

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) Sub Team for Data
Friday, 23 February 2018 at 17:00 UTC**

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Coordinator: Recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the RPM Data Sub Team taking place on the 23rd of February, 2018. On the call today we have Rebecca Tushnet, Kurt Pritz, Kathy Kleiman, Susan Payne, Cyntia King and Michael Graham. Joining us a little later in the call will be Phil Corwin. We have listed apologies from J. Scott Evans and Kristine Dorrain.

From staff we have Julie Hedlund, Ariel Liang, Antoinetta Mangiacotti, Berry Cobb and myself, Terri Agnew. I would like to remind all to please state your name before speaking for recording purpose and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this I'll turn it back over to Julie Hedlund. Please begin.

Julie Hedlund: Thank you very much, Terri. This is Julie Hedlund from staff. And I'm having difficulty getting into the Adobe Connect room, I think because I have a pretty low signal in my network. But let me go over the agenda, the draft agenda that was a suggestion for today from staff that Ariel sent around in her message yesterday.

So suggestion was the discussion of the remaining part of the data table, section 4 and section 6, and whether to include any high level topics related to additional marketplace RPMs keeping in mind that if there were any suggestions for topics related to additional marketplace RPMs they would have to be in the scope of the survey project.

The second item would be a last review sanity check of the data table keeping in mind that the data table will need to be shared with the full working group and then also sent to procurement so that it becomes part of the materials that is available to the responders to the RFP.

Third item is timing of future meetings and at ICANN 61 and whether to repurpose one of the sessions for the Data Sub Team. And the last item is any other business. So let me ask if anybody has any comments about the agenda? And Ariel, I'll need your help to let me know if there's hands up in the room because I'm still not in the Adobe Connect room for some reason.

Ariel Liang: Hi, Julie. No one has raised hand yet. This is Ariel.

Julie Hedlund: Okay. Great. Does anybody have any other business? Not hearing anybody and I assume there's no hands up so all right.

Ariel Liang: Sorry, Julie, Kathy just raised hand.

Julie Hedlund: Oh yes, thank you. Thank you so much. Go ahead, Kathy.

Kathy Kleiman: Thanks, Julie. And I know it's hard to operate when you can't see the Adobe room, it's really hard. I think we still have an agenda item and I don't know if it's really part of Number 2. Kurt is with us, which is great and so is Rebecca and they worked on the registrant questions, registrant and potential registrant that have now been kind of intertwined. So I think we – I think we

had agreed that we were waiting for Kurt to come in for that last review of the registrant questions.

Julie Hedlund: Thank you very much, Kathy. And yes, because we had gone through those and we have made some suggestions. I don't know, Kurt, if you have been able to – have been able to look at, you know, the latest version and had any, you know, any comments about that section. But let me ask everybody, is that where we'd like to perhaps start today? And I'm still not in the room and I'm just trying a different browser so, Ariel, are there any hands up?

Ariel Liang: No hand up yet.

Julie Hedlund: Okay. Well let's see, should we then progress first then to the registrant section, as Kathy as suggested, are there any objections to that?

Ariel Liang: Kurt has raised his hand.

Julie Hedlund: Oh thanks so much, Ariel. Go ahead, Kurt.

Kurt Pritz: Hi, everyone. Yes so I'm attending the call because I know it's the last we're going to have before we turn this information over to the potential survey providers. I'm a little bit of a disadvantage, it's 3:00 in the morning and I don't – and I'm kind of flipping back and forth between documents. I've read the latest version of Rebecca's section I think. And so with some help, if the group thinks it's more important to work on these registrant questions with some help on the group – from the group we can probably struggle through them. You know, I won't be as effective as I would like to be so that's a little bit embarrassing but, you know, we can work on whatever the group thinks is the most important. Thanks.

Julie Hedlund: Thanks so much, Kurt. We really appreciate that. And I hear some background noise. So, yes, if folks could mute? And it looks like I am now getting into the Adobe Connect room. So yes, so Kurt, I did wonder if it was

maybe a bad time for you in Australia and so yes, 3:00 am is quite difficult. I'm wondering then if – let me just ask other folks what they might want to do, if they want to go through the registrant section, you know, one more time and those changes or just go ahead and start with – go back to sections 4 and 6.

Ariel Liang: Sorry, Julie, this is Ariel. I'm seeing in the chat and Susan has posted the final version of the additional marketplace RPMs questions and then also mentions if we get to this we could run through it and identify whether of that fall within the scope of the survey, so that's the other comment.

Julie Hedlund: Oh thank you very much. I'm in the room now thank goodness, so and I'm seeing that as well. Thank you so much, Susan, that's extremely helpful. So let's see then, so yes, okay Section 4 is the registrant questions so should we just – since we want to kind of do a sanity check anyway of what we have remaining here, should we go ahead and look at the remaining part of Section 4 as we suggest and we've got this list of high level topics relating to additional marketplace RPMs, so maybe seeing if then switching over to see if any of those fit into the scope.

So let's go ahead and start, was it Page 28, I think, Ariel, in Section 4? I'm not seeing...

((Crosstalk))

Julie Hedlund: ...being shared at the moment so that might just be me actually, I think it's my view is not showing up.

Ariel Liang: For the Google Doc it's Page 26.

Julie Hedlund: Oh okay.

Ariel Liang: And I will get to the Adobe Connect. I think it's probably close to that page number.

Julie Hedlund: Okay.

Ariel Liang: And it's Page 25 on Adobe Connect.

Julie Hedlund: Page 25. Then let's – the document in the Adobe Connect is unsynced so you can move it yourself. And let me – and actually it's not showing for me, so – and I think it's really early in the morning for Kurt, how do you all want to do this? Do you want staff to go ahead and pick up where we left off or would – Kurt would you like to – I know it's a bad time for you or someone else would like to do that? Staff is happy to do so. I'm not seeing anybody else volunteering.

So Ariel, if you could help me, because for whatever reason the document is just not showing – okay there it's showing up a little bit for me. Let me see if I can get to the right page. It seems to be mostly not though. Perhaps you could let us know what, you know, where we left off, what the last sort of question was that we were on. And I'm going to try to pull it up here too.

Ariel Liang: Yes, certainly. So we have reviewed the questions from Page 26 to 28 on the Google Doc. And I just want to bring your attention to Page 25 where – sorry, Page 27 where Rebecca has posted some suggested revisions and comments. So maybe it's good to look at them again especially reviewing Rebecca's comment and now we can keep going to the following pages.

((Crosstalk))

Kurt Pritz: Hi, this is Kurt. So – this is Kurt Pritz. Instead of referring to the page, could you just, you know, read the paragraph or the additions to which you're referring and then maybe I could be more helpful and pick up from there?

Ariel Liang: Okay. Certainly. So the part that Rebecca has commented on I think the charter question is about, "Is the trademark claims service having any unintended consequences such as deterring good faith domain name applications?" And then the part that she provided comment is on the data related questions and so she putting in, the additional revision is, "If you attempt to register a domain name did you receive an objection based on trademark to your choice of domain names? If no, explain."

And then the next one she also added is to identify people who may now know what the specific name of the process triggered is. And then there's some other remaining comments. So that's the part that we're looking at. And I would recommend that we'd look at the Google Doc because the Adobe Connect is pretty small, probably rather hard to see. And I put the link in the chat. And Michael has raised hand.

Michael Graham: Yes, I'm trying to go – apologies. Michael Graham for the record. I'm trying to go back and forth in views. And just a couple comments, I think this is fine to add the "If you attempted to register a domain name, did you receive an objection based on trademark." I'm just wondering if from after "objection" to the end of that we should remove – it doesn't make much sense and we're asking basically did you receive an objection. And then I think the follow up would be, "If so, what was the basis for the objection?" if you know it or if you don't know it and that might give some information as well.

And then that second bullet point after this I agree with the – including the follow up question, "If you have registered," I think that first introductory part if we want to put that in the side to the survey provider so that we tell them why we're inserting that name, I think it's fine but I wouldn't put that in here with the question. Thanks. And I suppose I should ask, does that make sense?

Julie Hedlund: And I see after Kurt has his hand up then so does Susan. Kurt, please go ahead.

Kurt Pritz: Yes, so I've – because the time zone I missed the last couple of calls and I apologize. So this kind of might not go with the flow of our discussion, but I saw my – I guess the big question is what, you know, should we keep this narrow or should we be asking about other RPMs such as URS or UDRP because we're just trying to focus on trademark claims and sunrise. And I think we want to keep it as simple and straightforward as possible.

And my second comment really picks up from three weeks ago so this is really sad on my part, but I think "objection" is, you know, to a registrant who – and, you know, talking to registrants, you know, a lot of registrants you know, have quote "their guy" so they don't really even know about domain names possibly. So I want to try to keep the questions as straightforward as possible. And rather than instead of saying "objection" you know, my thought was to really just say, "Did you receive this notice?" And put the exact words of the trademark claims notice in so that they would understand clearly what we were asking about.

And so, you know, I'm concerned that "objection" is, you know, use of the word "objection" is too vague, unless we put this sort of more vague question toward the end. My other concern is the less understandable the questions are to somebody unsophisticated like the registrant the more likely it is that they abandon the survey. Thank you.

Julie Hedlund: Thanks so much, Kurt. And next is Susan, then Kathy and Rebecca. Susan, please.

Susan Payne: Hi, yes thank you. Yes I think my point is probably pretty much the same as Kurt's. I'm just trying to get my head around what it is we're looking for information on here. And I'm assuming we're looking for, you know, who received a claims notice and what did they do in response to it. And so I kind of agree with Kurt that I think something that asks them about did you receive an objection is – could mean all sorts of things. And really we want to know whether they got a claims notice or not, don't we?

Please correct me if I'm wrong, because as I say, I'm trying to get my head around what we're seeking here. But aren't we just trying to find out did they get a claims notice or not even if they don't know that's what it's called and what did they do in response.

Julie Hedlund: Thanks so much, Susan. Kathy.

Kathy Kleiman: No, I don't think we are. I think we are asking about objections. This is Kathy of course. For three weeks we've been talking about this that the trademark owners we ask some very broad questions to, the – similarly the registrants I think – we kind of – we've been heading in the direction of asking them some questions as well both about the notice, which is already in Column 3 where they'll be shown a notice and we'll talk with them about it. But there could be a wide variety of objections of that they're getting and we had, I thought, agreed that we were going to ask them about that.

I just came from Names Con, the first Names Con I've ever attended. It's one of the registrant – it's a registrant business side meeting. And again, I've never attended one before, I just go to the ICANN meetings. These are very savvy registrants. Registrants in the old days didn't know a lot but I think they do now. So let's not – let's impute some intelligence to everybody and I think we're on a really good path with the questions. Thanks.

Julie Hedlund: Thanks so much, Kathy. Rebecca, please.

Rebecca Tushnet: Hi, Rebecca Tushnet. So I actually agree with the objective which is not turning survey respondents off or confusing them, I think we have a disagreement on methodology. I don't think that the first thing to do is shove the exact words of the notice in their faces. In fact, I think the first thing to do is probably to get them thinking about the context. And even if they don't remember the exact wording they may know that they received some objections, that's what follow ups are for.

So again, you know, I think the surveyor can help finalize this but so, you know, did you receive it, you know, before you completed the registration, for example, would be a really good signal about what exactly this was that was a problem. And then we can ask what happened. But if we just ask “Did you receive this notice?” even I would not be able to tell without extensive search of my records, assuming I had ever received one, which I hadn't, whether the wording was exactly the same. And it seems probably helpful to let people have a chance to think about it and then maybe even if they think they received something different, their answers may reveal that they received the thing we're interested in. Thank you.

Julie Hedlund: Oh thank you very much. And next I have Cyntia, please.

Cyntia King: Hi, all. This is Cyntia, can you hear me?

Julie Hedlund: Absolutely.

Cyntia King: Oh okay, good. I wasn't sure. I agree with not using the word “objection.” First I think that there's a characterization to that word. But more than that, yes, I have attended many Names Con and Domain-fests and whatnot, and there are a lot of savvy folks there, those probably are the most savvy people in the industry. But even some of those folks may not understand what an objection or the trademark claims notice is. So – and that's the most savvy people that are out there.

In my 10 years of working with many different registrants, I think that we would be better off to ask them if they received a notice, ask them what kind of notice that they got or, you know, ask them questions about the notice and then find out if they misperceived some notices as you know, perhaps saying that they cannot or should not register a certain domain or if they even perceived that the notice is an objection. I mean, we don't know, we can't make any assumptions at this point.

And to Rebecca's – to what Rebecca just said, I agree with her that we not start off with the in your face notice. Before we get to the real meat of what we want to hear from them, we need to – we need to immerse them in the topic in the subject matter, I think, in order to get the best responses. So I would agree with what Rebecca just said about not opening with the meat of the problem. Thank you.

Julie Hedlund: Thank you very much. And next I have Phil, please.

Phil Corwin: Yes hi. Phil here. First I think on Page 26 rather than, "Did you receive an objection?" I agree, objection is the wrong word. I would say, "Did you receive a warning notice at that time?" to make it clear that we're talking about something that they encountered while they were in the process of attempting to register the domain name, which will, you know, clarify what we're asking about.

While I wouldn't – I believe and Berry can correct me, I believe in the URS we have ways to identify URS cases brought against domains that might have triggered a trademark claims notice, but in as much as we receive permission from Council to conduct data surreys regarding sunrise registrations and trademark claims I'm not – I do believe it's outside scope and just confuses the purpose of this exercise to start asking questions about whether post registration they were subject to a URS, a UDRP, a cease and desist letter, etcetera. That's really a different question.

I thought we were trying to determine did they trigger a claims notice? Did they understand it? And what action did they take after receiving it? Did they abandon the registration or go onto continue? And I think when we start asking about things beyond that that may have happened at some distance in time after it – we're getting outside the scope of what this survey is supposed to be about. Thank you.

Julie Hedlund: Thanks so much, Phil. And Lori, please.

Lori Schulman: Yes, I want to echo, excuse me, what Rebecca and Phil say. And I also want to be careful about using objection, protest or challenge simply because that hasn't happened yet. Really to my understanding the claims notice is exactly that, there could be a claim in the domain name, someone else is claiming rights. But that the rights holder hasn't made the claim, hasn't made the objection. So I think there's a difference between saying hey, you could have an objection and proceed at your own risk, versus we object. I think that's fundamental to how the claims notice works.

Julie Hedlund: Thank you very much. Susan, please.

Susan Payne: Hi yes, thanks. It's Susan again. It felt to me like we were having a kind of circulate conversation and Kathy made the point that we've been talking about this for a while and actually I think that's actually, you know, that's right. But if we go to Page 29, which I realize is in the potential registrant section, there's a detailed note which kind of captures where we'd come out in the course of the last week or two which was that we'd got kind of three buckets of people, you know, some who actually were registrants, some who attempted to register but didn't go through with the process, and some who might be considering registering in the future. And that we were essentially asking questions of all of them.

And the objective overall was to present all of them with, you know, to ask all of them questions about the language of the claims notice or, you know, did they receive, I think would be implicit in that, did they receive a claims notice?

And so perhaps it's, you know, we're kind of going back over the part that we went over maybe last week or the week before which is that we'd sort of come to the point where we'd realized that people don't sit in just one of these buckets, they potentially cross a lot of them and that what we're – what we're really asking them all is, you know, if you were attempting to register a

name did you get a claims notice? And what happened then? You know, did you keep going in which case you were a registrant, or did you not keep going, in which case you weren't.

And so I think because we've got these two different sections we're sort of duplicating our efforts. But essentially what we're still asking about is, you know, when you tried to register a name, did you get a claims notice or it? And, okay, so that's probably not the first question you get hit with. But again, you know, we're not the survey operators here, we're just trying to explain to them what it is we're seeking. You know, it's up to them to tell us as the experts how's the best way to get to that point.

Julie Hedlund: Thank you very much. And Phil, I see your – is that a new hand? And if it is I apologize if I skipped over you. Phil? Then not hearing Phil, let's go ahead to Kathy please.

Kathy Kleiman: Hi, sorry. Coming off mute. Okay, I know we have a lot of other stuff to do today so let's – because I think this is our last meeting before we wrap this up. So what do you think about the – so we talked about the idea that we didn't want to lose – in past meetings that we didn't want to lose those registrants or potential registrants, the ones in the bucket of, you know, may have tried to register and didn't get through. We don't want to lose them just because they don't remember the name of the objection or whatever you want to call it.

So I think in the chat room there was the phrasing, “warning or notice of a possible trademark conflict.” So did they receive a warning or notice of a possible trademark conflict might kind of stem their memory even if they don't remember that it was called a trademark claims notice two years ago or whatever. So that seems like compromise language that Rebecca offered again, warning or notice of a possible trademark conflict.

And then I think we can move on because we've done a lot of this section before and the three buckets, as Susan said, and we can go look at some of the private marketplace mechanisms and some other things if everybody's happy from there. Thanks.

Julie Hedlund: Thanks so much, Kathy. And Phil, I see that your hand is still up. Is that a new hand? Okay. Not hearing Phil. So Kurt, please go ahead.

Kurt Pritz: So thanks, Kathy, I think that choice of language is good about the notice. So I think what we're left with is whether or not we want to ask questions about other rights protection mechanisms such as, you know, URS, UDRP and that. And so and what I'm hearing from the group is that, you know, similar to the section below we want to narrowly tailor it to trademark claims and its effect on the registration. So I think I want to spend – I'd like to spend five more minutes on that before going – or get to some final decision on that before going on to the next section. Thank you.

Julie Hedlund: Thanks so much, Kurt. And please go ahead, Susan.

Susan Payne: Thanks. I'm afraid I didn't put my hand up in response to what Kurt was saying unfortunately. But I just wanted to flag up something that Michael had put in the chat which I think is a good point. And I think it is captured but he just points out that we do at some point want to ask them specifically if they received a trademark claims notice. And I think that's right, I mean, I think that warning or notice of a possible trademark conflict is a really – is a good suggested form of language.

I think there seems to be general happiness with that. But I think we probably do want them also to be shown that trademark claims language and ask, you know, did you get one of these? I think as I say, I think that's expected when you look at this Section 4 in combination with Section 5 and what we've said there, but I just – because I think Michael doesn't necessarily have audio I just wanted to flag that.

Julie Hedlund: Oh thank you very much, that's quite helpful, Susan. And we have also put that in the notes. Kathy.

Kathy Kleiman: Okay. So to wrap up this section, I agree we don't want to go too far down the URS and UDRP and other things but neither do we want to cut it off. And maybe we could put this in for notes for the survey provider, but I think what Rebecca has said is really important. You know, I do a lot of oral histories so I often have in my head the names of the people I'm actually asking, you know, I work with a lot of programming pioneers, so I'm asking them about someone and I'd love for them to remember the name but if they don't I've got it and I'll offer it to them because 80-year olds don't remember.

And registrants, you know, may come up when we ask them about things they may – we don't want to cut off their answers, right, so just preparing the survey people for the different kinds of things they might see, URS, UDRP, in addition to trademark claims. We may have registrants kind of fishing for the name of the warning that they got, so just I think what Rebecca did here is valuable just to prepare the survey people for what they might hear and then help – and then, you know, we may have to define it for them, it'll probably be in the glossary, and that will help them – guide them towards the trademark claims notice but to understand what they're hearing. Thanks.

Julie Hedlund: Thanks so much, Kathy. And I see Michael and then Lori.

Michael Graham: Yes, actually I do have audio just sometimes easier to type than to say. But I agree with Kathy, I think giving the possibility of, you know, did you receive some other sort of notice and either alerting the survey company or they may want to put it in there, just giving the option of well this is the type of objection or notice that I received, blah, blah, blah, or other and they get to fill that in. So I don't think we're going too far down that line that Kurt was concerned that we would go down but identifying what subsequent action may have

come after a notice or what type of objection it might have been is useful information to obtain. Thanks.

Julie Hedlund: Thanks so much, Michael. And Lori please.

Lori Schulman: Yes, I'm just going to second Michael. I agree, I think a roadmap is helpful. And to Kathy's point, that's exactly right, that's what a good survey should do, give cues, not direct people but at least give some kind of cue, either the types of things we're going to be asking you about or dropdown menu. But any time you do a dropdown menu I'm going to go back to some practicalities about survey design, dropdown menus, things like that, everything – anytime you do any of that it adds to the cost of the survey.

So I just wanted people to be mindful because we – there's so many robust questions here, so many ways to design them, at the end of the day when we're back to a consultant who actually helps with the design the more sophisticated we get the higher the cost.

And I think as much as we want a certain level of sophistication we also are very much constrained by cost so it'd be very important to prioritize what we want to know the most because at the end of the day I think if the survey as it's looking now were to be developed with what we have in mind it would cost many multiples of what the budget is and then we would have to make a decision, do we want to push ahead with something that could be a lot more expensive and say hey, \$50,000 doesn't do it, or you know, work within the \$50,000 understanding that the cost concerns right now at ICANN are only second to GDPR. And so I just feel like I want to interject that as we go through this.

Julie Hedlund: Thank you very much, Lori. So I'm not seeing any more hands up. Do folks want to now turn to the link that had previously been put in the chat from Susan on the final version of the additional marketplace RPMs as categorized? Do we want to just spend a brief amount of time seeing if

there's anything that we want to pull out of there that might be in scope? I'm recognizing we only have 20 minutes left of this, our last meeting, and we also do want to see if there are any comments, final comments about the table. And then also talk a little bit about ICANN 61 and timing of future meetings.

So and Lori, is that a new hand or an old hand?

Lori Schulman: Julie? Yes, no that's a new hand because I got to own something, I was supposed to fill out the nonprofit section, and to be honest I think I forgot this was the last meeting. So I didn't fill it out. I noticed that you put the – I noticed that you put the chart – the gating questions in, but what I didn't do and should have done, and I'm going to apologize to the group because the time has sped, is I didn't go in and say hey, this is where I think should be directed specifically to nonprofits.

So I could suggest – I do have ideas about it, although I didn't fill out the chart, I've actually done some thinking about it. And, you know, maybe we have a discussion for five of our 20 minutes, to get to Section 6. And back to your question about the private remedies, yes, I think if, I mean, it would be a good thing to do a well. But again, I feel like I need to make up for my – I'll use the word "negligence, I hate that word but it's true, I just didn't remember to do it.

So I just wanted to offer that because I think reaching out to NGOs is a lot different than some of the other users that we're talking about.

Julie Hedlund: Thanks so much, Lori. And I see you have your hand up, and I'll just note with respect to the additional marketplace RPMs, Susan in the chat is saying should we finish with the overview of the table first. But go ahead, Michael.

Michael Graham: Yes it's Michael for the record. I'm just wondering, and I was not at the meeting where this was inserted so the question may have been answered. I

do not understand why we're making a separate set of questions for public interest groups and trade association, I think we – it is useful and important for us to identify them. And I suppose I don't understand then why we would be asking them different questions then we would be asking any of the other entities except we want to identify who is answering the question. So if we have clarification, Lori, that'd be great. And then I do have a couple of summary statements when we go back to the form itself. Thanks.

Julie Hedlund: Thank you, Michael.

Lori Schulman: Great. I can answer that. I'm sorry, I didn't mean to interrupt, Julie.

Julie Hedlund: No, I was just asking you to go ahead. Thank you, Lori.

Lori Schulman: Oh sorry. Lori Schulman for the record. I apologize for over-talking Julie. I think originally, Michael, way back the thinking was we want to capture as many stakeholders as possible and that catching NGOs and associations may yield more information because of the way that they operate, that was always my thinking. And I know that I was assigned this task because of my experience managing trademark portfolios for nonprofits.

And I think one of the challenges that I had with looking at the table and actually thinking about the questions is except for a handful of very, very large nonprofits, very few have a level of sophistication, I would almost put them in the category of Joe on the street, average person on the street, Joe or Jane on the street, that some of these questions are at a level where I don't even know if they could answer the question.

So it would depend on who we reached out to. If we decided that we were going to target very large associations. And I know that, you know, some of them that have the larger portfolios are the Y, of course Red Cross, but Red Cross has its own, you know, its own set of issues so I don't even know if Red Cross would even be a good candidate for such a survey, but in the US I

know it's the Y, March of Dimes, Rotary, very, very large ones that probably are operating almost like at a Fortune 500 level.

But if you go to almost any other nonprofit, and I have worked with many of clients, I've been part of associations where not devoted to these issues, I've raised these issues in seminars and with other lawyers who are very large stables of nonprofit clients and they don't look at these issues. And to your point, they have their person, you're either going to have some person at their desk registering in their name and they may not get the notice or they're going to have enough money to have an outside counsel who does it. It's kind of A or B.

There's very few that I think would be able to answer any of these questions with any sort of reasonable knowledge. I feel that's what the challenge is on the NGO side. So we could – so I feel like we have two choices here. We could decide, hey, NGOs are like anybody else and we're going to push them up into all the other categories, or we say NGOs are different, they have different knowledge levels, they might have different budgeting issues, I don't know if any of that's relative to any of this because we're really talking about very fundamental RPMs versus a generalized knowledge or sophistication about what managing a domain portfolio is whether it's two names or 2000 names.

Julie Hedlund: Thanks so much, Lori. And Michael, please.

Michael Graham: Yes, Michael for the record. Thanks. Totally understood, Lori. I guess I see it as somewhat problematic that we would be asking different questions of that particular group because then there would be no way to compare that with the general populations questions that we've asked everyone else. I mean, it'd be apples and oranges, understood that we might want to reach out but frankly, trademark owners have the same issue of sophistication that any – the nonprofit that you were talking about would have. So I think we could probably ask the same questions and if there is the ability perhaps notify or

signal the survey taker that we anticipate there may be these issues and how would they address them if they would at all. Thanks.

Lori Schulman: May I respond, Julie?

Julie Hedlund: Please, go ahead, Lori. And then Kathy.

Lori Schulman: Yes, thank you. Lori for the record. I mean, I agree, Michael, I think there's a decision tree here, do we decide as a group that we don't recommend the (second) category or do we decide as a group this is a specialized category and then I could take it upon myself to do what I probably should have done weeks ago and maybe come up with some directed questions. But then that goes to your point about the whole philosophy of the survey. So I don't – I see Kathy has raised her hand and I'm going to yield to Kathy.

Julie Hedlund: Please go ahead, Kathy.

Kathy Kleiman: This is Kathy. And, Lori, you know, I share your love of noncommercial organizations. And they come in both on the trademark side but also on the registrant side. So of course in NCUC and NCSG we deal with a lot of noncommercial organizations who under the laws of their country are not eligible for trademarks even though their acronyms or their names are well known and becoming more well-known through the good services that they do.

Lori, let me ask you though, as we hit the wall on this and need to move it out to the world, is it possible to give a note and Rebecca tried to do this under potential registrant, would – do you think writing a note to the survey providers that noncommercial organizations, NGOs, may well fall under trademark owners but also under registrants and that they may need a little more coaching and background as we do it? And that we're particularly interested in knowing whether we're dealing with individuals or noncommercial organizations or companies I guess, kind of flag that for the

survey people so that they can help us identify who it is that's responding as they come in? Would that be useful? Thanks.

Lori Schulman: Hi, this is Lori. I'm going to respond to Kathy. I think it would be very useful. If we're trying to tease out a classification of user. I'm going to call them "user," I'm not even going to call (unintelligible) trademark owners because I – to be honest, Kathy, in my own real world experience, understanding what you just commented upon, I very rarely in my practice have ever made a distinction between who's a trademark owner and who's a registrant simply because these things overlap in many, many, many ways.

And you know, even though there are some who may not qualify for trademark registrations, there, as you know, there might be other laws that protect these names in their particular jurisdictions, it's a story or an issue and it's of course it's what's driving a lot of the debates about the NGO and IGO protections, right? And we don't want to fall into that loop here. So I think, yes, I think, yes, I think that – and to be honest I think that's why I never really drilled down to figure out the questions because philosophically, as you can see I've thought about this and I haven't figured it out. So maybe the note is the solution.

Julie Hedlund: Thanks so much. So I'm hearing we're converging around having some notes of guidance for the – this is Julie Hedlund from staff – for the survey providers. And I'm noting that we have just about 10 minutes left and Susan has suggested that we could maybe deal with the additional RPMs in five minutes or on email.

So but recognizing that we do have to also finish this up, you know, at least – we'll leave this where it's at and you know, get it out to the working group and then to procurement. Michael, I thought I heard you say that you had some general notes on the table but I could be wrong about that.

Michael Graham: Yes, it's Michael for the record. I have one general note and I guess this might be consistent with other terms as well. But reading through I noticed that there is inconsistency in how we're referring to the claims notifications, trademark claims notice, claims notices. I think we need to just make sure that we use the exact same term throughout, we don't abbreviate it or use it in some different way so that what I would say is all of those ought to read "trademark claims notices" or "trademark claims notice," so that it's clear.

There were also two – a couple redundancies that I saw in Section 3, I wonder if I should just share those by email rather than bring them up now.

Julie Hedlund: Thank you very much, Michael. Really appreciate that. I am going to just turn sharing over to Ariel at this moment because I'm going into a place where I'm going to lose connectivity, sorry about that. And I'll be right back on. Thank you.

Ariel Liang: Thanks, Julie. Anyone have comments on Michael's comment about bringing up the (unintelligible) whether to do it now or via email? And I just want to remind everyone that we do have to finalize this table by the end of today so that we can send out to procurement. And I see Kathy mentioned email is good, so looking forward to your email, Michael.

Michael Graham: Yes, Ariel, rather than it just hanging in the air let me tell you exactly what I'm looking at on Page 21, if you go to the bottom of that page, in both Column 3 and Column 4. In Column 3 there's a question, "Do you believe the trademark claims notice has met its intended purpose?" That's redundant to the question above. And I would simply remove that part of the question but leave in the sub questions, "If so, why? If not, why not?" which follow that "based on your experience" portion of it.

And then on the fourth column there is a statement that we make in here which might be made in a cover letter to the survey with the procurement and that is the "Do you believe," oh wait a minute, where it is, oh, "The primary

method of trademark owners would be a letter of concern or cease and desist letter,” I think that’s inappropriate to the question and ought to be in the comments, so I would remove that.

Those are the only two things other than just conforming what we call things so that it’s called the same thing each time. Thanks.

Ariel Liang: Thanks very much, Michael. So just quick clarification, would you like staff to make that change directly or would you like to do that directly on the Google Doc?

Michael Graham: I could do it on the Google Doc if it’s back up there, I mean, that’s the only thing that I had.

Ariel Liang: Okay thank you.

Kathy Kleiman: Could – this is Kathy. Could Michael send that – Michael, could you send that deletion to the group because I’m not following you and I know we have to go onto the private marketplace things. Is there any way you could just send that around to see if anybody objects to the deletion?

Michael Graham: You know what I’m going to do? I’m going to scan it as a PDF and I will send it to the list.

Kathy Kleiman: Cool. Thank you much.

Ariel Liang: Thanks very much, Michael and Kathy. So if no one has further comments on this data table then we’ll just do the modifications based on the suggestions today and then looking forward to Michael’s email. So now we can move to the additional marketplace RPMs. And I think Susan posted the link in the chat previously about these questions. And I can put that quickly in Adobe Connect. In the meantime, Susan, do you want to kick off this discussion?

Susan Payne: Hi, yes, I'm happy to as long as everyone recognizes that my preparation in doing so was sort of two minutes before the call started. But so we had a – the group that worked on questions for the additional marketplace RPMs came up with a series of questions and then staff very helpfully went through them and allocated them to who the questions were aimed at. And so hopefully that's the document that Ariel is just uploading at the moment.

And so I think it should be hopefully it should be a relatively straightforward task for us to just go through and look at questions that are aimed at particular people that we're surveying here and then just determine whether they actually are within scope or not. And so, yes, so here we have the document now. And the first question – the first section is questions for the working group.

And so there's – these are, you know, it's a perfectly valid question but it's not a question that gives rise to something that needs to be considered for the purposes of this survey would be my view. And I will just keep going until someone puts a hand up or disagrees with me I think.

And then the next question down – or the next section down was questions directed to registry operators so we know that we are obviously surveying registry operators here in the context of the sunrise and trademark claims. So the first question was what had been Question 3. And this is about are registry operators relying on the results of the TMCH validation service or accessing the TMCH database to provide their additional marketplace RPMs?

Now again, a perfectly valid question and one that we would like to try to answer but that's not a question about the sunrise or the trademark claims, so it seems to me that this is not a question that is within scope for the survey. And so I would say that I don't think that that's something we need to be adding into this particular document for the survey – for the RFP.

And then Question 4 is, moving down, is what are each registry operators rules for each additional marketplace RPM that they offer? And so again, I'm just kind of trying to skim through that but I think that that's a question which we can ask those registry operators who offer those services, we can look on their websites at their rules and so on. But it's not a question about the sunrise or the trademark claims and so I don't think it's something that's in scope to be adding into this survey. I'm – I see Kathy's hand so I'm going to pause.

Kathy Kleiman: So this is Kathy. And there are very few, I mean, there are these, you know, additional marketplace questions that seem to fall into the categories of what – of groups we're already surveying. And they have a lot to do with impact on the sunrise and trademark claims because that's part of what we're asking is what's the impact of using these additional marketplace mechanisms. And so I don't know any other opportunity for us to go out there as long as we're already talking to the registries and registrars.

And I think there's one question for trademark owners, so there's kind of one category of questions, I think maybe two for the registries and sort of running the services and then I one for the registrars and one for the trademark owners, although I haven't studied it closely. Why not, you know, it seems as – because we're already reaching out to them we should probably put that in and see what answers we can get because I don't know how else we're going to be going out to get these things. And it does seem to make sense to tack these on. Thanks.

Julie Hedlund: Thanks so much, Kathy. This is Julie Hedlund. I'm back again. So that was for Question 4. Do we want to continue quickly on – I'm sorry, I'm seeing, yes, Question 5 and I'm seeing question – please go ahead, Susan, I'm getting a little confused in this document, go ahead.

Susan Payne: I think the confusion is just because the numbering is kind of out of order. Kathy, I take your point but it seems to me – and I'm basing this on you know,

the communication that we had from staff which is that, you know, the sign off to do this survey exercise for a particular purpose and indeed they gave sign off in relation to the specific charter questions that were being asked. And they didn't give sign off for us to be asking additional questions of various of these groups in relation to the additional marketplace RPMs.

So to the extent that the questions we identified in the additional marketplace RPM document are, you know, are clearly going to cover something that is within the scope of the sunrise or the claims, then I think we can ask it. But I don't – my understanding is you know, of what we've been told is that we can't – we can't just expand the scope of this survey because we happen to be talking to people and so why don't we just ask them a load of extra questions.

Julie Hedlund: Thanks so much, Susan. And I put myself in the queue. This is Julie Hedlund from staff. So as we mentioned before we really can only add these questions if they are specifically in scope of the RFP. So they would really have to be clearly identified as fitting into the way that the table is constructed as it is and the scope of the RFP. Thus far it seems that we're not seeing that. And so we actually cannot, by the terms of the RFP, add these because we cannot change the scope at this point.

Kurt is suggesting we go onto Question 5 which might be more germane so let's go ahead and do that. And noting, so Question 5 for registry operators that extended the trademark claims service beyond their required 90 days, what has been their experience in terms of exact matches, etcetera, you can see that if you scroll to that. Comments please? Kathy and then Susan, please.

Kathy Kleiman: Okay, Julie, apologies, I'm going to take us back to Question 4, and I'll just read it in case you're not there. "Have you been blocked from registering a second level domain name matching your registered trademark in any of the gTLDs launched under the 2012 new gTLD program?" And in the notes, in

the staff notes, it suggests that this is about the sunrise period so to the extent that this question is, I think it falls in our table to trademark owners as a good one to add so Question 4 for adding. Thanks.

Julie Hedlund: Thank you very much...

((Crosstalk))

Julie Hedlund: ...and actually I think staff was simply just taking that as notes that someone had mentioned that. So anyway, go ahead, please, Susan.

Susan Payne: Yes, I'm not disagreeing with you, Kathy, it's just that I was just working through the document, you know, so we were looking at the Question 4 insofar as it was aimed at a registry operator. And I didn't think that there was anything there for us to add in in terms of questions for the registry operator. But when we go further down the document we get to the questions directed at the trademark owner.

But before we get to that, we had Question 5 which was about registry operators and extending the trademark claims service. And I, as Kurt said, he thinks that that's maybe one that's more germane to our work and I would agree, I think that is one that we could – that is within scope because it's about the trademark claims and we could ask that.

I suspect actually if we went back to the questions we're asking in relation to claims I suspect it's covered anyway, I'm sorry I haven't had time to actually look at it. But, you know, we could ask a question about experience of exact matches beyond the mandatory period.

Julie Hedlund: And thank you for that, Susan. And we can then as staff go and see if that is indeed perhaps already covered. It does seem to have some familiar with questions that we may already have in the survey. And I'm just noting that we are four minutes past the time and I'm getting mindful of not keeping people

late. Do we – something that is labeled here as – okay Question 5 seems to be duplicated. Please go ahead, Kathy.

Kathy Kleiman: Okay, so the proposal on the table is that Question 4 and Question 5 would then fit into the existing table, because one directly relates to sunrise and one directly relates to trademark claims. Does anybody object to that?

Susan Payne: No.

Kathy Kleiman: Thanks.

Julie Hedlund: Susan, please go ahead.

Susan Payne: I was – no I was just saying no, I agree in 5 insofar as it's aimed at the registry operator is within scope I think. Four, to the extent that it's aimed at trademark owners I think is in scope. And 5 to the extent that it's aimed at registrars would appear to be in scope as well.

Julie Hedlund: Okay thanks for that, Susan. So I think that answers your question I hope Kathy. Is there anything else that we want to pull out of this document before staff just covers the last item very quickly, which is on ICANN 61 planning? And Susan, I see your hand is still up?

Susan Payne: Well, yes, my hand is still up just in the sense that going back to – sorry and I'm jumping around but going back to Question 1 which is the questions for the working group, we don't have any questions where are asking about numbers of domains registered, you know, during – using these protected marks – using these additional marketplace RPMs so numbers of blocks that were registered versus numbers of sunrise. But I don't necessarily see that as something that has to be part of this survey. I think it's a question we certainly one we can look at. I don't think it's one we can force the operators who operate those services to answer but we can ask them.

Do people think that we could ask them within this survey and that if so it would be within scope in the sense that it impact on uptake of sunrise or impacts on the utilization of the claims because there's been a block registered? It's a question for the group. I don't know the answer.

Julie Hedlund: Does anybody have any responses to Susan – to her question? Please go ahead, Rebecca.

Rebecca Tushnet: Sorry, this is Rebecca Tushnet. My screen went black. I was just thinking I don't know if this is a direct answer but this is an instance where I suspect people won't necessarily know, right, so this is the kind of thing that we might want to probe for about, you know, what happens during the registration process that maybe you didn't complete, so maybe we could think about it that way as something we could ask – we could sort of see if that is one of the things that happened. Thank you.

Julie Hedlund: Thank you very much. And Kathy asks – go ahead, Kathy, please.

Kathy Kleiman: Yes, I guess a feeling we're running through this very quickly and we may regret that. I appreciate that Susan – Susan, thank you for having read this ahead of time and being, you know, so well informed, I'm certainly not. And so do we want to – is there time to think about this? And also are we the group that then figures out that whatever doesn't go in the table to the survey providers we then help the working group – question mark – do we help the working group figure out what to do with these questions? What happens to those questions we don't incorporate here? Thanks.

Julie Hedlund: Thanks, Kathy. And just putting myself in the queue and then I'll turn over to Rebecca. We unfortunately don't have more time for this survey. This survey does need to be provided to the respondents to the RFP so we do need to get it to the working group and then to procurement and that needs to happen today.

I also note that I guess in the early stages of this PDP these questions were sent to new gTLD registries that ran these additional RPMs, Donuts and a couple of others provided feedback and we do have that information. So there may be other ways that we can reach out, this may not be the last opportunity but we are constrained by time for this. And really can only put in what fits within this particular RFP. And I see Rebecca's hand is down and Kathy, go ahead.

Kathy Kleiman: Yes, Julie, and I'm sure I'm asking a question that as cochair I should probably know the answer to, but I don't, and so I think – I'd like to recommend that we take anything that we don't incorporate into the table, you know, or we create something that has colors such as what went on into the survey table and what didn't and take it back to the working group for some instructions because, Julie, I think some initial questions may have gone out to the registries and registrars but I'm not sure these questions – these more detailed questions ever did. I think that's worth looking up.

Again, I think something a little broader and higher level might have gone out earlier. But the working group certainly worked on this and so I think we have some obligation to send it back and I look forward to hearing what Susan says. Thanks.

Julie Hedlund: Thanks, Kathy. Go ahead, Susan.

Susan Payne: Yes, thanks Kathy. Yes, I certainly wasn't meaning in any way to suggest that I think this is, you know, the closing off of this document. I simply was you know, having had it brought to our attention that if we wanted, you know, that if any of these questions fitted within the scope of the survey that we had an extremely limited opportunity to ensure that we covered them, that was all I was doing. I wasn't by any means suggesting that this our review of these RPMs, that's once we've done, you know, these five minutes on this call that that's the end of it. It was purely that, to try to, you know, make sure that if

something should have been asked within the survey and it was within scope that we didn't forget to do it.

Julie Hedlund: Thank you. And this I think – thank you, Susan, this is Julie from staff. And no, and we don't have to rush and keep in mind that last week we talked about a possibility for using time at ICANN 61 as a working session. And that we could then more – do a more in depth review of these questions. And so that gets us then as staff to the question of whether or not we do want to repurpose one of the sessions, as long as we're extremely clear in the description of that session that it's a working session, that any working group members, you know, who attend should, you know, note that and that it's not an open presentation session for community members.

So for example, we could use the last session that is on Thursday morning from 8:30 to 10:15 as a possible – yes and Kathy says private RPM – so we don't currently have a meeting scheduled next week, Kathy, we have been talking about using ICANN 61 to meet. And but that is the question – the last question here on the agenda, timing of future meetings and also ICANN 61. So I'd like to ask you all that question.

Kathy's asking who will be at ICANN 61? We don't have an answer to that question. Susan is saying she will, so will Christine. Of course keeping in mind that we will have remote participation opportunity at ICANN 61 if we use one of the public sessions, and the time difference is not all that great. I see Kurt is leaving Wednesday morning in which case we might consider whether or not to repurpose time on Sunday.

But Phil, please go ahead.

Phil Corwin: Yes, I just want to note the cochairs on their regular Friday call which is taking place this Friday in about 45 minutes, had discussed this possibility. We hadn't made a final decision but my recollection is we have three hours Saturday afternoon, another 90 minutes on Sunday I believe in the morning

and then the final 90 minutes is on Thursday morning and that's the one we were talking about for – using for this data team or some other dedicated sub team work just because we have, you know, things for the full group and for the community on Saturday and Sunday.

So but the feedback from this group will be useful particularly for our call that we're having today where we're going to further discuss and move toward finalizing plans for the San Juan meeting. Thank you.

Julie Hedlund: Thanks, Phil. And given that we now are nearly 15 minutes over time, perhaps staff can suggest that we send this as a note to this list asking if people would wish to then make our next meeting either next week on Friday and availability on that and/or at ICANN 61 and people could perhaps indicate their availability for those two times. And noting that as Kurt has said, he's leaving on Wednesday morning.

So let's take that as an action item from staff and then we'll also continue discussion with the cochairs and maybe roll that into that action as well. And I want to thank you all for staying on 15 minutes past the hour. And wish you all a very nice afternoon, morning, or evening and also a nice weekend. Thanks, everyone.

Terri Agnew: And thank you. Once again the meeting has been adjourned. Operator, (Aubrey), if you could please stop all recordings? To everyone else, please...

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