
ICANN Transcription

RPMs Sub Team for Trademark Claims Data Review

Wednesday 10, April 2019 at 1700 UTC

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<https://gnso.icann.org/sites/default/files/policy/2019/audio/audio-rpm-review-trademark-10apr19-en.mp3.mp3> [gnso.icann.org]

Adobe Connect Recording: <https://participate.icann.org/p8060iaqlgn/?proto=true>

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MICHELLE DESMYTER: Hello. I'd like to welcome everyone. Good morning, good afternoon, good evening to all, and welcome to the RPM Sub-Team for Trademark Claims review call on the 10th of April 2019. In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you happen to be only on the audio bridge today, would you please let yourself be known now?

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

With this, I'll hand the meeting back over to Julie Hedlund. Please begin.

JULIE HEDLUND:

Thank you, Michelle. This is Julie Hedlund from staff. Thanks, all, for joining today. I'll quickly run through the agenda. The first item of business will be the updates to statements of interest, and then Item 2 will be a continuation of the developments of preliminary recommendation. That will be discussing individual proposals relating to Questions 2 and 3, with Question 2 the various individual proposals also related to that question and also for Question 3 and, time permitting, we'll move to discussion of preliminary recommendations for Question 4. Then there is Item 3, Any Other Business.

May I ask if anyone has Any Other Business they'd like to raise and add to the agenda?

Seeing no hands, then let me ask if anyone has any changes to their statements of interest.

Hearing none, I'm going to go ahead then and turn over to Martin for Agenda Item 2. Martin, please.

MARTIN SILVA VALENT: Thank you very much, Julie. I see we don't have the slides – or don't have the document on-screen. Ah, [then it's being updated]. Thank you very much.

Okay. So today we're going to go straight through to Question ... let me check this because I have something different.

Weren't we supposed to be starting with Question 4? No, sorry. I'm confused here. Julie?

JULIE HEDLUND: Hi, Martin. Yes. We do have Question 4 on the agenda, but we note that we are now as of today starting the discussion of the individual proposals. So in order to do that, we're going to Questions 2 and 3, as those relate to the [inaudible] proposals. So for Question [inaudible], there's individual proposals [inaudible] for Question 3 individual [inaudible] one. So we suggest that you go back [inaudible] Question 2 and we can start with ... Susan Payne is asking, "Why aren't we finishing the preliminary recommendations first?" As [inaudible] we mentioned on the last call, and as the sub-team Co-Chairs for both sub-teams have discussed, it seemed that we could gain some efficiencies by addressing individual proposals as we discussed the preliminary recommendations and save time by combining the discussions at once. But let me go back to Martin for confirmation of that. Anyway, let me go turn things back to Martin. Thanks.

MARTIN SILVA VALENT: Thank you very much. Yes. I thought that we were going to finish 4 first, but if [that's true], then we'll talk about going directly back

again to Question 2 on individual proposals. I can't move my document. I don't know if that's the case for everyone else. It's not. Thank you.

Okay. So if I understand correctly, we are supposed to re-go through Question 2 and, this time, talk about the individual proposals. We have the link there in the agenda. That is correct, Julie?

JULIE HEDLUND: Yes. That's correct. Question 2 and individuals' proposals 1 to 12. But Kathy had her hand up.

KATHY KLEIMAN: Not speaking as a Co-Chair, speaking as a participant. For some reason, I thought we were moving on to Question 4 as well, and I went back and I looked at the agenda. It was pretty clear we were going back [inaudible]. I prepared for going forward. I don't know what other people did. [Not that we want to] spent a lot of the time debating it, but do we go forward and continue the momentum, or do we go back [inaudible] save time? Thanks.

JULIE HEDLUND: Martin, how would you like—

MARTIN SILVA VALENT: If members on the call feel that they're not prepared to address Question 2 and 3 individual proposals, then I don't want to force

them to go talk about something they're not preferred. [I prefer] we just go to 4 and 5.

I'm trying to read the chat here.

Yeah. "[inaudible] prepared for discussing individual proposals for 2 and 3." So I don't know. I don't want to force anyone. I would like to stick to agenda if we can since that was the [plan]. So, yes, let's do that. Let's start with Question 2 individual proposals.

Okay. So we've already been through here, so I don't know if I should read every question again. But let's start up with Question 2. If the answers to the [agreed] claims Question 1A is no and 1B is yes, or if [inaudible] about the trademark claims notice and/or the notice of registry names should be adjusted, added, or [removed] in order for it to have its intended effect under each of the following questions.

I'm not seeing the individual comments here. Julie, you have your hand up.

JULIE HEDLUND: Oh, sorry. I lowered it. We can bring up the individual [proposals] if you'd like, if that's helpful. Unfortunately, we can't have both up at once.

MARTIN SILVA VALENT: It's okay.

JULIE HEDLUND: But right now we've got up Individual Proposal 1, and we can bring up Individual Proposal #12 as well if that's helpful also. Thank you.

MARTIN SILVA VALENT: No, I would like if the individual that submitted the proposals [want to address,] like we did before. In this case, I believe that ... let me see. [Do we even have] the name of the submitter here?

JULIE HEDLUND: I see Cynthia King has her hand up.

MARTIN SILVA VALENT: Cynthia, do you want [inaudible]?

CYNTHIA KING: My question was procedural. Are we going to have the person who made the proposals speak, give a quick refresh, or are we going to go right into the discussion? I mean, it's pretty self-explanatory, but I didn't know what the process was going to be. Thank you.

MARTIN SILVA VALENT: In my opinion, I think we should go straight to the discussion if we can. So if that's okay with you guys, I will open the floor for discussion on Question 2.

Cynthia, yeah?

CYNTHIA KING: Hi. So we're discussing the proposal on the board from George. I don't agree at all with the proposal. I understand why George thinks that this is unnecessary, but I think we don't throw the baby out with the bathwater. The process and procedures for this was a [group] effort that occurred before the new gTLDs were released. It was a compromise between many factions, many stakeholder groups, of ICANN. I think that it has worked. I think that if we can fix the notice so that it's not so intimidating and provides a little bit more information, I think that would best serve the ICANN community. Thank you.

MARTIN SILVA VALENT: [inaudible]. Since we don't have George, of course we're going to be missing here probably a relevant voice to explain this text. But I'm pretty sure everyone can have their own mind on this.

Phillip, you're next in the queue.

PHILLIP CORWIN: Let me start by speaking in a co-chair capacity, full working group co-chair. Mr. Kirikos will not be available to advocate for his individual proposals because of his non-compliance with a request from council leadership to affirm his commitment to an enforceable expected standards of behavior. But that doesn't mean we can't discuss them.

Speaking in a personal capacity, I would hope that members of this sub-team and on the full working group, when we get back to

the Trademark Clearinghouse – and I've been saying this consistently since the early days of this working group. The default position if nothing changes is, with the RPMs we have, I think there's plenty of room for improvement of an incremental variety. I do think we should focus on putting out for public comment, which is our job at this stage, proposals which either have broad agreement – for example, there's pretty broad agreement in this sub-team that we need to rewrite the claims notice; we haven't focused on the language yet, but there's general agreement on that – on the substance or where there's at least agreement that something that's being put out has some chance of getting consensus support at the end of this process when we look at the final report and that it's worth getting community feedback.

So I would say, in regard to proposals to eliminate any of the RPMs, that I don't envision any possibility of them getting consensus support from the working group or the community, and just as I would not envision a brand-new RPM getting consensus support.

So I'll stop there and step back, but in a personal capacity, I certainly don't endorse eliminating the claims notice or the ability to register recorded marks in sunrise. I'm certainly open to improvements to both of those RPMs. Thank you.

MARTIN SILVA VALENT: Thank you very much, Phil. Greg, you're next.

GREG SHATAN: Thank you. I am not in favor of this proposal. I would also take issue with many of the statements and the rationale, which, although many of them are stated – or maybe they’re all stated as fact – a number of them are opinions or they are conclusions without particular evidence, such as statements that the most desirable extensions have already been applied for in past rounds, which reminds me of the commissioner of patents, who wanted to close the patent office around 1900 or so because all the good inventions had already been made. Who knows what we’ll all see in the next round and will catch fire and what won’t? Clearly, new gTLDs didn’t quite catch fire as expected overall, which accounts for some of the lower numbers than one might have seen out of [the worst] predictions. But rather than arguing against the rationale point by point, I would just more or less turn it on its head and say that that’s probably a closer approximation to the truth.

In any case, I think I’m with Phil in terms of how we should approach improvements and solutions. This is not it. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. Kathy, I have you next in the line.

KATHY KLEIMAN: I think Michael Graham is ahead of me.

MARTIN SILVA VALENT: Hmm. Sorry. My head is elsewhere today. Michael, the floor is yours.

MICHAEL GRAHAM: That's fine. I'd go either way. I'd just like to say, yeah, at the outset I agree with Phil and Greg. I think things that we have identified to improve, we should focus our attention on that. Going over this proposal, if anything, even with the fact that we may not have had the tsunami of cybersquatting was feared, we still have had a great deal of it. To the extent we've been able to minimize that in the new gTLDs, I think partly that could be ascribed to the lack of success of the new gTLDs in terms of people not going to it.

Also, the fact that we did have the RPMs in place. At this point, there's no evidence that the bad, unintended effects outweigh the positive effects of the RPMs. Then, even with the RPMs, from a trademark owner's perspective, we face unreasonable costs if you compare the benefits of the new gTLD for most of us with the cost of protection of IP.

So I would not agree with this proposal, and I would say [it's] putting our attention on identifying and perhaps providing some sign posts to help the implementation team that comes after us in how to improve some of the RPMs better than this proposal suggests. Thanks.

MARTIN SILVA VALENT: Thank you. Kathy, [now yes]. Now is your turn. Thank you.

KATHY KLEIMAN: Great. Thanks, Martin. This is Kathy speaking as a member of the sub-team. So I'm not going to speak in favor of the proposal, but

what I am going to do is point out that there is the discussion in ... [I don't know]. One of the [sections.] Q6. Evidence. Support of the proposal. That does run to something else that we were talking about on Question 2. So let me read it to you.

“Certain responses in the registries and registrars have demonstrated that claims should be shortened or eliminated entirely, outweighing those who want it to be longer, and not extended due to the negative impacts experienced. Elimination or shortening of claims [felt to have] no impact on cybersquatting by some of the registry and perhaps registrar respondents.”

So one of the things that I believe we talked about into Q2 and certainly sunrise is talking about is the and/or; the ability of registries to chose sunrise and trademark claims; sunrise or trademark claims. So I wanted to raise that issue again, that a tweak – that it's something that has been discussed and that small parts of this proposal would appear to support as well if you don't pick the whole proposal, the elimination; kind of that choice that registries might make for what would fit best for the purposes that they're trying to create their new gTLDs for. Thank you.

MARTIN SILVA VALENT: Thank you very much, Kathy. You were the last in line. Anyone else wants to comment on this? I think there's a certain level of agreement on what to do with this. If there's no extra comments, let's go to the next one. [inaudible].

Thank you very much. Susan, do you want to say a few words, or do you prefer we just open the floor [inaudible]?

Since Susan is not stepping forward, I open the floor for anyone who wants to comment on this individual proposal.

I have Rebecca Tushnet first. Rebecca, the floor is yours.

REBECCA TUSHNET: First, this is a new mode of communication. Are you hearing me?

MARTIN SILVA VALENT: Loud and clear.

REBECCA TUSHNET: Awesome. Thank you so much. So I feel, if we're going to apply the Phil Corwin rule of "Don't propose anything that won't plausibly get consensus," I have to say I think this flunks it. At best, we don't know the effects the current period is having. We also have no data about the cliff, if any, when it ends. So extending it in my mind is just not at all justified, and I don't think we have any reason, any evidence collected, that it would be. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. I have certainly been struggling to find a way to make her voice down to the Adobe Connect. In the meantime, she [started] out, so she's not [under] pressure that she has to [run through] this.

I want to give the floor to Greg. Greg, the floor is yours.

GREG SHATAN: I would tend to support this proposal. I do think it's inextricably intertwined with improving the trademark claims notice. I think that it perhaps is more likely to be an option, and perhaps paid for, rather than something that is mandatory. But nonetheless, if the notice does what we'd like it to do, then, in a sense, it provides a service for the applicants as well as to the trademark holder. They don't have to pay for it either way.

I agree that, if the trademark claims notice is the equivalent of yelling, "Get off my lawn!" and brandishing a shotgun, then whatever we do with trademark claims, we have a problem. But if we have a valid claims statement, then I think this is a rational suggestion. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. I have [inaudible] ready to speak. Susan, please.

SUSAN PAYNE: Hi. Is it working this time?

MARTIN SILVA VALENT: We hear you, Susan. Go ahead.

SUSAN PAYNE: Oh, good. Thank you. Sorry about that. Technologically-challenged, I think. What I was saying – and none of you could hear me – was the reason I was sort of slow to respond, apart from the fact that my mic wasn't working was, as I said, I failed to

notice that we were doing individual proposals first, so I was surprised as anyone that this was my proposal and I was meant to be talking about it. But it's down to me, obviously.

So when I put this proposal in, it was because it was very unclear to me what the process for individual proposals was, and I wanted to be sure that we didn't not talk about it. But, actually, I think we have talked about this. It was, as I flagged, a question that we were asked to answer. So we have had a conversation about this because it was one of our charter questions.

I think the conversation that we had – I would have to go back to the actual transcript of that discussion, but I'm not sure that we need to have the same discussion again just because I put an individual proposal in. It's if we all reached one conclusion or the other the last time, and I have a feeling we reached the conclusion that most people weren't supporting this. But I'm not sure.

But as I say, I put this in because I felt that we needed to be sure to have a conversation about it, and I wasn't confident that I understood what the process was.

MARTIN SILVA VALENT: Thank you very much, Susan. I have Phillip Corwin now.

PHILLIP CORWIN: Thanks. This is just to make an inquiry of Susan. Susan, are you proposing a permanent trademark claims period for the next round of new TLDs, the subsequent round, or are you proposing re-imposition on the first round of new TLDs, or are you proposing

that this become a consensus policy and permanent trademark claims period for all TLDs? It's not clear to me from the proposal what you had in mind. The different variations would raise different issues. Thank you very much, if you can clarify.

SUSAN PAYNE:

Thanks, Phil. I guess I hadn't given it a great deal of thought, but I have thought about it. I was assuming I was making a proposal for future rounds. One could re-instigate a claims process on existing TLDs – I mean, in theory, one could – but there would be a long period of time when claims weren't happening. So it seems to me to be an ineffective RPM at that point. Also, it would be imposing new rules on people who have been running their registry in one way and perhaps building their system in one way. So I wasn't particularly proposing that, suddenly, registries who weren't running claims have to restart running them. I think that could have technical implications that I certainly haven't thought about. I was seeing this as something we're talking about for future releases.

MARTIN SILVA VALENT:

Okay. Thank you, Susan, for that – yes, go, please.

CLAUDIO DIGANGI:

Martin, this is Claudio. Can I get in the queue?

MARTIN SILVA VALENT:

Yeah?

CLAUDIO DIGANGI: Just to kind of pick up on what Susan just said [on] Phil's question, I'm thinking of how the EPDP Working Group structured some of its recommendations, which provide the option to contracted parties to do certain things and [kind of move] that into the consensus policy process. So, when we formulate a recommendation, I think we could keep that in mind, that we could come up with recommendations that allow, for example, the legacy TLDs to, if they desire to have a claims process in place, [inaudible] the Trademark Clearinghouse, that to be permitted. So it's somewhat of a middle ground, but I think it would provide the contracted parties some more options, and it brings some of these benefits more broadly. Thank you.

MARTIN SILVA VALENT: Okay. Thank you very much. I have Cynthia next in the queue.

CYNTHIA KING: I can see this as a value proposition that really needs to go to the public for comment. On the one hand, I think that there's a value to the consumer to know if what they're attempting to register could have potential problems for them down the line, before they make the registration. I think that benefits consumers.

And, of course, we all know that with a better notice, there would be less, hopefully, of the feeling that there's some kind of intimidation, if that exists.

Also, for the trademark owners, with the new rules around WHOIS and the fact that it is going to be very difficult for trademark owners to let people know once they feel that they have violated some sort of existing trademark because WHOIS are no longer going to be public, I think it might be a benefit to the trademark owners as well to have this notice going out at the beginning on a regular basis.

However, there's a cost involved that would be paid by registrars and registries, and there is the idea that some folks may not complete a registration if they receive a notice.

So this is a balance proposition. I think we really need to have the input of the public to make a good decision here. Thank you.

MARTIN SILVA VALENT: Michael? Sorry, I had the mic muted. You still want to talk or ...?

MICHAEL GRAHAM: Yeah, real quick. I did post something to the chat that I think I'd like a response on, but I don't think this is the appropriate time to bring it up online. However, I will say that I totally agree with Cynthia, I think, that this – and perhaps we might identify other things that we really should present to the public for their comment as part of our process; things that are a bit beyond us. I think this is one that might be valuable.

I think, of what she said, the one thing that really stood out to me and I think we have not taken into consideration is the effect of the change of the WHOIS and the ability to obtain that information that

would affect both consumers, potential registrants, and also trademark owners and others. I think that there are repercussions from that that we will not know for some time. Thanks.

MARTIN SILVA VALENT: Thank you very much, Michael. Julie is asking if you maybe want to put this on the list. I want to make a general comment on that. Let's [use more of the list]. We have the list there. We don't need to wait until these calls to put in things. We can use the list to just share the ideas beforehand, [put it out.] So don't feel that this is the only moment that [where it has to happen.] If you cannot make the call, you can still put things on the list and we can still try to put them together, [treat] them on the calls, and [leave them a space there, even if there isn't a] specific point on the agenda.

Rebecca, if you're in line, you're next.

REBECCA TUSHNET: Thank you. Two things. First, I wanted to go with the Phil Corwin standard, or I'm willing to go with "Let's put stuff in front of the public." I'm not willing to go with the double standard of [whose] proposal don't have enough support but should still get public feedback. If that's our standard – I think we've had [inaudible] before – and certainly the first one also should go to the public. It's backed by a lot of [facts,] even if you don't agree with their input, and certainly, as well-developed as this. So, honestly, I could go either way, but we should pick a standard and actually use it.

The second thing I'd like to say goes to Greg Shatan's point about, once the notice is improved, then all these proposals will

make more sense. If that's the case, it's very clear that the first thing we should do is improve the notice and make sure it's working. We can't just hope that we'll get a better one. If that's the way we go, we should suggest changes and then make sure they're working before we move to a bunch of stuff that we hope – which, by the way, will also change the content of the notice [and] a number of these proposals. So that's it for now. Thank you very much.

MARTIN SILVA VALENT: Thank you very much, Rebecca. I have Kathy now.

KATHY KLEIMAN: I'm going to agree with Susan that I think we've already reviewed this idea and that it was not the direction we decided to go. Normally, I agree with Cynthia, but I don't this time, and I apologize. But I would not put this out for public comment because I think the public will think it's our recommendation, and we, in fact, are moving towards a different recommendation.

So somebody's not on mute in the background. But we know the data. We know the chilling effect, the massive chilling effect, of the trademark claims notice. We know that the vast majority of registrants are turning around. We've decided that we are not going to do the registration after the fact, after the registration. We'd keep it before the registration. So we're still going to have the registrants standing on one foot in ten seconds, trying to figure out whether they're going forward or not.

So, no. I think a permanent trademark claims – especially in light of what’s already been called this widely accepted and negotiated compromise, where we balanced it. And critical to that balance was a very limited trademark claims notice. There’s lots of monitoring services for after the fact to let trademark owners know about registration, but it was a critical component that the trademark claims period be short and defined – actually, it’s not that short, but defined – so that it was limited. That was a critical part of the initial compromise for the Trademark Clearinghouse. Thank you.

MARTIN SILVA VALENT: Thank you very much, Kathy, for that. Greg, you are next.

GREG SHATAN: Thanks. A couple of points. In terms of process and what should be put out by the sub-team and ultimately as the report, I’m not sure if it’s the Phil Corwin standard or it’s just a working group standard, but, frankly, the standard we should be dealing with from the sub-team is putting forward those proposals that get a high degree of traction – one might even call it consensus – in the subgroup, and that those things that have no strong support – one might call it divergent – don’t get put forward. If that means nothing gets put forward because we end up with an even split of some sort, then that’s an interesting question as to whether means we’ve done a good job or whether we’re doing a bad job by perhaps being too parochial.

But in any case, I think that's the test. And that is where the sub-team chairs earn their munificent salary: by guiding and help in deciding, subject to the review of the sub-team, what the levels of whatever you want to call it – traction, agreement, consensus; I know Thomas Rickert likes traction. So I think we should probably restrain ourselves from arguing levels of consensus within the group, at least until there's a strawman or a proposed level of consensus or lack thereof or traction or lack thereof from the sub-team chairs.

So I think that's really kind of a key part of this. I think we're not supposed to have – the idea that we're going to let everything out of the sub-team? We might as well just stop working and just send everything [out], other than developing some new proposals to put alongside these. That's clearly not the intent. The intent is for us to actually perform a function here. So I think we as a group are going to perform that gating function on what's going forward and not what might get traction in the future in some other setting, but initially what's getting traction here in this group.

I would also say that there's no agreement here that there's a chilling effect or massive – any size chilling effect, other than perhaps a very insignificant one. The fact that folks have been turning around; we've discussed why that number – some people put forward why that number is important and valid, and other people have put forward why that number is irrelevant and invalid because we don't have a baseline and because we don't have an idea of what's happening and we don't really know even why people made it up to that point in the first place.

So the idea that we are going in a different direction – I think the direction we’re in right now is that we’re discussing this proposal now. So trying to shut down a proposal before we’ve decided whether we’re actually dealing with it on its merits I think is premature at best. This is the time where we put them up and we knock them down. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. I have Kristine now.

KRISTINE DORRAIN: Hi. Thanks. Unlike Phil, I do want to propose a rule. I think that, when you look at how public comments are structured, you come up with the initial report, which is a series of recommendations.

Now, a couple of the recent PDPs, SubPro being one of them and [inaudible] being another, have also at the same time put forward a few other questions to get the feel for the public’s view for these follow-up questions. They’re not punting their work to the public. They’re asking follow-up questions.

Our basic question here is, is the claims service working? Is it serving its intended purpose? Should it generally keep going? Is that a recommendation? If we put those questions to the public, we tell the public we have wasted three years of work. “We don’t know the answer to that question, so we’re going to ask you, the public, one more time how you feel about this.” By putting forth a basic proposal that says the claims period should go away, that communicates to the public, “We have not decided whether the claims period is working or not.”

If you look back at the document in the link that is the claims summary table, Question 2 in pink, there is a proposed list of tentative answers that we've been working on. When I read that, I see that we have generally proposed that the claims period is generally working. It could be improved. And I see that there is a tentative recommendation that we explore with the public some ideas for when there might be exceptions to the claims period.

So, as we're thinking about which proposals we should put forth to the public, I think we should benchmark them against our current recommendations. If a proposal rebuts our own recommendation, then we look like we have done nothing, and I'm very worried about that perception.

This proposal could be perceived as a follow-on proposal. So we say that the claims period should be mandatory. We say that the claims period should generally exist in the way it is and that there should be some business flexibility.

If that's the case, does this proposal tag onto the business flexibility option, which is the ability to extend the claims period longer, which might be something to put out to the public? But it doesn't call into question the basic point and punt our work to the community. Thank you.

REBECCA TUSHNET: Can I get on the queue, please?

MARTIN SILVA VALENT: Rebecca, yes. Go ahead.

REBECCA TUSHNET: Thank you. So I'm very sorry, but the last response just triggered some discussion I've been having with staff, who assured me that that wasn't really the proposed recommendation, that in fact they were going to send out an update [inaudible] agreement, I wasn't able to attend Kobe. I was told multiple times by multiple people that, no, these weren't really the recommendations. I understand why you're referring to them that way, and that's potentially my concern, actually. So I don't actually have a quibble with you calling them that. I have a problem with the process, and I just want to be clear that I think I've been pretty clear with staff and the sub-team chairs, and they have told me that, no, this was not a done deal. So if it is a done deal, then my path will change a lot.

Then, to the substance of it, I actually don't think that we have data indicating that we know that things are working. I think the best answer is we don't know, which has some implications for all the other things. I actually may very well agree that we don't necessarily want to send a whole bunch of stuff to the public. Probably we don't, but we should be clear about why or why not. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. I'm actually going to give now the floor first to Julie, because I'm pretty sure that, besides what she has to say, she can answer you on this.

Julie?

JULIE HEDLUND:

Thank you, Martin. Just to speak to your point, Rebecca, yes, what staff has been doing is, as directed and as an action item from the last call, to review all of the discussions thus far, including the proposed recommendation language, the preliminary recommendation language, and to compile it into an update of the summary table. So the summary table that you've seen that had been previously circulated, dating February 8th, does not – or, I'm sorry, March 8th – have that compilation. But we are prepared to show right now the updated recommendation for Question #2 that is a compilation of all of the discussions thus far.

So we'll drop that in the room here, but we absolutely have done our best to try to capture what you and others have proposed. So you'll see the document is unsynched. If you go to tentative answers and preliminary recommendations, it's pink. Then, if you move down from there, there's suggested answers for each of the parts of Question 2. Then there is, in boldface, a recommendation. Again, this is not a staff recommendation. This is text that has been compiled from the sub-team discussions thus far and, of course, can be amended based on today's discussion, which is of course not included here. Thank you.

MARTIN SILVA VALENT:

Thank you, Julie. And I will get back to you after Kathy and Greg so you can express again. We only have a few minutes left, so I'm going to ask Kathy and Greg to be very, very brief.

Kathy, please.

KATHY KLEIMAN: Okay. And I'm not responding to the pink text, which I don't think any of us have read or commented on yet. I just wanted to say that, for this proposal, there's nothing incremental or moderate about it to some. It goes against the very balance of the trademark claims process. So I'm very, very reluctant to put this out to the public. I think our recommendations – I think we did talk about it and I think our recommendations went in different directions. Thanks.

MARTIN SILVA VALENT: Thank you, Kathy. [Same consideration] for Greg. Please be brief.

GREG SHATAN: Thanks. A couple things. One, while we all hope for a more data-driven PDP process, and we hope that we're going in that direction, we're clearly not there yet. Once upon a time, working groups made all the decisions based really on mostly the anecdotes or anecdotal evidence known to those within the working group and without anything else other than that. That is not completely invalid in the sense that we should deal with the data we have but we also need to deal with all the information, knowledge, and experience that we have as well to judge whether something is working or happening. Whether we have insufficient data that comes to conclusions indicates that we're really just not where we need to do to be in a truly "data-driven" area. And it will always be a combination of data and experience. So I think that's a general note with regard to how we go forward and what makes sense to rely on. I'm not going to go into the substance of that issue on that point. Thanks.

MARTIN SILVA VALENT: Thank you, Greg. Julie, do you want to have five minutes before we close the call?

JULIE HEDLUND: I don't think I have anything to add. So not to curtail the discussion, but if you want to continue the – well, actually, I did just think of something. One of the things that we'll be doing is to help the sub-team, in addition to compiling any draft text that we can glean from the discussions, is we will send out homework, specific homework, for each call now after the call with links so that people can have plenty of time to be prepared for the next call. So we'll be – [yeah], Cynthia. Sorry. Homework. Yay! In the same [way] that we have been doing previously, it seems that that was helpful. And to make sure we're all on the same page when we get on a call.

We also might suggest that members could consider, if you have proposed language for preliminary recommendations relating to particular questions – it'd be very helpful if you circulated on the list – we can certainly help with that – and start threads around questions and recommendations so that some work that can happen off-list and perhaps expedite the work.

I'll stop there, Martin. I see there's some comments in the chat. Thank you.

MARTIN SILVA VALENT: Yeah. I don't want to [start] the comments in the chat unless they [take it].

Okay. If someone wants to take time now. If not, I think we are just three minutes from – five minutes – to the end of the hour, so we can wrap it up.

Yeah, Julie, wrap it up.

JULIE HEDLUND: Thank you very much, Martin. Again, just a reminder to all, if you do have any input on this draft language, which we can also circulate, please do send it on the list, and we'll be happy to incorporate it. Thank you very much.

Thanks, all. We'll talk to you next week at the same time. Thanks, everyone, for joining.

MICHELLE DESMYTER: Thank you. This meeting has been adjourned.

[END OF TRANSCRIPTION]