

**ICANN  
Transcription  
Review of all Rights Protection Mechanisms (RPMs) Sub Team for Data  
Friday, 05 January 2018 at 19:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-rpm-review-05jan18-en.mp3>  
Adobe Connect recording: <https://participate.icann.org/p26oy322ht2/> Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/YSBYB> The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Michelle DeSmyter: Great. Thanks, (Vincent). Well welcome, everyone. And good morning, good afternoon and good evening. Welcome to the Review of All Rights Protection Mechanisms Sub Team for Data call on the 5th of January, 2018.

On the call today we do have Rebecca Tushnet, J. Scott Evans, Kristine Dorrain, Philip Corwin, Kurt Pritz, Lori Schulman, Kathy Kleiman. We have apologies from Susan Payne but Michael Graham will be joining us later into the meeting. From staff we have Mary Wong, Julie Hedlund, Berry Cobb, Ariel Liang, Antonietta Mangiacotti and myself, Michelle DeSmyter.

As a reminder, please state your name before speaking for transcription purposes and you may begin.

Julie Hedlund: So this is Julie Hedlund from staff. Just to remind everybody where we left off and we did leave off during – in Michael’s section so we would like to have him pick up from where he was so that’s closing out the trademark brand owner section, cease and desist letter and brand owner experiences regarding evidence of hard, that’s pages 18-20 of the Google Doc. And we do have the link to the Google Doc up in the notes pod.

And also then once we follow from Michael we can then start into the registrant section which – or the registrar section, since Susan’s not on the

call and I don't think she's anticipated to join given the time, we could move into Kurt's section. So I see that we don't have Michael yet, so – but we do know that he does plan to be here.

Perhaps if no one minds I'll just remind everybody of the agenda today, as I've done a little bit here, but starting with the TM brand owner section, Michael to lead; then discussion of registrant section, Kurt to lead: agree on document management methods and then the timing for the next call.

So I also am still not seeing – yes and again this is Julie Hedlund from staff. Kristine Dorrain was asking. I see Lori is asking about fixing the screen view. Actually, this is the way the screen view is for the Adobe Connect rooms. It – what you have to do though is we have unsynced the document and if you click on the little – the minus button below the screen you can then shift it so that it will be smaller and more viewable. Or you can also download the doc as Kathy is noting.

And since I'm still not seeing Michael I'm wondering if we should go ahead and start in the registrant section. Kurt, would that be okay with you? I see Kristine has her hand up. Please go ahead, Kristine.

Kristine Dorrain: Hi, this is Kristine. And if Kurt wants to jump to the next section that's fine. I...

((Crosstalk))

Kristine Dorrain: ...feelings about it but I think that if Michael's anticipated to join us shortly I would like to second J. Scott's suggestion in the chat that we start with the document management issue because I think that could be quickly resolved and then if he's going to come – show up quickly then we can just stay on track.

If not, if you think he's going to be like a half hour late then maybe we should just jump ahead to Kurt. I just thought I would throw that out there because J. Scott suggested it in the chat. Thanks.

Julie Hedlund: Thank you, Kristine. This is Julie Hedlund again from staff. And thank you for that helpful suggestion and also to J. Scott and I'm sorry to miss that in the chat, J. Scott. Michael did say he was just coming off of another call and that he would just be a few minutes late. So if there's no objections perhaps we can skip to the document management methods question that staff raised in an email about a half an hour or so before the call.

Let me just speak to that again here. For general document management going forward, staff would like to ask the group to agree on whether to continue to use the Google Doc as the authoritative document with insertions and additions to be placed into it, and staff can assist if you need us to, and whether – and when to lock the Google doc prior to each sub team call so that everyone is clear when we start the call about the exact version we're looking at for that day.

Note that staff has locked this particular document, as we noted, before this call just so that we knew we were all in the same place. So those are the two questions that we'd like to put forward to the sub team. Thank you. Please go ahead, Kristine.

Kristine Dorrain: Thanks. This is Kristine for the transcript. I want to ask a clarifying question and maybe Kurt's going to jump in with the answer to my clarifying question. Is the problem that some people's changes essentially changed over what was originally there? Because I'm looking at the Google Doc and I see some things are on the side as suggested like Word's comment feature, which allows like all the comments to stay on the right but doesn't change the original text. And in other cases I think the text has actually changed.

And so it's unclear to me who has power to sort of write over, to delete, to move versus just add a comment on the right. And is that really the problem because I thought that what I read about what Kurt said was some of his work was actually taken out or – and maybe I misunderstood that. So I'll back out now but I just wanted to let you know that I'm sort of struggling with the question. Thanks.

Kurt Pritz: Hi, this is Kurt. So yes, part of this discussion is largely my doing, but I think we're in somewhat of a unique situation because each of us took turns, you know, we divided up the section and we each took ownership of a section and wrote the questions we thought would be applicable to that question. And then for the first couple sections we went through the original writing and, you know, through interaction on the call marked it up.

But also many people marked up my section and not that I take – have any ego about it but when it came time for me to anticipate leading the call I went through the questions and found them, you know, not only to be changed but to be somewhat unrecognizable so I wouldn't be the best one to take us through the questions.

So my point I think is because you know, we should only change a question when we know why a question is written a certain way. It's like breaking rules, right, you can't break the rules until you know why the rule is written. So, you know, I think for this case we want to somehow preserve the work that each person did in formulating the questions and have, you know, she or he, you know, explain and perhaps defend why they wrote them that way and then take comments.

But I understand completely the need for some sort of expediency and you know, anticipating what comments might be before the meeting and not waiting so that's kind of the balance of – need to be done.

Mary Wong: Thanks, Kurt...

((Crosstalk))

Kurt Pritz: I'm really sorry. To what Kristine commented, if all the changes were in Comment form in the original writing was there that would be one way to go about that.

Mary Wong: Thanks, Kurt. This is Mary from staff. Julie is dialing back in so I'm just stepping in for a bit. But Kathy, you had your hand up next and then after Kathy I'm going to ask Ariel to maybe go over what the cross-outs and comments mean in the Google Doc. Kathy, please go ahead.

Kathy Kleiman: Thanks, Mary. Can you hear me?

Mary Wong: Yes, we can.

Kathy Kleiman: Okay great. Always good to test the first time. Hi, everybody. Happy New Year. This is Kathy. And just wanted to point out that I believe the original drafter was Rebecca and so that we should be, you know, that if there's an initial presentation of the section, it should probably be Rebecca. And that it was, you know, a surprise to wake up I think the morning of the call and find a number of changes to this section that literally happened in the middle of the night. And so that was a surprise and then the discussion that – that Kurt had said, that the machine had crashed. And so uncertain whether we're looking at all of Kurt's revisions or not or what the situation was.

So and so I think, you know, this should – I'd like to recommend kind of a discussion with Rebecca and Kurt on this so that we kind of know where things stand. Thank you.

Ariel Liang: This is Ariel Liang from staff. (Unintelligible) the author of this Google Doc meaning I have the editing rights and everyone else has the comment rights. I just want to make a few clarifications to the Google Doc. All the changes

discussed during a call staff incorporate them but they're all in redline so meaning we are also using the comment function.

And even you see the text is reflected – like the edits are reflected within the text so they're in a different color than when new but the original text is still there, even there is the illusion of original text based on the suggestions you can see like a line crossing it. So you can always see the original there and it's – nothing has been changed from the text and all the changes are redline.

So that's the first clarification. And then the second clarification regarding what Kathy just mentioned about the crash and the new text added by Kurt, that happened I think December the 15th and basically as the editor I could see all the version changes and then I was able to track to the original version or the version dated back to the 15th of December before all the crash happened and reverted back to it. So and Kurt also confirmed that was the correct version he wanted staff to revert back to so nothing is lost there. So that's the two clarification I had.

((Crosstalk))

Kurt Pritz: This is Kurt. I think – oh go ahead.

Julie Hedlund: I see Rebecca has her hand up. Rebecca.

Rebecca Tushnet: Sorry, Rebecca Tushnet. I just wanted to say what I said in the chat which is I don't – I don't know why Google Docs did it this way but Kurt's crash did interfere with my section which is right behind his so, you know, that's all. He didn't do anything wrong and – but whatever closing Google Docs made it not save, you know, also affected my stuff and so I had to go back in. Thank you.

Julie Hedlund: This is Julie Hedlund from staff. Thank you, Rebecca. And I think I heard Kurt.

Kurt Pritz: Yes, thanks. So I think Kathy – so this must be a gross misunderstanding on my part but I think our comments kind of just went by one another. So my point was that whoever authored a section should get to present that section in its original form before changes are made.

And so my last minute changes were actually to try to remember what more of the original form was so that I could talk to that. And I think you were kind of saying the same thing, that there shouldn't be changes at the last minute but so anyway I think we were making two – addressing two different issues. Sorry I didn't put that well but I hope you understand.

Julie Hedlund: And this is Julie Hedlund from staff. Thank you, Kurt. And I'll just note that Michael has joined us so I do see a couple of more people with hands up. Rebecca, I still see your hand up. I don't know if that's new or old. And then I see Kathy – no now I see Lori and Kathy. Lori, please.

Lori Schulman: Yes, hi. Good evening, everybody. I have – I want to second something Kurt has raised about the original drafter being the presenter. I strongly support that. I just have to say from personal experience in working in a sub team where we had issues and questions about when staff might have added or other (unintelligible) might have added to a Google Doc when I as the lead was ready to present and then looked at something entirely different it's super frustrating. And I think in this when we have to be so careful about the detail of the question that we ensure that the person who's responsible for that section is the shepherd of the section. I think that's crucial.

I would suggest perhaps that we think about closing the document six hours before the meeting. The reason that I say six is that there's many, including myself, who tend not to prepare for their meetings until maybe an hour or two before the meeting.

I mean, it's just the reality of dealing – and I know there are many people here who are very active ICANN-ers and we're on several work plenary

meeting on Wednesdays. So I think it's a bit much to close it any earlier than that because I don't think that's the way people work, unless other people have (unintelligible) that but I think it would be fair to close six hours before and then at least you have half a day – a half a work day more or less to look at the – whatever been inserted into the document up to that point.

Julie Hedlund: Thank you, Lori. I see Kathy, please.

Kathy Kleiman: Yes, I think six hours may give a lot of advantage to people not, you know, Europe and Asia because it gives them the whole day so let's think about something that would fairly be a cutoff for everyone so everyone could see it because otherwise, it means, you know, a bunch of us wake up on the East Coast with a number of changes.

So I'm still trying to understand Section 4, survey of domain name registrant. Kurt, if you were the original drafter then, I mean, I've reviewed this section a number of times since we went through kind of the other section, I would just skim it in case we got to it in some of our prior meetings.

And there were a number of questions that have been part of it for weeks or at least it appeared that way. And then I see a number of cross outs the night before. Kurt, could you – sorry if you've already said this, can you help me out with what was happening here?

So you're saying your original got edited in a way that you didn't agree to or – and that you didn't like the edits and found out the night before? Is that because a lot of these edits have been there for a long time if my memory serves. Thanks.

Kurt Pritz: Right. So essentially the night before the meeting, which was well in advance of six hours but the night before the meeting I pulled up the document to review it in the event that we got to that section in our agenda and didn't recognize some of the questions.



So went back to the questions I had originally proposed, put back some of the ones that were deleted and then added some of my, you know, kept some of the other questions but edited those to make them what I felt was a little more clear.

But then again, preparing for this meeting I noted that there were additional edits to the questions so I thought, you know, rather than doing that again for exactly the reasons you're saying, Kathy, I decided well, I'll just, you know, put the original questions or the questions that I think there should be, you know, Word document so I can make my original presentation and then we can, you know, consider the mark ups if that was a way to be helpful to the group. No, the other way is just to start with the document the way it's been edited.

Julie Hedlund: This is Julie Hedlund from staff. Just putting myself in the queue, and I don't see anybody else here right at the moment. So we're hearing a suggestion and some agreements for a cutoff of six hours, closing the Google Doc for edits six hours before the call. And there seems to be agreement that we would continue to use the Google Doc.

I guess just one question staff might have is – goes to a point that you made, Kurt, whereby you had drafted questions and then there were edits to the questions. Staff should note that actually the original questions were still there, that – they should still be seen. We didn't take them out. I mean, there would be edits to them. But I guess my question from staff is – and I think you were making this point perhaps.

So if someone has been the original drafter and has not had the opportunity to speak to, you know, present those questions should we suggest then there should not be edits to the questions until they have been presented by the drafter? That's the question.

Go ahead, Kurt.

Kurt Pritz: Yes, so first I want to say that I'm probably the worst in this group by far at keeping track of versions and (unintelligible) when changes are made and not made. But I think that when I read the questions before the meeting they looked different – they were different than ones I had proposed and some of the ones I had proposed were lined out, so I was pretty sure there were changes.

Yes, so to me there is a way that comments could be made without line outs showing so it's really clear what the original text is, I think excuse me – I think that's the preferable way so it's easy to see what the original text is and then people could make comments alongside of that.

But if that can't be done without you know, some sort of line outs showing then that's more problematic. But anyway, yes, so I think we should be able to comment to documents but not edit them until they're discussed.

Julie Hedlund: Thank you very much, Kurt. And I see Kristine. Please go ahead.

Kristine Dorrain: Thanks. This is Kristine for the transcript. I support everything Kurt just said. I just wanted to note because I was the one that already did her section, and I did notice that when people put in their own comments either during the call or shortly before or shortly after, there was always a little bit of I had to keep really careful to find out if that was just a suggestion that another sub team member had made that we had decided to go on with as a group or if we had decided against it, you know, they had thrown that out there for discussion but we had decided to go a different direction.

So there's a little bit of danger even with adding comments before the drafter has had a chance to go through it. And that's only because it's hard to keep track, and I know the date function helps, the date and time function. But it really – it was really kind of tricky to make sure that we captured where the

group landed on each of those comments on the right hand side. So not that I disagree, I mean, I do agree I think that if we're going to have comments we should – if we're going to have a lot of changes we should make – force them to be comments and not redline.

But at the same time I also just caution having gone through this myself a few weeks ago that even that in and of itself is not entirely foolproof because we can lose track of you know, how valid those comments still are a week or two later. Just one suggestion there. Thanks.

Julie Hedlund: Thank you, Kristine. I see Ariel, I think she wants to speak to the Google Doc functioning. Thank you.

Ariel Liang: Thanks, Julie. This is Ariel speaking. So just wanted to clarify about the comments in Google Doc. So it may be people may have different understanding of that so comments does not only mean you can highlight a phrase and then insert a comment and put it on the right, it means you can also directly edit the text but whatever you put in will be in a different color. Like if you add a phrase it will be in a if color, if you delete a sentence or word, it will be a colored line across the text. So these are all comments.

And so I think that's kind of maybe that caused the confusion where some people are saying we can see, you know, on the right there is comments and then sometimes you see these cross out (unintelligible) also part of the commenting function. And I hope that helps clarify so just (unintelligible) original text is there and that's nothing deleted from the Google Doc.

Julie Hedlund: Thank you, Ariel. And I see that staff has suggested in the chat that perhaps the group agrees to use one form of editing and I see Kristine has said, "Yes, I propose that we not allow insertions and strikeouts in the text." And Michael Graham has his hand up. Please go ahead, Michael.

Michael Graham: Thanks, Julie. Yes, I'm noting in the chat the discussion of making comments rather than write-in comments or changes. And the difficulty with that is just the amount of drafting that takes place. You know, I had a quick question in that regard to Ariel, which I think might address the issue that we're facing and that is Ariel, do you know if Google Docs has the ability to retain the document but show you the document without the changes and then be able to go back so that that way the document that's been saved that people are moving into comment on or editing, that original document is still there even though there's a second document that we've been editing on top of it?

Do you know if there's that ability to do that or does that create a problem of as soon as you've entered those things if somebody accepts it it does away with the original document, which I guess Kurt, is what you faced.

Ariel Liang: Thanks for the question. This is Ariel speaking. So I do need to investigate a little further but what I understood is that if you want to view this document as a clean doc you will go all the way back to the very first version which is the version on 27 of November.

We can see it – if I change the (unintelligible) on this Google Doc to view only we will see the 27th of November without any commented or suggestions. But probably that's not what we wanted to do.

But I can look further into that and then see how to change the view from redline to clean version and, you know, different versions a clean version, that I do need to check. I hope that clears – I hope that answers part of the question.

Michael Graham: Yes, yes, that's real useful. I mean, my problem – this is Michael again – my problem with doing the comments in the side is that generally the comments I want to make are just minor revision or something to language and it takes an awful lot more to explain what the change would be than to just put it in there. So thanks for taking a look at that, Ariel.

Julie Hedlund: This is Julie Hedlund from staff. Thanks, everyone, for this discussion. I'll note that we're almost at halfway through the hour. So it seems that we're still in agreement to use Google Doc.

There was a suggestion to close the doc six hours before but there was also a suggestion of warning that the doc will close 24 hours ahead of the meeting, 18 hours, sending a notice, pardon me, 24 hours ahead of the meeting that 18 hours – that is 18 hours before the doc is locked so that way it would still be locked at six hours but staff would send a notice which we can do.

And then also to use comments not cross outs noting, however, that in some cases that's going to be perhaps more laborious for drafting and for just minor edits it might make more sense to be able to do those edits. And staff will look into the possibility of being able to see the original without the edits. And I see Kristine has her hand up. Please go ahead, Kristine.

Kristine Dorrain: Thanks. This is Kristine. I support all of these suggestions. I just wanted to clarify my little like sending a tickler thing, I know that you guys usually send – I think Julie sends a reminder about the call a day ahead, and I'm not necessarily saying you even have to like send a second email but as maybe in bold as a reminder this doc will close in, you know, X number of hours which gets you to six hours before the call.

So that's basically it, just a little highlight because we do get that the meeting is coming tickler; it would maybe be helpful if we're reminded oh that's right, in this working group, you know, our doc closes early. So we just – that was my only suggestion there. Thanks.

Julie Hedlund: Thank you very much, Kristine. Kathy, please go ahead.

Kathy Kleiman: I know it will be rejected but I think it's much fairer to close the document 24 hours before the call giving everybody equal chance to participate in it, otherwise I think the East Coast and the West Coast of the US are going to wake up and particularly I think it's actually particularly unfair for those of us bringing children to school, we just won't be able to look at this document or the edits that come in the night before so I think it would be fair if everyone had the same opportunity to look at the final round of edits and we – or comments in this case and we closed it so that's no one's surprised when they wake up or get to work. Thanks.

Julie Hedlund: Thank you, Kathy. And Lori, you're next.

Lori Schulman: Hi, yes, so I had put in the chat a couple of things. One is maybe in terms of the redlining issue that if we're there to correct spelling or a typographical error or grammar, that that would be fine to redline because I think that might be what Michael's referring to like when "its" should or shouldn't have an apostrophe kind of thing, that could save time. I mean, the group is small enough that I think remembering that rule wouldn't be difficult one, one way to maybe cut down on some of that post-meeting editing.

And then to Kathy's point, you know, maybe 12 hours is right. I don't know what the magic number is. But I do think that a full day before probably doesn't correspond to how most people review the work. Thanks.

Julie Hedlund: Thank you very much, Lori. This is Julie Hedlund from staff. Then so suggesting a lockout of 12 hours, that seems there is some agreement to that. So staff can send a reminder with the agenda, pardon me, noting that there will be a lockout at 12 hours. Can use comments rather strikeout, except as Lori notes, for perhaps minor edits. And just noting from Mary Wong in chat, "To Kurt, do you also want to limit edits of questions already discussed to the lead and staff with questions yet to be discussed reverting to Step 1?"

Kurt Pritz: So it seems – this is Kurt. Thanks, Mary. So it seems that the edits should be somewhat agreed to during the discussion, right? So the purpose of – and we're actually blessed to be in kind of a small group – but the purpose of the meetings is to discuss the questions and come to some sort of agreement as to what they should read.

And then, you know, I guess it's right during the call, you know, if it's my section and I'll say (unintelligible) those changes or Mary will say, you know, someone on the – an ICANN staff member can make those changes or Kathy would say, so, since everybody agrees, Kurt, I'm going to make those changes.

You know, it's like a 10-second discussion for each change about who makes it, something like that. We can be collaborative and probably more effective because we'll be flexible in that way.

Julie Hedlund: Thank you, Kurt. And I see Lori and Kristine. Lori.

Lori Schulman: That's an old hand, I'm sorry.

Julie Hedlund: Kristine.

Kristine Dorrain: Hey thanks. This is Kristine. I wanted to say what Kurt said but slightly more forcefully and that is I think we have sort of decided that we – after we've gone through a section it is more or less closed. I mean, I know we're going to do a final review at the end and make sure that it all kind of aligns and there's nothing that we did in Section 6 that we should go back and, gosh, we really need to separate that in Section 1, you know, for some continuity.

But I would like to say that when we're done with a section and we've hashed it out for four or five weeks, I would like to say that we're done and, you know, we were pretty happy with that. We know that this isn't the final version of questions, we know this is going out not only to the full working group but

also to the survey providers, so, you know, I – just to be more forceful but I would really be opposed to you know, digging through and anybody just randomly going in and changing stuff that we've already agreed to on calls. Thanks.

Julie Hedlund: Thank you, Kristine. So just to try close this out and move ahead to finish up Michael's section, we have a reminder that there will be a lockout that can go out along with the agenda; locking out 12 hours before these comments rather than strike out, except for very minor edits; limit edits of questions already discussed to the lead and staff; questions yet to be discussed reverting to step 1.

Then – and also I'll just note the action to that staff will look into whether or not there's an option to view sort of clean versus redline. Is there anything – does anybody else have any other comments before we move back to Michael? Thank you, everyone. And, Michael, then we'll turn it over to you to switch to where we left off with your questions. Thank you.

Michael Graham: Thanks, Julie. Michael Graham for the record. And to repeat the question that I asked Mary over – by email, where we stopped the last time. My brain and my body both are just back from vacation so I think we were beginning Question 4, is that correct? Or have we moved on beyond that?

Julie Hedlund: Michael, this is Julie Hedlund from staff. I think we were at page, let's see, pardon me for not having this right up on top, pages – we were – there are two questions left to close out the trademark brand owner section.

That's the cease and desist letter and brand owner experiences regarding evidence of harm so that's Pages 18-20 in the document. So for instance if I were to sync this and move us to that, let me go ahead and do that.

Michael Graham: Yes, I'm just seeing a portion of the document on my screen.



Julie Hedlund: Yes, actually there I've made it smaller so people should actually be able to see. Okay so I think you're right and that – let's move to Question – looking at Question 4, okay, that's – sorry. Yes, obtain owner feedback on brand owner experiences regarding evidence of harm, but then also, right. So – and, Ariel, can you – can you just correct me if – okay, Ariel has her hand up. Please go ahead, I want to make sure we're in the right spot.

Ariel Liang: Thanks, Julie. Apologies, so the PDF is – the page is not in sync with the Google Doc. So if you look at the PDF it should be the bottom of Page 24, it's above the cease and desist question.

Michael Graham: Oh there we go.

Ariel Liang: If you look at Google Doc that's Page 18 at the bottom.

Michael Graham: Yes. Thank you, Ariel. Michael again. And let's see, do you have control then over the page? So the question – the purpose is to obtain feedback on the number of cease and desist letters sent and that's pursuant to the claims charter. And then the relevant charter question, I can't see the second part of the page on 25, "Does the trademark claims notice to domain," yes, "name applicants meet its intended purpose?"

Question. And then it's, "If not, is it intimidating, hard to understand or otherwise inadequate? If inadequate, how can it be improved?" And then there's a further sub question whether does it inform domain name applicants of the scope and limitations of I believe a claims service.

Oh wait a minute, I can go down now, thank you.

Julie Hedlund: This is Julie from staff. I've unsynced the document if that's easier so that everybody can scroll along or if you prefer I can leave it...

((Crosstalk))

Julie Hedlund: Kathy has her hand up though.

Michael Graham: Oh, Kathy.

Kathy Kleiman: Yes, I don't see how the cease and desist letter questions correspond to the charter questions. The charter questions seems pretty clear about the trademark claims. The cease and desist, you know, I just – they don't seem to belong here, it doesn't seem to have been something – I don't even remember it being something that the working group talked about or that the initial sub team talked about. And I think here it's somewhat leading.

You can of course send, I mean, we're talking about trademark notice and you can of course send a cease and desist letter legitimate or not and you can be upset if someone doesn't respond or responds with a no legitimate or not, and we're not exploring any of that here and I think it would be far too detailed for us to do it. And again, I don't see a correspondence to the charter questions; I think we're going was beyond our initial scope. Thanks.

Michael Graham: I'm – Michael. I'm having trouble navigating the document I guess, back to there.

Julie Hedlund: I can go ahead and – this is Julie from staff – I can sync it and navigate for you. So it's hard because we're right at a crossover of a page and then we have sort of synced information so it is hard to read. And so does that help? Is that – can you read that okay so we can see the text on both 24 and into Page 25?

Michael Graham: Okay, yes, now I've got it. Thanks.

Julie Hedlund: Great. And I see Kristine has her hand up.

Michael Graham: Kristine, go ahead.

Kristine Dorrain: Hey thanks. This is Kristine for the record. I just wanted to address Kathy's point. And I think I agree with you, your point is well taken. If we – we just want to remember that the far left column, purpose and scope, was the cochair drafted list of questions that was presented to the GNSO Council for the purposes of obtaining – could do the survey. So as I recall, the cochairs themselves kind of summarized what each of these – what each of these groups of us were to ask, and so we had done as we had asked staff to go in and say for the specific questions that the cochairs put to the GNSO Council, we wanted them mapped back against the charter questions.

And I think this is – this is that charter question. I agree that perhaps the question that was presented or the statement that was presented to the GNSO Council was less than detailed here.

But I think we want to focus really on the meat of it which is the charter question which is in the second from the left column. Does the trademark claims notice to domain name applicants meet its intended purpose? And when I – when I say that I mean the charter question as rewritten and rescoped by the entire sub team is in the second from the left column.

And in this specific case, I recommend that we just focus on that language and make sure that our actual survey questions map to the charter question, not just the little summary question in the far left, if that's acceptable to everyone else? Thank you.

Michael Graham: Thank you, Kristine. This is Michael for the record. And I agree, I think, you know, part of the work that we did on the relevant charter questions and retooling those and looking at them was to really focus in on what we were trying to get at and here trying to get at the effectiveness of the claims notices, how much they're used, etcetera.

So moving from that then into the actual anecdotal questions that we have next, the first anecdotal question, Rebecca, you've got your hand up.

Rebecca Tushnet: Thank you very much. So I wonder if the – one way to address Kathy's question and also to get more designer input into this would be to just switch it to, you know, what did you do in response to the claims notice or notices, right, ask them as many times as there were different responses. And that would – so I take it that, you know, if the thing worked perfectly, then you would never actually get a claims notices because all the infringers would be deterred, then there are some people who go on anyway and you want to evaluate that. So it may be that the appropriate reaction for most of those is to do nothing because maybe there isn't a problem for whatever reason.

So I guess sort of leaving it more open ended might allow the survey expert to do some input and also allow us to collect whatever information happens to be out there about what affect getting a claims notice had. Thank you.

Michael Graham: Thank you, Rebecca. Kathy, before I call on you I see your hand is up, let me just respond to Rebecca. So I think your point is well taken and in fact we've anticipated that because if you look at the data questions, which is what we want to get to, they follow that line of questioning that you've suggested, the first question being, "How many claims notices have you received for your trademarks?" The next question, "How many of these claims notices did you follow with a cease and desist letter?" That's followed by, "How many times did the applicant agree to abandon its application?" And I suppose that should have inserted in it, "as a result of your cease and desist letter?"

Followed by, "How many times did the applicant refuse to abandon its application?" And then that's followed by, "How many URS UDRP or other actions did you file against applicants that refused to abandon their applications based on likelihood of confusion, cybersquatting, or bad faith?"

My suggestion with that last one would be that we remove that last “based on” phrase to the end that’s getting into some matters that, you know, would require the trademark owner to determine which of those were the grounds based on which the applicants refused, I mean, this is just confusing and the question really is how many claims did you get? How many cease and desist letters did you send out? How many people – how many applicants abandoned their applications before going further and basically how many actions did you have to bring because they did not?

Kathy, you want to go ahead? I’m sorry.

Kathy Kleiman: Actually it looks like Rebecca wants to respond so why don't – and why don't I wait? Would that make sense?

Michael Graham: Okay.

Kathy Kleiman: Okay.

Michael Graham: Rebecca.

Rebecca Tushnet: Thank you. Rebecca Tushnet. I guess the reason I – I did review those questions and the reason I suggested something more open ended was, you know, I think we should be open to other possibilities. So as I understand it, the claims notice actually holds out the prospect that in fact the use might be fine, perhaps it's, you know, its hotel or, you know, one of these top 10 names that is in the TMCH or maybe it's a personal name and the registrant actually has that name, you know.

So the questions don't sort of ask, you know, did you leave it alone? And if so, why? And I think rather than fighting about wording, that's why I suggest sort of waiting for the survey expert to talk about the details of what happens then. Thank you.

Michael Graham: Thank you, Rebecca. Kathy.

Kathy Kleiman: Sorry, coming off mute. Right so I think the recommendation, Michael, is to delete – is to keep Column 3. So looking at Column 2 and keeping – and looking at Column 3, there's a close correspondence, it's asking about the trademark claims notice.

But – and that seems to make sense, so a trademark owner's perspective on both the trademark claims notice, and I think we should – we probably have to come up with a different word, the notice – there's the notice that goes to the potential registrant that the trademark owner may be receiving and then also the notice that comes from the TMCH database to the trademark owner if someone registers something in the TMCH. We want to come up with different terms to define that because I think we're asking about both.

But in terms of Column 4, I think the proposal on the table, Michael, is to delete those questions, anything with the word "cease and desist." There may have been – and replace it with what did you do in response? Because there may have been many things, somebody may have picked up the phone, they may have sent a cease and desist letter, they may have sent a regular letter, they may have sent an attorney across the street. So replacing anything with the cease and desist with what did you do in response.

And then given the detail that we're going to get into for the registrant questions later, I would say, and what was the domain name, so that we have some sense of the domain name in question because we'll be asking that a lot later in terms of our data gathering. Thank you.

Michael Graham: Thanks, Kathy, and I think you've got a great point there in that there are two types of notices and we need to make those clearer. I don't know if there's an accepted terminology that we could adopt. And then we also have the issue of, you know, the survey going out to make clear to the survey takers what

they're responding to and I think that's a really, really good drafting point that we ought to take a look at before the next time what the language may be.

As to the point of open ended questions, I think there's a great point there too. As you point out, that Column 3 is more open ended and let me run through that really quickly because I think that's another part of the question. And this is really asking for anecdotal responses rather than empirical responses.

So the first question that I've got – we've got there is, "Based on your experience, do you believe the," and again this is directed to trademark owners and brand owners, "Based on your experience, do you believe the trademark claims notice to domain name applicants has itself met its intended purpose?" And then there's a note following that.

Again, we might want to explain here what that purpose is said to be in the Applicant Guidebook and also provide a copy – and I suppose that's referring – I was referring to a copy of that statement of purpose for the review of the persons who's looking at it.

It might be easier to just put that into simple words, you know, what is the purpose according to the Guidebook and insert that here. I don't have it in front of me right now. Rebecca, is your hand still up or did you put it up again? Not sure. And, Kathy, I see your hand is up as well.

Kathy Kleiman: Sorry, my hand should be down.

Michael Graham: Oh okay. Okay...

Kathy Kleiman: Thanks, Michael.

Michael Graham: ...so I think that needs to be revised at the end there to provide that information. The second question was, "If you do not believe it has met its intended

purpose, can you say why you believe this?" Or I suppose, you know, I think the question is fine if we get too much word-smithing you know, we're taking away obviously we're just again, trying to give some guidance to the survey designer, otherwise I'd say, "Why do you believe this?" is all I would say.

The next question is, "Is the claims notice hard to understand or otherwise inadequate?" And I suppose to go back to your point, Kathy, that should be, "Is the trademark claims notice sent to applicants hard to understand or otherwise inadequate?" I think that's really what's being asked there.

And at that point let me just stop and see if anyone has a good suggestion of what the accepted term, let's say, or terms, we should use for the trademark claims notice that goes to applicants and the – I don't know what it's called, the notice of continued application that goes out to – or I guess the notice of registration that goes out to trademark owners once one of these registers if it does.

Anyone have a suggestion what terminology we might use in the questions that would make it clearer what we're asking?

Lori Schulman: Michael? This is Lori.

Michael Graham: Go ahead, Lori.

Lori Schulman: Hi. I don't think I'm directly answering your question – yes, I don't think I'm directly answering your question but I have a comment and that is to the adequacy of the notice. How is – so how is the – this is only going to trademark owners, correct? That's where we are, to trademark owners because if that's the case, I agree with something that J. Scott put into the chat about why are we asking trademark owners if it's confusing or why are we asking trademark owners about if they understand it? Or do you think we're really asking is this a good tool? Is this the right tool?



I'm a little concerned about getting so into the weeds and asking a question that would be difficult for someone to answer, well what would an adequate one look like? It's like asking them to redraft the notice. I don't know if that's fair.

Michael Graham: Thanks, Lori, I think that's a good point.

Lori Schulman: And maybe – yes, and maybe I could just follow up and maybe we go super hyper-simple and say, “Do the communications that you receive from the Trademark Clearinghouse make sense? How have you reacted to them?” Call them “communications” maybe not even give them the official name that we give them.

Because these at the very heart are communications and we're trying to find out are we communicating effectively? And are we communicating in a way that alerts people without traumatizing people for lack of a better word.

Michael Graham: Yes, Lori, Michael. I think that's a great point because again, and I guess this is where I will admit to it too in phrasing these questions of adopting and learning the language of the country in which we are living of ICANN and moving outside of that trademark owners who are not spending their 24/7 with ICANN matters may not understand and certainly communications from the Trademark Clearinghouse would make it clear, hey, is here anything that you're receiving from them? Is it clear? Is it not clear? Do you not receive anything? Open ended question.

And I think if I can go back then after this call and rephrase that question there and address it in that way that's the direction I would go with it.

Lori Schulman: Yes, I mean, my point is, because this is, again, I'm going to go to the learnings from the INTA survey, the more technical we try to get the more we're going to turn respondents off even well informed ones.

Michael Graham: Great. And I think addressing that as well, if I can go back to the earlier discussion of I think Kathy was brought up of making the questions more broad on the data questions rather than having it follow with a cease and desist letter, let me go back and rework that so that it is more, you know, how many of these claims notices did you follow up with some action? And then what action did you take? And I think then we would have to list some of the possible actions and it would be sort of a – I presume that when it got to the survey creator they might make of it a multiple choice sort of thing that you could indicate which ones.

The problem with that, which again makes it more complicated, is that then we would go on and ask the trademark owner, well how many of each did you do? You know, obviously that information becomes more vague or more difficult to obtain over time. But hopefully that would address both of the issues so that it's broad enough, it's not limited to cease and desist letters and it gets the information that we want.

How much – those – oh then at the bottom there was another question in the third column, "Does the claims notice inform domain name applicants of the scope and limitations of trademark owners' rights? If not, how can it be improved?" And that's the one that you know, I think if we – we'd have to give them a copy of that notice and have them take a look at it.

Frankly I don't think most trademark owners know or may be instantly aware of what's in that. Certainly I'd question whether or not they would be able to answer that question, maybe that more general question you were suggesting, Lori, would be a better way to go. Kristine, I see your hand is up.

Kristine Dorrain: Hi, thanks. This is Kristine for the transcript. I also support a more general question but I wanted to kind of even back it up a little bit because I think that in this case we are asking – this is sort of like asking registry operators if their pricing is bad for registrant. I think asking a brand owner if the trademark

claims notice to registrants is bad or ineffective or hard to be clear. I mean, I think that that's a little tough.

I think what we really want to ask here from a high level is – excuse me – going back to the sort of the list of data questions that Michael had was, you know, of the letters you got how many cease and desist letters, etcetera, take it back up and say, you know, when you sent letters tell me about these experiences you had. Were the people confused? Were they baffled? Were they shocked and appalled?

Like we want to know – we're trying to get in this specific instance some anecdotal evidence about why – about how brand owners interacted with or thought the claims notice went for registrants. In some cases the brand owner themselves was a registrant and may have also received claims notices because there's many brands that, you know, exist in the same universe.

But then in this case we want to find out did the brand – can the brand owners report dealing with registrants that were just confused and did they – were they frustrated? Did they think to themselves, gosh, you know, it would be really great if these claims notices said this or that or that would really help the registrants, it would really make my job easier as a brand owner and getting these claims notices like and really putting people on notice.

That's what I think we're getting at here, not really, you know, the brand owners trying to clairvoyantly figure out you know, how a registrant interpreted the claims notice but what was their actual interactions. Thanks.

Michael Graham: Great. And I wanted to go back real quick while I'm thinking of it, Mary came up with the terminology which I think I'll adopt, NORN and claims notice obviously being clear on that. And then addressing what you were just saying, Kristine, I think that's an excellent point, leaving out or removing the questions about the content of the claims notice and instead asking about the reaction to – or their observations about reactions to the cease and desist or

other action that they took from the trademark owners on behalf – the actions and responses by the applicants so that we can get that feedback.

And I'm sorry I think we're over our time, if I'm not wrong, we only had 60 minutes for this. Our next meeting I take it will be next Friday, Mary?

Julie Hedlund: This is Julie Hedlund from staff. Actually the next meeting – we're rotating the times so based on the last Doodle poll the next meeting will be next Thursday the 11th of January at 2200 UTC.

Michael Graham: Okay.

((Crosstalk))

Kathy Kleiman: What time Eastern is that, please? This is Kathy.

Julie Hedlund: Five o'clock.

Kathy Kleiman: Okay, thanks.

Julie Hedlund: Thank you.

Michael Graham: Okay. And after this call I'll go back and revise these questions under Question 3 pursuant to our discussion today and pick up with my brain back in tact hopefully on Thursday. So thank you all very much, appreciate it. Thank you, staff, for helping guide us through the use of the Google documents and I think we've got some good – good guidelines there.

And let me just ask that you send those out again just in a quick email form to the group so that we all have those in front of us when we're looking at the Google Doc this week.

I will have my revisions in by noon on Saturday so that after that anyone who wants to make any revisions or questions to that Question 3 and beyond can do so. Thanks a lot. Have a great day. And, oh, by the way, happy New Year.

Julie Hedlund: Thanks, everyone.

Kathy Kleiman: Happy New Year.

Julie Hedlund: Happy New Year.

Michael Graham: Okay, I think we can stop the recording then, Ariel, or Julie, whoever is in charge.

Michelle DeSmyter: Thank you so much. Operator, you can disconnect the recording and all remaining lines. The meeting has been adjourned. Have a great day, everyone.

Michael Graham: Thanks.

END