ICANN Transcription

The Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims Data Review

Wednesday 03, April 2019 at 1700 UTC

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ANDREA GLANDON: Good morning, good afternoon, good evening. Welcome to the RPM Sub Team for Trademark Claims Data Review call held on Wednesday the 3rd of April 2019 at 17:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Adobe Connect room. If you are only on the audio bridge, could you please let yourself be known now?

REBECCA TUSHNET: Rebecca Tushnet.

ANDREA GLANDON: Thank you, Rebecca. Hearing no further names, I would like to remind all participants to please state your name before speaking for recording purposes, and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I will turn it over to Julie Hedlund. Please begin.

JULIE HEDLUND: Thank you very much, Andrea. Just to quickly run through the agenda, and then I'll turn things over to Martin. We have the first item on the agenda, update to statements of interest, and then we will go back into the development of preliminary recommendations, completing the discussion on question two, beginning the discussion on remaining questions as time permits. And we do have the summary table for your reference loaded and unsynced. And then time for Any Other Business. May I ask if anyone has Any Other Business? Phil Corwin, please go ahead.

PHILLIP CORWIN: Thank you, Julie. It's not Any Other Business, I just wanted to note the co-chairs on their planning call last Friday, we discussed with staff the timeline, and I just wanted to note for everyone's information that the timeline projects this subteam as well as the sunrise subteam wrapping up their work on the call of May 15th. Now, that's today's call and six more, which seems like a lot, but there's a lot to review.

So it's really imperative that we have robust discussion, that decisions are made on preliminary recommendations on then

moving on to vetting individual recommendations or proposals with some expedited focus, otherwise we're going to have to look at either extending the length of the subteam calls or adding extra calls. We do not want to miss that May 15th deadline for completing this stage of the work. So I'll stop there and yield to the co-chair of the subteam. Thank you.

JULIE HEDLUND: Thank you, Phil, and I see Michael Graham has his hand up as well. Michael, please.

MICHAEL GRAHAM: Yeah, I just had a quick question for clarification from Phil. So that date is for completing of this subteam's work, after which what we produce then would be moved up to the committee as a whole, the group as a whole, correct?

PHILLIP CORWIN: Yeah, that's correct, Michael. That's the projected date for the subteam completing its consideration of subteam recommendations as well as vetting individual proposals and reporting up to the full working group where that work product will be reviewed, and then moving on to the trademark clearinghouse as our last subsntative item for full working group review. I hope that clarifies. Thanks.

MICHAEL GRAHAM: Yes, it does. Thanks, Phil.

PHILLIP CORWIN: Sure.

JULIE HEDLUND: Thank you very much. Kathy Kleiman, please.

KATHY KLEIMAN: On a different issue, so let me just stop if there are more comments to what Phil and Michael were talking about. Okay, on a different issue for Any Other Business, I wanted to ask about timing of the meeting and whether the new time is posing any difficulties for people. We've shifted the time again for many of the people who are in the working group, so I just wanted to [check that] that's not creating undue difficulty for anyone participating. So if we could include that, I'd appreciate it.

JULIE HEDLUND: Thanks, Kathy. Let me just ask if anybody has any issues they'd like to raise concerning the timing of the call. We haven't seen any thus far, but I see a few comments that are coming into the chat. I'll pause there. Cynthia says all good. And yes, George did ask about it. We did not get any comments opposed to the time. Stephanie makes a good point. Yes, correct.

Alright, we'll let that run, but in the interest of time, let me go ahead and move to the second item on the agenda and turn things over to Martin. Before I do so, let me just note something that people may not be aware. Just so that people know that, as

you will see in the Adobe Connect room, the summary table is the draft as of 8th of March. Once the subteam has completed its discussion on the development of preliminary recommendations and the individual proposals, staff will update the summary table with the draft of the preliminary recommendations and also the links to all of the discussions.

To the extent that people have made recommendations and suggested text for preliminary recommendations, those will be included. For example, I know that Rebecca in the last meeting had made suggestions, and those were indeed captured by staff. Those would be rolled up into the summary table, and that would be provided to the subteam for review. So I just wanted to make that note, and then go ahead and turn things over to Martin Silva. Please, Martin, go ahead.

MARTIN SILVA VALENT: Thank you very much, Julie. Let me know if there's any problem with the sound. Welcome, all. Last time, we left work at question [2E.] I don't know if anyone had any [inaudible] because we had to cut the call because time reasons. Does anyone have any extra comments on [2E?] If not, we can just move to question three. I don’t see any hands up. Okay, I have George Kirikos. George?

GEORGE KIRIKOS: Yeah, I had strong concerns about the token use marks for the [inaudible] kind of gamed trademarks. But are we supposed to raise them in the subteam, or are we going to plan to circle back and talk about this when we talk about the trademark

clearinghouse? Perhaps the co-chairs might be able to have some insights, because I think there's a lot of concerns about the trademark clearinghouse and what gets into it in terms of figurative marks and so on. Are we planning to go back and reexamine those? Thank you.

MARTIN SILVA VALENT: I will defer that to Phillip. Phillip, you're up.

PHILLIP CORWIN: Yeah. Just to clarify – I see Kathy has raised her hand – George, are you raising an issue refers to what marks can be recorded in the trademark clearinghouse?

GEORGE KIRIKOS: Exactly, like the qualifications for the trademark clearinghouse. It seems like when we talked to Deloitte, they're basically including everything. Recall Rebecca sent them the ten examples and basically [inaudible].

PHILLIP CORWIN: Okay. Yeah. In my view – it's not definitive, I'm one of the three co-chairs, but that would be, in my view, an issue for full working group discussion when we circle back to trademark clearinghouse. In this working group – what's recording in the clearinghouse is an issue for the clearinghouse. What happens in terms of what generates a claims notice and what the language of the claims notice is is an issue for this subteam, just as issues regarding the

ability to exercise the sunrise registration RPM are an issue for the other subteam.

But as to whether we should change any of the rules for which can be recorded in the clearinghouse is a clearinghouse issue, not an issue for one of the two current subteams in my personal view.

GEORGE KIRIKOS: Just to respond to that, yeah, that's what I thought was going to happen, [inaudible]. I wasn't sure that by the proposed phase one timeline whether there's going to be enough discussion available for that. But as long as we have [inaudible] put in individual proposals and so on when we have that discussion. I think it's scheduled for June and July, maybe even August, so that would be great. Thank you.

PHILLIP CORWIN: Yeah. I'll defer to Kathy, and then again, this is a personal view right now because the co-chairs haven't discussed this particular question. But clearly, the issue of whether the rules should be modified in any way for what marks can be recorded in the clearinghouse is an issue for when the full working group reviews the trademark clearinghouse after the subteams finish their work. Thank you.

MARTIN SILVA VALENT: Thank you very much, Phil. Thank you, George. Kathy, you also have your hand up.

KATHY KLEIMAN: Yeah. Good question from George, and I agree with Phil's answer, up to the point that – so there was a question whether to have there subteams in parallel, sunrise, trademark claims, and structural issues of the trademark clearinghouse. And I know it's hard to do, because it's kind of a chicken and egg problem that we're reaching. It's hard to know some of the trademark claims answers until we know if some of the structural concerns will be addressed in the trademark clearinghouse, and maybe there are ways – to Martin and to all the members, maybe there are ways to note that in the recommendations that we're making here on trademark claims, that some of it may be dependent on something else.

But we did decide to do trademark claims and sunrise first, structural issues later. I don't think we decided – right now, it goes back to the full working group. The full working group may choose to delegate it to a subteam or do it as a full working group. And George, you may be right, we may need a little more time on that. But the structural questions of GIs, the geographical indications and design marks, [other things are questions] coming up for the trademark clearinghouse. Thanks.

MARTIN SILVA VALENT: Thank you, Kathy. George, you have one more follow-up before we go into teh questions?

GEORGE KIRIKOS: Sorry, that was an old hand.

MARTIN SILVA VALENT: Okay. Thank you very much. Then let's dig into question three since there were no questions or [inaudible] 2E. Let's start with 3A. We have does the trademark claims notice to domain name applicants meet its intended purpose? [inaudible]. If not, [inaudible] hard to understand or otherwise inadequate? If [inaudible], how can it be improved? Let's start there. I don't see any hands up. Yeah, I have Griffin. Griffin, you have the floor.

GRIFFIN BARNETT: Yeah. Thanks, Martin, and thanks, everyone. I think we've kind of discussed the issue before to some extent. I think there was some preliminary agreement at least that the wording or the – yeah, I'll say the wording of the trademark claims notice, there was some indication that it was perhaps difficult for perhaps what I might call a layperson or someone who's not especially familiar perhaps with trademark-related issues to kind of glean what the meanings and implications of receiving the notice were, and I think [inaudible] we would attempt either as the working group, or I think potentially more likely whatever IRT follows this working group, to try and revise the trademark claims notice itself, the actual wording of it so that it's a little bit easier to understand in terms of both generally what it means and what perhaps the legal consequences or what actions might be appropriate for potential registrants to take in response to receiving a notice. Thanks.

MARTIN SILVA VALENT: Thank you very much, Griffin. I personally agree with your statement. George, you're up.

GEORGE KIRIKOS: Thanks. Obviously, I proposed elimination of the trademark claims of an individual proposal, so I disagree the analysis to date. I do think that it's [intimidating her] to understand it's not really meeting its intended purpose in terms of having a balance for both sides. In terms of inadequacy, the trademark claims notice to the registrant who's attempting to make a registration doesn't have all the details needed to identify the actual trademark [in question,] for example there's no serial number, there's no creation date. So it really needs a lot more detail to actually be able to identify the trademark at issue.

If you go back to the survey analysis tool and the source [tab,] etc., I pointed that out in the comments when we we're analyzing all the data. It doesn't even show for example if it's a figurative mark. It'll show the wordmark, but I don't think it'll actually show whether it's a combined mark or figurative mark, a logo, etc. So that all needs to be in front of the prospective registrant sot be able to make an informed decision.

In terms of the translations, we already know there's quite a lot of chilling effect right now when most of the notices are in English, and only in a handful of languages. I think this is a point that Rebecca had made in her comment, but it's going to be far worse for registrants who have a language issue, and if the translation is poorly done. And we know from the data that not all the languages

are covered, so there needs to be much more work in this. Thank you.

MARTIN SILVA VALENT: Thank you very much, George. We have Kathy Kleiman next. Kathy.

KATHY KLEIMAN: Yeah. So, we're doing question 3A 1, 2 and 3, and so for one, I wanted to agree with Griffin, it is intimidating and hard to understand. Two, I wanted to agree with George that it doesn't talk about the scope and limitation, it doesn't inform domain name applicants, in part because the scope of work in the trademark clearinghouse right now is far beyond what was understood would be in there. So definitely [inaudible] dependencies, I think we have to draft now for what is in the trademark clearinghouse, and that would involve a lot more discussion about, goodness, how do we explain the geographical indication. But nonetheless, we have to, and we have to flag what it is, and that's how it's registered in there.

So there's definitely work to do on that. In terms of translations, we know from the data that translations have been a problem, and certainly in other areas, we've talked about translations [under the URF,] we were concerned about translations here too. People should note for the trademark claims notice to be effective in informing applicants, they have to be able to read and understand it.

And I think that's an easily solved problem once we've taken care of 3A 1 and 2. Then ICANN IRT can provide the translations. But one of the questions is since it was stakeholders who drafted the original trademark notice, should we the subteam make recommendations about how or who should revise it, and then how would that process go? Thanks.

MARTIN SILVA VALENT: Thank you very much, Kathy. We have Susan Payne next on the line. Susan?

SUSAN PAYNE: Yeah. Thanks. And I wanted to understand George's position. I think I do understand it, but to me it sounded like he was saying he disagrees with the questions in 3A because he's made an individual proposal to eliminate the claim. But then he went on to identify various elements of the claims notice that currently he feels are inadequate, which seems to me to indicate that in relation to actually question 3A, George does think there are changes that need to be made.

And I think if we could leave aside the fact that George obviously feels it needs to be eliminated, if we assumed for the purposes of the current discussion that it continues, then I think George is saying that, yes, he agrees it does need some amending. But it would be nice to get that clarity because it wasn't terribly clear to me, but that may just be because I didn't hear properly.

I would agree with some of the things he says, including [inaudible] and I've been thinking about this as well, I'm just

thinking I know we don't necessarily have to have all the answers in terms of exactly how these happen and [if] this is a question for the implementation review team. But it does seem like there's the potential for this to get quite complex and long [inaudible] quite complex for a registrar to operate if we start including all the possible translations.

And I wonder if we need to find a way to make these notices just a bit easier in terms of the notices actually being very short and including information about the mark, but directing the recipient to a place where they can find all the information in whatever language they want to read it in.

We are talking about domain names after all, and the Internet. So it doesn't seem to me that the notice itself has to contain necessarily all the information. We need to include the information that needs to be there and that's specific to a particular registration or registration attempt. But some of the stuff is uniform, and [there must be a way] to make this more streamlined.

MARTIN SILVA VALENT: Thank you, Susan. Silvia, you were next, I think.

CYNTHIA KING: Hi. I'm going to start with just a short comment, which is that people keep talking about sides on this issue. I don't think that there are sides on this issue. I think we all agree that [inaudible] registrants can make a good decision for themselves and that that benefits the business community as much as the registrants. So I

think we're all on the same side trying to make sure that registrants understand what's going on.

And to that end, I think the current notice obviously falls short. So it's just apparent from the responses that we received that it is falling short and it needs to be reworked. Who should rework it? I definitely think that our group should probably take a stab at providing some kind of an outline. Why? Because we've been studying this issue for three years now. So we're kind of experts, and I think it would be beneficial for everybody if this group or the RPM working group took a stab at the language, understanding that there's going to be another group of people that fine tune it or whatever. Or at least to draft the parameters under which a new notice would be written.

Regarding the translation, it doesn't benefit the trademark holders or the registrant if they can't understand the notice that they get. So obviously, that's an issue that will need to be addressed, and I agree with Kathy that that's probably something that will be much easier to address once we have the underlying notice figured out. And like Susan, I absolutely believe that you cannot write a notice that covers every single thing that any given registrant may need to know. It's just not going to be possible.

So, what do we need to do? I think what we need to do is we need to have a general notice that explains what is going on much better, and maybe refers people to some landing pages, if we had a landing page that described what a design mark is or what a geo name is that kind of gave some additional information, but we cannot be arbiters of what the situation will be for any given registrant. We have to keep it simple. That makes it easier to

understand. And then direct people away to a place where they can find more information. That's very important.

I completely support continuing the notices. I understand George's position, but I do think that the notices serve a very important function for the user, not just f or us. So if we could keep in mind that the user is the person we are trying to help understand, because I think that we understand the issue pretty well, those are the people that are not understanding the information that we're trying to give them to be helpful. So that's my thought. Thank you very much.

MARTIN SILVA VALENT: Thank you very much, Cynthia. Greg, you're next in line.

GREG SHATAN: Thanks. A couple of points. First, there have been a lot of opinions stated as if they were facts in the last 10-15 minutes. I'll just assume that's a shorthand, so I'll just consider them to be opinions even though they were stated as if they were fact. We should all treat them that way.

Secondly, I agree that I think there seems to be broad consensus that the trademark notice needs a rewrite, and I think that this group should provide as much guidance as possible, either a redraft coming out of this group, or at the very least, a markup of the current notice with its deficiencies or changes to be noted. I think that just saying it needs to be rewritten and then dumping that forward will do a disservice. This is, I think, among other things, maybe one area where we can actually show some

commonality and good progress, and I think that examining the text of the current trademark claims notice explicitly will also crystalize our discussion and points about what needs to be changed and how. Now we're talking [about it somewhat in] a vacuum, or at least as if it's inside a black box, this claims notice. So I think we really need to kind of put it up maybe as a Google doc and have at it in terms of commentary and potential edits to the doc. I think anything less than that and we're just kind of chatting.

Other than that, again, there are a bunch of things stated that we can all talk about and dispute at the right time, but most of them really were relating to the trademark clearinghouse and not to the notice or to trademark claims generally.

I would say that I think it's a stretch to call the notice intimidating. I'm not saying that because I'm a lawyer. I think it's a little confusing. I don't think we need to argue about the adjectives to be applied to it, I think we just need to get to the job of actually writing a claims notice that we think we can hopefully agree meets the needs better. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. George, you're next in the queue.

GEORGE KIRIKOS: I was originally going to respond just to Susan, but listening to Greg's comment, I didn't really understand what he was trying to get at with the differentiation between opinions and fact. We spent a lot of time going through [inaudible] results, the previous

[inaudible] data. When we have the document in front of us, we don't just have the questions, we have those three links below it, and I assume everybody would have prepared before the call, looked at the survey analysis tool, looked at the source tab, the additional data collected and all the comments.

So whether it's a philosophical question of what is data, what is fact and what is opinion, that's something that can be debated, but hopefully people are coming to judgments based on the evidence that's been examined, and they're all, I guess, prior beliefs before that and have adjusted the opinions based on the facts that we encountered in this subteam. So I don't understand the stuff about the [inaudible] as well. It's not a lot of work, and that's been to look at the data, analyze it and come to conclusions based on that data.

As for the [inaudible] thing that he mentioned, we do have the data. We have a huge abandonment rate, for example, the 93.7%, etc. that we talked about in the mailing list and elsewhere. Anyhow, I don't want to get into that.

But as for Susan's comments trying to understand my comments that I made earlier, the context was that I have this individual proposal for the elimination of the trademark claims notices because I look at the data for this experiment over the past few years for the current round of new gTLDs and look at how in my view the costs have far exceeded the benefits, and so from that point of view, it hasn't met its goals. So looking prospectively into the future, can it be improved so that – it can be improved, so that's what the comments I made with regards to the specific points in this question are it can be improved, but I think my main

conclusion [through] that individual proposal is that even with the improvements, the costs will still exceed the benefits for all of the multi-stakeholders that we're supposed to be representing overall at ICANN.

So it's like having a company, let's say the company is losing $10 million a year. Now, you can make an improvement to try to turn around, but if it's still going to be losing $5 million a year, is that an investment worth making? My argument would be no, you should be looking for other investment opportunities, other means of rights protection that are more effective. So that was the point I was trying to make. Thank you.

MARTIN SILVA VALENT: Thank you very much, George. I have Rebecca Tushnet next on the queue. Rebecca?

REBECCA TUSHNET: Thank you. So just a couple things. First, I think that having 15 lawyers try to rewrite this would almost certainly give us much worse results than what we even have right now, just because of [individual idiosyncrasies] piling on one another. And I say that as one of the people who would be piling on. What might make sense for the group to develop is a set of objectives that the notice should leave you with, including where to go for more information about different specific things like what is it that they have registered, what does that mean, and so I would support us developing kind of the set of things we want to cover. None of us,

as far as I know, are communicating experts, experts at understanding how consumers, applicants respond to things.

So here's what I think we have an opportunity to call on some resources that have already indicated an interest. So we have a submission from the AUIP clinic where they've tried redrafting. I think this might be a case where we might be able to ask for support for people who might then be able to do some actual testing. So they aren't consumer experts either, but there are cases where clinics have resources to go out and actually see whether they have followed best practices. There are best practices on how to communicate disclosures to people, and maybe even do some AB testing. Given that it's online, it's actually relatively cheap compared to other forms of consumer testing.

So that's where I would suggest to focus, is to work on a list of what we want and perhaps reach out to partners who might be willing to provide what we want. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. We have now Phil.

PHILLIP CORWIN: Yeah. Thank you. I'm making these comments in a purely personal capacity. I've taken my co-chair hat off. I'll try to be as brief as possible. Going through the questions, I think the data, while inadequate, it's reasonable to presume that the receipt of the notice has deterred some registrations that were meant to be infringing. But I think we also all agree that there's some degree of the deterrence of domain registrations that would not be infringing

and that we want to cure that. We have broad agreement that a rewrite is needed, so I think we should take yes for an answer on that.

On the wording of a rewrite, I think it's premature to discuss anything other than objectives or broad principles right now. We might get a little more specific when we get to the final report preparation stage, but I think for now, for our initial report, I would suggest we not spend a lot of time on a call but we put the text of the current claims notice out on the working group list for the subteam and solicit ideas for where it can be improved, broad principles, objectives, what do we want to make better about it, what do we want to take out that might be misleading or chilling to an unreasonable extent, and then put that out for comment in the initial report. And then maybe get more specific in how we want to rewrite it in a final report, but not t registry to do the entire job, leave something for the IRT.

On informing domain name applicants of scope and limitation of trademark holder rights, ICANN can't be in the business of giving legal advice. There's too much variation in national trademark law. I think we can think about providing links either in the notice itself or into a page it links to, to groups that can help a layperson to understand the [counter to] trademark law better. It could be trademark groups like INTA, it could be cyber rights groups like EFF. We'll give people a choice of what they want to look at. Ultimately some of them may have to consult with an attorney. But I think we can provide the links on translations. The rule now, I believe, is that the notice should be in the language of the registration agreement, so if it's not English, that would apply. But

I wouldn't see anything difficult or unreasonable about providing a link in the notice for people who signed and English agreement but have great affluency in one of the five UN languages that ICANN translates meeting into, but to have a link to a single document, so translate into French, Spanish, Chinese, Russian, Arabic wouldn't be a big deal. It's a single one- or two-page document. So if we could have a link to make that available to a registrant who would find that easier to understand – and let me see what else.

Well, on 3B, it's up for debate. We'd obviously be changing – if the aim is to deter infringing registrations, you need to give the notice beforehand. And if you want to inform people who aren't sophisticated that they might get into a legal jam if they register a certain domain for a purpose where they don't understand, it might be tagged as infringing, you're not doing them any favors either. But that can be debated.

Finally, on the question of eliminating it, I've been consistent since the start of this working group, which is that we should be pragmatic. I don't think it's reasonable to believe we're going to get consensus to eliminate one of these RPMs, just that I don't think it's going to be reasonable to think that we might need to add a brand-new RPM. But reaching consensus on that is way too heavy a lift to think it's going to happen. But that's my view, we can debate it further, but I think the main job here is to improve the claims notice with a rewrite and another [inaudible]. And that's it. Hope those were helpful. Thank you.

MARTIN SILVA VALENT: Thank you very much, Phil. We have Greg Shatan again in the queue. Greg?

GREG SHATAN: Thanks. Having li8stened to the discussion of the trademark claims notice, I think I'm persuaded by the remarks by Rebecca, Phil, others, that actually just completely having at it in terms of trying to redraft it, while it might be amusing, probably is premature at best, and a free-for-all is not really the right way to do it. At best, we probably want to do a small [team,] but I think that's premature.

So I think that what we need to do is to kind of work out our specification for our key points and issues. As a general rule, it's always better to draft something after you've come to a general agreement on what the terms should be and what is trying to be accomplished. So I think that should be our first step, is to put something like that together and put that out for comment. And there'll be enough interesting rounds for discussion.

Nonetheless, I think it's important that we do have the trademark claims notice in front of us when we discuss it, so I encourage that to be recirculated to the group and generally put in front of us while we're discussing [inaudible].

And with regard to just to clarify my earlier remarks with regard to fact versus opinion, I'll note that certain people – and different people – in my view or my argument would be – and what would proceed after that is clearly their opinion or at least it's their interpretation of underlying data, information in front of us.

My point was that there were a lot of statements made without those kind of predicate clauses. That really sounded to me – and I would argue are, were – statements of opinion or conclusions with which others could differ. Without having a transcript in front of me, I'm just going to take the general view that [inaudible] statements made were really statements of opinions even though they were stated as if they were facts. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. I have Kathy Kleiman next. Kathy.

KATHY KLEIMAN: Okay.

MARTIN SILVA VALENT: Sorry, Kathy. Give me one second. Mary, you have your hand up. Do you want to comment on this?

MARY WONG: Thanks, Martin. I do, from the staff perspective, but if you want to take Kathy and George as members of the subteam first, we're happy to wait as long as you do get back to us. Thanks.

MARTIN SILVA VALENT: Okay. Perfect. Kathy, sorry for that.

KATHY KLEIMAN: Okay, somebody's not on mute, and I'm getting an echo. Okay, so I think we're converging at going out – okay, so first thing, with my co-chair hat on, I just want to say I'm not sure George's proposal's on the table right now, so this is a question for the subteam co-chairs now [or] in the future, which is, how we're going to handle the proposals and whether we're going to bring them into the discussion as we're looking at the questions, which means we should probably all be on notice to review them.

Okay, with my co-chair hat off – and I know we're going into time – I think we're converging on kind of a process. we will recirculate American University of Washington College of Law's kind of student rewrite. This is a group of students who spent a year working with small businesses, entrepreneurs and kind of figuring out how to communicate legal principles to general audiences. I know there are people in this working group [that are good] as well. So it'll provide a sample. It's really interesting.

And third, I just wanted to say I'm looking at the survey analysis tool that we had, and on translation, we asked registrars what languages other than English do you use for your registration agreement, and they listed them off. And then they said, do you translate the claims notice into all of these registration agreement languages? Six said yes and five said no. So the data shows there's something there.

But anyway, I think we're converging. Thank you.

MARTIN SILVA VALENT: Thank you very much, Kathy. George, you have your hand up.

GEORGE KIRIKOS: Yeah. I agree with Kathy's point that we are making statements with the data in the back of our minds, and Kathy made it explicit that we made the comments on the data in the prior round when we went through the charter questions data by data. So if we're going to repeat everything here, we would be here forever.

So I don't think it's just opinions, that people are winging it. They are taking shortcuts to get to the point. As for Phil's point about what's achievable, I beg to differ, because we saw exactly what happened in the EPDP on WHOIS, namely that the BC and the IPC weren't able to block consensus that was achieved by all of the other constituencies, so the registrars and registries, I think, would be opposed to [continuation and mix the swing votes between] the ISP constituency and the noncommercial, how they view things. So I think coming to a conclusion prematurely would be an incorrect path.

Another point I think Kathy raised last week or the week before about the fact that there's a question in the sunrise charter about making one of the policies optional, having registrars, registries have a choice whether to keep trademark claims or to have sunrise. So that's kind of interlinked between the two subteams. We don't have that question in our subteam, but it might be something to merge between the two subteams, because it obviously overlaps. Thanks.

MARTIN SILVA VALENT: Thank you very much, George. Okay. With Mary, only, Mary, now you can have your time.

MARY WONG: Thanks, Martin. You'll be pleased to know that a lot of what staff wanted to say has been said by some working group members, Rebecca and Phil among others.

So on the first point about redrafting the claims notice, my colleague has also made the point that that is a job for the IRT, but that implementation guidance will be very welcome from the working group. This has been done in the past, and I noticed that Phil Owen in the chat has summarized what the agreement seemed to be leaning towards the type of guidance and the form in which it can be provided.

So on that point, the staff would just add that when the IRT finishes its work, that work actually is published for public comment, so there is an opportunity to weigh in there on a redraft of the notice. Secondly, the same would apply assuming that we use an applicant guidebook for the next round because as in the previous round, the applicant guidebooks were also open to public comment.

Then thirdly, of course, I think as everyone knows, the IRT is basically comprised of community members, preferably members from the actual PDP working group. So in terms of how that work should be done, the staff perspective is if this working group can, in your recommendation, [besides saying] the claims notice should be redrafted, if you should say the claims notice needs to be

redrafted in light of or according to the following specific principles, that would be helpful.

In relation to the second point about translations, I think it was Susan Payne who may have pointed out earlier in the chat – it scrolled right by – that the current TMCH requirements are that registrars must provide the claims notice in English and should provide the notice in the language of the registration agreement. And that could be why while some registrars did not translate the notice, it was not a compliance issue because it's not a must requirement.

So from the staff perspective, if the working group [is minded] to recommend translations of the notice, then one way the recommendation could go is to suggest that that particular requirement must and should simply become a must. And if you're requiring that the translations be done, you might want to be specific about what you mean by the translations. Do you mean for example the language of the registration agreement? Which is where it is now, but basically changing that from a "should" to a "must?" Or do you mean translations into the six UN languages or something else?

So just staff feedback on these two questions, and hopefully this is helpful as you consider what your text should be of the recommendations. Thank you, Martin.

MARTIN SILVA VALENT: Thank you very much, Mary. We only have a few more minutes for one or two more comments. Greg, you have your hand up

GREG SHATAN. Thanks. Just on the question that Kathy raised with regard to the timing of dealing with the individual submissions, my view – and this is kind of with my co-chair of the other subteam hat at least half on is that it's best to bring those up when the questions to which they relate come up, so I'm not sure that any of George's individual suggestions relate to this question specifically, and I think it's up to the co-chairs of this group to decide where in the process – if that's the idea – the suggestions such as elimination suggestion probably comes up when we discuss the preamble question which we put at the end, at least that would be my view.

So that's kind of ... the views is – certainly, I don't think it makes sense to segregate all of them to the very end of the discussion, although technically that's what the proposed process says. I think it makes more sense to kind of roll them in, particularly where they are suggestions relating to specific sub questions, because otherwise, we're kind of taking two walks around the block when we really only should need to take one. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. [inaudible] personally, I still won't say anything. I still want to think a little bit more. But of course, I'm open to all input here as always. We're not going into question 3A since we only have literally 60 seconds to finish this, so unless anyone has any other comment, I will just hand it over to staff. I don't see any hand up, no one in the phone that wants to pick up? Then Julie, or anyone, staff, we can pick it up from here.

JULIE HEDLUND: Thanks, Martin. And thank you all for joining us today. We'll go ahead and close this call now, and we will allow time for the transition to the next call for those who are also on the sunrise subteam. So, thanks again, everyone, and we'll talk to some of you soon. And others, I hope you have a good rest of your day. Thank you.

[END OF TRANSCRIPTION]