

**ICANN
Transcription ICANN64 Kobe
GNSO Review of all Rights Protection Mechanisms in gTLDs Part 4
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Julie Hedlund: Hello and welcome everyone. My name is Julie Hedlund from ICANN staff. And this is the Rights Protection Mechanisms PDP Working Group. And this is the Trademark Claims Sub Team meeting, a working session of the working group.

And as a note -- an administrative note and to alert you all to something that will happen during this meeting -- today is the anniversary of the earthquake and that was - that occurred on 11 March 2011. And the Japanese Government has asked us to observe a moment of silence and to make a statement at exactly the time that the earthquake occurred at 2:46 pm local time.

So at 2:45 we will cut off all conversations. We'll post a statement in the Adobe Connect room, which I will read and then we'll observe a moment of silence. So we'll be keeping track of this. But just so that you won't be surprised as to why we hold things up and then we'll continue.

This meeting does go to 1500. That is 3:00 pm today. So we'll continue after that with the meeting. So thank you. And Kathy, did you want to say a few words?

Kathy Kleiman: Please. Thank you Julie and what a day to be here in Japan. So this is now our fourth out of four sessions. We're at the - almost at the end of the marathon. Thank you everyone for being with us for so long.

Kathy Kleiman. I'm co-Chair. And I - Phil, I apologize for not introducing you in the last session. So Phil Corwin, also co-Chair and Brian Beckham who's our third co-Chair must be busy in the GAC right now. So otherwise he'd be joining us.

So now we switch - for anyone who doesn't know, now we're switching over to trademark claims, which is a process also associated with the Rights Protection Mechanisms for New Top Level Domains. And I will hand it over to Roger Carney who is our - one of our two co-Chairs for the sub team and thank you very much.

Roger Carney: Thanks Kathy. All right. That was an interesting discussion last session. So hopefully we continue the good discussion. I'm going to start out by suggesting four suggestions. So if anyone in the group thinks that we have an easy question that we will agree on, maybe we start with that one.

Fortunately for this group - yes. Fortunately for this group there's a lot fewer questions. So I'm going to open it up to whoever wants to suggest a question.

Julie Hedlund: George Kirikos has his hand up. I think he has a suggestion.

George Kirikos: George Kirikos for the transcript. Yes. We're on the same wavelength. We did this in the Sunrise Team. I was looking at the questions and Question 3B looks like a good one.

Should claims notifications only be sent to registrants who complete domain name registrations as opposed to those who are attempting to register domain names that are not just to increase in the TMCH?

I have a view on that but I think that might be a common view but I'll let our (groups) weigh in first whether they think that's an easier one.

Roger Carney: Thanks George. I will open that up and see if anyone thinks that that's a difficult one or not. Otherwise we'll jump on that one to start. Susan.

Susan Payne: Not necessarily more difficult than anything else. (But still) I just (sort of felt) that it kind of is a bit in the middle in the sense of, you know, there's all sorts of other questions first about, you know, isn't that a sort of, you know, if not, should it be a, you know, you know, does it - so we've got - is it meeting its intended purpose?

And it sort of feels like you don't get onto Question B until you've kind of answered 3A. But I'm not sure. I don't feel terribly strongly. Maybe we can knock it on the head reasonably quickly but who knows?

Roger Carney: Thanks Susan. Any other comments? Okay. Let's go ahead and try and we'll see how that goes. Yes. Maxim.

Maxim Alzoba: Maxim Alzoba for the record. About the process of registration. It's something like it's either (unintelligible). It cannot be like in the middle. It's the state. It's not the process formally because before you have all information you need for registration or maybe something preventing you from that, maybe your SMD is not valid or whatsoever, maybe you forgot to file all the required fields; you will not have a registration.

So there is nothing - it's like how can we identify (since) we thinking about registration. It's the same thing. Until you have all information and it's

passed to registry through a system of registrar, it's not - it never existed.
After that it happens.

Roger Carney: Thanks Maxim. And I think the difference here is should the claims notice be sent before a registration or after. So it would be - should a potential registrant receive it during the registration process or should they receive it once it is registered I think is the question.

Susan Payne: Right. (Unintelligible).

Kathy Kleiman: So point of order is we do need some background if we're diving into 3B because there are a lot of people in the room who don't know what Question 3 is and they certainly don't know what Question 3B is and they don't know anything about the data that we found on some of this. So thanks.

Roger Carney: Thanks Kathy. Good point. And I can read this. And we've got a list of a few people. I'll get to them as soon as I read this out. So 3B is should claims notifications only be sent to registrants who complete domain name registrations as opposed to those who are attempting to register a domain name that are a match in the TM (stage)? All right. And I'll go to the queue now. George please.

George Kirikos: Excuse me. George Kirikos for the transcript. Yes. I thought this was relatively easy because I thought most people would agree but perhaps I'm misperceiving the situation that the notice should be given before the registration because otherwise it would be a horrible situation from a consumer point of view to find out after you've already registered and paid for the domain name that, you know, there's a potential trademark infringement.

So from a consumer point of view, you'd want the notice before in order to be notified. And the other issue was that if you have the notification afterwards, it kind of puts the domain name in limbo.

You'd have to have a refund policy. You'd have to also deal with domain tasting because it becomes another mechanism of domain tasting if people can refund the name afterwards. So those were the points I wanted to raise. Thank you.

Roger Carney: Thanks George. Griffin.

Griffin Barnett: Thanks Roger. This is Griffin Barnett for the record. I completely agree with everything George just said. Amazing.

Kristine Dorrain: This is Kristine. So do I.

Roger Carney: Wow. All right. Well maybe this is an easy one. I'll move on to Kathy.

Kathy Kleiman: Alas. I don't think it's as easy as we think it is. Sorry. Okay. So this is Kathy. And what I'm trying to do is remember back to some of the data that we gathered or some of the anecdotes and how you want to call it, which was that there's a problem with pre-registration.

And so that when the registrars are - you can pre-register domain names long before they're available. And this is part of the marketing. Remember it's - by way of background, Sunrise comes in early in the marketing. So the marketing's out there and often the registry's doing marketing of the new top level domain.

And people are coming to the registrars and asking to register those. And I've had clients come to me. So we're in Sunrise for .radio but I've got radio broadcasts who (are in the) TMCH and they want to know. And so you go and there are certain registrars who will offer you pre-registration.

And so - hold on. I haven't finished talking. And so the - there's been a problem and Volker and others I think have documented it for us - a problem

with pre-registration in that the trademark claims notice - there's some kind of 24-hour expiration on it.

And so if you're pre-registering a month or two before general availability then there's a problem with the timing. And so often even within a registrar someone who is pre-registered second or third who happens to answer the trademark claims notice will force someone who's registered who pre-registered first gets the domain name.

So there was some kind of problem with the expiration of the trademark claims as in how it's being handled. So one of the suggestions was to table it afterwards. Register - let everybody register. Then send them the notice and see if they want to continue the registration.

This is something we have with verification under the RAA, the Registrar Accreditation Agreement for email and phone number. But there may be a problem with the expiration of the token that we can solve as well.

Roger Carney: Thanks Kathy. Yes. And as a registrar and not as a co-Chair, this was a serious problem. And GoDaddy does try to take as many registrations prior to general availability as possible again for the customer's benefit and for really the registry if you look at their numbers.

Day one is usually a big day and it's not because everybody's coming that day to register. It's because they've been registering it for (three to four) months before, so. And the Trademark Clearinghouse the IBM system that was built was from a registrar standpoint, a pain that had to be worked around.

And many registrations were actually lost because of a 48-hour window. The trademark claims idea is valid for only 48 hours. So that means if I took a registration three months before GA, I had to have the registrant come back within the last 48 hours before GA and have them agree again to doing it.

So those customers within two days won't respond and they won't get their name. So it was painful. Even though they did accept the claims notice three months prior, they're not able to accept it within the last 48 hours again.

So they lost their chance at it. And that's just - registrar knows this. So does this solve that problem for your post? I can't say that but I'll move on to the queue. And Greg was next.

Greg Shatan: Thanks. A couple things. Greg Shatan for the record. But to clarify, are you saying that when somebody pre-registers say many months before they do get a trademark claims notice at that time?

Roger Carney: Let me rephrase it. That was a - different registrars did it differently. Some did not take that upfront. Some did. And some of them didn't because of the 48-hour window and they knew that they would have to do it again.

But the reason GoDaddy chose to do it differently was it made more sense to make them aware now when they were registering than later. So we made it - we made it as a purchase time.

Kathy Kleiman: (Okay). But Roger, is that trademark claims notice coming in from IBM?

Roger Carney: Yes it is. We actually go out and get it just as any other time. The Trademark Clearinghouse will provide the claims notice to us to provide to the customer, so. But within 48 hours it's no longer valid.

Greg Shatan: That was - but just to get what I was going to say before I was - I think that giving the notice after the registration is purchase seems very troublesome, unfair to everybody. I think one thing it does is it helps us with the drafting of the new trademark claims notice because this one can begin with congratulations, you just purchased a potentially infringing domain name.

And, you know, maybe that could be, you know, surrounded by big, you know, lights or something. But it just seems like that's not the kind of notice you want to think about drafting. And it seems like it's kind of a - it's almost - that almost seems like a bait and switch; not giving them the notice till after they purchased it. Thanks.

Roger Carney: Thanks Greg. And we'll move on to Kristine. Maxim.

Maxim Alzoba: Maxim Alzoba for the record. So we mix two issues. Registration is a process with a registrar, not with a registry. So if the registrar policy processes each register event, they wait until it's - because it's customer relations, marketing ideas.

All registers they have their own ideas and it's not bad; it's just how it works. So registration happens as a - yes, customer to business or business to business on the registrar (label). Registry doesn't know anything about it.

And the second issue is (fast) expiration of (tokens). There is two issues. Please do not include together. So we can sort it out. Thanks. And registry before general availability, they have like (QRP) maybe, they have Sunrise, (limited periods); then general availability.

If you do something before the (QRP) phase, it's not really - yes. You are not allowed to do that. Registry can't do anything right at the moment. They allowed to do something in their zone. It's (QRP) which is before Sunrise. And nothing can happen before that. Only (NIC) does TLDs. (Can use there). And, yes, and (collisions team).

Roger Carney: Thanks Maxim. I'll just make one slight correction to that. That the backend registry does not know about it. Many ROs request pre-registrations from the registrars. So just want to make a clarity there. So Kristine please.

Kristine Dorrain: Thanks. This is Kristine. And I had a question on this for staff because Kathy is it not wrong that we were talking about this as an issue but I had understood that to Maxim's point because these are two completely separate issues.

I think Question 3B goes to sort of a - what people in the chat were calling a chilling effect on registrations based on seeing the claims notice (unintelligible) at the time of registration versus sort of the technical problem, which was a result of the pre-registration.

But then I looked through the notes and I couldn't see a second question. So I don't know if staff has that handy. But did we - do we not have a second question or was it all lumped in under this discussion because that wasn't my recollection?

Roger Carney: Thanks Kristine. Yes. I don't recall there being a second question but - okay. All right. We'll move on to George.

George Kirikos: George Kirikos for the transcript. Yes. I am sensitive to the fact that some registrars might have done the notice after registration because it was technically easier for them as Maxim suggested or for other reasons. But I do think that the (before) is the better solution from a consumer's point of view and also from the trademark holder's point of view.

And I posted in the - on the mailing list a few days ago that one way to get greater buy in would be from the registrar's point of view is if ICANN had a like open source programming examples so that registrars would be more able - more easily able to implement that system into their existing systems because some registrars don't even offer registrations during the trademark claims period.

Others that would offer it after - well sort of with the notice after would obviously be affected if we made this as a recommendation. So just looking

forward to the recommendation. But (as fact) we might get the better buy in if we coupled this with a recommendation that ICANN kind of, you know, provide that example code; make it much easier for them to transition to this model. Thank you.

Roger Carney: Thanks George. We'll move on to Griffin.

Griffin Barnett: Thanks Roger. Griffin Barnett for the record. I'm a little concerned that we're getting kind of very deep into the weeds on implementation issues. And we should really re-focus on the policy aspect of this question, which is the timing of when the claims notice appears.

Yes, we can discuss at some point with respect to the variability and how registrars implement this and the issue of pre-registration question. I think that is more of an implementation issue.

Kathy, I take your point that there are problems created by that approach to how registries and registrars may market the TLDs and collect pre-registration orders and things like that.

But I think in terms of the actual policy question that we're being asked to answer here in terms of when the claims notice should appear either before the registration is completed or after; I think the clear answer to me is before because otherwise it wouldn't serve the intended purpose of the notice.

Thanks.

Roger Carney: Thanks Griffin. It looks like - Greg, is your hand up? Is that an old hand?

Greg Shatan: Greg Shatan for the record. Just briefly it sounds like if we're simply talking about before or after, if that's the only question we're talking about, I haven't heard -- maybe I'm wrong -- anybody argue that it should be sent only after the registration.

So in terms of - if that's the question we're trying to answer, I'm not sure that we have much of a range of opinion.

Roger Carney: Thanks Greg. Kristine.

Kristine Dorrain: Thanks. I think Griffin's right. The answer is before. And the issues of how registrars implement is a technical detail in my opinion; that it (goes) to your point there are many different ways it's implemented. There's no way policy should or could anticipate those issues. And there's no way we should put the framework around like what the kind of rules are. And then let the system sort itself out I think. Thanks.

Roger Carney: Thanks. Maxim.

Maxim Alzoba: Maxim Alzoba for transcript. But maybe it should be both because for example, you have pre-registration three months before something. And then me registering this trademark go into the TM stage and get paid for services.

And at the (unintelligible) time there were no notice because TM is - wasn't registered with the Clearinghouse. And three months later when actual registration goes to the register base, it's already registered.

So it might be both. Because if the moments are milliseconds like your registry you have online connectivity with - yes. I'm register having online connective with you as a registry. And registrations (pass), it's like milliseconds. Yes.

It doesn't matter before or after because it's - the probability is that someone registers the trademark right in those milliseconds. It's negligible. But if it's months, it would happen. Thanks.

Roger Carney: Thanks Maxim. Phil.

Phil Corwin: Yes. Phil Corwin for the record. And the remarks I'm about to make are not advocating a position. They're simply to make sure we think about the other side of this before we reach a decision. So it's kind of a devil's advocate statement.

We don't know much from the data. We know that the data tells us that 94% of registrations that receive their claims notice weren't completed but we don't know what the baseline is for registrations that didn't get a claims notice.

We don't know how many of them were intended to be infringing. We don't know how many were intended to be non-infringing uses but got spooked by the notice.

And I admit that could be addressed by changing the language of the notice to make it more informative or balanced or whatever. But if you gave the notice after the registration to a person who had non-infringing intent, particularly was a generic word, well they still might have to consult with a trademark or to make sure that their intended use was okay.

But you wouldn't have had the chilling effect on the registry, which gets to what is - is the intended - is the intent of the claims notice to deter registrations or to deter infringing use? I'm not sure we're clear on that.

And if the person who intended to infringe on the trademark and we know there are people unfamiliar with trademark (all around) or who actually still think you can register a famous trademark and then sell it for a lot of money to the trademark owner.

They'd get a very expensive lesson, which would probably prevent them from ever doing that again. So I just wanted to - I'm not advocating giving it after. I just want to make sure we think clearly about what the intent is and what the result would be if we gave the notice after the registration rather than before. Thank you.

Roger Carney: Thanks Phil. Kathy.

Kathy Kleiman: I understand we were trying to pick low hanging fruit. I think we leapfrogged over way too much to get here. I'd love to go onto other questions. But I think we've got operational fixes that are very much in our bailiwick here in terms of registrants who are trying in good faith to register domain names and new gTLDs and then are finding out that they haven't done it.

That they haven't been able to do it because they're being blocked by the way that the trademark claim indeed has been implemented. But that's in our bailiwick. Remember we did lots of operational fixes on the URS.

So we've got a problem here. Registrants aren't getting what they registered for even if they've gone - even if they've clicked that they accept the trademark claims notice.

And to what Phil was saying, absolutely. This question, as I think Kristine kind of led is to, is actually encapsulating two or three or four ideas that we talked about.

But this idea that the trademark claims notice is something you evaluate in ten seconds when there's really real important information there. And that if you get it afterward instead of standing on one foot or one toe, you can talk to, you know, your friends, your family, your corporate attorney or find a trademark attorney and read it, process it, think about it and then decide whether you want to accept it or not or whether you want to return the domain name.

That, you know, we know these notices are intimidating. And being able to have real time to do it instead of facing that deadline in that shopping cart that you need to, you know, put your credit card into, that's real. You wouldn't

want your clients clicking on a lot of contracts without thinking about them.
Thanks.

Roger Carney: Thanks Kathy. So I think our queue may be a little messed up here. Greg, is that a new hand, old hand?

Greg Shatan: Old hand.

Roger Carney: Okay. Susan.

Susan Payne: Yes. Hi. It's Susan Payne for the record. Just - I'm just trying to think about this pre-registration issue, which I mean Kathy you were talking about people sort of not getting what they thought they'd bought and that kind of thing. But I mean that is a - that is a fundamental feature of the pre-registration process.

So it's nothing to do with the claims process because the feature of the pre-registration is that at a time when that domain isn't actually available to someone to register because it's in its Sunrise period. Someone is selling it to them.

But it's being sold on the basis that if it's still free come the end of the period when it's actually available to you, then you can have it. But you're buying something not knowing whether someone else is going to buy it first. So this kind of discovery that you didn't get the name you thought you got is a fundamental feature of a pre-registration.

Roger Carney: Thanks Susan. Kathy, go ahead.

Kathy Kleiman: Roger, do you want to go - no. I think, you know, when you pre-register the idea is that there's a queue. And, you know, general availability opens the registrar, and forgive me if I'm using the wrong words, it's going to start dropping start registering all these names.

Many people who - and that is first come first serve at least for the registrar is the way they're going to process it. And lots and lots of people do pre-register. That's the marketing period for the registry.

And so lots of people get excited about the domain name. They go in, they pre-register. No. There's no guarantee. But there is an expectation that if you're first in line during general availability you'll get it. And that's - and the trademark claims there's an operational problem and it's screwing up the queue.

And so the people - I think there's a fairness issue to registrants. And what - the reason we have it is not because the registrants told us. It was the registrars that told us they were utterly frustrated with this. I think it was Volker who came. And maybe my discussions with (Yurik).

But utterly frustrated with their ability to get - have a queue that worked properly for their own registrants. And I've had registrants who pre-registered and they were very pleased when they got their domain names.

And so I don't - I think we have to think about it in the whole context of releasing new gTLDs and how excited people get about registering.

Roger Carney: No. Thank you. And I wouldn't say that it's an unknown. I mean pre-registration does come with a disclaimer saying hey, you may not get this. But to me, again, I think that that's confusing the topic of should the claim be first or not. I'm not sure that that matters because I think the claims notice can come before or after and all those things still happen.

So I think the question is should the claims come before or during registration or post time that they've got it. I think that's the discussion, so. Maxim.

Maxim Alzoba: Maxim Alzoba for the record. There is a need for correction. A registry and registrars in this process because for example as a customer, I'm going for some strange (drink), thus strange TLD, yes.

And I'm going to a few registrars. And not (necessarily) (gets) in the market. Someone wins, you know. So an assumption that a customer goes only to one register is not very accurate.

And there is no way you can and you should synchronize because if you try to synchronize something between distant registrars, it might cause issues with (unintelligible) Committee. Yes. Because they're separate entities that should be like act on their own.

So it's seems the pre-registration is an informal process. I mean in terms of ICANN framework of documents. But a formalized on registrar to customer level because they have some kind of contract or agreement. But there are few registrars. It can be one but not necessary. And a customer or maybe two customers and few registrars.

So that's why I recommend to it to be bought prior notification when they to purchase it to avoid issues later, yes. And a notification when it's registered because if for example me purchased or something there, have notification and then (like example), a few months later went to some other registrar and registered it, he should also have this notification. That's it.

Roger Carney: Thanks Maxim. Kristine.

Kristine Dorrain: Thanks. This is Kristine. Yes. I support what Maxim just said and I actually put it in the chat. I mean there's nothing stopping you from both. Right? If a registrar wants to give the claims notice that was available at the moment on pre-registration, fine. But though maybe with the recommendation as the rule is at the time of registration the claims notice is presented.

If you're doing that in real time, the process is as it currently exists. If you're using a pre-registration system, kind of let the registrar decide are you going to email it to your customer, are you - somehow you have to notify your customer that the, you know, we re-run it and here's the thing today.

The problem I'm concerned about is that the pre-registration system is a sort of invention of there's a last round. We're going to see a whole bunch of new inventions with the next round. We might not even do pre-registration. Who even knows?

To sit here and codify and implement in policy something that could be out of date technology by tomorrow seems ridiculous when this is really just an implementation question.

So if the policy is it gets sent before, maybe our recommendation is we propose a window. It's got to be sent within, you know, 24 hours before or 24 hours and if it's a pre-registration, 24 hours after. We can get into the details within the implementation.

The point is we should have set the high level policy and what it is we want to see. Customers need to get noticed that there might be a claim. Right? That's what we want to see.

After that, let the registrars work it out. The registrars invented pre-registration. Let them invent how to sell it to send their customer the proper notice.

But what we're having here is a situation where for the lawyers in the room you can only take depositions by videotape. But when you invent digital media that rule is no longer valid.

So we won't want a rule that is going to be invalid in five minutes when the next great big new technology comes along or wait to get domain names queued up for registration or marketing.

And that's my concern here; not that it's not a problem, but that we need to put the implementation where it belongs on the people who are doing the innovating.

Roger Carney: Thanks Kristine. And just a couple corrections there. Pre-registration wasn't the last round. It's been done since early 2000. So but I agree with you. I think - again, the question is should it be done before or after.

And the implementation was done without the consultation of the registrars. So the implementation by IBM was done. And again, I assume for security reasons they like to have that key expire for, you know, and not last very long.

But claims notices almost very rarely change. So and we track this through pre-reg claims that when someone accepted it at the beginning, three months in advance, it was the exact same claim at the end that they've reviewed again.

And it's very confusing to do it twice to a customer. It's very confusing once. Twice is worse. So I would not recommend personally doing the pre and post. I would say if it changes, then they should be exposed to it again. If it's the same one, they shouldn't have to go add it again. But that's just an opinion, so.

Dirk Krischenowski: Dirk Krischenowski from .berlin and .hamburg. In the discussion I'd like to remind that the implementation of the TMCH for the registrars was so complicated that even registrars that have ten million plus domain names haven't implemented the TMCH thing. And they are excluded from that. You can't register domain names with them.

So my proposal would be as this was running smoothly for us as new gTLD registries not to change the current system. That worked out in how our opinion and we shouldn't change anything. Otherwise we would lose again more registrars that are not able to implement the TMCH technology thing in their system. Thank you.

Roger Carney: Thank you. All right. Let's finish up this and see if we can move on. We'll go to Greg.

Greg Shatan: Thanks. Greg Shatan for the record. This really seems more like a pre-registration implementation problem. I don't think there's anything that's been said that would persuade me that we should stop giving notice before the registration.

It seems like there's - maybe there's some sort of collision issue. But that either - if somebody pre-registers, you know, that is - to some extent that is the registrar invention. It's between them and the registrar and the registry might ask for the information but it is not truly a registration.

It's just - it's basically you're buying a place in line and it may be - there are other lines forming at other registrars. So there may be multiple people who all think they're first in line and that's, you know, a part of the problem.

There's no, you know, universal pre-registration queue.

And it would seem to me that everybody who's in line to pre-register a given domain name would be getting the same claims notice. So I'm not sure why it's unfair to - who it's unfair to in that case.

In any event, if it's somehow causing a delay and maybe the issue is that they - their second favorite trademark - second favorite domain name went away while they were, you know, blocked in the first or something that there's - the solution - the end of Sunrise.

The beginning of the general availability is a known time that you just issue the trademark claims notice, you know, back time it from when it - the actual beginning of registration or relevant registration occurs so that the notice would be received timely and that the applicant would be able to move forward.

But certainly nothing we're discussing here seems to support the idea of not be giving the notice before the registration. Thank you.

Roger Carney: Thanks Greg. And I'd just say that the only disadvantage is those people that aren't - in the current implementation the only disadvantage is those people that aren't available two days before GA. So those people are out and anyone else that is available would get the name. So I would say that's where the disadvantage comes in is the timing, so.

Greg Shatan: I think that maybe goes to the issue of what the pre-registration kind of product is and how it relates to real registration.

Roger Carney: Yes. I'm not sure it's a pre-registration problem. I think it's a TMCH problem, an implementation problem. So and again, I mean I agree with you. I'm not sure that changes what the answer or the question we're trying to answer. I still say it's before or after and those implementation issues should be resolved elsewhere. But I'll move on to Griffin.

Griffin Barnett: Thanks Roger. Griffin Barnett for the record. I think - I'm kind of actually - in the discussion so far I've kind of heard two distinct issues maybe. And I think to some extent, you know, the pre-registration issues that we've heard are maybe a little bit of a - well, I mean albeit it's before and what others have now said that seems to me to be an implementation issue that can be dealt elsewhere.

But I want to go back to a point that Kathy made earlier, which was saying well, registrants need time to consider the meaning of the notice. And so she had suggested that for that reason it makes sense to put it after the completion of the registration.

I don't know that I'm particularly persuaded by that approach. We're asked all the time to consider legal terms of service and things, the (quick wraps) and all sorts of things that pop up while we're using the Internet and trying to purchase things and all.

So I don't know that I agree with that. And if the notice is presented before you complete the registration and you complete it and then you think about it more maybe and then you can take the decision to cancel your registration. I just don't know that what you were suggesting necessarily changes the calculus all that much.

And so I think for all the reasons that have been stated previously as far as the policy question that we're looking at, it still makes sense to present the notice at some point before the completion of the registration. And so the question of when and the context of pre-registration, that can all be figured out, but.

Roger Carney: Thanks Griffin. Okay. I'm going to cut the line after Griffin here. Kathy, did you want to respond to that real quick?

Kathy Kleiman: (What are you going to say next)?

Roger Carney: I was going to cut the line at Maxim and then we'll try to see if we can get a general feel of yes or no.

Kathy Kleiman: (Go ahead).

Roger Carney: Yes, I know. After...

Kathy Kleiman: Yes. That's...

Roger Carney: ...until - then Maxim on, yes.

Kathy Kleiman: Which is I just - there's a reason this was Question 3B. And I'd like to recommend that we not answer this question right now. We've got a lot of background. We put some new background on the table.

But let's go through the questions. Is the trademark notice intimidating? Is it serving its intended purpose? Because that gets to the questions that Griffin is so rightly raising, which is how much time should somebody be spending looking at this, which I don't think we have the answer to now.

So all good background and good technical background as well as legal background but can we go back, you know, go in some other order? Thanks.

Roger Carney: Thanks Kathy. Phil.

Phil Corwin: Yes. Phil for the record. I just have two - I'm not really that familiar with this pre-registration and how it works. But my two questions are is this used for (land rush), general availability or both? And if 50 different people have pre-registered for the same domain with the same TLD with 50 different registrars, who winds up getting it and how is that determined?

Roger Carney: So again, this is going to be registrar dependent I assume. But GoDaddy would pre-register any available or any launch. So we would pre-register Sunrises. We would pre-register early access. We would pre-register general availability.

And again, if any of those had a claim on it, obviously it would be shown, so, except for the Sunrise because we don't care because they have to have an SMD for that. But that's how that would work.

As to your question about if Maxim as an example of a registrant goes to six registrars and tries the same name, it's going to be the registrar that gets the create done at the registry first. So it'll be random. Maxim. Or Phil, follow up.

Maxim Alboza: Yes. Short answer. It depends on the tier because if it's Sunrise and Sunrise is resolved by auction, it's not going to be the first (came), yes. And if Sunrise is of the (other sort), it might be the first (came), first one. And the thing - we are talking about pre-registration, which is relevant to registrars.

And if we invent too much and it goes to registrar agreement, potentially it might considered material change and according to Picket Fence it shall be (unintelligible). It cannot be enforced. So we have to be careful there.

Roger Carney: Okay. Thanks everyone. So I want to take Kathy's note and the suggestion of maybe not answering this yet. The only hesitation I have on that is we had great discussion and I don't want to do it again. Even though it was fun, I just don't want to do it again.

So I don't know how everybody else feels. If - I mean everybody seemed to lean one way here and it was before. And again, if we can leave it at that and not answer it today and then when we come back to it, we can say hey, this is the way it was leaning. What does everybody think now? And so Julie wants to say something.

Julie Hedlund: Yes. If we wanted to - this is Julie Hedlund from staff. If we wanted to be consistent with what the Sunrise Sub Team is doing, what we could do is in the notes some staff has indicated some things that are tentative preliminary recommendations that then can go out to the full sub team because some of us are not here and haven't been able to enter into discussion.

They can see what the key points have been raised here. And if they have something else that they want to raise, they can do so. But it does seem valuable to capture what seemed to be a general agreement and not have to revisit this entirely.

Roger Carney: Thoughts on that? Anyone concerns about that? Kathy.

Kathy Kleiman: Yes. I think a lot of people are seeing this question for the first time and some of the data for the first time. I...

((Crosstalk))

Kathy Kleiman: No. Well some people - okay. Well then huge disagreement. And so please list that as huge disagreement from me. And that - there are technical and operational fixes. This is not just policy. We did this with URS. If something's broken, we tried to fix it.

And so the idea that we're not going to try to fix this, I think is a problem. We did hear about this problem and not just from one registrar but multiple registrars. Thanks.

Roger Carney: Thanks Kathy. Greg.

Greg Shatan: Well I think any answer we have now is going to be the preliminary answer anyway. It seems to be the answer that's coming out in the room we have one member of the sub team who disagrees with the answer. And we're not, you know, not finalizing the answer.

So I think this will also give ample time for the powers of persuasion to be used to show those who are answering the question on way why they're answer is incorrect or incorrect in part.

I don't think we're heading toward an idea that trademark claims notices ought to be sent only after registration. Well, maybe that's a - that's your suggestion.

Woman1: (Unintelligible).

Greg Shatan: Well I think what - answering the question that's in front of us. But I think we need to know where we stand. And, you know, this is where we stand in preliminary and, you know, clearly your position - all positions will be noted and we'll move forward, you know, building from here to the next point.

And the answer - certainly have been many times where preliminary answers have changed when you get to the final answer. But, you know, certainly, you know, you can't help but capture where the group ended up. Thanks.

Roger Carney: All right. Anyone else on this? I see George's hand up. George...

((Crosstalk))

Roger Carney: ...go ahead please.

George Kirikos: Thanks. George Kirikos for the transcript. Yes I've posted this in the chat room but I want to throw it out maybe for other people to opine on. Do we solve this issue if the only trademarks that are eligible to be shown in the trademark claims for a given (unintelligible) are those that were in the TMCH before the Sunrise period? Because that would mean that that pre-registration as long as it starts before the Sunrise - or sorry, as long as it starts after the Sunrise period which gives them, you know, lots of time?

They would have all the eligible trademarks at that point because all the eligible trademarks, you know, preceded that pre-registration so that might be a way forward to think about. Thanks.

Roger Carney: Thanks George. I'm going to go to Griffin/Susan and then we will move on.
Thanks.

Griffin Barnett: Thanks. Griffin Barnett for the record and again I - as George noted he put that comment in chat and I kind of already responded to it in chat. But just to raise it again here, you know, vocally. I think George is potentially solving the kind of problem that I think Maxim raised of sort of the - if there's a big gap right and when you might get a claims notice for whatever reason than when the registration itself will occur, the landscape of what's actually in the Trademark Clearinghouse can change and so that, you know, when you generated the claims notice maybe now it's not accurate and all these sorts of things.

But - and so I appreciate that but I think if we're actually thinking about what the purpose of the claims notice is and it's to apprise a registrant or I guess a prospective registrant that all of these rights from whoever's, you know, matching - has matching marks in the claims - in the Clearinghouse, sorry, at the time that the registration essentially would occur it doesn't necessarily achieve that because there, you know, if there's a 60-day Sunrise/a 30-day Sunrise even, you know, two days before the general availability period starts and the claims period starts, somebody could add a mark to the Clearinghouse that they would need to consider as part of being on notice of those third-party rights.

And so I think that maybe takes us away from a effectuating the purpose of claims notices, which is to put those parties/the respective registrant on notice of what rights are there that they might need to think about.

Roger Carney: Thanks Griffin. Susan did you want to follow-up?

Susan Payne: Yes thanks and I guess it's sort of a question for you Roger although I, you know, you've said previously that, you know, all registrants do it differently.

But I'm not sure, I mean, George's suggestion seems like an interesting one and it, you know, it's someone trying to kind of suggest a solution.

But, you know, does pre-registration only start on the day that the Sunrise opens? I mean, it doesn't seem to me that there's any reason why it should and even if that's how you do it does everyone do it that way?

So I'm not sure it does fix the issue but I'm interested to know because I don't know how it works.

Roger Carney: Thanks Susan. So just quickly I don't think that that solves it because it really depends on how organized the registry operator is if they know their plan ahead of time.

Sometimes we get six months' notice of general availability and sometimes they're only running the Sunrise so it is only 60 days before that so, I mean, we could potentially be four months before that taking names.

So I don't think it solves it but I'm wondering and maybe staff can help if - and I thought I've seen this before where a recommendation says, "Yes it should happen before they register," but there's implementation issues that need to be resolved by the IRT.

Julie Hedlund: Yes this is Julie Hedlund from staff. I mean, I think it's - there are two things. We cannot say anything about implementation issues or we can say some things about implementation issues just to point out where we think there might be things that they could take into consideration when they get to that point and that we don't want to necessarily be prescriptive about it.

But it might be, "Well once we get to that point the IRT might want to consider X, Y and Z."

Roger Carney: Thanks. And again I think that maybe is - probably the possible solution is yes and just because, I mean, I would hate to throw away the discussion and then the IRT has to start that discussion up again.

I don't know why we wouldn't be able to say, "Yes this is what we recommend but we want the IRT to look specifically at these six things," or whatever so just a suggestion.

Okay. I think we're good with that. Julie/Ariel we're all okay with that one? Okay. So thanks George for the easy one that you threw out there.

((Crosstalk))

Roger Carney: I - I'm not sure. I'll try it again to see if anyone else has an idea on a good one or otherwise we'll just start with Number 1.

George Kirikos: Number 1.

Roger Carney: All right. It sounds like we'll go ahead and start with Number 1.

((Crosstalk))

Roger Carney: All right. So for those that are maybe not - I suggest the square root of pi. For those that are not really up to speed on these questions I will go ahead and read it and then we can have the discussion on it.

Question 1 is, "Is the trademark claims service having its intended effect? Consider the following question specifically in context both of the claims notice and as well as a notice of registered name."

So A is, "Is the trademark claims service having its intended effect deterring bad faith registrations and providing claims notice to domain applicants?"
And B, "Is the trademark claims service having the - any unintended

consequences such as deterring good faith domain applications?" All right, I will open it up for discussion. Phil is volunteering to jump on first.

Philip Corwin: Yes. Yes just to get discussions started I would say the - it might sound very forgiving if you turn your head. Yes Question - I need to get up on my screen because if I - let's try this.

"Is it having its intended effect of deterring bad faith registrations and providing claims notice to domain name applicants?" So far as we know it's being implemented pretty well.

We haven't discovered that, you know, potential registrants who aren't - who are supposed to get claims notice aren't getting them. We don't know of any big gaps in registrars failing to generate these.

"Is it deterring bad faith registrations?" Based on the data we have it appears to be - it's probably deterring some but there are still bad faith registrations being made so it's not deterring all.

And B, "Is it having any unintended consequences such as deterring good faith domain name applications?" And based on the data we have the answer is yes but we don't know the extent, so that should get the discussion started.

Roger Carney: Thanks Phil. So I - the way I heard you say that is you agree to both of those. Yes and yes on both of those.

Philip Corwin: Yes to a limited extent.

Roger Carney: All right, thanks.

Philip Corwin: We just don't have the data to definitively answer...

Roger Carney: Yes.

Philip Corwin: ...either one with certainty.

Roger Carney: Great. Thank you. Kristine?

Kristine Dorrain: Thanks. This is Kristine and I was going to also kick off the discussion. Phil leapt in ahead of me with the same suggestion so that's good. We agree. I do think that the claims service is having its intended effect of deterring bad faith registrations and providing claims notice to domain name applicants.

I would have a slightly different reaction on B, which is just that I would say instead of yes I would say probably or possibly because in our data review, you know, we came up with a lot of sort of we think, we - we're not sure/we don't know.

I mean, and don't get me wrong. None of the things we've done have ever come up with hard data. But even to the point of finding more than one sort of isolated anecdote, "Gosh I didn't register a domain name because I got this notice," I mean, we - we've got data that people might not/that we think it's intimidating.

We think it's intimidating collectively but I don't think we've really even come up with one verifiable story that a real person was actually deterred, although we think possibly and probably based on what we've seen.

That I think is - so I think A is fairly easy and I think we've actually kind of discussed that to death and maybe we don't have to again. I think we're going to get tripped up on B.

Roger Carney: Thanks Kristine. Greg?

Greg Shatan: Thanks. Greg Shatan for the record. I was struck by the conversation between Roger and Phil when Phil's answer to the second question was, "Yes but we don't know to what extent."

And you kind of summarized it as yes and yes and he said, "Yes to a limited extent." I think extent is kind of a large part of the answer here and maybe it's bigger than the question of yes.

I mean, it's conceivable. One can even stipulate that somewhere, somehow some person who receives a trademark claims notice was not only taken aback but so intimidated that they didn't register a domain name they could've registered in good faith, but the question is how often and how much of a problem?

We've already agreed we're going to try to rewrite the claims notice to make it somewhat less maybe, you know, hard to deal with but at the same time it is, you know, a notice of a potential - of pre-existing rights which may - which you may be violating.

So there's only so soft that you can make it before it, you know, it doesn't have its intended effect which will be even worse to send out a notice that, you know, so watered down that it makes no sense.

And there are clearly notices that people get intimidated by and, you know, maybe don't do things that they could've done. How many have seen tags on their mattresses that said, "You know, do not remove this tag?" and people left those tags on for years but it was really only intended for the store.

Now the tags say, "This tag not to be removed except by a consumer," and so now people are removing the tags. But - so there is - people, you know, will have reactions to notices.

It's just - it's kind of the way life is. Ultimately we're trying to be informative. We're trying to provide information to the potential - of the potential applicant that there is this fact of which they should be aware, and then the fact that maybe the particular notice might be intimidating.

And I think, you know, the question is also was anybody - the question is actually whether it actually had an intimidating effect on anyone, not whether in the abstract a group of people in a room might find it intimidating but kind of moved on.

So I think we need to determine the extent to which there is actually a real problem here as well as a - as opposed to a theory that it's, you know, chasing a problem. Thanks.

Roger Carney: So I'll just ask a question to Greg then. And there's two parts to that B I think and one is an example and one is the question of unintended consequences and - but good faith is just an example. Unintended consequence - is intimidating an unintended consequence?

Greg Shatan: Oh I would say if it's making - if I - guess it means what's - the question is what do you mean by intimidation and is it a pejorative term or is it a neutral term?

If somebody is supposed to be intimidated by a \$500 fine for littering that's an appropriate intimidation. If there's a death sentence for littering maybe that's an inappropriate intimidation.

So, you know, the word intimidation is kind of a weighted word so the - is it a deterrent? Yes it's supposed to deter. It's supposed to make you stop and think.

The question - if we're using the term intimidation to mean that it caused a - an incorrect result because somebody who should have realized they had no

problem thought they had a problem well, you know, that's an implementation issue we've already agreed we're going to deal with. Thanks.

Roger Carney: Thanks and again I wasn't questioning what intimidating meant. I meant what does unintended consequence mean? Is intimidation an unintended consequence?

We're saying people were intimidated. That's not what we intended for the claims notice to do so is intimidation the fact of an answer to this question? If we say people were intimidated that was unintended.

We didn't mean to intimidate people. We meant to provide education to the person and stop bad faith registrations.

Greg Shatan: Again I come back to the question of whether - if it - by intimidate you mean over - going beyond a good faith level of information and instruction to the point where they were frightened beyond what they've - should have been.

Like, "This mattress will explode if you take off this tag." That would be very intimidating. The fact that - it's a lie and so there - that's an - that's improper.

But if the - and the - if what we're saying is, "If you register this domain name it may be a violation of a pre-existing right," that's - let's just not call it intimidation because if the question is whether - if intimidation is a bad thing then it's an unintended consequence.

But if deterring - and then deterring - if we consider determent (sic) - terrent (sic) a form of intimidation then it's not a mistake and it's an intended consequence.

So a lot of it comes down to whether we - if we're using intimidation as a boogeyman word where - that nobody wants to do then of course - then the question is whether we - that bad thing actually occurred.

So if that bad thing occurred yes it's an unintended consequence but if people were deterred then that's an intended consequence and not a problem.

Roger Carney: Okay thank you. I will move on to Griffin.

Griffin Barnett: I'm going to put my hand down actually because I generally agree with what Greg said so I'll just yes put my hand down.

Roger Carney: Susan was next.

Susan Payne: Although I've kind of forgot what I wanted to say.

((Crosstalk))

Susan Payne: I think what I wanted - I think I was just really putting my hand up to kind of second what Kristine said. I think we - we've got some, you know, we had some - the analysis group survey of the registrants and potential registrants and so on.

You know, we have some people who did say they got the notice and they didn't proceed with the registration. We had, you know, some people who said they went into some advice, some people who said they paused and thought about it, some people who said, "Oh, you know, I changed my mind and did something different."

We did have - I can't remember the figures. I would have to go into the underlying data. You know, there were a number of people who, you know, many people who didn't register, said it wasn't to do with the claims notice per se but they decided they didn't want to proceed down this path and, you know, registering a domain was more complex than they thought or, you know, didn't want a Web site anymore.

You know, so we didn't have someone who said, you know, outright, "You know, I was put off by this claims notice and so I didn't register a name even though I felt, you know, I should've been able."

I mean, we - I suppose what I'm trying to say is we didn't have anything which took us to the - from the leap of, "I got the claims notice. I looked at it. I was, you know, so concerned by it that I didn't go forward."

And we know that that would have been a good faith registration, but I think we all probably in this room can agree that probably some people who might have been good faith registrations may not have gone forward.

I think we all were for - kind of three or four years now have been agreeing that we think the notice wording is not optimal so yes.

Roger Carney: Okay thank you. Before I moved on to George there was a couple of hands in the room. Maxim?

Maxim Alzoba: Maxim Alzoba for the record. First of all, we use an assumption that these kind of messages don't end up in spam box because the contents are quite similar to what you usually receive as spam.

The second thing - there is an assumption that people who are non-native English speakers do not delete messages where the - half of the message is in English.

So it's not - and also email is not granted method of delivery. It - just the best effort type of delivery.

Roger Carney: Thanks Maxim. Michael?

Michael Karanicolas: Hi. Michael Karanicolas for the record. Yes I agree with a lot of what's being said. I think there's probably I guess general agreement that there are bad faith people that are probably being deterred as well as some good faith people that are being deterred.

And with that in mind the way that I would frame the discussion is as a question of proportionality where you consider the intended or positive effects of the notification against their detrimental effects in terms of deterring good faith registration.

And is it having a proportional impact or is it structured in a way where the positive outweighs that negative consequence is the way that I would frame it. And, you know, chilling effects are always notoriously difficult to measure.

You know, we have some data about abandonment rates, which I think somebody brought up earlier but I, you know, it's - I think that we can probably agree that it's happening.

We will probably not be able to get good data about the frequency with which it happens, but maybe going back to something that Greg mentioned earlier, you know, I do think that we should be in redrafting this or designing it aiming for something that is informational as opposed to intimidating...

Roger Carney: Right.

Michael Karanicolas: ...where we should be presenting the facts as opposed to trying to, you know, this domain will explode if it's registered.

Roger Carney: Thank you. And just as the non-chair here and from a registrar standpoint any extra click is bad and that's not just from a registrar's standpoint. On any e-commerce any extra click that has to be done is going to cause additional abandonment.

So - but it - it's just known so that - that's not anything big so - all right, we'll move on to George please.

George Kirikos: Thanks. George Kirikos for the transcript. I - this Question 1A is really two questions. The second part is really easy. "If the trademark claims service have provided claims notice to domain name applicants," that part is easy.

Yes. It's intended effect of deterring bad faith registrations - I'd say yes but I quantified it - sort of qualify that by saying we don't know the extent. I think the really serious hardcore cyber slider - it has no effect.

The amateur cyber slider - it might put the fear of God into them but I'm not convinced as to the size of the deterrence. For Part B, the unintended consequences, I think definitely we see that.

We have to imagine a scenario where we don't have the trademark claims notice at all. We can't - we don't have this A/B testing but we can hypothesize it.

I don't think we would see that 93.7% abandonment rate in the real world. I'm going probably be led by what the registrars say on this but I think for B I - I'd say definitely yes. Thank you.

Roger Carney: Thanks George. Phil?

Philip Corwin: Yes Phil for the record. I think there seems to be fairly general agreement on the answer to these questions so we should probably move on to well what do we do in recognizing the general consensus?

And I think the general - our - number one, it's working. We have an RPM that's working. It's not working perfectly but it's working so we keep it. And number two, to the extent it's having unintended consequence I noticed Greg put an - definition of intimidation here and the third part is deterrence.

Whether it was on intimidation, deterrence, whatever, I think there's already general agreement within the Sub Team and the working group that the language of the notice needs to be looked at and hopefully revised so it continues to intimidate, deter or whatever word you want to use those people who are seeking to register a domain for bad faith purposes to profit off the value and the mark built up by another party, while better informing those parties who don't have that intent so they have a better understanding of whether or not they should - they can continue with the registration without risking legal action. Thank you.

Greg Shatan: I just briefly point out that it's to deter by inducing fear so it's to intimidate or deter by inducing fear so...

Philip Corwin: Well yes that's what - the fear of legal action. Yes fear of being sued and dragged into court or losing your domain in a UDRP or whatever. That's a fear.

Roger Carney: Thanks Phil. I'm going to just cut the line after George. We've got four people there. Our Phil's done so Kathy you're up next.

Kathy Kleiman: Hey I'll just tell you the comment that...

((Crosstalk))

Julie Hedlund: Just - excuse me. Just a reminder one minute until we need to cut off all conversation before the moment of silence. Thanks.

Roger Carney: So Kathy do you have a minute's worth?

Kathy Kleiman: Yes and I have more - well I have a short answer and a long answer. The short answer is I think the easy answers are yes and yes to 1A and 1B. I think it is deterring some bad faith and I think it's deterring lots of good faith.

And the long answer is if you need me to channel Rebecca Tushnet and give you the evidence on that I can do that too, but it'll have to be after the moment of silence.

Roger Carney: Thanks Kathy. And I will say the same thing to Petter. You've got one minute.

Petter Rindforth: I shall be quick. I think that we could cut it down on the issue to two different kind of groups within good faith. The - one of the groups are those that have already planned a business and they have a schedule and they don't even care about these...

((Crosstalk))

Roger Carney: We'll come back. We're going to cut it now and...

Petter Rindforth: Yes.

((Crosstalk))

Roger Carney: ...we'll come back to you. Thank you.

Julie Hedlund: So on 11 March 2011 at 2:46 pm Local Time a 9.1 magnitude earthquake struck in the Pacific Ocean off the northeast coast of Japan's Honshu Island. The earthquake known as the graded - Great East Japan Earthquake triggered a massive tsunami with waves that rose to heights of up to 40 meters and traveled up to 10 kilometers inland.

This was the most powerful earthquake ever recorded in Japan and the fourth most powerful earthquake in the world. An estimated 20,000 people were lost and close to 500,000 people were forced to evacuate.

In remembrance of the lives lost and affected by the Great East Japan Earthquake we now will observe a moment of silence. Thank you everyone.

Roger Carney: All right, thanks everyone. Kathy you're still online so I'll go to Petter and then back to Kathy.

Petter Rindforth: Okay. Coming back to this topic yes what I was trying to say is that I think we have two clear groups here. The one is the - I'm - and I'm not talking about the good guys.

One group is - does - that have a business plan. They have made searches before they apply and they have enough information to - don't care about this kind of information they got.

The other one is those that maybe - well people who are SMEs or private persons or other that have some kind of new ideas, maybe more eluding (sic) ideas.

And if they got a note about the trademark claim yes I would say that probably 50/50 cases they will - just to be sure don't move forward with it. It's like when you send out a cease and desist letter to things - to people that think they are the good ones.

You got to reply back that, "Well we don't agree with what you have stated in the letter but just in good order we will not - we will stop selling the goods," or whatever it is.

And as was mentioned I think it's maybe needed to have more clarification that is - this is an informative thing rather than - so that those kind of good faith people doesn't see this well as a cease and desist letter or is something that will automatically lead to legal actions.

It's more of an - information that they can make their own decisions on what to do. Thanks.

Roger Carney: Thank you. Kathy please.

Kathy Kleiman: Thanks Roger. Okay I'm channeling Rebecca Tushnet who can't be with us because it's the middle of the night in the United States. So I think she would direct us to the final report of the analysis group, not the survey data but the final report where it told us that the ten most frequently downloaded trademark strings in the trademark claims service data - so this is what people are getting the trademark notice - claims notices on are - includes smart, hotel, one, love, cloud, NYC, London, ABC and luxury.

So common words are nine out of the ten or well-known strings - geographic strings. And so that - people are getting these notices on dictionary words. We also have a - information in our data that says as the trademark claims service operates off the data in the TMCH, the long list of dictionary words protected in the TMCH including geographic indicators and other marks protected by statues or treaties and the extent to which common words are already subject to registration in the US seem to cause the unintended consequences.

We are seeing unintended consequences. I'll summarize from the analysis group survey. We saw potential registrants telling us they'd be turning around under circumstances that we thought they should be going, you know, that kind of is a group we - were constructed to see if they would go through, that it seemed like good faith use as both commercial as Petter pointed out but also non-commercial.

And then we've got the 93.7% abandonment rate which one way or another did exclude the automated hits, and so we're seeing the trademark claims notice really acting as a wall and that's not intended.

So I just think it's an easy answer to me which allows us to then go on to the fixes, which is where the more interesting problem lays. Thanks.

Roger Carney: Thanks Kathy. And I think George was next.

George Kirikos: George Kirikos. Yes I agree with Kathy and to add to the marks that she listed also there - remember there were the figurative marks that really had an impact, you know, figurative marks that disclaimed the text mark still possible to put that into the TMCH.

So the - why don't you go back to Michael's - Michael Karanicolas' point about a proportionality. I think Phil had said something about, you know, if we - even if we have the deterrence effect that means, you know, we should keep the trademark claims.

I think Michael - I agree more with Michael's point of view that, you know, we have to look at the costs and the benefits and not only in these current TLDs, the ones that are already launched in faith - in the latest round - the prior round.

We have to keep in mind that in the next round of new TTL - sorry, new gTLDs there are likely to be more niche extensions or - and long tail extensions.

I made this point in the Sunrise but it - that's a - there's a different group here in the trademark claims. So the Rights Protection Mechanisms that we created for that group of, you know, 1000 very, you know, popular TLDs at least the more popular strings like, you know, Dot Bank or Dot Web or - and so on - that might not be the same protection that we need for these niche TLDs where we probably expect much lower cyber sliding. Thank you.

Roger Carney: Thanks George. All right, we're quickly running out of time but please I want to give everybody some time here so just recognized - hopefully you can do it quickly and I'll move on to Greg.

Greg Shatan: Thanks. Greg Shatan and I don't find myself agreeing with those who spoke before. I think as noted before since we have nothing to compare the cart abandonment rate to it really proves nothing.

I think we also found in that - as Griffin mentioned in the chat that 83% of prospective registrants said they continued with the registration when presented with the notice.

I think also if we're going to look at data and evidence and interpret it, it's probably a good practice within the group for all of us to be looking at the data.

Well no matter who is presenting it at the time we're discussing it we should have it, you know, up and in front of us and put up. Obviously with ten minutes left to go in the middle of Kobe we're not going to go there but as a general matter, you know, any of - anything that's brought up here - and it just needs to be examined before we can kind of accept any particular interpretation of that data.

So far, you know, it's - I can't say that any of that was persuasive that there was any, you know, quote unquote intimidation or the, you know, and what those unintended consequences were/whether we have that proof.

One thing to consider is whether we really need to answer the - how much we need to dwell on how this question is answered before we move on to the generally agreed idea that we should rewrite the trade - the claims notice a bit. Thanks.

Roger Carney: Thanks Greg. Kristine?

Kristine Dorrain: This is Kristine and I'm going to assume that based on comments in the chat that Griffin's going to say what I'm going to say, because he's already put stuff in the chat so I'll just segue to him.

Roger Carney: Thank you. Griffin?

Griffin Barnett: Thanks. Griffin Barnett for the record. Yes I - just to yes quickly kind of rehash and reiterate some of the things that I did put in chat but just to kind of put it all together - so just going back to some of the points that Kathy raised earlier, I mean, she said that people are getting notices for generic words but they're not.

I mean, by definition they're getting notices from marks that are recorded - Trademark Clearinghouse and you can take issue with the fact that maybe you don't agree that those are valid rights, but there are other means of challenging that that don't - that doesn't relate to being presented with the claims notice.

That's a Trademark Clearinghouse issue, not necessarily a claims issue although I understand obviously that there's a trickle-down effect. Sure. And then my other point was - and Greg kind of already raised it but I believe in the AG survey 83% of prospective registrant respondents indicated that they proceeded with the registration, you know, even when presented with the claims notice, and of those 17% that did not there were a variety of reasons given for why they didn't proceed.

And so we can't necessarily peg the ones that didn't proceed to, "Well I got this claims notice and I abandon the registration because of the claims notice." Now I'd - I would want to go back - I will caveat that by saying I would want to go back and double-check exactly what's in the data but that is my recollection. Thanks.

Roger Carney: Thank you. John?

John McElwaine: Thanks. I think if we - John McElwaine for the record. I think if we're being honest really the only - with respect to A could we say that there is some data showing some bad faith registrations via some URS decisions.

We can't right now say that there is - good faith has been - any good faith registrations have been deterred because you have to know what's behind - what's in that person's mind.

You have to have some evidence and it - all of this discussion that we're getting at right now is all devolving into other questions. And I think we ought to - to Phil's point we can move on from this one.

And I don't even- really sure we need to make a recommendation out because all these issues are going to - we're going to be talking about in another question and I think we can probably cut off - timely cut everything off. Thanks.

Roger Carney: Thanks and we have two more and they need to do them quickly please.

Philip Corwin: Old hand.

Roger Carney: Okay one more. Kathy?

Kathy Kleiman: So remember the 83% includes the cohorts of a lot of trademark attorneys who responded as registrants. Of the - those who were not trademark attorneys most of them that were - they were a problem.

So I don't see any problem saying yes to both of these because that gets us to the next question of fixing the problem, which we're already getting to and, you know, which we've already said there are problems with the trademark claims notice.

And the reason why is because it's having unintended consequences so this - again this one seems an easy yes.

Roger Carney: Thanks Kat. Julie? Next steps. We're running out of time so...

Julie Hedlund: Thank you. I'm sorry. And I should note there was actually a couple of comments from Michael Graham. There isn't time to read them out but I will extract them into the notes and to their appropriate point in the discussion.

So next steps - staff will produce some brief notes from here indicating the trending of the discussion and send those around. And, you know, we will not meet next week and we do not meet the week after an ICANN meeting.

We will meet the following Wednesday at the usual time which is - guess is the 27th of March and we'll, you know, be sure to send around with the invite the table so that people can see, you know, what we might be looking at next for questions and give some thought to them before the meeting.

Philip Corwin: Okay well this is Phil. Thanks everyone who's been at the - this meeting just now and at our other three meetings over the last day and a half. I think we're all happy we've gotten past the data analysis exercise and into making actual decisions about whether anything about these RPMs should be modified.

And I think it's been productive meetings. Everyone's I think been very - a lot of good contributions, a good, respectful discussion and I think it's a good start to this phase of our work and we look forward to continuing and moving forward with all deliberate speed to stay on our timeline so thanks everyone.

Enjoy the rest of the meeting. Enjoy the gala tonight and safe trip home and we'll see you again later in the month when we're back online. Thank you.

END