

**ICANN
Transcription
Review of all Rights Protection Mechanisms (RPMs) PDP Working Group
Thursday, 31 August 2017 at 03:00 UTC**

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Michelle DeSmyter: Well good morning, good afternoon and good evening to all and welcome to the Review of All Rights Protection Mechanisms in all gTLDs PDP Working Group call on the 30th of August, 2017 – 31st of August of 2017. In the interest of time today there will be no roll call as we have quite a few participants online; attendance will be taken via the Adobe Connect room so if you're only on the audio bridge would you please let yourself be known now?

All right thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise. With this I'll hand the meeting back over to Kathy Kleiman.

Kathy Kleiman: Terrific. Thank you very much. Let me go good morning, good afternoon and good evening to everyone attending including Asia and Australia, hopefully tonight. This is Kathy Kleiman, I'm one of the cochairs and I'm joined tonight by both of the other two cochairs of the working group, J. Scott Evans and Phil Corwin.

Let me start with the first item always on our agenda whether there are any updates to statements of interest? I'll pause for a second. Okay, seeing none, let me go ahead and introduce the agenda item for tonight.

First, thank you for joining us for tonight. This is the monthly call that we do arrange for Asia and Australia and it's wonderful to see 29 participants on it. It's important to have these calls because it's important that at least some of our meetings can be attended by all of our members. It's also important to hear from all of our members. And tonight the three cochairs have invited one of our members, Lori Schulman, to present an overview of the International Trademark Association's report titled, INTA, New gTLD Cost Impact Survey.

And this was published in April of 2017. It's a 75-page survey and report, 60 pages main report and 15 pages of appendices. And I for one am very happy and thank Lori Schulman for being here to present it and to summarize it for us and to share with us this important information. Lori, in addition to being one of our members, is the International Trademark Association Senior Director of Internet Policy and of course she was the cochair of one of our sub teams.

So again, Lori has taken the time to create a summary of the report and PowerPoint for us which is – which you can see up on the screen now. And the plan is to – is for her to present the entire summary and then we'll be circulating – and then we'll be discussing it. We'll also be circulating these slides to the working group and continuing the discussion online.

So barring any objections or questions, Lori, would you like to go ahead?

Lori Schulman: Thank you, Kathy. And this is Lori Schulman for the transcript. I thank everybody at least on the East Coast and others for dialing in late or early depending on where you are. But I want to preface this report by saying that this study was commissioned and intended for use as a cost impact analysis

rather than an impact of (unintelligible) of the RPMs. I think it's very important to understand the purpose of the report as I go through the report.

I'm essentially giving you the same high level overview that I gave the CCTRT a few months ago, but where I've been able to, I have added some slides to make it a little more relevant to RPMs. So it looks a little different than what was posted to the list a few weeks ago. Along with this slide presentation in its earlier form, I believe I also posted a compilation of the anecdotal evidence based on the RPM it applied to whether it was URS, Sunrise, Claims or TMCH.

So all of that should already be on our wiki page and if anything is missing I'll be happy to supply it to the group as soon as the call is over.

What I'd like to do now is go through the slides with high level messaging, that INTA put together, this is an INTA report, to explain – and it needs to talk about some of the concerns that have already been raised on the list in terms of response rates and the applicability of the data to what our RPM group is tasked with. So I will spend a good deal of time on methodology and explaining where we felt we could improve in the future but we feel it could be helpful now to both the CCTRT and the RPM groups.

So just a snapshot of who answered our survey, our survey opened in January, January 9 specifically, and closed in February. The data about the open close date and who responded is in the slides on Report Slide Number 3. The survey was sent to 1096 INTA regular members, and an INTA regular member, in shorthand, is a brand owner. This could be large corporate, small and emerging business or nonprofits.

It was noted on the list that INTA has over 7000 members. The other 6000 members did not receive this survey because they are considered service providers and not brand owners. These would be the law firms, associates, trademark search services, domain registrars and registries, it could be

anybody who's providing services to a trademark owner. So a decision was made in order to keep the data relevant to brand owners specifically to only survey brand owners because otherwise there was the risk of the service providers answering questions in the aggregate or with aggregated information that could in fact be counted doubly.

You know, for example, if something was sent to Adobe and Adobe filled out the survey but then an Adobe service provider then also filled out the survey then in fact Adobe's answers could potentially be counted twice even if that was not the intention. So that is why we stuck to only the members we identified as strictly brand owners.

Now of course some service providers can be a brand owner. I think Donuts is a good example where they provide a service and they're a brand in our industry. And so those, for the benefit of doubt, if you provide a service and you're a big brand, you were still considered a service provider for the purposes of the study.

In terms of whether or not the study is randomized, to the extent that it was randomized to the general public, it was not; it was, though, randomly assigned to all regular members, we didn't carve out specific groups of regular members. If you qualify as a regular member, you got the survey.

The questions that were asked on the study were based on significant input from the CCTRT as well as a worksheet that we put together to try to prepare the respondents for using – for doing the survey as it was very labor-intensive, very data-intensive. However, to again clarify, INTA was approached by ICANN to conduct this study about two years ago. And it took about a year to put it together and then of course we administered it last January.

We had overall from the 1096, 33 responses; 32 of the responses were for profits, one from a nonprofit. The data has been analyzed and recorded with a copy forwarded to the CCTRT and now to the RPM Review PDP.

There is a note inside the study that I think is relevant to some of the conversations that were available on the list today and prior days regarding how to read this report. And I am going to read through this to clarify that INTA understands that the response rate does present challenges in terms of the validity of the report. That an analysis of sub samples of less than 30 are subject to high variability therefore Nielsen cautioned when interpreting the items.

This is noted on the relevant slides from Nielsen. So Nielsen is identifying where they see all that the data because of the low response rate may not be as reliable and we need to take it with a grain of salt. Again, additionally with a small sample size, percentages don't always exactly add up to 100%.

And lastly, there were some members who reported that they were engaged in certain activities that listed the cost as a dollar. This could indicate that the cost was zero and there was no room for zero in the survey, or that the cost could not be captured or was contained in some other cost they entered.

We do not know the actual intent but the \$1 responses do not have a material effect on the averages shown. If anything, they would suggest that the cost may be understated. This is a direct copy of a slide from the report – it's Study Slide 5. So INTA is mindful that there are flaws in the study and we don't present this as definitive, but we present it as information. This is information that we obtained from our members that it in a report form that we are happy to submit to any ICANN working group that asks for it. How the working group decides to use the data or what weight to give the data, that will be at the discretion of the group. INTA has clearly no say in the matter except to extent that we are active participants in many of the working groups and, you know, we'll raise our opinions and vote accordingly.

It looks like I have double – oh it looks like I'm going backward, sorry.

Okay so there were challenges with completion that I mentioned. Ninety three participants entered the survey, 33 completed it, 48 suspended it, 9 did not qualify and 3 were in the survey when it closed and were unable to complete. We were strict on the time due to the extension that we had already been given. We had originally given our members about 3-4 weeks, I think it was 4 weeks, to answer the survey, but given the complexities and the time involved we were asked for extensions and we granted them. But once we granted the extensions, then the final close date was absolute.

These are some of the challenges we heard from members regarding why it was difficult to complete the survey, that it was too long and time consuming, even though the actual clock time to complete the survey was 45 minutes to an hour, the prep time itself could be 5-10 hours depending how individual members collected data.

Some staff of our members were given strict time allocations for their responses. So for example, someone's boss would say well, you have three hours to do this and it takes three hours, don't answer it. We've heard that numbers are not kept this way; that the data that we were asking for, that we thought would be helpful to the CCT review, was not actually kept in forms that could be easily ascertained.

We were also told that the information is too confidential to share even with a third party provider. The reason that INTA decided to use the third party provider was to actually build this wall of confidentiality so that our members would feel comfortable providing answers knowing that INTA would not know who answered and that we couldn't identify specific respondents.

We also learned that the information that was being looked for was frequently disbursed throughout the company; there wasn't one holder of information

and trying to coordinate something between IT and Legal and Accounting, it was not necessarily a reasonable request to some.

Also, we found a flaw late in the project that the worksheet did not correspond to all of the questions that required data. In response to this point, INTA plans to update the worksheet and provide it as a tool for its members. This should help in follow up studies as we do plan follow up studies. There was at least two beta tests of this survey and this worksheet flaw, unfortunately, wasn't captured until the survey went live.

Here is a slide directly from the report which discussed the geographic distribution of the 33 members who participated. And as you can see Europe, North America, Latin America – all regions are represented although some are very more represented than others. And they are the regions you would suspect, the North American regions of Canada and the US. INTA membership is divided, as I explained, between what we call brand owners and regular members, and then associate members and service providers, academics, students. We have individuals, we have differing categories of membership. And as I said, we stuck to our brand owner.

And what we find among the brand owners, almost 70% of them do come from Canada and the US so the actual response rate does track to our own membership. We do work hard and are working hard, just like ICANN, to encourage participation from corporate members from Asia, Latin America and Africa. But the numbers there aren't there yet but we hopefully will be there in the future.

So how do we make meaning of this data given the fact that we had a low response rate, that most of the respondents seemed to come from North America, so what use of this – is this at all to the community? So we have a response to this, given the response rate, we would say that the results are an indicator of a trend and not the trend itself. The results are not dispositive, but they could indicate where things are going.

This is a new endeavor for INTA and given that the survey was an onerous one in terms of data extraction, in fact we are pleased with the participation of our members. I will note that it took a lot of effort from a lot of people to get the answers that were given, hundreds of hours were put into data collection to recruiting members, asking questions, and really getting as much participation as we possibly could.

We aim to continue to review the gTLD issues more thoroughly and the starting point is a refinement of the survey worksheet as a tool for data collection that reflects real world practice and satisfies the need for information as outlined by the CCTRT. As I said, we were asked for specific data points, we did our best to collect them, but we found what may be accurate or appropriate in ICANN world may not transcend to the business world and we need to figure out how to bridge that gap so we get the data that we need.

So this is how the report breaks down. For those of you who haven't read it yet, this is just a little guide sheet. It starts with background information, much of which I've already explained, notes on how to read the report, members who participated, what the key findings are in summary, what the actual domain name activity is for purchasing domain names using RPMs, enforcement costs, behaviors, policy and perceptions, what our members actually did, summaries and thoughts, verbatim comments.

And it's the verbatim comments that I think may be most helpful to this group as this is the anecdotal evidence that goes to the URS, Sunrise, TMCH, Claims all of the RPMs and whether or not the members who responded felt that these were useful tools for them and whether or not they struck the right balance between fairness to all and balancing trademark rights. We also have an actual copy of the survey and the worksheets for everyone's review as well.

So these are the high level conclusions that we came to based on the data that we had, that registrations of new gTLDs are overwhelmingly defensive. Registries of new gTLDs were overwhelmingly made for defensive purposes to prevent someone else from registering. As such, few of the respondents felt – it as 10% - that there were alternative domains to consider, whether registering a new legacy or a ccTLD. This conclusion can be found on Study Slide 9.

Trademark defense costs have increased. The new gTLD program has increased the overall cost of trademark defense with Internet monitoring and diversion actions as the largest line item. Average costs for all TLDs for two years was \$228,000; for new TLDs for two years, \$40,528. You can find this data on Study Slide 27.

New gTLDs are parked. I think we've discussed this a bit in some of our sub team calls, but the data we have from our 33 respondents verify that domain names registered by brand owners in new gTLDs are commonly parked and not creating value other than preventing unauthorized use by others. And that may in and of itself be a value. This is something for this group to determine and you can find this data on Study Slide 9.

An interesting data point here is that the company size does not necessarily correlate to company spend. The brand activity appears to be the dragging factor, so brand activity could refer to a number of things, the number of trademarks you own, how much you're marketing around them, how many products you're offering under them. And we found that two similar size companies could still vary in their costs based on the number of brands and the nature of their brand strategy. And this is on Study Slide 56.

This is a new slide, actually I'm not even sure the CCTRT has seen it, but I thought it would be valuable this group. We have a slide that is broken down in two areas in the study. I forget the original slide numbers, but they're pretty easy to find given the graphics that talk about breakdown and costs. And

what we asked Nielsen to do was to be a little more specific with one of the breakdowns when it came to claims. You know, what percentage of the costs, the average two year costs, were actually related to claims? And Nielsen was able to break that down for us in – as 4% of the cost. And you can see that in this diagram.

Other costs are broken down as well, monitoring and diversion, actions that were taken, enforcement actions versus owners versus registrars versus registries. I will say that trademark related costs, what those mean is basically the cost of registering and maintaining a trademark registration. All other costs like demand letters, monitoring, they're included in other portions of the chart.

Generally our members thought that RPMs are helpful, 2/3 of the respondents feel that UDRPs and required sunrise periods have helped mitigate risks to a major and moderate extent. Those are two things that RPMs are helpful they're ranked as follows, UDRP at 67%, Sunrise at 64%, Claims at 36%, URS at 27% and the PDDRP, the RRDRP and the PICDRP at 15%. These are found on Study Slide 15 and 51 respectively.

We also learned that the TMCH registrations are used by a majority of respondents. Nine out of 10 in fact registered at least one trademark in the TMCH with 6 in 10 registering between 1 in 10. Costs run the gamut ranging anywhere from \$1 to \$48,000. As I said, this \$1 is a bit of a conundrum in to how to report it because it could be a zero, we don't know, but the \$1 is what Nielsen used to identify the lower end of activity.

I'm going to respond to something that George is saying in the chat. Okay, there is an assumption here in all of this report, whether it says members or members that responded, of course, this is about the members who responded. We have already stated that and acknowledged the low turnout rate. If we're going to get that – I don't know what word to use – atomic or nuclear about you know, molecular – sorry – molecular about that kind of

wording, I'm happy to go back and change every single of the respondents. It's clear that this report is about a few respondents.

Some sunrise period takeaways that we found on Study Slide 51 and 11 that 64% of the respondents feel that sunrise periods have helped mitigate risks, which I mentioned before. The breakdown comes down to 18% think it's a majority help, 45% a moderate. Ninety percent of the respondents who registered new TLDs registered during a sunrise period, which we also think is interesting.

Regarding premium pricing, this is on Study Slide 48. Three-quarters of the respondents evaluate premium pricing for domain names on a case by case basis. Two-thirds of their domain registration decisions have been affected by premium pricing with dotSucks being mentioned the most as a TLD that they did pick premium pricing for. Fifteen percent of the respondents refused to pay premium pricing at all so it's across the board.

What we did learn from those who responded is that defense, not choice, is driving purchases. While the goal of the new gTLD program is to increase choice for brand owners, choice does not seem to be the prime consideration. New gTLD program does appear to have increased the overall cost of trademark defense. Costs have impacted small companies and big companies alike with the most relevant cost driver factor being the number of brands, as opposed to the size of the company.

So the status within the CCTRT with this report is that the full report has been presented to the CCTRT. The CCTRT is reviewing and may post this report for further comment. There was a follow up meeting held with Nielsen with questions from the CCTRT to clarify how costs were calculated. INTA is offering this also to the RPM group. If you have specific questions, I am happy to take all of those questions in writing and set up a meeting with Nielsen.

The way we worked it with the CCTRT is we had one representative and myself speak with Nielsen. We would propose to do the same thing with RPMs.

Also, INTA intends to develop a tool for continuous tracking of costs. As I explained, what we asked didn't necessarily reflect accounting measures in the real world and this was a big learning curve for us and I think the CCTRT as well. As we develop this tool if there are questions that we feel might be effective for ascertaining effectiveness of RPMs, we certainly could consider adding them to the tool as well.

There are points for the RPM review to consider, and I felt it was important to repeat them here. That the purpose of the study is to assess costs, not effectiveness of RPMs. That the CCTRT evaluation criteria are different from RPM evaluation criteria but there could be overlaps. Given the limited scope and purpose of the data, which parts of the analysis are useful for RPM review? And if it is determined that the report may be useful, then perhaps – and this is my personal suggestion – then perhaps the sub teams can evaluate based on the relevant slides given the size of the report rather than have the entire group break down the report.

You could do it either way but I will say that some technical questions about why a particular response was worded a particular way or why a graph looks the way it does, I will have to go back and consult with the survey designers, I know Paul Keating had asked the question today about why one column on Slide 22 was worded one way but not another way. And I think it's a good question and I will ask it. So I'm asking if you have those kinds of questions to kindly put them in writing to forward them to Mary, to put them on the list. We will aggregate everything and every question will be asked.

And I thank everybody for their time and attention.

Kathy Kleiman: Lori, this is Kathy. Thank you so much for that presentation. It was – it's important for us to see the overview. Thank you for walking us through it. And for us to understand that the International Trademark Association was trying to be very responsive to the Competition, Consumer Trust and Consumer Choice Review Team. And that to the extent that the information in the survey, in the study, in the responses and as you said, in some of the candid comments that were made are useful to us, then we should embrace it, and use that information. I think that makes sense.

As chair, let me take the prerogative, if I might, to ask the first question which has to do with the study slides. When it says "Study Slide 51, 11, 48," sorry if I missed it, but what are you referring to and where would we find that?

Lori Schulman: Okay, these are the direct references to the report. The report was posted to the RPM wiki I believe a week ago. I'm not sure of the exact timing because I was actually away as many of you know. But I did, before I left, ask the staff to post the report, to post INTA's – my presentation that I gave to the CCTRT and a breakdown of the anecdotes on the end of the report that – by subject matter to make it easier for the team to read.

So when I refer to a slide I'm referring back to the source document. Now some of our members have already read this document in full and have asked very technical questions and in fact have questioned the validity of the report. You know, in my position here is this is the report we did, this is the information we have. It is up to the various working groups to decide how, if any, weight they are to give this information. But this is what we have and we were happy to do it. And we're happy to do a follow up based on our learnings, probably within the next two years.

Kathy Kleiman: Terrific. Thank you, Lori. So a Study Slide 29 would then take us to the full report Page 29, the data about the respondents who registered in the Trademark Clearinghouse?

Lori Schulman: Correct.

Kathy Kleiman: That makes perfect sense. Okay, let me open it up to other questions. If I might, Lori, are you receptive to...

((Crosstalk))

Lori Schulman: To the extent that I can honestly answer the questions I'm receptive, although if we're asking technical questions as I said, I'm going to reserve the right to defer them until all the questions are put in one packet so that we can give it an honest and thorough look-through. I know George has the first question, I'm going to anticipate part of the question, if he asks me, is INTA going to withdraw the report, and we are not. So I'm happy to take George's first question.

Kathy Kleiman: Okay. Thank you, Lori. And, George, go ahead please.

George Kirikos: George Kirikos for the transcript. Thanks, Lori. You seem to acknowledge that there is going to be a follow up meeting with Nielsen, is that correct?

Lori Schulman: There may be depending on if this were grouped requests it.

George Kirikos: Because that would be valuable...

((Crosstalk))

Lori Schulman: Depending on Nielsen's receptivity. We had it with the CCTRT, there was a representative, once they got all their questions together, copies of the questions were forwarded to Nielsen and then we had a discussion for clarification purposes. If you have questions like that I am perfectly happy to do that for this group as well.

George Kirikos: All right, because – George Kirikos again – because I’m not sure what your academic background is whether, you know, you study statistics, I’m presuming probably not so they’d probably be in the best position to answer some of these questions. But basically obviously my main question is, do you – you seem to acknowledge that it’s a self-selected non-random and non-representative sample, and also it’s far too small in order to make any statistically reliable conclusions about the larger population it purports to represent.

And so if that’s correct, do you then acknowledge that it should just be treated as a series of anecdotes as opposed to saying anything at all about the larger population, either the group of 1000 members of INTA, and/or all trademark holders? Thank you.

Lori Schulman: Yes, George, I think this is a decision for the RPM group to make. That’s what I’m saying. This is the information, this is presented with all its flaws and with the benefits it may or may not have, and it’s really up to the group to decide that. I do believe that the question was quite frankly a little loaded in terms of what my background is. I think that’s irrelevant at this point. I think that if you’re saying were we to – did we survey the general population? No. but there was an agreement made that because of the size of INTA and who we represent INTA would be the logical place to go.

ICANN has done, I believe, similar studies trying to get similar information and it hasn’t gotten very much larger response rates either. What we’re asking people to do is give up a lot of proprietary information. And we’re also asking them questions in a way where they don’t generally keep these types of records. I mean, every department acts differently, as I said, some of this information could be in Legal, some of it could be in IT, some of it could be in Accounting, some of it could be in Marketing.

So we really asked our members to do a heavy lift to get this level of detail. And the fact that 96 entered, you know, showed the interest but the fact that

we could only get 33 to convert to full and final answers yes, means we have to learn from this and do better. But whether or not we should scrap all that information is not helpful. I don't agree with that. That's supposition. But again, I think that's up for the group to decide.

Kathy Kleiman: Hi, Lori. This is Kathy. And I think there's general consensus that that's up to the group to decide. And so that's a very fair statement. And sharing so candidly what you gathered, what you created, what the limitations were but also what the advantages are, is a very fair presentation as well. I see a question from Phil Corwin, and I'm not promising to read all the questions in the chat room because I'm sure I won't see all of them.

But, Lori, this is from Phil. And it says, "I don't see anything in these slides regarding use of private RPMs such as DPML and whether that affected use of sunrise. Were any questions asked about that?"

Lori Schulman: No, there were no specific questions on private RPMs. We really stuck to what is being offered through the requirements of ICANN and the contracted parties as opposed to the private. I mean, there are some anecdotal evidence there that mentions certain parties and their DPMLs, but we didn't ask any specific questions to that.

Kathy Kleiman: Terrific, thank you. And Mary, I'm going to – or Lori, if you could see the full names – for some reason I'm only seeing abbreviated names of people who have raised their hand.

Lori Schulman: Sure. I see Michael R – Mike Rodenbaugh as his hand up.

Kathy Kleiman: Perfect.

Lori Schulman: I only see one hand at the moment so I'm happy to call on Mike.

Michael Graham: Yes, it's Michael Graham. Can you hear me?

Lori Schulman: Oh, Michael Graham, yes. Hi, Michael.

Michael Graham: Yes.

Lori Schulman: I thought it was Rodenbaugh. Yes, I guess apparently I'm seeing partial names too.

Michael Graham: No, I just – Lori, I wanted to thank you for that presentation. Only Lori knows but during most of that presentation I was busy harvesting in my garden so it was quite entertaining. But I did want to address a couple things, just so that it is clear. And Lori already brought this up and just so that it is understood.

The (unintelligible) study was really something that was generated in response to a request from the CCT Review Team for specific metrics that were developed back in 2012, 2013 that they felt would be important in their review of the status of the new gTLD program. And those specific questions were ones that were included in the survey.

Many of them, unfortunately, are either phrased in a way because that is how – the information they were seeking, phrased in a way that were difficult to answer for businesses or sought information that businesses and intellectual property attorneys and teams do not keep in the regular course of business. It's similar to the type of problem I think that we face in talking with registries, registrars, and individuals because the information that we discover in our analysis of the RPMs that would be important for us are not things that they were considering as they were going through the process.

So that was part of the issue both in terms of the nature of the questions, and they were specific to the CCTRT, questions and not to any other questions from any of the other review teams. Accidentally we did collect some information that I think is useful to a number of them, both RPMs,

Subsequent Review Team and the Whois Review Teams as well. But that's almost accidental.

The other thing by way of explanation is the questions were so – were designed in a if only we could collect this information format rather than what can realistically be gained from the people who will be responding. And that's one reason why I think the exercise that we went through, the two – the sunrise and the claims subgroups in considering whether or not information that we thought would be important is information that we could gather, was very good.

And then a final point, because of the nature of the questions, because of the complexity and the scope of information being requested and because the design of the survey was such and this was from the survey designers who were hired as professionals who put this together, the design was such that respondents could not – not answer any questions and could not provide anecdotal information where statistical information was being asked for.

So of those 93 a number of them were people who wanted to provide the information and simply weren't able to because of the design of the survey. And that's something, as Lori referred to, is something that we're looking at for future reviews and surveys for INTA and for other trademark owners and domain name owners.

So I just wanted to speak up just to give that clarification. I hope that helps make it a bit clearer, it's something that what Lori said, yes, it was two years to get and I lived through those two years from the time they were developed with the metrics team originally through the CCT and then finally through these results. So, Lori, thanks a lot, I think INTA did a lot of get this out there. We all wish that we had more respondents, but in response to that question, no, being a professional in the field, I think they are indicative of the experience of trademark owners in this space.

Lori Schulman: Thank you. I wanted to address something in the chat since we don't have any hands up at the moment. Louise Hurel asked whether or not we could get a list of countries. Given the small amount of respondents, I don't know if a list of countries would actually be considered some sort of breach of confidentiality. I don't see why but I am certainly willing to ask and provide that list, I have no problem with that at all. And I just want to make sure it's within the bounds of what we can ask for given that we do have this confidentiality agreement in place. Thank you.

Kathy Kleiman: And, Lori, this is Kathy. I just wanted to add to what you and Michael said that – and I appreciate Michael providing us the background because I heard a constant refrain from the CCTRT members that there was a lot of data they were looking for that they were having trouble finding. So I think in a lot of ways this whole process is setting the benchmark for the future. And that there's a lot of data we don't have, a lot of ways we haven't had of collecting it, asking people to keep it, asking them to track it, people, companies, organizations. And in the future that will change and you're part of that change and part of that new process. Thank you.

Who is – Lori, can you see who's next in the queue? Paul...

Lori Schulman: Yes, Paul McGrady is raising his hand.

Kathy Kleiman: Thank you.

Lori Schulman: Paul.

Paul McGrady: Thanks, Kathy. This is Paul McGrady for the record. I know there's been a lot of back and forth on the chat and on the list about this or that perceived flaw in this survey, but what I think the important part to capture, the overarching theme here is that new gTLDs are not cost-free for brand owners. I don't think that even those claiming that this particular survey doesn't meet their standards for a survey would say that new gTLDs have resulted in a payment

to brand owners due to their existence; I think that there's hopefully consensus around the idea that this does in fact cost brand owners money.

And what we're talking about is whether or not this particular survey provides any useful information about, you know, how much money, I suppose, on average if you average this out over the, you know, the entire INTA membership which this doesn't, you know, claim to do. But certainly is information here about how much it has cost particular brand owners. And I think that that's an important thing to know.

And of course, none of this is a surprise, even when ICANN did its economic study in advance of Round 1, those guys that did that survey, you know, they have an entire section on upcoming defensive registration costs and other costs to consumers based upon enhanced confusion.

And so I – while I – I understand the reasons for objecting to, you know, this or that technical issue related to this survey, you know, which is, you know, reasons that are based upon advancing a position that is maybe viewed as inconsistent with some of the conclusions in the survey, the reality of it is is that what we're talking about is not whether or not new gTLDs have cost brand owners extra money, time and hassle, but just how much. And as we can see from some of the survey results, they're not insignificant. Thank you.

Lori Schulman: Thanks. This is Lori. May I chime in too?

Kathy Kleiman: Please do.

Lori Schulman: Yes. If you look at the note even from Nielsen, it says "Results under 30 are to be cautioned." We had 33. So it's still close to 30 but it is above 30, it's 33, it's 10% more than what Nielsen cautioned is being careful about reading. So I do think there is enough to give some weight to this.

I do think that George Kirikos makes a fair point about the low response rate but I don't think that given what we're tasked to do, which is effectiveness of RPMs, which is going to be an accumulation of hard and soft data, that we consider the soft data. I don't, you know, I'm not insulted by saying it's not hard data, we didn't have 1000 people responding, well we were never going to have 1000 people respond.

I was hoping for over 50, that was my personal hope. And, you know, the fact that we got 93 in, I considered it a success from a sort of advocacy and marketing perspective but the fact that it couldn't be finished is what I think is concerning in terms of figuring out how to do this and get better results for the future.

Kathy Kleiman: That makes perfect sense, Lori, this is Kathy. And having you as a member of the working group, having you presenting, having you sharing kind of very candidly information about the survey, how it came into existence, the questions you were asked by the CCTRT, the issues that they're wrestling with, is all very valuable, very valuable insight to understanding the structure, the data, the information being presented in the survey and reports.

Lori Schulman: Thank you. And I want to just remind people, costs are hard; costs are measurable. I think effectiveness is much more difficult and that is what this group is tasked with.

Kathy Kleiman: Costs and effectiveness. Good points. It is definitely getting late for some of us on the – in North America, but let me see if there are others who want to take some of the discussion going on in the chat room and bring it onto the telephones.

Okay, barring that, let me ask Mary, Michelle or Amr, if they can tell us when the next meeting is, we're not cutting off discussion yet, just moving onto the next item briefly on the agenda as people are thinking about other things they

want to talk about regarding the study. Can you tell us when the next meeting is please?

Mary Wong: Hi, Kathy. This is Mary from staff. And as you recall we are doing a rotation where we have three meetings at 1700 UTC on Wednesdays with the fourth meeting at 0300 UTC on Thursdays. So today's is the fourth meeting which means that next week we go back to the other rotation of Wednesdays at 1700 UTC.

Kathy Kleiman: Fantastic. Thank you. So then we'll have three weeks at the regular rotation and we'll return to our Asia and Australia meeting. Again, back to the report survey, any further issues to raise, questions, thoughts?

Lori Schulman: Kathy, this is Lori.

Kathy Kleiman: Sure.

Lori Schulman: I notice that Michael Fleming asked in the chat room the average total defense costs per company on Slide 13, he thinks is that inclusive (unintelligible) worker salaries or only the cost of defensive action? I can look into that. If I recall there was some worker time factored into this, I'm not sure how, but that is something I can go back and look at our notes because we probably do have them in our notes, or I can certainly ask Nielsen.

And what I would ask Mary and Amr to do is take all of the questions that are in the chat and put them into on document that I can easily pass along. And as I said, we've had many discussions and it's possible that some of these questions have been asked and that given the time of night my recall is not as sharp as it should be. And I'd be happy to look in our notes to see if we have the answers already, if not I will reach out and I will ask.

Kathy Kleiman: Great. And it looks like George has followed up, if I'm reading this correctly, and asking whether the \$150,000 costs apply to all trademark holders, so there's kind of a question of who it applies to and how far. So we'll add that.

Lori Schulman: Yes, that was...

((Crosstalk))

Kathy Kleiman: Go ahead.

Lori Schulman: That was the average, I believe – that was an average, I believe, an average. So...

((Crosstalk))

Lori Schulman: Some are going to spend more – and some are going to spend less.

Kathy Kleiman: But it's an average of the participants which included some very large companies, I think.

Lori Schulman: Yes, exactly. Right.

Kathy Kleiman: Okay.

Lori Schulman: The 33 had some very large companies and some small ones and one nonprofit.

Kathy Kleiman: Okay so some of the large companies in particular may have been spending an awful lot on defensive processes.

Lori Schulman: Correct. I would say it would – as we said, size didn't necessarily correlate to spend; it could easily correlate to the fame of a mark rather than the size of a company as well.

Kathy Kleiman: It could easily correlate to the...

Lori Schulman: The fame of a mark...

Kathy Kleiman: The fame of a mark.

((Crosstalk))

Kathy Kleiman: Sorry, I missed...

((Crosstalk))

Lori Schulman: ...smaller companies spending more money because they have a more famous mark than a larger company...

Kathy Kleiman: Right.

Lori Schulman: ...who might not have as strong a brand. Like size – size and activity didn't necessarily correlate, I just want to remind the group of that.

Kathy Kleiman: And you had that in the slides as well that's an interesting point.

Lori Schulman: Yes, that was something I thought was very interesting too. And I also notice that Michael Graham has his hand up.

Kathy Kleiman: Terrific. Michael, go ahead please.

Michael Graham: Yes, I was just to jump in and help Lori answer that last question so it doesn't have to go too far. Salaries for in house – well there were two salary components in determining the costs, one of course would have been the hourly rates charged by outside counsel for work, which was generally fairly easy to get. The other cost would have been in house, again, from in house

departments were able to break that out because they do divide up their billing and their work based on the tasks and so that – those were able to provide direct costs.

Companies like my own where we do not keep records in that way it was based on the estimate of time spent on defensive work with domain names according to how the question is phrased, I'm not looking at it so I don't want to say exactly what the measure was. But answering that question based on the percentage of time each of the employees spent on that, and taking from that their salary. That doesn't take into account other benefits so that there is to a certain extent a low ball cost on the corporate side but that's how that information was determined. And it was in fact included.

The \$150,000 I believe was an estimate. I don't think it was the mean but I'd have to look at the slides and I'd refer anyone back to the slides. The summary is exactly what Lori said, it's sort of a summary of findings and talking points for the exact information go back to the summary to the survey questions and then also to the extent possible if we have enough and the right types of questions and Nielsen is able and willing to do it, we could put together a group of questions for them. And they've been very helpful in answering questions to clarify what they've done and what it means. Thanks.

Kathy Kleiman: Michael, this is Kathy, can I ask a question? What is the relationship – and again, sorry if I missed it – late at night – the relationship between Nielsen and the International Trademark Association on this? Why are we asking Nielsen the questions?

Michael Graham: Nielsen was the company – this is Michael Graham for the record – Nielsen was the company that was hired by Nielsen to provide...

Lori Schulman: By INTA, sorry, Michael...

((Crosstalk))

Michael Graham: ...the survey, to conduct it and to analyze it. And it was based on a RFP that was sent out with a number of respondents. Nielsen, also by way of history provided at least two I believe survey – other surveys for the CCTRT so that when they were awarded the RFP it was thought to be very good because they had already been in discussions with the CCTRT, knew what they were looking for, knew how to ask the questions, some of which was true, some of which we unfortunately learned was not necessarily true in putting together this survey. But there was no relationship other than hiring them to conduct the survey and the study.

Kathy Kleiman: Terrific.

Lori Schulman: Yes, I...

((Crosstalk))

Kathy Kleiman: Thank you.

Lori Schulman: This is Lori for the record. May I clarify the answer?

Kathy Kleiman: Sure.

((Crosstalk))

Lori Schulman: Just to the degree that Nielsen as the third party provider is under an NDA with INTA, we don't have direct access to any of the results, they are proprietary to Nielsen, and I think that's important to remember. We did not conduct the survey, we hired someone to do it for us. As I explained earlier, we wanted to build a wall so to speak so that our members would feel comfortable providing information that is normally considered proprietary.

So it was very important to us to not have any access to the answers. Now the report we have is the report we have, we don't have any more information.

Kathy Kleiman: Terrific, Lori, thank you. Mary, is there any way that we can cancel out – thank you. Great.

Lori Schulman: Also...

((Crosstalk))

Lori Schulman: Cynthia King has her hand up, Kathy.

Kathy Kleiman: Yes.

Lori Schulman: I'm sorry...

((Crosstalk))

Kathy Kleiman: Cynthia, please go ahead.

Cynthia King: Hi, can you hear me?

Kathy Kleiman: Yes, we can, very well.

Cynthia King: Okay, thank you. This is Cynthia King. I realize that it's 11 o'clock at night where I am, meaning that it's midnight where a lot of these folks are on the East Coast. And I'm reading the comments in the section and I saw the emails that came through today, read all of those. And I'm having a hard time understanding why we're having so much discussion about how much weight to give this report. It's a good report and it gives us useful information, that useful information each one of us will have to decide exactly how much weight to give it.

So I'm kind of confused why there's so much going on. In a perfect world with unlimited time and unlimited money, we could go out and interview every of the, you know, all of the big 1000 brand owners and get their information over time, but we don't have unlimited time and we don't have unlimited money and what we have is what we have. So unless we're talking about going out and trying to obtain more results from the INTA group or other large brand owners, then we need to take the information that we have and, you know, internalize that and use it for the purpose which is to give us some insight.

So the idea of exact – deciding exactly how much weight to give this study seems kind of a waste of time, right, deciding whether it gets 50/50 weight or 40% weight or whatever, I think that we would all be better served if we internalize these results, decided that, you know, we think that the results may be imperfect, but move forward. And that's just my opinion. Thank you.

Kathy Kleiman: Thank you for sharing your opinion. Thank you to everyone for sharing their opinions on this. It's – a number of questions have been raised, a number of questions have been answered. And but Cynthia, what you say is very fair as well. So let me see if anyone else has anything to discuss. Otherwise, it is almost the one hour mark and we will close this discussion and continue it online.

The slides, as has been discussed earlier, Lori tweaked these specifically for our working group, so this new slide deck will be circulated, with Lori's permission, will be circulated to the working group so everyone will have a chance to review it as well as to review the chat from tonight and if they'd like to the recording. And we will continue the discussion. But hopefully tomorrow, I don't know about others, I'm not answering any emails tonight.

So let me wish everyone a good night, a good morning, a good afternoon and look forward to talking with everyone next week. For those celebrating Labor Day in North America, have a good holiday. Thanks very much.

Lori Schulman: Thank you, Kathy.

Kathy Kleiman: Take care. And a special thanks to Lori for spending so much time in preparation for today and in preparation of this data. Thank you, Lori. Thanks for sharing it with us.

Lori Schulman: Thank you, Kathy.

Kathy Kleiman: Goodnight.

Lori Schulman: Goodnight.

Michelle DeSmyter: Thank you. Today's meeting has been adjourned. Operator, please stop the recordings and disconnect all remaining lines.

END