
ICANN Transcription

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

Wednesday 16, January 2019 at 1700 UTC

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MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening to all. Welcome to the RPM Sub Team for Trademark Claims Data Review call, on the 16th of January, 2019.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. So, if you happen to be only on the audio bridge, would you please let yourself be known now?

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

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With this, I will turn the meeting back over to Julie Hedlund. Please begin.

JULIE HEDLUND:

Thank you very much, Michelle. This is Julie Hedlund from staff. Thanks to all who have joined today. I'll just briefly run through the agenda. Once that is complete, I will turn things over to Martin Silva, who will be chairing the call today. Just as a reminder, Martin and Roger Carney are our co-chairs for this call. Martin will lead today's call.

So, just to review the agenda, Item 1 is the review of the agenda and the update to statements of interest. Agenda Item 2 is to continue the survey analysis. Item #3 is Any Other Business. May I ask if anyone has any other business?

I'm not seeing any hands. I'm not seeing anything in the chat, so we'll leave that blank for now.

Let me ask, back to agenda item 1, if anybody has any updates to their statements of interest.

I'm not seeing any hands or seeing anything in the chat.

Then, I'll move to Agenda Item 2. We're going to continue the survey analysis, going back to questions 1 through 3. But, really, I think we're going to look at questions 1 and 3 and circle back to 2 – Martin can confirm that – and then questions 4 and 5.

I see Martin has his hand up. I was going to turn things over to you in any case, Martin. So, please, go ahead.

MARTIN SILVA: Thank you very much, Julie. Hello. Thanks, staff, for the work done and the work ahead. Thanks, Roger, for co-chairing, and to group for the [trust]. I would like to keep the call focused on the track we [inaudible]. Roger and I agreed we would chair one call each. Nonetheless, I do invite Roger to intervene at any point as co-chair. Things what we do in this call will affect the things he does in the next one. [inaudible].

First, I would like to clarify something on the draft agenda we have. The question [inaudible] review, and it will be done after question 5, according to what we said in the previous call. [inaudible] answered after this [inaudible].

We didn't finish question 3 last time, so we should pick up from there, unless someone [inaudible] ...

JULIE HEDLUND: I apologize, but I just lost Martin, I think. I see George Kirikos asking sound. Yes, Martin, I believe we have lost you. Michelle, can you ... Okay. Actually, it looks like we have lost Martin entirely. So, please all bear with us as we try to get Martin back.

MARTIN SILVA: Wait. Not entirely. I'm here.

JULIE HELDUND: Oh, good. You've dropped from the Adobe Connect room – oh, there. I see you on phone. Okay, that's good.

MARTIN SILVA: I can continue on phone while I get back to the Adobe Connect.

JULIE HEDLUND: Thank you. The phone is much more reliable, and I can let you know if people have their hands up. I think you were a little bit quiet for some of – at least you were for me. Your volume, for what you were previously saying ... I don't know if you want to kind of go back a little bit, now that you—

MARTIN SILVA: What about now?

JULIE HEDLUND: So, I think you were running through the analysis. You were suggesting that we start with question 3 that we had not completed discussion on.

MARTIN SILVA: Sure. Can you hear me now?

JULIE HEDLUND: Yes.

MARTIN SILVA: Okay. So, I was saying, yes, we didn't finish question 3, so we should pick up from there. On the phone, things always – I would

like to propose we leave the updates for extra comments to the questions on [policies] for when we finish with all the questions so we don't go back and forth on every call which can be disruptive and confusing for some. Any objections to this?

I don't see any hands up. Okay. I'll continue—

JULIE HEDLUND: Martin, I apologize. George Kirikos has his hand up.

MARTIN SILVA: Oh, I didn't see it. Go ahead, George.

GEORGE KIRIKOS: Can you repeat what you just proposed? Because I didn't quite understand what you were actually proposing.

MARTIN SILVA: Yes. I propose we go ahead with question 3 that we did not finish and that we leave the updates of question 1 in this case for when we finish on the questions, instead of going now.

GEORGE KIRIKOS: That's fine. Thanks.

MARTIN SILVA: Okay. Before we got into question 3, I would like to remind you all that we are not going to answer the questions themselves, nor

anticipate in our drafting recommendations. We are setting this call to identify which data in the survey is relevant to the [inaudible] questions and why. So, we should do an [inaudible] to focus on that narrow task, even when [the group] anticipates thoughts, ideas or [intuitions].

When we finish identifying the relevant data in the survey, then we will go to analyze all the other [data] available. Only later [inaudible] support the data that we pointed out earlier.

I do ask staff – let me know, Julie, if it's possible – that we link or pass the notes or the reports of this meeting in the document where we have the comments, so, when we go back later to the [tech] comments, we also have the oral debate we are giving here. Is that [inaudible] with you, Julie?

JULIE HEDLUND:

Thank you very much, Martin. Generally, what we try to do is to summarize the notes from the call and points that are raised in the document. They are also posted on the Wiki. But, keep in mind that, probably more definitively and when we roll up all of these discussions into the summary document, we'll be linking to the transcript as well because the transcript, of course, is a much fuller and more accurate reflection of these conversations.

MARTIN SILVA:

Oh. Perfect. Thank you for that. Griffin, yes, of course. Ultimately, we are set to do that. But, we have an order of things and if we don't focus on [inaudible], we are never going to go through these questions.

Okay. Instead of reading each comment and trying to go back and forth from the sub questions we have, I would like if the people that brought the comments can summarize what they found in each of the questions.

So, I could read the first one, question 3A. We started with this one. [Adopt] a trademark claims notice to [domain name] applicant's [inaudible] intended purpose. A1. If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved? What have the members of the subgroup found in this? What data?

Do any of you want to start? George? Griffin, Kathy? [Rebecca]? I know you have comments on that. George, go ahead.

JULIE HEDLUND:

Excuse me. I'm sorry. Can I just clarify, I have in the chat, that we should be looking at the new text that's been added and that is the text that's in green. That starts from page 8, from Griffin Barnett. Thank you very much. I'm sorry, again, for ...

I'm seeing that Kathy ... I'm seeing that I'm corrected, so let me apologize for my interjection. Kathy is noting that we've never actually reviewed the old text. So, apologies for that. Let me go back to George Kirikos. Again, apologies for interrupting.

GEORGE KIRIKOS:

I thought we actually did start to go through this last time on page 1 and 2. I pulled out the cells from the large spreadsheet, which seemed to indicate there was confusion. That was E23 and F23 of

the actual and potential registrants had, and E18 and F18. And the registry and registrars tab seems to reinforce that. I think that those were the most relevant examples from the document that had data relevance to that question.

I did want to make a general comment, though, that when we look at this data, we should try to make a distinction between the survey that was surveying opinion versus surveying facts because all the different stakeholders seem to have various opinions on various questions. But I think the more useful data is the one that's actually measuring facts.

Just to give an example, a fact would be something like, "I spent a \$100 (or \$200 or whatever) on a certain domain name." That's a factual statement, whereas some of the opinion questions, I think, are less useful, like, "Do you want more brand protection?" All the trademark owners would say, "Yes! Yes! Yes! Give me more! Give me more!" Other people might say, "No, no, no. We want less. We want less." That's kind of less useful. It's interesting that we have a survey [inaudible] members that are participating in the PDP and working group. But, it's kind of, I think, it's less important in the grand scheme of things. Thank you.

MARTIN SILVA:

Thank you, George. Kathy Kleiman asked, "Martin, how long would you like us to talk?" Ideally, I would love to have you speak only for two minutes, but of course, that depends on the amount of data you've found. I'm reading George's comment and he said that at least he's found data in the [inaudible] registrant for these remarks.

Maybe Kathy or Griffin wants to comment on the data they found on this A1? Griffin, go ahead.

GRIFFIN BARNETT:

Hi. Thanks. I'm happy to try and quickly summarize the comment that I added, trying to stick to specifically to what is tied directly the survey data, which I tried to do generally, of course. There is some additional kind of commenting [based on] interpretations of the data as well.

Just to try and quickly summarize, basically I think the data suggested that there was fairly little time spent by most registrants and prospective registrants in actually reviewing claims notices. I would note that there were some answers indicating that people were "worried" or "intimidated" by the claims notice, which I interpreted to mean they had trouble understanding what it meant or what its implications were.

But, at the same time, the data showed that I think it was 83% of the prospective registrants continued with the registration in spite of receiving the claims notice.

So, I think, from that, we can interpret that to mean that, even if people have had trouble understanding or didn't spend a lot time reviewing the claims notices, they weren't necessarily deterred from proceeding with the registration in many cases.

In addition, I was looking at what were the reasons why people indicated that they abandoned a registration, but I would note that receiving the claims notice was not listed as a top reason why some people abandoned a registration. I think the data says that

things like pricing or just general issues with the registration process were given as more likely reasons.

One other interesting piece of data – I think this is something that Rebecca mentioned last time – was a fairly high number of people indicated confidence in their ability to actually understand the notice, which seems to cut against other data, suggesting that people may not have actually understood the implications, or were intimidated or worried by the notices.

So, that's sort of a summary of what the data said to me. I'm happy to stop there. I did insert some potential conclusions that I drew from those kind of various threads of data. But, I understand that it's not necessarily where we want to go at this point. So, I guess I'll stop there.

MARTIN SILVA:

Okay, Griffin. Thank you very much. Of course, I note some of the comments [already] made are general, in the country-code data, the [inaudible] questions. That's okay. That's fine. But, of course, I have to ask, if you have [inaudible] say something more specifically because, of course, that's better. So, [inaudible] just say it's actually for the whole question. But, if you have an [inaudible] specifically for a question 3A3, it's good to know you have pointed out specifically that. I see Kathy. Kathy is next on the queue. Kathy?

KATHY KLEIMAN:

Hi. Kathy Kleiman, of course speaking as a member of the sub team. Martin, I just want to let you know I can hear you perfectly

now, which is great. Griffin, you probably saw on that chat we were having trouble hearing you. So, it was really good you were talking so slowly because at least it seemed to get through in the delay. I think I caught most of what you said, but if I didn't, thanks for repeating.

So, one to question 3A. I added a number of responses to 3A [inaudible] one, two, and three. I'm going to combine them because I actually think we're in agreement. So, one: is the notice [included intimidating]. hard to understand, or otherwise inadequate? Yes. For the [concordant] people – as you know, we've talked often that two groups of people responded. One group was the group the Analysis Group reached out to. The other group was the group ICANN reached out to, which included a lot of trademark owners. So, they tell you. They tell you we're experts in trademark. It's in the survey. That's a normal registrant group.

So, the normal registrant group didn't understand the notice. That's my problem and Paul McGrady's problem because we drafted it. But, they didn't understand it. Two, they didn't understand the scope, and particularly the limitations, of trademark owners' protections. They're confused. They tell us they're confused. Even in legal cases, they're turning back in lots of numbers; cases that, in the survey, were designed to be clearly legal cases. They're not going forward.

Also, we know that the translations aren't taking place [for] at least half of the registrars that responded. And that's the registrars who responded aren't taking place. The translations aren't taking place, so of course, anybody who doesn't speak English a first language isn't going to get it. And, all the IDNs, all the

Internationalized Domain Names – no one is going to understand an English claims notice.

But, I wanted to read what Griffin said. I'm just going to read it because I think we're in agreement. So, I'm not sure how much we have to go in a different direction. Griffin wrote, "Ultimately, the wording of the claims notice could likely be improved to improve its effectiveness, the notice delivered an additional translation into multiple languages, and mechanisms put into place to ensure potential registrants confronted with a claims notice actually read the entire notice before choosing whether to proceed with registration or not."

I think we're going to talk in D about timing of the notice, but I think we're in agreement: a clear notice and definitely translation. So, I think that gets us through a lot of 3A. Thanks.

MARTIN SIVLA: Okay, Kathy. Thank you very much. I think the next one is Michael.

MICHAEL GRAHAM: Sorry. I took my hand down.

MARTIN SILVA: Oh, okay. I see Rebecca typed in that chat, "[inaudible] to put the note in here because they are similar to Kathy's." They think it's not just they didn't understand it. [inaudible] as well as answers as well [inaudible] as well as the meaning of the notice, [inaudible]

and the non-ICANN panels, so [inaudible] experience. And since you already commented on [inaudible] which would be 3A3, do you think what we have exposed already covers 3A, or do you think have something more specific to point to 3A1, 3A2, or 3A3? Griffin has his hand up. Griffin, the floor is yours.

GRIFFIN BARNETT: Sorry. Old hand. Taking it down.

MARTIN SILVA: Okay. Do you guys have anything to add on question 3A in general, or any specific [thing pointed out] you could tell us about a sub question?

Okay. We seem to have an agreement. Let's move to 3B, then. Should claim notifications only be sent to registrants who completed the domain name registration as opposed to those who are attempting to register domain names that are [inaudible] in the Trademark Clearinghouse?

Do any of the subgroups have anything to comment on this? Any specific data that points out problems of doing this? George, you have your hand up.

GEORGE KIRIKOS: For that question, there was very limited data. I found some data on the registry and registrars tab that talked about issues of implementation, but it didn't really discuss the distinction between

those two possible implementations. It just talked about general problems with implementation.

Then also, on cell F56, there was a [large] percentage of trademark holders that do want the notice sent. So, that's obviously, as I was talking in the chat room, a desire from them when it doesn't cost them anything to say that. Thank you.

MARTIN SILVA: Okay. Thank you very much George. I see Kathy is next in line. Kathy?

KATHY KLEIMAN: Can you hear me Martin? And are we on 3B now?

MARTIN SILVA: Yes. Unless someone has any specific comments on 3A, we are now on 3B.

KATHY KLEIMAN: Okay. So, 3B. I looked at the tabs, and what we're seeing from the registrars – my tab might not have – I think [inaudible] probably a registrar/registry tab.

So, registrars are having trouble with the claims notice and the whole process of pre-registration of domain names prior to general availability, which is a big service that they offer.

As you guys know, you can't actually pre-register a domain name. What you can do is queue up a whole bunch of people and then order for people who want a domain name. The moment general availability opens – midnight or 12:01 on the night it opens – a program runs and registers all the domain names that are available in the order that they're in. So, GoDaddy and [inaudible] the registry at the same time, at 12:01, trying to get their pre-registered needs in. I've done this for clients. And they [inaudible].

But, in this case, what they're saying is – and I was hoping maybe Roger could us understand the technical side of this. What they're saying is it's resulting in a very poor customer experience. What I don't understand is – and I actually put these data answers into the table. One registrar says that we remove the rotation of the claim token every 48 hours, and that token is only updated when the claim is changed. Another says claim keys expire quickly. Sometimes the registry does deliberate claims [inaudible] reliable manner a little challenging. Others note real frustration for their customers.

So, on the technical side, I'd like to understand more what's happening. What's expiring? And what's causing somebody who's the customer who's first but then a customer who's second for the domain name and, if the second customer responds to the trademark claims notice faster, they seem to get the domain? Can somebody help us understand what's happening technically? Because it seems like there's a real problem out there, and one that might be solved by looking at the trademark notice later, rather than earlier. Thanks.

MARTIN SILVA: Thank you very much, Kathy. Rebecca, if it's okay with you – I know you're debating on the chat as well – can I put Roger Carney first so he can answer Kathy Kleiman's question? Roger?

ROGER CARNEY: Hi. Just speaking as a registrar – and I think Kathy kind of teed that up really well, actually, in that part of the problems of what happened during implementation – and again, we never [found] policy to back this up. But, during implementation, the Trademark Clearinghouse [decided] that they would expire claim IDs every 48 hours. So, when registrars or registry names six months before it even opened up to general availability – they present the trademark claim to the registrant. They accept it, but then it's only valid for 48 hours.

So, within 48 hours of GA actually opening, like GoDaddy did – they contacted the customers and said, "Hey, you have to accept this claim again because it expired." So, there was a lot of customers that actually lost out because, again, in the last 48 hours before – that's why they registered it six months earlier was not to be hurried at the end. But, then would hurry at the end if a claim notice was for that domain name.

So, I think the implementation got messed up somewhere that this 48-hour window caused a lot of problems, and a lot of people did not get the domains they requested. Others did.

As Kathy pointed out, if this was presented later, that would solve that. Also, other ideas were if the claim ID only expired if it was changed, that would also do it. I would think there were several

ways around this, but that was the main problem early on is a lot of registrants didn't get the names they wanted, just because they had this small window to try to execute it. If anybody has anybody has any questions, let me know and I can answer. Thanks.

MARTIN SILVA: Thank you very much, Roger. Rebecca?

REBECCA TUSHNET: So, I think I said most of what I wanted to. I do think pervasive confusion, as mentioned in the chat, is actually a perfectly good description. When you have 38% of people in a group choosing each one of the wrong answers – so, that's actually more than 38% of the people are wrong about what something means – that's pretty bad.

More to the point, I think, in terms of the timing of the notice, if you believe that the notice is something that ultimately we want people to take seriously, it's not a great idea to say, "Well, they can look at in 90 seconds and decide whether to move on."

So, I think, if the problem is in part that people aren't paying a lot of attention because they want to finish a process they have started, they have an obligation to the other people in the business – they thought they were going to do this – or there's some technical issue, then we really should think about sending the notice later, when they could think about it.

And there is, in the data, people who say, "I really want to get it done." I highlighted the one response that very specifically said, "If

I don't complete it, I could lose the domain name." I think we need to think about that.

Now, I think we need feedback about this, but I think it is pretty clear that the position is something that logically contributes. And we have some data from people who say, "I really want to get through this," to lack of understanding or lack of attention. Thank you.

MARTIN SILVA: Thank you very much, Rebecca. I have also Phil Corwin on the queue. Philip?

PHILIP CORWIN: Thank you, Martin. This is comments made in a personal capacity, not as co-chair of the full working group.

Look, I reviewed ... While I didn't fill out the form, I reviewed the answers to the survey. I read the comments that were put in by other members of the sub team. I think we all know that, despite the flaws in the data, the trademark claims notice probably does deter some intentionally infringing registrations, but not all. There are simply some actors who know exactly what they're doing and are not going to be deterred. They probably deter some registrations that wouldn't be infringing by people who just are spooked by the notice.

I think there's general agreement that the language can be improved. I would think it's likely that full working group will recommend that the language would be revised to be clearer.

So far as advising people on their legal rights, there's only so far the notice can go on the complexities of trademark law, and ICANN can't be in the business of giving conclusive legal advice. People with concerns are going to have to consult an attorney for a more informed answer specific to the exact domain name they intend to register.

Finally, on the timing, I would ask Roger – and I can check with my own people. I'm not an expert on the technical aspects of the domain name registration system. Yes, it might deter fewer infringing registrations if the registrant can go forward and complete the registration and then consult with a legal expert and decide whether they want to keep it.

But, will that work for contracted parties? I believe, once the registration is complete, a payment is made. There's a fairly quick forwarding of payment from the registrar to the registry and all of that. I would think it's ... That I defer to experts on this matter, that it would be both difficult and expensive to back out of the transaction once it's been complete. But, we ought to know more of the details on that. Those are my comments. Thank you very much.

MARTIN SILVA:

Thank you very much, Philip. I have Michael Graham on the queue. Michael?

MICHAEL GRAHAM: Hi. Thank, Martin. Just a couple things. One, I think Phil really – I agree with the comments that he just made. I think they're well-taken to help us move forward.

I'm concerned there's discussion of whether delaying notice would be appropriate, but to do so would defeat the purpose of the notice. So, I think it's contrary. If we want to go back and determine if there's a different purpose in the notice, that's one thing. But, in terms of deterring bad faith registration or registration process of a domain name which inadvertently conflicts with a trademark, I can't see that delaying that notice would be positive in affecting that.

Further, there's really no data that doing so – delaying that notice – would have a positive effect. So, thanks.

JULIE HEDLUND: Martin, did we lose you? Is Martin still on the call?

KATHY KLEIMAN: He doesn't appear to be.

JULIE HEDLUND: Ah. There we are.

KATHY KLEIMAN: Should I go ahead, Julie?

JULIE HEDLUND: Yes. Definitely we did lose Martin. Michael, your hand is still up. Did you mean to take your hand down?

MICHAEL GRAHAM: I'm just slow at taking it down. Thank you.

JULIE HEDLUND: Thank you. Just wanted to check. Kathy Kleiman, please.

KATHY KLEIMAN: Great. Thanks, Julie. Hey, everybody. So, I only heard part of what Michael said.

MARTIN SILVA: [inaudible]

KATHY KLEIMAN: Hi, Martin.

JULIE HEDLUND: We can hear you.

MARTIN SILVA: Oh, sorry. I'm back.

KATHY KLEIMAN: Okay. Should I go ahead?

MARTIN SILVA: Yes, please.

KATHY KLEIMAN: Okay. So, Michal, I apologize. I only heard part of what you said because it was going in and out. So, I apologize because I feel like [inaudible].

So, we're asking the question because the question is here. It's 3B. Should claims notices only be sent to registrants who complete domain name registration? Rather than debating the answer, what I think may be incontestable is that the data says, yes, the registrars have told us there's a problem. Also, the confusion level of ordinary registrants tells us there's a problem standing on one foot, reading a legal notice. People are used to click-throughs. How much time do we spend on time do we spend on terms of use? They're used to click-throughs. This is something they really need to pay attention to.

In 2009, we did not have the precedent that we have now, which is that, in 2013, the 2013 RAA made registrants verify their e-mail address or – hopefully it'll be clearer here; I'm just [inaudible] here – their e-mail address or their phone number.

So, what you do is, as all of you know because we've all done it, is register the domain name. We pay for it. It goes through, and then we get the follow-up notice at a time when we can review it – not standing on one foot, but when we can do it. In the middle of the night or whenever we do our administrative e-mails. We then

verify whether our e-mail or phone is correct and send it off. That finishes the initial registration process.

If we included the trademark claims notice on that type of cycle, it is precedent – a precedent we didn't even know or consider in 2009. So, there is precedent now.

But, what I'd like to suggest is not that we argue the answer but we say that there is some data showing that there's problems, both at the registrar level and the registered level, and that we then move it forward to look at what other data said. Volker talked to us as well about a year-and-a-half ago about this as a registrar.

So, let's move it forward to figure out whether there's an operational fix or a draft policy recommendation. But I think we do have some data on this. Thanks. Sorry for talking so long.

MARTIN SILVA:

Okay, Kathy. Thank you very much. Susan Payne is also on the queue. Susan?

SUSAN PAYNE:

Yes. Thanks. Actually, George has sort of addressed what I was going to say in the chat. I was just going to flag up the domain [tasting] issue, which wasn't considered a real gaming issue in the past. Processes were put in place for that. So, this idea that you might be registering and then dropping names later was proved to be really problematic and moved away from. So, we shouldn't be [starting to] try to re-implement a process that effectively recreates domain [tasting].

Then, just to reiterate again, yes, okay, some problems have been identified by registrars in terms of where they want to do pre-registration. But the fact remains that those registrants who wanted to register are taking a bit of a punt, sometimes many months before they're entitled to register, or whether the name is still going to be available for them when it comes available.

In the meantime, there's a whole period of time when other people could be registering that name. So, they haven't registered it. They aren't entitled to register it. If registrars want to offer that service and give registrants the gavel, well then, great. But we shouldn't be trying to fix that problem when that's not a domain name registration. We should be addressing the fact that these notices need to be delivered before the name gets registered, not before someone thinks they might like it in six months' time.

MARTIN SILVA: Thank you, Susan. Roger is in the queue. Roger?

ROGER CARNEY: I just want to respond to that. I'm not sure that that was a good idea of a post-one, but I think there's other solutions to this problem, still provided pre-registration or pre-[inaudible]. But, if a claim doesn't change, why should it expire? If claim notices aren't changing at all, and the registrant accepted it six months ago and there's no difference to it, why make them accept it again?

Again, I think it was just an implementation problem that should be sorted out so that it doesn't cause problems with registrations in the future. Thanks.

MARTIN SILVA: Thank you very much, Roger. Do we have anyone else who wants to comment on 3B? Or, any general comments on this [inaudible] for question 3 [inaudible]?

Okay. I see [inaudible] in the chat, so I will of course ask staff to take questions and look into the chat when I'm doing the notes and invite anyone in the chat if they want to come to the [mic]. If not, we can go forward to question 4.

I have Kathy Kleiman on the queue. Kathy?

KATHY KLEIMAN: Hi, Martin. One of the questions I have is, how do we summarize 3B? I know we're really supposed to collect more data going forward, but Roger raised a really good question: we don't even know. It's probably [IBM] that we need to ask about the tokens. But, how do we summarize this? How do we collect the technical questions that we have and how do we encapsulate it to move forward? That was my question. Our [discretion] is 3B. Thanks.

MARTIN SILVA: All right. Julie is on the queue. Julie?

JULIE HEDLUND: Thank you, Martin. So, as we all know, we do have the summary table, where there's a column to capture the results of these discussions. So, any conclusions or deliberations, if there are recommendations, these can all be captured in that column and

that is something that staff can assist with in producing a draft for the co-chairs and the sub team to review, whereby we would review the transcript, the notes, but primarily transcripts because that's a more accurate reflection of these discussions and also the chat and pull in the main points and summaries into that summary document. Then, once that's reviewed and then agreed to by the co-chairs and sub team, then that would then record these discussions, or reflect, I should say. Should reflect these discussions.

MARTIN SILVA:

Thank you very much, Julie. Does anyone else have any other comments or questions or is satisfied with Julie's answer?

No? We're going to move to the question 4. Let's move on, then. [inaudible] with question 4 [inaudible] recognize that [same] registry. In that case, we went through each question. In this case, I think, for the nature of these questions, it could be more useful just to [answer] them all together. What do you think? Julie, is that an old hand or a new hand?

JULIE HEDLUND:

Sorry. Old hand.

MARTIN SILVA:

Kristine?

KRISTINE DORRAIN: Hi. Thanks. So, I think that, in this case, answering the question all together is going to run into a pretty slippery slope. The question highlighted in yellow, which is 4A, which is the question for which we sought survey evidence. We weren't really able to seek survey evidence on the last of the questions – B, and its subparts; C, D, and its subparts.

So, I think grouping them together is going to invite a massive sort of running down the slippery slope into solutions and ideas and proposals.

So, I propose that we discuss 4A. Maybe we can skim the rest to see if there's anything else that people have to add. It looks like George maybe found something for B1, so maybe there's something there. But, I don't think it would be helpful to discuss them all in one big group. I think we discuss 4A and then maybe look at if people found stuff from the questions that were not part of the survey. Thanks.

UNIDENTIFIED MALE: [inaudible]

MARTIN SILVA: Thank you very much, Kristine. Yes [inaudible] going to be B1, B2 [inaudible]. But, yes—

UNIDENTIFIED MALE: Why did you just [inaudible]?

MARTIN SILVA: I'm sorry for that.

UNIDENTIFIED MALE: [inaudible]

MARTIN SILVA: Yes, George [inaudible].

UNIDENTIFIED MALE: [inaudible].

MARTIN SILVA: Okay. That's a very normal conversation for us. So, what is [inaudible]? Do any of the members of [inaudible] want to share their findings? [inaudible]. I know one of the biggest comments were from George and from Griffin. Any of you like to summarize your inputs? Griffin, go ahead.

GRIFFIN BARNETT: Hi. Thanks, Martin. Hopefully, you guys can hear me a little bit better now in terms of volume. So, as I put in chat, I tend to agree with Kristine that a lot of the subparts of this question are really for the recommendations and conclusions type discussion that I think is a bit premature for what we're trying to do right now.

But, I did try and go through the survey data and pull out anything that I could that I thought might be even somewhat related to

some of these sub-questions; in particular, obviously the highlighted subparts A about evidence of harm.

Really, the only thing I could sort of come up with is – again, I’ll be the first to admit it’s a bit tenuous in terms of its actual linkage to the survey data, but I took a look at some of the data concerning how many people reported receiving the claims notice. The statistic that we had there was that 53% of potential registrants reported receiving a claims notice, and 20% of potential registrants indicated they did not know anything about their country’s trademark law.

So, from those two discrete data points that we did have, my thought was, understanding trademark law, the test for infringement is a likelihood of confusion test and that doesn’t necessarily require an identical match to the trademark for there to be actionable infringement.

So, the thinking there was, “What is the harm of having exact match only system?” It’s that there might be registrants out there, prospective registrants out there, who don’t really understand that, even if they register something that’s not an identical match, there could still be potential legal consequences.

So, that’s what I wanted to try and highlight in my input. But, again, it’s somewhat tenuous in terms of its direct relationship to what survey questions we’re looking for, I think. But, I did want to flag that. Thanks.

MARTIN SILVA: Thank you very much, Griffin. Remember, we have to finish the call in five minutes, and we still have four speakers. So, we don't have to finish Question 4 now but try to [inaudible] so everyone can pitch in and we can [finish this] the next time.

Kathy, you're next in the queue.

KATHY KLEIMAN: Can you hear me, Martin, from where I am now with my cellphone?

MARTIN SILVA: Yes, we can.

KATHY KLEIMAN: Okay, good. So, Griffin, I'm glad you mentioned it's a little tenuous because I went back – I would have expected trademark owners to give us some answers on this – to the data you flagged in this register. This is the very data that's showing that the registrants are confused, that they're backing out, that they don't understand the data.

So, I don't think it's really a – I personally was surprised to see that data seeing cited for an expansion of the notices and the matching – because I don't think that's what registrants were asked, and I don't think that's what they responded to. And, we don't have any data from the trademark owners.

So, I know we've ... I'll cut it off there. Thanks.

MARTIN SILVA: Thank you very much, Kathy. Next in the queue is George. George?

GEORGE KIRIKOS: I actually went through the data in the spreadsheet and did find a couple of examples that existed to help in this question. It was very limited, though. One brand owner suggested that, because their mark included the word “co,” a short-form for company, they couldn’t register because it wouldn’t match the domains with the co. So, for example, if it was example co and they wanted to use the term “example,” then they couldn’t get it because the actual trademark was example co. So, that match worked to their disadvantage. That was S9 of the trademark and brand owners tab in one of the free-form comments.

Then, a couple of brand owners in cell F55 of that same tab suggested that the narrow scope of protection doesn’t include confusingly similar names and claim notices are limited to exact matches, blah, blah, blah, that they had to use third-party [watches] – like domain tools, I guess, and other services like that – to monitor domain names. So, that was considered a negative.

Cells F66 to F68 – they suggested that some UDRP [inaudible] litigation [inaudible] created misspellings of the company’s trademarks. That would be another example of lack of notice, of a creative misspelling match, causing damage to the trademark holder.

And, the same thing for domain names involved in combinations of exact match plus some other terms. That was cells F70 to F73.

So, those were all from trademark and brand owners.

On the other side, there was cells A7 of the registry-Q29A tab that had a freeform response, suggesting that there were some IDN issues. So, that was important to note, that some of the IDN exact matches used would have arisen due to that technical issue. Thank you.

MARTIN SILVA:

Thank you very much, George and Kathy, for being very short on time. Rebecca, can I ask you [something] [inaudible] time? Rebecca?

REBECCA TUSHNET:

Sorry. I'll try and be quick. I think the obvious points are that the lack of understanding shown by recipients of the notice that even an exact match makes it unlikely that a notice could successfully communicate the limit of an expanded system, especially when we're talking about algorithmically-generated matches, that people aren't spending a lot of time on these, and expanding the match is likely to make it even more ignorable if you get one every time because there is some – you're within two degrees of separation of something. Then, we should expect it to become even more ineffective.

That said, that's it for now. Thanks.

MARTIN SILVA: Thank you very much, Rebecca. You're ending in [55]. I'll give that next to Julie if she wants to [inaudible] with some formality.

JULIE HEDLUND: Thank you very much, Martin. And, thank you all for joining us today. We do end now so that we can all [inaudible] [sunrise] on claims trademark at five after the hour.

Thank you all for joining. You'll see some notes and homework coming shortly later this afternoon. Thank you all. Bye-bye.

[END OF TRANSCRIPTION]