

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

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Coordinator: Recording has started.

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

Interest of time there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe Connect room so if you are only on the audio bridge could you please let yourself 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: Hi, all. This is Kathy Kleiman. I'm cochairing for today. I see Phil Corwin on the call and hopefully J. Scott Evans will be joining us. We've been talking about the Trademark Clearinghouse questions. And in the chat last week Jeff Neuman raised an interesting point. He said that there seems to be an endless pattern of asking questions without a path towards discussing the policy issues.

And, apologies, there's an announcement in my firm, let me pause. And that's a good point. We've gone through the Trademark Clearinghouse charter questions. We have worked hard on trying to ask questions to Deloitte and IBM, our providers. But now we're going to start a deeper dive.

So the cochairs, with a huge amount of support from Mary Wong, have put together the documents that provide the basis for our review, the documents, the rules that were adopted for the Trademark Clearinghouse by the GNSO Council and the Board, the rules that were then written into the new gTLD Applicant Guidebook and the rules and practices been adopted by the providers, particularly Deloitte.

And we hope this will form a basis for going deeper into the questions that are before us and helping us decide which charter questions we want to look at more, and which charter questions we think are being handled properly and don't merit a further review.

Mary, I think you are going to briefly post the chronological listing of source documents for the Trademark Clearinghouse. So the document coming up, which hopefully you will be able to control, I am not going to read out, this was circulated I believe late last week.

And this is a magnificent chronology that Mary has put together of the critical documents that form the basis of the Trademark Clearinghouse, the path through the GNSO Council to the Board, to staff.

What you see from all these pages, and when I printed it out it was 5.5 pages, is that the path to creating the Trademark Clearinghouse was not a straight line and it wasn't an easy course. There were recommendations that came in from the community, particularly with a very, very strong report from the IRT that then came into the GNSO Council, which created a group that been worked on rules that were adopted by the GNSO Council and passed by the Board, called the STI recommendations, or the final STI report.

But then there were questions raised about further work that needed to be done. And as you page through the chronological listing you'll see a discussion of the strawman and some additional requests requirements that were added particularly in 2013, some additional material that was added as part of something called the strawman solution, which is where trademark+50 comes from, also called the abused mark list, and some other parameters that were added.

So again I'm not going to go through all of this. I urge you to dive into these documents, and there is a lot of material. Of course you don't want to read everything and memorize everything but for any given question that you're looking at, the answer, you know, this is the basic research material. So if you want to know about design marks there is a path here.

And it would be a path through, again, the rules adopted by the GNSO Council and then by the Board, the rules adopted into the Applicant Guidebook, which may or may not be the same, and then the rules and practices adopted by Deloitte and IBM, which again may or may not be the same as a review team that's what we are doing.

So fortunately, Mary and I have done the work for you this week. Mary, could we go on to the next document? Where we actually went through the documents for some of the questions, the charter questions that we've been looking at, we picked Category 3 as they start, the breadth and reach. And I

believe Mary is working on another document that would be covering other categories and sections.

So here you've seen this type of table before but now the categories are different or slightly different. So we have the charter questions, we have the STI recommendations, the report, the rules that were approved by the GNSO Council and the ICANN Board. The next column is what actually the language that actually went to the Applicant Guidebook. The next column is Deloitte's guidelines and other materials developed for the program.

So generally what we're seeing here is language that's actually on the Deloitte Website. Mary may correct me on that but that's where I found some of the materials. And then what we've done is just kept the working group discussion as it existed up until February 22 so we can see what the discussion has been. And again a lot of this applies to questions to Deloitte. But now some of the, you know, some of these questions are for us which is not just what is Deloitte doing but should Deloitte be doing it? What are the rules as we review this? Are the right rules being followed? Do they need to be revised? Do they need to be updated for other considerations?

I'm seeing a lot of work in the chat so please feel free to come online. It looks like Martin has raised his hand, of course the first charter question if our design marks currently handled by the TMCH provider. Martin, go ahead please.

Martin Silva Valent: Yes, hello. Can you hear me?

Kathy Kleiman: Yes I can but you might want to speak a little louder. Thank you.

Martin Silva Valent: Great. Yes, Martin Silva for the record. Mainly this is something I brought up in a call before, I'm not entirely understanding how the design mark issue is being addressed in the working group. I mean, it is up here why we are not following the STI recommendations, you could say the same for the

trademarks that are also being (unintelligible) universal effects on the protection. That specifically when it comes to this provision of the STI, I don't get why we are allowing the Trademark Clearinghouse to go with the full protection of design marks. At least it is clear that we have a contradiction there.

And I think we haven't addressed that discussion. I only listened to people going through that like yes, it's obviously that now we are going to accept it and we are not bounded by the STI itself. I don't really grasp that. I don't want to raise the specific issues no one else is interested in but if there is some interest I would love for someone to (unintelligible) on this. Not a subgroup so much but maybe to put a pin on this, not just to go through it and accept it.

Kathy Kleiman: Martin, hold on for a second. This is Kathy of course. So for those people who haven't been on the call for say a week or two people have been traveling and all, what is the concern that you are laying out regarding the design marks?

Martin Silva Valent: Oh, basically design marks are trademarks that specifically protect (unintelligible) when they're in some sort of design context, in some sort of figurative context. Here the wording is (unintelligible) Spanish and in English and other words, figurative, (unintelligible) text design vary the meaning, the law meaning of the word that basically means that the Trademark Clearinghouse should only accept trademarks that talk exclusively about text and not about text and some figurative thing because in the DNS we cannot accept that the figurative part of - could bring meaning or could bring distinct - a distinctiveness to the text.

So in this sense the STI recommendations were pretty clear, they said like we are not going to protect design marks because the DNS cannot actually get a hold (unintelligible) that the figurative part of the design mark is bringing to the text. So we are only going to (unintelligible) the text, and the Trademark Clearinghouse is allowing design marks.

And I'm not saying that I would definitely always opposed to it, I'm open for a full discussion, my intuition and I tend to agree with the STI recommendations, is that we should only support text trademarks alone. And the working group haven't discussed this so far (unintelligible) the few moments (unintelligible) about this was very much things like we can do it, and we want to do it and this is not an issue.

But I haven't heard a full debate that could convince me that we should go away from the STI recommendations. Something that should be our baseline, you know, that we are getting away from this, we need a good reason to do that. So that we can submit a strong reason of why it is not problematic the design marks are being taken account in the Trademark Clearinghouse. I don't know if that's enough, maybe you want to add something else as a - maybe you have more experience on this history.

Kathy Kleiman: Okay and let me just to double-check, you'd like to look into this issue further, you'd like the working group to look into this issue further kind of the discrepancy between what the original rules say and what's being done?

Martin Silva Valent: Yes, I don't want to impose. If this is not an issue that anyone else is concerned that I will of course just drop it because it's only me, I am the crazy one and everything. But if someone else is (unintelligible) this I think we could at least address this in a few calls or we can try to maybe solve this before moving on. I'm not saying to create a subgroup, I don't want to get into the procedure of how we should debate this. But since I'm raising my hand this is what I have to say. I think we should debate does in whatever procedural manner you think it's appropriate if there is interest in this.

Kathy Kleiman: Terrific. George in the chat room says you're on the right track, Martin. And I want to thank you for reading the table that Mary circulated late yesterday so thank you for reading the table and seeing that's what the STI

recommendations were, what was in the Applicant Guidebook and what Deloitte is doing up here to be very different.

As the STI definitely set the rules adopted by the GNSO Council and the Board said the TC database, which is the Trademark Clearinghouse database should be required to include nationally or multinationally text mark trademarks from all jurisdictions, and then goes on to differentiate that from design marks which it says should not be accepted.

Let me go on to Susan Payne who's next in the queue. Thank you, Martin.
Thank you, Susan.

Susan Payne: Hi, yes, it's Susan Payne here. Thanks, Martin. I don't think anyone had suggested that we shouldn't be discussing this. I mean, I think that's the purpose for the creation of this table and indeed there's been a great deal of discussion on the list on this topic. But I think we do have to recognize the chronology document which was flashed up at the beginning and is no longer being shown to us, which is that, you know, there was this sort of long process of where we, you know, how we got from where we started with the IRT to where we ended up.

And the STI recommendations are by no means the last word on this. And there was extensive public consultation on the Applicant Guidebook for example, and then on the straw person proposal. So I don't beekeeping stopped the clock at the STI recommendations. It's necessary to look at the whole history.

Kathy Kleiman: So this is Kathy again. Thank you Susan. Although if people can find something -- I don't recall the STI proposal having to do with - sorry, the strawman proposal having to do with design marks, so if there's something else in the chronology we need to put in, you're right, it's a very complicated history. But on design marks, we tried to capture it, if there's more there we

need to put it in. But there does appear to be an issue to discuss. Martin has raised it. It looks like others in the chat room have.

So in terms of going forward we have a charter question in front of us, Number 7, our design marks currently handled by the TMCH provider? We have questions going out to Deloitte. We have examples that Rebecca Tushnet has spent a lot of time to put together for the working group, then I believe we are now passing on to Deloitte. But we also now have this discrepancy between the documents.

So the question would be, and I'm going to ask this for every charter question we deal with today, are we done with the question? You know, we don't have any further questions, we're okay with what's happening. Number 2, do we want to look at this further, perhaps have a few people go off and work on it, a subgroup or just a sub team, or do we want to bring it back to the full list and continue to debate this fully? I'd love your thoughts.

Martin, is that an old hand or a new hand?

Martin Silva Valent: It's a new hand.

Kathy Kleiman: Oh thank you.

Martin Silva Valent: If anyone wants to raise this I think we should at least assemble a small group of people, about whether that is just an open list or that's a specific name of people working together within Skype that's up to you.

Kathy Kleiman: Martin, what might that small group of people do?

Martin Silva Valent: I would like to basically discuss why we are putting design marks in the Trademark Clearinghouse and what are the problems, the harms that can be done with that. Is that an issue that we are going to see afterwards, we are going to grab our heads and say we shouldn't have done this. Basically that's

what I'm afraid of. I mean, the STI had reasons to put only text, what are the damages that could be done from us having design marks as well?

Kathy Kleiman: Terrific, thank you. So we proposal on the table for a small group of people to look at why we are putting design marks into Trademark Clearinghouse database and what harms might be flowing from that. Thank you, Martin. John, you're next in the queue.

John McElwaine: Thanks. John McElwaine for the record. First of all, volunteer to help out with that effort if we do put one together. But secondly, I would like to add to the list of questions, maybe to ask a Deloitte, I've always had a sneaking suspicion that part of the reason why it went from text mark to word mark to what we see in the Trademark Clearinghouse guideline does that not every jurisdiction, like the United States, makes a distinction between a standard character mark, what sometimes referred to as the word mark, and a design mark.

And so I'm wondering if there's a practical or technical consideration that they had to develop there the standard that they did so that all jurisdictions trademark registrations could be accepted.

Kathy Kleiman: John, this is Kathy. That sounds like an excellent question to be asking the Trademark Clearinghouse, Deloitte. And I'm hoping Mary is capturing that as an addition to the questions we're asking them. Okay. Martin, are you still in the queue?

Okay, terrific. So we have two volunteers, John and Martin, for a subgroup that will look at this a little more, in a little more detail and this discrepancy that we are looking at and this question of other jurisdictions and how they handle their marks. Very good question.

Okay Susan, go ahead.

Susan Payne: Hi. I just want to say I think if we ended up going with a small group at some point then I have no doubt you will get more than two volunteers, but a number of us have been saying in the chat that we are not quite sure where that point yet because we, as I believe, we've been talking about in previous weeks we've been pulling together additional questions to ask Deloitte and we are planning to meet them I presume in Copenhagen. So it would seem a little bit premature shall we say.

Kathy Kleiman: That make sense, Susan. Let me ask Mary Wong, she is the keeper of our time and of our calendar, whether we've got an extra few weeks or whether she advises us to perhaps do things in parallel and start the questions going. Because Susan, I'm going to respond, I don't think Deloitte has all the answers here. There does seem to be discrepancy in terms of what's been adopted by Deloitte. So would it make more sense to do the work in parallel and prepare perhaps more for Deloitte? I see some of the discussion in the chat.

But Mary, if you would give us a sense of how much more time we have on the charter questions I'd appreciate it.

Mary Wong: Thanks, Kathy. Hi everybody. This is Mary from staff. And I think everyone knows that we are under somewhat of a time crunch in this Phase 1 of our PDP so we are, at least from the last work plan, which we will review in Copenhagen with an update, we were supposed to I think be moving on to sunrise and claims in April.

So considering that we have 16 charter questions, some of which, as you may recall from a discussion a couple of weeks ago, we had a note to say working group to discuss further, Kathy, I think my answer to the question at this point is that it really depends on how much deeper discussion on how many more of the charter questions the group intends to do.

Kathy Kleiman: That's a good point, Mary. How many, you know, do we want to do a deep dive into all the charter questions or are we now picking the ones that really need that close policy scrutiny from the review team, from the working group? Okay, I'm going to say that the proposal is on the table for a small group. There seems to be people interested in participating in a small group to ask further questions.

And that work may be useful in preparing for Deloitte, but certainly it sounds like some of the group as well wants to answer the questions after Deloitte. So I would say if some people want to start working on this, it's good preparation for Copenhagen. So not going with a formal proposal for a small group, but an encouragement for people to do the research into the deep dive, check the documents, most of the sections are here, there may be more sections, and to go further because it sounds like the design mark issue is a big one for our team.

Shall we move on to the next - shall we move on to the next charter question? Which is no less complicated. Okay, could everybody moved down to Question 8, Charter Question 8, how are geographic indications protected designations of origin and protected appellations of origin currently handled by the Trademark Clearinghouse provider?

And the table notes that there is no express mention of geographic indicators in the STI recommendations adopted by the Council and the Board. But what there was, was a sense of guidelines and what was to be accepted. And by the way, I want to put Massimo, who's on the call today, I noticed that I would love for you to talk about the answers that you provided, you know, staff and the cochairs and the working group in greater detail.

Okay so what the STI report said is that marks eligible for inclusion in the Trademark Clearinghouse would be, and this is section 4.1, would be nationally or multinational registered text mark trademarks from all jurisdictions. And that in terms of the functionality of the Trademark

Clearinghouse, Section 2.3, the Trademark Clearinghouse service providers should be required to maintain a separate Trademark Clearinghouse database but may not store data in the Trademark Clearinghouse database that's related to provision of ancillary services if any.

So there might be a place to put other types of intellectual property that's not trademarks, but that's not the Trademark Clearinghouse database, capital letters, which is for text mark trademarks according to the STI rules.

When we move on to the Applicant Guidebook, we see that there is support so 3.6, data supporting entry into the Clearinghouse of marks that constitute intellectual property of type other than those set out set forth in Section 3.2.1, 3.2.3, above, and we can, you know, can refer back to that in those trademark protections, shall be determined by the registry operator and the Clearinghouse based on services any given registry operator chooses to provide.

So again a sense that the Clearinghouse can go beyond and protect other forms of intellectual property but not in the Trademark Clearinghouse database that's being used for the sunrise and for trademark claims.

And then when you get to, moving onto the next column, Deloitte's guidelines allow incorporation of marks protected by statute or treaty. They may include but are not limited to geographical indications and designations of origin. And so here we see that the Clearinghouse is accepting these.

And so one of the questions I know we have for Deloitte, but let's ask it to Massimo as well is, our geographical indications trademarks or are they something different? How are they treated and where do they come from? Massimo, you've got your hand up. Thank you very much for your expertise. And if you could tell everyone the organization that you work for that would be great. Massimo. Mary or Terri, could you check with Massimo and see why we are...

Terri Agnew: And, Massimo, this is Terri from staff. We're unable to hear you at this time. To activate your mic on the top toolbar, select the telephone icon and follow the prompts. Or again this is Terri from staff, you can send me a private chat and I will be happy to have the operator dial out to you on the telephone.

Kathy Kleiman: In the meantime, would anyone else like to speak to geographical indicators and help the group understands if they're going into the Trademark Clearinghouse, and again I know we have a question for Deloitte, but if they're going into the Trademark Clearinghouse where's the certification coming from? And what is it that's going in? Terri is typing. Okay, anybody else who wants to speak to geographic indicators? Or raise concerns or just say this is a nonissue and we could continue. Kristine, go ahead.

Kristine Dorrain: Hi, Kristine Dorrain from Amazon. So I'm still struggling with understanding sort of what the concern is here because the Trademark Clearinghouse of course is not granting trademark rights. They are just confirming that someone somewhere has a registration and is using the mark. So presumably there is protections in place. I, Kristine Dorrain, cannot go put in a mark for, you know, Minneapolis Minnesota because I don't have a trademark in that name.

And I think that - I'm a little bit confused, are we conflating two concerns here? So we've got the entry of a quote, geographic indication in the Trademark Clearinghouse, and then there's the whole concept that someone could contest the mark in the Trademark Clearinghouse. So I applied for a domain name and I get a claims notice, you know, I would say hey, that claims notice is inappropriate; why did I get that? I want to contest that. That trademark shouldn't be in the Clearinghouse at all. I don't think they have the rights.

I just tried to figure out where the problem is. I mean, if there is a - someone who has a competing interest the Trademark Clearinghouse doesn't care. So

are we saying somehow that trademark owners with geographic indications have lesser rights to participate in the Trademark Clearinghouse? I'm just not really sure what the confusion is where the problem is here.

Kathy Kleiman: I can share some other problems that I've heard. This is Kathy again. Other people please, you know, feel free to step in. But one of the questions is, again, are geographic indications coming from trademarks or is this a different type of certification? Are we expanding the scope of the Trademark Clearinghouse database?

Since it is a confidential database, it's impossible to check these things independently. Kristine, come, we can have a discussion.

Kristine Dorrain: Just to follow up. Thanks. Yes, so the question then that I hear you asking is, is the Trademark Clearinghouse allowing things other than trademarks to serve as validation points to get into the Trademark Clearinghouse?

Kathy Kleiman: right.

Kristine Dorrain: I mean, maybe that's a valid question to ask them when we see them and say, I mean, I think it's kind of a moot point because I think their guidebook, as shown on the chart in front of us, is they look for registered trademarks. But, I mean, maybe we want them to like say in black and white, yes, we only look at registered trademarks. We do not look at, you know, anything else, some other thing. I mean, I guess I feel like they are pretty clear in black and white as far as what is allowed into the Trademark Clearinghouse. Now if they've screwed up maybe we need some data points on that.

Kathy Kleiman: Okay. Mary, is there any way you can capture what Kristine just said, because I think that probably perfectly encapsulates the questions and the broadest and the ambiguity and the search for clarity that some people are thinking about on the geographical indications. So if you can put that into the notes so we can capture it and ask Deloitte, but also so we can capture it as

a question here in this table as to, you know, are the guidelines being - are the guidelines and rules being followed? Okay, I think that wraps up Question 8. Kristine, thank you.

Okay, again, if people are typing in the chat room I'm probably missing it so please feel free to come onto the call. We are on Question Number 9, should the TM +50, trademark +50 be retained as-is, amended or removed? Trademark +50 is or course the idea that trademark owners can add up to 50 variations that are similar to each valid submission in the Trademark Clearinghouse database that are variants of the trademark that were awarded to the trademark holder any prior UDRP case, or also any prior court action.

And the question is - I can just do a quick preview that the STI recommendations did not have the trademark +50. And this was something that was adopted as part of the strawman proposal, and he did go into the Applicant Guidebook. And it's under a different name when you look it up in - when you look it up under the Deloitte rules, it's called abused labels. The trademark +50 is the same thing as the abused labels policy or the abused labels rule.

Ed Morris, you've got your hand raised. Please go ahead.

Ed Morris: Yes, thanks. Well ever have a flashback? This was actually my introduction to ICANN. I got locked in a hotel room in Beijing for seven days writing a reconsideration motion for the NCSG in trademark +50 and strawman. And I didn't intend to say that but I'm getting these flashbacks when I think trademark +50 comes again.

And first I'd like to suggest something to our tri-chairs. As a result of that NCSG reconsideration motion complaint to the BGC, etcetera, etcetera, the ombudsman was supposed to issue a report, not just on the procedure of the strawman but on some substance having to do with TM 50. That hasn't been released yet. I know a lot of work was done on it by that office. So I wonder if

the tri-chairs could send a missive over to Herb and say, hey, what do you have on this? Do you have data? Do you have a report? Will you release the report? Let's see what work they did on it to get some data.

Second, I don't see Jonathan here, just like to release inner-Zuck right now and say I want data. Can we get from Deloitte data? How is this being used? Is this being used? When someone is trying to throw marks - throw the non-exact marks in there, how many are they using? Is 50 the right number? Do we have a bunch of instances where folks are coming in and doing the math and maybe we need to raise the number. Maybe we need to lower it. Maybe we need to talk about this more.

Obviously the strawman was not the ideal bottom up multistakeholder process. So I guess what I'm suggesting is reaching out to the ombuddy to see if they're ever going to release the report that may have data that can help us to make sure we get information from Deloitte about how this is being used and I guess because we really didn't work at this bottom up, maybe this is another one of those instances where it might be a good idea to get a few of us together and try to root out what's going on here, what should be going on here and just try to get some basic principles done. Thanks.

Kathy Kleiman: Thanks, Ed. Again let me ask Mary whether the types of questions for Deloitte that you've asked, that the data questions, and, Ed, tell me if I haven't captured your thoughts. So is 50 the right number? So perhaps also, you know, how many variations under the trademark +50 or abused labels are people registering? Is that the kind of data that you'd like, the kind of variation that you'd like?

And, Mary, do we have - are these questions already part of what's being asked? Thank you. Go ahead, Mary.

Mary Wong: Thanks, Kathy and thanks, Ed. This is Mary from staff again. Without going to Ed's specific question, because obviously this is a request you're making of

the cochairs, that on the data question, Kathy, I don't have the document in front of me but as I recall, the sub team of this working group did ask Deloitte specifically for numbers about the previously abused labels and they did provide us an answer. And what I can do right now is pull it up and type it in the chat or in the notes.

I don't know if that is specifically part of what Ed was asking but in answer to your question, we did ask about the previously abused labels to some extent and they did provide an answer.

Kathy Kleiman: Perfect, that's good to know. So an invitation to Ed and to anyone else who is interested or interested, concerned, wants to dive deeper into trademark +50 is to look at the prior answers that we got from Deloitte and then see if you want to go further. We're closing the questions for Deloitte I think in the next day or two so that we can give them some time to prepare but also Deloitte will be with us in Copenhagen for an hour and we'll have the opportunity to have a real give and take with them face to face. So they don't - they'd prefer to have the questions ahead of time but they don't have to have the questions ahead of time so if there are further questions based on the inquiry that would be great.

Does anyone else want to - oh, and let me - Phil is - I don't know if Phil responded in the chat, Ed, good point. If there is an ombudsman report that's being prepared on the trademark +50 it would be useful. It sounds like it's been hanging out there for a while in the ombudsman office. I will talk with Phil and J. Scott. It seems to me there's no reason why we shouldn't try to get a hold of something if the ombudsman has been researching that. But let me check with them.

Okay, Mary, is there anything in the chat room we should be stopping for or can we move on to the next question? Okay, so in terms of my checklist...

((Crosstalk))

Mary Wong: ...a few topics...

Kathy Kleiman: Sorry, go ahead.

Mary Wong: There's been a few topics that's been going back and forth in the chat. I think one specific discussion still is about the geographical indications question which is about submitting an entry for the Trademark Clearinghouse under a statute or treaty. And there are guidelines for that.

Then I note that Maxim has asked if there's going to be a poll to collect questions for Deloitte. And if I may, I'd just like to respond that for the last couple of weeks we have been asking the group to send us follow up questions for Deloitte based on the discussion of the 16 charter questions for the TMCH. So as was noted last week, what staff would we doing this week is compiling everything that we have so far and we will send the list to the group on the mailing list today or tomorrow to make sure that we haven't left anything out.

The idea is to send it to Deloitte by the end of this week noting that the Copenhagen meeting starts at the end of next week and so noting also that while Deloitte will have the questions and we do want to give them as much notice as possible, I would not expect them to have the full answers for us by the time they meet us. So, Kathy, hopefully that's helpful.

Kathy Kleiman: Great. Thank you, Mary. And on your notes could we have the question that Kristine raised? And it sounds like there's been some expansion in the chat room so please, feel free, but are we putting things into the Trademark Clearinghouse database that are not trademarks? That was a great question that she raised or whatever phrasing she would like on that. I think that should go into the notes. And then the questions that are being raised about statute and treaty marks.

Massimo's hand was raised, Massimo Vittori, is with the organization Origin that works with geographic indications - indicators and GI associations. Massimo, your hand was up and it just went down. I was hoping, you know, we can dial back from Question 9 to Question 8, if you'd like to provide information, that would be terrific.

Okay, in that case, Question 9, it looks like we're not done with this question, the trademark +50 and there is some interest in pursuing it more so we shall do so.

Question 10, Question 10 is, should the TMCH matching rules be retained, modified or expanded, e.g. to include plurals, marks contained or mark plus keyword? So this one is fairly straightforward actually. So the STI recommendations said an identical match of the TC database should be structured to report to registries strings that are considered an identical match with the validated trademarks.

The Applicant Guidebook also says identical match, and the - and Deloitte adopted it also said identical match. And puts in - and then there are definitions of what that identical match means. But from the explanatory memorandum of ICANN to Deloitte identical match means that a domain name consists of the complete and identical textual elements of the mark. And there are further details regarding some special characters like if there's an ampersand or a dash.

And then it adds plural versions of a mark or domain names containing the mark are not considered an identical match for purposes of these baseline services which would be the sunrise and other - the sunrise and trademark claims. Is this an issue that people would like to look at further or is this one pretty clear?

George, go ahead, please.

George Kirikos: Yes, I think we should stick in terms of the inclusion and eligibility with the identical match. One point I did want to make though, is that when a registrant is attempting to register a domain name since it's - I think the registrars are probably returning the warning or the claims notice only when there is the identical match and same for the trademark holders, they're only getting notices when a domain name is registered that is an identical match, I could see value added if there was like a fuzzy match on behalf of, you know, both the claims notice and the notice that's given to the trademark holder for the registered domain names so that they can actually see if, you know, there's a, you know, names that are similar but not an identical match.

And I think it might add value both to registrants and to trademark holders if that fuzzy matching was allowed not of sunrise purposes but just for the claims notice and for the notices that the trademark holders receive. Thanks. And that fuzzy matching technology is, you know, pretty standard amongst - in the computer science technology. Thanks.

Kathy Kleiman: Okay. Fuzzy match. Does anyone want to respond to George? I'll wait and just share that the identical match was driven by a concern over the chilling effects that might happen from other types of matching, that there are many similar words, similar names. And that there was a fear there might be a large turn back at the trademark claims notice which apparently there is. And so that an identical match both protected the interests of the trademark owner and the interests of the registrant that was seen as the balance just to, you know, share what was done in 2012.

Does anyone else want to comment on this? Okay Susan, go ahead.

Susan Payne: Yes, sorry, I do want to comment. And this is - I'm not sure I totally understand what we're doing here. I presume, I mean, I presume you're not suggesting that this is our one opportunity to discuss this topic. It seems to me that most people on this working group think that this is a topic which needs discussion, they can correct me.

So I'm not sure whether you're asking us if we think this is a topic which needs to be discussed further and worked on or are you asking us to start expressing our views now?

Kathy Kleiman: Both. Both. We're going through the questions now as part of a deeper dive and to, again, not just the questions we want to ask Deloitte but that we want to ask ourselves. And so this is a question that's out there, does it give rise to additional conversation? So if you'd like to start the discussion...

Susan Payne: Okay.

Kathy Kleiman: I haven't heard that discussion. So.

Susan Payne: Fine, I don't think I need to ask Deloitte any questions on this particularly but, yes, I think this is something which goes to the heart of this working group's work. The question of identical match was - came up a lot on the staff report. And in various other circumstances where we've been commenting on things like the charter itself, the draft charter before the charter was approved and indeed the Analysis Group report. So, yes, I think we do need to be talking about the question of identical match.

Kathy Kleiman: Okay. In that case, and it's similar to the question I asked earlier today, is this a question for the whole working group to take up or is this one that we should be looking at perhaps in subgroups and bringing material back to the working group? Martin, go ahead, please.

Martin Silva Valent: Again, I think maybe if we can pull a lot of this issues like the one we discussed before and maybe we have enough for a subgroup, that can address these issues I think that would be okay. And I definitely would be interested in this particular matter. I do believe the chilling effect that can have adding keywords and (unintelligible) for nonidentical matches to work out.

Kathy Kleiman: Great, thank you Martin. So the idea that a subgroup might work on some of this more deeply. Thanks. Mary, if you could capture that? Susan, go ahead please.

Susan Payne: Yes, I was just going to add, I mean, obviously the matching rule come into play once you get onto the claims and sunrise, I mean, they don't of themselves impact what gets put in the Trademark Clearinghouse, if you know what I mean. Not that I'm suggesting that we kick this can down the road further. I think we should be talking about it, when we're talking about it what we'll be talking about is the implication of the matching rules on the sunrise and claims and any other uses of the Trademark Clearinghouse data.

Kathy Kleiman: So you're suggesting that it's a question of not what goes into the Trademark Clearinghouse database itself, Susan, feel free to come back on the line, but that it's more a question of when we look at the implementation for the trademark claims and the sunrise so that this may be actually one we can push farther down the line?

Susan Payne: No, no, I'm saying let's not kick it down the line. I think we need - we keep talking about what we're going to talk about. I think we actually need to start doing the work. But obviously what gets put in the Clearinghouse is only of any use when it gets applied, sunrise or the claims, so when we're doing our work considering the matching rules, we need to have in mind that what we're doing is looking at the sunrise and the claims.

Kathy Kleiman: Okay, good point. Phil, I think your hand is up. And, Martin, if - I think you're after Phil. If that's not - if that's a new hand. Phil, go ahead.

Phil Corwin: Yes, thank you. Phil for the record speaking on personal capacity, this is clearly a very important question that needs to be addressed by the full working group because everyone has an interest in it. I wouldn't view today's discussion as being the final, you know, talk about this because right now

we're talking about finalizing questions. And this is a question that really asks more from the opinion than for factual data.

In terms of what might occur if we expanded the rules to permit variations of trademarks to be registered, the best guidance we can probably get is to look at the actual use of trademark +50 because those are terms that fall in the same category, the only extra requirement was that they were terms - non matching terms that had been recovered in a UDRP or in trademark litigation. And I think if we - if there's any consideration of whether additional terms besides trademarks should be permitted to be registered I think we have to consider what that does to the integrity of the Clearinghouse as a database of verified marks. These would obviously not be verified marks anymore.

And whether allowing them to be registered would operate for both sunrise registration purposes, whether a mark holder should have a right to register these terms in the sunrise period of have to wait for general availability, and the claims notice, I think we'd have to discuss them in both contexts.

So I'm not - other than expressing concern about effect on the integrity of the Clearinghouse as a database of verified trademarks I'm not expressing any further opinion at this time just saying we can start the discussion today but we should try to wrap up on these charter questions so we can get them out and then we can return to a fuller discussion of this what's clearly a topic of great interest for members of the working group. I hope that's helpful. Thank you.

Kathy Kleiman: That's very helpful, Phil. And I keep trying to see if there's something that we can just, you know, release from the list as not being critical but it looks like everything we've touched today is something people want to dive more deeply into. So Mary, take note that our calendar may get pushed back on this.

At this point I think we've just got a few minutes, and I believe Mary wants us to take a look at the calendar or the proposed calendar for Copenhagen. Is that right? And if you're going to Copenhagen could you raise your hand - and just - or raise your hand or, you know, check or something like that. Who is going to be there?

Okay so this is the proposal. If you've got any concerns let us know now or let us know, you know, in the next few days. But we're trying to - we've got three - is it three hours or 3.5? And we've got, you know, this long face to face meeting on Saturday in Copenhagen as well as an outreach meeting later on in the week where we're presenting what we're doing but this is our face to face discussion meeting which is tremendous.

Thanks to Mary for all her work on the agenda. We'll be starting at 10:15 Copenhagen time. There will be remote dial-in and participation. We know that's early for certain continents, but we hope you'll join us. There's a long tradition of people coming in in the middle of the night their time so please consider joining us because you can - the Adobe Connect room will be up and you can participate just as fully as you do on a teleconference.

Mary, do you want to run down the agenda and let us know what some of the options are? And then we'll have just a few minutes to discuss it. Thank you.

Mary Wong: Sure, Kathy. And hi, everyone. This is Mary from staff again. So first to note that it will be basically a three-hour meeting as the Saturday face to face, with a lunch break. So it looks longer but it's going to be three hours. Secondly, that on remote participation, which Kathy has reminded us about, please note that the details and the Adobe room will not be the one that we use for our weekly calls, that's because it's all going to be provided as part of the overall ICANN meeting. So staff will send out specific details for the ICANN 58 sessions for remote participants once we have them.

Then in terms of this agenda, it's still under discussion by the cochairs, but given that we don't have a meeting next week and that next Saturday is in fact the 11th of March, it seemed helpful to get it out to the working group for your feedback. So you see that on this first slide there is a proposed agenda with some options for the Saturday face to face and in the next slide, which you can scroll yourself, is a proposed agenda for the open outreach session that Kathy has mentioned on the Wednesday which is an hour and a half.

So maybe I'll pause here and let folks have a chance to scroll through and maybe ask questions, Kathy?

Kathy Kleiman: Sure. But some of the things we're looking at in terms of options, so the Saturday morning it looks like we'll have our discussion with Deloitte assuming they confirm for an hour as well as beginning the substantive discussion - continuing really the substantive discussion of the charter questions that we've been working on.

There will be a lunch break. Lunch will be provided. And then some of the options include continuing with the substantive discussion, opening - I believe it was Kristine Dorrain last session who suggested that we should have a discussion about people's experiences with the Trademark Clearinghouse, agents, trademark owners, registries, registrars so that's a possibility for Copenhagen.

Trying to - another bullet point that Mary has put up, discuss the status of the Trademark Clearinghouse review, are we ready to close off some of our charter questions? And, you know, otherwise continue with the discussion of whether the Trademark Clearinghouse operates and conforms to the Guidebook.

And then update our work plan accordingly. Does anybody have any preferences for something they think is really important or something they think can be dropped from the agenda? What's the best use of our time face

to face in Copenhagen? Looks like Mary and the cochairs are going to - staff and cochairs will be trying to come up with the best agenda to facilitate what we're doing. In terms of the outreach session, that's pretty much a straightforward outreach and then Q&A with the community.

Mary, can you tell us when our next teleconference - Mary or Terri - can you tell us when our next teleconference call will be when we come back to meeting like this.

Mary Wong: Hi, Kathy. This is Mary again. And Terri will probably be able to provide the exact time and date, but essentially we will not have a call next Wednesday, the 8th of March I believe, because of the preparations for Copenhagen. Following the Copenhagen meeting, where our session will be on the 15th of March, there will not be a meeting the following week. That is the 22nd of March because traditionally the week after an ICANN meeting is a break from these meetings to allow people to get back to their regular rhythms and life.

So I believe that that means the next meeting for our group after Copenhagen will be in the last few days of March. In other words, two weeks following our last session in Copenhagen.

Kathy Kleiman: Terrific. Thanks, Mary. That looks like it's March 29, as George put in as well. Terrific. Well does anyone else have - it looks like, you know, we're working on agenda, we'll see you in Copenhagen hopefully. People are not coming to Copenhagen will participate remotely. It should be a conversation with Deloitte and a good conversation together. We've spent a lot of talking about the questions, now we have to really talk about the resolution of some of these charter questions. That's really important.

Barring any additional hands, we will end at 12:58. Thank you very much and safe travels to Copenhagen.

END