

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working
Group call
Wednesday, 01 February 2017 at 17:00 UTC.**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <http://audio.icann.org/gnso/gnso-rpm-review-01feb17-en.mp3>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/OZ3DAw>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of all Rights Protection Mechanism RPMs in all gTLD PDP Working Group call held on the 1st of February, 2017.

In the interest of time there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe Connect room only so if you are only on the audio bridge could you please let yourselves be known now? Hearing no names, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

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

Kathy Kleiman: Terrific. Thank you, Terri. This is Kathy Kleiman, I'm one of the three cochairs of the Rights Protection Mechanism Working Group. J. Scott Evans has sent

in his apologies, he will not be able to join us at the last minute today he found out he could not do that. But Cochair, Phil Corwin, is with us today.

So the first thing I want to do is ask in this New Year whether there are any changes and updates to statements of interest? I'll pause for a second. Terrific. Okay. I think we'll have some but not - maybe not from people who are currently attending on the call. There seem to be some new people joining the white house and exec and - the white house teams from this working group in the United States.

Okay, so right now we are trying to wrap up the discussion of Category 1 of our Trademark Clearinghouse charter questions. This is not - we're not wrapping them up in perpetuity but trying to move on so that we can look at Category 2 now and begin pushing forward on these questions.

So Mary has created a summary of - not a summary, an encapsulation of the questions. If you go to Page 2 of the material that's posted right now you'll see Category 1 and - Mary, this is - apologies. Mary, could you tell us what you've posted please? Thanks. I'm going to hand the speaker...

((Crosstalk))

Mary Wong: Hello, Kathy. Hi, everybody. This is Mary from staff. If you're referring to the slides on the screen, Kathy, the first slide other than the title slide, is the summary of the discussion from the call last week which primarily focused on Question 2, which you also see on the slide, and that's Question 2 under Category 1 for education. Is that what you were looking for?

Kathy Kleiman: That is indeed. Thank you. So the title on the second page of the slides could be summary including last week's discussion. Is that right?

Mary Wong: Yes, Kathy. I will change the title...

Kathy Kleiman: Okay.

Mary Wong: ...after this call.

Kathy Kleiman: Great, thanks. Okay, so a lot of people were not able to attend last week's call. This was the late night call. But we were happy to be able to put it at a time where Asia could participate and we did have new participants so thank you for joining us. And for those who were not able to attend, it was a continuation of the Charter 1 questions, which as you remember, are our education questions.

And so the summary - the discussion continued. And I'll just go through some of these bullet points. Is it ICANN's responsibility rather than the TMCH's regarding education? Who should be educated besides rights holders? This is now, you know, one of the questions that is very much on our agenda to be discussing.

Question about the continuing - second bullet point - whether the TMCH should be the one reaching out to registrants. So a discussion last week that the TMCH has incentive and opportunity to do education but it currently reaches out to its direct customers. Should we requiring that they go further in their education? And would that raise fees?

Third bullet point, should education be a community effort? And if so how is this to be mandated if at all? Fourth bullet point, there may be a limit on the extent of education the Trademark Clearinghouse can provide on sunrise given the different types of sunrise and the different choices that registries can make as they operate them.

Next bullet point, registries - that we talked about last week that registries have the option to extend the claims period so perhaps they should be doing the education. Maybe ICANN should be serving as a backup if the registries

and registrars don't do education. There is a note that registrars do have the customer relationships.

And how would it work if the Trademark Clearinghouse was responsible for education particularly if there are multiple providers - Trademark Clearinghouse providers in the future. And an ongoing request to look at how much the Trademark Clearinghouse and particularly Deloitte has done in terms of education in the past and were these communications effective? And we'll see some of that or at least Deloitte will be addressing some of that in the questions that we'll be answering.

So really a summary of the options discussed last week, which I think summarizes our discussion across several weeks on Category 1, Education, Question 2, who should be responsible for the education of rights holders, domain name registrants and potential registrants.

One, ICANN can be the neutral educator or at the very least prepare activities. Two, obviously the Trademark Clearinghouse can extend its education beyond rights holders with some of the stipulations and questions above about costs. Three, it could be a community effort.

And, four, it was proposed and actually discussed towards the end as a hybrid model of combining both Trademark Clearinghouse and ICANN efforts that ICANN would really - could develop the materials but the Trademark Clearinghouse could post them since a lot of searches on Trademark Clearinghouse questions, trademark claims notices, etcetera, probably lead back to the Trademark Clearinghouse anyway. So that might be a place where they could host materials for both trademark owners and registrants and potential registrants.

So different things discussed. I will pause for any comments but that was the summary of last week's discussion. And seems to give us some good starting points for more investigation. And unless there's any objection we'll probably

go on now to Category 2, the next set of questions. But let me pause to see if anyone wants to talk about education any further for the moment. Of course a list will be open on this issue and we're not closing the matter by any means. We've kind of scoped it out now and we're moving on to some of our other questions. But let me pause to see if anyone wants to comment.

Okay. Petter, please.

Petter Rindforth: Hi there. Petter here. I think, if I remember correctly from the last time, I started with supporting the Point 1, ICANN to be the neutral educator. But reading the mixed hybrid model, I think that may be the best - because I think still that ICANN has the responsibility to have at least the basic information. And that basic information can then be used by the Trademark Clearinghouse to refer to and to comment in more detail.

But still I think the initial basic material and basic information should be done from the ICANN side. Thanks.

Kathy Kleiman: Petter, thank you. There was - the hybrid model was a way of trying to pull together some of the discussions that have been taking place across several weeks so, you know, I'm glad you like it. It was posed by some people who were trying to kind of come up with a compressive view. Kurt, go ahead.

Kurt Pritz: Yes, I'm a little bit embarrassed to ask this question but it's sort of a point of order. So is our intent as a group then to leave these questions and then go through the rest of the charter questions and come back and answer these with our policy recommendations? Or are we going to, you know, now that we're talking about them, try to answer them now before going onto the next set of questions? I'm just - I just want to understand our order of battle here.

Kathy Kleiman: It's a good question. We didn't have a cochaIRS meeting this week but we did have a cochaIRS discussion online. And we decided to push forward on the questions evaluating Category 2 for this week. So I think the idea is - sorry to

use a cliché - to put a pin in it for right now. Kurt, as you know, we've got information gathering, data gathering out because you drafted many of the data gathering questions. So I think the idea is to raise the questions about education. We define them more, now we'll be looking later today we'll start the review of Deloitte's response.

You know, is there information, say, on education that we don't know about that's out there? We certainly raised the question to Deloitte. We'd like to hear their answers. We've got that. So I think this may be a good time to push on and go to Category 2 as we're still gathering information for Category 1. And of course we'll have to go back once we've gathered that information which presumably is both in written comments as well as in Copenhagen when we're talking to the providers as well as, you know, any other information we might gather. And then circle back to what the policy recommendations should be.

Does anybody object to that? Kurt, I'm going to call on you first. Does that make sense? And then after Kurt, Susan.

Kurt Pritz: Well, from a personal standpoint, I'd like to, you know, finish some things if we can. But I defer to Susan to see what she has to say.

Kathy Kleiman: Go ahead, Susan.

Susan Payne: Yes, sorry, I was just coming off mute. Hi, yes, it's Susan Payne. I think it may be that we need to put a pin in it, although I'm not sure if we actually do. Mary pointed out and indeed you've commented, Kathy, that Deloitte has sent their answers to some of these and that it's possible that they've addressed this. So would this be a good time to just maybe go to the Deloitte response? And maybe not go through the whole thing but to see what they've said in relation to education, because perhaps we can knock this one on the head, as some of us, I know, would love to do.

Kathy Kleiman: Actually what we'd like to do - what we'd planned to do first, we will get to the Deloitte response but that's going to mean changing the slides. And unfortunately I don't think they're going to give us the full answer that we're looking for on this. So what we wanted to do, actually, is take a quick look at the Category 2 questions, move on to the next category so that we actually have six questions in our heads when we're reviewing the Deloitte response.

That was how the cochairs mapped it out. So before we leave this page we'll go over - we've got education in mind, but we've also got - let me remind everyone of the Category 1, Education, questions. The first one is, is the Trademark Clearinghouse clearly communicating the criteria? Do - and also do rights holders understand when their submissions are rejected? And are there options for third parties who may have challenges to or questions from the TMCH trademarks that have been recorded?

The second one is the one we've been spending all the time on, should the Trademark Clearinghouse be responsible for educating rights holders, domain name registrants and potential registrants and if not, who is? And then third is, what information on the following aspects of the operation - I know you don't have it in front of you - Mary, maybe you can put the link into our wiki for these - for the final list of TMCH charter questions so that everyone can see 1-3 as well as 4, 5 and 6. Thanks.

Okay so Number 3 was what information on the following aspects of the operation of the TMCH is available and where can it be found? And it was TMCH services, contractual relationships between the TMCH providers and private parties as well as with whom does the TMCH share data and for what purpose? So those are our education questions.

Now, if everyone moves down to the third slide in front of us these are the Category 2 questions, which we've titled Verification and Updating of TMCH Data. And the first one is, you know, you've got it in front of you, it has to do

with the verification criteria; the second one has to do with challenging rejected submissions; and the third has to do with cancelled trademarks.

So now with these - with this full range - with this broader range of questions in mind, it's probably a good idea to jump forward to the Deloitte response or extracts from the Deloitte response that Mary has created. Okay. Mary, do you want to just jump to the very end which has to do with the outreach and education? That's in everyone...

((Crosstalk))

Mary Wong: Sure, Kathy. We have - yes, we have unsynced the document so everyone can scroll. And it would be in this document, the bottom of Page 2 and the rest of Page 3. We have the fuller Deloitte response ready to upload if we should get there. But basically this is the document for Deloitte's response from Questions 1-9. And the outreach question is Question 9 as I've just said. Thanks.

Kathy Kleiman: Terrific. Okay, so Deloitte was asked - so to answer - to be responsive to Kurt and Susan - Deloitte was asked about its outreach efforts and its audience. And, let's see if this has the same detail as the detailed response? Yes, and so it talks about - and you'll find this on the very last - no, on the second page, sorry third page of the slides we're looking at, the webinars and ICANN meetings that they attend, the International Trademark Association events, etcetera.

The very last line talks about that the meetings that the TMCH hosted and sponsored at various IP meetings and seminars in various countries of Europe, Russia, China, Taiwan, Japan, the Middle East and the US in various languages spoken in those countries.

So at least from my perspective they're talking about a very IP-trademark focus for their education, which is what I think we expected. But let me see

how other people read this. And we can talk about the education question, we can also move on to the verification and updating answers that we've been given by Deloitte.

So let me stop for comments and see if anyone wants to comment on education. Looks like Ed Morris has said, "The education seems only oriented towards rights holders, what about registrants?" George supports Ed. And Mary agrees that the primary audience appears to be trademark rights holders and their agents. Does anyone want to comment here? Okay.

In that case, Mary, do you want to provide an overview - moving back up to this extract - Mary, do you want to provide an overview if you would, of how this extract was created by staff and what we should be looking at to the extract versus which is three pages, actually, 2.5 pages, versus the full questions, which run about six pages. Maybe you could tell us a little bit about the difference and why we would look at one versus the other. Thanks. Go ahead.

Mary Wong: Hello, Kathy and everybody. It's Mary again from staff. There is absolutely no difference between the text in this document and the text of the response received from Deloitte. What staff tried to do was to simply copy the full text from Questions 1-9 because the rest of the document is fairly long and considering the group's discussions so far, as was discussed with the cochairs, it seems that most of our discussion today might be focused on these initial Questions 1-9.

We can upload the full Deloitte response, which will have these three pages as well as the additional if you like, Kathy.

Kathy Kleiman: No, I think we're good here. Can I ask people - and please feel free to throw it into the chat - whether people have had a chance to look at the questions from - the answers really from Deloitte, the questions that were asked and the

answers? But let me provide some background of how these questions were framed. This was done by the subgroup.

And the subgroup wisely, and I say wisely because I actually wasn't part of this idea and I admire the people who did, really went through the charter questions to see - to try to anticipate what kinds of questions the full working group would have. And what kind of data it might be nice to ask for ahead of time from Deloitte so that when we got those questions the data might be available.

So there's really a close correlation between the charter questions as revised and the questions that were asked of Deloitte. Maybe not be a close correlation with the answers but there's a close correlation with the questions. Going to take a look at chat for a second.

Has someone just come online to comment? Okay, I agree with David McAuley that Deloitte does sound a little frustrated at some of the questions and in some cases did not give answers or referred us to other places. We saw both. And in some cases gave extensive answers.

Okay, okay. Let's go through quickly just some of the questions and answers that we're looking at, some of the material we have in front of us because this is the basis of some of the work that we're doing.

So one of the things we've been asking about is rejection rights, Question Number 1, and in the second paragraph they talk about that they found or rejected about 8% of the total mark records submitted to the Trademark Clearinghouse. And then broke that down by country.

And in the second question we were asked - we asked - the working group asked what were some of the most frequently asked questions by trademark owners, by registry operators and by registrars? And the TMCH talks about how they have initiated a response, a more formal response because they

are being asked a lot of questions on, one, how to submit a trademark record; two, for what purpose is the trademark record deemed incorrect; and three, I have a claims notification, what do I do now?

So these are responsive to some of the questions we've been asking about education and also is the Trademark Clearinghouse clearly communicating its criteria clearly? In Number 2, the Trademark Clearinghouse seems to be telling us, at least to me, to that they're trying to communicate their criteria.

Number 3 I don't think is really applicable to what we're doing right now, that's SMD files and sunrise periods. So something we'd go back to. And please feel free to follow me as we page down on this.

Number 4, are the registration totals contained within the various monthly, quarterly reports made to ICANN cumulative? And the answer is yes. This is all cumulative.

Now they say something interesting, as the TMCH is not allowed to delete any mark records, this makes the totals cumulative. But I wasn't sure what that means in terms of canceled marks, so that may be a follow up question. And as we look at some of these questions please free to jump in and say - see whether we need to follow up.

One of the questions - Number 5 - one of the questions the sub team had is what's meant by the term "expired mark" that you see in the reports? Does that have to do with the status of the underlying trademark record? And it appears that the answer is no, that this has to do basically with whether they paid for their service or not and whether the service at the Trademark Clearinghouse has lapsed. That's what the Trademark Clearinghouse means by an expired mark in their reports.

Number 7 is interesting, it is a direct response to some of our questions - to our Question Number 6 in Category 2 about canceled trademarks. And the

Trademark Clearinghouse responds that when a trademark is canceled it's the obligation of the trademark owner to notify the Trademark Clearinghouse. So that may be something we want to talk about. And it's the obligation of the trademark owner to notify the Trademark Clearinghouse as soon as possible.

But if there's an expiration of the mark that's something that the Trademark Clearinghouse monitors. And by expiration here I believe they appear to be referring to the actual expiration of the trademark itself. If the trademark expires then the trademark office - this is a piece of data that the Trademark Clearinghouse has. So we're seeing actually a confusion, and I'm glad we asked these questions that expired marks appear to mean two things, one is an expired trademark at the trademark office, and the other is a mark that's been recorded in the Trademark Clearinghouse where the fee for services has now expired. So we may want to come up with some new terms for that.

There were a number of people with Question 8 that were concerned about where the trademark agents were located. And it's interesting that the Trademark Clearinghouse doesn't keep that information. And they say this is not part of the scope of the Trademark Clearinghouse. So it's difficult to know - we know that there were some questions particularly from developing countries whether trademark agents were available to work in local languages with local trademark owners. And Number 8 appears to not - Deloitte appears to not be able to give us the answer on that.

And Number 9, going back to the outreach efforts of the Trademark Clearinghouse, and they say they have some data and they provide us kind of with an overview of the webinars, meetings and gatherings that we talked about earlier in the meeting.

So let me pause for a second and take a look at the chat and pause for comments and commentary of what you think as we look at these first six questions that are really about education and understanding the verification and updating of Trademark Clearinghouse data and the questions we've

been given by Deloitte. At least on this initial pass, do you see initial information that you'd like? Are you happy with the responses? Let me pause. Thanks.

Okay, hearing no comments, Mary, I'm going to call on you again if I might to talk a little bit about some of the files that not in this extract but in the longer document were being referred to. Deloitte says in answer to certain questions that we provided the answers but the answers have been provided to ICANN in our monthly reports. And those are longer - those are files that when we followed the link that you sent out yesterday go to a set of kind of very basic types of reports provided to ICANN, data reports. Can you tell us anything more about that? I believe they're called CSV files.

Mary Wong: Hello, everybody. It's Mary again from staff. And, Kathy, thank you the question. First of all, I've been coordinating with my colleagues who are working directly with the Trademark Clearinghouse and I'm happy to report that those CSV files, in other words, the reports, have now been updated through October 2016. If you looked at it before yesterday you know that it showed only up to April 2016 so I'd like to take this opportunity to thank Deloitte and my colleagues for working so quickly to update that page.

Secondly, you'll notice that there's a certain type of information that's published on the page. And I believe that I sent an email to the group perhaps late last night to note that there is indeed additional data that is reported on a monthly basis to ICANN by Deloitte.

Those have not been posted, as you'll see if you looked at that records page, but I'm told that we are working with Deloitte to try to post most of that data possibly on the TMCH Website rather than on ICANN's micro site. I don't myself know what the problem is but I believe it has to do with some complexities in the system of reporting as well as getting consistency on some of the metrics that were used. So as far as I know, that is something in process and if I hear anything more I will let you know.

But at the moment, and I'm going to put the link in the chat right now, at the moment what we have in terms of public reports are back-date on a three-month basis is on this page on the ICANN micro site. Thanks, Kathy.

Kathy Kleiman: Thanks, Mary. And when you open up these files you'll see per month that there is one file that counts the number of recordings, say, that have to do with trademark or treaty that have been court-validated and then of course the regular registered trademarks. And so - and it goes through other data.

If you're having trouble opening these CSV files let us know. I've tried it on different systems and sometimes they open well and sometimes they don't. The second file is country by country the total number of, you know, trademarks submitted, the total number of trademarks verified and it goes through. The ones that are sunrise eligible, you know, these are things that we need to study. But we do have some of that data out there and Deloitte is probably right to refer us to it.

Let me see if anyone wants to comment now on this? We now have the full questions of Deloitte in front of us. I don't think I'm going to go through that, it is six pages. And it is something to be studied. And it does refer to our full set of Trademark Clearinghouse charter questions, not just the six that we're looking at now. So it's going to be a repository that we go to on a regular basis to find out more. And now we do have that link from Deloitte to other files that they'd like to look at for some of the answers.

So let me pause for comments. If not, Mary, can we go back to the Category 2 questions so that we can start talking about those a bit?

Mary Wong: Hi, Kathy. This is Mary again from staff. I'm happy to do that. I don't know if you've been able to see, because it's gone by quite quickly, there has been some discussion in the chat particularly and specifically about the role of the Clearinghouse in education and who its primary audience should be. Staff

can try to summarize that but since that was something that was highlighted in our earlier discussion I thought I'd point it out.

Kathy Kleiman: Okay. Does anybody who's in the chat room would you like to come onto the phone bridge and talk about some of the education discussion that's taking place? Go ahead, Phil. Thanks.

Phil Corwin: Yes, thanks, Kathy. Phil for the record. I hope everyone can understand me, I'm recovering from a miserable cold. But, yes, just to follow up on some comments I put in the chat, you know, I think the TMCH education efforts are what you'd expect. They've been trying to educate rights holders as to the existence of the Clearinghouse and what the potential benefits there are from registering marks and what marks can be registered.

At those meetings, ICANN meetings, INTA meetings, you're going to have some presence from sophisticated domain investors who have significant portfolios or by their counsel and they're going to have a full understanding. But the ordinary registrant who's just looking to register one or a few domains at new TLDs, is not going to know about and really probably doesn't need to know about all the permutations of the Clearinghouse.

The main issue for them is what does it mean if they receive a claims notice? Can they continue with the registration? Is doing so necessarily infringement? And I suggested that since they're going to receive that claims notice from a registrar, when they're attempting a registration, it's the registrant interface that's the natural contact point for most regular registrants.

And so I suggested that, one, there should be some information paper developed about what claims notice means and doesn't mean and that stops short of attempting to provide legal advice that can be at the ICANN Website with a link and a revised claims notice; and that an identical or similar information sheet should be provided to registrars to make available to their customers.

I think that would probably satisfy the educational needs of the average registrant whose primary concern about the Clearinghouse is going to arise in the context of receipt of a claims notice. Thank you.

Kathy Kleiman: Phil, let me see if - I'm not sure if Mary captured it in the notes. So what you're advising is that we have kind of a plain English discussion of the trademark claims notice that would be available both as a link in the trademark claims notice when it comes up in front of the registrant in real time as well as an information sheet provided to registrars so that they can make that available to the registrants as well. Was that...

Phil Corwin: Yes, and I think we should just pin that, to use a term, and keep that thought in mind for when we actually get to the claims notice portion of this working group's agenda later on and consider that as a potentially beneficial supplement that really shouldn't be particularly burdensome to compose or to distribute. It can be - it's a one-time posting at the ICANN Website, it's inserting a link in the claims notice and it's making it available to be provided by registrars and an interaction they're already having with a potential registrant.

Kathy Kleiman: And to bring in the hybrid model, perhaps asking the Trademark Clearinghouse to post it as well so that when people are searching, if they are searching, they can find it in various places, registrants and potential registrants can find information in various places...

Phil Corwin: Yes.

Kathy Kleiman: ...that might come up on search terms .

Phil Corwin: Yes, I wouldn't - I wouldn't object to that, but I think for most ordinary registrants, their interface with all of this is going to be through a registrar, it's

going to be a very small percentage who actually do a search and try to understand what this Trademark Clearinghouse is.

Kathy Kleiman: But this would indeed, the proposal that you make, would indeed appear to address some of the concerns that people have that the education is fairly one-sided at this point. So that makes sense to me. Does anybody want to comment, object? I'm seeing agreement in the chat room that this is largely an issue that we come back to when we get to trademark claims.

Phil Corwin: Yes, that would be my suggestion. And again, I think the educational needs of rights holders differ from the educational needs of ordinary registrants. The rights holder is looking to understand which of my marks can I register? What benefits do I get? What does it cost, etcetera. The average registrant is only going to care in the context of receipt of a claims notice that that's the result of a mark meeting the registration criteria.

Kathy Kleiman: Although, if the Trademark Clearinghouse is providing information having a balanced set of information for those people who may be representing registrants or maybe trying to educate registrants as well as trademark owners, having it all in one place might be useful as well. But...

((Crosstalk))

Phil Corwin: Yes, I think that's fine but, again, I think the average registrant is more likely to find this information either at the ICANN Website if we put a link in the notice or from their registrar when they're attempting a registration then we can't assume they're ever going to find their way to the Clearinghouse Website.

Kathy Kleiman: Agreed. Agreed regarding the average registrant. Yes. Thank you, Phil. Any other comments? Terrific. Then can I suggest we go back to Page 2, the Category 2 charter questions on verification and updating of the Trademark Clearinghouse data, and begin to move through them as we've done with

Category 1? And frankly, this is at the urging of Mary yesterday who said that our clock is ticking and we have to move more quickly through, so I take staff's instruction in mind.

Okay, so Number 4, if everyone's with me, again Page 2 of the slides that are posted now. Should the verification criteria used by the Trademark Clearinghouse to determine if a submitted mark meets the eligibility and other requirements of the TMCH be clarified or amended? If so, how?

And Number 5, should there be an additional or different recourse mechanism to challenge rejected submissions for records in the TMCH? And Number 6, how quickly can and should a cancelled trademark be removed from the TMCH database?

So regarding - Number 4, the verification criteria, the TMCH has shared with us that they think their verification criteria is pretty clear. Would be interested in thoughts from those who use this regularly whether this does need to be clarified or amended.

For Number 5, we've learned that, yes, is there an issue with rejected submissions that needs to be addressed. I don't believe there have been any disputes on this, but as Paul Keating pointed out in the past, it's hard to dispute - it's hard for third parties to dispute something they can't see. That's an issue he's raised before. I don't know if he's on the call today.

And Number 6, canceled trademarks, we've learned that the trademark owner has to notify the Trademark Clearinghouse. Is that enough? Should there be a different process? Happy to take comments on any of these issues or any thoughts on how to go forward on these Category 2, verification and updating of TMCH data questions.

Phil, I'm thinking that might be an old hand? So let's go ahead to George.

George Kirikos: George Kirikos for the transcript. For Number 5 it's kind of (created) in one direction, should there be an additional or different recourse mechanism to challenge rejected submissions for records? I think what Paul Keating was talking about was rejecting accepted submissions, so that's why we'd need to have the open data in order to be able to have third parties challenge not the rejected submissions but the accepted submissions. I don't know whether that should be an amendment of Number 5 or whether it should be Question Number 7 or something or...

Kathy Kleiman: Would you like to propose it as an expansion of Number 5?

George Kirikos: Either that's or it's an amendment of Number 4 where you'd want to be able to challenge the verification criteria or challenge the acceptance of the verification criteria. Thanks.

Kathy Kleiman: Okay, thanks. Good point. Mary, if we could make a note that we've got that flip side and add it to 4 or 5, the flip side of both the trademark owner that meets the situation of a reject mark and a third party that may want to object to an accepted mark. Kind of flip sides of the coin.

Is there anyone that wants to - these questions were presumably raised because there are issues and concerns so if people want to bring some of that to light this might be a good time to help us to, you know, hear some stories about how these criteria and these mechanisms are used and whether that raises concerns. I see Mary has her hand up. Mary, go ahead.

Mary Wong: Thanks, Kathy. And this is actually in relation to the point raised by George, which, if I recollect correctly, we had had a slight discussion about this when we first went through the education category. And I think we've been told that the Trademark Clearinghouse database is not publicly searchable. So the questions that had been raised there was how would a third party know what's in the database to even challenge what's recorded there?

And I don't know the answer to that but this is something that I thought I remember from our previous discussion. It may be something either folks more experienced with the Clearinghouse already know the answer to and weren't on that call the last time we talked about it. It may be something we need to go back to the Clearinghouse on. But while I'll record George's question, I just thought I would bring that back up to see if this is something we wanted to follow up on. Thank you.

Kathy Kleiman: Mary, thanks. This is Kathy. Actually, now that I look at it more closely, it's in Category 1, education questions, Number 1, Section 3 asking about options for third parties who may have challenges to or questions about records in the TMCH. So it looks like we have it. I don't know if we want to take that piece of it and put it really in Category 2 where some of the verification updating and perhaps checking of TMCH data seems a little more relevant right now.

But it is something that has been flagged and has been commented on by members. So perhaps, Mary, can we perhaps move Category 1, Number 1, Section 3 down to Category 2? I think that would help with the grouping so that we don't lose it. And pursue it as you suggested. But let me check, it says WIPO, please go ahead.

Brian Beckham: Hi, Kathy. Hi, everyone. This is Brian. I just want to make sure we're all crystal clear about this notion of challenging a submission to the TMCH. And probably a little bit of precision is in order here. If the idea is to challenge the fact that the TMCH has accepted a particular trademark registration based on application of the Trademark Clearinghouse requirements, then of course that's perfectly acceptable.

But I think it's inappropriate if we start to re-litigate some of the discussions that take us back to the discussions around absolute versus relative grounds for examination, and that's where we came up with the proof of use requirement for recording in the Trademark Clearinghouse.

The place to challenge the trademark registration is in the national office, not in the Clearinghouse. So I think it's important we're clear about terms and the difference between the two. Thanks.

Kathy Kleiman: Before you leave - before you leave, let me ask you question. I know it's a far-flung one, but say there is a cancelled trademark that the trademark owner has not reported to the Trademark Clearinghouse, would that be one where a challenge by a third party would make sense to see if that trademark is recorded and to make sure that it's been cancelled?

Brian Beckham: Yes, yes, thanks, Kathy. That's a good question. I think it's ultimately for this group to come up with. I don't think that's anything we would have any particular heartburn with. Of course in the responses from Deloitte, I think they flagged that there was an obligation on the trademark owner to note the cancellation or sorry, the expiration, whatever the status was to Deloitte. And if there was an option for a third party to raise that existence to Deloitte, then I think would be unobjectionable. But again, I think it's something that probably as a group we want to consider and answer.

Kathy Kleiman: Agreed. Does anyone want to comment on that, on the special situation of cancelled marks or on any of the charter questions that we're looking at and how to proceed on this category - on the beginning of our discussion of Category 2?

Does anyone have any thoughts on - of whether - given information - new information that we have about the relatively small number of rejected submissions, I'm looking at Question Number 5 now, is this an area - is Number 5 an area - what do people sense - where we really need to devote a lot of time? Do we need a different mechanism for trademark owners to challenge the rejected submissions?

Does anyone have the sense on a scale of 1-10 - 10 being, you know, critical - that this is a critical question or not one in light of the relatively small number of rejected marks? Is this one where we really should be devoting much time and energy or should - or are there other things that need our attention more?

There's still a hand raised. Is that an old hand or a new hand? Probably an old hand.

Brian Beckham: Sorry, it's an old hand.

Kathy Kleiman: Okay terrific. Barring any - let me wait a second to see if anyone wants to comment on 4, 5 and 6. One thing to look at here is that a lot of - 4, 5 and 6 were largely intended as informational questions, not necessarily an indicator of trouble or concern but information questions. We've asked these questions, in general Deloitte has responded. It looks like 6 may have some opportunity for us to do a little bit with third parties and cancelled trademarks.

Does anybody have any comments? Otherwise I'm going to give everybody back 10 minutes because this is really a lot to think about, these new Category 2 verification and updating questions and the full answers that Deloitte has given us in six pages of Q&A that we sent to them.

Mary, go ahead.

Mary Wong: Thanks, Kathy. So just a couple of points. One, very specific one is that Deloitte refers in a couple of places to IBM, which runs the - operates the database. And I think I sent out an email but perhaps I can just repeat this that we have forwarded those questions to IBM and when we receive responses we'll let you know.

Secondly, in terms of preparing for going through our comprehensive review of the TMCH and preparing for the milestone in Copenhagen where the ICANN 58 meeting will be, as was previously discussed, we will reach out to

Deloitte to see if they will be at the meeting either in person or remotely, and if they will be able to participate in a discussion with us.

The thought being that any follow up that the group may have can be sent to them ahead of time and perhaps we can finish out the discussion with them at the Copenhagen meeting.

In that regard, and this is my last point, you know, staff has been looking at the different documents. We've got these charter questions. We've got a few additional points and questions that were raised as a result of our discussion of Category 1. We have the response from Deloitte, as Kathy you noted, even though it's six pages is quite a lot of information. And hopefully we will have more responses coming in from say the Registries.

So, if you would like staff can try and put these together in a document or a set of documents so that instead of folks having to shuffle through three or four different sets of documents, at least for example, for one of the charter questions if Deloitte provided a response that might have relevant information, we can put that all together so you have it all in the same place. Would that be something that would be helpful?

Kathy Kleiman: I think that would be very useful, Mary, although there isn't completely a one-to-one correspondence between the answers of Deloitte and the questions we asked. And in some cases there are multiple responses to questions, in some cases one question actually is responsive to several questions. So I think that matching will be fun but appreciate you doing that. I think that would be great.

The other thing is, as people read through it, I'd love to know what you think about some of the stuff that's being bounced from Deloitte to IBM. I was a little surprised at some of this because it's interesting. I would have thought that Deloitte would have more answers on some of the questions we asked them given what's on their Website and some of the things they're doing. But

when you get to those points in the questions let's look at those and see whether we want follow up.

As Mary mentioned, we're hoping to have Deloitte in Copenhagen and I think that would be - that will be critical time, that's our face to face meeting of three hours, which looks to be - Mary, do we have confirmation that that is going to be on the first day of the meeting? Go ahead.

Mary Wong: Hi, Kathy. Thanks for that reminder. I cannot say that we have confirmation. What I can say is that staff has put in the request to the meetings schedulers. And as far as I can tell there is not likely to be a problem with us having three-hour face to face meeting. That will likely to be on Day 1 of the Copenhagen meeting which is Saturday the 11th of March. And I would like to say that that is likely to be in the morning Copenhagen time. None of this is concern but that's the request that's been put in.

And of course this three-hour slot is in relation to the usual 60 or 75-minute slot that each working group would normally get at ICANN meeting, which we have requested a slot for as well. And that - that slot will more likely be an open session with the rest of the community.

Kathy Kleiman: Terrific, Mary. Thanks. So the three-hour face to face meeting, for people who are in other working groups, at least the block schedule that I saw had the three major PDP working groups meeting at different times maybe with a little overlap but not a lot of overlap in that first day, as Mary said, Saturday March 11.

And, Mary, I believe our outreach session has been scheduled for the 12th, but I'm not sure, is that - is there any more detail on the request for that, the short outreach session with the community? Go ahead, thanks.

Mary Wong: Sorry, Kathy, I forgot to mention that. Thank you. So if we do the three hour block on Saturday the 11th, which is Day 1, at the moment that one hour plus

outreach community session has been requested for Day 5, which is Wednesday, and I want to say that's the 15th of March. That is the typical day at most of the GNSO working groups and implementation teams will be having a similar kind of session. So I'm going to try and confirm that slot but essentially we're looking at Saturday the 11th for a three-hour block and Wednesday, whenever that is, the 15th or so, for an hour or 75 minutes, possibly even 90.

Kathy Kleiman: Terrific. Thank you, Mary. And, Mary or Terri, can you tell us when the next meeting is? And Terri just posted it. So 1800 UTC on Wednesday February 8. So would anyone like to comment as we wrap up? Thanks for kind of this broad ranging discussion today as we move onto Category 2 of our TMCH charter questions and begin to approach the detailed answers of Deloitte and the extensive material that they provided. Any final comments? Then I wish you a good rest of the week. Thank you very much. Take care.

Terri Agnew: Thank you. Once again, the meeting has been adjourned.

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