
**ICANN
Transcription
RPMs Sub Team for Trademark Claims Data Review
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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 29th May 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now?

CLAUDIO DIGANGI: Claudio, I'm on audio only.

TERRI AGNEW: Thank you, Claudio. And I see someone just joined with a telephone number ending in 759. Are you able to identify yourself? We'll go ahead and check into that number as well. Hearing no further names, I would like to remind all to please state your name before speaking for recording purpose and to please keep your phones

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and microphones on mute when not speaking to avoid any background noise. With this, I'll turn it back over to Julie Hedlund. Please begin.

JULIE HEDLUND: Thank you, everyone, and thank you so much, Terri, for kicking things off. I will just quickly run through the agenda. We have as the first item updates of statements of interest. Second will be a brief review of the timeline and work plan. Third will be discussing proposed answers and preliminary recommendations for question three and question four. And four is any other business. May I ask if anyone has any other business? Kathy Kleiman, please.

KATHY KLEIMAN: Can you hear me, Julie?

JULIE HEDLUND: Yes.

KATHY KLEIMAN: Great. Hi, everybody. I'm not sure it's any other business. I do have some questions about when we get to the [very] point about the different documents that are out there. And some questions that I have because they don't seem to be syncing up. So I don't know if those are questions for staff, or for our co-chairs or sub-team coaches, but I wanted to put that in the queue. Thank you.

JULIE HEDLUND: Thank you very much Kathy, and I'm sure staff will be able to answer your questions.

CLAUDIO DIGANGI: Julie, this is Claudio.

JULIE HEDLUND: Yes, go ahead Claudio.

CLAUDIO DIGANGI: Hi. Under AOB, can we just get an update on the date for when the initial report is planning to be published and the process leading up to that?

JULIE HEDLUND: The phase one initial report?

CLAUDIO DIGANGI: Yes.

JULIE HEDLUND: Okay, so when we got to agenda item two I'll ask [Ariel] to pull up the page that shows the work plan. And that has been circulated to everyone and that has all the dates, including when the initial report is due to be published. Thank you for that Claudio.

CLAUDIO DIGANGI: Alright, great, thanks.

JULIE HEDLUND: Back to agenda item one. Does anyone have any updates to their statements of interest? Not seeing any hands. Then let me go to Ariel for a brief review of the timeline and work plan.

ARIEL LIANG: Thanks, Julie. For the trademark claims sub-team, we have three more calls, including today's call, before ICANN 65. And today's call is going to tackle questions three and four. And then next week's call is going to tackle question two and five.

And then hopefully the last call before ICANN 65, the sub-team will be able to review the updated text incorporating the input provided by the sub-team and that will be updated [to a] proposed answer and preliminary recommendations. So that's the timeline for now. Thank you.

JULIE HEDLUND: Thank you, Ariel. Could you switch to the tab for the full working group? Claudio's asking about the date for when the initial report will be published.

ARIEL LIANG: Sorry, give me a second. I did not have that document up.

JULIE HEDLUND: Sorry about that. And sorry to catch you on the fly. Just in general, keeping in mind all of you that what we're discussing now is just one

piece of the phase one initial report. We have of course the URS work that has been completed. We will have this work on the trademark claims and sunrise RPMs. We also will be circling back to the TMCH and related charter questions, so we still have quite a bit more work to do before the initial report will be ready to send to the GNSO Council.

So the initial report itself will not be prepared at the end of this piece of work. So if you just look at the trademark claims and sunrise work of these sub-teams and full working group. So just looking at the full working group timeline, you'll see we have blocks of time in for the work at ICANN 65. The working group to review and agree on the recommendations coming out of these sub-teams.

Then we go to the open TMCH questions that I mentioned. Then ICANN 66 and then agreeing on open questions for inclusion in the initial report. So initial report, drafting of that. Preliminary recommendations also to go in the initial report. Those would include URS Sunrise claims and TMCH. And then if you scroll a little bit further, Ariel.

Then you'll see that there's drafting of the initial report, publishing the initial report for public comment, that would fall in late October of 2019. And then assimilating those comments and projecting to submit the initial report to the GNSO Council by mid-late April 2020. And Ariel has put the link to the timeline document into the chat. Thank you so much, Ariel. Thank you, yes. There's a light at the end of the tunnel. It's pretty far though. Did you have any follow-up questions, Claudio?

CLAUDIO DIGANGI: No, that was great. Thanks a lot.

JULIE HEDLUND: Thanks so much, and thank you all. Just again as a reminder, and as Ariel noted, once the sub team finishes up its work prior to ICANN 65, then the focus would be on presenting the preliminary recommendations and answers to charter questions full working group, which could happen at ICANN 65. With that, let me turn back to the agenda, and also let me turn the meeting over to Roger, who will be chairing for agenda item three.

ROGER CARNEY: Great, thank you. So I saw Ariel pull up our checks dash document here, and we'll jump to question three. I just wanted to thank everybody before we get started on all the conversation going on the list. It's what we had hoped for the whole time was to get a lot of discussion on list so that we could bring it here. The other thing now that we're jumping on to question three is, we didn't find any comment on question three on the list, so we're going to assume everybody's happy with it, and move on and we won't have to talk about it, if that's okay. No, just kidding. We will definitely discuss question three. Kathy, you have your hand up. Please, go ahead.

KATHY KLEIMAN: Hi Roger. So one of the reasons I think it's been quiet on the list, and I wanted to ask about it, has nothing to do specifically with question three, is ... It's really weird, what's going on, and I was hoping you could explain it to me. We have the old summary table,

and then we have the discussions that have been taking place on the list.

And for a while, staff seemed to be cutting and pasting the recommendations, so we worked from that. And then we had some Google docs, and then ... Maybe in the sub-team, we don't. And then we have the status check that doesn't seem to correspond to either of them.

And so there seem to be at least three different versions of things floating around. So I wanted to let you know, I'm not sure how many people are reading the status check. I have trouble when I read it knowing what answer the recommendation is responding to. I think we may have a bit of a disconnect. But maybe everybody else is completely in sync. Thanks, Roger.

ROGER CARNEY:

Thanks, Kathy. No, it's great to bring up. And I'll let Ariel jump in after I just talk real quickly here. My document that I'm going from is this status check document. This is what we'll be providing to the whole group at the end of this. Obviously, this isn't current with the discussion that are going on in the threads. This document will get updated with those discussions as we talk about them on the call. As far as the more detailed summary table, I view that as the background, as supporting of this more, hopefully, concise document, and providing more details. But I'll let Ariel jump in if she has any comments on that.

ARIEL LIANG: Thanks, Roger. I think you covered the essence of that. There's no un-synced information there. So basically the status check and the summary table, they both have the same proposed answer and preliminary recommendations content. That's completely synced, and I'm not sure how, Kathy, you saw the inconsistency, and if you do see that, please point to the specific part and I will check.

KATHY KLEIMAN: Ariel, has this ever been posted on the list, the thread that we're supposed to have been working on?

ARIEL LIANG: We posted on the homework e-mail, it's always linked from the homework e-mail. And I'm also posting the Wiki page where all the documents are stored. You can see all the information there. And we also ...

KATHY KLEIMAN: But Ariel, that means that the thread has never had this text on it. Is that right?

ARIEL LIANG: The thread doesn't have the most updated text. So when we post the thread, that's just as a vehicle for you to put in comments. But you should check the status check document or the summary table that has the latest text for the proposed answer and preliminary recommendation.

KATHY KLEIMAN: Can I make a recommendation? It's a personal one. That when the status check changes, then you should post something to the thread. I'd prefer if you posted the actual text. You know, the proposed answer recommendation. But even if it's posting a link that says, we have now updated this, please review. And that way everyone's on alert that there's something new to look for.

ARIEL LIANG: Thanks for that suggestion. I don't want to take too much time from the discussion, and I hope I addressed some of your question here, so I'll turn over to Roger.

ROGER CARNEY: Thanks, Ariel. And just to follow up Kathy, I think that's a great idea. As you can see this document hasn't been updated for almost two weeks now. So I think that's a good idea as we change and update our responses here in this document. We can post that back to the thread when those updates are done. Okay.

So we'll just jump into question three if no one else has questions? Okay. Excuse me. So question three has several parts to it. We'll jump into part A. Does the trademark claims notice to domain name applicants meet its intended purpose? So we have an answer and some preliminary recommendations here. I will open it up to anybody that has comments. Let's start with the answer first. Rebecca, you've got your hand up. Please go ahead.

REBECCA TUSHNET: So since this doesn't seem to have been updated from our last call. I think it's still dependent entirely on whether it's effectively giving notice. We've agreed that in fact the notice that we have is confusing so I'm not sure that this actually has a separate answer. And you could say it's supposed to meet its purpose, but I don't know that more than that can be said. I just feel like we've been through this. Thank you.

ROGER CARNEY: Thanks, Rebecca. Comments from anyone else? I think to follow up with Rebecca, we did touch on this really briefly at the end of the last call, I think a new discussion ... Let's just start from there and go from there. I think that the same issue is kind of [the thing is] ... The intended purpose, I think, I've got my fingers in quotes here, is kind of the question of what is the true intended purpose, and how do you answer that. Kathy, please go ahead.

KATHY KLEIMAN: Coming off mute. Are we responding, Roger, to 3a, b, and all the sub-points as well?

ROGER CARNEY: Thanks, Kathy. We're just doing the main 3a at this point. We'll move on to the sub-items after that.

KATHY KLEIMAN: And I will wait, Thank you.

ROGER CARNEY: Thanks, Kathy. Lori, please go ahead.

LORI SCHULMAN: Hi. I want to support what Rebecca's saying about the claims. I do kind of feel like now we're in a little bit of a loop, and I'm not quite understanding why. Now, I will admit to the group, I haven't been on the calls probably for the last two, maybe three weeks, you'd have to check the attendance for ... Because of other professional obligations. But that being said, is ... I'm pretty sure this is where I left off three weeks ago, okay?

And so I agree. I don't want to go back and rehash. I believe that the proposed answer was agreed to, that's the position I'm going from for the straight 3a. But in terms of Rebecca's point about the notice itself and the 3a1's, the 2's, I remember having extensive discussions about this. And I think all sides of this issue agree that the notice itself, there could be a real community service in rewriting it and clarifying it in ways that are accessible to whatever level of domain portfolio owner you are. Whether you have one or 30,000. So I want to reiterate that I think Rebecca's point has been discussed. And, I believe, answered.

ROGER CARNEY: Great, Lori. Thanks for that. And again, I think that we have discussed all these items at some point. I think what we really need to do now is come to an agreement on the actual text of the answers and the recommendations, and if we need any changes, let's get those changes made. If they look good, let's move on, and we're

done and we won't have to come back to it. Rebecca, please go ahead.

REBECCA TUSHNET: Thank you. I don't think this is actually a question of intended purpose. It says intended purpose of notifying prospective domain name registrants, and based on what we have it does so sometimes and sometimes it doesn't. Because it's not a good notice. So I feel like we adequately addressed that in the other proposed answers. Thank you.

ROGER CARNEY: Great, thanks, Rebecca. Michael, please go ahead.

MICHAEL GRAHAM: Just to say I agree with Lori's comments. I think this accurately portrays where we've been, to the extent I've been able to catch up. And there are caveats [that are following] the sub-answers and I think we can move on from this one. Thanks.

ROGER CARNEY: Okay. Kathy, please go ahead.

KATHY KLEIMAN: Great. Following up on what Michael said, and what's going on in the chat. Roger, what kind of last line can we add to Q3a that would say that there are caveats, or there are flaws or concerns, see below? Just so people don't stop reading.

ROGER CARNEY: That's actually god. And I think that was brought up right at the end of the call last time. I can't remember. Maybe staff can pull it up or not. I think someone actually posted something in chat right before we ended the call. I don't know if that was Michael. Maybe it was Michael, I can't remember for sure. With something similar to that. Okay, I'll go on. Greg, please go ahead.

GREGORY SHATAN: Thanks. I also feel that the text that's there currently, in Q3a, reflects where we stand and even if the notice is flawed, I don't see that it does not meet the purpose.

We agree it can be improved, but the flawed notice I think doesn't result in a lack of notice or failure of the intended purpose. I do agree though that we could have some sort of a last sentence or clause at the end of the proposed answer so that people don't think that everything's hunky-dory. Sorry, I don't have any text off the top of my head, but hopefully, we can come up with some sort of a lead-in to the [arts]. Thanks.

ROGER CARNEY: Great. Thanks, Greg. Kristine, please go ahead.

KRISTINE DORRAIN: I'm sorry. I'm eating, and I just put my comment in the chat. Basically, and for those of you following both working groups, I have a suggestion that we do answer ... So we would say Q3h1, read the

question. Put the proposed answer, but that's going to say recommendations or answer or whatever. And then underneath it have a ... Whatever we're going to call the recommendation or the question, the thing we want the community to comment on.

And in this case, I think we want to comment on ... We have identified some flaws in the claims notice. If you have some you'd like to call out to us, as the community starts working on drafting, now is your chance to throw those in. I think this is where we have a call to action. And I think this is what we need to keep in mind. Thanks.

ROGER CARNEY:

Great, thank you. I guess, just to follow up on that, is that an action that the other sub-team is actually doing now? It would be good to be consistent between the two sub-teams, so I'm just curious.

KRISTINE DORRAIN:

That call is after this one, so we haven't discussed my proposal yet. But I just wanted to float it out there, because it seems ... My goal – and I'll just explain briefly – is we have a whole lot of discussion and debate back and forth, and some of that will likely make its way into our initial report, because we need to give the community the background, right? The thing is most of us come into this pretty well educated.

I will go to my stakeholder group and be like, here is what you need to know. You don't have to read the commentary if you don't want to, because I'm going to tell you. We need to have the question, the answer, and then like, what do you want the community to do, to

say, to comment on? And then have the background after that. And so that's the format, is like the question, the answer and then the recommendations/call to action followed by the discussion.

That's my suggestion and we can discuss it here or then. But I think that it makes sense to make sure that we separate out what I'm calling the debate or the discussion from the call to action to the community.

ROGER CARNEY: Okay, and you'd like to see a more clear delineation between those two items? Clearly state, and this is what we're asking as well.

KRISTINE DORRAIN: Yes, because I was in charge of, with a couple other people, drafting the entire registry stakeholder group comments for the sub-pro, which as you know if you've read it, and I'm looking it over on my desk right now, how many inches of paper I have printed. And I'm sure this is going to be the same, right? When you get this massive overwhelming document and you ask burdened stakeholder groups and other people in the community to comment, there's got to be really clear, here's what we want, please answer in this box.

Otherwise, you end up – and I'm going for the review of sub-pro right now, where people didn't really answer one-on-one. And we have a mess, an absolute mess to try to straighten out. So to have a specific, here's question one, what's your answer? Here's question two, what's your answer? Give the community a really

easy to follow format, otherwise, we're making out job on the other end so much worse. I will get off my soapbox now, thanks.

ROGER CARNEY: Thanks, Christine. And I think what I'll suggest to that is the two groups, the claims and trademark clearing, get together actually after the calls today, and talk about how to actually make that actionable. I think if we get the words in here right, we can clearly separate them if we need to if that's what makes the most sense.

CLAUDIO DIGANGI: Roger?

ROGER CARNEY: Go ahead, Claudio.

CLAUDIO DIGANGI: I was just going to say to follow up on Christine's comment. It just reminded me of when I think it was the EPDP, the expedited PDP on WHOIS, they were looking at GDPR. They used a template when they put it out for public comment. It wasn't required that people use that but there was some sort of document that staff created that laid out, basically, questions for specific areas where comment was requested and then there was a free-form text box, I think, to add responses. I just wanted to mention that, [it sounds helpful.]

ROGER CARNEY: Great. Thanks, Claudio. Please, go ahead.

JULIE HEDLUND: Roger, this is Julie Hedlund with my hand up, I can't put my hand up, since hosts can't do that. Just back to Kristine's suggestion, and assuming that we can try to make this also consistent for the Sunrise sub-team, staff can certainly follow the format that she suggested, probably as a third column in the status check document. But we'll look at what is the best format and simplest format to do that.

We'd also like to suggest that we get the threads closed so that we can incorporate the suggested or agreed-upon text coming out of those threads for the answers to the questions, any questions that may go into the initial report, in the format that Kristine has suggested, so that we can start building up that single document along the lines that Kristine has suggested.

ROGER CARNEY: Great, thanks, Julie. Alright, so I think we're getting an agreement that the proposed answer looks good, it's the call to action or that next line of, do we add just a line to this text, or do we call it out and say, hey, action, please read on and see what needs to be done. Is that the general agreement from the group? If you don't agree, please let me know. And we're talking about just specifically 3a right now. Okay.

Let's go ahead and move on to 3a1 then. "If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved?" Again, I think we've had a lot of discussion on

this but I specifically want to know if the text of the answer is okay by everyone. If not, let's make the suggested changes. And if there's, like we just talked about, call to action, then we can talk about how to get that done. Cynthia's not too sure about the answer, I assume from her ... Susan, please go ahead.

SUSAN PAYNE:

I put it in the chat a bit earlier, but it got lost as the text scrolled up. In this question and the following one, I just feel that the use of the term 'based on the data' is just elevating what we have, and giving it greater weight than it deserves. I'm not disputing the overall tenor of the response, but I just think at best we have based on the minimal data that the sub-team believes, or the working group believes, but the data overall ... This is a very positive response based on really pretty poor data, generally, overall on all fronts. I'm not disputing the basic comment, but I just feel it needs some kind of caveat on the data part.

ROGER CARNEY:

Okay, great. Thanks, Susan. Greg, please go ahead.

GREGORY SHATAN:

Thanks. First, I agree with Susan with regards to the data. And the data, of course, is still just one input to the work that we're doing, it includes the experiences that all of us have in the group. And I agree that we don't want to make it seem that this is somehow magically a data-driven exercise because what we have here in cold data is somehow magically really strong data. It's not. I'll also

say that we could say that some have found the claim notice to be intimidating, hard to understand, or otherwise inadequate.

I think that the flat idea that it is these things is I think overstating about the data and the general view or the consensus view. Obviously, there's those whose view is that it is, and that's ... And there are others who will read it and say, "It's legalese crap, but I'm not intimidated by this and I understand it." I also think the stuff in the parenthetical is unnecessary and incorrect, or at least inappropriate. The thing about lack of identifying details of the trademark is really dealt with in Q3a2. So if we want to be redundant and say things twice, we can, but I prefer not to.

The so-called issue with figurative/design marks really is a TMCH discussion or concern. There's no agreement that that's an issue, or at least where the issue stops or starts, and how, if at all, that would be reflected in the claims notice. So I think that should come out entirely. That's a positional insertion and not one that we have a broad agreement on, and it's really just clogging the work up here. Even by me talking about it. Thanks.

ROGER CARNEY:

Thanks, Greg. I think the point about the data I think people are agreeing with. I don't want to throw away data, because we do have, again, limited data. But there is data that supports the answer to the question. Maybe we can come up with some words that show that it's limited data, and/or the experience of this group that leads us to this answer as well. But I'll be interested to hear other comments on removing that last part, the parenthetical. Rebecca, please go ahead.

REBECCA TUSHNET: Thank you. The best data we have shows that when people who are not INTA members, but that are domain name registrants, when they are asked what this question means, and given four options, two of which are correct and two of which are not correct, they pick from those at the same rate. So basically randomly. If the claim is that no-one understands the notice, of course, that's not true. I don't believe that's the argument, or what anyone would understand this statement to be making.

I'm not going to die on the hill if we want to say some number of registrants find it hard to understand, intimidating, or otherwise inadequate. But just because you don't like the data that we managed to collect doesn't mean it's not the best data we have. And I will point out, the Analysis Group did standard measures for checking whether people were qualified.

The analysis group runs these kinds of studies. Brand owners rely on these kinds of studies all the time. If you can say you don't believe it, I guess I can't stop you. But it's the data that we have, as opposed to personal experiences that actually aren't even shared to the group, just asserted as being such. Thank you.

ROGER CARNEY: Thanks, Rebecca. Kathy, please go ahead.

KATHY KLEIMAN: Can you hear me? I'm on a different microphone.

ROGER CARNEY: I can hear you fine.

KATHY KLEIMAN: Terrific. Technology works, yay. We could argue this for the next hour, but this seems to be the question, or the sub-question, where agreement was all along. So let me suggest that we add the word 'collected,' 'based on the data collected.' But that's what we're doing. And then the rest of it I think is a very adequate summary. We have talked in detail about the fact that the claims notice was never drafted for figurative and design marks, and for logos, ever. And you can ask Paul McGrady about it too. We never drafted it for that, because that wasn't supposed to go into the clearinghouse. So that is an issue. I think we've largely got this right, and we should go on to bigger questions. Thanks.

ROGER CARNEY: Thank you, Kathy. Cynthia, please go ahead.

CYNTHIA KING: Hi. So like I said, I wasn't feeling the language exactly. I think that rather than saying 'based on the data', I think we could say something that says that the respondents identified issues and outlined those issues. I agree with Greg that the, for example, lack of identifying details that the parenthetical could be just gotten rid of, and handled in the next section, 3a.ii.

So I think that it's not that we don't believe in the data, I think there can be intelligent people that disagree with what the data specifically says. So we don't need to quarrel about the validity of the data. Let's make a statement that encapsulates what we know, which is that respondents identified issues, and let's move on. Thank you.

ROGER CARNEY: Great, thank you. Michael, please go ahead.

MICHAEL GRAHAM: I agree with the move on. I just have a question, and someone can point this out because I don't have any of it in front of me, but data that supports the portion of the statement that it is intimidating. And I was thinking rather than 'is always', 'maybe'. Thanks.

ROGER CARNEY: Great, thanks, Michael. Kathy. Claudio, did you have a comment?

CLAUDIO DIGANGI: Yes. Michael actually just mentioned it, which was just the 'maybe' language. Clearly, there's a different variety of registrants out there, and there's not going to be a universal interpretation. But if that is part of the concern, then we should mention it and I think the 'maybe' language is a good way to go. Thanks.

ROGER CARNEY: Okay, great. It sounds like there's some agreement on removing or at least moving the parenthetical. I want to ask Kathy about the idea of moving that to the next response in 3a.ii. Kathy, any comment on that?

KATHY KLEIMAN: Yes, I would recommend not moving it. Again, I think this is a well-phrased short sentence that has a lot of information, and then you can go on to the next issues. I think it was well done. Thanks, Roger.

ROGER CARNEY: Thanks, Kathy. Okay, let's go on to the second part here, 3a.ii. Does it inform domain name applicants of the scope and limitations of trademark holders' rights? If not, how can it be improved? Again, we have the 'based on data' here. It does not adequately inform domain name applicants of the scope and limitations of trademark rights. Again, I think everybody said we've talked about this. But I'm looking for any improvements that we can make or anything that has to change for us to move forward on. Michael, you've got your hand up. Please go ahead.

MICHAEL GRAHAM: Yes, in reviewing this, I thought of this last night. I think this is generally accurate. The problem is in the second part of the question, which is not addressed in the proposed answer in that it's not 'how can it be improved?' And just to point out the difficulty in that is that there are so many variables in determining what the scope and limitations of a trademark holder's rights may be if it's focused on trademark rights rather than rights within the domain

name space, which somehow is what I was thinking we should direct this to. So those rights are sort of determined based on URS or UDRP bases.

Anyway, I think we need to get that second part of the answer, but I think it's a difficult one, and I think it is sort of defined within the sphere of domain names, rather than generally in the realm of trademark owners. Otherwise not only will there be miles of paper, but also treatises written on what these may be. Thanks.

ROGER CARNEY: Thanks, Michael. Any other comments?

KATHY KLEIMAN: Yes, Roger.

ROGER CARNEY: Go ahead, please.

KATHY KLEIMAN: Okay. Again, we may want to add that word 'collected' again, 'based on the data collected'. I think again we kind of agreed this is a short way of saying go forward and let's correct this. We could spend a lot of time here, but I think we kind of agreed that the claims notice does not adequately inform the domain name applicants of lots of things and that's why we want to edit it.

ROGER CARNEY: Thanks. I'd just ask you, Kathy, kind of going back to the 3a one, first part, does it make sense to have another line in here that answers that second part of the question? Can it be improved? Do we say, ["Hey, see] the recommendation?" Or whatever, I'm not even sure if that makes sense, but ...

KATHY KLEIMAN: Oh, that's a good point, Roger. Yes, we think it can be improved. And then to channel Kristine, and we are seeking public comment for some of the ideas we put in the recommendations. Thanks.

ROGER CARNEY: Okay. Thoughts, anyone else? Comments? Great. let's go ahead and move on to the next one. Alright. 3aiii. Are translations of the trademark claims notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights? Once again, we have a 'based on data', which maybe we update.

The answer: the current requirement on translation of trademark claims notice is not deemed effective in informing domain name applicants of the scope and limitation of trademark holders' right. Sub-team noted however that it may become quite complex for a registrar to operate the claims notice if all possible translations are required. Open this up. Any suggested changes, any required changes, to the proposed answer? Kathy, please go ahead.

KATHY KLEIMAN: Yes. I don't understand it, actually. Based on the data collected, the current requirement on translations of the trademark claims notice

does not seem effective. The current requirement on translations isn't taking place in many cases. I don't have the words in front of me, but the current requirements on translations of the trademark claims notice does not seem to be taking effect, does not seem to be taking place in many cases, so ...

ROGER CARNEY: Just to follow up, the current requirement is English in the agreement, right? The language of the agreement.

KATHY KLEIMAN: Right. That's my understanding.

ROGER CARNEY: That was my understanding. And you're suggesting that that might not even be happening.

KATHY KLEIMAN: Right. We found that some registrars were not delivering any translations. So [it could say that.]

ROGER CARNEY: Okay. Other thoughts on this from anyone?

KATHY KLEIMAN: What were you going to say, Roger? I think I ...

ROGER CARNEY: I [wasn't] going to jump ahead and say let's change this. I want to hear what other people think about it. Susan, please go ahead.

SUSAN PAYNE: Thanks. I was just going to say that if that's the case then really, we don't need a recommendation that changes the current requirements in that case. We simply need to be reiterating that the requirements are not being followed and that they should be. Is that what you're saying, Kathy? Because I'm not quite sure what your point is. This is a compliance issue rather than an issue for the working group. But I'll put my hand down.

ROGER CARNEY: Go ahead, Kathy.

KATHY KLEIMAN: Okay. Actually, it's good, now I'm searching and I'd love staff input. This may have been one where 'must' got changed to 'should' in implementation. I'm not sure. Going back to your question, what's the current requirement, Roger. I think the intent was always that, particularly with IDNs, the internationalized domain names, that the translations would take place, that there would be a translation in the language of the registration agreement. But I'm not sure that made that into the actual language of the guidebook.

So I thought that the purpose of our recommendation was to make sure that registrants got something they could understand. So that if that means changing the language from 'should' to 'must,' and then providing a translation for the registrars that they can just cut

and paste. This discussion was a while ago. But I think we found that it was more than an implementation problem. Thanks, Susan.

And I wish my memory were clear on this, but there was a translation issue. I think if we can make the proposed answer reflect that based on the data collected, not all registrants or potential applications are getting the trademark claims notice in the language of the registration agreement. And that they should, or they must. I'll stop talking. Thanks, Roger.

ROGER CARNEY:

Great, thanks Kathy. And maybe we can have staff research that and just make sure. Again, I don't know what the language was. I know that when we built our interface, we had thought that it would be either English or whatever the agreement was in.

I don't know if that was a requirement or not, and I think we can have that checked. But I think the group is suggesting that either if it is that way now, let's keep it that way and enforce it, or if it's not that way, let's make it that way. Is that what I'm hearing? If people disagree, please let me know. Thanks, Mary. That's the current requirement, and [it's 'should.'] Okay. And I think what this group is suggesting is it must be available in both. Susan, please go ahead.

SUSAN PAYNE:

Sorry, I forgot to come off mute. Thank you, and thanks, Mary, for that language, that's really helpful. I'm therefore circling back to our proposed answer actually, I think maybe our answer is correct. Because what we're saying is that by having the term 'should' rather than 'must' in relation to the translation, that's not an absolute

requirement, and consequently we don't think it's doing the job of adequately notifying non-English speakers.

So actually I think what we've got as the proposed answer is right. That we don't think that the requirements, i.e. having the term 'should' is adequate, and hence the recommendation. So I think I'm agreeing with Kathy, but I'm actually thinking that the proposed answer is fine, because the language currently is not good enough, and it's not imposing a sufficient obligation.

ROGER CARNEY:

Thanks, Susan. And I would ask then, are we looking at maybe implementing Rebecca's idea here in suggesting that let's provide a hint to the readers of this that say, comments on changing this from 'should' to 'must.' Just a suggestion. Kathy, please go ahead.

KATHY KLEIMAN:

That sounds good. 'Should' to 'must,' because that's exactly what we're doing. Question. Do we need – and to Susan as well as to others – the second line? The sub-team noted however that it may become quite complex for a registrar to operate the claims notice if all possible translations are required. Because that's not a recommendation. Should we just delete that and go on to what we were talking about? Language of the registration agreement, and then a link to other languages.

ROGER CARNEY: Good question, Kathy. And Michael, you said as long as there's standard in all UN, you're not suggesting putting that here, but as long as that's documented?

MICHAEL GRAHAM: I was just thinking. If there are how many languages, 200? So I was wondering how that could be phrased.

ROGER CARNEY: Okay. I think that in the recommendation we mentioned the six UN languages. To Kathy's point, I think that maybe that last sentence is not needed. As she mentions, it's not what we're trying to answer. Kathy, is that a new hand?

KATHY KLEIMAN: We may be looking at the wrong ... Actually, the last sentence ... I think that that last sentence in the recommendation is good, the one that's highlighted on the screen now. it's the last sentence of the proposed answer to staff, that I think we can delete. Because it's how we got to the answer in the recommendation. Thanks, Roger.

ROGER CARNEY: Great, thanks, Kathy. Susan, please go ahead.

SUSAN PAYNE: Yes, just a quick agreement. I think if we've got that explanation in our proposed answer that clarifies the should/must thing. I agree with Kathy. I think this language is positively unhelpful, really,

because we're not and we never were suggesting translations into multiple languages. But the note that it would be beneficial to have links to somewhere where one can find different languages, I think we did talk about, and we felt that that would be helpful to people.

ROGER CARNEY:

Great. Thanks, Susan. Okay, unless there's any more questions, we have four minutes and maybe we can get 3b done. Let's go ahead and try. Question 3b. Should claims notifications only be sent to registrants who complete domain name registrations as opposed to those who are attempting to register domain names that are matches to the entries to the TMCH? I think the majority of the people went one direction on this, and we had a few that thought maybe it would be different. So I'll open it up to comments, questions. Anything that needs to be changed in the answer? Kathy, please go ahead.

KATHY KLEIMAN:

Okay. I was the one outvoted on this one, so I guess the answer goes against interests. I just want to say that. But I think we should take out the first sentence – I don't think it makes sense – of the proposed answer. “The claims notice should not be sent only to registrants who complete domain name registrations.” So that's not ... I'd take it out because also it's kind of a weird sentence. I think we're saying the claims notice should generally be sent to potential registrants.

And then under the recommendation, we tried to do that operational fix to solves some of the ... To at least begin to address the issues.

What did we call it? The shopping cart, or the pre-registration of domain names? So I would just take out the first sentence on proposed answer because we voted down my idea. Thanks.

ROGER CARNEY: Great. Thanks, Kathy. Susan, please go ahead.

SUSAN PAYNE: Hi, thank you. Sorry, this is a bit like trying to draft on the fly. The only reason why we have that first sentence in there is because of what the specific question 3b was, which is, should it only be sent to registrants who complete? And so we're trying to answer that by saying no, the claims notice should not only be sent to registrants who complete.

And I do think we still need it. If we take it out then I think we need to include something that specifically gives that answer somewhere else in the second sentence instead. Because otherwise it's [inaudible] –

ROGER CARNEY: We're not answering.

SUSAN PAYNE: – read the question and to read from the second sentence onwards, and not really understand how we're answering the question properly. So personally, I think we're better keeping it but just making it clear that we're saying, in answer to the question, no. The

claims notice shouldn't only be sent to the registrants who completed the registration. It should be sent pre-registration.

ROGER CARNEY: Okay, thank you. Any other comments? I'll just throw in a non-co-chair technical discussion here as, if a potential registrant is shown the claims notice, they haven't agreed to the registration agreement yet. What languages should be provided for that registrant, when you don't know because they're only a potential registrant? Just food for thought. Cynthia, please go ahead.

CYNTHIA KING: Based on what Susan said, can we not eliminate the first sentence as Kathy proposed and say no, the claims notice should generally be sent to all potential registrants who are blah, blah, blah. Can we not just shorten it?

ROGER CARNEY: Good suggestion. Comments from anybody on that? Susan agrees that that makes sense. Michael, please go ahead.

MICHAEL GRAHAM: I'm just wondering, and perhaps someone can clarify, why the use of the term 'generally?' If that's something that's discussed in the preliminary recommendation it should be discussed there. But having it here means that there are exceptions to it which are unclear in our answer.

ROGER CARNEY: Great. I agree. Cynthia?

CYNTHIA KING: I think that the reason that we did that was because there are some of the potential exceptions. We had talked about potential exceptions for dot-brands and stuff like that. So 'generally' was the word that we used instead of 'every.'

ROGER CARNEY: Okay, thanks. Susan, please go ahead.

SUSAN PAYNE: Sorry, and this really is kind of getting into the weeds, isn't it? But I think if a claims notice is going then it should be going to potential registrants, so I don't think the 'generally' is needed. I take your point, Cynthia, but in those cases, if there's an exception, they're not getting a claims notice at all. So I don't think in the context of this question, which is about the timing of the claims notice, it creates a confusion.

Because it's not a question about do you get one or don't you get one. It's about what timing should it come? And so I think the 'generally' here in this context is really confusing.

ROGER CARNEY: Okay, great. Michael, please go ahead.

MICHAEL GRAHAM: In that regard, if we want to point out that there may be exceptions, I think we should do so as far as the language here, rather than having this term generally open up a whole possibility. So the claims notice should be sent to potential registrants who are attempting to register domain names that are matches, blah, blah, blah, except in particular exception cases, or some language like that, at the end of the statement, so that we do identify that there may be exceptions, but are clear in that, and if we do include the exceptions, I think we need to provide that information as part of the answer. Thanks.

ROGER CARNEY: Great, thanks, Michael. And as Kathy just posted a comment from Rebecca's, and I wonder if the [where this in is] when it is required, may be also an option. But we are down to our last couple minutes here, and I know that the next call is going to start, so I will turn this back over to staff. Thanks, everybody.

JULIE HEDLUND: Thank you so much, Roger. This is Julie Hedlund from staff. Thank you all for joining and thank you very much, Roger, for chairing. And we'll go ahead and adjourn this call to allow a few minutes for folks to make the transition to the next call, which will start at five minutes after the top of the hour. Thank you all again. Bye-bye.

TERRI AGNEW: Once again, the meeting has been adjourned. Thank you very much for joining and pls remember to disconnect [all remaining lines.] Have a wonderful rest of your day.

[END OF TRANSCRIPTION]