

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) Sub Team for Data
Friday, 09 February 2018 at 17:00 UTC**

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Coordinator: Recordings has started.

Michelle Desmyter: All right, thank you again. Well welcome everyone good morning, good afternoon and good evening. Welcome to the Reviewable Rights Protection Mechanism Sub Team For Data call on the 9th of February at 1700 UTC. On the call today we have Rebecca Tushnet, J Scott Evans, Philip Corwin, Kristine Dorrain, Susan Payne and (Cynthia King). We have apologies from Lori Shulman, Kurt Pritz and Michael Graham. From ICANN staff we have Julie Hedlund, Berry Cobb, Ariel Liang, Antonio (Ta Mianjicati) and myself Michelle Desmyter. As a reminder please state your name before speaking for transcription purposes and please utilize your mute button when not speaking. I will turn the meeting back over to Rebecca Tushnet. Please continue.

Julie Hedlund: Actually thanks. You know, I'll – this is Julie Hedlund from staff. I'll just quickly just go through the agenda and then I'll turn things over to Rebecca. And just to remind everybody today we're going to start with a discussion of Section 5. We did not finish Section 4 but Kurt is unable to be with us today so and Rebecca is so we're going to go ahead and start with Section 5 today.

And then, you know, and then we'll just also confirm the timing of the next meeting. The next meeting is at the end of this call. Does anybody have any

other business they'd like to add today? I'm not seeing any hands raised so – and note for everybody that the Google doc is now unlocked and the link to that document is in the Adobe Connect room. So you can follow along in the Google doc or you can also follow along in the PDF that we have here in the Adobe Connect room. And thanks everyone again for joining and over to you Rebecca.

Rebecca Tushnet: Thank you very much. This is Rebecca Tushnet for the record. So what I want to start with is I think Susan's intervention from last time was really important which is that in fact people may fit into more than one of the categories we've discussed and so we should make sure that everyone who is in a category is asked the relevant questions. So someone who tried several domain names in new gTLDs and didn't succeed is also – may also have ultimately succeeded and so may count as an actual registrant as well. And we should make sure that we are sending people down the path of, you know, both sets of questions that were in that case without, you know, repeating questions that are simply duplicative.

But so the way I would frame the groups we have are the actual registrants in new gTLDs were subject – who are targeted in Section 4 and then two groups which may also overlap with one and with each other. So there are people who attempted but didn't finish registrations in new gTLDs and then there are people who would consider registering in new gTLDs in the future that are kind of target audience for the notice. And, you know, two and three deserve somewhat different questions. So in particular two people in Category 2 who attempted but didn't finish should be asked why?

And I have proposed and in their own words answer and then we can follow up with ticky boxes by which I mean, you know, boxes you can check as many as apply and then further prompts but I think how the question should be asked would also be a matter to serve for the service provider to weigh in on. And we can talk about what, you know, we might want to suggest. But I think that is kind of the key question we're interested in. And, you know, if we

find that someone received a notice or received an objection of some sort during the process because they might not know the name, you know, trademark notice we ask them what they did.

And this is the key question we're interested in and it's - I think it is worth asking to get as much information as we can and then giving more specific ticky box options again to be discussed with the surveyor I think it's really important to avoid leading questions here as much as possible. So, you know, we might want to see, you know, did they think it was not worth the time? Were they not sure about their legal rights? On reflections were they – did they think on I don't have the right to do this? Were they unsure whether they'd get sued and, you know, fearful of that risk and so on. But especially since a lot of these are going to be hard to frame in non-leading ways I think it's really important to try and get some general responses first. So in terms of, you know, conversations maybe now would be a good point to stop and listen to other people.

Julie Hedlund: And Rebecca, Phil has his hand up.

Rebecca Tushnet: Yes, yes Phil thank you.

Philip Corwin: Yes hi. Thank you Rebecca. Hey and thank you for your work on this. Before we get into the actual discussion of the actual questions I had kind of an overarching question which is, you know, some of the other parts of this survey it's easier to find registries, it's easy to find registrars but it, you know, how are we going to find registrants generally who registered new gTLDs much less that subset who may have received a trademark's claims notice and either halted or went on with the registration? I'm just trying to when we talk with the survey providers does anyone have any idea how we're going to, you know, try to identify and get these questions to that meaningful subset of the human population are not? So...

Rebecca Tushnet: Yes.

Philip Corwin: ...that was my question.

Rebecca Tushnet: Thanks Phil. So I think we've discussed this before and there are kind of two ways to go about it. One is to, you know, try and see if someone in the, you know, registry registrar space will be willing to send out a survey. And that would get at the at least people in Category 2, right or it certainly has the prospect of finding people in Category 2 those who, you know, tried but weren't able at least with respect to at least one gTLD.

And for Category 3 I think there – we're at the stage where there aren't really significant survey panels out there especially for people doing Internet things. So I think it actually might well be feasible to have Survey Monkey or one of those providers implement the survey. And it's true you probably have to ask a whole bunch of people before you got the, you know, 500 who had at least tried to register or would consider registering a new gTLD but I think that's eminently feasible given the existence of these large Internet survey panels. But again well those are my thoughts. The survey provider may have others.

Philip Corwin: Okay thanks for that response -- appreciate it.

Rebecca Tushnet: So I think that (Cynthia) has asked a question in the chat. Does Survey Monkey rely on self-qualification of respondents? So the answer is I don't work for Survey Monkey so I can't really tell you. But also (Cynthia) I think it's important to recognize that in Category 3 at least we are actually talking about potential consumers. So the classic way of figuring out who the potential consumers are is to ask them is this the kind of thing that you would buy? And, you know, that's generally recognized as a perfectly good screening question for trying to assess the understanding of the relevant group. And so I guess I would have no problem with someone who says, "Yes I might well try and register an Internet domain name in the new gTLD." Should I move on? Would it make sense to move on or any other hands?

Julie Hedlund: I'm not seeing any other hands Rebecca so I would think you could move on.

Rebecca Tushnet: Okay so okay in terms of people who - okay where was I? Right, so the next big thing is the - some general comprehension question. So here we're not interested in people who had received in oath. We're interested in what the target group, that is people who may register domain names in new gTLDs, what they understand the notice to mean. So this is the part where you present them with the language of the notice and then and then just ask them so comprehension questions. My personal preference would be to ask them first to explain in their own words, you know, what they think the notice means. But the survey expert may think that too much. I think what we want is the least directive guided responses possible.

Right so, you know, on the order of someone else has the right to this domain name, someone else may or may not have rights to this domain name. You know, I will get sued if I register this domain name, I may or may not get sued, I should talk to someone else to figure it out and so on. And I think there, in the document there are a couple of different ways of getting at this. I'm not particularly wedded to any one of them but and again I think given the importance of wording it might not be the greatest idea to try and settle on anything right now. I mean but I may get overridden on that. So Kristine you have your hand up please.

Kristine Dorrain: Thanks. This is Kristine for the transcript. Yes I think I mean obviously you're going right to the heart of the matter here which is showing the notice and getting some feedback on like sort of what does that mean to you and does that strike terror in your heart and are you going to run away screaming? My only suggestion is perhaps we could switch the sort of bracketed suggestions for the provider.

So what we really want is give – tell them what we really want to do is as comprehension questions. And then maybe we can say ideally would be explain in your own words. But I'm worried again about, you know, I keep

coming back to this about being too dictating about what it is that the, you know, and if we get zero responses to a fill in the blank question and, you know, 100 responses to some sort of a multiple-choice drop-down, you know, tick all that apply, you know, tick all the things that come to your mind when you see this, you know, I think we would prefer even if it's not quite as perfect, I think we would prefer the 100 tick box responses to one or zero sort of I've taken the time to type. So my suggestion just is to switch brackets and say give the guidance first and then the suggestion for how right after thanks.

Rebecca Tushnet: Kristine thank you. I think that's a great suggestion and let me just clarify my preference would be for, you know, the fill in the blank prompt first and then guided questions just so that we wouldn't have to choose. You know, it may well be that people will not give great responses in the, you know, fill in the blank but we can still then ask them and get our second best. So I absolutely agree that probably shouldn't be just a fill in the - a blank box.

Other people with comments, questions? All right then I think I will continue. So the final - there's kind of two things at the end and we're going through this at a pretty rapid clip which is great. One possibility is to ask them to imagine that they were going to register something like chipotle.sucks and - or xerox.careers or, you know, xerox.copiers even right, so something that I think we would all have no trouble saying only Xerox should be able to register that or apple.farms and sort of what they think in response to those different scenarios, what the notice would mean because I think it may well be the case that once you - that people might interpret the notice differently depending on what they thought they were trying to register right because I actually my guess is that somebody looking at that notice saying, "You know, somebody else owns the trademark in Apple. Do you really want to continue," who wants to register apple.farms will probably say yes much more often than someone who's trying to register, you know, xerox.careers.

But that is a total guess and it's certainly what we hope the notice will convey but I'm not sure we know that. And so it might be worth asking the hypotheticals just to see whether that is affecting uptake or not. And Kristine?

Kristine Dorrain: Kristine for the transcript, thanks. I see where you're going with this. I'm not – I think engaging in hypothetical can have value. I worry that it's a little bit of a slippery slope. I worry that a lot – people make decisions based on the lot of nuanced information. And I worry that we - some people in the broader working group may try to extrapolate too much meaning into that data. So I'm not really opposing it per se as much as really expressing some concern about is the – is what we're going to get out of it worth whatever sort of mayhem results from gathering the data I guess?

And then my second point is just as a major brand I guess I would prefer not to be any part of an example. And I'm sure most other prems are the same. So I'm not sure how we would approach that. I know that I'd probably get outvoted on that but at least I want to have that on the record. Thanks.

Rebecca Tushnet: So thank you Kristine. This is Rebecca again. I guess I absolutely understand your point and yet it seems to me that that mayhem is going to occur about the previous question. So, you know, we're asking this comprehension question and we're kind of asking people to interpret the notice in the vacuum - in a vacuum. We don't know what they're imagining they're trying to register. So, you know, the - I think we'll have the same set of objections to that as we would to the more exemplary questions.

And frankly I mean look I think I guess I hope that we would actually see a difference in, you know, xerox.careers versus apple.farms. If we do that would be great. It would show that the notice was at least doing some of what we hope it will do and which is why by the way I think we have to use well-known brands. You know, we could ask the survey provider to rotate them so that nobody gets, you know, particularly no axe - no ox is particularly gored or Xerox I guess. But I feel like that data will actually be, you know, better

quality. And I absolutely understand your concern but I feel like it's going to happen anyway. So sorry switching windows here to see what else is going on. So Kristine do you want to respond to that or is that an old hand?

Kristine Dorrain: Yes thank you. I - thank you. Yes I do want to respond to that. This is Kristine for the transcript.

So let me - this is maybe - let me use your exact example so apple.farms do we assume -- and I'm not asking if you are or not -- but do we assume then that any person who goes to register apple.farms is narrowly and by default not intending to have any sort of relationship with the brand? I mean you and I would - you and I we're, you know, we believe people are good, really and people are essentially good. If you're an apple farmer and you want to go register apple.farms, you know, you're yes fine.

But let's be honest about what we see in cybersquatting. Do we - and I'm a registry so I don't take that word lightly. Do we trust really? I mean do we assume that any person who's responding to the survey would register apple.farms with a purely innocent motive and no bad faith intent? And I'm wondering I'm worried about a hypothetical making sort of assumptions that any registration of apple farm must necessarily not come coupled with that (unintelligible) and such?

Rebecca Tushnet: So Kristine let me just respond to that briefly and then we'll get to Kathy and then I think Susan's hand is up. So it's an absolutely fair point. We might be able to if we go this route and we have rotated questions it actually might be totally worth testing right? So I want to register chipotle.sucks, you know, as a criticism site versus we can give some respondents, you know, you were going to register chipotle.sucks, you know, and try and sell it to Chipotle so that they could suppress criticism right or apple.farms, you know, for your apple farm versus apple.rarm, you know, and you were going to put up computer related stuff and hope to make money advertising through advertising revenue that way. I think actually we could probably work up

some scenarios. And, you know, again we wouldn't satisfy everybody but the utility of asking some more specifics is to actually have respondents try and apply the notice instead of in the abstract to general situations. So I think Kathy is next and then Susan.

(Kathy): Hi everybody. It's (Kathy). (Becca) thank you for all of the work that you've done on this. To Kristine's point that we should use, you know, major brands, certainly not major brands involved in the discussions makes sense. What I wanted to share is the amazing opportunity Rebecca that you've drafted here to actually look at the trademark claims notice and have real people looked at it.

I have to confess I'm looking at it now. It says you've because you receive this trademark notice because you've applied for domain name which matches at least one trademark record submitted to the trademark clearinghouse. You may or may not be entitled to register the domain name depending on your intended use and it goes on from there. And I look at it and I face Paul.

Paul McGrady and I drafted this in a weekend. We didn't run it by anybody. We didn't have a focus group. We were on a very narrow time frame and the idea that we can run it by real people and see what they think of what two, you know, intellectual property free speech attorneys drafted is incredible.

You know, it's about time. And so I really think we should run it by, we've got this global audience. Do they even understand what we're trying to share with them? That's kind of the fundamental premise of what we're doing so I think it's a long-overdue opportunity. Thanks.

Rebecca Tushnet: Thank you (Kathy). Susan?

Susan Payne: Yes sorry, hi. It's Susan. Yes I'm not sure that I'm going to add to the discussion as much as I agree with Kristine. I completely get where you're

coming from in terms of the earlier questions all seem to be in the kind of abstract. And we of course don't know what name the potential registrant, the survey respondent has in their own mind when they're, you know, putting themselves in the shoes of someone receiving the notice.

But at the same time we still, you know, although we're trying to pick examples which we think will take them down one path or another we still don't really know. You know, xerox.careers for example, you know, someone may be sitting there hypothetically thinking they might apply for xerox.careers. And they may be, you know, they may be doing so because they are in the recruitment business and they think this is a, you know, a perfect way to recruit new people or, you know, they may be someone who thinks oh this will be a, you know, a good way to scam people.

And I'm not sure how we address that unless we try to pick really extreme examples so that there's sort of only one way you could view it when you're reading it. But I do also sort of second Kristine's concern about the, you know, many brands are not going to want to be, you know, would be unhappy at the notion that we've selected them for this process. And also unless we choose extremely well-known brands there's a danger that the person receiving this won't actually know the brand.

I mean, you know, I'm assuming Chipotle is some big brand. I don't particularly know it. I think, you know, I don't really know what it is and what it does. And so if you're in a country where that's not really a brand you know that example doesn't work for you. So unless we're going to pick the really big multinational brands we don't even know if the people receiving this survey will recognize what they are.

Rebecca Tushnet: Thank you. So, you know, these are good points but first of all I guess my reaction to many brands being unhappy that they've been selected is okay I'm sure they will be or actually I'm not entirely sure they will be. But, you know, that actually doesn't – shouldn't really factored into our data-gathering

it seems to me. If they are useful in data-gathering I believe that's part of the process. And I will point out in fact that Coca-Cola and I think there are a couple others, IBM, Chevrolet, those are routinely used in surveys to actually kind of orient people sort of what they're - sort of when respondents are being asked sort of what do you think about, you know, this brand versus that brand especially in generic these survey.

So it's not like this is some, you know, wild eyed scenario but I think it's a quite fair point. You know, if we do propose scenarios they should be globally famous and we – they may have to be extreme. You know, honestly extreme is better than nothing. Again, you know, if looking at this notice an average respondent can say, "Oh yes I should probably rethink apple.farm for parking computer ads and would think I should go ahead with apple.farm for an apple farm," that's great. And it may be, you know, we still wouldn't necessarily know everything we needed to know but we'd know more than we do now. But I think it is absolutely fair to say that, you know, we need to - we would need to use well-known brands and that we would - it's a great point that we need to put in some scenarios which is well I guess that's what I've got. So Kristine your – you put your hand up?

Kristine Dorrain: Thank you, Kristine for the transcript. Yes I'm not going to die in the hill of not using brand names. I'm just saying I think you're going to get pushback and not just for me. I think the entire group I think anyone who's a brand there is probably going to push back on that. So – but I am not going to be the single person to die on that hill.

What I'm really concerned about and I think I mentioned this is the use of hypotheticals all together. I love the idea of checking up a notice and asking real people to tell us what they think and would they be scared away and what does that mean to them. And I think that's great and I think that's absolutely the right path. I just really am concerned about the hypotheticals.

Can you - and J Scott asked this in the chat also. Can you help me understand what we're going to get from a hypothetical that we could not get from other targeted questions about the notice? I mean and even maybe more than just explain in your own words but you said, you know, ask more comprehension questions. Is there other ways that we can get at the same information without using hypotheticals because I'm just worried that it's going to be misinterpreted? We're going to make inferences, you and I might not put other people will make inferences about what people intended to their hypothetical?

And I know yes it's going to happen to all of the questions. But hypotheticals are really dangerous. I think I remember you're a law professor and I know I was an adjunct for ten years hypotheticals are scary and I just really worried about it. Can you help me understand more about why you feel strongly about including that?

Rebecca Tushnet: Sure. So this is Rebecca again. The reason that I'm proposing them is I think that we are really interested in the question of deterring good faith nonproblematic registrants right, so false positives versus deterring bad faith registrants, you know, true positives. And we don't know whether this notice has potential to do that right?

So, you know, among the many things we don't know and it would be - we are - we've debated the data collection on this is kind of what's the underlying rate of false positives and true positives which is still going to be an issue. But at least it would be nice to know once you get to the notice what does, you know, what does someone who puts themselves in the place of kind of a good-faith registrant think when they see this notice versus what does someone who puts themselves in the place of a bad faith registrant think?

You know, maybe it does scare them off. That would be good. But, you know, we've - right now we just have zero empirical evidence. And I think Cynthia

suggesting if we want to make up something where there is – where we can also make up a scenario where there's a pretty understandable fair use like actually we could do – we could make up a famous brand called horse and, you know, for computers and have say and have, you know, horse.gov and horse.farm right? This seems fine to me. Like I too do not want to die on the hill.

But I feel like the – we don't know what people think, what ordinary non-lawyers think when they see this and, you know, examples of the ways that you test that. And indeed, you know, that's why we use them in teaching all the time because it helps you figure out what the rule is. Let me see so Kristine do you want to say more about that?

Kristine Dorrain: Thank you. Yes this is Kristine and I did put my comment in the chat but I have a suggestion also. My comment is I think the problem here is you and I think that we could – you and I could probably sit down and everyone on this call couldn't sit down over a cup of coffee with 150 different domain names and do – again John Berryhill calls it the smell test. He says I can look down either WIPOs or forums a list of pending cases and with like, you know, a 99% degree of accuracy by simply looking at the domain name I can tell you whether or not the complainant's going to win or lose because you can just kind of tell bad faith or good faith by looking at the domain name. And I think that's what you and I are thinking about here today.

The problem is, is good faith and bad faith is a spectrum. It goes to intent. It goes to what you've done in that intent. It goes to sort of a middle. And you can start with good intent and switch to bad intent.

And I think when you ask people who maybe never registered a domain name or have only registered one or have – are kind of new to this process, you know, well yes I'm here to register a domain name. What do you mean good faith, bad faith. Of course I can register this. Of course I can register

that. So we're not asking experts to decide this like you or I or John Berryhill. We're asking random people. So that's...

Rebecca Tushnet: So...

Kristine Dorrain: ...my concern. My - here's my suggestion and I'd like to make a suggestion. I'd like to make a suggestion that we - and we talked about this on a different question where we say, "Would you like - we're looking for people to be part of a focus group. If you would be interested after this question, if you would be interested in helping us refine this notice more by answering more detailed questions, you know, please off road - off ramp here. Like, you know, we'll contact you, we'll reach out to you, maybe there's a second survey." What do you think about that about saying just for people who want to know more but don't think this is a waste of time to dive deeper on this what do you think of suggesting an off ramp here?

Rebecca Tushnet: So Kristine first I'm sorry I have to leave the chat room. I'm still going to be on the audio bridge so my apologies for that. But I have no objection to that. It's clearly just kicking the can down the road. But, you know, if we got more real people and I guess the other part of my reaction to what you said is yes of course these are people who are not experts. That's why we need to know what they see when they see those notice right?

But you're absolutely right. We don't expect them to notice it - to understand it in the way that lawyers do. And that's kind of our problem and that's why asking them would be so important. But if you - but I certainly have no objection in principle to the focus group. You know, I think that can be quite helpful. I've used it with some - with terms of service stuff in the past. You know, you do get slightly unusual people participating but it's certainly better than nothing for laypeople. And I'm sorry could someone tell me if there are people in the queue now because I'm very sorry but I can't see it anymore?

Julie Hedlund: Yes actually (Kathy)'s in the queue.

(Kathy): Cool, (Kathy). So this – two things. One is we do need to ask staff about focus group and funding if that becomes an additional issue. The other is I just want to share an example of where examples worked. So we had what I think is actually an even harder problem with the Whois Review Team. We've been trying to find not even registered, people around the world and ask them about their reaction to the Whois? And this was, you know, close to a decade ago. And so this was, you know, this was hard.

And so it was that example. It was, you know, not the survey people, not that our survey people need to go nearly this far because people are much more familiar with domain names than they are with the underlying domain name registration data, the Whois database particularly a decade ago. But it was that sitting down with ordinary people with a computer and showing them an example of the Whois record that was the basics of the study.

And I just wanted to share and then I'll stop. Sorry I'm talking long. Mary Wong says there's no budget allocated for a focus group under this data request unfortunately. Back to you Rebecca. Thank you.

Rebecca Tushnet: So thank you (Kathy). I mean so one possibility would be that, you know, I'm certainly open to the idea of asking, you know, a subset of respondents like would you like to answer some more questions about scenarios and seeing what happens. And that way we could put it in the main survey. You know, I just think it's something worth doing.

But and this is not something where I can promise to try and get funds on my own although – I mean I could try but then I think we'd also have the same problems that we're having in the main group. So let me take another run at these and maybe I can sort of make up the horse example and think about what we might do.

But I mean and to Kristine's point that people aren't necessarily going to know what good faith and bad faith means I guess that's kind of the point that if that's the case then we need to see if the notice is at least pointing them in the right directions. So, you know, one possible response would be, you know, I would try and consult some online resource about trademarks or I would consult a lawyer or something like that right which in some ways would be the greatest answer they could give. So that's it for me. Other people – are there other people in the queue?

Julie Hedlund: Yes there are. Susan and then J Scott.

Susan Payne: Yes thanks. I'm sort of in the queue to ask a different question so I want to make sure that we finish this point first so maybe I should – I'll (seat) to J Scott first of all and then come back if that's all right?

J Scott Evans: Hi there. This is J Scott for the record. Can you hear me?

Rebecca Tushnet: Could you speak up a little? I'm sorry, I'm having trouble hearing you.

J Scott Evans: This is J Scott can you hear me?

Rebecca Tushnet: Yes thank you.

J Scott Evans: Okay. As I said in the text, chat box -- and I'm saying this on the record because unfortunately Rebecca had (unintelligible) and I understand that. That happens to me all the time.

So what I'm concerned about with hypotheticals is it's hypotheticals that become very nuanced depending on the facts. And I think you can ask comprehension questions or reaction questions without the hypothetical. You can present the notice to people and say, "Do you understand what this notice is trying to convey, yes no? Does this notice intimidate you from making a purchase," or I mean that's probably a leading question. But we can

ask objective questions about the notice itself without having to have hypothetical because, you know, one you have to understand their use. You have to understand trademark rights. You have to understand a whole lot of things to, you know, to – I can't imagine there very well may be some of the things. They have a right to register apple.farm for apple products that would be targeted to farms just because they don't understand trademark law.

So I think if we're trying to find out if - what the notice if it is having an intended purpose I think we can ask questions like that without having to do – get into the nuance of hypotheticals which then requires the person answering the question to understand the basic trademark law (hierarchy), (unintelligible) (phone use) -- all those concepts and then look at the notice it's okay in Example A that is a clear trademark. So the notice serves its purpose because it tells me that I, you know, I just think we're getting too nuanced. If what we're wanting to know is this is intimidated this - where you just turn away I think when we were - I'm not sure where we were. Perhaps it was when we were in Finland when we were in Helsinki I think we had Brett Fausett come up to us to say that he had, you know, empirical example of a couple of mothers who were trying to register and wanted their - and they were just totally freaked out by the notice, completely freaked out by it because it looked like some very intimidating legal document. It scared the bejesus out of them and they didn't want to move forward.

So I mean I think we can get that type of information by acting – asking objective questions about the notice itself, the wording itself, what is it conveying, how – what reaction do you have it without saying, "Well if you were going to register coca-cola.soda versus coca-cola (sun) how would this affect you because I think that is - we're expecting that the average person has a nuance of well in one scenario it's correct, in one scenario it's maybe incorrect. I mean I just – I don't know but I just think we're adding levels of complexity here and nuance here that we don't need to get to the kinds of information we're wanting to do which is this - are people, average people

understanding what the notice is set to do and is it having the intended consequence or are there unintended consequences associated with that?

Rebecca Tushnet: So J Scott thank you. The reason – so let me first say I'm certainly not saying we shouldn't ask the abstract comprehension questions. If people in the working group believe that those are the only questions that - whose answers they want to pay attention to I, you know come they can do that right? That's certainly within their capability.

But it seems to me there's two things, one smaller thing which is I don't think our mandate is limited to, you know, is this or is this, you know, terrifying people or not? I mean if we want to answer that now yes it turns out it's terrifying some people. But we also I think are asked, you know, can we improve it? And we need to know a little more about exactly what it's doing if we are trying to improve it.

If the real answer is that there's nothing you can do, it's either terrify people or nothing well that's important information. But maybe there are things that could be better and maybe there are non-terrifying ways to present the information. That would be great.

So then in terms of the broader picture what it seems to me that you are presupposing and it may well be true, is that people are so - laypeople are so ignorant that they can't make this assessment themselves. But A, that seems completely contradictory to the idea behind the notice which is that it would give people some notice to which they could react. You know, if you really believe that people are so dumb they shouldn't be able to register - or I'm sorry not dumb. The average person is so rationally ignorant of trademark law that they just wouldn't be able to make the assessment that I don't know why we're giving them notices in the first place and we should be doing something else whether it's barring them or having a, you know, a trademark examiner review it or something.

But the system presupposes that people can make thoughtful choices. And yes examples won't get every case. Of course they won't but it'd be nice to know if the notice were capable of helping people make rational choices. Maybe it's not. That would also be useful to know. Thank you and I'm sure there are hands now. Can someone let me know?

Julie Hedlund: Yes Susan has her hand up.

Susan Payne: Well yes I do although it wasn't particularly to respond to that point. I mean I think, you know, I'm still in kind of agreement with J Scott and with the concerns that Kristine's been expressing. And I think we can get the issue we want by asking the various questions, you know, without the hypotheticals. I think - I do think we can. We - I don't think we - you know, I think - and frankly I mean we talked about this quite earlier on in our work. And I think most people in the working group think that the notice is probably not ideally phrased and could, you know, and could benefit with improvement.

So I mean, you know, yes we must do data-driven development policy development, et cetera. But I mean I think we were all expecting that the responses we'll get for this will be exactly what we already know they're going to be which is, you know, if you're not in the, you know, not in the field and, you know, not an expert in this area, not familiar with trademark rule not, you're not, you know, you're probably not going to understand the notice. And therefore, you know, I'm not sure how much extra we get by the hypotheticals that we don't get from the other questions and frankly from the kind of already the anecdote that we had.

I think, you know, I don't think there's any dispute in the working group that we all think it would be a great exercise to have a go at improving the notice. But I guess I'll put my - I just want to flag this when we finish that I did have a point about the earlier question that I do want to make but I think we should keep going with this conversation first. So I'm going to sort of put my hand down and put it back up again.

Rebecca Tushnet: Okay. Well actually I wonder if I could ask you to do that now just because, you know, I hear what you're saying. I do think that we could get useful information about whether people are understanding, you know, the kind of basic things that the notice is saying with some actual examples to work with even if it's a, you know, a hypothetical horse name is (Mark). But let's table that and I hear you. Could you say your other thing please?

Susan Payne: Sure. And really it was just a question because and I'm sorry I may have missed it when you explained but I – the sort of various bullet versions about the one without the hypothetical there was sort of a whole range of questions that sort of are kind of asking the same thing in different ways. And I just wasn't really clear about why that is. And I'm not sure if that's because you're just suggesting alternatives and the idea is that, you know, one with the survey provider we'd work out what's the best way to express this or whether you're viewing them as or eliciting different information that's relevant. And I did - so I just – it was just a kind of question. If you could kind of clarify that would be really helpful.

Rebecca Tushnet: Yes thank you for that very helpful question. I mean you're absolutely right. I was thinking of them as sort of alternatives to prevent – to present to the surveyor because, you know, I think as what we saw with Section 4 demonstrated as well it's just really hard to formulate nonleading questions. And so I was sort of throwing them out there but I do think that the wording it - that there are several different ways of asking the same thing and we should try not to be redundant but here are some possibilities, let's talk to the surveyor but absolutely, absolutely.

Susan Payne: Thanks Rebecca. That's really helpful.

Rebecca Tushnet: Are there other hands?

Julie Hedlund: There are no other hands at this moment.

Rebecca Tushnet: So the only other thing that I have after that is just this sort of catchall question which I think now based on the discussion from last week should be moved up to the beginning basically trying to catch people who didn't know exactly what happened but who have – know they've received some sort of objection. And, you know, obviously the – based on the discussions from last the wording can be tightened up to at least try and limit it to, you know, trademark objections to the domain name.

But I think it would be quite helpful to see – to just ask to see if we can find people who don't really know what happened but something did happen. And so I would just say based on last week I would actually propose not having that separate but doing it upfront with the stuff we discussed with Kurt.

Julie Hedlund: And Rebecca Kristine has her hand up.

Rebecca Tushnet: Thank you. Kristine?

Kristine Dorrain: Hi, thank you, Kristine again. So just so I'm clear we're talking about if we're looking in the PDF -- and you might not be there so I'm just going to -- I'm going to read it. The part that's currently highlighted in period if you have registered a domain name have you received any kind of objection to your choice of a domain name? If yes what was it URS, UDRP, a letter from us -- don't know, not sure. Is that the question we're talking about?

Rebecca Tushnet: Yes. Yes Kristine, thank you.

Kristine Dorrain: And that one you're suggesting goes at the very top before we decide if someone is a potential registrant, a would have been registrant, a never got to be registrant -- whatever it is we decide, that's correct?

Rebecca Tushnet: Well no. It would be, you know, they would actually have to have registered in order to be asked that question right? So people who are only in group three

wouldn't be asked that question but if someone was perhaps in group two and group three we might want to ask them.

Kristine Dorrain: Okay I'm going to continue going back and forth with you just so I'm clear. I'm not arguing with you at all.

Rebecca Tushnet: Yes.

Kristine Dorrain: I just try to figure it out. So we want to find out what type of former current registrant these are. And so you're proposing that this question precedes the I'm going to show you the claims notice?

Rebecca Tushnet: Yes.

Kristine Dorrain: Okay. And then after that after you get the answer to this then you could go to the claims notice. I see. Thank you.

Rebecca Tushnet: Are the other hands?

Susan Payne: Yes I'll just leap in. It's Susan, Rebecca. I'm not arguing either but I kind of - I'd assume that this after the discussion last week would move into the, effectively into the domain name registrant section to the extent that it's separate for the - and I recognize that arguably those pots of people are kind of the same people and then they get targeted down one route or another. But that had been my assumption that this is about someone who has registered domain name so they kind of - they aren't the potential registrant. They're a registrant. Am I wrong?

Rebecca Tushnet: So thank you for that actually. So my understanding of last week's conversation was especially, you know, after Susan's really important point is that yes these are overlapping buckets and therefore we actually have to consider the questions to them as potentially overlapping. So now there are people in that I would call potential registrants who could of had this happen

to them so I would call people in Category 2. So if you're only in Category 2 or only in two and three like pride and sales would consider it in the future I'd think of you as a potential registrant right or even if you just tried and failed. You know, you certainly wanted to be a potential a registrant, that makes you a potential registrant in my mind. So although it does make sense to merge these categories in the way that the surveyor, you know, asks them and then send people down different paths I do also think of them, at least some of them as potential registrants. I hope that answers your question.

Susan Payne: Sorry yes. I think it does. I think it does. So let's - and I'm happy to take credit for the comment by the way. I've been taking credit all call but I'm not sure it was actually me who made this point but I'm happy to be associated with it. I think it may have been Kristine.

Rebecca Tushnet: Oh really? Then my apologies if I misattributed it. I didn't want to take credit for it myself but if I've been giving credit wrongly then I apologize.

Susan Payne: That's okay it's just Kristine's usually the one that comes up with really sensible suggestions.

Julie Hedlund: And I'll just note there are no hands up at the moment.

Rebecca Tushnet: Well, you know, I think this has been a really useful discussion. I wonder if it's - if I should be able to give you back a couple minutes of your time after staff reminds us what we're all supposed to do next.

Julie Hedlund: Sure. And Rebecca just for some clarification do you want to take a first cut at making edits or would you like staff to try? Staff is capturing notes so...

Rebecca Tushnet: Okay.

Julie Hedlund: ...we will send those out right after this call. But it seemed that, you know, there weren't specific textural changes, more, you know, discussion around

the approaches and so on. So, you know, we'll leave the document unlocked if you would prefer to make edits.

Rebecca Tushnet: I'm happy to make the edits. Am I allowed to make changes in the text? I ended up sort of unclear about this. I guess I would prefer to make at least some of these changes in the text like, you know, moving any discussion of did you receive any objection at all up towards the front?

Julie Hedlund: Yes you are allowed to make the edits yourself and that's really actually preferable. So the way the document is set up right now is that you can go ahead and edit and it will show up...

Rebecca Tushnet: Okay.

Julie Hedlund: ...as a redline.

Rebecca Tushnet: Okay. Okay so I'm happy to take a first pass at that.

Julie Hedlund: All right wonderful, thank you. And I see also J Scott has a question, what's the status of the survey provider RFP? And for that I'll defer to Ariel please.

Ariel Liang: All right thanks Julie. This is Ariel from staff. So the status right now is we have received interest from several vendors. We have actually six at the moment and we will keep this space open till Monday next week. And then following that will be a interaction period where vendors can ask questions about the RFP and we'll respond. So we do have quite a few interested vendors.

Julie Hedlund: Thank you very much. And J Scott is saying thank you Ariel and good news. And then I guess the final item on the agenda is just to remind everybody we will meet next week at the same time. So and I think we have completed the discussion of Section 5. If Kurt is available perhaps we could circle back to

Section 4 otherwise we also have Section 6 to address. Is there anything else anybody wants to say before we sign off?

And Phil is saying sounds good. And we have a couple people typing. And well and just thanks to all of you for joining today. This is extremely helpful and I hope you have a great weekend and we'll talk to you next week. Thanks everyone.

Susan Payne: Thanks, bye.

Woman: Bye all.

Woman: Goodbye.

END