

ICANN Transcription – Abu Dhabi

GNSO Review of all Rights Protection Mechanisms in all Generic Top-Level Domains

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On page: <https://gns0.icann.org/en/group-activities/calendar>

Jonathan Zuck: I'm Jonathan Zuck the Chair of the CCT. And I guess while the slides are being loaded or maybe they are loaded and that's what we're looking at I don't know I wanted to let you know that a couple of things. One is that we did release a draft report and received public comment on that report. But while that public comment was taking place and until recently there was an additional instrument in the field which was a INTA member survey that we did not yet have the results for. That's terrible sentence construction for which we didn't have the results.

And so what we are going to release just after this meeting is an addendum to that draft report for three particular sections. One is parking, one is DNS abuse for which there was also a study in the field at the time and then one is updated rights protection section that is now influenced by the results from the INTA survey. So we do have some things to talk about and to share today that you don't yet have in front of you in written form but will shortly. So we

will try to go into them in sufficient detail to discuss them with you. Obviously we're very anxious for your feedback and understand where you all are with the design of some of the new RPMs.

Next slide please. Next slide. Yes so this is our mandate which I think you've all seen and RPMs are considered part of the safeguard aspect of our mandate. We made a real effort to make a data driven review. And a lot of our recommendations have to do with better collection of data throughout the year so that future research and review efforts are better positioned to make quantitative analyses.

Next slide. So this is the current timeline. And you'll see here that in November which is just after this meeting we will be releasing an update to the draft an addendum to the draft report for a truncated public comment period of just 30 days because it was just sort of the delta that we're expecting comments on. And then we hope to incorporate those comments together with the public comments that we received on the principal report and finish up by the end of the year for delivery in early January.

Next slide. You can see here again that these are the three new sections to the report or updated or significantly updated sections of the report related to parking, DNS abuse and the INTA survey.

Next section. And so what I want to do at this point is hand the baton to David Taylor to talk about some of the findings, and some of the new findings, and go into some of the refined recommendations. Thanks David. Take it away.

David Taylor: Jonathan man, David Taylor for the record. So on the RPM's side as everyone on this working group obviously knows there was the new RPM specifically developed for the New gTLD program existing alongside the existing UDRP. Add on the CCT Review Team we were looking to really examine whether these have helped encourage a safe environment and

whether they've promoted consumer trust and also sought to measure the costs and the cost impact of the New gTLD program to IP owners.

That was very difficult to do because there was really very little data available to get to that. And the main difference really in this section or this new section in the report is one pursuant to the INTA Impact Study which we were waiting with interest to receive. So that was our hope we'd get quite a bit of data from them. In addition to the INTA Impact Study we were obviously looking at the ICANN CCT metrics reporting. The previous ICANN RPM Review, the independent review, the Trademark Clearinghouse Services and we've had the revised report since the draft of the original CCT draft and then obviously putting there very importantly the parallel work by the ongoing working group.

So we were also wondering, you know, who – which of us are going to go the fastest? And I see we're doing quite slow we started in 2015 and we're finishing in 2018 which is probably a data way of looking at something. We did start at the end of 2015 we'll finish at the beginning of 2018. But we were looking to see obviously where things were going with yourselves to know what we could build in from that and any findings and work that you were doing.

Next sides please. So looking at the INTA survey the concern that was there was obviously this expansion of the DNS would likely create additional and increased cost for IP owners. And there was a need to assess what those costs or those additional costs and efforts were to protect trademarks. And this is really trying to get the data as opposed to the anecdotal evidence swinging either way which way, you know, it's very bad because of this it's very good because of all of this and all of those examples. We were trying to actually get to data.

Why INTA? Well they're very well placed with the 6600 trademark owners and professionals across 190 countries. And INTA members then were all asked to capture costs over the past two years 2015 and 2016. There were

only 33 respondents in total including one for profit. So it was a low response rate.

That was probably due to the fact to a large part that it was a very onerous questionnaire. And it was compiling data to respond which was a very significant task for many of these respondents. And as I think you're probably aware there was I think there was about 100 of the members started the questionnaire and of those 33 completed it. So 66 gave up at some point during the questionnaire thinking this is just too much to do. So one of the things we'd be looking for and certainly saying is be careful on what you ask and try to make it simple.

The key takeaways we've got there these are some of the ones which we've got in the report which you'll see when it's out for the 30 day comment period was that, you know, choice was certainly not a reason for brand owners to go and register. And 90% of brand owners were doing it for defensive purposes.

Commonly parked was the thing most of these domain names just get parked. So they're not really used once they've been registered. And the New gTLD program has certainly increased the overall costs of trademark defense. Highlighting their dispute 75% of the cases brought involved privacy and proxy services which is certainly a different sort of scenario to what we had five to ten years ago. And the RPMs at the end though I think this was quite a good - an interesting conclusion that they felt RPMs generally considered to have been helpful in mitigating the risks anticipated with New gTLDs, so certainly some positive there.

Next slide please. We turn to the ICANN metrics, we've got - they're shown there. We've got the number of cases which are filed across all providers. And they've got the UDRP on the left and the URS there just next to it. So you can see on there we've got - and it's clear that the number of cases filed have been increasing since the introduction of New gTLDs. Between 2013

and 2016, 2013 being when the first TLDs were in the route we can see a 36% increase across all providers.

If you actually change your baseline and you look at the average say between 2012 and 2013 you then actually get a slightly different figure of 25% but it's still going up. And again these are all just indications but it's certainly in one direction. But rising number of disputes are not surprising because we've got rising number of domain names second-level registrations. So the more pertinent question is really whether the – there's proportionately more trademark infringement in the New gTLDs than in legacy TLDs? And that's where we then have a problem with data again because we don't have ICANN metrics which break that down so we can't see, you know, look to that.

Luckily we have WIPO which does break that down. And these are public figures. So these are useful to have. And according to those statistics the answer to that is yes. And if you look at it on what with WIPO in 2016 of the gTLD caseload 18.6% of that involved New gTLDs as opposed to legacy gTLDs. So you got your 18.6%. And when you compare that to the volume of gTLD registrations over total, sorry the volume of new gTLD registrations over total gTLD registrations that's at 14%. So it's higher. It's showing it's higher indicative again. It's not massively higher, you know, we're not talking twice or three times or anything like that but it is higher.

And the UDRP US cases are obviously are only part of the overall enforcement cost to brand owners. And this again is one of the issues. You see a tip of the iceberg if you're looking at just the filing costs UDRP and URS. There's all this stuff outside of the cease and desist cause action other enforcement actions watching, et cetera, which is not captured by these metrics.

And the conclusion one of the conclusions we've got there as I'm heading to my next slide but the URS is not proving popular. You're looking at only

around 5% of cases. So it's - and they are pretty flat over the three years the last three years were in the 200 mark. So somewhat surprising perhaps but then, you know, that's something which I know you all will be looking at with glee on the URS side going forward.

Now on the conclusions there so we've seen this increasing number of domain name disputes which I mentioned there. And the trademark owners using a variety of other means to go after the things more trademark infringement presently in the New gTLDs then in the legacy TLDs. And I stress presently because things could change so we do want to be looking at this going forward over the years.

An impact study which was done by the INTA and Nilsson on cost, et cetera, that we do think it should be repeated. But it needs to be in a more user friendly format. And questioning the URS and its value and the Trademark Clearinghouse as well if you look in to the review report on that they said there that, you know, they couldn't do or they couldn't conclude in the same way and draw (defensive) conclusions because they needed a cost benefit analysis and what they were doing didn't amount to that. So from that bit of the paper we've then gone on to the three recommendations which you've seen before because they're not that different.

So next slide Recommendation 40. And this is the impact study. So we're recommending to ICANN organization that this is something that's repeated at regular intervals. And so we can see the evolution of the time. And so we're suggesting or saying that the next impact survey must be completed within 18 months after issuance of the CCT-RT final report.

If you go to 41 we can come back to these obviously. You've got the full review of the URS. And that should be carried out. Obviously that's already required. And therein that recommendation we're noting as you can see there however given the PDP review of all RPMs which is ongoing (unintelligible) to take on board that report your report when published. And indeed may not be

necessary if that report is substantial in its findings. We need to see where that goes.

And that's to the GNSO. And the Recommendation 42 is the one concerning the Trademark Clearinghouse which is a cost benefit analysis and review of the clearinghouse because as I mentioned there the independent review of the Trademark Clearinghouse Services Revised Report wasn't able to make definitive conclusions on that due to data limitations. And so they specifically noted they were unable to perform a cost benefit analysis. And that's where we're at a short summary and sweet and happy to discuss and hear what you're doing as well.

Jonathan Zuck: So we're happy to take questions. And I don't know whether if somebody wants to play the role of replacing of the S&T landlords here in the - Heather you're volunteering. So what's your question Heather?

Heather Forrest: Thanks Jonathan. For the record Heather Forrest who is not volunteering for playing the role of absentee landlord. On that last slide Recommendation 42 was it in relation to the Trademark Clearinghouse given that the RPM PDP is, you know, seeking its own - two questions for you. Seeking its own data in relation to the Trademark Clearinghouse have you had an opportunity to see that DMPM request that's been made by the PDP Working Group? Have you had a chance to evaluate that at all? If we were to send that to the CCT could that be helpful in some way number one and/or could you - will you be willing to provide you meaning the real you be able to provide feedback?

Number two and perhaps not having seen that request you might not be able to answer question number two will the - so you made a comment about the URS and specifically said it may be that the review that's being undertaken through RPM PDP is sufficient let's say in relation to the URS. Can a similar comment be made? I noticed it's not in your recommendation in relation to the Trademark Clearinghouse or do we need for example a separate PDP to evaluate the Trademark Clearinghouse. Thank you.

David Taylor: Thanks Heather. So to the first question no I haven't seen that. Yes please would like to look at it whether we can build it in and at what stage we can build it in because we're getting squeezed.

Man: Providing comment...

David Taylor: Yes. Oh providing comments to that as opposed to changing anything we're doing.

Man: (Unintelligible) the right question?

David Taylor: Either way yes, yes. So would be absolutely happy to look at it. And what we can bring into our report in the timeframe we've got absolutely happy to bring anything in on that. And then on the second question which I can't remember what it was because I thought I couldn't answer yes to the first so I immediately forgot it.

Heather Forrest: New PDP on Trademark Clearinghouse.

David Taylor: On the clearinghouse. I'm happy to try and track any wording to make them similar because we're not wedded to that. We're trying to fit in a process where we've got the RPM Working Group in parallel. And it just seems strange that we've got the two beasts running together side by side and I'm trying to just put a tentacle over to make sure that we link up and we know we're each doing what we should be doing to get to a result. So I'm quite happy to take any input on that. And certainly look forward to that. You know, when we've got the comment period of the 30 days when this is out we could, you know, sort of adapt it accordingly and then we can discuss it internally. Yes (unintelligible).

Jonathan Zuck: It has been a long week for David. So please forgive the creepy metaphor of the tentacles between the two beasts running (unintelligible) go ahead.

Heather Forrest: Thanks again, Heather Forrest again. May I follow-up? And I don't mean to monopolize the queue but you've raised some very helpful and interesting points here. For the record I wasn't suggesting one way or the other let's say new PDP or not, you know, this PDP is sufficient new PDP.

But I think it's an important question which then leads me to the next question which is given that you folks have been undertaking a substantial body of work that does overlap with other efforts and feeds into other efforts. Is there anything that we, Steve Crocker likes the phrase learnings. Are there any learnings here about running reviews in parallel, running, you know, overlapping efforts, what could you folks say now that you're at the end of your process about, you know, what cautionary tales or words of wisdom can you give us about the benefits and burdens of doing what you've just experienced? Thanks.

Jonathan Zuck: Thanks Heather. I thought is going to wait for the public forum to become controversial. But I was sort of outspoken at the time of the launch for example the Subsequent Procedures Working Group that it might want to wait until a couple of these reviews had finished to begin their work but was convinced by some that there was a lot of sort of administrative work and administrative reform that wasn't covered by the review teams that could be begun.

And so that process has begun. And now we are hearing the things like well we're already done with that, or we already figured that out or things like that. And I think the only downside is really peoples disappointment maybe that they have to revisit something or, you know, so I mean it could be that net-net it's fine that those things were running in parallel but there's just going to be some friction in the actual overlap. In other words I think good work got done that didn't need to wait. And, you know, whatever friction there is maybe worthwhile and we just need to be ready to handle it and not, you know, seed to the emotional as those points of friction arise. Mary.

Mary Wong: I'm just raising my hand because there's a few people who have raised their hands in Adobe as well. We have four people in the queue. Two are remote but I believe they're actually on the phone bridge so they can speak...

Jonathan Zuck: All right.

Mary Wong: ...their question.

Jonathan Zuck: As long as Heather doesn't have another question then I'm ready to proceed with the queue.

Mary Wong: Well Heather can raise her hand and get back in the queue I suppose. But in order we have George Kirikos, Kristine Dorrain, Kathy Kleiman and Susan Payne.

Jonathan Zuck: Okay.

Mary Wong: Do you want to go on that order?

Jonathan Zuck: Yes sure.

Mary Wong: George I think you're on the audio bridge. So, you know, please try your mic and say your question.

George Kirikos: Hi. George Kirikos for the transcript, can you hear me okay?

Mary Wong: George we can hear you. But you're coming across a little softly. So I don't know if both you and our techs can try and amp up the volume a little bit.

George Kirikos: I'll try to speak a little bit louder. I just want to raise the point that this INTA study had numerous statistical issues so it should not be relied upon to inform the CCT review. For one thing the sample size is far too small only 33. And

that's far too small to provide reliable statistical results. And we discussed this on the PDP Working Group, you know, various courts have found that, you know, you need a much higher sample size to be - to yield statistically significant results.

Second it was a non-random and under representative sample of only very large trademark owners which is not going to be able to provide the kind of broad results that the CCT or anybody else would actually need. The proper way to have done it would have been to do a random sample of trademark owners using, you know, national database of such as the USPTO or other countries public directories of trademarks.

And that's exactly how they did it for the Whois studies, you know, they did a larger sample. I think it was 3000 and 4000. It was actually conducted by Nielsen. They actually know, you know, how to do it properly. And they did a random sample from the public Whois databases. So it was in that case it was random. And it was a statistically significant size to properly reduce the error margins for the survey. So include - I'm very curious as to why Recommendation 40 exists given that the sample size was far too small to yield any results that are valid statistically. Thanks.

David Taylor: Yes thanks George, David Taylor for the record. Good point good question. I tend to disagree unfortunately. First of all I do think it was, you know, it wasn't carried out by INTA. It was carried out by Nielsen. So, you know, Nielsen do have to know how to do a proper study and they did this one. So on that side I think that's sort of pretty clear. And I'm happy with that. It was independent for that reason.

And as well the sample size was very good. The response rate was low and that is a shame. And I fully agree with you there because we would all like to see a much higher response rate from the brands concerned and the members of INTA. And the fact that it was 33 was why we've looked and

when you'll see the report when you read it it was saying it's indicative of trends and it's not a trend itself.

And we double checked and went back with that with Nielsen and said, "Is that what you would say objectively?" So that's their words not ours and not INTA's either. So really we're just looking at this. And I think it was a shame that we didn't have more responses. And that we've identified as, you know, the study was perhaps overly complex.

And, you know, to jump to the saying of, you know, and so we shouldn't do it because that again we learned, we all learned from what we're doing and where we go at the next stage they we're saying that, you know, let's do it again. Let's repeat it and let's repeat it regularly and get it right and get more data.

And if this turns around to, you know, the next time it's done or anything like this and it shows the absolute opposite then we know that the indicative of the trend was wrong. But I think it doesn't mean that we shouldn't be looking at that. And, you know, I think as we've actually mentioned between us that it's still relevant as it's analogous to a focus group at the very least. So we're getting data on that and we're getting provided with data. And it doesn't make a big sort of change to where we're looking at this and it does match in with what we're looking at.

Mary Wong: And just before we move to the next speaker this is Mary Wong from staff. Just for everyone in the room there is a standing microphone in that corner. So the conversation should not be restricted just to folks around the table or to just Working Group members. Wo if you do have a question please feel free to go up to the microphone in the corner. And so the next person in queue is Kristine Dorrain.

Kristine Dorrain: Hi Mary. I noted the chat that George has asked for permission to respond. Is that acceptable with you and I can go next?

Mary Wong: Thank you Kristine. Please go ahead George.

George Kirikos: Thank you. I just wanted to respond. It's George Kirikos again for the transcript. I just wanted to respond to that last statement about being indicative of a trend. That's totally false because trends refer to time series data. And this isn't a time series data sample where you can compare onetime period to another time period. This was a onetime study. Trends refer to how data changes over time and we don't have two time periods to compare here. So that was just a throwaway line in the Nielsen report to try to make it look as though it was statistically interesting.

But I go back to my prior point. This was a statistically invalid study that should not be relied upon by anybody. It actually indicates that a proper study could be done using the same kind of methodology but it could be a much larger sample and also a representative random sample. Thank you.

Kristine Dorrain: Okay thanks. This is Kristine Dorrain for the transcript. I'd like to turn our attention to - this is the Recommendation 42 on the recommendations slides. The CCT-RT recommends a cost benefit analysis and review of the TMCH and its scope. And so having been one of the co-chairs for the sub teams where we reviewed claims and on the group where we're talking about sunrise the trademark clearinghouse is a broad catchall. And so I'm specifically interested in what you are thinking?

Were you thinking about the actual database and its implementation of like what gets in the database and how that information is collected and verified? Are you thinking about the sunrise services which are offered which the registry operators used by tapping into the database or are you specifically thinking about the claims notices that the registrars send out that also tap into the database? I'd like to know a little bit more because we're actually in the process of putting together a survey looking for more information and that would be helpful to us. Thank you.

David Taylor: Thanks Kristine. We deliberately broaden this because that is one of those if I use the tentacles again example, but we know you're doing this in parallel so we didn't want to sit there and say this is what you should be doing. So it, you know, it is broad. We've really gone back to this previous review and looked at that and they were really coming through in saying we can't draw conclusions because we don't have enough data.

And as we're looking from a data aspect we're saying okay we need to get that data but we're certainly not prescribing how we should do it and which ones. I mean it's as broad as we can make it but obviously we want to be careful we don't end up with an incredibly complex review to try and get all that data and then suffer, you know, by not having the results which we might be able to use.

Kristine Dorrain: Me I briefly ask a follow-up? Okay do you have any – when you put out your final report will there be some guidance, some sort of things that sparks this recommendation, you know, some sort of anecdotes or some background that says here is how we got to this recommendation so we can review that and try to pull out some information that would be helpful to us? Thanks.

David Taylor: Yes. We've got it in the rationale and as I say really it is that we've looked at the previous reports on the clearinghouse. We've kept little eye out on what's been going on in the RPM and so the discussions on the RPM working groups so those are there. And with, you know, we're just trying to say we think it needs to be done and in fact you're already doing it which is good. So we're not making anything radical at all on this.

Mary Wong: Thanks Kristine and David. And this is Mary from staff. And I'll just say that is probably the last time I'm going to say it because it gets very tedious if in announcing people asking questions. I have to announce myself so I'll just appear as woman on the transcript. The next person in the queue is Kathy

Kleiman who is one of the co-chairs of the working group. And Kathy I believe you're on the bridge as well so go ahead.

Kathy Kleiman: Hi Mary and hi everyone. Can you hear me? This is Kathy Kleiman?

Mary Wong: Kathy, we can hear you very clearly. Thank you.

Kathy Kleiman: Terrific. First a remote thank you to the CCT-RT for being with us. I know your work is amazing endless and that you're speaking with many, many groups in Abu Dhabi as you did in Johannesburg so thank you. So I have two questions and I'll pause. The first one is following up on Kristine and Heather.

And I apologize if you think you've already answered it. But looking again at that same slide for the cost benefit analysis of the TMCH Recommendation 42 Slide 15 how do we know, how does ICANN know whether the work that we're doing in the RPM Working Group satisfies the recommendation that you're setting forth here?

We can't try to revise it by the time the report comes out we may be well into our data gathering phase. So that's why, you know, questions now this meeting that was very timely. But again knowing the extreme weight given to recommendations of a review team how do - how do we know now that we're covering the bases that you're looking for so that we can prevent ICANN having to go through another detailed and exhaustive review of something? We think we're doing it but how do we know? Thanks.

David Taylor: Thanks Kathy. It's a good question and I'm not sure what the answer is because this ties in with running things in parallel as Jonathan touched on. If we'd have done this first of the RPM Working Group was following up then I don't think there would be an issue.

And if the RPM Working Group had those recommendations or exactly what you were doing, we'd be referring to that in a CCT Review Team report so it's

a bit of a chicken and egg really, which as I say is why this recommendation is deliberately large so that, you know, in a way what you provide should match.

And as Heather picked up there with, you know, matching I think it was very common between matching Recommendation 41 and Recommendation 42. I think we could probably jiggle some wording in there to make sure that they are the, you know, deemed to be looked at in the same way because that's the intention.

There's no intention to do this one differently to the – to Recommendation 41 so they're helpful points and I'd certainly welcome any input on that.

Jonathan Zuck: Kathy this is Jonathan Zuck also for the record. I think the other side of this and what we're perceiving is that in our attempt to not be overly prescriptive maybe we're being overly vague.

And so those are sort of two tensions that we face in these parallel efforts of why are you being so dictatorial on what we're doing and then why aren't you giving us enough, you know, details about what you want us to do?

So we face some of that with the Subsequent Procedures Working Group as well but I think at a – at the fundamental level we shouldn't be throwing these things over the transom at each other either.

So I think we're happy to participate with you in the conversations you're having about the cost benefit analysis you're trying to get accomplished, and provide ideas and interact with you to capture whatever ideas it is that we have.

As David mentioned we're actually reacting to a note that was also sufficiently vague in the Trademark Clearinghouse review that said we were unable to perform a cost benefit analysis.

So, I mean, so I think that's more of a question of maybe some joint brainstorming or something like that rather than something Kathy that you should feel like some weighted recommendation is going to be questioned later in implementation.

One of the things that's I think happening for the first time with this review team is that some subset of the team is going to remain in place after the board makes its decisions about which recommendations to accept so that we are able to participate in the implementation, so that there isn't this year later coming back and saying, "You didn't do this the way that it was intended," or something.

So hopefully the whole process is more interactive now than it's been in the past and would prevent the kind of scenario that you're describing Kathy.

Kathy Kleinman: Great. Jonathan if I might follow up. Thank you. First, when you say TMCH review are we talking about the analysis group report?

David Taylor: Yes so it's the independent review of the Trademark Clearinghouse services, which are the analysis. Yes.

Kathy Kleinman: Okay, which we've looked at closely. Yes I think in – I like that idea of working more closely and very quickly too, because there is the possibility I think based on some of these recommendations that ICANN may see itself as having to go through – having to duplicate efforts or having to go through another process because not enough tentacles crossed over for lack of a better term.

I will – actually let me – but thank you for the discussion and especially on the TMCH we think we've covered most of the date – most of the bases between the detailed review of the Trademark Clearinghouse that we've already done and the data we're about to gather that's been approved.

And I don't know if you've been following – that's been approved by the GNSO Council. We're about to go out and collect a lot more data so it would be good I think for the whole community to know if it looks like we're covering the right bases from your perspective.

I'll take my hand down and let Susan go and then I'll come back with a different question. Thank you.

Susan Payne: Hi. Thanks. It's Susan Payne here. I put my hand up a while ago and now that I've been listening to other people I have a nasty feeling I'm basically asking the same question in another way.

But I – looking at Recommendation 42 in particular you – when you were introducing that you talked about the analysis group mentioning they had insufficient data and so on.

So have you – I know elsewhere you've made various recommendations about data and the need for more of it, but have you – is there any specificity about things that you think (ISHAN) – ICANN should be doing in order to ensure that next time around - if we haven't managed this time around to get that data?

And I'm – and many of us on this working group think we are going to struggle. How do we get that data for the future? What should ICANN do to ensure that the data is there so that a more data-driven process can be done in the future than the one that the analysis group could carry out or the one that in fact we will be carrying out?

David Taylor: Thanks Susan. David Taylor for the record. Yes, I mean, it's the quest for data isn't it? It's like the Holy Grail on this and getting the data which is helpful, define it in the right way and being able to use it and not making it overburdensome and overcomplicated in getting it.

So looking at that the thing which struck me certainly in reading that report - when I'd read the initial report on that and then when I went through and read the final report it was this big caveat in there where they said, you know, "We've got significant data limitations."

And so you sit there and think, "Okay well that's been done with significant data limitations," and we didn't go out because that had already been carried out and we're waiting for the final report.

We weren't going to go out and suggest that there's another survey carried out as we did with the DNS abuse study, et cetera. And then also we knew that you - with yourselves being created this is something that the RPM Working Group's looking at so we don't want to duplicate.

And I think that's - so I just said to Jonathan there, you know, perhaps one of the things we should put in the mechanism is we encourage non-duplication of work wherever that's possible.

But the whole thing with the cost benefit analysis for us is just making sure it's wide, it covers everything, it covers everybody involved and so the big picture can finally be looked at.

And you - if the data is there you can draw the conclusions from it, and we've seen it's very difficult to get that and to get the data and you can interpret data in different ways. So...

Jonathan Zuck: Why don't we - this is Jonathan again. Sorry. I'll come back to you Mary. The - why don't we circle back to the analysis group for this part of this conversation as well?

I mean, I think they – having made the initial claim about the dearth of data our best position - to be talking about the kind of data we should be trying to collect.

And so we can take that on or we can do it together to circle back to the analysis group and get answers to those questions. I mean, and that might be the easiest way to approach that, especially the way you've raised it Susan in terms of ongoing data collection as opposed to some monolithic effort as Kathy was afraid of, right, but instead make it about the ongoing collection of data. Mary?

Mary Wong: Thank you Jonathan. This is Mary from staff and actually at this point we did have a few other people in the queue, but if staff may interject because we have done some work on the analysis group's data and report.

And there may be certain things that could be helpful to the CC Review Team for us in the working group to know what we've been up to basically, and I'm just going to hand that off to Berry Cobb to explain what I mean.

Berry Cobb: Thank you Mary. Berry Cobb for the record. So hopefully to bowtie all of these comments that were put together, at the end of the day the working group had revised our PDP Working Group, has revised charter questions.

One of those are still outstanding – is the TMCH effective or not – paraphrasing? There's several sub-questions to that and so the working group's still going to have to come back.

And Jonathan I'm hoping you were happy to hear the whole DMPM request because you know the history of that. There's basically without deep diving into it - and some of this was discussed on Sunday yesterday in the other RPM session or Saturday.

There's two components to that DMPM request. One is – not anecdotal but a survey of sorts and then a second part is more the – or for qualitative type data.

And then the second component is quantitative type data, one of which still is capturing data about the Trademark Clearinghouse. So from - leading up to that report from several months back, staff has access to the raw data that the analysis group used in that report.

I don't know if I'd go as far as using the word substantial lack of data. They've actually had quite a bit and in this initial analysis we essentially revalidated their findings in terms of the numbers they presented, and not so much their results or the like.

It's our hope that we can get a fresh copy of that data to make it more current when this working group circles back to address these charter questions around the Trademark Clearinghouse.

And I can't say whether we'll answer or provide a true cost benefit analysis or not, but based on some of this initial research I think there is additional information that can be delivered to this working group to at least have better insight about how it works, would it work, how – why it works the way that it does and some supporting quantitative data on how it's working.

So I think it is in line with the CCT Review Team's recommendation there and as far as I can see is - the working group's got it – the tentacles so to speak.

Jonathan Zuck: All right, I continue to be creeped out by all these tentacles but – and I think obviously we welcome all that data Berry and welcome the staff's effort in, you know, trying to reexamine it/collect refreshed version of it.

And rather than kind of make some normative statement about whether they had a substantial problem with data or not, I think the issue in particular was

about the cost side and getting a bigger – a bread – a broader picture of that that would allow for a – more of a cost benefit analysis.

And so, I mean, it may be worth going back to them to figure out what they meant by that or what data they believed they were missing so that we can powwow and figure out whether or not that data is, you know, accessible by other means.

Ariel Liang: This is Ariel speaking. There is a remote question from J. Scott Evans as one of the Co-Chairs of the PDP Working Group. “Would it be valuable for us to share with you what our plan is with regard to the TMCH to ensure that we’re headed in the right direction to meet Recommendation 42?”

Jonathan Zuck: Yes.

David Taylor: Yes. That was David...

((Crosstalk))

Jonathan Zuck: The answer from man and man.

David Taylor: Man and man.

Mary Wong: And so I think we – Kathy you had your hand up and you had ceded to J. Scott so we’re going to go back to you. Please go ahead.

Kathy Kleinman: Terrific. Thanks. Kathy Kleinman for the record. And I am going to move on to something that there’s a lot of discussion of in the chat, which is the INTA report.

Just by way of background Lori Schulman did circulate it to us and spent 90 minutes in a full call discussing it with us. The version I’m referring to when I refer to it is from April 13 of 2017.

I don't know if that's a slightly different version than the circulated and of course it's the INTA cost impact report. So in Page 5 of the revised report there's a whole section/there's a whole slide dedicated to limitations of the report.

It – this is from Nielsen - a note on reading this report and I'll just quote. "The sample size of completed interviews is still small from a statistical standpoint and requires some cautions."

And they go on with great cautions including that, you know, caution is advised in interpreting analysis of sub-samples less than 30 - are subject to high variability.

I'm not making any of this up because I couldn't. So when we look at your Slide 10 and it says, "The main reason for - 90% of brand owners elect to register a new gTLD is: defensive purposes."

Wouldn't that be the main reason for 90% of the 33 brand owners who happen to answer the INTA survey? One of the things we did note and talked with Lori about extensively is that Nielsen, while having all these qualifications in its kind of how to read this report slide, then went ahead and made very broad findings.

But those very broad findings actually only apply to the 33 that responded, and as I noted in the chat more than 50% of those were more than \$5 billion in revenue so very, very large companies were the majority of the respondents and maybe that's who had the time to do it and the resources.

But can you qualify your slides as we qualified ours that we're really talking about 90% of the respondents to the survey, not 90% of all brand owners or not 90% of all INTA members? Thanks.

David Taylor: Thanks Kathy. David Taylor for the record. I think you'll find when you read the new section of the report when that comes out in a couple of weeks that the qualified language is in now.

I didn't put a slide up here on the INTA impact study full of qualifications because we're making the point and we're taking from it, and each time I've presented this slide I've said that this is – it's indicative of a trend and we're looking at it in that way.

And you'll also note on the, you know, on the recommendations we're not recommending anything with regard to beefing up anything, removing anything, et cetera.

We're merely recognizing that the INTA's impact study or the impact study by Nielsen to INTA members wasn't perfect and had a very low response rate and should be done - and hence should be done to get a higher response rate.

And that really is essentially all the Recommendation 40 is so we're, you know, I'm a lot less concerned that we're going somewhere we shouldn't be going with this and as said the qualifications are in there in the report.

Kathy Kleinman: Good to hear that. Thank you.

Mary Wong: We don't currently have any hands up in the Adobe Connect room, but once again for remote participants please feel free to raise your hand. If you're on the bridge you may actually speak directly.

If not please type your question into the chat and we will read it out for you. So for folks in the room an invitation also to comment on either the presentation or to ask David, Jonathan and their colleagues about the work of the CCT team.

And while folks are thinking about that Jonathan or David I don't know if you want to add anything to your comments that you may not have already mentioned or a follow up.

Jonathan Zuck: Thanks. I guess I'll follow up with what David said -- this is Jonathan for the record -- Jonathan Zuck for the record -- and that is coming to the surface in a lot of the areas of our report is that because of insufficient data, because of insufficient time passing, et cetera there are a lot of instances in which there aren't a lot of smoking guns to point to in the CCT review that would suggest dramatic policy change.

And so that's why a lot of the recommendations are for the greater collection of data, ongoing, you know, analysis of that data so that more specific recommendations can be made in the future.

So the very fact that the first part of our conversation was, "Why are your recommendations so vague?" is a function of our understanding that the findings are vague.

And so we were forced to remove the recommendation, burn down all the RPMs and start over from scratch. That you might have been anticipating so the -- I think that the recommendations reflect the findings and that's -- and the -- and if you will the gravitas of those findings and the specificity of those findings and so the one explains the other I think.

Ariel Liang: And this is Ariel Liang for the record. There are two remote questions. Actually it's more than that but the first one is from J. Scott Evans. "Do you have -- do you all have any recommendations for how we can work better together?"

And then there's another question from Lori Schulman and that question is in the form of a comment. "INTA has no objection to CCT RT entering the words of those who responded to its reporting of the INTA results."

And then Philip Corwin also have a question to the CCT RT. “Do you reach any cost benefit conclusion as to whether the benefits of new gTLDs outweigh the inevitable increased costs to trademark holders?”

David Taylor: So David Taylor for the record. I’ll – there’s a few questions there and I can’t remember – we – whether we remember them. I’ll take the first one from J. Scott and it’s a qualifying question.

When you say, “How can we all work better together,” are you referring to generally within ICANN...

((Crosstalk))

David Taylor: ...or between this working group and the CCT Review Team or within the working group or – I’m just looking for a bit more specificity there. No I – well our time is pretty much up really on CCT Review Team.

So anything which we can do and we can share - and I think the points you’ve just raised and Heather raised at the beginning about sending information now - we’re more than happy to look at it and to build anything in in the timeframe which we’ve got left.

And I’d certainly encourage everyone when we’ve – when we put the report out this – for the 30 day comments we certainly look forward to anything coming then, which will enable us to shape and finalize the final report.

Jonathan you were going to – oh and sorry, with Lori’s question. Yes I think that’s actually in the wording of those who responded. I think that’ll be – that – that’s in the report as it is so that’s in.

Jonathan Zuck: And then I guess that leaves me with Phil’s question. And the biggest problem with doing a cost benefit analysis of the new gTLD program as a

whole has to do with an apples to oranges comparison of costs and benefits in large measure.

And so the truth of the matter is is that we had a finding that there was increased competition. There was a – nearly an equal share of – actually a better than equal share of new registrations in the time period of our research who were in the new gTLD program sort of equally shared by legacy TLDs and ccTLDs.

There was a – obviously an increase in choice but I think that it's also clear that there's a kind of mono culture that has developed in the name space to where everyone is gravitating toward the same business model, and there's some systemic things that kind of encourage everybody to have an open TLD and to go after as many registrations as they possibly can because any restrictions that would limit your registrations, you know, limit the viability of that business model.

And so we have recommendations about trying to find creative ways to encourage new business models in the domain name space. And, you know, I think that there's a – we're - kind of run neutral on some of the things related to the consumer trust because – partly because things are new.

It doesn't appear the safeguards were particularly effective in improving consumer trust, but there wasn't like a huge explosion of DNS abuse either. There was an increase in costs to trademark holders but it wasn't anything approaching the scale that was anticipated by those that were afraid of the new gTLD program.

So it's difficult to take all those things together and make a true ratio that says, "Well it passed or failed the test." But I think that if we, you know, take a step back from all of it and work on the areas where things appear to be weak that we are, you know, falling on the side of the benefits outweighing the cost but not by a large margin.

Ariel Liang: This is Ariel speaking. There is a remote comment from Jordyn Buchanan. “I don’t know how to get on the bridge but I think you all are focusing on the wrong thing.

As is often the case people at ICANN get fixated on the trees and loses track of the forest. Although the CCT RT report acknowledges that trademark holders largely see their registrations as defensive, would also take note that number of registrations for trademark holders is generally quite low.

And the total number of trademark defensive registrations is only a tiny fraction of the overall registration basis so not a base – they’re not a driving consideration for thinking about the new gTLD program as a whole.”

Jonathan Zuck: Thanks for your comment and I largely agree. In our first report we talked purely about defensive registrations, and part of what’s interesting about the INTA survey is a little bit of illumination on what might be considered a redistribution of people’s defensive budgets.

So there are a lot of alternatives now to straight up defensive registrations that include paying for blocking of domains that are offered with some enhanced monitoring that trademark owners are having to do going for, you know, and handling more things through cease and desist letters, et cetera.

And so I think there was a recognition in the trademark community that straight up defensive registration and the same kind of proportional volume they were doing in the past wasn’t feasible with this many new strings, and so those budgets have gone up but the funds have been spent differently.

But I agree that those funds are not – those budgets didn’t go up by the degree that people predicted, but I think it’s a mistake to suggest that this is a, you know, just minor and that there wasn’t anything to be concerned about from the standpoint of trademark owners.

But at the same time I think it's also if we're trying to take a step back and look at the forest, there's nothing particularly fantastical on the benefits side of the new gTLD program.

And so we need to, you know, look at both with the same wide lens and like I said I think that the team, you know, pretty determinately gives the edge to the benefits but it's a mistake to suggest that it was some smashing success with minimal costs, but neither one of those is absolutely true.

Mary Wong: Thanks Jonathan. This is Mary from staff again and once again the queue is clear both in the room and in Adobe. But we do still have some time left so perhaps you can just wait a little bit to see if people have additional follow-ups or questions. Think we have one.

Ariel Liang: This is Ariel from staff. There is a comment from J. Scott Evans. "I think Jonathan's comments are well balanced and realistic."

Jonathan Zuck: Thank you J. Scott. That means a lot to me. I feel the same way about your comments.

Mary Wong: No question what to say now. Let's – except this is Mary from staff and appearing in the transcript as such. There is some chat going on in the Adobe room and I think those in the room can see it.

But I did want to let people know that staff has been taking notes and action items, and we will also be saving the Adobe chat and posting that so that people can follow along some of the chat that was going on while this session was being conducted.

So again a invitation to people both remote and physically in the room for your contributions, feedback, comments or suggestions. And Jonathan you

can probably see J. Scott's comments on the screen to please not to pick on him just because he's not here in the room with us.

Jonathan Zuck: Come on J. Scott. You know I would pick on you even if you were in the room. But we really do appreciate the opportunity to interact with you. Let's keep the lines of communication open.

We're looking forward to seeing your DMPM requests and try to put our brains to it as well to see if there's anything that we might recommend in terms of enhancements to that request.

We will take it as a to do item to follow up with the analysis group and talk to them a little bit about their cost side challenges and see if there's any revelations from that conversation, and then we'll get back to you with the results.

Mary Wong: Thank you very much. This is Mary from staff again. And on behalf of the chairs and the members of the working group and the community here, thank you and the members of the CCT Review Team for spending this time with us and giving us a preview of what is to come.

Staff has taken on as an action item to forward immediately to you the data requests that this group has developed that was approved by the council, and we will also look out for the addendum that – when it's published so that we can take that back to the group in case there's any comments that either they as individual members or as a group would like to send back to you so...

Jonathan Zuck: And feel free to engage in the public comment process but feel free to ignore it as well and just communicate it with us directly. I know the time is short and - as Kathy pointed out so let's make sure staff are communicating with each other if issues come up here in the working group.

Mary Wong: Thank you. And staff actually does engage in quite regular communications with one another's support teams for each, because I will note for folks who are not familiar or that familiar of the work of the PDP that as part of the charter for this working group, the GNSO Council did specifically ask the working group to track the work of the CCT Review Team, so thank you very much.

And on that note I think we can stop the recording, give people a few minutes to enjoy a longer coffee break. And note that this Working Group for the Review of All Rights Protection Mechanisms will hold its fourth session, and it'll be the last session it will hold for this ICANN60 on Thursday afternoon.

I believe that will be from 1:30 to 3 o'clock and the discussion will come back to the Uniform Rapid Suspension procedure or URS. And it would be good if members of the community can join us for that session as the working group is looking for community feedback on their experiences with the URS. So thank you all very much and I'll see you on Thursday.

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