**ICANN
Transcription
Review of all Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims
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Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. And welcome to the Sub Team for Trademark Claims on the 21st of April, 2017. In the interest of time there will be no roll call; attendance will be taken via the Adobe Connect room. If you are only the audio bridge could you please let yourselves be known now? And, J. Scott, I do see you on the audio bridge right now.

J. Scott Evans: This J. Scott.

Terri Agnew: Thank you, J. Scott. Anyone in addition? Hearing no further names, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when

not speaking to avoid any background noise. With this, I'll turn it back over to our cochair, Kristine Dorrain. Please begin.

Kristine Dorrain: Thank you very much, Terri. This is Kristine Dorrain, today's cochair with Michael Graham, who will be chairing next week. So just a quick review of the agenda, the first order of business for today is to review the questions in the Google Doc. I noticed a few people have gone through and make some suggestions for deleting or combining questions. People have asked some clarifying questions. People have suggested - Kathy also suggested maybe a part of question that may have been omitted. It looks like those are the first sort of overarching observations that I made from looking at the chart.

So before we dive into the actual chart and, you know, attempt to see what we can agree on as far as deletions and combinations, does anybody have any introductory comments that they'd like to make before we get started? Oh, Amr.

Amr Elsadr: thanks, Kristine. This is Amr. Just maybe a few comments (unintelligible) the ones I set on the sunrise registration sub team call a little while ago. It might be helpful if the sub team members, while going through these questions sort of try to figure out what it is they - you feel is done and what you would like to report to the full working group on the call next Wednesday as well as when you would like the next sub team call to take place, presumably next Friday at the same time.

I was also wondering, because I think one of the objectives of the sub teams is to sort of identify missing data and metrics that may be helpful in answering some of the charter questions on trademark claims. So I haven't seen anything to that effect in the Google Doc, but if something does come up or folks do think of things that would also be something worth considering. Thank you.

Kristine Dorrain: Thanks, Amr. Okay, good. I've made a couple of notes of things that we're going to add including what we're going to be able to report out next week and when we're going to have the next call.

So let's jump into the actual table of charter questions. Hey, Michael, you just joined, yay, welcome. I wasn't sure if you were going to make it. Michael is our other cochair.

Michael Graham: yes, I'm here. Thank you.

Kristine Dorrain: Yes, you bet. So it looks like a few of us have commented on the combinations of questions. So I think we'll start there. We'll pick some low hanging fruit to let us dive in this morning or afternoon. There are some suggestions, I think mostly Kathy and I and maybe Susan have kind of agreed that there's a general coalescing around lumping Questions 1 and 2 together and lumping Questions 3, 4 and 5 together to the extent that we may have to talk a little bit about the actual inclusion of Question 4.

For those of you who are on audio only, I will just refresh your memory very quickly with a summary. Question 1 is, "Should the trademark claims period be extended beyond the 90 days?" And Question 2 is, "Should the trademark claims period continue to apply to all new gTLDs?"

And in my own personal notes, I've classified those in an informal bucket called Implementation, which is sort of if there should be a trademark claims period, how long should it be? Who should it apply to? And how should it work? That's one bucket that has been proposed.

For your comparing pleasure, I'll also mention Numbers 3, 4 and 5. Three is, "Does the trademark claims period create a potential chilling effect on genuine registrations? And if so, how should this be addressed? There's been a comment that we should replace "genuine" with "good faith." I think I support that because - or I shouldn't say I support that, I recall from last

week's discussion, and I think some discussions on the list that that was a pretty broad consensus; people generally thought that that was a more accurate description of what was happening.

And then the next question Kathy mentioned that the combination with Question 5, which is, "What is the effect of the 90-day trademark claims process?" So again, going to effect. And then Number 4 is, "Is the Trademark Clearinghouse and the sunrise period allowing key domain names to be cherry picked and removed from the new gTLDs unrelated to those of the categories of goods and services of the trademark owner. e.g., allowing Windows to be removed from a future dotCleaning by Microsoft."

And without getting into the merits of that specific question, I know there was a little discussion on an earlier call this morning about whether or not that question belongs here or whether or not that's sort of an overarching, you know, sort of general, what are the costs and benefits of the Trademark Clearinghouse overall?

But to the extent that we're not going to discuss the addition or removal of 4 at this exact moment, 3, 4 and 5 I've bucketed as initial research and in the notes Kathy Kleiman suggests that 3, 4 and 5 could be grouped together as well. So what say you all in the chat or by raised hands or whatever? Three, four and five lumped together as sort of initial research type questions followed by a discussion about 1 and 2? I have informally called Implementation. Michael, go ahead.

Michael Graham: Yes, I just would like to jump to talking about Number 4. And I guess I'm of a mind that it really is an overarching sort of issue and question. And I don't know if that means that it would be put back into TMCH. I sort of think it is almost looking at a fundamental principle of the TMCH, trademark claims and sunrise from a principle standpoint. And I don't know if we put that in its own separate category. I'm almost thinking that that would be the place for it so that that would be the first sort of underlying discussion. But whether or not

that, you know, latches into your implementation, which I think is a far more important goal for us to look at.

The other thing I have about 4 and I have not word crafted it, but it is certainly an argumentatively drafted question which I don't think is useful for any of us. So I'd do those two things. One, I would recraft the question so that it is, you know, a true question and not argumentative. And, two, I would consider it to be beyond what we should be doing in connection with claims, but more importantly as a basic principle underlying principle of the entire process.

And then as long as I'm here, I sort of think 5 would be - I think you've put that in for research, and I think that that as such, really is not a question that we should be addressing but it is an area of information that should be pursued in order to answer the question, Number 1, 2, 3, you know, bunched together. It really is an informational, I think as you've said sort of question. Thanks.

Kristine Dorrain: Okay thanks, Michael. So I have a few action items from you there, to Amr's point, which is we also want to flag where we're going to need additional research, I've made a note and it looks like Susan agrees, it looks like we should add some action items there to do some research so that the working group can address Question 5 when we get there.

You've suggested editing the text of Question 4 a bit to be a little less argumentative. And I think that that's - we're going to add that to our agenda for today if we can get there. And that - but first and foremost, I think that I'm taking your suggestion and Susan's suggestion on the doc, which is really that Question 4 really doesn't belong here and I think that that was also something, Amr - I'm sorry, Amr, I keep pronouncing your name wrong. I think that's also something Amr noted in the chat which was sunrise registration sub team also suggested to move Question Number 4 to the general overarching comment.

So let's take that up first. Does anybody object to moving - suggesting that Question 4 be moved to the overarching Trademark Clearinghouse discussion and taking it out of the specific claims discussion?

Kathy Kleiman: Kristine, this is Kathy Kleiman on audio only.

Kristine Dorrain: Yes, go ahead, Kathy.

Kathy Kleiman: I apologize, I got dropped in the tunnel. I hate to ask, could you read what Question 4 is? I apologize for missing that part of the discussion.

Kristine Dorrain: Yes, no worries. Question 4, "Is the Trademark Clearinghouse and the sunrise period allowing key domain names to be cherry picked and removed from new gTLDs unrelated to those of the categories of goods and services of the trademark owner? e.g., allowing quote, Windows, to be removed from a future dotCleaning by Microsoft."

Kathy Kleiman: I think that's now part of - I could be wrong since we were both on the sunrise call this morning, I think it's now part of the sunrise issue. Thanks.

Kristine Dorrain: Yes, I agree with you. I think the - we did discuss that this morning and it's not a question specifically for claims. Michael, I see your hand. Go ahead.

Michael Graham: Yes, I'm looking at it again and again, and, I mean, it really - is this a question that came out - I guess that would be my question. Since I joined late, and maybe you or Kathy could answer this. What the source of this question was, whether or not this was something that came out of the charter, or is it something that was developed within the working group, the PDP?

Kristine Dorrain: Mary or Amr, could possibly correct me on that. But I - it is my understanding that all of these first numbered questions came out of the charter or the sub team - let me try to be really clear, where there was a sub team to clarify the charter questions, because some of them were written in a very sort of

argumentative or in a way that sort of presumed the answer. But to my knowledge, all of these are a direct result of charter question.

Mary or Amr?

Amr Elsadr: Thanks, Kristine. This is Amr. As Mary has pointed out in the chat, there were a number of questions that were suggested to be added just during the public comment period on the preliminary issues report of this PDP. And this was one of them so it was included in the final issues report and then in the charter of the PDP. So that's kind of where this question came from.

Kristine Dorrain: Yes, and, Michael, just to be clear, there has been some sort of misfiling, if I may, with some of the questions. Some of the questions have been misfiled in different categories, and it is our job, as I see it, to move these questions into the appropriate category if they were inadvertently, you know, put into the wrong section when we went through it. Susan had her hand up and took it down so I'm going to read her mention in the chat. "Yes, we did not review these questions and edit to remove bias, we only did that exercise for the TMCH charter questions." So excellent, we'll add that to our agenda.

And, Michael, I see your hand.

Michael Graham: Okay so two quick things. And, you know, I really think that the best thing that we can do coming out of this working group is to get our questions nailed down and better defined. So if you don't mind, two things. One, and I'm jumping to Question 5, and Question 3. I think 3 in a similar way to 4, is an argumentative question. The proper question, I think, is 5, you know, what is the effect? And that with 1 and 2 would sort of make sense to me.

Four answers itself. It's argumentative and it is cherry picked? Well if you believe that there is such a thing as cherry picking, and this is how it happens, I don't think that there's any answer to this other than yes. But I

don't think that progresses in any way our consideration of the utility and effect of the trademark claims system.

So anyway, I would remove 4 from consideration. And I would move - take out 3 and sort of combine, as you have, so there's the overarching question and then there are the sub questions under it that you've already identified as 1, 2, 3 which would now be 1, 2 5. And then I think very usefully you suggested that we look at implementation, what sort of information we should try to gather in order to answer those questions as sort of a second group of questions. And I'll sit down. Thank you.

Kristine Dorrain: Okay, thanks Michael, for that proposal. So we have a - so it seems like no one is arguing to keep Question 4, that that will -I shouldn't say "keep" to keep it in the claims spreadsheet. We're going to request that staff move Question 4 into the overarching Trademark Clearinghouse discussion. And I think we have some good consensus on that.

So then the next question, excuse me, I have a little bit of this lingering cold form last week. So then the next piece, and I'm hearing some agreement with the idea that we merge Questions 3 and 5 in some order and in some change of wording, and that we move Questions 1 and 2 possibly with some change of wording, but I'm not hearing a lot of suggestion for that. Does that sound like I've accurately captured where we're at? We've got a checkmark from Michael. Giving anyone an option to speak up.

Okay good well feel free, this isn't the final word. Susan, go ahead.

Susan Payne: I'm so sorry, but you just - you'd finished and I'm not putting my hand up. I was just - I just wanted to clarify when we say "merge" are we sort of talking about batching, which is, I think, the term we were using in the sunrise sub. I mean, we're not - or are we talking about sort of trying to redraft 1 and 2, collect to make a single question? Personally I think I'd probably favor

batching, if you like, just because I think we could spend about six months trying to redraft these questions.

Kristine Dorrain: Susan, I agree completely. Thank you for that. I've - notorious for imprecision in my language. Absolutely, batching is the right word. Okay, so very good. It looks like we're going to batch 1 and 2. We're going to batch 3 and 5. And then I think from there we can dig into the wording of our batched questions. But I want to first circle back because I think it does deal a little bit with the compartmentalization of, you know, sort of how we're batching these things.

Kathy added a new row after Question 5 and I'll read it for the people only on chat. She says that she thinks the question somehow got dropped in the transfer from the charter to the table in front of us. And that part of the question may be relevant to trademark claims evaluation. "Is the Trademark Clearinghouse providing too much protection for those with a trademark on a generic or descriptive dictionary word thus allowing a trademark in one category of goods and services to block or postpone the legitimate and rightful use of all others in other areas of goods and services?"

That's the first portion of the question. The second portion that Kathy specifically flagged for us is, "Are legitimate, noncommercial, commercial and individual registrants losing legitimate opportunities to register domain names in new gTLDs?"

I - you know, kind of studied this a little bit. Mary answers in the chat, "No, this question was not dropped. It was moved to the TMCH discussion. There it was reworded and in its reworked form, discussed by the working group." Thank you for that, Mary, I really appreciate the background on that.

I also think that the second part of this kind of gets pulled into the discussions of the effects. So if you go up and you read sort of what's written in Question 3, "Is there a potential chilling effect whether or not we change the wording, " on good faith registrations? How should it be addressed?" You know, what is

the effect of the 90-day trademark claims process? I think that these two sort of additional questions or the questions that appear to have been reformulated I think those questions are kind of pulled into the concept of reviewing the effects of the Trademark Clearinghouse. Or I'm sorry, reviewing the effects of the claims service and the claims process.

Does anyone disagree with that? Susan says, "Thanks, Mary, we did move this to the Trademark Clearinghouse debate and refined the wording to remove bias." And that seems to be my understanding as well. J. Scott has a green check. Kathy, you're the one proposed this question and note the possible drop. Do you agree that this has been pulled into the Trademark Clearinghouse properly and that the wording of - the current wording of Questions 3 and 5 do allow us to kind of also consider these, you know, the legitimate or good faith rights of others?

Kathy Kleiman: Kristine, can you hear me?

Kristine Dorrain: Yes.

Kathy Kleiman: Okay, great. I'm on Bluetooth now. Thank you for asking. I hadn't - I vaguely remember this issue that we pulled some of it. The question is, is some of it still relevant to the trademark claims? This is a - I was just comparing the charter with the table. So this is a charter question. And there is information now from the Analysis Group about very common words being hit very frequently in the trademark claims.

And so have we really kind of encompassed all of that in the existing questions? Or should we take some piece of this question that was originally here in the trademark claims in the charter and look at kind of legitimate registrations of ordinary words, and look at that issue here through the prism directly of trademark claims. And so I'm not sure it's fully captured, but of course we wanted to remove the bias but, you know, is there still something to look at kind of this ordinary words question. Thank you.

Kristine Dorrain: Thank you. I will put myself in the queue after Susan and Michael. Susan, please go ahead.

Susan Payne: Hi, yes. It's Susan Payne for the record. Yes, I mean, I think that this - obviously this is a question in its sort of unbiased form, which needs consideration. Indeed the working group is considering it. I mean, there's endless extensive debate on this currently on the main working group mailing list to the point of exhaustion.

Now if we get to the end of that debate and we discover that somehow something slipped through the net, maybe we have to come back to this. But I think when we get to the end of that debate they will either say we've finished this discussion or they'll say the claims group needs to think about this further.

But this is not a question for here, it's a question about the TMCH and it's in that discussion, it's being dealt with. I don't think we need to talk about things three or four times.

Kristine Dorrain: Thank you, Susan. Michael.

Michael Graham: Yes, Michael Graham for the record. Kathy, thanks for bringing this in. I think, you know, especially being a latecomer to the PDP it's important for me to see these. I agree, this is really something that - I think is being addressed right now in connection with the TMCH. You know, in a perfect world where I was able to participate from the get go, I would have said it would be good similar to something that we did in the Policy and Implementation Working Group of before we set off on some of these discussions try to arrive at some basic philosophical principles underlying the purpose of the Trademark Clearinghouse and such.

And I think this question goes to some of that. I think it's very useful and it's important for us, and I hope that we can identify a way to do this, is to look at what the claims service is now and to try to find information that shows what effects it may have - that it is having, not may have, but has had on applications, on applicants, on registrants in the TMCH.

And I think, you know, to the extent that we can focus the questions as I think you have in batching these, using the correct term, questions is, you know, looking - for us at the trademark claims, what effect have those had? And I think these questions, to the extent that they're not already being dealt with in the TMCH or warrant, I think they certainly should be. But I think that's they're better left for that and for the larger group and not for this focused looking at the trademark claims service. Thanks.

Scott Austin: Kristine, hi. This is Scott Austin…

((Crosstalk))

Scott Austin: …just wanted to let you know I was on the call.

Kristine Dorrain: I'm sorry, was there someone else trying to speak?

Scott Austin: Yes, Kristine, I'm sorry to interrupt, but Scott Austin, I just wanted you to know I had to dial in, I've been on the call since about 12:10 and I support everything that Susan and Michael just said, totally agree with them.

Kristine Dorrain: Great. Thanks a lot, Scott. And welcome to the call. We're trying to be conscious of the people on audio only so jump in as needed. So I think that we're getting good consensus for the batching. I don't think we need to continue on with that. So it seems like there's a lot of interest in thinking about these questions - about the wording of Questions 3 and 5. So I propose that we jump into that since that seems to be where people are interested in discussing right now.

So the - so what I've basically - what I've basically done in my own notes is to suggest that we have this sort of general bucket of suggesting, let's see, what did I say in this - in Question Number 3? My note is, I think this goes with Question Number 5, that's 3. Susan, oh to be really clear, we're taking this question back out, aren't we? Yes, I don't think that there's any consensus for adding this proposed sort of Item 6 as verbatim into any sort of question.

I think we've generally agreed that it's there but I'm also taking Kathy's point that we should, as we revise the wording of Question 5, and Question 3, because I think that we have some - we have consensus that we'd like to revise that wording, I think we will take into our count the wording of that language and make sure that we're - our - any questions that we are going to propose that either staff or the team do ahead of the actual working group discussion, take into account legitimate noncommercial, commercial and individual interests.

So that's my understanding of where we're at. We are going to take that piece into account as we, A, reword the questions, and, B, request additional data. Does that seem fair, Susan? Or is that still doing too much?

Susan Payne: Sorry, I thought maybe I'd just speak, I was about to start typing. I think it seems fair, I just want to be - I just want to be sure we don't end up having, you know, duplicate conversations and reopening things if they get closed. I'm not trying to close down a discussion at all on something that needs discussing. Just want to make sure we don't have the conversation endlessly in multiple different fora.

Kristine Dorrain: Yes, agree. And noted, I think - in my comment earlier this morning on the other call, was we definitely want to be able to a question. And I'll repeat it for this group, we want to be able to get to a question, you know, a year from now or six months from now or three months from now and look at each other

and say, asked and answered, where appropriate. So I think we definitely want to have that opportunity as well.

Okay, so for Number 5, I have suggested that we ask the question a little bit more generally. So we say, "What are the effects of claims generally? Do they scare good faith registrants away? Do they act as a valid deterrent against would-be actors?" And then furthermore, I suggest, you know, is there, you know, is - if there is a deterrent effect, and I think we would probably - I think the working group would probably agree that there is, whether it's a good deterrent effect or a bad deterrent effect or an it depends deterrent effect, I think we would all agree that there is some sort of, you know, deterrent effect on the claims notice.

That is what I've written in the margin of the document that's in front of us, so for those of us online you can kind of skip back and forth between Items 3 and 5. Does anybody have any - I'm just going to throw that out as a straw person, so rewording Questions 3 and 5 or at least starting with saying, "What are the effects of the trademark claims notice? Is there a valid deterrent effect? Is there a harmful deterrent effect on good faith registrants?" any suggestions there? Michael, go ahead.

Michael Graham: Yes, I think that's a great place to start. And the way I would set it up, not being able to write well here this morning, is to ask the question - the real question is the big one that you gave, what are the effects of the trademark claims? And then under that the questions you were asking, for example, blah, blah, blah, blah, blah, that way we're setting up questions that we think need to be addressed in answering that overwhelming question which is, what are the effects? And sort of identifying some of the effects that have been discussed already within the group. And then certainly those can be added to later.

Now the problem with that I suppose is that we need to formulate some way to identify what the effects have been. And I'm certainly open to that. I think

one way is the simple narrative of people who have been involved either as an applicant for domain names, for trademark owners, and also for the registries, registrars.

Now the question is, how do we solicit and get that information from those people? And I guess that's part of the implementation - how do we answer this question other than just our personal beliefs?

Kristine Dorrain: Thanks, Michael. J. Scott.

J. Scott Evans: Sorry, I was getting off mute. This is J. Scott. I don't think we need to be that specific. I think you can ask an overall question of is the claims notice having the intended effect? Because we know the intended effect is to deter bad faith behavior. Now asking that broad question doesn't mean that our discussion is somehow limited in any way. Someone could come up and say, but it's having XYZ effect, and that's not the intended effect. The intended effect was to - I think we're trying to circumscribe too narrowly what we can and cannot do in the question. Ask the broad question and allow the discussion to be organic.

I think that's probably the best. We know it had an intended effect. The intended effect was to put good faith registrants that were about to commit infringement on notice so that they could evaluate what risks they were willing to take in the hopes of saving trademark owners the expense of chasing down infringers and saving good faith registrants from having the hassle of having registering something that is in fact infringing and then incurring the additional costs and frustration of having their domain, perhaps, taken away from them in a UDRP because they registered it in bad faith.

So I think that - or through a court action. So I don't think we need to be so prescribed, I think we can ask an overall question because we're supposed to be looking at whether the RPMs are functioning as they were intended. That's

sort of our overarching question for the whole group. And if not, how they might be improved or changed to make them function as intended.

I think that's sort of what we're all - so I don't think we need to be asking, you know, putting under the question 25 bullet points of every point that someone's made about how it does or doesn't act. I think what we do is we ask the overall question, we throw it out to the group and we have a discussion. And during that discussion people can bring up anything that they believe shows that it is acting as intended or it's not acting as intended. We don't need to prescribe it in some way. That's all.

Kristine Dorrain: Thank you, J. Scott. I'll put myself in the queue after Michael. Go ahead, Michael.

Michael Graham: Okay. Michael Graham for the record. Thanks, J. Scott. That is perfect. The one thing I would say is I would agree that that's a great question to ask and go from there. I think in order to focus the question for all of us then what we would want to do is, and I presume that this exists, someone can tell me that it does or doesn't, somewhere in the record there is a statement of policy of what the intent of the RPMs is, but more importantly for us, what the intended effect of the trademark claims system is.

Just, you know, drawn out so that we're not redefining it so that we're just looking, as you say, at what was intended when these were adopted and let's see whether or not that's the case. Thanks.

Oh and I agree that, yes, we could cut it up and I suppose that's a bad way to go. I was just suggesting that as an alternative to having weighted questions out there weighted by rhetoric. Thanks.

Kristine Dorrain: Okay. Thanks a lot, Michael. J. Scott, is that an old hand? Okay sounds good, that one's done. Okay so Mary has offered to go through the previous documentation to find the references that Michael asked about. And I made a

note to myself I think that would also be really great. I like to sometimes put a comment at the top of a document I'm working on to remind myself to stay focused.

And if we can find - if it's possible to find it one specific cut and dried statement in the documents that say this is the intended effect of the Trademark Clearinghouse, I think that'll be fantastic. I have some suspicions we're going to have a hard time finding that, but if we do I think that would be great.

And so taking J. Scott's suggestion and Michael's suggestions and thinking a little bit about how to organize this, so let's say we have the question we merged Questions 3 and 5 to say, "Is the claims notice having the intended effect?" Then from there, it's a very broad open-ended question and we can have a lot of different kinds of discussions and it doesn't limit our discussions.

Mary noted in the chat, or actually Amr noted in the chat there is some analysis being made available that might help this? Someone need to get in the queue?

Kathy Kleiman: Yes, this is Kathy.

Kristine Dorrain: Okay, go ahead, Kathy.

Kathy Kleiman: I think we're losing something in this. And that's - is it having more than the intended effect? It can completely have the intended effect if nobody goes through a trademark claims notice, which is effectively what's happened. But that - I think we - I think we're losing something (unintelligible) question. I think (unintelligible) is right but we have to go farther and say is this having some unintended effects as well? Is it driving away - and you can (unintelligible) think about it but (unintelligible) charter questions (unintelligible) is it too much? Is it too little? Did we get it right?

And I think that all has to be compassed because depending on who's definition of the intended effect you're going to get different answers. But the intended effect was to be balanced to allow certain types of registrants to go through and certain types not to. But if it's having more than the intended effect I think we have to specify that. Thanks.

Kristine Dorrain: Okay thanks, Kathy. I had a note that we have as listing some of the alternatives were, were we deterring bad faith or deterring valid good faith? And so my opinion, without taking my chair hat off, my opinion is that the question being broadly worded as is the - is the claims notice having the intended effect? If the alternative is not having the intended effect, and the intended effect is to deter bad faith registrants, I think that encompassed in that knot is are we deterring valid good faith registrants as well?

But what I was about to say is that possibly one of the ways we sort of get at analyzing this question is by saying, let's look at this Analysis Group data and to Michael's point, let's get some additional data. So if the question is worded, "What are the - is the claims notice having the intended effect?" If we immediately follow that up with let's see what the Analysis Group data says about that, and let's see if we can get some data about the deterrent of valid good faith registrants and the deterrent of bad faith registrants, and see if there's a way to get that data.

I think we are sort of assuming them that we're getting both sides of the equation. It looks like - looks like Susan and J. Scott think that that seems to be a viable solution. And that by keeping the question broadly worded, but asking pointed analysis or data questions, gets us ultimately to the final conclusion. Michael, go ahead.

Michael Graham: Yes, Michael Graham for the record. Kathy, I think you're right on point. I think that is a way to proceed. I think partly whether or not some questions are necessary that can be answered once we can identify the intended effect discussion which may or may not include in it a discussion of possible good

and bad effects that may also occur. So I'm sort of interested in finding that language first and then answering the big question.

Now, the questions that we have in 1 and 2 really then are not so much answering this overriding question but saying, okay, presuming it does have the intended effect, should we - 1 or 2 - should it be extended by 90 days? And then also should it continue to - so those are some sub questions of are there additional - are there changes to it that might enhance the effect? I don't know if that's appropriate for us but it certainly seems that - those are questions that are arising or arose from the charter for the PDP.

And I wonder if J. Scott or Kathy, you might have a comment on that, how that structure was viewed, are we, 1, answer the question of what is the state of the RPMs? And then, two, is there anything that can be done to improve them? Is that the way it's set up or was it simply what's the status of them? Thanks.

Kristine Dorrain: Since Michael called on either J. Scott or Kathy I think in their role as working group cochairs, does either one of you want to weigh in? J. Scott, go ahead.

J. Scott Evans: Sorry, it takes me a minute to get off mute. This is J. Scott. It's my understanding that the overarching question of this working group is to look at the current rights protection mechanisms that were mandated for the new gTLDs under the Applicant Guidebook and implemented by ICANN and its various contractors and to determine if they are in fact operating as they were intended, first question.

Secondly, if they are not, what, if any, adjustments do we recommend up to and including elimination of the RPM to rectify the situation and to make sure that we are - that RPMs in general - the ones that are mandated - are functioning as intended? That's my understanding of what our sort of overall 60,000 foot from the airplane remit is for this group.

Not to reinvent them, not to eliminate them, not that just because we didn't like the way they came out before, it's to look at them, to see if they're doing what they were intended to do based on the consensus policy, the fact that there have already been compromises made, that arguments have been going on for 10 years over this, so not to rehash all of that but to look at the RPMs, to see how they're functioning, to determine if they are in fact functioning as intended, and if not, what recommendations we would make to rectify any flaws that we found or we believe, based on the information we reviewed, exist. I think that's correct.

Kristine Dorrain: Thanks, J. Scott. Michael.

Michael Graham: Okay, I was basically going to repeat what J. Scott said simply to ask am I understanding you correctly? But my understanding then is we are not here to decide whether or not a new and different thing might be desirable or for any of us in going forward to subsequent rounds, but just looking at the RPMs are they doing what they were intended to after long discussion, debate, and principle consideration? And if so, say, they're doing fine. If not, then begin suggesting some changes to get them back on track as it were. That's my understanding from what you say, J. Scott. If that's fine, I think that's really good for me to know. Certainly focuses the questions we should be asking.

Kathy Kleiman: This is Kathy. I'm in the audio queue.

Kristine Dorrain: Go ahead, Kathy. And then J. Scott.

Kathy Kleiman: Okay. I think - I still think that it's fair to - we appear to have questions coming in from the charter and from the Council that asks us to look at the questions from different perspectives. And so because - and I (unintelligible) to that just to encourage the working group just to say that from the subgroup, that we're (unintelligible) kind of the essence of bringing in questions or asked us to look whether the goals were achieved but also whether they were overachieved, whether somebody's being hurt in a way that was unintended.

And so I think we should capture that because the charter questions should be guidance to the working group. Thank you. And sorry about all the noise in the background.

Kristine Dorrain: Thanks, Kathy. J. Scott.

J. Scott Evans: Okay, I agree but, again, if there are unintended consequences to the RPMs, then that would be noted as they were intended to do X, but our discovery found it out they're not only doing X but they're doing Y and Z. And we believe that Y and Z is outsides the remit of what they were intended to do. And in that we suggest the following - we recommend the following changes that we hope will rectify the discrepancies we found where these have gone beyond what was intended. So I don't think just because we're not articulating the fact that there may be unintended consequences, that that somehow limits us because again, the question is, are they operating as intended?

And I think that anything outside of what they were designed to thwart or stop or put brakes on is probably an unintended consequence which means that yes, they - it is an appropriate question - it is an appropriate answer, in my mind, to say yes, in fact, sunrise registrations work as - but we also know that there's been gaming in the system and so we suggest the following tweaks to eliminate or thwart gaming, right? That's an appropriate answer.

By saying yes, it is operating as intended, doesn't foreclose us from saying, but it is also doing Y and Z. And so I don't see it as limiting. And so and as long as there are advocates that will point out and can prove evidence and show and demonstrate that, and we can get consensus around yes, this is happening, yes we need to find a solution, and here's our consensus recommendation, I don't think there's anything stopping us without having to say are they operating as intended? Are they operating as not intended?

Here are the 17 non-intended consequences that we believe exist. Because I believe when you start getting - drilling down like that…

((Crosstalk))

J. Scott Evans: …involved and I think also the things become very biased. I think asking - if you want to ask, are they operating as intended? Yes, or no? If yes or no, are there unintended consequences? I'm fine with that, but I want to keep it broad and open so that I don't want to direct someone. I find that almost like being in criminal case and leading the witness to a conclusion that you want them to come to. Ask questions, you believe that there are unintended consequences, if so, what's your evidence? Show it to the group. Do we have a consensus belief that this is an unintended consequence? Yes. What is our consensus recommendation for a solution?

Kristine Dorrain: Thanks, J. Scott. It sounded like Kathy wanted to respond. And then after that I'm going to put my chair hat on and propose a way forward here. So go ahead, Kathy.

Kathy Kleiman: I actually like J. Scott's expanded, are there intended consequences? Are there unintended consequences? I think that does capture more of the spirit - the broader spirit of some of the charter questions we got. So thank you.

Kristine Dorrain: Okay thanks. And that's super helpful and that leads right into my next proposal. So what I think is great in our last 10 minutes I'd like to sort of propose our way forward for next week. And I'm looking to get feedback from anyone who thinks that this seems reasonable.

I think I'm going to ask staff to recombine - to batch, I'm sorry, I'm going to use the right word here, we're going to batch the questions, we're going to remove Question 4, send that back to the Trademark Clearinghouse group. We are going to combine - batch - 3 and 5. We are going to then subsequently, after 3 and 5, batch 1 and 2. Then I would like to - either we

use the sub team proposal column on the table or create a new column on the table, and insert some straw person language because I think I'm hearing a lot of similarities and overlap in what people are proposing. And I think it will, from my experience with the charter revision group, I think we will find that we're a little bit more closely aligned than we sound right now.

So I propose that maybe Mary or Amr or maybe even Michael and I can do it, but somebody sort of sit down, take the notes from today and take a straw person draft at some of these questions, how we might want to reword them, and then from there, underneath the rewording, list a couple of bullet points of saying action items that the working group is going to need to do.

For instance, we need to consult the Analysis Group report. In two or three different places in the chat now, Amr and Mary have pointed out that the Analysis Group has provided some data. Where the data is not there, or we're not sure if it's there, we want to ask follow up questions. We maybe can't get the data but we should at least wish for the purposes of this straw person.

So those are the action items I'm suggesting going forward from today so we can get ready for tomorrow. Any thoughts or comments on those proposed action items? Looks like Michael's got his hand first. That gives plenty of time for the rest of you to think about what you want to - if you think that's the right path. Go ahead, Michael.

Michael Graham: I just wanted to plus one you. I think that's a great way forward. And I will also note that another, albeit, preliminary - another source of some information may be the CCTRT, the review team looking at issues of competition, trust and choice, insofar as they commissioned in addition to that study, they commissioned studies of applicants, of users and also of registrants. And all of those are in their area.

So, you know, once we start turning towards where we look for information to help answer these questions, I think those might be very useful first places because the place I would hate for us to end up is answering we need to commission a study although I must say that that may be the answer at least for answering some of our questions. Thanks.

Kristine Dorrain: Okay great. Thanks, Michael. And I like the idea of everybody putting on their collective thinking hats about all of the working groups and review teams and CCWGs that we're a part of and finding out is there other data that we can pull in that's already available in the wild? I like that.

So it looks like no one is objecting to the plan forward. We have a few people agreeing with the plan forward. Mary, you've got something going in the chat there that you're typing. Did that seem reasonable to you? Am I throwing too much work on staff here for the next week? What can you offer your insight as to the plan forward? Oh, she says we're good and Michael agrees. Okay fantastic.

So in the remaining few minutes, is there anything anybody else wants to discuss? Otherwise I think what we need to do is the last two action items that Amr pointed out which was what are we going to report next week to the full group? And when should we have our next call?

I think we've more or less decided that this time works pretty well for most of us. Can I get a red X for anybody who thinks this time is suddenly awful for them? I know that I will not be on the call next week but Michael is super active and he's already mentioned that he's going to be there. And he's our cochair so no worries about having a - missing a cochair. No big red Xs for next Friday at 9:00 Pacific, I'm not sure what time this is anyplace else. Great. So we'll do that.

For our report, I think that our report will just be that we have proceeded with the batching and the question eliminating portion of the responsibilities and

that we are working on our charter question rewording and our work plan, our mini work plan is I think what we're calling that. That will be our update for the overall working group next week.

And then everyone will have homework by next, let's say, Mary did it work to have everything by Wednesday? Okay, Amr says good. Wednesday we will - I'm sorry, Mary, I was unclear. The homework, should we have homework due Wednesday? So the homework is that staff will batch and combine - batch and try to take a stab at some rewording of the charter questions based on our feedback today.

But then everyone else needs to go in and actively do their homework, make their comments using the Google Doc, as far as what they think -if they think the question or the charter question captures, you know, what we've talked about and is sufficiently, you know, sufficiently addresses the questions and add the additional data points in there. So I think we'll do that by Wednesday again. Michael, your hand is up.

Michael Graham: Yes, I was just going to say in terms of going forward, and you mentioned mini working plan so I thought it'd be a great time to do that. So I think what you're saying is by Wednesday any comments on the Google form and such and trying to work these down so our next meeting next Friday would be to actually go over that and hopefully by the end of that meeting finalize the questions that we're going to be facing, and then be a work plan looking forward to the next step.

The next step after that I think would be then to discuss how that - how those can be answered, where we can get the data, the information, for that. And then after that would be getting that information without having specific dates on those. I would think the idea of where we would get and discussing sources of information would be not the next meeting unless we get the questions done early and we can start on it, but certainly the following

meeting and then would be the task of actually going out and getting that information.

Susan, I note you're next. I'm just going to respond to Michael and say that - and I know we have our illustrious working group chairs on the call as well. I think our job here is limited to proposing the questions that we want to have answered and sort of gathering the existing data - Analysis Group data, or whatever, you know, listing a bunch of hyperlinks so people can go and do research when we get to this point.

I'm not entirely sure that we're supposed to go out and commission data and this point. So I would welcome a correction on that. And then I do think that the next step forward if the straw person questions - charter questions are decided upon and if the list of data that we need is relatively complete, then I think the next step is to take the overall work plan for the working group which has the dates on which each topic will be discussed and slot in, okay, well we're going to need two or three days to go, you know, two or three 90-minute calls to review, you know, the revised Questions 3 and 5. We're going to need, you know, two full 90-minute calls to discuss, you know, the revised batch 1 and 2. That's what my understanding is. Please correct me I'm wrong. It looks like Susan and then J. Scott.

Susan Payne: Yes, thanks. Sorry, it's Susan Payne. Yes, it's a really quick one, it's just I think perhaps it might be helpful if we just agree where we're going to - if we're going to draft suggested alternative language or, you know, redraft questions, if we agree where we're going to do that just to ensure that we're all on the same page and that some of us aren't, you know, that we're looking - we're all looking in the right boxes, if you know what I mean. I don't feel strongly about where it is, I just think it'd be quite useful for us all to agree where we're going to put it. If that's okay?

Kristine Dorrain: Thank you, Susan. I'm putting my suggestion…

((Crosstalk))

Susan Payne: And maybe - and maybe, I mean, maybe the answer is, as I say, I don't feel very strongly, I mean, maybe the additional column is the way to go but I'm happy wherever.

Kristine Dorrain: Thanks, Susan. J. Scott. You have the last word.

J. Scott Evans: Yes, just to answer your question. It's my understanding that what we're going to do is we're going to take our work and once we get this all consolidated we're going to present the consolidated questions, where we see gaps, where we need additional data. Then we're going to get the entire working group to have consensus around that. And once that consensus is done, we will then do a work plan that is mapped to the overall work plan that staff has put together to say on XYZ date we're going to do Questions XY and Z and we think it'll need to be a 90-minute call.

Before we can discuss Questions A and B, we believe that there were gaps and if the group has identified then we'll ask staff to assist us or we will assist the work group seeking to get that additional data, to present to the entire working group to inform the discussion. And if the entire working group, they have to look at what we've done, they have to agree that we're headed in the right way, then we will map out, you know, sort of our suggested work plan to cover this information understanding that if there are things where we think there are gaps and we need to have certain information, in our work plan, we're going to put that towards the end of our discussion so we give ourselves plenty of time to capture the missing data.

So those are the kinds of things that I think we're supposed to do and then present it to the group, they'll agree and then we'll proceed along those lines or refine it if there are any suggestions.

Kristine Dorrain: Fantastic. Thank you so much, J. Scott, it always helps to get a reiteration of where we're supposed to go next. Thanks to everyone. We've kept you a minute over. Excellent work today. Great discussion. I look forward to reading the transcript from next week because I will be on vacation. I will talk to you all shortly. I think we can stop the recording.

END