

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working
Group call
Wednesday, 22 February 2017 at 04:00 UTC**

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Terri Agnew: Good morning, good afternoon and good evening. Welcome to the Review of All Rights Protection Mechanisms, RPMs, in all gTLD PDP Working Group call held on the 22nd of February, 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 could you please let yourselves be known now? Hearing no 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: Well good morning, afternoon and evening to all our participants wherever you may be. I'm broadcasting from Alexandria Virginia where it's getting close

to midnight. And does anyone have any updates to statements of interest before we get into our substance?

Hearing none, staff, I think we want to open by soliciting any additional input on Categories 3-6 of our TMCH questions. Could we put those up? And apologize, Kathy and I were not on last week's call chaired by J. Scott, we were at the Non Contracted Party House meeting in Reykjavík Iceland, but we're back now.

And let's quickly review these and see if anyone else -anyone has anything additional to add to these. We'll try to trot through these and then move on to Item 3 on the agenda.

But, looking here in Category 3, the breadth and reach the scope of the Trademark Clearinghouse charter, and the Question 7, "How are design marks currently handles by the Clearinghouse provider?" Deloitte asked what was meant by design marks, pointing out in their belief there is no globally consistently accepted definition. There is a reference to the ICANN RPM staff paper of 2015.

And the working group discussion to date is to follow up with Deloitte on the original sub team question especially on validation criteria and how they differentiate if at all between design marks and requesting various examples of the accepted and rejected marks and soliciting Deloitte's view as to whether examples submitted by the working group would have been accepted or rejected.

And Rebecca Tushnet, who is on our call right now, apparently wants to take the lead in developing examples for submission to Deloitte. So any further comment in regard to design marks? Kathy, please speak up.

Kathy Kleiman: Good evening, Phil. Hello everyone. Kathy Kleiman, and I was reading the chat room from last week and Martin Silva Valent, raised some questions that

perhaps should also be part of our discussion. They didn't have to do with Deloitte. I believe his questions, and I wish he were on the call today, I believe his questions had to do with the underlying rules themselves and whether the Trademark Clearinghouse should be accepting design marks, should be accepting figurative marks.

What the original rules that should provide the guideline for the Trademark Clearinghouse say because there's certainly a sense that he raised from some of the people who worked on it that it was only work marks, only text marks that were supposed to be accepted. So this idea of going back to the original language, the original recommendations as adopted by the GNSO Council and Board should probably be something the working group does as well. Thanks.

Phil Corwin: Okay so, Kathy, I think maybe - I don't have the precise language may be staff can add in the working group discussion call him a desire to review the originating link which for the Clearinghouse to see if it addresses design marks, and if so the current practice is consistent with any relevant language. Would that work?

Kathy Kleiman: That would work well. Thank you.

Phil Corwin: Okay. All right, anyone else, going once, going twice on design marks, going three times. We're going to move onto Question 8 here regarding geographical indicators, how are they and protected definitions of origin and appellations of origin handled by the Clearinghouse provider? And I have to scroll up to remind myself of what these columns are. Okay, that Deloitte response is the center column.

And Deloitte's response was as of January of this year no registry operator pursued the option of including marks within the category of, quote, other marks that constitute IP and to meet a registry's individual requirements, unquote. And working group discussion is that Deloitte seems to have

accepted marks with geographical overtones or elements. And this Question 8 is to be sent to Deloitte asking specifically how these marks are handled.

And staff should find out from origin, and I'm not sure what that refers to. Maybe staff can enlighten me. I see Mary's hand up, as to who might be able to submit geographic indicators. Mary.

Mary Wong: Yes, thanks, Phil. And hello everybody. This is Mary from staff. So I think the first thing to note, and it's implicit in the follow-up question, is that Deloitte had not been asked specifically about geographical indications or protected designations of origin. And that's why we are going to be sending this specific question to them.

In respect of origin, I believe that's a group that represents ordeals with folks with geographical indications. One of their staff is actually a member of the working group. We have not had a chance to follow up with him but we will do so within the next day or so.

Phil Corwin: Okay. Thanks for enlightening us, Mary, and thanks in particular for pointing out what "origin" refers to, that's a specific organization involved with validation of geographic marks. Okay. Any other comments on this category, geographical indicators and protected definitions and appellations of origin? Greg, go ahead please.

Greg Shatan: Greg Shatan for the record. One more comment on the working group comment in the far right hand corner that Deloitte seems to have accepted marks with geographical overtones and elements. Geographical indications and protected designations of origin, appellations of origin are very specific types of marks or it's not just the fact that they contain geographic overtone, there are many marks that could be considered to contain a geographic overtone.

The comments here is much broader than the narrow indicators. So I hope we're not getting off into the weeds on trying to expand from geographical indicators do anything that seems geographical like Essex, so, you know, we just have to watch our scope. So, you know, these are - and I don't know, Feta, is not a geographical indicator even if it's a designation of origin; Champagne is both, in any case.

So and I see Heather have a follow-up question here as well.

Phil Corwin: Yes, I see Heather's question in the chat...

((Crosstalk))

Greg Shatan: ...right hand column mean anything to us.

Phil Corwin: ...in the chat. Yes, you know, I'm hearing a lot of background noise and now I'm getting an echo. Someone has their line open. Okay, it seems quieter now. Greg, do you have anything further to say? Greg, are you still with us? All right, Greg's and just went down. I guess he was down there.

And, Mary, why don't you chime in and then I'll get to Kathy.

Mary Wong: Sure thing. And hi everyone. This is Mary again. So just following up from Greg and to Heather's question, this remark was phrased mindful of the discussion that took place on the working group mailing list that there were marks that are in the Clearinghouse that have geographical elements. And if you seem to be there that these were likely to have been taken in and accepted because they are registered trademarks any particular national or regional jurisdiction, which is one of the criteria for the TMCH.

So the thinking here is that unless and until we have a clear response from Deloitte asked to whether or not they accept GIs and, you know, appellations and designations of origin per se as opposed to accepting marks with that

kind of geographical element, but because they are already registered trademarks, we thought that it would be helpful to get an answer to that question before going further. I hope this helps.

Phil Corwin: Okay. Thanks, Mary. And I can certainly think of many trademarks which have some reference to some geographic, you know, to some map term as part of the trademark but that is different than a geographic indicator as Greg turned out. Kathy, comment here.

Kathy Kleiman: Great. Kathy Kleiman. Two Mary's point, is it, you know, is that a question that's going to the Trademark Clearinghouse is the question are all of these - are any geographic indicators being accepted required to be trademarks as well or is there a different qualification standard? So to Deloitte, are they all trademarks? So is it all something people could look up? And then, what level of protection is being provided to the geographic indicators?

Let's assume they're not trademarks, so that, you know, in the US we have two states that have, you know, a lot of references, that have associations, so Vermont they have cheese or Wisconsin has fudge and they've, you know, is it possible that geographic indicators are going in without trademarks, and if so then what type of protection is being provided them? Does it include sunrise, trademark claims as well as perhaps private protected marks list?

And then I think the next question would be the same one that we just put into Number 7, which is due the rules allow this? You know, separate from Deloitte, you know, why do the rules say about this and why should we be looking at? What should we be comparing Deloitte's actions against? You know, what were the requirements as set out by the GNSO Council and the Board? Thanks.

Phil Corwin: Okay. And thanks, Kathy. I'm certainly no expert in geographical indicators, but I'd be surprised, let's ask the question and find out but I'd be surprised if a

geographic indicator that was not a trademark could pass the verification standard and get into the Clearinghouse. But let's find out.

And moving onto the next question, which is about trademark +50, should be retained as is, amended or removed? As everyone would recall, the TM +50 was added fairly late in the process in developing the Applicant Guidebook. It came out of CEO Chehadé's strawman proposal. And it's the exception to the rule that a - to be accepted in the Clearinghouse that a mark must be a registered trademark. This is a variation which allows a - basically a confusingly similar domain to the trademark that's been recovered in a UDRP or in a trademark litigation to be registered in the Clearinghouse. So it's an exception to the general rule.

And the working group is going to review questions suggested by the Registry Stakeholder Group, I believe that's supposed to be Registry, not Registries in the plural, to see if there should be follow up with Deloitte on this question. I guess from - this is more of a policy question. I'm not sure what Deloitte can add to it, but certainly they can tell us to what extent TM +50 has been used.

Kathy, is your hand still up or is that an old hand?

Kathy Kleiman: Sorry, Phil, old hand.

Phil Corwin: Okay.

Kathy Kleiman: I'll take it down.

Phil Corwin: So anyone have any - anything to add on the subject of trademark +50? Okay, and hearing and we will drop down to Page 8 of this document. Oh, Greg...

Greg Shatan: I had my hand up.

Phil Corwin: Yes, Greg, I just saw your hand. Go ahead.

Greg Shatan: Okay.

Phil Corwin: And someone has their speakers on again...

((Crosstalk))

Phil Corwin: I'm getting echo. Okay go ahead, Greg.

Greg Shatan: I'm turning my speakers down, maybe it was me. I was just wondering this Question 9 seems an odd one to ask a Deloitte, whether it should be retained as - why would they, I mean, they may have suggestions on how to improve it in some way but I don't know why they would, you know, why we would ask it for - why would we ask this of Deloitte, or are these questions being asked of various different peoples? I see we did not ask Deloitte this question. Okay so these questions are a mishmash, okay. I didn't understand that. Sorry.

Phil Corwin: Okay. You know, Greg, my previous comment indicated, I said this is more of a policy question. Maybe it should be reframed somewhat along to, you know, to start by asking Deloitte how often, you know, what percentage of what's in the Clearinghouse falls in the trademark +50 category. They should know that because people would have had to say, hey, this isn't a trademark, but this was recovered in a UDRP or a court action and therefore that's the basis for registrations.

I would think Deloitte could have it and it would be useful to this working group to know what percentage of the data in the Clearinghouse is trademark +50 data rather than registered trademark data. So and I have no problem with asking for any suggestions on changes in trademark +50. Kathy. Go ahead, Kathy.

Kathy Kleiman: As a extension of that, Phil, I agree with the question, it's an extension. How many - when trademark +50 is used, on average how many variations are registered? And how does the Trademark Clearinghouse use them? One question I have is does it create an SMD file for every variation? I don't know. You know, and is it used in sunrise? Is it used in trademark claims? Is it used in the private protected marks list? Does it have its own - as each variation have its own SMD file?

You know, just the nuts and bolts as you were laying out, you know, it would be great to have it from beginning to end up how trademark +50 is being used since it was never - I didn't want to say it was a consensus policy because none of these things were consensus policies, but it was never - trademark +50 was never part of the GNSO Council recommendations.

So as a follow up, but outside of Deloitte, you know, this is our time to review the policy. Do we have questions about it? Does it make sense? Should there be, you know, any modifications to this? Trademark +1000, trademark +2, there may be different variations we should be considering. Thanks.

Phil Corwin: Yes, thanks, Kathy. That's - I think - I hope staff is capturing some of that. I think the - asking about the technical aspect, the SMD file, would be useful information from a technical background. I note in the chat room Mary wrote that the question about TM +50 that Deloitte was asked was, quote, how many TMCH records include a TM +50 list and how many on this list - are on this list on average? How many registrations were made for entities on the trademark +50 list?

So it's all getting at the same - trying to get some detailed information of how much has been used. And I think aside from looking at trademark +50, the information would also be useful if the working group chairs to evaluate whether right holders should be free to offer other variations of their marks, as some of us have suggested. So before we get into that it would be useful

to know how many that were actually being used to infringe are being registered in the Clearinghouse.

Okay, moving on to Question 10, should the Clearinghouse matching rules be retained, modified or extended to include plurals, marks contained or mark plus keyword and/or the common typos are they mark. That's exactly what I was just referring to was that would be a further expansion beyond registered trademarks if we were to go that way. And I would think the working group would want to know how often TM +50 is used to before we think about any further expansion of what might be permitted to be registered.

And the notation, which I agree with, and then I will call on Mr. Levy, is that the working group decided that this was not an issue we needed to follow up with Deloitte, it's really something the working group meets to discuss further. And I would add that discussion would be better informed by hard data about the use of TM +50. Steve Levy, please go ahead. Steve, are you off mute? We're not hearing you.

Steve Levy: Can everybody hear me?

Phil Corwin: Hear you now, yes, go ahead.

Steve Levy: Hello?

Phil Corwin: Yes, we hear you, Steve.

Steve Levy: Hello?

Phil Corwin: Now apparently Steve is not hearing us.

Steve Levy: ...this question about whether these - I can hear you.

Phil Corwin: Oh okay, well go ahead with your comment please.

Steve Levy: Very quick question about whether the matching rules would apply to sunrise as well as notification, in other words would a landowner be able to obtain sunrise registrations for all these variations of their mark?

Phil Corwin: Yes, I think if we're going to consider this we - if we're going to consider the possibility of expanded - expanding what can be registered in the Clearinghouse, we'd have to decide what that would generate in terms of protections and benefits. So I think that could be added to the question. It's still something for the working group to figure out, not really for Deloitte - I don't see what guidance they could give us beyond the hard data on trademark +50 usage.

Other comments on that topic? And noting that we're 25 minutes into the call and we're about halfway through this list. Kathy, please go ahead.

Kathy Kleiman: Sorry, coming off mute. Perhaps as an additional question to be asked for Number 10, it would be a further exploration of why the exact matching rules were adopted. I know there's some issues, information in the staff paper of 2015, but also it seems like a question we should be asking, you know, do the exact matching rules serve their purpose and serve some of the balances of both trademark rights and registrant rights that we're trying to achieve as a working group.

Phil Corwin: Okay, thank you, Kathy. Greg. Greg's hand is down. And Kathy just spoke. And, Mary, I see your hand up.

Mary Wong: Yes, thanks, Phil. And, Kathy, I'm not sure if this answers your question, but my recollection is that the matching rules in terms of what is and isn't an exact or identical match were always there from the start. And there was at least one explanatory memorandum that was published sometime during the course of the various Applicant Guidebook versions.

There have also been, throughout this process, starting from the IRT through the STI, through the various AGB versions and indeed as you see even in the 2015 staff paper, that there are divided opinions amongst the community as to whether the matching rules should be expanded or changed or retained in some way. So hopefully that background is helpful for working group members.

Phil Corwin: Thank you, Mary, for another useful contribution. Moving on to Question 11, which is, "Should the scope of the RPMs be started with the Clearinghouse be limited to apply only to TLDs that are related to the categories of goods and services in which the dictionary terms within a trademark are protected?" I guess that would mean that if, for example, a, you know, the exact label, the right of the dot label would have to correspond in some way to the goods and services for which the trademark - that the trademark covered for the RPMs to be generated.

Deloitte, I'm going to go through the responses a little because this is a somewhat complex issue. Deloitte responded, upon request from the community the SMD file was designed in a way that the registry operator had all that necessary information to limit registration by goods and services and that it's really a registry operator decision whether to do that. It's not a Clearinghouse decision. They pass the information along.

Apparently we got responses from PIR, AfNIC and Donuts that they haven't used this to limit registration by goods and services. And the Registry Stakeholder Group said they expect that one topic under consideration by this working group will be the inclusion of generic trademarks in the Trademark Clearinghouse. They think that continued inclusion of generic marks is appropriate and necessary to allow brand owners to protect their IP.

However, they also believe that the RPMs need to strike a balance giving the volume of generic marks in the Clearinghouse and the potential for legitimate registrations by third parties. They strongly oppose efforts by the working

group to restrict registries from reserving or including a premium list any names that are recorded in the TMCH. So they're a little concerned about what we might do. I'm not sure were going to do that.

And then there's the reference to the RPMs staff paper. And that staff paper noted that what's generic in one context may not be in another, particularly between jurisdictions. I'm not going to read all of that comment.

So the working group decision was that this is not an issue, again, it's more of an issue that we need to hash out among ourselves than something that Deloitte can provide guidance with. It's really more of a policy question rather than an operational question. So any comments on that before we move onto the next - to Category 4? Okay Category 3 is going once, twice. It's done.

Category 4, we're on Page 12. This category is costs and other fundamental features. Question 12, "Are there concerns about operational considerations due to the Trademark Clearinghouse database being provided by a single provider? If so, how that may be addressed?" No response from Deloitte here. The 2015 RPM staff paper - and that related to cost for verification and other purposes.

The Registry Stakeholder Group said, one critical decision was to require that all registries and mark holders integrate within a single Trademark Clearinghouse provider than allowing multiple providers. They think that could have provided a competitive marketplace that would have driven down costs associated with this and perhaps better service.

And the RPM Working Group, again, as in the prior question, this was not something that Deloitte needed to be inquired about, in fact one would suspect is an editorial comment that Deloitte might like being the sole provider. Who knows, but they have the market to themselves right now.

This again, is an issue for the working group to discuss further. And as I'm waiting to see if there's any comment on this question, I'm just going to take a sip of water for a moment.

All right, I don't see any hands up so on this one so I guess there's agreement that this is another issue for the working group to get into on its own. Kathy, yes, go ahead.

Kathy Kleiman: I'm not sure about Deloitte but I would think certainly IBM would be one of the provider we want to ask this question to. And it's not - because it's not just a competition question, this is a technical question. And if there are technical, I mean, we deal with single databases and competitive databases all the time, right, in our world. And we believe that gTLDs should be singly run databases by one registry, not by multiple registries. We had that debate 10, 15 years ago.

But that other databases can be shared. So in this case I would think this would be a question particularly to IBM about whether there are technical reasons why this function should belong to a single provider. And maybe we want to ask Deloitte as well.

You know, we can expect what their answer might be that there may be technical reasons for single databases here. There certainly were when we framed the questions initially and gave them to the GNSO Council. So anyway I think this is one that might be interesting to ask them.

Phil Corwin: Okay, so Kathy, you're suggesting, contrary to prior working group discussion we should consider sending this to Deloitte and IBM as well particularly - with a particular focus on technical aspects - considerations that might be a factor in answering the question? Is that correct?

Kathy Kleiman: Yes, that is the proposal. Thank you.

Phil Corwin: Okay, okay. All right, I hope staff is noting that. I don't have a problem, it's just forwarding a question to those two parties. All right the next question, Question 13, editorial comment, this is a somewhat subjective question being, "Are the costs and benefits of the Clearinghouse reasonably proportionate amongst rights holders, registries, registrars, registrants, other members of the community of ICANN?" That's a lot of different slices of the pie to be proportionate. I'm not even sure what the right proportion for each would be. But it's late and my part of the world.

Working group was that there is no follow-up needed with Deloitte and this is something we need to discuss further. Unless there's contrary opinion, I would personally agree with that. This is a highly subjective question and I don't know how Deloitte would be able to opine on it, they're more useful for telling us how the Clearinghouse is functioning as it is right now rather than whether its costs and benefits fall properly upon all of the different parties.

Mary, please chime in.

Mary Wong: Thanks, Phil. Actually I was going to go back one question if I may? And I don't know that...

Phil Corwin: Sure.

Mary Wong: ...this actually answers the question that Kathy asked. But again for information, for those who haven't been following the whole development process as closely, the idea for a centralized database was also there from the start. And in the STI recommendations, that I think we are going to talk about it a little bit, one of the unanimous recommendations was for a single centralized database for registry use on the basis that the Registry should only need to connect with one centralized database.

So it could be from there that there was simply an assumption that with one centralized database there would be one provider. Hopefully again that helps.

Phil Corwin: Okay, thank you for the historic background, Mary. I guess we could consider whether - clearly we need one total database for the global Internet and for all the registry operators. I guess we could ask whether there could be different providers who providing the services based on that database. But the working group can get into that question as deeply as it wishes.

We're up to Category 5 now on Page 15 of 19, which is this is access and accessibility to the TMCH. And Question 14, and there's a lot of colored ink in the corresponding boxes, is, "How accessible is the Trademark Clearinghouse database and RPM rights protection actions and defenses to individuals, organizations and rights holders as well as trademark agents in developing countries?"

So, and there's a footnote in there which I guess, I don't know where I'd find - oh here we are. No, that - okay, here's the footnote. The word "accessible" is used in the sense of asking whether the Clearinghouse - its existence, purpose and how it's used is known to the types of stakeholders mentioned. So this is a question almost getting into the realm of education of users and potential users and others affected by it.

Working group notes here was that the working group appreciates that the website is translated into several languages and they noted Deloitte's response that it conducted sessions in Europe, Russia, China, Japan, Taiwan, Middle East, Europe and the US in various languages to provide education about the Clearinghouse, which in turn would aid in accessibility, would be the logical link there.

Deloitte's response is, no information on corporate headquarters of registries use the trademark agents as it's not a part of the Clearinghouse scope. That outreach and education was not defined as being part of the Clearinghouse scope, however the necessity of education and outreach became very clear from the start as there was limited awareness of the TLD program and by

consequently about the Clearinghouse, and that the TMCH has invested a lot of time and effort into creating awareness through various avenues.

And the working group discussion was that Deloitte's responses on corporate headquarters confirms that while it may know where the trademark agents are located it doesn't know where the rights holders who instructed those agents are located. And the working group wondered if various other sources of information other than Deloitte that can be approached for more input on this question.

So on this whole concept of accessibility and locations, as in corporate headquarters or I would imagine for possibly some other criteria of who is registering the trademarks, which can differ from the location of the agents. Anyone have any further thoughts on this or thoughts on who might have relevant information other than Deloitte?

Okay, hearing none I'm going to move onto the next question. And that question is, "What concerns are being raised about the Clearinghouse database being confidential? What are the reasons for having or keeping the Trademark Clearinghouse database private? And should the Clearinghouse database remain confidential or become open?"

And the working group - there is no information in the corresponding boxes other than that the working group had decided provisionally that no additional follow-up was needed with Deloitte on this, that this is an issue the working group meets to discuss further. So, yes, we'll discuss it further I'm sure. And this may be one of the more challenging and perhaps controversial questions we will be dealing with.

But in terms of a question, it doesn't seem to be any need to send this question to Deloitte in which case I imagine it will be dropped from the final question list. Further comment on that? Oh good, next to the last page here.

And, all right no hands up so moving on to the last category, that a balance. And Question 16, which is the final question we will be reviewing here, which is “Does the scope of the 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 registrations?”

I have to say this Question 16 seems to raise - I’m scrolling back to see which question it was. Yes, it seems to be somewhat similar to Question 13 about costs and benefits and whether they are proportionally distributed against various parties of the parties listed in a question are more numerous than this one, which just lists trademark holders and non-trademark registrations, or I guess registrants who might have trademarks, but that’s not really relevant for this issue. They stand in the guise of registrants for this consideration.

The Registry Stakeholder Group said that the new TLD RPMs have been generally effective, well-balanced and sufficient to provide protections to IP holders, with the advent of the new TLD program, that said, there are specific implementation details applicable to each of the major RPMs under study during Phase 1 that we believe should be taken into account by the working group.

I don’t know if the Registries got into more detail about what these - those specific implementation details are. If they did we can address them, if not we should probably ask them before we get into an internal discussion of this question. At the conclusion of the working group’s provisional, is no follow-up needed with Deloitte, that this is another of these subjective questions and a policy related question that we need to grapple with. And I would agree with that.

Is there any comment on that final question about appropriate balance of the protections before we close out this review of the questions? And I would think that between this review and prior discussion in the working group that we pretty well wrapped up discussion of these questions and are close to

being ready to send them out, the ones that are going to be sent out. Greg, please go ahead. Not hearing you yet, Greg.

Greg Shatan: Sorry about that.

Phil Corwin: No problem.

Greg Shatan: In the scope of this last question we seem to be asking not only about the TMCH but all the protection mechanisms which flow from it. So that's basically, you know, that's quite a bit of other things beyond the TMCH itself. So it seems like the protection mechanisms - should not be part of the scope of this question process. Thanks.

Phil Corwin: Okay, I think that's a useful suggestion. Yes, and to the extent that these are questions supposed to be focused on the Clearinghouse, that does go beyond that. We can certainly raise the scope of the sunrise registrations and the claims notice when we get to those protections that flow from the Clearinghouse. But I would agree that part of this question goes beyond our immediate focus.

I briefly saw a hand up but it's gone now. And I'm just checking the chat room to see if there's anything further than needs to be discussed before we move on from this list of questions. Kathy, go ahead.

Kathy Kleiman: Thanks, Phil. I think I may be reflecting something you are ready said but I don't see it in the notes so just so that it's captured, it looks like this last question should be added that the way you and Greg were talking about but also be added as we get to the rights protection mechanisms that are using the Trademark Clearinghouse database, so kind of a note that we put 16 in its more expanded version into, you know, after we look at the sunrise period and trademark claims notices.

Phil Corwin: Okay. And frankly, while one question refers to proportionality and another one to balance, I think we probably might want to consider whether Questions 13 and 16 can be combined in some way; they seem to be somewhat repetitive. And I already noted that.

So we are now done with this review of the questions, and we have 13 minutes before the top of the hour so I think we cannot really get into the substance of Item 3 in our agenda but I think maybe for about 10 minutes we can lay the groundwork for discussion of this question and our call next week, which will be our final call before we meet in Copenhagen. It's hard to believe Copenhagen is coming up that quickly but it is. I know that I will be leaving for Copenhagen two weeks from tomorrow, and for me tomorrow starts in 13 minutes.

So do we have some -- anything to put up on the screen on Question 3, or on Agenda Item 3, which is whether the Trademark Clearinghouse, as it operates at this moment, fulfills the requirements of the Applicant Guidebook, which means we're going to be getting into the actual language of the Guidebook, and discussing whether the operation of the Clearinghouse is filling that whole space it's too narrow or has gone beyond what set forth in the Guidebook.

So, Mary, you've got your hand up, please go ahead.

Mary Wong: Yes thank you, Phil. And on this point, as you and Kathy know, during the coordinating call earlier today, the chairs had asked staff to start to prepare a list of the source documentation for, you know, the scope of the Clearinghouse bearing in mind that there were different versions of the Applicant Guidebook, there was also the work of the STI, and there was some subsequent community work following the launch of the new gTLD program round.

What we have at the moment, and we have not had the ability to circulate this to the working group or the chairs as we've been working on it this evening, we have a few documents that we can show if you like. One is the STI reports with the recommendations. Another is the final version of the TMCH as it appears in the last version of the Applicant Guidebook. And the third is a table that is the staff attempt at compiling the source documents in a chronological order of sorts. So I can put any or all of these up...

((Crosstalk))

Phil Corwin: Okay, we've got the actual language of the Trademark Clearinghouse, we've got a preliminary list, kind of a history of how this became to be developed, and what was the first item again, Mary?

Mary Wong: The STI recommendations.

Phil Corwin: Okay. Well the STI recommendations were the basis, and not the entire basis, for the final language in the Clearinghouse and the Guidebook. I'm going to take chair's prerogative for this call and suggest we put up Item 2 for us to look at, which is the language in the Guidebook on the Clearinghouse, which is based in substantial part, but not completely, on those STI recommendations. And so we can look at this and then just to get an idea of what the basis is for the Clearinghouse and then I think on our next call would be a more appropriate to get into some of the details history of how this June 4, 2012 document came to be.

So let's take a quick look at this. I think everyone has scroll control. It's a nine page document. And I'm going to -- this is the first time the chair, tonight's chair, is seeing this document so I'm going to take just a moment to survey it before starting a discussion of it.

Okay and I do see just by beginning this review that this is a highly detailed blueprint for the purpose and functioning of the Clearinghouse. I'm not sure

how much progress we can make with eight minutes left in this call in reviewing any of this.

So I'm going to suggest - I see your hand up, Mary, I'll call on you in the moment. I'm going to suggest that rather than trying to wade through this now with eight minutes left in this call and that we asked staff to distribute the documents, the STI recommendations, which is a historic document, this provision of the Applicant Guidebook, which again is a short document, and the - I think staff can go ahead and distribute these to the entire working group mailing list so everyone has an opportunity to look at this in detail before our call next week.

And the third document, which is the history, and it's a document that staff is putting together right now, I would say send out these two documents right after this call and that final document, when staff feels it's ready later this week for the cochairs to review it, let us take a look at it before we send it out to the working group. But we have the aim of having all three background documents in the hands of working group members before our final pre-Copenhagen call one week from today.

Does that seem like an acceptable way? I would hope so because I don't see a reason to start wading into this detail with now just seven minutes left in the call.

I see John McElwaine in the chat room said, "What are we doing to 16 questions we just went over?" I think, John, we're pretty much wrapped up on those, and the next step would be for the ones that we decided should go to Deloitte, and in one case there was a suggestion from Kathy also to IBM, that we get those out to them as soon as possible. There's no reason to delay any further. Yes, Mary? I see your hand, and maybe you want to respond to what I just said.

Mary Wong: Thanks, Phil. Actually I want to agree and just follow up. As you and Kathy know, Deloitte is likely to be present in Copenhagen. And we have asked that they can be available for, you know, at least some of the time that are working group would be meeting. So if we can get these questions out to them sooner rather than later back in form at least part of the basis of the discussion between us and Deloitte hopefully in Copenhagen.

So the staff hope is to get these questions compiled. And we did have a couple of requests out to the mailing list that if anyone has any additional suggestions that they should send those to the mailing list as soon as possible to be included in the compilation.

At the moment my hope is to get the compilation done by Monday of next week at the latest so that we can get them out to Deloitte with a reasonable amount of advance notice.

Phil Corwin: Yes, thank you Mary. And I agree. And I believe recollecting what we went over on the cochair's call earlier today, that that meeting with Deloitte would be the first hour of our three hour face to face meeting of the working group, which I believe takes place on the first full day of the meeting, on the Saturday. Is that correct?

Mary Wong: Yes, Phil, that's correct.

Phil Corwin: Right.

Mary Wong: The three hour face to face for the working group will be on Saturday, 11 March sometime during the morning, and a few days later we will have the regular open working group session with the community. I believe that will be on the Wednesday the 15th.

Phil Corwin: Okay. All right so, yes, we definitely want to get those questions out no later than next Monday so Deloitte has, I guess a little less than two weeks to consider them. Maxim, I see your hand up.

Maxim Alzoba: Maxim Alzoba for the record. Could we have someone from IBM, I mean, the person devoted to TMCH during the session? Because they might - it will help in situations where Deloitte says oh, we don't it's, you need to ask IBM. Thanks.

Phil Corwin: Yes, well I see in the - Mary noted in the chat room that IBM may not be in Copenhagen. Let's have staff check that out whether they'll have a presence there. All right, so that about wraps up this call.

Our next steps are - when is our next call? What's the time on that? I believe it's next Wednesday, Mary. And I think it's at 1700 UTC. Is that correct?

Terri Agnew: Hi, Phil. It's Terri. You are correct.

Phil Corwin: Okay.

Terri Agnew: Wednesday, March 1 at 1700 UTC.

Phil Corwin: Okay. So that'll be our next call. We'll get into this actual text of the Applicant Guidebook on the Clearinghouse and some of the historic background. And the other thing that we'd like - since the time we are meeting right now, the 0400 time, was done for the benefit of APAC members, and I'm delighted to note that our vice chair from Tasmania, but this time worked out for and was able to join us tonight, we'd like to solicit their input.

And it can be via email back to the cochairs and staff order the full working group, whatever, as to whether the way we did it today, having the call early Wednesday morning, which is Tuesday night in the Western Hemisphere,

works for them or whether it would be preferable to have it early Thursday morning, which is late Wednesday in the Western Hemisphere.

And I guess we should ask all of our members thinking about it to opine on that because a change from scheduling early Wednesday morning to early Thursday morning would affect members all over the world, folks in the Western Hemisphere might have a different impact for them than others. But let's see, we do want to make sure that this time works for our APAC members.

Jeff Neuman, at one minute to the hour, go ahead. Jeff, not hearing you.

Jeff Neuman: It says I'm on so can no one hear me?

Phil Corwin: All right, now we can hear you.

Jeff Neuman: Okay, sorry about that. So I just wondered if we could, as soon as possible, return to our timeline, our project plan, figure out where we are and where we're going. I just feel like we've been kind of in limbo for the past bunch of weeks just reviewing the questionnaire answers and not path going forward as to what we're going to do with this data and how we're going to get back on our timeline. So if we could address that? Thank you.

Phil Corwin: Okay, Jeff. Yes, I think that's a valid concern. We should check against our timeline. And maybe, I would think that it would be something we should address as we are going to be face to face in just a few weeks in Copenhagen, that would be a good venue, when were all together in the same room to look at the timeline and see if we are adhering to schedule or slipping behind, and if we are slipping behind what we can do to condense the process to keep that comprehensive and yet to get back on track if we are off-track. So I'm going to suggest that approach but the cochairs can further discuss that with staff in advance of our next call.

And with that I'm going to thank everyone for joining this call. I'm glad we wrapped up on the questions and have started to lay the groundwork for the comparison of the Guidebook on the Clearinghouse to its actual operation. And we will get into that next week with the benefit of documents that staff will be distributing to all members between now and the next call. Thank you all very much and good morning, good afternoon or goodnight whatever it is for you. It's goodnight from me. Bye all.

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

END