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JORDYN BUCHANAN: I guess I'll do the welcome, roll call, SOI, thing. I see Lauren's on the call as well, but we're going to start with the findings on Competition and Consumer Choice, so I will kick things off before handing them over to Lauren in 45 minutes or so.

Is there anyone who is on the phone who is not on Adobe Connect for roll call purposes?

KAILI KAN: I'm still on the way back home. I am on the phone and do not have Adobe Connect. But [inaudible] about 20 – 30 minutes.

JORDYN BUCHANAN: Okay. Thanks, Kaili. I do see you somehow on Adobe Connect. But in any case, thanks. We have you here.

Anyone else on the phone?

No? Okay, great. We do have quite a bit of background noise so I will ask folks that are connected and not speaking to mute whenever possible. And then my next question is, does anyone have any updates to their Statements.

KAILI KAN: [Is there an] update to [what]? Earlier today I sent everybody an e-mail and I hope they all received it.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

JORDYN BUCHANAN:

Yeah, I at least received it, Kaili.

Just to give everyone a heads up in terms of agenda, we'll be talking through recommendations for both Competition and Consumer Choice first and then Safeguards and Trust, continuing our conversations from last week. Then we have a number of outstanding data requests so we'll talk through those for a few minutes including some prioritization. And then we have a brief conversation perhaps about the draft report that a group of us will be working on intensively next week.

Any other agenda items anyone wants to make sure we address? Kaili, I think we won't have time to get to the discussion around parking today, but we'll talk with Jonathan about seeing if we can add that to a following call just because the agenda today is quite full already.

Okay. Great, so why don't we dive right in then to the Competition and Consumer Choice document which is currently being projected in Adobe Connect. This document is also a Google doc. So to the extent that some of you want to follow along there rather than in Adobe Connect, that is fine as well.

And if you give me one second I will paste the link into the chat on Adobe Connect. Jean-Baptiste has beaten me to it. So feel free to follow along in either place. If we have edits to the Google doc I'll make them in real time for those paying attention there.

I believe last time we were on the topic of parking when we wrapped up. Kaili has subsequently sent a rather long set of thoughts on parking,

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and right now our recommendation here is soft which is just to study some more. I think we are expecting more data here, and staff informed us this week that it sounds like we've gotten things worked out with nLDStats such that we'll be able to get some data on legacy TLD parking rates.

So given all that, I'm going to push this parking discussion either to our next competition call if we have one or our next plenary call, but we'll need to coordinate that with Jonathan a little bit and then we can fully digest Kaili's document. In the meantime, I would encourage folks to pick up the conversation on parking based on Kaili's e-mail – e-mail's probably a great place to engage with some of the points that Kaili raises.

So pushing that aside for the moment, I'm going to move on to the next section of the doc which is – Waudu asked in the chat, "When are we going to get the data on parking in legacy?" Waudu, I'm going to... Let's just address that now since it's on point. But I don't see Eleeza on the call yet so we might not know the answer until she joins the staff. Does anyone else from staff know the answer to that question?

ELEEZA AGOPIAN: I'm on the call.

JORDYN BUCHANAN: You're hiding. You're one of the people that's on the phone but not on Adobe Connect.

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ELEEZA AGOPIAN: I am actually in the room. I don't know why... I see myself in the room [inaudible].

JORDYN BUCHANAN: You're just not a host.

ELEEZA AGOPIAN: Yes.

JORDYN BUCHANAN: Sorry, Eleeza. Yes, you're in the participants section.

ELEEZA AGOPIAN: Okay so on –

JORDYN BUCHANAN: Now you're [on] host. Alright.

ELEEZA AGOPIAN: So the question was, when are we [discussing] the parking data from the legacy gTLDs? I have reached out to nTLDStats and sent them a contract that has the terms that we agreed upon. I haven't actually received it back from them. My assumption is that that everything will be fine. They had told me some time ago that it would be a few weeks to pull this together. My guess is [it will be] four to six weeks after they sign the contract we could receive it but I don't know if their timelines

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have changed because it's been quite a while since we've begun this discussion.

I will let you know as soon as I know and as soon as I hear back from them.

JORDYN BUCHANAN: Unfortunately, it sounds like the answer is probably, "Not before we have to issue a draft report if that's coming out by the end of the year."

ELEEZA AGOPIAN: It seems unlikely.

JORDYN BUCHANAN: So we'll have to figure out how to deal with this topic in the draft report without that data. It may be that there's some proxies we can use from some of the other studies. So this is something I think we'll want to address in probably the next plenary call just how we deal with the topic given that we'll be missing some important data. That's true for other important topics as well such as DNS abuse and trademark [costs]. So I think there will just be a few places in the report with significant placeholders. But thanks for the update, Eleeza.

ELEEZA AGOPIAN: Sure.

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JORDYN BUCHANAN:

Okay, so moving on then to the next major topic here which is the question of vertical integration, which is flagged as a question. This is actually something I think we need to discuss a little bit more within the Competition and Consumer Choice Subteam. This has been flagged by an issue by the Subsequent Procedures PDP, but we don't have any findings here yet and therefore we don't have any recommendations. So I'm just going to flag this once again as an issue that is going to require some further work on our part, and we'll expect some more discussion within the subteam.

Okay, the next section here is on backend, and this relates quite a bit to the industry structure topic above but focuses specifically on the backend component. I suspect we should probably rearrange this document and in the final report we'll start with the industry structure discussion and then segue to back ends and registrars since these are the two inputs to the industry structure that we discussed and it would be good to understand this aspect of the market.

But so far the only findings that we've documented here is that the market for backend services is unconcentrated when we look at the definition provided by the U.S. Department of Justice uses at least with an HHI of 1284. It's also, once again, and for new gTLDs the market is much less concentrated than if we look at all gTLDs largely because there's a single backend provider – Verisign – which provides services to .com and .net which are by far the largest gTLDs and largest – at least in the case of .com – by far the largest TLD in the world since there's just one provider behind those two very large TLDs that ends up having a significant effect on concentration, whereas the new gTLDs are less concentrated and, as in the case of the general gTLD market findings,

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we see that as new gTLDs pick up increasing shares of the marketplace, that has an effect on decreasing overall concentration.

So this just roughly matches the overall trend that we see on gTLD registrations, so I don't think there's a lot of new insights here. So as a result, we don't have any recommendations around backends in particular at this point. So I guess we'll pause and see if anyone has thoughts on should we be making any recommendations. This does seem like an area where we mostly have the data we need. I guess the one thing we don't have data on is the actual prices the backend services providers charge and whether that's changing over time.

Waudou asked, "Is there competition between backends?" So, Waudou, I'll answer in my personal capacity which is, I think the answer is yes. I don't know if people were following we could send it around, but PIR which is the registry operator for .org, recently did a RFP for backend services for .org and there were over 20 applicants, I believe – or 20 interested parties interested in providing those services. So at least for a major TLD like .org it seemed like there was quite a large amount of potential competition through that RFP process. PIR says, at least publicly, that they [were] satisfied with the responses.

So I guess the question is here, does anyone have suggestions? Do we think that there are recommendations that we ought to be making on this topic of backends?

Okay. I'm not seeing anything, but Laureen is typing. Hopefully Laureen actually has working audio since she's going to have to lead the second

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half of this call. But I'll wait one moment for the folks that are typing to complete before moving on to the next topic.

Oh, Laureen just wants to be dialed back in which will give her working audio hopefully. Hopefully staff can take care of that. And separately Waudu is typing.

Okay, I'm not seeing any recommendations here. So I'm going to move on to the next section of the document which is Registrars. I'm going to say to preface this that I've seen a little bit more data recently that makes me believe that these findings are perhaps a little bit oversimplified, and we may as some of the follow-up work that we have here end up expanding upon these findings. I also think Waudu sent around a document earlier today that we may want to discuss here as well. So we'll get to that in just a moment.

But I will say that the current summary of the findings on registrars is that concentration amongst registrars within the new gTLDs has declined somewhat –

We have a little bit of echo there. Okay, it seems to be gone. Sorry.

Concentration amongst registrars has declined somewhat largely because, once again, there's lower concentration within the new gTLDs. But generally speaking, there hasn't been significant changes in concentration amongst registrars because there was already fairly robust competition between registrars prior to the introduction of new gTLDs. So it looks like the new gTLDs have had a small positive effect on registrar competition, but it is small, mostly because there was already robust competition here.



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And two other things that we know here is first that, although there is sometimes high concentration within a specific TLD – so there might be a TLD where say a particular registrar has 70% or 80% or you looked and calculated the HHI amongst registrars – within that particular TLD you’d get a high number even in those TLDs with high concentration which [we see] a large number of registrars offering services. So it seems like consumers have choice at least, even if a particular registrar or small set of registrars have a large fraction of the total registrations.

I think the Analysis Group report found something odd, which was that these TLDs that had high concentration actually have lower prices, and so the concentration within specific TLDs doesn’t seem to be having an adverse effect on pricing, which is probably worth adding to our findings if we can substantiate that.

And then the last thing to note about registrars I think as a general observation that we’ve seen, which is even though it looks like there is robust competition, we still see very high variation amongst the prices between registrars for what we believe look like very similar looking services. And this is an oddity that we can’t really explain, but is not what the economists expect because there’s this notion of the Law of One Price within a competitive marketplace – the same products shall gravitate towards the same price, which we don’t see happening here. So that’s an oddity.

I’m going to pause here because Waudu sent around earlier today a paper on the pricing competition amongst registrars within registries. And I wanted to ask Waudu if he had any additional findings from that paper that we wanted to incorporate into this document. So Waudu, I

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know you're on the call. Do you want to comment on your paper here? This is maybe assuming that we can get Waudo's audio working because I don't hear him so far.

WAUDO SIGANGA:

The paper that I sent around first of all, I just started with a copy that. There was some information that we did not have. There was some analysis we did not have at the last meeting in Hyderabad. And we asked the Analysis Group to do that analysis for us and we are still waiting for results from the analysis. And [inaudible] the information that we are waiting for, it includes calculation for each registry for the three price types: that is the selling price, the transfer price, and the retail price is what? It's the renewal price. So those three prices. We need for each to be calculated the coefficient of variation and those are the [two questions] of the coefficients. And that will give us some idea about whether the registrars are competing on price within the registries. So we don't yet have that information.

However the Analysis Group had already given us a special report for the CCT on registrar concentrations, I think Jordyn has already referred to that one. And that report which I have also referenced here indicates that there is quite robust competition within the registries in terms of the number of registrars that are within each registry.

I don't know how significant that is, as Jordyn has just said now there was already quite good competition between registrars even in those legacy [dates] so I don't know how significant that would be, but this report that was done by Analysis Group especially for our team

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indicated for most of the registries, they exhibit quite a number of registrars so the HHIs are quite low also the registries.

I think [conventionally] that would indicate what kind of competition is going on just by the fact that each registry has quite a number of registrars.

So I think that's what I can say about that particular project to date. We are still waiting for more detailed information from the Analysis Group unfortunately. Thank you.

JORDYN BUCHANAN:

Thanks, Waudu. That's helpful. I do see in your document you do have a recommendation which I think aligns with a recommendation that we already have above in the other document, which is that there's a mechanism explored to periodically collect retail prices by registrars for purchases, renewals, and transfers. So that's certainly something that we want to include is we probably need more pricing data in order to have future reviews be able to make good observations about pricing trends. That makes sense to incorporate as well.

WAUDO SIGANGA:

Yeah, that's our recommendation. Sorry I [left] that one out.

JORDYN BUCHANAN:

Sure. Okay. Thanks, Waudu. That's helpful. Does anyone have questions for Waudu about this document or his findings?

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WAUDO SIGANGA: Is Stan on the phone? I think he would help [him] out with this as well.

JORDYN BUCHANAN: I don't see Stan on the phone today, so I don't know if he'll be joining later or we can ask for his review offline as well.

Alright, so thanks, Waudo. I don't see any other questions here, so I'm going to move back to the findings – Kaili has raised his hand. So Kaili, go ahead.

So far we don't hear you, Kaili. May be on mute?

Looks like they're trying to call out to Kaili. Let's see if we get a connection in just a moment.

KAILI KAN: Regarding price competition, I fully agree that price competition is [most] probably most important aspect of competition price, however, regarding the importance of price, say the domain names, I'm not sure if this is the best idea mostly because the price of the domain names is [in] most cases is only a small portion of just total overall cost [to run a business] over the Internet or [and] other usages. So therefore, [even if] we do not reach conclusion on price competition, but still this would not mean that the New gTLD Program is a failure. As a matter of fact, I believe the [net worth] as advantage or achievement of the New g Program is that it provided much more choices, especially for brand names to have registrations in new gTLDs.

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So therefore, the [inaudible] the price is the important aspect, however, it is not the only aspect of competition and especially not for this New gTLD Program. Thank you.

JORDYN BUCHANAN:

Thanks, Kaili. That's a good observation. I think at this point, all we're capable of saying about price in our findings or recommendations is that in general we have less data than we would like. I think you're right, that separately if we look at the Registrant Survey there's a large number of factors other than price that registrants seems to care about, and so it's probably worth mentioning the fact that other factors will also be important to registrants and that even though we want to get additional information on price, we shouldn't say that that's the only factor that would affect our assessment of the program.

KAILI KAN:

Yeah, so far our data is sort of inconclusive. But that doesn't matter. The New g Program has provided tons – over thousands of new choices for the registrants and consumer, so that is great I think that it's a great achievement, the New g Program.

So even if we do not get the data to prove there is price competition or even if we get the data to prove the price was not lowered, still the New g Program has largely reached a goal. That's what [I think].

JORDYN BUCHANAN:

Thanks, Kaili. That definitely touches on the consumer choice element of our study which we'll definitely make sure to include. That's a great

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[observation]. I think Stan actually said a long time ago early in our program that in general when we give consumers choices that's good unless we find countervailing costs independent of the price topic, and so I think that may just be, like you're saying, an observation that we want to make – that choice itself is valuable.

KAILI KAN:

As a matter of fact, in the [type of] economic literature there is a market situation which is called monopolistic competition which the end users or consumers, they give up certain advantages of price however the [gains] are more choices. And I think this for [inaudible] the New g Program that might well be the case according to the classical economic literature.

And so as a matter of fact, now that's in the world that most commodities are monopolistic competition rather than full competition, so that is just good for consumers. That is what we want. They don't care [that much about] prices. So we don't need to worry about that that much. Thank you.

JORDYN BUCHANAN:

Thanks, Kaili. That's a helpful observation. So we will make sure to include that line of reasoning. And maybe we want to include a specific section on choice in the findings which we don't currently have.

KAILI KAN:

Yes, exactly.

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JORDYN BUCHANAN: That's a good observation.

KAILI KAN: That is the number one achievement of our New g Program – choice.

JORDYN BUCHANAN: Okay, great. Thanks. That's a helpful observation, Kaili. I'm going to suggest we jump back to the findings document, so if we can represent that.

I'll give one last call. Do people have any – Waudó's presented his recommendations. We have another data request, but that's already mirrored in the gTLD market recommendations above. So based on these findings about registrars, does anyone have any suggested recommendations relating to registrars that you think we should incorporate into the report?

Okay. Not seeing anything –

KAILI KAN: I would suggest [inaudible] –

JORDYN BUCHANAN: Go ahead.

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KAILI KAN: I would suggest attention to the price analysis we also include just what I mentioned about monopolistic competition model in which consumers prefer to give up the price advantage in exchange of choices, as that [truly] falls into all subteams' territory. Thank you.

JORDYN BUCHANAN: That's right, Kaili. I think we'll resolve that by creating a new section in this doc on choice to break it out from these existing sections. So agreed.

Okay. I'm going to move on to the trademark section of the document. Just to remind folks, we talked about this quite a bit already, but I'd say there are two things about our findings on trademarks so far. The first is that most of our analysis here is limited to direct defensive registration costs. There's other costs that trademark holders could bear. One striking example is related to blocking. A number of registries provide blocking services and I think we saw a series of articles to the lists recently indicating Donuts, for example, is expanding their blocking service. And so we're not capturing the costs of blocking in any of the analysis we're doing so far.

Secondly, there may be other types of costs related to enforcement, for example, that we're also not capturing here. I think David Taylor's done some initial analysis on costs related to UDRP and URS cases, and those don't seem to show an increase as a result of the program. But what we are expecting is that INTA is putting out a survey to its members asking them to help INTA understand – but we'll use the data as well – what the costs related to the New gTLD Program were for those INTA



members, which are Intellectual Property [earmark] holders. And that data will help us understand better some of these other costs.

With that caveat, I'm saying that there's still additional data that we're expecting here. What we see so far is something of a bimodal distribution in that most trademarks... so we definitely do see defensive registration costs in new gTLDs. As with previous expansions of the TLD space, some mark holders who already have their name registered in .com or another legacy gTLD are choosing to register that same mark in additional new gTLDs. And the registrant Survey tells us that mark defense or brand defense is a significant contributing motivation for some of those registrants registering their names.

So we know that there is defensive registrations occurring. It's not necessarily the case that all of the duplicate registrations where a registrant already has their mark registered in a legacy gTLD is registered in the new gTLDs, but those might not always be defensive. I know Amazon, for example, Amazon.plumbing points to their plumbing supply store, so maybe they are actually using that as a way to better target some of their retail offerings, for example. There may be other registrants that are doing similar things where they have a purpose behind registering in specific second level domains.

In fact, what we see is about half of trademarks that were registered in .com are also registered in the new gTLDs. And most of the registrants in the new gTLDs are registering only a small number of times. So if you have most of the trademarks are I think the median number of registrations is only three. So 50% of the people that have trademarks

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that are registering in new gTLDs are registering three or less fewer [inaudible].

[Inaudible] background noise. So, Kaili, if you could mute that would be helpful. Thank you.

In any case, half of trademarks in .com don't register in the new gTLDs at all, and of those that do register, most of them don't register in very many of the new gTLDs. However, we see a very small portion of the trademark holders registering very large numbers of duplicate registrations in the new gTLDs – 4% of the trademarks that we see registered in the new gTLDs are registered at least 100 times, and one trademark was registered in 406 of the new gTLDs, which is essentially all of them I would say based on the study that we saw. And so those trademark holders are probably bearing quite a bit of cost related to their marks.

So that's the general finding, is that the summary that's written here is, "The cost of the New gTLD Program for most trademark holders related to direct registrations and defensive registrations has been relatively low, but a small fraction of trademark holders are likely incurring significant costs."

So that's the finding at least. I see Kaili has his hand up. So Kaili, go ahead.

KAILI KAN:

Regarding the trademark registration, I [inaudible]. Regarding the trademark registration, first of all, ICANN is a non-profit and we are [to]

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provide a service for all the registrants, [to] registries and registrars, and therefore I think, first of all, ICANN is not to make money out of this, only for service. Therefore, I believe [inaudible]. One, is the [inaudible] registration in many cases that we call that [inaudible] registration in order to avoid being hijacked by the people [inaudible].

So therefore, also I [inaudible] find so far a trademark registration [has] nobody [anyway] and the only benefit and [inaudible]. Therefore, as we formulate our recommendations, I recommend that we [inaudible] solution is that we have the next round then we open up the door wide for the trademark holders [inaudible] \$185,000 [inaudible]. So therefore, as long as the trademark can be verified by [inaudible], we can provide a [inaudible] for example, 90% of [inaudible] have paid. And then also we [inaudible] registered as a gTLD [inaudible] then we provide some protection mechanism for those type of [inaudible] in the second level domain name.

Yes, I think, I believe [there's] much welcome by the [business] community [inaudible] and also we resolve a problem that at least I have heard a lot of [complaints] about. So I strongly suggest that our team decides and provide some recommendations in order to avoid any drawback in our next round if we have it.

JORDYN BUCHANAN:

Thanks, Kaili. I think although – I'll just note again, one interesting thing we asked Analysis Group to do a follow-up study or analysis of the data, and it looks like TLDs that were registered as .brands were also being registered defensively in many of the second level domains. So it

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doesn't seem like having the brand TLD itself is helpful to avoid the defensive registrations. I think there's a separate question of, do we provide some sort of blocking mechanism at the second level. And I think as we discussed on our previous discussion around this, it's hard to figure out what the right threshold is there, although this has been discussed. My takeaway is that because of this bimodal distribution we see, the extent we have recommendations they probably should focus on this small fraction of brands that are bearing most of the costs. But I don't think yet [per] a specific recommendation that we can capture that.

Go ahead, Kaili. Then I've got David in the queue.

KAILI KAN:

First of all, I agree with you with that so far is only a small number of brand name owners have registered over hundreds of second level domain names. However, that does not mean those brand name owners who cannot afford such a large scale registration that they would not like to do that [inaudible]. Now there are some internationally recognized brand name [recognition] entities or [inaudible] entities. If that is the case, that is why I suggest we do provide some second level registration protection mechanism.

For example, [inaudible] there's [a course] – anyway, that we provide some recommendation in order to [solve] at least [inaudible] of this issue open the door for our next round and to avoid any [inaudible] and [be] more welcome by the business community. And I think that's good for the registrants, good for brand name owners, and good for

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[inaudible] in ICANN and also if we do not have time to fully study and formulate the policies, [inaudible] at least in our report we raise this issue and recommend ICANN for further study of that. And I think in that case, at least we have not wasted our effort for [inaudible] time and energy on looking at this issue and then pave the way not only for further policy as well but also as well as open the door [inaudible] fewer drawbacks for the future rounds.

That is what I recommend, that is if we do not have time to fully study and make policy recommendations at least we [inaudible] for ICANN further study.

JORDYN BUCHANAN:

Thanks, Kaili. I'm going to just... David may have something to say about this so I'm just going to hand the mic to David who's been patiently waiting in the queue.

DAVID TAYLOR:

Thanks, Jordyn. I suppose just looking at this, the worry I have is the conclusion where we conclude from the data relatively low and the small fraction – those two terms. I know we're talking just about defensive registrations and I agree completely with your caveat that we may other costs and no doubt do have the other costs on enforcement and watching [inaudible] which are out of this as well as the blocking. So when we look at the overall picture, it may be a different picture.

The point I raised in Hyderabad was where we mention I think three was the average registrations by brands according to this data, and I

suggest that three seems relatively low but relative to what? And there was the concern I have was if we're looking at some big brands and their thousands of domain names, absolutely three is incredibly minute. But I do have clients who have three domain name registrations to [their] that is the only domain name registration they have – a .com, a .net, and a .fr, for instance. They've gone and registered three new gTLDs, then their defense registration budget has just doubled or gone up to 100%. So I'm sure they would be saying that it's not for them relatively small. For them it's an enormous change.

In the scheme of things, it's small because it's only three. But that's the kind of thing where I'm thinking we need to be a little bit careful what we say on that. Maybe we need to, and this is perhaps the data we'll get from INTA, but I'm thinking here out loud that we need [inaudible] the number of domains a particular brand has registered say over a period of time and its evolution year on year and then see if they're actually registering more on an annual basis since the new gTLDs have existed or not and have that sort of data so we get a proper overview because I'm just a little bit concerned that the conclusion is the right conclusion on the data we have but we might not have the right data at all and so my point on three and three being 100% I think is what I raised in Hyderabad and I think that's something we need to be careful of.

JORDYN BUCHANAN:

David, I have I guess a couple of quick reactions. And I know that we're basically close to out of time. I'm going to make sure that we hand over the floor to Laureen no later than at the top of the hour, so we've just

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got a few more minutes so we may not fully be able to close out this conversation.

I guess I have two thoughts for you, David. The first is, while I expect you're probably correct that for some registrants this has doubled the – like you say, it is possible that we've actually doubled the number of defensive registrations taking place globally. And in my opinion, defensive registrations are not helpful. They're dead weight cost to the system, so it's definitely a cost as opposed to a benefit when we look at the pros and cons of the program.

But nonetheless, even if someone started and they said, "I used to have three and now I have six," the absolute cost is that trademark holder is still probably on the order of we're talking an incremental cost of tens or maybe hundreds of dollars per year. When I look at that in the context of the overall cost to maintain their brand and their mark, that still seems relatively insignificant to me.

My notion, David, was when I look at this data what it tells me is that our recommendations – and maybe this builds a little on what Kaili was saying – our recommendation should be along the lines of, that future policy discussions around the trademark protections probably ought to focus on this tail of trademark holders that are incurring the significant majority of the cost. Does one registrant who's registering 406 copies of their [SOB] is bearing the cost of 100+ of the typical registrant registering three of these? And so it would make sense to me at least that if there's going to be future policy work in this area it would focus on these registrants that are bearing the brunt of the cost as opposed to trying to do something that's really broadly tailored to try to get to the

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people that are minimizing the costs for the folks that are registering three because I think in terms of both the direct cost to those individual registrants and the absolute cost to the program, most of it seems to be landing on a small number of trademark holders.

I guess I'm wondering whether you look at the data and come to a different conclusion than that and how crafting the finding one way or another would shape our recommendations.

DAVID TAYLOR:

Thanks. I certainly appreciate that looking at it that way and I suppose it really just depends on the data and so I'll have a look at this in a little bit more detail. I've been concentrating on the enforcement side of things and see what we can come up with because obviously certain brands will go defensive, certain brands will watch, certain brands will enforce so we can only look at a snapshot in this way of what their total costs may be. And again, we just don't know how many brands are out there and again, the relative portion of this to their brand protection online generally.

So it's the big picture and obviously we've got this... it's like a jigsaw and we're looking at one little element of it and I just don't want us to make the wrong conclusion or the wrong takeaway when we don't have necessarily all of the data but let's work on it. No problem.

JORDYN BUCHANAN:

Yeah. Agree, David. We may find that we see totally disparate like if we drew a Venn diagram we may see that direct costs are totally discrete



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from enforcement costs, like if you actually do all of your defensive registrations and you don't have any enforcement costs, then you don't do any blocking and if you do blocking when you don't have any direct costs or enforcement costs and if you do enforcement then it's because you didn't do these other things. In which case, each of those, we'd have to consider each of those buckets entirely separately and see what the net cost of the program was.

My intuition is that's not the case, and that what we'll actually see is these same brands that are registering defensively quite aggressively are also bearing most of the blocking costs and probably most of the enforcement costs as well. But it would be good to actually substantiate that with data as opposed to intuition.

DAVID TAYLOR:

Yeah. [Inaudible] your other point before when you're saying – and I agree with that – defensive registration costs are certainly a cost to the program and it's not something we want to see, nobody really wants it. The whole idea is innovation so if you've just got defensive in there and it's not being used then there's no real benefit to that. If we look at the 25 million domain names, that's where we could have the very broad conclusion if we saw that 20 million of these were defensive registrations by brands, we would have an incredibly different conclusion and thank goodness it's not because that would be a nightmare if that was the situation – that we had that much by brands defensive registering it would squeeze out any decent innovation, etc. But it's trying to get that big picture which is a hard thing to get. [Inaudible].

JORDYN BUCHANAN:

Thanks, David. That's a good point. I do feel confident from the data that we've seen so far that, like you say, thank goodness it's not that actually the defensive registrations seem to be a relatively small fraction of – at least for trademark purposes in particular – seem to be a quite small fraction of the overall registration.

We only have a couple minutes left so I'm going to go back to Kaili who's put his hand up in the queue and then we're going to have to wrap this up and turn it back to Laureen. So Kaili, go ahead. You've got just about a minute before we need to wrap things up.

We can't hear you, Kaili. There we go. Go ahead, Kaili.

KAILI KAN:

Okay, great. [inaudible] if we just look at defensive registration alone that [inaudible] that looks like [inaudible] if we put them together [inaudible] together we have millions and millions of parked registrations. And if we do not [inspire any] mechanism I think [inaudible] will stop the hijacking of brand names in the second level domain. It is only going to be a matter of time that parked [inaudible] as David mentioned will happen. That is a portion [inaudible] thousand of the owners rush [inaudible] defensive registrations. Therefore, I believe that we look at this problem and we could recommend further study if it is revealed. I don't think that if any [inaudible] and obviously would be part of our [competition], our review team [inaudible] for ICANN and all the stakeholders and also that [inaudible].

JORDYN BUCHANAN: Thanks, Kaili. I do think it is definitely the case that one of the problems... We don't have any trends data here at all in that we don't see... We know what the current defensive behavior looks like from the Analysis Group TMCH report. We don't know if that's increasing or decreasing over time, so that might be a good example of something where ongoing data collection would be useful. So we'll try to capture that recommendation as well.

KAILI KAN: I would say [inaudible] we do not have any data to show that is the very significant problem. However, [inaudible]. [Inaudible] that quick. So [inaudible] include this point in our final report and at least caution there because this is the [inaudible] in the future. Also [inaudible] further study [inaudible] and then [inaudible]. That is what I think is [the right thing to do].

JORDYN BUCHANAN: Okay. Thanks, Kaili. We're going to have to give you the last word for now on that because we're now over time. But we'll try to incorporate that into some of the discussion going forward. And we are waiting for some additional study from INTA in particular.

But I'm going to turn things over to Laureen at this point because we're going to go through and take a look at the recommendations from the safeguards and trust side. So Laureen, it's over to you, hopefully.

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I see Laureen on the call, but I don't seem to be having luck with audio here.

LAUREEN KAPIN:

Sorry. It's my fault. I was muted. Apologies. I'm talking and there's silence and it's like, "Why can't anyone hear me?"

Unfortunately though, now my Adobe Connect has... As soon as one communication method worked another communication method... Okay, now I'm back. Okay. Firing on all cylinders now.

I thought we could stick with IP issues since we have the benefit of David with us, and that, David, perhaps we can walk through your papers and work through recommendations in the template that we had discussed on the last plenary call and also that I had sent out to my subgroup via e-mail. David, is that something that you're comfortable with, yes?

DAVID TAYLOR:

I don't have anything in front of me and I haven't looked at them since I wrote them. But if that helps, I'm quite happy to read them at the same time as you and hope to remember the synopsis. You'll have to share them with me because I don't have access where I'm standing at the moment to them. That might be the best way [if you want].

LAUREEN KAPIN:

Just to translate, does that mean you don't have access to a screen? Is that what you're saying?

DAVID TAYLOR: I have Adobe now and I can see it in Adobe, so I can see that, yes. [I don't know if] this was 20 days ago so I'm trying to remember what I was going through. Okay, let's go through. [Mucking] onto these I'm sure. Do I have scrolling rights on it?

LAUREEN KAPIN: Yeah, so we can just give everyone independent scrolling.

DAVID TAYLOR: I seem to have, yeah. Okay, so I can do that. I need to make it a little bit bigger because I'm getting short sighted as my age gets on. There we go. I think I can see that good. Right. I do like the way one thing there you said, I like when you said you have the benefit of me on this call and [inaudible].

LAUREEN KAPIN: You heard how I slid that right in there, didn't you, David?

DAVID TAYLOR: For another reason which you might not be thinking of in particular, the benefit of me rather than the cost of me, you see because it's the [costs] of rights protections, the cost of this. For once I'm a benefit so I like that.

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LAUREEN KAPIN:                    You're absolutely a benefit.

DAVID TAYLOR:                    So the first question we had was the New gTLD Program that put the mechanisms in place and putting a description of the RPMs there, so there I've gone through and basically run through a little bit of the background and the history of it because we got UDRP which existed and was in existence since 1999 but we had the Mexico meeting ICANN meeting and prior to that where there was quite a bit of consternation from the brand community saying that UDRP would not be sufficient to deal with a flood of new gTLDs which at the time I think it was 500 at the most but it would still be a flood on UDRP just wouldn't cope with that and it wasn't fast enough and the whole process had evolved. So that was putting in the background there. The IRT which was formed by Board resolution back in 2009, and that's the one I sat on back then with 17 other people which created and set up the Clearinghouse, the Uniform Rapid Suspension as we know and also the PDDRP for taking out a TLD that does something bad.

So that was that and also then there were specific processes that covered string confusion, objections, [limited] community and legal rights which I'm going to put those and I haven't finished that yet but I was working on that coming back from India so I'll add something into that.

You've then got the description of the UDRP which I probably don't need to go through, detailed description of the URS so we can see all of what goes on in there, and then the PDDRP and what's going on there

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and the various branches I'll call it of the PDDRP, so that was all of the various mechanisms, and then finishing up the Clearinghouse. And there at the end you see there, which I want to complete, is the description of the objection processes so hopefully there's quite a bit of material there we can obviously use in the draft/final report as we wish. But that's what I was trying to pull together so we've got the background. That's where I am on that. Happy to take any questions, but it's nothing groundbreaking on there, I think.

LAUREEN KAPIN: And so David, this is basically more of a description of what's in place, yes?

DAVID TAYLOR: Yes. That's where we were.

LAUREEN KAPIN: Would any recommendations flow from this or is this more background?

DAVID TAYLOR: I think it's really background. I can't think of recommendations. It's only when we start to look at how they've been used, whether we can get to a recommendation. I think that's where it ties in with what Megan's been looking at with the string confusion objection, for instance, whether the... That's why I need to put in some of the description of it so we know what the string confusion objection is. We've got that

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background and then from there we can see well, “Was it used successfully or not? Was the community objections used successfully or not? Did the legal rights objections, were they used successfully or not?” and that’s an area which obviously we need to fluff out and develop, and that’s where we’ll get the recommendations.

LAUREEN KAPIN:

Right. Okay. So in terms of timing, we’re trying to pound out a draft next week. So to the extent that you can finish the background here that needs to be done sooner rather than later, that’ll be very helpful.

DAVID TAYLOR:

I will undertake – and lawyers can’t give undertakings unless they actually do them so it’s much better than saying, “I will try to” – I will undertake to have the description of the objections to you by the end of this week.

LAUREEN KAPIN:

Perfect. Thank you. Should we move on then to the next paper, which I think you’re other papers do have material that needs to [inaudible].

DAVID TAYLOR:

A little bit more in, yeah. I should have swotted up and read these before the call again. I’m waiting to discover because I can’t remember - I do too many things – what is this going to say? What did I say in it?



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LAUREEN KAPIN: It's an adventure for all of us.

DAVID TAYLOR: It is. Here we go. What's this one? "Have the new gTLD operators complied with the RMS?" This was the simpler one I think. I don't have scrolling rights yet to see if there's anything underneath it but I don't think there is.

LAUREEN KAPIN: I don't think there is.

DAVID TAYLOR: So whether there's any issues arising with noncompliance and the gTLD operators – I know I put my findings there – in essence it seems that they've complied with their obligations under the Registry Agreement and therefore to locate any examples of noncompliance I haven't seen any examples of noncompliance in my searching but there again I could well be missing it. So I don't know if Eleeza's got that. That was part of the – which I think you did say in Hyderabad that you had replied to me so I probably missed that e-mail. [If] you can pull that to my attention again I'll look at it, but it was the section on the ICANN website which had the complaints and that's what were the complaints about? So we've got that answer and there's complaints in there which are talking about registries not complying and obviously we can build those into here, but I haven't looked through that if there is data so if there is data there, please do point it and I'll start sifting through that to see but I haven't seen any noncompliance by registries.

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LAUREEN KAPIN: So maybe you can touch base with Eleeza to make sure you're on the same page regarding the data that's available.

DAVID TAYLOR: Will do. Okay.

LAUREEN KAPIN: Okay, and I also see the mention here – and I think that one thing that may flow from this depending on what you find in terms of data, David, is if you can't tell from the compliance information, if the information isn't granular enough, a recommendation that might flow is for more granular information to be available in terms of the compliance information that is public facing.

DAVID TAYLOR: Yes.

LAUREEN KAPIN: [It's just] we've seen that in other areas. So that's something to consider, whether the data is sufficiently transparent and specific to be able to identify the subject matter of the complaint.

Okay, so Eleeza's asking you to follow up with her in the notes.

DAVID TAYLOR: [Is she?] Okay.

LAUREEN KAPIN: Okay. Then should we move on to your next paper?

DAVID TAYLOR: I think there's two more, isn't there?

LAUREEN KAPIN: I believe so.

DAVID TAYLOR: So this was the, "Did the RPMs help mitigate certain risks?"

LAUREEN KAPIN: Right, this was the meatier paper.

DAVID TAYLOR: Yeah, so this one – sorry I'm just going to skim through it so I can recall. Okay, yeah. Rings bells. So this was a bunch of subquestions – is anyone else getting that echo? There's a high echo [or something] in my ears.

LAUREEN KAPIN: I'm getting an echo, too. Is everyone on mute?

DAVID TAYLOR: No, I'm not. The echo's gone.

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Yes, there was a bunch of subquestions in here which were the subquestions which we ran through – I can't remember exactly when we did run through them but a little while ago prior to India – so [it] was basically trying to get a bunch of questions together. And then I went through some of the findings, here is where I pull these findings. This was from the reports which are available on the ICANN website so it was limited specifically to that. There's quite a bit more data so I was looking at it the other day so if we do look at it there the number of cases filed UDRP and URSs, the number of UDRPs seemed to have dropped slightly. That's taking 2012 as a baseline which is what I did because that was within the ICANN data. But obviously the [same] thing or the interesting thing is 2012 was also a peak year so if you go back and look at the UDRP over the 10 years previous, 2012 was the largest year ever of disputes so again, you change your data because all I need to do is take a baseline of 2008 or 2010 and then we've got an increase. But the bottom line is we're not seeing as far as I'm concerned and that's the key point, we're not seeing triple number of UDRPs being filed.

So that's the main point that comes out of that. But I think that's the finer points which is what I've built into the presentation because if you drill down and look at some of WIPO's data, etc., you see that there's actually quite a significant portion of their cases involving new gTLDs. And if you hence look at that you can see a common [inaudible] because it's not in this, I've got it somewhere else. It was in the presentation I think. But you're looking at something whether there's a higher proportion of cases involving new gTLDs then the number of

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registrations that are out there when you look at the percentage [of your] 25 million.

So again, we can look at this and come at it from various angles and I think that's the way I'm trying to do it is look at it from the various angles and see what we can conclude and what we can conclude with any certainty because data can be shown to show anything which I really don't want to be doing, I want to try to get an objective view.

And so there we've got the complaints - #2 there – "Complaints to ICANN concerning implementation of UDRP/URS." Let's pass on that because that's the bit we need to go through, I need to go through with Eleeza. And the "Registry Restrictions Dispute Resolution Procedure" - #3 – there's been no cases so not much data there. And then we've got "Share of sunrise Registrations Domain Name Blocks to Total Registrations," and there we've got some data so that's on my to-do list to be looking through that sort of data to see what we can find.

And I think just reminding that reminds me if I go back to the URS/UDRP point which I thought the data was in there with the number of URS cases – sorry, yes – I've got my little hand hovering over it there – the number of URS complaints. No, that's not it. Sorry. It was this bit, yes. The URS complaints 229, and in 2014 20, and in 2015... According to my stats when I went onto the Forum website for instance, I think we're looking at over 600 complaints. So we've actually got quite a bit. There's a third more than was in this data so I'm not sure whether the data's fully correct. I need to cross reference that and whether we're looking at the same cases. But from that it was saying we were looking at 400-odd cases and it seems to be quite a bit more so it's maybe showing

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that there's a lot more in 2016. Again, we need to look at that data which is on my to-do list.

The real fact there I think is what we can all agree on is that there's not as many cases as many of us thought there would be on URS. It's a surprisingly low number. And again, what you can conclude from that is various things. It can be that it's such a wonderful mechanism that everyone is so scared of the fact that it exists that no one is registering and the bad guys are not doing the bad things which is why everyone is very happy and URS is not being used very much. Or it could be that the process is so diabolically developed that nobody likes it and it's such a pain to use that no one's using it and they're just letting the abuse run rampant. So you can conclude many things. So again, we have to try and look at that and see a lot of the anecdotal evidence around it and again, hopefully the INTA where brand owners will be coming in and saying why they're using it, why they're not using it, what issues they've had with it. And again, we can drill down into that because there's been a lot of discussion about various URS cases and the issues. So I'll put something together on that and I'll try and do it high level but that's a very detailed article or more to be going through and starting to go into that.

Again, difficult to know how much to go into in the time available. I don't think I'll be commencing anything like that too, Laureen, by the end of this week but it's certainly something which as I've got time I will try and look into and build something together on that.

And I don't think there's anything else to say on this one apart from – I did have some recommendations.

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LAUREEN KAPIN: Yes, and that's what I'd really like to focus on. I appreciate you giving us the overview, though, because we haven't had a chance to hear that yet. I think Jordyn has his hand up.

DAVID TAYLOR: Okay, go.

JORDYN BUCHANAN: Yeah, David. Were you going to run through the recommendations first because I'm fine waiting. I just have a couple general observations, though I'm fine to wait until after the review of the recommendations.

DAVID TAYLOR: Sure. [inaudible] to have a full impact study to inform the community. That's obviously the INTA study, and it's just hoping that we're not going to have the results of that for this preliminary report but all guns are going for it to be ready for the final report so that we will have so we're going to have to put quite a few placeholders in because that's going to bring in a large amount of data I think for us to look at. So our work will be cut out I think more in the February – March – April time than it is just now because [inaudible] perhaps falsely conclude.

Recommendations there and #1 that's what I've just mentioned. I was thinking this impact study is something which we should be repeating at regular intervals so that we can see the evolution once we've got the questions, once we've looked there, like we've seen with the Nielsen

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where you can go back and do a similar query 18 – 24 months later we're going to get the data and we're going to see the evolution for future groups looking at this, future review teams.

I think we need to consider the relationship between the URS and the UDRP. That's something there's quite a bit of commentary on and I think it is something which needs to be flagged as a recommendation that it is considered and I think it will be considered, and that's basically talking about do you have the two living in parallel? Do you have one as a precursor to the other? And there's an anecdote I find it very time consuming to be talking to clients explaining to them the difference between the court action, the UDRP, the URS, or anything [inaudible] like that. I've got – someone's come off mute. I'm hearing myself again loudly.

And I think that's one of the biggest problem, that you can spend – I can't hear myself. Whoever's off mute. Good, thanks.

I think that's one of the biggest things when you look at costs, the actual cost to file a URS is very small and a UDRP is not a lot more when you compare it to court action, but if you're talking to lawyers you figure out what's going on and what the difference is between all of these things, you can easily spend way more cost than the cost of filing [URS] being told whether or not you should file a URS or whether you should file a UDRP or whether you should go to court or whether you should do this or whether you should...and that's to me the big issue. So anything we can do to simplify things for brand owners and registrants alike I think is good and I think the URS to me is rather complex as it stands.



LAUREEN KAPIN:

So just to jump in here a minute, David, because I want to use this to illustrate... So these are recommendations that are in I'll say their early stages. But I want to make sure that you and everyone else understands that these, consistent with my e-mail earlier this week, these really need to be put in a much more precise and wholesome format. Because otherwise they're not going to be useful for a preliminary report. And my drafts are similarly challenged when I use words like consider and when I don't tie it to the finding. But I want to emphasize to you and everyone else on the call is that what I've asked everyone to do within our subteam is to reformulate these recommendations.

So, first of all, they relate to the findings and they are phrased and given the findings of X. And for you it may tie to the complexity of certain procedures or the lack of sufficient information about certain procedures. But consider the relationship it isn't specific enough to be useful. So we need to tie it to the findings and you need to make an actual recommendation which perhaps might be... I don't know what your recommendation is because you're the expert on it, not me. But I can't tell what your recommendation is in this sentence and that's what I'm getting at.

DAVID TAYLOR:

Sure.

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LAUREEN KAPIN:

In your recommendation that one thing is too complex or too costly or that there's certain challenges or that a survey should be done to see why this is or isn't used. It just needs to be more specific. And it also needs to be directed to an entity within the ICANN ecosystem. Who should be considering this? What entity, is it the Board, is it a PDP process, is it budget for a future review team to do more data gathering? So it needs to have that level of precision. Otherwise, it's not going to be a useful recommendation.

I just want to make sure that you're the person I'm counting on this week, last week Calvin was the person pounced upon. So I'm an equal opportunity pouncer. But I want to make sure that everyone understands that, because at the end of the day what people are going to be looking at most of all are our recommendations and they need to have that level of precision. It needs to be given the findings about the costliness of this procedure. We recommend that ICANN look into methodology to decrease the cost or whatever it is. But it has to tie to the findings. It has to be precise action, and it has to be directed to an entity within the ICANN ecosystem.

And then the other thing that Jonathan has emphasized is we should be prioritizing this. Is this a short-term, mid-term, long-term, where does it fit in? So I just want to use this as an illustration of how we need to be moving along within these draft recommendations. Does that make sense?

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DAVID TAYLOR:

Yeah. Absolutely, that does make sense. And I think this is really a good case and a good example of the chicken and egg. Because if I make recommendations based on the dates we have I'll stop at number two. And I can make that precise because we don't have the findings, we don't have the data to look at. Something like consider the relationship between the URS and UDRP, that is a recommendation almost based on David Taylor having helped create the URS, watched it develop through the entire process and now seeing it used by close to 20 or 30 clients and had many, many client calls, etc. on it and got sick to death of trying to explain the different burden between the UDRP and which one should be used and which one is that and that's why this one failed, etc.

That is a conclusion which I can draw and a recommendation which I have. Do I have the data? I could put a wonderful paper together on it and I could delve into the RPM Working Group and find stuff and I'm sure we could put something together, but that in itself would probably take me a couple of days to get to the Recommendation #3. So really in this point I was trying to flag where I think this would go that there would be a general consensus that this is something which is an important thing to do. And I wouldn't get much kickback. I don't think many people would be saying, "Oh, no there's no relationship with the URS and the UDRP. They should be looked entirely separately, etc."

So I'm trying to make a recommendation which is objective without having the data available to make that recommendation. So when we get into a report stage I would hope something like this is in the final report and I hope we've got data to prove it. If we haven't got any data or anything then we have to drop it. Really I'm sort of flacking these so I

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was trying to get a direction to go in where I think we would be finding ourselves, do you see what I mean?

LAUREEN KAPIN:

Yeah. No, that makes sense. But what I would say is, if there is an efficient way to incorporate that data into your report other than spending a few days on a whole separate paper which I think at least at this point in time doesn't seem realistic, I would say if there's an efficient way to incorporate this data into your paper, do so. But in the absence of data then I think we need to drop the recommendation.

I know you know far more than is reflected in your papers. But we need to create a system where our recommendations flow from our data, not from all the things that, of course, we know from our experience as well. So, I leave it to you to find that balance. But for everyone, if you don't have data, we shouldn't be making recommendations—

DAVID TAYLOR:

Yeah. Since we're working parallel and doing certain things together, we're trying to get recommendations from findings from data and it's the chicken and egg. We don't have the data. So without having the data we're swimming around. But it's also because I'm obviously spending a fair bit of time trying to get the data. So, hence, a recommendation there, consider the relationship to the URS and UDRP, that is trying to format in a way some of the questions which we're asking brand owners, so we get the data.

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Yes, in a way, you could argue I'm going around this in a reverse manner. But it's not really that, it's more the fact that we're trying to do it simultaneously. So if we don't have those questions we're never going to get any recommendation as to whether we should consider or shouldn't consider the relationship. Whether there should be a transfer or whether there shouldn't be a transfer.

LAUREEN KAPIN:

Right. And I'm not saying don't collect the data or have a placeholder to say we're gathering data on this and it may lead to a recommendation. I'm just saying for this preliminary report, we either need to have recommendations flowing from data or have a placeholder to say we are gathering this data. We don't have it yet, but once we do we suspect a recommendation will flow out of it. So we certainly can have placeholders, that is not a problem. We will all have placeholders.

DAVID TAYLOR:

Good. Now, that makes sense. That's really what a caveat with a big draft above it I'm finding the placeholder in there so we know where we're going, so don't misread this. And again, as you look at that I agree, Number Eight, consider the usefulness of Donuts DPML and the DPML Plus. You know that, we haven't got any data so is it useful, isn't it useful. To me that is a key recommendation we want to be looking at whether it was useful, whether this was a good practice, a bad practice, should other registries do this, should they not do this. Except in all those questions [inaudible] and unless someone's asking those questions, I remember when we were doing the Nielsen Survey we were

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putting in questions there because we were brainstorming, 15 of us around the table saying we should put this question and this question. We're at that stage with whoever is the provider to do the questionnaire, we're going to have to make sure we get the right questions in there and work with them so that we can try and ascertain some recommendations out of it. So again, that's really why I'm putting that in there. It's nebulous the way I've put it as recommendation. Here's a recommendation of the data we need to collect I should be perhaps rephrasing it—

LAUREEN KAPIN:

Right. Which would be fine. A recommendation to collect data is fine, especially if we're not able to make the recommendations we like to because we don't have sufficient information. So, it's perfectly fine to say that. But I think what's needed is we looked for this, but at this point we did not have this.

DAVID TAYLOR:

Yeah. I'll try and make something suitable.

LAUREEN KAPIN:

Are the other recommendations more in this category where their flagging information that you'd like to have or are there any that flow from the data that we actually have?

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DAVID TAYLOR:

Well, rather than things which [inaudible] which we should consider or specify. It's probably appropriate that I put consider. They're again picking up just the noise which a lot of people on this group may or may not hear. But there are a lot of people who say there should be a loser pay model. And there's other people who say there shouldn't be a loser pay model. And there's arguments both ways. And I don't necessarily either view on that.

But I think we need data to understand whether a loser pay model would be detrimental to registrants in an untoward way and, hence, should not be considered. Or whether it is something which would deter abuse in the system. And, hence, be a good thing for the new gTLD process going forward. And that really depends which side of the fence you're sitting on as to which you agree on. So, again that's something which we wouldn't have an conclusion on that as to whether or not it should happen.

But that's why I think the recommendations I was kind of going there thinking, well, if you ask brand owners I'm sure 80% of them will say, yes, let's have a loser pay model. So that's where the INTA Survey wouldn't necessarily help on this particular point. But I think it is for me something that's more general as us as a group where we might be making recommendations. Now, I don't know how we'd bring those in without specific data and maybe we can't. But, to me, it's something which ICANN should consider this and carry out a proper survey of it and get a clearer understanding of the pros and cons of it and decide whether it's something that should be put in place or discarded, for instance. So again that's there.

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And then the [inaudible] new gTLD RPMs to legacy TLDs. Do we want an even playing field, this comes onto the competition side. Because where they don't apply, is that an unfair playing field? How does that tie in? So again, I'm really flagging it as recommendations or something where we need to be considering this. How do we consider it? How do we go about doing it? So that's just really the background on it, this one summary, highlighting things which I know are topics of discussion. And there's a lot of viewpoints on it and I don't know whether we can get data on this sort of thing, but we need to try.

LAUREEN KAPIN:

Right. I guess my main point is that we can't introduce things in the recommendations... I mean, just like in a legal brief you have to have things and your first section is always going to be fast and then you can make an argument based on those facts. But we can't go straight to our argument here and make recommendations when we haven't teed it up with facts or data. So to the extent you want to have these recommendations, there has to be some sort of discussion about them to tee it up. We can't just—

DAVID TAYLOR:

Absolutely, yeah. And I think that's exactly with a loser pays model, for instance, is a good one. I'm sure we will have data in February or March where a significant number of brands as per the [inaudible], I think that a loser pay model is a good idea. So what do you do with that?

Our recommendation would be, I don't think I'd go as far as to say a loser pay model should be put into place or whether we say a large



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proportion of brands think this. To me the conclusion is, "Well, that's brand side of things, so let's be objective about this." They're going to want the loser pay model so that's a no brainer because it's in their advantage. So how does ICANN go through this process of dealing with it and how do we get something in place which is fair to all. And, that's the point really.

So again, I think these will be interesting because it'll depend how we phrase them. But that's my point, I think there that it's going to be clear. We're going to have that as a recommendation to consider, to me that would be considerate. So again, I'm jumping ahead because I'm guessing that's what the results of a survey would be. Because imagine brand owners saying, "Oh, no, we don't want registrants to pay any money towards this if they've abused our brand."

LAUREEN KAPIN:

And what I would say would be a more useful formulation of the recommendation just for a illustrative purposes and [inaudible]that. I would say instead of consider which I've used the same thing, but it's wishy-washy, it's mushy. I would say given the survey results, which indicate brand owners would prefer a loser pay model. ICANN should assess the costs and benefits of such a model, not only to brand owners but to, I don't know who the other players are, I would phrase it in that neutral way and I would tie it to the findings. I wouldn't say consider, I would say assess the cost and benefits because that's much more precise and useful so we could actually do something with that. I can consider things until the cows come home, but assessing costs and benefits that's going to be something useful. Does that make sense? So

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ICANN I'm using you as a Guinea pig to illustrate to everyone how we need to be phrasing these recommendations.

DAVID TAYLOR: Just to finish on that. I agree completely that that's the sort of recommendation, if we had the data, it would be something like that. We don't have the data so I certainly can't write that now.

LAUREEN KAPIN: Absolutely.

DAVID TAYLOR: So as I say I would probably start my recommendations at number two would be the last recommendation on there and there would be a placeholder for these other areas which we think... I don't know how we would write that, but there would be other areas we think will need consideration once we've had sufficient data [inaudible]—

LAUREEN KAPIN: Right. And I think that's fine because we don't want to lose the good thoughts you have based on your knowledge of this area and the hot spots. So I think putting placeholders there is fine. But for the things we do have data on we just need to be precise. And mindful of the time, I think we have about seven more minutes and I know you have two hands up in the queue, so maybe we should take questions and then see what else we have time for.

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DAVID TAYLOR: Sure.

LAUREEN KAPIN: I think Jordyn, your hand was up first. It looks like Megan has taken her hand down.

JORDYN BUCHANAN: I'll just jump in. So a couple quick thoughts, the first I put in the chat already. I think in the initial finding section it would be really helpful to figure out ways to normalize this data somewhat. And so for the case of the numbers of UDRP and URS cases, it may be helpful, David, you pointed out that depending on where your baseline year is you may see different trends. I think one thing that would be helpful for me to understand is how the number of cases relate to the total number of domain registrations. Because presumably those are increasing over time as well. And so making some attempt to say, "Oh, there were 3,987 UDRPs and at the time there were 10 million registrations subject to the UDRP and so the rate is whatever one per, 3.7 per 1 million registrations or something like that. It would be helpful just to see how if in 2008 there were way fewer domain registrations and that's the reason why there were fewer UDRP cases. We may see an overall negative trend but I think that would be a helpful bit of normalization.

And similarly I think that with the number of UDRP and URS complaints relating those to the total number of cases would be helpful as well. Just to see what the fraction of cases that are generating complaints looks

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like. That might allow us to make some sort of useful... because I see, for example, that from 2014 to 2015 we see a 35% increase in complaints. Whereas the UDRP complaints are decreasing. So this might just be a result of the fact that in 2014 maybe there were very few URS cases, I don't know, for the first year maybe are terrible at implementing it. Whereas in 2015, maybe there was ten times as many cases even though there's a few more complaints. And so actually we've gotten much better at implementing it. So I think some amount of thinking about ways to normalize some of these numbers or give us some basis to compare them would be helpful, would be my first observation.

Then secondly, Laureen's covered most of my thoughts on recommendations, but I think when I look at these recommendations I think some of them strike me as just things that we should be doing ourselves. So it's really like recommendations to the CCT-RT. So the relationship between the URS and the UDRP, that's I think something that we would want to get to the bottom of and then maybe come up with our own recommendations about what to do after we think about it some more.

Some of these other later ones without the applicability of new gTLDs and legacy TLDs when Laureen talked about audience, I think in some cases we may just want to say these are important issues that we know, for example, that there's either the subsequent procedures PDP or the RPM PDP and these may just be questions that we make sure that we tee up for those other processes. So I think just thinking about in each of the cases of these recommendations is there some other body that's actually the best place to be considering them would be helpful as well.

DAVID TAYLOR: Good points.

LAUREEN KAPIN: David, did you have one last paper?

DAVID TAYLOR: Yeah. I think I did four, so there should be a fourth one. I don't think it was copious. I can't recall, which is probably good in that we haven't got much time left.

LAUREEN KAPIN: Was staff able to locate that? I'm not sure that they are judging by [inaudible].

DAVID TAYLOR: No. That's the first one again.

LAUREEN KAPIN: That's the first one. Okay.

DAVID TAYLOR: Doesn't matter. Let's move on.

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LAUREEN KAPIN: Because our time is short and we're having trouble locating the paper, I think what we should do is, I know that we have a couple other agenda items, Data Request Listing, which I think Eleeza was probably going to lead. And then the Draft Report Structure and Next Steps and I do want to leave time for that since our time is short. So Eleeza would it make sense now for me to turn the floor over to you?

ELEEZA AGOPIAN: Hi, Laureen. Sure. I wasn't sure if you guys wanted me to get through this. I wanted to talk a little bit about data requests prioritization. We've gotten a number of different requests that are so outstanding to analysis group and all together they will add on to the costs that we have for our work with analysis group is going outside of the scope of what we had originally anticipated because Admin had added on to the scope of work that they agreed to conduct for the Competition Subteam. So we wanted to go through this list with you all to see if we could prioritize the projects that are outstanding, see which ones you'd like to receive first. Or if there are any that perhaps aren't as critical. So either your Draft Report or could be deferred to future report or future review. I see that Jordyn has his hand raised, since he primarily comes from the competition team that maybe you can [inaudible].

JORDYN BUCHANAN: What I was actually going to say is I think a lot of these requests came from Stan. It doesn't look like he made the call today. I did raise it with him over e-mail. But I would suggest that we actually just defer this

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conversation or just move it to e-mail because I think we're going to need Stan's feedback for it to be meaningful.

LAUREEN KAPIN:

Yeah. I think that makes sense. And also because this is really something that it seems like the Competition Subteam needs to work through. It might be a better subteam activity via e-mail or separate phone call.

JORDYN BUCHANAN:

Yeah, that's right. I'd suggested yesterday that we have the discussion on this call just because we were all going to be together. But I agree with Lauren that it's better suited for the Competition Subteam. We've [inaudible] offline and see what the best way to take this up is. I do think we want to make sure which of these are really necessary. I think some of the ones that are related to price, for example, we don't have any way of getting at other than with analysis group. But some of the other ones we may be able to either compete separately where there'll be less critical to the report. I think we should probably just figure out the right venue to have that conversation and I'll take back my suggestion from yesterday of doing it today just because we don't have quite the right audience here.

ELEEZA AGOPIAN:

Okay. That's fine. Just a note that we'd want to make a decision on this fairly quickly. Obviously, you won't have the same time for your drafting especially [inaudible].

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JORDYN BUCHANAN:

Great.

LAUREEN KAPIN:

So I think that'll take us to the Draft Report Structure and Next Steps. Who is leading that discussion?

MARGIE MILAM:

Laureen, this is Margie. I can quickly walk us through what's going to happen. As we mentioned, several of us will be in Washington D.C. next week to try to pull together the draft report and I imagine that at the end of that we'll be circulating the draft for input from the rest of the team. We were tentatively scheduling plenary calls, not next week, but the week after in anticipation that there might be a need for discussion and if we're able to do through e-mail maybe we'll cancel those. But we at least put them out there until we know whether we need them. And with regard to the timing of the plenary calls, we're going to push them up one hour, so they're a little bit later. Or push them back an hour, I guess, because of the time change in the U.S. it makes it extremely early for the West Coast folks. So all the plenary calls that take place from here on out will be an hour later than today's call.

Jean-Baptiste, do we have the format of the structure that we used in the past for the report that we could at least show the group or is that not available to post on the Adobe Connect? Yeah, the one that Alice had done. I think she posted it on the wiki at some point.

So what you see on the Adobe Connect Room is the draft report that Alice had provided a shell for the discussion and it's set to scroll so you



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can scroll through it. Essentially it follows the format that was used with reports that were generated related to the IANA Transition that the CCWG Groups had pulled together. What we did as staff was provide some details on just the background sections to help facilitate the drafting of the document and then for the folks that are coming to D.C. this is certainly a format that we can talk about to see whether it needs to be refined. But I at least wanted to give you guys a heads-up as to what Alice had suggested from several months ago. And with that, any questions?

The other thing we're going to do is because this was drafted by Alice before we had some findings, some studies that came in such as the Phase 2 from Analysis Group and some of the Nielsen work, Jean-Baptiste is going to take the next few days over the holiday to fill in the details in some of the appendices as to the findings from those reports. So that report will at least summarize some of the recent studies and data findings. So that's all I had, Lauren.

LAUREEN KAPIN: Margie, I had a question with metrics. It says, "Analysis of recommendation implementation assessment..." I don't see how these even relate to what we're doing.

MARGIE MILAM: Where are you looking?

LAUREEN KAPIN: I'm looking at page eight.

MARGIE MILAM: Page eight. Yeah—

LAUREEN KAPIN: I don't even understand that.

MARGIE MILAM: Yeah, this is... as I mentioned, Alice had just done this a while ago before you guys did the work related to all the templates. So I think probably one of the first things we'll do in D.C. is identify how we want to structure each of the sections so we're consistent and track what was done by the subteams. Does that make sense?

LAUREEN KAPIN: Yeah. But I'm thinking even now some work could be done maybe to make this match a little more of the efforts that have already been done.

MARGIE MILAM: Sure. We can take that back and have Jean-Baptiste go back to the templates that have been used recently and try to track that so that it makes it easier for us when we get to Washington D.C.

LAUREEN KAPIN: Yes, I think that would probably make sense.

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MARGIE MILAM: Jordyn?

JORDYN BUCHANAN: I was just going to suggest, I'm a little worried that we'll get too attached to the templates and lose track of the overall narrative flow I think. I'm not 100% sure how to approach that, but I think we can have Jean-Baptiste do it as a first cut. But I suspect the right thing to do is probably when we first get together in D.C. just think about overall structure and story and whether we want to... I think breaking it down by the high-level questions is probably the right approach. But within that I think there's going to be quite a bit of narrative that's going to have to necessarily pull together from the individual papers and structure that we have so far.

Like just even today, at least, on the competition side when we were talking about the structure of the findings doc. There's places where we probably want to leave together a few different sections. And so I wouldn't spend too much time on the structure going in other than just to flag all the stuff that we have researched. And then we can spend a little bit of time up front thinking about how we want to look at that, right. The other thing I think that is inevitably going to be true is as we start writing it'll become a lot more obvious what the structure's supposed to be like than if we try to build the structure too much in advance because [inaudible] war plans are great until the first shot is fired.

LAUREEN KAPIN: Sure that makes a lot of sense. All right. So that's the report structure.

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Any Other Business? Okay. Well, hearing none. Thank you, everyone. Have a wonderful Thanksgiving for those of you in the U.S. And some of us will see you next week in Washington D.C.

UNIDENTIFIED MALE: Thanks, all.

LAUREEN KAPIN: Thanks, everyone.

[END OF TRANSCRIPTION]