ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) TMCH Sub Team call
Friday, 29 July 2016 at 15:00 UTC
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Attendees RPM TMCH Sub Team:
Susan Payne
Phil Corwin
Kristine Dorrain
Kurt Pritz
Khouloud Dawahi

On audio only:
Vaibhav Aggarwal

Apologies:
Salvador Hernández

Attendees RPM WG:
 Beth Bacon - RySG
Griffin Barnett - IPC
Justine Chew - Individual
Maxim Alzoba - RySG
Monica Mitchell - Individual
Paul Keating - Individual
Paul Tattersfield - Individual
Robin Gross - NCUC
Sonigitu Ekpe - NCUC

Guest speakers:

Greg Rafert and Stacey Chan

ICANN staff:
Mary Wong
Antonietta Mangiacotti
David Tait
Berry Cobb
Terri Agnew

Terri Agnew: Good morning, good afternoon and good evening. Welcome to the RPM TMCH Sub Team call held on the 29th of July, 2016. On the call today we have Kurt Pritz, Susan Payne, Beth Bacon and Phil Corwin. We have listed apologies from Salvador Hernandez. From staff we have Mary Wong, David Tait, Antonietta Mangiaocotti and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and I'll turn it back over to you, David.

David Tait: Thank you, Terri. Hello to those of you who I have not met previously. My name is David Tait and I'm from the GNSO Policy Support Team. The – as clear from the agenda on the right hand side, the purpose of today's meeting is really broken into two parts. For the first 30 minutes we'll be discussing the data which we were hoping the Analysis Group, which reviewed the trademark clearinghouse, might able to assist us with. And then actually speaking to Greg Rafert from the Analysis Group, who produced the report, which has been circulated on the list for the following 60 minutes.

So I guess if that – you can see the agenda on the right hand side. And the thing to do is perhaps to refer to the list of questions. And this is also questions that had previously been circulated on the list by Mary yesterday. But we subsequently received a couple of amendments from Kurt, which

have now been added into that at Points E and F, so that's an aggregate list of questions now.

So I would like to open up if you'd like to start with any discussion points around the questions that we have at the moment. And if there's anything new you'd like to add.

Susan, you put your hand up so.

Susan Payne: Yes, yes, they aren't points that I had added to the list yet, but – and I confess I haven't made it all the way through to the end of the Analysis Group report yet either, unfortunately. But, I mean, one of the things that struck me was that they – when looking at the TMCH, they sort of comment – and I can't remember the page reference, about the result being sort of consistent with the TMCH meeting some of its objectives of preventing just bad faith registrations, that they say for various reasons, those sort of results, as it were, shouldn't be relied on to make any policy recommendations.

And that's particularly because they don't feel that they've got any data about why – why the abandonment rate seems to be so high and whether…

David Tait: Susan, this may just be may but I think the sounds drop off from your connection.

Terri Agnew: This is Terri. I see Susan lost Adobe Connect connection and that's where her audio was out as well.

David Tait: Okay while we try to get Susan back, does anyone else have any issues that they'd like to raise either about the report so far or the specific questions (unintelligible)? Great, Susan seems to be back so if you're able to pick up, Susan, that would be great.

Terri Agnew: And, Susan, this is Terri. I do see your connection is back but your microphone is no longer active.

David Tait: Mary.

Mary Wong: Yes, thanks, David. Hi, everybody. It's Mary from staff. So while Susan comes back online I thought it might be helpful to just remind everybody – I think everyone on the call knows this, this is for the record that we're really talking to Greg today as a kind of first step for the working group and for the sub teams. And the working group is very focused on trying to get the data.

And so while there are some additional questions that sub team members have already come up with and circulated on the sub team list, that concern the claim service, sunrise and some of the substantive issues addressed by the Analysis Group, we refer those to the full working group when we arrange that full call with Greg.

In the meantime, I think for the sub team, one of the things that we might want to think about after today is the timeline or a probably timeline for getting the work that we have to do done so that we can communicate that back to the cochairs and the working group. Thanks, David.

David Tait: Thanks, Mary. Hi, Kristine, you've got your hand up if you'd like to.

Kristine Dorrain: Hi, yes. Thank you. This is Kristine Dorrain, Amazon Registry. Yes, I think I wanted to agree with Mary on that. I think I feel like this – one of the things we sort of are lingering on in this group and sort of figuring out what forward-going direction is is what information do we still need to get from the Analysis Group before we can decide. So I like the idea of having sort of on our agenda for next week, a discussion about what we learn today and then I know I'm going to take it as a homework assignment to make sure that I have reviewed the Analysis Group report in its entirety.

And then maybe we can come next week with some concrete suggestions for timeline, you know, some different ideas of, you know, what sort of additional questions do we need to get? What should we go back to the trademark clearinghouse for? And what things are sort of a moot point, what things have already been figured out? So thanks, Mary, I think that's really a good suggestion.

David Tait: Thanks, Kristine. And just to pick up on that point, and I'm sure that Antonietta can jump in here but in our preliminary discussions before this meeting and one point that we did want to raise was that some of the information contained within the report and some of the data is found in an (unintelligible). It may well be difficult for the Analysis Group themselves to share the underlying data and therefore what we may want to do, and that's due to nondisclosure agreements that have been signed with the trademark clearinghouse.

And so what we might want to do is look and see where they are, where we've got the aggregate data but we can't get the underlying data from the Analysis Group where it's going to be necessary to look – to interact directly with the trademark clearinghouse.

Antonietta Mangiaocotti: And this is Antonietta. So, yes, that's correct. Analysis Group would be able to provide aggregate data pretty much what's – the numbers that are included in their report. What would also be available, I would need to double check on this, are monthly reports from Deloitte that are provided to us. They include, you know, a number of verified marks, number of marks that are sunrise eligible as well as transaction data from IBM. That's data that might be available. I need to – like I said, double check, whether we can share it or not.

Also, there is a section on the new gTLD microsite page that includes a couple – (CSD) files on trademark data, number of trademark holders and

dispute resolutions – cases. That is currently posted and available on the microsite. And I will include a link on the Adobe Connect room.

David Tait: Thanks, Antonietta. So one of the proposals that – oh, Susan, over to you.

Susan Payne: Sorry just a quick question on that. Antonietta, I guess, you're probably the best person to answer. Is it the case that Analysis Group wouldn't be able to provide the data because of the terms on which it was supplied to them, but that we would be able to be provided with that data direct by the TMCH? Or is that we wouldn't be able to have it at all and apart from in its aggregated form?

Antonietta Mangiacotti: Correct. So they did sign an NDA to keep the confidentiality of that information. However, we could reach out to the clearinghouse and request for that same data that they've changed. What I would be able to share that in these reports includes a lot of what's the Analysis Group received from Deloitte, but they also got additional information that we do not get on a monthly basis like, you know, which trademarks are downloaded, when the download occurred, registrar download data, when information of the trademark holder, who filed each trademark, the name of the registrant's organization, geographic location, their industry and all of that. Would need to put a request in.

David Tait: Next in the queue we've got Kurt, you've got your hand up if you'd like to go next.

Kurt Pritz: Can you hear me now? Can you hear me?

Terri Agnew: Hi, Kurt. It's Terri. We can hear you, go ahead.

Kurt Pritz: Oh okay good. So I just want to go back to Susan's opening comment about – I dropped the call for a few minutes so I'm sorry I'm chiming in late here – about the abandonment rate and it being so extraordinarily high. And I think

the report kind of intimates that they agree that that number is almost jokingly high. And they also seem to indicate that the reason for it might be that registrars are downloading information from the trademark clearinghouse, records from the trademark clearinghouse without corresponding requests for registrations. And so that's what skews the number.

And so what, you know, a pointed question I had was for them was, you know, it seems like they're saying that they needed more data from registrars or registrars to collect data in a different way. In order for us to determine what the true abandonment rate was. And to help us in other ways understand the effectiveness of the claims period. And so, you know, I think after this we want to look at, you know, what information that registrars and registries can provide to us to help us understand the effectiveness of claims and of the sunrise period.

David Tait: Thanks, Kurt. Just to back up one bit, on the issue of data (unintelligible) – sorry, I think someone's got their microphone on. There we go. On data that we might seek from the TMCH (unintelligible) what perhaps the way we do this is that staff will undertake to maintain a list of items that the sub team agrees they might want to seek from providers, and we'll take forward trying to get that information from that – that information either through liaising with the Analysis Group and where it's not available from the Analysis Group, take out with the TMCH providers themselves.

Susan, do you want to pick up on the issues you began to raise before you got cut off in relation to preventing bad faith registrations?

Susan Payne: Yes, I'll try to. Sorry, I'm trying to also get back into the Adobe room. Seem to having terrible connectivity problems today. Yes, I mean, I think it was probably I was making the point that Kurt was just making which just it seemed to me that they were, you know, they say there's a very high abandonment rate; they're unable to determine what – why that rate was.

And in – within our RPM's working group we, you know, when people were throwing around sources of information in Helsinki someone had said it would be very useful to look at the abandonment rate generally for registrar shopping baskets. And so I guess the question for them was whether they had considered that and was that data which they concluded wouldn't be useful to them or was it more that they weren't able to get that data or didn't feel it was within scope to get that data.

Can you hear me?

((Crosstalk))

Susan Payne: Oh sorry. Just checking.

David Tait: Yes, sorry, thanks, Susan.

((Crosstalk))

Susan Payne: Thanks, sorry. As I say, I'm having some connectivity problems so I'm never quite sure if I'm still on or not.

David Tait: So, with about nine minutes to go before we're joined by Greg, does anyone have any other comments at this stage? Phil.

Phil Corwin: Yes, hi. Phil Corwin for the record. I haven't completely read their report yet but the part I have finished – I would like a clarification from them. On Page 17 of the report there's Table 4, claims service registration abandonment, completion and dispute rates. And that's the one that shows there were 1 – almost 1.7 million abandoned registrations, 93.7 – I'm trying to figure out the relationship on that number too on Page 7. And just let me get to it.

Yes, where they say at the beginning of the first full paragraph, we received the claims service data from IBM on February 5, 2016. It contained 125.8

million records of claims services download. So I'm not – I don't understand the – well, one, you know, we had the abandonment rate.

But, two, what's the relationship of the 1.7 million registrations abandoned, which was out of about 1.8 million registration attempts versus the 125.8 million claims service downloads, which, as they describe it, the downloads are – yes, paragraph proceeding and say each time a potential domain registrant attempts to register a domain the registrar much check whether the requested domain matches a record in the TMCH.

Oh I guess that's it, that the registrars have to download every time there's an attempted registration to see if there's a match. I get it. All right. I think I just answered my own question. But I welcome any further feedback on that.

David Tait: Great. Thanks, Phil. And maybe just capturing that in the questions. Hi, Susan. If you'd like to go.

Susan Payne: Oh thank you. Yes, I was trying to raise my hand. Yes, there was one other thing which struck me was that they identified two registrars, or appeared to identify two registrars who may or may not have been misusing the TMCH data. There appear to have been two registrars who were downloading in sort of in bulk. And so for some of their analysis they excluded them because they presumably didn't feel confident that they were – that they were sort of genuine registration attempts.

And I guess that's fine. But I suppose I had a question around was – I think they must have concluded that that was outside of their scope for them to look further into that but I was wondering whether that as the conclusion that they didn't need to be looking at this idea of was there being misuse of data which I know is one of the things that we, in our group, are interested in.

And whether they had given any thought to how they might further test whether that was the case or not or whether they just concluded it was out of scope.

David Tait: Thanks, Susan. Again, we've captured that and (unintelligible).

Susan Payne: Okay. And I'm trying to lower my hand but it just won't let me. Oh, it's gone.

David Tait: So can I invite anyone with any other comments just very briefly before Greg joins us?

Kurt Pritz: This is Kurt. I'll just jump in without raising my hand if that's okay. So I think the corollary to the high 93% number is the other number that says 6.3% of registration attempts that show a claims notification complete the registration process. So if 93% is way high then, you know, 6.3% is way low. And so I just want to understand that they agree that that number is way low too.

David Tait: Great, thank you.

((Crosstalk))

David Tait: Unless anyone has any other questions before Greg joins us, I propose that we just take a short break and pause the recording until he comes into the room. Okay, there being no objections to that then Terri, could I ask for the recording to be paused briefly until Greg joins us?

Terri Agnew: Certainly. The recordings will be paused.

David Tait: And with Greg hopefully having joined us I think now would be a good time to review. Greg, are you able to hear us? So if I could ask Terri to restart the recording and invite Greg to possibly give us a very brief overview of the Analysis Group's working relations with TMCH and then we'll dive into the question.

Terri Agnew: Hi, David. This is the Terri. The recordings have started. And, Greg, I see you've joined on the Adobe Connect but your mic is not active. So to activate your mic on the top toolbar you can select the telephone icon and follow the prompt. Or, again, this is Terri Agnew. Up in the host you can send me a private chat with your telephone number and we'd be happy to have the operator dial out to you for a telephone connection.

And, Greg, I see you've joined on the telephone connection.

Greg Rafert: Yes, we have. And, Stacey Chan is here as well also at Analysis Group.

Stacey Chan: Hello.

David Tait: Hi, Greg. This is David Tait from GNSO Policy staff. Just to make you aware, although we've got some preliminary questions which you'll see up on the – being shared in the presentation box at the moment, we've also got some extra questions and the notes and agenda is on the right hand side, which the sub team came up with during their sort of pre-meeting in the last half hour.

Greg Rafert: Okay.

David Tait: So if we ask you to maybe give us a brief overview of the Analysis Group's work in this area and of the report and then and we'll maybe dive into those questions if that's okay.

Greg Rafert: No, that sounds good. I mean, so at a really high level, the – our analysis was aimed at assessing the strengths and the weaknesses associated with the TMCH. Our kind of – the areas in which we looked were informed by the GAC recommendations in terms of what should be assessed in reviewing the TMCH. And so although there were – I think there were kind of three primary areas where we focused most of our attention on, the first was assessing the extent to which the matching criteria should be extended in any way.

The second was thinking about whether it made sense to extend the claims service period beyond the standard 90 days. And then the third was doing a little bit of thinking about the sunrise period and the extent to which it's valued by trademark holders. And so those were kind of the three areas that we focused on.

There were other things that we kind of assessed along the way so, for example, we looked at the extent to which trademark holders or trademark agents enrolled in ongoing notifications but as I said, those were kind of the three primary areas associated with our work. I don't know if that was too high level or sufficiently high level but we're happy to, of course, take any questions.

David Tait: Okay, perhaps to kick things off, Greg, can you see the questions that have been listed there – on the overhead on the slide in the presentation pod? And maybe it would be best if you were able to walk through questions – there's A to F there, (unintelligible) but they're the ones that you've received from the sub team in advance. And maybe if we just work our way through those.

Greg Rafert: No that sounds great. And so just to confirm that I'm looking at the right set, this begins with, "What sorts of data did Analysis Group seek from the TMCH?"

David Tait: That's the additional ones so it's the set which begins, "What information did the TMCH have but is not prepared to provide?"

Greg Rafert: Great. Sorry. I'm just getting to them now. Actually of course managed to leave the meeting and now I'm back. So apologies for the technical difficulties on our end. So this is, yes, what information did the TMCH have but was not prepared?

David Tait: Yes, that's correct.

Greg Rafert: Okay sorry. So the TMCH – so there's kind of two components to the data that we received from the trademark clearinghouse. There is a database that's operated by Deloitte which effectively contains the trademark strings that have been registered within the TMCH and verified. And then there's data that's maintained by IBM which indicates essentially – oh, there's a lot of data there that IBM has. The data that we were primarily interested in was information that indicates whether or not a registrar pinged the TMCH to see whether or not a potential registration attempt matched a string in the TMCH.

So the very short answer is that all of the data that we wanted to get from both Deloitte and IBM were provided to us and there was nothing that they were not willing to provide.

I think, moving down to Question B, "What, if anything, did the TMCH say they did not have?" I think there were – and this is noted in our report. So one of the caveats associated with the data that's maintained by IBM, is that you can't distinguish between whether or not a registrar was pinging the TMCH because an individual was attempting to register a string that matched – a string in the TMCH, or they were just pinging the TMCH for some type of other – some other reason.

And so unfortunately there's nothing in the IBM data that would allow us to differentiate those two reasons for accessing the TMCH from the registrar's perspective. So there – and I think this goes to some of the other questions that we've seen from your group – I think in an ideal world it would be nice to be able to get that data from registrars themselves to the extent they actually maintain it.

I think the other thing that we had hoped would be a little bit more detailed with respect to data in the TMCH, but isn't maintained at that level, so Deloitte for each string that's registered, whether it's by a TMCH agent or a actual trademark holder, they provide a two-digit effectively industry code that

lets you know what industry that holder might be in or their goods or services might be offered in.

Unfortunately, those two-level codes are very high level and so we had hoped that there would be kind of additional detail, the codes can get quite detailed so we were hoping that they would have a little bit more information with respect to the specific goods and services that a given trademark holder was offering. But unfortunately that information just isn't maintained.

Why don't I pause there briefly to see if there are any questions or comments? And if not then I can continue marching through the questions.

David Tait: We've got hands up from Phil and from Susan.

Greg Rafert: And I see…

David Tait: So…

Greg Rafert: Sorry, I do have a couple questions from Kurt and Griffin I'll just answer very quickly. So those are the NICE classification codes.

David Tait: Okay, Phil.

Phil Corwin: Yes, Phil Corwin for the record. Thank you for being on the call with us, Greg. One question I had, in terms of the about 125 million downloads of clearinghouse data for different domains, there had been some speculation that some registries had down downloads to see if various generic words had been registered in the database and would be eligible for sunrise and then use that to set premium pricing. Would registries have the same access to the database as registrars? And did you find any evidence that would – well would you have been able to find any evidence of the purpose for which those downloads were made or is that data just not available?

Greg Rafert: Those data were not available. And we certainly didn't see any registries that were – that showed up as having made downloads.

Phil Corwin: Okay.

Greg Rafert: It's a good question as to whether they have the same access or not. Your point is something that was brought up in Marrakech as well when I was talking with various groups. And unfortunately, we just weren't able to assess that.

Phil Corwin: Okay thank you.

David Tait: Susan, would you like to.

Susan Payne: Oh, yes, thank you. Hi, it's Susan Payne here. My first – I'll just do a quick follow up question the not what Phil was asking, if that's okay? You said you couldn't distinguish if – or you didn't see any evidence of registries having interrogated the database. Just for the avoidance of doubt, is that because, I mean, will you – if there had been that situation happening, would you have been given the data or did you ask Deloitte for – sorry, IBM, rather for information only about registrars pinging the TMCH data and therefore they didn't give you anything relating to registries doing so?

Greg Rafert: No, that's a good question. So we asked IBM for every single ping that was made to the TMCH.

Susan Payne: Okay.

Greg Rafert: So to the extent that registries were doing so then we should have identified the more they should have appeared in our data.

Susan Payne: Okay, thank you. And then could I ask the question I was going to ask, which was just, again, was just a question of clarification in terms of the code. So I

think I'm understanding you correct that the sort of – the trademark classifications, so Classes 1-42 or so, was what you did have is that correct or was it something less than that?

Greg Rafert: I would have to take a look back at the actual SIC code data. I don't recall if it – the range was only from 1-42 or if there was some other range. But it was, you know, the total number was certainly less than 100 or 200 SIC codes. And so you would just get these very – yes, - these could be very, very broad categorizations that made it difficult to actually identify what industry a given trademark holder was in.

Susan Payne: Okay all right, I think that probably is that then, yes. Thank you.

Vaibhav Aggarwal: Hi, this is Vaibhav Aggarwal for the record. I've just joined in five minutes but I couldn't dial in. Can I take my turn? I can't see the screen so I don't know.

David Tait: Yes, please go ahead.

Vaibhav Aggarwal: Okay, so my question to Greg. Greg, when you see the data that you've seen for the TMCH purpose, can you pinpoint as to – can we break the data as to agent-wise and region-wise, country-wise and is the data that is available (unintelligible) can that be segregated or can that be uniform where categorization of data is also there?

Greg Rafert: So with respect to the IBM data, if I'm understanding your question correctly, it would be – I don't think we're in a position – I don't think the data would allow us to, for example, delineate whether or not – where registrations were coming from. So we wouldn't be able to say that it was a North American registration versus an Asian registration. For the Deloitte…

((Crosstalk))

Greg Rafert: Oh sorry, go ahead.

Vaibhav Aggarwal: Sorry, so does it capture the IP address? And pardon me for butting in because I'm on the phone and I can't see the screen so I don't know – sorry I'm butting in. So doesn't it capture the IP address from where the ping to the database is done?

Greg Rafert: That's a good question. And it's not something I know off the top of my head so why don't we – we'll take a look. And I don't know the best way to kind of follow up with any questions that we're not able to answer on the phone today.

Vaibhav Aggarwal: Right.

Greg Rafert: But why don't we take a look and then we can get back to you. I think – I think there's also some interest I see in the next question on the screen, which is are you able to provide us with the raw data you gathered? And so to the extent that we are able to, and I think that we probably will but we need to confirm with Deloitte and IBM, that may help answer some of these questions as well.

Vaibhav Aggarwal: Sure. Thank you.

David Tait: Thank you. We've got a further follow up from Kurt in the chat which says, "What question would more detailed industry codes help us answer? What questions are you seeking to answer using the industry codes?"

Greg Rafert: That's a good question. So there were two reasons why we wanted more detailed information on the industrial classification of a given trademark holder. So the first is in terms of thinking about and developing the set of non-exact matches that we wanted to see if individuals were attempting to register or registering, one of the things that is apparently common in at least some

types of domain name squatting is adding the goods or service that a given kind of company is either onto the front or the end of the trademark string.

So you might get applecomputer.com for example. That was one reason why we wanted more detailed industrial codes. The second was just to get a sense for whether or not there was any variation in our results across the different types of industry. So was different types of potential type of squatting more or less prevalent among different types of goods or services being provided by a given company.

David Tait: Okay, so before we move back into the questions, I think we're on 1C at the moment, which is a question about the availability of the raw data to the working group – to the sub team, I highlighted this to the sub team in their discussions before you joined us on the call, Greg, but Antonietta highlighted to us that some of the raw data underlying the aggregated data within the report wouldn't necessarily be available from the Analysis Group due to had to sign NDAs with some of the providers.

And therefore it may be best for the working group to try to get some information directly from the providers themselves. So just going back to the question, if there's anything else you want to add to that one.

Greg Rafert: Yes, so I think that's right. We can certainly – I think one of the things that is less clear to me is the kind of the working group's relationship to ICANN and whether or not giving the – or providing the Deloitte data to ICANN is exactly equivalent to providing the Deloitte data to the working group. So I think what we can do is work with Antonietta and Deloitte and IBM to determine what, if any data, we can actually provide.

My understanding is that the Deloitte data can be provided to ICANN itself but I don't know whether that means that the Deloitte data can also be provided to the review team. I think if it were an NDA would likely have to be signed but that's something we can double check with Deloitte.

David Tait: Okay, thank you. It may be something also that ICANN staff can take up with ICANN Legal to discuss that issue further. So shall we move on to Question D?

Greg Rafert: That sounds good. And so once again this is I think a relatively short response to this question, which is that there really isn't any information that we collected that we didn't use in our review. And I think you're seeing kind of the full set of data that we collected, kind of described in our report. And so to the extent that we can provide those data we certainly will, we're happy to do so.

David Tait: Great, so…

((Crosstalk))

Greg Rafert: Oh go ahead, David, sorry.

David Tait: I was going to say – I think let's move through the questions and we can open up for questions from the floor after.

Greg Rafert: That sounds great. So with respect to Question E, I don't think there's any data from registries that would have been useful except for, perhaps, data that goes to the question that was posed a little earlier, which was, do we see registries actually pinging the TMCH to try and figure out which strings they might want to include in the sunrise period?

I think we'd probably be rather lucky to get that information from the registries. But it would certainly be of interest. And then with respect to data from registrars, and I mentioned this a little earlier, I think here, to the extent it's maintained, it would be nice to get data that would indicate whether a notification was shown to a potential registrant and then whether or not that registrant went forward and actually registered that domain.

Moving to Question F, this is what data could be collected from trademark owners to understand the effectiveness of the TMCH sunrise and claims, I think, I mean, our approach to assessing trademark owners' views of the sunrise and claims service period, was the interview and surveys that we conducted.

I can't think of any other quantitative information that we could have obtained from them that would have added to the kind of the quantitative analysis these are described in the report. And, you know, I think we certainly interviewed and/or surveyed a number of TMCH agents and trademark holders. I think to the extent we could further expand that group just to make sure that we're getting the full range of views, that would be nice, but I think we've at least kind of done kind of a good first job of assessing their views using the surveys and the interviews.

Now, moving to Question 2, which is "What documents…"

((Crosstalk))

David Tait: Sorry, Greg, just before we move into that we've got some supplementary questions which the sub team came up with before the meeting, and also we've got questions now from Kurt, he's got his hand up.

Greg Rafert: Sure, that sounds great.

Kurt Pritz: Thanks. Yes, with respect to information from the trademark holders, as I recall, the report said that, you know, there weren't a lot of sunrise registrations maybe because the price of the name was too high or maybe because trademark owners thought the other protections were adequate and they didn't have to register the name at sunrise. So that question about data from trademark owners really goes to, you know, what kind of questions

could we ask to decide whether it's, you know, one of those reasons or both of those reasons.

Greg Rafert: No, that's a good point. And I think it would be – that would be a nice kind of short follow up survey for some of the individuals or rather trademark holders that we've already talked with.

Stacey Chan: Another useful question along those lines might be to find out how often trademark owners are using other domain monitoring services and what types of – what we call permutations on their trademark strings, they're monitoring since that is something that we were trying to look at but weren't able to draw very strong conclusions about.

David Tait: And we've got questions from Griffin in the Adobe Connect room. Who said, "I haven't fully reviewed the draft report yet, but can you provide some detail on who was surveyed from the TM agent, or other TM owner communities?"

Greg Rafert: So we can't give out the actual kind of identifying information for the individuals who responded to the survey. So let me check the numbers, I believe we ended up surveying or interviewing something like a total of 15 or so trademark holders and TMCH agents. That number is a little off but it's kind in the ballpark.

They were selected based on kind of a number of criteria. We wanted to make sure that we were getting kind of – talking to a diversity of individuals so we wanted to ensure that there were some geographical distribution in individuals that we were contacting as well as differences in just kind of the – I'll say the size of the trademark holder owner so, for example, how many strings do they actually register in the TMCH.

Stacey Chan: We also received some responses from our Web form from trademark holders and trademark agents who were not directly selected.

Greg Rafert: Yes, we worked with ICANN and kind of various groups within the ICANN community to publicize the web form that Stacey is referring to. And so that was open to anyone who wanted to provide comments. It was a little shorter and the questions were a little bit less specific, since we wanted to assess responses from a variety of different types of individuals. But we ended up actually getting some relatively kind of good and detailed responses through the web form from trademark holders and TMCH agents.

David Tait: Okay so just before we move on to Questions 2 and 3, there were some questions that came up during the initial period – oh- Phil's got his hand up, sorry, before we move on then. Phil.

Phil Corwin: Oh I didn't mean to interrupt if you want to finish your point or I can ask my question, it's up to you.

David Tait: No, Phil, please go ahead. I'm just moving on…

((Crosstalk))

Phil Corwin: Okay. Yes, I wanted to ask Greg, you know, you're quite clear in the first paragraph of the executive summary that the review – the purpose of the review is not to make policy recommendations and of course we're looking at this study and we're looking at the data you have and other data that might be available. And I say this in my role as cochair of the working group that's reviewing the rights protection mechanisms. It's our job to make the policy decision. But just to make clear – sure I have the key points on Page 2 here in the executive summary that I understand that correctly.

                   Number 1, you were unable to discern the extent to which the existence of the clearinghouse deters potentially infringing registrations. You're also unable to estimate the extent to which it may deter non-infringing registrations. So we can probably presume it's having some affect in both directions but how much is just a matter of opinion. Would that be correct?

Greg Rafert: Yes, that is correct. And to answer those questions effectively you would need data from, I would assume, a large number of registrars, some representative sample of registrars in the universe of registrars. And then assuming that they maintained information with respect to whether an individual saw a notification and then what they did subsequently, then you could begin to answer that question in a more effective manner.

Phil Corwin: Okay. And then on the other two points which are addressed in the final paragraph on that page, you express the opinion that – well you found that registration activity declines after the 90 day claims service period ends. So adding additional time to the claim service period will likely have diminishing value, that's a quote. We'll take that into account in our deliberations in the full working group.

And finally, that trademark holders infrequently dispute registrations or the variations of a string so you don't think that expanding the matching criteria would have much benefit. My personal view on that point is that, you know, when you add in the lack of – after all the brew-ha-ha over trademark plus 50 that was not used very much at all. But at least there was some basis for those names. I prefer personally to see the clearinghouse be a – continue to be a database primarily of verified trademarks rather than, you know, variations thereof.

But those are the three key points. You can't differentiate the effects. There's no – registrations decline after the first 90 days. And, you know, there's – you don't see tremendous value to expanding the matching criteria. Am I correct on those?

Greg Rafert: That is correct.

Phil Corwin: Okay thanks very much.

Greg Rafert: Yes, of course.

David Tait: And we've got another question from Susan.

Susan Payne: Yes, thank you. I have one that I put in the chat which I'll just – since I didn't put my hand up. I just wondered to what extent you sought to get data from registrars that would advance the deterrent effect. And whether it was a case that you either didn't, you know, weren't in touch with registrars and didn't seek or it that registrars weren't willing to provide it. So that was what I put in the chat.

But then I also did wonder if you can clarify or expand on the data that you did have which led to the conclusions that you drew around the expanding – the scope of the matching roles. And it may be – apologies if it's in the report and I haven't understood it well. But just what data did you have that allowed you to deal with that question?

Greg Rafert: Why don't I – I'll take the – I think the questions in order that you posed them, Susan. So unfortunately we did not request data from the registrars, we kind of – the – I think by the time that we realized that deficiencies in the IBM data it was a little too late to request information from the registrars. I think the one thing that I can say from experience working on another project with ICANN where we did request information from registrars, it's a little like pulling teeth, to put it somewhat bluntly.

And so my guess is, although I don't know for sure, is that if we had requested the information we probably would not have received it. But that doesn't mean that it wouldn't be a good thing to at least attempt to do.

And then, Susan, I think your second question was with respect to kind of what data did we end up relying upon to assess the effectiveness or the usefulness of expanding the matching criteria. Is that correct?

Susan Payne: Yes, yes.

Stacey Chan: So for that, we sampled a set of trademarks from TMCH that we had, and we developed a set of variations according to the types that we listed in our report, so plurals, you know, one-character typo mistakes. And then looked at the registration activity for those types of typos or variations on trademark strings.

So for that we relied on Whois registration data and then we looked at how many registrations were occurring for each different type of string variation. So were plurals very common among the set of registrations that we got back, were exact matches the most common. And the comparison that we do is not just, you know, what type of variation has the largest share of registrations, but in the set of variations that we constructed you can imagine if everything is kind of random statistically, you would expect you could develop these variations on a trademark string so let's say Apple, and so, you know, Apple a whole bunch of different one-character typos so A is hit incorrectly, the P is hit incorrectly, etcetera.

You throw all of those into a bag and a registrant randomly pulls from the bag. Then you think that when you look at the registrations that actually occurred, those registrations would be distributed across the different types of string variations in the same way as the set of variations that we actually developed.

So that's what we're doing in – I'm just looking for the table number.

Greg Rafert: I think it's Table 8 I believe.

Stacey Chan: That's right. In Table 8 where we're comparing the distribution across the different types of string variations for the registrations in Column B to have the distribution of those variations across the set of strings that we generated, which is column D. And so if they happen much more often among the

registrations than among – then we would have expected, then it seems like that's a type of variation that registrants are really interested in.

And what we found is that exact matches are the most common and I think are (unintelligible) plurals and – sorry. There were only two types of variations where the registration activity was higher than we would have expected. And I think for at least one of those it was a very, very small portion of registrations. I know this if this is much more detailed than you're asking for.

David Tait: Thank you. We've got an immediate follow up from Susan Payne. And I'll just read the question because it's in the AC room, which is, "Regarding matching did you also look at mark plus generics?"

Greg Rafert: No, that's – we did not. I mean, that's kind of what we were hoping to get at to some extent by including – by using the industrial classification codes at a more detailed level, so for example, applecomputer.com and so we unfortunately did not do that.

Stacey Chan: But we did add by to the strings as one of the variations so it's the buy type of so for example apple buy or buy apple.

Greg Rafert: As well as cheap.

Stacey Chan: Right.

David Tait: And so the next person in the queue is Kurt. Kurt, would you like to ask your question?

Kurt Pritz: Sure. This goes back to obtaining additional information from registrars with regard to abandonment. And, you know, first I wouldn't – I wouldn't blanketly say that our registrar buddies wouldn't share information. And I think what would be really helpful as part of this report would be an appendix that highlights the additional data that would be required in order to effectively

measure the effectiveness of the clearinghouse or the effectiveness of the claims process and include that registrar data in there.

It's part of ICANN's policy development process that whenever a new policy is created, you know, we have to be able to measure how effective that is. And that's something that every stakeholder group has to sign up for. And so what this group or other – this subgroup or other groups should do would be – would come out with, you know, in order to measure the trademark clearinghouse effectiveness going forward, we need to have these kinds of data so that we can collect it going forward.

So if we need to know, you know, how many domains were actually abandoned versus how many downloads there were by registrars, that's a valid question.

Greg Rafert: Now, Kurt, I actually – I really like that suggestion so I think we'll make sure that we include in kind of the revised and final version of the report is exactly what you suggested. And I see…

David Tait: I'm sorry, a question, Kurt? We've got other questions from Susan in the chat which is, "From the data you did have, could you have looked at everything that had (unintelligible)?"

Greg Rafert: So apple would have – the issue with this is that we kind of had to work with Domain Tools to access the Whois data. So we could submit another request to Whois where they would pull anything that had apple in it. But in kind of the interest of keeping the cost down and also in the – because we didn't necessarily want to request too many records from Domain Tools, we did not do what Susan is suggesting that we could have done.

And given that the data we currently have, we cannot look at that. But it is possible to do so by going back to Domain Tools.

David Tait: Great, thank you. So just in the interest of moving on, as I flagged earlier on, we have some additional questions that came in before, you know, half hour before the call. So just looking at the – up on the notes pod on the right hand side of your screens, so the first question is, "Do you have any data on why abandonment rates seem so high? Are registrars downloading records without corresponding registrations thus skewing the numbers?"

Greg Rafert: Right, I'm just trying to find the actual questions so I'm looking at the same point. I am in the agenda notes.

David Tait: It's flagged as question…

Greg Rafert: I got it, Number 3.

((Crosstalk))

Greg Rafert: So unfortunately, and this goes back to the – kind of the lack of good data from registrars, which we did not request, it's difficult to know why the abandon rate is so high with the data we have. And I think to kind of determine whether or not the potential abandonment rate that's cited in the report is correct at least within the ballpark of the true abandonment rate, you would want information from registrars.

David Tait: Okay so Question 4, says "Will it be difficult for the Analysis Group to share…" we've already dealt with that issue actually. So looking at Question 5, this is a specific question from Phil. I don't know if you want to read it, Phil, it's in relation to your point there, 1.7 million abandoned registrations, vis-à-vis, the number on Page 7 of the report.

Greg Rafert: So one of the reason why there's a big – I think there's a couple reasons why there's a large difference between those numbers, so there are some registrars, and I think this actually goes to the question that's immediately below this one, that every time they're downloading, or most of the time that

they're downloading from the TMCH, they're downloading a large number of records.

There's also – and I'm going to get this slightly incorrect but there's basically an internal ICANN system that pings the TMCH as well and my understanding is that it does so to basically ensure that kind of the system is working as it should. And a large number of the downloads are also from kind of that automated or kind of institutionalized ICANN mechanisms.

Our understanding is that registrars do have to download every time there is a registration, although to the extent there's different views of that we would certainly be interested to hear from the group.

Stacey Chan: And another reason why some records fell out, so not just excluding the ICANN monitoring system but also because we were concerned about the possibility that some of the registrars were essentially bulk downloading records, for the results that are in Table 4, we excluded two registrars who downloaded large numbers of records at a given time relative to the rest of the registrars that were in the sample. So we can see when a download occurs and how many strings are being downloaded.

Most registrars are downloading less than five at a time on average but there were a few registrars that were downloading many more at a time. So for the result in Table 4 we excluded those registrars but we also conducted the analysis with those registrars included, and also still found a very high abandonment rate.

David Tait: Okay thank you, you've helpfully answered the next question that we had. So the last question of the additional questions is, "6.3% of claims trigger registrations seems very low." Sorry, before we answer that Susan's got a further question to follow up on the large registrar downloads, which reads, "For additional data would you need to determine if this was improper

activity? Is this being looked at elsewhere, for example, with ICANN Compliance?"

Greg Rafert: I don't know if it's being looked at elsewhere by, for example, ICANN compliance. You know, I think one of the ways that you could determine whether this was improper activity was actually going to the two registrars and essentially asking them kind of what was the mechanism that was leading them to kind of undertake the – kind of the large number of downloads at a given point in time.

Beyond that, it's not obvious to me what data would allow you to answer that question, but it's something that we can give – that we will give more thought to and figure out. And this might be something that goes into the appendix that was mentioned before is the data that would be ideally kind of incorporated and additional assessments.

David Tait: Okay thank you. So turning again to the final question which is that 6.3% of claims triggering registrations seems very low. I can't remember where that question came from, but perhaps maybe if you have some more detail on that?

Greg Rafert: Yes, I think to the extent the individual who posed that question, if you could provide just a little bit more detail I think it would be helpful from our perspective.

Kurt Pritz: This is Kurt. Yes, so this is Kurt, it's my question. So the report seemed to say that 93% was a unreasonably high and unbelievable number with respect to – with respect to the percentage of abandoned attempted registrations. And so if that's true, if that's what the report is saying then equally then 6.3% of attempted registrations that were followed through after receiving the claims notice would be low.

Greg Rafert: I agree. Yes, I think to the extent the report kind of – and it probably did but I think we didn't necessarily mean to give the impression that 93% was unbelievably high. I think kind of going in it wasn't clear what we were actually going to find. But so I think maybe the language could be softened in the final version of the report.

Stacey Chan: I mean, one thing that would be useful, I mean, if we had registrar registration data then we could look at registration activity outside of the claims service period so of registration attempt that are begun, how often are they dropped just because we don't have a baseline to be able to compare the 93.7% and the 6.3% to.

Greg Rafert: Does that help answer your question?

Kurt Pritz: Yes, this is Kurt. Well I think so. When I read the report I had trouble believing that the actual event and that rate is 93% after receiving a claims notice. And the lack of – and the report seemed to say to me that the lack of data from registrars makes it really difficult to verify that that's an accurate number. So to the extent 93% in question then 6% also a question, that's all.

Greg Rafert: Yes, no it's a good point.

David Tait: Okay so at this point before we move on to our final two questions, which are back in the main presentation pin, do we have any other questions from the participants or from the chat? So while we wait for Paul Keating to type his question, we can maybe look at the penultimate question which is, "What documents are (unintelligible) Analysis Group find most useful and what, if any, would they recommend the sub team to look at?"

Greg Rafert: So that's a good question. I think in terms of the – in terms of the documents themselves they weren't documents that I would necessarily recommend I think that would be useful from – other than the GAC recommendations which I'm guessing that most of you are familiar with. In terms of data sources, you

know, I think that the underlying – or the Deloitte and IBM data are, of course, I think especially the Deloitte data are, I would say, quite useful in thinking about how trademark holders and TMCH agents are using various types of services provided by the TMCH.

I think to the extent that there's interest in expanding the matching criteria, the Whois data that we obtained from Domain Tools, would also be of use. And then finally to the extent you want to – it's helpful or of interest to look at patterns and disputes that are actually initiated by trademark holders, the UDRP and URS data that were provided by ICANN was also quite useful. So I think probably the Deloitte data, the UDRP URS information, and then the Whois information that we obtained from Domain Tools.

So I think Stacy and I will give just a little bit more thought to that question, and to the extent that we have any other kind of follow up suggestions we'll be sure to provide them.

David Tait: Great, thank you. So the final question we had at this point I'll ask if there are any other questions that people have to pose to Greg and Stacey if you'd please raise your hand or put them in the chat now.

The final question we had is, "What other data should be collected and from whom?" Brackets, "TMCH database, TMCH valid registrar, registry, others?"

Greg Rafert: Yes, and I think here – I think it's been to some extent covered in some of the other questions but I think it really comes back to the extent to which we could obtain both notification data and kind of subsequent registration activity from registrars. There's – I think we've essentially received all of the information that we would want from the TMCH database. It's – I guess you could conceive of kind of approaching registrars and determining to what extent they are pinging the TMCH and – but that seems a little bit less useful from our perspective I think.

David Tait: Great, thank you. And we've got another question in the chat from Paul
                   Keating which says, has there been any follow up research on the number of
                   domains actually registered following a notice from TMCH, for example,
                   domain name tools (unintelligible) searches?"

Greg Rafert: So there has not. And that's a good question. Why don't (unintelligible) just
                   think about it a little bit more but that is an interesting point and I think could
                   be kind of a nice complement to some of the analyses in the report. Yes, and
                   I see also compared a file of UDRPs and URS from Paul Keating as well,
                   which I'd like to give this a little bit more thought to but…

Stacey Chan: Oh, one of the drawbacks of the IBM data is actually that we can't see the
                   domains that were being attempted unless they're actually a completed
                   registration. So if a registration is not completed we don't know what domain
                   was attempted.

Greg Rafert: That's a good point, Stacey.

David Tait: Great, thank you. So at this point if – I'd like to invite any final questions that
                   there might be from either in the chat or over audio if (unintelligible) please
                   raise your hand now. Susan, if you'd like to (unintelligible).

Susan Payne: Yes, thank you. It's in relation to the non-registered names I suppose. I guess
                   I'm not quite clear why IBM don't have that data. I mean, shouldn't they have
                   that data? I mean, the claims notices go out or – and this is my lack of
                   understanding of how the process works probably. But is that information only
                   ever with the registrar and it's not with the TMCH?

Greg Rafert: That is correct. So for – and I guess I don't know the exact reason why but it
                   is information that is not provided or kind of included in the data that IBM
                   maintains. So our understanding is that once the registrars maintain that,
                   that's where you would need to go to get that.

Susan Payne: Okay thanks.

David Tait: And we've got questions coming through from Kurt and from Phil.

Greg Rafert: Yes. I do agree, I mean, and maybe this is something else that would be useful to include in this kind of data that one would ideally kind of obtain to do a more complete analysis or to kind of smooth out some of the rougher edges. So I think there could be some recommendations that kind of going forward or if any changes are made to the TMCH of the types of information that IBM perhaps should work to include assuming that it can.

David Tait: Phil, you've got your hand up if you'd like to…

((Crosstalk))

Phil Corwin: Yes, I just wanted to ask Greg in regard to this little colloquy that's been going on in the chat room about Paul Keating's suggestion, I just want to make sure I understand, if you had a scenario where a potential registrant began a registration, got a claims notice, abandoned the registration at that point but then did some further research or talked to a trademark attorney or something, did something that gave them pretty good assurance that they wouldn't be subject to a, you know, trademark infringement claim or a UDRP or something like that, and then went back and completed their registration that would be – that would trigger another inquiry to the database at that point and that final registration would already be reflected in your 6% that goes through the registration, would it not? Or am I misunderstanding…

Greg Rafert: No, that is exactly correct.

Phil Corwin: Okay, okay. Just wanted to clarify that. Thank you.

Greg Rafert: No, thank you.

David Tait: And, Susan, you've got your hand up.

Susan Payne: Yes, thank you yes it was just one other question which is sort of unrelated really to what we've just been talking about. But I noted earlier on in your report you said that you felt the questions about competition of the TMCH supplier was outside of the scope and so it wasn't something you looked at.

                   I think we, within our group, feel that that probably is one of the things that's potentially within scope for our consideration. Did any of the data that you gathered, do you think any of the data that you saw would assist us in that task or do you feel that you – because it was outside of scope you don't think that anything that you have would assist us with that analysis?

David Tait: That's a good question. So I think the only data that we could have gathered that would be on point with respect to competition from other services would be if any of the survey respondents provided their views on whether competition would be useful or not. I don't recall off the top of my head as to whether anyone did but we can take a look back through the survey responses that we received and we'll take a look and determine whether there's anything that would be useful to be shared with your group.

Susan Payne: Thank you.

Greg Rafert: As a quick aside, from a couple of interviews that took place in Marrakech, I definitely got the sense that from the trademark holder perspective it seemed like at least from the individuals that I talked to, that there was some interest in having there be competing services to Deloitte and IBM. But, I can't tell you to what extent or kind of how pervasive that view is either among trademark holders or other stakeholder groups.

Susan Payne: Okay, thanks Greg.

David Tait: Okay, thank you, Greg and Stacey and all of participants today. Staff will take away the questions and the answers that we've collated over the last hour and share the outcomes and the notes that were taken with the full list in the next couple of days – the analysis team for joining us today.

Greg Rafert: No, thank you for having us. It was a pleasure.

David Tait: So with that if I can ask Terri to stop the recording and to wish everyone a pleasant rest of your day.

Susan Payne: Thanks very much.

Terri Agnew: Thank you. Once again, the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines. (Eric), the operator, if you could please stop all recordings.

                              END