

**ICANN Transcription**  
**Review of all Rights Protection Mechanisms Sub Team for Trademark Claims**  
**Friday, 26 May 2017 at 16:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Review of all Rights Protection Mechanisms Sub Team for Trademark Claims on the Friday, 26 May 2017 at 16:00 UTC.

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Michelle DeSmyter: Good morning, good afternoon and good evening. Welcome to the Sub Team call for Trademark Claims on the 26th of May, 2017 at 1600 UTC. In the interest of time there will be no roll call. But we do have seven participants currently in the conference at this time. Attendance will be taken via the Adobe Connect room, so if you're only on the audio bridge would you please let yourself be known now?

Hearing no names, I would also like to remind all participants to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I will turn the meeting back over to Kristine Dorrain.

Kristine Dorrain: Thank you very much, Michelle. This is Kristine Dorrain. Welcome to everyone who made it on this one day between INTA travel and the - for those of you at least in the States, the Memorial Day weekend holiday that's going to happen coming up for some of us. We have a relatively lightweight agenda today. It's primarily discussion based. Our first order of business was

- I was hoping to finalize the charter questions today and so if anyone has had a chance to take a look at them and has any concerns, questions, comments that they'd like to raise.

I did add - Susan Payne brought up last week and I had forgotten, so I did a little phrasing to our first charter question sub A that basically address the second purpose of the Trademark Clearinghouse, so not only is the Trademark Clearinghouse in effect to - and the sunrise claims notice itself, specifically, there to deter bad faith registrations and make them go away, but also to provide legal notice to innocence infringers or - I'm happy to entertain wording.

What we're trying to get at here is people who might have, you know, gone to register a brand. whatever and not realized that, you know, that wasn't okay. I know and a lot of us, especially lawyers in our legal practice, you know, there's a lot of people who think something is totally fine and then, you know, and we could even be talking about, you know, big Fortune 100 brands. People just aren't aware that they don't have that right. So the point is I'm trying to get at there is that.

Kathy, you have a comment.

Kathy Kleiman: Hi, Kristine. Hi, everybody. Yes, just I would neutralize the wording a little bit if you're receptive to that. And that would be of - I'm not sure it's legal notice. God knows Paul McGrady and I drafted it but we were never thinking legal notice when we were doing it. But notice - and then innocent infringers, loaded, somewhat loaded. So how about neutralizing a little bit and providing notice to registrants. Because what it's doing is putting - at least when we talked about it years ago, was putting a level of choice into the hands of a registrant. Do you want to go forward or not now that you know that there's something out there that maybe you didn't know before.

Just providing notice to registrants. Because I don't think we can go as far as saying it's legal notice because I'm not sure it rises to that or what the standard would be for that. Thanks.

Kristine Dorrain: Okay, excellent point. As I said, the language I threw out there was discussion purposes only so let's proceed with the discussion. Michael, you're next.

Michael Graham: Yes, I just have a question. I would agree with that change generally. I wonder if registrant is the - the appropriate term, if they should be domain name applicants or how we should refer to them. I don't want to get - I don't want to confuse the TMCH registrants with the applicants who may not have gotten through. And if we do registrants, I think that would only refer to those who have gone through the process and then actually registered. So I'm not sure if that would be the correct word or if it should be applicants, open to that. But I think the general change that Kathy was suggesting would be fine otherwise.

Kristine Dorrain: Okay good, precision of language. Kathy, are you responding or is that an old hand?

Kathy Kleiman: Actually I was trying - it's a good point, although I always think of applicants as gTLD applicants, it's almost a term of art now in the ICANN world. But good point (unintelligible) potential registrants because that's what we're talking about is someone right on the verge of registration so potential registrants. Thanks.

Kristine Dorrain: Michael, are you okay with that?

Michael Graham: Yes, I guess that would be fine. And maybe in the questions maybe there are other terms too that we would want to define so that either potential registrants we could just clarify what we mean is the, you know, applicants for

domain names within the new gTLD. But, yes, I think that would be better than registrants.

Kristine Dorrain: Yes, I agree. I support that. I don't see any other objections. Kathy, old hand or more comments?

Kathy Kleiman: Old hand, now it's down.

Kristine Dorrain: Okay great. Thank you. And, Amr, in the chat I see that you asked whether we'd like to be specific calling them potential good faith registrants. I think Kathy's point is not just ascribing any intent at all, if I may be so bold. I like the idea of just saying, as Kathy put in the chat, and providing notice to potential registrants. I think that that is clear and if we want to be even more clear to address Michael's point, domain name registrants would possibly work as well, although I think that that's probably implied and understood here but maybe not.

And looks like Kathy confirmed my understanding. So thanks for that, everyone. That portion in red was the only - I'm just going to scroll through to make sure that I'm correct - was the only additional change to the charter questions. So if there is nothing additional I would like to maybe have us do a quick glance through here and just make sure that we're cool. I'll sit quietly for a minute and let everyone scroll through. And then I'd like to sort of mark our charter questions as final so that we can, you know, sort of lock them in, report back to the working group that we're ready. And proceed on with our data gathering activities.

Amr Elsadr: Kristine, this is Amr. I have a question just to...

Kristine Dorrain: Yes.

Amr Elsadr: ...be clear on the action item here. So does the proposal here is to replace legal notice with notice and to replace innocent infringers with potential registrants, is that correct?

Kristine Dorrain: Yes, that's correct. Thank you.

Amr Elsadr: okay.

Kristine Dorrain: Kathy, go ahead. Kathy, go ahead.

Kathy Kleiman: Yes, just thinking out loud, so let me just double check based on this kind of flow chart idea which makes sense but I'm still getting my head around. So if the answer to either A or B is - actually if the answer to A is no and the answer to B is yes, so if something's not working the way it's supposed to be working, then we go down to Question 2? Is that the way - is that the way it works?

Kristine Dorrain: Yes, that is correct. The presumption is that we are only, you know, I mean, obviously the working group can do what it wants, but the presumption is that if there's no problem and it's working perfectly, there, you know, we shouldn't need to make any changes.

Kathy Kleiman: Okay. And then the changes that are there, A-2 - A-D are kind of a combination of all the original charter questions and different variations the claims period might take?

Kristine Dorrain: Correct, putting them all under one category. Yes.

Kathy Kleiman: Terrific. Thank you. Looks good to me.

Kristine Dorrain: Okay great. All right, okay, I'm seeing one checkmark and no raised hands so I'm going to assume that everyone is fine with the charter questions as worded. And a next order of business then is to move onto the data gathering

section and staff, Mary and Amr, did just an amazing job so I want to call them out, on throwing a ton of data and information into the far right column of the screen.

For those of you - I'm hoping that this works - for those of you who are like at your like computer and the doc in the chat or in the Adobe Connect screen isn't big enough for you, I just put the Google Doc itself in the chat so that you can click on it, that's what I'm doing. I actually have two screens open with the doc on one.

And then so staff went through and put a ton of information in the right hand column, so our job next is to anticipate what the working group is going to need, what the working group will want in order to discuss these questions. And Michael and I had proposed a week ago or two weeks ago that what we really thought of is we should start with kind of asking for the sky or asking for the moon and then if we need to trim back and say this was probably not attainable, we could do that.

So I went through and added some of my own thoughts and comments. It's just a starting point because I just wanted to, you know, start the discussion somewhere. So to move on the very first trademark - the very first charter question it says, "Is the trademark claims service having its entire intended effect?" and then our sub questions are about is it having its intended effect or is it having unintended consequences.

Amr and Mary have included a couple of different pieces of information. One has to do with we could use some numbers, and someone has proposed URS cases corresponding to marks for which a claims notice was or would have been issued had the registration taken place during the notice period.

The URS cases not corresponding to such marks, to get a sense of the relative contribution of the marks in the Trademark Clearinghouse to the overall set, though this may require further analysis to find non-TMCH marks

to compare fairly. So generally in, you know, correlation between the URS, use of the URS and use of the trademark claims service.

I suggest that this is possibly for Step 2 of our process, I suggest that it may be practically speaking, that information may be hard to obtain unless one of our academics is able to get some research or unless we're able to get some funding from ICANN for a researcher.

I did want to throw out for the group discussion on this, I went to the Forums Website, there have been 698 URS cases. And Forum has a wildcard search which allows you to type in any term and search all of their cases. I limited my search of the URS cases to only cases that referenced the letters SMD. So where the panelists noted that there was an SMD file submitted or somehow relied upon in that case.

That was only the - the three character combination, SMD, was only mentioned 15 times in 698 cases. I'd like to get some discussion going if anyone has any opinions as to whether or not we think URS case data in this specific instance is likely to be instructive on the efficacy of the trademark claims service. Does anyone have any thoughts about that or is that - yes.

Michael, go ahead.

Michael Graham: I think it would be instructive and helpful but the fact that in 698 cases SMD has been mentioned only 15 times, I don't think that's going to be a - I would just gut feeling that isn't going to be a real determinative reference to look for. The difficulty, as you note in here, is the fact that there's no - we have no clear evidence into what was recorded with the TMCH. Was that information that the AG was privy to when they were doing their study, do you know?

Kristine Dorrain: Amr maybe can jump in. I know that there was some analysis, and I'm going to skim down because I think that Amr and Mary have provided that on one of the other - I think in response to the Question 2. So the URS or the AG did

provide the dispute rate for exact match strings registered during the claims service, so the number of cases that went to I think URS but possibly URS and UDRP. So the URS went - or the number of cases disputed were 323 disputes out of 136,732 strings that were registered during claims service.

Is that correct, Amr?

Amr Elsadr: Hi, Kristine. This is Amr. That is correct. Okay, I'm looking at the data right now. And, yes, it was a very low percentage, I believe 323 out of 136,732.

Kristine Dorrain: and, Amr, did those - were those URS only or URS and UDRP?

Amr Elsadr: No, those - this was a - this was a number for disputes - for a dispute rate, which I know - I believe it covered both but I need to confirm that. And this was - these were dispute rates for exact match strings registered during claims service period and during the period between October 2013 and February 2016.

Kristine Dorrain: Okay. Okay thanks, Amr. Does that answer your question, Michael?

Michael Graham: I'm going to have to (unintelligible) that.

Kristine Dorrain: Okay, go ahead and think about it, yes. Kathy, you're next.

Kathy Kleiman: Yes, first could someone - Kristine, if you heard it, could you repeat Amr's response because I couldn't quite hear it.

Kristine Dorrain: Oh yes, I'm sorry. This is Kristine for - Amr had just confirmed that my understanding that the - that the 323 out of 136,732 was the number of URS and UDRP cases that were a result of exact match strings registered during the claims service. So my understanding is where the domain name was registered during claims as an exact match for a mark in the Trademark Clearinghouse, that exact same domain name also became the focus or - it

was also disputed in a URS or UDRP case subsequently during the period mentioned.

So 323 of those names went to dispute and 136,732 were registered...

((Crosstalk))

Kathy Kleiman: Is this is the Analysis Group telling us this?

Kristine Dorrain: Yes, because...

((Crosstalk))

Kristine Dorrain: ...this is the Analysis Group report, yes.

Kathy Kleiman: Okay. Interesting. Yes, I actually think the finding that - and like Michael I need to think about that data coming in. But I think your finding about SMD files being mentioned in the URS at such a low rate is valuable. I think - and I think Analysis Group was looking at something similar. Didn't they look - and is there any way to get their data so that we don't have to repeat it on what happened immediately after the claims period was over? And didn't they look for 60 or 90 days after a trademark claims period ended to see if the strings that - the URS cases were brought matched something in the database, in the Trademark Clearinghouse database...

((Crosstalk))

Kristine Dorrain: Yes, and Amr just put that in the - yes, this is Kristine - Amr just put that in the chat, 62 out of 47,606 within 90 days following the claims period.

Kathy Kleiman: And that was URS or UDRP or both?

Kristine Dorrain: Amr thinks it's both.

Kathy Kleiman: Okay.

Amr Elsadr: Kathy, Kristine, this is Amr. I'm going to try to confirm that and get back to you with that after the call. If I recall correctly this was a dispute rate which covered both UDRP and URS but, like I said, we need to confirm this. Thank you.

Kathy Kleiman: Okay. And this was the data that the Analysis Group, if I remember correctly, used to say hey, you know, it looks like claims is working pretty well.

Kristine Dorrain: I believe so, yes, that's my understanding.

Kathy Kleiman: Okay.

Kristine Dorrain: The note that I made in this section also relates to the fact that as we all know, brand owners file UDRP cases and time them for a variety of reasons. So it's possible that a domain name could have been registered during a claims in the period mentioned and not been a - not been disputed in a URS or UDRP case until after February 2016 as well. So there's a little bit of - a little bit of discrepancy probably there because, you know, people the been known to go back a couple of years later and file.

Michael Graham: Kristine, it's Michael. I'm holding up my hand.

Kristine Dorrain: Okay, go ahead, Michael.

Michael Graham: Just addressing what you just said, that's exactly right. And part of the problem is if you're going under UDRP, of course, you would have to prove both bad faith registration and bad faith use. And if a Website is not used, you know, the domain is not used for a period of year or years, you know, a trademark owner who, you know, is being diligent is not going to file until after that use and they can prove it. They may be sending cease and desist letters,

but until there's that use they can't file the UDRP. So it looks I think, too, we would want a bit more information.

One thing I was wondering too, although we don't have access to the actual TMCH registration we do have access to these decisions and to who brought them. And that opens up the possibility of coordinating these findings with an inquiry to the prosecutors of the various URS and UDRP actions to ascertain, at least to ask them if they will advise us whether or not the domain or the trademark being asserted was also registered in the TMCH.

Certainly, you know, we could ask the question and then according to the results, you know, yes or no, come up with some additional information on that and actually - and have an actual correlation between the TMCH registration and these actions.

Kristine Dorrain: Okay great, thanks. Just I know Amr's taking notes but I think he's flying solo there so I just put it in the chat to make sure that we get that as a proposed data point. And actually maybe I can just drop it right into the Google Doc myself. Great, Amr.

Amr Elsadr: thanks, Kristine. This is Amr. And I just wanted to follow up on the point that both you and Michael just made. Regarding the low percentage of the (unintelligible) registrations, something following the claims notice, which is about (unintelligible) the Analysis Group did note that this could indicate one of three possibilities.

So we discussed claims notices being effective but actually (unintelligible) bad faith registrations which is one possibility why this low percentage exists. And you also...

Kristine Dorrain: Amr? Amr? Could I interrupt you?

Amr Elsadr: Yes.

Kristine Dorrain: We're having a hard time hearing you. There may be a lot of background noise, you're cutting in and out, I'm not sure if there's a - if you can get a better connection or - I'm sorry.

Amr Elsadr: apologies about that. Is this any better?

Kristine Dorrain: I think so. Yes, go ahead and try that. Thanks.

Amr Elsadr: Okay. Sorry, I'm in a bit of a noisy place so. I was just saying that the Analysis Group report indicated that, you know, there may be three reasons why this percentage of dispute rates of - following registrations during a claims period may - the possible reasons as you indicated, one may be that the claims notices are actually effective at deterring bad faith registrations. The other reason you mentioned was that disputes had not yet actually been submitted. And as Michael noted, to submit one of those you have to also prove that there is bad faith in terms of use of a domain that is registered.

A third possibility that the Analysis Group pointed out, and I thought this may be helpful to also consider, is that in some cases, trademark holders may not really be concerned enough with a domain name registration even if registered in bad faith to initiate a dispute. So I just thought I'd point that out. Thank you.

Kristine Dorrain: Thanks, Amr. Yes, I think those are - that's good to have. And I think that that - that accurately reflects sort of a lot - the general understanding of the variety of reasons why brand owners, you know, kind of file and don't file UDRP and URS cases, so thank you.

I did - so I did add Michael's comment proposed data into the Google Doc. Anyone else want to take a stab at this first part of the question about having the intended effect of deterring bad faith registrations and providing notice to registrants? Any suggestions about that? You know, the URS seems like

maybe - it might have some value especially if we can get the filers to disclose whether or not their clients had trademarks in the Clearinghouse.

The - I guess that's all we had for comments. I'll give you another minute to think. Does anybody think that there's any other way to determine the intended effect of deter - of the trademark claims service as a deterrent or notice mechanism?

Kathy Kleiman: Hi, Kristine. This is Kathy.

Kristine Dorrain: Hi, go ahead.

Kathy Kleiman: Hi. I know it's very controversial but truly the turn back rate is a valuable piece of information. And I think we should use it, the Analysis Group did the analysis of how many people are not clicking through. So I think we should look at that. And figure out what value if any, there is in that 93.7% turn back.

And then the anecdotal evidence helps us understand why people are turning back. But the Analysis Group already told us they took away some of the batching out of that that - when somebody was hitting it repeatedly, they actually eliminated that from the results. So I think we've got some statistics that will help us as well. Thanks.

Kristine Dorrain: Okay, thanks. Yes, that moves onto 1B, so 1B is, the trademark claims service having any unintended consequences such as deterring good faith registrations. And that's exactly what we have there, anecdotal data from registrants or would be registrants. We also do have a request for more granular data about the percentage of those who abandon attempts. I added an additional question which is if we have any way to figure out of abandonments, how many went back and thought about it and registered later.

And I don't know how you would determine that unless you go to a particular registry operator and say hey, you know, you had a query for this domain name, they got a notice, a day later the same domain name was registered. I mean, certainly there could be flukes but if there was a strong consistent pattern that people thought about it and went back later that would be good information to have if available, again, on the wish list.

((Crosstalk))

Kathy Kleiman: Okay so...

Kristine Dorrain: Oh sorry, Kathy.

Kathy Kleiman: So 1B - the title isn't anecdotal data, it's - 1B is kind of the whole category of data we'd be collecting for 1B.

Kristine Dorrain: Yes, so - under the far right column 1B is the first paragraph there is one person's wish list of what they would like to see. And we can all add our wishes underneath that and they can agree or disagree with the person who wrote 1B in that far right column.

Kathy Kleiman: Thanks.

Kristine Dorrain: Yes, you bet. Michael.

Michael Graham: Yes, I'm just cogitating and I know this is something, you know, we've been - Kathy and I have discussed online before in other context is what to do and how to test that and some of the figures that were presented, the 93.7% and the anecdotal. I think the anecdotal evidence from registrants would be useful but also anecdotal evidence from registrants of trademarks in the Clearinghouse would be useful. So that would be something I would reach out for to get that.

In terms of the 93.7% I do note that there was some comment by the advisory group that, you know, some of the ping sources were removed. But I think we really need to understand that figure a little bit more. And I don't know how we go about that. That might be something that we need to discuss with them, what is available in order to drill down into that a bit more to see if we can't find out more about those ping rates, where they were coming from and the percentages of them.

The other difficulty with it, and frankly I don't know how we approach this, is that figure is meaningless unless there is a figure to judge it against where there is no notice in terms of people turning back and, you know, beginning an application process and then turning back for whatever reason. Because there was no similar system before the trademark claims service, and the TMCH and such, were put into effect, there really is nothing to compare that with. So, you know, to say 93% is high is presuming that without the trademark claims that the figure would somehow be lower and we don't know.

So that is something I'd like to test and I'm not sure how we might be able to test it. Certainly there are, you know, experts in the area that we might turn to to ask and see if there is any means. And it may be simply something that, you know, something that can be tested and if that's the case then, you know, I think we have to take that into account. But if there were any way of putting together a comparison that would be useful.

But I think, you know, the anecdotal evidence certainly and then if we're able, I understand that a number of those pings were repetitious of a particular string, to have that more specific information in a chart form might be useful in analyzing this. I'm just putting those forward because I think it's a tough number to test and it's something that exists there in the void and certainly yes, 93.7% is a high percentage. Does it have any significance? That's the question we need to answer. Thanks.

Kathy Kleiman: Kristine, are you there? This is Kathy. Am I...

((Crosstalk))

Kristine Dorrain: Oh yes, I'm sorry. I was on mute. Yes, thank you, Michael. Kathy, you're next, I'm putting myself in the queue after you. I just wanted to read into the record Amr's comment that Footnote 3 at the bottom of Page 2 may contain relevant information. So go ahead, Kathy.

Kathy Kleiman: Okay, Michael, to your point, let's drill down on that for a second because there's any number, I mean, do we throw this out, and I'm looking forward to hearing the footnote, but 93.7%, as Phil said, often is much higher than anyone who is involved in drafting this expected. But let's look at the moment. So it's one thing - so different things registrants do where they turn back.

So you go to the Whois and you find out it's already registered, so obviously you can't so that's a moment where you turn back, because maybe you can't get the exact domain name that you wanted. Or you go into the registration, you go into your user account, you starting registering domain names, I was doing this yesterday, and you know, you're registering new ones, you're checking out expiring ones. And you get to a total that you don't like and then you're like, well, do I really need all of these extra extensions? So you may take things off.

But the moment of turn back here, and maybe we should verify, is when you're facing a yes or a no. Do you want to go forward? And that moment I don't - I'm not sure what the ambiguity is you're being asked to make what some will regard as a legal notice, which we've said is not, but what some will regard as a legal notice, it's certainly (unintelligible) notice. And you're saying, no, that's exactly what we wanted the Analysis Group to look at.

It seems to me it's actually very revealing data at that moment because in the real world there's nothing else that would stop them; they would be going through because they're about to hit the registration, they wouldn't be hitting

a notice, they're going through. There's no turn back. What's happening is they're turning back at a notice. So I think that's actually very revealing.

Thanks.

Kristine Dorrain: Thanks, Kathy. Yes, so I wanted to also mention, and I summarized it in the chat but I'm going to just explain what I was thinking. But before I do that I wanted to respond to something Kathy just said, and that is that the cart abandonment is happening at the moment of the claims notice being presented and not at some other point in the process.

I was not aware of that. I would be interested to find out if that's - if that's in fact what the Analysis Group found. I'm not challenging Kathy, I just don't remember seeing that piece of data. So - but so I'm not sure that we want to make that assumption or not or maybe we can provide that because if I have that legitimate question others may as well.

But avoiding substance, and trying to get into whether or not, you know, where abandonment happens, I thought it was possible that we could (unintelligible) Michael asked about the types of data we could compare. So it might be useful if we could get some general (unintelligible) statistics on cart abandonment rates for online purchases generally. Somebody's got to have that out there, Google's got to have that out there.

Especially purchases in that same - in that same general price point. If you assume the typical new gTLD domain name is somewhere between let's say \$8 and, you know, \$80, you know, what is the general cart abandonment rate for those online purchases? What are the general abandonment rates for dotCom over some period of time? And what are the abandonment rates that the TLDs who are saying they're seeing this high abandonment rate, what are their abandonment rates after claims?

It seems that that data may be available, whether or not we can get it is a totally different question, but again, we're just going through the wish list at this point. Reactions to that?

Michael Graham: Graham again, hands up.

Kristine Dorrain: Go ahead, Graham.

Michael Graham: Sorry, I have limited access to my computer. Plus if I do hand's up I can't look at the document so and in my poor visual state I can't read it. I think the abandonment rates that you were suggesting that we look to see if they're available would be very useful. I guess, you know, Kathy, I think you're right, I mean, they're asked to make that decision when they get to claims. The problem is that we're drawing - we're conjecturing from that the effect on good faith applicants. So I think you know, if that's what we're looking for I think we need more.

If we're looking at whether or not the claims service is effective in limiting the number of people who are actually going through, then I think it's a worthy figure. But I think looking at other abandonment rates might give us some insight into this.

My concern simply is that you know, data without context beyond what it is we can't draw any inferences and (unintelligible) that we'd like to be able to, such as whether or not it's effective for what we intended the claims to do, if it's - if we say, for example, I'll just back up, if we were to say are the claims notices effective in limiting the number of applications that may be bad faith? Then obviously 93.7% abandonment is a pretty good figure. I mean, it's showing that a lot of people get to a certain point if we presume that the majority of those are actual applications and not pings, are going back.

So it's being effective in limiting the number. And we could presume from that that it includes the number of bad faith. But we also presume that it would

include a number of those in good faith. But without more, you know, I don't think we can draw a good inference in either of those directions and I certainly think that what I've heard is that we'd like to be able to. So I think going and looking at some of the other abandonment rates at other times.

And also what you were suggesting, I think, Kristine, correct me if I'm wrong, being able to look at if we can at the specific new gTLDs for which applicants had abandoned and comparing that to the cost of those; we might find that there's a correlation there as well which would be interesting and useful. And then also being able to compare it with the dotCom and such. So I think those suggestions are good. I would suggest if we can put those down and then see if we can find a source that would be great.

I think too, Kristine, and correct me if I'm wrong, what we were looking for here as you were saying, we're sort of trying to put together our pie in the sky list and then let's see if we can find a source for this information. If so, let's try and get it. And if not, let's admit that we can't get it. Is that (unintelligible)?

Kristine Dorrain: Hi, this is Kristine. Yes, and I don't know, admit that we can't might be a step too far. But at least categorize it as possibly too many obstacles to obtain. I would hate to go back to the working group and say, well, we discounted this wholesale because we thought it would be too hard to get and then have someone like an academic or ICANN or someone come forward and say no, we're willing to provide letters on that. So I think, yes, I think we were going to classify it as available, obtainable and relatively complicated to obtain. So yes, I agree.

Michael Graham: Okay...

((Crosstalk))

Kristine Dorrain: And this could fall under the really complicated to obtain category, I'm not sure.

Michael Graham: Yes, and just on one quick thing, there has been talk and the INTA meeting I actually - I think we've gotten the troops that'll be able to do this is to take a look at some UDRP and URS decisions and actually put those together with - to the extent possible trademarks, exact trademarks and non-exact trademarks, but more importantly with trademarks that were registered in the TMCH through a sort of a reaching out to the trademark owners.

The problem with that of course is that it takes man power and the solution that we've found was we've got some, you know, summer interns who joined law firms and such that that would be the sort of research subject that, you know, really would - they would be able to do, it's easy to find them and it's, you know, coming up with pure numbers, which would be very useful.

The shortcoming is that that won't happen until this summer. But it is something that we're trying to put together, so hopefully that sort of information would be something that would key in here. And to the extent we can define the information we want to gain looking at those URS and UDRP decisions coming out, you know, we can ask those - for those surveys to include looking for that to see if it's identifiable and useful. And that would be a source. I don't want to volunteer them because I've run into that before, but that is something that we could see if that would be possible to include in those surveys.

Kristine Dorrain: Okay thanks, Michael. Rebecca.

Rebecca Tushnet: So sorry, we may have moved a little past this. But I guess I was unclear on the idea of comparing other abandonments. Like Kathy, I understand there are other reasons that you don't go forward, but why would it matter when we're trying to assess the effects of this particular reason that you might not go forward? And I note, among other things, at least in the ones that I've looked at, you know the price well before you get the notice.

So to the extent that you abandon it based on price, I think has already happened. Maybe there's variations in practice, but I guess we could look for that but I'm not sure exactly what it would tell us. Thank you and let me put my hand down.

Kristine Dorrain: Thanks, Rebecca. This is Kristine. And before I let Kathy go I'll just respond because I think you're addressing my question. I was - the reason I proposed the sort of general comparison amongst cart abandonment rates throughout sort of other online purchases is just to understand scope. I mean, if someone came back with a data point that said in all online purchasing situations 85% of carts are abandoned, you know, I think the group would look at that and say, wow, that's like why? You know, like are there reasons for that? Certainly people have done that market research.

Therefore, 94% maybe doesn't seem so bad and we could say but we're still outside the norm by X percent so maybe we need to consider that. That's the only reason; not because I necessarily thought there was a one to one correlation but because I thought it would give us a general sense of scale. How bad is 94%? That's sort of the main reason so thanks. And, Kathy, do want to let Rebecca respond or did you want to - are you still on the same topic?

Kathy Kleiman: No, Rebecca, respond, absolutely.

Kristine Dorrain: Okay thanks. Then you're next. Go ahead, Rebecca.

Rebecca Tushnet: Thank you. So I'm still puzzled by this because as best I understand the specifics, their abandonment at receiving the notice, right? So it may - it may well be that there's other places that you abandon but it's not - it's sequential, as Kathy said. So if 85% of carts were abandoned, and then when you get the notice, 94% of people who get the notice abandon, that's 94% of the 15% remaining. So I'm still not clear as to what that would tell us. Thank you.

Kristine Dorrain: Okay go ahead, Kathy.

Kathy Kleiman: I share the concern. But let's confirm, as you said, Kristine, that these people are choosing not to go forward at the moment they're being asked to click on something that they have some sense whether they know it or not, gives them some legal liability. So it's that moment, I do think we might be comparing apples and oranges with general abandonment rates. But that aside, (unintelligible) one of those light bulb moments where I realize that something may be missing from the charter questions and I don't know if I'm still allowed to go back to those.

But is the trademark claims notice itself clear? If we're going to talk about anecdotal evidence, let's ask people what it is they're seeing when they read the notice. What it is registrars are hearing when people read the notice, and registries too. So and it doesn't seem to be actually in the questions, does the trademark claims notice - we never had a focus group on it, it was over the weekend - does it need to be clear? And also, is it being delivered in the languages that it was promised. It's supposed to be delivered in the...

((Crosstalk))

Kathy Kleiman: What?

Kristine Dorrain: Can I just - yes, that's in Question 3, just scroll down to Question 3. It's in there including the language.

Kathy Kleiman: Oh. Okay, did I not scroll far enough?

Kristine Dorrain: Maybe not, it's a giant long, long, long column.

Kathy Kleiman: Okay apologies. Okay. Then that's part of the anecdotal. But back to Rebecca's apples and apples, if people - can we find out more? Can we understand more about the moment of abandonment in this - when they hit

the trademark claims notice. Are they clicking “no”? Are they just going away shutting down their screen? Is it something different than general cart abandonment or cart reservation where you just kind of leave it in the cart and come back later? Thanks.

Kristine Dorrain: Okay, thanks. So I’m going to - before I let Michael go I’m going to summarize a little bit because I know Amr’s going to go back and take notes. So we have some general questions about at what precise moment are the 94% abandoning? Are they all abandoning at the time of notice? Or are they all abandoning at some point during the registration process, but we’re only talking about during the claims notice period.

So we’re not entirely sure, we definitely have a difference of interpretation within our sub team as far as when that’s happening. Then from there, is there value in looking at other cart abandonment rates? And whether or not there’s value in that, is there value in looking at other cart abandonment rates for either dotCom or new gTLDs but after the claims period.

So there may be some granular data there. And it also, as Kathy points out, will tie in a little bit to when we talk about 3. So are cart abandonments tied to claims notices really a result of an improper understanding of the claims notice? So there looks like we’ve got kind of an interrelationship there and Kathy is wondering if we should talk about 3 before 2. And I think that that is a worthwhile discussion, even if we’ve sort of locked down our questions, we absolutely have the flexibility to slide them around a little bit if in the course of our data gathering or our data suggesting exercise we feel like we need to get, you know, some data before others.

And Amr points out it may be worthwhile pointing out that the 94% figure is not necessarily an abandonment rate, it represents the number of trademark record downloads from the TMCH by registrars that are not massed as a completed domain name registration. So these are not necessarily all attempt

- associated with attempted domain name registrations. So we do have - we definitely want more granularity about that.

Maybe that's enough of a recap and Amr can synthesize that for us later.  
Michael, you have been waiting patiently, go ahead.

Michael Graham: And I think Amr's comment, and I think yours, referenced to it, I think that is something we do need to explore and I don't know the means by which we might do that to determine, you know, what part of that percentage does represent actual abandonment and not click-through. And I don't know if that's information that - apparently it's not information that AG was able to get but it might be information that the Clearinghouse might be able to provide. And that, I think, would be very useful.

I'd go back to the discussion that we had - to a certain extent it may be apples and oranges but we don't know without knowing more about, you know, the motives behind abandonment, whatever the figures are, on either side of the notice. But as you were saying, Kristine, I think it's useful to have some sort of benchmark just to understand you know, if there's a difference in the percentages that tells us something is happening at one point that isn't happening at the other.

In terms of the order, I think, you know, there's a misunderstanding, that test of the percentage of abandonments that we would be looking at a percentage the 85% that you were suggesting or whatever it is, is of applications that have gone through, have been abandoned during the notice period, and then were later abandoned, so it's not taking, you know, it's taken into account these are applications that actually have gone through the process in the normal course, how many are abandoned, the percentage.

And then looking at the group that gets abandoned during the period, but as Amr points out, we don't really have that figure and that's something that we need to get in order to, you know, to understand it, I think - (unintelligible) my

only point. And I think, you know, apples and oranges we can talk about later but there is, as far as I know, absolutely no way unless we get into the brains of the applicants to understand what it is and perhaps the answer is to get into the brains of the applicants somehow.

Unfortunately they weren't asked that question, they were just asked yes or - do they want to go forward? It's not a yes, no; it's a do you presume that the, you know, there's no likelihood of confusion at one point in which case it would go through. They might still abandon it after they've gotten through the claims process. So anyway there's a lot (unintelligible) there that I think we need to go back and get.

And when you were talking about going back 3 before 2, are you talking about looking at the questions that were looking at getting data? Is that what we're talking about doing? I wasn't clear on that. Thanks.

Kristine Dorrain: Thanks, Michael. I think we're still working out the precise order in which we're going to recommend that the working group discuss these questions. So even though at first glance we think that it's a nice flow from 1 to 2 to 3 to 4 to 5, it's a possibility that we may decide when we start really looking at the data we need to gather and the interrelationship between the questions, we may decide that we really need to discuss 1, 3, 2, 4, 5 or some other you know, combination of numbers just because we've decided that these charter questions summarize, you know, are accurate reflections of what the community wants to know.

That doesn't mean we can't rearrange the order in which we recommend the working group discuss them, so that's what we're talking about with respect to 3 before 2 possibly.

Michael Graham: Okay great, yes thanks. And I agree that 3 should be before 2 if we want to broach that at this point.

Kristine Dorrain: Okay great. Fair point. I think that I'm going to suggest that we leave that as a suggestion but that we not necessarily make that decision at this point. I'd love to see the right column be a little bit more fleshed out with the types of data we'd be looking for because I think that we're going to run across this situation more and more. And if we - we might get to the point where we decide that based on the types of data we're going to try to gather, that it doesn't make sense to move them even though right now I agree that it makes perfect sense. So I'm going to suggest that we just sit on the moving until we get a better sense of the data we want.

I'd like to, in the last few minutes of the call, sort of summarize an action item for staff and make sure that as a group we're okay with this action item. What I'd like Amr to do, and Mary when she gets back, is to listen back to this call and make sure that we have a good note - good notes of all of the various comments about this abandonment question. We can call it abandonment, whatever we're calling it. Rebecca, Kathy, Michael and I have all submitted various sort of risks on the same sort of like what should we gather and what should we know.

I have not taken very complete notes. I think that all of us as a group would really appreciate a very short summary of what we'd all kind of like to see. Circulate that to the list and then maybe we can get a little discussion going about whether or not, you know, the request for data is, you know, worded in the way that we all thought. I know sometimes you get on the call afterwards and we all maybe thought there was a different side of the elephant presented to us. So just to make sure that we all kind of understood the outcome of that. And Amr looks like he says that they could do that.

Does anyone agree with that, asking staff to sort of summarize this last bit of the discussion so that we can see it in writing, think about it and maybe, you know, tweak it a little bit? It looks like silence is assent.

Michael Graham: Yes, I'm assenting.

Kristine Dorrain: Okay. Very good. And then I really encourage us - I don't know that we - in four minutes - we have a lot of time to go, you know, to get on past Question 1. But I think we should all take as homework for the next week to really review the summary of data that Amr and Mary put into the doc in that far right column because there's a lot of individual pieces of data.

And I know that I need to go back and read the Analysis Group report because I just definitely want to make sure that I have the context around some of this data that Amr and Mary put out. So that's going to be my homework for this week and I think everybody - it would be really helpful to our call next week if we're able to do that.

With that said, I'm going to be happy to report to the chairs that I think we have a final list of charter questions and that we are well on our way to a good list of suggested data that we can get for - that we can get for the working group's consideration.

If there's nobody has anything else, any other last minute hands, I will leave you to your long weekend.

Michael Graham: Okay thanks a lot, Kristine.

((Crosstalk))

Kristine Dorrain: ...everyone. Have a wonderful weekend. Bye-bye.

Michael Graham: Bye now.

Michelle DeSmyter: Thank you. Meeting's been adjourned. Operator, please stop the recordings for us? Thank you so much.

END