialogue. Again, we're not going to make the decision today. It needs to be something that's shared on working group e-mail literally, just to raise this issue now and that surprised you with it at the end of the TMCH discussion and get some feedback as to whether working group members think some further look at those individual proposals is worth doing or do you really want to put out nearly three dozen proposals for community comment in the initial report? I will stop there and I welcome any comments and feedback.

KATHY KLEIMAN: Thanks, Phil. This is Kathy. I'm joining you in monitoring the queue. Paul Tattersfield puts into chat, "It's something I would support." David McAuley, "Conceptually, this makes good sense to me and a good idea to float the idea and take up specifics later."

PHILIP CORWIN: Okay. Anyone else want to weigh on this now or ...?

KATHY KLEIMAN: Phil, Zak Muscovitch has his hand raised.

PHILIP CORWIN: Hey, go ahead, Zak.

ZAK MUSCOVITCH: Thanks, Phil. It's been a while since we talked about this and I'm a little fuzzy on how we got to this point and why it's coming up now. I seem to recall that in the path of least resistance at that time might have been to just put them all in rather than to gauge levels of support on interim basis. If that's correct, I'm wondering why we're revisiting it now. Thank you.

PHILIP CORWIN: Yeah. Zak, your recollection of this is the same as mine and that we just, for whatever reason, I didn't [inaudible]. We just decided that we would put them all in without even trying to find out what level of support they enjoyed within the working group. So, these are not closed issues.

It's just not a situation where we decided that something had wide support or didn't have wide support or whatever standard we would've set in an attempt to reopen that. It's a situation where we, in my view, punted and made no decision. It's my personal view as a co-Chair but it's up to the working group that it's not an efficient process or fair to the community to ask them to comment on several dozen proposals where we haven't done our full job in really saying beyond the proponent of this or that particular proposal, are there others within the working group who supported and want to see it in the initial report.

As I said, there's a mix of ones that would be viewed as strengthening the URS, others might be viewed as making it more difficult to use. I have no intent to target any particular proposal with this. It's just about getting more focused comments from the community. And I see Renee has her hand up as well.

ZAK MUSCOVITCH: I'd like to get back into the queue just to ask another question if I can, whether it's before or after Renee, either way.

PHILIP CORWIN: Why don't you finish up, Zak, then we can get to Renee?

ZAK MUSCOVITCH: I'm sympathetic to that thought or that proposal but my concern is that if we put – I don't remember how many individual proposals there are, I seem to recall I authored a bunch of them or at least a handful of them

but if there are a few dozen of these things, for the purposes of weeding them out, I'm wondering if that is just going to spin our wheels and delay us more as opposed to dumping them all in, whether they're good, bad, ugly, indifferent, and letting the community focus on whatever they're interested in to extent they are if they see any better there. In other words, ideally I'd love to be able – just for this working group – to weed these out but I seem to recall that the problem back then was that that was a froth effort. Thank you.

PHILIP CORWIN:

Yeah. Well, again, Zak, I appreciate that and the reason I raised it with the co-Chairs and I thought it was good idea to raise with the working group was for everyone to get an ability to consider this and do we want to revisit these, or do we want to ask the community to look and comment on three dozen? I guess I would expect that most of them will get little or no comment with that many and that the community will focus on just a few that they view as particularly significant.

I see Renee has her hand up, and then Greg, and then George, and then hopefully that will wrap it up and get on to TMCH and take this discussion to the working group list.

BRIAN BECKHAM:

This is Brian Beckham. I'm sorry I'm on the phone.

PHILIP CORWIN: Okay. Yeah, Brian. I'll bring you in at the end. Renee? Are you on mute Renee? Not hearing you. I see your phone is crossed off, which mean you're muted.

RENEE FOSSEN: Can you hear me now?

PHILIP CORWIN: Hear you now.

RENEE FOSSEN: Okay. I'm so sorry. Pardon me. I don't specifically recall all 36 of the proposals, but I do know that at least one of them is mute, so I do think it makes sense to spend at least a little bit of time going through them just to see if we've made any progress since we've last discussed it. And that was quite a while ago in Barcelona, so I think it's a worthwhile effort. As I said, I believe that one proposal is essentially mute based on a change in procedure for all of the URS providers. Thank you.

PHILIP CORWIN: Yeah. Thank you and thanks for pointing that out, that one would be some justification to weed out the ones that don't make sense anymore. Greg.

GREG SHATAN: Thanks. It's Greg Shatan for the record. I support the proposal of trying to revisit these and see if we can cut cull the wheat from the chaff. I

think that dumping them all on the community will make it much more burdensome for each group or organization individual company to comment. We have enough heavy duty or bulky stuff in this that we have in fact decided as a working group has sufficient support to go out. Putting out unprocessed information really goes against the essential grain of the working group process. And I think that it's really as between burdening the working group with doing its work and burdening every commenter to comment on stuff that would not be in there but for an upper hand, to me the choice is clear. Thanks.

PHILIP CORWIN:

Thank you, Greg. I'm going to go to George now, and then I'm going to bring Brian, and then Michael, and then hopefully we're going to wrap this up. Again, we're going to take this onto the working group list and discuss it further there. We have plenty of time between now and the end of the TMH consideration to decide if we're going to do this, how we're going to approach it. We'd want to do that on the most efficient way to make the other processes as short as possible. George?

GEORGES NAHITCHEVANSKY: Hi, can you hear me?

PHILIP CORWIN: Hear you fine.

GEORGES NAHITCHEVANSKY: Okay. Georges Nahitchevansky for the record. I support the proposal. I recall in the Barcelona meeting being there, being unsatisfied that 36 plus proposals were coming in, and I think it was just, again, as Zak pointed out, it was let's try to get all these things through because you're trying to get to meet some deadlines and move forward. But I think since then, you have had the experience of both the Sunrise and the Claims periods and sort of culling through a lot of proposals and getting it down to a handful that can be presented to publicly, and I think we could benefit from having to [sum that] exercise here to really get this down and focused to the things that are most meaningful and most important as opposed to having everything under the sun thrown out in the public.

PHILIP CORWIN: Thank you for that comment. I'm going to ask Brian to make a brief statement now. Brian, you're next.

BRIAN BECKHAM: Thanks, Phil. Brian Beckham for the record. I largely agree with most of what's been said including the concern characterize it that way that Zak raised. I think for me, one thing to point out would be that the idea I think brings a level of parity with what we did – where we ended up with the Claims in Sunrise and I think that's worth considering in terms of the actual presentation of the report and of course it doesn't stop people from commenting. They could even be included as kind of an appendix or something.

Just to draw out an idea, to save time we could, for example, over e-mail issue some sort of a survey where we ask people to say, “Are there proposals you simply could never support or ones that you believe in with everything you have?” In other words, to try to size up before a phone call, whether there might be possibility of support for some of these to save us a little bit of time to bring it to a close. Thank you.

PHILIP CORWIN:

Thank you, Brian. And I think that’s a good idea. I think we’ve got plenty of time over the next few months while doing Clearinghouse work to work out with the working group if it wants to proceed in this manner. An efficient way so that we don’t want to do this and want to spend two or three months on it, we want to do it efficiently and we can work out something hopefully that’s acceptable to most folks in the working group if we go down this path of revisiting them.

Michael, you’re the last hand up.

MICHAEL KARANICOLAS:

Hi, Michael Karanicolas for the record. I oppose this proposal and, frankly, I’m a bit surprised this is even on the agenda. I don’t think it’s any secret that folks opposed this approach last time. They opposed the number of proposals that were included. They expressed this much in very colorful terms. And to me, all these look like a second bite of the apple.

I put something on the list on a different discussion where I noted that when something was trying to be opened, I noted that to be real. I

noted that I opposed the final results of the discussion but supported that we should respect the result of the discussion nonetheless. Since if we're constantly reopening past decisions, we're never going to make progress and it's fundamentally anathema to the kind of work we're supposed to be doing here. If we're going down this road, let's wait another month and then revisit all the Sunrise proposals. Let's revisit every decision that we've done previously because why not? If decisions were never final, I think it completely stymies the work of this group and I'm puzzled that we don't have better things to do and better things to work on than to start looking backward.

I think that there's a fundamental unfairness to this given that the composition of the group has changed since the time when these were brought up. Folks come and go, folks drifted in and out of participation. There may be folks that could attend the previous discussions but won't be able to attend this one because of their schedule or whatever. And I think that asking people to keep coming back again and again and again on the same issues is completely counterproductive, and I'm astonished that it's being considered. Thanks.

PHILIP CORWIN:

Well, Michael, I'm sorry you feel that way. Obviously, the others who spoke to this didn't feel that way. I'm going to respectfully disagree. I would never have brought up with my co-Chairs and I don't think they would've supported putting this on the agenda if we had made decisions. The decisions we made was a decision not to decide and that's what I'm asking. That's what we're asking the working group to consider whether we want to leave that as the final word on all the

individual URS proposals. But again, we're going to put this out on the mailing list and give everyone in the working group a chance to weigh in, to see if there's support for trying to look at these proposals again. But thank you for your comment.

BRIAN BECKHAM: Phil, this is Brian, could I make one final comment?

PHILIP CORWIN: Sure, Brian and then hopefully we can move on to the main agenda which is starting the TMCH discussion.

BRIAN BECKHAM: Yeah, thanks. I don't want to open up a discussion on this but I just want to agree with what you said, Phil, is that, Michael, I think with respect, it's a slight mischaracterization because this isn't any second bite at the apple, and if it were the case, it would be a second bite for all of the individual proposals and they run the gamut as Phil said earlier, some proposed to weaken, some proposed to strengthen, so if there's any second bite, everyone's getting a fair second bite. Frankly, I think that's the wrong characterization. It's precisely as Phil said, it's because we never took a decision as we did with the Sunrise and Claims, so this is why I pointed out I feel that one reason that there's merit in considering this is because it would bring a level of parity to the URS, which what we've done already with the Clearinghouse and the Sunrise. Thanks.

PHILIP CORWIN: Okay. Thank you, Brian. I'm going to turn the conversation back over to Kathy now, and so we can begin our discussion of TMCH which is our last major issue to deal with in the terms of reviewing the new TLD RPMs. So, Kathy, please take it away. Thank you.

KATHY KLEIMAN: Thank you much, Phil, and thank you for the discussion and everyone who participated in both audio and chat. What I'm going to do for just a second and letting staff now, we're now in agenda item #3: background on the TMCH and previous working group's discussions. If you'll allow me a minute or two to summarize where we've been and why we're here now – I see people are participating. We're not up to 30 participants. Thank you very much – who have been with us consistently and some who are coming back into the discussion. So, it makes sense to just revisit very briefly.

As you remember, we spent the last number of months working on the Sunrise and the Trademark Claims Subteams which wrapped up their working recommendations in Marrakech at the face-to-face meetings, which also had lot of remote participation, for which we thank the people who stayed up so late. We then reviewed both subteam recommendations with the full working group as we had promised to do, and that took us until the end of July.

Now, at the top of August, we returned to the last part of Phase 1 and this is dealing with the structural questions of TMCH, question of structure, function, pricing, availability, and other questions that we consider open and deferred. We have 12 weeks allocated for this work.

Believe it or not, that will take us into the eve of the Montreal meeting, ICANN66 in November 2-7. By then we should be ready to start our final preparations for the initial report and going out for comment on Phase 1, a tremendous body of work have been done over the last few years.

So now as we head back into the structure of the TMCH, I will turn it over to staff who prepared some very interesting important background documents for us to help take us back into where the working group discussions were in 2017, what documents are available to us, what the chronology is, as well as our questions – what Charter questions and revised Charter questions we’ll be working on? Who’s going to be leading us in staff please?

MARY WONG: Hi, Kathy. It’s Mary. Can you hear me?

KATHY KLEIMAN: Yes, Mary. Thank you very much. Over to you.

MARY WONG: Thank you. So, just to refresh everybody’s memories, as Phil and Kathy had said, this call is really just to reorient everyone to the TMCH discussions which we paused somewhere around July 2017. So, that’s two years ago. Therefore, hopefully, this refresher and some of the documents that you see will help orient everybody.

What you’re seeing on Ariel’s screen now is a document that for about 98% of it you will have seen two years ago. And this describes in

summary form, not in comprehensive form, how the TMCH – its scope, its rules, its requirements – came to be, starting with the original GNSO PDP that finished in 2007 into the development of the very specific TMCH requirements which you see on the following pages.

The 2% or so that changed in this version of 5th of August from the version you saw two years ago is that we did put in some of that background information from 2007 and 2008, more specifically at the co-Chairs suggestion, we have pasted in the full text of all the GNSO Council as well as the Board resolutions that describe the work to go into the TMCH. But other than that, this is pretty much the same document that was circulated two years ago. So, it will be helpful for you to take a look, to remind yourself of really where we came to be with the final version of the Applicant Guidebook in 2012. We hope this is useful.

For purposes of this call, we also circulated at the co-Chairs' request, a second document and again this is a document that you will have seen two years ago. I'm going to ask Ariel to pull that up now, and while she's doing that, for background, you may recall that for the TMCH there is a set of agreed Charter questions. These Charter questions as of mid-2017 fall into three categories. There is a category of Charter questions that basically are considered closed. There are also Charter questions that the staff describe as deferred and we use the word "deferral" because those Charter questions are questions that either did not see the working group solicit or discuss specific proposals, or that the working group agreed at that time to defer discussion until, for example, you completed your review of the Sunrise and Claims. Which means that for

this second category of deferred questions, now is the time that we're going to go back to them.

The third and last category is what you're seeing on Ariel's screen now and it is the document that was circulated for this call earlier this week, and these are the Open Questions. We used the word "open" versus "deferred" because for these questions and there's basically three of them, they are to do with design marks, geographical indications and such. For these three open questions, the working group did solicit and did receive specific proposals in 2017 from several working group members. You did begin discussing these questions and these proposals that were received but there was no firm or clear recommendation or conclusion, and so these are the open Trademark Clearinghouse Charter questions. We are assuming that you would want to start your TMCH review or re-review as it were with these open questions, given that there were proposals that were received. You may then wish to move on to the remaining deferred questions and thereby complete the TMCH review.

Kathy, I think that's all that the staff needs to say for now. And of course we're happy to take questions, so I'm going to turn the call back over to you. Thank you.

KATHY KLEIMAN:

Mary, could you stay on for just a second. Let me ask you a question if I may. With the open TMCH Charter questions, which is a subset of three questions from the total of about 10, I think, deferred TMCH Charter questions, all of which we'll be giving to, there is a document that's

being prepared in the background I think that has some updates because at least one of these charter questions had some insight coming in from some of the subteams. Is that too much detail or does this spark a recollection on something? Do we have an updated version of this document in preparation?

MARY WONG:

Thanks for the question, Kathy. You're right. I should clarify them that for the purposes of this call, we circulated two documents. The Chronological TMCH Timeline document that you saw a moment ago, the Open Questions that you're looking at now, and there is a third document that the co-Chairs are reviewing with staff that hopefully can be sent out soon that have all of the questions.

In relation to then your specific question about updates, that third document, we did make some updates that the co-Chairs are reviewing. They're basically factual updates that try to summarize information that came in after that mid-2017 discussion, for example, the fact that the working group had discussions with Deloitte and with the Analysis Group as well as some of the results of your review of the Sunrise and Claims, recommendations that you just completed a couple of weeks ago.

For purposes of this document, the one on the screen, which is the Open Questions – and, Kathy, I think your question went to that as well – what open question does talk about the exact match criteria. As you recall, that was extensively discussed as part of the Claims review and there were some recommendations that came out of that. When you do

get to that particular open question in this document, it will probably be worthwhile to think about what the Sunrise – I’m sorry, the Claims Team recommend it to see if indeed you may have already answered the question or had gotten additional information that can help you answer what was an open question in 2017 and may not be as much at this point. Thanks, Kathy.

KATHY KLEIMAN:

Terrific. Thanks so much, Mary. Preview of coming attractions, everyone, there will be a fourth column coming out in an upcoming document with bright yellow highlights that staff has prepared. As Mary says, we’re finalizing for distribution that has some of these updates coming in, that staff thought was appropriate from the TMCH and Sunrise Subteam. So watch for those bright yellow updates in an upcoming fourth column.

Mary, did you want to walk us through, or did you want me to walk us through these first three of our deferred Charter questions, what we’re calling the open TMCH starter questions? Maybe we should begin a little deep dive now since we’ve got some time.

MARY WONG:

Hi again, Kathy, everyone. That’s totally up to you, Kathy. We’re happy for you to take the lead as the Chair of this call, and obviously, if there’s additional context or questions from folks, the staff are happy to jump in to help out.

KATHY KLEIMAN:

Sure. This is just designed, everyone, as an overview but let's page our way through this and see where the proposals are – again, what we're looking at as a draft as of May 17, 2017. So this is quite a while ago. The co-Chairs have not had a chance to meet yet one of the questions that we'll be talking about is how to handle old proposals versus new proposals versus timing in the next round in the next discussion process. But I see that we have at least two hands raised. We'll go to Phil and then to Susan. Phil, go ahead please.

PHILIP CORWIN:

Thanks. I just want to make one quick point which I thought was worth keeping in mind as we're addressing these questions, which is when you look at it then it was briefly on the screen the chronological history of the development and adoption of the TMCH. This was not a typical process where there was a working group made recommendations, council passed the recommendations, and Board approved them, and then there was implementation. And then the chronological table – you see that the last council resolution relating to the Clearinghouse was a fairly general one in December 2009, and then there was nearly four years of the community working with staff to develop the details and final TMCH requirements being published three and three quarter years later in September, 2013. So I just wanted to bring that unusual aspect of the new TLDs and it wasn't unique to TMCH. But as we're discussing the standard, it's just a good thing to keep in mind what the process was for the developing the actual details in the implementation of the Trademark Clearinghouse. That's all I had to say. Thank you.

KATHY KLEIMAN:

Great. Thanks, Phil. But I'll add, there were some very specific policies adopted by the GNSO Council and by the ICANN Board. So I trust we'll be going back to look at them in detail and staff has given them to us in detail.

Okay, over to Susan Payne. Susan, please.

SUSAN PAYNE:

Thank you. A couple of things, really. The first was a question. If Mary wouldn't mind clarifying, I didn't quite follow where she talked about a new document, your third document being circulated, an updated version where information has come to light since July 2017 and there'll be a new column there with that additional information included. It wasn't clear to me, does that just relate to the so-called open questions or does it also relate to the part of question that she was referring to as the third one? It seems to me that if we deferred the discussion on some particular questions in order to allow us, for example, to do our conversation about the Sunrise and Claims, I'm assuming that those deferred questions may also warrant update to them. I just wasn't clear if that was the plan.

Then I'll just ask my second comment, if you don't mind. If I'm understanding correctly, there's going to be a version of this Open Questions document where additional information that's come light since the version that circulated. If we're going to have a version with new information then, then does it make sense for us to spend time going through this one when we'll then have to go through it all over again once we've got the version that's been updated? Would we

perhaps best to go through the other document, the chronological one, and review what new information has been identified in terms of things like Board and Council resolutions rather than reviewing a document which we know is going to be replaced? Thanks.

KATHY KLEIMAN:

Good suggestions, Susan. I think this document will stay but there'll be another document coming out. Can staff switch to the other document, please, to the Open TMCH? Just page down to page 6 quickly.

So, we're not deep diving. Yes, number 10. This is one of the areas, Susan, where I think, if I remember correctly, there's an update coming in from the subteams. Number 10 – and again we're looking at the 2017 version – was, "Should the TMCH matching rules be retained, modified, or expanded?" Of course, we spent a lot of time talking about this in the subteams and this is the kind of question we'll see an update on. So, not all open or deferred TMCH questions but just ones that happen to have been addressed by the subteams as well. So, I'm happy to take your suggestion under advisement. I think that's probably a good idea not to go through this document or maybe just to give everyone a chance to review both documents and begin our deep dive next week. But I understand staff's hand is up, so let me hand it over to staff. Thanks.

MARY WONG:

Thanks, Kathy. And thanks for your response to Susan's question. We just wanted to add some additional clarification. And Susan and everyone, I apologize if I wasn't entirely clear previously. With respect to that third document, that is the document that will contain all of the

agreed Trademark Clearinghouse Charter questions, including the three that you're seeing in this Open Questions document. That is intended to contain only a very few specific factual updates.

In the staff's view, those factual updates are very well known to the group. For example, that you got a report from Deloitte telling you what the data looked like at a certain time, for example, that you had a meeting with Analysis Group and, for example, that the Sunrise and Claims Subteam submitted a report a couple of months ago. So in the staff's mind, that document should not preclude a discussion of the three open questions that you see in this particular document. Whether you wish to begin on that discussion today or postpone it until next week when you see the next document is of course a decision for the working group and the co-Chairs. But if it helps, in the staff's mind, what you're seeing in this document really will not be affected by what the few updates that you're likely to see in the next document because the questions themselves in the staff's mind remain the same except possibly for Question 10, given what the Sunrise and Claims Subteams came back with.

So our assumption when we gave the documents to the co-Chairs to review before sending them out was that it makes sense for the working group to first go back to these three open questions and then go on to the remaining deferred questions. And any of the factual updates really should not affect that chronology or your ability to substantively discuss them. I hope that's helpful.

KATHY KLEIMAN: Susan, do you have any follow up? Did that answer your question?

SUSAN PAYNE: Yes. Thank you. Sorry. I put something in the chat just saying actually that helps a lot and I think I misunderstood what Mary was saying. It sounds like it makes sense to start on the Open document.

KATHY KLEIMAN: Okay. Actually, let me ask the other co-Chairs. I don't know if we're ready to go through that document yet. We just saw it and we have a number of proposals that perhaps the people who submitted them two years ago would like to take a look at as part of their review and preparation for a more detailed discussion. That will include Greg Shatan, Paul McGrady, Claudio, Michael Graham, as well as myself. So I'm not sure if anyone is ready to begin the deep dive into this, but if anyone is ... Otherwise, I think the purpose of today's call is really to provide a background and an overview and an introduction of these documents. But I'm not sure how far we want to deep dive into them. And again, as Mary has mentioned, we're working on one more document that will provide some additional background.

In my opinion, we've gone through the agenda today and we can give people back their time. If people do want to walk through this document, we can certainly do that – the document that's on the screen. Any thoughts?

JBB. Who's JBB?

BRIAN BECKHAM: That's me. I was going to a computer. I agree with you. I think it may be a bit much to ask people to start to wade through this substantively, given that we're really all in the same boat where we're sort of getting back up to speed. So, I agree with you that rather than jump in, better to call it a day and give people a little bit of time to get back up to speed with where we are.

KATHY KLEIMAN: Great. Thanks so much for your comment, Brian. Anybody else who want to comment? Is there anybody else in the queue that I'm not picking up? I'm just checking it. Susan, go ahead please.

SUSAN PAYNE: Yes, sorry. I feel like I derailed the discussion rather, because I misunderstood something. So now I'm kind of getting that we're not even going to go through this document at all even just to remind people where we got to. I guess I don't see the harm in going through it and reminding ourselves because otherwise, when we do a call next week, that's what we'll end up doing. So rather than losing the time when we've got another 45 minutes schedule, maybe we can go through it.

KATHY KLEIMAN: Two different views. Quick thoughts in the chat? Michael Graham, is that a plus for deep diving into the documents or moving forward, letting everybody study them to begin the discussion next week?

Mary, I'm going to hand it back to you for just a quick overview. If you could walk us through the document, I think you've been deep diving to it the most. If you could walk us through it quickly so we can see where we were in May 2017, I think that would be great. We'll begin the discussion next week.

MARY WONG:

Sure, Kathy. I'm happy to. This document, like I said, but I think it bears repeating, these are three of the agreed TMCH Charter questions that the working group in the spring and into early summer of 2017 really did quite a bit of discussion on. And before I get into the three questions, this document is the same format and structure as how you left it two years ago. So, where you'll see each column is that the first column is the question itself and that's three of them. If you wanted to refer back to the full list of Charter questions, they're basically questions 7, 8, and 10.

The second column is the proposals pretty much verbatim the actual proposals that were submitted by specific individual working group members and these have not been edited. I believe the end of the document contains the rationale that some of the proposals also included with the text so that you can see the context and the reasons for their particular proposal to the extent that that's not in the proposal text itself here.

Then the third column is basically where things were left as of mid-2017. If we're to look at these questions, I think from the staff's perspective, Question 7 here, for example, that was the agreed TMCH

Charter question, “How are design marks currently handled by the TMCH provider?” You’ll see in the second column the proposals that were submitted. Here you're seeing the one that was submitted by Kathy. And then the third one as I said is where you left things.

One of the staff’s suggestions that the co-Chairs are considering is to try to focus your substantive discussions now by suggesting some of those questions. For example, for this, one of the things that you could consider is whether or not you have and you wish to have and agreed understanding on what you mean by design marks. You might recall that when you first discussed this question, there might have been a little bit of a confusion as to whether by text marks or word marks you included word marks that were in a stylized font versus plain text. You also talked about what could be done to distinguish between those and marks that consist of words in whatever form, whether or not including letters and numerals, plus some kind of design elements versus marks that are purely design or graphical in nature. Those distinctions were being parsed out as you discuss that, and so that may be something that you want to go back to and as you're looking at Question 7 and as you're considering the proposals, first having that understanding and a definition perhaps for the different kinds of design marks.

Ariel, if you can then go to the next question, which is the Question 8? Thank you.

Question 8 is about geographical indications, protected designations of origin, and protected appellations of origin. It is about how those are handled by the TMCH provider. Again, here you have at least one proposal. And where you were in the discussions, if you remember, is

that you did have a chat with Deloitte about that particular category to which these marks pertain which is marks protected by statute or treaty. Deloitte explained how they handle these marks which is basically that if the submission can show the specific statute or treaty that apply whether it's a GI or an [AOC], Deloitte would not go further and ask, "Is this or this not a GI by any definition under national law or treaty?" It would look at the statute and accept it into the TMCH. I may be misremembering the figure but as of the time you had the chat with Deloitte, I believe it was a fewer than 100 of these marks had been accepted into the Trademark Clearinghouse. That's Question 8.

Ariel, you can go to the third and last open question which I think you've already seen briefly. This is about the matching rules in the TMCH. Whether or not they should be kept as is, whether they should be modified in whatever fashion, or if they should be expanded. Here again, you have some proposals – and I know, Michael, you're on the call here today as well.

This is the one question out of the three open questions that the conclusion of the Sunrise and particularly the Claims Subteam could be very relevant. You recall that the Claims Subteam recommendations in this respect which basically were not to expand those rules were discussed and accepted by the working group a few weeks ago. So on this third and last question, you may want to consider whether in view of that conclusion, in view of the recommendations that you accepted, whether or not this third and final open question could quite easily have this discussion concluded.

So, Kathy, everyone, that's hopefully not too long winded a summary of the three open questions and where things stood when you last talked about them two years ago. Thank you.

KATHY KLEIMAN:

Mary, that was outstanding. Thank you so much for walking us through that and helping us deep dive back into 2017. Thanks to those who submitted proposals then to help guide us into the discussion that will be coming up. We have up to eight weeks – at least according to our current timeline – to look at just these three questions. Co-Chairs are hoping we can move a little faster on that so that we can get to some more of the deferred questions because there's about another eight of them coming up.

Anybody have anything they want to discuss here? We're really just in the background segment as we move back into rethinking and relooking at what Deloitte shared with us different Q&As. We talked with them orally. I apologize about the lawn mower that just appeared outside my window. We talked with Deloitte face to face. We "talked" with Deloitte via written questions and answers. Some of those summaries are going to start coming through as well. Lots and lots of information but we'll just take it one bite at a time.

Anybody have anything to add? If not, thank you for joining me beginning the discussion of the structure of the TMCH, again, very last part of our Phase 1 review. Unless anybody has any other business, we can move into the rest of our day.

Susan, I see your hand raised. Go ahead please.

SUSAN PAYNE:

Yeah, just a to flag to people something I raised on the list which is in relation to these open questions, I think in particular the kind of design mark question and the GI [straight] marks protected by statute question. We did do that very non-scientific polling exercise, and so people might want to remind themselves of that as well. We did that. We quickly reviewed the results but then we did not form any conclusions as a result of it. And indeed it was never intended to be a formal vote or anything, but nonetheless, since we are doing a level set, I think it's worth people reminding themselves that we do that exercise.

Just an observation, I really think that we've discussed all of these topics at great length already and it's unfortunate that we didn't just reach conclusions on them. I think we would be doing ourselves and the community a disservice if we spend 12 weeks revisiting everything we've already discussed.

KATHY KLEIMAN:

Great. Thank you, Susan. I agree. We've seen a lot of this before. It was our joint decision to do the URS review and then look at – we had then three topics, as you remember well I know. We have the structure of the TMCH, and then we have the processes that use the TMCH, the Trademark Claims and the Sunrise. We decided to do the Trademark Claims and the Sunrise in part because there was an idea that some of that work and research and data analysis might give us some insights or some ideas or some requirements and needs for the structure of the TMCH. So now we're feeding everything back in, we return to the

structure of the TMCH, and happily, if things seem a lot easier now than they did two years ago, hopefully we can proceed a lot faster through that. So, you've given me some hope. I trust that staff in our next agenda will include that non-scientific polling exercise that you mentioned will include a link so people can review that as well.

Let me check the chat. Mary, that's correct. Susan and Michael are raising an issue. Michael, do you want to raise your hand and raise it as well? Okay. Just the issue of revisiting things already discussed. In this case, we did decide that we would wrap up these issues. We would come back to these questions and finish them up after we did the other things.

I think that takes us to the end of our call. Any other business? If not, thank you to staff for the discussion. Thank you to Phil for leading the discussion. Have a good week and we'll see you next Wednesday with more deep-dive documents that are in store and in hand for a deeper discussion. Thank you very much.

TERRI AGNEW:

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

[END OF TRANSCRIPTION]