

---

## ICANN Transcription

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

Wednesday 09, January 2019 at 1700 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<https://audio.icann.org/gnso/gnso-rpm-review-trademark-claims-24apr19-en.mp3>

Zoom Recording:

<https://icann.zoom.us/recording/play/lqQR2DGLvh0wlbvGk43MYbk2l673F7EHX0iqnP4lCwW8VL-Jsyr1Ry-XpbqMLKff?continueMode=true>

Attendance is on the wiki page: <https://community.icann.org/x/TgR1Bg>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gnso.icann.org/en/group-activities/calendar>

MICHELLE DESMYTER: I would like to welcome everyone. Good morning, good afternoon, good evening. Welcome to the RPM subteam for trademark claims data review call on the 24th of April 2019. In the interest of time today, there will be no roll call. We have quite a few participants on the line. Attendance will be taken via the Zoom room, so if you're only on the audio bridge, would you please let yourself be known now? Alright, hearing no names.

. As a reminder to everyone, if you would please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid any background noise. To mute your line today, unmute, the bottom

---

*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

---

portion of the screen, you'll go to the bottom left corner, you'll see mute and unmute as Julie said earlier, and to make sure you turn your video off as well, you'll see a red line through it and that'll make sure your video is off. And to toggle between the two screens today, between Ariel and Julie, at the top of your screen it says "view options." If you click on the dropdown arrow, you'll see shared screens and then see Ariel's name and then Julie. You can toggle between the agenda and the document that is being shared. At this time, I'll turn the meeting back over to Julie Hedlund. Thank you.

JULIE HEDLUND: Thank you very much, Michelle. But I see that Greg has his hand raised. Greg, please go ahead.

GREG SHATAN: Thanks. I want us to note based on what was just being said that users on tablets and other mobile devices cannot toggle between screens. They will only see whatever is considered to be the first screen at any given time. And I'm on a tablet. So if there's any toggling going on, I won't be able to toggle, unless the first screen was dropped and then the second screen becomes the only active screen. Thanks.

JULIE HEDLUND: Thanks, Greg. In that case, perhaps particularly for you to be able to follow along today, I can go ahead and stop sharing once we switch over to Ariel's document. There's no reason for people to

---

watch the notetaking in real time, it's very minimal as it is. So thank you for that.

Thank you for the thumbs up, Greg. So just to quickly run through the agenda, we've got review the agenda and updates to statements of interest, a note about the timing of the next meeting, then the development of preliminary recommendations and review of individual proposals. That would be the draft answers for recommendations for Q1 and review proposals for five and six, and then again AOB, a reminder concerning the next meeting just for those who may not be on the call at the beginning.

Let me just go to agenda item one, and ask if there are any updates to statements of interest. Not seeing any hands or any chat, then going to agenda item two. The meeting next week has been moved. It is not on Wednesday May 1st. It has moved to Tuesday the 30th at the same time. That is because the ICANN offices and many community members have a holiday on the 1st of May. So the U.S. offices of ICANN and several of the European offices are closed, and we also know that many community members will be off, so we have switched the call to the same time, 17:00 UTC on Tuesday, 30 April. Kathy Kleiman, please go ahead.

KATHY KLEIMAN:

Okay, great. This is Kathy, I'm speaking as a member of the subteam, not as a co-chair . First, I didn't know about this, and second, I object. I don't know about others, and I'd love to know, but I have commitments all day on Tuesdays, and so I think we should bump to another – we've been doing Wednesday s for

---

years now, and so given the importance of the work that we're doing, I think it would be valuable to stay on our schedule and stay with the time and the day of the week that's been working. So I thought I'd see if other people also have conflicts on Tuesday. Thanks.

JULIE HEDLUND:

Thank you, Kathy. I see Kristine is noting she has a – and Susan also has a conflict. I don't know if there would be conflicts – I think there might be conflicts for Thursday the 2nd, and we don't have the liberty of skipping a week given our schedule. Let me just ask if there aren't – well, the main question would be whether or not we have – if we move to Thursday the 2nd, whether or not we would have participation from the co-chairs of the subteam, because we did have to confirm their availability and they are available on the 30th of April.

So let me just do this, because we don't really have that many people on this call. I don't know that we have participation from all of the subteam members. What we'll do quickly after this call is ask if there are conflicts if we move to the 2nd, but we will first have to look and see whether or not there are conflicts with any other community meetings, and we will also have to ascertain whether or not the subteam co-chairs are available to chair, at least of them, on the 2nd.

And I see two hands up, but I'm going to go to Roger first as one of the subteam co-chairs. Roger, please.

---

ROGER CARNEY: Thanks, Julie. I just wanted to make a note that I'm available at this time. I can be available at this time on Thursday as well if that works for enough of the others. It sounds like Tuesday may not work out at all since we have several people going to miss that. But I could make myself available Thursday at this time as well. Thanks.

JULIE HEDLUND: Thank you, Roger, for confirming that. Appreciate that. Kathy, please.

KATHY KLEIMAN: Sorry, old hand.

JULIE HEDLUND: Okay. And I see some people are saying they can do Thursday. Staff will take the action following this call to just very quickly send a message to the list asking if people are able to attend on Thursday, if we can get enough people who say they're able to attend, then we will schedule the next call for Thursday at the same time. And Kathy, I still see a hand there. Is that still an old hand.

KATHY KLEIMAN: Still an old hand. This is so much fun, learning new systems.

JULIE HEDLUND: That's alright, I'll lower it for you. Thank you so much.

KATHY KLEIMAN: Thank you. Great.

JULIE HEDLUND: It's now lowered. Thank you very much, everyone, and that took a little longer than I thought. Apologies. Let me go ahead then to agenda item three and to Roger, please. Thank you very much, Roger.

ROGER CARNEY: Thanks, Julie. Alright, let's go ahead and jump in. And I don't know how much time this will take. I think we've discussed question one quite a bit. I don't want to read this whole thing, but I do want to start with the answers before we get into the recommendation.

So for both Q1A and B, we have somewhat agreed on the fact that it's probably doing both of these things, it's just that the data doesn't push us to either one of those conclusions, so I think that the way staff has this written is pretty good and that's possibly having this effect. So I'll put it up for any questions, comments on answering of question 1A or 1B.

I think I'll take silence as everyone agrees with how staff answered that then. And we can move on to the recommendation. I'll read this out so everybody can hear it at least. The subteam recommends that the language of the trademark claims notice be revised in accordance with the implementation guidance outlined in the subteam's recommendation for question three below. So we're creating a little bit of a circle here, but I think it works out

---

well as question three does lead itself to providing our answer here.

And I see a hand up. Go ahead, please. Michael?

MICHAEL GRAHAM: Yeah, is that working now?

ROGER CARNEY: Yes, that sounds great.

MICHAEL GRAHAM: Okay. I'm sorry. I actually raised my hand, wanted to raise it on the Q1A answer. I think the data that I've seen and anecdotal evidence and my own evidence as practitioner isn't that it is possibly, but it appears to be having its intended effect in that regard. I can't say anything in terms of the response on unintended effects because I've not seen those and I agree that the data doesn't support one way or the other, but I'm just a bit concerned about the "is possibly" is very vague sort of language, and I think we've seen more that whether it is over-effective or not, that we have had evidence, and again, anecdotal and experiential evidence that it has been working and has had its intended effect. Thanks.

ROGER CARNEY: Thanks, Michael. Kathy, you have your hand up. Please go ahead.

---

KATHY KLEIMAN: Is Rebecca on the call?

ROGER CARNEY: I don't see Rebecca on the call.

REBECCA TUSHNET: Hello.

KATHY KLEIMAN: Okay. Rebecca, I was going to channel you, but go ahead, please.

REBECCA TUSHNET: So I'd like to get on the queue, if that's okay.

ROGER CARNEY: Go ahead, Rebecca.

REBECCA TUSHNET: Okay. Thank you. Yeah, so we've rehearsed this an awful lot. The anecdotal evidence is actually not evidence of cybersquatters being deterred. We've gone through this in pretty extensive detail. We have large-scale evidence that doesn't show any effect, which, even if the result is negative, it's more [probative] than nonrepresentative anecdotes. It's large-scale evidence. And "possible" is as far as the evidence will take us. And I think I'm willing to leave it there even though there's a good argument that



---

there's actually no effect on the kind of behavior we want to see deterred. But if we're just going to go in [inaudible] pointless. We did collect a bunch of data, it didn't show what people hoped it would show, what we've got. Thank you.

ROGER CARNEY: Great. Thanks, Rebecca. Kathy, did you have any follow-up comment that you wanted to put on that?

KATHY KLEIMAN: Yeah, just agreeing with that and that this is, I think, a compromised position we arrived at after a lot of discussion and debate. Thanks.

ROGER CARNEY: Thanks, Kathy.

KATHY KLEIMAN: And I will try to figure out how to put my hand down.

ROGER CARNEY: Thanks, Kathy. Alright, Kristine, you have your hand up.

KRISTINE DORRAIN: Hi. Thanks. I wanted to support what Michael Graham said, because I think if you look – I'm going to invite people who can affirmatively answer question 1A themselves to get in the queue, but I can tell you with 100% certainty because of my experience

---

that the trademark claims service is deterring bad faith registrations. We see that, we know that, we get claims notices, we have seen instances of it working.

We don't know the effect. I think that's right. there's insufficient data to know the extent of the deterrence. But we know it's working, and we don't have to actually rely on outside data to make that analysis. I think we went to look for it to see if we can find any new stories or any interesting information that we didn't already know, and certainly, we had to go looking for unintended consequences, because in our group, we don't have very many examples of that. So we had to go looking for that. So I think it is fair to say that we know that the claims service is working because we see it working, but we don't know for sure how much because we don't have hard data. So I actually support Michael's position on this. Thanks.

ROGER CARNEY: So Kristine [inaudible].

REBECCA TUSHNET: Can I get on the queue again?

ROGER CARNEY: Yes, Rebecca. Thank you. Kristine, I just wanted to follow up. Do you have strong disagreement with the use of "possibly" then?

---

KRISTINE DORRAIN: Yeah, I support Michael's characterization, and I think his suggestion was that – I don't want to put words in his mouth, but – the trademark claims service – appears to be is a soft version of saying it, but we know it does deter bad faith registrations. The question is to what extent. We can't, we don't have data to quantify. And I think that I would accept Michael's friendly amendment there to clarify that this specific group has insight and we know the answer to this question. The other question, we don't know the answer to as much.

ROGER CARNEY: Great. Thanks, Kristine. Phil, you had your hand up. Please go ahead.

PHILLIP CORWIN: Yeah. Thanks. Speaking in a personal capacity, but my full working group co-chair hat is half on with the aim of moving things along, getting to decisions, and a half off as I'm expressing a personal view. While I respect the dialog that's taking place, I think the limited time we have would be better spent not debating whether or not the word "possibly" should be in this answer, which is only going to be background material in an initial report, but in discussing what our recommendation is going to be, and unfortunately, we can't scroll through this document to see what would be in accordance with the subteam recommendation for question three.

But there's general consensus that it's likely deterring bad faith registrations, but we don't know the full extent. It's likely deterring

---

good faith registrations, we don't know the full extent. To the extent that the warning deters a person well-versed in trademark law who doesn't mean to infringe but might wind up getting hit by a UDRP or URS, it 's probably saving them a lot of grief. But all that is kind of besides the point. I hope we can move rather quickly from debating these answers which are not really what are work is about right now but in discussing what our recommendation is going to be. Thank you.

ROGER CARNEY:

Great. Thanks, Phil. Before I jump to Greg, I think Rebecca had her hand up virtually virtually. Go ahead, Rebecca.

REBECCA TUSHNET:

Thank you. So I want to just point out there's actually not consensus that it's probably working. That's kind of the point I've been making a lot. So "possible" is an acceptable characterization of this data. I actually want to make a serious question, because we have had trouble getting participation on the mailing list, so Kristine and Michael, I would really like to see the evidence developed over this period of actual deterrence of cybersquatters, that is bad faith registrants.

So I understand that you may have had encounters with people who are unsure of how to proceed having received this notice, but the characterization of the data that you've given, including anecdotal reports, doesn't really match. So if you talked to cybersquatters, then by all means please point to that in the materials. We spent a long time developing, we had a lot of fights

---

over who would get to put what it, we extended the time. So let's talk about where that evidence is.

And if you would just answer on the mailing list, I would appreciate it, because I'm not seeing it. Thank you.

ROGER CARNEY:

Great. Thanks, Rebecca, and I think that's a good call. And going back to Phil's comment, I think that's a great place to take this up if we can get some more information out on the mailing list, that may be the best place to discuss, but we'll go ahead and finish this discussion up real quick. Greg, please go ahead.

GREG SHATAN:

Thanks. I disagree with Phil to some extent in that I think that the answers are important, and I think the way these two answers are phrased in parallel I think creates a series of impressions or findings even that I disagree with, and I don't think it's support by the information and data that we have. I think that the question of whether it's having its intended effect of deterring bad faith registrations is only a question talking to cybersquatters, and I'm not sure anybody's claimed to talk to an actual kind of professional cybersquatter who has been deterred, or not deterred, for that matter.

As Kristine notes, the evidence is more in the experience over time, which I'm not sure that anybody captured at the times that they received claims notifications and then the registrant didn't go forward, and maybe it seemed like it was part of a pattern or a practice or something else might indicate that. I don't think the

---

evidence we have shows that there's – the way the second half of each one is phrased, you don't know the extent of the deterrence, that part needs to assume that there is deterrence. So that, I think, if it's possibly not having its unintended consequences or possibly not having its intended effect, it's not just a question of the extent, it's insufficient data to know the existence of the deterrence or the existence or the extent.

And I see Kathy saying that a professional cybersquatter is by definition not deterred. I'm not so sure about that. One of the things I noted in the new gTLDs is a lot of amateurish, maybe they were trying to make money off of it, much more amateurish cybersquatting than was traditionally noticed. And I think there were a lot of people who just kind of thought they could make some money and do some stuff.

So I guess that makes them unprofessional professional cybersquatters, maybe they were deterred, or not. I don't think we have enough data to say much about anything, but I think that an answer that basically indicates that this is kind of an area where we have kind of an equal answer for both or equal basis of an answer for both, I don't support. I do support the idea that the data didn't show what people wanted it to, but I would say that in the opposite direction. Thanks.

ROGER CARNEY:

Thanks, Greg. Before I move on to Michael, I just wanted everybody to take a note of what Ariel put into the chat as well, that Q1 will be going out on the thread, the mailing list so that we can get this actively discussed on the mailing list as well.

---

I'm going to finish up with Michael and Cynthia, and then we can move on. Go ahead, Michael.

MICHAEL GRAHAM:

Thanks. I will try to engage on the mailing list. I will express here my frustration in so far as I do have a regular job that demands more of my attention than I might some days want. However, I will give just a very quick example on our part that supports, I think, my determination that the claims notice is having the desired effect, and that is that in comparison with the number of UDRP proceedings and challenges that we have to make in the legacy domains, we have, at this time at least, a substantially lower number in the new gTLDs. And at the same time, I do note that we have received a number of indications of notices going out on our TMCH registered trademarks to applicants, and based on that, it appears that this claims notice is being effective in limiting or reducing or eliminating in some cases cybersquatting and registration of our trademarks in some of these new gTLDs. So that's part of the evidence.

In terms of asking a professional cyber squatter, I don't think you're going to get any answer there. And I'll just finish up – and I'll note this in the discussion on the mailing list – equating the possibly in Q1A with the possibly in Q1B, I think that's a false equivalence that we have not seen any evidence whatsoever, specific of there being adverse effects, whereas we have seen evidence and anecdotal evidence of positive effects from the notices. Thanks.

---

ROGER CARNEY: Thanks, Michael. Cynthia, can you go ahead?

CYNTHIA KING: Yes. Hi there. So the idea that we are going to ask cyber squatters specifically, “Hey, can you tell me how many domains are cyber squatting and whether or not a claims notice is preventing you from registering some of those names” is really kind of ridiculous. So I'm not sure why we're spending so much time on that.

But to the point, I do know a number of cyber squatters, and I do know that those cyber squatters are looking for easy targets. And I also know that when they receive notice that something is not going to be an easy target, they can be deterred. So the claims notice absolutely has some effect.

However, as I've noted last week, the claims notice is so difficult to understand, I think that it is impossible for us to know the exact effect. So I guess we can talk about which words most clearly exemplify the situation, but the idea that there is no evidence out there that cyber squatters are deterred is ridiculous. We can see that in – people who have trademarks can see that in the overall numbers, but the idea that we're going to get cyber squatters to say, “Yes, let me tell you how many times I was deterred from cybersquatting and doing something illegal” is kind of ridiculous. We should talk about the language and let's move on. Thank you.

ROGER CARNEY: Thanks, Cynthia. And I think that we've all agreed that we can move this to the list then and we can discuss it there, and we can move on to the recommendation and discuss the



---

recommendation. Kathy, you have your hand up. Please go ahead.

KATHY KLEIMAN:

Thanks, Roger. We'll take it on the list. I think we've been in this conversation before, and we spent hours on Q1A and especially Q1B, and lots of evidence of unintended consequences. Like it or not, there's a lot. We asked about it, we got answers, we got responses. So we can move it on to the list, but I agree with Cynthia, let's go forward and let's talk about how to fix what we found that needs to be fixed, which is the notice. Thanks.

ROGER CARNEY:

Great. Thanks, Kathy. Alright. So I did go ahead and I read the recommendation. I'll turn it over and give everybody a chance to comment, suggest any possible changes or however. Please, anyone that has any comments, come on up.

KATHY KLEIMAN:

Sorry, Roger, what are we commenting on?

ROGER CARNEY:

Yes. Thank you, Kathy. On the recommendation. I'll read it again since its been a bit since we've actually heard it. I just wanted comments on the recommendation four charter question one, which is recommendation is the subteam recommends that the language of the trademark claim notice be revised. In accordance with the implementation guidance outlined in the subteams

---

recommendation for question three. There you go. Thanks of the suggestions online of showing Q3.

So I'll go ahead and read the guidance from Q3. I think that's what Q1 was pointing to. So I'll read the guidance and hopefully everyone's already read the recommendation. The guidance states the claims notice must be clearly comprehensible to a layperson unfamiliar with trademark law. And any other agreed terms, concepts, parameters, objectives and principles for the revised claims notice.

[May it] also suggest that ICANN Org consider partnering with external resources that have already indicated an interest in helping redraft the claims notice, [e.g. the AUIP clinic.]

Greg, your hand's up. Please go ahead.

GREG SHATAN: Thanks. I assume we're actually still talking about question one even if we're looking at question three.

ROGER CARNEY: Correct. We are talking about the recommendation on question one as it points to question three. That's why it's being pulled up.

GREG SHATAN: I think we're missing a connection between the questions in question one and the recommendation. The recommendation there does not flow without further elucidation from whatever the answer is we ultimately end up with to questions 1A and question

---

1B. They don't ask directly about the content of the claims notice. So I think at the very least, one option is to just take it out of question one entirely as a recommendation, and another option is to create natural linkage if there is one that says that an improvement in the verbiage of the claims notice would improve its chances of having its intended effect because it would be understood by more people and would decrease the chance of unintended effects, if any, because deterrents through just intimidation at receiving an impenetrable document would be mitigated. But without that, there's no connection between the question about consequences and a recommendation to change the trademark claims notice. Thanks.

ROGER CARNEY:

Greg, I just wanted to follow up with you. How would you create that link more so than it already does refer to Q3 in the recommendation?

GREG SHATAN:

I think the reference to Q3 does not go to the question of intended effect or unintended effect, so I think the answer to some extent does, but I think I would either have the answer be more fulsome in Q3 or add to the answer in Q1. We say here in Q3A3 that the subteam generally agree that the current level of translations of the trademark claims notice does not seem effective in informing domain name applicants. So at the very least, in the reference to Q3, we would note that some feel that the language hinders the effectiveness of the notice and that we'd be more likely to see intended effects and less likely to see unintended effects, if any,

---

with an improved noticed. But right now, just looking at saying “Look at Q3” doesn’t, to my mind, provide enough guidance for how it links up to intended effect and unintended effect.

ROGER CARNEY: Okay. Thanks, Greg. Alright, Michael, you have your hand up. Please go ahead.

MICHAEL GRAHAM: Yeah. Thank you. And sort of going back to the question that you asked Greg there, I think what is needed in terms of the recommendation ahead of the reference to the revision of the notice itself is a statement that based on the evidence, there's insufficient – or based on our analysis, there's insufficient evidence to conclude either that it is positively having its intended effects or having unintended effects. However, we have determined that based on the evidence and the discussions that there should be improvement, one, to improve the intended effect, and two, to help remove the unintended effects that we believe is happening. Something along those lines, and that then leads into the conclusion that we would support the answer to question three. Thanks.

ROGER CARNEY: Thanks, Michael. Phil, your hand’s up. Please go ahead.

---

PHILLIP CORWIN: Yeah. Thank you. I'm generally okay with the current text of the recommendation that appears on page 12 of the full document answering 3A subparts one and two. But I think it might be helpful – and I throw this idea out for discussion – to have an introductory sentence for further guidance of the implementation team if this recommendation goes forward and winds up in the final report and being adopted, that the aim of the revision of the language of the claims notice should be to increase the deterrence effect of those registrants who intend to infringe while simultaneously increasing the amount of useful information for those potential registrants who don't have infringing intent so they can accurately gauge their risk of an enforcement action based on their intended use of the domain. That was too many words, but I think you get the drift of what I'm suggesting, that there be some introductory sentence which links back to question one and the answers, and kind of sets up the whole purpose of the revision of the trademark claims notice language that we're recommending here. Thank you, and I hope that has some merit for other members.

ROGER CARNEY: Thanks, Phil. Okay, so I'll just take that one step and maybe even ask Greg to step up and say something about it. So that's kind of creating that length that Greg talked about, just kind of in the reverse, and I don't know if Greg has any thoughts on that.

GREG SHATAN: I think we're getting there. I think as long as the connection can be read between the two, and I think if a little bit more can be added perhaps in question one as to what we're referring to in 3A, just a

---

couple of words of effectiveness, have to see it, but I think we're heading in the right direction of kind of trying to create a basis or a linkage between why the answers are relevant and why the recommendations were being made. Thanks.

ROGER CARNEY:

Okay. Thanks, Greg. And it looks like Susan and Kristine both kind of agree that that linkage – and I think that now most of the people have agreed. Some better linkage is needed, so I think we can take that back and take a look at that and see what we can come up with. Any other comments on recommendation one?

Okay. Great. I think on our agenda now is moving to the proposals five and six, so we'll jump into proposal five, and I'll read it out so the people that are on the phone can hear it and maybe respond as well.

If the trademark claims notices are retained, a separate proposal calls for their elimination, then registrars shall be allowed to be compensated on a cost per impression basis for the display of the mandatory notices.

So the proposal is registrars could – and I don't know how this would happen, but could be compensated in some way for displaying of the notice when they need to display it. I'll open it up for comments. Kathy, your hand is up. Please go ahead.

KATHY KLEIMAN:

Sure. The proponent of this proposal is not here, so let me just read a little more by way of background in front of us. Normally, a

---

registrar would charge a third-party a fee to display message at checkout time. These messages are revenue generating. However, as we know, mandatory trademark claims do not generate revenue but instead there's huge abandonment rate – I'm paraphrasing – causing a loss of revenue presumably for the registrars because people are not proceeding to checkout.

Furthermore, we know that some terms in the TMCH are requested more than others, hotel, love, and so by shifting the cost from the less frequently searched [inaudible] to the more frequently searched [inaudible] there's greater balance in the system.

I know there's going to be a lot of objection to this about the [comp,] but it's interesting. It's an interesting idea designed to kind of address really the shocking conclusion that we found in the original Analysis Group report which is that most of the top ten hits trademark claims notices generated are for common ordinary dictionary words and not any kind of terms that we would consider globally famous in the way we were thinking when we crafted these rules in 2009-2010. Thanks.

ROGER CARNEY: Great. Thanks, Kathy. And Kristine, your hand's up. Please go ahead.

KRISTINE DORRAIN: Hi. Thanks. So I think if we fix the claims notice, we could possibly get around this idea of – well, first of all we don't know why people abandon their checkouts. People abandon checkouts for a lot of

---

reasons. I abandon multiple checkouts a day for a lot of reasons. At Amazon, we have fairly detailed statistics as far as how far people get in our processes, and we're not even out of sunrise – or we're in still limited registration period. So there's no way to know why someone abandons.

But if you fix the claims notice such that the one someone who wants to – let's pick hotel for instance, someone wants to register hotel.something, they should make a reasonable choice as to whether or not they want to continue, and then continue. No one needs to bear the cost of that. The person can either make a purchase or not make a purchase. But they ultimately are just confronted with the choice in having to make a decision based on a proposed cost in front of them. So I don't think that this proposal makes a lot of sense, and it isn't even viable. So thanks.

ROGER CARNEY: Thanks, Kristine. Susan, your hand's up. Please go ahead.

SUSAN PAYNE: Yeah. Hi. Thank you. I was going to say what Kristine wrapped up with, which is both that I can't see how this could possibly be viable. It seems to me to be an extraordinarily complex thing that would have to be introduced for each registrar to be able to be somehow reimbursed in this way. And it's just not at all clear to me that there's a problem that exists that this would fix.

This seems like an extraordinarily complex way to try and fix something that's a hypothetical problem. We do know that the Analysis Group had that particular figure, but even they were not



---

particularly confident about it. They attempted to get further information in order to have a more robust and confident figure, and they couldn't get it.

We subsequently in our surveys attempted to get information that would assist, and again, we got some information, but the data was not really doing what we hoped it would do.

Yes, we know there's some abandonment. We don't know how many of those people come back later and carry on with their purchasing decision. Certainly, our survey suggested that that happens. We don't know how many of these people were just looking to recreate the TMCH by checking what generates a claims notice. We don't know how many people were just randomly having a stroll about to see what names were available and deciding which one they finally plunked for.

But even if we have some people who are being deterred, that's why we're attempting to address it in another means by revising the language, and I just can't see how building some complex way of reimbursing registrars is going to fix George's perceived problem.

ROGER CARNEY: Great. Thanks, Susan. Greg, your hand's up. Please go ahead.

GREG SHATAN: Thanks. I would definitely call this a perceived problem at best. I think the proposal is based on a false premise of comparing an advertisement with a trademark claims notice because coyly using

---

the word “message” and although it’s clearly identified as an advertisement in the parenthetical.

So advertisements are revenue generating to the party putting the advertisement in. Secondly, they are also revenue generating to the company that is providing the time or space for the ad, but this is not an ad. If you want to equate it with something else, maybe it’s a public service announcement or a legal notice. Nobody’s paying for that. So it’s just silly.

And we have no idea whether the mandatory notices, how they lead to a 93.7% abandonment rate versus any other percent abandonment rate under other circumstances. There’s no control group, there’s nothing to compare it to that’s really an accurate or even reasonable comparison.

Second to lastly, the fact that extremely common words were searched more commonly as potential applications and thus returned trademark registrations in the clearinghouse that were common words, I would not call that shocking any more than I would call any “dog bites man” story shocking. It would be shocking if we saw a huge number of people searching fanciful and coined trademarks looking to own xerox.ninja, to the extent that that’s even a relevant trademark anymore. That would be shocking if we saw this groundswell of people searching out highly unique trademarks.

Lastly, before we debate this further, we should probably ask the question whether there’s any traction or support for this from anyone other than the original member of the group who proposed

---

it, and if there is no traction, we should probably not spend all the time on debating it. Thanks.

ROGER CARNEY: Thanks, Greg. Phil, your hand's up. Please go ahead.

PHILLIP CORWIN: Yeah. Thank you. Not to pile on – and I haven't heard any support for this yet – I just want to state in a personal capacity I regard this proposal as an intentional poison pill proposal coming from a former member of this working group who was [inaudible] clear that he wanted to sunset most, if not all, of the new TLD RPMs.

The proposal raises multiple difficult questions in implementation. Who would pay the registrar, how much would they be paid, would they be paid for all displays of claims notices, or only for those that were deterred that would have been non-infringing? And to do that, you would need a baseline abandonment rate for that registrar and then for the remaining registrations between the baseline and the 93.7% you'd need some accurate way to estimate how many of those would have been indeed infringing registrations that would have been subject to dispute resolution procedures or infringement suits.

So I think the intent of this proposal was to burden and perhaps kill the claims notice and that the implementation would be extremely difficult, if not impossible. And I concur with Greg that unless we hear significant support for it, we should check the box and say that its not accepted. Thank you.

---

ROGER CARNEY: Thanks, Phil. And I'll agree with the last two speakers saying that I haven't heard any responses supporting this. I want to ask Ariel or Julie if we have answered the question so that we can process this and say that we are done with this one.

ARIEL LIANG: I think we have heard sufficient feedback from the call, so I think staff can take a first stab at the draft [inaudible] to this proposal and perhaps share that [inaudible] the discussion thread. So just a quick summary. I think what we heard is that the proposal will not be put forward to the full working group to consider for inclusion in the initial report. That's our last understanding of the discussion.

ROGER CARNEY: Great. Thanks, Ariel. And I would concur with [inaudible] you stated that. Okay, I think we can retire this proposal. Julie, Ariel, do we want to try to tackle proposal six, or are we running out of time?

ARIEL LIANG: Sorry, I cannot raise my hand. I think for proposal six, maybe we can move it to the next call and then perhaps we can wrap up and just let the subteam know the homework before next call.

ROGER CARNEY: Okay. That sounds good. Any comments or questions from the group before staff closes us out? Yes, can you just pop proposal

---

six up on the screen so they can take a quick look at it? There we go. And I will turn it back over – oh, sorry. Susan, please go ahead.

SUSAN PAYNE:

Yeah. Thanks. Sorry about this. It was just about proposal six. I think not to put you on the spot now, Roger, but it would be super helpful to know what you and some of the open registrar colleagues think of this proposal, because it's one which is proposing that sort of software be made available to registrars in order to assist them in operating the claims. So it would be really helpful to know if actually registrars even want this before we spend a huge amount of time giving them something that ICANN would have to create if they don't want it. So, maybe I've just given you some homework.

ROGER CARNEY:

No. Thanks, Susan. And again, I'll take my hat off here and say I know the larger registrars would not use this. I can't speak for the smaller registrars. I talk to a lot of them often, and I can't imagine that they would take this and use it or not, but I can't say that for sure for all of them. My guess is no. Most of them would not use it, some would. And actually, I've asked staff to see if this is something that's been done previously, if ICANN's ever provided this up. So I'll leave it there and turn this back over to staff to follow up. Julie, please go ahead.

---

JULIE HEDLUND: Just to respond, staff is checking internally to see if there already have been any [inaudible] ICANN Org has done to assist in the integration of the TM claims notices with registrar systems. So we are checking on that, and then just in this last minute, again, a reminder of the staff action to go on a list and see if there are any objections to moving the call to the same time on the 2nd of May, and so we will do that as a follow-up. You'll see that just a bit later today.

And I want to thank you all for joining. Thank you very much, Roger, for chairing, and we'll let you go now and adjourn this call so those who are on the next call can transition. Thank you.

ROGER CARNEY: Great. Thanks, everyone.

JULIE HEDLUND: Thanks, everyone. Bye.

MICHELLE DESMYTER: Thank you. Meeting has been adjourned. Have a great day, all.

**[END OF TRANSCRIPTION]**