
ICANN Transcription

**The Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims
Data Review**

Wednesday 06, February 2019 at 1700 UTC

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ANDREA GLANDON: Hi. Well, good morning, good afternoon, good evening everyone. Welcome to the RPM Sub Team for Trademark Claims Data Review call on Wednesday 6th of February 2019. In interest of time, there will be no roll call. Attendance will be taken by the Adobe Connect room. If you're only on the audio for just this time, could you please let yourself be known now? Okay. Hearing no names, I would like to remind all to please state your name before speaking for recording purposes, and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I will turn it back over to Julie Hedland. Please begin, Julie.

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JULIE HEDLUND: Thank you very much. This is Julie Hedland from staff. I see actually that there's a question in the chat. Brian is asking if the call will be recorded. Indeed, it will be. The calls are all recorded. It will also be transcribed. But thank you very much and thank you all for joining. Just as a reminder to everyone, we will end this call at five minutes to the top of the next hour to allow people who are on the following call to be able to transition.

So, just to remind you all of the agenda, which you see has been posted in the agenda pod, the first item is to review the agenda, and to ask about statements of interest. Then we'll go to the analysis of the first four source documents, the previous collected data with respect to the claims charter questions, and following that, going through to next questions one through five. Following that, we have any other business. May I ask if anyone has any other business? George Kirikos, please go ahead.

GEORGE KIRIKOS: Obviously, there's been discussion in the past week about the workload, so that should be discussed as well as the work plan, in terms of the schedule for what's required of members both on the of this sub team and of this PDP.

There seems to be mixed messages that at times the processes are being described as a proposed process, in which case that means ignoring the deadline of this Friday to submit additional data and also the deadline for individual work plans. At other times

it's described as the actual plan because we've got these forms and so on.

So, I'd like to know what's going on and what people are actually doing because, as I pointed out on the mailing list, we've over 250 pages left. I guess the homework assignment was 27 pages, and only a handful of people – myself, Griffin, Kristine, Kathy – seem to be putting the input into the Google Doc. I don't see anybody else doing that. So, tell me what's going on. Tell me what I'm doing wrong, in other words, by raising this issue. Thank you.

JULIE HEDLUND: Thank you, George. So, that would be fair to say your any other business would be workload and timeline?

GEORGE KIRIKOS: Yes.

JULIE HEDLUND: Thank you, George, for confirming. Then let me go back to the top of the agenda and ask if there are any updates to statements of interest. I'm not seeing any hands. I'm not seeing anything in the chat. So, there are no updates.

Then let me move on to agenda item two and the analysis of the first four source documents of previously collected data. I will then turn things over to our co-chair for today, Martin Silva. Martin please.

MARTIN SILVA: Hello. Thank you. We're having an echo. I don't know who it is.

JULIE HEDLUND: It's now gone. Thank you. Please proceed.

MARTIN SILVA: Okay, so I'll go again. Hello. Richard couldn't make it to the call for urgent, personal matters, so you're stuck with me today. I would like you know that we have been working very hard with staff and all the current co-chairs of this working group to sort out the best way to move forward, so any feedback or ideas you may have is more than welcome.

Today, we're going to work on the real pre-released collected data like with the survey data staff produced at [inaudible] with the member's findings. Being that the staff summary has already been on the online tool for two weeks, I don't think we have to go through that again.

Let's jump right to the members' homework. The last time [I asked] members who made [inaudible] to comment on them instead of reading out loud every input [inaudible].

So first charter questions says if the trademark's claim service having [inaudible] consider the following question specifically in the context both of the claims notice as well as a notice of register name. A, is the trademark claims service having its intended effect of the [inaudible] registration and providing claims notice to the domain names [inaudible]? B, is the trademark claims service

having any unintended consequences such as the [inaudible] domain name applications?

No, George, I'm sorry, but not all of us know the questions by heart. So, this is part of leveling the field for those who might not know the questions by heart. But we are saving time with you summarizing your comments.

I know the first comment we have in the PDF is Kristine Dorrain. Kristine, if you want to come on first and tell us about your comments or findings in these specific questions, please go ahead. If not, we can open the queue for any other members that want to share their findings, whether they're in the PDF or not.

KRISTINE DORRAIN:

Thanks, Martin. I basically summarized for this question, I looked at three documents at this point. I haven't been able to go further. Two of them I didn't think offered anything helpful to this sort of question. One was the registry responses to the data sub team, which primarily related to protected marks list, so that was predominately not very helpful.

Secondly, I looked up at the TMCH report from 2013 to 2017, also expectedly not very helpful because the TMCH report typically has to do with the marks in the clearinghouse and doesn't really deal with the claims service.

So, the only information that I saw that might have been helpful was in the questions from the RPMs to the TMCH provider. We were asked a lot ... There was a question about how many descriptive word or mark plus 50 list from UDRP cases. I think

these were the 50 labels taken from I think from one UDRP cases. And I believe that there was only 370 labels suggesting that that probably wasn't as used as it might otherwise have been, so I think there were some comments to the original charter questions that thought that this was sort of a bad idea because it gave too much to brand owners. But my suggestion is that perhaps it is not having a bad [inaudible] registrations because there's not very many affected labels. So, that was basically the observation that I made in [inaudible].

MARTIN SILVA: Perfect. Thank you very much, Kristine, for all the hard work. Does anyone have a specific comment, perhaps Kathy next in the queue? Kathy, go ahead.

KATHY KLEIMAN: Hi, Martin. No comments on Kristine's comments, so if anyone does want to comment on that, I'll wait.

MARTIN SILVA: Anyone want to jump [inaudible] Kathy? If not, I don't see anything happening. Kathy, all yours.

KATHY KLEIMAN: So, I wanted to say that first I always hate starting with this question because it's umbrella question. It's a conclusory question, and I actually had started working on it after I did more

detailed questions because it's really what did we find in the other charter questions.

I also wanted to comment that I [inaudible] the four documents today, and to those who didn't read it, they're really interesting. We have questions from the working group to the Trademark Clearinghouse providers, so to Deloitte that is dated December 5, 2016. And I think that's actually when their answers came back to us.

Then we had some follow-up questions that we ask them dated March 5. We have a TMCH report that runs from March 2013 to February of 2017. We had our first compilation of registry responses dated December 13, 2016.

So, of course we'll get some more registry responses and the recent analysis data. But this is I think our first set of registry responses, and we hear from [PIR], Donuts, and AFNIC, and AFNIC, maybe among other things ran the geo dot-paris. So, of those new gTLDs, old gTLDs, legacy gTLDs, and some of the geo TLDs.

I thought these were interesting documents, and you'll see in my comments coming up across the charter questions that I thought there was really some interesting things to be gathered from this, and it's helped me connect some dots that I had been missing, so this idea of looking at the data and looking at the chartered questions to me was really valuable.

So, you'll see in my comments that I talk a lot about unintended consequences. In part because we find that Deloitte is doing

unintended thing. I'm not going to go in the order of my comments. I'm going to go in reverse order. One of the things is that Deloitte is putting design marks into the Trademark Clearinghouse.

You've heard a million times that Paul McGrady and I drafted the trademark claims notice, and you can blame us for all of it, but we didn't anticipate design marks. I can tell you that because the wording of the rules had said word mark.

So, there is no way we can properly design if you could even do that, but there is no way we designed the trademark claims notice to talk about the consequences – and we'll see more about this in the detail questions later. But there's an unintended consequence would deter in good faith the [inaudible] applicants because we could not have drafted the trademark claims notice, the things we didn't intend, and that includes the broad scope of what's going into the Trademark Clearinghouse, including geographical indicators, marks protected by statutes and treaties that all have nothing to do with trademarks at all and design marks. We did not draft it so no one is knowing about it. There's no way of even knowing about the scoping limitation. So, huge unintended consequences. So, we're finding things in the Trademark Clearinghouse that weren't anticipated to be there.

Another thing that we're finding – and Deloitte confirms that we don't have open access to search in the Trademark Clearinghouse. We knew this, but here it is documented. And that means that council, trademarks, clinics, anyone working with good-faith entrepreneurial domain name registrants cannot do traditional research of what's out there, what to avoid, how to

prepare for registration of a domain name and also how to prepare for naming a business or company.

I'll stop there. There's also some comments about we appear to be comingling different types of marks in the Trademark Clearinghouse, which was also not envisioned by the role. Back to you, Martin. Thank you.

MARTIN SILVA: Thank you very much, Kathy for your input. I have Susan Payne on the queue. Susan?

SUSAN PAYNE: Yeah. Thanks very much. It's Susan here. I e put my hand up early, and then Kathy didn't go through an order I was expecting, so she didn't particularly highlight the reason I put my hand up, but I may as well carry on. I suspect then Griffin may have some further comments on a lot of what's happened. I won't steal his thunder.

But just on a first entry from Kathy. She talks about Deloitte not being able to delete marks and that surely has unintended consequences of deterring good faith domain name applications. I think that, one, that really goes to the ... That is the case. Deloitte did confirm that they don't delete mark records, but that doesn't mean that a mark that is no longer an active mark – for example, because the fees haven't been renewed, or indeed if the mark has expired. That doesn't mean that's still working. It just means Deloitte are not deleting their records. It's no longer got an SMD file if it needs one, it's no longer being used to generate claims, it's

no longer effective. It has no impact whatsoever. So, that's a fundamental [attempt] at misrepresenting how this actually works. I know that Kathy knows how this works. We've covered this ground [inaudible]. Thanks very much.

KATHY KLEIMAN:

Susan, if I might as a point of personal privilege, are you saying that Deloitte has confirmed ... I'm a little database programmer, and I don't know how this works. So, I was raising the issue in good faith. But let me ask you, often when old [inaudible] records are left in the original database, they are not properly used. I've seen this many times when I was a data security officer. Can you confirm that Deloitte has responded that these old records are not being used as part of trademark claims or sunrise?

And just to follow up, I don't think there's any revocation of an SMD file. Were going to see that coming up later on in material or instance think George pointed out. But I would like to confirm that. If it is, that's great and that's the answered question.

MARTIN SILVA:

Susan?

SUSAN PAYNE:

Goodness, Kathy. I have no idea. I would have to go back through all of these documents to see whether anyone even asked them that question. I'm not sure they did in those precise terms, but they have explained on multiple occasions how the claims service works and how the sunrise works. Given we're in the claims

group, there probably isn't references to SMD files in this context because of course they're not applicable to the claims. They're only applicable to the sunrise.

But we have had multiple conversation and multiple explanations of them, about how this works and how these different rights protections are [inaudible] and generated.

MARTIN SILVA:

Thank you very much, Susan and Kathy, for the debate. Griffin, I know you're typing a lot. Do you want to also tell us what you think?

GRIFFIN BARNETT:

Yes. Thanks, Martin. So, I had put my hand up initially to just to walk folks through my written input that I had prepared, but then again, as I noted earlier in the chat, I inadvertently forgot to actually add to the Google Doc.

Instead, given the most recent comments, I will instead try and just reply to some of the most recent points. On Kathy's first point – and I typed something into the chat to this effect, but I just wanted to mention it again quickly.

On the point of the Clearinghouse accepting design marks, as I understand it, what's actually happening is somebody submits a mark that contains both textual elements and design or device elements – the wording actually varies a bit. So, where there's a discernible textual component of the mark, even if the mark also includes design elements, the Clearinghouse will accept it.

This actually makes sense to me in the context of trademark law generally, and also in the context of typically what this sub-team is about, which is to basically advise potential registrants of a potential trademark issue for registering a domain name, because the test is ultimately a likelihood of confusion tests, at least with respect to infringement. So, if you're using a domain that is the text, that text is textual element. A mark that's text and designs, there's still arguably infringement occurring. So, I think purposes of notifying people of that issue seems to make sense. That seems to be logical and that's the point that I was making in response to that issue.

Again, on the point of deleting mark records etc., the Deloitte follow-up response is that they note that where they've been informed that a mark has been canceled, the mark will be deactivated and the sunrise and claim services will be canceled within 24 hours.

This goes back to Susan's point in response to Kathy. Just because records are not being deleted from the database, I suppose, doesn't mean that they're still continuing to be active when they've been identified as no longer being legitimate or what have you. I think that's been clarified as well, so I'll leave my comments there for now. Thanks.

MARTIN SILVA:

Thank you very much, Griffin. We'll welcome you again so you can share your findings. George, you're next in the queue, please. Go.

GEORGE KIRIKOS: Just a quick question. I think I interpreted this charter question differently than other people, perhaps a bit more narrowly. That's why I agreed with Kristine initially, that [we] didn't necessarily answer these questions directly. However, I can see Kathy's point where she seems to focus on a bit more expansive interpretation of part B of the charter question, [inaudible] having unintended consequences. So, [inaudible] more expansively, I agree with all the issues that she's identified.

One of the issues she identified was the [inaudible] of the claims notice and I tend to more appoint that, put that in my answer to charter question three. So, she might want to look at my [inaudible] question three [inaudible] give a quick overview of that if they want to flip over to question three.

Basically, a claims notice only contains the registrant – actually, [inaudible] registrant contact jurisdiction and goods and services. So, if you're a good-faith registrant actually wanting to locate the trademark in all the jurisdiction, you're going to have a problem in some jurisdictions. I pointed to an article where Google [inaudible] and others are registering [inaudible] names in foreign countries without searchable databases, like Jamaica, Tobago, [inaudible]. You're not necessarily going to have enough data to actually find these trademark ... They're not searchable. You don't have the registration number of the trademark. You don't know whether it's a [inaudible] mark or whether it's a character mark and Kathy didn't find that issue as well.

So, people I think in good faith aren't necessarily being well-served, so she [inaudible] as an unintended consequence. I put it more towards claim charter question three, so I won't have to go over this again when we get to claims, charter question three. But what I was [inaudible] putting them in different [questions]. Thanks.

MARTIN SILVA: Thank you very much, George. We have Michael Graham on now. Michael?

MICHAEL GRAHAM: Hi. Thanks a lot. Two points. One, I agree with what Griffin had posted regarding the discernible elements of design marks where there are discernible word elements. Blocking the ability to record those discernible word elements in the TMCH actually from my point of view would threaten the ability of SMEs, smaller companies, that in some instances when they have certain limited resources and will only register a design or a stylized mark that includes the word mark with the understanding that that registration would protect also the word mark – not enabling them to record with the TMCH actually would cut off those smaller companies, and I'm concerned about that. Larger companies don't have that same issue.

On the second point and addressing both the point that Kathy and George just brought up. The Trademark Clearinghouse is not a trademark search tool, nor was it ever intended to be that. That a company that's looking to adopt a trademark or a business name

is not going to look there. They're going to look online. They're going to look at the trademark registries, albeit, as George pointed out, there may be some registries that do not publish or do not have an easily searchable database. I've never found that to be a blocker, but certainly the Trademark Clearinghouse, we should not broaden its importance to be one of determining whether or not we adopt a name of a mark because if it's recorded there, it's also registered somewhere that would be discoverable with the search. Thanks.

MARTIN SILVA:

Thanks very much, Michael. Kristine noted in the chat that we should focus [specifically on data searches] and she is right. So, I know that [inaudible] and we of course, everything is all built up towards a final discussion but the final discussion will be done later. So, to all speakers, do remember to try to not stray. Thank you. Rebecca, you're next.

REBECCA TUSHNET:

Thank you. I think the expressed concern for SMEs is misleading in this context because there are lots of reasons that ... Different types of entities get marks, but in general, people seek word marks when they can get word marks because word marks provide a broader scope of rights through the registration.

When someone has only a registered design marks, then their rights are as far as the registration is concerned, centered on that design mark, not on individual components. It may well be that there's a greater scope to that. But the point of the system was to

identify something specific, which was a registered mark, and they don't have that in the works.

In fact, I think Kathy is exactly right to point to significant consequences, which is as applied to design marks, then notice that people get, the [attempted] domain name registrants get is wrong and misleading because it indicates that there is a registration covering the letters that they've tried to register and there isn't. So, that makes it even harder for someone to figure what the scope is. It's already not a particularly helpful statement, but now we're getting further away from the actual truth of the matter.

If there is enough potential conflict in a likely confusion proceeding, we would evaluate the factors. That's not the standard. This is supposed to be for a really clear conflict, and when you have a design mark, that's not what you have. Thank you.

MARTIN SILVA: Thank you very much, Rebecca. Kathy, you're on.

KATHY KLEIMAN: So, I'm not going to ... Griffin and Kristine has got ... I'm not going to talk anymore about design marks because I think it's covered and that there is data that's very relevant on it. To the charter of question, is the trademark claims service having any intended consequences such as deterring good faith, domain name application, be a different aspect of that – and it is, again, in these materials – is that the database is closed. That was not the

intention; trust me. The STI did not want a closed database. There were certainly some who did. That was not what was created. That was done later. The rules adopted by the GNSO Council and the board were open, so huge unintended consequences of deterring good faith domain name applications.

Let me tell you why. What we found ... First, that Deloitte has confirmed it. That's the data. We knew it, but it's here in these materials, and it's very relevant to these claim questions.

So, what it means is that as a SME attorney – and I did that for 20 years – you can't check where the problems are, and you certainly as an SME attorney have no resources to check the entire world. What you would do is go to every major database and that would include the TMCH. That's what was envisioned by those who created the rules.

So, it prevents you from getting that turn away at the end when you actually go to register the domain name. Your client is standing on one foot looking at the claims notice. So, that's a real problem. So, the [closeness] as well as the registration of design marks. Thanks.

MARTIN SILVA:

Thank you very much, Kathy and thank you for staying on topic. George, you're next unless Rebecca – that's an old hand. George?

GEORGE KIRIKOS: That's a new hand. Just to reinforce what Rebecca and Kathy is saying, I see in the notes and action items, it says the TMCH wasn't intended to be a trademark search tool. Anything recorded in the TMCH would be discoverable by a search [inaudible] or something being potentially available to be found. It's not to say that being uniquely identified.

I make this point in the charter question three document. You can have, for example, a figurative mark that's in the TMCH and you can have that mark holder have multiple figurative marks for the same [inaudible]. Let's say it's Michelob, just to take an example. That's probably a bad example. But Michelob might have 20 different logo marks that are figurative marks and one of them might be the basis for a TMCH record. So, which one is it? We don't know. The person receiving claims notice doesn't actually know.

Well, why is it of their interest to know? Well, maybe that mark was revoked. Maybe it expired. So, how are they supposed to know whether to take that claims notice seriously if they actually can't uniquely identify it? Thank you.

MARTIN SILVA: Thank you very much, George. Greg, I see you're next.

GREG SHATAN: Thanks. It seems proof is somewhat relative, unfortunately. I've also had the pleasure of representing small- and medium-sized companies. Often a very limited trademark budget dictates you need to decide. If you're only going to file one trademark

registration, or application rather, wouldn't you file it for the stylized form of your word of your mark or the text-only form or a composite with a logo and not all of the above, which is a luxury that larger companies can afford but smaller ones can't.

Also, a design mark or let's say a [stock] highlight mark or a figurative mark, composite mark with design elements does protect the words. There's nuance to be discussed there, but the idea that it's not protectable goes ways too far in trying to understand the issue and I think it's quite germane and appropriate that marks with design elements and stylized marks and the lights are in the TMCH. We have [narrowly discussed it] and we've identified potentially which are those where the mark itself is [inaudible] and those where the mark is no longer valid. Those are interesting concerns. They're appropriate concerns. If we have data that goes directly to those concerns, it would be great to identify them. But just using the data as a jumping off point for talking points is not really going to get us very far with the data. Thank you.

MARTIN SILVA:

Thank you very much, Greg. I would like to see if we can get to question two, but I know that we have Griffin's comment. Griffin, would you like to [inaudible] manage to get into the document?

GRIFFIN BARNETT:

Yeah. Hi, Martin. I'm happy to just quickly note what my input on question one here is and, again, appositve for not timely getting

into the Google Doc but I will add it following this call once the document is [inaudible] again.

It was just two very quick points. I noted that Kristine basically said there's not a lot of data here or no data here to help us answer these questions and I know Kathy had inserted some data that she believes helps answer these questions. I found just two small pieces of information that I thought were relevant to this question.

The first was from the initial set of responses from Deloitte in which they state, based on our support team experience, most of the questions relate to the actual trademark management such as "I have received a claims notification. What do I do now?" which to me suggests some potential confusion regarding the meaning of claims notices and also the TMCH provider's role in administering them which I think goes to the issue of intended versus unintended consequences.

Then, secondly, something which I mentioned earlier from the follow-up responses that Deloitte provided which is the fourth document. They say that when a trademark holder informs the TMCH that a mark has been cancelled, the mark will be deactivated and the sunrise and claims services will be cancelled within 24 hours. Again, I think that's relevant to the issue of potential unintended consequences, particularly whether marks that may no longer be valid continue to receive the benefits of claims, at least in this case and potentially sunrise, but that's for the other sub-team.

So, those are the two quick data points that I was able to find in this particular set of documents that I thought were relevant to question one. Thanks.

MARTIN SILVA:

Thank you very much, Griffin. Unless someone has any specific comments to what Griffin said, let's move to question two. I see no hands up. Okay. Do we have question two on the Adobe? It's loading.

Okay. So, claims charter question two. If the answers to claims charter question 1A is no or 1B is yes, or it could better, what about the trademark claims notice and/or the notice of registry names should be adjusted, added, or limited in order for it to have its intended affect under each of the following questions?

A, should the claims be extended? If so, for how long? [inaudible]. Should the claims be shortened? Should the claims be mandatory? Should any TLDs be exempt from the claims RPM, and if so, which ones and why? Should the proof of the use requirement for sunrise be extended to include the issuance of the Trademark Clearinghouse notices?

I see here we only have two comments and both of them basically say they don't find any relevant data from this source for this question. So, unless anyone wants to add something specifically or the members [inaudible] comment on it. I don't have anything else to add regarding this question, so I open the queue. I assume that was an old hand, Greg. Griffin says that he agrees that there is no relevant data in this document for this question. I'll wait a few

seconds so people can finish typing if they want to put something in the chat.

Okay. Since we don't have anyone in the queue and we don't have anything else to add to this question, let's [inaudible] more input from other sources. Let's move to question three, then. Give me one second here.

Claims charter question 3A. Does the trademark claims notice the domain name [inaudible] meet its intended purpose? If not, is it intimidating, hard to understand, or inadequate? If [inaudible], how can it be improved? Does it inform domain name applicants of the scope and limitations of trademark holder rights? If not, how can they improve? Three, are translations of the trademark claims notice effective in informing domain name applicants of the scope and limitation of trademark holder rights? And B, should claims notifications only be sent to registrants who complete domain name registration as opposed to those who are attempting to register domain names that are matches to entries in the Trademark Clearinghouse?

Here we have George Kirikos first. I'll ask him if he wants to comment on his findings. If not, we can move to someone else. George, would you like to—

GEORGE KIRKOS:

Yeah. This is exactly what I [inaudible] when we were talking about charter question number one. So, I don't really have anything new to add. That's all been said. Thank you.

MARTIN SILVA: Perfect. Thank you very much, George. We have also Kathy. Kathy, you're next.

KATHY KLEIMAN: Sure. Not sure it's all been said because this is where we're really diving in. Does the trademark claims notice – does the data tell us anything about whether it meets its intended purpose? It absolutely doesn't. Is it hard to ... Intimidating, hard to understand? We've already dealt with that issue. But is it inadequate? We're going to get to that one in big form in the data today.

And does it inform domain name applicants of the scope and limitations of the trademark holder's rights? No, because we're about to talk about people who aren't trademark holders.

So, let me just summarize. Again, it's just fascinating to think about the history of this and then look at these documents and look at the charter questions as we've revised them. This is really the first time we're pulling this all together.

So, my comments, I'm going to read them because [inaudible] people are just sitting there reading them right now. We have a problem. What information is the claims notice providing when the TMCH registration is not a trademark but a geographical indication, a protected designation of origin or protected appellation of origin? What is shown on the claims notice [inaudible] possibly form a domain name applicant of the scope and limitations of the trademark owners rights, but there is no trademark owner and these are very complicated and contested

rights in the international sphere. So, that. The [note] that the trademark claims notice was never drafted for these types of situations because they weren't supposed to be in the Trademark Clearinghouse. That's why it's called the Trademark Clearinghouse Database.

So, we've got a clear problem with these charter marks and also with the design marks because [the claims notice] did anticipate them either and the trademark claims notice makes no mention of design marks. There's nothing to share the full design mark. Does not print out the design, the logo, and accordingly the notice can't be serving its intended purpose because the right materials are not being delivered to inform anyone. I know we talked about this in the [inaudible].

But let's talk about geographical indications and other types of non-trademark rights that are now there and [inaudible] the trademark claims notices are pointing some of those out [inaudible]. Thanks.

MARTIN SILVA:

Thank you very much, Kathy. Do we have anyone else who wants to add a comment on this? I know there are some comments in the chat. Griffin is in the queue. Griffin, you're next.

GRIFFIN BARNETT:

Yeah, thanks, Martin. I'll just summarize what my written input will be. I thought again there was a very small amount of relevant data for this question. The first data point which is also something that I mentioned in connection with question one but which I felt was

also relevant to this question was the point from the first set of Deloitte responses which said that from their customer support team experience, most of the questions they received related to trademark management issues including questions about from people who received a claims notification asking, “What do I do now?” which again I think goes to the point of whether the notice is hard to understand, etc.

Then, secondly, the other data from this set of documents that I felt was relevant to this question was basically just Deloitte summarizing what is in the claims notice and they say the third party is informed [inaudible] and the TMCH is a claims notice which is presented prior to registration, so that actually first relates to the timing, which is sub-question B of when the notice is delivered and then the claims notice holds the mark name, registrant and registrant contact, and the jurisdiction of goods and services of the mark according to TMCH. Again, that’s just a factual summary of what is presented in notice which does relate to sub-question A2. Again, just sort of from a factual perspective in terms of what’s presented currently. Thanks.

MARTIN SILVA: Thank you very much, Griffin. Susan Payne, you’re next, please.

SUSAN PAYNE: Thanks. I really just have a question about what the scope of this exercise is meant to be because my understanding is we we’re meant to be [inaudible] group and it wasn’t me who had time to do this exercise this week. But we’re meant to be looking at these

specific documents and pulling out the information from them which goes to help answer the particular charter questions. And I didn't think we were supposed to be kind of [stepping out our stall] and advocating our particular positions.

It seems to me that a lot of this exercise is just being used to do that and I'm not sure that this is very helpful. It seems to me it would be more helpful to just [call] out what it is in the particular document that one is trying to identify, and perhaps it needs a sentence to explain why it's relevant. But if it needs three or four paragraphs to explain why it's relevant, [inaudible]. I think that's something that is meant to come later. I just would like to understand what we're supposed to be doing and how this task is going to be carried on going forward because we seem to be spending a lot of time listening to people advocate their positions.

MARTIN SILVA:

Thank you very much, Susan. We are supposed to be finding relevant pieces of data and linking them in a context – why is it relevant – so we can later discuss whether that impacts or not in our final [decision].

In the homework, people have identified specifically [inaudible]. I can see Kathy has identified [inaudible] questions from Deloitte and she has quoted them and same others.

So, as long as we have identified which specific [inaudible] that they're talking about, I think the exercise is [worth it]. I do agree it's difficult sometimes to separate or to stop people, to stop the thoughts to go into their specific position but the idea is that they

have [inaudible] say there's a piece of data here in this specific document and let's test this. This is what [inaudible] same and that's why it's relevant.

So, as long as – and I do ask members to be very [inaudible]. Please, point out [inaudible] because if you don't, as Susan said, this could be futile. It is only relevant as long as we can relate it back to a specific piece of data so we can later on [inaudible]. And yes, it's difficult to manage [inaudible] each member speaks and when they are straying or when they're going to make a point at the end. Sometimes you only know it at the end. But I do ask [inaudible] control and honestly on this. Thank you very much. We have Kathy next. Kathy?

KATHY KLEIMAN:

The precedence for this was set in the Analysis Group and how we responded to those. So, just following [inaudible]. To Griffin, of course we know what's in the trademark claims notice. Thank you for repeating it. But how does that possibly apply? Sometimes, it sounds like advocacy but sometimes we find gaps that are so extraordinary it just makes us look and say, "Oh, my God. What is the relevance of the question?" Does the trademark claims notice to domain name applicants meet its intended purpose when it's not even dealing with a trademark or dealing with, as Deloitte tells us, a geographical indication, a protected designation of origin or protected [appellation] of origin?

Guys, we're completely off base and the data shows that we're trying to address X and there's Y in the database. So, that's what's being pointed out here is that the trademark claims notice

does nothing, and hence, we've got kind of extraordinary clear responses to some of the claims charter questions of stuff that's not trademarks. Thanks.

MARTIN SILVA:

Thank you very much, Kathy. George, you're next in the queue. Unless someone else wants to get into the queue, it will be the last one and then we just go to any other business and call it a day.

GEORGE KIRIKOS:

I agree with Susan and Griffin and Greg and Kristine who are saying the exact same thing. We should be limiting it to finding those gems, finding – it's been compared to doing mining, which compares to garbage picking. Picking through the garbage trying to find that relevant data and putting it into this document. The thing is I don't think we're doing that. Only [four] people seem to have done that and we need to put [inaudible] document that explains why we think it's relevant. Sometimes, that might seem like advocacy, but there needs to be a balance between not putting it in enough or putting in too much. Hopefully, [I've met] that balance [inaudible] figure out the points very carefully. Thank you.

MARTIN SILVA:

Thank you, George. Susan, you have the last word on this. Go ahead.

SUSAN PAYNE: Sorry. I don't even know how that happened. That's not a hand. Sorry.

MARTIN SILVA: Okay. That's okay. Thank you. Thank you very much, anyway. I do appreciate your comment. I do agree it's just sometimes it's hard to find the right way to herd everyone into that specific task. So, [inaudible] if you're going to comment on something, you really identify which piece of data. And if you [inaudible], that will speak to itself what [inaudible] mean by we should just point out, go to [inaudible] and we can later discuss it because I think [inaudible] relevant or not. Again, with only four minutes left, let's go to any other business now. We are going to briefly discuss the time [inaudible] workload. I know that was [inaudible] last week. But we have a new time – well, we don't have a new [inaudible] right now. We're working on it. This call has been sort of, I think, useful. We did move forward compared to the last time, so I do celebrate that. I thank everyone who participated in this.

We are not going to [inaudible] now because we don't have time. It's just four minutes. Opening that discussion, I don't think it makes sense. George, do you want to [inaudible] for this question and this call. Do you have anything to say?

GEORGE KIRIKOS: Yeah. I've kind of already said it on the mailing list. Just a basic question I posted right before this call. What is the current work plan? Some people are saying it's a proposed work plan. Some people are saying [inaudible] on Friday for documents that are a couple weeks from now for individual proposals. This is confusing

to me. What should I be doing as a good-faith member and why isn't everybody else doing the exact same thing? Thank you.

MARTIN SILVA: Anyone else want to add something? George, you have your hand up. Probably it's an old one.

GEORGE KIRIKOS: Well, it's a basic question. What is the current work plan? That's something that should be a definitive answer on. I know [inaudible] document [inaudible] proposal or it's not a proposal. Sorry, or it is binding and decided. What is the current work plan? Can somebody actually post it? Because it obviously has an impact on how things proceed. Thank you.

MARTIN SILVA: We are using the proposed [inaudible] so far. That is not final. [inaudible] staff to [inaudible] document if you haven't seen it already. And if no one else has anything else to add, we can close the call. We are two minutes away from our target, so I think that's a good [inaudible]. George is [inaudible] in that we need to move forward with the timeline. So, as long as [inaudible] we don't have a change in the proposed plan, it is binding.

GEORGE KIRIKOS: That's what I've been arguing. In terms of workload, let's talk about that specifically. How many hours of homework are we going to be expected to do every week? Only ... I see Griffin,

myself, Kristine. Sorry, Griffin, Kathy, Kristine, and myself have been the only ones filling out the document for the most part. You can't throw 20 hours of work in a week and expect that to get done. What's the expected work load and how does that compare to the 24 hours of staff that it takes? Next week is supposed to be when we're done. I don't want to see 20 hours of assigned homework after this call ... What's going to be happening for next week?

MARTIN SILVA: Julie, I see your hand up.

JULIE HEDLUND: Thank you very much, Martin. Just to be quick, we have about a minute. So, I think as we mentioned, last week on the call and the sub-team I think specifically asked that the sub-team co-chairs should consider whether or not additional calls are needed, meetings are needed to go over the previously collected data. And if we get through to next week's meeting – and I think we understand that and the sub-team has indicated that there's still a lot of work to be done. If we get through next week's meeting and we have more work to do, then it seems clear that there will be a need for additional meetings and the sub-team co-chairs can consider that and consider the impact on the timeline.

For example, there could be a scenario – and this is why ... That's why the timeline and the work plan is evolving. There could be a scenario in which we run through this analysis through to the end of February, for instance. That will change the timeline and the

deadlines in the timeline. It will also affect what work is done in Kobe. So, it really depends on how much the sub-teams are able to achieve during the meeting where it's reasonable and whether or not additional time is needed. Go ahead, Martin. I see that we're five minutes to the top of the hour.

MARTIN SILVA:

Exactly. Yes. We don't have anymore time to add things. But I do welcome and I do ask everyone to have ... That hasn't seen it to send it to the list because we [inaudible] and we use it. So, if you're saying we should not do this or we should go into this, we should move the deadline, please just tell us. Type it if [inaudible] idea. Let's [inaudible] so people can go to the next call. Thank you very much.

ANDREA GLANDON:

Thanks, everyone. Today's meeting is adjourned. You can disconnect your lines and have a good rest of your day.

[END OF TRANSCRIPTION]