

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) TMCH Sub Team call
Friday, 15 July 2016 at 15:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<https://icann.box.com/shared/static/l8e2nlti8qrcj6ibypg43z1ykjrnymgc.mp3>

Attendees:

Vaibhav Aggarwal
Susan Payne
Kristine Dorrain
Jeff Neuman
Khoulood Dawahi
Phil Corwin
J. Scott Evans

Apologies:

Grace Mutung'u
Salvador Camacho Hernández

ICANN staff:

Mary Wong
Glen de Saint Gery
David Tait
Terri Agnew

Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the RPM TMCH Sub Team call taking place on the 15 Jul, 2016. On the call today we have Vaibhav Aggarwal, Susan Payne, Kristine Dorrain, Jeff Neuman, Khoulood Dawahi, Philip Corwin, and J. Scott Evans. We have

listed apologies from Grace Mutung'u. From staff we have Mary Wong, Glen de Saint Géry, David Tait and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. Go ahead and begin.

Mary Wong: Thanks very much, Terri. Everyone, this is Mary from staff again. And prior to starting the recording we had had a brief discussion about chairing this call as well as chairing the sub team so just for clarity, it certainly will be up to this sub team if they wish to have a chair for the work as well as the calls. And it's certainly is also up to the working group cochairs if any of them would like to join actively or chair any of the sub teams that may be formed.

So we don't have an official agenda, as noted, when organizing this call. This is really just an initial administrative or organizing call to make sure that the team is on the same page about the nature and the scope of the work, the timelines that we might have to adhere to, as well as start to think about the sources as well as the types of data that this team may wish to collect to bring back to the full working group.

I know that a number of you have been on both working groups as well as sub teams or working groups before so, again, just for the record, this particular sub team is tasked to collect data that's relevant to the working group's analysis of the trademark clearinghouse. And my understanding from the staff end, is that at the moment, at least, this does not yet extend to specific questions about, say, the sunrise registration period or the trademark claims notices. So we're really, at the moment, looking at the functionality of the trademark clearinghouse as an entity.

And in that regard, what we would do is to bring back whatever data and information we can find back to the full working group for its consideration, deliberations and further direction. So I just wanted to get that out there to set

the scene for our work. The other thing that I wanted to highlight is the scoping document that staff prepared and sent out just a short while ago.

And hoping that this will serve as some kind of framing for the discussions that this group will have today and in our future calls, and maybe just continuing some initial suggestions for the sorts of data that we might want to look for and who we might look for that from.

So on that note, J. Scott, Phil, as two of the cochairs I don't know if here's anything you wanted to add or if there's things we wanted to clarify for the group.

Phil Corwin: Phil here. I thought that was a good summary, Mary. And in terms of the timing, when does our current timeline project us starting the substantive discussion of trademark clearinghouse? Is that - I believe it's around the first week of September, is that correct?

Mary Wong: That's correct. The current working group's work plan has us completing the PDDRP discussions in late August and starting the TMCH review either on the 31 of August or possibly the first week of September. And in that regard, it also means that whatever work that this sub team is going to do should be completed before the end of August.

Within the work plan we also have built in some dates for status reports from the group. And I believe the first status report is expected in two weeks on the 27th of July or rather the working group call on the 27th of July. These, you know, report dates can change but it gives us a sense of the fact that we probably have five or six weeks, maximum, to do the initial data gathering.

Phil Corwin: Right. Right. Yes, because well I'm looking at the work plan now. I pulled up the draft you sent the other day. I mean, this is July 15, as you'll know. This work plan projects the initial status report from the trademark clearinghouse subcommittee on the 27th, which is 12 days. That's probably not a realistic

date. And the second one on August 10, which - so we may have to adjust that to be more realistic, because I don't think we can expect this subgroup to start giving back a lot of hard data in 12 days when it's just organizing today.

But that's just my opinion. And I see J. Scott clicked the Agree. So - but, yes, so I think, you know, today is a good time to discuss the scope of the work, going through that scoping document you sent out earlier today and really for the - I intend to participate in these calls as much as possible and monitor this group. I didn't expect to be a leader of this group. I don't know what J. Scott's disposition is. But my assumption had been that the subgroup members would organize themselves and pick their own leader or leaders to keep them on track.

So that might be something to do today or at least since not all the members are on the call today to send out an email to all the sub team members and aim to have that internal housekeeping taken care of by the next meeting next week. That's all I have to say at the moment.

Mary Wong: And, Susan, what we will do as staff is send a note after this call to the group making that suggestion and perhaps suggesting nominations on the email list, with such a small group it doesn't seem necessary to do a Doodle for that kind of thing. Susan, you have your hand up?

Susan Payne: Yes, if you were finished with talking about that, I was just going to say I did make a few notes of things that we talked about in Helsinki on - in terms of sort of the data gathering exercise. And I had (unintelligible) members when we had our first call but I will, I'm afraid, have to send them around shortly after this. They're not very long. It's more time because they're still out, you know, have the discussion what we actually concluded on some of this.

But I think one of the really important things that we did talk about, and I think we could probably move on with pretty quickly even whilst we're trying to select a chair, is trying to fix up to speak with Analysis Group or to get an

update from Analysis Group on what they're doing, what data they have already either gathered or asked for and when tabled together because one of the real concerns was that we shouldn't either duplicate what's already being done or, indeed, contribute to the kind of sort of recipients fatigue of, you know, certain classes of people have been asked for the same or very similar information on rather sort of multiple occasions already.

And the last thing we want to do is be exacerbating that any further. So is that something we could perhaps fix up for our next call is to hear directly from Analysis Group on what data they have and what they can provide to us?

Mary Wong: Thanks for that, Susan. And actually that was one of the topics that in preparing for this call, we had raised with our colleagues who are working with Analysis Group. And they're happy to try and fix that up for us. I think that goes to the related question also which we may want to come back to later this call about how frequently and when this group wishes to meet. And once we have those dates or at least the next date and time I can certainly facilitate an invitation to Analysis Group.

On that note as well, my understanding from speaking to my colleagues is that we're currently expecting a draft report from them some time in this third quarter, helpfully sooner rather than later. I understand that they are in the midst of drafting that initial report which will I believe also be posted for public comment like most ICANN reports. So that presumably is something we can check in with them as well.

Then the third point I wanted to make in follow up to your point, Susan, is that staff has also heard that we want to be cautious about over duplication of effort by not just our working group, or our sub teams, but by other ICANN groups as well as the fact that for this particular review by the Analysis Group, as you noted, there's already been questionnaires and interviews and I believe other outreach efforts to trademark owners and other stakeholders.

So I think that's certainly something we need to bear in mind going forward for this sub team as well as for our full working group.

Phil, please go ahead.

Phil Corwin: Yes, just a few thoughts. I know Kathy is not on the call yet. I had expected her to be. But I did have some occasion to, at the IGF USA meeting yesterday, we had a short discussion on this. And something she raised that we should look into immediately is to what extent we can get information from the trademark clearinghouse itself. It may not have to be, you know, I know there's, you know, confidential information in there but certainly some aggregate information if it would be useful in this inquiry.

As I understand the task of this subgroup is not to answer the questions that are on the document displayed on the screen, but to look at where data might exist that would be helpful in answering those questions and go after that data. Am I correct in that, Mary?

Mary Wong: Hi, Phil and everyone, this is Mary again. Yes, I believe that's absolutely the case. And so to that extent, the list of charter questions that's in the first part of the scoping document is really intended to guide and to frame the work. But we would bring back our findings to the full working group who will review them...

Phil Corwin: Right.

Mary Wong: ...and presumably look at them in the order of these questions.

Phil Corwin: Right. Yes, so basically I'm looking at these questions, the first thing the working group members should be thinking about is not what is the ultimate answer to these questions but what data might exist that would be helpful in reaching an answer and where it might lie and how, you know, and start taking steps to go after it and aggregate it.

So that's - just wanted to bring that in and particularly while we're waiting on the Analysis Group report, which according to what you just said, Mary, we can hope to have by late September. That would be the end of the third quarter, at least the preliminary version that's out for public comment. The - we can, you know, pursue other potential sources. And obviously a prime one would be the trademark clearinghouse itself.

You know, I'll suspend judgment on the Analysis Group report until we see it, but I do - I did ask questions at length at the Marrakech meeting and they were quite candid that a lot of the questions we have they're not going to be able to provide useful answers. That's a group which has been tasked by ICANN to ask - answer a question raised by the GAC several years ago when the GAC had certain presumptions about the new TLD program, some of which may have not been borne out in reality.

But that's what that group is answering. It's the questions raised by the GAC. And when I looked at the questionnaire they were working off, my personal view was that a lot of it was more of an opinion survey than actually gathering hard data. So we shouldn't presume that that - well should wait to see that report and it may be useful in some respects, we should also be realistic and that we may need to - to the extent they exist, try to find other data. And I'll stop there and turn the conversation back to others.

Mary Wong: Thanks, Phil. This is Mary again. And what I've pasted into the Adobe chat is the basic question that the GAC had with respect to the review of the trademark clearinghouse. And then there was also a couple of very specific questions that the GAC wanted included in the terms of reference, which I think the Analysis Group has embraced, I suppose, for lack of a better word.

And is one of these is the question of non-exact matches. And I can send around the link to the full GAC advice on this for everyone's information, or at least background information, if you like. Susan.

Susan Payne: Yes, thanks. Yes, I was just going to comment on what Phil said and say, yes, I completely agree, Phil. I don't think that Analysis Group will have all the answers by any means. I think I was just keen that we don't end up, you know, going over the ground they have gone over.

And I think the data that they don't have could be as illuminating as what they do in terms of if they sought particular information from the TMCH and were unable to be, you know, were unable to acquire it or, you know, because either it doesn't exist or the TMCH would not provide it, then, you know, we're going to be wasting our time if we try to follow the same path only to come up with the same answer.

So that was my thinking. That it's an early, you know, a really early to determine what they do have and what they don't and what they tried to get and couldn't.

Mary Wong: Thanks very much, Susan. And maybe one of the first things we can try to decide amongst ourselves and then run it by the rest of the sub team, is to see if we want to have our next meeting, say, next week. I don't know if you want to have it at the same time, because then we can have, as a focus of that meeting, a discussion with the Analysis Group with respect to the questions and topics that Susan and Phil have just raised.

Thanks, J. Scott. So the suggestion is that our next meeting should be one, if we can schedule it, with the Analysis Group. J. Scott, please go ahead.

J. Scott Evans: I would suggest also that during the interim that this list, this scoping document, be sent to the full working group and that everyone be asked to provide their ideas for where they think they might be able to seek this type of information to answer these questions. Because all they're really doing is identifying places we may look to obtain information. And then they can decide whether, once they've got the list of places they want to look for

information, then they can decide how to go about dividing up, reaching out to those sources.

But that way, we would get some, you know, thinking going during the interim and not just be waiting on the various calls to take action. That would just be my suggestion. And I think there's another hand up.

Mary Wong: Thanks, J. Scott. We will do that. Yes, and I see Vaibhav. Apologies if I'm not pronouncing your name correctly. Please go ahead.

Vaibhav Aggarwal: Yes, absolutely right. I think I would have a suggestion saying that we should keep a (sharp) call, half an hour, 30 minutes kind of a call, just before we get on a call with the Analysis Group and get our own house in order. I think what we should do is we should set our own expectations, right, with respect to what we want to achieve out of it and then start touting for ideas outside our group. Because we all have a task at hand in terms of the scoping document. It certainly gives a certain idea as to what could be possible, deliverables of this sub team.

So before we get on with the Analysis team we should be very clear as to what we want to do in terms of our deliverables, take inputs from the Analysis Group and then correct our course if need be. So before we get on a meeting with them I think we should have a concrete constructive discussion in our own sub team especially when everyone's starting.

Mary Wong: Thanks for the suggestion, Vaibhav. I don't know if other members have a view about that. In terms of having that constructive discussion amongst this group, I certainly agree with that. I think others will as well. I was thinking, though, that in terms of the call, if we are going to schedule a one-hour call with the Analysis Group having a 30-minute call amongst ourselves before that could make that a 90-minute call, which is fine if that's what everyone is able to do.

One alternative, if that seems too long of a call at this stage, is to have that discussion that you suggest amongst ourselves by email, at a minimum to agree on the list of topics that we want to cover or we want Analysis Group to cover in the call with us, as well as any potential questions that as a group we would like Analysis Group to answer either on the call or to take back and answer for us subsequently.

Vaibhav Aggarwal: So I think - Vaibhav Aggarwal. I think I agree to what you're saying, but in my opinion is we already have - I can read that (unintelligible) work including Analysis Group, find out. Now we can definitely get the work done by AG on the email and then we can meet up in a group on the (wire) like this to speed it up for about 30 minutes before we get on with the AG, that's what I'm trying to suggest. (Unintelligible) the group, whatever the group decides.

Mary Wong: Thanks for that. Phil, please go ahead.

Phil Corwin: Yes, I want to say I certainly agree with the sentiment that we should be well prepared and not just go in cold for that call with the Analysis Group. And in that regard, Mary, there was a presentation on this in Marrakech. There's an existing slide set, part of which explains the whole background on their project and what they're looking at. And if we could get that circulated to members of this subgroup along with the questions that individuals were asked to answer by the Analysis Group, I think that would provide much better background.

So that would, you know, that way everyone here would have good knowledge of, you know, what were they - what was the Analysis Group asked to focus on? And what did they actually ask so we would have some decent knowledge of the background on this and the questions they're looking into and that would make for a better informed, I think more productive conversation when we get on the call with them.

Mary Wong: Thanks, Phil. So I noted that as homework in the Notes part. And we will do that. So essentially where we are with our work is that we will schedule - the next call to be with the Analysis Group if possible. And prior to that, staff will send to the sub team the slides that were used for that session in Marrakech and so I think we'll send the transcripts as well because, as you know, that some of the questions and comments that you and others raised in the discussion that followed that presentation, is likely to be relevant as well.

Presumably, we will then continue discussion of the types of topics and questions that we want to raise with them on the call. And in that regard, Vaibhav, I see your hand is up again and I was also hoping to ask the rest of the participants on this call, if we would like to have that scheduled for this time next Friday? And if so, or even if it's some other time, do we want to at least set aside a 90-minute block in case we want to do that 30-minute pre-call that Vaibhav has suggested? Vaibhav, please go ahead.

Vaibhav Aggarwal: Okay, yes, I was just wanting to (enter) that I can - before we get onto that call I can work with Mary, David, Terri and Glen and help you guys work with the group to prepare a summary kind of a thing with the analysis with respect to the scoping document that we have in front, present it to everyone on the email and then get on a call so I can volunteer for that if we want.

Mary Wong: Thanks very much for that, Vaibhav, we appreciate it. So it sounds like we will contact Analysis Group to ask if they are available at this time next Friday. And we will schedule this call to be 90-minutes beginning at 1500 UTC. We'll of course send this information out to the full sub team to see if there's any problems or conflicts with either the proposal or the time.

We will also send to the...

((Crosstalk))

Mary Wong: Yes, please go ahead?

Vaibhav Aggarwal: Sorry. Sorry, so this is Vaibhav. I think I would suggest instead of doing this as a 90-minute call, let's get on a 30-minute call within the group, review that and then get on a 60-minute call at another date or at another time, which is convenient. I think that will allow us to deliberate and give us time to form certain parts around the subject matter that we will collect and, you know, then go forward.

Mary Wong: Thanks, Vaibhav. So that's probably more feasible. My concern I suppose, is that it might be difficult to find a time that will work for everyone, even for a 30-minute call, but we can certainly try that, depending on how others feel about that suggestion. Phil, did you have a view about this or about...

((Crosstalk))

Phil Corwin: Well, yes, I didn't. I didn't raise my hand to speak to that. But I'm going to differ somewhat with Vaibhav. I think if we can arrange a call with the Analysis Group, we should have it as soon as possible. I think if we have the background data that I suggested we get that - to familiarize ourselves with the origin of the Analysis Group's study and the questions that participants were asked to respond to, my view, and this is a personal view, is that if you have a 30-minute prep call where everyone kind of agrees what they want to ask and focus on, it's better to go right into the call with the Analysis Group.

If we have that call and then the call with the Analysis Group is days or a week later, people forget what they agreed to, to a large extent. Whereas if you just get on the same page and then go right into the call with them everybody is focused by the discussion they just had. So I'm going to differ somewhat.

The original reason I raised my hand was I did - and following up on my remarks earlier on data from the trademark clearinghouse, in scrolling down in this document that's on the screen, I noticed that on Page 2 and continuing

on Page 3, a list of the sources of data for the 2015 ICANN staff review paper on RPM review. And the source was the Deloitte monthly trademark activity reports, you know, they run the clearinghouse. And then on some of the other issues, not data but issues, took summary for it.

So I assume that if staff was able to get - ICANN staff could get that information from Deloitte in 2015 I would suggest that we make an immediate inquiry to Deloitte about getting the exact same type of data but an updated form, you know, as of July 2016 because that would be very useful database for our work. And that's all I had to say.

Mary Wong: Thanks, Phil, and thanks, everyone. So we're trying to capture all these suggestions as notes and so please let me know if I'm missing anything in the right hand notes part. Following on your comment, Phil, I think one of the things that staff hopes that the sub team can determine and I note in this regard, J. Scott's suggestion that we also rope in the rest of the working group in terms of suggestions, is to agree on the sources and the types of data that we want.

And, Phil, you've just asked that we do the monthly updates from Deloitte. And in that regard I will ask my colleagues in GDD for their assistance as to how we can get this done quickly.

Phil Corwin: Yes, thanks very much, Mary. And I also agree with J. Scott's suggestion that we - while this subgroup is in charge of this part of the project that we circulate the documents to the full working group and get feedback to make sure we haven't missed anything.

Mary Wong: Thanks, Phil. So on the staff end, I noted we have homework. And in terms of some of the initial questions, such as when we're going to do our calls, who, if anybody and how we're going to select a chair for this group, and making sure that we understand the nature of our work, I think we've covered all that. And like I said just now, if we can ask the subgroup and the working group to

take a look at the data that this group is going to be tasked to collect, that was really the aim from the staff end for today's call.

So I don't know if anyone else has any comments, questions or other suggestions that we can cover today during the call? I see J. Scott is typing in the Adobe chat.

J. Scott Evans: I guess it'd be quicker just to speak. This is J. Scott.

Mary Wong: Anyone else would like to speak?

J. Scott Evans: You hear me, Mary?

Mary Wong: Sure, go ahead, Scott.

J. Scott Evans: I'm sorry.

Mary Wong: Yes.

J. Scott Evans: I'm sorry, I thought it'd just be quicker if I spoke. I just think it's really important that members of the sub team realize that because of the compressed timeline it's going to be very important that they do a lot of work on email on getting to agreement on certain things so that when they have calls they can use those calls to handle the very difficult issues where maybe they haven't had agreement so that they can divide up and agree on objectives and timelines for getting objectives done. But they need to be exchanging as much as possible through email so they can keep moving and progressing along the timeline. That's it.

Mary Wong: Thanks for that reminder, J. Scott. That certainly seems like the path ahead for this sub team. Susan, and Phil, I see you're typing in the Adobe and - thanks, Susan. I think we all note that too. So on that score I don't know that there's any need to keep folks on the phone for this. The scoping document is

there. We will send it to the full working group as agreed. We will also follow up with email to the sub team so perhaps between now and our next call, hopefully with Analysis Group, we can ask the sub team to go through the scoping document to think about the sorts of discussion we would like to have with Analysis Group and to engage in further discussion on the email list.

Vaibhav, we don't have a separate wiki space for the sub team. There is a page on the working group wiki space that we've already created for this sub team where staff will upload the documents that we're using, including the scoping document. We will also be putting up the recordings and the transcripts of each of our calls and any other draft that we might have. You have your hand up. Oh, you've taken it down. So hopefully I've answered your question.

And since I don't see any other hands up or anyone else typing, except Terri, and I'll wait for Terri to finish typing. Oh thank you, Terri. Terri has just pasted the wiki space for the sub team into the Adobe chat. And so we will look to that as the repository of information and documents for our work.

And obviously the reason for that is not just for us to track our work but so that the rest of the working group and the community can see what we are doing as well. Thanks, everybody, for getting on this call. And we will go ahead and schedule the next call as agreed.

Khouloud, did you have a last comment? You have a question, please go ahead.

Terri Agnew: Khouloud, and this is Terri from staff, your microphone is not activated so on the top toolbar select the telephone icon to activate your microphone. Or you could always type your question in the chat and we can read it for you.

Mary Wong: Khouloud, we see that you are typing so hopefully your question will come through on the chat shortly. Hello again, everyone. This is Mary from staff.

Oh, Khoulood, thank you, I see that your question is now in the chat. And you're asking if we can look in other documents about RPMs, for example, from INTA.

And I think one of the things that perhaps we should have mentioned, and I apologize for not having highlighted this before, is that to the extent that there are other sources that we have not yet identified or listed as well as any material or documents, that the sub team or indeed the full working group, can identify for either us as a sub team or the full working group to review, that we should feel free to do that. So thank you very much for that reminder and the suggestion. We will be sure to add it to the notes as well.

And so on that note I'll ask everyone to please continue the discussion on the email list and we will follow up as discussed today. Thank you everyone, for your time. Thanks for taking on this work. And have a good weekend.

Phil Corwin: Thank you, Mary.

Terri Agnew: Once again the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines. And operator, (Christine), if you could please stop all recordings.

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