ICANN
Transcription
RPM TMCH Questions Sub Team call
Friday, 21 October 2016 at 15:00 UTC

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Attendees:
Kathy Kleiman
Kiran Malancharuvil
Kurt Pritz
Paul Keating
Paul Tattersfield
Susan Payne
Philip Corwin
Edward Morris
Sarah Clayton

Apologies:
J. Scott Evans

ICANN staff:
Mary Wong
David Tait
Ria Otanes
Terri Agnew

Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the RPM TMCH question sub team call held on Friday the 21st of October, 2016. On the call today we have Susan Payne, Ed Morris, Paul tattersfiled, Kathy Kleiman, and Kurt Pritz. We have listed apologies from J. Scott Evans. From staff we have Mary Wong, David Tait ,Ria Otanes, and myself, Terri Agnew. I would like to remind all participants to please state your name before speaking for transcription purposes. With this, I'll turn it back over to you Kathy. Please begin.

Kathy Kleiman: Great. Thanks Terri. Appreciate it. And everyone I want to thank you for your outstanding and amazing service to the working group. This is our second subgroup call of the week and we had a working group call. So it's been a crazy week even as we prepare for India. So thank you very much. The purpose today is to continue our discussion of earlier this week on the charter questions. And I'm going to open it now just for general discussion of the types of revisions that have been presented. Mary I know we didn't talk about this ahead of time but maybe you can talk about the table that you put together. I'd be happy to talk about the comments I posted in and Kurt I didn't even have a chance to look at what you posted, but maybe you want to give kind of an overview of what you were thinking, not the details but an overview so we can kind of see what's on the table for us to be looking at. Thanks.

Mary Wong: Hi Kathy and everyone. This is Mary from staff. So what you see here is what staff prepared based on the sub change discussion and agreement from the last call. In other words to make it easier for folks to review the questions, we have done essentially two things. One is to group them into categories using basically the categories that (Paul) had provided previously. So this is not chronological as you'll see in the charter, but it is boxed by category and we have at the top of the document the current suggested categories.

                The second thing that we did again as requested by the sub team last team was to go back and look at where each charter question came from and you see that in the second column of each table under context or background or

origin. General comment here is that they all came from public comments primarily to two papers that were published in the last year or so. One is the draft RPM paper that was published by ICANN for public comment in February of last year. The second is the more recent issue report that really framed the work for our PDP. So that's what we've put in the column there. And where we could say that the question was actually a specific question that we took verbatim from a public comment, we indicated as such.

Then the third column is comments and suggestions which we have picked up either from suggestions and questions and rephrasing that the sub team made on the last call or based on our review either of the - of either of the sources of the comments in the second column. So that's kind of what it is Kathy and everyone I hope that's helpful.

Kathy Kleiman: That's very helpful Mary and thank you and David for your work on this. Kurt, do you want to say anything about what you introduced today - actually recently?

Kurt Pritz: Yes very recently and I apologize for that. I was, you know, looking for the list of questions such as one…

Kathy Kleiman: It's hard to keep track of everything. Don't worry.

Kurt Pritz: Yes the ones on this table from Mary and David and somehow it slipped right by me. And so I got up early to get ready for the meeting and then I looked back and there it was. So the table that Mary and David furnished, you know, has the far right hand column that seems to be asking for this group's recommendation on what the questions should be or should become. And so given that we made certain commitments to working on this between the meetings I wanted to at least put, you know, get my thoughts in there and then I thought I'd share with the group. So we can either look at those or, you know, as we go through these I can kind of take what my suggestions are where I think it's appropriate and just put them into the chat and we can

consider them there. So what I put in the far right hand column of what I sent around are proposed final additions of the questions. That could show you some editing from this group so.

Kathy Kleiman: Thanks Kurt and I'm just going to share that if you put it in the chat I may not be able to read it. My - I'll try but that's really small compared to some of the other things on the page. So I'd much rather you raise your hand, you know, or just shout out or both. Okay and let's see the suggestions that I made this morning also are in the agenda and the note. So one thing also to think about is as we go through this is as Mary said there's no particular order here just the grouping of the questions of the categories of the questions which we asked staff to do and truly appreciate because it separates out and lets us see, you know, what we've got in each kind of category.

One of the things that would be good for us just to keep in the back of our minds is what suggested order if we have a suggested order of evaluation for the working group as well. They don't have to accept it but if we see a very clear path for evaluation, we recommend you do this first and this first and this first because it makes sense kind of from our thinking. I'm sure the working group would welcome that information as well.

Okay it looks like we've been joined by Phil Corwin and (Sarah Clayton). Phil and (Sarah) we've just been kind of talking about some of the documents that have been passing in the listserv in our group over the last few days and some people including me and Kurt missed the annotated table that Mary and David had circulated. And so I re-circulated that this morning when I found it. Kurt then picked up on it. So it looks like we're all thinking about this anew or some of us are thinking about this anew this morning. Okay David go ahead and then we'll start a general discussion.

David Tait: Hi Kathy. This is David Tait for the record. Just to make you aware, we do actually have Kurt's document available in the background if that would be easier for you because that version is also up but it's entirely up to you.

Kathy Kleiman: I don't know about others. I'd prefer to work with the document that you guys circulated because that's the one I prepared off of. What do other people think? I'm open to either way.

Susan Payne: I haven't actually reviewed Kurt's document but as far as I can see he's just added an extra column in. So I don't think it hurts. It makes it easier to read the text if we wanted to look at it.

Kathy Kleiman: Anybody else want to weigh in? Kurt did you put any changes into anything that had been in the existing document or is yours just a layer in addition?

Kurt Pritz: It just fills in some of the blank spots on the column to the far right, proposed edited questions. So I didn't edit anything, any of the content that Mary or David provided.

Kathy Kleiman: Is everybody okay with looking at Kurt's document? I only pause because it means kind of processing in real time legal language and technical language but what the heck. We can give it a shot.

Kurt Pritz: I wouldn't call my language legal or technical.

Kathy Kleiman: So in that case Kurt, why don't you take the first category guidance because it looks like there were a few comments and suggestions and you broadened that? So why don't I let you lead the discussion on this section. Okay?

Kurt Pritz: I almost think I'm really looking for (Susan's) input on these. Remember in the last meeting we decided that we were undecided what the question meant and whether it meant should verification guidelines for the existing categories of marks be considered and possibly revised. Or does it mean there should be additional categories of marks considered? So we were going to write two different questions. So I took a shot at the two different questions. They're really short but I was trying to keep them simple.

And then in the second part which is guidance - oh, I just changed it from how can the TMCH provide education services to should because my understanding is that that's not one of the - even though the TMCH did provide education, it's not in their remix. So should it be actually added to the scope of the clearinghouse? But that's sort of a judgment call on my thing and I think, you know, the other question is fine. So those are the two questions in that section if anybody wants to outline.

Kathy Kleiman: Do you want to go into some detail on the - your - the underlying question was - the original question was should further guidance on verification guidelines for different categories of marks be considered. And do - are you proposing two variation of this or two - right you said two alternative questions. So maybe you could read them and talk about if it's an either/or or you're recommending both as different variations. Because I think we have to dive into the details…

Kurt Pritz: Yes. Let's do it. Yes just to recap our discussion of last time and again I'd love to Susan and others on the call to refine my understanding is that I think and I can - I'm sorry Susan I keep mentioning your name but I think that Susan read the English correctly on the question.

Susan Payne: I'm happy to comment.

Kurt Pritz: Go ahead. Go ahead Susan.

Susan Payne: I was just going - I was happy to let you continue but I was just saying I, you know, I'm happy to comment at any point.

Kurt Pritz: Oh okay. So yes - so Susan correctly read the English that said should the verification guidelines be changed for the existing categories but some including me thought the question was slightly mis-worded. And those that posed the question were really asking should different categories of marks be

accommodated in the clearinghouse and if so, you know, and then so what should the verification criteria be. So the task for this meeting was to put up two questions, one that asked one and one that asked the other, and then decide for ourselves whether we just want to put one of these questions up in some rewarded form or whether we should put both questions to the bigger group and have them decide.

Kathy Kleiman: Great. I'll comp Susan in just a second but I note that our discussion of last week and I'll just read what Mary wrote. It seems to go towards the process of verification by Deloitte so the process one of whatever process they have of verification which I would assume is not just for registered marks but of course for the court verified and other types of marks. And we seem to be leaning towards the fact that this particular question did not run towards the scope/standards of qualifying for entry into the TMCH, so not the threshold question but a process - a verification process question. But let me turn to Susan. Thanks Susan.

Susan Payne: Yes I think that's - I would say that's right having - basing this on the way that stuff is very kindly done and going back and looking at the source of this question. It seems to me that it's very clear that it's around problems people had with understanding what was required of them in order to verify, you know, in order for Deloitte to verify their rights. So it was around verification that the mark qualified if you like as opposed to anything else. You know, so people talking about difficulties having to go back and forward with staff in proving their mark, in proving their use - evidence of use that kind of thing, difficulties where it was non-Latin text. And so I think the question is very much around, you know, are the current guidelines on verification adequate or can they - or could they be improved.

Kathy Kleiman: Susan how would we capture the list you just gave? Some of it is in the context but are these - these are specific problems because this really I think fleshes out an important question. So these are specific problems people have been having as they were trying to register in the clearinghouse things -

language barriers. I don't know what error corrections are, certifications required. So it looks like the comments in our table include clearer communications and better guidelines from the TMCH to those applying or submitting their marks.

So that sounds like along the lines of what we're talking about. What about a question that included some more detail so that the - some of the detail perhaps of our second column, the context background and origin? Really based on what you just said Susan, that provides the working group with some of these details so they can get their hands around what we think the verification process questions really are. Because I think you've hit the nail on the head. And then the question for Kurt is are we going in the right direction? Go ahead Susan. It looks like your hand's up.

Susan Payne: Yes. I forgot to take it down but and then I realized I would just leave it up. I think that's right. I mean I - in many ways I think we can keep the questions. I mean I think that question does need, you know, the original question could do with some tweaking if you like. But the question itself does that really need to be particularly lengthy? This is after all, you know, a document - a sort of internal document for this wider working group isn't it? So that, you know, something which just says, you know, almost a sub paragraph which then just says, you know, by way of, you know, guidance the following, you know, issues were some of those that people had, you know, raised in relation to the draft issue report or something like that. Do you think? I mean it seems to me that, you know, the guidance is helpful but it doesn't mean we need to have a question that goes on for three paragraphs.

Kathy Kleiman: Although, you know, the more the merrier. I mean I really - now in light of your comments and Kurt's background, I really like the second paragraph in the table supported by various public comments to the draft RPM staff paper referring to administrative challenges, e.g. inconsistent submission requirements such as. And it goes on. I - the more information, not necessarily guidance, not necessarily direction, but information about and

background we can give the working group the better it is. I think the first column combined with the second column may give us the answer and some variation of what Kurt said.

Susan Payne: I think that sounds reasonable.

Kathy Kleiman: Okay. So really this is how can the, you know, should the verification criteria be clarified really, you know, amended or clarified. And if so, how? And then the background, the whole background as in that long paragraph. Does that make sense? And that way we can - it looks like we're trying to overcome hurdles that people actually encountered. So that gives direction to the working group that if they want more information they probably can inform this particular question for us. Go ahead Kurt.

Kurt Pritz: Yes so I agree. I - except for my silly mistake here in this question number two, you know, should the verification criteria, you know, and that's the simple question and then just put the background underneath it.

Kathy Kleiman: But it doesn't sound like we're talking about amending necessarily the verification criteria but explaining it, streamlining it. I'm not sure we're amending it because the original question asks for further guidance on verification guidelines. So I'm willing to go with Susan. It sounds like there's a communication gap going on.

Kurt Pritz: So the verification guidelines are the - am I - maybe I have a basic misunderstanding. Are they the criteria by which trademarks that apply for registration in the clearinghouse are either accepted or not?

Kathy Kleiman: That's my understanding but Susan you're probably the expert here. Can we ask you? Oh (Kieran) is on too and (Paul Keating).

Susan Payne: Well I think the problems that were identified when most of people's lack of understanding about how the verification - how the, I believe, information

needed to be provided and how they worked with the TMCH in order to get verified I think. I think it's much more to the practical difficulties of verification rather than anything criteria based.

Kathy Kleiman: Go ahead Mary.

Mary Wong: Thanks Kathy and thanks Susan. That's what I was going to say. From the staff review of the comments, it was about the difficulties of working with the TMCH provider and some of the examples are in the second column. So I don't recall a comment that specifically said that we must prescribe the verification guidelines or criteria. They just basically said we're having a lot of problems and it's just not clear what it is that we need to do and we're not getting clear signals from the TMCH if I may summarize.

Kathy Kleiman: Okay. Does anybody disagree with the direction we've adopted on the proposed edits to this question that we're going to interpret it as a clarification question and understanding question? (Kieran) says it's primarily a communication problem for our clients as well. Okay so we're on the right track. The only thing I'd point out under context background origin is that the design versus - the design mark may be a different category here. I think Mary the design mark it may fall under this but whether the design mark should be accepted at all I think is an underlying question that we've got in the working group. So not necessarily a clarification there. And there - other people might want to know how designs are verified. So it may fall into multiple categories.

But I really like - it sounds like we like the description of the second - of the context background origin paragraph. Mary, David is that enough instruction? Can you take it from there and provide kind of a clarifying question on communications of the verification criteria and helping people understand better what the trademark clearinghouse is accepting and what to do when they're being challenged? Okay.

Moving onto - thank you for the discussion that. I think that's great. Moving onto the question of education. How - the original question is how can the TMCH provide education services not only for trademark owners but for registrants and potential registrants who are equally impacted by their services? And here I think we're talking about not just what's in the TMCH database but how it's being used and summarized and particularly in trademark claims because that's when the registrants and potential registrants will be coming in.

So Kurt it looks like you've rephrased it as should and if so how should the TMCH be responsible for education services for trademark owners, domain name registrants and potential registrants? I'm okay with that as long as you add if the TMCH is not responsible for education of any of these groups, who should be? I open to questions and discussions. Okay is everybody okay with the question as I just amended it? Go ahead Kurt.

Kurt Pritz: Well so I think that's right. I think when the clearinghouse was set up there wasn't a focus on this at all. And the trademark clearinghouse took up some educational and outreach activities even though it wasn't included in their obligations. And we - I think it's, you know, a policy question with, you know, who should be responsible for education and outreach here. Should ICANN be helping out more affirmatively? Should it be included in the express obligations of the clearinghouse, that sort of thing? So I think your addition is good and, you know, even though I reworded the question it's only - it's an incremental change and it might be better or it might be worse. I'm not wedded to the wording I put up either.

Kathy Kleiman: I like your change Kurt. I'm waiting for others to input on the chat room or raising your hand or just speaking out. I like it because I think it helps us think about this in different slices. Education is a big question. So your question the should and if so how should the TMCH be responsible combined with if the TMCH -- and maybe staff you can put this on the right - in our notes -- if the TMCH as a modification or an expansion if the TMCH is not responsible for

education to any of these groups, who should be? And the question makes sense. You know, how should a registrant find out what, you know, a trademark claims notice is when it pops up in front of them if they want more information? Okay. Any - oh Susan go ahead.

Susan Payne: Yes thanks. Yes I was going to say I think that sounds okay. To be frank, I think if we reach the point where we conclude that the TMCH isn't responsible, I think we may well conclude that some other part of ICANN is responsible or ICANN the organization in some way needs to find a new home for it. I'm not sure it's our - I'm not sure that we should be imagining that we'll spend a lot of time working out precisely within the ICANN organization who is responsible for education and awareness of RPMs and the new GTLD program generally. I mean I think that goes a bit outside of scope. But I recognize that in the context of determining whether we think the TMCH should be doing this, we'll clearly come to a view if we think they shouldn't that someone should.

Kathy Kleiman: Okay. Thanks Susan. So…

Kurt Pritz: So Susan I think you're making a good point and I'm not quite getting it. So how would you reword the question then? Would you leave it in its original form or?...

Susan Payne: Well I suppose I would - I guess I would be happy with the version that you put and I think it's almost implicit that in determining if the TMCH has a role in this we're going to, you know, if we're - if our determinate is no, you know, we're not saying there shouldn't be awareness. And so we'll almost implicitly be determining that ICANN should be finding a new home or should be finding a home for awareness. I'm not sure it's our job to identify which department within ICANN should be dealing with this. That's all I'm saying.

Kathy Kleiman: Go ahead Mary and I'm just thinking this may be, you know, I'm not sure we have to decide this one way or the other. Go ahead Mary.

Mary Wong: Thanks Kathy. Just to follow up on (Susan's) point and you're right. I mean we certainly as the sub team don't need to decide this but based on what Kurt and Susan are saying I mean I think the obvious response from folks will be well if not then it should be ICANN. And we agree with Susan that it probably goes a little beyond the working group scope to sort of dive into that. However, I wanted to note that there is a work track one in the new GTLD subsequent procedures working group that is looking overall at the question of outreach accessibility etcetera. And so while this may be a little specific, you know, as appropriate and when the time comes this may be something that's appropriate for them to look at and we can pass it to them at that point.

Kathy Kleiman: Okay. I'm going to take off my chair's hat for a second and say I think it's completely inappropriate for us to say you only educate one side and not the other side. It lies within the balance of the rights protection mechanism to ensure that all using its processes are educated and have information they can go to even if it's not webinars but Web sites, FAQs, things like that. Right now 100% of the time and resources have been spent educating trademark owners and not registrants. So I really think we should move on from here but I think it's a legitimate question to give to the working group not to say - not for a subgroup to say yes we're not sure where this goes. I think it's an important gap that's been identified. And so, you know, and now I'll put my chair hat on again. But I really think we should move on because we know that there's a big category that we need to spend a lot of time on. So for final wrap-up go ahead Susan.

Susan Payne: Okay well I'd be very happy to move on but I would just like to put on the record that I don't think anyone said that we thought it was only appropriate to educate one side and not the other. We didn't mention that at all. I think all I was saying was that if we conclude that TMCH doesn't need to do outreach then we probably are concluding that ICANN needs to find a new home for it. That was all I said.

Kathy Kleiman: Excellent, okay. So the follow up question which is if not the TMCH then
                  where sounds like it's a legitimate question. Okay unless anybody objects,
                  let's move on to where the core, as long as we're all together I think we can
                  do a lot of the other work online.

                  But let's move down to suggested category balance. This is about the scope,
                  the balance. We've got a lot of people on the call, appreciate your time. It
                  looks like we'll probably spend the next 25 minutes maybe in this area.

                  So let me start with the original questions. We've all got them in front of us.
                  And so the original question was is the protection of the TMCH too broad, is
                  the TMCH providing too much protection for those with a trademark on a
                  generic or descriptive dictionary word.

Susan Payne: Hi, apologies Kathy. I think we have missed two.

Kathy Kleiman: I'm skipping them Susan so that we can focus on where the…

Susan Payne: Are we?

Kathy Kleiman: I'm going to skip those and maybe we can work with them online.

Susan Payne: Okay.

Kathy Kleiman: Okay? Can we go on to where the crux of the discussion has been and just
                  trying to maximize our time together. Because I think other things we can
                  probably clarify on the list quickly or I'll move back to it. So we're on balance.

                  And let's see, we've got the original question, we've got the revised question
                  which is just taking the original question and saying is the protection too
                  broad or too narrow or appropriate. Not to say that (Jay Scott) drafted it but
                  he also adopted that when he talked about the three Goldilocks, you know,

give all the options being too big, too little, just right.   And then there's staff revision to this as well as Kurt's revision.

So let me ask if people want to introduce their revisions and we'll talk about them. Because I think this is where the crux of our work would really be for today. Mary do you want to introduce the staff revision?

Mary Wong: Hi Kathy and all. So what we put here is basically our attempt to capture the discussion that the subteam had on the last call and as was noted here the idea was to create a general question with more specific questions or points that capture the nuances of the suggestions that were made. So again like Kurt we're not wedded to this wording, we just wanted to provide something for the working group to - sorry, the subteam to look at, rephrase, and edit.

Kathy Kleiman: Kurt do you want to talk about your edited version and what you were basing it off of? Thanks.

Kurt Pritz: No but I will channel (Jay Scott) a little bit. And so remember the trademark clearinghouse really is just a database, it's just a cost reduction mechanism and the protection is really from the sunrise and trademark claims trade. So I wonder if we should put a fine point on that in the question.

And also in the wording of the questions recognize that registries before the trademark clearinghouse also had sunrise and trademark claims periods that varied in their implementation. Some could be tighter or more - leaning more towards trademark holders and some not. So as Susan said yes, maybe Susan can put into better wording than anybody has so far.

But, you know, maybe it should go to, you know, is the - does the present implementation of the sunrise period or the trademark claims grade, you know, affect, you know, negatively affect the rights of either trademark holders or registrants with a legitimate interest in dictionary or other terms, something like that. Susan, you go.

Susan Payne: Thank you. I was just going to say I'm not going to get into the sort of sub clauses if you like but just in terms of the first part, I think what we should be just saying is does the scope of the TMCH and the rights protections that stem from it reflect the appropriate balance. And that's the point.

Because otherwise the answer to does the scope of the TMCH reflect the appropriate balance kind of - it's kind of yes because it doesn't do, you know, it's not a rights protection. So I think what we should be looking at when we're thinking about this question is not the TMCH in isolation but the TMCH plus its RPMs so the claims in the sunrise.

Kathy Kleiman: Okay so it sounds like the modification of the question that we're talking about -- tell me if I'm totally off the wall. I've got (Jay Scott)'s version, I've got the original question. So is the protection of the TMCH database combined with the sunrise and the claims notice and the private RPMs too broad, too narrow, or just right?

Susan Payne: No I don't think that is the point. I mean, we don't - the private RPMs are not - are certainly something that are within scope and that's a whole separate question but the private RPMs are not something that is an ICANN mandated. What we need to look at first is what has been mandated. We separately have a whole load of questions where we'll have to consider GPML and other.

And I think phrasing it as creates the appropriate balance between the rights of the trademark holder and the legitimate - and the right source non trademark holder registrants is the appropriate way, not to start going too broad, too narrow, just right. I think the term - I don't see what is confusing about balance.

Kathy Kleiman: One might argue that it's the last question, not the first. Like you have to kind of look at - I talked to the original question drafters but I'll wait for Mary and then I'll put myself in the queue. Go ahead Mary.

Mary Wong: Thanks Kathy. So two points. I think in terms of the private protections like the block services that are additionally offered by certain registry operators, maybe that's something we can put a square bracket around because our understanding on the staff side is that how we deal with that within this subgroup is something that is still under consideration including by the chairs.

So this is something that we can just bracket for now and say once that is something that has been agreed on we can put it back in or, you know, put it somewhere else as the case may be.

The other point that we wanted to raise is that going by Susan's and (Jay Scott)'s comments as well as how the TMCH really works, our suggestion would be that this question if Susan is rephrasing is appropriate and accepted by all that this is something that we probably need to come back to after we are completed with the sunrise and the claims because then we really can't answer this question without.

So one recommendation on this we can make to the full working group is retain this as a primarily TMCH question but this is something that we will return to at the appropriate time. Thanks.

Kathy Kleiman: Okay. Now I think there is some disagreement with Susan's wording and I'm looking forward to others joining in. But the purpose of the original question which is in our charter seems to be not a balance one but a legal one. Are we providing protection in the TMCH and here it's broad. It doesn't say TMCH database or processes like the sunrise.

So I think we can interpret all of that into it. I don't see any reason why not. But are we providing protection for trademark owners that may go beyond

what they're being given, what they have in the real world. Again I invite others to participate.

But it seems to be a fact based question. The balance question seems to be our question at the end of the day but I'm not sure it supplants the fact based question that we have been asked to look at in the charter. I certainly open this to others for comment.

Mary Wong: Kathy this is Mary. May I jump in?

Kathy Kleiman: Sure.

Mary Wong: And I guess the difficulty here is that the question does just say trademark clearinghouse. And without the associated mandated sunrise and claims notice it essentially is as the others have said a database and the description of the TMCH itself is as a repository of marks.

So I'm not sure if the question is to the extent that it's talking about the TMCH without the associated mechanisms. Are we talking about entry into the TMCH? By your last comment I think that's the question that I have.

When you say too much protection that they don't already have in the real world, the only thing that I can see is that you as a trademark owner and there's three categories. You can put your trademark into the clearinghouse if you wish. Is that what the question is getting at?

Kathy Kleiman: Could you say that again Mary? Is it getting at what you put in the database or how it's used? Is that the question?

Mary Wong: Well yes. What - is the question getting at how you get into the database meaning the categories of marks? Because when we talk about how it is used then we must be looking at sunrise, etc.

Kathy Kleiman: That's a good question. I am going to have to go back to the drafters on that one. So if we were to draft it with both the database itself and open the question to the working group but the database itself and also add the uses of the database, because it sounds like that is more the operational are the uses of it.

Of the - if it's right then, is the protection or the use of the trademark clearinghouse database too broad, too narrow, or just right, is the TMCH through the RPMs, trademark claims, and private uses providing too much protection, too little protection, just right protection particularly for those with a trademark involving generic terms or descriptive and dictionary words. Does that get better to what people think the purpose of the question is? Go ahead Susan.

Susan Payne: Honestly Kathy I think that just ended up being three paragraphs saying the same thing as I was trying to say. What I was saying was, you know, the TMCH doesn't give any protection so it's the TMCH together with the RPMs that fall off it or run off it that we're trying to look at here.

And I don't understand why that seems to be a concern unless what you're really asking about is, you know, our categories of marks that are too broad to be put into the TMCH. And that's a very different question because, you know, maybe that is the question you were asking. But that's not protection being granted by the TMCH because you don't get any protection for putting your mark in there. You just get the ability to participate in the other protections.

Kathy Kleiman: Thanks Susan. Phil let's see if you can clarify, we would appreciate it. Phil if you're speaking we can't hear you.

Phil Corwin: Can you hear me now?

Kathy Kleiman: Yes thank you.

Phil Corwin: Apologies for failing to unmute the first time. At the risk of being repetitive to what has already been said, TMCH is just a database. I think the only germane questions about the TMCH itself is whether the eligibility criteria for listing a mark in the TMCH are the proper ones and whether they're being adequately enforced.

Then we have ICANN required RPMs that key off TMCH registration which is the claims notice and the ability to do sunrise registrations. And then we have additional services offered by both the TMCH itself and by certain registry groups that are tied to TMCH registration. So that's the three different layers that I see in all of this.

And Mary is correct, the co-chairs are considering the proper way to address private sector protections tied to the TMCH. We're going to be communicating with the working group on that shortly. But right now we're just looking at the database and trademark claims and sunrise and then we can go beyond that and look at other things that are tied to TMCH registration.

Because they perform another part of the entire picture of what is out there right now in terms of right protection mechanisms so you can't ignore the other stuff and get a complete picture of what's going on. That's my two cents, thanks.

Kathy Kleiman: So Phil before you get off then, are we talking about questions - because obviously we don't want to drop a charter question if it belongs appropriately in another category and we can help with that. So are we talking about pulling this question completely out of the TMCH clearinghouse database evaluation and adding it to sunrise, adding it to RPMs, adding it to private purposes should we go there? Is that…

Phil Corwin: Are we talking about this balance question, is that what we're still on?

Kathy Kleiman: Yes.

Phil Corwin: Well I think it is phrased incorrectly. It's not the protection that TMCH, it's the rights protection mechanisms based upon TMCH registration. I think we have to be precise about our questioning. You know, so I'm agreeing with the others who have said that there is no protection granted just by registering in the TMCH.

                   What it does is give you access to the other protections, the claims notice that you get and then you can decide what to do about it, the ability to take advantage of sunrise registrations if you wish to. And then there are other protections available in the marketplace from both the TMCH and certain registry groups that are built upon the TMCH registration.

                   So I'm just saying you've got to disaggregate the database and the qualification for getting in the database from all the actual protections that are tied to that database registration.

Kathy Kleiman: Okay.

Phil Corwin: In terms of asking the questions.

Kathy Kleiman: So it does sound like we need to move part of this question or at least some interpretation of this question into other categories. So is - so looking at are the RPMs based on the TMCH database too broad, too narrow, or just right? Is the TMCH - are the RPMs based on the TMCH database providing too much protection, da, da, da. It sounds like we move copies of those questions into sunrise, trademark claims, and private purposes.

Phil Corwin: Yes I would go with that because I think the only broad or narrow question about the TMCH itself is whether the criteria for getting in are too broad or too narrow for registering a mark and then whether the operator is doing a correct

job in vetting those credentials for registrations. But everything else is beyond the TMCH itself, it's tied up with the things, the RPMs that are tied to it.

Kathy Kleiman: So would it be a reasonable question to ask, are the current requirement for the TMCH itself then to ask are the current requirements to be included in the TMCH database sufficiently rigorous given how the database is used and its impacts. Would that be a valid question for right now?

Phil Corwin: Well I think it's two separate questions. One, are the current requirements, the eligibility standards for putting a mark in the database, are they the proper standards, are they too high or too low and then look at are they actually being implemented properly. So that's just about getting a mark into the database. But everything else is about the separate protections tied once you have that mark in the database.

Kathy Kleiman: Okay. So where should we put…

Phil Corwin: I'm just saying we should be very precise in our questions.

Kathy Kleiman: Agreed, agreed. So where should we put the question as staff has phrased it and could even rephrase it. But so the overall question does the scope of the TMCH reflect the appropriate balance as between the rights of trademark holders and the rights of non-trademark holders. Where and when, and this is not just a question for Phil but we'll kick off the discussion if that's okay. Where - we don't want to lose that I don't think either. Where should we put that? Go ahead Susan.

Susan Payne: I think provided the question says does the scope of the TMCH together with the rights protections that flow from it or that rely on it correctly reflect the appropriate balance, I think that could stay in a category called balance if we want but it may just be that we - that's not the starting place of our work but rather the end of our work. Do you know what I mean?

You know, we talked - you mentioned at the beginning we may - as we're talking about these come up with some ideas about order in which we're addressing questions. This is probably not our first question. This is almost kind of a conclusion that we will probably draw at the end of our work.

Does that seem reasonable? I don't think we need to worry about losing it. I don't think we're losing it, it's just it's a question that needs to keep being considered as we consider the underlying RPMs and indeed throughout the course of our work.

Kathy Kleiman: I totally think you've got it. Okay so moving this balance question then, and I'm not sure about the ones that follow. We're almost at the hour, we've got five minutes but moving this balance question as staff has defined it to kind of an ending question for the TMCH for this section.

So we're going to take specific questions about the RPMs themselves, I think staff has got it, and we're going to move it to sunrise and claims and private RPMs about the protection levels. But keeping the scope question and making sure that it is looked at, that the balance - when we get to the end that the balance is looked at overall. Susan I think you've got it.

So for this particular question staff to find what it looks like we're recommending now to put it, you know, at the end of our charter questions for the TMCH clearinghouse. That works to me. Does anybody object? Great.

Let's see, I'm trying to think of the best - I think in light of that we should be able to look at the other questions and try to figure out particularly in balance whether they're questions that are intended for the TMCH providers and clearinghouse review which is what these questions are, where the questions should be going, into other categories of our review. Maybe once we see a rewritten version this will make a lot more sense.

Does that make any sense? Is there anything anyone would like to raise about a favorite question? Kurt you looked at this in detail. Do you want to raise a favorite question down the list that we should look at as we're reviewing?

Kurt Pritz: You mean on this whole list Kathy?

Kathy Kleiman: On this whole list because we've only got three more minutes and it looks like we're going to have to have one more meeting before we go to India.

Kurt Pritz: You know, yes I think we're going to have to have one more meeting. I think we all - I have some favorite questions but I think all of us have different cruxes as you put it so, you know, we should endeavor to touch on them all and maybe we can meet the beginning of next week or something like that.

Kathy Kleiman: Is anyone not in town next week? Early next week because I know we're all leaving at different times later next week. Mary go ahead, maybe you can suggest a good path forward.

Mary Wong: Well I don't know about that Kathy but David and I have been discussing this and we would like to propose that if the subteam is available that indeed you do one more call before Hyderabad and we would like to suggest using the regular working group slot of Wednesday rather than the subteam slot of Friday.

That will allow folks time before Hyderabad although, you know, not as much time to review any updates we can provide. It will also allow staff time before Hyderabad to capture any further updates that the team might come up with next week.

And the reason we're suggesting that is that we looked at the calendar. Typically we don't meet the week after an ICANN meeting so that would mean the week of the 14th of November would be a meeting free week. The

week following that is the 21st and that is Thanksgiving week for the U.S. and many of our members are U.S. based. So if we take that out it basically means that the first time this group will come back together is the last week of November.

That raises the question particularly for Kathy and Phil and (Jay Scott) as to the timing and the expected receipt of the final list of questions by the full working group so that they can start diving into the TMCH.

So I'm sorry to introduce all of these elements one minute before the end but if we can at least agree on the time of the next call perhaps the chairs and staff can discuss the remaining questions.

Kathy Kleiman: Is anybody registry? Do we know what time the registry stakeholder call is for next week? Mary what time - do we have a time we'd suggest for next week?

Mary Wong: There isn't one next week. We're very lucky, the rotation was this week.

Kathy Kleiman: Okay so noon or 1:00 is okay Eastern Time? Great. Does anybody object to using our normal Wednesday slot? I think that's a very good idea. We did - in terms of when - this is owed sooner rather than later. We have actually somewhat promised the working group that they will have the charter questions by the end - by our meeting, that we were going to close our meeting in Hyderabad with the charter - with the revised charter questions.

So if there is any way to have a deliverable by the end of next week. But I don't want to put too much pressure on because people are traveling and packing and getting children ready and things like that.

So I think Mary and David if you have time to give us another revision we will call a meeting then for Wednesday, no one has objected, and see if we can finish this up with Kurt's guidance and his edited column, thank you, and the

guidance that we're getting online and in the chat room. Thank you very much.

Mary Wong: This is Mary again. Can I just jump in really quickly? It may help for next week and looking ahead to Hyderabad if this subteam could take a look at the list including Kurt's suggestions. And perhaps on the list we can agree on which of the questions we really should be discussing and in Hyderabad we can perhaps present those that are complete as well as those that we think might be more difficult to the working group. But just a way forward for next week at least.

Kathy Kleiman: But Mary let me just check that you're going to take the current table and work with it based on what we have discussed today. So we've got revisions to guidance, we've got revisions to balance, we've got revisions to order. And so when we work with that, that will be our starting point for next week.

Mary Wong: We were going to suggest that while the staff do the update, because the updates as you understand really are only to a couple of questions, that there are some remaining questions in the table. And so this - the subteam could look at the remaining questions and agree if possible which are the ones you also want to be discussing next Wednesday. Preferably all but realistically we can't get through all of them, which are the ones to prioritize.

Kathy Kleiman: Sounds good to me. Sounds like a discussion for the list. But I would hope we would be able to get through everything by next week. I don't know about others. I think we can - I think we have covered some of the more sensitive and difficult of the questions. The others may fall into categories from there. To be continued.

Thanks everyone. Sorry we're two minutes over. Thanks to Mary and David for the work that they're about to do and have a good weekend everyone. Any final thoughts, comments? Thank you very much.

Terri Agnew: Thank you. Once again the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END