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**ICANN Transcription**  
**Review of all Rights Protections Mechanisms (RPMs) and all gTLDs Working Group**  
**Wednesday, 02 October 2019 at 17:00 UTC**

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JULIE BISLAND:

Good morning, good afternoon, good evening, all. Welcome to the Review of All Rights Protection Mechanisms in All gTLDs PDP Working Group call on Wednesday, the 2<sup>nd</sup> of October, 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge at this time, will you please let yourself be known now?

All right. Hearing no names, I would like to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise.

With this, I will turn it back over to Kathy Kleiman. You can begin, Kathy.

KATHY KLEIMAN:

Thanks, Julie. This is Kathy Kleiman and I'll be chairing today. First I wanted to start with a personal note. I'm sorry to share with you that we've lost a long-time member of the ICANN community.

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If anyone knew Don Blumenthal, he passed away a few days ago. He was a technologist and lawyer and a long-time member of the ICANN community on the law enforcement side, working in cybersecurity. He came out of the Federal Trade Commission. Just a wonderful member of our community. So I thought I would let you know if you hadn't heard.

Do we have any updates to statements of interest or any changes? Anything for AOB at the end of our meeting?

Okay. Then we will dive right in. What we're doing today is hopefully moving from what we call the open Trademark Clearinghouse Charter Questions 7, 8, and 10 and to some of our deferred Trademark Clearinghouse charter questions. Believe it or not, there's a few more. So we'd like to get to them, hopefully wrapping up Q7 and Q8 and moving on to our deferred ones.

So, Q7. I'm hoping Greg Shatan is on the call to tell us about a slightly revised proposal that he shared with us. Greg, are you with us? I know he mentioned in e-mail that he might not be with us.

Greg, go ahead, please.

Okay.

UNIDENTIFIED FEMALE: I don't actually see him on the call.

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KATHY KLEIMAN:

I don't either. Can you post the redline then of Greg – or should we return to it if he's not here to share with us what the redline ... Because he gave the redline that shows the edit. Is there anyone that he asked to speak to the edits?

Okay. Ariel has posted the redline. Maybe we should go on to Q8 and see if Greg joins us later in the call to talk about this – ah. Susan says, "Greg said he had a meeting." Right.

Does anybody object to moving on to Q8 if there's no one here who can speak to Greg's changes?

Okay. So let's table Q7 and move to Q8. When last we met, I believe Phil Corwin asked a small group to see if they could merge different proposals on Q8. It looks like some work towards compromise has been done, but it looks like we still have two independent proposals. But let me turn it over. Who would like to speak first? Rebecca or Claudio?

Don't all volunteer at once. It looks like Rebecca's proposal is up, so, Rebecca, are you on the line and could you go ahead please and share with us what might have been a busy weekend? Thanks.

REBECCA TUSHNET:

Phil asked me to put my proposal into something that's a basis for public comment about how the AGB specifically should change. So I worked with the current language of the AGB to identify what language should be changed or inserted. Susan and Claudio were able to comment, but I think that's what is fair to say. So this is still my proposal incorporating some of the feedback.

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Basically, we're trying to solve the problem of over-inclusiveness in a way that makes sense by limiting the Trademark Clearinghouse to trademarks. My proposal does two things. It clarifies what a trademark is and it also makes clear that GIs are not trademarks. Just to talk about some stuff that's on the list, I had two primary reasons for not adding a new term into the rules. First, GIs are in fact source indicators, meaning it's flatly contradictory to say that source identifiers are in if they're protected by statute or treaty but GIs are out. And GI proponents could, I think, legitimately claim unwarranted discrimination against them.

Second, the other edge cases that have been brought up don't actually use source indicator in their governing statutes or treaties, as far as I can tell. So the term might just make things work in terms of lack of guidance and inconsistency. So my proposal tries to be minimalist but to provide some guidance.

We had this morning Paul Tatterfield's suggestions, but the more I look into it, the more I think that we still need to define what a trademark is because having it be in statute or treaty is not good enough, given how people treat GIs. It does seem that GIs are, at least in some systems, notified to trademark offices. So, unless we are very clear about what happens at the contradiction point, then we will just have a contradiction in the rules.

Second, perhaps because they were and remain hypothetical, the treatment of what I'm short-handing as other IPs – that is, other marks constituting intellectual property and the related ancillary services ... The AGB is arguably inconsistent in its various sections. For example, there are provisions that could be read to

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suggest that only the TMCH can have these in the first instance, though other providers must be allowed to license their data.

Rather than dictating what those services could be or adding in references to other potential services that are business decisions beyond our power to control, my proposal is just designed to remove ambiguity, if it exists, about what the other IP provision is for. It also asks the TMCH to be clearer in its public-facing materials.

Right now, the TMCH indicates that the standards for accepting marks in the clearinghouse as other IP are different from the standards for accepting trademarks – registered, court-confirmed, and statuted treaty – but it doesn't explain that the results of being accepted as other IP would be very different and would not provide eligibility for claims and notice. I think that's a really important distinction to maintain, so that's what my proposal is centered on. Thank you.

KATHY KLEIMAN:

Rebecca, before you leave, Phil Corwin has asked if you could – and the same question to Claudio – if you could please identify areas of agreement in your proposals and remaining areas of disagreement. We can do that now or after Claudio presents. Whatever is good for you.

REBECCA TUSHNET:

From my perspective, and not speaking for Claudio, our remaining areas of disagreement are on the question of whether we should use the term “source identifier” to give some further guidance on

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what we mean by statute or treaty and, second, whether we should go into more detail on what the ancillary services should do, which I don't think we should. But he will, of course, present his position. So that's my perspective. Thank you.

KATHY KLEIMAN:

Because it's not on the screen, maybe staff can page down. Because there is something about ancillary services here. Anyway, 3.6 seems to refer to ancillary services.

A hand. Susan Payne, please.

SUSAN PAYNE:

Thanks, Kathy. Thanks, Rebecca, very much. I do appreciate the steps that you took to try and take onboard the comments that I've made. Indeed, a lot of what you have proposed I can live with, even though, when we've been discussing this offline, I had some concerns, particularly about the other IP element. Obviously, I still have the concerns about how we deal with the GI issue.

But I did want to put my hand up to discuss the other IP aspect. I think your – sorry, I'm just going to pull the language out. The amendment you're opposing to make to 3.2.4 I can live. I don't think that amendment is at all necessary to the AGB because, to my mind, Section 7 is perfectly clear about which marks in the TMCH get the sunrise and which ones get the trademark claims. It's very clear. However, I can see that you have cross-referenced to Section 7, so I can live with it.

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But I do think that we are making statements in the rationale parts, specifically in 2B, which are not correct in the sense that the TMCH's public-facing materials are perfectly adequate and make the distinction perfectly clear. You haven't identified any TMCH materials where they do not make it particularly clear, and I've identified multiple documents and places where the distinction is incredibly clear. Frankly, this is an unnecessary comment to make. It implies that improper activity on the TMCH's part, on Deloitte's part, which I simply don't think is the case. I'm by no means here as a defender of a Deloitte, but I just think we need to [have some facts.] The facts that are that they are not doing anything with this other IP that they're not supposed to.

KATHY KLEIMAN: Susan? Sorry. Before you leave, could you identify what part of the rationale you're talking about again?

SUSAN PAYNE: Yeah. Give me a minute. It's the big at the top – rationale – and then 2, and then, in little B, the TMCH should revise it's public-facing materials to make this distinction clear.

KATHY KLEIMAN: Thank you. But overall, you're okay, it sounds like, with #3: the ...

SUSAN PAYNE: More or less, apart obviously from the aspect about GIs and whether we're referring to treaties or statutes that identify

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trademarks. I'm not covering that part. I'm just talking about the other IP thing. So the amendment to 3.2.4. As I said, I don't think it's necessary, but I don't think it's problematic.

KATHY KLEIMAN: Terrific. Thank you, Susan. Rebecca, it looks like you'd like to respond. Go ahead, please.

REBECCA TUSHNET: Thank you. I appreciate Susan's engagement here, and her comments were clearly quite helpful. I think Susan is correct to say that, if you read into the materials on the site, it is clear that you have to satisfy different standards to get your other IP in. So that distinction is indeed clear.

However, if you look at, for example, the entry page on the TMCH, which I just put the link to in chat, it says, if you're in, you get claims and notice. To the extent that they start offering other IPs, that won't be true.

Now, if we are interested in softening the language further, I would actually be happy to say, "If and when they start, they need to make the public-facing materials very clear about the difference." I hope perhaps that would address Susan's concerns because I do think this happened by accident, but it does present a potential for not telling people what they're actually getting. Thank you.



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KATHY KLEIMAN:

Thank you, Rebecca. I think there are various webpages where some of this material is, so there may be slightly different couching of the issues of the presentation on the different webpages. That may be one of the issues.

Mary, it looks like you're next in the queue. Go ahead, please.

MARY WONG:

Thanks, Kathy. Hi, everybody. It's Mary from staff. From the staff side, we had two potentially relatively minor comments or questions. One is to the discussion that Susan and Rebecca are having. With respect to the public-facing materials or any other kind of information that Deloitte or whoever the clearinghouse provider or providers end up being, maybe that is something that we can in the report separate out from language that this group is proposing be put into the AGB versus a policy recommendation that we can address in terms of the implementation materials and how we actually engage with the provider to make sure that those materials are accurate. So that's one suggestion that's relatively minor, just in terms of presenting text to go to the AGB versus text that is a policy recommendation nonetheless and just as binding but maybe addressed in either different manner or outside of the AGB.

The second thing that we wanted to raise was more of a clarifying question. This has to do with the discussion over ancillary databases, ancillary services, and what goes into the TMCH for what particular purpose. As staff has said before, the term "ancillary services" is used currently to describe services that the Trademark Clearinghouse provider might want to provide but that

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needs to be approved by ICANN but advanced under our contract with them. So we were little concerned, as we said previously, that using this term for this particular recommendation could create a bit of confusion, similarly with the maintenance of ancillary databases in the clearinghouse.

Where this comes down to – here’s the question and comment – is that, with regard to all of these categories, whether it is a naturally registered trademark or a court-validated mark or “what we will do with the mark protected by statute or treaty” category, these three categories all go in the TMCH and are eligible for the mandatory sunrise and claims services.

For the fourth category, which is the other IP category, at the moment they do go into the Trademark Clearinghouse. So they are actually included in the TMCH. They are simply not included for eligibility, for sunrise and claims.

So, for us, it may be a nuance, but it is a difference when we say, “Marks that go into the clearinghouse,” versus, “Marks that go into the clearinghouse but that are only eligible for other services and therefore not the mandatory sunrise and claims services.”

I hope that’s clear and not confusing. We just wanted to offer those comments. Thanks, Kathy.

KATHY KLEIMAN:

Mary, let me ask you a question, and then we’ll go to Rebecca, whose hand is up. Are you saying that 1 and 2 of this would go in one direction, and #3 might go in another direction, going back to the first part of what you were commenting on?

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MARY WONG: Sorry, Kathy. I'm afraid I don't understand the question about directions.

KATHY KLEIMAN: Rationale versus the Applicant Guidebook language. You're talking about two different [inaudible].

MARY WONG: Oh, I see. Sorry. I'm simply saying that, for purposes of presentation in the initial report, we'd be very clear about what is actually text that goes into the AGB and what is similarly of equal strength a policy recommendation. But how we actually handle it in particular with respect to what it is we're going to obligate the clearinghouse provider to do it is may be something that is worked out during implementation, rather than it being cast in stone as language for the AGB coming out of this working group.

KATHY KLEIMAN: Interesting. Okay, thank you. Rebecca, your hand is up. Is that a new hand?

REBECCA TUSHNET: Yes, it is. Michael has brought up a good point, which is that the treatment throughout the AGB – the language is just written by trademark lawyers who were never thinking about anything but trademarks, so they used a bunch of terms interchangeably that, it turns out, have potentially different nuances and meanings. So it

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definitely would be a reasonable recommendation to go through and actually harmonize the language here.

However, because of these nuances, harmonizing the language would have policy consequences. So I actually think the proposed definition of what we mean when say “trademark” is probably a good thing.

I don’t think we should take any particular national law, especially since, if you do U.S. law, you will include GIs because the whole point of our discussion is that the U.S, unlike many other countries, protects GIs as trademarks. So I think that my list as good as we can get in terms of what we think a trademark is, but, of course, I’d be happy to hear other stuff.

In terms of the uncertainty about what’s in the clearinghouse versus in the databases maintained by the clearinghouse, the language I think actually gets precisely to Susan’s point. Susan’s position is – and I understand it – that this clarification is unnecessary. But what Mary said about the different things that might happen to a mark in the database actually is, to me, what makes the need for clarification much stronger. So, to the extent that we can clarify whatever they call it, whatever the backend looks like, we want to make sure that only things in these three categories get claims and notice, unless we do a new RPM for other stuff. That’s why I think this language is useful. Thank you.

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KATHY KLEIMAN: Terrific. Thank you, Rebecca. Thank for the dialogue, back and forth, with Susan and Mary. It looks like there is some convergence and support for this proposal.

Let me see if there are any other hands raised. Staff, if could let me know. I don't see any other hands raised now, which means, I think, we would go on to the next proposal, with thanks for everyone who worked on this one, so that we could read it and discuss it.

Okay. Next proposal. I think this goes to Claudio.

While we're waiting for Claudio, I have a message from staff asking if whoever has listed themselves as Michael could confirm in the chat which Michael it is.

Okay. Claudio, if you are speaking, we cannot hear you. Are you there, please? Is Claudio on the line with us?

UNIDENTIFIED FEMALE: Kathy, I've just done a search. He is not.

KATHY KLEIMAN: He's not here. Okay. Thank you to Michael for responding to the caller. Is there anyone who wants to speak to Claudio's proposal for Q8?

Okay. Hmm. Absent someone speaking for it, any thoughts on what we should do?

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Two proposers not attending our meeting. That's too bad. I guess we should table this and – oh. Julie says it as well. "I suggest we move on and see if we can ask Claudio to join us." Perfect.

Let's move on to ... interesting. So that puts us outside, for the first time in many weeks, outside of Questions 7 and 8. I was wondering if this –excellent. Yes. So staff has just posted – maybe you've done this. Could you include the link to this table in the chatroom so that everyone can reach it? Great.

This document is called now the status of working group discussions on agreed trademark clearinghouse charter questions. It was earlier called something like deferred trademark clearinghouse charter questions. These are the questions that go beyond 7, 8, and 10 that we were looking at – 7, 8, 9, and 10. What you'll see as you page through is that certain questions we regard as closed because some of them were referred on to some of the sub-team. When you see purple, it's a question really that's been asked and answered.

I'll just read it briefly. "Q 9. Should the TM plus 50 be retained as is, amended, or removed?" We have a proposed answer. "In the absence of wide support for change to the status quo, the working group recommends that the TM plus 50 should be retained as is." That was extensively discussed.

Let's skip the purples. People can go back and read them. Q 10 has also been discussed briefly. Let's see. Julie, or whoever is in control of the document, should we skip the purples?

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Okay. Now we're going on to a different category of Trademark Clearinghouse marks. Again, just to refresh everyone's recollection, these are part of the revised charter questions that we worked together on to carefully rephrase and categorize. So we're in the category of TMCH (Category 4) costs and other fundamental features. These were categories that we created in 2017.

Q 12. What the countries have agreed on is that we'll mention some of these questions briefly, but if there's not a proposal, then there's probably not reason to really sit and dive into these questions because they've been before the working group on and off now for several years and we did offer the option to present proposals.

So, Q 12. Are there are concerns about operational considerations such as cost, reliability, global reach, service, diversity, and consistency due to the Trademark Clearinghouse database being provided by a single provider? If so, how may they be addressed?

Staff, would you like to summarize the working group discussion that took place on this just very briefly? Or we can let people take a fast look. We've received no proposal on this issue, so we have no action items for going forward or for diving more deeply into it.

Looks like the chat is continuing discussion [above] Q8, which is fine, too.

Barring any discussion on Q 12, let me look for hands. It's harder in this new Zoom to see who has raised their hands.

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Okay. Then let's move on to Q 13. Are the costs and benefits of the Trademark Clearinghouse reasonably proportionate amongst rights holders, registries, registrars, registrants, and other members of the community and ICANN?

Also, we similarly have no proposal on this question. I'll pause as everyone reads the various columns.

Okay. Any hands raised? Any thoughts on this question? Anything else to add to our long-ago discussion of it?

Okay. Q 14 is [inaudible] closed question, so we go on to Q 15. What concerns are being raised about the Trademark Clearinghouse database being confidential? What are the reasons for having/keeping the Trademark Clearinghouse database private? And should the Trademark Clearinghouse database remain confidential or become open?

We do have a proposal on this question. I believe it's Michael Karanicolas who presented it. So, Michael, hopefully you are on the call. I'll turn the microphone over to you.

MICHAEL KARANICOLAS: Hi. Thanks very much for that. I circulated this proposal yesterday, and I see it on screen. The proposal is fairly straightforward, that the TMCH should be an open and searchable database. This is probably the first issue that I noticed getting involved in this because I work a lot in transparency issues. But it's also been, I think, something that's a problem that has, to a certain degree, dogged this working group throughout its operations, namely a



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lack of data, I think, permeating all the major questions this working group has addressed.

There's always been disagreements about, "Well, is it working this way? Is it working that way? Are there problems with this? Are there problems with that?" The huge challenge that we as a working group have faced in trying to assess the operations of the TMCH is that we have no idea what's in there. I think that that makes our work extremely difficult. I think that that'll make further reviews extremely difficult.

I also think that it removes unimportant accountability mechanisms for the TMCH. I'm sure that there would be academics and civil society groups that would love to see that data, love to audit it, and look into how it's working. I'm sure there would potentially be commercial implications for folks like MarkMonitor, folks like different organizations that work in this space. I'm sure that data would be useful to a lot of people.

I also think that transparency is broadly consistent with ICANN's bylaws and with what we're constantly hearing from ICANN org about the need to promote transparency. Given that every statement that we seem to get out of ICANN org is, "Transparency, transparency, transparency. We care very much about this issue," it seems curious to me that this was set up as a closed database.

I personally have only been around ICANN for about 5 years, so I can't speak to any issues in terms of how it became closed, but it has also seemed curious to me insofar as trademark databases are, by default, open. They're searchable. That's the point of

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trademarks: you want to let everybody in the world that this is your brand, this is your mark, this is who you are. That's the function of a trademark. It doesn't serve that purpose if it's classified and withheld.

So I do think that it's broadly consistent not only with ICANN's own interest in transparency but also with the foundational principle of trademark law, which is a public area of law.

More broadly, I think that it serves a broader commercial purpose for potential new registrants to be able to assess what aspects of the commercial space of the domain name space are potentially problematic and what spaces are more open in order to allow a smart investment and in order to ease the ability of folks to enter into this space. So it's a fairly straightforward proposal and I look forward to discussing it further.

KATHY KLEIMAN:

Great. Thank you, Michael. Thank you for the proposal and the presentation. Maxim, I know you want to speak to Q 12. Do you also want to speak to Q 15?

MAXIM ALZOBA:

I'd like to stick to Q 12 if possible.

KATHY KLEIMAN:

Okay. Can we hold that until we're done with Q 15?

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MAXIM ALZOBA: Yes, of course. thanks.

KATHY KLEIMAN: Okay. We'll double back. Thanks. So – John, go ahead, please.

JOHN MCELWAINE: Speaking in my personal capacity here, not as the incoming liaison to this group, the whole confidentiality of the Trademark Clearinghouse database was really heavily discussed. There wasn't much debate that I recall about it when we were part of the IAG (Implementation Assistance Group, I think it was) for the clearinghouse, the reason being that it does give a glimpse into party, brand owner, business, priorities, and things such as that.

I was a little bit surprised I didn't hear Michael talk in terms of a more narrow searchability of the Trademark Clearinghouse database. Kathy, what you and I were talking about at one point – I forget if it's in the report or where it ended up – was having some sort of ability to request a search of the Trademark Clearinghouse if you could justify the reasons. So it seemed to me like you and I were working on that. Again, it may have gone maybe in a forthcoming initial report. That's the proper place to address this, rather than readdressing something that has already been discussed and decided upon but also balancing the need that I think we all recognize for some transparency in the process. Thanks.

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KATHY KLEIMAN: John, before you go, could you expand a little bit on what it was that you remember we might have been talking about a while ago? I remember a lot of different ideas being batted around. Thank you for refreshing our recollection on this one.

JOHN MCELWAINE: Yeah. You and I know had discussed and traded some drafts of a proposal that would allow people to request a glimpse into the Trademark Clearinghouse if they could justify the need to make that search. I think I also raised that having a freely searchable Trademark Clearinghouse database may have some – shall I even mention the four letters? – GDPR concerns.

I'll see if I can dig that up. I think it came up, Kathy, when the same sort of issue was with respect to – probably in the sunrise. We were talking about not being able to have a very robust method of filing an SDRP because you couldn't necessarily see behind the record that allowed for that sunrise registration. You and I were kicking around an idea that allowed some sort of access. So it was a limited view into the Trademark Clearinghouse. Maybe we can even say we've asked and answered and already dealt with this in that part of our discussions.

Does that help you?

KATHY KLEIMAN: It does, although I would respectfully disagree, Co-Chair's hat or not Co-Chair's hat. You're right: we dealt with it – thanks for recalling – in the sunrise, that there was this problem with the

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sunrise dispute resolution policy, which is, if you think a mark – correct me if I’m wrong, anyone – has been misused for sunrise, there was a challenge process that was very difficult to use because how do you know? How can you show that it’s one company’s mark versus another company’s mark? So you may have a really good idea that it might have been misused, but you need that way to go into the Trademark Clearinghouse database and query it to get that very narrowly tailored information.

You’re right. We agreed that that would be appropriate. I’m not sure that was adopted. It appears to be referenced in the fourth column on the table – I’m not sure we want to switch to the table yet – as something that the Sunrise Sub-Team members did talk about.

Let’s go back to Michael. I think Michael might be talking about something broader than just sunrise applications of the TMCH. Michael, you have your hand raised, so let me go back to you.

MICHAEL KARANICOLAS: Yeah, I am indeed talking about something more broad than that. Just to address a few points [inaudible]. Yeah, I don’t think these should be our concerns. First of all, I think the vast majority of registrants are going to be businesses, which impacts things.

But beyond that, if you really want to have a very expansive understanding of GDPR, you don’t necessarily have to publish the phone numbers and addresses of the registrants. I don’t see how that information is relevant. The most important thing is to know who’s registering what – well, what’s being registered and, ideally,

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the companies doing the registrations. I say the latter mostly because I think that would be important to trace back if you had, for example, some kind of shell company in Tunisia or in Switzerland that's registering a bunch of generic words. It's easier to track those kinds of abuses with that kind of information.

Now, that being said, in terms of the concerns about brand strategy, again, everything in the TMCH has been registered. It's all coming from some kind of national trademark database. So I think that, if you wanted to get the global brand strategy for a company like Nike and know every word that they're interested in enough to register, would be fairly trivially easy: to track around the different databases and say, "Well, this is Nike's brand strategy."

What that doesn't tell you, and the reason why specific transparency in the TMCH is important, is that that would give you an actual picture of the state of brand enforcement on the web and in the domain name space. So, if you were just to look at different trademark databases, that'll probably give you a bunch of hits back that are not necessarily digital. So, if some guy has a pizza restaurant in Jakarta and he has registered that because he doesn't like competition from across time stealing his name, but he has zero web presence, that name is going to be in an Indonesian database but that's not going to be as relevant to me trying to make sure that the name of my startup isn't going to step on anybody's toes if I want to have a web-based company.

So I think that transparency is important in order to provide this clear picture of a commercial space that wouldn't be available to people otherwise. There are sound commercial reasons as to why trademark databases are public. Actually, in preparation for this, I

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tried to look up what are the arguments that people typically make for trademark databases being public. I wasn't able to find any articles because it's such an assumed thing. This is just not even a conversation when it comes to trademark databases about whether or not they should be public because they wouldn't serve any function otherwise. So, fundamentally, I do think this is important.

The one thing that John said that raised a bit of an alarm bell for me, in addition to the fact that I think that transparency needs to be understood more broadly as opposed to just little segments of sunrise, is this idea of justifying reasons insofar as, first of all, I think that that's a really loaded question in terms of who determines what is a legitimate reason and what is not a legitimate reason. As I said, there are commercial reasons for why this stuff is important. So I would say that those are legitimate in addition to being researchers, in addition to journalists. Fundamentally, that kind of a vetting process not only is in[inaudible] with this transparency by default that is a standard operating procedure among trademark databases and among a lot of ICANN's operations, but I also would want to make sure that this database could be accessed with minimal kinds of procedural hurdles in order to facilitate the public good that comes from the release of this information.

KATHY KLEIMAN:

Thank you, Michael. One of the things I captured was [inaudible] the clear picture of a commercial space.

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Phil, before I call on you, there's an active chat going on, so apologies if I haven't gone all the way back. Feel free to raise your hands and actually talk and say this on audio, please. Marie says, "There are commercial reasons behind which TM's trademark holder chooses to enter in the Trademark Clearinghouse."

Michael Graham says, "As a trademark owner with a number of trademarks registered in the TMCH, I would frankly not have a concern about revealing any secret schemes for protection of my trademarks or their value. Knowing what has been registered and having the ability to challenge the registrations could benefit trademark owners. As for revealing the strategy of protecting particular trademarks, that could be beneficial, too."

Maxim says, "Misuse can be seen only after use. If an organization just registers and dies? Nothing." Marie responds, "My members have given me the opposite comments." Michael: "Concern about the disclosure of commercial strategy to competitors." Michael: "Do we really believe that not registering a trademark in the TMCH would adversely affect a company's ability to protect that trademark, either through the UDPR or other proceedings?"

Rebecca – oh, my gosh; this keeps going: "A global brand is going to have multiple public registrations already. Hard to see the marginal strategy info involved here." Marie: "Public trademark registration may be one thing. Of the hundreds of trademarks you own, choosing only ten to enter into the TMCH says to your competitors that those are the ones you would likely want to use/protect online. Very different information."



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Michael: “Obviously, without knowing who those members” ... You know what? I’m going to have to stop reading here because people ... Please raise your hands and let’s go to the – this is a great conversation going back and forth. Phil, let me go ahead and call on you. Do you see a way forward?

PHIL CORWIN:

Hi. Personal comment, Co-Chair hat off. I don’t have strong opinions personally one way or another on this. I am aware there are strong views within the working group. Perhaps this is an issue where we might solicit community comment in the initial report, although I’m not sure we’ll get to consensus within the working group based on past statements.

But I would say two things. While it’s true that the – I assume that the legitimate concerns of copyright owners who feel that the database should remain confidential is over potential abuse by bad actors targeting a particular brand. But let me say this. We had a long discussion about trademark claims and the 94% non-completion notice and why that was, and one of the reasons we speculated was that people might have been, during the opening weeks of a new TLD’s opening, submitting registrations through a registrar with no intent to complete them, submitting trademark terms for a particular brand or brands, with the express purpose of wanting to know whether they would generate a claims notice, which would tell them that they’re in the database. So, if you want to target a brand, there are ways to find out if particular trademarks that you might be intending to infringe on in one way or another are in the database.

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Of course, the other thing is that, to the extent that brands register in the clearinghouse for the purpose of taking advantage of sunrise, it's a relatively trivial exercise to survey a group of new TLDs, particularly those who might be related to the category of goods and services of the brand, and see whether they've done a sunrise registration. That will tell you right off that that mark is in the clearinghouse database.

So I guess I'm just point out that, while the full database is not public, folks who are curious about whether particular marks have been registered in the clearinghouse have some ways to get visibility into that. So there still might be valid reasons for wanting the overall database confidential, but we shouldn't think that it's really locked down completely and can't be assessed one way or the other.

That said, there's clearly different groups within the working group, and perhaps the broader community should be asked to weigh in on this. I don't know if we ever reach a consensus agreement on how to handle it, but I respect the views on both sides. Thank you.

KATHY KLEIMAN:

Thank you, Phil. The broader community weighing in is one option on the table. Definitely respecting the views on both sides is good.

Let me call on Zak. Zak, go ahead, please.

ZAK MUSCOVITCH:

Thank you. Of the closure of the Trademark Clearinghouse, the confidential aspect of it happened a long time ago, before I was

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directly involved in ICANN policy. Frankly, to me it's an anomaly that the Trademark Clearinghouse is closed in this manner. The importance of it being open as set out by Michael to me rings quite true. I think that, if there are people that believe there's serious and genuine commercial reasons for it not to be open, I think they have to lay out a much more compelling argument than they have, respectfully, because I think that a reasonable person would say that, if a mark is put into the Trademark Clearinghouse by a brand owner, it doesn't represent marks that the brand owner is only concerned with because the brand owner is concerned with all of its registered marks in national registries. If anything, this says that we're concerned with all of our registered trademarks and these are the ones, for one reason or another, that we've put in the Trademark Clearinghouse. I don't think it really reveals much about commercial strategy. I don't think it weakens the hand of brand owners. I don't really see any compelling arguments for not opening up TMCH. But I'm willing to hear them. I just don't think we've heard them so far, if they exist. Thank you.

KATHY KLEIMAN:

Thank you, Zak. Compelling arguments. That's fair. Greg, go ahead, please.

GREG SHATAN:

Thanks. I have eight more minutes before my next business conflict. In any case, I think there have been arguments made that have been compelling. It can be certainly be fleshed out, but arguing about arguments is not really going to get us where we need to go. It may not be convincing. I think the issue is more,

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what marks do you have that are reasonably important and yet you have not protected them in the Trademark Clearinghouse? That's the interesting question, the one that cyber squatters and others would be looking to know about. That's what would be vulnerable. So it's exposing vulnerabilities and relative importance. Not all marks can be equally important, clearly. They are not.

At the same time, I have some sympathy with the view that it should be an open database. I think there could be advantages to it. I'm wondering if it could be quasi-open. I haven't thought of a model for it, but one model for it might be not unlike the models that are being developed for the WHOIS, [which] are now RDS database, that it's not just a completely open type of database but one where access can be achieved for proper reasons under a certain process. I'm not saying it should parallel that but to define some way that might blunt some of the realistic business/strategy concerns while at the same time providing greater transparency.

I think also this is a question which is best looked at in a larger context of the workings of the TMCH, sunrise, and claims in terms of what overall objectives we want to accomplish and how we're willing to balance various equities to try to come up with the best system that we can. I think, looking at this as a one-off issue, people will stick to their positions, most likely. Viewed in a larger context, maybe we can start coming to some progress or some coming together or a set of views. Thanks.

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KATHY KLEIMAN: Thank you, Greg. The idea of access [achieve] for proper reasons per process – not your exact words, but close, a la where we're going with the WHOIS RDS: providing transparency but pursuant to a particular process for proper reasons. Interesting. Thank you.

Let's go to Rebecca Tushnet, please.

REBECCA TUSHNET: Thank you. I just wanted to point out that I think Phil's comment is the most revealing, but I think it points in the direction of transparency, which is to say bad actors or actors who are just interested in finding out what the marks are of a particular target, for good or bad, can actually find this out. The question is really, what kind of audits of the whole system are going to be possible. The answer is none. So we find out about cloud because it's one of the most searched for registration, so it shows up in the top ten, which is all we know. We find out about Christmas because a domain name, specific news source, does a story on the person who registered Christmas. But that's not systematic. To get answers without systematic bias, we really need transparency. Thank you.

KATHY KLEIMAN: So transparency for auditability. Thank you. Interesting. Jason, then Michael Graham, Michael Karanicolas, and then we loop back to Zak. Jason, go ahead, please.

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JASON SCHAEFFER: Thank you, Kathy. I'm sympathetic to both views here. I understand the potential concerns of the brand owners. But the issue is, as I see it, it's not a matter of what these potential horrible situations could be from both sides. We're talking about extreme hypotheticals here. On the one hand, maybe there's some trolling the database and finding these so-called holes, which others have expressed. I do agree it's already easy to do. I don't think this so-called cyber squatter is out there, this boogeyman, if you will. So we shouldn't be making decisions on the boogeyman on both sides. We should be making decisions based on what we're faced with.

While I respect what John stated earlier and John's work earlier in the process when the TMCH was created, that's one thing. But today, all these years later, we have, as we've expressed in this working group extensive, extensive time trying to unpack what has happened. A lot of this work could maybe even be avoided if we knew exactly what was in the TMCH in the first place.

The concept of transparency everybody understands. I don't think we should be designing mechanisms that are ironclad against that evil cyber squatter that's going to take advantage of the brand owners because, as we all know, the brand owners are going to get their names one way or another, whether it's through a URS proceeding or whether through a UDRP proceeding.

So, if someone is going through that extensive work, which I really don't believe they are (but we can debate that), the brand owner is protected anyway. So we should probably making smart decisions on, is the TMCH working? Is it not? That's the whole point of this conversation. We don't believe it is, so how do we fix it? I would

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err on the side of transparency because I don't see how transparency really ends up harming the brand owner. I'm opening to hearing it still, but I don't see the real-world case showing itself of how the brand owners are really going to be harmed because now the TMCH is a searchable database. Trademarks are searchable. People can find out information. The bad actors are out there. They're going to do their thing no matter what, but that's not what we should be trying to figure out. We should be figuring out do we improve a system that has some problems. Thank you.

KATHY KLEIMAN: Thank you, Jason. So figuring out how to fix it perhaps via transparency. Thanks.

Michael Graham, go ahead, please.

MICHAEL GRAHAM: Hi. Can you hear me?

KATHY KLEIMAN: Absolutely. Loud and clear.

MICHAEL GRAHAM: Great. Without getting into it deeply, I've got to say that, for years now, I've wondered the true rationale behind keeping this closed database of what's registered in the TMCH. I've heard the explanation, but I agree that it's the horrors under the bed that may or may not occur. Frankly, I haven't understood it in the real world.

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I also agree, going forward, that it was horrible that we're out there before the TMCH was formed, before we could see how it was operated. Frankly, I'd like to be able to look under the bed to the way we've tried to in this process and understand what's been happening. But the only we can do that is if we can see what's in the TMCH.

So, yeah, perhaps there is some outlying cyber squatter who is going to utilize an analysis of what a particular company has and has not registered and go for that soft spot. Frankly, that's probably a bad economic decision because, if that's a soft spot the trademark is not going to be concerned about, the trademark owner is not going to be concerned because there's no traffic there, perhaps. But I would much rather have that potential issue be out there than to face again what we know is the real issue, which is the inability to understand the utilization of the TMCH and whether or not there are unintended consequences. That's information that could be available if it were more open.

Finally, I also see having it be an open database actually aiding both trademark owners and potential registrants in that it would hopefully be a source of search to avoid applications if there's already a trademark there or for additional consideration when a company is applying for a domain name, which could reduce the cost and the burden for all parties.

I do work with a trademark owner. We do have trademarks registered I the TMCH. I do have strategies for protection. But unless the non-registration of a trademark on the TMCH had an adverse effect on a decision on whether or not I could protect that non-registered trademark in either a UDRP or court proceeding or



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cease-and-desist letter, I don't see the real danger in having that database revealed.

Anyway, just wanted to get that out there. It's something that, years ago, I brought up. I still don't entirely understand it. Now that we're down the line a few years with using the TMCH, I think it's time that we reconsider it. I would be all for – I think because of the GDPR, we would have to, in implementation, consider some sort of [restructuring] how it would be revealed and what information would be revealed. That would be an area that I would encourage the implementation team to look into in the future. Thanks.

KATHY KLEIMAN:

Thank you, Michael. Thank you so much for making the effort to come online and share your ideas and for the best laugh of the day: the horrors under the bed. That's an amazing image.

Let me issue the same invitation to Marie Pattullo. Marie, if you can come on and speak with love, it would – reading from the chat is hard with so many hands raised. So let me encourage you, if you could, to come online as well and raise your hand and share.

Michael and then Zak and then it looks like Jason's hand may still be raised, if that's not an old hand. Michael Karanicolas?

MICHAEL KARANICOLAS: I'd be happy to let Jason and Marie go first because I think that what I was going to say echoed fair. But if what Michael Graham mentioned ...

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KATHY KLEIMAN: Fantastic. Michael Graham and Michael Karanicolas. Okay, great. Jason, is that a new hand? Maxim, I'm ... Actually, Jason, may we go to Marie next and then we'll follow up with you?

Marie, go ahead, please.

MARIE PATTULLO: Thanks, Kathy. Can you hear me okay?

KATHY KLEIMAN: Absolutely. Loud and clear.

MARIE PATTULLO: Great. Thank you. I really don't want to keep repeating things here, but if I can try to put some clarity in this, what we're talking about is not necessarily a cyber squatter. It's the disclosure of a business's commercial strategy to their competitors.

Now, as you guys know, in the E.U., we don't have a use requirement for registering trademark. You have to use within a certain period of time of registration.

One of the examples I try to explain is that companies will do all of their in-house development. They will search the trademark register. That's what I was referring to, Rebecca. If you look at TMView, that's one that has many jurisdictions. That's also another one at WIPO. So standard branding practice is you check to make sure that the name you want is available. You then in the

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E.U. would apply to register the mark and probably at the same time to register the domain name. That would really depend on the strategy in-house.

However, the major branded goods companies, who of course have tens or maybe hundreds of trademarks, won't necessarily, for their own reasons, want to tell their competitors on the marketplace. So other people who make shampoo, other people who make widgets – whatever it may be – are just about to go live with their brand-new, super-duper, hyper shiny shampoo widget. That's on the concerns. By putting into the Trademark Clearinghouse a trademark which you own but is not what we call an A brand, you are basically telling somebody who is your competitor – not cyber squatter – but this is something you consider very important right now, which shows you that you're likely to go to market quickly.

That's one of the examples, Kathy. I hope it makes sense. But you have to remember that, from the E.U./the European side, we have a very, very different basis for competition law but also for trademark law. Thank.

KATHY KLEIMAN:

Thank you, Marie. Thank you for making the effort to come on and share this. Thank you for that background and discussion.

Jason, I believe you're next in the queue.

Jason, if you're speaking, you seem to be on mute.

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JASON SCHAEFFER:           Sorry there. How's that?

KATHY KLEIMAN:           Perfect.

JASON SCHAEFFER:           Okay. The only point I was going to add was something I neglected to state at the end of my talk before. When we were dealing with the URS, we were able to spend extensive time looking at the data, figuring out what was and what was not happening in the URS. We were pleasantly surprised that some of the preconceived notions that we held with respect to the URS was not born out in the data. That's the same thing here, I believe: maybe we will find, one way or the other – I don't know which way the balance will tip – [that] having access to this information, again, is critical to solving what we believe we see as a problem. Maybe we'll find that it's rampant, or maybe we'll find it's not so extensive. But to say that we can't see this is frankly wasting a lot of our time. We're spending hours upon hours upon hours and without any access of real knowledge of what's really happening, other than some reports that Deloitte gave back to us. We need to understand what's really happening.

With respect to the competitive issues that we're just discussed and what would happen to a brand owner that's seeking to something that E.U. ... I can't really speak to that, but the only comment I have is that trademark databases are searchable today in their present form. So, if you are registering a mark – I don't know E.U. inside and out; maybe you can speak to this – I know

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that I can search the database. I can see what trademarks are registered. Whether you're using them or not is another issue. If you're taking the step as a brand owner to go and register your mark and now you're looking to now potentially have registration of a certain domain in a certain string, I'm not sure how that tips your hand one way or another. But I'm open to hearing this further. Thank you.

KATHY KLEIMAN:

Let me pause for a second. A factual question has been raised about registration. Would you like to address it briefly?

Okay. Perhaps in the chat. Michael Karanicolas, is that a new hand? Then I knew John McElwaine is the queue as well.

MICHAEL KARANICOLAS: Yes, it was my deferred hand. It's been good to hear support for this proposal from different quarters. I think that the benefits of transparency are very easy to justify, both in terms of the public interest and it being in line with ICANN's mission and also specifically to commercial uses. We've heard that before. That's the reason why trademark databases are open.

Given that that is understood, I do think that, in discussing whether it should be an open or a closed database, the burden of justification against those demonstrated benefits of transparency – there is a burden of justification for it being kept closed. I think that that does need to be justified with something a little more tangible than what sounds to me like obscure hypotheticals.

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I would also say that there are trade-offs that accompany registering [their] marks and getting those protections. That's the tradeoff that exists throughout this area of law: you have to publicly announce aspects of your business.

So I think that this is just something that's inherent in the system. I think that, at the very least, what we've heard today should be enough to support the idea that the community should be given an opportunity to weigh in. Obviously, we're not going to all agree. I understand that there have been opposition on this from some sectors from the IPC. I understand that. But I do think that, at the very least, this is an area that should go out to the community. Thanks.

KATHY KLEIMAN:

Terrific. Thank you, Michael. I'm going to take an earlier comment from my Co-Chair, Phil Corwin, where he talked about framing this TMCH transparency question for the initial report and soliciting community feedback. It sounds like there is substantial support for bringing this forward as a question and talking it through with the community. So maybe one of the questions is to think how we might do that.

Let me call on John McElwaine.

JOHN MCELWAINE:

I just wanted to point that that is not correct that every trademark database is searchable. For clients that are looking to have a confidential launch but also want to get an early priority date, it's pretty common to file in jurisdictions that don't have such a

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searchable database. So I just want to correct that. Most are, admittedly, but not all are searchable. Thanks.

KATHY KLEIMAN:

Terrific. Thank you, John. Maybe ... let's see. Question: how to move tis into the initial report and whether anyone has any specific – I promised Maxim we'd go back to Question 12, so I want to make sure that we preserve time on that. I know others have joined with issues from [the floor]. But I promised Maxim next.

It looks like this proposal moves forward in some kind of probably edited or more succinct version into the initial report for continuing discussion. Terrific. Thank you to the proposer and for this robust discussion on the issue, which we'll continue now with the community.

John, I'm believing that's an old hand? Okay. So, Q 15 now closed, at least for the moment. Going back to Q 12 [inaudible] on our table. Q 12. I'll read it while staff is posting it. Again, I promised Maxim half-an-hour ago that we'd go back.

Are there concerns about operational considerations, such as cost reliability, global reach, service, diversity, and consistency due the Trademark Clearinghouse database being provided by a single provider? If so, how may they be addressed?

Maxim, go ahead, please.

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MAXIM ALZOBA:

Actually, there are concerns about reliability because the only parties who know that the TMCH offline or that some services of TMCH do not work for some reason are registries and registrars. All others don't have access to it. So the thing is that there is almost zero transparency about registrations where it goes offline. Registries just share their experiences. I might remind you that the most important phase is the registration where the sunrise is going on in the sunrise registry and not necessarily that, during those offline periods, there were sunrises.

But the thing is that, to have an objective picture, we might need to send the request to the contracted party house because it's registrars and registries that have knowledge of offline behavior of the TMCH when some services are not accessible.

That's my thinking because, personally in our experiences as registries – the registry for two TLDs – we had periods when it was not accessible to us, and we had some conversations with some other registries that had the same thing. I know at least one registry – I wasn't given permission to name them – that experienced a case where potentially registrants suffered in one of the TLDs. So the other thing we should do, in my opinion, is to request from ICANN the periods of unavailability of the TMCH for the periods starting from the beginning of the TMCH services. Thanks.

KATHY KLEIMAN:

Maxim, before you go, let me ask you a question, which is, how long were the added – I mean, we may not have the time to go out and ... You suggested two different things. One is to reach out to



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registries about downtime, and one is, I think, to go ask staff to ask ICANN about registered downtimes. So maybe you can clarify what the most time-efficient mechanism would do if decide to do that. But also, how long was the database down during sunrise? Are we talking minutes? Hours? Days? Thanks.

MAXIM ALZOBA:

Talking about the offline time, it's hours, maybe days, because sunrise is per TLD, and we don't have information about all TLDs. The thing is, nothing is published about [stations]. So we just exchange experiences in the contracted party house. Thanks.

And speaking about the way to do it, the first is we might ask the staff. It's a separate process. If we need some feedback from the contracted party house, I believe two weeks is a reasonable period of time because registries, for example, have meetings once in two weeks and it's a typical turnover of information (at least a week and something) because people travel, they have vacations, etc. Thank.

KATHY KLEIMAN:

Maxim, did you want to present a proposal on this? Marie says we will need to check. She's not sure whether she's – let me just read it. "Whether we have those records likely depends on what the SLAs are with Deloitte." Then she asks, "Has the [CPA] reported this to ICANN org?"

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MAXIM ALZOBA: There are cases between particular registries and GDD. They are known to ICANN org because cases in the GDD Portal are well-known to ICANN. All we need is just to check how many cases were relevant to Deloitte/TMCH. That's it. Thanks.

KATHY KLEIMAN: I don't know how long we're going to be working on these deferred Trademark Clearinghouse questions. Let me defer to my Co-Chairs. Phil, I know you're on (Brian, if you're on) what do you think we should do with these operational questions that they may be some downtime – in fact, perhaps some significant downtime – of the TMCH that we don't know about?

I see no hands raised. Let me flag for staff that we return to this question after Marie, Julie, and Ariel have reached out to ICANN staff to see what we have in terms of downtime information from Deloitte, hopefully for next week.

We have two questions. We've got ten minutes and two questions that we skipped over: Q 7 and Q 8. Let's start with Q 7. Greg, I think you're – or has Greg left?

Let me ask staff. Has Greg left or is he still on the line to briefly present the revised – okay. Greg has left. That takes us back to Q 8, and Claudio is here. Claudio, I'm sorry you missed the earlier discussion, but go ahead please (the earlier discussion of Q 8). Go ahead, please.

CLAUDIO DIGANGI: Thanks. Give me one second.

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KATHY KLEIMAN: And one of the things we're asking is about similarities and differences among the two proposals and also how groups work together over the last week to try to create convergence. Rebecca spoke to both of those issues. If you could as well, that would be great.

CLAUDIO DIGANGI: Okay, great. I was unmuting, so the system is talking over you a little bit. But I think you were saying it's effective focus on the areas of divergence between [inaudible]?

KATHY KLEIMAN: Areas of similarity and divergence. But similarity. Overlap. Convergence.

CLAUDIO DIGANGI: Oh, okay.

KATHY KLEIMAN: As well as how you worked together over that weekend to get to that convergence, if it's there, as well as divergence. Thanks. Go ahead.

CLAUDIO DIGANGI: Sure. On how we worked together, I think we worked together well. One of the challenges was the timing. There was a Jewish

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over this period. I think it was a three-day holiday. I think Rebecca was trying to work through it. But we had a time, and I suggested asking for an extensive, but I don't think Rebecca supported the extension. There was a feeling that the working group as a whole wanted to move on, so I withdrew my request for an extension. I'm not sure if it would have made any difference or not [on] bringing everything together. So I just wanted to mention that I think we worked well but it was under extreme time constraints.

Where we ended up in similar way is conceptually on whether GIs would fall under the mandatory sunrise or claims. I've been trying to compromise and really hoping that we would come up with a unified package of things. So you can see in my proposal it's that the GIs are not eligible for sunrise and claims.

Then the way we're trying to implement that is through Section 3.2.3. Rebecca and I have different wording in our 3.2.3s. I mentioned something on the list today about adding a disclaimer that just says GIs don't fall under 3.2.3. I think that would do the trick. I'm not sure if that's acceptable to Rebecca or others, but I was looking at it from the perspective of "We're looking at GIs. This is the subject matter. If we put a disclaimer in that says they don't qualify, that should be enough." We shouldn't get held up on the specific phrasing on that specific provision.

KATHY KLEIMAN: Claudio, let me stop you. You're saying 3.2.3 should say no GIs?

CLAUDIO DIGANGI: Yeah.

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KATHY KLEIMAN: Okay. Thank you.

CLAUDIO DIGANGI: So we could either say it there or we could say it directly below because, directly below, there's some other provisions. Another area where we [came out integrating] was that there shouldn't be any limitations or bars on the use of this [inaudible] services. So, if multiple registries want to connect to the same database – maybe it's a portfolio applicant and they have multiple new gTLDs or maybe there's a registry that sees, "Hey, there's a bunch of GIs registered in this database that .t or .someothertld launched" – they could connect to that, basically unless the registry – I think the way I phrased it ... Maybe some of my prior text was, "Maybe, if the registry set it up exclusively for itself, that should be okay, too. But, if they're okay with their competitors to all leverage the same centralized database [inaudible] this is on a voluntary basis, that they shouldn't be prevented from doing that."

KATHY KLEIMAN: Claudio, can other companies set up these databases as well?

CLAUDIO DIGANGI: Yes, they can.

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KATHY KLEIMAN: Okay. Let me get to 2.1, if could: voluntary RPMs. That's a new term, isn't it? And our involvement in limited registration periods – our involvement (the working group). Just ...

CLAUDIO DIGANGI: The limited registration period I'm not sure is formally called a voluntary RPM, but I think it's in our charter. It's in the registry agreement that there could be a limited registration period that takes place before general availability. So that's already built in, and that's an existing mechanism. So I was pointing to that to basically say, if there's a registry in Europe or Latin America or in Asia, where GIs are protected and there are statutes that protect them, they could register them during that limited registration period.

KATHY KLEIMAN: Is there anything that bars that now?

CLAUDIO DIGANGI: No.

KATHY KLEIMAN: Okay.

CLAUDIO DIGANGI: To give one other example, what we've also seen is that, for claims, some registries – Google, I think, does this – have a permanent claims period. So I don't think there's anything

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preventing registries from doing that: if they want to set up separate claims notice, they could do that as well. So that was just something I was trying to get in in terms of the use of the ancillary services. It [wouldn't] be completely voluntary, but if they wanted to do that and there were GIs in the database, they can set up a 60- or a 90-day claims period, as long as it doesn't conflict with anything in the registry agreement. So I tied things back to the registry agreement and said, whatever they want to do just has to be allowed under the registry agreement with ICANN.

KATHY KLEIMAN:

Thank you, Claudio. You missed my thanks to everyone who worked so hard over the weekend on this, so let me extend that to you.

We have two minutes. I have to say I've been hearing a lot of convergence. Do people want to comment briefly? Then we need to reserve, like, 30 seconds to talk about the meeting next week, which is not going to be next Wednesday because of the Jewish holiday of Yom Kippur.

CLAUDIO DIGANGI:

Kathy, one thing I left out – thank you for that – is – I'm not sure if Rebecca highlighted this or not – we don't know if there are any GIs currently in the database because Deloitte didn't parse out what [inaudible] under statute or treaty. I think they came back and said there's 75 records under statute or treaty, and they didn't say there's 30 GIs. They just lumped them all together. So we don't know if there's any in there. I think Rebecca has something

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in a proposal that says, if they are, they need to come out. I did not include that in my proposal because I just wasn't sure if that was a policy function, if that was something that Compliance would handle. I just had questions around that. These have been recorded. They pay for them. I'm not sure how it would impact things to have to say to somebody who paid to get something recorded in then clearinghouse, "We're—

KATHY KLEIMAN:

Thank you, Claudio. I'm going to have to [inaudible]. Thanks. It's a good point to raise: what would happen to the GIs that are in there. Good point and something we can think more about. Good point.

Bu, overall, I'm hearing convergence, and I'm going to have to draw a line after this because people have to know that we are not meeting next Wednesday. Staff, I'm going to hand this over to you because I believe we're meeting at Thursday at the same time. But I'm not sure whether we were going to put that out for a quick public [poll] to see if people can do Thursday. Let me hand it back to you.

Thanks, everyone, for a fascinating discussion today and covering so much material.

JULIE HEDLUND:

Thanks, Kathy. Yeah, the suggestion is that we hold the meeting next Thursday at the same time. The reason is that there is a holiday next Wednesday, which is a conflict. It would also include next Tuesday. We've checked the calendar. There do not appear



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to be major conflicts for next Thursday. So we'll go ahead and send that out as an invite following this call. So that would be the 10<sup>th</sup> of October at 17:00 UTC. Thank you.

KATHY KLEIMAN:

Thanks, Julie. Thanks, everyone, for being on the call today and staying a little late. We will see you next week. Bye-bye.

**[END OF TRANSCRIPTION]**