

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
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Coordinator: Good morning, good afternoon, and good evening, and welcome to the review of all rights protection mechanisms RPM and all GTLD PDP working group call held on the 19th of July 2017. In the interest of time, there will be no roll call as we have quite a few participants. Attendance will be taken by the Adobe Connect room. If you are only on the audio bridge, could you please left yourselves be known now? And Brian Beckham, we do have you noted for audio only. Anyone else?

With no further names, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I'll turn it back over to our co-chair, J. Scott Evans. Please begin.

J. Scott Evans: Hello, everyone. Good morning, good afternoon, good evening wherever you may be. The chairs met this week and we're going to now continue. I don't see Michael Graham in the list of participants but I do see that Kristine Dorrain is on the phone. We're going to finish going through the work that has been done by the TM claims subgroup. I think we had gotten through -- I'll need Mary to remind me, or Amar to remind me how far we got. I think we

got through maybe one or two questions that had been identified and refined, but I'm not sure.

Okay, we stopped at the end of question one, Mary says. So that helps me. So Kristine, if I could ask you to lead us through, then, the rest of the questions. We've got about 30 minutes to sort of discuss where we ended up and any data gathering that you all have identified that needs to be done in relation to the particular refinement of the charter questions that you all have presented in your chart.

Kristine Dorrain: Yes, thank you. This is Kristine and happy to jump in. I did listen to the call from last week. Apologies for missing it, and so I was unprepared to jump in on question two. So it looks like the way that staff has formatted this documented is they haven't actually gone in and made the changes yet we talked about in Johannesburg. And so everything is in this version of a comment on the side.

I don't know about everyone else's screen but the comments are pretty small and so I think there is an updated version that Mary had posted and maybe it's in the -- on the wiki. You can easily find a bigger version there as well if you're having a hard time reading it. So question two, as you recall, where question one was an overarching question, what's working and what's not. Question two is really about if it's not working well, what needs to change and we've listed A, B, C, and D as options of things that people have suggested maybe should change.

So one of the comments that we received in Johannesburg was that the proof of use requirements for sunrise names should be also extended to the claims notice. So a sunrise -- a brand owner who enter their mark into the trademark clearing house can choose to go the route of providing proof of use in order to participate in the sunrise period. But they can enter their mark -- their registration without a proof of use, as I understand it, if they only want

to participate as part of the claims notice, which is the sending or receiving of the email that says, hey, someone may have (unintelligible) to that string.

And so the suggestion is that the proof of use requirement also extend to the claims notice. I think from my perspective, it's a little bit tricky as to where this fits but I think putting it here I guess is as good of a place as any, because we need to put it somewhere in here. We're talking about the actual in service being available. So I guess I would open it up for conversation to find out what people think of that suggestion. As I understand it that's what we're doing is we're (unintelligible) suggestions made in Johannesburg and seeing if anybody objects to adding that as a consideration.

So we would add the consideration. So we're not adding the actual recommendation at this point. We're just going to add to the list of things to consider whether or not the claims notice will also include proof of use. I'm looking at the chat, not seeing anybody -- question two, George, on question two, there's a comment in the right hand margin from July 11, which sort of summarizes what the question is.

I'm not seeing any objections so I guess we can consider that ratified. We'll put that into -- Mary and Amar will merge that into the text of question two and we will address it when we get there. We also have a comment as to -- George has also made a comment as to question two that any data that we get should be viewed as relative rather than an absolute number of domains. So the data question should be asked in relation to all four sub-questions and I think that's my understanding that the data question will be asked in relation to all four sub-questions.

But I know that there was some discussion last week about absolute versus relative data. Does anybody have anything else to add to that? All right, seeing no objection or no comments, we will also add the suggestion that we review relative data, not just absolute data. Second question, John Nevett

asked, each of the following bulleted questions should be asked separately for the claims notice and then also for the notice of registered name.

So John's point is we should ask about the extension, the shortening, the mandatory, and any exemptions. We should ask the same questions of both the claims notice to prospective registrants as well as choose the brand owner that's receiving the back end claims notice as well. I don't think there's any problem with that. I think the intent was that this would be the case, but I do support the suggestion that we include that as a note also in question two.

Any objection there? All right, seeing none, I guess we will assume that all of those suggestions will make it in as notes. Okay, good. Let me see here. I believe that this -- no, I think that's it. So I think that's it for blue comments for 2A and moving down, there were no additional blue comments to three. Moving down to question four then, which is on Page -- well my view, it's Page 10 -- does the exact match for criteria for trademark claims notice limit its usefulness. We had a couple of suggestions in Johannesburg that the wording was not completely neutral. Our working group has really made a focus of trying to make our questions all be content neutral so we're not suggesting any specific outcome.

I am totally open to any suggestions that balance or neutralize the wording. The suggestion is that we changed this particular language to say is the exact match criteria for trademark claims notices appropriate. Does anybody have any comments or objections to that change? More balanced, less balanced, fine, nobody cares one way or the other. Hey, George, all right, has an opinion. He says it looks fine. Kathy, go ahead.

Kathy Kleiman: Hi, Kristine. This is Kathy Kleiman of course. Consistent with the way we phrased other questions, wouldn't this -- to neutralize this one -- wouldn't it be more like is the exact match -- which is what's currently taking place -- so is the exact match serving its intended purpose. Would that be more of a neutral way of doing it, so that we start with the starting point of what we're

doing now and then see if it's serving its intended purpose, see if it's having unintended consequences, and then move onto evaluating whether there's some kind of harm in the direction of doing something more or less.

Thanks.

Kristine Dorrain: Okay. Thanks, Kathy. I do know that that is consistent with the way in which we worded other questions and I don't oppose that. Paul, go ahead.

Paul McGrady: Thanks. So I guess if we ask is the exact match serving its intended purpose, then that would necessarily be limited in the response to the exact match. If we did something more broad like is the exact match serving the intended purposes of the RPM itself, then -- of the intended purposes within the claims -- within sunrise, within whatever -- then maybe that's the question to ask. But just to ask is exact match serving its own intended purpose. Well, the short answer would be yes because it's only limited to exact match.

Does that make sense? Fine with intended purpose language but I think we need the broader view on what question we're trying to answer. Thanks.

Kristine Dorrain: Paul do you mind drafting -- I didn't quite get the right note. Do you mind just throwing a line in the chat with your suggested language real quick so we can take a look? I'm hearing you say that we think that the exact match and intended purpose is correct, but you'd like to make sure that we're specifically talking about the claims notices to registrants, the claims notices to brand owners, and making sure that we're going back to their original intended purpose.

But I didn't quite capture the exact wording. If you wouldn't mind. I see you're typing so I'm going to take that as a yes. All right, thank you. Anyone else on this? Kathy is down there. Let's give Paul a chance to type in the chat and we do have other sort of questions on number four. So we can absolutely stay on this topic.

Should the matching criteria for notices be expanded? That's -- we're now to 4B. (Amadeo) has suggested considered expansion only for the notice, not the claims. I think that that's implicit. I don't know if anybody wants to argue vehemently for including that but I think that when we talk about notices, plural, I think we are specifically talking about all of the notices that result from the trademark claims service and the trademark claims process. Does anybody have anything else to add to that? I think that it's covered by the notices plural. Objections, comments, Maxim, go ahead.

Maxim Alzoba: Do you hear me?

Kristine Dorrain: Yes, we can hear you Maxim.

Maxim Alzoba: Okay. I think someone mentioned it during our Johannesburg meeting but a large number of registrars, even some of big registrars didn't participate in sunrise and in some cases in the registration for some particular TLDs until the claims are not over. So if we suggest that we will have indefinite claims everywhere, we might face situation where basically not many TLDs are going to be reserved by many registrars. Thanks.

Kristine Dorrain: Thanks, Maxim. I think if Amr wouldn't mind just taking that as a footnote for when we get there that we want to make sure we consider the impact on the availability of registrars to onboard with registries, if we decide to make some of these changes. And I think Maxim's suggestion should cover anytime we propose to make changes to the claims or sunrise periods. I mean obviously, that's sort of implicit. We have to figure out who is going to be impacted and how, but I think it's important to note here that we want to make sure to gather that data.

Because if you set up a system where registrars are generally not going to be able to onboard with registries then, I think we need to just be aware of that. So if you just take a note on that, I know that that's sort of goes to the impact

of some of these suggestions. Paul has proposed some language in the chat for question four, the overarching question four. So let's back up to that. Is the exact match limitation on trademark claims serving the intended purposes of the trademark claims RPM. And I think that adds the intended purpose language and generally keeps the sense and the concept of the overarching question.

Anyone else have an opinion? George notes in the chat that it presumes there is a limitation. Criteria is more neutral. And feel free to speak up, folks. You don't have to type.

J. Scott Evans: How about if we said requirement? Does the exact match requirement?

Kristine Dorrain: It looks like Paul thinks that's brilliant, requirement, George supports that, Kathy supports it. Well, good. Mary and Amr, let's take Paul's language, substitute out requirement instead of limitation and insert that into the main question four please. Thank you. Noting that there were no other -- nobody else advocating for expanding 4B. Everyone else seems to think that notices plural covers both of the claims notices. We'll leave that as it is. Moving down to 4B1, should the marks in the trademark clearinghouse be the basis for an expansion of matches for the purpose of providing a broader range of claims notices?

(Amadeo) notes that the IDN variants are not necessarily accepted at the moment so this should be factored into the analysis. Again, this is really more of a when we get there point, but I think we could also -- I'm going to suggest that Mary and Amr here add a footnote about IDNs because I think this is really -- it's an issue that we sometimes lose sight of as we go through this conversation, and I think that we want to make sure that we are addressing IDNs where relevant. All the acronyms are killing me this morning.

Maxim, I see your hand. Go ahead.

Maxim Alzoba: I see that Amr typed into the chat that question four was to add something about the non-exact match suggestion and I send my clarifications about (unintelligible) semantics and assessment of the historical data, those suggested criteria only last hour. So I think we need to add it to a footnote that if we are talking about exact match versus non-exact match, we might need to add something from the document of Greg and most probably something from my letter. Thanks.

Kristine Dorrain: Okay, can you clarify for me, Maxim? Are you talking about your most recent suggestion about the making sure that the impact of any changes against registrar onboarding to registry -- are you talking about that comment? Or are you talking about the comment that you made with respect to getting the third party to translate the ideas into semantics or programming language? Can you clarify which comment you were just addressing?

Maxim Alzoba: I was trying to say that if we are talking about the exact matches then we have to add somewhere in the comments to this question four suggestion about non-exact matches and the (unintelligible) I sent in the email.

Kristine Dorrain: Okay. Thank you. Kathy, go ahead.

Kathy Kleiman: I'd love to, if Maxim could resend his email, or type some of it into the chatroom. But going back to (Amadeo's) comment, it was really interesting, I think, what he said -- what I think was the example he gave for this in Johannesburg, which is something like an O with an umlaut, or a vowel with an accented aigu or accent grave. So he was saying that the exact match criteria doesn't include these.

So Kristine, I'm wondering if we have a new category that we're looking at, not this exact matches or non-exact matches, but let me try this. Are there small changes to the exact match criteria that should be included so that IDNs are more easily processed? And for those who don't know, the exact

match criteria, at least a setup -- I'm not sure about the IRT -- but by the FTI wasn't completely exact match because some trademarks will have characters that don't exist or can't be used in the URL.

And so -- and in the domain name -- so if you have an at sign in your trademark, it has to be removed because obviously, the at signs have a specific use in the domain name. And so there were variations created within the exact match criteria for slightly less than exact matches under very limited circumstances. So let me pose this again. Are there smaller changes to the exact match criteria that should be included for better processing of IDNs? And that -- and I'd love to see this comment also incorporate (Amadeo's) specific suggestion, this idea of over the umlaut and vowels with accents. Thanks.

Kristine Dorrain: Thanks, Kathy. I think we could possibly work this in, certainly. There's a lot of places under four where we could have a separate 0.4 IDNs and I think when we look over to the data in 4A1, looking for research, studies, reports, typo squatting, other forms of non-exact match cybersquatting, I think you could easily also put in there evidence of problems with IDN matches and non-exact matches and those sorts of things.

I think you can easily loop that into the data for 4A1 for sure in addition to sort of finding other places. We talked a little bit about 4C, the technological options for creating a non-exact match system. So I think absolutely there's some technology involved in IDNs as well. I am hearing some background so if you have an open line and you're not preparing to make a comment, please make sure that you're muting.

Thank you. Does anybody oppose Kathy's comment? And Paul says without reaching the answer to Kathy's question, which I think is exactly right. I think your suggestion to include such a question is a good one. Does anyone else feel like it would belong someplace else other than somewhere fit in under number four and that we include in our data gathering under 4A1 and 4C an

express obligation to look at the impact on IDNs and how IDNs are involved in this exact and non-exact match situation?

And Mary says she's going to update it along with other additional examples from (Amadeo). And it looks like Kathy has put in her suggested text already. So good. Excellent. Moving along and trying to keep it on time here, J. Scott. Moving on, the next question is Maxim's suggestion that getting a third party to translate the ideas into semantics of programming language and then test the historical data versus the semantics so we can see how many claims it would generate and are able to evaluate the presence of the registrations without claims.

That is in relation to our actual reviewing of the Graham Shatan Winterfeldt proposal. So when we get to that point, Maxim has suggested hiring a third party to basically do a model and see what -- if we had had this -- it looks like if we had had this before, given the data we have now -- what would the claims notice situation have looked like? Where would the claims notices have come? Who would have received them both from the trademark owner side and from the registrant side, it looks like. That's a suggestion for data.

I know we haven't gotten to the point of figuring out what our budget is for hiring third parties. But does anyone -- MW22 is a simulation that I suggested. Okay. Does anybody have any objection to the data gathering question of possibly having a third party run a model to figure out what the results of something like that -- the Graham Shatan Winterfeldt proposal would have been? There's some chat about that it would require a full implementation of the proposal. Well, that's the case. Some people are -- Maxim of course says that he seems pretty simple.

Kathy, go ahead.

Kathy Kleiman: That sounds like a big study. Are we there yet? Have we gone through the phases that get us to the place where we need to be studying this at this

point? Do we have harm with the exact matches? We might want to wait on a study like that, thinking about it. Thanks.

Kristine Dorrain: Thanks, Kathy. I think it's a chicken and an egg deal for me, right. So if we wait on the study then we risk waiting a long time for the study. If we don't wait on the study then we risk not getting everything we need. We don't have our harm. We don't have a lot of the pre-data that we need to create the study. So I think that obviously, I think it's going to be a big discussion.

My guess is that -- and your co-chairs and the chairs can weigh in, but my guess is that one of the first orders of business that this group will do when it gets to these questions is to set out the studies that need to be done. And I know one of the things that we had talked about was deciding which studies we could kind of launch ahead of time.

And I share your concern that perhaps we aren't ready for this study, but then I also present that I think if we wait until we're ready for this study, it's going to take us six months to get it from that point. Greg, go ahead.

Greg Shatan: I agree with your characterization as a chicken and egg sort of thing and I think a feasibility study is important because we may find that some things are more or less feasible than others, and I think we do need sometimes to run along parallel paths. And since this is a third party study, it will take relatively less of our own resources to do it, which is one of the inherent dangers of running parallel paths.

So I would definitely -- I think it's a good idea to get what is essentially a feasibility or practicality study on the non-exact matches, and I think it would - - it may help us also analyze in looking at how they might work or looking at how they might need to be modified in order to work. That might help us look at ways to avoid any false positives or issues with overreach or the like.

So I think it would very much help inform the discussion on the other path.

Thank you.

Kristine Dorrain: Thanks, Greg. Jeff Neuman points out in the chat that a feasibility study, of course, is feasibility from whose perspective, right. One of the things that we haven't actually -- it's sort of the elephant in the room for our specific sub-team was when is it time to just figure out from ICANN what resources are available to us. And perhaps that's something that it's time to talk with the co-chairs about and see what the appetite is.

But I think we need to figure out what resources are available, either as far as entities that are already on boarded with ICANN to do studies, budgets that might be available to do studies. I know that our data gathering suggestion list is pretty aggressive and I think that we need to know the limitations of what we can get so that we can start to winnow out some of the chaff.

And Mary has her hand up and maybe you can weigh in on that, Mary.

Thanks.

Mary Wong: Thanks, Kristine. So following up on that point and on the data discussion, as everyone knows, the co-chairs and staff have started going through this week these various suggestions to try and figure out what might be more feasible, what might be higher priority, et cetera. One thing that I did want to bring back to the attention of the group is when we talk about third parties doing tests or surveys and studies for us, there is a process to do that through the GNSO Council.

So our advice would be that to the extent the group knows -- when you do it is one thing -- but that you know you want to do study A, study B, study C -- that we try not to send in three separate requests but we do try to consolidate as much as possible. I don't know what the budget is. I don't believe there's a set amount per PDP but this is one of those things that if we know we're going to have it, it's better to get the request in so that the council has time to

consider it and internally staff can't and work out how that can best be achieved as well.

Kristine Dorrain: Thanks a lot, Mary. I don't think we're going to answer the question today but I do -- I'm going to just throw this out there maybe for the co-chairs to consider and maybe we can think about the best way to do that, to kind of take the data requests for both sub-teams, combine them to the extent that we can, and make some suggestions to staff in order to be able to request these GNSO council resources.

So that's my suggestion. I don't know what the co-chairs want to do with that, and I think we've just sprung it on them. So my suggestion is that maybe next week, we can hear their thoughts on that suggestion or that question. Seeing nothing further in question four -- oh, I do notice Wendy did say add the consideration of financial and technical costs for registrars and registries. I think I would say that that is again another data point that we absolutely intend. At every point, we're asking what is the intended and unintended consequences, including financial.

So it may be necessary to just kind of put a footnote in to put a little asterisk in that just says of course we're considering all sorts of consequences including financial consequences as well when we talk about the impact of some of these changes.

I'm trying to keep an eye on the chat but if you have something that you definitely need to make a statement on, I hope you'll raise your hand because I'm just seeing kind of a little bit of back and forth there as well. The last change to this document is an addition of number six, should claims notifications only be sent to registrars who complete -- oh my, that was loud -- should claims notifications only be sent to registrants who complete domain name registrations as opposed to those who are attempting to register domain names that are matches to entries in the trademark clearinghouse.

I suspect that this has to do -- Paul Keating has made this -- or I think Paul Keating. I'm going to withdraw that because I don't know who has. Some people on the email list have made suggestions that it would make life a lot easier for different models of registries and registrars if the claims notices were always just emailed after the fact. Hey, thanks for registering this domain name. By the way, et cetera.

Certainly, there are probably registries and registrars that would also say that's a terrible idea but it looks like this is a suggestion that's made it to the list. Any objection to including this as a question without weighing in on the substance of the question? Because I have my own opinions about that too. Susan, go ahead.

Susan Payne: As usual, this is quite a one-sided question. If we were going to ask this, I think we ought to also be asking other questions around the timing of when the notices go and so perhaps that's an appropriate question. It fits more naturally, sorry, I can't scroll through this document, which is really annoying. There are all sorts of questions being asked under (unintelligible) on the period be extended, should it be shortened, should it be mandatory.

It seems -- actually maybe it doesn't fit (unintelligible). Sorry, it's hard to work out where it would fit. But it seems to me that that's only one question. Others of us might feel that we should be asking should the claims notice go before the domain name gets registered at all so that there's an opportunity for the trademark owner to actually do something about it before the registration goes through.

I can imagine there will be screams of protest to that as well, but I think something much more neutral is needed if we're going to put this question in at all.

Kristine Dorrain: Thanks, Susan. I raised my hand because I want to add my own comment, not as the person leading this call right now. One suggestion might be to

take question six and put it up sort of where it belongs under question three or question two. So question two is, if there's something that's not working properly, what do we need to change? And so one of the things we determine if when the trademark claims notice is presented as a problem, if that's an identified problem, then E could be is the timing of the presentation of the claims notice -- should that be changed. Should the timing of the presentation of the claims notice be changed in addition with other things like the format or anything else.

So it could fit in my mind either under two or three because it could go under the claims period itself or the way the claims notice meets its intended purpose or doesn't. Any other comments as to my suggestion that we limit it -- that we rephrase it as to being generic as to the timing of the presentation of the notice. Any thoughts about that? I'll put my hand down and look at the chat and see if anyone else is going to raise their hand.

It looks like Susan, Kathy, Paul, Michael are saying this is good. Paul Tattersfield suggests we change it to timing and presentation. I think that's perfectly fine. Jonathan Frost points out that flexibility could reduce implementation. Absolutely. I think there are certainly registries and registrars that would think that a post registration notice would be better. I think others would obviously argue that a pre is a better. Jeff Neuman says is there are problems identified with pre-registration and post-registration claims may be a potential solution but we should not address it until pre-registration is shown as the problem.

Exactly. Does anyone -- maybe you can make a note in the chat. Does anybody believe whether or not this question fits better under two or three rather than as a standalone?

(Brian): Kristine, this is (Brian). Could I jump in?

Kristine Dorrain: Yes, go ahead.

(Brian): Thanks. For me, I don't know if this was where Susan was kind of going with her comment, but to me, there's -- when we're looking at the charter for this working group asks are the RPMs fulfilling their intended purpose, to me, a question like this completely turns that on its head and looks to up end the very existence of the RPM. Shifting it to notification after the fact completely undermines the purpose of the claims notice.

So I think your formulation is slightly better, but I think in fairness, if we're going to add questions like this for consideration then we also want to add questions like should, for example, the trademark owner be presented with a claims notice simultaneous with a would be registrant so that they can seek to intervene before infringing registration is undertaken.

Now, I'm not suggesting that that's right or that's what the direction this working group should go, but again, to me, it feels like the question really goes more towards upending the RPMs than asking whether it fulfills its intended purpose and making improvements. Thanks.

Kristine Dorrain: Thanks, (Brian). I'm seeing some agreement in the chat with what Brian has stated. I know that we are well out of time. We've gone nine minutes over on this. What I'd like to do is we understand the concept, we think. I think we want to make sure that we're addressing both the timing and the presentation of the claims notice and to (Brian's) point, possibly also to the brand owner. So not just to the registrant, but the timing and presentation of claims notices to brand owners and registrants.

So we want to know is there a problem with that and if so, what is the solution pre, post, some other variation. So I suggest that perhaps Amr or Mary, hopefully, could take a stab at that and throw the rewrite into an email or into the updated document, and maybe we can just do a quick discussion on the list to make sure we're happy with wording. Is everyone okay with that? I

think we're generally in the same ballpark but I know I definitely want to keep this call moving along so we can move onto the next topic. Kathy, go ahead.

Kathy Kleiman: Volker is not on the call and I was catching up on some of the emails the last few days. I think he's the one who presented this idea. I don't know about this wording but this idea because of concern for resellers and kind of a lack of participation in the trademark claims down the line, that there was a problem with abandonment because of problems with the real time processing of the trademark claims notice by a number of people involved in the chain, not just registrars but also resellers.

So we've got a lot of work to do to kind of look at the existing problems because of course we want those trademark claims notices to reach someone. But I think that was the context of the suggestion was how best to get those claims notices in front of registrants. So timing and presentation makes sense, but I just wanted to give the context since Volker wasn't here. Thanks.

Kristine Dorrain: Thanks, Kathy, and you're right, thanks for correcting my misattribution at the beginning of my conversation here. So thanks. We will continue to take this part offline. It looks like most of the suggestions have been adopted. I trust that Mary and Amr have done their spectacular job of taking notes and I turn the conversation back over to J. Scott with apologies for going over. Thank you.

J. Scott Evans: That's great. Thank you so much, Kristine. I appreciate the fact that you're picking up the mantle of the great job Michael did last week in leading us through this and thanks everyone for your honest feedback and help. So our next plan is that I believe we are going to have -- the co-chairs are going to have an extended call on Friday where we're going to go through and we're going to look at all the suggested data (unintelligible) that needs to occur with regards to both the sunrise and with regards to the TM claim.

And we are going to then work with staff to make a proposal back to the group about exactly how we should go about implementing, gathering the data and what our work plan will look like.

Because there are certain questions that do not require data gathering and then there are others that do, and then do a work plan for handling and getting through those questions that don't require data gathering, along with a proposal to the group about how we propose to go about gathering the necessary data, who we're going to gather it from, and how we're going to work with staff to accomplish that.

So that's sort of our plan and hopefully, we will present that to you within the week -- next week after we've had this extended call where we've discussed that. Are there any comments or concerns? I see Kathy's hand is up. I'm not sure if that's an old hand or...

Old hand, J. Scott. Thanks.

J. Scott Evans: Okay. So are there any comments, concerns about that particular next step with regards to sun rising clients? Okay, hearing none and seeing none in the chat box, I now am going to ask that Mary take us through the -- Mary has sent me a private chat. I don't think at this point there's any more work for the two sub-teams unless somehow that the data gathering or something requires that and that will be something we will address.

But at this point, I don't think there's any additional work or the two sub-teams unless there's some sort of thought from the team. So just to let you know that it looks like you're off the hook at least until we come up with a plan on data gathering and if that will require some sub-team support. Okay, with regards now, what we're going to do is we're going to turn to Mary and we're going to let her present the results of the Pulse survey is what we like to call them at Adobe.

It's the survey that we took with regards to the trademark clearinghouse. Now, this is just about what goes into the clearinghouse with regard to certain types of trademark registrations and other types of IP that have been put into the clearinghouse.

And we asked some questions to sort of take the pulse of this group to see where we had consensus and where we could close certain things out. So I'm going to turn it over to Mary and let her present these results to you. And if you'll see in the chat, you can scroll through these results everyone. You're empowered to do so. Mary?

Mary Wong: Thanks very much, J. Scott, and this is the document that was sent maybe a day and a half ago after the Paul closed (unintelligible) and the co-chairs had a chance to look briefly at the results. So what you're seeing here and what was circulated on Monday is basically a collation of the different responses. The advantage of this is that you can see all the comment in one place. You can also see the level of support for each of the questions, both in terms of a bar chart as well as in terms of the various percentages.

The other introductory comment I'll make is since it's been some time, is as J. Scott noted, these poll questions relate to two of the open questions we had as a working group about the trademark clearinghouse, primarily on so-called design marks and secondly, on geographical indications. And if you fill out this survey, you'll notice that many of the questions are in fact about the design mark issue.

There were a few comments and thank you for that in the comment boxes that found some of the questions a bit repetitive. I think what we were trying to do is to be as thorough as possible to investigate the various different permutations of the kind of composite or stylized marks that might be registrable or not depending on what the working group believes to be the appropriate approach.

So we did have some good feedback actually. We had a total of 39 respondents to the survey. There was one person who answered the survey twice and so what we did after consulting with the respondent was to take that set of results that that person told us was meant to be his authoritative answer, and there was one other person who filled out the poll who was not a member of the working group. So for purposes of reporting the results, we have excluded that non-member from the group. So we're still at 39. Most people answered most of the questions.

So the first (unintelligible) question actually is in question three, although question two, which you see as the first page on your screen shows the spread, the professional spread of the respondents to the survey. We had registry operators, we had a registrar, we had academics, brand owners, (unintelligible). So of the 39, there was quite a diversity of at least background represented there.

So the first of the design mark questions talks about stylized mark and you recall that when this poll was sent out, a brief reference guide was also circulated to make sure that as you're filling out this survey, you are thinking about what someone calls a design -- a stylized mark in the same way. And also for consistency across the different questions so that we could have more robust results.

We also for each of the relevant questions put in one of the examples that the working group had developed and had sent over to Deloitte where we had asked whether or not those -- I believe there were six examples -- would have been accepted into the trademark clearinghouse if they have been submitted, being as they are real trademarks.

So the first question here is whether the TMCH operator should accept stylized marks. As I said, that's an explanation for stylized marks and the example that we gave here is the own your power mark. When you see that the responses are fairly evenly distributed and what's also quite interesting is

that we did have a third option besides yes and no in many of the questions where we simply asked can you live with this. And people did respond to that as well.

But we may also be very interesting is to go through all the different comments that were made after each question, and like I said, we did have quite a lot. I don't know that I need to read them out and bore everybody to death, J. Scott, but maybe I could pause here for a moment and let folks read through the results and comments for a couple of minutes.

J. Scott Evans: Sure.

Mary Wong: And for folks, this document was circulated. It's also on the working group wiki page and of course, it's on your screen. You can scroll through it. You can also make it full screen on your screen if you like. J. Scott, do you want to start a discussion on this question three?

J. Scott Evans: I would just ask if there are any questions, concerns, comments with regards to this particular question. If not, Mary, we'll move on.

Mary Wong: Okay. And I see Paul McGrady has a hand up. Go ahead, Paul.

Paul McGrady: Thanks, and I apologize but I guess I should have raised concerns earlier in this process, but I sort of felt like as I took the quiz that it was almost designed to ask three or four different ways whether or not the trademark operator should accept stylized marks, like should it take stylized marks. And the next question was should stylized marks be taken, and then the third question was if and when we take stylized marks. So I kind of felt as I was taking the quiz that it was almost setup for me to not understand the next question and answer incorrectly or at least inconsistently with the prior time I answered it.

And so I guess it's too late now to be critical of the questions and I should have been more Johnny on the spot, but as a consumer of the survey, I kind of felt like it was stacked to come up with the answer that no, the trademark clearinghouse shouldn't take stylized marks when I think the answer should be yes. Thanks.

J. Scott Evans: Thank you, Paul. Do you want to go ahead and continue?

Mary Wong: All right, I can do that and just to note that George has pointed out in the chat that this is not meant to be a consensus call or a conclusive study and that's why we also had all this space for comments so that folks could put in their comments, which in many ways probably are as illuminating if not more so than the actual poll answer. And so we move to question four. We're still on stylized marks such as the own your power mark, but it asks if the text in the mark was expressly disclaimed during the registration process should the TM stage operator nevertheless still accept that mark.

And you see here that a large majority of people, 75% of the respondents said the answer should be no and we did have a few additional comments here as well. And one point that came out from these comments was already made I think previously on the call, but it bears repeating, which is that not all countries have the same practice or process relating to disclaimers. And so one of the aims of the trademark clearinghouse was to have consistency and that was something that was pointed out by one or two of the comments as well.

J. Scott? I see Jeff has his hand up.

J. Scott Evans: Jeff Neuman's hand is up.

Jeff Neuman: Thanks, guys. This is a question I put on the chat but maybe it's worth asking. Especially for question three, I think we need a little bit better breakdown in yes versus no. So in question three it was pretty evenly split,

but was it let's say all IP owners said yes, it should be protected, but all academics said no, it shouldn't and that's why we got the split.

Or is that even split actually academics are split and IP owners are split, and registries are split. We need to know a little bit more behind the data in order for it to have any meeting. Now, this question four, we should still have that kind of breakdown but because it was 75%, I think it's going to be a little bit less important, but still important if one group strongly felt yes, while all other groups felt no.

And sorry, Kathy. I was using academics as -- I was just saying it. I don't know what -- I saw the first slide on the official breakdown. I'm just making a point of knowing -- breaking it down by different groups.

J. Scott Evans: Thanks, Jeff. Greg?

Greg Shatan: Thanks. Also going back to question three, looking at the first three comments, they are strikingly similar in their text. So it appears that there was some coordination or perhaps even some astroturfing going on here in terms of kind of coordinating answers to the study and coming up with answers that would then be the same or highly similar answer would be laid in over and over by different people.

I think that needs to be taken into account in considering the validity of the study and the validity of the numbers, not thinking there are sock puppets or robots here necessarily but it's a little bit -- it brings to some question of the independence of thought or whether people are just kind of attempting to pile on to influence the numbers. That concerns me.

J. Scott Evans: Okay, Susan?

Susan Payne: I might have to pause, actually, because I thought we were on question four. I may have my hand up too early.

J. Scott Evans: We're not on question four. We had just -- yes, we -- let's see here. We had done question there. Yes, we are on question four. I think Greg went back up. So we are on question four. Go ahead, Susan.

Susan Payne: I just had a comment about four, which I think is -- goes back to how the question has been asked and it's a comment that a few people made, which was around there's a distinction between whether the text has been disclaimed or whether some of the text in the trademark has been disclaimed, or at least some people who answered this survey perceive a difference.

But what's clear from the yes/no answers plus the comments is that some people answered that question yes and then made that point that it would be no if the following, and some people answered no and made the point that it would be yes if the following. And so the yes no here is really difficult to understand without the attached comments, where a number of people have actually answered yes and no in practice.

J. Scott Evans: Thank you, Susan. Mary?

Mary Wong: Okay, thank you for that. And I just want to follow-up briefly on Jeff's comment. We can try to correlate the comments to the respondents not necessarily by name but by the group they identify with when they filled out the survey. We did have many more brand owners and registrants than we did registry operators or registrars but we did have a handful of each as well. So I don't know if the spread will make a difference but if you'd like us to, we can go back and take a deeper look at the data and attribute comments to coming from someone who identifies as registrar as a brand owner. So that can be done on the staff side with a little time.

So we're going to move on from question four. Then we're coming down to question five, which is I think the last of the stylized marks questions and this relates to the example that we gave where it was one letter of the Latin

alphabet, the letter A, that was stylized and was a trademark. And that was one that we sent to Deloitte.

And so this question really tries to get at that whether if you're looking at stylized marks and the stylization is not of a word or a series of words but of one individual letter of the alphabet, should that still go into the clearinghouse. And you see here that more people said no than yes and again, there were some comments that followed including a possible concern about asking the operator of the trademark clearinghouse to make value judgments, some concerns about whether this expands rights and so forth.

So I'll pause here as we did previously and see if anyone has any comments or questions. George has a comment in the Adobe chat to say that the first comment about three character minimum probably isn't relevant to this particular discussion. Is there anyone else who has comments and would like to raise your hand to speak? I guess not.

So then J. Scott, I'll move onto the series of questions on composite marks. And again, this was a term that we included in the reference guide to make sure that everyone had the same understanding of what is meant when we use the composite marks, and so that going forward, we will also have the same consistency of usage if needed. So this is again about disclaimers. A composite mark is basically a mark that has a text portion and a design or graphical element. So here, we asked about disclaimers and bearing in mind the comments that were already made that it may not be the practice in all trademark offices, and it may be that not all the text was disclaimed so we didn't go down to that level for these particular questions.

But here, you see more people have answered no to the question of whether composite marks should go into the TMCH if the text portion of that mark has been disclaimed. And again, followed by a number of questions. I'm going to pause again and let folks have a minute or so to review the comments and raise any questions or suggestions.

J. Scott Evans: Greg?

Greg Shatan: Thanks. Just to state something out loud that's stated multiple times in the comments to this one and the prior one, in answering these questions, I assumed from the way the question was written that all text in the mark was disclaimed since it says if the text portion has been expressly disclaimed. So if anybody thinks that this question was asking about partial disclaimers, it will be good to know. So but if everyone agrees that this is asking about a disclaimer of all text then we can just kind of move on. Thanks.

Mary Wong: Thanks, Greg. J. Scott, Kathy, and Phil, what we can do is as members are spotting certain potential gaps or certain places where (unintelligible) might be required, we could send those (unintelligible) to the mailing list today and I'm thinking in particular of what Greg has just said that if folks answered the question based on a different understanding (unintelligible) people might have, if they base it on an understanding of partial disclaimer rather than complete disclaimer. So we can try and follow-up (unintelligible).

J. Scott Evans: I'll leave it to the group but this is a Pulse survey. It is not definitive in any way. We will ask the group. I personally -- and I'm just going to be very honest -- getting a little irritated at everybody coming and taking apart the survey because we're not survey. We were asked a series of questions to sort of get the pulse of the group. I cannot get in the head of every person who answered to find out exactly what they thought when they saw text portion of a composite mark and we explained what a composite mark is. It's words and design. It seems to me if we said the text portion, it's very clear that's all but maybe I'm just more intelligent than a lot of other people.

But I'm just saying we cannot tear this things apart. I get it that there are people that aren't happy with the way the Pulse came out. Their side didn't get the majority of answers. The most portion of this discussion that I'd like to

see that I think will add to the value of the data is what Jeff suggested, is to see what camp voted which way.

Because if it's all breaking down along lines of historic divides within the group then maybe that's an answer. But if we're seeing that there are (unintelligible) owners and registries, and registrars, and registrants that are lining up with a certain position that gives us a better idea of whether there's a consensus there.

But we can't continue to tear this survey apart. We have to accept it for what it is and (unintelligible) trying to get sort of a sense of what's going on. We have discussed these issues ad nauseum. So I really just don't think that there are people out there that don't (unintelligible) about. With that, I'd like to move on.

Mary Wong: Thank you, J. Scott. The next question is question seven, which is basically the flipside of question six. Where question six asked (unintelligible) text, question seven, still on composite marks, asks about the situation where the text has not been expressly disclaimed in the registration process. And here you see that the yes and nos are closer than in some of the other questions and again, there are also some comments, including a concern about control (unintelligible) and a concern that again Deloitte should not be making certain decisions beyond just what they basically have to do.

Do we have any comments or questions from anyone on question seven? I don't see any, but I notice in the chat there's been some discussion over moving forward from this pole and hopefully, even with any weaknesses in it, it does show the pulse of the lay of the land, as J. Scott and others have said. So then we go to question eight, which I believe is still on composite marks.

And again, I can see where the repetition may come in for some folks depending on how you answered the other questions, but here is a pretty general question. Do you agree that the trademark clearinghouse operator

should accept all composite (unintelligible) whether the text portion was expressly disclaimed. And we have quite an overwhelming, more than three-quarters of respondents said no, whereas some said yes and a couple said I can live with this.

And again, there were some folks who, because they answered no on certain assumptions or on the earlier questions, it makes sense that the comments they're putting in here are the same as well. And some of the concerns that are reflected in the comments to this question are echoing comments that were made to the other part of these questions on composite marks as well.

So I'll move on from there, I guess, and of course you already have these documents. And if the co-chairs would like to give everyone an opportunity to reflect not the comments and the results so that we can come back to (unintelligible) how and when do we close out the trademark clearinghouse discussion? In question nine, we are not talking only about composite marks or stylized marks, it could be either, but the concern here is where the text portion of either of those types of marks is purely descriptive in nature. It should then make a difference into whether such a mark with purely descriptive text should or should not be accepted into the TMCH and the answer we see here is more (unintelligible) than yes.

And one of the comments or a couple of the comments noted that it's not necessarily clear what we might (unintelligible) descriptive. You'll recall that we've had these discussions before on what is descriptive versus distinctive and we also had discussions on (unintelligible) dictionary term. So recognizing that that may have been an (unintelligible) the only way we felt we could get an answer and working with the chairs is to really try and tease that out and hopefully, the comments do that as well.

And as usual, I'll pause here for a couple of minutes. And then the next question actually follows on question nine, bearing in mind the potential ambiguity for some of the word descriptive, question ten then asks, well, who

is going to decide if the text in question of either composite or stylized mark is descriptive in nature. And there were some suggestions including Deloitte as a TM stage operator, including possibly looking at the dictionary but some folks thought the TM stage would be the wrong venue to decide this.

So we don't have a lot of (unintelligible) as to who should make that decision in question ten, but we did get a few suggestions as to who might do so if that indeed is the direction that we're going to go into. Greg, you have your hand up?

Greg Shatan: I see both in the answers to this question and question nine kind of confusion regarding the meaning of the term descriptive. Obviously, not explained as far as I recall in the question. Maybe it was but in the comments there seems to be a lot of confusion or at least caveats to various people's answers depending upon what you mean by descriptive. So I think we need to tease this out further. So interesting but in terms of -- and I understand we're not taking conclusions from any of this -- but this one is probably further from conclusive. Thanks.

Mary Wong: Thanks, Greg. Does anyone else wish to make a comment at this point? I'll note that as mentioned earlier, there is still time for everyone to review the results and to raise concerns, comments, and suggestions. And so hopefully, you can do this before the call next week when you've had a little bit more time to digest these results and noting some of the possible concerns that were raised on the call today as well.

And Paul Tatterfield has made a suggestion that we can try and add some columns to indicate the background of the person who made specific comments, and we can certainly look into that, Paul. Scott, you had your hand up?

Scott Austin: Yes, thanks Mary. The only comment I have is I mentioned a few times before the question of the supplemental register and I think comment 15 to

question nine is very much worth reading and considering, especially since in the U.S., supplemental register does have a Circle R, is considered a registered mark, and given the fact that we still recognize (unintelligible) potential for descriptive marks to become distinct, to acquire distinctiveness and therefore be put on the principal register.

I still don't understand the logic of why supplemental registered marks are not included on the TMCH.

Mary Wong: Thank you, Scott, and I think we've made a note of that. So again, if there are certain points that need to be teased out further or deliberated on, please feel free to do so on the mailing list between the end of this call and the call next week.

So then we're moving to the last couple of questions and moving away from design marks. We are going to be looking at geographical indications and as you may recall, the background for this is that we did have a call where quite a number of people believed that we should not continue discussing the inclusion of GIs into the trademark clearinghouse. This was also taken to the mailing list and so these last two questions were meant to indicate, again, the lay of the land, what the sense of the group is about that particular issue.

And so first, if we look at question 11, we ask if working group members agree with the decision that was made on a working group call and subsequently repeated on the mailing list that the working group should not at this time need to consider whether GIs should be included in the TMCH as a separate category.

And there were one or two comments about the way this question was phrased, particularly on the use of the phrase at this time. There's at least two responses to that, that staff hope will make things clearer. One is that because we're looking at an initial review of the structure and operations of the TMCH, we haven't done the sunrise or the claims registrations, and we

certainly haven't gone back and looked at the whole exercise in one coherent space.

So it is at least theoretically possible that there may be new facts or findings that emerge that might cause us to want to go back and look at some of these conclusions. That might not be very likely but the possibility is there. The other one is because we now have a category in the TMCH of marks protected by statute or treaty, and I think that's in the next question actually, and if you were following the discussions in, I think it was Hyderabad, where Deloitte did confirm for us that there were, I think, 75 marks that went into that category and some of them may well have been GIs but that is not a test that the (unintelligible) stage performs.

And so for those various reasons, question 11 was phrased the way it did, and it looks like we did have quite a lot of people who agreed with the conclusion on that last working group call. And as usual, there are some comments here basically questioning whether GIs are the same as trademarks because they may be legal rights but they're not the same as trademark rights and so forth.

Do we have any comments on this Question 11? And I'll just note that in the chat, I think George was addressing Scott's point on the previous question, Question 10, about the supplemental register. And we will of course post the chat for everyone to review after this call as well.

Mary Wong: So then, I think we're coming to the end, G. Scott, and everybody. So Question 12, like I said, is a follow on from Question 11. Generally, do working group members think that considering whether GIs should be included into TMCH at all is within the scope of this PDP? So regardless of what category they fit in, regardless of whether there may or may not be a new category, this was, again, a general question to try and get the lay of the land.

And we did have more no answers than yes. So 19 folks said no, 13 said yes, seven said I'm not sure. And then there's some discussions in the comments about whether this is within the scope of the charter itself. Do we have any comments on this or should I move onto Question 13, which is actually a related question?

Hearing no immediate interest on speaking up o Question 12, I had already mentioned the category of marks protected by statute or treaty and I mentioned, as a reminder, that Deloitte has told us that marks have been accepted into this category that may well be geographical indicators. So this question asks whether this particular category of marks protected by statute or treaty should apply only to registered trademarks. And we had more than half the respondents say yes, but a not insubstantial number of folks who said no.

So again, this is a discussion about trademark rights and rights and geographical indications, and what is and is not within the scope of our charter. And then that was the end of the poll, J. Scott. I'm going to turn it back to you.

J. Scott Evans: Thank you so very, very much, Mary. Really appreciate the assistance. So as you can see, there are still some issues where we need to have some additional discussions. I think one of the interesting things that we need to see, and I think that Jeff was right to ask it, and I think Paul Tattersfield asked it with regards to one of the questions as well, is to sort of have a breakdown of what camp the various respondents were in and how they voted, so we get sort of a sense of whether this is all being generated out of one group that has one particular viewpoint or if it's more of a consensus group that is a mixture of the different representatives on the working group. And I think that will be great information to have.

I do think that with regards to the GI issue, we've got out answer and that is that it's -- we've determined that GIs should not be included in the

clearinghouse unless they're registered trademarks and that if there's going to be any more discussion about that, that needs to be a separate working group. And so I'm going to suggest that we do a call for consensus on that point based on these survey results and the earlier email discussion and email that we had so that we can close this out and move on.

Is there any huge objection to us doing that within the next -- generally, it's one of those things where we give I believe ten days for people to object on a call for consensus. But we need to close this out. I see Paul McGrady is agreeing with me. Rebecca, I see your hand.

Rebecca Tushnet: I don't actually disagree but I would really like some sense of what affirmatively marks protected by statute or treaty means. Is there any way of maybe adding that into the call for consensus, just asking not as a call for consensus, but when we see if we have consensus on GIs, asking what do people think that language means.

J. Scott Evans: Let me go to Greg and then I will respond. Greg?

Greg Shatan: I thought I would take the opportunity to agree with Professor Tushnet since it doesn't come all that often, though hopefully more often as we head toward consensus. That is one of the underlying and key problems we have here, the likelihood or possibility of, to say the least, that that language was misinterpreted by the TMCH and Deloitte, and therefore created an option that didn't really exist, which we then have to -- we need to resolve -- that what that option was supposed to indicate. So that's a discussion we may have had up to some point. We have to go back to that discussion in order to do our work. Thanks.

J. Scott Evans: Thanks, Greg. Rebecca, with regards to your specific request, I would suggest that we should ask for a call for consensus in one particular email limited to simply that. And in addition, we can send out another email that says in relation to this discussion, this phrase is used and we would like to

have submissions from various persons or groups as to what they believe this means. And then we can have that discussion based on the submission we receive.

But I think it should be separate because I just -- call for consensus is a pretty important thing and I see you're okay with that. So I would ask that -- why don't we do this? Why don't we go ahead and this week, we'll send out a call for consensus on the GI issue to close that out. And then after we have our call, we look, we re-look at the survey results with them parsed by respondent can'ts. Then we can ask that question along with any additional questions that may arise with regards to the survey and handle that all in one bailiwick.

That would be my suggestion so that we don't inundate people with piecemeal mails. I see that Paul McGrady thinks that will work. Because I do -- and other people -- think of questions. I know you haven't had this very long but when we go back and we look at the parsed things, think of those questions you'd like circulated to the wider group and I do think we have to do some of this by email because there are people who are not on these calls that want to weigh in.

Not only that, I want to take due consideration that there are participants that feel much more comfortable expressing themselves in writing when English is a second language. And I think we need to be very cognizant of that, and I'm not trying to belabor points. I'm just trying to give everyone as much opportunity as possible to be able to articulate their desires, concerns, thoughts, or ideas with regards to the issues that we're discussing. With that, I think I'm going to be Santa Clause and Christmas in July and allow everyone six more minutes of their day back.

Mary has her hand up.

Mary Wong: Yes, I did, J. Scott, and this is just to let everyone know, and we'll follow-up on the mailing list as well, of course, that in thinking about the rotational calls,

as people remember, the co-chairs and staff did talk about this no our last call on Friday. The proposal is to have the calls at 17:00 UTC for Wednesdays, three Wednesdays in a row, and for the fourth Wednesday to keep that to the APAC friendly time zone circulation of 03:00 on Thursday. So for three weeks, it will be Wednesday at the same time, 17:00 UTC, and the rotation will continue for the fourth week. Thanks, J. Scott.

J. Scott Evans: Thank you, Mary and I also want to say thanks to Amr and to Kathy and Phil because it's taken a lot of additional time for us to have additional calls with regards to this. So I want to thank you for your time. I want to thank everyone for their time today, for everyone speaking up and getting their thoughts out there, and let's continue having good discussions about these things so that we can move things forward.

With that, I will say ciao.

Coordinator: Thank you, everyone. Once again, the meeting has been adjourned. Thank you very much for joining. Operator, if you could please stop all recordings. To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END