
ICANN Transcription

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

Thursday, 02 May 2019 at 1700 UTC

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JULIE BISLAND:

Alright. Well, good morning, good afternoon, good evening all. Welcome to the RPM Subteam for Trademark Claims Data Review call on Thursday, the 2nd of 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 audio bridge at this time, could you please let yourself be known now. Okay. Hearing no names, I would like to remind all to please state your name before speaking for transcription purposes. Please keep your phones and microphones on mute when not speaking to avoid any

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background noise. And with this, I will turn it over to Ariel Liang. You can begin, Ariel.

ARIEL LIANG:

Thanks very much, Julie. This is Ariel for the record. Welcome, everyone, to the Trademark Claims Subteam meeting today. For the agenda, we have four items. First is the review agenda updates to SOI. Second is the overview of updated timeline and work plan. The third is the continuing developing the preliminary recommendations. So, that includes two sub items. One is to conclude the discussion on Claims Q1 in conjunction with the review of Proposal #6. Second, the sub item as being discussion of the Claims Question #4. Then at the end, now it takes us to AOB.

Anyone has any comments, questions about the agenda today? I'm not seeing hands or comments, so staff will take you to the second item which is overview of the updated timeline and work plan. I just pulled the table that was sent to the subteam on the screen and I'm also going to put this document in the chat. I just dropped the document in the chat so you can download it yourself if you would like to scroll through.

Just to give you a quick update on this timeline, basically it's structured in a way that we want to show exactly week by week what's the expected scope of work by the subteam and then it also reflects in real time the actual work completed. You can see there are three tables. The first table is basically the individual proposals that the subteam is tasked to review. The second table is the charter questions that the subteam needs to answer and

also develop cross recommendations for. And then the third table is the consolidated table that shows on a weekly basis what needs to be done and what work actually has been completed.

So you can see that based on the work plan from this week's meeting show – mid June, that's what we projected the work will be completed for the Claims Subteam, and there are just some remaining charter questions and a couple of individual proposals left. In the case where anticipating for two meetings, the subteam will complete one charter question and in conjunction with the individual proposals that's related to the charter questions. So that's anticipated case that's reflected in the intended scope of work column in the table. But of course, if the subteam is doing faster than what's anticipated, we will keep track of that in the third column which is the actual work completed and that you see it.

Then once the individual proposal has been reviewed completely by the subteam, we will put the date in the third column of the actual completion date for Table A, and once the charter portion has been completed which means there's answers developed and the recommendations developed if needed, then we'll also track that completion date in the table. It's structured in that manner.

So just to wrap up on this timeline overview, for the subteam there are actually basically two charter questions left. It's Question #4 and Question #5, and then there are two individual proposals left which is Proposal #6 and #11. That's the remaining scope of work. Based on the prediction, the work should be done before ICANN65 the latest. Hopefully, this would be done earlier. That's just a quick overview of this timeline.

I'm not sure whether, Mary, you have any additional inputs? I see actually Mary. So, Mary, please go ahead.

MARY WONG:

Thanks very much, Ariel. Hi, everyone. It's Mary from staff. As you noticed in Zoom, when staff is hosting, we cannot just put up our hands so we have to communicate in other ways. As Ariel said, hopefully this gives you a sense of where the subteam is right now as well as the intended completion date which looks to be within target. So the only other thing I'll add is that following the staff discussions with the various subteam co-chairs, obviously towards the end of this process, we will be helping to extract whatever draft recommendations this subteam agrees on, similarly with Sunrise, into a table or document so that towards the end or at the end of this process, you can see exactly what is the recommendation or what are the recommendations, if any, that this subteam will be providing to the four working group. And hopefully there will be time during the Marrakech sessions to begin that review. That's kind of where we're aiming to go in June. Thanks, Ariel.

ARIEL LIANG:

Thanks very much, Mary. We'll pause for just a moment and see if there's any other questions, comments from the subteam on the timeline. Not seeing comments or hand raised, I guess we can go on to the third item on the agenda which is development of the preliminary recommendations including Q1, proposal #6 and then Q4. I will turn over the floor to Roger who will be chairing the meeting today. Thank you.

ROGER CARNEY: Hi, this is Roger. Thanks, Ariel. I just wanted to start with a question that Julie has asked a couple of times in chat and I'm not sure if anybody has seen it, but we have one phone number or two phone numbers now that have called in. If you'd like to identify yourself so we know when we're speaking to you, who we are speaking to.

MICHAEL GRAHAM: This is Michael Graham. I think one of them may be mine, it's a 4330 number.

ROGER CARNEY: Okay. Thanks, Michael. Then there's a 6759 number. Oh, thank you, Rebecca. Alright.

Well, let's jump in. I think we ended the call on the Proposal #6 last week. We just introduced it and I said a few things from a registrar standpoint, not a co-chair standpoint, but let's go ahead and jump into that. Since Michael and Rebecca, I'm not sure if they can see, I'll go ahead and read it once again and then we can jump in to the discussion. The recommendation is, "If the claims notices are retained then ICANN shall provide open source software in the top five programming languages used by registrars to assist in integration of the TM Claims notice with registrar systems."

I'll recap for those weren't on the call last week. My input from a registrar standpoint was I don't see us as GoDaddy using this. It

would just take actually more work to integrate it to anything that we've already built, but I'll leave that up to other registrars that are interested in speaking or anyone else that has input on this proposal. Please go ahead.

Okay. No one has any comments. Oh, there is a hand. Cyntia, please go ahead.

CYNTIA KING:

Hi, this is Cyntia King. I think that during our discussion last week, most of us came to the conclusion that this would not be appropriate for ICANN, not only because at this point, we don't even know whether any of the registrars want this. We haven't asked that question. But because having ICANN begin to provide software, not only do they have to provide the software but then the person receiving the software has to want it, and then there has to be an integration between what we're providing and what the party currently has. It would be a mess, it would be expensive, and I think that unless the registrars really, really want it, which they've never expressed, that just doesn't seem to make any sense to me. Thank you.

ROGER CARNEY:

Great. Thanks, Cyntia. I see Ariel has her hand up. Please Ariel, go ahead.

ARIEL LIANG:

Thanks very much, Roger. This is Ariel. Just to update from staff side we're also following up with Compliance to ask the question

whether they have already provided any technical assistance or guidance to the registrars and to help them implement the claims notice. So we already asked that question and then also we asked another question is whether they keep track whether any registrars are not implementing the claims notice because the proposal, if you look at the rationale, I think what the proponent said is that some registrars have not implemented the TM Claims notice due to the cost. So, we want you to verify whether Compliance actually track that and if so, what's the scope of the issue or problem with that. Then once we receive the response from Compliance, we can share that with the subteam.

ROGER CARNEY: Great. Thanks, Ariel. Kathy, you have your hand up. Please go ahead.

KATHY KLEIMAN: Can you hear me? I think Susan was first.

ROGER CARNEY: Oh, we'll let Susan go if she's ready. Susan?

SUSAN PAYNE: Yes. Hi. I see you can hear me. Really, I've put my hands up because there was a sort of [inaudible] and no one was speaking. I was going to say something very similar to Cyntia, really. Just things that I raised really briefly at the end of last week's call just around, "Do we have any kind of visibility on whether registrars

would even use this if it were provided to them, leaving aside whether it would be appropriate?" I do know some registrars chose not to run the claims versus not to sign on to sell names during the summarizing claims period but there may be a number of factors in that, including things like what the client base is and whether they were likely to get enough trademark on the clients to make it worth their while building out. So, I guess I'm sort of cautious about us suggesting that ICANN spend money and time in developing something unless we genuinely feel that this is going to serve a need and fix the problem.

ROGER CARNEY: Great. Okay. Thanks, Susan. Alright. I think Kathy is agreeing, so she took her hand down.

KATHY KLEIMAN: No. I didn't take my hand down.

ROGER CARNEY: Oh, okay. Sorry.

KATHY KLEIMAN: Okay. A question for you, Roger, with your technical hat on please and also for staff, and then a suggestion. So, I'll just kind of throw it all out there. One is, does ICANN provide any other types of software? Two, which is a question to you, Roger. Is there any kind of software library for registrars on anything? A question to Ariel for ICANN staff, could we expand our question from is

current ICANN org be at large, currently providing TMCH or Trademark Claims software to registrars to – does ICANN provide any software to registries and registrars? Is this something that might be added to a library? So, variation of the question to Roger. And to everyone, do we just want to table this into until we get the answers to the questions that Ariel said last week that we're going out to ICANN, so that we just have some basis for information about whether ICANN provide software? Thanks. Back to you, Roger.

ROGER CARNEY:

Thanks, Kathy. From my standpoint, we don't use anything. I can't say that ICANN doesn't provide it. I don't know. We have never integrated anything if they did provide it, and I know that staff was going to research that. But yes, we don't use it. And with my technical hat on, looking at this proposal, it's fairly broad and that I'm not even sure where or how ICANN would start this. But there's a long process in the claims notice, so I see that it's – I don't know. It would take a lot of work that I'm not sure would get used, but again that's just my technical hat.

Alright. Kristine, you have your hand up. Please go ahead.

KRISTINE DORRAIN:

Hi. Thanks. This is Kristine Dorrain. I wanted to piggyback a little bit on what you've said there, Roger, and then respond a little bit to Kathy also. When you talk about a big registrar telling you that's a really big technical infrastructure and a lot of work, it means it is for starters. And the main reason why the smaller registrars don't

implement claims is because they don't really have the technical ability to sort of build out whatever it is or the resources. Maybe they just don't have a developer on hand to build out whatever that resource is, they've done the cost benefit analysis and it's just not worth it to them, whatever it is.

The solution of providing software in open source is unlikely to make it any better because the registrars would still have to implement this technical solution. I don't think the integration with the Trademark Clearinghouse is so exceedingly burdensome that it can't be done. It's just that it's a hurdle, right? I don't think providing the same information via some sort of an open source plugin would provide a less of a hurdle to most of the registrars we're talking about here. So, I do support tabling it a little bit, but I don't think this proposal offers an actual fix to the problem. Thanks.

ROGER CARNEY:

Thanks, Kristine. And I would agree with you. Taking my co-chair hat off, I would agree with you. I just don't see that this lowers the hurdle for anyone to get into it, but again I understand why it was brought up. And if staff could answer some of those. I see Mary has her hand up. If Mary would like to interject now?

MARY WONG:

Thanks, Roger. It's Mary from staff. And as Ariel said, we are following up internally with those of our colleagues. We will have more details than those of us on the policy staff. In order to assist them, I think what we're trying to do on our end here on the policy

side is try to understand the specific problem as well as the breadth of the proposal. For example, in terms of ICANN providing software or ICANN providing whether open source or any other kind or any kind of technical assistance – and I think this goes to Kathy’s question that we’ll follow up as well.

Quite aside from any potential slippery slope arguments, I think this just seems like a very broad proposal. So, unless we can understand what the specific problem is as well as perhaps the scope and nature of the kind of technical assistance as being requested, it might be something that’s going to be difficult for or to provide more than let you know what we do at the moment.

And to Kathy’s question, we can follow up internally. We have not been given a timeline as to when they can come back to us.

ROGER CARNEY: Okay, great. Thanks, Mary. Alright. Moving on. Cyntia, you have your hand up. Please go ahead.

CYNTIA KING: Hi. Thank you. Just one of the point and maybe it’s something that we should be asking at the same time we’re reaching out to other departments is, would this bring liability to ICANN if the software that they’re providing didn’t work correctly with whoever’s implementing it or if it’s still allowed registered trademarks and things to get through? Do you know what I’m saying? If there’s a liability, I think that that will also play into whether or not this is something that we would even consider venturing at into. Thank you.

ROGER CARNEY: Great. Thank you, Cyntia. Kristine, you have your hand up. Is that an old hand? Thank you.

KRISTINE DORRAIN: Yes, I'm new. Sorry.

ROGER CARNEY: No problem. Everyone's new on this. Okay. I think that we can close this up and staff can get back to us with some of the answers from their side. It seems like general agreement that this seems to maybe not work out well, but let's go ahead and table this for staff to get back to us on it. Is there anyone else have any comments or questions? Okay. I think we will table this and jump to Question #4.

Alright, Question #4. Somewhat simple two-sentence question that leads into I don't really know how many parts here. Quite a few parts. So, I'll go ahead and read the question and we'll get on to the first sub-section. So the question is, "Is the exact match requirement for the Trademark Claims serving the intended purposes of the Trademark Claims RPM? In conducting this analysis, recall that IDNs and Latin-based words with accents and umlauts are currently not serviced or recognized by many registries." Sub-section A is, "What is the evidence of harm under the existing system?"

I'll open that up and we can start with A, or actually if you want to answer the question in whole of the first line. Griffin has his hand up. I didn't see it come up. Griffin, please go ahead.

GRIFFIN BARNETT: Yeah. Hi. Thanks, Roger. This Griffin Barnett for the record.

ROGER CARNEY: Go ahead.

GRIFFIN BARNETT: Thanks. I'll take a step quickly at just kind of giving a quick response to part A I suppose. I think there was some data that we saw. I'm just trying to switch back and forth between documents. My thought is that the harm of having exact matches only for claims is that registrations that are still confusingly similar and might still be sort of actionable under trademark laws or dispute resolution mechanisms like EDRP or URS, currently those types of domains are not subject to the notices and there's no possible deterrent effect against such registrations, potentially preventing non-exact match but still confusingly similar matches. And again, this leads to a greater curative mechanisms burden on rights [inaudible] than there might otherwise be. At the same time there's also kind of an equal harm on prospective registrants because they're only made aware or notified of exact matches when in fact there are non-exact matches made to be equally as actionable.

So that's what I would suggest are sort of the harms, so to speak, of limiting the notices just to exact matches. Now, at the same

time I understand that you might say – well, I'll leave my comments there for now. Again, the gist of the point is there are plenty of non-exact matches that would still kind of fit in to a likelihood of confusion or trademark infringement analysis or bad faith analysis. I think limiting the notice mechanism in particular to just exact matches doesn't give a full view on that type of analysis which would be applicable here. Thanks.

ROGER CARNEY:

Thanks, Griffin. The one thing that I'll bring up – and I'm not sure if I have this down right or not and if someone can correct me – is I was thinking that in the database, the X trademark holders can actually identify 50 other, and I don't know what that requirement is. I'm not really familiar with it. I was thinking there is up to 50 other related trademarks or something similar to that that they could identify with it, that would get triggered at the same time. But again, I don't know those rules real exact so if someone can bring that up, that's be great.

Kristine, you had your hand up. Please go ahead.

KRISTINE DORRAIN:

Hi. Thanks. This is Kristine Dorrain. First, I'll answer you question and then I'll go to my –

ROGER CARNEY:

Perfect. Thank you.

KRISTINE DORRAIN: Trademark plus 50 is in the Trademark Clearinghouse, a brand owner whose prevailed on the UDRP – for some of these confusingly similar terms, can submit those terms along with the evidence of the UDRP itself into this Trademark plus 50 because it has been shown that it's an abused string and that a panel has already found that those strings are confusing. There's a likelihood of confusion, so that's been adjudicated. It's hasn't just been randomly come up with by the brand owner. Griffin put in the chat, UDRP or court case. Yes, correct. Thanks, Griffin, you're right.

I think it's a good mechanism. I think we determined based on our obviously limited data gathering. I think we've determined that it was not of much used feature of the TMCH but perhaps now that people have had a full round of this maybe people would use that a little bit more. I'm not sure.

But to go to my point, I just wanted to note that – and I don't disagree with anything Griffin said. I think they're clearly confusingly similar is a problem. However, one of the things you get with Trademark plus 50 is you get terms that have been adjudicated to have been a problem already. Whereas, if you just have whatever term the brand owner can think of, I think you end up – there's a lot of possibility for capturing other sort of related terms that would be permissible in unique circumstances or whatever.

I think when it gets to a technical implementation, it gets even more tricky. So if you can imagine as a registrant, the customer here getting a claims notice that says, "Hey, you wanted to register whatever string you wanted," and that's available, but it's

kind of similar to this brand owner's term, and so you need to know that and here's some information about the brand owner.

I'm not sure how much information we would be able to provide in a form claims notice. In some cases, it would be the addition of terms. Sometimes it would be the addition or the transposition of letters. In some cases, the words might be a misspelling or a substitution of a vowel or something. And so, I'm worried that the claims notice wouldn't be precise enough to give the registrant a sort of sense as to what's wrong with its name choice. While I respect the concern and I think it's a problem, I think that this is a very kind of broad hammer for a pinpointed problem, and I think it's going to be a bit of a concern. Sorry for taking so much time. Thanks.

ROGER CARNEY:

No, great. Thanks, Kristine. That helped out a lot.

I don't know. Michael had a couple of comments and I'll read them that he posted in the chat. His first comment was, "Most domain names that we have issue with our match, plus some other elements. Very few exact matches. Notifying the applicants of possible issues would permit them to consider continuing or not.

I thought he had another comment that I could read.

Michael said, "The problem with 50 plus is that very few litigate domain names reappear." Alright, I think that was everyone. Greg, you have your hand up. Please go ahead.

GREG SHATAN: Pretty much in line with what's been said already, I think that the idea of being able to align this with things that are match plus, and the plus is not just anything that we'd be looking for. I'm thinking of more specifically that there's usually either some sort of a term that relates to the product or service or there's an INC or CORP or LLC or GMBH. My client has Hasenpfeffer, I'd also want if I could to get claims for Hasenpfeffer stew or Hasenpfeffer rabbits or Hasenpfeffer Inc. but not for Hasenpfeffer computers because Hasenpfeffer doesn't make computers.

ROGER CARNEY: Okay. Thanks, Greg. Kathy, you have your hand up. Please go ahead.

KATHY KLEIMAN: Thank you, Roger. I'm going to try to move. I've got two computers open so that I can try to quote from one and with the other. I have two screens.

I just want to read some of the data we collected also that the Analysis Group collected. This is a long way I think agreeing with Kristine that probably got this right the first time.

This is our Trademark Claims. This is a summary of discussions and individual comments. It's the middle column. The exact match requirement for Trademark Claims seem to serve the intended purpose of the Trademark Claims RPM as exact match registrations account for disproportionately large share of registration WHOIS data found by the Analysis Group. I'm not quite sure what that means. But we did find – and I just want to

cite also to the harms that we remember that from the registrants as well that even exact matches were causing conflicts in terms of fair use and free expression. We have that under the existing terms.

Now I'm at the Analysis Group's final report – this is the revised report – but going all the way back to what the GAC asked them to do, it included an expansion to. The GAC wanted the Analysis Group to examine whether an expansion of the matching criteria could be implemented.

Analysis Group says, “Initial responses had trademark owners and expressing interest in expanding, however, registries and registrars express some concern regarding the cost associated with the implementing additional matching criteria.” Then when you get to the Analysis Group's – if anybody is trying to follow me that was I think page 25 – now when you get to the top of page 28 of their report, results. “We find no clear evidence that expanding the matching criteria will outweigh the potential cost of doing so. Registration activity by trademark holders and third party registrants is disproportionately centered around exact matches of trademark strings rather than variations of trademark strings. Additionally, our results indicate that trademark owners filed very few disputes using the URS or UDRP,” so the sense that they could use the URS and URDP on these variations and not doing that.

I think our data kind of indicates that expanding it would create more problems than it solves. Thanks.

ROGER CARNEY: Thanks, Kathy. Kathy, Michael had a couple of questions to you. I don't know if you answered them or not. Maybe Michael can chat that in there to you about what you're reading. Michael, if she didn't answer that, please let us know.

Rebecca, you have your hand up. Please go ahead.

REBECCA TUSHNET: Can you confirm that you can hear me because I've been going in and out?

ROGER CARNEY: I hear you perfect. Thank you.

REBECCA TUSHNET: Thank you. Okay. I wanted to agree with what Kathy said and some others have said. We haven't gotten the notice working yet. We should not make it more complicated and confusing before having any confidence that it has been improved. I would also point out that likely confusion is not the right stand to be applied here. Claims were supposed to be for the things that were most likely to cause problems. The worst of the worst or the most likely and the chance of catching real problems goes way down and the false positives go way up when you start to expand.

I just want to point out based on the Analysis Group data, we know who's going to get notices under an expanded match system. Marriott Hotels will get a match because there's a hotel in there. Amazon Cloud will get a match because there's a Cloud in

there. Christmas in July will get a match because there's a Christmas in there. Those are in the TMCH. In fact, that cloud and hotel are the most popular results. That's going to get worse and that interacts with Susan's excellent point about making the notice worse.

So, at the very least, we got to fix the notice before we can say that more people ought to get warned. Thank you.

ROGER CARNEY:
ahead.

Great. Thanks, Rebecca. Phil, you have your hand up. Please go

PHILIP CORWIN:

I'll speak on a personal capacity so I don't have to figure out what's in my co-chair role and what's in a personal role. You should be able to hear me better now. I was on speaker.

Let me say personally ... well, there's a couple of considerations here. One, before I forget it, I'm not sure that Rebecca's description was right that if Marriott registered Marriott that hotel at every attempted registration with the term hotel in it, my conception would have to be an exact match to the trademark plus goods and services. But the virtue of the current system is that underlines 100% with existing legal rights, either the exact trademark or an exact match of a variation of the mark that was recovered in a court case or UDRP or URS.

The problem here is to talk generally about this without a specific proposal on the table is very difficult. If we were talking about a

very narrow proposal like Marriott was registering Marriott and they said, “Also we’ve recovered a bunch of domains that were Marriott Hotel or Marriott Hotels and we’d like to include those, it’s goods and services,” that’s a fairly narrow expansion and just based on actual real world experience with infringement. If we’re talking about something where every possible fat finger typo of a domain, of a trademark was included and also missing digits or added numbers or an added S at the end, the chance of false positives goes way up.

So I think we need to be looking at a specific proposal or proposals, if there are any, for expansion. Then we need to consider, does it accord to real world experience? How many false positives would be expected to generate? Really, a key thing that hasn’t been discussed yet, is it technically implementable by the Trademark Clearinghouse? I think the Clearinghouse is going to have to be the ones to provide the master list to the registrars of the Trademark plus all the related terms if there’s any expansion so they can generate the notices accurately.

So we have to be in touch with Deloitte and say, “Hey, there’s a proposal here that we’re looking at sympathetically. From a technical viewpoint, can you implement it?” There’s no point expanding this if they can’t handle it. So, I reserve further thoughts for specific proposals. I’m not against any potential expansions, speaking personally, but I would want to know how many false positives could be expected, whether it accords to real world experience with infringement, and whether it’s technically implementable by Deloitte so they can provide a comprehensive list to the registrars. Thank you.

ROGER CARNEY: Great. Thanks, Phil. Susan, you have your hand up. Please go ahead.

SUSAN PAYNE: Yeah. Thank you. Just to respond briefly on something that Phil has just raised first. I agree that clearly we have to have something that's technically implementable and speaking to the Trademark Clearinghouses is obviously relevant. But it does seem to me that certainly in some regards, an expanded matching is clearly technically implementable because the Trademark plus 50 concept exists. Therefore, Deloitte's already able to address sending claims notices that go wider than just the exact match to the trademark. So it seems to me that for sure this is implementable.

You also commented on the difficulty of talking about this without a specific proposal, and of course we aren't just limiting ourselves to discussing the individual proposals that some people had put forward. I mean the whole point of this subteam is to be looking at the data that we've got to the extent that we've got any, also considering our own experiences in using the system and try to answer these questions and considering the possibility as we go further down the list of questions or question for the different types. Because we've started on A without looking further down the list, there's actually a series of questions that talk about – for each individual type of possible expanded match, what are the pros and cons effectively? To talk about this in just very headline terms about expanding the matching allows for people to get into

a conversation about how complex it is and what a complicated algorithm there is, whereas in fact there may be some forms of match plus that are not complex at all and where the balance is on one side of the line or the other, and then the others where maybe the balance is on the other side of the line. Perhaps what we really need to do is try to talk about the different types of variance one by one, rather than lumping them all in together because that leads to confusion.

The reason I originally put my hand up was just to reference back to the Analysis Group report, and I recognized that some of the data that we have. But there are some significant flaws with the Analysis Group report. It's not necessarily their fault, but in terms of this matching, for example, they made it very clear that it was incredibly difficult for them to make any assessment of the matching. There were various forms of matching that we all think would have been extremely beneficial to be included in their assessment and they didn't do it because they said they couldn't.

So the idea of matches that involve industry keywords related to the trademark, for example, was not something that they even looked at. So there have been conclusions around the cost of implementing some kind of expanded matching would be far in excess of the benefit. It isn't looking at actually a full range of scenarios. It's not looking at the type of matching that some of us are talking about here. They actually made no cost benefit analysis at all, so for them to make conclusions about cost to me is fundamentally flawed.

I understand that we have that report but we have to exercise real caution in following any of the conclusions from that group. If they

referenced frequently in their report that it shouldn't be used for policy development because they recognize the limitations of the work that they've done.

ROGER CARNEY:

Great. Thanks, Susan. I just would like to follow up, take off my co-chair and put my technical hat on with what something Susan brought up that the 50 plus is still technically a exact match. It may be exact match on 10 different things but it's still an exact match where the resourcing power for say a wildcard is different than a simple lookup to 50 different things. So just, again, a technical hat, not a co-chair or anything just to add some input to that.

Kathy, you have your hand up. Please go ahead.

KATHY KLEIMAN:

The fun of unmuting. Okay, it takes a while. I'm going to agree with what I think Susan said at the beginning, which is that we should probably go further down the list. Also that I think the Analysis Group spent a lot of time – I just put it in the chat so I don't repeat it – on this issue and did not limit their conclusions. Those are for policymaking purposes, but also that I don't see anybody busting down the door of the URS on this one, which I'd expect to see if there was a huge problem. The URS seems to serve this kind of overflow issue of non-exact matches which has such huge and enormous implications for free expression and fair use and also for trademarks, and so we have that medium for them to go to rapidly, quickly, cheaply. The door is just not busting

down on that. So, thanks. I think we should go on to other questions.

ROGER CARNEY:

Great. Thanks, Kathy. As I said here and many of you brought it up, we're answering several of these questions later on. We're touching on them, I'm not sure we're answering them or not. But we're at least including them. Looking at some of the other questions, A is there harm? Maybe we heard some of that? B was, should it be expanded? Then B has four sub-parts to that. C was, how feasible is expanding it? D is, if it is expanded, what actually has to happen as well? There are a couple of parts to that.

Again, as people talked, you could see pieces of these getting pulled in and tried to be answered. I don't know if we need to do anything specific and ask one specific question or if we can just go ahead and talk about this as a whole. I'll leave that up for the group if they want to try to answer one thing specific. I don't know if you can or not. We'll open it up to the floor to discuss any of the A, B, C, or D. I think that was it. It was the four pieces.

Kathy, your hand is up. Is that an old hand?

KATHY KLEIMAN:

That is an old hand.

ROGER CARNEY:

Thank you. So I opened it up and if anybody wants to speak to anything else, maybe that helps answer some of the other questions. Again, I think we touched on some of them. Is there harm? Should that be expanded? What's the feasibility? If so, what needs to happen? I opened that up and letting it be for any comments.

Cynthia, your hand is up. Please go ahead.

CYNTIA KING:

Thank you. I just wanted to say that we go around and around here looking at the detail of the issues because that's what our job is, right? But the other side of this coin is that what we need to think about is what is going to benefit the consumers, the average Joe who's out there just to register a domain.

I do think that it would be helpful for the average Joes to know if they could be getting into a place where a letter or two could cause them pain, if they registered a domain name and then someone says, "That's a typo or a variant." But I do also want to be mindful of the fact that we do want for people to register domain names they can use. So it seems like what we probably need to do is to consider maybe not making any decisions today but to consider how best to limit it. I kind of agree that this is a situation where we don't have an actual proposal, so we're considering concepts. A concept should be how do we appropriately notify these folks that there's a potential problem without just burning down the house and telling everybody, "Go home, you can't have a domain name"? Maybe it will take a little

bit more consideration and a fine-tuning of the proposal before we can actually make a good decision here. Thank you.

ROGER CARNEY: Great. Thanks, Cyntia. Griffin, you have your hand up. Please go ahead.

GRIFFIN BARNETT: Yeah. Thanks. I typed some additional comment in chat and it kind of speaks again to what Cyntia was just saying, but I wanted to just reiterate them as well. I can go into Cyntia's point. There's a couple of things I guess to keep in mind which is, one, I still think of going to the original point that I made earlier that it's better all around to provide broader notice. Again, we're really just talking about notice here than to push all these various issues as others have suggested to being dealt with with the various curative mechanisms that may be available. Again, we're not just talking about notice to prospective registrants, we're also talking about notifying the TM owners themselves when a registration is made. And currently, they may not even be aware of a universe of non-exact matches that have been registered to even consider taking curative action because the matching rules are just limited to exact matching. Just a couple of other points that I wanted to underscore. Thanks.

ROGER CARNEY: Thanks, Griffin. Cyntia, your hand is up. Is that an old hand? Thank you. Rebecca, your hand is up. Please go ahead.

REBECCA TUSHNET: Yes. To the point I just noticed, I will just say again, the notice isn't working. Expanding it while it's still not working is not a great idea. In fact, getting notice to the trademark owners is also going to be a problem. There's a very clear tradeoff in the data and I referred in the chat to the URS coding and I actually recommend it to anyone if you want to look at the things that cause URS cases. So it is nice to say that perhaps we could do a subset and Marriott could register hotels and lodging, but that's not how this tends to work with non-exact matches. You could target and then you would have a whole bunch of stuff that wasn't covered, or you could cover everything and get a zillion bad matches.

There isn't a magic solution and pretending that there is is not going to be particularly helpful. And by the way, if we do it broad so that everybody who might potentially want to think about it gets the notice, Marriott will get 5,000 notices a day, which is not a great thing for Marriott either. So I think actually, there's an undercount of the cost to the trademark owners here if you expand the match and get a bunch of false positives. Thank you.

ROGER CARNEY: Great. Thanks, Rebecca. Alright, so we are coming up on our time here. Ariel mentioned that Michael had a comment in the chat. I didn't see that. If Michael wants to mention it or if Ariel could read that.

ARIEL LIANG: It's actually a comment earlier in the chat. Maybe I'll just read it quickly. "The evidence of harm for my company and others based on the conversations with in-house IP counsel, is that most of our enforcement in the domain name space is for either Typosquats or Exact Plus Trademark domain name applications. This harms both us and applicants. Agree that a well-crafted, informational notice is better than forcing applicants and trademark owners to take adverse, curative action." That's the comment.

ROGER CARNEY: Okay. Thanks, Ariel. Alright, with just a couple of minutes left, I think we'll continue this discussion next week. I'm not sure what progress we can make. I guess I'll just throw this out there. Do we need to have a specific – this was brought up multiple times I guess – proposal to answer this question? Do people think that? Or is this a question that we can answer, or take #4 without a specific proposal?

Julie, you have your hand up. Please go ahead.

JULIES HEDLUND: Yeah. Thank you very much, Roger. This is Julie Hedlund from staff. One thing staff could suggest is that we open up a discussion thread on Question #4 and that would give people an opportunity if someone had a proposal that they thought might be helpful to be able to suggest on that thread. Just a reminder to all that we do have a several threads open and we don't have any comments at this time, so we'll send a reminder but ask you to

pay attention to those threads. Please do comment if you have comments that you would like to have included.

ROGER CARNEY: Great. Thanks, Julie. I see several people thinking the same way in that we can take this to the list. I think that's a great idea to start the thread on Question #4 out on the list.

Since we are running out of time, I will turn this back over to staff to close this out. Thank you.

JULIE HEDLUND: Thanks so much, Roger. I do apologize I've been kicked out of the Zoom room so I can't see if people are talking or raising their hands, but we are five minutes to the top of the hour when we would close the call to allow transition to the next meeting. Thank you all. We will resume our meeting next week on the usual day at the same time. Thank you all. Thank you very much for chairing, Roger. We really appreciate it.

ROGER CARNEY: Thanks, everybody.

JULIE BISLAND: Alright, today's meeting is adjourned. Everyone can disconnect your lines. I'm going to close out the Zoom room so that we can start fresh for the next call. Thank you so much.

[END OF TRANSCRIPTION]