

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) Sub Team for Data
Thursday, 11 January 2018 at 22:00 UTC**

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Coordinator: Recordings have started. Recordings have started.

Michelle DeSmyter: Thanks (Harvey). Well welcome everyone and good afternoon and good evening. Welcome to the review of All Ranks Protection Mechanisms Subteam Call on the 11th of January 2018. On the call today we do have Rebecca Tushnet, Susan Payne, Kathy Kleiman, Kurt Pritz, Michael Graham, J. Scott Evans, Philip Corwin, and Kristine Dorrain. We have no apologies from ICANN staff. We have Mary Wong, Julie Hedlund, (Barry Cobb), Mario Leang, (Antonia Cameron Giacconi), and myself Michelle DeSmyter. As a reminder please state your name before speaking for transcription purposes. And I'll turn the meeting back over to you Julie Hedlund.

Julie Hedlund: Thank you very much Michelle. And thank you everyone for joining today. We really appreciate it. And so as mentioned just prior to the start of this call, we - staff had noted also in the email we've sent yesterday with the agenda we can - for the agenda we will do an update on the RST, we'll complete discussion on the Section 3, the trademark brand owners, Page 20 and then commence discussion on either Section 2, Registrars or Section 4, Registrants. And then we'll go over the timing of future meetings. So at this point for the update on the RST, (Ariel) did you want to address that?

(Ariel Ale): Thanks Julie this is (Ariel Ale) from staff. So I sent an email to the sub groups informing you of the fast program for completing the RST preparation is close to end. And we can launch the RST a little bit earlier than we anticipated. So we did ask the questions to the subgroups.

One is whether you feel comfortable to share the last data tables with the full PDT working group but 22nd of January and the reason is we will - we will heavily recommend to include this data table in the RST documentation to provide vendors more detail on the scope of the project and so they can help develop a targeted proposal and even in this draft form it will be very helpful and it will make sure to make the clarification at the beginning so they understand this deal of working programs.

And in the meantime the subgroups can continue working on this data table and we will have another opportunity to share update on that with the (unintelligible) later on. So that's the first question. And the second question is, if you have any suggestions of potential vendors who you can reach out to, we will really appreciate that, and it's kind of encouraged by procurement so we can send out the RST to targeted sender and facilitate the responses. So that's just a quick overview of this email and I will stop for a moment and if Mary and Julie, (Barry) or any others have comments please chime in. Thank you.

Julie Hedlund: Thank you very much (Ariel) and I see that Kurt and Kathy have their hands up. Kurt first, then Kathy.

Kurt Pritz: Thanks Julie this is Kurt. I wouldn't send them this full document with all these columns and I don't - because I don't think it's necessary to show the machinations that we went through to get from the charter questions to the gNSO set of areas of inquiry to the specific question. So I would - I think that they'd find that confusing. So I would - I would make a chart with the charter questions and then the questions we're developing here.

Julie Hedlund: Thank you very much Kurt. Kathy please.

Kathy Kleiman: I was going to say something else. But I don't - I don't think we can ignore. Sorry Kurt. I don't think we can ignore that first column purpose and scope, which if I remember correctly is all the subteam work from earlier subteams that were working on data, that - so it's really, like, if you were going to reorder the columns. We started with charter questions, went to purpose and scope after a lot of work and we're kind of clarifying purpose and scope but I think they should have the purpose and scope column.

I'm not sure how we narrowed down the data from there because I understand what you're saying that we need to. But I think we need that first call. And I'm glad Kristine's in the queue because she was part - you know, I'll be interested to hear what you say Kristine. I just - I really wanted to display the analysis group into the mix, clearly they've - they understand what all the basic terminology means and they've got lots of data. So we will throw them in as a possible - as somebody that we reach out to for this RST. Thank you.

Julie Hedlund: Thank you very much Kathy. Kristine please.

Kristine Dorrain: Hi thank you. This is Kristine for the record. It is my understanding -- and I could be wrong, so I'm hoping that someone can go back and look maybe staff has just a second to back -- I'm fairly certain that the purpose and scope column was the section that came from the draft document that the cochairs presented to the gNSO. I could be wrong about that, but I thought that was where the sort of cochairs came through and tried to summarize to make it a digestible for immersion for the gNSO counsel.

If that's the case, and it wasn't actually a community effort -- it looks like Mary is confirming - so -- not that I want to offend our cochairs and make it seem like they didn't do a good job -- but I don't think it was actually fully vetted. And I know that when we talked last week we actually thought that one of

those purpose and scope questions with a little bit too - it didn't quite capture everything we were trying to capture, it was too limiting. And I know we don't want to be too limiting. And so I don't feel like we have to send the purpose and scope section, because I don't think that was anything we sort of like that as a big group.

On the other hand I'm going to say I don't strongly oppose the inclusion of it. I just - I feel like of all of those sections, the purpose and scope section is actually the least robust. So if I were a survey provider, I would be focusing on the more robust sections anyway. So I think the purpose and scope is kind of a throwaway. So whether it's there or not, not a big deal. Thanks

Julie Hedlund: Thank you very much Kristine. And (Ariel) has her hand up to speech a little bit more the RST. So I'd like to go to her please.

(Ariel Ale): Thanks Julie. So I just wanted to clarify the purpose and scope. And I think we're all - we're referencing a trough of questions. So it is part of the IRT document. I have - we have to reiterate, I mean - not reiterate - We have probably played the whole list of charter questions as a reference to - as part of the explanation of the scope of the work. So I just wanted to clarify that. It's already in the critical document for the RST.

Julie Hedlund: Thank you (Ariel). Kathy please.

Kathy Kleiman: Sorry, old hand.

Julie Hedlund: Thank you very much. Are there any other questions concerning this update? Then seeing no further hands, and I'm just looking at the chat to see if there's something else. I know Kathy has noted, "How do we go back to the original data subteam questions?" but Kristine was saying, "Those are the charter questions, the original charter questions are stockpiled for later after we have data. They are the ones that are really biased and unclear. So not very helpful." Kathy please.

Kathy Kleiman: Yes, taking a closer look I think relevant charter questions is the kind of the revised charter questions. So take away anything I said about purpose and scope. It looks like that is the column, the relevant charter questions are really the updated charter questions. Thanks.

Julie Hedlund: Thank you very much Kathy. So then we'll move on to the second item on the agenda. So that's to complete the discussion on Section 3 trademark brand owners. And so if we could get out documents up and I'll try to get us to where we left off and then I'll turn things over to you Michael. And...

Michael R. Graham: Yes Julie, it's Michael, and I think although you had mentioned Page 20, since some of the revisions and some questions arose on Page 19, we ought to start there, on the 'How many claims notices have you received?'

Julie Hedlund: Thank you very much Michael. Let me move to that section. I appreciate that. All right this is Julie again let me just - because I - correct me if I'm wrong but I think the page numbers are different in the PDF from the Google.

Michael R Graham: (Unintelligible).

Julie Hedlund: So because I'm seeing comments in here. Okay and I know we talked about this one where we obtain feedback on actual brand owner experiences. I'm sorry again Michael, exactly where would you like to start?

Michael R. Graham: I was actually - let's see. I think feedback on applicants. I was down at let me see where you are.

Julie Hedlund: I am on what is the...

Michael R. Graham: It actually would be the previous question. So it would be obtain feedback on number of cease and desist letters.

Julie Hedlund: Okay.

Michael R. Graham: Where we had had the discussion whether or not we would refer to that.

Julie Hedlund: Here it is

Michael R. Graham: Okay yes.

Julie Hedlund: Okay back on number of cease and desist letters. Let me just line that up.
There we are. Thank you.

Michael R. Graham: So what I wanted to do was to go through the, again, the two groups of questions. Now there was some discussion from what I was able to get revised and what went up here and I want to address that and probably make some changes in what is up here. So, on the far right column the changes were to 'How many claims notices have you received for your TMCH registered trademarks?' Followed by 'How many of these claims notices did you follow up with some action?' And then the question, 'What actions did you take?'

And the discussion there was that we might make that a multiple-choice answer then to select from one or another and then to have another file. If that's the case then I think we need to come up with what those actions would be. Obviously one of them, which was his in the following question, was sending a cease and desist letter. So then Rebecca? You've got your hand up.

Rebecca Tushnet: Yes this is Rebecca Tushnet. So, I mean, I wonder whether at this stage it would be better to - not to do too much about the options. I mean if we want to list possible actions we think people may have taken, you know, I'm not - I'm not unalterably opposed. But it seems like the list might be developable with this - with a survey experts rather than now. But, you know, if we want to

list them, you know, for review I don't think that's terrible either but I'm not sure it needs to be done. Thank you.

Michael R. Graham: Okay thank you Rebecca. I see where you're going and I agree with it. The one issue I would have with the idea that there might be multiple-choice, is maybe we would have to abandon that in terms of the survey expert, only because I'm not certain that the survey expert would also be an expert in the procedures that might be followed in these cases. So I wonder, you know, we'd either have to leave it open ended and have the survey takers, the trademark owners provide a description of what action they took or assist the survey taker. But I see your point which is good. Kathy you have your hand up.

Kathy Kleiman: Yes I was going to say the same thing that we need to tell the survey takers and then add the -- and I thought we had talked about it last week -- kind of the line and 'What response did you get?' and kind of leave it at that.

Michael R. Graham: Okay right.

Kathy Kleiman: Thanks.

Michael R. Graham: Thanks so that sort of ends at that 'What action did you take?' and I suppose that could be followed, which is not in here, is 'Do you believe your actions were successful?' And then 'If so, please describe. If not please describe.' Now that is totally open-ended and I added here -- I'll get you into the moment Susan -- just for clarification, the primary method that most trademark owners I know of would either be a letter of concern or a cease and desist letter. And I utilize the terminology following this with 'If you sent a cease and desist letter' it would be - it would be followed by these other questions. But before we get into that, Susan you had a comment?

Susan Payne: Yes thank you. I just had a quick question -- and my apologies if this has been covered any previous call that I missed. I do apologize -- but in terms of

just the first thing about how many claims have you received to your TMCH registered trademark. Are we speaking information here on how many times a brand owners got a claims notice about their own mark. Or when we say claims notice do we actually mean notice of registered name, which is kind of the second part, where the brand owner gets told that someone's registered their name?

Michael R. Graham: My understanding is that it would be that second part. So that's why we inserted TMCH registered trademarks, to try and be clearer that this would be where the notice has gone out to the applicants, the applicants have gone ahead. And once the domain name registers then the trademark owner receives a notification of that.

Susan Payne: Yes, I mean, because I think the problem is that obviously some brand owners received claims notices for their own trademark. It was a more common occurrence than you would actually think depending on if their using different providers. So it's perfectly conceivable because someone could be answering this as though you are asking them the question 'Did you receive claims notices about your end marks?' So I think we have to, yes, Kristine is putting in the chat, she thinks we ought to use the terminology notice of registered names because otherwise there will be - there could be some misconception about what's being asked.

Michael R. Graham: Okay that would be the NORN. And I would agree with that totally, right there. So it would be 'How many claims notices have you received?' - or 'How many notice of' - yes NORNs.

Susan Payne: Yes. Quite.

Michael R. Graham: (Unintelligible) bad in here. yes. And then the next question would also be changed. Maybe that would be where we introduce NORN as the acronym. Then, 'How many of these NORNs did you follow up with some action?' 'What actions did you take?' And then insert under there, 'Do you believe these

actions were successful?' 'If so, why?' 'If not, why? Would be the subquestions for that. Kathy?

Kathy Kleiman: Yes I guess we've all got a new acronym NORN. We have to, like, embed that in our consciousness. Okay so 'What actions did you take?' 'What response did you get?' Can I suggest something more neutral like, you know, 'How do you feel about it?' I know that sounds too touchy-feely. But the word successful is probably a loaded one, you know, because we're not asking about the strings and maybe we want to ask about the strings, you know, what was the word? I don't know if we want to go that far.

But successful, we're getting into kind of more legal areas now. And if we - again if we don't know the strings so, you know, is it possible - and we're not - and I don't know how far we want to dive into the details but, you know, they might not feel that they were successful because then when we responded and said no, because I'm in a completely different category of goods and services, or you're operating, you know, in Timbuktu and I'm operating in Zimbabwe. And, you know, I don't know how far we want to go. Successful, I think, is, you know, kind of a term that has different meanings to it. So if we could go more neutral on that I's appreciate it.

Michael R. Graham: And is there specific language you might suggest Kathy maybe in the...

Kathy Kleiman: 'What response did you get and what's your response to that response?' or something.

Michael R. Graham: We're you satisfied with that?

Kathy Kleiman: Are you satisfied? Right. Good. Same words, same moment. Great.

Michael R. Graham: Yes, 'If so, why?' 'If not, why?'

Kathy Kleiman: Sounds good to me

Michael R. Graham: That would be fine. What actions - and hopefully the staff has gotten that We'll be able to put that in. Now following that question then, you know, I think these were inserted by me. I'm not sure I don't have a history revised. But this was focusing on in the use of cease and desist or similar types of things. Now I use a cease and desist simply because that's generally -- I think - how - certainly how I think of these, if we are challenging someone, whether or not it's a nice cease and desist or any mean cease and desist is another question.

But I guess - let's see how many - so the earlier question was a bit more general, 'Did you follow up with some action?' Then it would be the more specific question of 'How many of these claims notices did you follow with a cease and desist?' And I suppose we might insert there 'Or similar type of letter.' And then I don't know - I mean, I guess we can ask 'If you did not,' - I mean 'If you left it alone, why?'

I don't know. That's sort of a difficult one because that's getting into subjective. And these questions, at least on the far right column, I was looking at and trying to get those as empirical as possible, so they would come up with a number if there was some follow-up to it, it would go into the third column next to it for the anecdotal answers. Kathy, you have your hand up?

Kathy Kleiman: Yes I think we're way outside the scope of the charter questions when I looked at Column 2. Do we have to ask anything else or just leave it to the survey people active that? There's a whole bunch of variations of cease and desist questions.

Like, can we just - we've got, you know, three really general questions that seem to kind of encapsulates your experiences with the NORN of but can we - can we leave it at that in both Columns 3 and 4 kind of leave it for the more general, the more anecdotal and then let people fill in from there?

Michael R. Graham: Yes and I'm looking back then at the second column which would be the charter questions to see what the scope of those were. The cease and desist reference came -- I think -- from the summary of the scope that was presented through gNSO.

But the specific charter questions, 'Does the trademark claims notice to domain name applicant meet its intended purpose?' 'If not is it intimidating, hard to understand, or otherwise inadequate?' 'If inadequate how could it be improved?' 'Does it inform domain name applicants of the scope and limitation of trademark owner's right?' 'If not, how can it be improved?' And then there's a question on translation. J. Scott you've got your hand up?

J. Scott Evans: Yes once again I just wonder why we are asking trademark owners about the claims notice. It seems to me that what their opinion is on it is irrelevant. It's the - it's the applicant's opinion that is most relevant. And I think when you ask someone those kinds of questions, you're just waiting space. So I don't think that, you might say ask something to the effect, 'Do you believe the claims notices are serving their intended purpose?' Or something like that. But I don't think I would get into the subjectivity of what they feel or think registrant or applicant are gleaning from the notice. That's my opinion.

Michael R. Graham: Kristine?

Kristine Dorrain: Thanks. This is Kristine for the record. Yes, I do - I see what you're saying J. Scott and I agree with you to a great extent. As the person that cochaired with Michael this - the claims subteam, I know that one of the things that we talked about here with respect to A, not the subparts A, 'Does the trademark claims notice to domain name applicants meet its intended purpose?' Thinking about, you know, trying to reduce the amount of cyber-squat, not, you know, not legitimately but actually cybersquatting, right?

And one of the - sort of data points that we were going to pull out is getting too, like, what was the experience of trademark holders. So it's not really captured well in the charter question -- I think I'll admit that now that were digging into it. But if we're attempting to look at it from the reverse, which is to say, can we extrapolate about the trademark holders - or the registrant's experiences by the behavior of trademark holders?

So if the trademark claims notice was effective, then trademark holders would receive very few NORNs and have to respond to them in a very, you know, and not have to respond to very many of them. To the extent they did get a NORN and decided to follow-up with a cease and desist letter or some other form of action or, you know, outreach, you know, to that extent were there people that still came back and said jeez I got that but I don't know what it was, I didn't understand it or yes I got that, screw you go, you know, take a long walk off a short pier.

I think that's where this was headed when we - when we started drafting it. I agree that I think we are getting really into the weeds here and we don't need to know that much about the specifics of trademark owners and specific trademark - or brand owner actions. But to the extent that we can extrapolate any problems, that either the NORN itself had or the trademark claims notice had, by the way that trademark holders reacted - interacted with future or, you know, the people that ultimately became registrants. You know, I think that's where we were trying to go and maybe we can think about how we can redirect the questions from that way. Does that help anyone at all?

Michael R. Graham: Yes Kristine, it's Michael for the record. It certainly does. And after Susan talks, I do have a proposal for dealing with the fourth column. But Susan?

Susan Payne: Yes Thanks. I put my hand up before Kristine started speaking. She said a lot of what I was going to say only much better than I would have said it. But I think - I think in a way the data questions about, sort of, 'How many NORNs did you get?' and then 'What did you do about them?' is really valuable

because in fact it almost doesn't matter how many NORNs people got in sent to their registered name.

But I mean if the results of getting those and the brand owner looking at it, was for them to go, 'Well this is okay I don't need to send a cease and desist on this one, it's not a problem.' That would be - that would tend to suggest that there have been an effect on the claims notices because the people who proceeded with the registration were ones where it wasn't viewed as an infringement.

So I think - I think those data points together about, you know, how many NORNs you got and then whether, you know, whether you perceive that as something you needed to do anything about, I think is really useful and valuable information.

Michael R. Graham: Thanks Susan. Let me make a quick proposal then looking at this in listening to all of the discussion. And I agree it gets into some very interesting areas of information but does not address the charter question. My suggestion would be to remove everything from -- what's now in the screen is the fourth bulleted item -- 'How many of these claims notices did you follow with the cease and desist letter?' to remove from there to the end of this block, so all the way down to 'And how many such actions did you lose?'

Remove those questions and just leave those general questions up at the top for this part of the inquiry that suggestion. And I wonder if maybe we can do a plus, minus -- how would that go -- that wants to do a my hand up -- yes the agree - if you agree with that change, if you do a green check mark?

Susan Payne: And hey Michael, it's Susan. Would you mind if I just asked you a quick question?

Michael R. Graham: Go ahead. Yes, I'm sorry.

Susan Payne: I'm not entirely following where we're deleting from because there's all sorts of bullet.

Michael R. Graham: Okay. You're looking at the screen?

Susan Payne: Yes.

Michael R. Graham: Okay so on the fourth column over we would keep 'How many claims notices - NORNs' -- I like to use that long way -- 'have you received for your trademark, TMCH registered trademarks.' followed by 'How many of these claims notices did you follow up with some actions?' 'What actions did you take?' 'What were your feelings about these actions and response, and were going to have some questions with that. Those are the general questions everything after that then, that's in here now, we would remove. Does that make sense?

Susan Payne: Yes. But the...

Michael R. Graham: Because I think what we're getting at and I'll be it with the understanding that asking someone, 'Do you think the notice that the person over there received was sufficient?', may not be the best way to get at that information. Still it's going to the perception of the trademark owners. That's appropriate in the third column that we haven't started talking about. And those questions are in there I believe.

Susan Payne: Okay.

Michael R. Graham: Okay so does anyone object to making that change?

Rebecca Tushnet: Hi this is Rebecca Tushnet. Sorry I had to leave the chat room. But I was - in the chat room I suggested instead of sort of 'How do you feel about it?', 'Why not' - 'Was it resolved?' 'What was the resolution?' which I think doesn't require people to give their judgment. Although if we are interested in sort of

what people see, to see what the registration said to the trademark or to object, we could ask specifically about that.

Michael R. Graham: Would that be - Rebecca, just to follow up on that, would it be perhaps the line of questioning, 'Was the matter resolved?'

Rebecca Tushnet:Mm-hmm.

Michael R. Graham: So, 'What was the resolution?'

Rebecca Tushnet:Right.

Michael R. Graham: And then perhaps followed that with 'Do you have any' - 'Do you have any response to that resolution?'

Rebecca Tushnet:Well so I'm not sure that really get at it. I mean something like, you know, what, if any, was the registrants justification for continuing with the registration? Something like that. If we're interested in, you know, what people who have received the notices and continued, then said then that seems like the most direct way to get at it. It is, you know, secondhand reporting but...

Michael R. Graham: But I guess Rebecca, I think that might be an interesting way of approaching it because we might have, you know, applicants, are they going to self-identifying that they, you know, failed in this or abandoned. Or perhaps we're going to have to get that information from trademark owners who were involved in something like this and then the applicant abandoned and, you know, said something. Yes that court of law hearsay we're not going to get it in there but at least it's trying to elicit information that might be useful, unless it's a pain, we could determine what to do with it.

Rebecca Tushnet:Right well, you know, it's two different populations that we're interested in. We're interested in people who didn't proceed with the registration and why.

But we can learn anything about them by asking the trademark owners. We might be able to learn something about people who continued after receiving the notice by what they then said to trademark owners.

Michael R. Graham: Keep that in mind in drafting a final version of this. Let's turn to the third column which was for the anecdotal responses and I think as I say this was sort of addressed to answer more specifically to the extent it could be answered from the trademark owner standpoint, the charter question. What I'd like to do is just read through each of these questions one at a time. After I read it and asked if anyone has an objection, that be included or a change to it.

And I'm going to do it with the revised versions on the screen here. So the first question is 'What did you do in response to receiving the NORN?' I guess question be - and we've already asked that over in the other column. I wonder if we should decide where we want to have that.

Susan Payne: Michael? Sorry, this is Susan and I forgot to put my hand up.

Michael R. Graham: Yes.

Susan Payne: I wonder if it doesn't matter we have it in both places. I mean just thinking back to the purpose of this document and the fact that it's going to be the guidance for the survey providers. I mean does it - I'm not sure. I don't feel strongly but I'm not sure that it matters terribly from my perspective anyway.

Michael R. Graham: Okay. Good point. Thank you. Kristine?

Kristine Dorrain: Same point. I was just going to go a step further and say that -- excuse me -- I think the questions ultimately the end of the day of course logically will be all mixed up. And so leaving the question in both provides relevant context so that when you start off this total section, sort of, we know, sort of, what the context is for - I think we should actually do that. Thanks.

Michael R. Graham: Okay thanks. And again the point is, we're not really drafting the final questions we expect that those will be drafted by the survey company. I've been disappointed in that regard in the past but that would be my hope. Okay so let's leave it in there. The second question is 'Based on your experience, do you believe the trademark claims notice to domain name applicants has met its intended purpose of notifying applicants of possible conflict with the registered trademark?' And that's followed up.

So I'll go on. 'If you do not believe the trademark claims notice has met its intended purpose can you say why you believe this?' And that's followed by the inverse 'If you believe the trademark claims notice has met its intended purpose, please explain why you do so?' So those three questions together were meant to elicit that opinion to the extent possible and to ask also 'Why is it that you believe that?' Any comments? Kristine?

Kristine Dorrain: Yes. Just to raise my hand and say I don't object. I think obviously we want them to wordsmith it because it's long. But yes I think that's the question we're getting at, so I think we should just ask it and move along.

Michael R. Graham: Okay. And then I guess the next question really was intended to get a little bit deeper into that. And again this is going at the hearsay angle of it I suppose, 'Have any of the domain applicants you have challenged said anything about not having understood the claims notice?' 'If so, what did they say?' Kathy?

Kathy Kleiman: Hi just a quick word change instead of applicants, it's probably registrants because that's why they would be getting the notice, right? So 'Have any of the domain registrants that you challenged said anything about not having understood the claims notice?' Which is an interesting question - it's interesting trying to get information from a registrant about - from the trademark owner, but I guess it is a process. Anyway, just that one word change. Thanks.

Michael R. Graham: Okay thank you that's a good change, if we can enter that. Then in the most subjective, I guess of questions in this line, 'Do you believe the claims notice sent', and I guess it should be the 'trademark claim notice sent to domain name applicants,' and then there's a note and copy of which is attached, so we were instructed that it should be part of the survey -- 'inform domain name applicants of the scope and limitations of trademark owner's rights?' And it's followed by the sub questions, 'If not, please explain.' And then also a specific question 'What else do you believe applicants should be advised of in the notice?' Kristine?

Kristine Dorrain: Hi this is Kristine for the record. I just wanted to say that I think that this really does actually go with that - just the previous section you just read. It kind of is very, very similar to the first one in this section and so I don't really oppose it. I think I would like to see sort of all four of these kind of bunched up together and a couple little checkboxes with a few little optional word text boxes to make it easy for people to answer but yes I support that. Thanks.

Michael R. Graham: Okay just addressing that and the way you would structure that, do you think that's something we should do for the surveyor or do you think - company or do you think that's something they would do if they look at these, let's say - unprofessional questions?

Kristine Dorrain: No I think that they should - they should look into it that these four are related.

Michael R. Graham: Okay.

Kristine Dorrain: And if they don't well we maybe should reevaluate our choice.

Michael R. Graham: I like the point. Kathy?

Kathy Kleiman: Yes. The phrase 'what else do you believe?' Let me phrase it a different way and see if it makes sense, 'what might you' - 'what might you add or change?'

And that way it's not just asking if they want to add anything, would be change anything in kind of how this is presented. So again in changing 'What else do you believe applicant should be of advised in the notice?' to 'What else might you add or change in the notice to better advise trademark applicants?'

Michael R. Graham: I like that entire phrase, if we did that.

Kathy Kleiman: Thank you.

Michael R. Graham: And yes (Ariel), if you can capture that I hope - well we can capture that from the transcript of course. Great. Then...

Kathy Kleiman: Michael, if I might.

Michael R Graham: Yes. Go ahead.

Kathy Kleiman: Not, 'What would you,' 'What might you?' you know, Because would is different. What might you. You know, it's an option. Thanks.

Michael R. Graham: Okay. And again I think, you know, the important thing is to try and get across a sense of what we think ought to be asked to the survey company. And I think that does that. So that's great. Then sort of a secondary approach to this really going and I - for this reason I don't know if this is appropriate or not -- it's really going at the trademark owner's experience with I suppose with the NORNs. It says, 'Do you receive any communications for the TMSH?' Which is a pretty broad question, 'If so, are they clear or not? Please explain.' Again neither of these are looking specifically at the NORN. They're not looking at the client trademark claims notice.

And then, you know, it goes deeper into that. 'How have you reacted to them' - the communications. So I'm not sure if that line of questioning is what we are looking at is not so much the adequacy of the notice of registration to the

trademark owner as looking at the claims notice to the trademark applicants. if perhaps this question - this line of questions might be removed. And having posited that further thought you'll note that the following questions then -- let's see.

Okay the next question, 'When you sent the cease and desist letter to applicants how did they react?' Really is a holdover from the other column. And I think that question and it's subquestion 'Did they say anything about the trademark claims notices they received?' might be removed although that is asking for that hearsay, but I think we've already asked for that in the fourth column questions. So we could remove both of those questions and be fine.

So that would be my suggestion, removed from 'Do you receive any communications from the TMCH' down to the 'Did they say anything about the trademark claims notices they received?' and just remove those further questions. And I don't see anyone opposed to that I will down to the next one which is - question which is 'Should claims notifications only be sent' and I think that should be 'trademark claims notifications' Should trademark claims notifications only be sent to domain name applicant at the time they apply for the domain name or at the time they - their domain name is registered? Please explain your answer.' Kristine?

Kristine Dorrain: Hi Kristine for the record. I do not disagree, which is a really backwards way of saying I agree I guess. So the point of this question or the reason - the reason we're talking about when domain name applicants/registrants get the claims notice is because of preorders. When a registrar takes a preorder that's the time at which the person have to click, the registrants have to, you know, but they don't see - they don't log back in after the preorder when the claims notice is going to be displayed and then registrars were having problems with how to get the notice to the customer et cetera.

And so there was some talk of should there - should there be some options of one the claims notice gets displayed. I am not entirely sure if everybody is

aware that that's sort of a registrar complication or registrar issue or an issue registrars face - let me rephrase that, an issue registrars face. So I'm wondering since this is going to brand owners at this question requires explanation or not. And I see Susan our registered registrar's hand up. Maybe she knows the answer. Thanks.

Susan Payne: Well Hi it's Susan. I don't have my hand up as a registrar in this context maybe because, I don't think in terms of our registrar business, we don't run the preorders in that way, so it's never been an issue for us. But I was just going to question whether this is - whether it's only come about as a result of the preorder issue. And you may well be right Kristine. I'm not sure.

But it does seem to me that has come up a few times in the context of our conversation in the wider working group where, you know, there have been a, you know, one or two people who have been making the point that they think, you know, why the claims notices go first. They have a chilling effect. You know, registrars shouldn't get , kind of - there shouldn't be a notice until after the domain is registered, that way there's no chilling effect. So I'm not sure that this is entirely a preregistration issue. But I'm happy to be corrected.

Michael R. Graham: And Susan and Kristine, I'll put this out there - I mean, if this is a - really a registrar issue, is it appropriate to be asking the trademark owner for what they believe? I'm not sure if that of value to the consideration of when that notice should be issued or not. Kristine you put your hand back up.

Kristine Dorrain: Thanks Kristine for the record. Yes I agree with Susan. I know we have talked about it in a wider context. I know that the registrars have noted that there's - that there is this issue of preregistration. I know that brand owners have, you know, a strong feeling that the notice should be displayed, you know, early and perhaps often. Director parties probably want the notice to be displayed less often and less early.

So yes I think that this is. But I think this is relevant to branders because this is the point at which they're - at which the registrant is theoretically put on some sort of notice about trademark rates that may exist and may or may not conflict with the registrar intended use. So I think the brand owners do care at what point that notice is presented. And maybe then, to Susan's point, maybe it needs to be more open-ended.

I was reading this and either/or, at the time that they apply or at the time it was registered. Perhaps it was more broad or - like is it here, you know, is it at the time of application and/or at the time of registration and/or some other time, do you have other options? Maybe it's really meant to be, 'Here's two common options that are discussed but offer us your own opinion.' I don't know but I'm not going to tell Susan that I think this only has to do with registrars because I do actually- I think this does implicate, you know, other factors as well. Thanks.

Michael R. Graham: Okay thank you. Kurt you have your hand up.

Kurt Pritz: Yes thank you Michael this is Kurt. So I have a couple points. One is I agree with Kristine's point that if we ask this question, it requires a preamble because it really is - the timing might be a fine point that of which many trademark owners are not aware, so it would rear some explanation that, you know, currently the way the system works is, you know, when you try to register a name before you're allowed to register a name, you know, the trademark claims notice is given.

And then my second point is, you know, regardless of whether we're asking this question because of a potential chilling affect or because of the ownership put on registrars. I think in either case it would be important to know what trademark owners think of the timing of the notice. And so the way that we might ask the question - and make it easier to answer is in a multiple-choice way.

So, you know, give the background about when the notice is given and then say, you know, the notice could be given at this time or it could be given, you know, after the registration is made and then ask them - ask the trademark owners if they think having to notice before the actual registration is very important, kind of important, not important, something like that. So we can get input from the trademark owners about whether they think the timing is important or not. Thanks.

Michael R. Graham: Okay thank you Kurt. (Lori)?

(Lori)'s been losing and gaining audio. Do you have it now?

I guess not. She's dropped off. I think that would be useful in light of the comments I think the two parts of that one of having a preamble to it and then have followed up with sort of a general ability to answer. I don't know if, you know, the importance of filing - of timing we could ask about I don't know how far that would get us. But that one, let me put together a question for that and I will pose it after we get off the call for everyone to take a look at.

And after that we're into the next which is obtaining feedback on actual brand owner experiences regarding the evidence of harm intended to be addressed by the claims RPMs. And then the question in the charter question was, 'What is the evidence of harm under the existing exact match system?' And so there were two ways of approaching this, again as usual, and I will go to the third column first in this case. So that will be the anecdotal.

We only have about eight minutes. So I'm not sure I'll get to all of this. But let me go ahead and read it. Kurt is your hand back up or is that old hand? and (Lori) your hand's back up did you want to say something?

(Lori): Yes. Just - can you hear me?

Michael R. Graham: Yes.

(Lori): Can you hear me?

Michael R. Graham: Yes.

(Lori): Okay I'm sorry. Yes. I just wanted to echo Kristine and Kurt and to the extent that I think a preamble is wise because, unless you are a trademark practitioner day in and day out, my guess is most people don't have a clear understanding of when the communications are supposed to come and maybe even why. The why spot seems to be obvious but it may not be. So just supporting the work I guess is my point.

Michael R. Graham: And (Lori) supporting that being an open-ended question to see what sort of response we might get from trademark owners.

(Lori): I know there's a lot of practitioners out there that think to prosecution. And don't always get into the domains. That's my only point. There's even - yes, I mean I think there's even a lot of differential experience even among trademark attorneys. That's my point.

Michael R. Graham: Well I guess in thinking about that there would only be certain people who would be answering the question and again the number of responses, the nature of the responses I think that's something then that after the question's asked we'll be able to make those decisions based on, you know, what sort of responses we get back, what sort of expertise. But I think it's worth exploring that area just to see if there are feeling, if any practitioners have developed a particular feeling of when it would be better to have that. And I know the question has arisen whether or not the notice should be in early phase for later in the process.

So going back then to this last question, 'Are you aware of what harms were meant to be addressed by the trademark claims service of notification of TMCH registration to applicant, requirement of non-infringement and

notification of trademark owners upon registration of TMCH registration names?" So sort of a mouthful, but basically the question is are you aware of what harms were meant to be addressed by the - by the claims service notification through applicants.

And it's a yes or no answer. 'Do you have any evidence of harm being addressed - of the harm being addressed actually occurring prior to the claims service. And I guess that would be prior to the trademark - wait let me see. do you have any evidence of the harm being addressed. Kathy, you've got your hand up while I'm mulling over this.

Kathy Kleiman: Yes Michael. I'm sorry I don't understand the question. Do you have any evidence of the harm being addressed actually occurring prior to the claims service of - I mean we can talk about claims notices, the claims made just to the applicant, the NORN to the trademark owner. What are we talking about here? Sorry the question, whoever drafted it. Thanks.

Michael R. Graham: Yes and I think I'm going to pause it because I think I drafted this and I think what I was trying to get out was, so we are addressing this particular harm of somebody applying for a domain name and being advised of these particular trademark owner rights or trademark right and being asked to do you think you should go ahead.

And I think the second question was intended to address before the new GTLD program, where we put in the claims notice. 'Are you aware of any harm that was occurring in trademark applications or in domain name applications?' that this harm is addressing? You know, I think it's probably more confusing a question than anything and I would, because I think the first question and then the one down below are actually better, I would actually remove the second bulleted question. Do I have anyone who would fight for it? Susan?

Susan Payne: I'm not going to fight for it because I think it would be - it would be - there isn't really a comparable situation or at least not in any recent times because of course, you know, the claims only comes at a certain point in the launch cycle of the registry. And so there, you know, unless we are going back to the launch of something like (unintelligible) we don't have comparative. So I'm not fighting for it but I think - I think a slightly different variation of that question would look at the timing of the claims notice, which I'm not sure if we've got any other recipients questions about timing.

So, you know, the idea that perhaps, you know, are you aware of any harm after, you know, after the end of the claims period that an ongoing claims issue would have addressed. I mean that might be of interest. I'm speaking off the top of my head somewhat so I'm happy to be shot down as it is. But, you know, the sort of what happens when they stopped as opposed to what happened in previous registry. Did I make any sense at all?

Michael R. Graham: Yes that actually did make sense. On both points I think. And I think a rewording of the second question might save it so that it actually becomes a question of before the institution of trademark claims notices. "Do you think these address a harm that occurred before and if so what was that harm?" Something along those lines. Again I'm going to have to redraft it. I hate to say that but I can do that.

The last question then down below or the next question 'Do you have any evidence?' and I think this means 'Do you have any evidence that you, your company or your trademarks or your ability to registered trademark domain names have been harmed in any way by the fact that claims notices are only issued to exact match applications?' And I think that is an artfully phrased question but I think it's a question that should be asked. Kathy?

Kathy Kleiman: As we go into 6 o'clock I think we should think about a more neutral way to phrase it. I think it is a leading question counsel.

Michael R. Graham: And we're not on redirect? Damn!

Kathy Kleiman: Right.

Michael R. Graham: Or across. I agree with that. I think what it's trying to get at is good. I think it needs to be rephrased, I will offer that up. Let's see and I suppose - hang on one moment. And I've followed by a similar question that goes in the other direction. So this question is, 'Have you been harmed by the limited nature of these?' and 'Do you have any evidence of broader notifications would be useful and protect the rights of both trademark owners and domain name applicants?'

Again I think I would have to say that is leading but it is asking for evidence. And I think these two questions sort of need to be bunched into one that is not leading and is more objective and gets at the information. I think I can do that so I'm trying to. And I think we've come to the end unfortunately of our session and have not gotten to the questions on the right here, which are the final one section. And I asked if between now and our next call you might look at those, and if you have any questions, changes to that for such enter them into the Google documents.

Julie do you want to set up when our next call is and then perhaps find out to which of the other sections we'll be able to start on after we deal with that last question in these two revised questions that I'm going to work on.

Julie Hedlund: Thank you very much Michael. Yes this is Julie Hedlund I'm try to be quick here. We did have, you know - second reminder on the doodle poll for the next meeting and it looked like either the Friday at 1600 ETC or 1700 ETC are working best. So I don't know if we got any more responsive to that after Mary's reminder.

I think we'll have to take a look at that and see which have the most number of responses. So that we can find a time that is not too late for those who are,

you know, in the European side of the time zones. So we will follow up with that to see where we stand on the whole. And then send out a notice accordingly. And so then once we complete your section Michael, then we're going to then either go to -- just let me check again, I think it was either the registrars and...

Michael R. Graham: Or registrant?

Julie Hedlund: Yes I think so. Let me just - let me just check that here real quickly. Yet the next would be either Section 2, Registrars, or Section 4, Registrars. So whichever -- I guess we'll probably need to see who's available on that call of those leaders -- and then, you know, base it on that as to who picked up. And see what Mary says depending on whether Susan or Kurt are available. Yes exactly.

Michael R. Graham: Okay in between now and then I will resubmit revised questions, a version for these last two columns. So thank you very much everyone. Thanks for allowing us to go over a bit. Hopefully we'll clear up this and either Susan or Kurt will take us in on the next section of the next meeting. Thanks very much and I guess we can top the recording.

Susan Payne: Thanks very much everyone.

Julie Hedlund: Thanks everyone. Have a great morning, afternoon, evening.

Susan Payne: Night.

END