
JONATHAN ZUCK: Should we just go ahead with Drew's presentation while Jordyn finishes up his work? Jean-Baptiste, are we ready for that?

JEAN –BAPTISTE DEROULEZ: Yes, we are.

JONATHAN ZUCK: Okay. Then let's just switch the order. Great. Thank you. I missed that suggestion. I apologize.

Welcome, everybody, to the 34th CCT Review Plenary call. I'm your host, Jonathan Zuck. Welcome, welcome, welcome. Is there anybody who's on the phone but not on the Adobe Connect, and is there anybody with an updated Statement of Interest? Alright, great.

Then let's move ahead and Drew, I'm going to just hand the reins over to you for the things you want to draw our attention to and get consensus on. Bearing in mind, this is an hour long Plenary so let's try to be as efficient as possible. Thanks.

DREW BAGLEY: Hey, Jonathan. I am still walking back to my place and dropping off my son at day care, so I won't be in front of my computer for another two minutes since I was anticipating Jordyn was going first. But, I could at least [inaudible] just assuming everyone's [inaudible].

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JONATHAN ZUCK: I guess I could go first. I just don't want to take anybody's time.

DREW BAGLEY: Okay. If Jordyn's ready or if someone else can go first, great. And then otherwise, I could give an overview without it in front of me as long as everyone else is looking at it.

JONATHAN ZUCK: Okay. Go ahead. Give your overview. [Let's switch].

DREW BAGLEY: I updated the DNS Abuse chapter to the best of my ability, as far as incorporating everybody's edits and harmonizing anything when I had suggestions that were seemingly incompatible with one another. Some of the initial suggestions before the last call were about footnotes and better defining things. There's a few of those areas that, assuming the paper's still showing comments, I left those comments in until I get a chance to find good sources for those. But, for the most part I've resolved all of those.

And then, special hat tip to Waudo for providing a lot of good feedback after everyone else had done some edits. He, I think, provided a good way of reorganizing the paper, and so I did that and then added to it.

What I'm trying to reflect – and I think I'll tweak the sentences a little bit more maybe today or tomorrow – but what I wanted the placeholder to reflect is the fact that we were tasked with looking at two things in this area. The team was looking at issues related to the expansion of the

new gTLDs, and in this category of issues that came up when the expansion was being discussed years ago, DNS Abuse was at the forefront of that.

And then from that discussion, nine proposed safeguards were created. And so, as a team, we've of course looked at each individual safeguard to the best of our ability with the data available and then we've tried to look at this broader issue of abuse as it was an area raised in general and not just confined to those nine safeguards. And so, that's what the study will be looking at.

Of course, our hope is that we might be able to draw a few correlations or what not from the study to what we know about the safeguards. That's what the intro paragraphs now reflect, and I think I can definitely tweak them a bit more.

And then, for the rest of the paper at this point, all I'll be doing is adding a couple definition footnotes. And then after that point, this paper is looking about like it will in our first draft. The only other things that I would attempt to do in the interim is one of Waudo's suggestions, which is to change the format for the analysis of each safeguard so that it's more consistent from one paragraph to the next so it looks like we're taking the same approach to analyzing each one.

The reason why it hasn't appeared that way thus far is just because this chapter, like all of the chapters, of course, came from a modge podge of discussion papers and the data I had available to me at the time from those various papers. And so, to the extent that I can apply a common approach and a common format, I'll do that.

I'll be in front of my computer again in 30 seconds, so if anyone has any feedback or wants to chime in on the phone now, feel free to. Otherwise, I'll be able to see the chat comments really soon.

JONATHAN ZUCK:

Thanks, Drew. So, you're going to try to normalize the paper a little bit. I wonder if we should...

Does anybody have any lingering concerns or issues with the paper? Have folks had a chance to read it?

Drew, are the recommendations at the bottom of the paper?

DREW BAGLEY:

This one will not include any recommendations until we have the DNS Abuse Study because then we would have a much more comprehensive [universe] to work with. I think you said yesterday, maybe, about narrowing the target. I liked that. So, I think for this one in particular, since we're waiting on a lot of data, there's no point in opening ourselves up based on pure speculation. So, this [in terms of it], has none of those.

JONATHAN ZUCK:

Let me ask a transactional question, though. Is there anything on this document – you've identified things that you need to fuss with, but is there anything that you think is controversial that you want to draw attention to for consensus purposes? That's really where we are at this point in terms of these plenary calls. Is there anything that there was

discussion about – “If you don’t say it differently then I can’t agree with it” – that kind of thing, that you want to draw our attention to?

DREW BAGLEY:

The last time I presented this paper, I think some people had trouble following it because it wasn’t the cleanest yet. That was my intention with this. Anything controversial or pointed out to me, so far, is something that’s already rectified because I’ve incorporated all the comments.

With that said, I can’t think of anything controversial since this is all just an analysis. I guess, maybe, one area that could potentially be controversial is an area where I’ve purposefully left the comment in because I still need to elaborate and address it.

There’s a sentence that states that, “ICANN Compliance does not monitor registry procedures for handling complaints,” which is entirely true, but I could provide more context for that. That’s something that Brian pointed out.

For all of the other feedback, I still see would be just adding definitions. I can’t think of anything else controversial, unless anyone believes that maybe the analysis of the safeguards themselves, if someone takes issue with something there [inaudible].

JONATHAN ZUCK:

This [could] have been something that people have raised before. Jamie, do you have any concerns about that construct about compliance? I just want to get, very quickly and efficiently as possible,

to things that so we can say we've got consensus on this document, which is a different issue than finding citations and things like that, which we all can rely on Drew to do.

JAMIE HEDLUND: Jonathan, I don't believe so, but I have to go back and look at it again.

JONATHAN ZUCK: Okay. Just make a point of doing so if you would, Jamie, in the near term because, otherwise, I think that that may be enough. I appreciate the update, Drew, but, absent recommendations that really require the kind of strict consensus discussions, I think it makes sense for us to probably move forward.

Thanks for your work. Keep at it and fixing up the comments and references. But, if anybody is concerned about the document, please read it.

DREW BAGLEY: Thanks, yeah. I encourage everyone to do an accuracy review. Great. Alright. Next, to Jordyn or you.

JONATHAN ZUCK: Jordyn, are you ready at this point?

JORDYN BUCHANAN: I am. Jean-Baptiste was just downloading the doc, so I don't know.

JONATHAN ZUCK: From Google docs?

JORDYN BUCHANAN: [Yeah]. [Is it] done yet?

JEAN-BAPTISTE DEROULEZ: We're doing it just now.

JORDYN BUCHANAN: I can start talking while this happens.

I've left a few comments in because I think there's still a little bit of controversy around the language that we use around the principle finding of this doc. And then, I've clarified with one recommendation in this doc as well. So, why don't we talk through them in that order? Because, unfortunately, especially the finding part, I think, is going to be particularly challenging to resolve, although Megan has perhaps given us a path forward in one of her comments.

Most of the comments that are left in here basically relate to how we characterize the existence of defensive registrations in the new gTLDs. Stan originally drafted some language that says that the phenomenon is "not insignificant," which I've continued to leave in the draft because I think it's probably the best characterization of the situation. But unfortunately, we have two competing sets of comments in reaction to this formulation.

On the one hand, I think Carlton suggested that that phrasing isn't strong enough and that we should just say it's a significant phenomenon. And on the other hand, I think Jamie has comments in here saying that that doesn't actually seem to be substantiated by the rest of the data in the document.

The point that I think we're trying to make here is that defensive registrations are a thing that happen and that it motivates at least some of the registrations in the new gTLDs.

Now, Megan has separately suggested that we just say what fraction of the registrations in the new gTLDs are defensive based on, I guess, the TMCH Study. I think we could extrapolate that out. I have to first of all note that the TMCH Study just did a sample, so we would have to extrapolate from that sample in order to conduct that analysis.

But, we could probably do that with a little bit of work. And then we could say that we could conclude, I guess, that defensive registrations, [power] present in the new gTLDs, and use the TMCH analysis to try to estimate what fraction of the volume that they represent.

First, before we get to the recommendation that I've made, I'd like to reach that point. So, I wonder if folks have any opinions on how to resolve this comment war that's going around about how we characterize the existence of defensive registrations in the new gTLDs. I'll pause there for a second.

JONATHAN ZUCK:

Anyone have thoughts?

JORDYN BUCHANAN: Note that both Jamie and Carlton are on the call.

JAMIE HEDLUND: I might want to put my hand up. Someone, please call on me.

I guess I had two concerns, [Jason], which I tried to call out in my comments. One was, it seemed like the paper was saying different things at different times or was inconsistent in characterizing the amount or level of defensive registrations or how much of a problem they are.

And then secondly, given that it's hard to identify what is truly a defensive registration as opposed to a registration that's a second registration that's used not just to defend a brand, but to aggregate traffic or redirect traffic to somewhere else or other reasons for having multiple names, that it seemed... Some of the descriptions of the level of defensive registration just seemed a little stark and overly, maybe, exaggerated.

JORDYN BUCHANAN: Thanks, Jamie. I think, as Jonathan noted in the chat, there's certainly a perception amongst, for example, the IPC that the current text understates the severity of the problem as opposed to overstating it, which maybe means if everyone's unhappy with the language, we've reached the [inaudible] compromised language in the [inaudible].

You are correct that it says... You note that the fact that we say it's not insignificant seems to contradict the fact that the median number of registrations is only three. I guess what I'm trying to express, and maybe we should just say this, is that defensive registrations definitely exist in the new gTLDs. I think they represent a dead weight cost that we need to be thoughtful about, but that the average trademark is not directly bearing a significant amount of direct registration related cost.

That's roughly how I would characterize it, and we could also perhaps try to add Megan's fact, which I think could be helpful just to try to quantify, based on the measurements we have, what a general sense of the total number of defensive registrations in the program would be.

You're right that we can't make a solid determination of that, but I also think that number is going to end up being quite low and we ought not to be too afraid of it, I don't think – even if it's an upper bound as opposed to a lower bound.

I don't know if you have any more commentary, but that would be my general statement.

JAMIE HEDLUND:

That makes sense. Thanks, Jordyn.

JORDYN BUCHANAN:

Alright. I think I saw Kaili raise his hand before Jonathan. So, why don't we jump to Kaili and then Jonathan and then David? [interweave] between the two parts of the window there.

JONATHAN ZUCK: Kaili, you might be on mute.

KAILI KAN: Okay, great. Thank you. Can you hear me now? Hello?

JORDYN BUCHANAN: Yes.

KAILI KAN: Okay, great. Thank you. I agree with you, Jordyn, that... Well, first we have to acknowledge that defensive registration is, indeed, a phenomenon that bothers some stakeholders, especially like IPR or brand name owners and so forth.

Also, I agree with Jamie in that there is not a very clear borderline between defensive registration, especially the fourth defensive registration. And, also some brand owners [are] registrants that they want to broaden their reach into the marketplace and so forth. So, that means multiple registration in multiple gTLDs might represent other reasons other than defensive.

Here, I would suggest maybe we set a recommendation for further studies into this issue because I think that might satisfy about everybody, every party. Clearly, at least, I know at this stage some – both data and some conclusions might look pretty fuzzy and so, I think if

we cannot reach a clear consensus on that, I think the best would be provide a recommendation for further studies. Thank you.

JORDYN BUCHANAN:

Thanks, Kaili. We might as well just blow up the conversation by – I’m going to jump ahead for just a second. If you scroll down to the very end of the document, you’ll see there is a recommendation now. And that recommendation is roughly whether the ICANN community... “The ICANN community should consider whether the costs related to defensive registrations or the small number of brands registering a large number of domains can be reduced.”

As we’ve discussed, the distribution actually seems to be pretty bimodal. The vast majority of brands either don’t register in new gTLDs or register only a small number of new gTLDs, whereas there’s a small number of brands that are registering a large number of gTLDs – in some cases, hundreds and hundreds of new gTLDs.

KAILI KAN:

First of all, I do agree with this recommendation which is to consider the cost. But also, I would like to include in this recommendation the scale of this defensive registration, as [inaudible] mentioned and also Jamie mentioned – about this fuzzy borderline. I think, first, before our final report, we need to work more on this issue. But also, I would like to make the recommendation not only to include the cost, but also to study and review the scale of defensive registration. And that might need some surveys to be taken. [inaudible]. Thank you.

JORDYN BUCHANAN: I actually think the INTA Survey that's being fielded should already get to that point of whether or not the costs are defensive in nature or whether all of the registrations we see are just brands happily registering in order to reach new markets. So, I think that study that you are hoping for is already in the field, essentially.

KAILI KAN: Also, there are some brand name owners who did not [multiple] register. I suspect it's possible that these brand name owners who do not [multiple] register might be just as a sideline and wait and see. Anyway, I would suggest to broaden this and see how it goes. It might evolve over time. Thank you.

JORDYN BUCHANAN: Thanks, Kaili. I think that your recommendation is largely captured by David's recommendation that we discussed on yesterday's call that we both have a baseline review of the impact of the RPMs, as well as to do that on a periodic basis so we could see the evolution over time.

But, I know there's a bunch of other people in the queue at this point, so let's get some other feedback and we'll see if we can consolidate this into a set of changes for the doc.

I think I have Jonathan next and then David and then Carlton.

JONATHAN ZUCK:

Thanks, Jordyn. I was just going to suggest a couple of things. One is that I find the idea of using numbers in place of characterizations wherever possible, so I think that's just an agreement of trying to do an extrapolation from what data we do have in the Trademark Clearinghouse Report with the caveat that it's based on sample data or something like that to anticipate a possible criticism.

I think there's also an opportunity to highlight the fact that the INTA Study is in the field and may show a different distribution of costs than has historically been the case, and that a complete analysis awaits a better understanding of that distribution of defensive costs beyond defensive registrations.

Something like that, I think, will create a little breathing room for folks who are ready to jump on this.

JORDYN BUCHANAN:

Yeah, that's fine. We can add a sentence. I tried to soften the language already in here which says that its direct costs of defensive registrations. We could add another sentence saying, "There may be other costs. That's being examined in the INTA Study, and you can see our [inaudible] in David's section related to fully understanding the costs to brand holders" or something like that. Right?

JONATHAN ZUCK:

That's it for me. Thanks.

JORDYN BUCHANAN: Okay, thanks. Speaking of David, you're up.

DAVID TAYLOR: Thanks, Jordyn. I guess it comes down to what is and what is not significant and what we consider. And certainly, I feel uncomfortable with the wording saying it's not an insignificant amount. I do prefer something [stronger]. Certainly, it's hard. And obviously, the data here... We are limited to the data, so we have to get some [inaudible] data. But, I don't know of any brand owner who would sit there and think they don't have a significant cost consequent to the new gTLDs.

If I did a ratio of [inaudible] our clients and looked at how much they've spent pre-new gTLDs and after, you are looking at anything between 20 and 100% increase. So, a 20% increase in the budget is significant in my book. All of them would say they're significant, and I think that [as you said], that would be an INTA Impact Study. I think that's what we'll find and that will come forward.

So, if we agree, then I think let's put a pointer to that saying that we are working on the data we've got, which is absolutely fair enough, and hopefully we need this other data which would enable us to take things forward.

I think it's a point I've made as well, previously, when we've got the median number of registrations – [it's] three – and what that means; certainly, when you say that and we read that data point, it sounds incredibly low. And I fully agree. That's nothing, is it? Certainly, if you look at any big clients' – Facebook, e-Bay, Google – preregistrations – nothing. Absolutely nothing.

But, when you look at your portfolios that these companies have, if you look at some of the smaller clients – and even a firm like us – we’ve got many small clients who have three domain names. That’s all we’ve ever registered for them. That’s all they run. They run on the .com, and the .co, and the .uk – and they may have a .net.

And we’ll have a discussion with them as to whether or not they should register and we say, “Well, here you go. You’ve got 1,400 different TLDs you can register in,” and they look at you in disbelief. And they select one or two or three. And so, for them, they’ve just doubled their portfolio. So then, that is massively significant.

That’s just the point I’m getting across. Really, it’s very, very, difficult to get it right. [That’s why I was struggling] a little bit, but I do think if we can say – we do need to say “significant.” I’d certainly prefer that to “not insignificant.” But let’s get the facts in what we can do.

JORDYN BUCHANAN:

Thanks, David. I guess only two points. Number one is, I think I’m leaning, based on this [session], away from the words “significant” or “insignificant” whatsoever and just say that they’re [a present] and then the usual number that we extrapolate out to give a sense of the total magnitude of it. That’s probably not going to satisfy your point because you want it called out that it is significant – which that proposed language wouldn’t do.

The second point I’ll make is that while I acknowledge that three may be a doubling of costs to a trademark holder... I’ll first note that the TMCH Study actually found that something like 47% of the marks they looked

at that were registered in the legacy gTLDs were registered zero times in the new gTLDs. And so, it's only of those brands that did register the new gTLDs that the median is three.

First, it's likely the case that there's many brands that are seeing no direct registration cost. It seems like it's the case that there's many marks that are seeing no increase in the direct registration costs.

And secondly, even if three is a doubling of costs, that's a large magnitude in terms of the percent, but it still strikes me as a low magnitude in terms of the total cost associated with that particular mark.

I don't exactly know how to get to that question of points because, obviously, different people are going to view it through different lens, which is why I'm tempted, as Jonathan suggested...

Anyway, I think we're seeing some support [from the call, just] to try to use the numbers as opposed to the characterizations for them.

I will say, even though it's harder to get to consensus on the call, I consider that a little bit lazy in that I think part of our job is to help interpret the data and not just to throw numbers at people.

Alright, I think I've got Carlton next.

CARLTON SAMUELS:

Hi, Jonathan. Can you hear me? Jordyn?

JONATHAN ZUCK:

Very faint, though.

CARLTON SAMUELS:

I am actually talking very loud. Hopefully, you can hear me well. Let me say a couple of things. First off, I – just to Jordyn – the issue is the interpretation of the numbers and how we characterize it. We say, “substantial, not substantial,” and who decides which is it.

There are a couple of things that need to go on the table. First of all, defensive registration is fact. So, we can always agree that’s the fact and we can say state it boldly. “Defensive registration [happened]”.

Second of all, we know that there are models and there are people who look at these things who have reported numbers. They’re high numbers, low numbers. And they are credible sources, and I think we can also say that this is the case. In one instance, they say this number, and in the other instance they say the other number.

We know the INTA Study that is coming is probably going to give us some more information – better details in terms of cost. I agree with you that compared to the cost of running the business, additional registration is miniscule. That is not to detract from the point that if, as David says, in the case where you had 3 registrations or 2 registrations and then you have to do 10, you’ve not added to the cost of registrations [for you]. It seems to me that is something that we can say as a fact.

We know what the Trademark Clearinghouse draft report says. And as you mentioned, it says 47% of brand owners who were surveyed did not

have any registrations in new gTLDs; but, on the flipside, 53% of them did. And maybe if we dig into that data, we'll see whether it is the 3, the 10, or whatever that number is as the average numbers that have moved in the last little while.

So, in my view, what I think we ought to go for is to establish a baseline for study and the framework in which we want to study this issue. And then, we lay it out for those people in the analysis that we would expect to give better information, a better interpretation of the data, to the next review.

That's all I think is reasonable, and I don't want to change your head at all. I think you're in the right place with this. All I'm suggesting is that we bread crumb it a little bit more and just put some additional facts in the paper to plug the holes. That's all I'm saying. I think it is reasonable to get that done.

JORDYN BUCHANAN:

Thanks, Carlton. I think I just reacted to Jonathan a little similarly in the text, which is that I actually think this is a place where we have pretty good facts, and depending on the lens that you choose to look at it through, you can characterize those facts in various different ways. And I think we're roughly struggling in this conversation to settle on that characterization.

We could just, like I said, put the numbers out there – and those are facts and so, hopefully, they're less controversial. But I think we do somewhat of a disservice to the reader by either refusing to characterize it or by suggesting that this is something that the future

analysis can understand. I think in many cases, we just lack the data to draw conclusions. I don't think that's the case here. I think we have pretty good data that tells us something.

Jonathan has suggested some language in the chat which I think is probably a good characterization of the situation, which is that, "While defensive registrations remain a problem, this is particularly in light of those with larger portfolios. It does appear as though the incidence of defensive registrations is not as significant as originally feared." Something like that.

I think, then, we would need to have some reference to what those original fears looked like so we can justify that characterization. But that also does seem correct to me, and I think a lot of the initial rhetoric around the defensive costs was a little bit overheated and this will at least help balance the actual data against those previous statements.

I don't know if anyone knows where we can dig some of that up, but to the extent you have those sites, it would be great to send them to me and I'll try to incorporate them.

Jonathan, is that a new hand or the same one from before?

JONATHAN ZUCK: It's old, but I'm happy to pretend it's new.

JORDYN BUCHANAN: Sure. [We'll turn] to you and then Kaili, I guess.

JONATHAN ZUCK:

So, I think we can find those sites and I think that makes sense. I think the real danger here for the IP community is not in the characterization of defensive registrations, but the characterization of defensive registrations as the sole incidence of defensive costs. That's what I feel might get revealed by the INTA Study.

And so, I think as long as we contextualize defensive registrations in this new world in which the distribution of defensive costs may be different, we need room for a better understanding of where those costs might go, like going to court more often or something like that as opposed to registering defensively because there's just too many...

I heard David say this at one point. He said clients decide there's just too many now to engage in a defensive strategy via registrations and, instead, they'll engage in a [defensive] reactive strategy through challenges and waiting for infringement.

That's the only thing. I think it's just that context that says that this doesn't provide a complete picture any longer. Defensive registrations used to kind of be the primary thing we looked at, and the world's gotten a little more complex and hopefully better in the process with the Trademark Clearinghouse and URS and things like that.

But it's different, and I think just maintaining that context is all that's necessary. If we do that, I think that we could feel free to characterize the numbers we see on defensive registrations. I didn't mean to totally wimp out on that.

JORDYN BUCHANAN:

That's right. Like I said, I plan to include some language referring to the other costs and the INTA Study. I'll just note, although you're right that in theory there could be a bunch of [us], I think to the extent we have data points on these other costs, they don't seem to indicate – like David's data on UDRP and URS cases doesn't seem to show that there's a huge amount of [it]. It certainly doesn't seem to support the notion that there's been a large increase of those sorts of costs associated with the program either.

The one thing that's missing here is blocking costs. Once again, I think just understanding how those products work, it seems unlikely that those are going to be a dominant... It's also unlikely that those are going to represent a huge subterranean cost that we've missed in the initial analysis.

On the one hand, I totally agree with you that defensive registrations don't fully capture the costs. I also don't want to give the impression that there's probably some other secret cost that we're just not capturing because, to the extent we can see any of the costs, they seem to be – once again, I'll use the phrase that you're suggesting, which is "lower than previously feared." And I think that's pretty consistent across the data set that we see.

Alright, I've got Kaili and then David. Kaili, go ahead.

KAILI KAN:

Thank you, Jordyn. I think as we see now the Nielsen Survey, it says 51%. So, I think here we have two issues. One is the scale of defensive registrations. According to Nielsen Survey, 51%, that is not insignificant.

So, I think first of all, we want to acknowledge that defensive registrations is, indeed, a significant phenomenon here. Number one. After that, then we discuss about the costs. And then, probably we can do more study and so forth. But at least, according to the Nielsen Survey, I would say we want to acknowledge defensive registration is indeed significant. Period.

And then, we go on to the second issue about cost which can be further studied. Thank you.

JORDYN BUCHANAN:

Thanks, Kaili. I think it's hard to extrapolate too much from the Nielsen findings because it bundles a bunch of responses together as saying defensive. It also includes the notion that you have bought a name opportunistically or speculatively in addition to defensively. And those aren't quite the same thing. Even though both of them don't represent active registration intent, they're not quite the same as saying 51% of registrations are defensive.

KAILI KAN:

I don't think we're over extrapolating. Here, as we have already quoted, 51% of respondents indicate that they want to "protect my brand or organization name," and the same person that give as the reason to keep someone else from [inaudible].

So, that is not... Right there, it's not... I don't think it's even extrapolating. That is the original text I, suppose. So, I don't think that is over extrapolating.

According to the quoted text, and also 51%, that is significant. I think we are only acknowledging what the Nielsen Survey has found, and then we go on to the costs. So, these are two separate issues. One is to significantly acknowledge that. Secondly, if later on studies find that the cost is negligible, very small, then we can say, "Well, it's a large scale, but such and such is not important for the consumers and so forth." However, we need to acknowledge the facts that we have already found. Thank you.

JORDYN BUCHANAN:

Alright. Thanks, Kaili. I do agree that we need to try to characterize the data, but I guess I'll note that Jamie's comment in this document is essentially saying that he thinks the "not insignificant" language, which is even a step back from the "significant," is too strong.

I'll work through the discussion we've had here today and some of the language Jonathan presented and see if we can get something that people are happy with.

David, go ahead. And David and others, since we only have eight minutes, I'd also like feedback as we discuss on the actual recommendation here, which is that there should be some follow-up to see if there can be RPMs that try to decrease the costs for those trademark holders registering a large number of domains defensively.

I'll put you on the spot a little bit for that, David, but feel free to add your initial commentary as well.

DAVID TAYLOR:

I'll just be quick. Jonathan pretty much covered it anyway. It was really just referring – You said, yourself, back to my bit of the paper where I talk about it being part of the costs. I just think, as you said there, there's blocking as well, but don't forget there's the cease and desist letters and [watching costs, which were in there – and those we don't have any metrics on, whatsoever.

And the cease and desist letters are very high because those go out further to the Trademark Clearinghouse when you get their notification. So, that side of things is a positive on the Clearinghouse, but it takes significant cost which is there way more than they used to be – the cease and desist letters, for instance, what we see but we don't have the metrics.

So, it was really just going about that it's only a part of the costs. And I'll try and think of some wording if I can to help with the "significant" or "not insignificant" point which you've got in the drafting. I'll drop there and leave the time for anyone else to talk about the other bit.

JORDYN BUCHANAN:

Great. Thanks, David. David, I'll put you on the spot. Do you have any thoughts about the recommendation here?

DAVID TAYLOR: Reading it now again, sorry. I was in my Google doc, so I'm going back onto the other bit.

JORDYN BUCHANAN: Sure.

DAVID TAYLOR: I think my immediate thought is, I immediately go into the "significant/not insignificant." I feel there we've got something where we can say that defensive registrations remain a phenomenon, a significant phenomenon.

And I think, really, what we want to try and find out is whether this phenomenon of defensive registration has gone down with the new gTLDs, which is not to my mind unexpected because there's so many of them. You can no longer have the same strategies you did five years ago. That, to me, is the difference. I think that we can maybe find a way of, if you want, putting that in the recommendation as well. I'm happy to help. That's my immediate thought.

JORDYN BUCHANAN: Yeah, potentially. Anyone else have thoughts on this recommendation, and I'll just remind everyone that in specifically suggesting – and this is suggesting as a blocking issue to additional gTLDs – that probably one of the two existing PDPs (either Subsequent Procedures or the RPM Review – or whatever the RPM PDP is) one of those two consider whether we should have a mechanism that's tailored towards the small

number of brands that are engaging in significant whatever...in larger numbers of defensive registrations.

Anyone have a reaction to that? Or, I guess this is the, "Hey, if you don't like this you should say it because this is the recommendation that's currently embedded in the doc."

Kaili, is that a new hand?

KAILI KAN: Yes. [I just here]. Just for the recommendation text itself, I suggest to take off two words. Instead reading "whether the costs related to defensive registration for defensive registration of brands registered," take off the "small number of." Because why do you want to have those words there? We shouldn't consider [inaudible]

JORDYN BUCHANAN: I think [inaudible] correct characterization

KAILI KAN: We should represent a substantial large number. [Who knows?] So, I don't think it's very meaningful to put the words "small number" here. Thank you.

JORDYN BUCHANAN: The reason for that language is A) [the impact], and B) I think it's to call attention to the fact and to make sure that those groups are looking at the fact that there's different behavior for different of brands – or

there's different behavior for different trademarks, and there ought to be some effort made to focus on the particular behaviors associated with the ones that are registering large numbers as opposed to just reopening and saying, "Oh, defensive registrations are a problem. We should do something about that."

This is trying to focus in on a specific subset of the defensive registration behavior and end up with – to see if it's possible to make changes or introduce RPMs that decrease that specific set of costs.

I do think it's important to try to differentiate between defensive registrations in general –

KAILI KAN: As a matter of fact, I do prefer a blanket solution for defensive registration, no matter if the number is big or small.

JORDYN BUCHANAN: Okay. Thanks, Kaili. Jamie?

JAMIE HEDLUND: Thanks. Just picking up from Kaili's comment, I may be reading this wrong, but it seems to me that, for starters, we're supposed to make recommendations either for the Board to consider or for the PDP or other Subsequent Procedure PDP or other community mechanism to consider and not to necessarily recommending a position of any particular remedy.

If you disagree, please tell me now. But that's sort of why it's--

JORDYN BUCHANAN: That's correct. That's the exact recommendation, is that either the Subsequent Procedures or the RPM PDP should consider this issue.

JAMIE HEDLUND: Right. Okay, so while Kaili may have a preferred solution, I don't think that's really necessarily ours to surface. But when I read the last one, "This bimodal distribution suggests that RPMs tailored to certain of these trademarks may be appropriate," for me what that conjures up is the GPML idea -- the Global Protective Marks List.

And unless we say explicitly, "May be appropriate for consideration," it may suggest to the community that we're saying that that's exactly what needs to be imposed without taking into consideration some of the challenges with ICANN organization imposing a sort of new standard and level of protection that does not exist elsewhere.

Otherwise, I'm fine with it, but -- and maybe this is too academic -- but I just thought it would be important to indicate that these kinds of protections for the small number -- that is a fact that there is a problem there and mechanisms may be appropriate, but they should be considered by the relevant bodies. Thanks.

JORDYN BUCHANAN: I'm happy to include language for consideration. Other than that, I would hope that no one would infer from this language that there's a

specific mechanism being recommended because that's not the case. And while those with a history on the subject may jump to previous suggested solutions – I [don't] think that's included in any of the language here, but the specific suggestion you made about “for consideration” seems fine because that's the intent. We're not trying to specify what the solution should be.

JAMIE HEDLUND:

Got it. Thanks. And thank you for indulging my paranoia.

KAILI KAN:

I agree with Jamie that we're not looking for specific remedies for specific brand name owners. As a matter of fact, as we make recommendations to PDP, working groups, and other RPM PDP, etc., I think we are looking for policy as a solution. Whenever we're looking at a policy, it should be uniform across the board. So, that's why I agree with Jamie that we're not looking for specific remedies for a couple of brand name owners who have incurred large costs. But what we're looking for is a policy which avoid those costs happening in the future.

So, as long as we're looking for a policy and recommending other groups to do that, I think we want to indicate our intention that we are looking for a policy solution. So, that's why I suggest to take out the four words “the small number of” instead to [inaudible]. Thank you.

JORDYN BUCHANAN:

Thanks, Kaili. I know we're out of time, so I'll wrap things up with that. I like your suggestion to make it clear that we're looking for a policy

discussion. I think that's better indicated, as opposed to editing the other words by saying the ICANN community should consider adopting a policy or something like that just to make it clear that we're looking for policy here. Because that is the intent. That's why we're looking to one of the two PDPs to look at this since they're the policy development entities.

In any case, I think I'm over time so I'm going to hand things back to Jonathan to either wrap up or go over time to talk about the data analysis bits.

JONATHAN ZUCK:

Thanks, Jamie. We are at time here. I know folks have tight schedules. I've made some modifications to – if people can hang on for five more minutes, what I may do is just ask Jean-Baptiste to upload that document and I'll scroll to the changes to draw your attention to them and then request that you take a look at them in Google docs to see if they've captured your comments from yesterday.

Do I have scroll control for everybody else? Okay, great. Thank you.

There's a couple of things that I want to draw attention to. One is in the first recommendation. I tried to take the suggestion to make it more output or process oriented and less specific in terms of putting a position in place here so it became, "formalize and promote ongoing data collection."

And then the, "ICANN should establish a formal initiative perhaps including a dedicated data scientist to facilitate quantitative analysis by

staff, etc. this department will be directed and empowered to identify, etc.”

That was the attempt to address Jamie’s recommendation to make this more output oriented. Because we’re stretched on time, I don’t want to start a conversation now. But I just want to draw your attention to those changes and for you to reach out to me as soon as possible if you’ve got issues with them.

I also changed, subject to Jordyn’s yardstick, I changed the critical path nature of a couple of these to “no” when the critical path would be too unduly delayed by changes to agreements and things like that.

I included areas... Jamie also mentioned issues related to – mentioning the things that are going to require changes to agreements. I think they were in there so, Jamie, you just may need to read those to the end.

And then I added something on secondary market data here as a finding as well, recognizing that we had difficulty getting it this time around. But we may need to just put it out there as something to make it an organizational priority to try and get [active].

And then the other thing that’s added here came from Waudu and I just put it in here. I just restructured it a little bit and included it directly. So, you’ll see that there’s a recommendation to, “Create support and to partner with mechanisms and entities involved with the collection of TLD sales data at a country by country level.”

Waudu’s recommendation is actually to reach out to the entities that are attempting to collect ccTLD data today and help them to standardize

their output so that the data's more easily combined and dealt with in the aggregate, etc. So, please take a look at this recommendation, as well, when you get the chance. That's here on the middle of the screen.

Finally, updates to agreements that Jamie mentioned here in tracking the cost of safeguard implementation and the granular data collection by Compliance. That was another suggestion by a concern raised by Jamie, understandably, because he'll be confronted with this.

I may try to offline this conversation with Jamie, but do read the last recommendation here about granular data collection because I think the crux of the argument is about whether or not it should be a critical path.

In other words, should it be completed prior to subsequent rounds? Because there is definitely some IT work required to make this happen. It's work that should have happened a long time ago, but let's decide what our consensus or rough consensus of the group is about whether or not getting access to more specific data collection – not getting access to it but the collection of more granular data by Compliance for future review is critical path.

That's the big question to think about. I wanted to draw your attention to those things, and that way we can have an efficient conversation about them on the next call.

Otherwise, thanks everyone for participating, and we'll see you on the next Plenary. Thanks.

JAMIE HEDLUND:

Thanks, Jonathan.

[END OF TRANSCRIPTION]