ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims
Friday, 14 April 2017 at 16:00 UTC

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Adobe Connect recording:
https://participate.icann.org/p3nv2phl1u6/

Attendance of the call is posted on agenda wiki page: https://community.icann.org/x/ds7RAw

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 recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the Sub Team for Trademark Claims on the 14th of April, 2017. In the interest of time, there will no roll call. Attendance will be taken via the Adobe Connect room. If you are only the audio bride, 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 kick it back over to you, Mary Wong. Please begin.

Mary Wong: Thanks very much, Terri. And welcome everyone. And for some of you I note that this is your second sub team call of the day so thank you very much. We have not yet been joined by any of our three cochairs who are members of all of our sub teams. So far we have two going but we expect to have the third

up and running shortly. So I don't know if any of them will be planning to join us.

Just a reminder, as Terri has had, that like a working group calls, our sub team calls are recorded and transcribed and documents and recordings are posted on the wiki page, for those who didn't know.

And then I also wanted to note, again for those who were on the earlier sub team called for Sunrise, we did manage to come up with a plan for working forward and through the questions. It may be that this sub team would want to adopt a similar or different plan, but we have proposed that the sub teams each begin with selecting a chair for the group were chairs, if more than one person is interested in volunteering. So perhaps I can open it up to anyone who would like to volunteer or nominate someone else?

Noting that since we don't have all sub team members present, we can and will probably also take this question to the list. I don't see a huge rush of hands or mics open. So if it's okay with everyone, staff will continue to manage this call, but the first action item that we will take for this call is to go to the sub team mailing list to ask for a volunteer or volunteers to chair the sub team.

And in that context, for those who are - listening to the recording or reading the transcript, the reminder here is that at the moment the work of the sub teams, as captured in a scoping document that was sent around a while ago, is for the sub teams to at least initially do a couple of meetings, to do a couple of initial things.

First is to look at all the existing questions that we have in our charter to refine them for review by the full working group; and secondly in that context, to prepare a meet work plan within the context of the larger working group work plan. The thinking there is that because the sub team will have spent some time looking through all the questions and thinking about them, that the

sub team will be in a better position to have a sense of how long they think, you know, three questions might take or six questions I take and bring that back to the working group.

At this point there has not been a consensus in the working group about whether the sub teams would continue to work beyond that. I recall from the last meeting of the working group that this is something that will be decided at the time.

And on that note, I welcome J. Scott Evans, one of the cochairs of our working group and Kristine Dorrain, who has her hand up. Kristine.

Kristine Dorrain: Thanks. This is Kristine from Amazon. I have a couple of I guess comments and suggestions. One is I would tentatively throw my hands up as a cochair for this group. I know we are only going to meet a couple of times at this point so that's fine. I just can't lead today, I have bronchitis so I'm going to start coughing (unintelligible). So I appreciate if you would, you know, keep going, Mary.

But my suggestion, before I lose my voice completely, is that I really like the idea of starting where we kind of left off on the earlier call and explaining to the people on this call sort of where we ended up because I think it's a really good framework. I think we should propose that to these attendees and find out if a similar structure would make sense.

So in that case, if we agree on that same structure, and we can agree that we are going to, you know, the homework that we are going to do and what's going to happen on the next call, then perhaps - I know Michael raised his hand also so maybe between Michael and I we could sort of, you know, co-wrangle leadership going forward. But if you wouldn't mind taking the reins today, as you are, and sort of walking everybody through what the decision was earlier, I think that would be great - we ended up working out with great

strategy and I think the people on this call would probably agree that that's a great way forward. And I'll stop now.

Mary Wong: Thanks very much, Kristine. And we all hope that you're going to feel better very soon. So thank you for stepping up and thank you, Michael, as well for volunteering. Staff will work with the two of you offline to try and, you know, manage the process noting, Michael, as you say, that we still have a couple of weeks to go and we have work to get through and then there's a bit of a question mark as to what happens after that. But thank you to both of you.

J. Scott, I'm happy to hand it over to you. I'm happy to keep going. Please let me know what you prefer.

J. Scott Evans: Mary, it's - I think, you know, given that you're staff and you sort of took pretty copious notes on what we came up with the last time, in the last call which was about an hour and a half, two hours ago, I'm pretty comfortable with you just giving that and setting that out because I did not take notes and I don't have the benefit of having the agenda notes from the Connect room. So that'd be great if you could do that for us.

Mary Wong: Not a problem, J. Scott. And of course since we have people from the earlier call, obviously where there are things that I may mischaracterize or miss please just jump in or raise your hand and let us all know.

Essentially, the approach that the earlier sub team on sunrise agreed to was to have a form document that could take the form of a Google document that would have all the questions from the charter listed as an initial pass. And each member of the sub team would have a number of days from this call - in the earlier call they agreed that the deadline or the initial deadline would be this coming Wednesday, by which they would review all the existing charter questions and send to the sub team mailing list comments and suggestions which staff would then capture in the Google Doc and circulate it to the whole sub team just prior to the next call.

The purpose of the next call would then be to work through that Google Doc to review all the comments and suggestions that have been received and to take that work forward. I think the other thing that might be helpful for the members of this sub team to note is that one of the points that was made on the earlier call was to not take a whole lot of time word-smithing. One observation was made that in the TMCH Charter Sub Team, that seemed to take up more time than people expected.

So unless a question from that charter is really unclear and might need some rewording of some sort, the idea is to leave it as is and perhaps with notes or footnotes to that question from the sub team to the working group to try and add more clarity to that question or questions. So that may be something that, as we look through these trademark claims questions, may or may not work for this group, again, depending on the level of ambiguity or vagueness in any specific question.

Then the last thing I'll say for now is that one takeaway from the earlier call was that we would desperately try to categorize or bundle the questions in so far as they can be bundled. So you may have two or three questions that deal with a similar issue, even if it's not asking the same question, we would bundle those together. And of course as part of that exercise, to the extent there's any duplication we would note that as well.

So hello, Phil, I welcome another of our cochairs. And I'm going to stop there briefly for members of the other sub team to add anything that I may have missed and to ask everyone on the sub team if that approach is something you feel could work for us as well. J. Scott, please go ahead.

J. Scott Evans: Sure. Thanks, Kathy - I mean, Mary, I'm sorry. One of the things that I think we agreed on on the last call was what our output would be. And the idea is for us to batch these questions into groups that would be discussed on

certain times within the work plan and to eliminate any duplicative questions that are asking the same thing.

So the idea is we'll go through, look at the questions, decide which ones sort of deserve to be batched and discussed together because they're interrelated, look at questions that might be duplicate and get rid of those that are duplicate or repetitive, and then to look at the overall work plan that the staff has put together for the entire working group and say okay, on this day we're going to discuss Questions 1, 2, 4 and 8, because they all relate to the wording of the notice or whatever.

Also, another idea is for us to identify those questions we feel that we require additional information in order to answer and where that information would come from and giving that to staff and making sure that we discuss those questions at sort of the end of the process within the schedule so that there's time to collect the additional information.

Mary Wong: Thanks very much, J. Scott. That's exactly right. And I think reflects the discussion on the last working group call as well. So thank you for adding that. Michael. Michael if you're speaking I don't think we can hear you so either your mic is not activated or you might need to call into the bridge.

Michael Graham: Okay, can you hear me now? Mary?

Mary Wong: Yes, thank you.

Michael Graham: Oh okay, so this is on audio then. I love my computer. I just wanted to pipe in and say I think that that plan sounds very good. It's really directed, gives us all something to do and focuses it rather than just be a discussion. And my understanding is that our goal is basically to winnow these questions and sort of put our (unintelligible) on them so that bringing them back to the larger PDP group will be focusing on these questions and not be wandering around and wondering what questions are appropriate to ask or not. Is that correct?

Mary Wong: Michael, I think that's exactly right. In other words, the work of this and the other sub teams would be kind of like both a forward-planning group as well as framing the discussion. So that's why if you look at the bullet points under the agenda, besides consolidation or deleting duplicative questions, it - as well as identifying any data that we might need, if there's any gaps we can suggest those as well.

That's not to say that in the course of the full working group discussion we may not find that there are other things that we might need data for or other topics or subtopics that might need to be addressed. But as an initial framing and scoping I think that's exactly right.

Michael Graham: Right, and just again it's Michael Graham, just to clarify then, one important role I would think and from what J. Scott was saying as well, will be to identify those questions who - the discussion of which and answers to which really require additional information, identify those what information may be necessary, bring them back to the group and say do you agree? And if that is the case, then the questions themselves probably would be, I mean, I guess I would suggest we put them on the side until that information can be gained.

And then as you were saying, come back to them towards the end so that we don't waste a lot of time with the argument of this is what I think and somebody asking well where is your proof?

Mary Wong: Michael, this is Mary again. Yes, that's correct as well. The idea obviously is that if there are questions for which data is viewed as necessary that that's something identified up front, and then we leave time for discussion of that. And I think one of the things that we said previously also is that for the sub teams if in identifying what data might be required for what question, you can identify sources as well.

Those are things that the staff can help, to the extent we can, or individual working group members if they have the right context, can help us with reaching out to the sources earlier rather than later so that we would have the data in hand when the time comes.

Michael Graham: Great, thank you.

Mary Wong: And as J. Scott has noted, yes, as J. Scott has noted, in any event, you know, things will always go back to the full working group. So as an initial deliverable from our team, and from the other sub team, just the list of refined questions, right, that goes back to the full working group, the order in which they'll be tackled and the proposed timeline within the context of the overall work plan. So the idea is that if we can do as much as possible of this initial scoping over the next couple of weeks we can take back as much as we can, maybe we'll even have completed that initial scoping, back to the full working group in a couple of weeks and then we can, you know, discuss sort of next steps from there on out.

Are there any questions or comments about the approach? It seems that Michael, you said that that sounds sensible. Kristine, it sounds like you would support that approach as well? Thank you to both of you, Michael and Kristine.

And for those who were not on the earlier call, and J. Scott as well, I hope that the explanation is sufficiently clear. And Susan, you support that notion as well. So in terms of an action item for staff, what we'll certainly do is start preparing the Google Doc. Then it would be up to members of this sub team to spend the next few days looking at the existing questions and providing comments as to whether they should be bundled, whether they should be deleted, whether they're clear, they're not clear and any other comments. That doesn't mean we can't go through them today as an initial pass either.

Susan, please go ahead.

Susan Payne: Thanks, Mary. It's Susan Payne. I just have a quick question for you. Just looking at the document in question, the section on the claims just only seems to have five questions. Is that right? Or am I looking at the wrong thing, the wrong section?

Mary Wong: Susan, I don't think you're looking at the wrong thing. From this document it does look like there are only five questions that are specific to claims. What I'll do with Amr as an action item immediately after this call is just to make sure that that in fact is the case because as you'll recall, the list of questions from the charter is a very long one. And I think that there were also some questions that had initially been placed in one category based on how they were categorized when the comments came in but then on reflection seemed more appropriate as a different category. So we'll redo that exercise as well just to be sure.

I noticed that Rebecca is saying in the chat that some of the general questions could be relevant as well. And I think that's probably applicable to all of the three sub teams that besides - and maybe after looking at the specific questions that we have, that it would be worthwhile to look at the general or the additional questions from the charter because some of them may be directly relevant and others may be relevant at a certain point.

Susan Payne: Yes, I was going to say I think also - I mean, I think some of the questions that we've been looking at in the context of the TMCH are sort of phrased along the lines of, you know, does the TMCH and the RPMs that flow from it or the RPMs that it supports, do the following? And it seems to me that they potentially are also relevant albeit that we don't want to - we clearly don't want to spend all our time re-discussing things that we've already covered. But to the extent that we maybe didn't cover stuff because we said well that's a conversation about the actual RPM, rather than the TMCH, I think we need to make sure we capture it.

Mary Wong: Thanks, Susan. Yes, and staff has made a list of I think it might be two or three questions from the TMCH discussion that the group agreed to hold over until we had, as a group, reviewed the sunrise and claims. And you're right that we probably need to bring that up at the appropriate time for each of them as well.

So we're really looking at I guess three categories of questions starting with the most specific ones, then looking at the general additional ones in the charter to see whether and how those might be relevant in some way and then circling back to the ones that were held over from the TMCH. Kristine, go ahead.

Kristine Dorrain: Hi, thanks. Kristine again, Amazon. Yes, I wanted to just - as we think about our homework and we think about how we're going to approach this and we create the Google Doc, I think as each person goes through and reviews these questions I think it's more than just oh I think Question 1 and 2 should be grouped together.

I mean, I think you do them all individually so that we can come together and discuss the collective viewpoint. We need to take each individual question and compare it to the general questions as well. So should the trademark claims period be extended beyond 90 days? And of course all the general questions will always apply. But as I'm looking for the general questions I'm thinking about, you know, do the RPMs need to, you know, is there a need for internationalization? Does that - does that really affect the 90-day thing?

My personal view at this point, maybe not so much. But what about Number 2? Do the RPMs adequately address registrant protection? So I think to the extent that we're going through and doing the homework, the more effort we can put into sort of synthesizing these questions, rather than reviewing everything as sort of a linear question (unintelligible) yes or no answer, I think it'll really seep into our discussion next week about, you know, sort of how we

envision the questions as a whole, which will lead into the development of the many work plans.

So we'll know wow, question - I'm just going to say 4, that seems like it's really going to be meaty and it's got three general questions really heavily linked to it, we need to give more time for that. Then I don't even know like Question 5 or something.

So I think to the extent that people are going through and making their comments on the Google Doc, if you can be mindful about bringing in some of this other information I think that would be really helpful. And I totally support Mary pulling in some of those questions that we've identified that need to be brought into the sub teams and added to these lists. So I appreciate if you could add that to the Google Doc as well. I don't know if that needs to be a separate category or not. Thanks.

Mary Wong: Thanks, Kristine. And that seems to make sense. I mean, certainly at the very least of having folks have one place to look at all the questions. It occurs to me and since you and a number of other people are members of the other Sunrise Sub Team, that this is also something that we can bring back to that sub team.

It may have been implicit in the earlier discussion but it probably doesn't hurt to make it express obviously with Lori, who's chairing that group, in the loop and with her agreement as well.

So I think we do have our homework for staff. And it seems that there's no objection at least to members of the sub team taking the next few days to look at all the questions and coming back to the mailing list with comments and so forth. And then we'll of course, as staff, put all that in the document.

So my question for everyone on this call, since you've all taken the time and trouble to get on the call, is whether you would like to at least start working

through the questions now so that we can take the notes and we can incorporate whatever your discussion is today into the Google Doc for next week.

Kristine.

Kristine Dorrain: Thanks. Kristine again from Amazon. Can I ask that - and if everybody's willing to stay on the call for 15 more minutes, can I ask that you, since my voice is not going to hold on, reach each question and then because there - I don't know if there's anyone on the phone or not, but and then if anybody has any questions for them about what the - what the - I guess I keep saying question - what the question means, we could have a little short discussion just to make sure that we all kind of have in our head what the question is about. This is coming back around from the part where the conversation we had this morning about whether or not it's useful to get context.

So I think if we quick run through the questions, make sure everybody feels comfortable that they understand the context without having a debate about the substance, you know, if we kind of get a sense as to the context it'll allow us to I think make sure that we can dive into the whole much easier, if that's okay with you? Excuse me, Mary.

Mary Wong: Not all, Kristine. And thank you for speaking despite you're being ill. I would say from the staff perspective that makes a lot of sense. And I would just note in relation to your comment about the historical context, that we had discussed in the sunrise team, and because this came up with the TMCH charter questions early on as well, that because all of these charter questions came from public comments to prior papers and projects, it's not always clear just looking at the question itself whether that's something that has been identified as an issue over a period of time and is a concern that's shared by multiple stakeholders or is something that was identified as a one-off by a single commentator.

So that's related in some ways to whether that is viewed as a question that ought to continue to be discussed by the working group. So to the extent that you have any thoughts about the need for staff to go back and look at essentially the origin as well as the context within which these questions arose, we're happy to do that and to put that in the document as well.

So, Kristine, on that note and, and Michael, I can start with looking through the questions. And I would imagine that they may raise at least a little bit of discussion or comment just today as well. So the first question, and I'm looking at the specific category, in other words, the questions that are very clearly related to the question of a claims notice.

So Question 1 is - and as Kristine has noted on Page 2 of the PDF document where we have all the sunrise and claims as well as general questions listed. That first question is, "Should the Trademark Claims period be extended beyond 90 days?" Do we have any comments on that question, not so much to resolve it, but as to - whether that needs to be explained further and so forth. And Kristine and Susan say, it looks fine, seems pretty straightforward. That would seem to be my take as well.

So we're looking at 90-days mandatory trademark claims period under the current RPM regime. And the question clearly is asking whether this should stay the way it is or should it be extended, presumably meaning should it go longer. And as we think through this question there may be other I guess subtopics within that. Should it be shorter, for example; is it something that should be standard across all types of gTLDs and etcetera.

And Michael, I notice you've asked in the chat whether there should be follow up questions. I think that if this group feels that the follow up questions are a natural follow on or variations, then absolutely, that should be brought up. Michael, please go ahead.

Michael Graham: Yes, thanks for reading that. I just realized I could jump on the phone as well. But, yes, I think that would be useful. In reviewing these questions for us to provide if we believe that there are follows ups. And I suggested two of them for this first question. It's sort of a yes/no answer on it, but then according to that answer there is a further question which is how long or how short or, you know, there could be others.

And I think we as a working group will really provide a service to the group as a whole if we can identify those at this point and that would avoid, you know, opening the discussion of what other questions might be asked when we go to the full group and also we would be able to provide direction for those conversations I think.

Mary Wong: Thanks very much, Michael. And if I may, I'll just say from the staff perspective of having supported a number of different types of groups and sub teams that that would generally I think be very useful. And so if this sub team, again, in reviewing the questions, come up with additional ones or sub questions or follow up questions my suggestion would be that for now as they occur to us we would just suggest them, we can stick them all in the document so that when you guys come to do the first or second pass at it you might decide that some are superfluous or some could be further refined and so forth.

And as Kristine notes in the chat, follow up questions would also be important for determining the timeline and that's absolutely right because again, the second deliverable from this group is a proposed mini timeline and work plan for getting through all the final list of questions we're going to be proposing. Michael.

Michael Graham: Sorry, it's old hand.

Mary Wong: No worries. And the good thing about having a small group is that there's usually not as much confusion; you've got six people in a row who didn't lower their hand, which sometimes happens. So perhaps we could just take a moment and looking at this Question 1, Michael's already suggested two follow up questions and, you know, I was just thinking through that as to whether or not you want a standardized trademark claims period for all types of gTLDs, that might be another type of question that belongs here as well.

               Scott Austin has typed in that chat asking, "Could there be a middle ground? And the procedure will permit a request for a 30-day extension similar to the trademark trial and appeal board, or the US TTAB extension request for filing a notice of opposition."

               Scott, I don't know if you're able to speak but if you either are on the bridge or you have your mic activated, would you like to speak to that suggestion?

Scott Austin: Sure, I'll just say a few words. I mean, I have not been as actively involved as I'd like to be because of business. But it just seems to me that there's a reticence to extend something on a mandatory basis for - without more support perhaps, but maybe give the option that an extension could be granted and some of those extensions in the TTAB practice are based on a showing of cause, some are just initially granted without cause for example, an initial 30 day extension. And obviously it doesn't start with 90 days, as you have here.

               But I'm just suggesting perhaps there would be an interest in a middle ground of allowing an extension rather than changing the timeframe that we have now. It may be that trademark owners or - are busy, they missed it, they didn't have the time to attend to it because of other matters within the initial 90-day provision but yet they want a signal that it's something they need to further investigate, which is one of the bases under the TTAB extension request is the need for time to discuss with counsel or the - and there's a number of others factors to investigate the claim, etcetera.

And I'm not suggesting that you would necessarily have to have the same point for point bases for an extension but there is that kind of a procedure that exists and we have an analog so I just thought that I'd raise it and see if anyone else had an interest.

Mary Wong: Thanks very much, Scott. And thanks for participating on this team and in the working group. I suppose as Kristine has pointed out in the chat, what we have as the RPMs, they're basically minimum mandatory services that all registries have to offer. And individual registries can extend for as much or as long as they wish. I suppose the difference in what you've noted is that maybe that could be an option coming from the trademark owner.

That may be something to come back to in the discussion as I think Griffin and Michael are noting. It may be something that we can put in a comment tab for the Google Doc for further and future consideration.

Can we go to Kristine and then Phil?

Kristine Dorrain: Hi, thanks. Yes, I was just going to echo Michael and Griffin and get it on the transcript as well as the chat that, Scott, thanks; that's a great suggestion. Let's make sure that we capture those independently and get those on Google Doc. Today I'm really hoping that we'll spend the next 20 minutes going through the questions and just making sure that we kind of understand the basis for the question. So I think for Number 1 I didn't think we had any additional, you know, sort of like questions about it; it seems pretty straightforward. We've come up with a few, you know, follow up questions, which is great. Keep them coming.

Number 2, though, for instance, just to demonstrate, I have a question on Number 2 which is should the trademark claims period continue to apply to all new gTLDs? So I have a question that perhaps staff could research which is - and I'm sorry for gasping - should - what does "continue to apply" mean? Is

this question meaning that they should make the trademark claims be sort of persistent and retroactive to all new gTLDs henceforth and forevermore and retroactive to anyone who no longer has, you know, whose trademark claims period's already expired?

Or are we talking about subsequent rounds? I'm not entirely sure that that question means. I would love to get a little bit more context on that. And that's sort of what I'm hoping to spend the next 20 minutes looking at is not like it's a substance or coming up with ideas, as much as making sure that we all understand what the questions are so we can properly bucket them. Thanks.

Mary Wong: Thanks, Kristine. So that might call for some contextual research, as you note. Why don't we go to Phil and then move onto question 2? As I said earlier, I think we should just start throwing out thoughts and questions now that were all captured because obviously we'll take a pass through this again. Phil.

Phil Corwin: Yes, thanks. Phil for the record. A couple of random thoughts here. One, Questions 1, 2 and 5 are all kind of related in that they are all on the general topic of the applicability and scope of the trademark claims RPM. And you can't figure that out unless you look at the actual operation of the claims notices up to now and their effect on both potentially infringing and non-infringing registrations.

Second, we have some discussion - I don't think we reached any agreement. Jon Nevett had brought up the fact that originally registry operators were going to be able to choose between offering a sunrise period or a trademark claims process, and then after GAC intervention it became mandatory to offer both, so that's really wrapped up in this.

The 90 days, we go shorter, we go longer. I think we have to be more precise in one sense, the trademark claims extends for as long as the term is registered in the Trademark Clearinghouse. And that there's a 90-day period

from, you know, the start of general availability where registrants get a notice if they begin registration of a term that's an exact match of a trademark in the database that they may be in trouble if they continue. We'll be looking at the language of that.

And I'm not sure if there's any question below here on the language but I think we have to look at the language and where that's giving clear understanding to potential registrants. But there's an unlimited time past the 90 days where the - a potential registrant no longer gets that claims notice generated before proceeding with registration. But the trademark owner gets notice if the registration is completed. So we need to be a little more precise there.

And finally, in regard to a potential process for a trademark owner to ask for an extension beyond the 90 day period or whatever period we wind up with at the end of this exercise, I'd be, you know, I'm not trying to answer the question but I don't think we should be specific now about the standards, but anything that becomes discretionary in this and not required, it's going to require us to go on and say okay, well, if there's such a request who's going to consider the request? It's going to be the registry operator or some neutral third party. What criteria should they be required to look at?

So the moment you get into anything discretionary rather than required you open up a lot of other questions and then we just should recognize that. Doesn't mean we shouldn't do it but we should be careful about doing it because it's - once you say yes, there should be some process then you have to design the process. That's it. Thank you.

Mary Wong: Not at all. Thanks, Phil. And, before I go to Susan, maybe just let me try to recap because, Phil, you did make a few very concrete suggestions that I think there's some agreement in the chat that we should try and capture. And I think one of the first things you'd noted is that perhaps Questions 1, 2 and 5

in the specific questions category that we're looking at on Page 2, could be bunched together.

Another point that you made was whether or not the working group, I would assume, would want to review at the appropriate time this question of sunrise or claims versus sunrise and claims. And then you made a couple of other points as well, one about possibly rephrasing Question 1 about the duration of the trademark claims service. And I think there was some agreement in the chat that we might need to be more precise about that.

And the - one of the other concrete notes that you pointed out, and I think Griffin in the chat had a similar question, was whether in talking about the trademark claims service or the trademark claims period, we're talking about both the claims notice that's sent to a prospective registrant as well as the notice of registered name that's sent to the trademark owner if that registration goes forward.

I will say that from the staff perspective, we had assumed it would cover both because both are part of the trademark claims service, even though ones comes through a registrar and one comes through a registry. So at this point, hopefully, that captures most if not all of your concrete suggestions, Phil, and your note about when we come to discuss the optional issue as well.

Susan, I think you had your hand up…

((Crosstalk))

Phil Corwin: And, Mary, just to reply, yes, I think that captures it and I think just wanted to note that Question 3 about potential chilling effect on genuine registrations, which I take to mean non-infringing registrations, would allow us to look at the - the current language that's of the claims notice that the potential registrant gets and see whether we think it's clear and adequate to communication. That's it. Thank you.

Mary Wong: Thanks very much. So I'm going to go to Susan who I think has a few comments, and then to Michael.

Susan Payne: Thanks, Mary. Yes, it's Susan Payne here. Yes, just I do have a couple of things to comment on. I would say that - as far as I'm concerned, and it had always been my assumption that when we're talking about trademark claims in this context and in terms of reviewing the RPMs, that we're - that we would be looking at the trademark claims process all together so the notices to potential registrants and the notices that go to the trademark owner after the event, I think to me that's completely implicit.

But I did want to pick up on something that you mentioned, Phil, about the trademark owner getting notices beyond the 90 days. It is true that the trademark owner can opt in to receive ongoing notices from the Trademark Clearinghouse, if they would like to do so. But it is not - that is a voluntary service, if you like, the Trademark Clearinghouse introduced. It isn't something that was mandated in the RPM requirements.

I don't think anyone - I don't see a problem with what's effectively an ongoing watch service, particularly myself. I suppose perhaps it's something which is also in scope to consider. I don't have strong views on it. But it isn't something that's mandated, so the mandatory period is - it's currently the 90 days where you get the notice that goes to a registrant when they attempt to register and if they proceed with their registration the notice that goes to the trademark owner after the event.

And then since I've got the mic and since we have been jumping around a bit on the question numbers, it seems to me, and we've all been talking about every single number but Number 4 and just reading it here on the document it seems to me like Number 4 might be in the wrong place because it doesn't talk about the claims at all, it mentions the sunrise. So just lobbing that one out there for people to think about.

Mary Wong: Thanks very much, Susan. And just to note that on your pointing out the ongoing claims service, and I forget the actual name for it, as you note, that's something that's voluntary or optional; that's something that is offered by the Trademark Clearinghouse. So in a sense that's quite distinct from the minimum mandatory ICANN RPMs that we're reviewing.

And I'll just note for that, based on some discussions, the full working group had in Copenhagen is that that indeed is actually the ancillary service that so far has been approved by ICANN under our contract with Deloitte to offer.

Michael.

Michael Graham: Well two quick things. One is jumping ahead to 3, but going back to the point you were just making, I think that would be perhaps subject to a separate question developed from this conversation as to the desirability of continuing or expanding the offering of that continuing monitoring and notice service to trademark owners who have registered with the TMCH. And I'll just put that out there.

But going back to 3, Phil mentioned it and the hot point for me in that question is understanding, and perhaps this is something that staff could answer from a historical context, what is meant by a, quote, genuine registration, end quote?

Mary Wong: Hi, Michael. This is Mary from staff again. And I'm not sure that I would have an authoritative answer for you. As Phil noted, you know, that seems to refer to non-infringing registrations. In other context, people have referred to legitimate registrants or legitimate registrations. So I would say that there is no consistent usage. What we might want to do on this sub team is agree on what we think it means and either rephrase it or present it as such to the full working group.

Michael Graham: This is Michael again, although my hand isn't up. I think that would be a good thing to do. And my suggestion would be to adopt a more clear nomenclature or terminology for what it is that we're referring to, genuine registrations really requires context and it is not transparent what that means so I think that would be something that we should address at least in our comments. And I am interested if that means registrations that are not infringing, that's sort of a - an analytical determination that doesn't help us in going forward with the discussion.

If it means, you know, good faith applications for domain name registrations, not based on, you know - and this is getting quite long - not based on a desire to infringe and not infringing a registered - trademark registered with the TMCH, I think we ought to use that language rather than genuine registration. I think that's just way too confusing even within our group and then when we expand it to the full group and then expand it to GNSO, I think we're just inviting continued discussion.

As Amr noted in a quick message to me, I was involved with the Policy and Implementation Team when we sat down and took about a month to define the terms so that when we use them everyone will understand what we mean. And I think that's something we should do with this genuine registration. Thank you.

Mary Wong: Thanks very much, Michael. And I notice that Phil has suggested in the chat that instead of saying genuine registration, we could rephrase this to say good faith registration, which Kristine supports. And I see that Phil, you've got your hand up next.

Phil Corwin: Yes, just to expand on that a bit, even - it was pointed out the other day by Paul McGrady that even the term "non-infringing" and infringing isn't quite technically correct because we're really focused here on cyber-squatting and not every potential type of trademark infringement that could occur through

the use of the domain, some of which are way outside the scope of ICANN remedies.

And that, you know, a cyber - cyber-squatting might be infringement or it might not be depending on other factors. I think generally we should try to relate these RPMs to the UDRP and URS and since they require a complainant to prove not just lack of legitimate rights by the registrant in the domain name but also to prove the elements of bad faith registration and use, I think if we say good faith registration that refers to a registration where the registrant does not have an intent to go on and use the domain and bad faith through cybersquatting or other infringement.

And that's a pretty clear term and relates directly to a term in the UDRP. So it kind of ties all these RPMs together. I think they should be as consistent as possible. And that was the reason I suggested. Thank you.

Mary Wong: Thanks, Phil. Thank you. And, you know, when I say you type "good faith" if I may just make a comment here, I actually did think that you were using that kind of in contradistinction to the bad faith in the UDRP within the context of domain names and cyber-squatting.

I see that Kristine supports the concept. Michael has a question and actually, Michael, I think you've put your hand down. There's some discussion about the good faith concept. What I'd suggest is that we obviously will keep the original questions in the Google Doc, but we will try and capture as much as possible in a separate column, let's say, or separate tab, some of the discussion and suggestions that we've had, both for rephrasing such as in this question, as well as for bundling of certain questions together, because for that I think we note that there's been two separate suggestions received without necessarily, you know, making a decision either way today.

Then on that, I would also note that when Susan raised Question 4 as to whether it actually belongs in a trademark claims discussion, Phil had noted

in the chat that this seems more related to a question that we had started to discuss as part of the overall TMCH review and that for that particular question the group had agreed to defer further deliberation until we had completed the review of sunrise and claims.

So I think one question for this sub team is when we look at Question 4, whether that is something that we agree with and then that should then be our recommendation. There's some additional discussion in the chat. And I'm going to start with Kristine's suggestion as the voiceless cochair. You've been doing very well, Kristine, but yes, please take care of that voice.

We should probably summarize the homework and plan for our next call. And with five minutes to go I am going to suggest that we do that noting that there is some agreement about the need for clarification and rephrasing as well as suggesting of follow up questions. And I would think that that is part of the homework for this group before the next call.

So if we go back to how we preliminary agree we would do this, I think we agreed that staff will start to prepare a document and that over the course of the next few days bearing in mind the discussion that we've taken place, all sub team members should review the questions in the charter including the general questions and come back to the mailing list for the sub team with suggestions and comments.

And those suggestions and comments could be for rephrasing, could be for bundling, could be for gap-filling, could be for identifying the need for data. And in relation to a question like Question 4, it could be this is not within our remit, it should go to some other group for example.

And then staff will capture all of that in a Google document that we'll send out to everyone before the next call where I think we can start working through all those questions and suggestions so far. And hopefully by then, Kristine, you'll

have recovered your voice, and Michael, you might free up a little more than you are.

So the question then we would have about homework for everyone is how much time would be appropriate bearing in mind, you know, your respective schedules as well as the need to get back to the working group with as much as we can do within two weeks. And the related question to that is, when would you like to have the next meeting?

We do have the ability to have the next meeting on Wednesday during the time of the working group call which I think would be around 16 or maybe 1700 UTC. Or we could keep to a Friday, either this time or some other time. So thanks, J. Scott, I note that you need to sign off. Thank you for joining this call as well. And so two questions for the sub team, how much time do you think realistically you would need to at least think a little bit about these questions? And secondly, when would you like your next call to be?

And Kristine, you're saying Friday is good for you. We can do a 60-minute call at the same time next Friday. Griffin supports as does Beth and Michael. So and Susan as well. So it does look like there is quite a few people on this call that would prefer to keep it to this time next Friday for 60 minutes, and I'm going to ask those who haven't spoken or typed if you have any concerns or objections?

It doesn't look like it, so what we will do of course is when we take these notes and action items to the sub team mailing list we will note that that is more likely than not going to be the time and duration of the next call, but, you know, anyone who is on the team but not on the mailing list if they have concerns then we would ask that they voice those as soon as possible. So we'll do that.

And then, Phil, as the only cochair that's on this call, I note that this might mean that we would need to move the cochairs and staff prep call and we'll come back to you, J. Scott and Kathy separately on that.

((Crosstalk))

Phil Corwin: Mary, on that, this is Phil. I'm not going to be able to join any calls next Friday because of a family event in New York. So just putting that on the record, you know, and so work around me for next Friday.

Mary Wong: Understood, Phil. Thank you very much for letting us know. And so if we're going to meet next Friday at this time for 60 minutes, Michael, your question is the natural follow up, can we then agree that any comments and suggestions that sub team members will have be sent to the full mailing list of the sub team, not necessarily of the working group, by close business Wednesday? Then that will give staff some time to try and put them in and send it all to you before Friday.

And of course I think what I would note is that that doesn't mean that we won't take any suggestions after next Wednesday, it'll just be nice to have some additional food for thought to work through for next Friday. Everyone's so amenable today. That's lovely.

So on that note, we've reached the top of the hour. It looks like our homework's quite clear, our timeline for next week and the next call. Kristine, I think there's more chocolate in your house than in mine at the moment. But on that note, thank you to everybody for joining. Staff will follow up with the sub team mailing list on action items and so forth. And for those who are having extra days off or celebrating this holiday, have a good one. And we'll talk to you all soon. Thank you very much.

Michael Graham: Bye now.

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

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