ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group call
Wednesday, 11 January 2017 at 18:00 UTC

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Coordinator: Recordings have been started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of All Rights Protection Mechanisms, RPMs, in all gTLDs PDP Working Group call held on the 11th of January, 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 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, Kathy Kleiman. Please begin.

Kathy Kleiman: Thank you very much, Terri. Everyone, this is Kathy Kleiman and it's my opportunity to wish you a happy New Year. I hope it's a wonderful year for you and your families.

I'm joined today by my cochair, Phil Corwin, J. Scott Evans recently sent out a message to us that said he's been called into a meeting and will probably not be able to join us for any of the meeting today.

The first thing I want to ask is if there are any changes to Statements of Interest. Does anybody have an update that they'd like to share in the New Year? Okay great.

Today's meeting is a little unusual. Phil Corwin and I will be sharing the chairing of it. I'll be talking first about the final version of the TMCH charter questions, which Mary has just posted, and then Phil will be talking about the cochair statement on the voluntary rights protection mechanisms that have been adopted in the discussion of the review by the working group.

But first actually, I'd like to ask Mary just very briefly to give us an update on the questions that we were talking about last week. I know there's been some activity on the list, maybe you can just quickly summarize where things stand on that. Thanks, Mary. Go ahead.

Mary Wong: Kathy, did you mean the questions that we had turned into a survey rather than this list of charter questions?

Kathy Kleiman: Yes. I'll talk about the charter questions in a second but, yes, if you could talk about the survey questions that we worked on last week?

Mary Wong: Sure.

Kathy Kleiman: Just where they stand, where they're updated.

((Crosstalk))

Mary Wong: Yes, so we haven't made any changes since it was circulated. So if anybody has any concerns, particularly if they have to do with how the questions are

phrased, because obviously in a survey format, they appear a little bit differently than in a Word document format. As we said on the email, we haven't changed the sense or the text of the questions, what we have done is reordered one or two.

So assuming there is no further concerns or comments, what the plan is, is as noted last week, the cochairs will prepare a request to specific registry operators and we will also reach out to those members of this working group that are registry operators and try and get their help to get further responses, noting that the survey is just for the registries, particularly those that are offering new gTLD registry services.

We are waiting responses from the Trademark Clearinghouse provider on the set of questions that were sent to them. We expect that sometime this month. And we are also hoping that the registrars will be providing us with some responses to the questions that will be sent to them as well.

So, Kathy, that's the update from the staff side.

Kathy Kleiman: Perfect, thank you very much. Mary, sometime during this call you can just put the link in. Again, I know it's on the list, maybe the link in the notes or in the chat room where people can find the survey if they want to look during the meeting, that would be great. Thanks again for the update.

Okay so now we move onto the questions that have been occupying so much of our time for the last few weeks, these are the Trademark Clearinghouse charter questions that first went out to the sub group and then to the full working group. And now we have a final version in front of us.

And the cochairs had a meeting last week and we were looking for - to see if we needed to do anything in terms of just the flow and the clarification, kind of in what order do we take these on? And it was interesting, I actually did the majority of the work and somewhat of the reordering. So what you're seeing

here is a slightly revised list of questions. None of the questions have been touched, none of them have been eliminated, nothing has been added. The only thing that's been changed is a little about the category and the order.

And I'll just share why. So we were sitting down with Category 1 and it says, "Guidance," and I've never quite understood what they meant so we've changed that to Education. And the first question was a verification question. You might remember the first question was originally, "Should the verification criteria used by the TMCH to determine if a submitted mark meets the eligibility and other requirements of the TMCH be clarified or amended?"

And I thought, wait a second, we have verification - a section, that's Category 2. So we moved Question Number 1 to Category 2. It's now Question Number 4.

Similarly in Section 1 on Guidance or Education, pick your - pick the right word - there were questions about the review of design marks. That's not an education question, that's really a scope question so we moved it to Scope.

Similarly, we had added a question about geographic indications and how things are protected in the TMCH or whether they're protected at all in terms of designations of origin. Also not just a verification question but really a scope question as well. So moved that to Scope.

So now I'll just run through the categories. Mary, does everyone have control of the document themselves? Yes, and it looks like everybody does. So perhaps you can just move down with me?

So Category 1 is now Education. And we'll be looking specifically at, you know, the criteria for marks entering the TMCH; Number 2, the education of rights holders; Number 3, information on all the operations of the TMCH.

Category 2 remains verification and updating of the TMCH data. And we now have Question Number 1 is Question Number 4 about the verification criteria and whether this needs to be clarified or amended. And then the other questions in Category 2 are unchanged.

Category 3 is revised from Balance, which now you'll see at the very end of these questions, to Breadth and Reach or Scope. And we have questions here about the design marks, geographic indicators, the Trademark+50 and the TMCH matching rules. Those are the questions now.

And the final question, Question 11, is the question, "Should the scope of the RPMs be limited to goods and services in which the dictionary term within a trademark is protected?" So that was moved slightly down to the end of this evaluation.

So Category 4 is actually - we've moved Costs and Other Fundamental TMCH Features ahead of Access and Accessibility because we thought that costs really have a lot to do with access and accessibility so let's look at the costs first and then we'll be able to better understand how accessible TMCH services are to people in developing countries, which is one of the questions we'll find under Category 5. So Category 4 and Category 5 have been flipped.

And so Costs and Other Fundamental TMCH Features, Category 4 questions, unchanged. Category 5, Access and Accessibility, again the questions are unchanged, just the order changed. And we get to Category 6, which is now our Balance question, you know, have we achieved the appropriate balance between the rights of trademark holders and the rights of non-trademark registrants? And that seems a very appropriate question to ask at the very end.

So let me pause for a second and see if anyone has any questions, edits, concerns or whether we go forward with this as our final list and flow for the questions. George types it looks fine to him. Thank you.

So, great. So this will then be our roadmap for the next few months. And one of the things we do need to think about is how we should structure the discussion of these questions, whether people like dividing into sub groups, whether we want to keep the discussion more at the full working group level. I was wondering if anyone had any thoughts on that as we begin to dive into this material.

George, go ahead.

George Kirikos: George Kirikos for the transcript. Personally I think it would be better to have it at the group level so that everybody could be fully aware of the entire discussion. I'm not sure how other people feel but that's my personal instinct. Thanks.

Kathy Kleiman: Thanks, George. Susan, please go ahead. And I'm seeing support online for George.

Susan Payne: Hi. Yes, I agree with George. To be honest, I think they're so kind of intertwined and overlapping that I would say we would risk kind of either duplication or kind of missing something between the cracks if we (unintelligible) up. But I'm, you know, if people can see a way to break them up I'm willing to be persuaded but I think we might do better to keep it as the group.

Kathy Kleiman: Terrific. I was definitely leaning that direction as well, thank you. Petter, are you just showing your support or you would like to speak as well?

Petter Rindforth: Well, sorry, I mixed the buttons there. Just a short confirmation that I support that we split up in practical working groups to get the work more effective.

Kathy Kleiman: Okay so splitting up. Thank you. Mary, go ahead.

Mary Wong: Thanks, Kathy, and everyone. Not a staff preference at all but just kind of a looking ahead in terms of where we want to be with our review up to the Copenhagen meeting in March and of course looking through the rest of the year where we hope to have completed the whole of Phase 1. I think one thing to bear in mind besides the possibility of using subgroups where that's appropriate, whether for this review or a subsequent one, and this is something that the cochairs will probably be discussing has been brought up before, the possibility that to get through the work, especially if we keep it in at the working group level, which may make sense for a number of these questions, is to have longer calls. So that's it, Kathy.

Kathy Kleiman: Interesting. I was wondering, this was something that the cochairs talked about at their last meeting, and I was wondering how people felt about longer calls? This would be a 90-minute call that would happen from time to time when we were working on a substantive issue. Does anyone have some initial feedback on that? I'm seeing a check from Petter. Go ahead, Phil.

Phil Corwin: Yes, thank you Kathy, and happy New Year to all, everyone on the call. My personal feeling is that if it's necessary to get our work done within a reasonable amount of time, that it would be better to have some 90-minute calls than to have more calls. I think it's easier once you're in a call to add another 30 minutes, which often is the difference between reaching a conclusion or not on a particular subject, than to try to jam more calls into everyone's very busy schedule. So that's my personal opinion on that. Thank you.

Kathy Kleiman: Terrific, thank you. And as Mary noted, this wouldn't be every week, this might as we're working on major things. Also it's not a promise not to divide into subgroups but subgroups have - appear to have worked very well for kind of deep dive issues pre-planning, pre data gathering, that kind of thing. And we don't seem to be at that state right now as we jump into these big questions. Petter, go ahead.

Petter Rindforth: Well just echo that for limited time it's much better, as I said, to have a little bit longer working group meetings but not as a normal. But if you have a specific topic that you have a limited time to conclude it's almost so disturbing when you have to end the discussion in the mid when the 60 minutes has gone.

Kathy Kleiman: Terrific. Thank you, Petter. And just to make clear, no plans to move to 90-minute calls right now, we'll stick with our 60-minute format until we need it but I'm glad to know people are flexible. Mary, we didn't talk about this but it might be a good time to let people know a little bit about the schedule and the longer meeting, which I believe may be on the first day. If you could let people - would you have a second to talk about that so that people who are making their plans for Copenhagen can know that we're probably starting right at the front of the meeting? Go ahead.

Mary Wong: Sure. Thanks, Kathy. And for those working group members who have not been participating in a number of GNSO policy development processes, what we're referring to here is the possibility that some PDP working groups would do a more intensive face to face meeting as part of or alongside the ICANN public meetings. When we say face to face obviously that includes remote participation facilities for those who are not able to be at the ICANN meeting in person.

   But this would be a fairly intensive session probably for three hours. In the past we've had PDP working groups do full day sessions. And I know we have some survivors of those amongst the members of this working group. But for the Copenhagen meeting, which is starting on March 11, just a couple months from now, the thought that the GNSO Council chairs have right now is that given we have several large complex PDPs going on, it may be possible to give each such PDP working group, including ours, a three-hour slot, as Kathy said, on Day 1 of the meeting. That would be Saturday the 11th of March.

The decision to do that has yet to be made. This is something that the GNSO Council will probably be looking at at its meeting next week so we will try to let folks know what the outcome of that is as soon as we can. However, that's what it's looking like if it does go ahead, that we're looking at a three-hour slot on the 11th of March. This will be in addition to the usual one-hour or 90-minute open community session that normally takes place sometime during the ICANN public meeting itself. And on that note I will cede to Phil.

Phil Corwin: Yes, Mary. Thanks for that update. I was not aware that there was a possible plan to have a face to face meeting of this group on that Saturday. That might present a significant problem for this cochair who is a member of the GNSO Council which usually holds an all-day meeting on that Saturday and at least for part of Sunday so we'll see how that develops. But I want to note that concern right now on my own behalf. Thank you.

Kathy Kleiman: Good point, Phil.

Phil Corwin: And I'll just add the one thing I've never been able to figure out in regard to ICANN duties is how to c lone myself so I can be on two calls or in two physical locations simultaneously.

Kathy Kleiman: In triplet.

((Crosstalk))

Phil Corwin: ...suggestions please send them my private email. Thank you.

Kathy Kleiman: I think you need to be in triplicate, Phil.

Mary Wong: This is Mary.

Kathy Kleiman: Sure, go ahead.

Mary Wong: Although I would dearly love to see Phil triple clone himself and everyone else, I think for this meeting, and Phil, as I noted, this is something that the Council will probably have to discuss. It is at the leadership level right now.

I believe the current idea is that if we use that Saturday, which is the Day 1, for these intensive PDP meetings, it would probably be spread across two or three PDPs, the Council, the working session that normally takes place over two days, the first two days of an ICANN public meeting, would be one long day on the second day, that would be the Sunday. And this would be very similar to what was done in Hyderabad. So if that helps, that's kind of what the plan is right now.

Phil Corwin: Yes, and thanks, Mary. Phil again for the record. Yes, that's the plan that Council will only be meeting Sunday because I notice some other councilors are on this call. Of course that wouldn't present the same conflict problem. So thanks. We'll stay - we'll be watching to see what develops. Thank you.

Kathy Kleiman: Terrific. So that's the head's up that Saturday March 11 the very first day of the meeting might be a long face to face meeting where we can really work through some of the issues of the TMCH.

Great, so the cochairs will be meeting, we'll be working through kind of how to dive into this. Everyone now has the questions, the categories, the order and the flow of the questions that we'll be dealing with for the next few months. And we'll start diving into the specific issues next week.

But we're still on kind of the level of what we are going to be discussing and what's within the scope and breadth of our TMCH discussion. And for that discussion I'll actually turn it over to Phil to discuss a statement that he drafted that the cochairs have all signed onto regarding inclusion of the private rights protection mechanisms that are using the TMCH, Clearinghouse and database. But, Phil, let me turn this - oh, Susan, it looks like you've got a comment before we go onto the second half of our program?

Susan Payne: Yes.

Kathy Kleiman: Go ahead, please.

Susan Payne: Yes, if you don't mind, just really quickly, and I almost hate to raise this already, but the small group that works on kind of revising the charter questions, I think it probably took all of us by surprise how long it took us. And we've only done it for the TMCH I think, I'm right in saying. And so there are other charter questions that still need that kind of review and revision.

                 As I say, I almost hate to suggest it already, but would it be sensible to, at a relatively early stage to get some volunteers to start looking at the rest of them?

Kathy Kleiman: So hold on, stay on the line for a second, Susan. That's a very good question. Let me double check that what you're talking about is the draft charter questions that we have for the sunrise period and the IP claims, sorry, the trademark claims, the notice provisions. We've got draft questions that are out there that have not yet gone through kind of the scrubbing the subgroup and then the scrubbing of the working group. Is that what you're referring to?

Susan Payne: Yes, exactly.

Kathy Kleiman: Okay. What do you - let me take that to the cochairs and that's a really good point. It's actually something the cochairs did discuss. We didn't come up with a decision on when to kick those off. I'm not sure we need to kick those off quite yet. But that's really good point so we will bring that back to the working group when we think it's time to set up a subgroup to really look at those again and feed them back. I think it may be a little too early right now. What do you think?

Susan Payne: Well I suppose, as I say, I mean, it was only that I think it took us all by surprise how long this process took us. Having said which, you know, maybe we don't need to start quite yet but I'd hate us to kind of get near to the end of looking at this and then realize we hadn't done it.

Kathy Kleiman: That's a very good point.

((Crosstalk))

Kathy Kleiman: And of course we'll put out a call for the subgroup to see if people want to join. We don't have to just stay with the wonderful subgroup that worked on these current TMCH questions. Thank you, Susan, for the comment. Phil, go ahead.

Phil Corwin: Yes, thanks Kathy. I want to - this is actually a question for staff, I was just - got a private email from a member of the working group about a relevant topic and I went to reply and I'm getting a notice that private chat is disabled by host, which I've never seen before, and which I don't understand since the other party was able to send me a private email. But if that can be remedied so I can reply it would be appreciated. Thank you.

Kathy Kleiman: Great. Mary, do you want to - it looks like we've lost Mary. Mary, do you want to reply or Terri?

Mary Wong: Hi, Kathy. We're looking into it.

Kathy Kleiman: Great.

Phil Corwin: Thanks. Yes, now I'm getting private emails from other members. And I am getting them, I'm unable to reply for some reason and I don't know why. But it's not critical, we can address that issue before the end of the call. And so...

Terri Agnew: So this is Terri. Sometimes if you log out and log back in it seems to clear up that issue, that's just one troubleshooting thing we can try.

Phil Corwin: Okay. Well let me - I'll bring up the subject, it's a scheduling subject, I'll bring it up toward the end of the call. So, Kathy, are we ready to go into the discussion of looking into private RPMs, blocking mechanisms, that type of thing?

Kathy Kleiman: Yes, we are. Phil, let me turn the meeting over to you.

Phil Corwin: Okay. So I will now - I'm not going to log out and back in at this point. Yes, what you have before you on - and you've seen this document, I think it was first circulated more than a month ago, I forget exactly when it first surfaced. This is a draft statement, and at some point once we get feedback from the group the chairs will come back and make it a final statement.

But the cochairs did, I think it back in November, have a private discussion among ourselves saying what should we - should we be looking within this working group at the additional protective measures that are being offered by various private parties, which are related to the ICANN-mandated RPMs, but add to them.

And it was the unanimous view of the chairs that we should do - make some inquiry and gain some understanding of what they are and how they interact with the ICANN-mandated RPMs because if we didn't do that we really wouldn't have the complete picture of the RPM ecosystem that's developed since the launch of the new TLD program, and some of these measures either enhance or otherwise interact with the ICANN-mandated ones.

Now I'm not going to go through every paragraph of this draft statement because you're all smart people, you all know how to read and you've had this for quite a while. So to cut to the chase and going to Page 2, the additional RPMs offered, not required by ICANN, but offered in addition to the

required RPMs that were created for the new TLD program, we know of three of them, if we're missing any of them, anything else, people can bring that to our attention.

The first is the ongoing notification service that's offered by the Trademark Clearinghouse through which it provides a notice to rights holders of any potential IP infringement indefinitely, that is beyond the original 90-day period that's required by the ICANN policy. Whether - when either exact-matches or various types of additional variations are registered in a new TLD.

That's being offered by the Clearinghouse, which has a contract with ICANN and has decided to offer this additional service so that rights owners can get notifications directly from the Clearinghouse rather than from another private sector notification method when there has been a domain registration that may be infringing. So that's the first one.

Then we noted some registry services, registries, have voluntarily extended the claims service, that is the sending out of the notification to the potential registrant and the advisory to the rights holder if a matching - if a domain that matches a TMCH term has been registered beyond the same 90-day period that's required as a minimum by ICANN.

And finally, we know of at least three major portfolio registry operators, Donuts, Minds+Machines and Right Side, which offer protected marks list blocking services. And do so suggesting that they be more cost effective for rights holders than sunrise registrations within the portfolio of domains that they're offering.

So we know those are out there. And we'd like to know whether they're enhancing the ICANN minimum mandated RPMs, whether - and also we'd like to know how they impact the RPMs that are being used. It's quite clear from the marketing, and there's nothing wrong with it, that a rights holder which decides to purchase the blocking service offered by one of the three

registry operators mentioned, is most unlikely to engage or at least to engage in far fewer sunrise registrations. That would be our supposition. But we're not sure; we'd like to find out.

So really we're just trying to get - we think this working group should have, when it completes its work, a full picture of the interplay between the ICANN-mandated RPMs and the private sector RPMs. And whether that leads to any policy recommendations is up to this group.

In addition to having a complete picture, we've got - these are all being offered by parties that have contracts with ICANN. In one case by the Trademark Clearinghouse, the extension of the claims service is being offered by registries, and the blocking services rest upon registration and Trademark Clearinghouse. So no TMCH registration then no blocking of a particular trademark. The trademark has to be in the TMCH before any of these portfolio registry operators will make the blocking available for that trademark. That's our understanding and we will try to confirm that when we get into this.

So that's the basic. We also think when you go to Page 3, that understanding the operations of these private sector offerings and their interplay with the ICANN-mandated RPMs, is required to answer some of the key questions that we've been charged with answering. So that's pretty much the sum of it.

And I point you to the last paragraph where we state that the cochairs - to be clear the cochairs believe that the ultimate scope and depth of inquiry into blocking services and other additional RPMs undertaken by this working group and the content of any resulting policy recommendations should be determined through working group consensus. That is determined by you, the members.

So the cochairs are unanimous in the view that we need to take some notice and gain some understanding of these private sector offerings and how they

interact with the ICANN RPMs. What we do beyond that is going to be up to this group. And clearly if there's no consensus within this group to go beyond such understanding much less to make policy recommendations, then we won't go down that path, that's up to the group.

But we do believe that we need to at least, in our operations, in our final report, take some notice and gain some knowledge of what's going on and understand how it impacts the ICANN RPMs and it may lead to recommendations for adjustments to the ICANN RPMs that wouldn't be made otherwise.

So I'm going to stop there and see if anyone has any questions about what I've just said or has any comments about the notion that at some point in our work, and we haven't fit it into the calendar yet, and that's another consideration, we don't want this to be a very long inquiry that throws our timeline way off.

But I'm going to stop there. I think and hope that I've given you a coherent and concise explanation of the thinking of the cochairs. And now would be good to hear back from members of the working group on this subject. Thank you. So the floor is open for comments.

And I note that Jon Nevett has said that - I'm here on behalf of Donuts. He'll be happy to answer questions about DPML on a subsequent call. And that's - that's a good - I appreciate that, Jon, and probably one thing we'd want to do on this is have a call and invite the three portfolio registry operators that we know of who offer blocking services to be on the call to explain their services so we can understand not just the costs but the scope and any differences between the different services.

And I not Greg has his hand up so go ahead, Greg.

Greg Shatan: Thanks, Phil. Greg Shatan for the record. I agree that having an understanding of the private RPMs, or whatever we want to call them, is - well would be valuable in terms of having a complete picture of the landscape so that we can review the RPMs we're chartered to review. I don't agree that this somehow bootstraps us into having the capacity or remit to review the private RPMs much less to make policy recommendations about them.

So I think that is - that is the line I see here geographically we should be aware of them and understand them but they're not under our jurisdiction. Thanks. I'm sorry for mentioning the word "jurisdiction."

Phil Corwin: Yes, that's a very sensitive word these days, Greg, as you're well aware in a different capacity. Thanks for that input. Other points of view or additional support for Greg's point of view? Other issues I note that in the chat below George Kirikos has raised concerns about zone file access by registries. Jeff Neuman has said we need to understand the IP rights asserted by the owners or I guess - I don't know if owners is the right word but those offering these services.

And Steve Levy says, "Private RPMs would only fall under the remit of the RAA." Well the RAA is the Registry Accreditation Agreement, I mean, the - I believe it's the Registrar Accreditation Agreement, but whereas new TLD operators are under the standard new TLD RA, not RAA.

But I'm talking too much. Please, others, speak up. Yes, George, go ahead.

George Kirikos: George Kirikos for the transcript. I don't entirely agree with Greg Shatan's statement. We should probably seek to understand why these services are being offered in that are they representing a deficiency in the existing RPMs? If so, you know, perhaps that means that RPMs need to be strengthened in some manner or altered in some manner. Or are they like revenue-grabbing opportunities where registry operators don't see a valid business model and are, you know, grasping at straws to try to get any revenue that they can?

So we should try to perhaps isolate why these offerings exist and to some extent they could have negative impacts on stakeholders, for example, depending on how RPMs are devised in the future, so they might affect domain registrants or prospective domain name registrants. You can imagine, you know, if certain creative RPMs are created, you know, they would, you know, be more in the registry's favor than - it would imbalance the rights of registrants. Thanks.

Phil Corwin: Yes, thank you for that, George. And sure, it can implicate rights of registrants to register certain domains. I believe, I don't want to state this for complete conclusion, I believe one of the offerings also allows a trademark owner to block the registration of a mark that's registered for different goods and services by another trademark owner in any of the TLDs operated by that registry operator. I may be wrong in that, but that's why we need a complete understanding of what's out there in the marketplace.

And again, this is a draft statement from the cochairs. We left it a draft because we didn't - we wanted to get feedback from the working group. And I believe our method of going forward will be to first gain a detailed understanding of all of the private sector offerings and try to understand how if it all they're impacting the ICANN-mandated RPMs, whether the ICANN-mandated RPMs should be changed in any way because of what's become available in the marketplace, and whether we go any further than that is, again, subject to full and open debate within this working group.

But all we're talking about right now is saying we're going to devote a few meetings to understanding what's out there and how it impacts utilization and effectiveness of the ICANN RPMs. And I haven't even, in Greg's statement, I heard no objection to that basic inquiry.

And I see there's been some comments from Ed Morris in the chat room saying we can fully review the TMCH without reviewing the private uses

being made of it. Greg has reiterated his view that he's okay with understanding them, just not reviewing them in terms of saying well - and I assume, Greg, you mean we shouldn't be saying this shouldn't be offered or should be offered in a different format. And we're not taking that position at this time one way or the other.

And other statements, I see Jeff Neuman's hand up, so, Jeff, we look forward to your remarks. Go ahead.

Jeff Neuman: Thanks. This is Jeff. I'm assuming you can hear me because I'm seeing the mic move. With respect to Greg's comment and just the understanding, and I'm not saying this is going to be a recommendation or not, I've not formed any kind of opinion. But would the statement that you guys that, Phil, you and Greg have made, meaning that we couldn't as a group make a recommendation that, hey, we like the private RPMs that are being offered. In fact, we like it so much there should be a centralized RPM or centralized blocking mechanism run by ICANN for round 2?

I'm not sure how you could make that kind of recommendation if you can't, quote, review the implementations that have already been going on in the private context. Again, I'm not saying that that's my recommendation or that's how we will come out or how I even think that's right, but I just don't want to prohibit us from, in this discussion, from making some kind of recommendations like that if that's what we all determine.

Phil Corwin: Yes, and I'm not going to try to speak for Greg, and I see his hand up so he's going to speak for himself in just a few seconds. I personally I see a difference, and I'm stating this personally, not as any mandate from the cochair, a difference between saying hey, that's a good thing and maybe it should be available at all registries, not just ones operated by major portfolio and should be developed as an additional RPM. We'd have to talk about, since this is a source of revenue for the operators, we'd have to talk about that aspect.

Would be different than saying hey, we don't like the way this particular registry - we think this blocking service goes too far and should be reconfigured. So there's a difference in my mind between saying ICANN should emulate something to saying something shouldn't be offered in that manner.

And I'll - the last thing I'll say on that is that we do note in the memo that in the present situation, and this is on - near the bottom of Page 3 on the next to last paragraph, the current situation is that trademark owners have an RPM landscape in which additional protections and varying scope and cost are available from some but not all registry operators. So that, you know, be up to the group whether if they think any of these are good offerings whether they should be made available on a more uniform manner. I'm going to stop there and let Greg speak up. Go ahead, Greg.

Greg Shatan: Thanks. This is Greg Shatan again for the record. And, you know, I would say that what Jeff describes would be - and maybe what you've described as well, you know, falls in my mind into understanding the private RPMs. We always have the option to recommend additional RPMs and we can look at other models whether they're models in the domain name space or elsewhere to do that.

My concern about review is that our mandate, and, you know, look at the title of our working group, is to review the RPMs. But that doesn't merely mean review, that means make the policy recommendations regarding changing them and basically, you know, putting them under our, again, you know, jurisdiction or scope or remit or mandate or whatever you want to call it to actually do it. You know, some reviewers don't change the film, they may cause it to succeed or fail. But they don't change what's on the screen.

You know, the word "review" can mean a lot of different things. I just don't think we have the power to review outside RPMs in the sense that we have

the chance to review the PDDRP and say recommend a higher or a lower burden of proof of a structural or procedural change and have that go through, you know, the ICANN process. So by all means, let's get our vision on these sharp and well educated so that we understand the full landscape both what's within our boundaries and what's not and if we want to make recommendations about what's going on within our boundaries that's part of our remit but not beyond that. Thanks.

Phil Corwin: Okay, thank you, Greg. And I'm going to note a couple of important comments made in the chat room in the last - our esteemed lead staff support, Mary Wong has said that, in her view, it's beyond the scope of our charter to review these additional services, however, it is within the scope of the charter for us to review the overall effectiveness of the ICANN RPMs and it seems incomplete without acknowledging and understanding the existence and use of these additional services. And she adds in parenthetical now that we know versus when the Clearinghouse was developed that these additional services have sprung up and exist.

Jeff Neuman said, okay, so we can review their implementation but not just make recommendations to the existing providers. And then he goes to say, it could impact future providers, just not the current ones, which he states as a question. Marie Pattullo, who represents a lot of trademark interests in the EU, says, "Given that they exist and their cost and given that some brand holders have chosen to use them, I think we can safely assume that some brand holders do like RPMs beyond the mandatory. Let's look at them."

And Greg says - yes, I think this is getting down, to paraphrase an old Bill Clinton statement, it all depends on what the meaning of review is. I think at this point all the cochairs are looking for from this working group is agreement - and I haven't seen any disagreement on this point - that it would be not just useful but necessary to some extent for us to look into these private sector offerings and understand what they are, what they cost, and try to gain some understanding on how they interface with the ICANN RPMs, and impact their

- the utilization of the ICANN RPMs and the overall efficacy of protections for trademark owners.

And whether we go anywhere beyond that is up to this - the members of this working group. And noting that no working group can go anywhere or make any recommendation without pretty strong consensus, I don't think people are worried about us going too far in this issue need to worry that much particularly when they look at the makeup of the working group. I'll stop there and I see there's some additional comments in the chat room.

Okay, George has raised a question of the RSEP approval. And, again, you know, I don't - as I understand the RSEP it's mostly a technical review but I - based on a presentation made by GDD at I believe the last ICANN meeting, there have been - all the registry operator offerings have gone through the RSEP process, that's probably something we need to at least understand how they - what if any approval is required from ICANN prior to the offering of these.

And that's it. Jon Nevett said - Jon, I don't know - we're going to look at the RSEP - I see your question. In my mind we just want to understand whether a registry operator can just one day offer these or whether any ICANN approval is required. But that's not going to be a chief focus of this inquiry, I don't believe.

But again, so I don't want to keep repeating myself. I haven't heard - seen or heard anyone disagree with the notion that this working group should understand what's out there, how it operates and then try to understand how it affects the utilization of the ICANN RPMs and the efficacy of overall protections. And whether we go beyond that is going to be up to this working group down the road. And the cochairs have no fixed point of view on how far we go with this inquiry at this point of time other than that we should understand the operation and the impact of these offerings.

So in the absence of any objection so far to making that basic inquiry, I don't know that we have to do anything further at this point unless people have other comments. The cochairs will - and noting that it's seven minutes before the scheduled end of this call, what the cochairs will now do, having brought up this subject, and gotten some initial reaction from the working group is get back together and look at the overall schedule for this working group and get back to the working group with our thoughts on when would be a proper time to slot this inquiry into our work.

And so basically that will be probably within the next few weeks that we get back to you with a proposal from where, in our process, we're going to do that. It would certainly be before we get to the URS since this relates primarily to utilization of the Trademark Clearinghouse and interaction with claims notices and sunrise so it's all interfaces with the TMCH and the RPMs tied to it.

So I'm going to stop there and see if there's any additional comment on the notion of a basic inquiry by this working group so that we can understand the availability, operation and costs of these private RPMs and then through that understanding make some knowledgeable assessment of how they interface with and affect the utilization of the ICANN RPMs. Kathy.

Kathy Kleiman: Hi, Phil. And thank you for the discussion. Thank you to everyone. I don't think the last note actually captures the discussion. I think there's no objection to talking about these additional mechanisms. But, Phil, as you so carefully phrased, what we do next really depends on what the working group does. I don't think there was any agreement here. Obviously we're not going beyond our charter. But I don't think that last note really captures the discussion.

There seemed to be different, you know, once we get the information then the working group will decide where we go. But I'd like to see that last note struck or rewritten. Jeff Neuman has been raising interesting points. Others, George

Kirikos has. We don't know what to do until we see the information. And so we're going to go forward with an important evaluation. And, you know, it probably fits within our current TMCH review. We talked about that it might go into the end of Category 3. But you're right, this is something for the cochairs to discuss.

But there's a lot to learn. It will be an interesting process.

Phil Corwin: Yes.

Kathy Kleiman: Thank you.

Phil Corwin: Thanks, Kathy. And even though that last note has been taken off, let me say personally my, you know, this working group has a charter and my experience with working groups is that they - we can only do those tasks that we're assigned to do by our charter, we can't - if we want to go into an area that - where there are valid cases made that it's beyond the scope of the charter we either have to back off or we have to go back to Council and ask for a revision of the charter.

But we're nowhere close to that point now. All we're talking about is gaining a basic understanding of this. And what we do beyond that understanding in terms of further inquiry or in terms of recommendations in regard to the ICANN RPMs is going to be through the consensus decision of the members of this working group.

Kathy Kleiman: Agree completely. Thanks, Phil. And thanks, everyone.

Phil Corwin: Okay so with that - with three minutes left, and no further hands up, let's talk about next meetings. The private - there's a question from George and the - Mary has responded. Our next meeting is one hour earlier, 1700 UTC next week. Now, the following week I will not be able to participate on the 25th because I'll be on an airplane coming back from - or I'll be getting ready to go

to the airport to return to Washington from NamesCon. And that private email that I couldn't reply to earlier was about - from another working group member who's going to be at NamesCon.

So I don't know how many of the members of this working group are going to be at NamesCon and feel that that presents an irreconcilable conflict with any participation on a call scheduled for the 25th. Can we get a show of hands from those if you're going to be at NamesCon just click the green Agree. If you're going to be at NamesCon and - okay. So we have one, two, three, four five, including myself, six, seven. All right, seven members of this working group, including this cochair, will be at NamesCon and will find it difficult if not impossible to participate in that call - in that call on the 25th.

I don't know whether that's a significant enough number to not have the call. I think the chairs will take that under advisement and get back to you about the 25th. But I'm lowering my hand now, but we should all take note that we have a call next week one hour earlier. Is there any other business before we conclude for the day?

Okay well hearing none, thanks, everyone, very much for your participation. I think we made a lot of progress today both on the questions and on reaching a general consensus that we're going to, at some point in our work, at least gain an understanding of the private RPMs and the cochairs will be back to you with a proposal for where we put that in our overall work schedule within the next few weeks.

So thanks very much and hope the rest of your day goes well. Bye all.

Petter Rindforth: Bye-bye.

Terri Agnew: Thank you. Once again this meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have

a wonderful rest of your day. (Julio), the Op, if you could please stop all recordings.

                    END