
ICANN Transcription

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

Wednesday 19, December 2018 at 1700 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. And welcome to the RPM Sub Team for Trademark Claims taking place on the 19th of December, 2018 at 17:00 UTC. In the interest of time, there will be no role call. Attendance will be taken by the Adobe Connect room. If you are only on the telephone bridge, could you please let yourselves be known now?

Hearing no one, I would like to thank everyone for joining and remind you all to please state your name before speaking for recording purposes and to please keep your phones and microphones on mute when you are not speaking to avoid any background noise.

With this, I'll turn it back over to Julie Hedlund. Please begin.

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JULIE HEDLUND: Thank you so much, Terri. And welcome all and thank you for joining us today.

So let me go ahead and run through the agenda and I'll just note that I am acting leader of this call because we don't currently have a Sub Team leader. Hopefully, we'll be able to rectify that soon.

So on the agenda, we have reviewing the agenda and Statements of Interest, then selecting Sub Team leader, then we'll begin the survey analysis and we've gone ahead and put up the action that was the homework for the Sub Team from last week's Wednesday call, and then any other business.

And let me ask if anyone has any other business.

And Kathy, please go ahead.

KATHY KLEIMAN: Hi, everyone. Thanks, Julie. And I thought maybe we should talk about the chairing for a little bit because we did have nominations last week and we did have responses. I thought, Julie, maybe you could bring us up to date kind of on where we are with that and where we're going.

JULIE HEDLUND: Thank you, [Kathy] [inaudible]. Actually, I was just running through the agenda and now we will go ahead and start at the top of the agenda

and I'll just note that the item that you mentioned is item number two on the agenda.

But to go to the first item on the agenda, we've reviewed the agenda and now may I ask if anybody has any changes to their Statements of Interest?

SUSAN PAYNE: Hi, Julie. Yes, I do. It's not a major change, but I have am now the Secretary of the IPC so I just made a change. It's in my SOI.

JULIE HEDLUND: And I'm sorry. What was the... Could you repeat that, is the change? I'm sorry. I didn't quite catch it.

SUSAN PAYNE: Sorry. Yeah, I've just taken up the post of the Secretary for the IPC so I made a change to my SOI.

JULIE HEDLUND: Okay, thank you. I heard IPC and I heard that you had a change but I didn't hear the word secretary. Now I got it. Thank you very much and I have noted that. Appreciate it.

I'm not seeing any other hands, so then we shall go to item number two for a second [inaudible]. And may I ask who just joined?

CLAUDIO DIGANGI: Hi, Julie. It's Claudio.

JULIE HEDLUND: Hi, Claudio. Thanks for joining and I assume you're only on the audio bridge. Is that correct?

CLAUDIO DIGANGI: Correct.

JULIE HEDLUND: And to help us identify you on the phone list, is your number the 4330? [Inaudible] 4330?

CLAUDIO DIGANGI: 8208.

JULIE HEDLUND: Ah. Can I ask who is the number ending in 4330?

MICHAEL GRAHAM: Yeah, that's Michael Graham.

JULIE HEDLUND: Oh, thank you very much, Michael. We'll make a note. Appreciate it.

And so back to agenda item number two... And pardon me, but may I ask who just joined? Is that Martin rejoining by any chance? Anyway, I'll

go ahead and let Terri sort that out. So we'll go again back to agenda item two and selecting the Sub Team leader, as you may recall, we had a couple of nominations last week. Griffin Barnett and Kristine Durrain, but as you noted on the list, they both have indicated they are unable to accept those nominations but we did just have yesterday, a volunteer. Martin Silva Valent has volunteered to co-chair. We do not have any other volunteers, but let me ask if we do have any other volunteers now that we're on this item. I'll just pause and see if there's any responses or any hands up and also let me ask if there are any comments concerning Martin's volunteering for Co-Chair.

And Martin, please go ahead. And Martin, if you're speaking, we can't hear you.

I'm not hearing Martin. Is anybody not... Is there anybody else not hearing Martin?

TERRI AGNEW: Martin [inaudible].

MARTIN SILVA VALENTS: Can you hear me now?

JULIE HEDLUND: Yes. We can hear you, Martin.

MARTIN SILVA VALENTS: Okay, thank you very much. [Inaudible] was Denise, but of course, I don't think I'm the [perfect] Co-Chair so it would be great if [inaudible] chairing the group would also join so I would be Co-Chair so we can share the burden. Of course, [inaudible] with me if no one else can [inaudible]. Thank you.

JULIE HEDLUND: Thank you very much, Martin. It was a little bit hard to hear you, at least from my end. But I think you were saying that you were willing to co-chair the group and if there were other volunteers, you'd be willing to.

Yes. Yes, thank you very much for that. Confirming that, Kathy, in the chat, looking for others to share the co-chairing.

Let me see if we have any other volunteers. I'm not seeing other volunteers. How would the sub-group like to proceed? We have one volunteer, but someone who Martin would like to share the duties. Shall we re-... Shall we extend the period for asking for volunteers or Martin, are you willing to take the position on your own if accepted by the sub-group?

MARTIN SILVA VALENTS: If no one else is willing to [inaudible], yes, of course, I can take it.

JULIE HEDLUND: Okay, so Martin is willing to take the position of the chairing the sub-group on his own if there are no other volunteers. But Kathy Kleiman is suggesting to keep it open for a few days. Now I'll note that "for a few

days” basically runs us into the holiday and ICANN offices are actually closed as of close of business on this Friday, the 21st. So that would, essentially, extend the period up until the beginning of the new year.

And I think Philip Corwin has his hand up. Phil, please.

PHILIP CORWIN:

Yeah, thanks. Let me say this in a personal capacity. I have no particular advantage on this being a co-chair of the full working group. I would suggest we keep the period open until close of business Friday, which is when ICANN offices close for the year. I appreciate Martin stepping up to the plate and agreeing to chair. He has indicated he’d like to share that job with someone and just for the information of those who may be considering it or maybe not understand what’s involved or think it’s too burdensome, it’s basically an administrative post to lead the calls. I don’t know if there will be any separate planning calls, but probably most of the work is going to be done by e-mail. It’s just leading discussion and making sure there’s a complete discussion of issues as they come up, working with staff to plan the agenda for the next call, and having first crack at the Sub Team report to the full working group and then sharing it with the rest of the working group to finalize it. So not particularly burdensome, primarily administrative. You’re not supposed to be steering things one way or the other, so just if anyone else wants to help Martin out, I’d appreciate everyone thinking about that and we have the next 48 hours and then some to decide if someone else wants to share that responsibility with them. Thanks very much.

JULIE HEDLUND: Thank you very much, Phil, for that. Then staff has taken the action item to keep the nomination period open until COB Friday, 21st of December, and then depending on the outcome there, we'll see where we stand as of the next call. So then unless there are any objections, staff is going to suggest that we help run this call from this point forward and then hopefully we'll start up the next call with the new chair, chairs, co-chairs. I'm just looking to see if there are any objections to staff running the call from this point.

CLAUDIO DIGANGI: Can I [inaudible]?

JULIE HEDLUND: Claudio, please go ahead.

CLAUDIO DIGANGI: Yes, and no objections at all. But I just had just a quick question. I wasn't... I couldn't remember if the Co-Chairs have sent an e-mail to the full list with sort of a request for the co-chairs. I know we've talked about it on the Sub Team calls, but there's a broader group on the working group and I think a lot of the people haven't joined the sub teams and so I just wasn't sure if notice went out to them that we're looking for volunteers.

JULIE HEDLUND: Thank you for that, Claudio. The request for nominations went to each of the sub-groups because the thinking was that it would be the sub-group... Well, because the Co-Chair would need to be a member of the sub-group. So while we can send the nomination to the full working group, I think we'll need to clarify that anyone who is nominated or anyone who volunteers who need to be a member of the sub-group. So I guess if they weren't already, they would need to join one of the sub-groups if that makes sense.

CLAUDIO DIGANGI: Yeah, that makes sense.

JULIE HEDLUND: Okay. Well, we'll note... We'll go ahead and forward it also the – sorry – also to the full sub-group and let me make a note of that. One moment. Full working group, I mean. And then see if that helps to get responses.

And so, let me go ahead and put into the chat room, the tool that we're using for this discussion, the link. Actually, it looks like maybe Ariel might be... Yep, Ariel's doing that. Thank you very much.

And just as a reminder, the action item from the last call was to analyze whether and how the data in rows 12 through 27 of the actual and potential registrants tabs answer the agreed question 1 and it's sub-questions A and B in the spreadsheet that you see before you and also at that link. And I've got in the notes pad so that I hope you can see it, the question 1 from the final charter questions for trademark claims. And I'll just read that here.

Is the Trademark Claims service having its intended effect? Consider the following questions specifically in the context both in the claims notice as well as a notice of registered name. A) Does the Trademark Claims service having its intended effects of deterring bad face registrations and providing claims notice to domain name applicants? And B) Is the Trademark Claims service having any unintended consequences such as deterring good faith domain name applications?

And then we'll just note that staff is sharing the screen but it's probably easier if you go to the link so that you can see things better. And I note that George Kirikos has his hand up. Please go ahead, George.

GEORGE KIRIKOS:

I was curious about what exactly we're going to do today and in future weeks because the homework assignment was to look at just the tab for the actual and potential registrants, but other tabs also impact these questions. So I don't know if we're going to go to the same question, but other tabs of the spreadsheet in the future or we're going to consider this question answered just on the basis of this one tab. So I'd appreciate other people's thoughts on that because, obviously, other tabs do impact the answer to this so we can't just answer the question through the one tab alone. Thank you.

JULIE HEDLUND:

Thank you very much George, and just noting that there are some audio issues. Susan Payne is noting audio cutting out. Kristine Durrain is saying it's fine. I'm wondering. Let's just see if others are having issues.

I'm wondering, Susan, if perhaps we could dial out to you. Yeah, it seems that others are not hearing audio problems.

So with respect to your question, George, I thought we checked that it was only rows 12 through 27 of this tab that apply to that question. Some of the other tabs actually do not have any trademark-related data, data relating to the trademark, to the specific question. But if you would like to point us to where you think material in other tabs applies, that would be most helpful.

I see two people in the queue. I see Kathy Kleiman first and then George. Kathy, please.

KATHY KLEIMAN:

Hopefully, we won't spend too long on the procedural questions so we can dive into the data. I think the answer to George's question, if I heard it properly is that we're not bound, and tell me if you disagree because in Sub Teams – most people know – but in Sub Teams, Co-Chairs participate just as regular members of the Sub Team which is why we don't [chair].

But it's my understanding that our job now is to dig into this data and put in what we find is a column for findings. Let me see, comments from the Sub Team. So what data is relevant to the question, but this isn't the only data relevant to the [revised] charter question. There is other data, data collected around Johannesburg, data collected earlier, data collected from early analysis group reports.

But staff has asked us and the Co-Chairs have agreed that we're going to focus on this data right now, but it doesn't bar anything else. We're not trying to answer the charter questions yet. We're trying to find data that sheds light on them and we're starting with this data that we worked so hard to get. But it's not exclusive. It's inclusive. Thanks.

JULIE HEDLUND: Thank you very much, Kathy. George Kirikos, please.

GEORGE KIRIKOS: Just to talk about which other tabs refer to the claims, I would look at all the registry and registrant tabs. For example, there's the Registry-Q26 tabs. You have to scroll right a bit to get to it. There are a whole bunch of columns talking about the higher cost on registries [inaudible] claims period which might be considered an unintended consequence. Same for the registrar Q4i tab. There was... It was talking about how the costs would significantly decrease if the claims were eliminated. These, I think, were related to answering this question and so, and also, there were obviously trademark owner tabs as well that would apply.

But I don't think this one tab alone captures everything. Hopefully we'll get to those future tabs later and then go back to these questions. Thank you.

JULIE HEDLUND: Thank you, George. I'm going to go to Kristine Durrain and then I'm going to ask Ariel Liang to speak to this as well. Kristine, please, and then Ariel.

KRISTINE DURRAIN:

Thank you. So I know I made a proposal last week and I thought that there was pretty good agreement around it, but maybe not. There's a lot of debate as to how valuable this data is and the ultimate goal of this entire Sub Team is to answer the questions, and so I've proposed... I do need to spend a moment on procedure here. But I have proposed that we go into this with the goal of answering the questions. And to George's point, the answering of questions involves looking across all tabs to which the question might relate, or for which the question relates, and that will include looking at data or I think we talked about several blogs or whatever was out there, plus our own knowledge.

I think most of us have determined the data is more or less reflective of our lived experiences even if it's not super, ultra reproducible and scientific. So I propose, from a procedural standpoint, that we do actually look at answering the questions.

If the goal in six weeks is to come up with some sort of an initial report, our initial report means we start by answering the question and so I think to go through and separate out question 1, is the Trademark Claims service having its intended effect? We discuss the survey data for actual and potential respondents. Then we get through all the other questions and then we go through them all again for trademark owners. Then we go through them all again for registries and registrars. Then we have to go through them all again for any other data that we might have that's not part of the survey, including, I think people have talked about proposals for different ideas.

So that's, now we've re-hashed and re-hashed and re-hashed these questions four or five times. I propose one time get through the question as much as possible. There maybe some circling back because specifically Charter question 1 is big and all-encompassing. But I think to the extent we can, we should try to get through it all in one pass even if a pass takes more than a meeting or two. Thanks.

JULIE HEDLUND:

Thank you very much, Kristine. And so yes, I think we did capture in the notes from last call that the goal was to, yes, answer the questions using the data that we have, not just the data in the survey but other data as well, and ideally, all in one pass.

Now one action that staff took away from last week was to think about how we might be able to create a tool that also matches the other data that's been collected with the questions. And we do continue to have an action item on that. It's something that we're working on. It's something that will take some time, so apologies that it's not something that we can have ready for today.

And thank you, George Kirikos, for putting your thoughts in the chat as far as other cells that may apply.

At this point, I'm going to ask Ariel Liang for any comments she may have from staff. Thank you.

ARIEL LIANG:

Thanks very much, Julie. Just additional comment on how we organize the table and we [motion] that is for, how the questions match to the

survey questions and match to the Sub Team's draft question and that's based on the original data request table and that's why you see in the question 1, question 3, on the registrant tab is where they are. We just want to bring some organization to [mirror] that information so that the Sub Team can go through the information in an organized way, and in fact, that's what Kristine mentioned that staff [inaudible] support that it will be several rounds, perhaps, to go through all the data but at least we bring some organization here and then you can start from somewhere. So that's the comment I want to make here. Thank you.

JULIE HEDLUND:

Thank you very much, Ariel. And George Kirikos is saying, also stuff in the TM Owner tab, okay, S52. So we'll make a note of that as well, George. And Kristine Durrain, I see you have your hand up. Please go ahead.

KRISTINE DURRAIN:

Thanks. So I'm going to propose a path forward for the rest of this call. We have 30 minutes left. Question 1, the first part, is an over-arching question that we're probably not going to answer until we get pretty close to the end, so let's look at... I propose that we look at Question 1A which is, "Is the Trademark Claims service having its intended effect of deterring registrations and providing claim notes to domain names applicants?"

We can discuss the data on the actual potential registrants tab, but in the event that that's exhausted, I vote to move right on to reviewing the trademark and brand owners tab, which I've done and I'm sure George

and others have done as well. And then we start that discussion. We've got 30 minutes to discuss.

What we could put in, so for drafting this initial report, what will we say? Will we say that the Trademark Claims service is having its intended effect? Is it being a deterrent and notifying domain name applicants of claims? And will we put that in the report or will we not? And if not, we're not, what will we put? Thanks.

JULIE HEDLUND:

Thank you very much, Kristine. That's extremely helpful. Does anybody have any objections to proceeding as suggested for the remaining 30 minutes of this call?

Then let's look at... Let's go ahead and look at A) Is the Trademark Claims service having its intended effect of deterring bad faith registrations and finding claims notice to domain name applicants?

And George Kirikos, you have your hand up. Please go ahead.

GEORGE KIRIKOS:

Yeah, if we go to the tab for the actual and potential registrants, I guess the one that we had the homework on, cells E12 and F12, I think answer the second part of that question, which is are people receiving the claims notices? Which, to no surprise, any of the answers, hopefully we have unanimity that people are receiving the claims notices. But the first part of that question, whether it's deterring bad faith registrations, I think it's a lot harder to answer that question because in the survey, it

doesn't really tell us what kind of domain names they were attempting to register, whether they were good faith or bad faith.

So I think the answer to the first part, A, is kind of related to the second part, start to the 1B, namely whether it's having unintended consequences because we don't know, we can't differentiate between good faith and bad faith registrations based on this survey response. Although, we can kind of get a look at how to answer that question based on the most frequently requested claims notices. Sorry, most frequently requested domains, which is the top ten strings from the March 2017 analysis group report. So we know that the top ten terms were domains like "one" and "hotels" and generic – I don't want to use the word generic – but commonly used terms that have multiple good faith uses. And so that's, I think, where we're going to have difficulty is to whether the bad faith and good faith registrations are being attempted. Thank you.

JULIE HEDLUND:

Thank you very much, George. And Kristine Durrain, please.

KRISTINE DURRAIN:

Hi, thanks. I just hold on for one second because I'm switching screens because I wrote some stuff yesterday while I was doing my homework and I think with respect to 1A, what I kind of wrote and I didn't see until today's staff [suggestion] that we circulate, proposal text via e-mail and I think that's a really great idea because it allows people to really think about what's being said and maybe by doing that, we can sort of start

formulating a response as we go. Part of Sub Pro is sort of drafting staff [takes] notes and that's part of [inaudible] aside for the initial report.

So I think, I sort of agree with George on this. The data is pretty inconclusive, especially from domain name, from actual and potential registrants. I think honestly no one's going to say, "Yeah, I was going to be a bad faith registrant and I decided not to." Right? No one's going to identify as that, so it really comes down to really where that trademark and brand owner data comes from, which is how many UDRP/URS cases are they seeing that... Are they seeing more or less than expected? More or less compared to dot-com? Those sort of questions. Honestly, spoiler alert, I think that's also pretty inconclusive.

I do know that one, not row 12, but one of the applicants, one of the survey respondents did say, although no one selected a trademark reason for continuing through to register the domain name. So no one said, "Yes, I'm a good faith registrant." One respondent later did say that it analyzed its intended use against the claims notice data so that was kind of interesting. So that, I think, provides only one solitary data point.

But the note is maybe causing some registrants to think twice before registering a trademark term, which is really what I think is the desired impact. We don't want people to just not register a term because of the trademark necessarily. We just want them to think twice. Is this going to be violating, the way I'm going to use this, is this going to infringe on someone else's work? And if the answer is no, regardless of whether you continue or don't continue, I think that's really the ultimate goal.

So I think that the answer, the initial report, for recommendation 1A, at least as far as I've looked at the data from the various respondents is that it's inconclusive based on data but we have some evidence that it does seem to be deterring from people or at least causing some people to think twice. I'm happy to just throw that out there as a means of launching discussion.

JULIE HEDLUND: Thank you very much, Kristine. This is very helpful and Kathy Kleiman, please.

KATHY KLEIMAN: Great, thanks. And take a look at the tab at the bottom, Registrant Q11. If you were presented with this notice, and this is deep data so I've been playing with it for a little while and thanks to Ariel for putting it together.

So question 11, if you were presented with this notice when attempting to register this domain name for the following purposes, what would you do?

And what I wanted to point out is the columns that say, "Stop trying to register the name, stop for now, do some research and maybe come back, stop and talk to a lawyer first, and other." Although, only one potential registrant filled in other and they said cry.

But if you look at the numbers and I haven't added them up and we don't have totals here, you see an awful lot of people stopping. This may get to 1B at a certain point, but right now, we're seeing a lot of

people stopping and so I wanted to point that out because I think it really does gives us some insight into whether, into the question that Kristine was asking, which is are people stopping and thinking? And I think the answer in this tab says yes, they are. Thanks.

JULIE HEDLUND: Thank you very much, and I see that, yes. I think you're referring to registrant Q11, so make a note of that. Thank you, Kathy.

And Rebecca Tushnet, please.

REBECCA TUSHNET: Yeah, so I certainly agree with Susan's initial description except I would just say that we... Right, we know there seems to be a fair amount of deterrents going on. We just don't know what it is. Certainly, not from the survey, and actually, not really from the other stuff that we've looked at so far. We know there's deterrents but we don't know who's being deterred and what would have happened and so as long as we're clear on that, I think we can reach consensus on that. Thank you.

JULIE HEDLUND: Thank you very much, Rebecca. Susan Payne, please.

SUSAN PAYNE: Yes, sorry. [Inaudible]. Yeah, I'm not quite sure where Kathy was going with her comments and apologies, so I'm not entirely sure whether I'm agreeing with her or disagreeing with her but I think she's absolutely

right. We can look at these results and see that some people stop. Now some of them say they would stop altogether. A number of them say, “I would stop and do something before I decide whether to go forward,” so that’s not really stopped, is it? That’s pause and take some advice or pause and do some research. Now isn’t that exactly what the point of this is? So I wasn’t clear whether Kathy was trying to suggest that this means people are being put off from registering, or whether, in fact, this is a demonstration of, I would argue, that actually, the [inaudible] is doing entirely what it’s supposed to in having people pause and consider whether they should go forward with the domain registration or not.

JULIE HEDLUND: Thank you very much, Susan. And I see Kathy Kleiman, please.

KATHY KLEIMAN: And I think I’m in complete agreement with Susan, so for 1A, is it having its intended effect? Are people stopping and pausing, to use Kristine’s revised question. I think the answer is yes. Thanks.

JULIE HEDLUND: Thank you very much, Kathy. And I think – okay, and Kristine is saying, and I’m not going to try to read all the chat – we probably don’t need... This could be a question that we put out for public comment, [plus] one to Susan. And Rebecca’s saying, “To be clear, there are a range of responses. Some groups just stop, some stop and research. We don’t know from surveys, the distribution within those groups.”

So may I suggest... Oh, I'm sorry. I didn't see your hand was up. Kristine Durrain, please.

KRISTINE DURRAIN:

Thanks. I just want to apologize. I'm guilty also of this, but I agree, we need to... Kathy just put in the chat, let's finish the question. Let's stay on 1A to the extent we can. I think it sounds like we may. I'm going to pat ourselves on the back for 12 seconds here. We may have come to an initial comment that we could make on A that would go into our initial report which is that we cautiously, we think that there is some sort of a trend going on to bad faith registrants, not yet talking about collateral damage in 1B, and if so, if that seems to be a rough place to start with on 1A, I think we can move on to 1B, but I've also been guilty just in the chat of moving on to 1B and I apologize.

JULIE HEDLUND:

Thank you very much, Kristine. And I have George Kirikos, please.

GEORGE KIRIKOS:

I'm not sure if this on the same point that Susan's trying to raise in chat, but I think what we can say definitively is that it's deterring registrations, period. But it's deterring perhaps both good faith and bad faith registrations. I don't know if that's something that people would agree on because it seems some people don't agree that it's affecting good faith registrations for 1B. But I would combine them and say it's affecting registrations in total, but to answer whether it's deferring bad faith registrations, I think it needs to look at elements of the data that

we have, like the strings that are being applied for or attempted to be registered, and perhaps, registration rates outside the claims period, which we haven't really looked at or collected the data for. Thanks.

JULIE HEDLUND:

Thank you, George. I think maybe you were breaking up for a little bit of that but I think we tried to get that in the notes and just some things from the chat. Susan is saying, "I think, George, we don't know for sure if it's bad faith, so your inference would not be supported."

Cyntia King says, "I don't think we can infer intimidation. I see a simple thought process now that I know there's a potential trademark issue. Should I proceed [inaudible] alternative?"

And again, Michael Graham says, "I don't think we can presume the type of registration affected."

Okay. Cyntia is having trouble with audio, so thank you, Cyntia. We'll get a dial out to you.

There's a lot going on in chat so I'm not going to try to read it all out. I have several people in the queue, so let me go to the queue. George Kirikos first, then Susan Payne, and then Rebecca Tushnet. George, please.

GEORGE KIRIKOS:

Somebody said in the chat that you can't infer intimidation. That's right in E23 and F23 that people are finding the notes as intimidating so I don't know why people are disagreeing with that. Thanks.

JULIE HEDLUND: And I'm sorry. You were referencing E23. Did I hear that correctly, George?

GEORGE KIRIKOS: Yeah, E23 and F23.

JULIE HEDLUND: E and F23. Thank you. Susan Payne, please. Susan, if you're speaking, we can't hear you.

SUSAN PAYNE: Sorry. I'm having trouble with my [inaudible]. I'm putting my hand down, sorry. I'm pausing.

JULIE HEDLUND: Thank you. Noted. Kristine Durrain, please.

KRISTINE DURRAIN: Thanks. Way to go, Susan, on roping in the word "pause" again. Really appreciate that.

So yeah, I put it already in the chat but I'll say it again online here. I think that when we think about what we would draft in this initial report, I think we can say that we all agree that a certain number of – on 1B – but a certain number of potential good faith registrants might be, and we could use the word deterred, intimidated, [chilled], whatever

you want to say to probably [inaudible] lot in their [use]. A chilled speech would be a speech that was going to be sort of protected free speech. Intimidated might be someone who was just going to register a domain name for fun, and deter would be someone who was going to register in bad faith. So it kind of depends on their use, right?

So the point I think I'm trying to make is that when we write our initial report, we don't necessarily – and I'm taking a page out of the Sub Pro here – but we don't have to, have to, have to have a firm recommendation for every single section. We can say something, for 1B, the working group reviewed the available data, our own user inferences from across the industry and all of our collective decades and decades of experience and we really believe that probably users are deterred. Could this be a result of the actual wording? We're going to get to that later. Shall we recommend this [inaudible] to the work? Is there some, what does the community think about that threshold because there's going to be a certain amount of collateral damage for every single thing we do. Every statute, everything that's done has a certain amount of collateral damage, so what is a tolerable threshold that the community believes is fine with respect to sort of accidentally not letting someone with really good intentions get through? Versus the cost benefit of costing brand owners hundreds of millions of dollars.

So I think that there's a way to work through this language here that says this is what we've noticed, this is what we think, what does the community say. And then we kind of move on. I don't think we have to decide it at this point. For the final report, we do. For the initial report, I think we just ask a few questions and please correct me if I'm wrong. Thanks.

JULIE HEDLUND: Thank you very much, Kristine. Just on your last point, yes, in the initial report, we can have several different levels of deliberations. We can have recommendations, we could have a proposal to discuss and we could have questions that are directed at the community to answer in the public comment forum. So if we think there's something we want more information on from the community, we can post it as a question.

And now I have two people in queue, Greg Shatan and Kathy Kleiman. Greg, please.

GREG SHATAN: Thanks. Going back to the question of "intimidation", I think that we've recognized since the beginning that the form is a little, say, harsh or over-bearing, formalistic, whatever you want to call it. I think Kathy Kleiman and Paul McGrady were the primary drafters of it way back when and they agree it could be a little kinder and gentler. I think we all agree. I think that's all that's meant by intimidating. It's a legal notice and it's somewhat stiffly worded. I don't think this means that people were intimidated from proceeding. So I think we need to be careful what we infer and what we claim is meant by some of the language here.

So it's not a question of believing or disbelieving what's in the data, but rather, of trying to understand what the data is telling us. Thank you.

JULIE HEDLUND: Thank you, Greg. Kathy Kleiman, please.

KATHY KLEIMAN:

It's true. It's my fault and Paul's. We take the blame for the Trademark Claims notice. We had no focus groups. We can do better. I agree.

Okay, to what Kristine said, Kristine I'm going to respectfully disagree. Normally, I agree with everything you say but I don't agree here. I think we're biting off more than we can chew and that has to do with answering the revised Charter questions on the first deep dive pass into the data.

I think our job might be easier if we look at the question and say, the revised Charter question, so 1A and say, "What data are we looking at that sheds light on the answer to this question?" We can even put down preliminary conclusions and differences that we're having like on the issue of intimidation. But really, what data is it that sheds light on this question? We have another table that staff has prepared that actually has a column just for that. And so this will be a lot of the data, but there may be other pieces of the data as well.

And then on the second pass, maybe when we reach the end of all of our analysis of the trademark claims and we've gone through trademark owners and registries and registrars, then we do the second pass to actually see if we've got what the answers would be that we might propose or draft policy recommendations or operational fixes that we would propose for the Sub Team.

I'm not sure we can do it all in the first pass and I think we're going to wind up wordsmithing recommendations right now. I'd much rather gather the data and I don't know how other people feel. I'd much rather

say, “Is there data? Where are we seeing it, so Q11 goes into one of these boxes at the end of this spreadsheet?” What is it that’s shedding light on the question? What data are we seeing? And then let’s draw our final conclusions later. But if we do it all now, I think we’re going to be here on 1A forever. Thanks.

JULIE HEDLUND:

Thank you, and I’m just going to point to a question in the chat. Mary Wong from staff has noted. Can the group agree that the results show that the claims notice does affect the decision, whether or not to proceed with the registration and that various reasons were cited by respondents for not proceeding?

I’ve got a couple people in queue. I’ve got Greg Shatan. I don’t know if that’s a new hand or old. And Susan Payne. Greg? Oh, and for some reason, I also, Phil Corwin had his hand up but it wasn’t showing up for me. I see Phil is actually showing up now before Susan. Phil and then Susan, please.

PHILIP CORWIN:

Yeah, thank you, Julie, and these are personal views. And my personal view is that on these questions and perhaps on many of the other questions, I think it’s fair to look at the data but at a certain point in the conversation for some of these questions, we ought to just admit that the data is inconclusive, it doesn’t dictate any particular direction for us, and that the more important question is, all right, we know it’s causing some potential registrants to pause but then they go ahead. It’s causing others to stop and not return. We don’t know the division between

folks who intended to infringe and those who would have gone forward with perfectly non-infringing domain registrations.

And the real question is on the basis of the inconclusive data but just also our experience with the new TLD program, the Trademark Claims notice is a notice. It's a bunch of words and can we make the words better so that they're more targeted at putting potential infringers on notice that they're putting themselves at risk and they're probably going to get found out and have legal action while better explaining to less sophisticated registrants with no infringing intent that this may not apply to them, so it's not telling them to stop completely but that they probably should get some advice because this is a legal issue.

So in the end, we're going to have to look at the language and say, "can we improve the language that was adopted several years ago on the basis of their experience?" Thanks very much.

JULIE HEDLUND:

Thank you very much, Phil. I have Susan and then George Kirikos and just that verbal reminder of what I put in the chat. We've agreed to adjourn these calls five minutes before the top of the hour to enable time for a switchover to the next Sub Team. Susan and then George, please.

SUSAN PAYNE:

Thanks so much. I didn't put my hand up to agree with Phil, but it turns out that that's exactly what I do want to do. I agree wholeheartedly with what Phil said and I can see that there's a number of other people

in the chat who are doing likewise. But I put my hand up to respectfully disagree with Kathy about this idea of going out and getting the data. It seems from the way that you were speaking, Kathy, that you're talking about going out and sourcing the data and gathering it into one place and so on and so forth, and it seems to me that that's exactly what we've already done and what staff have done in this table. Okay, there's some other random bits of data as well that we should also be looking at in this single pass.

But this idea that we have to keep wrangling this data in various different forms, but never actually do anything with it is what's so frustrating. We've been wrangling the data and going out and looking for it, getting on for three years now. It's time for us to just finish this effort. Thanks.

JULIE HEDLUND:

Thank you very much, Susan. And George Kirikos, please.

GEORGE KIRIKOS:

Yeah, I just wanted to disagree with Phil's take on what the goal in all this is in terms of making slight improvements of the wording of the TMCH Claims notice. I don't think that's the, necessarily, objective at all because the registries and the registrars were explicitly surveyed as to whether they prefer one or the other of the TMCH claims versus the Sunrise or even the elimination of both. So those should be on the table because presumably some of the trademark people, [inaudible] or whatever, would be in favor of extending the Trademark Claims to dot-com, dot-net, and dot-org and other legacy gTLDs if it was deemed a

success in terms of reducing cyber squatting. So I think we have to look at the overall picture in terms of whether this is a net benefit or a net negative on cyber squatting and registrations in general. Obviously, it can reduce cyber squatting but if it's at the cost of impacting good faith registrations, then you have to compare the benefits and the costs. Thank you.

JULIE HEDLUND: Thank you, George. I have Susan Payne please and we have about two minutes left, so we'll need to wrap. Thank you.

SUSAN PAYNE: Thanks very much. I can be really quick. To start talking about extending this to the legacy TLDs is a complete red herring. These are things that happen at registration when the launch mechanisms for registries, the legacy TLDs that have been going forever, we're not talking about that. So that's just a red herring to [inaudible].

JULIE HEDLUND: Thank you very much, Susan. And so I'm going to... Okay, I have Phil. Phil, you have the last word. Phil Corwin, please.

And now I see Phil's hand is...

PHILIP CORWIN: My hand is not up.

JULIE HEDLUND: Okay, your hand was up but now it's down.

PHILIP CORWIN: But since I'm on the line, let me just say in response to George that it was implicit in my previous personal comment that the Trademark Claims would remain for a subsequent round. That doesn't mean that it's out of order for someone to propose its elimination or that there be a choice for contracted, for registries to offer either Sunrise or Claims but not both. But personally, I would view those proposals as unlikely to gain consensus within the working group or the ICANN community, so I'm implicitly refining my comments to not dwell on things that I don't think can get consensus, but if others think they can get consensus, so be it. Thank you.

JULIE HEDLUND: Thank you very much, Phil. And so we're going to go ahead and close out this call at this point. And thank you all for joining today. We'll go ahead and capture some action items and the discussion thus far and suggestions for where we start on the next call, which will be the 2nd of January and we'll identify the homework for the next call as well.

So we'll send out an agenda for that with homework just as we did last week and you'll see that today. We'll send a reminder before the next call also. Happy Holidays to everybody. I wish you a very happy new year and I look forward to talking to you very shortly. Thanks, all. Bye-bye.

TERRI AGNEW:

And once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of your year. Happy New Year.

[END OF TRANSCRIPTION]