

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
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Terri Agnew: And it does appear the recordings have started. So good morning, good afternoon and good evening. And welcome to the Review of All Rights Protection Mechanisms, RPMs, in all gTLDs PDP Working Group call held on the 26th of July, 2017.

In the interest of time there will be no roll call as we have quite a few participants, attendance will be taken via the Adobe Connect room so if you are only on the audio bridge, and again, currently on the audio bridge only is Brian Beckham and Jeff Neuman, anyone else in addition? Hearing no further names, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this I'll turn it back over to our cochair, Phil Corwin. Please begin.

Phil Corwin: Yes, good morning, good afternoon and good evening, whatever day of the week it happens to be for you. Welcome to our call. Looks like attendance on these calls is dropping off a bit, which isn't surprising since we're in the midst

of summer vacation season but we're going to keep plowing through anyway. And checking our agenda, we're not going to do a formal roll call.

Anybody with SOI updates? All right, so we're going to - you can see from the agenda, we're going to continue discussing the poll results from the Open Trademark Clearinghouse questions with a focus on questions 3, 7 and 9 and 13. Excuse me.

And we've got annotated results now which give us a more granular analysis of the poll results, although we want to talk about that because I think if we stare too close at the grains in the granular results we'll miss the forest for the trees. And we'll get to that in a minute.

And then toward the end of the meeting we're going to review the draft data collection proposal for the sunrise RPM document. So with that - I'm just looking at the breakdown here. Okay so we've got this document on the screen, Trademark open questions on design marks and GIs. And the question up on top is not one we're going to prioritize since that's just identification. But we were going to look more at Question 3.

But before we do that I'd like to jump to Question 8 because Question 8 where there was much of a break between noes and yeses illustrates the point I want to make about focusing on the forest rather than the trees. And I'm going to ask staff to chime in in a minute but you'll see here that Question 8, there was a big gap, this was a question where there was very strong consensus within the working group that the TMCH operator should accept all composite marks irrespective of whether the text portion of the mark had been expressly disclaimed.

And you had only 13.5% yes; 78% plus no and another 8% said I can live with this. So when you add to the noes to the ICANN live with it you get up to 86.5% so pretty overwhelming consensus on this question. Then when you look at the breakdown, you'll see the trademark owners were 40% of the yes

and 10% of the no. So you might say well wait a minute, maybe this is - maybe the trademark owner is being boxed out on this question and it's important to them.

But then when you run the numbers, you find out that 40% of the 13% that said "yes" means that trademark owners who said yes were 5% of the total responders. And trademark owners were only 10% of those who said "no" but that was 10% of 78 so that was about 8%. So actually the percentage of trademark owners saying "yes" to "no" was a 3 to 2 ratio so trademark owners who answered this - the ones who said no were in the majority and then with the aid of staff, we figured out that the actual difference between the individual responders who designated themselves solely as trademark owners, was in actuality 2 answered "yes" and 3 said "no."

So I just wanted to point out that when you see these number breakdowns, when you see, you know, this category X percent of yes, and Y percent of no, that's the percentage of the total yes responses and no responses, not the percentage of total responses. And also, to further muddy the waters, we have all these other categories in which trademark owners are mixed with trademark owner/registrant, trademark owner/registrant/other, trademark owner/registrant/registry. So trademark owners are mixed in with multiple other categories where the respondents felt they were wearing more than one hat.

So I'll take any questions or comments on that. But my point was that when you look at the more granular breakdown please realize that those percentages are the percentage of the people answering in that category of answer and not total answers. And what may appear at first to be one thing is in fact something quite different. So do we have any questions or comments in understanding the breakdown here? And this is something that your cochairs went back and forth with staff over the last day to get a grasp on what this means.

So I don't see any - let me check the - well George said, "I can live with this, can be added to yes but not no." Yes, I guess you're right on that, George, they're agreeing with the statement. They can live with the statement whereas the majority of respondents said no to the statement. So you're correct on that one and I misinterpreted it. And I think David McAuley has made the same comment.

So still even if it's 78% to 22%, that's still more than a 3 to 1 ratio which in my personal opinion, would be fairly strong consensus, a 3 to 1 ratio on overall answers. So having gone through that, let's go back and discuss Question 3. Yes, George, I see your hand up.

George Kirikos: Sorry, George Kirikos for the transcript. Yes, I was just curious whether we actually ever found out why so many people that are participants in this working group didn't actually fill out the survey? We've got like 39 answers but we've got maybe 150 participants, you know, what are all the other participants doing in this working group? Thanks.

Phil Corwin: Yes, I don't know the answer to that, George. And of course we can't make members of the working group participate in a survey. But we seem to have a fairly good distribution. If we look back at Question 2, which was where people identified their category, and these numbers add up to more than 100% because some people answered for more than one category and we don't know who they were from this breakdown, there was, you know, we get - sorry, I had to kill that call.

You know, we have fairly - we've got decent participation from contracted parties, strong participation from individuals who identify with registrants, likewise strong participation from those who are trademark owners or legal consultants or advisors to trademark owners. And 23% said other, which was the catch all. So we've got - it's not concentrated in any one category in terms of those who responded to the survey.

And the number who participated is about 25% of total membership, which is - I'm not a polling expert but I believe 25% of any total population is regarded as a statistically significant sample that you can rely on to a pretty solid extent. So I don't know if that fully answered your question but I think we had enough participation that these answers should be regarded as fairly meaningful and probably representing what we would have gotten if everybody - if we'd had 100% participation. It could have been different but again, if you don't participate in polls then you really don't have a right to complain about the results if you think they're not representative, similar to folks who are not happy with the results of certain political elections.

So let's look at Question 3. And as we discuss these, I'd like also participants in the call to chime in. We've had concerns that some of these questions were not quite as clear as they could be, and we'd appreciate any input on what people thought the question was asking because different folks may have perceived the question somewhat differently and might have given a different answer if they perceived it the way someone else did so.

Okay, so I'm starting with 3 because our agenda says start with Question 3. I don't - did we get into this in any detail last week, staff? I'm - or is this focus new ground for us? Yes, Mary.

Mary Wong: Hi, Phil, everyone, this is Mary from staff. As I recall last week, the staff went through all the questions and the answers but and for each there was an opportunity for working group members to raise questions or comments but not focus extensively on this or any other question.

Phil Corwin: Okay yes, thanks. That was my recollection but I wanted to make sure. And we will take as much or as little time on each of these questions identified in the agenda as the group wants to take place. It could be less than five minutes, it could be a lot longer if people want to get into more depth.

But so Question 3 asked whether participants agreed with the statement - and this is the statement - that the TMCH operator should accept stylized marks where the trademark is registered with specific fonts and/or colors for the definition of stylized marks, an example in this context see the reference guide and the own your power mark example 6.

So here's a question in which there is no consensus, in fact there's a pretty clear break. We had 50% exactly saying yes, they agreed; we had 47.3% saying no, they didn't agree. And then I can live with this where people say they could live with agreeing - so that added to the yes you get to 52% and change yes and 47% and 3 no. So a very slight preference for yes but not a clear consensus for either response so clearly something we need to look at further in the working group.

And here's one where the category breakdowns are meaningful because the yes and no answers were almost 50/50 so they're pretty equivalent. And we can see that registrants only 5% of responding the yes answers were provided by only 5% of registrants who said yes whereas 44.4% of the no answers were from registrants.

Looking at trademark owners, they were 20% of the total yes responders so and only 5.6% of the no so of the individuals identified as trademark owners exclusively they broke 4 to 1 for yes and only a small group for no. So you can - I'm not going to go through all the breakdowns, it looks like there were no - well other whoever other was - were 10% of the yes respondents, 22% of no. So but I think again, staring at the forest, within the working group as a whole whatever the granular breakdown, we don't have consensus on whether or not stylized marks where trademarks registered in specific fonts and colors should be accepted.

So is there any - into the Clearinghouse. Is there any further discussion on this question that people want to provide the working group with their

perspective on why they believe the correct answer is either yes or no? And, Steve Levy, thank you for coming in. Please share your views with us.

Steve Levy: Thanks, Phil. Steve Levy for the record. I've been a trademark lawyer for 27 years and, you know, the law - at least I know in most countries that I've dealt with is when you own a trademark that is stylized but where the words are not disclaimed as generic you know, just because it's a stylized trademark registration doesn't mean that your rights are strictly limited only to that stylized depiction, you know, and the classic example I guess would be the Coca-Cola logo in its typical script font.

You know, now granted that's a very famous mark so let's try to consider one where it's not famous, maybe it's a small startup company and, you know, I've heard other people mention in the past the issue of budget. You know, let's say you're a small startup company, you've got a very limited budget for trademark applications and so you only can file one, you file one for, you know, just a text only application or do you file one for text to your specific stylized version? Some companies may choose to protect that stylized version. Does that mean that they should be shut out from the Clearinghouse?

You know, I don't think especially since as I said, trademark law does give them some range of rights beyond just their stylized presentation if somebody else came along, a competitor came along and had the exact same words, again which were not generic, but came and used the exact same words for competing goods but in a slightly different stylized version, you know, that would be a good case for trademark infringement.

So personally I feel since the Clearinghouse is designed to, you know, provide notice and protect people's trademark rights, it should do so to the similar extent that is provided by most national trademark laws. And I don't think owners should be penalized strictly because they presented a stylized version of their trademark.

I'm very eager to hear opposing views. Obviously there should be some since the polling came out the way it did. So I'm really eager to hear opposing views. And but that's my perspective.

Phil Corwin: Okay, so Steve, you're basically saying that where a trademark owner has made the choice to - they could have registered just the text or the stylized version of the text, they chose for budget reasons to do the stylized but that would in other context you're saying, give them protection for the term and therefore you believe the term should be eligible for Clearinghouse registration. Am I getting that right?

Steve Levy: Yes, that's absolutely right, unless of course it's a strictly generic term and the only protection through the stylized application is the graphic stylization itself. In that case I would say that, no, you know, they may not necessarily have trademark rights to that word. So - but I think for purposes of this question I'm going to assume that it is a, you know, distinctive trademark textually distinctive and they just happened to file it in a stylized fashion.

Phil Corwin: Okay. And to drill down a little bit, if I might, if it is a generic word, a dictionary word, and of course those can be trademarks for specific goods and services, I assume that the corollary of what you're saying is that just registered in the stylized version wouldn't give them a trademark right to register in the Clearinghouse but if they had registered that dictionary word just the word itself, not a stylized version for specific goods and services, then they would be allowed to register it in the Clearinghouse. Would that be a logical conclusion from what you just said?

Steve Levy: Well I want to make sure we're not confusing the two issues here. One is you know, a dictionary term or a generic word when used in a distinctive way like apple is used...

Phil Corwin: Right.

((Crosstalk))

Steve Levy: ...for fruit or for technology products. That I think is a completely separate issue from Question 3 which is stylized versus not stylized. You know, if we are going to accept the underlying principle that dictionary words are permissible as trademarks and are permissible in the Clearinghouse as such, then I think whether they're stylized or not should make no difference, that's my understanding of Question 3. We can talk about the other question of dictionary terms and generic words, you know, I know other folks on the working group have had concerns about that issue. But for Question 3 I think it should be strictly limited to this stylization question.

Phil Corwin: Okay well maybe we could have worded it better to include whether or not the word was generic. Thanks, Steve. Rebecca, please go ahead.

Rebecca Tushnet: Rebecca Tushnet for the record. So I think this is what I've said before on these calls, some of what was just said is true; some may or may not be true, we simply don't know what if any the rights are in text based on the existence of registered stylized mark and that's why the own your power example is important because we have very clear - a very clear example of a court saying that you don't have rights in the words just because you have a registration for the stylized version.

We just don't know. Perhaps the trademark registrant could have made the choice to register the text alone and chose for various reasons to do otherwise. Perhaps it didn't have that choice and that's why it has a stylized mark because it couldn't get a registration for the text. And there's no way to make an inference without substantive examination or more evidence.

By contrast of course, Coca-Cola has registrations in just the text of its mark and if it wants to enter the TMCH it can submit those registrations. So it doesn't have a problem. In terms of the small startup issue, I've simply seen

no evidence that small startups are real users of the TMCH especially given the apparent consensus that there are small abusive registrants going with their cloud and hotel registrations and so on.

The last point I'd like to make is this claim about what most national trademark laws do, I think that we discussed this a bit on the list and actually didn't come up with anything that indicated standard disclaimer practice. I have to disagree with Steve's characterization, disclaimer of text that isn't itself subject to ownership is just not standard practice even when national law is clear that there are no rights in the text alone.

And, you know, we talked about the US. If you look at the EU Intellectual Property Office, it actually doesn't allow you to disclaim words in the marks even when the text itself lacks distinctiveness because the principle of registration is what is registered is exactly the sign that you have put on the register so you don't need to disclaim because (unintelligible) in the EU IPO does not actually claim the text (unintelligible) it just claims the mark. So I just think there is no warrant for saying that a stylized mark should be presumed to have rights in the text. Thank you.

Phil Corwin: Okay. Thank you for that input. Greg, you're next.

Greg Shatan: Thanks. Greg Shatan for the record. You know, kind of a number of legal and non-legal terms are being throw around rather loosely both in the question, and there's no such - there's no meaning - there's no term purely descriptive. And descriptive is - in one context is suggestive, and another is arbitrary and (unintelligible) so there's really, you know, no way to make that determination.

Obviously the own your power mark was chosen by the person who chose it very specifically because there was a court case there that could be used to advantage in this discussion. Whether or not in fact, you know, it is in other cases, you know, a court would come to that same conclusion is open to question. But it is what it is.

But, you know, in the, you know, vast majority of - I do agree that, you know, most countries don't engage in disclaimer practice, and my understanding is after a bunch of years practicing trademark law. But that's not the issue here. You know, this is about whether something that is a composite mark is, you know, can be registered and there's just no way for the TMCH to make a determination whether or not a mark is, quote unquote, purely descriptive. And the vast majority of marks that are registered in the US in stylized form or not, not disclaimed as far as I can tell from, you know, a lot of years looking at the database, and so there's obviously no, you know, it would be kind of barring a lot of legitimate rights and interests from the TMCH.

And as for the concern with small and medium sized businesses, first off, you know, this would be running up against - this would run counter to all of the trademark counseling that probably every trademark lawyer has given to their client regarding choosing between registering in a stylized form and registering in text only form. So we'd really be swimming upstream against settled trademark practice.

And I really don't think we want to go on record as saying we don't care about small trademark owners because we don't see evidence of them using the TMCH. Frankly, there's - the TMCH has been underused and needs to be better publicized, needs to be better priced perhaps to allow for more use. But basically just throwing out that class of owner and all of their, you know, legitimate concerns and legitimate rights to me, just makes no sense whatsoever. Thanks.

Phil Corwin: Okay. Thank you, Greg. Someone has their speakers on. I'm getting echo. Next up, Susan Payne.

Susan Payne: Yes, thank you. I just wanted to make a couple of really quick points. I mean, one is that I think we're inevitably probably sort of veering into the is it disclaimed or isn't it scenario. And that's fine but actually there are, you know,

numerous other questions about disclaimers and this one wasn't about disclaimers. So I think it's, you know, I think we should perhaps wait until we get to that before we start, you know, conflating all these questions together.

But I did also want to make a comment about the scope of EU IPO registrations since Professor Tushnet raised it. It may be the case that the registration is the mark as you apply for it, if you like, but it's also the case that EU legislation gives protection which is for the mark for, you know, protection against identical and confusingly similar marks. And where you were - where it's a situation of stylization, and frankly the example of own your power, the stylization is minimal, you'd find many judges taking a view that that was an almost identical mark when they were looking at scope of protection. So I think it's important to bear that in mind as well.

I think I'll wrap it up there for now.

Phil Corwin: Okay. Okay, and I see my co chair's hand up, Kathy, go ahead.

Kathy Kleiman: Thanks, Phil, Kathy Kleiman speaking not as a cochair but as a member of the original STI group. And so Greg, I just wanted to share that it made sense when we created the original rules that we use only text marks. And all of these things - and that we did not - and it's actually in the STI rules that were adopted by the GNSO Council unanimously as well as the Board that said that we would not be looking at kind of the stylization because that would expand existing trademark rights.

And I just wanted to note even under US law, and here I just quote the trademark manual of examining procedure, the amendment of any color in a color mark is a prohibited material alteration. So the color is - so the color in the example we're looking at is an integral part of the trademark. And so even without disclaimers we're kind of talking about a package that you accept when you create this trademark.

And I wanted - we thought very heavily actually about small businesses and medium size businesses and those frankly without global protections to their territorial trademarks when we were looking at the text mark issue for the STI. And I wanted to provide some background on that that we were very concerned that someone might have a color mark, a stylized mark, a composite mark that would have elements in it that were, as Steve said, generic or dictionary terms, last names also go into the category.

And that other small businesses and medium sized businesses around the world will be using those same type of marks, that same type of text. And that was another reason why we went for the text mark alone. If you have - at least extending text marks into this global database, the Trademark Clearinghouse, made sense. But when you have that generic term with a particular country and a particular country, at least years ago we decided that didn't make sense because it might not be fair to other small and medium sized business currently and in the future. Thanks.

Phil Corwin: Okay, thanks, Kathy. Susan, I think you still have your hand up from the remarks you just made so I'm going to go Greg.

Greg Shatan: Thanks. Greg Shatan again for the record. Just in response, first, in reading the STI materials, I don't see it the way you do; I see Jeff also does not. You know, it's not, you know, clearly defined that only text marks with no stylization are what's being considered and in any case, you know, STI is just a stop on the train, it is not the terminal for the decisions in what we're doing here. It is not (unintelligible). And so it, you know, should not be treated as such.

The example you give with regard to a material alteration is irrelevant here because you know, that is a change to a portion of the mark. However, we need to look at what the rights in the mark are and as instead me and many others have said, the rights in the mark extend beyond the stylized form to protection of the text as such. So the issue of making a material alternation to

a mark, which is a part of a technical trademark classification, and not a judgment on kind of any substantive element I think really doesn't help us here, but it does do a good job of confusing the issue. So would not want to put much weight on that.

So we need to consider the rights that come with a registration, the registration as such is intended to (unintelligible) certain rights and does. So we need to consider what the registration means, just looking at it as if it's a, you know, some sort of ministerial event completely misses the mark so to speak. Thank you.

Phil Corwin: Okay. Thanks, Greg. And while this has been going, I did note that Mary in the chat has noted that the IRT and STI didn't expressly distinguish between text marks and pure text or stylized text. And I've been having a little private chat with staff and they believe that the Clearinghouse is currently accepting stylized marks and in part that's based on a belief that in the application to put a mark into the Clearinghouse there's no question asked as to whether it's real - purely a text mark or a stylized mark. I may - if I'm incorrect on that, somebody jump in, that's based on staff feedback but they weren't 100% sure.

So I don't see any more hands up. We're going to leave Question 3 right now. Again, this is a question where there's a slight majority between yes and I can live with this, although I've seen some chat saying that that's a bad category and we should just replace that with no opinion where it wouldn't be assigned one way or the other to an answer.

But there's clearly a pretty even split in this working group right now, at least among the representative sample that responded to this questionnaire. And in the event where there's an even split like this, the default position is to let the Clearinghouse continue doing what it's doing since there's no consensus to change that practice. Although there - some of the discussion suggest that some of the - that perhaps the application to register in the Clearinghouse

might ask for more detail particularly whether it's a pure text mark or something - some other category.

But rather than muddy the waters on that, we can come back to that discussion, we're going to move on now to Question 7. And the reason we're dealing with these questions is because the questions we're skipping there was a very clear difference between the yes and noes to where there was a big difference in those answers whereas the ones we're focusing on it's where the answers were pretty close and there's no clear consensus one way or the other.

So moving on to Question 7, and again this asked whether respondents agreed with this statement, and the statement is that the Trademark Clearinghouse operator should accept composite marks if the text has not been expressly disclaimed in the trademark registration.

And then the definition of composite marks was the Cars mark in the reference guide where it was the word cars, which of course is a dictionary word, and but in a particular design context, not just the text was stylized but was also in the context of a larger illustration that contained the text. And on this one, well nobody could live with it. It was a clear split between yes, 47.4%, no, 52.6% and then trademark owners were clearly more in the yes camp than the no camp by about 4 to 1, 22% said - were in the yes category, 5% in the no category.

Registrants on the other hand, were very much in the no category, 40% of the respondents who said no but only 5.6% of those who said yes. And then everything else broke down the other categories in a fairly even way other than trademark owners who were also - I don't know what they were, trademark - registrant/trademark owner/registry/registrar, so those were respondents who thought they were every category, so I don't know what weight we give to something like that where it was 16.7% of the yeses and only 5% of the noes.

But here's another one where there's a very close division within the working group, no clear consensus for one way or the other. Let me ask, before we enter the discussion, let me just inquire staff, do we know if the Clearinghouse is currently accepting composite marks? Would that cars mark that was in the reference guide be accepted by Deloitte if there was an application for it to register in the Clearinghouse. Can staff enlighten us on that question? Go ahead, Mary.

Mary Wong: Thanks, Phil. Hi, everybody, this is Mary from staff. I cannot say for a fact that I know whether or not they're accepting composite marks. I don't know that there is such a breakdown or categorization either in the TMCH submission or (unintelligible) process.

But what we do know is that we did send Deloitte a list of the examples that we had and they did provide us with a view of whether if hypothetically those marks had been submitted whether or not they would have been accepted by Deloitte. So hopefully that information is helpful.

Phil Corwin: Okay. Thank you. Thank you. All right, with that background, Martin Silva, please go ahead.

Martin Silva: Yes, can you hear me?

Phil Corwin: Faintly, if you could speak a little louder it'd be helpful.

Martin Silva: Sure. I just wanted to comment the thing that the other people has commented both in emails and in our meetings which is the problem here is that giving protection to a composite mark means to actually giving more protection than the trademark gives itself. It only protects that - the nomination with a certain context and a certain color, a certain things giving a broader protection than that is giving a right that is wider than the right the right holder

has. I think that's the main issue that we haven't got very straight now intuition here. It's just that.

Phil Corwin: Okay. Thank you for that comment. And I want to comment a bit on the - some comments in the chat room. George Kirikos is saying that Deloitte was given the composite version of cars and said they would accept it. And then there was another comment that if the - if there's a lack of consensus it means we have to accept continuation of the current practice by the Clearinghouse.

I'm not saying - I saw Jerry Malcolm - I'm not saying that's a good or bad result, I'm just saying that's the practical result that if we know Deloitte is doing something now and there's no clear consensus in the working group that it should stop doing it or do it in a different way, then I'm not sure how we could issue an initial or final report that recommends that they change that practice or that calls out that practice as mistaken or contrary to policy.

So I wasn't endorsing anything when I made that observation, I was just saying that where there's no consensus for change we're not going to have a report that recommends change. I'm getting some background noise if someone could mute their phone if they're in a noisy place.

And I saw John McElwaine put in a link about what the Clearinghouse was doing with respect to non-word only marks. I don't - John, I don't have time to click on that link and review it while I'm running the call. I don't want to force you to get on but if you feel like you could get on for a moment and just explain your interpretation of what the Clearinghouse is doing that would be helpful for this discussion.

John McElwaine: Hi, Phil, John McElwaine for the record. So really all...

((Crosstalk))

John McElwaine: ...you'd asked what was the Clearinghouse doing and I could read it but that link tells you. And it's not something we haven't looked at already before, but essentially, you know, Deloitte's policy is if it didn't - if the mark did not consist exclusively of letters, words, numerals, special characters, etcetera, that's when they were looking at whether the design element was predominant and clearly or separable or distinguishable from the word mark itself. I won't belabor it, I just wanted to point you to it. You seem to be asking what are they doing, all these examples that we're talking about now are, you know, when Deloitte was looking at them they would have been applying the standard contained in that link that I posted. And that's it, thanks.

Phil Corwin: Okay. And, John, just to keep you on one second longer, as you interpret that link would they have accepted the composite cars mark?

John McElwaine: I think so. I haven't really studied it fully but when I looked at the - everything earlier I think they would have.

Phil Corwin: Okay so basically what I'm hearing is that if Deloitte gets an application for a particular word, whether that word is - if there's a trademark somewhere for it, whether it's text only, stylized, composite, whatever, that Deloitte's current practice is to accept it? So that's what's going on now. So any further discussion on Question 7? Mary, go ahead.

Mary Wong: Thanks, Phil. And thanks, John, for the link. I've pasted some of the language from the link into the chat. And just to follow up on that, the words that they have in this set of guidelines for device or image marks, and I know that we've had this question in this working group about what we all mean because when someone says a device mark or a design mark, they may actually mean something different from when someone else uses the same phrase.

What the Clearinghouse guidelines say for this particular test is that it relates to marks that do not exclusively consist of letters, words, numerals or special

characters as John noted. Whether that is just for what we're calling composite marks, that is letters or words plus design or graphical element, or whether that also includes what we're calling stylized marks, which is the mark is exclusively letters or words, but the letters or words themselves have some kind of stylization.

I'm not sure that that's entirely clear and I thought I would raise that in case someone from the working group has an answer or if that's something that we want to seek clarification from Deloitte. Thanks, Phil.

Phil Corwin: Okay. Thank you for that further explanation, Mary. And, yes, some of this does get confusing, particularly for those of us not involved with daily trademark practice as opposed to the policy aspects of trademark. Is there any further discussion on this question? I think we're left in the position where there's no clear path to a consensus resolution right now, that we'd welcome any creative proposals for getting to consensus. But right now there is a fairly even split within the working group based on the representative sample of respondents on this question regarding what the Clearinghouse should be doing with composite marks.

So I'm going to move on to Question 8 without - since there's no further discussion. All right, so it says in our agenda we're doing 7 and 9, but 8 is one where there - well I guess we wanted to compare 8 to 7 and try to figure out - this is where people's understanding of the question, now that I'm recalling last week's discussion, can be very helpful.

So we just went through Question 7 where there's pretty much an even split on whether the Clearinghouse should accept composite marks if the text has not been expressly disclaimed in the trademark registration. And then on Question 8, which is very similar, respondents were asked if they agreed with the statement that the Clearinghouse operator should accept all composite marks irrespective of whether the text has been expressly disclaimed.

So the difference is Question 7 said, should they do it if there hasn't been an express disclaimer? And Question 8 says, should they do it even if the text has - really a better word would have been even if the text has been disclaimed, that's how I'm reading it now -even where the text has been disclaimed in the composite mark, that shifted a lot of the yeses to noes where expressed disclaim of the text had occurred.

So that's - looping that back to Question 7 it seems that we have much stronger consensus with the group and much less of a gap between trademark owners and others where it seems to be saying that trademark owners would agree that where there's a composite mark for which the text has been expressly disclaimed, that mark should not be allowed to go into the Clearinghouse. That's how I'm reading this.

And let me ask this, based on our discussion of what's - what information is requested of applicants for Clearinghouse registration, are those registrants currently being asked whether the text has been disclaimed because if they're not being asked the question, then composite marks for which the text has been expressly disclaimed, there'd be no way for Deloitte to know that it occurred and they'd still be getting in which is contrary to the views of the significant consensus majority.

I think the - I can live with this would be added to the no comments - no responses so we'd be 86% to 13.5% on that one. So any comments on what I just said and particularly whether - I guess what I'm getting to is should we be recommending that registrants provide more information than they currently may be providing to the Clearinghouse on the - either stylized or composite marks? And, Greg, I see your hand up, and welcome your response on that or anything else to do with this dichotomy between Questions 7 and 8. Thanks. Go ahead.

Greg Shatan: First I would say, as I think was remarked before, that the "I can live with this" should be grouped with the yeses, although it doesn't really matter for the

purpose of this question. Second, I think that, you know, the difference between these two reflect an interest in compromise and in moving forward on part of at least this representative of trademark owners. And I've been both plaintiff and defendant representative. But that's not germane here or any of the other Jackson 5 members.

In any case the point is that the difference is that if something is expressly disclaimed then I think we can come to the conclusion fairly readily that no trademark rights are being claimed in that text standing alone without the context. And, you know, the opposite, but for all of the other situations you can't come to that conclusion or make that inference. So I think that is the difference here.

I think that, you know, Question 8 kind of - a different question would have been the one that you asked, Phil, as you were mulling this over which is should they accept composite marks that have expressed disclaimers on them?

And I think the - obviously the understanding of what's being submitted is different than what might be submitted if we were to change the rule; if we had an express rule on disclaimers, then I think clearly when a mark is being submitted to the TMCH there would be a field or an area in which you would indicate whether the text has been expressly disclaimed, the text for which protection is being sought, that is because there are plenty of times when there is some text that is disclaimed so it really - again, goes back to the issue it's all the text that's being disclaimed where the issue here is that - or there's a feeling that it should not be placed in the TMCH. Thanks.

Phil Corwin: Okay, yes, thanks. That was very helpful, Greg. And, you know, my view is kind of a dilettante trademark lawyer who's involved with policy aspects related to the Internet but not a day to day practitioner. Is, you know, when we're talking about protections in the Domain Name System, and the only thing, when you register a domain in sunrise you're registering text.whatever,

text.tld, when a claims notice is generated to a prospective registrant of a domain it's because the text they're attempting to register as a domain name matches the text of a mark in a Clearinghouse. So it seems to me that for both stylized and composite marks if the text has been disclaimed there should be no right to register in the Clearinghouse because there's no rights in the actual text, which is what we're concerned about in the Domain Name System.

And it shouldn't give a right to get a domain with that text in sunrise or to generate a warning to someone through a claims notice. So that would be my view at this point. And I would probably advocate is something we should consider for an initial report that if the Clearinghouse is not currently asking applicants for Clearinghouse protections whether they - Clearinghouse related protections whether they've disclaimed the mark, that question should probably be added to the registration system going forward to exclude these type of disclaimed marks where even a substantial majority of the trademark owners would agree that they shouldn't be permitted to be registered in the Clearinghouse.

So that's my views on that. They're strictly personal. And if anyone wants to agree or disagree feel free to. And with no further hands up, unless someone wants to shoot one up now, I'm going to move on to Question 9. Noting that we're now almost an hour into the call, so we've got Question 9 and 13 and we want to stop within 20 minutes so we have a little bit of time to discuss the draft data collection proposal for the sunrise RPM.

So moving onto Question 9, a little bit more split here, not so even. The question was, "Do you agree with this statement: It should make a difference that is the mark should not be accepted into the Clearinghouse, if the text portion of a composite mark or a stylized mark is purely descriptive in nature?"

And it referenced in the reference guide the music and parents examples. And on this one, we got 33% of respondents said yes, it should make a difference. And I'm not sure what difference they thought it should make, whether it should result in acceptance or non-acceptance of the mark. We can get into discussion on that.

Another 5.5% said they could live with the statement, so unless I'm messing that up again, in this case the I can live with it should be added to the yeses. And noes were 61 and a bit percent. I guess my first question is, how did people interpret this question? I mean, a majority - a 2 to 1 majority approximately - well not quite 2 to 1, about 3 to 2 when you add the I can live with it to the yes, who agreed with the statement, thought it should make a difference but we didn't ask them what difference it should make whether one can presume that being purely descriptive they probably thought that meant it shouldn't be accepted, but that's just my guess.

So I'd welcome comments first of all as to how people interpreted this question, what difference they thought it should make. And whether this - and also whether there's a significant enough difference, a 3 to 2 ratio with this reprehensible sample to put any recommendations in an initial report on this question. And I see Rebecca's hand up followed by Mr. McGrady. So, Rebecca first.

Rebecca Tushnet: Rebecca Tushnet. I think that there were likely two kinds of noes based on the other responses so, you know, those of us who thought that stylized marks or composite marks on their own shouldn't be accepted said no, because it shouldn't make a difference, right, you should have to submit a text mark.

And then I suspect there were people who thought that since there shouldn't be substantive examination, the default I think - I'm sorry - I forgot who was speaking for this but the default should be to accept no matter what at least unless there's an explicit disclaimer. So I suspect there's kind of a three sided

division here. I'm not sure that that gives us much insight on the others.

Thank you.

Phil Corwin: Okay, yes thanks for that input. Paul, go ahead, please.

Paul McGrady: Thanks. Paul McGrady for the record. Yes, I think it's hard to know what to do with these yeses and noes because of - and I don't want to get in trouble for picking apart the survey but the question doesn't answer the question which is considered by whom? Considered by an examiner? Considered by the Trademark Clearinghouse person who works with the Trademark Clearinghouse? It's not really clear who considered it purely descriptive. And that also should (unintelligible) descriptive, I'm more what merely descriptive means; purely descriptive is a new phrase.

The other thing that the question doesn't answer is, is it a young mark or has the mark acquired any secondary meaning anywhere? You know, some marks may start out merely descriptive but because of widespread use and, you know, consumer's association with a particular mark, a distinctiveness over time, that's a well, you know, well-traveled road in trademark law.

So, again, without really knowing who's considering it to be descriptive and whether or not it has, you know, if it's a descriptive mark on day one or descriptive mark on, you know, year 10, it's really hard to know what these yeses and noes mean. You know, they could have said, for example, no, I don't think it matters because I think Trademark Clearinghouse person who thinks it's purely descriptive and I really don't care what those dudes think, I care about what examiners think.

Or no, I don't think it should matter because in my head when I was answering this question I was answering it, you know, based upon a mark that's 10 years old and has been sold, you know, to billions of consumers around the world. I mean, who knows what the presuppositions that the

people who answer this question had to bake in in order for the question to make sense?

And so without being able to unpack those presuppositions, I don't know what no means, I don't really know what yes means. So anyways for what it's worth. Thanks.

Phil Corwin: No, that was helpful, Paul. And I think we're starting to get a clear consensus that Question 9 was not the best drafted question in the world, that it could have been interpreted in multiple different ways. So we can't put a lot of weight in the response. And then as to what, you know, whatever purely descriptive means, I'm not sure that Deloitte is differentiating between distinctive and descriptive marks. I think they're looking at whether a mark is registered somewhere and meets the other criteria for registration and is probably not even differentiating between descriptive and distinctive when they're making that analysis.

So I guess we can't put a lot of weight in the responses to Question 9 is what I'm hearing. And so we're going to move on to - oh, Rebecca, yes, I don't want to cut off discussion. Go ahead.

Rebecca Tushnet: My mistake, I'm sorry.

Phil Corwin: Okay. So we're going to move on to Question 13, lucky Question 13. Okay, this should be an interesting discussion. Do you agree with this statement, the current Trademark Clearinghouse category of marks protected by statute or treaty, that's a quote from what's in the directive to Deloitte as to what they should be accepting, should apply only to registered trademarks? That's the question.

The yeses were 53%, 53%, almost 54% said yes, it's got to be a trademark to get into the Trademark Clearinghouse. The nos were 36% saying no, it might be able to get in even if it's not a trademark if it's protected otherwise by

statute or treaty. And just over 10% say they could live with this. So in that case they could live with it only being, you know, only registrations for registered trademarks you would add that to the 54% and get about 64%. So about a - close to a 2 to 1 ratio of yes to no here.

And I'm aware that - I believe I'm remembering correctly that this phrase "protected by statute or treaty" got into the Applicant Guidebook somewhat late in the process, it wasn't something that was there from the beginning from the IRT STI. And I'm going to start this discussion by explaining how I interpreted this question.

And I answered no. And I answered no not because - and I answered no despite the fact that while I'm not that troubled by marks protected by treaty, because treaties tend to be multinational if not completely global, and that's appropriate for a global Domain Name System, I'm a little queasy with protecting marks by statute because that could be a mark protected by the laws of only one country and not recognized anywhere else and yet under this definition taken literally, statute or treaty, being protected a mark that was not a trademark that was protected under the law of a single nation it seems should - if you read this strictly, should be eligible for Clearinghouse registration.

The reason I answered no is because if you view - if you apply the requirement that a mark protected by statute or treaty must be a trademark, then the whole phrase makes no sense since it's an addition to trademarks in the directive to the Clearinghouse. There would have been no need to put in this phrase, "marks protected by statute or treaty" if the Clearinghouse was restricted solely to trademarks meeting certain registration criteria.

So I answered no, I interpreted the question not because I necessarily think that putting marks protected by treaty and particularly by statute, by the laws of a single nation, I don't think that's good policy. But if that's the current rules, I think the way I strictly interpret that phrase in the context of the - what

can go into the Clearinghouse I think you have to let them in unless we change the policy.

So I will stop talking there and open this up for comments on what people - why people think that marks protected by statute or treaty shouldn't be let in if they're not also registered trademarks and the overall policy questions here. Do we have any folks who want to wade into this issue, which any time we're talking about statute or treaty we've got to be thinking about the GAC as well. So I see Rebecca and then Greg. Go ahead, Rebecca.

Rebecca Tushnet: Thank you. And I think your summary actually is pretty much how I'm thinking about this too. I was going to put in a potential distinction, is it possible to think about this as a case where if there are specific entities identified by a statute or treaty, such as the Boy Scouts and the Olympics in the United States we might want to include them without necessarily including things that are eligible for some sort of national protection by virtue of some other scheme but not specifically named in the foundational legislation like some GI schemes.

That's just a possibility, I, myself, might be inclined to just completely eliminate it but as it's in there now, that seems like one way to make it work. Thank you.

Phil Corwin: Okay, thank you, Rebecca. And, Greg, I'm going to ask you to hold just one second because I noted that Mary's hand her hand up for quite a while and I think she has some explanation on the background of this phrase, so if Mary could enlighten us?

Mary Wong: Yes, thank you, Phil. This is Mary from staff. And we may have done this in a very early stage of the working group's work, but just to note that this category of marks protected by statute or treaty first made its appearance in version 4 of the Applicant Guidebook. And I think at the end we ended up with version 9. And at the time, going through the explanatory memo that was

put out for including this and a number of other changes to the TMCH rules, it seems that the concern was about unregistered marks that nevertheless serve the function of - or similar to a (unintelligible) regardless of whether it had been registered.

And so as a result, we did get the category of court validation, which was itself also something that had been discussed I believe by the STI, but this category of statute or treaty was added at the time as well for the same reason. And there were no substantive public comments to this edition either in response to version 4 or in subsequent versions so essentially it just stayed in there from 2010. So hopefully the origin and the explanatory context for that will help the group determine what exactly this was supposed to be and whether it should stay. Thanks, Phil.

Phil Corwin: Okay. Well quick follow up, Mary, do we remember - do you remember how many - I know Deloitte broke down the types of marks they had taken. What percentage of what's in the Clearinghouse now falls into this category, a mark protected by statute or treaty? Did they inform us on that? I see in the chat Mary said it was 75 so not a lot but some have gotten in that may not have also been registered trademarks. I notice also in the chat this probably includes all the IGO names that have invoked WIPO Article 6ter, Paris convention protection but haven't been registered as trademarks.

And also maybe GIs, I want to defer the GI discussion - I want to call on Greg first, he's been waiting. Go ahead, Greg. Greg, we're not hearing you. Are you trying to speak? Okay, I don't know...

((Crosstalk))

Terri Agnew: And Greg, this is Terri. I no longer see your Adobe Connect mic activated, you'll have to reactivate it or join in on the telephone portion.

Phil Corwin: Okay. While Greg is doing that, at any time he can join audio, we'll let him just speak and we'll note his presence and let him speak. While he's doing that...

((Crosstalk))

Phil Corwin: Oh, okay.

Greg Shatan: I'm back.

Phil Corwin: Okay good. Go ahead, Greg.

Greg Shatan: I was just going to say that, you know, it'll be nice to try to look back and whatever legislative history there is for this edition. I have always read this the way Rebecca suggested it could be read. I almost thought we were heading for a kumbaya moment until she suggested she was sympathetic to eliminating it entirely, which I'm not.

But I agree - I thought it always meant to cover specific marks of specific owners that where the protection came because it was created in a statute or recognized in a statute like the Boy Scouts of America, like Big Brothers of America, and a few - a number of others where the protection came through a statute or congressional intervention of some sort or where, you know, the treaty created specific protection, I think you know, one could at least arguably say Red Cross under the Geneva Convention. Although some people think that it's only supposed to be protected in battle, but I'll put that aside.

It was not meant to kind of bring in anything that was not really a trademark, not a trademark at all but somehow had some kind of protection for some kind of string under the laws of at least one country.

I think that was a gross misinterpretation by the Trademark Clearinghouse, do not think that for instance a geo name or even 6ter names should be coming in that way to make - again, you could argue something about 6ter because at least there's an official record that's attached to 6ter whereas the whole idea that this was meant to protect non - meant to allow non trademark statutes to be used as the basis for registration in the Trademark Clearinghouse, I think that was just a fouled - a mistake that was made. One which I would like to cure now that we've found out that that mistake has been made. Thanks.

Phil Corwin: Okay, thank you for that, Greg. So I do hear you saying that this category of marks protected by statute or treaty is one that deserves some further consideration by this working group as to whether that should be clarified or narrowed in some way, that the way it is now is maybe over broad. Would I be correct in that?

Greg Shatan: Yes, yes, yes.

Phil Corwin: Okay. Yes, that's kind of my feeling that it deserves some further scrutiny by our group. I note that since her earlier submission Mary has noted in the chat that Deloitte's report was that as of February 2017, so earlier this year, 98 such marks had been submitted and of those 98, 75, about 3/4 had been successfully verified and entered into the Clearinghouse.

And the one last question I'd like to raise on this is just for my own understanding, we had a pretty clear consensus in this working group that geographic indicators shouldn't be accepted into the Clearinghouse if they're not also trademarked. But my question would be if that geographic indicator has been protected under at least a statutory law of a single nation, wouldn't they be eligible for registration under a strict reading of that phrase? Any takers on that question?

Greg, is your hand still up or is that old hand?

Greg Shatan: That's a rejuvenated hand. But if somebody else has their hand up they should go first .

Phil Corwin: Well as long as you're on, go ahead, give us a quick comment and I'll jump to Paul.

Greg Shatan: Sure. I don't think we can come to the conclusion that, you know, any mark that was protected by a specific statute could also have been registered necessarily even if it meets the substantive requirements for registration. I just don't want to get down that long dark corridor of trademark law. You know, the fact of the matter is that the - the statute or the treaty, at least under, you know, my view of what the statute or treaty is meant to be functions as a form of registration of, you know, state recognition of rights or creation of rights and should be viewed as such.

So that was the - I think all that this was intended to include. So if the implication is, well, we should just treat them like any other registrant - or any other trademark owner that didn't have an interest in getting a registration and therefore, you know, can't get into the TMCH, I would disagree with that because you know, once they have, you know, been protected by statute or treaty, you know, that, you know, should be sufficient for them in the TMCH as it is elsewhere. Thank you.

Phil Corwin: Okay thanks, Greg. And I'm going to call on Paul McGrady now for what probably will be the last comment on this question because we've got 10 minutes left and we want to quickly review the data collection proposal for sunrise, but go ahead, Paul.

Paul McGrady: Sure, thanks Phil. Paul McGrady here for the record. Again, the operative word is mark, geographic indicators are not marks and unless they're registered as marks and that was the basis for this working group deciding to not include them. You know, I don't think it's - again just because we have

this phrase that talks about something protected by statute or treaty it doesn't make it a - it doesn't make it a mark, doesn't make it a trademark. You know, all that some of these geographic origins will tell me if I drink it and it's poison and I get sick, is the general region from which it came, that's not the same thing as source origin, which is what trademarks do.

If I drink it and it's poison and I get sick I can look up the trademark, I can go to the registry, I can find out who made the stuff, I can have their address and I can go tell them, hey, you made me sick. So, you know, again, the operative word here is mark and I hope, hope, hope we don't reinvigorate this debate which I think is pretty well settled at this point. Thanks.

Phil Corwin: Okay, well I'm not sure it is settled but we'll get - we'll find that out later. The only thing I'd say in regard to your mark, Paul, is that if I - if the word "marks" means only trademarks then again, why is this phrase even in the directive to the Clearinghouse? Why don't we just - why was it ever added to registered trademarks if marks means only trademarks that meet the registration requirements of the Clearinghouse? But...

Paul McGrady: Phil, if I could respond to that? I think you...

((Crosstalk))

Paul McGrady: ...yes, you've got your answer in what Rebecca - the examples that Rebecca gave before because I can go to the headquarters of the Boy Scouts of America and I can see that they've applied their mark to their services and even to their goods. I can go the International Red Cross headquarters and I can see - those are operating a source origin and so therefore they are marks and therefore if they're protected under a different statutory scheme, I think there's an interesting argument to include them but that's different than, you know, me going out and, you know, having a geographic indication of Napa and just, you know, me going to Napa and hoping to bump into the guy that sold me the wine.

You know, those are very, very different things. I don't think that they're - I don't think that conflating them will bring clarity. Thanks.

Phil Corwin: Okay. Yes, well I agree, we may not want to bring - drag in the GI issue because we do have clarity on that one. But I'm not sure that Deloitte would reject a GI if someone could say hey, you know, my bottle says champagne on it and there's a French law that protects champagne, it's not the - the champagne growers association.

Let's not get into that now but I think there may be some good reason to come back to this phrase, marks protected by statute or treaty, before we complete our initial report and discuss whether we want to suggest some tightening up of that phrase to address the ambiguities we've identified and the concerns that some people have.

And with that, could staff - could we please jump quickly to agenda Item 3 which is the data collection proposal for the sunrise RPM? We've got about six minutes to do so. And thanks for the good participation on the discussion of the TMCH questionnaire. I think we've had a pretty robust discussion and we can probably move on from that and not have to go back for further discussion.

So let's see how many pages this is. Does someone familiar with this document want to speak to it and take us quickly through it regarding either staff or someone from the sub team involved with developing it? I see Mary's hand up.

Mary Wong: Thanks, Phil. This is Mary from staff. In the interest of time I can start off and hopefully sub team members, the chairs or indeed anyone can jump in. So this document was prepared by staff and in four pages and this one is just for the sunrise registrations. We haven't circulated one for the claims sub team yet.

The document shows three columns. The left most column, or Column 1, is the charter questions as refined and as they stood as of the last working group discussion. Column Number 2 is the data collection suggestions that were made by the sub team and the working group. And again, that is as they stood as of the last time we looked at those suggestions.

It's Column 3 that is new. And what we've tried to do there on the staff side is to put in a few comments or some clarifying questions about the suggestions to try and get a sense of either the scope or the methodology that's being proposed. And in some cases, we've put in some additional suggestions as well. This is meant as a starting point and hopefully the working group can add to it, can clarify it, so that when we go back with the cochairs we can really see better what would be probably easier to do and priority and so forth. Thank you.

Phil Corwin: Okay, thanks, Mary. And I'm just reviewing that third column for - to differentiate between where we - there's existing data or things we can cull out of existing information we have or we're looking at new data collection, I see for sunrise pricing, we're contemplating a survey on that to collect data from the registry operators possibly all of them, possibly just a statistically significant sample, possibly using that same survey on - to get input from registrants - trademark holders, their experience with pricing.

And going down, there's suggestions we need to identify public interest groups, media on - regarding the 30-day minimum sunrise period, also media sources on questions relating to 30-day period. So we are contemplating some new inquiries here. So staff, what if anything does this working group - you need any feedback from us on these suggestions? Do we need to get involved or are they going to be self-executing? I'll call on Mary again.

Mary Wong: Thanks, Phil. Mary from staff. So a couple of things, one is that in looking at these suggestions and also the ones from claims, which we'll get to in due

course, it does strike staff as this could be fairly extensive exercise. So we would want guidance from the working group in a number of respects. One is something that we've mentioned before which is that the GNSO now has a mechanism by which a working group can request resources from ICANN by going through the GNSO Council to gather data.

So one point that we'd like some guidance on is whether some or all of these things, especially for example, a survey is something that requires professional help as you go through that process. And if so, we would certainly assist the cochairs in preparing a draft request from the GNSO Council.

Another point is that even in doing a survey and even if it's anecdotal evidence, some of these points require quite a lot of data from say registries so we may have to be realistic about how much data we can get on that. So those are the two initial thoughts that staff had. We can continue working with the cochairs but we'd really appreciate it if the working group could cast an eye on these suggestions and offer suggestions that hopefully clarify and tighten the scope of what it is that we're expected to do. Thanks, Phil.

Phil Corwin: Okay. So Mary, let me say this, in terms of requesting budgetary resources, the cochairs can discuss that with staff on our next coordination call. I would urge members of the working group to review this proposal, if you have concerns about any of the data being proposed to be collected be prepared to speak to that because we'll - I think we should come back to this chart at the beginning of the next call because we're giving it fairly short shrift here.

I'm a little bit concerned about the time that the collection and analysis might take so I think we have to be sure that we really need all these different types of data to base sound decisions on before we embark on this exercise. If we need it then let's do it and take the time but I don't want to add time to this Phase 1 portion of our working group's task just to pursue statistics that may not be all that meaningful when we finally get them and analyze them. So

everybody, please review this and be ready to speak to any suggestions for improving it, tightening it, any concerns you have about it, at the start of our next call.

And with that we're at - just past the hour and a half mark so staff, I believe our next call is next Wednesday at the same time, 1700 UTC, is that correct? Go ahead, Mary.

Mary Wong: This is Mary. Actually, the staff were looking at this, this is - next week will actually be the fourth rotation if we date back to ICANN 59 so it would be the APAC friendly time zone which would mean Wednesday night for folks in North America but Thursday morning for those in the APAC zone.

Phil Corwin: Okay, so I correct my prior statement, that's the call that's more convenient for people in the Asia Pacific Rim next Wednesday and the one that starts at 11:00 pm for people on the East Coast of the US and the one in which we usually get very little participation from Europe because it's the middle of the night in Europe when that ends. So with that, thanks everyone, for participating today. I think we had some good discussion of the meaning of the results on the TMCH survey. And have a safe and productive week until we meet again one week from today. Thank you.

Terri Agnew: Thank you, everyone. Once again, the meeting has been adjourned. (Cindy) the operator, if you could stop all recordings? To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END