

**ICANN  
Transcription ICANN Copenhagen  
GNSO Rights Protection Mechanisms Policy Development Process Working  
Group Meeting  
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Mary Wong: Good morning, everyone. This is the open community session for the GNSO's review of all rights protection mechanisms in all generic top level domains policy development process working group. And so if the techs can signal that we're up and running, we will begin. Thank you. Phil, Kathy all yours. And I'm told that some people have just lost network connectivity. This is Mary Wong from staff and apparently, some other magic staff members have fixed it. So can I know say over to you Kathy and Phil?

Kathy Kleiman: Hi, everyone. This is Kathy Kleiman. I'm one of the three co-chairs of this working group. Sitting next to me on my left is Phil Corwin another co-chair, and (Jay Scott Evans) our third co-chair was not able to join us on this meeting. But as you know, he leads robust sessions in the working group and attends as many of the in-person meetings as he can. By day I'm an attorney with (Fletcher, Hill & Hildreth) in the Northern Virginia area of the United States where I lead the internet law and policy practice.

One thing I wanted to say before we jump into everything is that this is our outreach session, we had a three-hour face-to-face on Saturday where we did a deep dive into the questions that we're working with on the trademark clearing house. But the purpose of this session is a broad outreach overview. We'll share with you the overview of the whole policy development process that we're working on which includes much more than the trademark clearinghouse. And we will also then be sharing with you, you know, we'll gradually- it'll be like a funnel. And we'll gradually go into the overview of the trademark clearinghouse. And then into the 16 questions that we're evaluating.

I also wanted to let you know if you want to come into this working group, we are welcoming new members. We're welcoming new observers. There is material if you're trying to catch up or stay up, there's material on a wiki site that our wonderful staff members (Mary Wong) and (Ummer), (Ummer)'s our newest staff member. (Ummer) want to wave? Where are you? And (Mary Wong) has put together, and it's- I also have samples of it up here because I actually am one of the only people at ICANN who still believes in hardcopy. So if you want to see the original questions we asked to Deloitte who's the provider of the front side of the trademark clearinghouse, the original questions, the follow up questions, come on up and take a look. If you want to see the independent review of the trademark clearinghouse services, the new revised report by the analysis group, I've got a copy of that.

If you want to see a sample of the tables that we're evaluating, both the rules that were created for the trademark clearinghouse and, kind of, how they've been implemented as well as our keeping track of our working group discussion, we've got a lot of materials as we try to keep track of, kind of, this massive amount of discussion and research that is undergoing our review of the trademark clearinghouse. And then other areas as well. So I invite you to our wiki. I invite you to come up and see my file. And I invite you into the discussion today.

So as I introduce Phil Corwin and let him introduce himself, I would like everyone to give him a round of applause on his birthday today. Happy Birthday, Phil.

Phil Corwin: Thank you, I'm at the age where birthdays are not greatly celebrated but it sure beats the alternative. Welcome everyone. We're glad to see so many people in the room, particularly since I know we're competing with the GAC board meeting. And I'm a founding principal of (VirtueWa) which is a policy consultancy in Washington, D.C. that focuses on internet and technology issues. I'm also Of Counsel to the D.C. based firm of (Greenburg & Lieberman). And as Kathy said, if you're interested in the topic we're dealing with which is all the new TLD RPMs and then coming up next year the first ever comprehensive review of the UDRP since its creation, it's not too late to get involved with that work. In fact, we're just getting into the really juicy stuff and each stage gets more and more exciting.

So we- if you have an interest, and want to join as a member who participates or just an observer who sees the email feeds, please join our work. There's plenty left to do. We're just about a quarter of the way through our journey that we anticipate for Phase 1 and Phase 2 of this working group. So I'll stop there and want to hand the first slide to Kathy and we'll just switch off here.

Kathy Kleiman: Okay. I normally don't like to read slides, but these are pretty good. And so the PDP working group, this is the rights protection mechanism, policy development process working group was a target by the GNSO council to review all existing ICANN trademark related rights protection mechanisms in all gTLDs. And we're doing it in two phases. First, a few years ago, in preparation for the new gTLD program, we created a set of rights protection mechanisms associated with the rollout of new gTLDs. And the concerns that had been raised about trademark earners about this rollout of hundreds of new gTLDs.

And so we created the trademark clearinghouse with its sunrise periods and trademark claims notices. We're not going to go into all the details of that, but we have slides laying out what all of this is, if you'd like. When we finish this later this year, we'll be undertaking the uniform rapid suspension dispute resolution procedure. And later on- oh, and also the trademark post delegation dispute resolution procedure which we've already undertaken which is a challenge never used to an entire top level domain. The other is a trademark clearinghouse, the sunrise, the trademark claims and the uniform rapid suspension all have to deal with second-level domains with under a new gTLD.

The second phase is the first review of the uniform dispute resolution policy which was ICANN's first consensus policy. And we'd never looked at it before. And it's, kind of, our awesome responsibility to undertake that review. So ultimately, the PDP will examine the overarching question as to whether all the rights protection mechanisms collectively fulfill the purposes for which they were created or whether additional policy recommendations are needed including to clarify and unify the policy goals. In our objective is provide a coherent framework for rights protection mechanisms, and really a balance, you know, protection of trademarks. But also protection of registrant rights and that, you know, have we created that balance? Have we preserved that balance? Is there anything we need to do to better protect that balance as we go forward? Over to Phil for our timeline and the next slide.

Phil Corwin: Okay, and just to add what Kathy just said, obviously, the purpose of the rights protection mechanisms is to protect trademark rights holders from infringement. And that's a very worthy objective that we have to make sure that it's done properly because each and every domain is potentially a platform for commerce and for speech. And they can't be extinguished or transferred to another party without applicable due process, both substantive and procedural.

Here is our timeline. We were chartered by the council in March 2016. So chartered a year ago. We haven't been operating that long. The- we really launched in about June, and started talking about how to organize our work and how to proceed. And as Kathy noted, we started with the post-delegation dispute resolution procedure which has never been used. It's the only RPM directed at registries, not registrants. And it's to protect mark holders if they have a belief the registry operator is either directly infringing their mark or is deliberately encouraging registrants to engage in infringement.

So it was a challenge to review something that's never been used. One possible recommendation we'll have at the end of our work is to permit rights holders to join together in a collective action if a registry operator is probably engaged to have a second practice of actively encouraging infringement by its registrant customers. So we started that PDP discussion last fall. Now we're in the middle- actually we completed last fall once the review of the trademark clearinghouse which is a high-quality database of validated trademarks. There are certain validation criteria for a mark to be entered into the clearinghouse.

And once a mark is entered in there, it is the foundation for two other key RPMs. The sunrise registrations with the right of the mark holder to before general availability opens to register their mark as a domain, it needs new TLD if they wish to. And the trademark claims notice which when a registrant is attempting to register a domain name with a registrar, if the domain they're attempting to register is an exact match for the mark in the clearinghouse, they will get a notice that they're continuing to proceed in registering the mark, may constitute infringement. But of course, that depends on if you're trying to register Microsoft.tld you're probably, if you're not Microsoft, you're probably going to be in trouble if you start doing something with that domain.

But if it's a descriptive dictionary word, it can have many non-infringing uses and that's, of course, the second part of the task for the EDRP and the RS is there must be bad faith registration and use. So we'll be reviewing the impact

of that claims notice and the wording of it. When that registrant, if the registrant goes on to complete the registration, the mark holder gets a notice from the clearinghouse that that has occurred. And then they can monitor that domain and watch to make sure that it's not being used for infringing purposes. And then they have curative rights if it is.

So we're just wrapping up in the next few weeks, the trademark clearinghouse review. And then we're going to start the review of the claims notice and then the sunrise registrations. And by late summer, we expect to get into uniform rapid suspension which is a narrow supplement to the UDRP that's faster. It's less expensive. It results in immediate suspension of the domain. There's a somewhat higher burden of proof because it was created strictly for black and white cases of infringement. And the co-chairs spoke last week and we've been having 60-minute calls most on a weekly basis pretty much. We're probably going to up that to either 90 minutes or two hours in order to stay on our schedule. Because our work in conjunction with the work of the subsequent procedures TDP must be completed before the second round of new TLDs can go forward.

So we're aware of that. We don't want to be an obstacle to that depending whatever the community decides to do about a second round so we're going to do everything we can to stay on that schedule and deliver a- hope to deliver a initial report and review at the end of this year, review and recommendation. And then while comments are coming on that, we're going to- intend to start the UDRP review and we'll, kind of, be double tracking at that point because as the comments come in on the initial report, we'll have to take them into account and perhaps make changes and deliver a final report and recommendations to council. I would expect next spring on Phase 1 and then council will deal with it as they wish to. And forward the final recommendations to the board. So next slide and bounce back to Kathy.

Kathy Kleiman: I actually think Phil already covered this slide. This is, so we will move onto the community discussion with you. The trademark clearinghouse charter

questions. A few introductory things, first we have plenty of seats at the table. You don't need to be a member. You don't need to be an observer. You just need to come up and bring your computer and find a place at the table. Also, and I announce this, because there are people who didn't know it in our last meeting, the microphones are open. They're open here. They're also open over there. So, you know, please feel free whether you're sitting here at the table or sitting in the chairs, the microphones will be open for the duration of this meet.

Okay so Phil already covered some of this, but what is the trademark clearinghouse? It is a global database of verified trademark information. This is registered trademarks from anywhere in the world as well as trademarks that have been court validated, so common law trademarks and common law countries that have been court validated. The trademark clearinghouse support sunrise registrations and trademark claims notices, thank you very much. My law firm likes pictures. It supports sunrise registrations and trademark claims notices which Phil provided an overview of.

The trademark clearing house Deloitte verifies the trademark data that's received, but it does not adjudicate. And the goal of this trademark clearinghouse is not to create any additional or changes in trademark rights. Nine percent of the submissions that have been made to the trademark clearinghouse have been verified and put into the trademark clearinghouse. Ninety-two percent have been verified for proof use. Many of you are international trademark experts. In some trademark offices, national trademark offices require use as a condition of the issuance of the trademark and some don't. But for sunrise periods, we require the use of a trademark. That's part of the rules of the ICANN community.

And so as of August 2015, and we have more updated statistics for you coming later, 37,000 marks from 121 jurisdictions have been submitted to the trademark clearinghouse. Can we go to the next slide please? So trademark clearinghouse functions, and again, just an overview. I know many people

here are expert on this, but some aren't. So we just wanted to provide the overview before we go into the deep dive. So trademark holders submit their trademarks to Deloitte for the verification. It goes into the trademark clearinghouse database. And is then used, not by Deloitte, but by IBM which runs the back system. IBM works with the registrars on the sunrise claims- sorry, sunrise period registrations and the trademark claims services.

So when we talk about trademark clearinghouse providers that's actually an ambiguous term because there are two, Deloitte on the front end and IBM on the backend. I believe Deloitte is in the room, sorry for calling you up (Vicky), but could you just raise your hand in case anybody wants to find you, (Vicky Fallins) from Deloitte. Is there anybody here from IBM? Okay, thank you for being with us (Vicky) and thank you for the presentation that you and someone else from Deloitte gave us the (unintelligible) presentation and report that you gave us on Saturday. Thanks.

And then, of course, the registries and registrars that interface with both the trademark clearinghouse, the backend is run by IBM and also with the SMD files that are created through the trademark clearinghouse. I think it goes over to Phil for the next slide.

Phil Corwin: Okay and as Kathy mentioned there, we just received updated information from Deloitte which was discussed in detail at our working group meeting our three-hour meeting on Saturday. So these are updated figures as of last month, February 2017. As of now, 42,000 and change total trademark records submitted, 38, 172 successfully verified, and 27, 228 successfully verified to minimum sunrise eligibility. So still seeing about 90 of all submitted marks satisfying the verification requirements for insertion into the database. And about, I guess, about 2/3 of all the marks in the database have demonstrated use and, therefore, can be used for sunrise registrations.

So of that number, of the 42,000, almost- not a big gap between the ones that were nationally and regionally registered trademarks. There were 16 court

validated marks submitted and that would go to the trademark plus 50 portion of the RPM where- that's the only case where something other than a validated trademark can be in the clearinghouse under trademark plus 50. A rights holder can submit into the clearinghouse up to 50 variations of their mark which have been recovered either in a UDRP or in trademark litigation. This would be confusing. Only similar variations that have been used for infringement in the past.

And 98 marks that are protected by statute or treaty were submitted. And of those, 75 about 3/4 were successfully verified. Oh, and down here, I guess, trademark plus 50. I made a mistake. The court validated marks are different. The trademark plus 50 which are the ones I just discussed involve 209 cases involving 375 separate variations of marks. So that gives you a good idea. So there's a lot of trademarks in the clearinghouse. It's still just a small fraction of all the trademarks in the world. But it's the one that right holders given the cost of the clearinghouse which about \$150 per mark per year have decided are of sufficient importance to take advantage of the rights protection mechanism that are based on clearinghouse registration. Next slide.

Kathy Kleiman: Can I?

Phil Corwin: Sure.

Kathy Kleiman: So Kathy Kleiman again. Because the trademark clearinghouse is not an open database, we can't review it. But the analysis group did and so again, I recommend to people who want to, kind of, get a sense of what's in the trademark clearinghouse, the independent review of trademark clearinghouse services, the new revised report that the community has received. And this was a request from the GAC to deep dive on certain questions. And the analysis group got access to the kind of data that we haven't gotten access to, but we get the benefit of their analysis in a really cogent and interesting report. So it's up on our wiki or, you know, ask any of us and we'll get you the link. But it's a good way to deep dive into it.

Phil Corwin: And to further comment on that, that analysis group study showed that of the several million registrations that started that generated claims notices, 94% were abandoned once the claims notice was received. And that's interesting information but we don't really know what it means. A lot of those registration attempts might have been nothing- might not have been real attempts to register a domain, but attempts to find out if certain words and certain marks were in the clearinghouse. And once you got the claims notice, you knew the answer. Or if you didn't get a claims notice, you also got the answer. We don't know how many other attempts were made that didn't generate claims notices where people found out that certain words and marks weren't in the database. And of, course, some portion we also don't know what portion or those were actual attempts to infringe a mark that were abandoned when the bad actor got cold feet after receiving the claims notice. And the other possibility is that non-sophisticated registrants got that claims notice and weren't sure what it meant, but thought they might be in trouble if they completed the registration and didn't want to pay a trademark lawyer to explain the situation.

So we're going to try to get more data from the registrars to shed some light on why so many, such a high percentage of attempted registrations that got a notice were abandoned. But so, we've got the number, but we don't really know what it means. And that's one general problem and I think both we and the subsequent procedures group are both going to make recommendations in our final reports. Not for policy changes, but for designing into the TLD program that goes forward much better data collection. That really wasn't thought of very well in the initial applicant guidebook. And as a result, our work has been slowed down somewhat and hindered somewhat in terms of understanding the data we get because it's either not there or there's not enough accompanying data to really figure out what it means. I'll turn it back to you, to go through this slide.

Kathy Kleiman: Let's be frank, Phil. We probably didn't think about data collection at all. So, that is the purpose.

Phil Corwin: But we are now.

Kathy Kleiman: The rights protection, of our work, and I'm glad you flagged it. Okay, so now, you know, the funnel- now we begin to dive into the trademark clearinghouse charter questions. We received an enormous number of questions in our charter from the GNSO counsel. And a subgroup which contained people around this table, and we appreciate the work met on an extra day, not our working group day, on an extra day, to kind of, clarify and consolidate questions. So that we had, kind of, a clearer set of questions to work through. There were a lot of repetitions and things like that. Because questions were coming from a number of different places.

So now we have six categories of questions that we're asking about the trademark clearinghouse. And the categories are education, verification and updating of the trademark clearinghouse database, breadth and reach, really kind of scope questions, access and accessibility, cost and other fundamental features, and the overall balance. How we preserve the balance as we said at the beginning. We set out to do in these rules.

And so what we're going to do is go through these categories of questions and just see if anything's bothering you. Anything that you want to contribute. We've got one more month that we're really going to be evaluating these. And in the trade- in the Saturday meeting that we had, the deep dive meeting, we were working on questions 14 and 15. So we're at the end in access and accessibility. But we wanted to open up all of the questions in case you wanted to provide input. And what I'm thinking is we'll go category by category and this is open to working group members, observers and those of you who are joining us today for the first time. And category by category or if we get to a question and you've got something burning, come on up to one of

the microphones. And again, an open microphone there in the middle of the room as well as the open microphones up here.

And so this is to make sure that the community has an opportunity to provide any issues, experiences, opportunities, that we haven't already considered. So the members of the working group are listening carefully because we think we've got all the data in front of us, but just in case, we're here to ask you for more.

So Number 1. Under education; is the trademark clearinghouse clearly communicating one, that the criteria that applies when determining whether or not to accept marks for entry into the trademark clearinghouse? Does everybody understand? And I'll be reading out the acronyms, because I hate acronyms. Two, options for rights holders when their submissions are rejected, do they understand what to do to challenge a rejection if they feel it was an invalid rejection? Three, what options are there for third parties who may have challenges to or questions about records in the trademark clearinghouse? So if you've received a trademark claims notice, for example, or if you've shared that with an attorney or another third party, and you want to ask more questions about it. It's a required procedure, but is it being done? Is it being used? Is it available? I'm going to pause for a second and see if anybody wants to comment.

Number 2. Should the trademark clearinghouse be responsible for educating rights holders, domain name registrants and potential registrants about the services it provides? If so, how? If the trademark clearinghouse is not responsible, who should be? What we heard in our discussions is there is a sense and part of that sense that trademark owners probably know a lot more about the trademark clearinghouse than registrants do. Is, you know, is that accurate? You know, does everybody know everything about the trademark clearinghouse and the sunrise period and the trademark claims? Do we need more education, both for trademark earners, for registries, and registrars or for registrants? And we have representatives of all of those groups here in

the room? Do we need more education? And if so, do you have ideas of what those avenues- what the appropriate avenues might be? And who should provide that education?

Number 3. What information on the following aspects of the operation of the trademark clearinghouse is available and where can it be found? So here we're talking about the trademark claims services, contractual relationships between the trademark clearinghouse providers and private parties. And with whom does the trademark clearinghouse share data and for what purposes? There may be other secondary uses of this data. And so we're trying to better understand how the trademark clearinghouse database is being used. We'll pause, see if anybody wants to comment. (David).

(David McCallie): Thanks Kathy. This is (David McCallie) for the record. And I've lost my connection, so I'm raising my hand actually. I'm a recent member to the group, several months now. I approach this as a newcomer to this whole area, but just want to reiterate something I said on the list. That it strikes me as a newcomer that's not really that conversant with what's available to registrants that there should be a source of education for registrants as to what the TMCH services are that's easily accessible and is fairly comprehensive. Not about the intellectual property rights necessarily, but about the services that are provided and to equip people to deal with things like claims notices.

So it just struck me as a good idea. I set it on the list and I just wanted to reiterate that here now. Thank you.

Kathy Kleiman: (David) would you mind a follow up question? And thank you for your comment. Do you have any sense of where you might want to- where that data might be effective in, kind of, being available to registrants and reaching registrants?

(David McCallie): No, I'm hoping the group will figure it out. But it's either between the TMCH website, one of the service providers for their services or on ICANN. You know, and it seems to me it possibly would end up on the ICANN site. But that it be good, comprehensive information that's easily accessible. That if someone gets wrapped up in this process they wouldn't have a problem finding the information. I don't know what the answer is, but I'm hoping that we can work that through. Thank you.

Phil Corwin: And just to respond to that (David) and this is a personal opinion, not an official position as co-chair. My thing on this is that ordinary registrants really don't have to know every aspect of the clearinghouse. About how a mark is verified and what the criteria are. The key thing for them is, you know, if I get a claims notice, if I'm trying to register windows.paris and I have a windows cleaning service and Microsoft has registered that for their software, am I going to be in trouble if I complete the registration? And probably the best source of- and we're going to be looking at the language of the claims notice and see if it can be make better to give a better explanation. Of course, we can't give legal advice to each and every potential registrant. We don't know what's in their minds about what they're intended use is, but probably the best place is to provide that information to them or not from the clearinghouse, but probably either the ICANN website or directly from their registrar with whom they're trying to register the domain. Again, that's a personal view.

Kathy Kleiman: (Kristine Dorrain).

Kristine Dorrain Dorrain: Kristine Dorrain Dorrain on registry. And I'm going to basically echo what Phil just said. That's why I raised my hand. You know, when you buy something from the store, you can get the like comprehensive manual that tells you every single thing you need to know about it. Which is completely irrelevant to you. Or you can get the quick start guide which is two pages with pictures. And when you talk about a registrant and someone who's just coming into register a domain name, you know, just kind of, hey, I

want to start my own business. I need a domain name for it. You know, who's faced with a claims notice, I think you want to give them the quick start guide. So it's got to be right there. As Phil pointed out, part of the claims notice is got to be understandable and easy to follow. But I don't think you need a comprehensive overview of what the clearinghouse is. Because they don't care.

They don't need to know how it works or anything like that. I mean there could be a link for if you want to know more. But I think what they really need is what is this claims notice? What does it mean for mean for me? And so I just want to pushback a little bit on this what I thought I heard was that there should be, you know, information about the clearinghouse itself. I don't think there should be. I think it should be just about the claims notice.

Kathy Kleiman: (David) go ahead please.

(David): I want to thank Phil and Kristine Dorrain for those comments. And I think that message is what I'm saying. I don't want a comprehensive tutorial on the esoteric of the TMCH and so I may have misspoken. But someplace where somebody that gets wrapped up in the process can go to and find the quick start guide. I like that. I like quick start guides. And with pointers, if they want to dive deeper. But that somebody who does get a claims notice as the example that we've chosen, can figure out fairly easily what's happening to them. That's all I'm really looking for. So I think that's- I tend to agree with the comments. Thank you.

Kathy Kleiman: I think that, wait can I respond? Okay. And another chain that we heard about in this lengthy discussion that took place in the working group is perhaps a hybrid model. You know again, the cost of who would develop this and there was some question whether the trademark clearinghouse should do it or whether ICANN should do it. And there was a thought that perhaps ICANN should do it, but host it on the trademark clearinghouse, was called the hybrid model. I think Kristine Dorrain and I may have come up with it at

some point in the lengthy discussion. Again, nothing- nobody wedded to anything, but that sounds- that two-level sounds interesting and that's a new idea that there's a quick start but also links to go if you want further information because people may have questions. Registrants may have questions when they get these trademark claims notices and want to know more.

And I've got to say, my dad was an electrical engineer and he made me read the full manual of everything before I used it.

Man: We have a comment from Michael Graham who is participating remotely. His comment is on Question 2. He says I do not think that trademark clearinghouse should continue- I do think that trademark clearinghouse should continue to make information available to rights owners and others. And should make periodic outreaches to IP owners or small businesses, media, etc.

Phil Corwin: And just to comment that, I haven't heard anybody suggest that the clearinghouse shouldn't continue to make such information available. I think as a practical matter, as we near the end of the first round of new TLDs, I don't know what's in their minds. They may diminish that outreach because other than generating a claims notice on a continuing basis for the marks already registered, they'll probably be renewed interest in the clearinghouse when there's a next round of TLDs that starts operating. I see that Greg Shatan who's chair of the IPC has his hand up in the chatroom. So maybe we can hear from him.

Greg Shatan: Hi, Greg Shatan for the record speaking in my personal capacity. Or as a baritone saxophonist, either one. Not to get too wrapped around the minutiae of this, but in terms of where the data should reside or the educational information and ant what depth it should to. It seems maybe too obviously to remind folks that the architecture of the world-wide web allows for hyperlinking and drilling down in a way that traditional print media don't. And

that take advantage of the fact that it could reside in one place and be linked to in many places. And that the data can be presented at a high quick start level and allow for drilling down to even the most turgid of minutiae. And hopefully as this I implemented, both of those aspects of the web content architecture can be taken advantage of. Thank you.

Kathy Kleiman: Thank you, Greg Shatan. And thank you to (David) for kicking off this discussion. Any further comments? Would anybody not at the table like to comment on education? Anybody else at the table like to comment? Phil, do you want to take the rest of the education questions or you want me to wrap up this category?

Phil Corwin: You wrap up education.

Kathy Kleiman: Okay. We're on the next slide I believe which would be Question 4. Should the verification criteria used by the trademark clearinghouse to determine if a submitted mark meets the eligibility requirements and other requirements of the TMCH be clarified or amended. And here we turn, especially to people in the room who have used the trademark clearinghouse. Should this be clarified or amended and if so how?

One of the things we talked about that we might talk about here is experiences with the trademark clearinghouse. So this might also be, kind of, a category that we can talk about. So both the verification criteria and perhaps other interactions with the trademark clearinghouse, does anything need to be clarified or amended or discussed?

Okay open question Number 5. Should there be any additional or different recourse mechanism to challenge rejected submissions for records in the trademark clearinghouse?

Number 6. How quickly can and should a cancelled trademark be removed from the trademark clearinghouse? And currently cancelled trademark, so if

you have a trademark that's cancelled in your national trademark office, it's actually up to you to voluntarily submit that cancellation to the trademark clearinghouse. And the question is, you know, would people do that? How quickly can we remove it since other mechanisms are based off of what's in the trademark clearinghouse? And if it's a cancelled trademark probably shouldn't be there. Let me pause. Looks like Phil wants to comment.

Phil Corwin: Yes. Just going to make a quick comment and then we'll take comments from our audience here. You know, on the cancelled trademark, if the rights holder doesn't notify the clearinghouse, it's probably going to drop anyway. Because you're not going to keep paying your annual registration fee for a cancelled mark. I will say in our discussions, I haven't heard- well let me say. What we have heard is that rights holders generally give the clearinghouse high marks for the way it's doing its work. We haven't heard a lot of objections to the current eligibility and other requirements and/or any allegations that the challenge process when a mark is rejected isn't working properly. So the general comments we've gotten from the IP world is that they're fairly well satisfied with how the clearinghouse is operating. And that's a good thing. Kristine Dorrain and then (Susan) had comments and who else? And then Greg Shatan.

Kristin Dorrain: Kristine Dorrain Dorrain. I just want to make a slight correction, I guess, to friendly amendment to Kathy's statement of the voluntary notice. It's actually contractually obligated. You have to notify the trademark clearinghouse if your mark is cancelled. So while you do have to do that, it's on you to do it. It's not really voluntary because you're contractually obligated.

Secondly, I'm just for practical purpose, most of the time a trademark claims period is only 90 days. And so the actual effect of like your mark gets cancelled in whatever jurisdiction you're in. And like it coinciding with the particular 90 days when you haven't actually submitted you like voluntary whatever takedown or cancellation request. I think it's a pretty- I think we're talking about a pretty small number of cases where that would actually be a

problem. And then Phil's point of then it also wouldn't be renewed. Because it wouldn't be able to be revalidated. So I think we're talking about like an actual numerical statistically small problem.

Susan Payne: Hi, it's Susan Payne. I was going to make Kristine Dorrain's point so I won't do that again. But I was just also going to add that, you know, we keep talking about data and the need for evidence of harm and so on. And it certainly it's theoretically possible and I accept that. That someone may have failed to notify the TMCH that their mark had been cancelled, either deliberately or accidentally because they didn't get around to it in time. I accept that's possible. But we have no evidence of that actually having happened. We've had no one report to us examples of situations where they've been, you know, where they've been disadvantaged by it.

So I think we need to be a bit careful about making presumptions that there's a major problem here. We haven't heard anyone saying there's a problem here.

Kathy Kleiman: Sorry, this is Kathy. Didn't mean to imply that there was a problem. Just trying to provide some background from some of the discussions for those who weren't present there. But thank you for the amendment and clarification.

Susan Payne: I will just say, I wasn't saying you were, but I mean bearing in mind that this is the session for the community who aren't a member of the working group. There might be a perception from them that they've come up, you know, we've discovered a major problem and we haven't.

Phil Corwin: And given the workload on this working group, we're going to focus strictly on real problems and not alternative problems. Greg Shatan.

Greg Shatan: Thanks, Greg Shatan for the record. Just to, kind of, be a little more precise than the language of the question itself. Trademarks don't get cancelled. Trademark registrations get cancelled and as Susan noted, they can be

cancelled inadvertently. While that may, obviously, take it out of the trademarks, the TMCH in terms of eligibility, the underlying trademark could still be in use. So really the question should just be asking about cancelled registrations. It's important to keep in mind that trademarks and registrations are no coextensive. Thank you.

Kathy Kleiman: Terrific. Thank you for the clarification. On that note, we go to Category 3, breadth and- oh (Max)?

Maxim Alzoba: Maxim Alzoba for the record. Just a question. So do you know if there are any incentive in place to help those trademark owners whose trademarks were cancelled to notify TMCH? Like I'm not saying penalties, but something. Because for example, if I have a trademark, it's cancelled. And I decided on purpose not to notify TMCH and still enjoy like sunrise and claims, do I have some kind of like pressure on me from the clearinghouse? Then if just no matter for them, they will not notify?

Kathy Kleiman: Actually, perhaps Deloitte would like to respond. Would that be possible? Thank you (Vicky). And thank you for the question, Maxim.

(Vicky Fallins): (Vicky Fallins) from Deloitte. In relation to the trademark clearinghouse and when a actual registration is being cancelled at trademark office, so in principle they are indeed contractually obliged to notify us. At that moment in time that trademark becomes deactivated in the clearinghouse. Secondly, we do a reverification every time we do an annual reverification. And thirdly, when for example, we see that there could be an issue because something is in opposition or something like that. Or we've heard something around in the market, then we'll always take a look as well on, sorry, on the trademark record.

Phil Corwin: (Vicky) before you leave the mic, just to drill down, I think what Maxim wanted to know. The rights holder is supposed to notify you if the mark's- if the registration's been cancelled to be precise as Greg Shatan pointed out. But if

they don't, if they fail to do so, there's no penalty to them is there?

(Vicky Fallins): That is correct. That was never foreseen in the policy.

Phil Corwin: Okay, thanks.

Kathy Kleiman: This is Kathy. But also what you're saying (Vicky) before, sorry. Is if you hear things, you'll do an independent verification that that's a new piece.

(Vicky Fallins): We'll flag in our system so that we keep track of it.

Kathy Kleiman: Terrific. Thank you, because some of us will get publicity occasionally when trademark registrations are cancelled. And we are moving on, over to Category 3 and Phil, thank you for the discussion.

Phil Corwin: Okay. Let me make this full screen so I can read it. Other questions, how are design marks currently handled by the provider? We have found that the clearinghouse accepts design marks, but of course, only in conjunction with words. You can't register a picture or design by itself in the clearinghouse. However geographical indications, protected designations of origin and protected (unintelligible) of origin currently handled by the provider? Should trademark plus 50 be retained as is, amended or removed? Should the matching rules be retained modified or expanded to include portals, marks contained or mark plus keyword or other common typos of a mark? And should the scope of the RPMs associated with the clearinghouse be limited to apply only the TLDs that are related to the categories of goods and services to which the dictionary terms within the mark protected?

So peripheral observations on some of these questions. We had a pretty robust discussion on Saturday on Question 11 and that brought up the difficult of even figuring out what particular goods or services a TDL might be regarded as being related to. If not, it could be quite diverse in some cases and it's not clear what a mark for one product and service might still want to

get protection and other which are related activities to that mark. We haven't had any major pushback about getting rid of trademark plus 50 and as noted in an earlier presentation of statistics, despite it's availability, only a very small percentage of marks in the clearinghouse are TM plus 50 marks, there hasn't been much use of that.

And on Question 10, my personal view, not official co-chair view is that I wouldn't want to see the matching rules expanded greatly for a number of reasons. One, we- if you look at trademark clearinghouse TM plus 50, there hasn't been much use if not clear that there would be use. But my real thinking on that is that the best thing about the clearinghouse is the high quality of verified marks in it. And to open it up to an unlimited range of variations would degrade the quality of the clearinghouse overall in my personal view. So I'll stop there and see if there's any remarks or questions about anything on this slide.

Kathy Kleiman: This is Kathy. These are really meaty questions. We would love to know if there are people who haven't- people who have spoken with us, but also people who haven't spoken with the working group on this. We're talking about designs marks where the rules, kind of, pretty clearly say they shouldn't be accepted and yet they are. Geographic indications where we had a really interesting discussion about that on Saturday. Trademark plus 50 again, the matching rules, the rules currently say identical match. And the scope protecting categories of goods and services of the trademark versus the larger protection perhaps of the sunrise and trademark claims.

All of these questions are now open for discussion. Wow, let's pause for a second. Susan.

Susan: Also open for discussion is whether trademark owners are getting adequate protection by only being entitled to safeguard an exact match. Many trademark owners, many of my company's clients for example have given us strong feedback that no in relation to what's in the TMCH per se, but how the

TCMH then gets applied to things like sunrise registrations. That it would be far more beneficial and use for them to have a mark in the TMCH if they knew that they could then secure and protect their mark plus an industry keyword.

So if you're a, you know, if you're Apple, that your trademark registration in the TMCH for Apple would secure you, you know, Apple computer, Apple whatever. You get the point. So it's important when looking at these questions to bear that in mind as well and not just the reverse.

Phil Corwin: Susan, can I ask you to drill down on that? Do your clients envision that by registering, let's say, if Apple was your client. That registering Apple would that give them the right to generate a claims notice and sunrise registration for Apple plus computer, Apple plus music, Apple plus, you know, whatever terms? And how would those terms be determined? Because goods and services for trademark are described differently in different national trademark regimes. And most importantly, would they expect all that for the \$150 registration or would they be willing to pay one fee for Apple, one fee for Apple computer, one fee for Apple music, etc.? Because these are all considerations we have to deal with if we're going to go down that route.

Susan: Yes, these are all questions we have to deal with and we do need to go down that route. And yes, they would say that they ought to be able to get their mark plus industry keywords. Now I'm not sure that anyone's got the solution for how we do that, but I think it's something as a group we really need to discuss. And I think what you put in the trademark clearinghouse to be clear is, you know, you put your mark in the clearinghouse. I don't think people would be very happy about the idea that to put their mark in the clearinghouse, it would be plus a fee, plus a fee, plus a fee. But we, as a, you know, we collectively have to work that out. And how we could practically address that real concern.

Phil Corwin: Well, we'll be having some interesting sessions on all of that. There's a lot of intricate questions.

Pascal Boehner: Thank you. Pascal Boehner for the record. I just want to follow up on these points you just discussed. We should also bear in mind that the clearinghouse does not only have the purpose of enabling sunrise registrations, but also the claims notices. And of course, taking into account statistics, how many or what third-party registrations Apple or others face if you take the example of Louis Vuitton. And they will certainly have thousands of third-party domain names registered with their mark plus a generic term. And so when we discuss expanded the matching rules, and not taking trademark plus generic term into account, then the TMCH and the claims notice would not really make any sense because it's not the identical domain names which hurt trademarks. It's trademarks plus generic terms.

Phil Corwin: I take your point. Who else.

Kathy Kleiman: There were two hands. No? Okay.

Phil Corwin: Okay, Greg Shatan you had a comment.

Greg Shatan: Thanks, Greg Shatan for the record. I'll also note that does not, as far as I know, allow for trademark plus trademarks. So as Susan was talking about Apple plus computer, I was thinking well, what about Apple plus iPad? Both trademarked. That would not trigger a notice even if both Apple and iPad were in the trademark clearinghouse. Isn't that interesting?

Phil Corwin: That was a good comment, Greg Shatan. And I never heard that point raised before. And I'm, personally, I'm less trouble by combining two trademarks in a single registration than some of the other things that have been suggested. But we'll get into this in the working group and all its variations. Yes, sir.

Brian Cimboric: Thanks Phil. Brian Cimboric. I agree. I'm less uncomfortable with the notion of, you know, if one mark- one trademark owner has multipole trademarks allow them to combine them somehow gives me much less heartburn than

the notion of endless combinations of trademark plus something. I mean literally the iterations of that from the marks within the TMCH may potentially be millions of domain names we're talking about. It's such a foundational question. I can't envision a scenario where that doesn't just spin out of control in an absolute hurry. And essentially become a train wreck.

Phil Corwin: Good comment, Brian. And just adding to that again with a personal comment, and the gentleman who brought up Louis Vuitton, I've just been thinking about it since he made that comment. And you've got Louis Vuitton the full words. You've got LV. You've got LVMH which is the actual company acronym, and then I'm just thinking about the range of products and services, luxury products and services that Louis Vuitton Moet Hennessey provides ranging from champagne to fashion to shoes to watches. I mean it's dozens and dozens maybe hundreds of potential terms and combinations. So I understand the desire, but we'll get into the intricacies and in further discussion in the working group. Are there other comments? George Kirikos, beaming in. Go ahead, George.

George Kirikos: Yes, George Kirikos for the transcript. I just want to point out that...

Kathy Kleiman: Hold on a second, George. We need to raise the volume. This is Kathy. We need to raise the volume. I don't- I can't hear you. I don't know about others. Can we raise the volume on Georges mic?

George Kirikos: I'm speaking normally,

Kathy Kleiman: Okay, go ahead George. They've raised the volume. Thank you.

George Kirikos: Yes, I just wanted to reiterate the last point that there could be a combinatorial explosion of combinations if you allow that expanded matching. Also there are trademark registrations for every letter of the alphabet. A through Z and also probably 0 through 9. So if somebody has a registration

of all those individual letters, they could obviously generate trademark notices for every possible domain name. Thank you.

Phil Corwin: I don't see any more hands. Oh, Kathy, you're not raised in the chatroom.

Kathy Kleiman: No, I didn't. Sorry. I thought if I was sitting next to you that might be good enough. Well thank you to George for being up in the middle of the night again to participate. And I just wanted to point out that this was one of the questions. Matching criteria was one of the questions that the GAC asked the analysis group, well not the analysis group, but asked ICANN to do an independent review that the analysis group then took up. So I would to point everyone to the independent- again, to the independent review of trademark clearinghouse services, the revised report. Which looks closely at this concept of the matching criteria, both the identical match. And what might happen if it were expanded.

And it looks both at the advantages and the disadvantages and finds some key disadvantages as well. Brian alluded to some. There are others that they raise including, you know, people turning back. The abandonment rate that might occur- that occurs currently, and the result. I'll just read it. "We find no clear evidence that expanding the matching criteria will outweigh the potential cost of doing so." And so I just, you know, I refer people to the report and let it speak for itself and its data analysis. Susan.

Susan: I'd agree if people are going to be quoting the report, it is important if you're interested in this that you actually read the full report and let it stand for itself. They make a number of comments where they say there aren't able to- they don't believe that their conclusions can be used in policy development because they have been unable to gather the data in question. And in relation to matching rules in particular, they were unable to or concluded that they were going to be unable to look at the particular point about mark plus keyword. So they didn't consider that even though that was one of the things

that the analysis group of the independent review of the TMCH was specifically asked by the GAC to do.

Kathy Kleiman: So we talked a lot about matching rules. Is there anyone here who wants to talk about some of the other questions that are on this slide? Design marks, geographic indications, geographical indications? Okay. Thank you for the discussion.

Phil Corwin: All right, we're going to move on because we've got- it's hard to believe we've got 26 minutes left of our 90-minute session and I believe there's three more slides left. So we're going to have to do each one about eight or nine minutes to each. Okay, I'll finish up on- let me hit these and you do the next. Just two questions on this slide. Are there concerns about the operational considerations such as cost, reliability, global reach, service, diversity and consistency? Do the database being provided by a single provider and, if so, how they could be addressed? And are the costs and benefits of the clearinghouse reasonable proportionate to amongst rights holders, registries, registrars, registrants, other members of the community at ICANN?

That Question 13 is obviously cosmic in scope. Quick comment on Question 12 and then we'll open it up for discussion. Again, we've, in terms of reliability, global reach, I think a little (unintelligible) about diversity. Again, we've heard nothing but positive comments about the operational aspects of the clearinghouse under its present provider. We do have some members of the working group who believe that if there's more than one provider that the competition would drive down the cost of registrations. And as a result, there'd be more registrations. I just want to get it mentioned because Kathy wasn't in the session the other day where the co-chair, she was tied up in a different session.

Where co-chairs from all of the working groups related to a second round were in the room and one point that was brought out which is the time it takes to get to the second round is not just dependent on the delivery date of the

final report by this working group and the subsequent procedures working group. It's consideration by council, delivery of the final recommendations from council to the board. And the board's disposition of those recommendations with possibly conflicting GAC advice on some of them. Which always leads to delay. But by implementation delay because if there was significant changes in the policy, there have to be changes in the implementation. And one aspect is if we decided to recommend- and I don't know the answer, whether- if there were more than one provider whether cost would go down because of competition. Or whether cost wouldn't go down at all because on a relatively small database, you'd be having multiple providers and lower economies of scale.

But it's clear that if there were multiple providers, ICANN would have to go out and find those additional providers and contract with them and we don't know what's in ICANN's current contract with Deloitte. But it might have to renegotiate that contract and all those contractual negotiations which really add some additional time before the second round can go forward. So I'm saying that not to express an opinion one way or the other on what our final recommendation should be in this regard. But just to point out the fact that implementation of whatever changes are recommended by this group and the subsequent procedures group adds to the time before the second round. I see Susan's hand up and George- then George Kirikos in the chatroom. Go ahead, Susan.

Susan Payne: Yes, thanks. Susan Payne. That's a really interesting point you make. And it's not something that I'd really thought about. I'm not sure I agree with you. I don't feel very strongly, but I mean it seems to me that we've got a TMCH provider. And so you could go forward with another round with them and that would- nothing would stop other providers coming online, along stream, would it? I mean, you know, nothing would even then prevent pricing changes, as people went along. I mean it's not as though the price is fixed by this policy group.

I don't know. It seems to me that you could go forward as you, but it wouldn't stop changes as you go along?

Phil Corwin: You know, I have to think about that, Susan. Because this point is just arisen in the last day. But I'm not sure that if we recommend that there be competition and more than one provider, I'm not sure one- whether the second round could proceed before there was at least one more provider. And I just don't know the answer. I'm just pointing out that implementation of whatever changes in policy are recommended by this in the other related working group add to the timeline. In many cases, we were second round to launch and we'd have to hear from the right holder might say no, we don't want a second round going forward until there's more than one provider. Because we'd like to take advantage of the hypothetical lower cost of registering in the clearinghouse before that second round opens. I don't know. We're going to have to speak to them too. Georg Kirikos, go ahead.

George Kirikos: George Kirikos for the transcript. Pulling up on last Saturday's call, I did some additional research on cost and TMCH. And I sent an email to the list on Sunday with my findings. I just want to briefly go over them. I'll be very brief. There was a point attempted to be made that- there's an echo on the phone. So if somebody could fix the echo, that'd be great. There's an argument that ICANN would need to compensate Deloitte for intellectual property rights if another provider was selected. And I did some research and it turns out that ICANN actually reserves all the intellectual property rights. So that was an invalid argument.

The second point I wanted to make is that the contract explicitly said that Deloitte's validation services are to be nonexclusive. ICANN may add additional validators after a threshold of minimum stability is met. But I think after three plus years, you know, of the TCMH, there probably is that stability.

Third point is that ICANN said that they can audit Deloitte's performance and revenues and costs to confirm that the cost and fees for validation services

are reasonable. So given that that contractual right exists, I think it's incumbent upon ICANN to do that audit, to actually take a look at it, at the multimillion dollar revenues and see whether there are actually multimillion dollar costs that go along with that. Or whether, you know, it's a big profit center for Deloitte.

Fourth point I wanted to make is that there's a question last time where even the community was asking whether costs are an issue. And we can just go back to the analysis group's report which had on Page 64, you know most registries and trademark owners felt that fees and the cost associated with working with the TMCH are too high. So, you know, we had those survey results and it wasn't brought up at the last call, but I just wanted to put that on the record that there actually are community complaints about cost.

The fifth point I wanted to make is that apparently, registry operators are paying either \$5,000 or maybe it's even \$7,000, it's unclear which number is correct, per TLD. I don't know if they're paying that to IBM or whether that's a payment to Deloitte. But given that are 1.000 plus top all domains, that's obviously, a multimillion dollar cost or revenue source, depending on whether you're looking at it from Deloitte's point of view or from the ICANN point of view. And so that's a potential cost saving.

Also I have an alpha script report actually went through and this...

Phil Corwin: George can we, given the limited time, can we wrap this up in the next 30 seconds or so? There all good points.

George Kirikos: I'm on Number 6.

Phil Corwin: But we've got very limited time left in this session to get to the other slides.

George Kirikos: I think I've used less time than other people that have been participating in this call, so I just wanted to get, you know, my three or four minutes in of the 90 minutes.

Phil Corwin: I appreciate that and those are good points and one of them raises a question in my mind is if the registry operators are paying a per domain fee to Deloitte, would they have to pay that same fee to one or two or three or more additional providers? I don't know how that- these are all questions our working group's going to have to get into in detail as we wrap up our consideration of the clearinghouse.

George Kirikos: May I briefly finish?

Phil Corwin: Yes, finish up George.

George Kirikos: Okay, the sixth point I made was that we actually have data on the most popularly requested string. And if you look at, they're all very common, generic terms. Things like smart, (forex), hotel, one, love, cloud, NYC, London, ABC and luxury. Those are the top ten requested marks. We should have access to more of that data given that there was no apparent confidentiality issue generating that top ten list. So if we have a top 500 or top 1,000 terms, we could obviously be able to gauge whether, you know there is a chilling effect from the trademark claims notices and the sunrise availability.

And I actually did a deep dive into one of those marks, namely hotel. And it appears, you know, very questionable whether, you know, a sunrise eligibility for that kind of term should exist given that, you know, the mark- underlying mark appears very weak.

And lastly, I did an analysis of what the cost should be under competition. I think, you know, done properly it would probably be under \$40 a year as opposed to \$95 to enter 50. Those are my points. Thank you.

Phil Corwin: Thank you for all those points, George. Gentlemen, let me just say if you're in this physical room, but enter the chatroom, please raise your hand in the chatroom because it's- we don't know how to run. But this gentleman here in the cardigan and then Greg Shatan and then we'll move on to the next slide unless there's other people who want to comment. And Mary Wong wants to comment too, so. You, Greg Shatan, Mary Wong and then we'll move on.

Pascal Boehner: Thank you. Pascal Boehner again. And actually that's a comment (Laura Shulman) also made in the chat. I was, Phil, actually quite happy to see you at the meeting the other day with the other co-chairs of the working groups. And because you were the one emphasizing that everything might be ready from an organizational, technical point of view. But it's probably not on these questions. We are just discussing all. I mean I follow the discussions of this working group and it's taken us weeks to talk about what design marks and figurative marks are. It's taking us other weeks to just define the questions to be asked. So in my view, and I'm not- I'm quite new and I'm not experienced in the working processes within ICANN and this working group, but I just don't see that we're ready to even answer those questions yet.

And not to imagine how long it will take us to give answers to these questions and to review the data we're getting from the TMCH and all that. So I think you were absolutely right in saying that two days ago, that we need more time to review these things properly. Because otherwise it just wouldn't work. We can say well it worked more or less, good in the first round. So just keep it as it is and continue as we did before. But then, we just can stop working in this working group because we just say it was okay the first time and let's keep it as it is. But that's probably not the aim we should have.

Phil Corwin: And thank you for those remarks and just quickly, I think I stressed the other day that we do have this tension between people who want us to go faster and people who want to make their points about each of these questions. And particularly if they want change, and to make sure that we've done a decent job of considering each of them before making a final decision.

Because there isn't going to be another review like this after the second round. This is it. This is the course correction after the experience of the first round and that's why we're going to be upping our time of our calls to 90 minutes or two hours to try to keep on schedule as best we can while giving each of these questions the consideration that the members of the working group want it to receive. Go ahead, Greg Shatan.

Greg Shatan: Thanks, Greg Shatan. Briefly, (Laurie) make one of my points in chat. Also on the other point, I don't recall anybody saying that the trademark that Deloitte and IBM had intellectual property rights in the database or in TMCH. If George was referring to a comment that I made, my concern was about the sunk costs and recovery for IBM and Deloitte if they were- if essentially their rights to operate were taken away while they were still in a position of recovering their initial cost. So I think, not to dive down that rabbit hole now, but we, you know, need to understand what is actually being discussed here. Thanks.

Mary Wong: Thank you and this is Mary Wong from staff. We realize that there is a lot of information. There are a lot of documents. So just a reminder that staff has uploaded a lot of those documents to the working group wiki and at the end of these slides there is a link to the working group wiki. So we strongly encourage everyone to take a look and certainly if there's any document that you know is out there that we haven't captured, please let us know. And to George's point about the contract with Deloitte and the contract of IBM, there is a summary of what is in those contracts and that is available on ICANN's microsite that we also uploaded to the working group wiki. And I can send that link around to the group if you wish.

Phil Corwin: Thank you Mary Wong and now Kathy had a comment.

Kathy Kleiman: I just wanted to share briefly from a different meeting that we were at. That the GNSO council's actually putting the screws to us. They really want us to move a lot faster than we've been moving. So different pressure, we're

feeling the squeeze from both sides. So as Phil said we will be expanding our meeting times and we hope everybody can, kind of, roll with that. And so we'll be asking more of the working group so we can move ahead faster. Thank you.

Phil Corwin: Let me just add to that. Since the second round is depending on the completion of the work of this- Phase 1 work of this working group and of the subsequent procedures, I asked the co-chairs of subsequent procedures the other day when they anticipate delivering their final report and recommendations. And just like us, it's spring of 2018. So we're pretty much looking at the same end date. And frankly, the co-chairs of both groups don't think it's realistic to project getting to completion much earlier than that no matter how fast we work.

And again, we don't want to give these very important questions short thrift particularly when there's divergent opinions within the working group and a lot of data to consider.

Kathy Kleiman: Okay, Kathy again. And now we're onto Category 5, access and accessibility and Category 5, balance. So first two questions are Category 5, last question is Category 6. So and ten minutes to go. How accessible is the trademark clearinghouse database and rights protection mechanism actions and defenses to individuals, organizations, and rights holders; as well as, trademark agents in developing countries? This word accessible is used in the sense of asking whether the trademark clearinghouse, its existence, purposes and how it is to be used is known to the types of stakeholders mentioned.

So this is an education and also an accessibility question. Fifteen. What concerns are being raised about the trademark clearinghouse database being confidential? What are the reasons for having and keeping the TMCH database private? And should the trademark clearinghouse database remain

confidential or become open? This was a topic of a lot of discussion on Saturday.

And Number 16, a balance question. Does the scope of the trademark clearinghouse and the protection mechanisms which flow from it reflect the appropriate balance between the rights of trademark holders and the rights of non-trademark registrants? And of course, this is a question not just for the trademark clearinghouse as it exists, but also the trademark clearinghouse as we're envisioning it.

So these last three questions, we've made it to 16.- 13, 14, 15, 16 and all of the trademark clearinghouse questions, in case you've thought about things and percolated during our hour and 15-minute, hour, 20-minute session. You know, anything you'd like to comment. Again the mic is open in the middle as well as these mics.

Phil Corwin: I have one very quick comment.

Kathy Kleiman: Okay, Phil and then was there a hand over here?

Phil Corwin: Very quick comment. As Kathy mentioned, we had a very robust discussion on Question 15 at the Saturday session. And the only point I want to make is to remind people that working groups produce recommendations for change by consensus. And not just on this question, but other questions, when there's no strong consensus and strongly held divergent views on both sides of the question, the default result is that there's no consensus recommendation and things tend to stay the way they are at present. So that's just for those not familiar with how working groups operate. That's the result of when there's no strong consensus and strongly held divergent views on both sides of the question.

Kathy Kleiman: So Mathieu, please.

(Mathieu Weill) Thank you, chair. (Mathieu Weill) from (Ashnik) Assistant General Manager for (unintelligible). I would just like to log in a concern that's related to that discussion on Question 15 which is not strictly related to the confidential discussion. But I think that as long- the TMCH is basically a part of the mission from ICANN that is subcontracted. So I see the TMCH as a part of ICANN's mission to deliver right protection to candidates. As a consequence, I want to register the concern that the contractor for ICANN might actually use the existence of this confidential database to grow a business that would actually with additional services and that he would be the only one able to do that without any competition. And that would affect registries, registrars, rights holders and that would be better served or the community if it was open for competition.

So I think there's a very strong relationship between confidentiality of this database and the ability for severe restrictions on additional services for the contractor. I think those two items just be put in the same balance. And I would personally be in favor if the database remains confidential which I can understand from the concerns that were expressed in the previous session. Then I think it should be balanced with the very severe restrictions on the TMCH contractor additional services. Thank you.

Phil Corwin: Okay. Anyone in here have a question or comment?

Kathy Kleiman: I wanted to say to Mathieu that was a good point. And then an angle we haven't heard. Thank you.

Phil Corwin: Well that's our slides. That's our presentation and we're four minutes from the scheduled end of this session. And Mary Wong has points she wants to make.

Mary Wong: Actually, I just wanted to follow up on Mathieu's point. And this is Mary Wong from staff. And it actually links back to the earlier point about the scope of the Deloitte's contract with ICANN. And Mathieu, I think you're referring to the

provision of the ancillary services. And for folks in the room and listening in, I believe that the provision of ancillary services by the provider, in this case Deloitte, is subject to ICANN's consent under the current contract.

Kathy Kleiman: Do you remember details of the contact on that?

Mary Wong: This is Mary Wong from staff again. I see Mathieu has a follow up. I'm afraid I don't have the details of the contract in front of me and not something that we've looked at in a while. But it clearly does say that ancillary services can only be provided if ICANN's consent and my recollection is that there may be just one, perhaps two at most. And (Vicky) might recall.

Phil Corwin: Let me just- Phil for the record. Let me add, the only ancillary service we know Deloitte offering is if you maintain your trademark registration in the clearinghouse, you continue to get claims notices. If the exact match to that mark is registered and any of the new TLDs. So it's true that Deloitte's the only one who knows what marks are in the database, but there are plenty of commercial mark services where a rights holder could go for the exact same mark without maintaining the clearinghouse registration and be notified when exact matches and even variations of that mark are registered in any TDL in newer legacy. So.

(Mathieu Weill) It's not a response. It's just a follow up that considering this provision, maybe we should add to our review and information from ICANN about which ancillary services have been approved. And on what basis and what criteria. That might be an area for our group to actually provide clearer directions about what would be acceptable and non-acceptable.

Phil Corwin: Yes, I would agree in my personal view and certainly if ICANN approves ancillary services that should be transparent and noticed to the community. Maxim has his hand up.

Maxim Alzoba: Maxim Alzoba for the record. I think just a question or the next meeting. Do we consider the (log in) mechanisms for TMCH clients like DPM) to be ancillary services or not? It's the question I don't think we need to answer now.

Phil Corwin: Let me just respond again, just comment or first impression. The private DPMO services offered by a number of portfolio registry operators, they're not being offered by Deloitte. They are based upon trademark clearinghouse registration. The rights holder using those services to block registration has to show for each mark that they are, in fact, registered and validated in the clearinghouse. So I think it's a definitional question whether that's an ancillary service. But our working group will be looking at those private services, at least to understand how they affect the use of the ICANN mandated RPMs. And that will be a few months down the road.

Kathy Kleiman: Well, while they're talking. We'll be looking at sunrise period trademark claims and also private uses. Kind of the category of different uses of the trademark clearinghouse database. So we had actually talked about looking at protected marks list at this point and the co-chairs decided to move it to a later point. It seemed to match with the later discussions of the uses of the trademark clearinghouse database.

Phil Corwin: And I'm told Kristine Dorrain has her hand up and then Greg Shatan has his hand up in the chatroom. And that will take us to the end of this session. So go ahead, Kristine Dorrain.

Kristine Dorrain: No, I'm sorry. I don't have my hand up, sorry.

Phil Corwin: Oh, that just told me she did. I had a question in the chat, they tell me. Do you want us to address that now?

Kristine Dorrain: Oh, thanks. Kristine Dorrain. No, not really, I was just, sort of, hypothesizing. I know Georg had sent an email around talking, kind of, about his perception of

gaming in the trademark clearinghouse and my point was- so I said I have a question about that. But that was just to George. Basically it just said that, you know, we have to consider, sort of, maybe people are gaming the trademark clearinghouse. But here's also domainers cybersquatting also which would theoretically be, you know, sort of another form of gaming. So I mean we can't mitigate all abuse. That was the point I was trying to make with George.

Phil Corwin: Kristine Dorrain, I'm going to have to take exception to your term domainer cybersquatting because I'm counsel to a trade group of domainers who do and our code of conduct prohibits intentional cybersquatting. So if you want to refer to domainers- those are domain investors and developers. If you want to refer to cyber squatters, I'd prefer you use that term. Just a personal observation.

Kristine Dorrain: Thank you. Domain names, some domain name registrants may engage in cybersquatting behavior which would be considered abusive of the domain name system. Some people who like to register domain names, again, domain name registrants, may also be taking advantage of the trademark clearinghouse. And my question was to George, just, you know, at what level are we, sort of, having to deal with a certain amount of abuse of both systems?

Phil Corwin: Okay, point taken. Greg Shatan, I think you're our last commenter or questioner. And then Kathy has some concluding remarks.

Greg Shatan: Thanks just following on what Kristine Dorrain said. I think that any look at gaming and/or abuse needs to, you know, consider the infamous doctrine of unintended consequences and it would be quite interesting of those domain name registrants who would prefer the trademark clearinghouse didn't exist, could abuse it into nonexistence. That hopefully is not the-what would happen, but anything- we can't throw the baby out with the bathwater. This is the core rights here are appropriate and finding ways to make sure that those

who are other than legitimate trademark owners are somehow abusing the trademark clearinghouse is a laudable goal. But should not take down the clearinghouse or the underlying rights and protections of that it helps to promote. Thank you.

Kathy Kleiman: And Kathy Kleiman taking us out of here. First on abuse, it wasn't- abuse and balance, this is all part of the issues that we're looking at, kind of, in the wrap up. But certainly when we were designing the rules, when the GNSO multi-stakeholder group was designed the rules, abuse on both sides was being considered. And so did we get that right? It's an open question.

But I wanted to do the thank you's. Thank you to everyone for the hard work today for the hard work on Saturday, for the discussions we've had in the hallways and across ICANN. To our wonderful staff for the amazing tables and materials and slides they create for us. (Mary Ann Ohmer) and looking forward to- thanking you ahead of time for the discussions to come. Looking forward to our discussions ahead. And again, a Happy Birthday to Phil. Enjoy the rest of your meeting.

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