

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
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Coordinator: Recordings are started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the Review of All Rights Protection Mechanisms RPMs in all gTLDs PDP Working Group call held on the 3rd of May, 2017. In the interest of time there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe Connect room. If you are only on the audio bridge could you please let yourselves be known now?

Rebecca Tushnet: Rebecca Tushnet.

Terri Agnew: Thank you, Rebecca.

Claudio DiGangi: Claudio DiGangi.

Terri Agnew: Thank you, Claudio. Hearing no further 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 I was speaking to avoid any background noise. With this I'll turn it back over to her cochair, Phil Corwin. Please begin.

Phil Corwin: Yes, thank you Terri, and good morning, afternoon and evening to the 40 participants now in the chat room. I will again be chairing today's call. I assured this is no power grab on my part to the extent that anyone would want the burden of this power, but at the request of my fellow cochairs who seem to think I did an adequate job of leading the discussion on the last call.

So with that, anybody have any updates to statement of interest? And hearing and we are going to turn to Item 2, which is a short five minute update from our Sunrise and Trademark Claims subgroup chairs and then we will also say a few words about the state of our preparation of questions for the basis of another subgroup on - to review private protection questions.

So, Lori Schulman, I see you on the line, are you ready to give a short report on your activities past week?

Lori Schulman: Sure. Can you hear me okay?

Phil Corwin: Hear you fine. Thank you.

Lori Schulman: Great. So we've had three calls for the Sunrise Subgroup. The first of the calls was more administrative, and the second two were more about getting to the substance of the task we were asked to do, which is basically to combine questions where we thought they could be combined, eliminate any redundancies and to match the questions with the overall workgroup timeline to estimate or guesstimate how much time each question might take.

So we have bunched questions. We have noted where we thought there are redundancies, although there are not many. And what do team decided to do is instead of propose rewriting questions, since these are charter questions and they have been agreed upon, that we were going to make notations to the questions of where we felt clarity could be useful, rather than attempting to do the work that we think that greater review team ought to be doing.

And so we left off with - we're creating a simplified chart. We will have the combined questions, we'll have the estimated timelines. And I'm hoping that after this week's call we may actually be completing the task.

Phil Corwin: Well thanks for that report, Lori. I've been on most of your calls. The group is making good progress. Does anyone have any questions for Lori before we turn to Michael Graham? Not Michael Graham...

((Crosstalk))

Lori Schulman: I have a question.

Phil Corwin: Michael or Kristine. Yes. Sure, Lori, go ahead.

Lori Schulman: Yes, one of the things that we've been discussing in some of the questions go to sort of the nuts and bolts of how the TMCH actually works. And we had one participant asking questions about SMD files. And we were wondering if those kinds of questions are appropriate in the charter or perhaps there might be a mechanism to maybe do a briefing on mechanics rather than pose a mechanical question inside policy review questions. So this is something I wanted to highlight for the group.

Phil Corwin: Okay, so you're saying...

Lori Schulman: I want to note that - yes, Mary's been especially helpful in providing information regarding technical questions and how things actually physically operate inside the TMCH with registering names and claims.

Phil Corwin: Okay, so are you requesting now any additional help in that area or just noting that it's come up?

Lori Schulman: Well I'm throwing this out there to you as the chair into the group generally because I don't know if other of the sub teams are having the same types of issues where perhaps there is more technical questions being asked rather than policy related questions. If so then I think it would be a good idea to maybe have a technical briefing for the entire workgroup so that everybody is on the same page in terms of how things technically work like an SMD file or a claims notice. Not the substance of it but how it's issued, how it sent, things like that.

Phil Corwin: Okay, well I think the cochairs, I'm just one of the three, will take that under advisement, discuss it with staff and see if on one of our future calls not too far into the future we can do a short presentation on the operation if members of the working group would find that useful as we try to wrap up on the Trademark Clearinghouse. Okay.

Lori Schulman: Thank you.

Phil Corwin: You're welcome.

Lori Schulman: Okay.

Phil Corwin: So now do we have someone ready to report on the progress of the Trademark Claims Subgroup?

Michael Graham: While this is Michael Graham for the record. Both myself and Kristine, who is cochairing the working group, we are sort of tag teaming it, are on the line. The last call that we had I chaired so I will go ahead and just very quickly...

Phil Corwin: Okay.

Michael Graham: I guess to summarize I think we are, Lori mentioned that they had had three meetings, I think we are one meeting behind being around the same status as the other working group. We sort of in discussing questions that had some

proposed batching the last call that we had last Friday sort of took it from there to try to present it in a batched way and sort of a tree formation because some of the batching seem to be mixing questions.

So I took it upon myself and I distributed last night and we will be discussing that on Friday at the meeting which Kristine will be chairing. And the idea being to try to get to general questions and then to identify with in those sums up questions that have come up either, not so much through the charter but through the development of these questions so that it is a clear approach to answering those once we bring them back to the group as a whole. So I think we are probably one meeting back. We have not started looking at the time on the working plan.

And I suppose according to how the discussion goes Friday on the draft questions in general and specific questions that we may be able to start working on that and have that for the next meeting.

Phil Corwin: Okay. Thanks very much for that update, Michael. Anyone have any questions for Michael before we proceed? All right, hearing and let us proceed to Item 3 on the agenda, and this is the presentation of the proposal for open question number 10. And it appears that Michael Graham will be presenting that proposal in a five-minute presentation.

So as soon as staff gets back on the screen in the chat room, Michael can go forward with laying out his case for his proposal. Mr. McGrady, I see your hand up. Please go ahead.

Paul McGrady: Thanks, Phil. Paul McGrady here. Before we move off the sub teams, I guess I was just checking in on the private protections list sub team, I know we were supposed to get questions, I don't know if those have been circulated or not. Is that team formed? Who's on it? When is it meeting? That kind of thing. Thank you.

Phil Corwin: The team - yes and excuse me for skipping over that, I should have hit that before moving to Item 3. The cochairs have been looking at a near final list of proposed questions. Can I ask staff to brief us on - quickly tell us how soon we anticipate sharing that with a full working group, getting their feedback and setting up that subgroup to refine the questions?

Mary Wong: Hi, Phil, everyone. This is Mary from staff. I believe what we are doing is waiting for final signoff from each of the three cochairs. And the hope is that we would circulate that list to the full working group sometime this week so that that group can start meeting next week.

Phil Corwin: Okay. All right thanks, Mary. I think I've given that final review by can you, after this call can you circulate that document as it now stands, to the three cochairs again so we can wrap that up and give it out to the members of the working group hopefully before the end of the week? Would that be acceptable, Mary?

Mary Wong: Of course, Phil, no problem.

Phil Corwin: Okay hey, thank you very much. Okay so now we have the proposals relating to Trademark Clearinghouse questions on our - what for me was a late night call last week. We went through four of them. And which I believe leaves the - we went to the questions on the proposals relating to Questions 7 and 8, and that leaves the - and I'm scrolling through here with a little resistance from my computer - the proposal beginning on the bottom of Page 5 submitted by Michael Graham.

The question it relates to is, "Should the Trademark Clearinghouse matching rules be retained, modified or expanded to include plurals, mark contained, or mark plus keyword and/or common typos of a mark." And so Michael, you've got a proposal here on that question and if you could proceed with the presentation we'd love to hear the rationale.

Michael Graham: Thanks Phil. It's Michael Graham for the record. I think the rationale, which I think is the most important part of this, is best expressed in the document. I can read that, I don't know how these were presented in the last meeting. It was a bit too late at night for me I'm afraid on the West Coast.

Basically though, the issue that I've become aware of, and this is really working with some people registering domains were trying to register domain names in the new gTLDs, and also from the standpoint of working with a trademark owner, this is an individual proposal, has nothing to do with any of my connections, just from personal observation.

And that is that there is a lot of time spent when we would get through an application for domain name, get through the claims period only to find out later, and this was in the case of people who were not running any sort of searches, either in the domain space or in the trademark space to see if anyone owns any rights, and discovered that indeed the domain name that was being applied for contained either prominently or incomplete form trademarks that were being protected so that after getting through the process, of course when the trademark claims notice then goes to the trademark owner, who has registered it in the TMCH, to have actions filed against some of these applications, on the other side, to become aware of applications and have to move against them after they are registered.

It seems to me that, you know, from the standpoint of clients that I was working with, that really a lot of them were, you know, good faith applicants, they didn't have any reason to believe that they should run into any trouble. And then the question became well, do you think there's going to be a problem or not after they had already been challenged by trademark owners. And they had already started development of sites and such.

So this proposal is to address that as a possibility to avoid that sort of issue. And it was not trying to address so much the variants, typos, there's so many ways that there could be either intentional or unintentional typo-squats that,

you know, that would be the 50 plus type of provision I suppose. But really where the entirety of the mark that was recorded with the Trademark Clearinghouse appears in or as a portion of the applied for domain name.

I think it's an idea worth considering, both to benefit applicants to avoid their cost and going forward, also given the opportunity to determine whether or not they would be problem or not, and then also to trademark owners I suppose in terms of getting that information out to applicants so that again, the applicant can determine whether or not what they are doing is going to be confusingly similar and decide whether or not to proceed with the application.

After I posted this, I did note that there was some very good discussion of a problem that I had not gone into which would be especially for certain types of trademarks, the possibility that they were being incorporated almost as grammatic portions of innumerable trademarks, I'm sorry, domain names. And that is something I think would have to be addressed if this proposal were to go forward certainly in the implementation phase.

But I put this out there because it was something that I saw happening in the real world, and in order to, as I say, in the proposal really to help applicants avoid unnecessary costs going forward and so that they could make intelligent decisions about their applications before going forward with websites and such that this notice be given to them.

Phil Corwin: Okay, thanks for the presentation Michael. I'm going to take cochairs prerogative to just ask you a couple of clarifying questions. What just happened to the document?

Michael Graham: It darkened.

Phil Corwin: Looks like we're about to see a video. All right, let me get - scroll back to the page where. Alright so we are not going to debate whether we should adopt your proposal now but I'm going to start by asking one or two clarification

questions and if anyone else wants to ask clarifying questions we will entertain that for a few minutes and then we will return to actually starting to discuss whether we should adopt some of the proposals on Questions 7 or 8.

So as I understand it, your proposal would be to allow the registration of a plural of a mark, which is one form of a typo, very limited form but it's not the exact mark, to include any mark in which the full - any term in which the full mark was contained. So if I was to - if Apple was registered in the Clearinghouse and I attempted to register Grapple.tld, I would get a claims notice.

And mark plus keyword, which would be something like Apple Computer or Apple software or something like that but not typos other than plurals, is that a correct characterization of your proposal?

Michael Graham: Yes, that is correct, it would not include any of the typo variants.

Phil Corwin: Okay.

Michael Graham: And I note that in the chat George has posted one of those marks that would pose an interesting - would pose an issue with coverage and that was Red registered for AIDS fundraising, that would then...

Phil Corwin: Right, right, yes, I note George's comment, that goes more toward debating whether we should adopt this rather than just clarifying right now.

Michael Graham: Right.

Phil Corwin: Second question, and I have three altogether, they are each short. Do you envision if this was adopted would the mark holder have a right to register the marks contained or the mark plus keyword in the Clearinghouse or would it simply - while I guess - excuse me. Would the rights holder have a right to a sunrise registration for the marks contained or mark plus keyword term or the

plural or would it merely be for purposes of generating a trademark claims notice to a prospective registrant? How would this operate? Would operate for both related RPMs or just for the claims notice?

Michael Graham: No, my proposal would be only for the claims notice; it would not be for sunrise.

Phil Corwin: Okay. And last question, not trying to be a trick question but since we are talking about rights protection mechanisms, a question I ask all the time because I strongly believe that ICANN has a responsibility to protect rights but not to create new rights, what right do you see a trademark holder having any marks contained or a mark plus keyword term?

Michael Graham: It would be the same rights as other cases when trademarks, likelihood of confusion.

Phil Corwin: Okay, all right.

((Crosstalk))

Michael Graham: And trying to avoid, you know, any sort of having the Trademark Clearinghouse conduct any sort of analysis whether or not they determined that it is. One thing, again it's still Michael, as you are asking these questions I realized that perhaps, and again this would be part of the debate perhaps or part of the implementation, that for this type, if there were this expansion I think it would call for a different type of notice than the notice that is being used now, if that's continued.

Phil Corwin: Yes, I would agree with that. That gets more into should we adopted under, and how does it relate to the RPMs if we do adopt it. Without venturing into debate on whether this proposal should be adopted, does anyone else in the working group have a question for Michael right now seeking to clarify the

bounds of his proposal or the basis for it? The floor is open for any clarifying questions at this time.

Okay, I don't see any so we are going to move onto Item 4. And I do want to note then in regard to Question 8, we do have a new proposal submitted since I last called from Jonathan Agmon regarding a potentially broadening the registration of geographic indicators in the Trademark Clearinghouse. He is not with us on today's call so we are going to hold on the presentation of that proposal until he's able to join us.

So okay, I see handset from Brian Beckham and then Scott Austin. Please go ahead and then we will hear you out and then we will get into Item 4 on the agenda. Oh.

Brian Beckham: Hi, thanks Phil. Brian Beckham. I just wanted to ask, Michael, I think - I'm scrolling down the document there was a second part of the proposal which was to look at the possibility of expanding the trademark claim service to legacy TLDs in addition to new gTLDs.

Michael Graham: I'm sorry, that is correct.

Phil Corwin: Okay. The cochairs are going to intervene just to note that the separate question of whether any or all of the new TLD RPMs, and of course not all will be relevant to legacy TLDs, sunrise registrations clearly wouldn't be relevant. But we are charged in our charter to issue an opinion on whether any or all new TLD RPMs should become consensus policy and thereby applicable to legacy TLDs.

And while the cochairs haven't discussed our process for addressing that in great detail yet, my own conception is that of how that would unfold is at first we would decide whether to make any changes in the existing RPMs, and then after completing that effort would discuss whether any of them should be recommended to become consensus policy.

So the chair would suggest that that question of becoming consensus policy and applicable to legacy TLDs is implicit in all of our work and will be addressed at some point in the - in its working group's efforts.

Michael Graham: Phil, it's Michael.

Phil Corwin: Yes.

Michael Graham: Yes, and in light of that, and again my apologies joining the group a bit late so I have - I'm still trying to catch up on it. But in light of your comment that that is part of the charter for later, I'll remove that part of the proposal.

Phil Corwin: Okay, that's fine. No need to apologize. Just wanted to make sure everyone knew that we are going to address that central question of any of these RPMs becoming consensus policy before our work is done. And we would probably want to do that after we decided whether to adjust any of them in any way. Scott Austin, please go ahead.

Scott Austin: Yes, Phil, thanks. Scott Austin for the record. My only comment was there was a little - well first of all Brian asked the question I originally had. But in looking at Michael's proposal, the term "common typos" is still on there. There was a discussion about it and I thought I heard Michael kind of retract from that, but it is a very uncertain term and it just might kill the whole proposal if it wasn't clarified. I don't know if there was going to be a scope given to that in terms of common typos or if it's off the table now. And I just wanted some clarification on that aspect of the proposal.

Phil Corwin: Sure. Michael, do you want to respond to that regarding the meaning of "common typo" versus "uncommon typo."

Michael Graham: I'm actually looking for where that language is. I'm sorry.

Phil Corwin: That's in the question.

Scott Austin: This is Scott Austin. It's at the end of the...

((Crosstalk))

Phil Corwin: That's in the question.

Scott Austin: Yes, it's in the question itself, but I thought that was part of what was being addressed by the proposal.

Phil Corwin: No, I think Michael just clarified that he's not talking about typos other than plurals, that his proposal does not go that far.

Michael Graham: Right. This is Michael for the record. Yes, Scott, I was not addressing or incorporating common typos into the proposal that I submitted.

Scott Austin: Okay thank you.

Michael Graham: Yes...

((Crosstalk))

Michael Graham: ...would be in addition to that general question, it really is approaching it at a different angle.

Scott Austin: Okay thank you.

Phil Corwin: Okay. And I want to note a question from Paul McGrady in the chat room, "What does holding the already late additional (unintelligible) due to our ability to discuss the two that are currently on the floor?" Well, Paul, let's start with the debate on Question 7, the two proposed on Question 7, see if we even get up to Question 8. But I think we will ask Jonathan to be ready to present

on our next call. We can't wait indefinitely for that presentation, but at least we know that his proposal is out there and we can - if we get to Question 8 today we can keep that in mind as we discussed the alternative proposals. I hope that's satisfactory.

All right, so I think we are ready now to continue to agenda Item 4, which is to continue working group discussion on Questions 7 and 8, starting with a quick summation, two minutes of the separate proposals. So let's start with Question 7. And let me just take a look here and suggesting a way to proceed.

The question is on, "How our design marks currently handled by the TMCH provider?" that is by Deloitte. We've got one proposal from Kathy Kleiman. We've got another related proposal from Greg. And I think the most efficient way to proceed might be to have both first Kathy and then Greg give a short two minute presentation on their specific proposals and then launch into a general discussion about whether we want to in any way direct Deloitte to change its current practice on the handling of design marks.

So, is that an acceptable way to proceed to have those two presentations and then open general discussion? If anyone objects to that, now would be a good time to speak up. Okay, so why do we go ahead, Kathy, if you can give us a quick presentation and then we will hear from Greg and then we can open general debate.

Kathy Kleiman: Sure. Thank you, Phil. Can you hear me? This is Kathy Kleiman.

Phil Corwin: Hear you fine.

Kathy Kleiman: Terrific. Hi, everyone. We've discussed this extensively on the list so I will summarize quickly that this is a recommendation addressing both Question 7, the design marks, as well as Question 16, which is also one of our major charter questions on the scope of the TMCH and the protection mechanisms

and do they reflect the appropriate balance between the rights holders and those of the non-trademark registrants.

So I'll skip down straight to expanded discussion, where the original rules adopted by the STI, and later that GNSO Council and Board talk about that the Trademark Clearinghouse database would accept text marks from all jurisdictions. And that those text marks specifically won't be design marks because the design marks provide the extraction of letters or words from logos or designs was expressly not included for the Trademark Clearinghouse.

And what we find is that although these rules were dutifully passed on through the Applicant Guidebook, which says that the Trademark Clearinghouse can accept any word mark from any jurisdiction and a word mark validated by a court of law or judicial proceeding, it turns out that Deloitte is doing exactly what neither the IRT, because I've talked to some IRT people, neither the IRT nor the STI wanted. They are exercising a massive amount of discretion.

We put them in number and are Appendix A, a number of examples of words interwoven with designs, stylized composite marks and design marks, and it turns out that Deloitte said, and I'm glad they answer the question, that they would extract every one of those words as well as letters that were engaged in extensive patterns.

So the letter A, they would have put into the Trademark Clearinghouse, even though it's very, very stylized. Think of the implications of that from Michael Graham's proposal. So my proposal as well include that, it's not just in the US but Argentina and other places where a mixed mark, composite mark is protected in its stylized form.

Accordingly, and here I'm quoting an Argentinean quote, accordingly the protection granted by the registration of a mixed mark is for the composition

as a whole and not for any of its constituent elements in particular. And that was a UDRP decision actually, I apologize.

So the proposal is to go back to the original text that as adopted as part of the creation of the trademark claims, the creation of the Trademark Clearinghouse, the creation of the sunrise, was this balance limiting closely what goes into the Trademark Clearinghouse.

And the proposal is that the rules that we created and set out in the Applicant Guidebook are not being followed, and they should be unless we change those rules by consensus. Thank you.

Phil Corwin: Thanks, Kathy. And just clarification, I've read through again the proposal and the detailed explanation, but can you succinctly give us like in 25 words or less exactly what direction you would have this working group provide to Deloitte in terms of changing its current practice?

Kathy Kleiman: That's a good question. Yes, to accept character marks, to accept - do not extract, to not engage in any discretion and not accept stylized mark, composite marks, to stick with device marks and character marks, the text in the word marks that are part of all the rules that we can see in front of us. And they should stick to the rules that they were given. Does that answer the question?

Phil Corwin: Yes, I think for now. And I'm sure we would get into more detail as we start open discussion. So I'm going to turn to Greg now and ask Greg to present his proposal also in regard to Question 7 and then we can open it up for general discussion of whether either of these proposals or some variation or combination then should be adopted by the working group. Go ahead, Greg.

Greg Shatan: Thanks. It's Greg Shatan for the record. First, I don't think it's merely as clear or cut and dried what the STI statement meant when the said text marks since when it talks about design marks it talks about excluding marks that

are, where the protection is solely in the context of the design. And that hardly goes to most of what is being lumped in under the category of design marks.

Boiling everything down to text and design marks is far too binary for what is really a spectrum of many different kinds of marks, which were referred to as word of marks, not word only marks or standard character marks, in the AGB. To the extent there's a distinction to be made between text marks and word marks, is not without merit to consider.

Furthermore, the Board did not dutifully place anything in the AGB, it accepted only the substantive content of the STI, and not the verbatim text and that's clear in the resolution that the Board made.

The Trademark Clearinghouse rules may be questionable whether they are in fact following their own rules, which say that the letters, words, numerals etcetera need to be predominate and clearly separable or distinguishable from the device element. And all predominate characters are included in the trademark record in the same order they appear in the mark.

May be from some of the examples we saw that issues of predominance and separability aren't being adhered to as closely as one might hope, if following those rules. In any case the distinction is made only between design marks and all of the marks. Putting aside the issue of clearly designed only marks are not going into the TMCH, but we consider the fact that the primary concerns expressed in the STI report was to exclude registrations where the mark was protected only in the context of the design, that the only type of mark that contains text that can clearly be characterized as such are marks where the text is expressly disclaimed and where all of the text is expressly disclaimed.

So my proposal is actually to take names, what I think is a more practical and appropriate interpretation of what is in the AGB and even the STI statement

as made, since there is no actual legislative history just, you know, recollection which can be clouded by results, desires for particular result, but taking from the words we instruct - in the actual proposal itself would be to exclude from the TMCH any marks where there are design elements included and all of the text elements are disclaimed in their entirety.

So we would in fact instruct them to change their rules on predominance and separability and accept all registrations containing text except where the mark text is disclaimed so that can create a fairly simple rule and it is a rule that's consistent with the understanding that even for marks that contain both words and designs the words are protected beyond the particular context of the registration in this particular form. Thanks.

Phil Corwin: Okay. Thanks, Greg. Two quick questions from me, the third part of your proposal recommends that we establish new ground to challenge procedure to be added to assess where the underlying trademark registration was obtained in bad faith as a pretext to obtain a sunrise registration. Who do you envision filing such a challenge?

Greg Shatan: Thanks, Phil. I think that in that case the challenge could be filed by a party that it would seek to register such a domain. Obviously if it is merely receiving a claim they can ignore it but nonetheless cleaning up the record is worthwhile. And if it is a - one that they would want to get in sunrise and believe that they are competing against essentially a bogus fraudulently acquired trademark application, and I use "fraud" more in the context of fraud on the trademark office than some sort of, you know, criminal enterprise type of fraud.

But nonetheless the challenge would most likely I think him from another interested party, although there have been some discussions separately about some form of the review panel or the like to deal with the issues such as this and that could also be something to be explored as well.

So I think that sometimes, you know, depending on enlightened self-interest as the only method of dealing with objectively, or nothing is objective, but reasonably objectively fraudulently obtained registrations where there is really no underlying bona fide business going on under the mark, it may be a little narrow to depend only on the self-interested parties and perhaps to consider some other form or mechanism of dealing with those, or seeing if the TMCH itself, you know, wants to take a more active role, I think there are some indications that they do have some role in that. But that's another potential solution to that problem. Thanks.

Phil Corwin: Okay. And last clarifying question, and then replied just a very brief answer, both you and Kathy seem to believe that Deloitte has gone too far in terms of the marks it is accepting. You both want to give us some direction that would pare back its practice somewhat. But yours doesn't go as far as hers as far as I can see. How would you characterize the principal difference between your proposal and Kathy's proposal in terms of the restriction of acceptance of marks into the Clearinghouse? And again a short answer please and...

((Crosstalk))

Phil Corwin: ... open it up for general discussion.

Greg Shatan: Thanks, Phil. I'll try to be as short as I can be. I think the primary difference is that Kathy, as I see it seeks to limit the TMCH only to what we in the US call standard form or standard character marks and exclude even marks with the slightest amount of stylization such as the registration Deal Safe which is in the TMCH guidelines, as an example of a trademark exclusively consisting of letters, words, numerals and special characters which is actually a figurative or stylized registration in both cases because it is in Times Roman font I believe as opposed to a text or standard character one.

So that is basically taking only, if you will, kind of the tip of the iceberg and leaving everything else out of the trademark registry regardless of its validity

or strength or protection as a trademark. In my case basically taking all marks that contain design elements and have stylized fonts or claims as to color and putting them into the Trademark Clearinghouse unless they are expressly disclaimed, in other words there is the express statement that there is no claim being made to rights in the text itself.

So it's really if you look at the spectrum, which is in my proposal of - I think it's, you know, roughly 12 or 14 different types of registrations from standard character to design only, we are really slicing between admissible and not admissible marks at a very different place. Thanks.

Phil Corwin: Okay thank you. So now I'm going to open it up to the working group. We have two proposals before us in regard to Question 7, both are premised on the belief that Deloitte has gone somewhat too far in their acceptance of certain marks into the Clearinghouse. They would both seek to direct Deloitte to pare its practice somewhat from current practice, but they differ in the details. So we are going to entertain discussion on one, whether Deloitte has gone too far in acceptance of design marks; and, two, what if anything should be done about it.

And the last thing I'm going to say before opening discussion is that while I see in the chat there is always a lot of discussion about what STI or IRT or AGB said on this, and I think all that historic background is very important to know, but I remind the group that we are not bound to prior decisions; we have latitude to recommend changes in the policy based on the concrete experience of the actual operation of the Clearinghouse in the new TLDs, which none of those, none of the folks who draft in the IRT or STI or the drafters of the AGB had such concrete real-world experience.

So I'm going to stop there and hopefully there are some folks on the working group who want to comment on these proposals. I see Rebecca's hand up, so she can start the discussion and then we will - got another hand up to her,

I'm sure we'll have some good discussion on these proposals. Go ahead please Rebecca.

Rebecca Tushnet: This is Rebecca Tushnet for the record. So I think the point is that there are different kinds of marks gets to the core of the problem because only text can go into the TMCH with right now some special treatment of spaces and ampersands, we could also make particularized rules for other symbols, which might well be appropriate.

But if a mark that is not text-only gets translated into the TMCH, gets the non-text parts stripped off of it, that is a change from the national protection as much as any other translation, including a translation into a foreign language would be.

I think the concepts that we are talking about other things like predominance, and separability are far too subjective and give Deloitte wait too much discretion as their answers clearly indicate. Greg seems to agree with that. He just wants a different solution, he wants them to register everything including that stylized A. I think that's way too expansive. There's really no doubt in my mind that that A has extremely limited protections based on the stylization.

But more generally, statements about how stylized marks are subject to greater protection than what's in the registration, those are beside the point and speculative. So that is true in some circumstances where a challenged second use has similar words. It's not true in other instances when the protection is limited to the stylization.

That's the kind of judgment Deloitte should not be making and certainly shouldn't qualify a marked go into the TMCH, or portions of the mark. I think the argument, the key argument is that Deloitte should stick to the thing that the national authority actually granted rights in, not the potential scope of the trademark owner's rights if litigated up against a particular use. Thank you.

Phil Corwin: Okay. Thank you for those comments. And calling now on Paul McGrady.

Paul McGrady: Thanks, Phil. Paul McGrady here. A couple of thoughts on this, first to address something that Rebecca said that I think is really important distinction between these two proposals, is that we really need to step back and think what is the, you know, what is it that these, especially for claims, setting aside sunrise, what are the purposes of these claim notices in the first place?

And, you know, obviously they have some brand owner protection baked into them because in very if they are tailored correctly they would reduce some amount of the cyber-squatting. And I know we've been around the list on that topic quite a bit already.

But the second purpose is that they would give a potential registrant the information that they need in order to make a wise decision about whether or not to proceed with a domain name registration. And so I do think that a real-world notice to the potential domain name registrant is helpful. We don't do them any favors by saying well, you know, that, you know, that word mark essentially is written in cursive so therefore a domain name registrant doesn't need to know about that. I think hiding the ball from the registrants is a bad idea.

We have essentially, you know, one-time opportunity to get to them before they do something that can expose them to at least in the United States up to \$100,000 in statutory penalties. I think that Greg's proposal strikes the proper balance of informing potential registrants of what they need to know before they go down that path.

Secondly again, we've gone round and round about this on the list. But something to keep in mind is that the Applicant Guidebook, which at the end of the day is the final baked product that came out of all the various, you

know, steps of review, doesn't exclude stylized marks from word marks. And, you know, but it does specifically address design marks and does specifically address text marks.

You know, we may need to do some really basic thinking about what's more like the other here. Obviously a mark that has words and a design is arguably more like a design mark than a mark that is pure text. It's not a design mark, it's a composite mark, but it is, you know, at least it is on that, you know, at least it is moving down the spectrum whereas a stylized mark, which is essentially just words but written in a different font than Times New Roman is much more like a Times New Roman mark.

And in fact I would argue it is written in a fancy font it is in fact a word mark, it's just that, you know, there are, you know, more than one font in the world. And so we do need to do some real, you know, sort of basic thinking about what it is that - how the different marks move down that spectrum and specifically how do we produce claims notices that actually provide notice to people who frankly need it.

Part of this, as I said, is for brand owner protection but from my point of view the real world benefit of this is to warn folks away from registering domain names that are going to get them in trouble. Thanks.

Phil Corwin: Okay, thanks Paul. I just want to remind all working group members, if you raised your hand and made a comment please lower your hand after that. Calling now on Greg.

Greg Shatan: Thanks. Greg Shatan. And just briefly, I think is important, as Paul points out, that recognized the TMCH isn't just a tool and service of two specific RPMs, and clearly in the case of claims important to get the notification out there. I think in seeing the discussion about freaking out, so to speak, in the chat, I want to remind the list that we had some earlier discussions that seem to have been lost of tweaking the claims notice, and that its original parents,

Paul and Kathy, volunteered to have another go at perhaps making it a little less legalistic sounding, trying to strike the proper balance, phrase of the day, between something so weak that it's ignored or so strong that there is a freak out that it's out of context with the intent.

So I think we should keep that in mind in terms of how we look at what goes into the TMCH and how claims is used. The current claims notice is not necessarily what will be seen the next time around. Similarly, I think with regard to the other supported RPM, which is sunrise, eliminating, you know, all marks that happen to have design elements or stylizations or claims as to color, I think excludes, you know, a huge swath of legitimate registrants.

And it is hardly the kind of coin flipping head scratcher about whether there is protection beyond the mark exactly as it appears. And it is not the case that would need to be litigated, for instance the examples being discussed today, you know, are examples that came up on the list just before this or examples that came out of trademark examination looking at a mark already on the register versus one that is being considered for registration. So this is not about applying a sort of litigation test to this but really just that protect-ability test.

So, you know, I think we can also think about whether, with proper instruction and guidance, that TMCH could do a better job of dealing with the separability and predominance and being somewhat less subjective on those. But if we take the view that that can't, that that is unlikely to occur, I think that humbly my proposal strikes the right balance. Thanks.

Phil Corwin: Thanks, Greg. And I would just note that of course when we get to the claims notice we will be discussing a change of language. Certainly if we were to adopt something like the proposal that Michael Graham presented a little while ago, and permitted generation of claims notice by something other than an exact match, we might even need a different kind of claims notice for those situations, different text.

But in the end personal opinion, no matter how we rejigger the language of the claims notice the basic message is still going to be if you proceed with this registration you may be in some kind of trouble and you might want to consult with a trademark lawyer before you complete the registration. I think that is, no matter how you say it, that's the ultimate message to the prospective registrant.

With that I will shut up and call on Michael Graham to comment on these proposals.

Michael Graham: Thank you Phil. Michael Graham for the record. I just wanted to address a couple of things specifically with regard to the proposal of removing a registration for any trademarks that incorporate designs. And I think, you know, Rebecca and I sort of shared a couple of emails, and Rebecca, I thank you for sharing some of the case law that you've come across.

I have to disagree that granting protection to the word portion of design, stylized, whatever we call them marks is a change from the national protection. I think that it is clear that marks that incorporate words and designs or stylized words in the case law does provide protection to those words apart from the design in many cases. It varies. And there is a variation in the amount of protection that may be given to a particular word that is a portion of a design mark.

But that is also the case with any mark, with any textual only mark in terms of the protection that it is granted. One of the what I see real benefits of the TMCH registration and the Clearinghouse notices is that there is a bright line that you do know that if it is registered this will happen. And I think that bright line of information is very important, and I agree totally that, you know, it's not just the trademark owners. I don't want to lose focus of the fact that the benefits of the system are not only to protect against trademark infringement but it is also to protect registrants when they apply for domain names.

Yes, there may be implementation issues that should be considered going forward, but I do not think that a block prohibition against registration of words in the Trademark Clearinghouse that are incorporated in word plus design or stylized word marks would be the appropriate direction to go either from the perspective of trademark registrants or from domain name applicants.

So anyway, I believe that, you know, it is not speculative whether or not words within these design marks, using that is a broad term, are going to be protected. The extent to which they may be protected would be a question but that's not something for the Trademark Clearinghouse to decide, that's something for the courts. And I think we need to stay away from that.

And I also think that some of the comments on the chat list have it correct that - and I don't think it's part of the proposal that we would make but my understanding would be that perhaps the distinction should be that word plus design stylization, registrations with the Trademark Clearinghouse again be applied only to the claim service and not be the basis for sunrise registrations, and that might get away from some of the concerns some of us have. Thank you.

Phil Corwin: Okay. Thanks, Michael. And I see cochair Kathy Kleiman is next up. Go ahead, Kathy.

Kathy Kleiman: Thanks, Phil. For this purpose of course I will take off my cochair's hat, thank you. And use my hat as submitter of one of the two proposals that's before us. And I think, Phil, I'm going to address three issues quickly. One is the fundamental question of what is in front of us and what is up for discussion and what is not. And then address some of the factual questions and then go back to Greg's fairly - what I hear is some new proposal or variation.

Okay, so fundamental question, how much are we wedded to our original work? It's a really good question but it's one we have to wrestle with and we

have to handle fairly. I've been hanging out, thanks to Jeff Neuman's invitation, and some of the Subsequent Procedures Working Group sub team meetings. And they view everything as kind of advisory. Jeff, you know, let me know if I am mischaracterizing. But they view everything as somewhat advisory and they can make all the new rules.

If we want to view what comes to us, what was written, what was intended and what was written as advisory then everything is on the board. That means the existence of the trademark claims, the existence of the sunrise, and we have proposals now before us that do question some of that. Jeremy is on the call, Jeremy Malcolm, he can talk about his proposal.

So if we, I mean, but we can't do both. If the sunrise period exists and the trademark claims exist then they were created with the balance that was intended. And we've talked with some of the drafters. You know what was intended by some of this material.

Okay, so now I want to go back, I appreciate the care for registrants that I am hearing, and that we are protecting registrants. Registrants are turning back almost 100%, 94% is really high. And we never intended, well actually we never intended to create trademark rights. And as much as we wave our hands and say we are not creating trademark rights, if we allow preemption of something broader than the rights that were given, then we are. We are creating some kind of right. You can call it what you want but it is certainly related to the trademark rights.

And choice, the choice, the power, the opportunity, the choice lies entirely with the trademark owner. They can choose to register a standard character mark or a stylized mark or a design mark. But if you come to the US Trademark Office they tell you what the standard character mark, the word mark, the text mark gives you. And that is registration of a standard character mark, and here I'm just reading, would entitle you to use and protect the mark in any font style, size or color.

It is for this reason that a standard character mark can be an attractive option for many companies. So Coca-Cola registers Coca-Cola as a standard character mark and also as a stylized mark so they get the protection as text. Easily translatable into ASCII because ASCII doesn't have the cool font of the Coca-Cola, they have the protection as text and then they go ahead and get that protection as script and that readily seen stylized mark that we all know.

The choice is entirely in the trademark owner. If they choose standard character marks we should protect that. If they choose a stylized marks and design marks, way too much discretion. And so to Greg's thought on separability and predominance, this is something we should give some thought to. And I'm willing to work with whoever wants to do that. Thanks.

Phil Corwin: Thank you, Kathy. And I'm about to call on Paul Keating. I'm going to note we've got 22 minutes left on this call, I hope we get to some finality on this question in those 22 minutes. I don't want to cut anyone short but I want to urge all speakers to be as succinct as possible. I think if you kind of focus on the main points without a lot of the surrounding detail it actually sometimes strengthens the presentation in terms of clarifying the issue. So go ahead, Paul, and then I see, go ahead and then we will continue the discussion. Kathy, if you could drop your hand now that you finished. Paul Keating, go ahead.

Paul Keating: Thank you, Phil. Paul Keating for the record. I will echo go to thoughts. One of Kathy's comment that the trademark owner is the one that is ultimately in control of how they filed their registrations for trademarks. I also agree with Michael's comment to the extent that there appears to be two different curative right that issue, so to speak. What is being the sunrise preemptive right to register, and the other one is the notice which is primarily for the trademark holder's benefit, although I can see some tertiary benefits to a domain name registrant.

I think that what we need to focus on is the fact that there is a balance that is here. There is a balance between the rights of the trademark holders and the participation in sunrise goes well beyond any legal right that the trademark holder would otherwise have. And we also have to consider the ease of use of the system, in other words Deloitte does not want to make, nor do we want Deloitte to make any form of subjective decisions whatsoever as to what is in or is not in the database.

So I believe that they should be severely limited to a pure word mark, and it is as it is. Any stylization is grounds for removal from the database. And figurative marks are treated exactly the same. I'm willing to relax that rule a bit if we are talking only about utilizing the database for the purposes of the claims notice process. And to advise registrants as to a potential problem with the domain name registration.

In that regard, I'm not so concerned about it although I would like to see a little bit of inquiry and investigation as to why people are actually in fact dropping their registrations faced with these claims notices. Is it a legitimate issue in which they should've dropped the registration or is it that they just got scared off for example? Thank you.

Phil Corwin: Okay thank you, Paul. And I particularly want to note your comment that, and I think we should think about it for all these proposals, not just the ones we are discussing now, that we always need to keep in mind well, if we make this change can it be readily implemented or does it involve the very complicated and subjective process to implement it, which may be undesirable. And with that, if you could lower your hand, Paul, I'm going to call and Scott Austin. Scott.

Scott Austin: Thank you, Phil. Scott Austin for the record. Just to make a point that I tried to make in the chat and to clarify, it seems to me that the Trademark Clearinghouse relies on the concept (unintelligible) the name of the

trademark. And while (unintelligible) it looks like the name of the trademark is a convention. (Unintelligible) with Rebecca's comment about translation.

I think that in order for there to be searches of the marks where there is text and design, and I don't know whose phone is going off there...

((Crosstalk))

Phil Corwin: Yes, staff, I think we're all - I see notes in the chat there is a very intrusive beeping. Can we try to identify that and terminate it? Thank you.

Scott Austin: My point is that for there to be searches in these databases, trademark office databases (unintelligible) territorial and may vary from jurisdiction to jurisdiction if a domain name system is not (unintelligible) it's extra-territorial, it's multiple - multi-jurisdictional. So my point is that each of the trademark databases used in name of a mark as a particular convention (unintelligible) you can find that mark.

So my question is why should we be penalizing people who have these registrations even though they do have a design element when their text can be searched, and the purpose here is to avoid cyber-squatting, or at least one of the purposes, and because the domain name purchaser can search using those literal elements and then go and buy the domain name that has those literal elements and use them in bad faith for cyber-squatting for that mark, because consumers know that the Internet, the domain name can't possibly have the design so they say oh, that's related to that particular mark.

I mean, I think that's one of the purposes we are trying to solve here is to deal with the cyber-squatting issue. And my point is domainers, or somebody who wants to do something in bad faith has the luxury of searching those literal elements in the trademark registration databases, then purchasing that. And on the other hand we are going to deny the ability for that same mark owner, that registered mark owner for however many years it's taken them to get that

registration (unintelligible) represents we are going to deny them the protection against that cyber squatter who can easily search for the literal elements in the database, in the trademark registration database. That's my point and my question as to why we would do that.

Phil Corwin: Okay. Thanks, Scott. And I just want to note two things from the chat. One, George Kirikos had said something I've said in the past that we hope folks won't equate domainers - that is domain investors automatically with being intentional cyber squatters, it's two different classes of individuals.

And I - again, I'll - I've said before in the 94% abandonment rate, I agree that we don't know how many of the attempts were actual attempts that were intended to follow through to conclusion and result in a domain registration but even if only 25% of all the registrations that were initiated that triggered those notices were legitimate in the sense of being by individuals who wanted to complete a registration, it would still be an abandonment rate well over 50% even if a small percentage of the total number of attempts.

So I think we do have to note some concern over the fact that receipt of a trademark notice and a majority of legitimate instances appears to result in abandonment of the registration even - and we have no way of knowing what those attempted domain names were and whether they would have intended to be used in good faith. There's a lot we don't know other - but we know that 94% is a real high rate.

So I'll stop there. And...

Steve Levy: This is Steve Levy. I'm wondering - this is Steve Levy, I'm wondering if I could get into the queue for a comment please?

Phil Corwin: Yes, Steve, you're just on the phone?

Steve Levy: Yes, I'm on the audio bridge, sorry.

Phil Corwin: Okay, well we've got Lori Schulman with her hand up and we'll get to you right after her, okay ?

Lori Schulman: No, this is Lori. I'm happy to yield to Steve and go after Steve, no problem.

Phil Corwin: Okay. Steve, go ahead.

Steve Levy: Well thank you, Lori. I won't rehash things that have been said very eloquently by our prior speakers, simply to add my own sort of overview of this issue is that I think Greg's proposal to include design marks that have textual elements is in fact a clear bright line rule for the Clearinghouse to follow. I don't believe it allows any discretion for the Clearinghouse in the way that he's proposed this.

And second of all, to the extent that our goal is to give I guess some protection to trademarks that (unintelligible) protection by their - the government offices, I would just simply note that, you know, having done litigation in my past part of my career, you can in fact succeed in the case against a supposedly infringing trademark even where that is in a different type font or a slightly different design than one in which the plaintiff only owns a stylized to a design trademark registration. There have been many, many cases where somebody owns something other than strictly a text only trademark and has succeeded in a case against another infringing trademark.

So we are protecting rights that do in fact exist and that's all I've got to say on that.

Phil Corwin: Okay. Thanks for that, Steve. And noting that we have 12 minutes left on today's call. Go ahead, Lori.

Lori Schulman: Hi, I want to - yes, thank you. I want to make two points about SMEs having counseled them for a very long time and something that Michael Graham

asked me to expound a little bit on that I had typed into the chat, and that was about this issue of trademark owners having choice whether they file text marks or what we call - we'll call now stylized marks where there's a particular look to the way a text is presented because there are brick and mortar issues with trademark registrations that we don't see domain world. Scott Austin pointed some of this out.

But I want certain goods dropped at the border then my trademark registration has to match what's being used at the border. And this frequently comes into play when choosing how I'm going to register a mark in particular jurisdictions. I don't recall the jurisdictions off the top of my head but some do require exact matches. So a text mark alone doesn't do it when you're trying to present goods.

How that relates into the domain world is I've got trademark registrations, and I've had them for a long time, and I have established rights, and there are some design elements in it, but the words are quite separable, have meaning and have a history of cyber-squatting, I could probably - you know, most established brands can probably show that, there's no reason why I should be precluded because I've been following a best practice for years to protect my goods and in some cases online with services.

Charities have that problem all the time. Many use common words, they'll use designs to distinguish themselves. But we're not talking about a necessarily good faith use, we're trying to protect from bad faith use. And I won't say who they are, I won't give them a name, let's just call them bad faith users. As to the good faith users, the ones that are starting their businesses and making hard choices about where to spend their money.

Some will be counseled that it's better to get a text mark because from a text mark you can imply anything, any stylization, any figurative use, any way you portray that word you get protection. That's the broadest protection possible, that's the rule of thumb. But now what would be very confusing then, is if you

say for the purposes of the Clearinghouse, it gets the absolute narrow or no protection.

So I'm finding that we seem to be mixing up what I think is established trademark law and rights with something different here in the TMCH and this is the TMCH, it's the Trademark Clearinghouse. So we should be discussing along what (unintelligible) rights and textual rights are broad, they're not narrow. Thank you.

Phil Corwin: Thank you. Thank you for that clear statement, Lori. At this point we are 9 minutes away from our scheduled conclusion. I don't see any more hands up right now. Lori's is still up but she just finished speaking. I gather - I haven't heard a single member of the working group make a statement to the effect that Deloitte is doing things just fine right now and that we don't need to give them any direction on this question of design marks. So unless somebody wants to speak up now, I'm going to presume that there's general support for the proposition that they've gone a bit too far afield and that we need to provide some direction.

And oops, I just saw a hand up but then it went down. I see Mary Wong's hand up, so let's hear from Mary and then Michael Graham has a statement which I hope will be short at this point. So go ahead, Mary, then Michael.

Mary Wong: Thanks, Phil. So staff just had two points. One is in relation to the proposition that you've stated and we would like to know - we would like to ask that the working group members in considering that take into consideration the wording in the Applicant Guidebook and what Deloitte has in its TMCH guidelines in making decision on that question.

Second, in terms of words and usages from now on, and just listening, I think it would be really helpful given the variety of practices in different trademark offices, if we could be clear when we're using a word like design mark or stylized mark, exactly what we mean. I think that would be much more helpful

especially to those working group members who aren't steeped in trademark law like some of us might be. Thank you.

Phil Corwin: Right. And, Mary, you prepared a glossary for us on those terms, haven't you, or is that just on the GI stuff?

Mary Wong: Yes, we - no, there is a glossary where we attempt to sample the usages across a number of jurisdictions but that should in no way be taken as a definitive list. Thank you.

Phil Corwin: Right. Yes, there probably is no definitive list given the variations in practice in different jurisdictions. Mr. Graham, quick comment.

Michael Graham: Just really quick, Phil. It's Michael Graham for the record. And I'll just echo a few of the comments that have been on the chat list. I think although I think there may be some agreement with the notion that we should look at Deloitte, what Deloitte is doing and it may not comport with what it should be doing. I don't think the language too far afield is appropriate in so far as it suggests that they are expanding rights whereas that may not be the case.

Phil Corwin: Okay. Okay. Thank you, Michael. And I note in the chat room the reminder from Paul McGrady that INTA's Internet Committee, and full disclosure, I'm a member of that committee though with considerably less detailed expertise than some of the other members and the nuances of trademark law, is reviewing that glossary prepared by staff and will be commenting on it to recommend whether any clarifications should be made. So that's going to be useful in our work here.

Let me ask, we've got six minutes left. We're not - no further comments on these proposals on Question 7, it's clearly too late to begin on Question 8. Let me turn, I hate to keep bothering Mary, but we couldn't function without her and the other policy staff, once we close out discussion of these proposals, what - of course we could take a straw poll to see general support for either

one of them, or for some amalgamation, some third version that attempts to meld them together, but what's our practice going to be in actually making a conclusion and pulling the entire working group and seeing whether there's consensus for one or the other of proposals?

And also sometimes when there's consensus there's not much opposition, sometimes when there's consensus, there's a lot of opposition. So what - how are we going to - because we're going to have to start that process very soon. So, Mary, comment on that and then I see Paul's hand up. But Mary first.

Mary Wong: Thanks, Phil. And I think a number of folks know a lot of our group especially those with lots of members, have taken to using, as you noted, straw polls or surveys of some sort that are not meant to be definitive or conclusive but is really meant to take the temperature of the working group as a whole as to what direction or as to what preliminary conclusion we might reach at a certain point in time.

So, Phil, as you alluded, the important thing is to distinguish between that kind of poll that tells us roughly how much support we have for a certain proposition and the formal consensus call that will occur later in the process when we've reviewed everything we need to review and when we're actually looking at language of specific recommendations.

So from a staff end, I think our recommendation is noting that we don't have a meeting next week because of the GDD Summit that we probably will need to close out the discussion so at some point we probably will need to have either one conclusion or possible alternative proposals for the group to take the straw poll on. Does that help?

Phil Corwin: Okay so basically you're saying straw poll to get a sense of the group and the straw polls are clearly not going to be - if we take a straw poll on a call we've got 44 participants on this call in the chat room plus a few other on the phone,

that's a lot of people. But it's still only between 1/3 and 1/4 of the entire working group. So it's guidance but it's not definitive.

And then later on in the process we'll take a formal poll to establish consensus within the full working group. So thank you for that clarification. Paul McGrady, go ahead.

Paul McGrady: Thanks, Phil. Paul here. Very briefly, I think we're a little bit early in this process because there were good ideas in the chat today that I think need to be explored first, for example, Paul Keating raised the issue of evaluating both of these proposals in a way that separates out claims from sunrise because the thermometer, you know, maybe needs to be set differently for each of those two things, maybe not. But at least we should have enough time to talk about that. So I don't want to rush too quickly to a straw poll if we could still all get together on a consensus position. I'm not sure if we can, but I think we should try. Thanks.

Phil Corwin: Yes, I agree, Paul. I think any time we can see the positive points of different related proposals and meld them together to get consensus, that's really the best possible result. So with - at 28 past the hour, I'm not going to call for a straw poll today. I'm going to ask working group members to think about our discussion, think about these proposals and since we're not going to have a call next week, because of the GDD Summit in Madrid, we've got two weeks before our next call to see if we can come to some kind of amalgamation of these two separate proposals that brings them closer together and satisfies the concerns that are reflected in them.

And staff can certainly help the cochairs in reviewing today's discussion and maybe suggesting not us alone, other working group members are free to do so as well, but suggest some further tweaking of these proposals that brings them closer together and hopefully brings us closer to consensus on the direction we want to give Deloitte. So with that I think we're on our last agenda item, which is - and every time I try to scroll up here something

happens and it jumps all the way back down. Staff, please stop typing into that side box for one second.

Okay so Item 5, next steps, next meeting. I think the next step is to, one, on these proposals on Question 7, please think about what's been said today and whether there's some way to modify these proposals to bring them closer together and give them a clear direction to Deloitte with something that's fairly objective and doesn't create a lot of implementation difficulties in regard to treatment of design marks.

We're still welcoming on these charter questions until we shut down discussion if others have proposals on any of these questions. The window is still - I think I'm correct in saying the window is still open but we don't want to keep it open much longer. And so our next call will be in two weeks which would be May 17.

And are we - let me ask staff, is that going to be at the same time, 1700 UTC so that's one hour later than the start of today's call. And, yes, Lori, I see your comment, that's actually before the INTA annual meeting begins officially, although I realize you may - I'm actually departing for Barcelona the evening of the 18th, the day after that next scheduled call.

I think we're going to have that call because while some may be traveling to Barcelona already we probably won't have a call the following week because so many participants in this working group are going to be at INTA annual meeting in Barcelona. So I don't want to go for weeks and weeks without a call since we're skipping next week because of the Summit.

So with that unless there's anything else anyone wants to raise at this final minute, we're two minutes past the deadline, and so we'll thank everyone for their very helpful comments. I think, again, we had a very constructive fact and policy oriented discussion that clarified a lot of things. And we'll pick up where we left off two weeks from today. Thank you very much.

Terri Agnew: Thank you.

Paul Keating: Thanks, bye.

Terri Agnew: Once again, the meeting has been adjourned. Operator, (Ara), if you could stop all recordings?

END