

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
Wednesday, 04 October 2017 17:00 UTC**

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Terri Agnew: Good morning, good afternoon and good evening, and welcome to the Review of All Rights Protection Mechanisms, RPMs, and all GTLDs (unintelligible) October 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 let yourselves be known now?

Rebecca Tushnet: This is Rebecca Tushnet.

Terri Agnew: Thank you.

Claudio DiGangi: This is Claudio.

Terri Agnew: Thank you, Claudio.

Steve Levy: This is Steve Levy, audio only.

Terri Agnew: Thank you, Steve. All three have been noted. Hearing no further names, I would like to remind all to please state your name before speaking for transcription purpose 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: Good afternoon, good evening, good morning everyone depending on your locale. Thank you all for joining us this morning. We are going to be continuing for the first part you'll see in the agenda in the right rail of the Adobe Connect room, completing the discussion on additional marketplace (arc-in) questions and agree on next steps. That's the first thing on our agenda.

I have asked that Kathy, who chaired last week's call, take the first two to three, five minutes, to sort of bring us -- for those who may not have been on the call last week -- up to speed on what was discussed last week and where left off. So with that, Kathy, I'm going to turn it over to you.

Kathy Kleiman: Great. Thank you, J. Scott. Can you hear me?

J. Scott Evans: I can.

Kathy Kleiman: Terrific. Thanks. So this is Kathy Kleiman and last week was our late night meeting, the Asia and Australia friendly meeting and rather than it being our usual one hour meeting for late night, it wound up going all 90 minutes. What we were doing was reviewing the additional marketplace RPM questions but not the questions per se. Those have been adopted by the working group in an earlier call chaired by Phil Corwin. We were looking at the data gathering, and in this case, we've got something a little unusual. In the other two sub-groups, sunrise and trademark claims, the subgroup itself had done the data gathering recommendations and the working group just reviewed it. And if you all remember, we had a big face-to-face in Johannesburg with a number of people in the room both from the working group and the community as well as online, as we reviewed and talked with the sub-team chairs about the data gathering that had been recommended.

In this case, the sub-team did not do that. The questions were created by the sub-team and the staff prepared a document that we reviewed last week where they kind of said who can we reach out to for answers to the questions. So they suggested certain questions might go to registry operators, certain questions might to registrars, trademark owners, and that in some cases these be added -- actually, in most cases, these be added to the surveys that we're talking about already reaching out. As you know, we did the big data gathering effort and funding with the GNSO Council. So hopefully not too expensive to tack on a few more questions to some of these surveys going out to members of our community.

So what happened and the reason there were 90 minutes was that there were a number of additional suggestions on where to get data and I've actually captured them because I didn't see them and I think it may be something with, unfortunately, with Amr leaving, and maybe Mary can tell us a little more about that, the co-chair, she's got news that Amr will no longer be with us. And I'm not sure if he's leaving ICANN or just leaving the working group but it's a big loss and he did most of the note taking last week.

So I think something might have gotten dropped in the process, but certainly, we had a number of really constructive suggestions of where we might go to get data from providers, maybe from ICANN itself, from registrants and so I tried to capture some of that because it hadn't been part of the notes and I just remember the conversation so clearly because I was helping co-chair it. I was chairing it. But we had suggestions from Phil Corwin and others.

J. Scott, Mary can tell us exactly where we left off but we had made it through most of the document, because it was 90 minutes, and I don't think we reached question six. I think we were working on question two when the evening finished. Again, Mary can help us. We had made it through most of the document and now, we have some recommendations based on suggestions by Martin, and Phil, and others in the call last week, based on taking additional -- the same questions, not rephrasing them, not changing

them, but sending them to some other sources, some additional sources for data.

Is that the kind of update you were looking for, J. Scott?

J. Scott Evans: Yes, thank you very much. So Mary had circulated earlier today a copy of an annotated document that was used and captured some of the comments I think or some comments from Mary and the staff suggestions that had been in the original report discussed last week. And I think that there has been, I think, as Kathy pointed out, she had looked at that document and had felt like that there were some suggestions that were not incorporated into the version that was circulated with the agenda today.

So she annotated that list and I think we have a copy of that document. Mary, do you have a copy of it that you could put up? Because we are only going to be discussing Section 5, Question 2. We'll look at it and see if we've answered all the data points, suggestions, and then we'll move to Question 6 in Section 5.

Mary Wong: J. Scott, I apologize, this is Mary. Can you clarify which of the documents you'd like us to put on screen? Would it be the earlier staff version or Kathy's annotated version? As I said in chat, we have both.

J. Scott Evans: At this point, it seems to me that it doesn't really matter for today's -- the particular discussion we're having at this moment because we're not going to be reviewing any of that information, decide whether it's pertinent or not. What we're going to be doing is looking at Question 2 and Question 6 to see if we've wrapped up Question 2 under Section 5 and if so, can we move to Question 6. I see Kathy has her hand up.

Kathy Kleiman: So you're saying that we'll save the -- I have a question and then a comment to something in the chatroom. So you're saying that we're going to continue where we left off and then review all the recommended edits and changes

later so that Mary will have a chance to consolidate all of the recommendations so far? I'll pause for the question. Is that right?

J. Scott Evans: Yes, since there seems to be an issue as to whether the document that was circulated with the agenda captured all of the comments from last week, I do believe that that raises the point that we need to have that looked at. But as the agenda pointed out, we are looking to have a smaller group get together with regards to these data points, when we decide what they are, and come up with a game plan for dealing with gathering the data and how that best should take place.

It seems to me that the reconciliation and to ensure that we capture it and we have a document that accurately reflects discussions that took place on the 28th and discussions that will finish up today, we can leave that to that group.

Kathy Kleiman: That makes sense to me. Thank you. I wanted to respond to Colin O'Brien in the chatroom if I might.

J. Scott Evans: Sure, quickly.

Kathy Kleiman: Is that okay? Yes, that I'm definitely not criticizing Amr. He took great notes and in fact we paused regularly in last week's 90 minute meeting to ask the people who Amr was summarizing in the notes whether their comments were being reflected, whether they felt their comments were being reflected accurately because there was some confusing stuff and these are long questions. And we stopped along the way and they said yes, their comments were being reflected accurately in the notes. I was just commenting that with his departure, something might have dropped in the process of incorporating those excellent notes into the materials. But something to be discussed with the working group. Thanks.

J. Scott Evans: Okay. So we are -- Susan Payne is sticking with the document that Mary has drafted and that is what is on my screen at least -- and we are at Section 5,

Question 2 and it's my understanding from everyone that this is where the conversation ended towards the end of the call. And I see that Mary has a note here and it's a little difficult to read but I read it earlier and I think the summation of it that there was some suggestion about where and how this question would be put out to the community, and whether it should be divided by geographic region, commercial versus non-commercial and things like that.

And I think the point that Mary raises in the blue note you see to the side is we have to be very careful there because that could quickly rapidly increase the cost of any survey that we might be doing. So we have to be very thoughtful about how we do that. You see down here at the bottom, for those that were not on the call last week, you see that there's a staff note and that staff note sets out sort of a suggestion of where they think some of the materials that you would gather data from may come from. And you see here that they say similar to, as they noted above, you have the trademark clearinghouse guidelines, the requirements and functionality specifications may provide information that is relevant to answering the questions. Fuller answers can be obtained through direct outreach to and contact with the TMCH providers.

So that's their suggestion. So I think when we think about this, the question to this group is beyond that, do you believe that there are any additional sources of data that should be noted here that would be useful and pertinent to Question 6 specifically? And if you weren't on the call last week and you believe that there's something specific to Question 2, Question 2 is what information on the following aspects of the operation of trademark clearinghouse is available? Where can it be found? You've got A, which is ancillary services offered by the trademark clearinghouse, which are not mandated by ICANN RPMs including but not limited to the post-90 day ongoing notification service and other services in support of registry specific offerings. And B, with whom and under what arrangements does the TMCH share data and for what non-mandated RPM purposes?

That's Question 2. Are there any additional beyond reaching out, looking at the guidelines, and reaching out, looking at functional specifications, and looking out -- contacting the TMCH provider directly that people feel would add or we could look at to answer that particular question? I'm seeing none. Oh, George?

George Kirikos: George Kirikos for the transcript. Are we able to get access to possibly a redacted version of the contract between ICANN and the TMCH provider? Because that would perhaps provide information on what they can and cannot do. Thanks.

J. Scott Evans: That's a question for staff and I see that Mary has raised her hand. Louise Marie, I'll get to you as soon as I have Mary chime in on this particular point.

Mary Wong: Thanks, J. Scott and thanks for the question, George. This is Mary from staff. I don't have a direct answer for you, George. I can find out because matters of contract obviously are handled by our legal department. What we do have and what has been posted to the working group wiki space is a summary memorandum of the scope of the contract that ICANN has with both the TMCH providers, that is Deloitte and IBM. I can recirculate those links if you like and I will seek further guidance from legal. Thanks, J. Scott.

J. Scott Evans: I mean, I certainly -- this is J. Scott Evans speaking from my personal capacity. I think the very fact that these services are offered answers the question at least with regards to ICANN's legal perspective that these are allowable and doable or they wouldn't be doing them. So sort of answers the question as far as I'm concerned. But I can see that there may be more inquiring minds with regard to that issue. Louise?

Louise Marie Hurel: Hi, Louise Marie over here for the record. Can everybody hear me?

J. Scott Evans: Yes.

Louise Marie Hurel: So I just wanted to note over on Question 2 on Mary's comment to Question 2 and note what I posted on the chat that I think we need to critically assess the quality of the data that we're gathering over here and even though the comment actually poses the question of increasing the cost, I think well, okay, there's the question of the cost. But on the other hand, I think it's about what are the data that we actually want to get and who do we want to reach out. Because if it's a question of cost and that we limit our number of people we want to get to an audience, I think we have to put that question out there.

And I think that is why I believe we also (unintelligible) and I support that we should reach out for registrants other than just registries, knowing that we have talked over and over about the difficulties and the challenges of just reaching out for registries and having their feedback. So creating a more diverse pool of people who we want to get with the survey.

J. Scott Evans: Thank you. Kathy?

Kathy Kleiman: It's interesting. So Louise was not on the call last week, I believe, because she's in Europe and very few people from Europe come onto our late night calls, but she's echoing the notes that were there and here I'm just reading. Question 2, and these are the notes from last week, suggestion to expand target respondents of this question beyond TMCH providers such as non-commercial registrants, small businesses, take geolocation into consideration.

Geolocation might be expensive but the idea of asking registrants about their experiences with ancillary services, A, does not appear to be blocked by the question, which is asking what information on the following aspects of the operation of the TMCH is available and what can be found, and then the two sub-parts that follow A and B. And it also doesn't seem to be precluded by the budget since we're adding much longer questions particularly to the

registries above, adding another question to registrants doesn't seem to add disproportionately unless I'm totally missing something.

So again, reflecting some of the notes, there was this suggestion that Question 2 also go out to registrants. And I believe Phil was the one who raised that the analysis group, believe -- remember something about post-90 day ongoing notification and some kind of data that they collected on that, and some kind of analysis that they did on that, it would take going back to the report as well as perhaps going back to the analysis group to see if there's some insight they might share.

But again, two additional sources. Thanks.

J. Scott Evans: I'm going to next go -- I've got a lot of hands up. In my queue, it looks like Susan Payne is next.

Susan Payne: Hi, yes. Thank you. I just don't really understand what the purpose is and what we think will be achieved by asking this question of different people to the people that have been identified. This is a question about what services does the (tier) advisors offer and where can one find out about that. And so to the extent that we can't find that information ourselves, looking on their website or whatever, it seems like a valid question to the TMCH provider.

But I'm mystified as to what we think will be the benefit of asking random so-called registrants. What do they tell us? They either tell us yes, we found the information or they say, no, we didn't find it but that doesn't tell us anything about the service being offered. If they say they don't know anything, okay, we know that a particular person didn't know about the RPMs but that may be because it had no impact on them whatsoever. The post-90 days ongoing notification thing only goes to the brand owner.

So the so-called registrant, if they were outside of the 90 days and they weren't a trademark owner, wouldn't need to know anything about it and

asking them a question about it just doesn't seem to me to garner any useful information, certainly nothing that's reasonably proportionate to the additional cost and time of asking it. If people can identify genuinely useful information that this will garner then I might feel differently but this just seems like an utter waste of time and I don't know why we're talking about it.

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

Greg Shatan: Thanks. Greg Shatan for the record. Two things. First, in terms of asking questions and whether there are significant additional costs in asking them, asking anything of registrants who number in the millions and are worldwide introduces a whole new level of complexity in survey design in terms of not designing the questions but designing how you reach a scientific or non-scientific population. And we've had plenty of discussion on this group about the extent to which a population that is approached and also the population that actually responds may or may not affect the validity of the response. And in terms of value for money, which we've been asked to be very concerned about, trying to poll a representative sample of the world's registrants, and I assume we're not talking about professional registrants who register domain names for a living, but all registrants, that this is -- that's the kind of thing that in itself raises a huge expense and complexity. It's a whole different kind of survey rather than surveying the registries who are a closed universe or even the registrars who are a closed universe and a number of them are just drop catching shadows anyway.

So that's where the cost comes in. Asking the question into the ozone isn't where the cost comes in. It's asking the question the right way to the right people is where the cost comes in. I'll also note and I haven't gotten around to finding Kathy's document that I -- well first, I'll note that there was a regular drumbeat of suggesting that many of the questions -- I think all -- but many needed to be asked all over again to this population of registrants or a representative subset of that population. The word registrant probably got worn out if we had captioning, it would have gotten worn out.

I suggested then equally important population to ask many of these questions about is consumers or end users and rights protections of the sort that we're dealing with are ultimately intended to protect consumers. And in terms of whether and how they're having their intended effect or even being noticed would seem to me to require or at least if we're going to expand the circle, and I frankly don't think we should, if we're going to expand the circle we really need to consider consumers as much as we do registrants. So thank you.

J. Scott Evans: Thank you, Greg. This is J. Scott. I'm speaking in my personal capacity here. It seems to me that where we are is we are looking at a document that was prepared by a subgroup and has been approved by the working group and in each of the Roman numeral sections, it's very specific as to who the questions are for. It's very clearly defined and that was agreed upon by this entire group.

So it seems then to say, oh, we're not going to just ask the people identified by the group that we've approved but now, we're going to say and slip in under the data gathering that we've got to get data from all the -- because it seems to me categorization says we're going to get data on these things. We're going to ask questions to Group A, Group B, Group C, and Group D. And that was clearly laid out in this document. The questions were laid out and then the question was asked of this group, okay, where can we find this data? Do we need to ask them directly? That seems to me that what we're trying to figure out, and I think I'm a little frustrated here because this was clearly adopted by the entire group and it is very clear in the Roman numerals who the questions are directed towards.

And so I think having a discussion now is taking three steps back and is just slowing us down. And so I'm going to call on Paul McGrady first, Louise, because he was the chair of this committee, to just see if perhaps somewhere I have misinterpreted this document that was approved by the

working group in the way I've just presented it. And then once Paul has had a chance to answer that question and say what else may have been on his mind because he raised his question -- his hand -- I will then go to Louise and Kathy.

Can I get on the queue? Sorry. This is Rebecca.

J. Scott Evans: Is that Rebecca? Certainly.

I'd like to be on the queue. Thank you.

J. Scott Evans: Okay. So we're at 10:28 and I would like to continue this for about 15 more minutes and then I'd like to move forward in the agenda if possible to keep us moving forward.

So Paul, Louise, Kathy, and then Rebecca. So Paul, I call on you now.

Paul McGrady: Thanks, J. Scott. Paul McGrady here. Thank you for all the robust debate on this issue so far this morning. I will say though that as the chair of the sub-team that put this together, I am a little surprised that we are attempting to reopen this up to include a new class of people to ask these questions to. I do think that the questions would have perhaps taken a different form if the purpose of the questions were to go out to the seven billion potential domain name registrants of the world. Obviously, these questions are very narrowly designed to reach contracted parties, to reach a trademark clearinghouse operator, things of that nature.

So I don't want to use the phrase bait and switch because that's a bit harsh but I do feel like we were given one job and now that job has changed now that we've closed out our work and we don't really want to go back and revisit all of this. I think that if that was doing a global survey of the seven billion potential domain name registrants of the world was part of the plan here all along, I think that it would have been nice to know that up front.

So that's in response to J. Scott's question and then my comment really relates to the whole idea of a seven billion person survey and whether or not that is -- I won't address whether or not it's practical. I think that Greg did a fabulous job of addressing the impracticalities of that already, but I will say that it is a significant departure from the way that ICANN has always done it. And I know whenever you say, well, that's the way we've always done it, you're offering yourself up for criticism. I get that.

But in soliciting public comment, there's always been a public comment period and that is a push rather than a pull. And if we are going to change direction and start bringing public comment in by way of global surveys of anybody who might possibly register a domain name then we're changing direction here and we should just be aware of that. And in the event that we decide to go down this path, and I hope we don't, but in the event we decide to go down this path, we need to be very prepared for pushback from the GNSO Council, I think, and from staff, from the accountants, from basically anybody who may see the financial downside of going this direction. Thank you.

J. Scott Evans: Thank you, Paul. Louise? Okay, you've put your hand down so I'll go to Kathy.

Louise Marie Hurel: So I just wanted to point out that I don't think we're actually taking three steps backward -- hello?

J. Scott Evans: Yes, I'm sorry, Louise. Your hand had gone down and I'd called on Kathy and then you started speaking so I was a little taken aback. But we can hear you.

Louise Marie Hurel: Okay, perfect. So I don't really think we're taking three steps backwards. I think that something that was raised on last week's call and I think too that it came up it actually means something that things come up. And as we do in

most of the calls, many issues come up at different times and it was actually critically assessing Question 2. And I think that we're not actually going back with this. We're just revisiting it to understand where is the potential aspects of actually the feasibility of reaching out and who should we reach out.

So I think I'd just like to go back to Susan. She asked what generally useful information can we gather from talking to registrants. I think my question is what are the costs of not asking registrants. So I'd just like to make that point and really just what's the cost of not asking registrants around (unintelligible) services if we do have information about it.

J. Scott Evans: Thank you. Kathy.

Kathy Kleiman: Wow, the idea that in a multi stakeholder group we would not reach out to all reasonable resources. We're going after trademark owners with questions in this data gathering and there are a lot of trademark owners. In this case, we're talking about closed groups. If you send it to all the stakeholder groups, as we will be doing if we send these questions, so that the commercial stakeholder group is asked about ancillary services and the non-commercial stakeholder group is asked about non-commercial services, I don't know where we get seven billion people. We get four stakeholder groups. That seems to be a very defined and closed universe.

And J. Scott and Paul, I was in the sub-team. I was watching as the questions were drafted and participating with my hat off and I just don't understand what revolution we're causing when we look at Question 2. It is not directed towards anyone. It's directed broadly. What information is available and where can it be found? We've already said the analysis group has information. It's crazy not to use it. Can we please put it in the notes as an action item? What information do they have about ancillary services? What did they gather? What's the report? What did they analyze? That's pretty clear and then going after not the global world of registrants but whatever we do with the survey and whatever stakeholder groups it goes out

to, but not including all of our stakeholder groups with questions that could be reasonably addressed to them and responded to them seems to me to be where we're going to get in trouble within a multi-stakeholder community. Thanks.

J. Scott Evans: George?

George Kirikos: I just wanted to address the small point that Paul McGrady tried to make earlier claiming that in order to do a survey you would have to survey all seven billion people on the planet. That's obviously an example of a strawman argument because no one other than himself appears to be arguing that we would need to survey everybody on the planet. To do a statistically valid survey would only require, depending on the margin of error that's desired, 1,000, maybe 2,000 people domain registrants or whatever the population being studied is. ICANN has obviously done studies of that size or greater in various other contexts. Thank you.

J. Scott Evans: Susan Payne?

Susan Payne: (Unintelligible) Rebecca is in front of me.

J. Scott Evans: Oh, I'm sorry, Rebecca. I apologize. I should have taken a note. I'm sorry, Susan. Rebecca had asked to be put in the queue as well and I apologize. Go ahead, Rebecca.

Rebecca Tushnet: That's a hazard of being on voice only. I just wanted to say two things. One to make clear it's my understanding that we are talking about surveying registrants and potential registrants for purposes of answering the other questions that we have, not in the additional marketplace RPMs group but rather questions we have, like, for example, how do people understand or do people understand the notice, the language of the notice, and do they understand exactly what kinds of statements it's making. Is it translated into

your language, things like that. So we, in terms of cost, I was under the impression that we had to be talking about marginal costs.

And if people don't contemplate that we're going to be surveying registrants and potential registrants for some purposes then we really need to have that conversation because that was my understanding of what part of the budget request was going to be for. That is not to say that marginal costs of lengthening a survey are not important. They are and in fact, I could readily be convinced to leave a bunch of questions off, although I think that's something we should be talking with the survey expert on.

But perhaps if people think that doing surveys of registrants is wrong then I think we may need a larger conversation. And then the second point it more a procedural one. We did these subgroups that try and reach consensus but there were things on which consensus was not reached. I understood statements in the working group to mean that people with serious concerns could still bring them up in the larger working group. If that's not true then I need to change the way that I have been interacting with the subgroups that I've been parts of. Thank you.

J. Scott Evans: Thank you, Rebecca. This is J. Scott Evans for the record. That is true that when you are completely welcome if you're a participant in a subgroup to raise your concerns at the working group level. So that's completely within the ambit of how we should proceed. My only comment earlier was I thought that those discussions would have occurred prior to us approving this because it wasn't my understanding that last week's call or this week's call was approval of this document. It was looking at a document that had been discussed and consensus had been reached about the form the document was in, and then looking at how do we go about answering the approved questions.

So scope of the document, whether the document went far enough, I thought that that would have been a discussion that would have occurred prior to the

last two weeks because once the document has been approved and then we start looking at now, how do we put in an implementation plan in place, it seems to me that we've passed the point of discussing where we felt like there wasn't consensus on the drafting of the document. That was the point I was trying to make.

But your point about raising your concerns that you had in the subgroup at the working group level when the document is being discussed for approval is absolutely within the procedure that should take place. Because there are many people in the working group, the broader working group that is, that might agree with those concerns. And so they should in fact be raised.

Susan Payne, you're next.

Susan Payne: Thanks, J. Scott and I would just say that I completely agree with you about the status of the document. We went through as a full working group this document and agreed, finalized and agreed weeks ago. So we shouldn't be now starting all over again. But what I wanted to say, Rebecca, I think we just need to step back and look at the wood rather than the trees here. And it's a point that's being made by a few people in the chat but I think it's important to say it out loud.

Our work here in relation to these additional marketplace RPMs is to look at their impact on the mandatory RPMs and in particular, they're likely to have an impact on something like utilization of sunrise and utilization of claims because if you've taken a block in a particular registry, you're not buying a sunrise registration and there's not going to be any claims notices. That's the purpose of this work. This work is not to deep dive into the additional marketplace RPMs, which individual registries are entitled to operate and make some judgment call about them.

And just again, now to go to the tree, look at Question 2, look at what we're asking. What on earth is a registrant going to tell us? The question is about

where do you find out about the TMCH's operations in relation to these services. It's not a question a registrant can answer so why are we wasting time and money asking them? And I'm mystified as to why we're now 40 minutes into a call and we're having this row all over again. I think someone is seriously wasting time.

J. Scott Evans: Thank you. Paul?

Paul McGrady: Thanks, J. Scott. Paul McGrady for the record. Just to respond to a couple things. One in relation to George's comment. He is right, I should have said a survey that purports to reflect the views of seven billion people. I do understand sampling and this is a unique challenge because that sample would somehow have to span 200 plus different jurisdictions I think in order to get a fulsome view of what the seven billion potential registrants might view.

So it is not a simple undertaking no matter how it's being dressed up here. It would be a complex and expensive undertaking. I don't think that Kathy's suggestion that we simply fall back on asking various stakeholder groups who say they represent all seven billion registrants what they think would be a useful outcome. I just don't think that some of these groups are lovely groups, but they don't consist of the full diversity of the seven billion potential registrants. So I don't think that that would be a very good sample to start with.

And then lastly, just to Rebecca's point, by all means you did not misunderstand anything that anybody in the group wanted to raise with regard to these questions should be raised in the full working group. This particular issue has been raised and we are discussing it. So there's no concern there. I will say that just because something is raised in the full working group and somebody doesn't necessarily get their way doesn't mean that it wasn't raised in the full working group. And so we have to make sure that everybody understands can raise what they want, but that does not

necessarily mean that they're going to get the resolution that they want in the full working group. Thanks.

J. Scott Evans: Thank you, Paul. Kathy?

Kathy Kleiman: Hi, J. Scott. Did you just call my name? It's Kathy.

J. Scott Evans: I did.

Kathy Kleiman: Okay, great. So point of information is that I don't think we've done as much work as we think we might have done procedurally because this document was presented a week and a half ago. I think it came in on Rosh Hashanah or something, the Jewish new year. So this is staff doing -- saying where should we direct these questions and so we just thought we were just reviewing it for the first time last week.

As everyone remembers, we spent weeks going through the data gathering documents for the other two sub-teams, sunrise and trademark claims. Spent a lot of time looking at the questions and then the data gathering aspects of those questions, kind of how those questions apply to the data we're gathering. Spent a ton of time in the sub-teams and then a ton in working groups, including face-to-face time in the full working group. So here, this is really the first time, unless I missed a meeting somewhere, that we were looking at this document last week and going through it and saying hey, there are other -- and what we heard was Martin and Sue and others saying, hey, there are other people and places to go to get this information.

Specifically on Question 2, I guess there are different ways to read it because to me it doesn't appear to be directed to providers that Question 2A, but rather ancillary services generally. And god knows, a lot of registrants and registrant representatives talk to me about ancillary services. There is information out there. So pick your closed universe or the open universe that Rebecca said we're already reaching out to, as she pointed out, so it's just an

incremental cost as it is with the registry questions and others. Or pick a more closed universe and go to stakeholder representative.

But one way or another, the idea of not talking to registrants seems to be the purpose of a lot of comments coming in and whether sub-team wanted that or not, I think you're hearing from the working group that that's kind of extraordinary. Thanks.

J. Scott Evans: Cynthia?

Cyntia King: Hi, can you hear me?

J. Scott Evans: Yes.

Cyntia King: Hello? Okay. This is Cyntia for the record. I'm going to be super quick. I think that we are experiencing again mission drift. This is not a think tank. We don't have unlimited time and unlimited money to do our work. We have a timeline that the GNSO has given us. We have a budget that they have agreed to, to do some data collection to further our work, and we have to operate within those constraints, continually re-litigating every piece of work that every sub-team does.

And I'm not saying that we can't have some commentary but we need to limit it and it needs to be productive because what I'm seeing today is the same thing that happened, the same things we talked about last week, and we're not getting any further to actually completing our goal. The GNSO is already unhappy that we're not performing. The fact is if you've ever worked at a startup that perfection is the enemy of accomplishment.

We could talk about this forever, but we have to have a timeline. We have to do work toward that timeline in order to achieve results and to produce the product, the report that we are responsible for. We can't just talk about this forever. We need to move forward. Thank you.

J. Scott Evans: Thank you, Cyntia. I see Phil Corwin has raised his hand.

Phil Corwin: Yes, and this comment is made under the heading of fools rush in where angels fear to tread. I am -- this is also a personal comment, not in my capacity as co-chair. I'm all for surveying domain registrants when we can identify some group of domain registrants who can provide us with useful feedback and when -- that's basically it. To me, the problem here is we're talking about how a domain registrant be effected by these marketplace RPMs and how would we find the ones who were or at least some target population that would likely have some significant percentage.

Because -- and to me it's two things. One, two ways they could (unintelligible). One, if the trademark claims notice process was extended beyond 90 days by the registry operator where a potential registrant might get a trademark claims notice and decide not to proceed with the domain registration for that reason.

The problem with that one is that as we know from the analysis group report, not even the registrars can identify which of their customers are potential customers, decided not to proceed to completion upon receipt of a trademark claims notice. And further, if we could identify them, unless we were going to check the dates for each registry, it would be very difficult to know whether that notice was received from a registry that had voluntarily gone beyond the 90 day period.

For the blocking services, it's more likely that some subgroup of registries generally might have wanted to registry fairly desirable domain in a new TLD and were not able to do so because they got a notice that the domain was not available. The problem there is that would they know whether it was not available because it had been registered or because it had been blocked without registration.

So I'm just pointing out the problems. I think it would be difficult to survey registrants in regard to these. Now, there have been other parts of our work where I've been very vigorous in advocating getting feedback from registrants and I will probably do so in regard to the URS where I think we can readily identify those registrants hits by URS actions. But in this one, I'm not against it in principle. I'm just saying we need to look at the practicalities of being able to identify a knowledgeable group within the vast ranks of all registrants, the ones who might have been affected by a post-90 day trademark claims notice or might have been blocked from registering a domain because it was not available for the reason that it has been registered by a trademark owner for a blocking service.

So I'll stop there. I hope that's helpful. Thank you.

J. Scott Evans: Thank you, Phil.

Phil Corwin: Paul McGrady, use whatever -- recipient of a URS action, okay. Is that a neutral term rather than hit by URS. I wasn't trying to put any value on that.

J. Scott Evans: All right, so I feel like I'm compelled as chair to move us forward. We have been presented with a document here. This document has listed out specific direction of who the questions should go to, right. We have question for the working group, question for the registry operators. We have questions for trademark owners. We have questions for registrars and we have questions for the TMCH provider. That's how they were divided up. That's how they were presented to the working group.

Keeping in mind Cyntia's comments that we need to keep -- we cannot continue to get stuck on a debate for endless cycles and keeping in mind Susan Payne's comment of this isn't a deep dive into the efficacy, the appropriateness or anything else of these additional RPMs. That battle was fought at the subgroup level and there was a lot of discussion on the calls that I attended as chair about that being out of scope.

And so these questions were narrowly tailored to keep us within scope, which is to determine what if any effect the additional dispute mechanisms, rights protected mechanisms had on the traditional mechanisms that are mandated by ICANN. That's a limited -- my understanding of what this limited exercise is trying to achieve.

Keeping all of that in mind, I need to take a poll of the group now so that we can close this out. So the question I have is of those people in the -- and I will go to those that are not in the Adobe Connect room afterwards -- of the people that have chat function, and I think we have 37 people, I'd like to see a show of hands for the accepting this document as it was produced by the sub-team and sticking to their categorization of who we should reach out to.

Kathy Kleiman: Point of information, J. Scott. This is Kathy. You said earlier in the call that we hadn't even gotten to the edits that were offered. This is a staff created document, not a working group created document, that we were going to review the questions that were added earlier per other suggestions but that we were going back. That we were just moving forward in the document, not back. Are we rejecting all of those edits as well?

J. Scott Evans: At some point, we're going to have to make a call here, okay, and you seem to be the only person that believes, at least at this stage, that there is a huge mass misinformation from this document. And I've had

Kathy Kleiman: Martin, Louise, Rebecca, George. You've heard from a lot of people.

J. Scott Evans: Okay, I'm happy -- okay, you, and a contingent of folks believe that there has been some -- I was not on last week's call so I don't know. Okay. So I'm happy but at some point, we have to decide and we have to move forward. And so I don't know when that -- our plan today was to review this, come up with a plan and move it to a sub-team that could then start implementing and gathering this data. It doesn't look like we're going to be there today. Okay.

So it seems to me, I mean I'm at an impasse of how to direct us to move forward at this point if it's nothing other than to have somebody review the transcript to ensure that your edits accurately reflect the discussion that occurred and then we look at a document next call that then we believe reflects where we left off at the end of the 28th call, so that then we can then take action with regards to that document.

I am absolutely happy for anyone to chime in with any other action plan that they believe will get us moving forward but what I hear is we're having this discussion now and then we're going to have this other document that you circulated, Kathy, 30 minutes before the call. And I'm not criticizing you for the quick timing. I understand that that was a matter of circumstance but nobody has really had a chance to look at it. So we're going to have to have a whole new discussion. So it's almost as if today's call, except for identifying that there is a rift with a group of people who believe that the questions are very limited, and very targeted, and very focused to a group, and a group that believes that there's some people left out of that universe that should be included.

That's where I am today. That's where I find myself and I don't know how to move us forward. I don't think it's fair to task a sub-team to rectify all of that given that it doesn't appear that we have approval of this document. Because it my understanding, and I need someone to tell me, maybe this is a thing for staff, that this document as written was approved by this working group and that what we are discussing now is not whether the document as approved categorized to who we would reach out to, is up for discussion. What's up for discussion is where do we get the information to answer these questions? Is it available? Right.

And if that's the -- so what I'm concerned is I'm not real sure what we're discussing because if we're discussing the latter, I think what I proposed is completely accurate. Because all the discussion from last week and all the

discussion of this week is out the door with regards to do we go beyond the groups identified here because we've already approved this. And we're not reopening it for discussion. When we start talking about data points we're not going to then add in additional groups because the groups were already identified in the document. The document has already been approved.

So I just think that that's where I'm getting a little confused here because it was my understanding that last week's discussion was focused on do we have this information available and can we get some of this information ourselves or do we have to ask the registrars directly? And if so, how do we do that? That was sort of the discussion that was occurring. So somebody needs to help me out here because I am a little confused about where were are. I did not think this was a discussion about the output of the working group, their product, their work product. I believe that discussion -- I was under the impression that discussion was done and dusted.

And now, the question was just looking at the staff notes with regards to where we might go to get this information and seeing if there was any additional points we have to. But we've already identified and agreed upon who we were going to ask these questions to.

Rebecca Tushnet: J. Scott, this is Rebecca Tushnet when you're ready.

J. Scott Evans: Yes. So I need help and I'm happy to reach out to others. I just need help to how to move this forward. And there are a lot of smart people on this call and help me out here. Rebecca, I'll go to you first.

Rebecca Tushnet: Thank you. This is Rebecca Tushnet. So I was on the call last week as well as in the working group. Unfortunately, I was not able to make anyone hear me on audio so just wanted to say two things.

First, I believed that the allocation of questions to groups was done by staff and was not a working group product. Rather these were suggestions of staff

for where those questions should go. So I guess I would characterize it slightly differently. Second, my understanding of what happened last week was that we got a lot of data collection suggestions, some of which include asking people and some of which include independent going and looking to figure out.

So I guess in my mind, those were all part of the work and that's what I thought Kathy's attempts to capture the notes that Amr took were doing. So that's how I see it. I see why you feel differently but to me, this seemed like a natural continuation.

J. Scott Evans: Thank you and that's a good clarification. I'm going to go, Paul, to Mary Wong first to get staff input here and then I'll come to you. Mary?

Mary Wong: Thank you J. Scott and everyone. This is Mary from staff. So I just want to clarify for the record one specific point, which is that the questions themselves, the text of the questions in this document or rather in last week's formulation of this document was the text of the questions that had been reviewed by the working group based on the sub-team's report. What the staff did for last week's discussion, as Rebecca noted, is we took the exact text of those questions and we categorized them by the target group of respondents. So whether that be registries, registrars, and so forth.

The only change we made therefore to the actual text of the question from last week to this was to Question 4, because that was a specific request and action item. So the text of the questions that you see before you, except for that one change to Question 4, is exactly the text that was reviewed by the working group. What the change in terms of format was, was simply just categorize them by target group of respondents. Thank, J. Scott.

J. Scott Evans: Thank you very much. Paul and then I'll call on Phil.

Paul McGrady: So yes, as Mary noted, this is the document that was approved by the sub-team. I think what we need to do is vote up or down on Kathy's proposal to survey registrants. Once we have an up or down on that then we can look in on substantive edits to the document. But I don't think that putting off a vote on that point and then looking at non-substantive edits to the document, that doesn't make sense to me just because this new idea that Kathy has is really -- it's very different from what the sub-team (unintelligible).

So obviously, working group members can raise what they want to raise on these calls and we've discussed it robustly. And so now, I think we need an up or down including -- basically just answering the question, are we going to survey registrants on these questions. Thanks.

J. Scott Evans: Phil?

Phil Corwin: I'm glad I raised my hand. I don't know if we're going to take a vote as Paul suggested but I was trying to avoid this, but let's go quickly through the questions and see which ones would in any way be relevant related to potentially registrant responses. Question 1, to what extent is use of a protected marks list effect the utilization of other RPMs? Well, trademark owners are the ones that utilize RPMs so that's not a registrant question. We're not going to get any useful data back from registrants on that.

Question 3 is a factual question about whether registry operators rely on the TMCH validation services in providing their additional marketplace RPMs, and could they do so, and what would the cost be. There's no useful information (unintelligible) registrants on that factual question. Question 4, what are each operator rule for each type of additional marketplace RPM that it offers? That's a factual question. We go to the registry operators to find out their rules. Again, no potential registrant information.

Question 5, for operators that extended the claims served beyond 90 days, what's been their experience in terms of exact matches. That's a factual

question for the small group of registry operators, which went past 90 days. Again, I guess we could survey registrants generally. Did you not complete a domain registration because you received a claims notice in that post-90 day period but I've already discussed the problems we previously identified with finding out which registrants receive claims notices and if we could find them, it's dubious that any of them would know whether they received that in the original 90 day period or the post-90 day period.

Going down, this is the one where to me is most directly potentially related to registrants. Just to -- we're going to ask trademark owners have been blocked from registering a second level domain name because it was blocked. I guess we could ask registrants if there's a practical way to find out the ones who wanted to register a domain but found out it wasn't available. The question is would they know it wasn't available because it was previously registered or because it was registered through a DPML program.

So I think that's a practicality question. Question 5, we already discussed that. That's the trademark claims beyond 90 days and Question 5, questions to TMCH providers, what information is available. That's a factual question, no relationship to registrants there. And same for Question 6.

So if we want to debate something, really, when you look at these questions, the only question that is debatable is would it be useful to ask registrants if they didn't complete a domain registration because they received a claims notice in the post-90 day period from the small subset of registry operators that went beyond 90 days. And if they didn't register a domain that they wanted to because it wasn't available, if there was some way they wouldn't know it wasn't available because it was blocked rather than registered.

I guess it's possible some registrant might have gone and looked up the WHOIS to see who had it and found that it wasn't really registered and concluded it was blocked. But that's about it. So I'd suggest that when the sub-team on data, since we're really only talking primarily about post 90 day

URS and unable to register a domain because it was blocked, could look at -- could discuss with staff the practicality of finding a meaningful set of registrants from whom feedback on those points could be solicited.

But I thought it was important to go through all the questions and narrow the debate. Most of these questions, there's no useful information on them to be gleaned from registrants because in many cases (unintelligible) factual questions, adding -- asking the party that would have that information to provide it. Thank you.

J. Scott Evans: Thank you, Phil. Greg?

Greg Shatan: Thank you. Greg Shatan here. Phil, thank you for whittling this down. I'll note that in the document circulated before this, it was suggested that all of Question 2 should be asked to registrants but I agree with your analysis that's incorrect or inappropriate. As to this issue of registrants or foiled registrants receiving notices after the 90 day period, I'm just getting awfully confused.

Under the extended claims service, only the trademark owner gets a notice after the 90 day period is expired. The applicant gets nothing. So what am I missing here? Is there some other population where beyond the 90 day period potential registrants get notified? So just a point of clarification. Is there isn't that type of thing happening then we're talking about something that's completely moot and even if it is, then we're talking about a needle in a haystack because we'd need to find not a registrant but a foiled registrant who received a notice after the 90 day period and would know why they got that notice and how.

I think you'd have to survey a whole lot of people to come up with a meaningful number of people for whom that experience happened, if it happened at all.

J. Scott Evans: Okay. So I believe that the overarching question here is should we reach out to registrants or to the broad community of registrants and potential registrants with regards to the data gathering on additional (unintelligible). That's a threshold question. If that answer comes back from this group as yes, then the sub-team, I think, with regards to data gathering can make a suggestion as to which potential questions they believe that is appropriate.

So I will ask the threshold question using the red no and the green -- the red disagree and the green agree buttons that you can find at the top banner and I will go to Rebecca, Claudio, and Steve Levy afterwards. If you would now -- so call the question (unintelligible) so we can give direction to the potential sub-team. The question is do you believe that in this endeavor that we should be reaching out to registrants? Is that something we should consider?

Okay, now I'll go to the phone. I'll start with Steve Levy, if he's still with us.

Steve Levy: I had managed to get into the Adobe Connect and I voted there. Thank you.

J. Scott Evans: Okay, thank you. Claudio?

Claudio DiGangi: Sorry, just got off mute. In light of what Phil said, I thought it would perhaps be okay for one or two questions but otherwise I don't see the need. Thank you.

J. Scott Evans: I need a yes or no. So are you saying yes you do believe it should or no we don't?

Claudio DiGangi: I think it's question specific as a matter of principle.

J. Scott Evans: I should count you as a yes.

Claudio DiGangi: Okay.

J. Scott Evans: Okay. So Rebecca?

Rebecca Tushnet: I'm also going to say yes along Phil's suggested lines, but the other thing I just want to note for the record is that when we ask registrants about their experiences more generally in terms of the claims process, which I believe no one has said we shouldn't and we got the funding authorized in part to talk to registrants, based on my understanding of how surveys usually go, there's going to be a part where people are asking have you ever been blocked from registering a domain name. And certainly at the funnel stage of that, they probably won't know the exact details.

So we shouldn't -- whatever the outcome of this -- we should not ignore data that comes in later even if it turns out people were blocked or had notices based on something that turns out not to be the mandatory claims process. I just want to be clear that this vote shouldn't be taken as an invitation to discard data that comes later. Thanks.

J. Scott Evans: Thanks very much. Okay. I see here -- from what I can see here, there seems to be overwhelming response that we should not reach out to registrants with regards to this particular inquiry, for the inquiry we're seeking information, with regards to this document. So that's a threshold question that's been answered. So I counted nine votes for and then the great majority said no.

So it appears that that's the question. I do note for the record that Rebecca said there is a chance -- I just want to restate -- that we could receive data (unintelligible) go to these questions even though we didn't seek it. And just because we didn't seek it doesn't mean we should ignore it. So with that, we need to put together a small sub-team that will look at this document and make sure that we've got what we have complete here and then begin the process of gathering this data.

So I think the co-chairs would thought we might like to ask if the chairs of the former sub-teams for the sunrise and trademarks claims notice, which were Kristine Dorrain, Michael Graham, and Lori Schulman, if they would step up and serve and then take volunteers for additional folks to assist. So my first question is can I -- would Kristine Dorrain, Michael Graham -- is he on the call? I thought I saw him earlier, and Lori be willing to step up? You can answer in the chat box.

And then do we have some additional volunteers that would like to help with this? And Mary, I think since where we are, we probably should put a call out to the mailing list as well so we can ensure that we're giving folks that were unable to come to our call today, the opportunity to participate should they like to participate. I'm not seeing any response from anyone. I don't know where we go from here. Do we have any folks that are willing to volunteer?

Okay, rather than...

Susan Payne: I think maybe you're missing the chat. There's quite a few volunteers in the chat.

J. Scott Evans: I'm sorry. Maybe I am. You know what it is? I haven't scrolled down. So if we can capture that, Mary, in the chat, and then also put out a call to the list that would be super. And we had planned on going into some sunrise data that's been collected and presenting sort of the initial draft. We had reviewed it. The co-chairs reviewed with (Barry) and Mary yesterday during our preparatory call. But I am absolutely convinced that ten minutes is grossly insufficient for that information to be presented.

And so unless I see a resounding raise of hands that we should continue, my suggestion as chair is that we pick (unintelligible) with that at our next call. I see (Barry Cobb) has raised his hand. I want to acknowledge him. (Barry)?

(Barry Cobb): Thank you, J. Scott. (Unintelligible) for the record. Your observation is correct, ten minutes or nine minutes now wouldn't be sufficient time to go through them. I would ask the working group though to take a close look at the document that was sent by Mary last night or this morning. If any of the members have any questions in the meantime, please don't hesitate to send those to the list with suggestions, or concerns, or questions how the data is presented. I'll be happy to work on that up until our next meeting when we can spend more time to review through this. Thank you.

J. Scott Evans: Thank you, (Barry). So with that, I'm going to give everyone back nine minutes of their day. I would like to thank everyone for their discussion. I would specifically like to thank Rebecca Tushnet for sort of letting me know where we were and how this document got developed, and helping me out of my frustrated ignorance.

So I really want to reach out and thank her for that. And to everyone else for your participation and time and for the robust discussion that we had. I appreciate also that everyone maintained their manners and we all while disagreeing were able to treat each other with great respect and I appreciate that very much. It's very helpful. These are really difficult discussions. For those who we are new to the process, it is a rough and tumble world, but we try to wear kid gloves even when it gets a little rough and tumble so that we can treat each other with respect and understand it is okay that we don't necessarily all agree. So I really appreciate everyone's decorum today and want to thank you for your time and for being with us.

And with that, I'll call the meeting adjourned.

Mary Wong: Thank you, J. Scott. Thank you everyone.

Terri Agnew: Once again, the meeting has been adjourned. Operator (Marvi), 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