ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims
Friday 09 June 2017 at 1600 UTC

Note: The following is the output of transcribing from an audio recording of Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims call on Friday, 09 June 2017 at 16:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
https://audio.icann.org/gnso/gnso-rpm-review-09jun17-en.mp3 AND
https://participate.icann.org/p3z7fe2i2ny/
Attendance of the call is posted on agenda wiki page: https://community.icann.org/x/mzzwAw
The recordings and transcriptions of the calls are posted on the GNSO Master calendar page:
http://gnso.icann.org/en/group-activities/calendar

Coordinator: Your recordings have started. Please proceed.

Michelle DeSmyter: Thank you, (Martha). Well good morning, good afternoon and good
evening to all and welcome to the RPM Sub Team for Trademark Claims call
on the 9th of June, 2017. In the interest of time, there will be no roll call but
we currently have seven members in the conference at this time. Attendance
will be taken via the Adobe Connect room. If you're only the audio bridge
would you please let yourself be known now?

J. Scott still on audio. Okay. I would like to remind all to please state your
name before speaking as well for transcription purposes and please keep
your phones and microphones on mute when not speaking to avoid any
background noise. With this I will turn it back over to our chair, Kristine
Dorrain.

Kristine Dorrain: Hi. Thanks, everyone. Happy Friday wherever you are today. I am hoping that this will be our very, very last working group or sub team I guess call today. We've made a lot of really good progress. We only have a few remaining action items to consider and get fitted in on the chart. So if you have not spent time in the past week or two really reviewing, you know, the updated questions, the discussion, the list, listening to calls, I really encourage you to do that because we're going to be finalizing this out and calling it done and reporting to the broader working group soon.

Just to recap where we were last week, we are working on data collection, that's Number 2 on our agenda. We spent a significant amount of time talking about the data we wish we could have, how we think we could get it, what we think is available. If you scroll down it looks like everyone has access to their own scrolling. If you scroll down you can see significant notes in the far right hand column called Data Available/Collection Needed.

We've got considerable suggestions in there for how we could get data. And we have a lot of data in there already that Amr and Mary have so diligently provided for us. So thank you to them for that.

I'd like to jump down because we've spent a significant amount of time talking about the first two charter questions and the data we could get for those. And I think we pretty much exhausted that in our call last week. So I'd like to move along down to the bottom part, which is showing for me as Page 7, I believe, on the - in the Adobe Connect chat room, Page 7, related to 2C, 2D and starting with 3.

So if you recall, under 2C our question was really - we started with a broad question. So if the answers to Question 1, which is, is the sunrise period - or the claims period having its intended effect of deterrents and notice or is it having any unintended bad faith effects? Should we make any adjustments? And this is where we're inviting the working group to start considering things like extending claims, shortening claims, making claims be mandatory and if

so, should they be mandatory for all registry operators or are there specific business models that would - that (unintelligible) claims just doesn't really seem to make sense?

We really have not talked too much about what data we might need to discuss whether or not claims should be mandatory or some TLDs registry operators being exempt from claims. So I'm opening the floor up now to anybody who can think of a reason or a - some data that we might collect regarding Questions 2C and 2D.

And I'll let you ponder for a moment while I throw my suggestions out. I thought a little bit about that, and I know that we've talked multiple times about having - about it being really difficult to get survey or anecdotal evidence. But in the event that we can get some surveys - or some anecdotal evidence from registry operators and registrars, we might want to get some feedback from them as far as have they operated a TLD in which the claims service was just purely a tick the box redundant feature that was completely useless to their business model?

And then to get some - either supporting or contrasting evidence from trademark holders saying yes, in fact indeed this specific TLD having the claims notice was entirely useless, it just didn't seem to make any sense for us to get these notices. And so it would be wonderful, in my opinion, if we could get that sort of data. But again, we - just with the caveat that we've already in this sub team noted many times that the availability of anecdotal data or survey data from - there's just a fair amount of survey exhaustion. So to the extent that we might want to survey it would be a little bit complicated to get. Any thoughts on that including the caveat.

Okay, it doesn't look like anybody opposes that as a potential data point so I think we should add it just noting, again, with the caveat that we're going to have to work on an outreach plan to reach out to contracted parties and to brand owners to make sure that we get the information that we need.

Moving on to Question 3, so this one is actually one that I think relates a little bit to - as far as data collection, relates a little bit to Number 1 where we talk about getting, you know, doing some really detailed information gathering. So Question 3 says, the revised Question 3 says, does the trademark claims notice to users meet its intended purpose? And then we ask sub questions about is it intimidating or hard to understand? Does it need improvements? Does it inform registrants of the scope of the trademark holder's rights? And then how are the translations doing? Is there any difference between places where the claims notice is presented in English versus other language? Is it successful?

Initially on the Google Doc, I included a comment that said ideally we'll present the claims notice to average Internet users and get their opinion, such as through a survey. And to address 3C, we would make sure to include people from other regions. Again, this goes to data that might be rather hard to get or would require funding from ICANN. Does anybody have any suggestions to append to my suggestion, any concerns or comments? Amr. Amr, you may be on mute.

Amr Elsadr: This is Amr. Yes, sorry took me a minute to get off mute. I just wanted to remind the sub team members that one of the suggestions from last week's call was that if it does prove challenging to gather data to answer this question at this point and even if not, actually, I mean, even if we do manage to collect some of this data, it might also be worthwhile to consider a survey of registrants during the subsequent rounds of new gTLDs so that could be something we could do, and although it wouldn't be helpful in the current review, it may be helpful moving forward. Thank you.

Kristine Dorrain: Thanks, Amr. I agree we should absolutely make sure we make that note. I know that I, for one, continually forget to think about the forward looking, how do we propose to gather data for the next review. So I think that's excellent, appreciate that. Rebecca, please go ahead.

Rebecca Tushnet: Rebecca Tushnet. Thank you. So just a clarifying note, I think especially given the ability to use something like mechanical (turk), or, you know, the large survey panels that many survey organizations have available for Internet surveys, I would want to make sure it was not just ordinary Internet users but people, you know, like you do in an ordinary advertising survey who had registered or would consider registering a domain name to see how they in particular would react to it. And, you know, there might be different ways to cut the data but just a small point and I know that's something for the future. But I wanted to put that down. Thanks.

Kristine Dorrain: Thanks. Amr, can you take a note that Rebecca is suggesting that we tweak the - what my comment is in that middle column or what - I'm not sure, is that the third or fourth column if we count the numbering column, to clarify average Internet users not actually average Internet user but actual people who have or would consider registering domain names in the regions being surveyed. And I think that's an excellent suggestion.

Good. So and is there anything else that you can think of for gathering that information? Anyone else want to propose anything additional? I mean, obviously like the actual formulation of survey questions could be, you know, formulated to address as much or as little as we needed to. Rebecca, go ahead.

Rebecca Tushnet: Thank you. So Rebecca Tushnet, just to add here we would probably want to put in, you know, testing some potential alternatives, testing various types of notice especially to the extent that we're considering adding different match criteria so to see just to make sure that we're covering the waterfront of what we might be proposing. Thank you.

Kristine Dorrain: All right, thank you. Good, excellent suggestion again with the forward looking if changes are going to be made we should probably not be only waiting for the hindsight data but do some testing ahead of time, I think that's a good

suggestion. And I'm also going to suggest that we make the note in when we talk about Number 4 that we make sure to include any - we include testing and any proposals that come out of Number 4, that's good. Thanks.

Is there anything specific that anybody can think of that would be related only to either Points B or C? So one of the data collection points that we have for 3B is, what is the correlation between domain names that were registered during the claims period and subsequently subject to a UDRP or URS? Objective is to determine if the registrant was on notice when the domain was registered and then subsequently resulted in a UDRP URS filed.

And I know that Amr circulated some data - a further analysis of what the Analysis Group had provided as far as the comparison between claims - registration of domain name during the claims period and subsequent disputes for UDRP or URS, so I think that information will be really helpful there. But is there anything else that we want to add for 3B or 3C? Rebecca.

Rebecca Tushnet: Rebecca Tushnet. I just want to again, add in, you know, that we want to look at how many people received a notice and then didn't subject to URS or UDRP, again, just some information which might tell us something both about, you know, deterrents and current rate of false positive/false negative. Thank you.

Kristine Dorrain: Okay. I think very good. I know that we - we're going to - that's actually - I have the proposal in my own personal copy of this document. If we do end up going back and asking for UDRP URS data because it's likely to be a very, very, very comprehensive project, we are likely going to be - we are going to want to make sure that we are collecting every data point that we think that we're going to need so that we don't have to do this again anytime soon.

Greg, go ahead with your comment and maybe you'll also summarize what you put in the chat. Thanks.

Greg Shatan: Thanks. As I said in the chat more broadly, we should make sure that any survey is designed to be as valid as possible. Survey design is an area that has some real expertise attached to it and ICANN generally doesn't take advantage of expertise, or maybe I should say that I've seen a lot of polls in various areas of ICANN that if they work well it's more accidental than by quality design. So if we're going to do something as significant as a poll like this we might want to you know, find some way to get expertise, you know, I've worked with any number of survey experts; that does not make me a survey expert.

Gives me some sensitivity to what bad surveys look like. And Rebecca is pointing out, you know, some of the things about what good surveys look like. So, you know, at the right point in time we really should make sure that, you know, not just engage in home cooking because this is not an area where home cooking gives you the best result.

To the specific point that we were looking at, if we are going to look at abandonment I think we would need to have some idea of what the potential motivation of the applicant would be. That seems you know, a little hard if we're just asking random - if we're asking random potential registrants or likely potential registrants whether they would be deterred, it'd be one thing if they were trying to register, you know, apple.xyz to show their pictures of apple orchards or if they're registering it to sell counterfeit Apple products because without that we don't know whether they - what happened was good, bad or indifferent. Thanks.

Kristine Dorrain: Thanks, Greg. I have a follow up question and then Amr, I'll turn to you next. I completely agree that you - we have to be really careful when we draft the survey. I want to just ask a follow up, would one suggestion for of a more valid survey be to reach out to people who would hypothetically be in the market for a domain name? Or have in the past, but maybe aren't necessarily in the process of currently trying to buy a domain name?

So you wouldn't want to intercept that at domain name purchase time but you would want to just reach out to them sort of arbitrarily, that way there wouldn't be sort of any - it would hopefully then weed out anybody who was just automatically thinking I'm already going for a brand or, you know, just to try to get more of a reaction as to the claims notice itself rather than the claims notice in response to some specific intent on behalf of the current registrant. Do you have a quick reaction to what I just said or was it unclear?

Greg Shatan: It's clear. My quick reaction is that there are a variety of different ways to find subjects for something like this. And intercepting them at or after point of purchase is always one way to do it. Another way to find - and I think this is, you know, I think I'm trying to get what Rebecca was getting at - likely potential registrants or actual prior registrants would be likely to register again.

A poll that consisted of responses from people who've never registered a domain and would have no interest in ever registering a domain would not be nearly as helpful as one that dealt with people who at least would be interested in registering a domain. And we might actually - it might actually be interesting to take the different subpopulations and have their relative reactions too. You'd only - one type of survey respondent. But I think we would at least want to make sure that we had a population or subpopulation of likely potential registrants because otherwise, you know, this'll just be as foreign to them as, you know, cricket is to me. Thanks.

Kristine Dorrain: Thanks, Greg. And before Amr goes, I think we need to make a note that I think we're going to - I'm proposing - I'm going to propose somehow I lost Internet connectivity so can you still hear me?

Amr Elsadr: Yes, we can hear you, Kristine.

((Crosstalk))

Kristine Dorrain: I know our phone is VoIP here and now my Adobe Connect is back. Good. I'm going to propose that when staff puts this - or writes out this data collection point, that we actually recommend to the working group that not only do we actually hire an actual survey company who's designed to create surveys, but that we include a sub team of working group members, including people from this sub team who would be willing to get together and help formulate the questions to get at what we want to get at.

And I think that I'm going to ask staff to make sure that that is included as a note for the broader working group. And I'm seeing some agreement in the chat. Thank you. Amr, you've been waiting patiently, please go ahead.

Amr Elsadr: Thanks, Kristine. This is Amr. And I'm just actually revisiting Rebecca's last comments on - I believe she mentioned that it would be useful to have data on registrants who during the registration process, triggered a claims notice but then proceeded with the registration anyway and to sort of determine whether those resulted in UDRP or URS cases being filed.

The summary that I sent to the list was limited to those that did actually - that did actually end up in a URS or UDRP being filed, but it did not include those that did. But I just wanted to note that those were also included in the Analysis Group report. So for example, when there 0.3% figure of disputed registrations following a claims notice of an exact match to an entry in the Trademark Clearinghouse, there were - there was also data on domain name registrations that did also - that did trigger a claims notice due to an exact match in the TMCH but did not result in a URS or UDRP being filed. I just wanted to note that this data is available and I can circulate that to the list as well. Thank you.

Kristine Dorrain: Thank you very much, Amr. And to the extent that you are pulling out all this data and circulating it, of course it probably goes without saying that we want to definitely make sure that it gets, you know, sort of summarized, captured, linked to, something so that when we present our final work product to the

working group we don't have to go back and find all this again. I want you to not have to repeat all of the digging you and Mary have done in the past several weeks. And to make, you know, all of this available to the working group. Thank you very much for that.

Very good suggestions so far. Thanks, everyone. Let's keep them coming and let's keep marching through this section. I think we've - I think we like the idea of a survey here. Is there anything that we want to make sure to capture for notes as far as translations? We know we've talked about definitely getting survey respondents from different regions that speak different languages. Obviously we'll want a survey that's validated, you know, and translated properly so that the survey questions are accurate for the regions represented.

Is there anything specific that we want to ask or that we want to make sure that the working group considers when it creates this survey? Kathy.

Kathy Kleiman: Hi, Kristine. Hi, everybody. It's Kathy. This may go without saying but I believe the rules around - and I don't have them in front of me - that the trademark claims notice itself should be going out in the language of the domain name registration agreement. And one of the questions, I don't know if it's for this survey or another survey, is, is that happening? Are people getting the trademark claims notice in English or are they getting it in the language of their domain name registration agreement so Spanish or French or something like that. So we don't have any independent confirmation of that and that would be really useful. Thank you.

Kristine Dorrain: Thanks, Kathy. And Rebecca, you're next. Before you go, Amr, can you please make that note that there's an actual sub question I think there that says we would like to cross check that registrars are providing the trademark claims notice translation in the registration - in the language of the registration agreement so we do need to make sure that that is captured. Looks like

Rebecca answered - Rebecca says, "Kathy asked my question." So good. Thanks, Amr. Appreciate that.

Anything else that's specific to the trademark claims notice and making sure that we get a proper sampling or, you know, proper information on this survey? Okay, very good.

I think this is a good point to say that before we jump into Number 4 that what I've suggested that staff do after this, because presumably I'm hoping we're going to get through this today, is to really reformat everything to make it super easy to read, make sure that we've gone through all the notes and gathered all of the suggestions, all of the comments, put everything on to the chart. And then present it in sort of a final format for the group to review.

We can talk a little bit at the end about what I'm imagining that this work product looks like just so that we can make sure we're all on the same page. And I can get everyone else's feedback on this. But I think that we want to make sure that we've captured everything so when staff does send around that sort of final work product I'm encouraging everyone to do their homework and really make sure that it's included everything that we've talked about.

And if you've raised a point that didn't make it into a comment or didn't make it into a note do make sure that that gets added and it gets raised to the entire group because it's been a ton of work. And I know Amr and Mary have been taking just a crazy number of notes and a crazy number of action items. So we definitely want to make sure that we didn't miss anything here.

And Greg wants to know if putting the notice in Comic Sans has any effect. It would make me not answer it, that's what I know.

Okay, moving on from the potential surveys for the claims notice effectiveness, we have an action item - so we've had an ongoing placeholder question. Number 4 says, if the review of all RPMs in all gTLDs PDP

determines that non exact matches of trademarks should be allowed inclusion in the Trademark Clearinghouse, should the trademark claims notice be changed and if so, how?

Not exactly on point but there have been three proposals, what I'm calling the Graham, Shatan, Winterfeldt proposals, that do actually propose to make changes to the claims process not necessarily just of the claims notice. So I think the wording of our question was assuming that the changes would be made to what was entered into the Clearinghouse. And I believe that the proposals at hand currently propose sort of some subsequent mechanism so the marks would be entered in the Clearinghouse and there would be some subsequent mechanism that would translate between the exact match and some of the variations proposed.

So we do want to make sure that we include both time, data gathering points and reconsider if we need to make any slight tweaks to the charter question here. Please remember, Question 4, Charter Question 4 is a completely new charter question. There was no placeholder for this in the original charter questions, so that we're not actually tweaking anything that was underlying; we have created an entirely new question for Number 4.

Rebecca, go ahead.

Rebecca Tushnet: Rebecca Tushnet. I'm just unclear so do we want to put here the kind of data gathering that we want to evaluate the proposals as a whole or are we going to put those proposals in and then separately indicate what kind of data we want for them just as a kind of procedural matter? Thank you.

Kristine Dorrain: Well I think that's an excellent question procedurally. And since one of our cochairs, Phil, has raised his hand next, I'll let him answer that before I weigh in with my opinion. Go ahead, Phil.

Phil Corwin: Kristine, why don't you go ahead and answer Rebecca's question because I wasn't really listening to it, I was focused on getting ready to raise my point, which is different.

Kristine Dorrain: Okay, great. Thanks, Phil. You'll go next then. So my proposal is that we do a quick glance through the Graham, Shatan, Winterfeldt proposals really carefully not looking at them substantively. But I do think we need to do a quick run through on the list now to - in order to be able to fill in that what data do we need column.

I do have one broad suggestion on my own which I will enter into the chat or into the conversation in due time. But I don't want to jump the queue. So, does anyone disagree with the suggestion that at this point we transition to looking at the proposals from the context of trying to determine how we're going to fill in the data gathering portion of the chart? Does anyone disagree with that suggestion either with saying I disagree in the chat or using your red X button. Going once. Going twice. All right, it looks like we have some consensus for going forward in that way.

Phil, you have the floor next.

Phil Corwin: Yes, can you hear me now? Hello?

Kristine Dorrain: We can.

Phil Corwin: Okay. Yes, the way Question 4 is worded is incorrect. And we did have a full working group call Wednesday night. I don't know who on this call was on it, but Greg was on it. And we did clarify that the intent of his proposal for generating notices from non-exact matches is amended by Brian, was not seeking to include those matches in the Trademark Clearinghouse but was seeking to have a secondary process in which, for example, if Google was in the - was the term registered in the Clearinghouse and somebody put in the

registration for Google with an extra G or with a fat finger typo or something like that, that that would generate a claims notice.

So I guess basically there'd be the Trademark Clearinghouse database, which would remain a database of registered and verified trademarks meeting the qualitative standards for inclusion in the Clearinghouse, and then there would be some other additional database generated by some software programs or in some cases by some human controlled processes like for trademark plus keyword, which would - so that when a term was entered for domain registration it would be matched - compared against both the Clearinghouse database and this additional database.

So the wording should not be non-exact matches of trademark should be allowed inclusion of the Trademark Clearinghouse, but something along the lines of non-exact matches of trademarks in the Clearinghouse should generate claims notices. I think we have to be precise about that.

And also, I don't know if we need it in the question, but - and I haven't looked recently at the current language of the claims notice, but clearly we're going to need to consider if a warning is generated - if we decide to allow any classes of non-exact matches to generate claims notices, the language would have to be changed because it now refers to a match to the Trademark Clearinghouse database it would be a match to something different. I think we should also strive to make it understandable to lay persons attempting to register domain names who the vast majority of which do not have law degrees or any even elemental understanding of trademark law.

So I'll stop there but certainly the language has to be changed because we're not talking about including these non-exact matches in the Trademark Clearinghouse, we're talking about generating claims notices based on non-exact matches of terms that are in the Clearinghouse and it's an important distinction. Thank you.

Kristine Dorrain: Thanks, Phil. And that is - that - you underscored my point. I think that we had this placeholder question in there because we didn't know what direction the working group was going to go when we drafted it, and I think it is time for a rewrite. Kathy, you have a red X, before I go onto - did you have a disagreement with the way we were going forward or was that an oops or how can I - how can we help you?

Kathy Kleiman: Thanks, Kristine. This is Kathy. No it was - sorry for the delay, my machine is moving very slow today. So the X was that - and maybe I've misunderstood what the question is. Now that the non-exact matches question has come formally into the sub team, you know, don't we have to do, you know, and Number 4 as it was, was a placeholder, but as Phil points out, it's not, you know, we have to update it now.

But don't we have to do what the sub team normally does which is make it concise, make it neutral, make it balanced? So really, you know, is Number 4 becoming, you know, in light of the evidence that we've collected in Questions 1-3 above, you know, are non-exact matches, you know, is there a problem? Are non-exact matches needed? Are they doable? Because Phil's right, we're talking about something that's not going into the Trademark Clearinghouse database.

And, you know, are there - and then are there unintended consequences that might be created by going into the non-exact matches? We've talked about it in the working group, but it wasn't really you know, it's now time to kind of make all these questions concrete and Number 4 seems to be the place to do all of that. So I think we've got some wording issues even as we're talking about data gathering. Just wanted to share that. Thank you.

Kristine Dorrain: Great. Thank you. And, yes, I think that you're right, I think we have - I probably did jump the gun a little bit there. I don't know - I'm going to give Amr the next comment only because he's staff. Greg, you'll go next. And I just note for the record as we're listening and reading that I did propose a

question for rewrite in the chat as a straw. Feel free to make - to riff on that in the chat as everyone is talking. You know, just as a starting point to try to make it neutral, try to make it in the voice of the rest of our charter question rewrites. Thanks. Amr, and then Greg.

Amr Elsadr: Thanks, Kristine. And, Kathy, thank you for the comments. And I just wanted to confirm what Kathy said, the action item from Thursday morning's full working group call was for the sub team to take the three proposals and synthesize, use them to synthesize questions similar to the ones that we already have. So as a first step we would need to, as Kathy suggested, draft these questions and then determine what data would be required in order to answer them.

And then perhaps, as you said earlier, Kristine, move on to sort of reconfigure Question 4 although I think it's been sort of done quite well, but the first step would be to take these proposals and use them to synthesize or formulate new questions to be considered during the claims - trademark claims review by the full working group. Thank you.

Kristine Dorrain: Thanks, Amr. So just to be really clear, because I wasn't on the Thursday morning call, and I have not had a chance to listen in, the - we are not touching the proposals made by Graham, Shatan and Winterfeldt, right? At this point we are just determining how to sort of summarize that they're proposing as a question in the charter, is that correct?

Amr Elsadr: That is correct. The sub team is not meant to substantively review the proposals in any way. It is meant to only use the proposals to sort of extract new questions to be addressed during the full working group review of trademark claims. And as Kathy suggested, we need to make sure that these questions are neutral or unbiased and not leading or suggestive in their answers. And following this, the sub team should also go through the same exercise it's gone through with all the other questions in determining what

data requirements may be needed in order to answer these questions. Thanks.

Kristine Dorrain: Great. Okay, thanks, Amr. Go ahead, Greg.

Greg Shatan: Thanks. Greg Shatan for the record. I think, you know, the way Amr just put it sounds a little closer to what I expected the sub team would do as compared to what's in the chat which is to, you know, look for questions - to derive questions from the proposal that would allow the proposal to be evaluated better if it could be, if we can get the data. So - and not to judge whether or not the TMCH should be used to generate non exact matches, I think that's a question for the full working group that kind of goes to the heart of the substance of the proposal. So I think we need to do another rewrite there.

I think, you know, Phil's point was that these non-exact matches will not live in the trademark database but the generated using the TMCH as a starting point.

So I think one of the things I don't see in the Questions, you know, 1-3, there really are aimed at the claims themselves and maybe this makes this not the greatest fit for this subgroup, but if we're going to look at the substance of the of whether the questions - whether any of these have, you know, significant unintended consequences and the like we really kind of need different questions than 1-3 because we'd want to look at - get some idea both of the feasibility of the idea of having this layer or, you know, approach of manufacturing these appropriately, and then we'd need to look at each of the proposed non exact matches to see, you know, where and how they would result in actual matches to - in the application process and see what concerns we have.

So it's really going to the - in essence to the substance of the RPM itself and not to the claim. It's in essence a new-ish - it's a variation on the theme of trademark claims that needs to be studied. So I think in addition to Question

4, however it turns out, there's going to need to be some either sub questions or other questions that will allow us to judge this both in whole and in part to see so at least we have, you know, can all work from some reasonable set of data in analyzing this. Thanks.

Kristine Dorrain: Thanks, Greg. I do suggest that you do take either my straw proposal or what's currently in Question 4 and start rewriting, give us all something to attack. I think we all are looking for someplace to put pen to paper here and I think that's great.

To your point, Questions 1-3 are purely questions relating to the review of current RPMs, so absolutely, we are reviewing the RPMs, the claim and the claims process and the claims notice as it exists today. We did not have any questions to consider yet until today that were proposals for changes or things that were forward looking. So this is the first time we've had as a sub team a charter question to review that was related to something that was a change of a forward looking proposal. So absolutely, the model of looking retroactively probably isn't going to work here, we're going to have to switch it up a little bit.

But to Kathy's point, one of the things that we've been focusing on this sub team is always considering sort of intended or unintended consequences or in this case maybe anticipated effects that maybe more like it. So please do - so please do, you know, start to throw around some additional suggestions for how Number 4 charter question could look. Kathy, go ahead.

Kathy Kleiman: Thanks. This is Kathy. I was trying to follow what Greg was saying, and actually I think he just said what I was going to say, which is that, you know, now we'd have to come into the sub team mix and I don't think we presume that we're going forward with non-exact matches, it's a proposal that's out there. And this is the place to evaluate it and frankly it would be a dramatic expansion of the RPMs. So definitely something to look at all sides of. And I will work with your draft and try to put something in the chat. Thank you.

Kristine Dorrain: Great. Thanks, Kathy. Yes, I think that's really where we're at right now is trying to take a look. So let's pop in quick. Amr said he does have the proposals ready loaded. We do not have a Question 4 right now; we are in the process of looking through - of thinking what Question 4 might say. And keeping in mind what the data we might be willing to gather looks like. And also just as a friendly reminder to everyone, myself included, that we need to really avoid staying away from the substantive discussion. This is merely a how do we summarize what's being proposed here as a charter question exercise.

                  Greg, go ahead.

Greg Shatan: Thanks. I'm in the process of typing something into the chat that provides something for people to swing at. In response to Kathy, and maybe this points out the - one way that we can derive questions - Kathy claims this would be a dramatic expansion. I think that assumes facts not in evidence. Doesn't mean it's wrong, it doesn't mean that it's perhaps certain of the exact matches might; others might not. But it's certainly the non-exact matches. So I think, you know, let's think about conclusions that people are trying to advance, whether they're good or bad or, you know, pro or con and see how we test those because at this point we don't know anything about the future so we need to think about how we would test that.

                  You know, my argument has been that there would be far fewer actual new matches that might occur than others have surmised. But without doing any underlying work that's more of a gut level reaction from me too. So we can in essence work backwards from the conclusions to see what questions might be asked to either refute or back those and then try to make sure the questions themselves are as balanced and neutral not leading as possible. Thanks.

Kristine Dorrain: Thanks, Greg. And just Amr noted in the chat that Question 4 was initially drafted assuming that non exact matches would either be included in the TMCH or may generate claims notices and that additional questions may be required. Absolutely, I think the decision of the working group right now or the sub team right now is that Question 4 is old and is no longer valid as written, and our first task is to rewrite it, given the proposals that are available to us. Greg has put in the chat, "In order to assist the working group in analyzing the proposal for non-exact matches, the following data would be helpful." Okay, let's let him finish pulling that out.

I propose right now, as Greg is typing that into the - his suggestion into the chat - Amr, would you switch to the proposals document? We really only have about seven or eight more minutes to kind of get through this, but perhaps we can take a stab at it. It would be great to look at Greg's proposal or Greg's proposed charter question in light of the actual proposals available to us. For people who are not - who haven't even been following along, basically there were three related proposals asking for the working group to consider an expansion in the trademark notice program. And they all sort of kind of took off from one another.

Michael Graham has a proposal, Greg Shatan's proposal went much more detailed and he listed 12 different riffs or variations on what a non-exact match criteria could look like. And Brian Winterfeldt appended to the - to that list. So I think our action item here isn't to summarize the proposals per se, you know, we don't need the list. What we want to come up with is a charter question that asks, you know, how do we analyze this proposal? What - I know we want to think about how this would benefit some parties, how this would harm other parties.

We know that we want to determine if it's feasible. So those are some of the considerations that we know we want to include in our charter question. Anybody want to jump in with some more suggestions? We've got my straw proposal. We've got Greg. He says the intro to his straw proposal is in order

to assist the working group in analyzing the proposal for non-exact matches, the following data would be helpful. And I think that's good for the data gathering question. But how are we going to word that charter question?

I'm just trying to think of some other suggestions or some - looking for anybody else to suggest how we could neutrally you know, direct the working group's thinking on this. Let's see here, and Rebecca asks, "Is it really a charter question at this point?" That might be semantics, I'm not sure. Kathy and Phil have entered long comments, which I will read but also feel free to raise your hand, folks.

Kathy says, "In light of the evidence of the trademark claims gathered in Questions 1-3 above," Oh, I think Kathy's making a proposal. "In light of the evidence of the trademark claims gathered in Questions 1-3 above, how extensive is the need for non-exact matches? What is the proof of harm under the existing system? What unintended consequences might non exact matches have? What is the appropriate balance going forward? A, if non exact matches were not adopted, then no further action is necessary. B, if non exact matches of some form are adopted, should marks in the Trademark Clearinghouse be used to generate non exact matches for the purpose of providing a broader range of claims notices? If so, how should the claims notices be written?"

And Phil mentions, "To amplify the point I made verbally, Google consists of three letters in the center horizontal row of a qwerty keyboard, G times 2 and L and three letters in the top row, O times 2 and E. The first three have six possible fat finger variations, while the latter three have four. So that totals 30 potential fat finger variations of Google that could generate claims notices or at least registration notices to the trademark holder."

"If we adopt that suggested non exact match. Neither Greg nor anyone else has suggested that those 30 typo variations should go into the Trademark Clearinghouse database, rather, as I understand it, they would exist in a

second database and all attempted domain name registrations would be tested against both the TMCH and that second database. As to whether or not 30 additional variations that could generate claims notice is a dramatic increase, that is a subjective judgment on which opinions may differ."

Okay, yes, I think there's no question, I think we totally agree that the charter question needs to be rewritten. We understand it's not going into the - the changes would not be going into the Trademark Clearinghouse itself. I'm really trying to think about Kathy's proposal I think is really valid staying away from the substance of is this a dramatic change? And where will the domain name - or where will the trademark be housed? I think we need to stay away from those and really focus on the charter question.

Greg.

Greg Shatan: Thanks. My reaction to Kathy's suggestions - and I think that obviously it's a first draft and would need to be cleaned up because they seem to have some level of presumption built into them but that's only natural, I don't see - and this is kind of the point I tried to make before - I don't see that Questions 1-3 are generating the type of data that we would need to look at whether this is, you know, necessary or appropriate. So that's - while obviously we wouldn't ignore the, you know, what we get out of 1-3, I think that's kind of missing the mark in terms of analysis. It's just - it's not the right - it's not the right data set or potential data set; 1-3 are really designed, you know, for a different purpose as obviously they were before this just got wedged into the group of this - this subgroup's work.

Kristine Dorrain: Okay, thanks Greg. Yes, this is Kristine again. So I think what we're going - I think what we're suggesting is that 1-3 is here to tell us how the trademark claims service is working today. Is it actually deterring people? And if not, where is it falling down on its face? Where is it not working? And so we think that your proposal, and I'm not speaking for Kathy, I think that your proposal is going at addressing what you perceive to be a problem, or actually not just

you, you, Michael and Brian Winterfeldt perceive to be a problem. And that that's perfectly fine.

So we propose - excuse me - I propose that what we do is we're looking at the past data to identify the level of the problem, the depth of the problem that currently exists and compare your proposal to the depth of the problem and try to determine does your proposal fix the problems? It's possible that there are problems that we haven't even considered yet that you're baking a proposal for a problem that we don't even have on the list. If that's the case, please, please let us know. But we do think that what we're trying to do with 1-3 is make the questions broad enough that we will be able to drum up a relatively complete list of all of the problems and successes of claims. Does that help at all?

Greg Shatan: Yes, this is Greg. I need to look back at 1-3 more carefully. And I just - I felt there was a disconnect but I think I, you know, try to analyze on the fly so to speak especially since I'm a late addition to this subgroup and, you know, hate to come in to any group cold, that's, you know, not even - it's bad but, you know, not much time between the last meeting and this.

So I'd like to look at that obviously, you know, dig deeper into it. But again I don't think the fit is there or at least there's a lot left that one would like to know that wasn't the case with looking at the existing situation and trying to analyze it.

Kristine Dorrain: Okay, thanks a lot. So we've got four minutes left and I want to make sure I leave us all with good homework for the next week. This sub team for the newcomers, has been very good about doing its homework and making its comments so I'd like to keep that up going forward this week, especially in light of the fact that we kind of thought we were winding down and it's possible that we may be, you know, extending this conversation for one or two more weeks.

And so where we really want to go right now is I like - I think that the most complete proposal for the charter question has been submitted by Kathy in the chat so I propose that Amr circulate that for discussion on the list and how that charter question could be tweaked.

Simultaneously, because I know that Greg is concerned that perhaps Questions 1-3 are not going to be gathering the types of data that would really inform new charter Question 4 and the proposals, I would invite everyone to consider in that same email string, simultaneously discussing proposed rather than waiting for this as a two step process as we've done before. Let's do both at the same time.

So one question, two columns, looking at the proposal, how do we word the charter question or to Rebecca's point, it's not exactly a charter question, it's a claims question, that includes - to really get at the nuts and bolts of the proposals. And what data are we going to need to be able to answer those - or to be able to decide whether or not the proposals will work?

So I think that's our two-part homework for this week in addition to generally everybody please, one more time, reviewing everything else we've done to this point because we really are trying to kind of put a, you know, close out 1-3 and we've spent a significant amount of time on them and, you know, absent some sort of groundbreaking, earth shattering, you know, thing that we've missed I'd like to be done with that and just kind of focus on 4.

Any final last minute comments that anybody wants to append to that? It looks like Amr's in the chat so he should have been able to hear his most recent action items. Anything else for today? One minute left on the call. All right, thank you very much, everyone. Have a wonderful rest of your day. Have a happy weekend. And we will convene against next week for sure. Thank you very much. Bye-bye.

Michelle DeSmyter: Thanks, Kristine. Again, the meeting has been adjourned. Operator, would you mind stopping the recordings for us and disconnect all remaining lines.

END