
ICANN Transcription
The Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark
Claims Data Review
Wednesday, 22 May 2019 at 17:00 UTC

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<https://audio.icann.org/gnso/gnso-rpm-review-trademark-claims-22may19-en.m4a>

Zoom Recording:

https://icann.zoom.us/recording/play/eEGfW27OWnmLWfOPW0V65MyfGVv5Xv_aNC80Bu5JhLnMwRUcDyiPuhmyDjPEMa [icann.zoom.us]

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ANDREA GLANDON:

Good morning, good afternoon, and good evening. Welcome to the RPM Sub-Team for Trademark Claims Data Review call, held on Wednesday, the 22nd of May, 2019, at 17:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, can you please let yourselves be known now.

Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for recording purposes and to please keep your phones and microphones when not speaking to avoid any background noise.

With this, I will turn it over to Julie Hedlund. Please begin.

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.

JULIE HEDLUND: Thank you very much, Andrea. This is Julie Hedlund from staff, and I'll just quickly run through the agenda. First item is statements of interest. Second will be a brief review of the timeline and work plan. Third is to conclude the review of Individual Proposal #6 and discuss the ICANN Compliance response. Four is to review proposed answers and preliminary recommendations for Question 1, Question 3, and, if time permits, Question 4. Five is Any Other Business.

May I ask if anyone has any other business?

Seeing no hands, then I'm going to go back up to Agenda Item 1. Does anybody have any updates to their statements of interest?

I have Kathy. Kathy, please go ahead.

KATHY KLEIMAN: Hi, Julie. It's an Any Other Business request. It takes a lot longer in Zoom now to find the right buttons to unmute or raise hands. We were so used to it in Adobe Connect and it was much more centralized. So, for Any Other Business, I would like to talk about edits and how we handle edits if we haven't talked about it in other places. Thanks.

JULIE HEDLUND: Thank you, Kathy, and noted. I'm not seeing any hands for updates to statements of interest, so let me turn over to Ariel Liang from ICANN staff, who will give a brief update on the work plan.

ARIEL LIANG:

Thank, Julie. As you can see on the screen, we have four meetings left before ICANN 65 for the Trademark Claims sub-team, and that includes today's meeting. So we are ahead of schedule, and basically today's work plan is what Julie has described. The focus is to finish Proposal #6 and then review the draft text for Q1 and Q3 in terms of the proposed answers and preliminary recommendations.

For the meeting next Wednesday, on the 29th, it's likely the sub-team will discuss Q4. That's also includes the proposed answers and preliminary recommendations. The third meeting on June 5th will be focusing on Q2 and Q5. Also, when Julie [sent] the e-mail to the discussion threads just before the meeting, these are mentioned a well.

The last meeting before ICANN 65 on the 12th of June will be the time for the sub-team to review the updated text. So just to remind the sub-team that staff will update the summary table and the status check document after the sub-team has finished discussing all this draft text, in the meeting from today from the 5th of June. The updated text will also incorporate comments and inputs sent to the discussion threads. As Julie mentioned in the e-mail, basically we have three more threads that are open. That's Q2, Q4, and Q5. All of these will stay open until the 29th of June. That's for you to chime in and provide comments.

Staff just wants to add one note and suggestion. We do appreciate the redline comments from Rebecca and Kathy on Q2 and Q4, but our understanding is that it's a little bit difficult to incorporate these redlines when we update the document. So we certainly welcome you

to continue providing your input and comments, but provide is as a format as plain text and reference which question you are referring to. Then you can, for example, just write your suggested proposed answer for which question would be what. In that way, we will be able to easily update the documents after seeing your input and also hearing other sub-team members' comment on that. [A risk] of having redlines [is] it's possible that it may create a version confusion, and other people may start doing redlines on top of redlines. That will make the process a little bit messy and may run the risk that staff may miss some important comments you provided. So our suggestion is, when you provide further comment, please just write it in plain text in the body of the e-mail and then reference which question you're referring to. That way, we can quickly check our document and provide updates in that way.

That's all from me. Julie, do you have any additional comments?

JULIE HEDLUND:

Sure, Ariel. The other thing I'll mention is just what staff mentioned on behalf of the Co-Chairs into the threads now before this call, and that is that we certainly do welcome any sub-team member to alert us to gaps with respect to what we have gathered from the transcripts. Even more helpful is, if anyone does note gaps or mischaracterization, if you can point us to the appropriate place in the transcript. That's even more helpful. Also, to be clear, as we mentioned in the e-mail, at the close of a thread – the conclusion of discussion of the thread – and at the sub-team meetings, that is when staff will do all of the updates because that will give us an opportunity to look at all of the comments [inaudible] making updates incrementally as we [inaudible]. Once the discussion is

concluded, then the Co-Chairs note then that all of the updates will be incorporated.

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

KATHY KLEIMAN:

Always fun with unmute. As one of the people who submitted comments, I'm completely confused by the comments, particularly that Ariel just said. I've done this I can't tell you how many dozens or hundreds or thousands of times now, and I don't understand what you guys have just said in the case ... I don't understand what you want.

So the questions are, given that there are edits now out on Questions 2 and 4 as requested, are you asking for changes of format? And given that a lot of this reflects stuff that has been just talked about a lot, do we really have to go back to the transcripts? Is that what you're saying?

So I'm confused about format and substance. I think I muted before [inaudible].

JULIE HEDLUND:

Thank you, Kathy, and sorry if staff wasn't clear. No, we are not asking you to go back and revise anything that you have already submitted. Thank you very much again for your submission. That will be taken with all the comments and edits that might be provided in the discussion thread.

The point staff were trying to make was, as others may respond to the thread – say, for instance, if somebody was responding to the

comments and edits that you and Rebecca provided – then we simply ask that, when they do so, rather than providing edits or markup to either of the documents, they just input their edits or comments in the text of the message on the thread. That way, we don't have to worry about version control with multiple redlines on a document or changing versions of documents. Instead, we can gather up all the comments – yours, Rebecca's, and any others received on the threads – once the discussion closes. Then we can take them all into consideration at the end of the close of discussion.

With respect to transcripts, no, we are definitely not asking that – and the e-mail did not ask anything of you or Rebecca. It was just pointing out that, if someone does note a gap or mischaracterization, again, as the discussion threads are continued to be opened, then we ask that it would be helpful if possible if any sub-team member who might note that could point out where there are gaps in what staff has gathered from the transcripts. So nothing about what you or Rebecca have provided should change at all. It will all be taken into consideration equally with any other comments received.

KATHY KLEIMAN: I have to follow up, Julie.

JULIE HEDLUND: Your have [your hand up], Kathy.

KATHY KLEIMAN: The follow up is that, if we don't use redlines, it's really hard to talk about some of this stuff, in part because part of the objection is that stuff made it into the recommendations of the sub-team, even if it was only a suggestion of one sub-team member. So it's hard to talk about strikeouts and things like that. This is why I did [attract] changes: it's hard to talk about some of this and keep track of it in text-based e-mail, one of our oldest technologies on the Internet; our e-mail based technologies. So I think the redlines actually give us the ability to engage in a discussion that will be maybe more difficult via text-based e-mail. Thanks.

JULIE HEDLUND: Thank you, Kathy. Greg, please?

GREG SHATAN: Thanks. Can you hear me?

JULIE HEDLUND: Absolutely.

GREG SHATAN: Now somebody's phone is ringing. In any case, as part of this, as somebody who looked at Rebecca's and Kathy's suggested changes and wants to understand where they came from and to see whether I agree that they improved the characterization of the work of the group, I wouldn't need or really appreciate knowing where this came from in the transcript. Otherwise, I have no basis, other than my own recollection,

for where this is coming from. Since we have a record of everything, either being an e-mail or in a transcript, it would help and get us away from any kind of he-said/she-said discussion about whether what's being put in is a correction or a change that does not reflect the discussion. If something was a suggestion of one member and was put in as if it were something that got wide support, then it would be good to know where that came from. The rest of us then are doing this with mittens and blinders if we're trying to understand the changes.

So I, for one, would find it really helpful to know what the genesis was of the changes. I assume, when making the requested changes – whether they're in redline or plain text, I don't care – you're making reference back to the transcripts or particular e-mails. So, in order to understand what we being done here, since we're all, at this point, stakeholders with a point of view, it's good to see whether the changes reflect the work of the group or the point of view of the person making the request, which would be equally true of anybody from any point of view making that request. And, as staff indicated, if anybody else wants to make any comments, they're asked to the point in the transcript where it appears that what's down from staff has deviated from what actually happened. Thanks.

[ANDREA GLANDON]:

Just one moment. It looks like Julie's audio is not connected any longer, so give me just a moment.

ARIEL LIANG: I just learned that Julie is trying to get back into the room. We're seeing Rebecca also having her hand raised. Rebecca, please go ahead.

REBECCA TUSHNET: Here's the thing. The question is, on whom is the burden to identify what [was previously] said. Frankly, it depends a lot on the quality of the summary we got. I'm just going to take the sub-question in Question 4 that we discussed last week just because it's easy to remember. Frankly, I thought that there was a not complete but rough consensus on the lowest common denominator answer that I formulated. Staff decided to go instead with a blanket statement that did not reflect the thinking of the group and, in fact, conflicted with the other answer, where we said we were going to seek feedback on whether there would be exceptions. That was fully discussed at the call.

So, especially if one set of commenters gets ignored in the summary, it is a misuse of procedure to say it's a burden on them to go back and say, "Hey, you skipped this. You skipped this. You skipped this." Not everybody has [RAs] hired to do this stuff. Thank you.

JULIE HEDLUND: Thank you, and apologies for being dropped from the call. Thank you for your comments, Rebecca. Certainly, staff did work very hard to try to capture accurately the transcript, and that's why we did ask, if we did inadvertently miss something, that people could let us know. You have done that very clearly, and we will definitely take your comments into consideration, along with all the others that we may receive on the threads.

I see that Kathy's hand is up. Is that a new hand?

KATHY KLEIMAN:

It is a new hand. In following up, and, again, going back to the need for a redline, a redline may help us all keep track of things that are hard to see in text e-mail. So I'd like to ask you to read that declaration that everything should go into text. I think we're going to wind up losing a lot of the nuances.

Also, to Greg's statement, yes, I would love to know in the transcript how one person's comments became a whole sub-team's recommendations. So it's a question to staff, but it's clear on the face of the discussion. Again, I'm not blaming anybody. We're looking at a draft and we're coming to it and we're trying to say, "Hey, we think it seems to not reflect what some people said many times, but it also seems to overemphasize individuals." So take another look at it, if you would. And maybe you can help me in the transcript find where certain individuals' statements became recommendations of the working group, even though it's only identified [inaudible] who some of these people are. But individuals rose to the level of recommendations, even though it was an individual mentioning something or suggesting something. So I invite you to join me in trying to go back to the transcript to find out who these people are because, in some cases, I have no idea.

To staff, can we figure out another way, a smoother way – or maybe to Martin and Roger as well – to talk about the edits? Our process should be building on each other, and we try to be very constructive and help

in this, but I'm not sure of the next steps. Again, I just don't think e-mail necessarily does it for us. How can we incorporate some of this now?
Thanks.

JULIE HEDLUND:

Thank you, Kathy. Just to be clear, the suggestion for not marking up the documents in redline is due to the fact that that can cause confusion between versions since documents cannot be updated until after the transcripts are out. That takes several days.

I see Greg and Kristine's hands are up, but I just wanted to briefly turn to Ariel, who has perhaps an explanation that might be helpful. And I should also emphasize again that these suggestions for using text in the thread – the discussion thread versus redline – are not staff suggestions. These are Co-Chair suggestions. So I think your request, Kathy, is more properly addressed and directed to the Co-Chairs and not to staff.

Ariel, please, and then I will turn to Greg and Kristine.

ARIEL LIANG:

Thanks, Julie. Just to respond to Kathy's question – why one or two people's comments become a recommendation – that's not an accurate statement for that. As you can see, a lot of these are suggestion that we captured as such. We said its initial concepts or ideas were proposals that the sub-team just discussed, but the sub-team hasn't developed preliminary recommendations on that. We also highlighted them in orange and we have noted what the orange means. They're tentative text. They're not set in stone.

So that's not true what Kathy said, that they're already recommendations. They're not. They're just initial ideas, proposals, or suggestions that are proposed by people. I want to make sure the record is capturing them so that the sub-team can look at them and see whether they can potentially develop into a recommendation. That's the purpose of that. I just wanted to clarify that. Thanks.

JULIE HEDLUND:

Thank you, Ariel. Greg, please?

GREG SHATAN:

Thanks. I don't want to beat the horse, living or dead, but I don't think this is an abuse of procedure or a request to do research. It's just a request, if you think something was incorrectly captured, to indicate where it was correctly ... what this resource is that you're relying on and saying where the accurate thing is from which it should be captured or recaptured.

Kathy, I'm glad to hear that, by your invitation to join you – I'm looking in the transcript – you're indicating you're going to be looking at the transcript again as well to point out what the basis of your suggestion was. I think this is a mountain out of a molehill. It should be clear enough. If the staff didn't capture accurately what was being said, then we need to look at what was being said and then make sure it gets captured accurately. That does not sound like a bizarre proposition. Thank you.

JULIE HEDLUND: Thank you, Greg. I see no other hands up, so let me go ahead and turn to the next item on the agenda: concluding the review of Individual #6 and discussing the ICANN Compliance response.

To Martin, please.

MARTIN SILVA VALENT: Thank you very much, Julie. Can you hear me?

JULIE HEDLUND: Loud and clear.

MARTIN SILVA VALENT: Perfect. We already started reviewing Proposal #6. If there are any other comments besides the ones you made last week, just a very quick reminder, it was about implementing, [inaudible] trademark notice, some components of open-source software in order to allow registrars to use the trademark notice. We asked for ICANN's opinion. Maybe staff can [tell us] to what ICANN has responded with and we can open the floor to comments on it.

Maybe Ariel or Julie wants to talk about ICANN's response on this?

JULIE HEDLUND: Thanks, Martin. Given that we are already at 26 minutes after the hour, we do have the text of the response from ICANN Compliance. We also sent around via e-mail – and you'll see link in the chat ... So, Martin,

perhaps we can just ask if anybody has any questions and otherwise move on.

MARTIN SILVA VALENT: I don't see any hands up, so it would seem that we can move forward [inaudible].

CLAUDIO DIGANGI: Martin, hi. It's Claudio.

MARTIN SILVA VALENT: Yes, Claudio, please go ahead.

CLAUDIO DIGANGI: Thank you. I apologize. I have not been in the calls recently, so I'm not exactly clear what the genesis of reaching out to Compliance is. I'm assuming it was to inform our understanding of what's been happening operationally in terms of looking at the policy. It's very helpful to have this.

In just looking this over, I was just left with the feeling of why the Compliance team is not proactively doing this stuff. I'm not sure if that might be outside their remit. Maybe that's something that could be discussed separately with Compliance or not. Maybe it is related to our work. It just seems to me, when there is a policy – this has come up before in the WHOIS context, where I CANN is doing proactive work in

terms of making sure WHOIS is in compliance. Of course, now with GDPR, it's totally changed somewhat.

That was my thought: it would be helpful for Compliance to be taking on a more active role in the RPMs.

JULIE HEDLUND: Martin, may I provide a little context?

MARTIN SILVA VALENT: Please.

JULIE HEDLUND: Just briefly, Claudio, this isn't really about whether or not Compliance is being proactive in the RPMs. It arose from a proposal in Individual Proposal #6, that, if the TM claims notices are retained, ICANN shall provide open-source software in the top-five programming languages used by registrars to assist in integration of the TM claims notices with registrar systems. So the reason staff had the action item to check with GDD and operations-focused colleagues is just to see what ICANN is already doing. So, for example, is ICANN already providing open-source software? Or what else might ICANN be providing? And what assistance did ICANN provide in implementing the claims notice and so on? So all of these questions are around validating claims notices and so on. So just answering some questions that arise from that proposal but not to what I think might be a different question but a more broad question as to whether or not Compliance is being proactive with respect to RPMs.

I don't know if that's helpful for context, but at any rate—

CLAUDIO DIGANGI:

Yes, that is. That is very helpful. Again, I just quickly looked this over and I just saw that the first question was asking if they were proactively checking to see if the claims notices were sent out. Because I just know that a lot of our work is we're drawing assumptions about the claims service and what's happening once those notices are sent out. It just seems to me correlated on a certain level from that perspective because we've heard for example that some registrars have waited until the claims period was over. We don't really know – for example the claims notice could be generated – it doesn't have to necessarily be a domain registrant that is triggering the claims notice. So I was just looking at it from the perspective that if they are not proactively looking at it, that could be relevant to our work. But everything you said was very helpful and I don't need to drone on about it. Thank you.

JULIE HEDLUND:

Thank you very much, Claudio. Appreciated. Back to you, Martin.

MARTIN SILVA VALENT:

Thank you very much, Julie. Thank you all for your inputs or for doing a quick overview of the agenda. And [inaudible] sure that there's no [inaudible] here, mistakes are made, and please do speak out and help us to sort out how can we better translate our opinions into the final text.

And with that, I would like to remind everyone that we are focusing on this new document, the status check document instead of the summary table, and we're going to go back and forth, but [inaudible] try to keep the focus there. We have now in the agenda the review of those answers and recommendations of question one and three. I don't think we're going to get to four.

We can start with question one, and I will open the floor in case anyone wants to start competing on question one, either the [inaudible] answer or the [inaudible] recommendation. [inaudible]. I see that Rebecca Tushnet has her hand up. Rebecca, please go.

REBECCA TUSHNET:

Thank you. I don't believe this reflects our discussions at all. Absolutely it was never a standard that we applied. The debate has been over likely, probably and possibly, and that's what the summary should reflect. And it may be true we can't come to a consensus over whether it's probably or likely. That seems to me to be accurate. But I don't think anybody ever demanded absolutely, and in fact, the standard has never appeared in previous versions. So in fact, this to me illustrates the problem, like if I were to go back to the transcript, I could not find, I don't think, anybody proposing absolutely as one of the standards. So I think it should be removed. We can put back in "probably" or "likely." Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. Of course, [inaudible] noted. Anyone else want to come in the queue? If you are on the bridge, just move forward. [inaudible]. Kristine, you're next.

KRISTINE DORRAIN: Thanks. In the interest of moving it along so that staff can very clearly capture what we'd like the answer to be – because I jumped into this call, and I think we were having some issues with the way staff has characterized the recommendations – Rebecca, are you suggesting that staff say with limited data, the subteam has determined that the service is – and I believe the word you used was probably or likely – having its intended effect? Period, end of proposed answer? Thank you.

MARTIN SILVA VALENT: Rebecca has just answered in the chat, “No.” I have Kathy Kleiman next in the queue. Kathy, go ahead.

KATHY KLEIMAN: I just got an interruption, so I will skip. Thank you.

MARTIN SILVA VALENT: Rebecca, would you like to answer [Dorrain]?

REBECCA TUSHNET: Sorry, did my question not answer Kristine's? I'm sorry. I'm not sure what I'm being asked.

KRISTINE DORRAIN: Yeah, No, I'm just trying to help staff. And clearly, I misunderstood, so I'm glad I asked. So you would say then if staff is taking notes, with limited data, the subteam did not come to agreement as to whether the trademark claims service is probably or likely having its intended effect, although the subteam could determine that the service is at least possibly having its intended effect. Is that your proposed language?

MARTIN SILVA VALENT: Go ahead, Rebecca.

REBECCA TUSHNET: Sorry. Yes. As I said in chat, that would work for me.

MARTIN SILVA VALENT: Thank you very much, Rebecca.

KRISTINE DORRAIN: Can I ask a follow-up?

MARTIN SILVA VALENT: Sure. Go ahead.

KRISTINE DORRAIN: Okay, thanks. So then Rebecca, my follow-up question is, just in the interest of simplicity in drafting, do you believe that the two clauses are

potentially redundant, to say we did not agree X but we did agree Y? Is it easier just to say we agree Y without saying what we don't agree with? I'm just trying to be super clear, because I would like to have the fewest number of words in our recommendations if possible.

MARTIN SILVA VALENT: Rebecca, go ahead.

REBECCA TUSHNET: Thank you, Kristine. So I actually could be fine with just the second half. I think it's a little weird, but in the interest of compromise, I would be fine with the second half. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca and [Dorrain] for that exchange. Greg Shatan is next, please.

GREG SHATAN: Thanks. I guess I'm struggling and maybe won't be able to do it during the time of this call to see whether I agree with Rebecca as to the characterization, and for that matter, whether I agree with staff that the subteam agreed that the service is only possibly having its intended effect and whether in fact there was more of a split of some people saying it was probably or likely or just plain old having its intended effect, and others may be saying possibly or not. In a sense, I don't know that this is one where you can kind of average out the answers. It's like

putting jockeys and basketball players in a room and saying the average height in the room is 6' when nobody in that room is 6'.

So I guess I need to go back to the transcript and see whether this "possibly" is even on the scale that was suggested that we are working from, pretty low down on the thermometer and whether there is agreement in this subteam that that's where we stand versus the intended effect is a conclusion which I question substantially. Thank you.

MARTIN SILVA VALENT: Thank you very much, Greg. I see [Kristine] commenting on the chat. Kathy Kleiman has her hand up. I see Rebecca is old hand. Same with Greg. Kathy, go ahead.

KATHY KLEIMAN: Okay. First, is that an old hand for Rebecca, or does she want to respond?

MARTIN SILVA VALENT: No, it's an old hand, she took it down.

KATHY KLEIMAN: Okay. So a question for you, Martin, and for staff, about master documents. We now have two documents, the status check and the claims summary table. So I have just a question to ask and then a quick comment. The question is, are these documents synced? Is the claims

status check for trademark claims what we show in terms of proposed answer and draft recommendation the same as what we find in the claims summary table?

So are they synced? If not, what's the master document? And then just a comment that the revision that Kristine and Rebecca have been talking about makes sense to me, and seems consistent with the original summary table that we had for this question.

JULIE HEDLUND:

Martin, I'd put in the chat, yes, Kathy, the documents are synced. So any changes made to this status check doc will be reflected in the proposed answers and preliminary recommendations in the summary table.

MARTIN SILVA VALENT:

Thank you very much, Julie and Kathy. Please remember that a lot of these things [inaudible] actual text. Maybe not today or tomorrow, but in the next week as we move along. So don't panic if you don't see immediately a change in the summary tables or in the status check. They're being worked in the background.

Do we have anybody else on queue or on phones?

CLAUDIO DIGANGI:

Martin?

MARTIN SILVA VALENT:

Claudio, go ahead.

CLAUDIO DIGANGI:

Yeah. My thought was simply it's actually related to the last comment I was making, which is if we don't know to what extent the policy is being complied with, then it seems very difficult to be able to ascertain to what extent the claims service is having its intended effect. And maybe there's things out there that provide some context. I know there were surveys done, and that went out, but that's the part I'm struggling with if we just don't know to what extent registrars are complying, it just seems that that's just a direct corollary to whether they're having their intended effect or not.

I could come up with some draft language and maybe send it around just to add that component into this answer, unless anyone has any concerns with it. Thank you very much, Claudio. I have Kristine with her hand up. Kristine, go ahead.

KRISTINE DORRAIN:

Thanks. So yeah, I do have a problem with that, Claudio, because as Julie pointed out, compliance is a completely separate function, and we're talking about the effect of deterring cybersquatting. And even if you put in language that said Compliance should do a better job, even if we pretended that was in our scope, there's really no way for Compliance to check it.

Various people sort of – and we know that various people recreated the TMCH because during claims periods, they basically pinged the registrars looking for registration data to see when they got claims notices back. So we know that people were doing that.

But the claims period runs for 90 days. The registrars that offer domain names during claims as the staff doc pointed out – that was on the screen a moment ago – where a registrar is offering a claims period, they could only do that if they're on the list, which means they're plugged in, their EPP codes are all connected. So theoretically, the only way they would not do it, because they're plugged into the TMCH, would be if something was broken, in which case even the registrar might not realize that something was broken, which I could see that might be a compliance issue to let them know something was broken, but it's hard to know that there's an absence of something.

So that's why staff – to my understanding. I don't know why staff put that in the comment ,but it would be my understanding that the reason staff responded the way they did is because they can't actually ask people, “Tell us about the thing you don't know might be broken.”

So basically, they have to rely on third parties to say, “Gosh, my mark is in the clearinghouse and there's a sunrise or a claims period, and someone should have gotten a claims notice, and then I attempted to register my own mark and I didn't get a claims notice.”

That would kind of be the only way to check it. So I don't think it makes any sense to go out of scope for something that we can't really ascertain anyway and where it's more or less irrelevant to the purposes of our discussion. So maybe that helps the explanation. Thanks.

MARTIN SILVA VALENT: Thank you very much, Kristine. Claudio, since you can't put your hand up, if you want to follow up, just speak now. If not, Greg Shatan is next.

GREG SHATAN:

Thanks. I'll keep it brief. I tend to agree with Kristine on this. I think the mention of Compliance in the ICANN response has gotten us a little bit off our track. Of course, we're looking for data and it would be nice if Compliance somehow assembled data on the level of compliance with this, it's not happening, and our focus is not, at this point certainly, on what Compliance should do.

If in fact there was data that there was very low compliance, then I think we could answer that it wasn't having its intended effect because of a lack of adoption. But I don't think we have any sense, any data or any first- or second-hand experiences that Compliance is so far off. We do have knowledge, I think, of specific instances. Could certainly say in those instances it did not have its intended effect because it wasn't there.

But I think we're not looking for the long answer here. I think we're looking for the short, holistic answer. And this is an interesting conversation, and at some point in the life of the working group – maybe not this team – we should talk about how to have better data for the next time. I'm not sure it's Compliance's – while it's good to have compliance data, I'm not sure they're necessarily the right resource to have better data. But it would have been nice to have had this data, wherever it came from, and maybe we should try in the future to have better data. But at this point, I think the issue is not what Compliance should or could be doing, the issue is kind of writ large how well is this working based on overall adoption and overall effect. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. [inaudible] according to the agenda, we don't have ten more calls to talk about question one. So if you have anything, [use this time to] speak up, because we'll have only one other call working on this question moving forward.

So if no one else wants to step up, remember – we can always use the e-mail list – we're going to move to question three. I see that Ariel is moving towards that in the Zoom. Thank you very much, Ariel. We'll start looking at this. We have less than ten minutes. Let's start at least with something.

Does anyone have any comments towards the proposed answer here or the preliminary condition? I have Rebecca Tushnet in the queue. Rebecca, go ahead.

REBECCA TUSHNET: Yeah. So I think the answer has to be we couldn't reach consensus on this either, at least on 3A. What we did reach consensus on with respect to three is that the notice needs improvement, and we should probably focus on that.

I don't think that the discussion that we had supports the proposed answer given that every time it's come up, people have pointed out that the underlying question, is it deterring cybersquatting or even deterring accidental infringement is unanswered. We can't reach consensus on this too, which is just a restatement of, is it doing its job?

So I would delete the proposed answer and put in a reference to question one, reflecting our existing disagreement, and then move to the things that we can find, the quality of the written notice itself. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. I have Kristine Dorrain next in the queue. Kristine?

KRISTINE DORRAIN: Thanks. I'm going to push back a little bit, Rebecca. I get what you're saying, but I actually think staff did a pretty good job with this answer, because it is really factual. It doesn't get to some of those emotional issues that we've been talking about here, and we've saved those for the preliminary recommendation.

So I think if we look at the proposed answer, it's very specific. The trademark claims notice generally meets its intended purpose of – so we're saying the purpose is to notify prospective domain name registrants – so we don't say the purpose is to [inaudible] cybersquatting. We say the purpose is to notify prospective domain name registrants that the applied for domain name matches at least one trademark in the trademark clearinghouse.

That is the proposed purpose for the claims notice. We don't get into the substance of are we preventing too many, are we preventing cybersquatting. It's just, do we give people a notice?

So I think the proposed answer is really neutral, and it's fine. And I think that we can handle some of the other issues in the preliminary recommendations section. But I think that in this case, the proposed answer is pretty neutral. But I welcome your thoughts on that.

MARTIN SILVA VALENT: Thank you very much, Kristine. Greg Shatan just commented in the chat, [inaudible]. I have Kathy Kleiman next. Kathy, go ahead.

KATHY KLEIMAN: Okay, so Greg's comment is about Q1. Okay, but we're on Q3A. So a question to Kristine and to others. In light of – it seems to me we could just delete –Q3A is really an umbrella question. It seems to me we could just delete the proposed answer and say, "See below." And that would solve our problem.

If we don't want to do that, then it seems to me that we need some kind of balancing here, because Kristine, even though it may be somewhat factually correct, it seems to leave a misimpression. I'll read it fast because we all have it in front of us. Trademark claims notice generally meets its intended purpose of notifying prospective domain name registrants that the applied for domain name matches at least one trademark in the trademark clearinghouse, but there are clear problems, as set out below.

And that way, no one stops at this answer, because you can't stop at this answer. This is the question about the trademark claims notice, and

of all of our questions, this is the one we most agreed on and found the most answers to.

So [to Kristine, to others,] should we delete this or keep it with a but? Thanks. Oh, great, thanks. I'll put it in the chat then. Thanks.

MARTIN SILVA VALENT: Thank you very much, Kathy. Rebecca Tushnet is next .Rebecca?

REBECCA TUSHNET: Thank you. So I'd actually like to delete it a lot better, and here's the best evidence we have. The best evidence we have is from the survey of ordinary registrants who weren't previously members of INTA, and in that group of people that the surveyors found for us, when you asked them what the purpose of the notice was, if you look at the data, they basically – we gave them two answers that correspond to what we have here, that this notice is to inform you that there's a match, and we gave them three answers that were completely wrong.

And they did not kick with any predictability. Their answers were essentially random. We got basically – it appears that you could answer more than once, so we got basically 30% clicked each of the right answers and each of the wrong answers.

So to say that it's generally meeting its intended purpose is not borne out by the best data we have. And that's why I think deletion makes total sense, especially since we get better, more coherent answers below. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. I have [inaudible] on the chat [inaudible] suggestion proposed [inaudible] why the trademark claims notice [inaudible] so I'll ask Greg to be very brief. Thank you very much, Greg.

GREG SHATAN: Thanks. I would not support deleting the answer to question 3A. I do not believe it is merely an umbrella question, especially since the next one begins with, "If not." So clearly, it's a chain of questions. And the best data we have on this doesn't appear to be very good, and for reasons we don't have time to discuss, so I would certainly not make that govern our answer.

I think what would make sense, just so people who can't read more than one sentence or two sentences that aren't in a row, maybe we could put in a sentence or a clause at the end of this that says that the subgroup or the subteam notes the following inadequacies or concerns below. Something to that effect. That's not the exact language I would suggest. But I think the fact is that it does do what it's supposed to do, but it has some unintended intimidation effects, and those need to be dealt with and I think we agree on that. So maybe that's kind of a [nimble] path on this. Thank you.

MARTIN SILVA VALENT: Thank you very much, Greg. And we don't have more time unfortunately, but we can solve this next week. So staff, if you want to [inaudible], go ahead.

JULIE HEDLUND: Yes. Thank you, Martin. And as we are four minutes to the top of the hour, so past stopping time, thank you very much for Martin for chairing, and thank you all for joining. We will now conclude this call to allow people to transition to the next call that will start five minutes after the top of the hour. Thank you.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]