

**ICANN
Transcription
Sub Team for Additional Marketplace RPMs
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Michelle DeSmyter: Good morning, good afternoon and good evening to all. And welcome to the Sub Team for Additional Marketplace RPMs call on the 25th of August, 2017. In the interest of time there will be no roll call. Attendance will be taken via the Adobe Connect room. So if you're only on the audio bridge today, would you please let yourself be known now?

All right thank you. Hearing no names, I would like to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I will hand the meeting back over to Paul McGrady.

Paul McGrady: Thank you. And thank you, everybody, for what was a robust conversation last week. I was not able to get all the way through, I got about 85% through the transcript. I apologize for missing last week, we had a family medical issue that had to be dealt with and I want to say a special thank you to Greg Shatan from - for stepping in last week to run the call as chair.

I want to - I'm putting into - in artful in its format but we did have some responses on the list over the week to our action items. I think that our action items will be our agenda today. The action items were sent around on Monday the 21st from Mary - staff. And I've put in the reactions that were on the list there. I see Kristine is on the call today. I don't see Kurt.

But I think that if you did not see these on the ListServe, if you could take a few minutes up front here to look through these and encourage us to be - to make sure that we use the content that our list generates during the week as part of our discussions.

So, we have a skeleton crew today but it is a Friday and a beautiful one at least here in Chicago in August. So I'm glad that we have those who came out. And it looks like our list is growing a little bit as we go.

So I think that we have to essentially jump in here and try to determine at least once and for all the fate of some of these questions. Before I do that, however, I see that Kathy is on the call. Kathy, I know I do this to you every week, but any updates from the main working group about their thoughts on the scope of what we should be doing? Just to reiterate, many on the call believe that our scope is to gather information about the additional marketplace rights protection mechanisms, while others believe that we should be, as a team, engaging and - a substantive evaluation of those additional marketplace RPMs. That question was sent back up through the cochairs to the working group.

I apologize, I was not able to be on this week's working group call because of the aforementioned family medical issue. Kathy, can you let us know, has that been sorted and do we have an unequivocal mandate or are we still operating under the scenario that we should limit ourselves to collecting information and we are still waiting for a substantive response? Thanks, Kathy. Please go ahead if you can.

Kathy Kleiman: Hi, Paul. Can you hear me?

Paul McGrady: I can, thank you.

Kathy Kleiman: Okay good. First, I hope everything's okay with your family. Sorry to hear and I just hope everything's okay and going well. Sorry that it's taken us all summer to get to this and to get back to you. I believe there'll be a letter going out today or tomorrow to the working group from the cochairs. We have to review it, we're reviewing it about two hours, which I know doesn't help now.

But I think staying on the track that we're on in terms of information gathering is the right thing for the sub team, so I think kind of continuing the way we are is what will help the working group the most. And, you know, if there are policy issues it's probably for the larger working group, so I think the track we're on is a good one. Thanks.

Paul McGrady: Thank you, Kathy. I appreciate that and the clarification is helpful. And it's kind of - it's a happy outcome because we don't have to go back to question Number 1 which is very good. All right, well great.

So let's dig in here - essentially the takeaways from last week's call for Question 6 was for the sub team to consider whether to retain the original Question 6, delete it or revise it, limit its scope strictly to any data collection that may be needed, and if a revision is preferred the sub team to propose edit, and finalize language for the rephrased question.

I will - I know this is a little bit redundant since we have it in the text, but I will read the two emails that we received on the list, they were thoughtful and I'd like to have them into the record, and then I will open a queue on this.

So from Kristine Dorrain, "Question 6, the question should be deleted, it's asking for a substantive review of the existence of additional marketplace

RPMs, not data gathering to support sunrise and claims statistics. It's unclear from the recording what the proponent of keeping it in thinks they're getting at by asking this - registry contracts and what is required to be part of a registry contract are a sensitive issue and this is not the forum to dig into that. Those requesting this information should provide a compelling reason for its inclusion, informational purposes might be interesting is not a compelling reason to dig into a contractual relationship. That is not the subject of this PDP. Question 6 is a phishing expedition."

"Question 7, the question should be deleted, it's asking for a substantive review of the existence of additional marketplace RPMs, not data gathering to support sunrise and claims statistics. The answer will likely be obtained as part of another question."

That looks like I cut off the - maybe the text fields are just not long enough. Let me see if I can get to the - it's asking for "a substantive review of the existence of additional marketplace RPMs, not data gathering to support sunrise and claims statistics. The answer will likely be obtained as part of Question 3 and Question 3 is the right context because Question 3 asks background questions about how these services operate. To the extent that - extent those that offer them are willing to provide that information as an educational service to the ICANN community."

And with regard to Question 8, "This question should be deleted. Again it's asking for a substantive review of the existence of additional marketplace RPMs, not data gathering to support sunrise and claims services."

And we know now that our remit is data gathering and not substantive review, so I think that that is an important thing to keep in mind when we consider Kristine's comments.

And then from Kurt, "I largely agree with Kristine that these questions should be deleted. To elaborate slightly, Question 6, one test of whether a question

should be deleted is whether the answer would affect our analysis and answer. I do not see how the answer to this question affects our analysis of existing and potential RPMs. These additional RPMs exist regardless of how they have been improved. There is no reason to ask this question and the chance that it could lead to information that could be uncovered through a more direct data-related question. I think we have asked these data-related questions above.”

“Question 7, similarly if Question 7 is deleted, I don't think we would lose any data as it is already being collected elsewhere. Alternatively, this question might be narrowed and placed under Question 3 as an additional bullet, e.g. what information do registries require for additional marketplace RPMs from the Trademark Clearinghouse, trademark holders, other sources.”

“Question 8, similar to Question 6, I don't see how the answer to this question affects our analysis and can be eliminated. There are two other points here, first, the GPML and the additional marketplace mechanisms as currently operated are two different animals and should not be held out as equals in the premise to the question. The GPML targeted the top 100-500 brands granting them automatic protections. The additional marketplace protections provided protections to any brand wishing to purchase them.”

“Second, Question 8 is easily answered and does not require data collection. Adoption of services by individual registries do not upset or create new policies. In order for additional individually adopted RPMs to be violative of policy, the existing policy must prohibit them. Then the opposite is the case. I believe the Protection of Rights Working Group recommended that new TLDs adopt RPMs that were not required. Quote, that regardless of other authentication of legal rights, all new gTLDs should institute measures to deter abuse of RPMs and clearly (unintelligible) submissions.”

And Kurt was kind enough to provide the PDF link. “Not as eloquent as Kristine, but I agree. Thank you, everyone. Kurt.” Okay, so I know that was a

bit tedious but I think that these are the comments from the list this week, and I think comments from the list are important to acknowledge or else we won't engage in a list and a lot of good work can be done on the list during the week if we want to do that.

So, let's see here, getting caught up with the chat. Oh, Mary said they posted - Kristine and Kurt's comments on Question 6 in the notes pods on the right. Phil Corwin says, "Reinforcing what Kathy just stated, cochairs have a one-hour call at 2:00 pm today to deal with multiple issues including scope of this work's team's responsibilities listed in the former statement." Okay. So Phil's comments don't relate specifically to Questions 6-8 other than that the framework we should be looking through is data collection rather than substantive analysis.

All right, well that was a whole lot of setup. Thank you all for your patience with me as I sort of reset the table now that I am back. And I would like to open a queue on Questions - we'll start with Question 6 and I know that we hashed this out quite a bit on the call last week, we may do some more hashing.

There were two responses that I just read on the list. And the two responses for Question 6 were essentially it can be deleted. Okay, so Kathy Kleiman, your hand is up. Please go ahead.

Kathy Kleiman: So this is Kathy. And like others I've been on vacation this week so have not been able to engage in the list. I came back especially for you, Paul, and this sub team from vacation.

Paul McGrady: Thank you, Kathy.

Kathy Kleiman: Thank you, Paul. And so I wanted to say from a data gathering information perspective, this question does seem to be important but perhaps boiled down to its essence. And that is it's a very important question, I would - I think

for the working group to know and we'll be asked it so we may as well ask it. The sub team will be asked it - or the working group, which is how private rights protection mechanism are approved.

And clearly we exist as a sub team, and these questions exist because there's an overlap. And this seems to be a critical part of the overlap. And no one seems to be able to answer it either. There seems to be different ways that the approval of private rights protection mechanisms is done. And so just understanding that, gathering that data, understanding those processes, because I don't think it's a single process, seems to cover a critical (unintelligible) data element for the working group. Thanks.

Paul McGrady: Thank you, Kathy. Can I ask a question back before David speaks? And that is, is that - is asking the question, "How are private rights protections approved?" Is that a question for the registries who offer these additional marketplace protections? Or is that a question that could be put to ICANN?

Kathy Kleiman: I think ICANN because we're looking for procedural answers but probably both since we normally go out to every available source of data for this kind of thing. So I don't see why the answer would be both, but I definitely keep ICANN in the loop on that. Thanks.

Paul McGrady: All right, thank you Kathy. Next up is David. David, please go ahead.

David McAuley: Excuse me. Thanks, Paul. David McAuley here for the record. I would - I agree to a great extent with what Kathy just said but I understand the concern with the way Question 6 was formed and the notion of approval. I think I'm largely in agreement with Jon Nevett who, unfortunately, is not on the call right now. Jon and I had some differences but I think largely agreed that there may be an appropriate need to get some information about some of these additional protections to the extent that they may have or conceivably could have an impact on the security, stability and resiliency of the DNS.

And so in that respect it could be relevant and pertinent data collection. And I think Kurt even said, you know, data collection may be appropriate. So it seems to me the question may be formed not necessarily in the correct matter, but that some information about these would be germane and could be collected.

I had hoped to work on a statement but like Kathy, I've been gone and have only come back this week for meetings, and that'll be the same next week. So anyway I just wanted to say I think there could be a restatement of the question that makes sense. Thank you.

Paul McGrady: Thank you, David. Next up we have Kristine. Please go ahead.

Kristine Dorrain: Thanks everyone. This is Kristine. I'm going to watch the chat a little bit. I have a new headset so I hope everyone can hear me. I did talk a little bit to Jon Nevett earlier this week. I know he's in agreement with my email. I want to bring up a couple of things again in response to Kathy and David. First of all, if you recall the reason we're even here, the reason we've even asked these questions is because we want to find out what the statistics and the numbers of these sorts of services are doing to impact the way sunrise and claims are working and the way that those services are operating and the level of participation in those services.

These questions get far deeper into the structure of registry operations that is completely unrelated to the data that we're supposed to be gathering for the sunrise and claims RPMs. The way that a registry service gets approved or why or how it gets approved is completely irrelevant to the numbers of people participating.

So Kathy mentions it's important. My follow up to that is why? And for what? Who says it's important? How is it important? What is the data that we need to be gathering? I'm going to move my mic away because Greg says I'm a

little loud, and maybe I'm just so used to yelling because my old mic doesn't work. I'll just try talking quieter.

She says people will ask. Well people ask a lot of questions at ICANN meetings every single day. And these are questions to which they may be entitled to answer or they may not. But we don't have to give people data simply because they ask for it if they're not entitled to get it. It's unrelated and I think we need better questions than it's important and people will ask.

To David's comment, he talks about you know, we may have questions about the security and stability of the DNS. Well that's ICANN's job. If an RSEP was requested, that is the question that ICANN is looking for if there was an RSEP. If there wasn't an RSEP, and somebody really thinks that there's a problem with security and stability, then they need to submit a complaint to ICANN and ICANN will look into that. That's not for this PDP to look into; we're looking at RPMs, not the security and stability of registry services.

And then David mentions we need - it might be germane. I still don't know germane to what. So I'm hoping that people can answer some of these questions for me, I'd really appreciate it because I'm getting a lot of vague, it's important, it's critical, we need to know but nobody has explained to me in what data collection process this information is relevant. Thanks.

Paul McGrady: Thank you, Kristine. Greg, you're up next. Please go ahead.

Greg Shatan: Thanks. It's Greg Shatan for the record. I do share Kristine's concerns but also think that perhaps there is an appropriate data collection question buried in here somewhere, you know, part of it is the problem with the way it's phrased. And I think Mary may have offered a different phrasing in the notes, but I haven't had a chance to look at.

I think you know, the - a concern is that this is being used to gather data for a challenge to marketplace protections in this or some other forum. And while

it's anybody's prerogative to challenge anything they want pretty much in the world, not their prerogative to use this group for that exercise. Nonetheless, if what we're trying to do is understand the facts of how the marketplace protections worked in the prior round, it would be part of that overall understanding is whether they were submitted to ICANN for approval and if so, under what method.

But the question needs to be phrased in a more definitively historical "what happened" type of context and not with this implication that we're trying to drive future policy making or investigation.

So it's a bit of a - I don't know if I have the ideal answer to Kristine about why it's important but I think in trying to understand kind of just how these worked, including how they worked in relation to ICANN, you know, it seems to kind of flesh out the situation, whether it's really necessary in order to understand how they work in relationship to RPMs or to registrants, maybe it's not necessary and maybe while it's kind of a curiosity and may be useful to some other exercises, maybe in fact it isn't useful to anything we're actually trying to do.

We're not trying to create a complete history of marketplace RPMs, we're just trying to understand what they are and how they relate to the RPMs that are in fact within our remit to make policy recommendations on. So not sure if that is anything definitive, but I think ultimately I probably plunk down where Kristine does. Thanks.

Paul McGrady: Thank you, Greg. Next up we have Phil. Phil, please go ahead.

Phil Corwin: Yes, thank you, Paul. And, Paul, I'm glad to hear that your brother is doing better, so - and that you're able to be back with us.

Paul McGrady: Thank you, Phil.

Phil Corwin: On these questions, I would agree, Question 8 probably doesn't belong. This is strictly a policy question, it has nothing to do with impact on use of other services, use of the TMCH or any of that, it's strictly a policy question. Whether it's germane or not should be reserved to the full working group.

On 7, I don't know why, you know, it's so - I think if private RPMs are rooted in TMCH data, I'm kind of surprised by all the pushback to have basic questions answered about a basic understanding about the interrelationship of these RPMs with the private protections. And on 6, you know, the question arose from an observation that some blocking services had sought RSEP review and approval and others had not which raised the question, was there some substantial difference between them, a qualitative difference that would involve ICANN in reviewing some but not others? Or was that strictly an abundance of caution for the ones that were put in for review?

But I think how this relates to our overall duties, just understanding what if any review is required or what analysis is used when a private RPM is submitted for RSEP review at the discretion of the registry operator, I think we need to keep in mind we're not just - we're looking at this but our ultimate recommendations and understanding of the whole marketplace, the ICANN-mandated protections and the private protections, is not just looking backwards but looking forward.

And you know, this does affect - this could affect - we don't know yet because we haven't looked at detail at the DPML services, I don't know whether there are DPML services available that allow one trademark owner to block a term to the extent that another trademark holder with rights in the same term for different goods and services could not register a domain at any of the covered TLDs even if they wanted to do so for proactive purposes.

Also, what if, you know, we have - we're going to review the impact of the claims notice on registrations and whether it should be changed, whether it should be altered. You know, what if a - what if in the future a private registry

operator said, we'll offer a trademark claims service past the due date, you know, past the mandatory date, if you pay us to do it for all the marks you tell us to do it for, which covers every possible type of non-exact match and which has our own wording not even the ICANN wording or the modified wording in the future.

So I think you know, I agree, we don't want to interfere with the offering of these services, but we also have to have some understanding of what's going on here. Otherwise we're really being silent about what might be offered in the future. And I guess one point of view is that registry operators can do anything they want and if they - a trademark owner is willing to pay for it, that's okay, but it could affect other trademark owners adversely and it could, you know, impact other folks.

So I get back to my, what is the, basic fear of just understanding why some DPMLs or other service who are submitted for RSEP and others weren't, and what standard ICANN uses? That's it. I'm not falling on my sword on this one, but I thought it was important to state that. Thank you.

Paul McGrady: Thank you, Phil. Next up we have Kristine. Kristine, please go ahead.

Kristine Dorrain: Hi, thank you. This is Kristine again. I think the - maybe it's being mis-characterized as a fear. I don't think it's a fear as much as I'm very much concerned about scope creep. I know that this PDP is well past its time. Looking into sort of digging into (unintelligible) and the way a registry operator gets allowed to do one service or another is just outside the scope. And it's a slippery slope because other, you know, other things are very easily getting pulled into this.

I mean, we want to - now I just heard somebody saying, you know, Phil mentioning the, you know, what if a registry wants to offer a trademark plus a descriptor? And there's nothing in any of the RPMs that prohibit that. Registry operators put limitations on who can register domain names all the time.

There are geos, there are communities, and there are, you know, TLDs like dotBank and dotPharmacy that have very strict restrictions on who can get in and what terms they can register. And that's okay.

And if there's a big global problem with that, then maybe that belongs in Subsequent Procedures or, you know, so kind of stuff be allowed in the next round. But that's not within the scope for a review of rights protection mechanisms that were the result of ICANN policy. And so we could spend weeks and months trying to figure out how each DPML offering, you know, got their permissions and what they allow. But really we're trying to get at is the data we need to keep going with our sunrise and claims analysis. That's what we're trying to do is move forward.

And so I feel like this is just getting - we're being sidetracked, look at the jingly keys instead of moving forward on the review we're supposed to be doing. Thanks.

Paul McGrady: Thanks, Kristine. Greg, your hand is up. Please go ahead.

Greg Shatan: Thanks. It's Greg. I'll be brief since Kristine said a lot of what I would have said. You know, I don't think we need to question the validity of those questions in the universe, but I do question the validity of those questions in the universe of this working group, the questions that Phil raised.

And I think any questions that is forward-looking, you know, what if, as soon as it begins with what if a marketplace RPM does this, we've gone out of our scope. Doesn't mean that you're going to get purged and sent to Siberia for asking the question, just it's not the place to ask it.

So, you know, I think we need to stick to fact-gathering and to kind of what happened and not delve into whys and wherefores because I think it will take us further off track. But I don't think it, you know, provides information that's germane to the task at hand as much as, you know, curiosity creeps in.

It's the very lure of curiosity that is at the base of mission and scope creep putting aside, you know, any other darker motive where humans are just naturally curious, that's why so many of us get electrocuted. Thank you.

Paul McGrady: Thank you, Greg. Kathy, your hand is up. Please go ahead.

Kathy Kleiman: Absolutely. Thanks, Paul. Can you hear me? I'm in a different location now.

Paul McGrady: We can.

Kathy Kleiman: Okay, great. So look, the (unintelligible) 3, by way of reference, question Number 3 says, "What is each registry operator's rules for each type of additional marketplace RPM if offers?" that's how it opens. So Question Number 6 seems to be the very logic extent in of what's the approval process? At a very high level, what's the approval process for this type of private RPM? This is not - I wish Jeff Neuman were here. To the best of my knowledge this is nowhere within the scope of Subsequent Procedures right now. This is, you know, immediately adjacent to what our working group is doing.

It doesn't seem like it's going to take us far afield, we're talking about portfolio applicants that I believe, you know, are likely to follow the same process for private RPMs across dozens, even hundreds of new gTLDs. It's a data gathering question with, you know, some security and stability ramifications. I just don't see what the harm is or the danger of going far afield because my guess is the answers are probably pretty straightforward. Thanks.

Paul McGrady: Thank you, Kathy. Mary from staff, I see your hand is up.

Rebecca Tushnet: Sorry, this is Rebecca on audio only - Rebecca Tushnet. Can I go after Mary?

Paul McGrady: Rebecca, why don't you go first and then we'll go to Mary. Thank you.

Rebecca Tushnet: Okay. Didn't mean to cut Mary off. But I just wanted to respectfully disagree with the idea that we don't need to know the whys and wherefores. The point of this inquiry is to figure out, you know, which of the RPMs are working or are the RPMs working. And if you don't know the why of the situation, then you won't know if it's the RPMs producing the results or something else. And I think understanding the way the entire system works is important to diagnosing what is actually happening. Thank you.

Paul McGrady: Thanks, Rebecca. Mary, please go ahead.

Mary Wong: Thanks, Paul. Hi, everyone. This is Mary from staff. And, you know, in looking at all these questions and trying to capture the comments and the ways forward, staff took a look again at the actual Question 6 and noted earlier, you know, who is question addressed to, and I think it was Kathy who said it's addressed to ICANN. The question actually says, you know, "What approval process from ICANN is required to offer these protected mark services?" And I just wanted to take a step back and basically say that when you're talking about the RSEP, for example, that is something that registry operators have to send into ICANN when they are intending to offer new registry services.

For obvious reasons, there isn't a single overarching universal list of what may or may not constitute a new registry service. So from the ICANN perspective, you know, it's almost like a case by case. We get an RSEP and then we look and see whether it is or is not a new registry service. So similarly, since the additional marketplace RPMs, and in this case we're talking about protected marks lists, are not, you know, mandatory services that are offered on a voluntary basis by some operators; they don't all, you know, do exactly the same thing.

I'm not sure that by asking the question in this way that we would actually get at some of the factual information that some members are thinking that we want from this question. So this is not so much a staff opinion as to how

RSEP works or whether or not you should retain this question or rephrase it, we're just thinking that the way it's phrased now the answer itself may not be terribly helpful because there just isn't this single rule of what is a protected marks list service, what is or is not a new registry service. I hope that's helpful to everyone. Thanks, Paul.

Paul McGrady: Thank you, Mary. And I think that it does - that information does sort of lead me back to the question I initially asked Kathy which is, who is this question addressed to? It seems like to the extent that there is an answer that is something that would be within the four corners of ICANN's ability to answer the. I don't know that putting it to registry operators is going to get us much except for contractual interpretation of responses if they're even willing to do that, whereas ICANN may be willing to do that, I'm not sure.

Kristine, your hand is up. Please go ahead.

Kristine Dorrain: Thanks. And maybe, yes, I'm looking at Phil's comment in the chat and I'm listening to Mary and Paul and I want to maybe just take a step back because maybe what's happening here is a misunderstanding of the process. The registry operator makes a business decision regarding whether - and a legal decision - about whether or not they are (unintelligible) a service that requires an RSEP. Then they go through the RSEP process, submit the RSEP to ICANN who looks for security and stability concerns.

If there are none, the contractual amendment is issued. That's generally the outline. So if you want to know how the RSEP process works, posted a link in the chat. ICANN as Mary pointed out, does not have an itemized step by step list of if you would like to do X you need an RSEP. It is a business and legal determination that each service provider makes.

And so what you - what here you would have to be asking are registry operators to disclose to you their rationale for their business and legal decisions. So I guess I mean, if the group has decided that they want to throw

that question in there, I mean, nothing mandates the registry operators who are already volunteering to answer these questions, from disclosing their business and legal considerations. And maybe that's part of the problem is just a misunderstanding of how the process works. Thanks.

Paul McGrady: Thank you, Kristine. From the chat Phil Corwin says, "I do see it as a question for ICANN. Mary, do you believe staff could recast it in a manner to yield useful data?" Mary is typing and so Mary's hand has gone up, even better. Thanks, Mary. Please go ahead.

Mary Wong: Thanks - I was almost thanking myself. Thank you, Paul and Phil. This is probably faster than typing. And I should say that, you know, obviously I'm not in the department that deals with RSEPs, but Kristine's page link will show you how that process works and there is a manual that tries to explain that workflow better.

In response to Phil's question, in listening to the conversation, it seems to me, and correct me if I'm wrong, that the sort of basic question that a lot of folks would like to know is whether ICANN requires that a registry operator put in an RSEP request prior to offering any form of protected marks list services.

Again, I'm not GDD staff, but from the way that I understand how RSEP works, I suspect the answer to that question you know, would be no, we don't require that because we don't know what those services are. And unless and until we get an RSEP outlining the proposed service, and that proposed service could be within RPMs, it could be something completely different, it could be a departure from the original business model, as Kristine has outlined, you know, unless we get that request we won't actually know because then the evaluation only happens at that point in time.

So we can think about recasting the question, but like I said, again, if you're asking ICANN if we have a requirement that anything within this list because

it is within this list, you must submit an RSEP then that the answer there is no.

Paul McGrady: Thank you, Mary. Greg, your hand is up, please go ahead.

Greg Shatan: Thanks. This is Greg Shatan. I think maybe the question to be asked here in terms of your fact-gathering is which marketplace RPMs were submitted for RSEP approval? Which I think is probably published somewhere. And which marketplace RPMs were submitted to ICANN for some other form of approval? And that's - maybe that's the sum total of the question here in terms of fact-gathering.

Because it seems to me, you know, obvious enough that there's kind of a judgment call being made here. And, you know, it's not the question of this group to question or even to delve into the judgment call about whether a particular marketplace RPM falls within the RSEP process or not. So I think the facts of what happened, again, are really all we need to know, if we even need to know that. Thanks.

Paul McGrady: Thank you, Greg. Can I call for a refreshed queue on Greg's reformulation of this question? Acceptable as-is. Don't like it. Okay, here's a tweak. Need to think about, Kathy Kleiman says. Okay, well let's actually do that. If staff could capture Greg's revised Question 6 and we'll put it out the list just because we are, you know, we've spent a lot of time just on Question 6. And let's look at Greg's proposed revised Question 6 and we will open it up to the list for comment and hopefully on our next call put Question 6 finally to rest one way or the other.

Okay. Oh, David, I see your hand is up. David, please go ahead.

David McAuley: Thanks, Paul. David McAuley for the record. If I'm not mistaken I think Mary indicated that staff had taken a stab at reformatting or reformulating Question 6. And so when you put Greg's out to the list I would suggest putting staff's as

well in a clean form, you know, without all the markings and what we have with track changes so we could see both of them. Thank you.

Paul McGrady: Thanks, David. A great suggestion. And like to ask staff to do that for us. Phil Corwin says, "Greg's suggestion is useful." Great. Okay. Shall we soldier on then to Question 7 and see if we can - oh Mary Wong says, "Actually staff didn't touch the question, we only offered a more limited rationale for the question." Okay. So there's no staff reformulation, there is a Greg Shatan reformulation and we will see that under action items on the list this week. And hopefully we can use that as our starting point to wrap up discussion of Question 6 on the next call.

Let's move on to Question 7. And I will just open a queue on where we are on Question 7. Anyone would like to go ahead and kick that off? If we could see some raised hands. Right now the pushback from the list over the week was Question 7 should be deleted. Kathy, please go ahead.

Kathy Kleiman: Hi, Paul. Hi, everybody. It's Kathy. And I think the other proposal was that Question 7 should be added to Question 3. And so I wanted to support that, that we make this a bullet point or sub point under Question 3 in terms of the data that's gathered by the registry operator from the TMCH or the trademark holder because there may be data from the TMCH through the trademark holder to give the registry. So just supporting the suggestion I saw out there that I put my notes to be added to Question 3. Thanks.

Mary Wong: Paul, did we lose you?

Paul McGrady: I'm sorry, I was on mute and talking to myself and I was brilliant. Sorry about that. Let's see here. So was just calling for any reactions to what Kathy had to say or Question Number 7 as written. I see we still have this bracket around "or trademark holder." That's a carryover from the last call. And I heard a little bit about that on the recording but if folks would like to speak that? Kathy, your hand is still up, is it old or new?

Kathy Kleiman: Old, but let me just to Mary's question, I'm not sure what the question means, but I stuck a third bullet point under Question 3, Mary, could put Question 7, that data gathering part as part of the general data that we're gathering. I don't know if that answers it, I'll try to type more in the chat. Thanks.

Paul McGrady: Thank you, Kathy. Kristine, please go ahead.

Kristine Dorrain: Thanks. This is Kristine. Yes, so my suggestion really was that if you look up to Question 3, second bullet point, "What do registry operators impose as a condition for using protected marks lists, e.g. blocking services? For example, do they all use the valid SMD file contained in the TMCH database?" That's where that sort of connection to 7 is, "What use do they make? How much and what manner of use" from, you know, Trademark Clearinghouse data such as the, you know, of the trademark holder. I mean, that would be some of the SMD file.

So I think if you just, you know, broaden bullet point Number 2 a little bit so it's, you know, because "for example" is just an example. So do they use the SMD file contained in the TMCH database, other TMCH data, or mark - or information from the mark holder themselves? You know, and that could just be it. Again, the question is just you know, there as a suggestion for the types of data that we are wondering about. But it says "for example" that was my suggestion that we just kind of merge the two.

Paul McGrady: Thanks, Kristine. Kathy, before we hear from Phil, Kathy, if we brought some of the content out from Question 7 like Kristine suggested, and enhance Question 3, and then retired Question 7, does that - does that address your concerns?

Kathy Kleiman: Thanks for asking, Paul. I would - I'm looking at Question 3 now. I think I'd break it out of the third bullet point there just as a separate data-gathering line. I'm not sure that's what Kristine suggested but I think for ease of

following it, it does seem to be a little different than the other bullet point. So but, yes, if we merge it up to 3, maybe as a third bullet point, I think that would do it. Thanks.

Paul McGrady: Okay thank you, Kathy. Phil, your hand is up.

Phil Corwin: Yes, thanks, Paul. I'll be brief. Yes, I support consolidating 7 with 3 in some manner. And I think what we're looking for here is data, facts, not judgments on the facts and not inquiry into proprietary business information. So, you know, let's find out which of these private RPMs are - require an SMD file, you know, or other data from the Clearinghouse and understand what data is in there. I think we can draw our own conclusions from, you know, other than verifying a valid trademark how you know, the service might be based on that.

But I agree, asking registry operators to tell us exactly how they use such data might at the least elicit fierce resistance about giving away trade secrets. Thanks.

Paul McGrady: Thank you, Phil. So it sounds to me - I'll - before I do that, before I say the - it sounds to me part - any other comments on Question Number 7 and the proposal to merge parts of it into Question Number 3 and retire it? All right. Seeing no hands on that. It sounds to me like there is a rough enough agreement here that we should do that.

And so I'm hoping that staff will be able to send us a revised - oh, David, thank you for the green checkmark. I'm hoping that staff will be able to send us a revised Question 3 for us to give a quick look at on our next call. And we will, assuming that turns out wonderfully, we will mark Question 7 as deleted. And I think that that is some forward progress. Great, okay.

Question - Phil, your hand is still up, is that an old hand or a new one?

Phil Corwin: It's old.

Paul McGrady: Okay thanks, Phil. All right, so last call, Question Number 7? Okeydoke. All right. Moving onto Question Number 8, there's a proposal to delete Question Number 8. Again, the comments on the list over the week were essentially this should go, this is a policy-driven question, not a fact-driven question. You know, again, I'm going to reserve my thoughts on that and hopefully hear from working group folks instead of me.

So I will open a Question on Question 8, is it - in light of our clarified mandate of fact collection, is Question Number 8 appropriate for us to move forward with? Kathy, please go ahead.

Kathy Kleiman: Okay. I've got this innovative idea. This is Kathy of course. How about we move this, instead of a proposal to delete, we move this to a new section that says, and title it, not within the scope of the sub team. That way we don't delete it, it's still there, but we don't deal with it. And if the working group wants to deal with it later, if it's within the scope it's a placeholder for a future discussion because it was part of the original questions, but it's outside of the scope of the sub team, it's not part of our data gathering. So just kind of a proposal to bump or to punt or not to deal - come up with the best creative title. Thanks.

Paul McGrady: Thanks, Kathy. So unlike other - unlike others that questions that were just deleted because they were reformatted or moved around or ultimately decided were not, you know, we shouldn't have the question, this one would be sent back up essentially in the cover email in addition to the task questions which we all agree should be asked, Question Number 8, ill-fated Question Number 8 we decided was not within our scope but we're sending it back to you.

Okay, is that right, Kathy, that's the idea? Okay, all right. Greg, your hand is up. If you could respond to either Question Number 8 in its absence or Kathy's idea about what to do with it, I'd appreciate it. Please go ahead.

Greg Shatan: Thanks. Kind of a response to both. I don't think this question is in the remit of the working group much less the subgroup. So sending it up from this group I think implies that something about how this group feels about it, it's a little more positive.

I think obviously anybody could be free to raise this question in the group but I think it should be raised there fresh. It won't get lost, it's not going to be deleted and wiped from everybody's memory. But I don't think it belongs in our document any more than any other deleted question does and maybe even less. Because I think it's going, you know, to questions that are not ours to ask in this working group. Thanks.

Paul McGrady: Thank you, Greg. Kristine, your hand is up. Please proceed.

Kristine Dorrain: Thanks. This is Kristine. I fully support what Greg just said. I don't think that we're - I think we want to make sure that we remove the outside of the scope questions or comments. It doesn't make any sense to leave questions that are outside the scope. If different group members wish to make a note in there for when that, you know, when that discussion comes to the working group and raise that, I think that's one thing. But this is sort of the official question document and I don't see any place for leaving outside the scope questions in that document. Thanks.

Paul McGrady: Thanks, Kristine. Any other comments on Question 8 or Kathy's proposal of retaining it in our document? Okay. Well, I'm sympathetic to the idea of, you know, Question 8 of finding a home somewhere if somebody thinks it's a good question that the working group needs to ask. But I do tend to believe that this document should contain our official questions and that we should

not muddy the waters on - including questions that we don't think we should ask, that were outside the scope of the - this agreement.

So I think that since there's no one fighting substantively to retain this question, that it should be deleted and if anybody on this call or anybody familiar with the list of questions that the cochairs sent to us originally to consider would like to see this question resurface, I think that the working group process is very porous and there are opportunities to do that.

So that's current thinking. Kathy, I see your hand is up. Please go ahead.

Kathy Kleiman: Yes, Paul, (unintelligible) we send this out to the group to discuss a little more because the, you know, the (unintelligible) and the idea that we're deleting it without leaving someplace for it to go and without leaving a note it's been deleted, without leaving a note that we could not consider part of the data gathering, I think there's a real question as to what is within the scope of the working group and that's outside the scope of the sub team.

And so you know, it's here, we wouldn't delete something from the charter, you know, if we didn't address it, we'd send it back to the working group. In this case I think it's important to expressly send this back to the working group as something (unintelligible) not to address. Thanks.

Paul McGrady: Thanks, Kathy. A point of clarification if you don't mind? Did this question - did you say it came from the charter itself?

Kathy Kleiman: I'm not sure exactly where this question came from (unintelligible) sub team had it come from the charter, we wouldn't just delete it, right? If we decided it was outside our scope. So in some sub team we actually punted a question from one sub team to another, a question that came I mean, I may get the order wrong, it came from the trademark claims that was really a sunrise question so we sent it to sunrise. But we didn't just drop it.

And so here too, the idea of just dropping a question that's come in because we've decided it's outside our scope, and potentially outside the scope of the working group, but that's a question outside our scope, means that we should flag it and just say this was not within the scope of our data gathering, not delete it but flag it and send it back because I'm not sure of the efficacy of just deleting it. So that's something we just flag it for the reasons that others have outlined, but not to let it disappear completely. Thanks.

Paul McGrady: Thanks, Kathy. I just wanted to make sure that this question was not in the initial charter of the main working group, this question came from the three cochairs, I believe, and the three cochairs I mean, are in pretty good position to reintroduce this to the main working group if they would like to do that. So I'm a bit hesitant to create a new section in our questions for questions that didn't make it.

However, we're completely out of time and this is not a - this one is something that we can take up on the next call. Let's all give it some thought over the list. I see that Mary has proposed a potential way forward by putting it at the end with "deleted as outside the remit of the group but archived for working group information." Let's consider that over the week. Mary, let's add that to our action items if you don't mind, so that we capture it. And we can all respond to it on the list.

Thank you all, for a robust conversation. It's terrific to be back. And I look forward to talking with you guys on the next call but certainly all through the week on other things. Thank you all.

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