

**ICANN
Transcription
Review of All Rights Protection Mechanisms Sub Team for Data call
Friday, 16 February 2018 at 17:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at: <https://audio.icann.org/gnso/gnso-rpm-review-16feb18-en.mp3>

Adobe Connect recording: <https://participate.icann.org/p3grvcpu24b/>

Attendance found on agenda wiki page: <https://community.icann.org/x/ChO8B>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Coordinator: The recordings have started.

Michelle DeSmyter: Great. Thank you so much, (Robert). Well good morning, good afternoon and good evening everyone. Welcome to the Review of All Rights Protection Mechanisms Sub Team for Data call on the 16th of February, 2018 at 1700 UTC.

On the call today we do have Cyntia King, Susan Payne, Kristine Dorrain, Kathy Kleiman and Philip Corwin. We do have apologies from Rebecca Tushnet, J. Scott Evans, Lori Schulman and Michael Graham tentatively. From staff we have Julie Hedlund, Ariel Liang, Berry Cobb, Antoinetta Mangiacotti and myself, Michelle DeSmyter.

As a reminder if you please state your name before speaking for transcription purposes and to please utilize your mute button when not speaking. Thank you and I'll turn the meeting back over to Julie Hedlund.

Julie Hedlund: Thanks so much, Michelle, and this is Julie Hedlund from staff. And thank you all for joining today. So we had hoped to proceed with Section 4, the Registrant section that is Kurt's section. Kurt is in Australia, we don't have apologies from his but he's not on this call. So we'd like to get a sense of how you might like to proceed today. We, you know, if someone else wanted to step back into Kurt's section and lead us through a discussion there, that's one possible alternative.

We do also have on the schedule, on the agenda, to discuss the timing of future meetings and also the activities at ICANN – deciding whether or not we want to meet at 61 and if so, how we might do that. So I'd just like to first of all just open it up to all of you to see what you would like us to do today. Kristine, please go ahead.

Kristine Dorrain: Thanks. This is – let me move my mic here so you can hear me. This is Kristine for the transcript. I know we worked on Rebecca's section last week and she's made some changes; and then I sort of lost track of where we left off with Kurt's section. Does anybody remember sort of where we even left off with Kurt's section?

Julie Hedlund: So this is Julie from staff. So we left off in the Google Doc it would be starting, let's see, we've got page – let me ask Ariel – Ariel is typing actually, because, yes, she's confirming Page 28 and onward. And so I'm not sure what that translates into in the PDF. But if you look at the Google Doc you can see where we were at.

So I mean, we certainly would have the option to, you know, begin discussing from that section on today's call if people would like, even in the absence of Kurt. So we'd just – might be helpful to have...

((Crosstalk))

Kristine Dorrain: Yes, thanks. Can I ask another follow up?

Julie Hedlund: Yes, please go ahead, Kristine.

((Crosstalk))

Kristine Dorrain: So I'm actually – my apologies. I'm actually looking at the Google Doc and not the screen and maybe that's my problem but I don't see page numbers on the Google Doc. So do we – when we talk about Page 28 are you talking about the actual PDF then?

Julie Hedlund: Ariel Liang says that on the Google Doc the page numbers are in the bottom right corner but let me just...

Kristine Dorrain: All right well...

((Crosstalk))

Julie Hedlund: Let me look too, because I don't have that...

((Crosstalk))

Kristine Dorrain: I'm sure it's operator error.

Julie Hedlund: Not necessarily. Let me look as well. And because I do think I had seen page numbers but – okay here it's come up. Yes, the page numbers do show up in the bottom right corner for me anyway. And Ariel has her hand up. Go ahead, Ariel.

Ariel Liang: Thanks, Julie. This is Ariel from staff. So we're looking at the section with the scope titled Obtain Feedback on Number of Cease and Desist Letters Received, Claims Charter, Question Number 3. So that's where we left off. And then we were talking about the data related questions in Column 4.

Julie Hedlund: Thanks, Ariel. So then – and I see that we have Susan is also trying to get in the Google Doc. Yes, I found that it was a little slow as well, Susan, when I went into it just now. So if folks would like to get to that spot then we can decide – on the Adobe Connect it's page 27. Thank you very much, Ariel. I was just getting to that, there it is, yes. So we have that section up on the PDF. And so what would folks like to do? And I guess – and here we have a couple of hands up. Kathy and Kristine. Or vice versa.

Kristine Dorrain: Okay, this is Kristine. I just had a really quick question. When we – where we left off with Kurt I thought he was going to be making some updates. Do you know if what we're looking at in the Google Doc included updates or did he not get those in, because his last email that I saw, and I haven't checked since yesterday, said that he hadn't made the updates before he got on.

Julie Hedlund: He did not make the updates, Ariel is confirming that. Kathy.

Kathy Kleiman: This is Kathy. (Unintelligible) first can you hear me? Sometimes I have good phone connection, sometimes I don't.

Julie Hedlund: You were a little choppy there. It seems a little better now but you were breaking up. You try again?

Kathy Kleiman: Okay, please let me know if I continue to break up. It looks like someone has put in edits that tie together Sections 4 and 5, so the Survey of Domain Name Registrants and the Survey of Potential Domain Name Registrants and that kind of funky area in between that is a survey of someone who tried to register and may not have gone through. So someone took the discussion from last week, I'm assuming it was Rebecca but I'm not sure, and kind of wove it all together. So it seems like Sections 4 and 5 now flow through, but that just was my quick read of it. I thought I'd check and see if anyone else had the same thought.

Julie Hedlund: Thanks, Kathy. And, Ariel, do you – can you confirm whether or not Rebecca had made those changes?

Ariel Liang: This is Ariel. Rebecca did make some changes on Page 27 on the Google Doc. She did add two questions there and I think that was in the hope to tie Section 4 and 5 together. And then Rebecca did a lot of updates on Section Number 5, so yes, that – if there's any update it's from Rebecca.

Julie Hedlund: Thank you, Ariel. Kathy, does that answer your question?

Kathy Kleiman: Coming off mute. Yes it does. Thank you and to Ariel and Julie.

Julie Hedlund: Thank you. Kristine.

Kristine Dorrain: Thank you. Kristine for the transcript. So I'm looking a little bit at where we left off with Kurt's section. And because I unfortunately did not take great notes about what changes Kurt was going to be putting in there, I feel like any work that we might do on his section would just either be duplicative or go a different direction or not be useful. So I propose for group discussion that we look at the information that Rebecca just inserted.

Now I know she's not on the call but we all just discussed it last week, she did say she was going to make some changes and that includes to 27 and whatever else other changes she made in her section. And so at least it's refreshed and she had the opportunity to put in the changes she said she was going to make. We can be very gentle about, you know, any edits we'd like to make to it to be respectful of her work there. But I think that we could use our time to address the things that actually did have that, you know, that Rebecca did actually spend the time to update for us. Thoughts?

Julie Hedlund: Thank you, Kristine. Kathy.

Kathy Kleiman: My hand down.

Julie Hedlund: We can hear you. Yes. Go ahead. Okay. Hand down. Thank you. Does anybody have any thoughts on Kristine's proposal that we start with the changes that Rebecca made following last week's call? I see some folks are typing. Cyntia says, "Sounds good." Susan, please go ahead.

Susan Payne: Yes, I was going to type and I thought this would be quicker. I was just going to say I think that probably would help because I have to say I'm looking at Kurt's section and I'm completely lost as to where language has come from and who's inserted it whereas hopefully if we look at Rebecca's section it may make more sense to us.

Julie Hedlund: Thank you, Susan. And Kristine says, "Yes." Okay. Can't make heads or tails or the Google Doc. So it sounds like we have a good proposal here. Would anybody like to lead the discussion? I think I've tried to pull up that page in the Adobe Connect and you can go to that page – there. And Kathy is saying, "I'm using the PDF that Ariel shared before the call, seems to have both edits and highlights." And Ariel is typing.

So we should start then – please go ahead, Kristine.

Kristine Dorrain: Thanks. This is Kristine. Without taking any ownership of this section I'm happy to just chair it for no other purpose than somebody should volunteer, if no one objects.

Julie Hedlund: Thank you, Kristine. I don't see any objections and you're volunteering is most welcome. And I'm seeing hand clapping from Susan. And Cyntia says...

((Crosstalk))

Kristine Dorrain: Okay great. This is Kristine. This is Kristine for the transcript. Will you either unlock it or go to the next page please? I don't know – no, this was the first change I think you said. Okay perfect. So it looks like Rebecca made

changes as promised to the first section. She had a big (unintelligible) section that kind of, you know, gave a heads up. I wasn't sure last week if this intro section was mostly for the survey provider or if it was something she thought was going to go to the registrants. But either way it's a suggestion and the survey provider can decide if that's useful or not.

And so let's look at her note here, keeping in mind that I'm not entirely sure if the note is designed for survey providers or for respondents. The new note says, "Note, there are three potential paths for respondents. Respondents may fall into more than one group and should be asked the relevant questions for each group. One, actual new gTLD registrants, see previous section; two, people who attempted new gTLD registration but did not complete the process; or three, people who would consider registering a new gTLD in the future, who we're calling, quote, likely consumers, end quote."

"Someone who tried multiple domain names in the new gTLD before successfully registering one or more should be asked both about their unsuccessful attempts and their understanding as registrants whether or not they received a notice."

Any thoughts or questions related to that? I think this is meant to be – it looks like now that I've read it closely it looks to me like this is really meant to be a note to the survey provider some direction giving them like how to present the instructions to the different registrants. I don't see any problem with this language; I think it's helpful and clear. Does anybody think that we need to add anything or if anything is a problem, you know, to go to the survey provider? Pausing for hands in case there's a problem. Cynthia agrees. Susan says, "It looks okay."

All right, let's take the other attack really quick. What if this is going to registrants? I don't think it is but what if it is? Do we see anything wrong with sort of this information or some variation of it being sent to registrants? I don't think it would be a problem. I think it might be confusing but I don't see

anything problematic. So seeing nobody else jumping in on that, I think we can call that done.

Next I'm going to try to scroll down without going way past it. Okay, next section, now we're working on – Susan agrees that it's fine but definitely seems more relevant to the provider. Great.

So the question we're really talking about is we want to talk about – we want to learn a little bit more about abandonment but specifically we're learning about is the trademark claims service having any unintended consequences such as deterring good faith domain name applications? And so that question we start digging into this have you ever registered a domain name – I'm on the data column, so the far fourth column. Do you plan on registering a domain name in the next year? Would you consider one of the new domains? Have you attempted to register a domain name in one of the new domains?

So these it sounds like these are sort of a background yes or no questions that we're asking to get started and sort of figure out what track the registrant is on. Do we see any problems with these? It looks like the only change is the last one, have you attempted to register a domain name in one of these new domains? Okay, so it looks to me like we're just – she's just covering her bases here.

And then she has an instruction, "If no to both, terminate the survey." I thought we had decided that we were not going to instruct the provider to terminate the survey only because there may be follow up questions, there may be other sort of, you know, questions that are not related to, you know, in fact I think even she last week would – so that if you would consider. But even she last week was suggesting that she would love to put the survey in front of other people, so even if somebody wouldn't really want to register a domain name – a new domain name but would want a dotCom maybe we still want their opinion on the survey.

So I don't know why she's asking to terminate here. Susan, go ahead.

Susan Payne: Yes, sorry it's Susan here. The only thing I would say is that obviously this is meant to be the survey for potential registrants albeit, you know, that people might fall in more than one part. But if they say "no" to all of these questions, you know, kind of they're not considering registering and they haven't registered in the past, they don't plan on registering and they wouldn't consider a new domain, they're kind of not a potential registrant.

Kristine Dorrain: Yes this is Kristine. No, I think – okay good, yes, I think you're right. So I guess maybe my – Cyntia says, "My dad would be that guy." Awesome. So my question is then for you, Susan, if you want to respond, is I believe that there was some discussion, and we may not have agreed on this and maybe that's why we didn't go there, but there was some discussion just trying to be fair to Rebecca, about putting the claims notice in front of as many people as possible sort of just any standard American and if somebody is sort of getting the survey but says I would never register a domain name, might we still want them to glance at the claims notice? Do we care what they think or are they just going to be so disgruntled and confused and giving their opinion is going to be invalid. What do you think, Susan?

Susan Payne: Well, no, I think we did have a conversation about that. And I can't – I was trying to find some notes as to where we came out on it. I'm not sure where we came out on it. But I suppose I'm thinking about Cyntia's dad and my dad and if you put the claims notice in front of them – well my dad anyway – he wouldn't have a clue what it was about but then he doesn't know what a domain name is. So it just feels like you could potentially get a pot of people who, you know, couldn't be anything but confused because they have no idea what we're even talking about.

And I think I can do my – you know, using my dad as the example, I mean, that works, you know, because he absolutely has no idea what a domain name is or frankly can't turn a computer on.

Kristine Dorrain: I love it. Kristine again. Okay, so I think that we'll leave that language in and, you know what we also are giving the survey provider latitude to sort of make different recommendations so if they come back and say well no, we think we can, you know, maybe we ask other questions, certainly do that, but let's just invite them to consider terminating the survey and leave that language there. Good.

All right, carrying on, all right, the next section is a bit long. "Wording of this set of questions should be discussed with the surveyor." Oh this looks like it might be a note. Okay. "We would like to present the language of the notice to people in all relevant groups, 1-3," and in fact I think that should say 1-4, right, because 1-4, have you ever registered, do you plan on registering to consider, okay. I see so I think she's discounting the people who have registered, I think she's only talking about the do you plan on registering, would you consider or have you attempted? Okay.

"We would like to present the language of the notice to people in all relevant groups..."

((Crosstalk))

Kristine Dorrain: Yes, go ahead.

Susan Payne: Sorry, it's Susan. Sorry for butting in. I think she means 1-3 in the top notes, you know, in the bit at the beginning where we – the first note we went through. So she's got, you know, actual new gTLD registrants and then...

Kristine Dorrain: Oh.

Susan Payne: ...2 is people who attempted and then 3 is people who would consider, I think that's what she means, I'm guessing.

Kristine Dorrain: Perfect, thank you. Thank you. This is Kristine. Yes, good. And then ask comprehension questions. So the question should be as neutral and non-leading as possible. This may involve beginning with explain in your own words, and then asking more directed questions about perceptions of legal rights and risks as well as what would you do next if you receive the notice when you attempted to register such as stop, continue, consult someone else, etcetera. And why?

And then she – so okay, so let's stop there. That's the first bullet. So this looks more of an instruction to the provider to ask – to tell them what our goal is here. So our aim is to show the group of people the claims notice and then get them to talk about it, whether that's in your own words, or whether that's radio buttons and click boxes. And that's where she gets to – I remember her proposal last week it was very important to Rebecca that we gather information multiple different ways.

So anybody have any problems with this section? The only question I'll ask on this is, you know, in other cases we've been a little more specific and maybe Rebecca's done a better job at taking it up a notch and, you know, pulling it back a bit. But I'm wondering if we've given enough direction here. Do you – does everybody feel like the survey provider will have enough direction? I'm also assuming that, you know, the survey provider is smart enough to take this entire document collectively. By this time, you know, the survey provider should have a pretty good understanding of what we're trying to learn.

Susan says, "Yes, agreed. And I think this is what we talked about doing."
Susan, go ahead.

Susan Payne: Yes sorry. I hadn't scrolled down and realized that the sort of various versions of the questions that we had in the previous version of this document – sorry, that's lots of versions – I kind of assumed that they were sort of staying and that we were giving this explanation to the provider that's saying kind of like

here's the kind of questions we'd been thinking about but you will know better than us, you know, how best to ask them. I hadn't – I just stated that we were just giving this explanation without also giving them the guidance that came from the proposed questions. Does that make sense? Not sure I made sense there.

Let me keep going...

Kristine Dorrain: This is Kristine for the transcript. No, I think – please go sorry.

Susan Payne: No, just in case I wasn't being clear because in the previous version of the document we had you know, if when registering your domain you received a notice with the following wording, which you believe you have 1, you know, A, legally allowed to continue; B, legally, you know, not legally allowed, etcetera, etcetera and there were various different kind of versions of that language. And so I had kind of anticipated that the survey provider would get a note along the lines of the one that Rebecca has drafted but also probably those examples of questions that we had previously as, you know, as helping guide their consideration of how is the best way to ask this.

Kathy Kleiman: I think the answer may be in the third column. This is Kathy.

Kristine Dorrain: Kathy, could you explain? This is Kristine.

Kathy Kleiman: Yes, because I agree with Susan, I was expecting that too and I was kind of expecting to see it in the fourth column continuum. But now when I slip over the third column if we go back to the prior page, Page 3, right under the instructions that read, Kristine. Let me just read it because that way we can all absorb it.

First, sound like I'm underwater? Can you hear – can you understand what I'm saying?

Kristine Dorrain: This is Kristine. You're a little muffled but much clearer than before.

Kathy Kleiman: Okay good. Apologies, I can't switch phones at this point so. Okay so third column says, "Show notice, explain in your own words what you understand the notice to be. Ask more comprehension questions you may or may not have rights." And I'm not sure exactly what that means. And then it says, "Separate survey inquiry," oh here it is talking of IBM or the Analysis Group data on past potential registrants who didn't..." actually let me stop there.

So I think in the third column at the top of that third column for potential registrants, that may be the section that Susan was talking about, question mark, Susan, that we show them the notice and that the survey providers kind of lead them through what it might or might not mean to them because these are people who have never seen it before. Does that answer your question, Susan? Is that what we were looking for? Thanks.

Kristine Dorrain: Go ahead, Susan.

Susan Payne: Yes, no, I don't think it does. It does remind me, thank you very much, it reminds me that we did have a conversation, and Rebecca, I know was very keen to do kind of one version of show them the notice and just hear what they have to say and one where there's a more sort of, you know, after that, a more sort of targeted asking them questions to understand their comprehension better. And so I think that's what that does, the combined language in Column 1 and – sorry, Column 3 and Column 4.

But in terms of that slightly more targeted questioning to really drill down on comprehension I just had imagined that we would keep in at least one version of the questions that we'd previously had in the document as a, again, as a guidance for the survey provider that this was the kind of thing we were thinking about, you know, you might think that there's a better way to as this but these are the kind of questions we were imagining you'd be asking.

Kristine Dorrain: Thanks, Susan. Kathy, you still have your hand up, did you want to respond?

Kathy Kleiman: It's an old hand. Thanks, Susan.

Kristine Dorrain: Okay, thanks Kathy. This is Kristine for the transcript. Yes, I think I see what you're saying, Susan. For anyone who's just on the phone, basically there's – the questions that were deleted that Rebecca deleted in the Google Doc were, and I'll read just the questions and not the answers for brevity. "If, when you registered your domain name you received a notice with the following wording, would you believe you were," and then there were questions like "Were you legally allowed? Not legally allowed?"

The second question, "If, when registering your domain, you received a notice with the," hold on I'm getting a pop up here, "If you received a notice with the following wording, would you believe you would," and then she had some suggestions like get sued, not get sued, nobody would care, what's the problem. And then both times she asked for anecdotal information.

And then the third question, "What would you do if you received a notice with the following wording?" Continue, not continue, etcetera. And that's when she put in her hypotheticals. I think that – and I'm going to take this from Susan's suggestion, I think there is some value in sort of converting all of that laundry list of questions and various answers, and she did summarize it a bit here, and just sort of say – sort of for instance, you might ask, you know, if you saw the notice. And she started with that, she says, "What would you do if you received the notice? Stop, continue, consult and why?" So one of the questions is there.

I think that it would be helpful if we also brought in the other questions that Rebecca had initially asked too, again, just for directive purposes, of course the survey provider can word them as needed. That's my suggestion I think based off on Susan. Cyntia, please go ahead.

Cyntia King: Hi, this is Cyntia. So the way that I heard what both Kathy and Susan said, is that they're kind of talking about two different things. Kathy is saying that when they do the survey they going to give a copy of a type of notice so that these folks understand what they're talking about which I think is an excellent idea, and then these questions on the fourth column would be questions that we provide to the survey taker to say, right, to say these are the kind of information that we're looking for so that they can properly explain the notice to the respondent, is that right?

Kristine Dorrain: Yes, that is correct.

Cyntia King: Thank you.

Kristine Dorrain: Okay great. This is Kristine. So it sounds like we have some agreement on that. It sounds like we all think that the presenting of the claims notice of course is a good idea. We think that asking the follow up questions is a fantastic idea. We like – so far it looks like we like what Rebecca suggestion to the survey provider. But the one thing we would like to add are to go back and pull the other questions that Rebecca had deleted and very briefly summarize those in the note there in that first bullet under, “If no, terminate the survey.” Is that what I'm hearing? Cyntia says, “Yes.” Susan says, “Yes.” Kathy says, “Yes.” Okay good.

So I think maybe we can maybe – it might just be an easy ask for staff since Rebecca's not on this call to just sort of pull those – the deleted questions in here and we can make sure that Rebecca is fine with that. All right, moving swiftly on, next bullet point, “Consider offering hypothetical, famous maker of computers, horse and scenarios of extremes such as horse.computers and horse.farm. If consumer attempting to register these receive notice, what would they do?”

Okay so this is where we spent I think the bulk of our time last week. I think we did not come to a consensus on whether or not we all, you know, sort of

thought the hypothetical was a good idea. I know that I'm in the not hypothetical camp; others were in favor of the hypothetical. It looks like Rebecca attempted some compromise by removing brand names so that's good.

And thinking about sort of extreme scenarios like, you know, would it be okay to get horse.computers or horse.farm if the consumer is attempting to register these and they receive notice? So I have to admit this is where I followed a weakness because I don't know that we have consensus on hypotheticals here and I don't know how to proceed from here. I know that the full working group needs to decide; I don't know if we have a way to get to consensus on this here. I'm just – I would love some suggestions maybe even from one of the chairs about the best way to go forward.

I mean, I don't think it's going to be helpful to spend 20 more minutes rehashing all of our same – you know, sort of positions about why hypotheticals are – or should not be – should or should not be permitted in the survey. So, Phil, please go ahead.

Phil Corwin: Thank you and good job running the call, Kristine. You know, on this it seems to me what Rebecca is trying to get at in kind of roundabout way is to figure, find out among respondents what the level of general understanding of trademark law is. But, you know, I'm not against trying to find out amongst surveyed registrants you know, clearly a sophisticated domain investor versus someone who's just trying to register a domain would probably have a very different reaction to receiving a claims notice.

But I'm not sure that offering hypotheticals is the best way to find out the general level of understanding of trademark law concepts of registrants who did receive or might receive notices .it might perhaps they should just be asked in a more direct fashion. I don't have a particular example of a question in mind now, but, you know, a more direct inquiry about understanding of trademark law might be more useful than giving them hypotheticals and then

trying to extrapolate from their answers to the hypotheticals what their understanding is. So I don't know if that's helpful but those were my thoughts. Thanks.

Kristine Dorrain: Thanks, Phil. Yes, I think extrapolation was one of the concerns I had as well. Kathy, go ahead.

Kathy Kleiman: Hi. Kathy. And as you said, Kristine, probably don't need to rehash this. I think what Rebecca did was kind of the middle ground. So we had been talking – her original material had very specific and kind of well-known examples that have been debated in the ICANN world forever so she was using Xerox and Apple and like and of course, you know, questions were raised like what is Chipotle is outside the US that might not be known.

But I think what she was trying to do was give some concrete examples because that's what people work with, I mean, the Whois Review Team, when we surveyed people on the Whois we actually put Whois records, we had the survey providers actually go and help them find a Whois record so they could actually see it so it wasn't something abstract in their minds.

So I seem to recall that the suggestion had been made to kind of neutralize these and actually take out real well known trademarks and put in some hypotheticals which is what Rebecca did so I think she was trying to do the middle ground. And like to recommend we show that to the working group as well as, you know, ask the survey provider whether this kind of example actually kind of helps develop an understanding of what the registrant is thinking.

But I think really what they're trying to do is give a concrete example, again a hypothetical of, you know, would go forward? What would you do here because that had a lot to do with decisions for the trademark claims, which is what we're trying to understand. There's so many questions about the

trademark claims, you know, I think we can just present this to the working group as kind of the compromise that we arrived at. Thanks.

Kristine Dorrain: Thanks. This is Kristine. And I will – oh I see Susan in the queue also. I just wanted to respond really briefly. I appreciated the effort to take out the brands, which I did note last week was an objection that I had. Also I noted last week in the transcript that this is not a hill I was about to die on. The branding was an irritation more than a real problem. My main problem is really – and I think, you know, I can make a comment to this and put it in writing and we can send it to the group so we don't have, you know, go on and on about it.

But it's really that we can't know intent. So – and I think I just put in the chat, but if we say, you can register apple.farm or apple.computer, you know, but if you're presented this notice what would you do, right? And maybe you say majorcomputercompany.farm, majorcomputercompany.computer. The problem is is that someone might, you know, do the right thing and say of course you can't get Apple Computer or yes of course you can't get apple.farm, but even then you can't of course do anything because it all goes down to what you eventually intend to do with that domain name and then what you actually do with it.

So ultimately people can click, they might click the quote unquote right answer, but we won't actually know if they're use or their intended use or what they're thinking is in good faith or bad faith. So that's what I worry about. And I think as I mentioned last week, I really think we, when I could sit and figure this out, but I'm worried that the working group is going to take this to mean, wow, people feel scared away or I don't think it's going to end up in a good place.

And Kathy would like to respond to my comment and then Susan.

Kathy Kleiman: I think even with the no right answer, because you're right, we don't know what's in their head, but wouldn't it be useful to – I mean, hopefully survey providers they're not going to be trademark people and they're not going to convey whether they agree or disagree, they're just collecting data, right? So wouldn't it be interesting for us to know what that person would do in a hypothetical? I think it might help answer questions that have been with the working group for a long time.

But you're right, we don't want to convey there's a right answer or a wrong answer because there's not; it all depends on context. But it might be very useful for us to know what they would do next. Thanks.

Kristine Dorrain: Thank you. Susan, go ahead.

Susan Payne: Yes, sorry. Hi, it's Susan. I'm pretty much in the same place as you are, Kristine, I mean, I'm more comfortable with this now that the brand names are taken out than I was when the brand names were in there obviously.

But I'm still not that comfortable because even when we have the, you know, we have the data, if you like, but it's data which I'm not sure how usable the data is when we have it because as you've been saying, you know, we, you know, the guy who on horse.farm clicks oh dear, I wouldn't proceed, you know, we don't know what he was planning to do with horse.farm and so we then are – we are in this working group – going to draw the inference that people have been scared off when they shouldn't have been because the example was horse.farm but we don't know what the guy we were asking had in his mind he was going to do with horse.farm.

But I think we'll – I think we will inevitably have people in our working group drawing adverse inferences from the responses using these hypotheticals because we don't know what the underlying intent was. And I do acknowledge that I think Rebecca's done a great job of trying to make this less offensive to individual brand owners by, you know, anonymizing it and

making it a hypothetical, but I don't think we could go so far as to say this was the compromise we reached on the last call because it absolutely wasn't. I mean, we didn't reach agreement on this last time. So, you know, we can't put it to the working group as this is the compromise we came to because we didn't come to this as a compromise.

Kristine Dorrain: Thank you, Susan. Kathy, is that an old hand?

Kathy Kleiman: Yes, it is a hold hand. I'm – go ahead with Cyntia and I'll come back. Thanks.

Kristine Dorrain: Okay, great. Cyntia, you're next and then Kathy and then I actually have a proposal. Go ahead.

Cyntia King: Okay. This is Cyntia. So you know, as I listen to Phil and Kathy and Kristine and Susan, what it seems like to me is that we are actually not in agreement of what information we're trying to elicit from a hypothetical. Kathy points out that more information, you know, we could get all kinds of information, more information is better, there are some specific pushback on, you know, what parts of the information may not be you know, may not be knowable or usable.

So here's what I'm thinking. I don't mind the hypothetical so long as we are trying to elicit a specific piece of information that is actionable. Information for information sake would be great if we had unlimited time and money but we don't, so let's stick to the information that will be actionable but is directly related to what we have to decide upon. And then if a hypothetical can be asked that is targeted to elicit specific information, I say let's do it. But it needs to be targeted to elicit a specific kind of information that we can then act on, in my opinion. Thank you.

Kristine Dorrain: Thank you, Cyntia. Kathy.

Kathy Kleiman: Okay, Kathy. I think that's a point, actionable information, and that's why I think Rebecca is pushing so hard on this because it does – it could give us actionable information. Of course we don't know what the answers will be, but, you know, for anyone (unintelligible) as one of the coauthors of the trademark claims notice that clearly is not being understood. Anything that helps us understand how to make it clearer and communicate better that there are reasons to register, that there are reasons to not register, this is about shedding light on the notice to make it more understandable. Thanks.

Kristine Dorrain: Thanks, Kathy. This is Kristine for the transcript. So we are not a consensus on this, and we do need to wrap this up as soon as possible. I think we have agreement on everything else in this section so far. I'm going to suggest that we leave this suggestion here, the considering hypothetical. What I would like to see and see if there's a volunteer for is someone to do what Cyntia suggested, someone who advocates for the hypothetical and maybe that's Kathy or Rebecca, and I'm not even sure if Kathy advocates for it or she's just sort of helping Rebecca in her absence.

But if someone is willing to make a short summary, a few sentences of what they hope to get from the hypothetical, what the purpose is. I would be willing to write a few sentences, and perhaps Susan would help me, explaining why we don't think a hypothetical is useful in this situation, sort of a point, counterpoint, not a long thing, so that when we send this whole thing to the working group for their review, the working group can decide which way to go and they'll have a really short concise summary of advocacy why we should include versus not.

And Kathy is volunteering Rebecca for that, which it sounds right because this is her idea and she has the best arguments. And I personally am volunteering myself and I – anyone who wants to help me that's fine. And then we can do that. Does anybody disagree with that solution? You know, we are such a small group that I don't know how else to resolve it. And Kathy

thinks it's a good solution and Susan says "Yes" and that she could help. Cyntia likes it. Okay, good.

And we can circulate our, you know, kind of position statements to anyone else to kind of help tweak too so that's fine. Let's plan to do that by next week, I think. I think that'll help staff because I know we need to get a jump on and this doc, I think was technically supposed to be done by tomorrow so good, good. Let's scroll down.

I think that might be the end of – I think that's the end of Rebecca's section. And we only have 15 minutes left. I don't know – maybe Julie, I know there was more action items; we wanted to talk about ICANN meeting and future meetings, so maybe now is a good time, maybe we can spend the last 15 minutes conducting group business. Julie, go ahead.

Julie Hedlund: Thanks so much, Kristine. And thanks again for, you know, chairing for this section today. That was extremely helpful. And, you know, hopefully we've called all the actions in the notes here which we'll send out not too long after this meeting. Thanks again.

And so the other item on the agenda is timing of future meetings and ICANN 61. And just to go back to remind you of the email that Ariel sent. First, we note that – staff notes that there's one more task for this sub team to do and that's to examine potential data needs in relation to preliminary agreed questions for examining additional marketplace RPMs currently being offered on a voluntary basis by some registry operators.

And so the sub team is going to need to determine the timing to commence the discussion. Now realize we have people missing today so we may not be able to answer, you know, the question on timing today but we can at least perhaps get some thoughts. Some options that staff suggest are to start the discussion on Friday March 2, two weeks from today, and that would be the

last opportunity for a sub team meeting before ICANN 61, or to hold a meeting during ICANN 61 or to start the discussion after ICANN 61.

And if this sub team would like to meet at ICANN 61 then staff could assist with logistics, for instance would this group want to use one of the four slots that are already set aside for the RPM sessions? Or alternatively, this group meet as a small group and staff could get a – what we call a popup room for that, that is a room that doesn't appear on the main schedule but that we can request, you know, for informal meetings. That would mean though if we had a popup room that we would not have remote participation and sort of all the bells and whistles that we'd normally have in one of the main rooms.

So there are just some thoughts for you and happy to open it up to get discussion going. Thanks. And Kristine, please go ahead.

Kristine Dorrain: Thank you. This is Kristine for the transcript. I had one question, maybe I think I saw this but maybe I missed this, Julie, are we trying to sort of get this done fast enough that we can append it to the survey? I know because we're going to want to ask, you know, sort of everybody that we're already surveying about these – this sort of mandatory versus optional sunrises and the DPML or the merged protected lists. I think we're going to – I think we're going to want to ask more of that. So would we want to add that in to the survey or are we going to try to come back? Thanks.

Julie Hedlund: Thank you very much. This is Julie Hedlund from staff. So let me see if I got – so no, we don't think it's part of the survey, no. What we're – for the survey we're going to try to close that out by 2359 UTC on Friday February 23 and then produce a clean version. So what we have here, so whatever we, you know, decide is this last version after the meeting on the 23rd, and incorporate the input and comments as-is, and then we'll be circulating it to the full working group and then forwarding it to the procurement team.

So does that answer your question because I'm not sure if I quite understood what you were asking.

Kristine Dorrain: No, it did but if we think about – if you work backwards from the question that says, you know, we need to get data about the, I don't know, I forget, I say it wrong but we're really talking about the private mechanisms, right? We want – we're going to have it from the same sources, so the best way to do that I think is a survey. So then are we going to induce some survey fatigue? But I think you answered the question, no, the plan is not to wait; the plan is to proceed and resolve the problem that arises from having to do another survey when that problem comes up. Is that my understanding?

Julie Hedlund: Thank you, Kristine. And actually staff is having a little internal discussion about your question just and whether not that, you know, the additional marketplaces showed for and part of this survey. I mean, the timing obviously would be well, you know, if we want to get information to, as you note, to the survey providers, you know, and particular those who have responded to the RFP, if we want to get more guidance to them then we'd need to close this particular survey and do that as we had originally planned.

So we're actually just discussing amongst ourselves whether or not there would need to be a survey also for the additional marketplace RPMs and while we're doing that, oh I see Ariel has her hand up. Please go ahead, Ariel.

Ariel Liang: Thanks, Julie. This is Ariel from staff. So just to give a little understanding of the RFP timeline, we are going to close the deadline March 9 and that's when we're going to review all the proposals but then we will still have a month or more to do the evaluation and contract with the survey provider, so we don't foresee the project get kicked off until mid-May or so. So if the team wants to work on the additional marketplace RPMs you can definitely do that and then when we have – get the vendor contacted then they can come back and

discuss with the sub team about, you know, how to design and develop the survey and incorporate additional questions to address that type of RPM.

So I think you know, we can just try to finish this data table by the end of next week and then we can provide that update to the responding vendors. And when the vendor is contracted if there is additional information we want to provide we will have opportunities to discuss with them how to design a survey. I hope that provides some information.

Julie Hedlund: Thank you very much, Ariel. And Susan has her hand up for quite a while. Go ahead, Susan.

Susan Payne: Hi, it's Susan. I mean, part of the reason I had my hand up was to ask the question that Kristine asked so I was quite happy to sit and wait for that discussion to happen. But I think maybe what we want to try and do is kind of, if we can, knock the marketplace RPMs on the head as quickly as we can because we might, in the course of doing that work, find one or two questions that we could, you know, sensibly slip into the survey which, you know, don't sort of massively expand its scope but kind of are, you know, are a sort of useful and sensible addition to what's already being envisaged.

And then I just saw Kristine's suggestion that we have big work session in Puerto Rico and hammer it out which seems to me to be a good one. I'd be willing to try and do that. My ideal would be to have a kind of breakout room where we could do it. However, I do recognize that that's probably not the best way to work if that means that we can't have Adobe Connect for anyone who hasn't actually made the physical journey and that kind of thing.

So I wouldn't be averse to using one of the sessions because there are about four or something that are already scheduled but I would really, really like to ask that there is – that the room is set up in such a way that we can make it a working session and that it's made extremely clear to everyone in the working group that unless they want to come along and join this small working team

and do this exercise they shouldn't be coming because what we did in Abu Dhabi was we had a really awkward and difficult session where the sub team thought we were going to be sitting and, you know, working around a table trying to do the work and a whole roomful of people were sitting staring at us expecting us to make some presentation on our findings.

And we don't want to have that again. That was a just a very uncomfortable, awkward and somewhat wasted session. We did the best we could in the circumstances but we just needed a small table with, you know, eight of us sitting around and working on it. And I don't mind if other people come if they want to do the work but we don't want, you know, to be a theatrical performance for a lot of people.

Julie Hedlund: Thank you very much, Susan. I've got some folks typing in the room and Kristine says, "When I say 'big work session' I mean, us as a breakout for as long as possible, not a full working group." Kristine agrees with Susan. Phil notes that RPM Working Group has six hours – six hours of session time in San Juan and so Phil says, "Using 90 minutes to wrap this could be done. Cochairs can discuss further on our regular planning call." And Kathy, I have your hand up; please go ahead.

Kathy Kleiman: Yes, this is Kathy. I worry a little bit about jumping with the full working group from URS data back to Trademark Clearinghouse related mechanisms data. I wonder how that would go. I think people you know, have kind of moved on. We're still with the sunrise and trademark claims issues and I think a lot of the working group has moved on as we asked them to do. So I'm kind of in the camp of thinking that a smaller breakout session but one that definitely had Adobe Connect or teleconference capabilities that we could bring in members of this sub team who have not – who are not able to go to Puerto Rico, I think that would be great.

The other hand, I note that ICANN 61 is already very, very crowded so finding a space where most of us could attend is going to be its own challenge.

Thank you.

Julie Hedlund: And, Kristine, I see you have your hand up. This is Julie Hedlund from staff. Just to note so we would have – If we wanted remote participation we would have to use one of the existing slots, one of the working group slots. So and as Phil noted, we do have six hours, we have quite, you know, four different sessions scheduled. So we do have, you know, if the cochairs agree, time available for one of those sessions to go to the sub team. And then we would definitely have remote participation.

If we were to schedule this as a separate session, it would then be in a popup room and it would not have any remote participation. Just to be clear on that. And please go ahead, Kristine.

Kristine Dorrain: Thank you. Kristine for the record. Yes, again I think it happens a lot, I was going to say what Susan said. But I'm thinking about the people on the call today, who all knows that they would need to have remote participation? Is there any oddball chance that we are all going? I don't know about the people who are not able to make it, if we're all – if we're all able to make it, then maybe the small room would be perfect.

I very much have the same sentiments of it is not going to work, it is going to be awful if we try to pull anyone from the working group who wants to come in. I mean, we wouldn't – we have a separate call, we have a separate membership list for the sub team, and, you know, if someone wants to join the sub team they can but they need to formally join it. And I think it should be the same for this breakout. You know, if you're going to show up you need to formally join and commit to participating because we are an active, active group of participants who are very deep into this. So that's my concern. Phil, go ahead.

Julie Hedlund: Go ahead, Phil.

Phil Corwin: Yes, thanks. Yes, I think the cochairs need to huddle with staff and we've got a planning call at 2:00 today so – 2:00 Eastern, maybe we can raise it then but see kind of what was being planned for the six hours we have and whether we could use this. I'm just concerned that if we try to add this on top of six hours already scheduled that's a lot of RPM for one meeting.

And if – since people have different responsibilities at other times trying to find a time slot where all the members of this working group could be there and not have conflicts with their other commitments could be difficult whereas people should be able to – on this overall working group should be able to make the RPM sessions if they were scheduled correctly. I haven't seen a San Juan schedule yet.

So you know, this cochair has taken it all under advisement and but I think if we can complete the task in San Juan with a dedicated session that would be a useful exploitation of one of those 90 minute slots.

Julie Hedlund: Thank you so much, Phil. This is Julie Hedlund again from staff. And we are at the top of the hour so I do want to let us all adjourn on time. But we will continue the discussion as Phil notes with the cochairs and staff and let you know the results of that. So thank you, everyone, I hope you have a great day and a nice weekend, and we'll look forward to talking to you next week. Yes and thanks again, Kristine, for leading today. Great job. Thanks, Michelle. You can go ahead and stop the recording.

Michelle DeSmyter: Absolutely. Thanks, Julie. Meeting has been adjourned and recordings have been stopped. Have a great day.

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