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**ICANN Transcription**

**The Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims  
Data Review**

**Wednesday 02, January 2019 at 1700 UTC**

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<https://audio.icann.org/gnso/gnso-rpm-review-trademark-claims-02jan19-en.mp3>

Adobe Connect Recording:

<https://participate.icann.org/p7pjuj6expq/?launcher=false&fcsContent=true&pbMode=normal>

Attendance is on the wiki page: [https://community.icann.org/x/lwj\\_BQ](https://community.icann.org/x/lwj_BQ)

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<https://gnso.icann.org/en/group-activities/calendar>

ANDREA GLANDON:

Good morning, good afternoon, and good evening. Welcome to the RPM Sub Team for Trademark Claims Data Review call held on Wednesday, 2 January 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Adobe Connect room. I do know at this time we have Kristine Dorrain who is on the audio only. Do we have any other participants who are on audio only? Thank you.

Hearing no further names, I would like to remind all participants to please state your name before speaking for recording purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. Thank you, and over to you, Julie.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

JULIE HEDLUND: Thank you very much, Andrea. Again, welcome, everyone. We hope that you enjoyed the holidays, and we wish you a very Happy New Year.

Let me just briefly review the agenda, and then we'll get started with agenda Item 1. Reviewing the agenda, we have statements of interest, [selecting the sub team leader], continuing the survey analysis, and any other business.

As folks join – heard somebody join just now – could you let us know who joined?

ZAK MUSCOVITCH: Zak Muscovitch.

JULIE HEDLUND: Ah, thank you very much. Thanks, Zak, and welcome.

So then back to – oh, let me just ask briefly, is there any other business? George Kirikos, you have your hand up. Please go ahead.

GEORGE KIRIKOS: Yeah, I posted a message to the main mailing list today noting that there was a potential source of data that could inform our work, namely the list of domain names that were seized back in November by ICE. I think some of those might be trademark infringing domain names and could be a valuable source of data

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for a PDP where we've been starved for high-quality data. So I'm curious whether anybody in this sub team might have been able to access that data. Well, I don't want to talk about the whole thing now, but we could maybe add that to all other business when we have time later. Thank you.

JULIE HEDLUND: Thank you, George. We'll go ahead and add that to any other business.

Then back to agenda Item 1. Let me ask if there are changes to anyone's statements of interest. I am not hearing anything. I am not seeing any hands up. So I am going to assume there are not.

And let me just ask, I see that we have a couple of numbers that aren't identified. There's a 952 ending in 8613. Who's associated with that number?

KRISTINE DORRAIN: That's Kristine.

JULIE HEDLUND: Oh, thank you so much, Kristine. I thought maybe the 952 was you, but I wasn't sure. I really appreciate that. And then there is a long, long number starting with GM and I'm not sure to whom that belongs. But if someone can claim that, we'd appreciate it. You could always type it in the chat if you're in the room.

So on to our agenda Item 2: selecting the sub team leader. As you may recall, we did extend the call for volunteers to just prior to the

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holiday, the 22<sup>nd</sup> or 21<sup>st</sup> I believe, and we did not get anymore volunteers. But we have had a volunteer, and that is Martin Silva. I see, Martin, you have your hand up. Please go ahead.

MARTIN SILVA:

Thank you very much. As I said, I did volunteer to be co-chair because I really don't neither I think the experience nor maybe the time to do all the legwork for this. So I still stand by it if anyone wants to co-chair with me, especially someone that has either experience or is heavily involved in the group. I'll be happy to share the burden. But if I'm the only one, then I would be a little bit more reluctant to take the whole burden on myself. I just wanted to clarify that. Thanks. Hello?

JULIE HEDLUND:

Oh, I'm sorry. I was on mute. Pardon me. Thank you, Martin, for volunteering as co-chair. Let me ask if there are any other volunteers to join Martin as a co-chair.

MARTIN SILVA:

This is to answer Kathy Kleiman that in the chat said, "Martin, have you gotten any indication if others might be interested in [joining as] co-chair?" I was approached by someone [from] the GoDaddy group, but I haven't seen any official proposals yet. So I don't know. Maybe we can give it one more day, a few more days and see what happens. I don't know. I'm up for whatever the group wants to decide.

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JULIE HEDLUND: Thank you, Martin. Greg Shatan, I see your hand is up. Please go ahead.

GREG SHATAN: Hi. Happy New Year, everybody. A question: have we received any volunteers for the Sunrise sub team, even to co-chair?

JULIE HEDLUND: Thank you for your question, Greg. No, we have received no volunteers thus far for the Sunrise sub team.

GREG SHATAN: Thanks, Julie. The reason I asked is that, perhaps against my better judgment, I'm contemplating volunteering for that post. But if I didn't, I would volunteer to co-chair with Martin. But I couldn't possibly do both. And so if there's nobody volunteering for Sunrise, then I would go where the need is greatest, as they say. So [I guess I'd] have to see how things play out. But as somebody who has done a bit of chairing in the past, I feel like somebody has to step up to the plate and that might as well be me this time around – but maybe not this time around. So that's a kind of provisional maybe, depending upon what happens in the hour following this hour. Thanks.

JULIE HEDLUND: Thank you very much, Greg. That's extremely helpful. So we'll see how that plays out in the subsequent meeting, the Sunrise meeting. And that's perhaps timely to remind everybody that we

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will actually finish this call about five minutes early to allow folks to switch calls for those who are in both of these meetings.

Let me ask then how the sub team would like to proceed at this point, at least for the work today. It sounds like we may have a contingency as to a possible second co-chair for this group, depending on the outcome of the Sunrise sub team meeting that follows. If it's helpful, staff could for today's call walk us through the edits and suggestions that we have gotten in the analysis tool at least to keep the work going until we are firmed up on our volunteers for co-chair. And recognizing, of course, that we did have the holiday intervening which may also have constrained some folks from having the opportunity to volunteer.

So let me ask if there are any objections – well, first, are there any suggestions for how people would prefer to proceed at this point or any objections to whether or not staff could simply walk us through the edits we received since the last call in order to keep the work moving? George Kirikos, you have your hand up. Please go ahead.

GEORGE KIRIKOS:

Yeah, I think as Kathy noted, some people are still on holiday. I know here in Canada, or at least in Toronto, the schools don't go back until next week. So a lot of people are still in holiday mode. I think only Kristine Dorrain and myself actually edited the document prior to the deadline. I noticed Griffin [sent a] document as well separate from the Google doc to the mailing list with his comments. I don't know if everybody else had an opportunity over the holidays to review things, but we should perhaps at least try to

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start the document. But if people haven't had time, maybe we should do a soft review with the intent of going to the hardcore mode next week. Thank you.

JULIE HEDLUND:

Thank you very much, George. Does anybody have any other comments? Any objection to doing a soft review? At least to keep some work going since we do actually have some comments to review and including comments that were separately sent by Griffin before the call. Griffin supports the soft approach for now. Thank you for that.

Then let's go ahead and proceed to agenda Item 3 with the survey analysis of what we have thus far. Although, we may end up revisiting the questions as we get additional comments from folks who come back from the holiday.

Griffin, thanks for sending your comments. It would really be appreciated if they could be integrated into the Google doc. And we'd like to remind folks at this point that the reason we're using a Google doc is because it does allow people to see other people's edits in real time. But we're also closing off the document to comments the morning before the meeting just so that we're not getting comments just before the meeting, so that people have time to review the comments but also to review them against other comments received where there may be some similarities or synergies. So we really would appreciate it if folks would use the tool.

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And let me actually use this opportunity to turn to my colleague Ariel Liang so she can describe what we're seeing here on the screen and how we're suggesting that folks can use the tool. So, Ariel, let me please turn things over to you. Thank you.

ARIEL LIANG:

Thanks very much, Julie. Happy New Year, everyone. As you can see on the screen, it probably doesn't need a lot of explanation. Basically, staff set up a worksheet for each agreed charter question for the trademark claims.

And then you can see that there is Instructions on the top section that just explains some of the survey data [as related to] answering these questions.

And then right after the Instructions, that's the actual agreed charter questions there. It's highlighted yellow because when the analysis group developed the survey, they had included these charter questions for their consideration when they designed the survey questions. So that's why they're highlighted in yellow.

And then in the table, we have several columns. I requested each sub team member to write down the name when you are commenting and then explicitly explain whether the survey results help answer the charter questions, yes or no. [inaudible] additional notes you want to add. And then the specific sub question that [inaudible] the data. [inaudible]

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JULIE HEDLUND: Sorry, Ariel, you dropped out for me for a moment. So I don't know if there's something I missed.

ARIEL LIANG: Oh, I'm sorry. I didn't know. Is my audio back?

JULIE HEDLUND: It is, yes.

ARIEL LIANG: Okay, thank you. I was [essentially] finished. [I was saying] the last column is we want commenters to reference the specific tab and cell number so everyone can look at the data and see how the response related to these survey results. So that's the structure of the table.

I will just put a link in the chat that – just one moment – this link is to the wiki page where we have set up the Google docs for every single agreed charter question for trademark claims. So these worksheets are ready to be used. And if the sub team decides to move rapidly, we can quickly jump to other worksheets. So that's pretty much it for the worksheets.

And as Julie mentioned, we will close down the worksheets in the morning before a call. So if you look at the Google doc, you probably won't see the comments that Kristine and George put in. They're still there, but it's just reverted to view only mode, so that's why you're not seeing it on the Google doc. But on the PDF, of course, you see these comments.

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That's it. Thanks, Julie.

JULIE HEDLUND:

Thanks very much, Ariel. That's extremely helpful. What staff will do is let's go ahead and go through these, noting again that the document you see before you is un-synced. And since there were a couple of questions in the chatroom, just noting again that we do have the Google doc locked. We'll lock it a few hours before the call, and we will unlock it after the call. But just to avoid things changing from what you're seeing here, so making sure that the Google doc reflects what you see on the PDF in the room.

And also, Griffin, if it's okay with you, we can after we go through what we see here for Question 1, we can move to the document you sent and go through your comments. And then those could be added later to the tool. But just make sure that we are talking about them today.

Martin is asking a question: "Should we go through this document/homework or directly go back to the survey and see if we agree we have enough data on each question so we can send the next homework chart?"

And Griffin says, "Sure, Julie, that would be fine."

So that's a question for the sub team. Do you folks have thoughts on that? And I see there's some typing in the room. And let me see here. Okay, so I was hearing that I was breaking up. Yes, and I was asking for input on Martin's question above as to whether or not we should go back to the survey and see if we agree we have

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enough data on each question. I have a couple hands raised. I have Kathy Kleiman and then Kristine Dorrain. Kathy, please?

KATHY KLEIMAN:

Hi, Julie. Happy New Year, everyone. I hope you had a wonderful New Year's and a wonderful, relaxing holidays with your families.

To Martin's question, I think maybe we should review quickly what's been added, what's here. I certainly haven't had the chance to review Griffin's input, and I think there may be other inputs. So it looks like there may be more data to be added to these two questions, to 1(a) and (b). But also, I think we should starting thinking about Question 3, which is the other registrant question as well. So to Martin's question, I think we have both, to quickly review what's here in case people haven't had the chance to look at it, and it looks like we're going to continue to work on this until next week [if it's] a soft review. So let's look at what's here and then consider what's not. So maybe a combination approach between yours and Martin's. Thanks.

JULIE HEDLUND:

Thank you very much, Kathy. Kristine Dorrain, please?

KRISTINE DORRAIN:

I'm going to take my hand down because I agree.

JULIE HEDLUND:

Okay, very well. Thank you. We'll go ahead and proceed with what we have here and then we can see based on that whether or

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not we need more data. I see that Griffin is agreeing with Kathy's suggestion as well.

So then on Claims Charter Question 1, which I'm not going to read. You see it before you. The general comments from several sub team members whose names will be added on the question "Do the survey results help answer Claims Charter Question 1?" Commented "Yes."

"If yes, which sub question(s) do the survey results assist?" That's Question 1, sub question (a).

"Many respondents indicated they received a Claims Notice, but their responses do not directly" – I see George Kirikos is saying "Page 1 is a summary of the last call essentially."

"But their responses do not directly answer whether the Claims Notice is deterring bad-faith registration. There is evidence that the Claims Notice does affect the decision whether or not to proceed with a registration and that various reasons were cited by respondents for not proceeding. The Claims Notice is supposed to make people pause and consider, and that is the intended effect. We could cautiously say that the Claims Notice has some deterrence to registration. Responses in E23 and F23 in the Actual & Potential Registrant tab indicate that the Claims Notice is confusing and/or intimidating to some respondents. We can recommend improving the wording of the Claims Notice to reduce confusion and improve future results."

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And then you'll see in the final column, the Tab Title & Cell Number: "Actual & Potential Registrants, E12, F12, E22-23, F22-23."

I see there are a couple of comments in the chat here. "Page 1 is a summary of the last call essentially." "Yes, it is. Yes, Kristine is agreeing. "In my opinion, it's a good summary."

Anybody have any questions, anything to add on what we have there? I'm not seeing any hands up, so I'm going to go to the next item from George Kirikos. "Do the survey results help?" "Yes." Question Q1(b). And I see we have a TBD. And then we have Tab Title & Cell Number: "Registry, Registrar, etc." I'm not going to read all those. But I see George has his hand up. George Kirikos, please go ahead.

GEORGE KIRIKOS: Yeah, that's actually [not] Page 2 [as spelled out] by Ariel just from the last call. I ended up making my full comments later on in the document. I didn't want to change anything in case it broke. So my comments are actually on Page 3 and 4. So we could probably just skip to Kristine's comments because there wasn't anything substantial on Page 2.

JULIE HEDLUND: Thank you very much, George. That's extremely helpful. Next, I have Kathy Kleiman. Kathy, please?

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KATHY KLEIMAN: Yeah, actually, I'm going back to before George's comment to the Q1(a) at the top, the first one that you read. The bottom says, I don't know if we want to edit it or this is the appropriate place, but the very last sentence says, "We can recommend improving the wording of the Claims Notice to reduce confusion and improve future results."

I just think maybe we want to add a note about translation as well. We can double check that the translations are taking place because we're going to see later that registrants did respond, potential registrants from all over the world, and there is some question about translation and whether they're getting it in the language of the registration agreement. So just throwing something in about translation as well. Thanks.

JULIE HEDLUND: Thank you, Kathy. I'll note that, although if you have some specific language you would like us to include to make sure we capture correctly what you would like, once we reopen the document you are welcome to add that after the call.

KATHY KLEIMAN: I'll be happy to do that.

JULIE HEDLUND: Thank you so much. I have Kristine Dorrain and George Kirikos. Kristine, please?

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KRISTINE DORRAIN: Hi, thanks. I'm taking Kathy's point because I know we don't review this in a vacuum. We do know that the translation has come up. It's one of the questions that we going to be asking later. So I think putting some foreshadowing in that's just like an asterisk that links it to that question might be helpful. But this specific question, is it having its intended effect or unintended consequences, is a pretty broad overarching question and there's no specific data about the translations I don't think at this point. So I take [this] point that we can't review it in a vacuum, but we haven't really gotten into any of the data as far as translations yet.

So I would say that I wouldn't want to amend this because at this point reviewing the sections that we reviewed and answering Question 1(a) & (b), we aren't getting to the translations. But we are recommending improving the wording of the Claims Notice at this point. We'll absolutely get to translations, but I don't know that we need to spend a lot of time wordsmithing yet for what we're going to say about that because we have a whole section on that later. So that's my only comment on that. Thanks.

JULIE HEDLUND: Thank you very much, Kristine Dorrain. Perhaps as staff is noting that and also maybe suggesting that rather than altering or wordsmithing the language we could do an asterisk or a footnote just noting the possible linkage to translation.

But I have George Kirikos and Greg Shatan in the queue. George, please?

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GEORGE KIRIKOS: Thanks. I was curious, are we supposed to be putting in recommendations now? Because that column is literally labeled “How do the survey results assist (e.g., ‘Registries responses in tab/cell X demonstrate Y’)?”

So this I was under the impression this was supposed to just be an analysis of the survey results in terms of answering the questions, but solutions and recommendations or proposals are separate. But if we want to integrate the discussion of the potential solutions now, like the last sentence was, “We can recommend improving the wording of the Claims Notice to reduce confusion and improve future results.” That’s a proposal or a recommendation. If we’re going to integrate that now, then we should be clear about that because it would obviously affect our workflow. Thank you.

JULIE HEDLUND: Thank you very much, George. I’m just noting in the chat some discussion about recommendations. I think to be clear, we’re not wordsmithing recommendations at this point but indicating where we might be [finding] areas where we might want to develop recommendations. So just noting that.

Greg Shatan, please go ahead.

GREG SHATAN: Thanks. I think we’re getting a bit of if not mission creep at least kind of document creep. It’s kind of in a way similar to George’s comment. The document in front of us was intended at least as it’s set up to answer essentially three questions: whether the survey

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results help answer a question; if yes, which sub questions do they help with; and how did they help, which is basically just expand on your answer in the second column assuming the answer is yes.

So I think recommendations are in a sense out of scope for that column. We might want to have an additional column. Or if we want to be looser, we could have recommendations but then I think we can [rename] the columns. But I think the bigger point is we need to be clear about what we're doing in this document.

Right now, what we're proposing to put in the document goes beyond what the document was set up to do. And I think that's particularly true in the case of the translation issue which is absolutely, as Kristine said, a valid issue but it's just not one that has any relationship as far as we can tell to the data analysis. And the job we're doing here is data analysis and recommendations coming out of there. That's not exhaustive of all of the recommendations that could be made.

But I think we need to define our project, our process or else we're going to get caught doing potentially more work and weighting the document down with stuff that isn't supposed to be in it just because it's a worthwhile idea and [that's] the document in front of us at the moment. But that's a bad way of sorting things out. I know that my desk looks like [I do the same thing], but with documents I try to keep a little bit closer to task. Thanks.

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JULIE HEDLUND: Thank you very much, Greg. So just noting a few of the things that are in here. Whether or not to have a separate column. It does get a bit fussy the more columns we add. Since Column 4, "How do the survey results assist?", is really the deliberations piece of this tool, staff suggests capturing where there may be trending toward recommendations in that particular column and then these can be distilled and rolled up separately. Otherwise, it just ends up getting really, well, it's already getting very small type and hard to read. Hate to make it any more difficult.

George Kirikos, please go ahead.

GEORGE KIRIKOS: I was thinking that we have another way of making it within the same column. Namely, change the color of the text. So if we have something that's a recommendation or a proposal, we can either underline it or make it a different color so that it stands out. Because I agree that perhaps adding additional columns would make it harder to read the entire document because it would probably require scrolling right more or scrolling up and down more, depending on how exactly the document is formatted. So the use of color or fonts might be a possible way forward. Thanks.

JULIE HEDLUND: Thank you very much, George. Yes, we'll capture some kind of formatting to get this done.

And just so that we can move on then to the next comment – and noting agreement for distinguishing the recommendations – this is a comment by Kristine Dorrain. It relates to Q1(a) & (b) indicating

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that the survey results were helpful. She notes, “There is some evidence that the Claims Notice may cause some registrants to take notice, particularly if the registrant is unsophisticated, which I think is the goal (though, as one would expect, there is some collateral damage, with some potential registrants shying away). A common UDRP response was ‘I didn’t know. If I had, I wouldn’t have registered it. Why was it available or why was I not warned?’ On the other hand, the trademark/brand survey indicates that, as one might expect, industry players will disregard the notices and take their chances. Some registrants register domain names only to monetize them for the few weeks it takes brand owners to catch on and file a UDRP. The notice is clearly not affecting them, and I would argue those people are not the target audience anyway. For the target audience, I think the Claims Notice is likely working, but should be fixed to be more clear to reduce collateral damage. I further believe that this is unlikely to have a lot of impact on the brand protection efforts against habitual, recidivist cybersquatters who are going to infringe anyway.”

You’ll see in the last column the various tabs relating to this.

George Kirikos, I see your hand is up.

GEORGE KIRIKOS:

Kristine referred to something, a phrase called “industry players will disregard the notices.” I don’t know which industry players she was referring to, whether she was referring to domainers or she was referring to cybersquatters. She should probably maybe clarify that term. Most domainers actually are not trademark infringers, so I think that’s an incorrect term or at least an unclear

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term which could be made more precise. Most domain industry professionals would target generic commonly used terms and not go after a trademark infringing domain name knowingly.

The second paragraph talks about reducing the need for collateral damage, and I agree with that completely. And her last sentence about going after the habitual, recidivist cybersquatters, I agree with this as well. So in terms of recommendations, that might point toward trying to have more targeted measures. Like one idea I was thinking was maybe we might want to distinguish between bulk registrants who are registering thousands of terms at one time as people who might want to be receiving the Claims Notice and having to more forcefully show that, yeah, I received the Claims Notice and I'm going to register the domain name anyway. Or somebody who is just registering one domain name at GoDaddy who is probably a good faith registrant is probably not the kind of person who is going to be the habitual cybersquatter.

So, I don't know, perhaps Kristine could respond. I notice her hand is up. Thank you.

JULIE HEDLUND: Thank you, George. Kristine Dorrain, please?

KRISTINE DORRAIN: Hi, thanks. Yeah, so with respect to the "industry players" comment, I was trying to leave that purposefully vague because I think it's anybody who knows to expect a claims notice. Those could be domainers. Those could be cybersquatters. Those could be brand owners registering brand names in general availability.

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They could be corporate registrars registering on behalf of clients. Really, it could be anybody.

My point is that if you're already in the know, you're going to know. You're going to click through and look at it, etc. So, yeah, I think that's what I was intending to say, so that's actually why I left it vague.

With respect to cybersquatters, that is why the last paragraph was [there]. It was to distinguish between people who – we talk about it in other areas of [online] abuse as well, such as counterfeits or piracy. We talk about people who are just hardcore recidivist criminals. This is what they do and they're going to do it anyway. So this isn't trying to prevent them is what my point is. Those people are going to commit anyway. What we're trying to do is get people who might not realize that they're running into a problem to think about the fact that they might be running into a problem.

I'm not going to disagree with Brian's characterization in the chat about the common UDRP responses. I just was getting at the same thing. "It was available. You could have had it. They didn't want it." I do remember getting a lot of responses from people that also said, "I didn't even know. I thought it was fine. I didn't know." So there's plenty of that as well. So if people have an objection to that, I can take that out.

But basically, the point of my whole writeup here was that I wanted to point out that between Question 1(a) and Question 1(b) were two flipsides of the same coin. So back to the STI and the IRT, the point was there was a lot of negotiation and people had to

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compromise. And at the end of the day, not everybody ended up with everything they wanted.

So, yeah, there are some people that are going to be deterred and the question for this group is, is it the right amount of people being deterred and the right sorts of people generally being deterred? We want people that are going to infringe or might be infringing to be deterred. We would hope people that aren't going to infringe would keep going. And we want brand owners to have protections, but we also don't need to give them the moon either. So are we striking the right balance here rather than trying to make sure one entire group is getting everything they want and another entire group isn't getting what they want? That's the point of my comment.

I believe that answers all the open questions.

JULIE HEDLUND:

Thank you very much, Kristine. That's quite helpful. I'm not going to read out what's in the chat, but there are a few comments there for your reference.

The next comment is from George Kirikos. The answer in the second column is "Yes." Pertains to Q1(a) & (b).

"As discussed previously," – a link to that discussion – "there were serious statistical problems with the survey, so any 'Yes' must include an asterisk, given the low weight that should be attached to any results. Having said that, we can unequivocally conclude that the trademark claims service is 'providing Claims Notice to domain name applicants' (the 2nd part of Q1(a)). For the first part

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of Q1(a), it's clear from the answers that registrations are being deterred, but we have no way of knowing whether these were limited to only 'bad faith' registrations. So, we can conclude that adding the warning creates an obstacle/impediment to registration, but those could very well be good faith registrations (as per the Q1(b) second part of this question)."

It's a very lengthy comment. I'm going to ask George whether or not it's necessary to read this out. We've only really got about 15 minutes left on the call, and you all can see these comments here. So maybe I will just pause for a moment while folks are taking the time to read George's comments. And I see there is a hand up as well. So, Kristine Dorrain, please go ahead.

KRISTINE DORRAIN:

Thank you. I hope you can hear me because Julie just started breaking up for me, and I don't know if it's me or not.

I didn't disagree with most of what George said. I think my main question, and I guess disagreement with the last paragraph, which assumes that registries [inaudible]. [It says] the registries negative impact is arguably an unintended consequence. I would as a registry operator who is experiencing this negative impact that it's not an unintended consequence. I think it actually was a negotiated compromise.

I think the registries absolutely did not want a Claims Notice. The registrars as well. They didn't want to deter customers from registering domain names or slow down the process or even wait 30 or 60 days until general availability. However, it was a fair

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trade, and I think that was ultimately what people were negotiating for and that's what they got.

Now at the end of the day is it time to relook at that negotiation? Maybe. But I think my point is it wasn't unintended. I think it was a result of a very, very complex negotiation and it was a [give]. So there's a balance here and, yeah, registries didn't get everything we wanted. And so I think my only point is I would say it's not an unintended consequence. It may still be a negative consequence. Thanks.

JULIE HEDLUND: Thank you very much, Kristine. Then I have Susan and George Kirikos. Susan Payne, please?

SUSAN PAYNE: Yes, thanks. Yes, I agree with what Kristine has just said about the unintended consequence, or rather that it wasn't unintended. That was one of the reasons I put my hand up. The other comment I was just going to make was that, yes, I think the survey responses do show that there was some deterrence. But it's worth noting, of course, that 83% who were being asked said that after having got the Claims Notice they proceeded. So 17% said that they stopped in relation to the particular question. I'm sorry, I can't remember the question number. So it's not wide scale deterrence that we're seeing here.

And George is making an assumption that we have no way of knowing whether these were limited to only bad faith registrations and, yes, that's correct. But we also can't know precisely how

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many bad faith ones were not deterred and continued. The data doesn't really help us either way. It's safe to say that there were a certain number of question responses that indicated that having continued with the registration there was then a subsequent action taken which some of the domain name registrants identified and some of the trademark owners identified. And therefore, that would seem to suggest that at least some registrations that a trademark owner perceived to be bad faith resulted in them taking further action.

So the data – we have to be careful not to overdraw conclusions from this data. It is what it is. There was some deterrence, yes. It was only 17% if you go on that particular question. We don't know if they were all bad faith. We also don't know how many bad faith went forward. But we do know that it would appear some bad faith went forward. So, as I say, I think we need to be cautious in over concluding.

JULIE HEDLUND: Thank you very much, Susan. I have George Kirikos and then Kathy Kleiman. George, please?

GEORGE KIRIKOS: Yeah, responding to Kristine's comments. I think whether it was intended or unintended I guess is open for debate in terms of the impact on registrars and registries. But perhaps what can be said is that the magnitude of the impact might be higher than expected. So that might be an unintended consequence that impacted

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registrars and registries more than they anticipated when this so-called negotiation took place.

Because [we know], for example, some registrars worry about the high implementation costs of these policies and that obviously impacted their businesses. And so that perhaps some [players] who already invested in the technology to do the Claims Notices. But for others who haven't, it's a permanent obstacle to being a registrar just like there are other permanent obstacles or high obstacles, whether it's having to respond to an abuse report within 24 hours or things like that. It requires, obviously, staffing. This is another technological impediment which prevents a small registrar or registry operator from starting up.

And as for Susan's comment about the 83%, you have to take a lot of these survey results [inaudible] the statistical issues. I think the more reliable data is from the March 2017 dataset in terms of how many Claims Notices were received and the registration didn't proceed. And perhaps some of the registrars might be able to talk about their abandonment rates. Thank you.

JULIE HEDLUND: Thank you, George. I have Kathy Kleiman and Greg Shatan. Kathy, please?

KATHY KLEIMAN: Yeah, thanks, Julie. I'm going to urge whoever becomes chair or co-chair to move us through quickly [on] processing a few things. One is that Kristine said that we're still on the umbrella question, and yet we're kind of diving to conclusions and I'm not sure we're

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ready to go there. So Martin kind of invited us to dive deep into the data. I think there's still more data. I'm going to posit that there's still more data for us to look at, including that we're really just beginning the deep dive into Question 1(b), is the trademark claims service having any unintended consequences?

I'd urge people – I'll be working on this – to look at the Question 11 tabs and answers before. It was Rebecca Tushnet, who is not on the call today, who reminded us on the last call and pointed out – I think it was the last call – that there are really two cohorts that we're looking at, two statistical groups. It appears a number of trademark owners responded as registrants, completely within their rights. Trademark owners are registrants. But they're very savvy, and they tell us that in their answers. They know exactly what the law is.

That really wasn't the group – that's not necessarily the group of registrants and potential registrants that are reading the trademark Claims Notice cold. That's the other cohort, which is if you don't know anything about trademark law or you know very little, how are you going to feel when you look at the Claims Notice? So let's be careful about big statistics. We're going to have to look [through] the two cohorts. And I assume Rebecca or someone will be adding some more of a deep dive down into unintended consequences.

And then I think when we get to the revised charter Question 3 and all their sub sections, we'll be again invited to look more at the data. So I think the idea of diving too deep into conclusions now is probably premature. So to Julie's invitation, we're not on the

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recommendations yet, but more data to come for next week.  
Thanks.

JULIE HEDLUND: Thanks, Kathy. Greg Shatan, please?

GREG SHATAN: A couple of observations. I think as the conversation has told us over the last ten minutes or so, determining whether a consequence was unintended or intended or had a greater effect or a lesser effect than might have been intended may not be possible to glean too much from the data on that. But I think we need to be careful when we're talking about consequences to be conservative in assigning it an unintended category or, if it is unintended, whether it's negative or not. Otherwise, I think it starts to sound a bit like a results-oriented analysis which we shouldn't be engaging in.

And I think that we cannot conclude – we need to avoid all kinds of assumptions. Assumptions such as in the last few minutes that the costs to implement the trademark claims are “high.” Now whether they form an impediment or obstacle to being a registrar, except in the sense that every aspect of the job that one has to do as a registrar is an obstacle to doing that job, I would prefer to call it a requirement rather than an obstacle. Knowing how to read and write [is] an obstacle to performing the job I'm in, but I don't really think of that as an obstacle. Certainly not an unfair one. So I think [you can ask me about time records another time].

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So I think there's a lot of adjectives floating around characterizing things in a certain way. And it's fine for everyone. You [can all] engage in advocacy. That's perfectly okay. But I think we have to distinguish between advocacy and trying to get toward something that resembles consensus. There's definitely a big gap between those two things, and the sooner we get away from impassioned advocacy and toward some sort of common agreement, the better off we are. It may be less fun, but I think it will be more effective. Thanks.

JULIE HEDLUND:

Thank you very much, Greg. I put myself in the queue. We have just three minutes left, and we have some questions in the chat as to what we is our homework for next week. We would like to ask, as we mentioned earlier, Griffin, if you could add your comments through the tool, we would very much appreciate that.

And then we will open it back up, obviously, after this call. If other folks have comments they want to add, they certainly can do so. But the suggestion was to move on to the next charter question, charter Question 2, for next week. And we can send around the Google doc that we've created for that and ask people to fill that in, and we'll close that down early in the morning on 9 January so that we have time for people to review that next week.

And I have Kathy Kleiman. You have your hand up. Please go ahead.

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KATHY KLEIMAN: Yeah, Julie, if all the documents are about actual and potential registrants, could we do one big Google doc with all of the revised charter questions rather than doing separate docs that we have to flip between? It might be good because it might give us reference back so that we can see the cells that Kristine was referring to or George or I presume Griffin when he adds material and stuff like that. It might be good to have it all in one big document. Thanks.

JULIE HEDLUND: Thank you, Kathy. That's going to be extremely difficult to do. And, in fact, I don't think it's even possible. We did talk about the organization of these documents last week, and it seemed that the only feasible way to do this is to break these up by question. They're all on the wiki, so they can be referenced back and forth. I see your hand up, Kathy, but let me just turn to my colleague Ariel Liang to explain what we did last week with respect to how we've organized the documents.

ARIEL LIANG: Thanks, Julie. I think staff's thought is that separating the doc will make information more digestible because if we put every question in one single Google doc, that will be a very long document. And then with people writing at different parts of it, it will just get really messy and the document may jump up and down. And we have the wiki page, as Julie mentioned, that you can reference the other documents. So we thought separating them would be a more efficient way to make information more digestible. So that's our recommendation, and we still have that opinion. Thank you.

JULIE HEDLUND: Thank you, Ariel. I will note from experience with other PDP working groups that when you do have an extremely large Google doc, it [slows] down and sometimes is just unworkable when you have multiple people editing it. So that's what we're trying to avoid as well. Yes, and it does mean we have to flip back and forth, but hopefully we won't have to do it quite so much on the calls when reviewing the comments.

I now have five minutes to the top of the hour. And, George Kirikos, we did note your any other business item. We'll carry that over. But to give everybody time to switch calls, we'll ask that we adjourn at this point. And we'll send out some notes and homework assignments later.

Thank you all, and we'll talk to some of you very shortly.

**[END OF TRANSCRIPTION]**