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MARRAKECH – GNSO Review of all Rights Protection Mechanisms in gTLDs (Session 1 of 4)

Tuesday, June 25, 2019 – 10:30 to 12:00 WET

ICANN65 | Marrakech, Morocco

JULIE HEDLUND:

Hello, everyone. This is Julie Hedlund from ICANN staff just kicking off this Session 1 of the GNSO Policy Development Process on the Rights Protection Mechanisms. This is the Working Group working session for the sub team on Trademark Claims.

This session goes until noon here local time. Thank you all for joining us. I'm just going to note that we have chairing today Martin Silva. And we also have a co-chair, Roger Carney, who is not with us today. Also in the room, we have two of the co-chairs from the full working group. We have Kathy Kleiman and Brian Beckham. And remotely, we have the third co-chair, Phil Corwin, for the full working group.

At this point, I'm going to go ahead and turn things over to Martin. Martin, the show is yours. Thank you.

MARTIN SILVA:

Thank you very much. Welcome, all, to this Trademark Claims Sub Group of the Review of all Rights Protections Mechanisms Working Group of the Generic Names Supporting Organization.

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I will just give a few seconds for the ones that are new that may be joining for the first time. This is the end of a subgroup. This subgroup has been working for several months gathering and [debating] evidence to answer the questions around the trademark claims notice and drafting preliminary recommendations so that the working group can consider them eventually for their final report, and today we're finishing that work. So we'll be presenting whatever we [inaudible] up today, this Thursday on the full working group session. For this reason, I would like to ask the sub team members to speak first, but everyone is welcome to join the debate and to come to the table and grab a mic. To make sure we get the time for everyone to speak and to go through everything, we have a two-minute timer for each speaker that staff will manage and I will enforce.

Our task today is to review all preliminary recommendations and answer to the charter questions. We're going to have them on screen. Specifically, we're going to be using the Status Check document. We use a document that has summaries of the debates we've been having. That doesn't mean the debates or the comments are being dropped off the document that will go to the full working group. They are stored. They are recorded. All the context for this text is there, but today we're only going to use this specific document which [worked] as a summary of the agreements and the debates because we need to focus on the

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final text. That's the only reason we are using this and not previous, more meaty documents.

We're going to start with the questions we left the last meeting, Q4(c), and then we're going to go the questions that we have less work on, Questions 2 and 5, just to be safe and be sure that we have a clear text on the agreement that we've been working on. So we're going to be finishing with Questions 1 and 3 which are the most agreed.

There is a focus on the preliminary text if we have one. If we don't have one, we may not have an agreement. That means that we can either try to continue looking to the answer in case someone can find a solution. And if not, it's okay. Non-agreement is a way of conclusion in this project, and the just means that there will be no changes. The status quo remains from what we have previously.

Let me see if I'm forgetting something.

JULIE HEDLUND: Martin, Kathy has her hand up in the Zoom room.

MARTIN SILVA: Oh, I didn't see it. Kathy please?

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KATHY KLEIMAN:

For everyone who know, co-chairs participate in sub teams because we have sub team chairs. Martin, before we go to Q4(c), I have a question about Q4(b)(iv). There's something on the Proposed Question for Community Input that I'm not sure was agreed to by the sub team. I'm not sure when the appropriate time to raise it is.

But Rebecca Tushnet had sent me something to read, but I see she's joining us at 5:30 in the morning which is very nice remotely. And to everyone joining us, Phil Corwin is joining us and others, so thank you to the remote participants. But she may have something to say about Q4(b)(iv), and I was wondering when you wanted to address that since I don't think it has been finalized.

MARTIN SILVA:

Okay, just a quick reminder for those who may not remember, we have the questions there in the Status Check document on the Zoom and you can also download it in the chat. You can read the questions, and you're going to see that there's a Proposed Answer that captures the agreement or disagreement of the group on such question. If we find an agreement, you're going to find text that was extracted of that question so it can fit as an actual Preliminary Recommendation. And if not, we have a third column which is the Proposed Question for Community Input which [mainly is], okay, if we don't have an agreement and therefore we

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don't have a recommendation, maybe we can put forward toward the working group an eventual question to the community that could shed some light on that. So that's what Kathy is talking about.

Specifically, we were supposed to start with Q4(c) but it's fair enough. I was going to ask anyway if someone had any other comments on Question 4. Of course, please try to be brief, but please give us your comments. Specifically, you're referring to Q4(d) or Q4 – which one was it again that you wanted to comment on?

KATHY KLEIMAN: Q4(b)(iv).

MARTIN SILVA: Q4(b)(iv), the question is: "What is the resulting list of non-exact match criteria recommended by the working group, if any?" The Proposed Answer was: "The Sub Team did not recommend the concept much less develop a proposed list of non-exact match criteria." And there was a question that could be proposed: "The Sub Team does not recommend expanding the matching criteria for the Claims Notice due to diverging opinions among its members. Nevertheless, the Sub Team recommends that public

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comment be sought on the following questions.” And you wanted to comment on that?

KATHY KLEIMAN: Yes.

MARTIN SILVA: Okay, be brief, but, yes. Thanks.

KATHY KLEIMAN: I’m sorry. Did you read the proposed question?

MARTIN SILVA: Yeah.

KATHY KLEIMAN: Okay. So I’m not sure we agreed on going out for more public comment on the question of expanding the match criteria. I think that was something that went back and forth and there was a lot of discussion. But I know Rebecca and Kristine were going back and forth on this issue. But I thought there was no agreement on expanding the match criteria, so going out for more comment didn’t seem to be something that we had agreed to.

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MARTIN SILVA: So for you it's not accurate to say that, "Nevertheless, the Sub Team recommends that public comment be sought"?

KATHY KLEIMAN: Right, exactly.

MARTIN SILVA: Okay, we're going to note that and we're going to work that on later.

We can move now to Q4(c) unless – oh, sorry, I didn't see Greg. Greg, go.

GREG SHATAN: Thanks. You know, I don't disagree with that comment, but I think it's got to be seen in a larger context. First, anybody who is coming in with public comment is free to disagree with or come up with their own ideas in response to anything we've said. So implicitly we're asking for public comment on everything. And so if we say we didn't come to agreement on matching criteria, there's an implied question, "Did we get it right? Do you have a different idea about it?" So in the Proposed Questions for Community Input, in both sub teams frankly, I think we would probably be better off only asking specific questions where we wanted kind of an answer to a question to be responding to

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somewhat more of a specific prompt. Because to my mind, every one of our answers is a general prompt for comment: yes/no/yes, but. So all of these kind of, “Please second guess this question” or “Please second guess our answer,” is implicit in the entire public comment process. So I’d probably apply a different filter for all of the proposed questions which is, is the question getting at something that just commenting on our answer would not get? Thanks.

MARTIN SILVA:

Thank you very much, Greg. That was actually very useful. Yes, please?

KRISTINE DORRAIN:

Hi, thanks. Yeah, I agree. As Kathy I think was alluding, Rebecca and I actually did resolve this. I withdrew my suggestion that we specifically solicit these types of questions. And I think the wording that we came to or agreed to was this idea that follow-up questions should be elaborating on something that we would not have already gathered data on. So we shouldn’t be re-second-guessing, as Greg pointed out, but any follow-up questions should meet the criteria of something we didn’t already consider, there’s a further elaboration. I think that was some of the language we came to. Thanks.

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MARTIN SILVA: I'll also read – please go, Julie.

JULIE HEDLUND: No. Just then the question to the sub team members here, which you were probably going to ask so I don't mean to preempt is, then is it agreed that this text here in Column 3 should be deleted?

MARTIN SILVA: I think there's sort of agreement [on that now]. Thank you very much for [bringing it up], Kathy and Rebecca, this was the beginning of this. One last from [inaudible], yes?

UNIDENTIFIED MALE: I would say the “please provide” sentence might be put all the way up at the beginning of our public comment request just generally. If you're responding, please provide us with to the extent you can specific proposals. We're going to still a lot of high-level rhetoric. We know that. And heartfelt opinion without support. But generally speaking, not for any one question, I mean, this almost applies for anything else you answer. Just give us the [same old]. We should just say at the top, “Generally speaking, it is better to get stuff with a foundation and a rationale than you

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an ‘I don’t like it.’” I would use this elsewhere, not specifically but generally.

MARTIN SILVA:

That’s a very mindful note. Thank you very much. As a reminder, in Question 4 particularly we couldn’t get an agreement, so we do not have a preliminary recommendation [almost any of it], if not any. And that might be the case for the whole question, but we are right now on Q4(c). That’s: “What is the feasibility of implementation for each form of expanded matches?” The Proposed Answer is that: “The Sub Team had diverging opinions on the advisability much less the feasibility of implementing expanded matches.”

If anyone has a comment specifically on this, you can either say now or we can just continue with the questions agreeing or knowing that that proposed answer is what’s going to stick. Yes, please. Go ahead.

GRIFFIN BARNETT:

Thanks, Martin. I don’t necessarily object to the gist of the proposed answer. I just wonder if it could be more clear in terms of encapsulating. The way that it’s formulated currently seems to suggest that we may not have fully discussed the feasibility because the threshold issue of advisability preempted that. It’s a

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minor, I guess, maybe almost semantic point of clarification. But I just thought I'd mention that.

MARTIN SILVA: It's a fair note, and I'm pretty sure staff can change something. And I have Greg also.

GREG SHATAN: Thanks. Sorry to be so talky. I just had my first coffee, and all of a sudden I'm – but in any case. In the other sub team we kind of came up with, or at least the co-chairs and staff came up with a formulation for these kinds of dead follow-on questions where the predicate was answered in the negative. And we kind of had a drier way of saying it which is just that since the subgroup did not decide to have expanded match, this was not considered in detail. And we kind of repeated that mantra every time we had one of these questions where we didn't get there because we ended higher up the tree, so to speak.

MARTIN SILVA: Thank you for the experience. That's something I do want to say. Staff and co-chairs, all of them, please interrupt me or jump in if you have something relevant. Especially things like this from experience saying we are doing this [and that] work. So thank you very much for that.

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Any other comments specifically on or answer [to] Q4(c)? If no, we have Q4(d)(i). But those sort of come out of Q4(c) and if we do not have an agreement on Q4(c), then it really doesn't make so much sense to debate Q4(d)(i) and (ii) unless someone else wants to oppose or [comment on] that. Go, Greg.

GREG SHATAN: I'll just say that this formulation here is exactly the formulation I mentioned. It's unfortunate it's across two pages so it can't be read, but this is the kind of formulation I mentioned.

MARTIN SILVA: Thank you very much. Noted.

GREG SHATAN: And we see it again on one page in Q4(d)(ii), so you can actually read it.

MARTIN SILVA: Thanks. Okay, if we are okay with this, then we can move toward a new question. We can go to Question 2. I'll let staff get there and everyone else. Okay, this is a question we worked before but not the Preliminary Recommendation itself. But the good thing is it has been out already for a very decent amount of time. This is not

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something that just came up last week. So I hope that sub team members had some time at least to look at it.

The Q2(a) says: “Should the Claims period be extended? If so, for how long (up to permanently)?” We can also go to Q2(b): “Should the Claims period be shortened?” And Q2(c): “Should the Claims period be mandatory?”

I will stop there because the Preliminary Recommendation that we have there and the agreement answer specifically to those Questions (a), (b), and (c). And for the Questions (d) and (e), we have a Proposed Question for Community Input.

So Q2(a), Q2(b), and Q2(c) are inside this Preliminary Recommendation that says that: “The Trademark Claims Sub Team recommends, in general, that the current requirement for a mandatory Claims Period be maintained, including for the minimum initial 90-day period when a TLD opens for general registration.”

Does anyone have any comment to add on this Preliminary Recommendation to Q2(a), Q2(b), and Q2(c)? If no, that means it’s agreement. I have first Kristine. Kristine, go.

KRISTINE DORRAIN:

Thanks. I’m going to just nitpick the words a tiny bit because where the proposed answer says “However, the Sub Team

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generally agreed that registries should have a certain degree of flexibility,” the “with the option to extend” sort of modifies that. But we just need to make sure that it aligns so that the registries aren’t shortening the period that they can – their flexibility is only in one direction. Does that make sense?

MARTIN SILVA: It does, but in the Preliminary Recommendation it says “including the minimum initial 90-days.”

KRISTINE DORRAIN: Yes, assuming people read those both together I think we have it. But my concern is if people don’t read them both together, that meaning may be lost.

MARTIN SILVA: Okay, and that’s a good note. People should focus on the Preliminary Recommendation because that’s the actual thing we are giving them. The question and the answer are just tools so we could get to the Preliminary Recommendation. So, yeah. And I have Greg now.

GREG SHATAN: I’m sorry. I’m going to nitpick as well. I would suggest taking the “based on a suitable business model” and putting it to the end of

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the sentence. That way, it would be clearer that the flexibility is to extend. So anyway, it should say, “it should have a certain degree of flexibility to extend the Claims period.”

MARTIN SILVA: Okay, thanks.

GREG SHATAN: And in the Preliminary Recommendation, on the fourth line, I think the word “for” is surplus and should be removed.

MARTIN SILVA: Thank you very much. Perfect. And then it seems we have agreed on the Preliminary Recommendation. One thing less to do. Let’s go to Q2(d). Specifically here we said the question is: “Should any TLDs be exempt from the Claims RPM and if so, which ones and why?” The answer is: “Some Sub Team members believe that some future TLDs should be exempt from the Claims RPM. The Sub Team agreed that public comment should be sought on whether there is a use case for exempting a TLD from the requirement of a mandatory Claims Period due to the particular nature of the TLD.”

In the question we have drafted two. I won’t read them entirely but just their basic title. The first one is: “Is there a use case for

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exempting a gTLD that is approved in subsequent expansion rounds from the requirement of a mandatory Claims Period due to the particular nature of that gTLD?” And then it goes into specific cases. And the second one is: “If the WG recommends exemption language, what are the appropriate guardrails ICANN should use when granting the exception?” There are some comments that explain and expand what this question means, but instead of reading them I want to hear first from sub team members if you have any comment on these. If you don’t have any, the question will go as is. I don’t see any hands up. Greg has one. Thanks.

GREG SHATAN:

I think we need to examine this language first in more detail. First, I think if we are saying that it should be mandatory, then I’m not sure why we’re asking about exclusions. And if we are, I recall some discussion of dotBrand TLDs since there is essentially a single registrant. I do recall some discussion but not any agreement in putting forward the question of TLDs that “bar” any commercial use and also [emphasizing] for that matter some disagreement on the highly regulated area.

I guess that’s a question about what we’re going to put forward in terms of ideas that themselves don’t get broad currency in the group. But I think at least want to raise the concern about these

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that it kind of makes it seem like it could be proper, the idea that somehow a trademark claim wouldn't arise in these instances. I mean, I can see why wouldn't arise in a single registry. Although one could argue it possibly could as well. But I don't see. We haven't really discussed the idea of why it would be appropriate to even consider this possibility that a trademark claim wouldn't stand, that there wouldn't be any reason why there wouldn't be cybersquatting in a noncommercial TLD, for instance. Or at least a potential reason for a claim to be put forward.

MARTIN SILVA:

Oh, just to clarify, the idea is that this is an exception and even if something is mandatory, you can create a [sub rule] for that. Kristine?

KRISTINE DORRAIN:

Thanks. I think that's the point, Greg, is within our group we have a lot of expertise and a lot of different perspectives. But we saw in the draft charter questions that this was an open topic. We don't have a lot of good data on this, so it seemed like a good type of thing to put out into the community to try to solicit some feedback on.

I don't know that there's anybody in our group who has come up with a really good use case. I mean, we've talked a little bit about

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dotBrands, but I'll give you one personal example. We own .AWS, and we went to register a domain name in .AWS and received a claims notice for a domain name. And it was very useful because we already do a bunch of searching and we, of course, want to be very responsible with our dotBrand TLDs. So it allowed us to go back a second time and make sure that we were really comfortable with that domain name being registered.

So there are certainly potential use cases even for dotBrands to have a claims notice. But I think for this particular case, we wanted to get some community feedback because it was something that we just don't have a good handle on in this group. So that's why it hits that exceptional status I think, Greg, which is I think what we discussed. Thanks.

GREG SHATAN: Thanks. I think that's a fair point. Thank you.

MARTIN SILVA: Thank you very much. Please, [inaudible].

SUSAN PAYNE: I would agree that. The only thing I disagree with is that I don't think we had any conversation of any note about this notion of asking the question on TLDs that supposedly have registry

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policies that prohibit noncommercial use. We didn't discuss that. It's not clear to me why that's in there. It doesn't seem to me to fall into the same category as the others that we're asking the question on. So that would be all I would say.

MARTIN SILVA: I'm pretty sure [staff team] came up specifically with those cases. At some point, someone mentioned them.

UNIDENTIFIED MALE: Where did this language come from? It's in green, so that indicates something about its origin, which was where?

UNIDENTIFIED FEMALE: Yeah, and it was discussed a while back, so it might be possible that we don't recall that discussion. Go ahead.

ARIEL LIANG: If you scroll down to this page, you may notice we captured a comment that that particular text was commented by others and [wanted to remove that], so we captured that point.

MARTIN SILVA: Kristine?

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KRISTINE DORRAIN: Thanks. Just a clarification. I don't think it actually occurred as a discussion on a call. I believe it was completely an e-mail or inter-documentary discussion between Kathy and I. But I don't think we actually had a verbal conversation about it. That might be why some people don't remember it if you didn't read the very long document that Kathy and I sent back and forth between each other.

MARTIN SILVA: Thank you very much. Please everyone state their name for the record. Just to be very clear on this. Fair enough. Whatever happened, happened. Is this text okay? Someone wants to take something out? Or we can be sure that this is what we want to put forward? Just to move forward with this.

UNIDENTIFIED MALE: What is the text below "other Sub Team members provided input" and is that intended to also be part of the text?

MARTIN SILVA: Go, Ariel.

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ARIEL LIANG: That part can be removed. It's just to capture the comments from the discussions thread. But that's mainly referring to that particular text about the restricted TLDs that need to be removed.

MARTIN SILVA: [inaudible].

SUSAN PAYNE: Thanks. I think if we're going to remove it, maybe we need to just make it clear that the question we're asking by no means had support from the whole of the subgroup. So if we want to take out the language, and I'm not objecting to it, that Greg was just referring to, and I think it is better to make it more simple, I think we need to make it clear that not all of us in this group think that question is one we need to put out for comment.

MARTIN SILVA: Thank you very much. I think we can meet middle ground there. Last chance. If not, I'm moving forward. Kathy, go.

KATHY KLEIMAN: My recollection is that of Kristine's, that this language has been around. It has been going back and forth. It was kind of one of our general questions and that it kind of fits with the flow of the other

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questions that are being asked and that we have discussed it back and forth.

SUSAN PAYNE: Kathy, and I'm not saying we'll take it out. I'm saying let's at least acknowledge that some of us don't agree.

MARTIN SILVA: It's a middle ground. I think it's resolved. We keep the question but we clarify that.

Fair enough. Then I am moving forward. I don't care anymore. Let's go to Question 5. Not really. If someone has any other comment and question too, you can just jump in and do it. Greg, thank you.

GREG SHATAN: I think a more neutral way to possibly deal with the other sub team members issue and Susan's issue is maybe to ask those who respond to indicate why they believe trademark issues wouldn't be implicated or why claims would not be necessary. Maybe just more generally to indicate why claims would not be necessary in these instances and not merely to kind of say a use case.

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MARTIN SILVA: Fair enough, but I think that part is not part of the question itself, right?

GREG SHATAN: What's not part of the question?

MARTIN SILVA: The things that are [inaudible] of the other sub team members.

GREG SHATAN: Right. What I'm saying is that those were comments that people had on how to perhaps modify this question. So the question is still in play.

MARTIN SILVA: Oh, yes, it is.

GREG SHATAN: So because it's in play, I'm suggesting a different way of resolving the fact that there are some objections to the question. That just merely by asking why the believe trademark claims are unnecessary in there, it's a more neutral way than saying some people didn't want this question to be asked or some people believe this question has no predicate or whatever. Just neutrally

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ask, why do you believe trademark claims are unnecessary in this instance?

UNIDENTIFIED FEMALE: Does that make Susan happy? Does that make you happy? Is that [okay]? Yeah? Good.

MARTIN SILVA: Thank you, Greg. Okay, Griffin?

GRIFFIN BARNETT: Sorry. Maybe I'm overdoing this. But the overarching question says, should any TLDs be exempt from the claims RPM and, if so, which ones and why? So I think in the overarching formulation of the question for which these additional questions for public comment are subsidiary to that overarching question, I think that's already implicit in getting that type of feedback. But, Greg, I take your point. I mean, I think we want people to obviously provide rationale supporting whatever use cases they come forward with on these issues to say why should these types of use cases be exempt from operating [a] claims service.

GREG SHATAN: I'm just uncertain whether people will look back to the charter question when they answer our question for public comment. I

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hope they will, but at least when it's formulated, it should be understood somehow that they're answering the charter question. So that's why I felt like we needed to say it.

MARTIN SILVA:

Remember, all these go to the working group, and it's the general working group that will eventually fit this into what will go to a public comment. So we will have another instance in the full working group to debate that.

JULIE HEDLUND:

And I think from an implementation point of view, we will repeat the charter question when we have the question for community input. That has been the standard like, say, for SubPro as well. So we'll make that very clear.

MARTIN SILVA:

Okay, [inaudible]. I will move to Q2(e): "Should the proof of use requirements for Sunrise be extended to include the issuance of TMCH notices?" And here the Proposed Answer is: "The Sub Team had diverging opinions on whether the proof of use requirements for Sunrise should be extended to include the issuance of TMCH notices."

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It means, basically, we don't have an agreement there and, therefore, we do not have a preliminary recommendation and at least until now and probably not later either we don't have a specific question to the public that could help us there. So unless someone wants to comment on the fact that we don't have an agreement, we just can keep that as a [non thing].

UNIDENTIFIED FEMALE: [inaudible] you said [inaudible].

MARTIN SILVA: Yes, but I was interrupted, so I was going back to Q2(e). I'll give a few seconds if anyone has to read that again.

UNIDENTIFIED MALE: There was a comment in chat as well I noticed. Although they didn't put /comment/.

MARTIN SILVA: Where? What user?

UNIDENTIFIED FEMALE: [It's not a comment comment.]

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UNIDENTIFIED MALE: [Does he know we should put comment comment?]

UNIDENTIFIED FEMALE: Yeah, just as a reminder, if you can and most people should have access to a microphone, if you have a comment to add, you should speak it into the microphone. If you don't, then you should choose [comment] to indicate your comment.

MARTIN SILVA: But I can read anyway if it's [any] helpful. Michael Graham says, "I do not recall it being discussed and agreed. [inaudible] if language is included but we as a group do not believe it should be included, then it should not be included. [inaudible] discussion and language, else it seems we are allowing some [inaudible] questions and not others." Fair enough. He was answering to Kathy specifically.

Anyway, we are in Q2(e). Yes, Q2(e). We don't have an agreement in that question.

UNIDENTIFIED FEMALE: Do you want to just read the question?

MARTIN SILVA: I just read it before.

UNIDENTIFIED FEMALE: I'm sorry.

MARTIN SILVA: “Should the proof of use requirements for Sunrise be extended to include the issuance of TMCH notices?” And we don't have an agreement there. Divergence of opinions, and I don't think we're going to have one now either. We can live with the fact that it will remain as it is. It's not going anywhere. Fair enough.

Now we can move to Question 5. I'll give one more second so people can get there if they have their own document. Question 5: “Should the Trademark Claims period continue to be uniform for all types of gTLDs in subsequent rounds?” We have here a Preliminary Recommendation, so I'm going to skip the answer itself.

The Preliminary Recommendation is: “The Trademark Claims Sub Team recommends that where the Registry Operator has not obtained an exemption (see proposed answer to Q2(d)), the current requirement for a mandatory Claims Period should continue to be uniform for all types of gTLDs in subsequent rounds, including for the minimum initial 90-day period when a TLD opens for general registration.”

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This didn't have any specific divergent opinion. So unless someone wants to add something or correct the words in the text – Greg? Yes, Kristine then Susan.

KRISTINE DORRAIN:

I guess I would just propose that if we're going to change those two clauses around that Greg suggested in the last bit, we should flip them here. Also, for some reason the wording in this one is just slightly more readable. So I would just ask staff to compare the two because they theoretically should be exact. So switch the clauses and make sure we pick the most readable of the two.

Those last two clauses which are “based on a suitable business model, with the option to extend.” And Greg's proposal was to say, “should have a certain degree of flexibility to extend the claims period, based on a suitable business model.” So it should just align. Thanks.

MARTIN SILVA:

Thank you. Okay, fair enough. Anyone else have a specific comment on Question 5? This one has actually agreement so it's good. If you don't comment, you are just continuing to agree. Great. Let me just check the Zoom for one second in case there is someone else.

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UNIDENTIFIED MALE: Are we discussing the Preliminary Recommendation as well or just the answer?

MARTIN SILVA: No. We are discussing the Preliminary Recommendation. The answer is just a tool to get there.

UNIDENTIFIED MALE: Yeah, I'm not sure about the Preliminary Recommendation. I think it over assumes the idea of obtaining an exemption, which is at most just a question for public comment. As we have not proposed an exemption. I don't know that we would have support within the group for an exemption. So asking this question as if an exemption is something that the group is considering I think is overstating the case.

MARTIN SILVA: Go ahead, Susan or Kristine. Whoever wants to go first.

SUSAN PAYNE: Yeah, actually, I think that's a good point from Greg. And maybe what we're actually saying, and I'm sure that is what we're saying, is if this group's final recommendation is that certain TLD types should be exempted, because we haven't reached that point as Greg says, I think that's a sensible thing.

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MARTIN SILVA: Go, Kristine.

KRISTINE DORRAIN: And I was just going to suggest that we could just include it as a footnote referencing back just to say and by the way there's this possibility of an exemption for discussion.

MARTIN SILVA: I think just go, Julie, or Greg.

GREG SHATAN: Yeah, I wouldn't even go that far. I mean, clearly if somehow an exemption arises because public comment comes back in that convinces everyone that there should be one, then clearly if there is an exemption there is no length of period. They're not even in the same ballpark at that point. So I don't think we need to even mention it. I think it over legitimizes what at best is an open question and makes it sound like it's something that we believe is a reasonable outcome, which I don't think we would agree on.

MARTIN SILVA: I have first Kristine then Michael.

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KRISTINE DORRAIN: Thanks. Yeah, I think I see your point, Greg, and I would take that. I think this is our initial report. So certainly by the time we get to our final report, we will know whether there's a recommendation for an exemption. And if there was one, we would see fit to include at that point I think. So I don't feel strongly the need to include that parenthetical in there. Thanks.

MARTIN SILVA: Michael.

MICHAEL KARANICOLAS: Hi. Yeah, I wasn't part of these discussions, but I just as a matter of document of interpretation and drafting, if there is a possibility of an exemption that remains on the table, I think by taking that out it creates the illusion of consensus on the other side. So I think it's better in.

UNIDENTIFIED MALE: I don't know if there's a possibility of exemption. We're just asking the question.

UNIDENTIFIED MALE: [It's still a possibility.]

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MARTIN SILVA: Kathy also wanted to comment.

KATHY KLEIMAN: Yeah. Agreeing with Michael that I think this language reflects what we were talking about in the sub team. So if we drop it as a footnote or a parenthetical, but that's what we're talking about is if there's some – and the one that comes to mind is dotBrands. But if we decide that dotBrands should be exempt from trademark claims as some I think have mentioned, then let's leave it here as a placeholder so we remember to go back.

MARTIN SILVA: Greg, do you think, and Kristine and other people, do you think you can live with the wording that really puts it an aside but doesn't drop it entirely? Like a footnote?

GREG SHATAN: I would drop it as a footnote. I wouldn't lead with it. Right now the question leads with it, which it's not leading with our recommendation. Our recommendation should be our recommendation. Just drop a footnote that says see the question being asked under Q2(d) or something. Or it can be more. I would make it a full sentence and a separate sentence because it is not a possibility that is being considered by this group. If it was, we'd be putting it forward as a possibility.

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MARTIN SILVA: Well, fair enough. I think we can capture that difference. Okay. Anyone else want to comment on this?

UNIDENTIFIED MALE: I'm sorry.

MARTIN SILVA: No, please, don't be sorry. Thank you.

GRIFFIN BARNETT: It just came to mind, and it actually relates back to – and I can't see on the screen the entirety of Proposed Answer so I think it's maybe captured there – but to the extent we want to reflect that also in the Proposed Recommendation because it speaks to the uniformity issue specifically is obviously registries have the option voluntarily to extend claims beyond 90 days.

UNIDENTIFIED MALE: [It's there.]

GRIFFIN BARNETT: Okay, so as long as that's captured in the answer.

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MARTIN SILVA:                      Yeah, it is.

GRIFFIN BARNETT:                  Okay. All right, sorry.

MARTIN SILVA:                      Okay, again, open for one more time. If not, we can move forward to Question 1 because we don't know how to count in the right order.

Yeah, this has already been agreed on. It would be a very shocking thing if we find someone that doesn't agree with this. We will probably be angry with him or her. But this is about [the wording]. This is just about everyone being okay with the wording. If you have a specific comment like, "This comma doesn't go here" or "You could say this in another way," this is your chance.

Question 1 specifically, the Preliminary Recommendation is: "The Trademark Claims Sub Team recommends that the language of the Trademark Claims Notice be revised, in accordance with the Implementation Guidance outlined in the Sub Team's recommendations for Question 3 (below). This recommendation aims to help enhance the intended effect of the Trademark Claims Notice by improving the understanding of recipients, while decreasing any unintended effects of deterring good-faith domain name applications."

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If anyone has any comment specifically on the text. I have Julie.

JULIE HEDLUND:

This is not actually on the text, but it's a comment that Michael Graham put into the room. And he doesn't have access to a microphone, so he's asking us to read it out. It's actually on the previous discussion with respect to the wording of the answer to the question. He's commenting: "@Greg, agree wording should be removed or moved to a separate sentence or footnote." So agreeing with Greg.

MARTIN SILVA:

So we have more support for the last part. Something for the Question 1 text that anyone wants to comment? We are now commenting on the Preliminary Recommendation of Question 1, the wording, the text itself. We already agreed on the solution.

JULIE HEDLUND:

Just reminding everybody that Questions 1 and 3 had been previously discussed and the text agreed to. So this really is a review of a review, so to speak.

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MARTIN SILVA: It's the last chance to say something, and it's going away. Because if no one raises their hand or something, I'm moving to Question 3. Greg?

GREG SHATAN: Just a minor suggestion. I would – well, actually, forget it.

MARTIN SILVA: Thank you very much, Greg. Let's go then to the last question, Question 3. Okay, this is the same thing we have with Question 1. Since we already discussed this, we agreed on a text, we agreed on that Preliminary Recommendation and on the Proposed Question for Community Input that could help us to have a better understanding of the Preliminary Recommendation itself.

I'll read just the Preliminary Recommendation: "The Trademark Claims Sub Team recommends that the Trademark Claims Notice be revised to reflect more specific information about the trademark(s) for which it is being issued, and to more effectively communicate the meaning and implications of the Claims Notice (e.g., outlining possible legal consequences or describing what actions potential registrants may be able to take following receipt of a notice).

"The Trademark Claims Sub Team recommends, accordingly, that the current version of the Claims Notice be revised to

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maintain brevity, improve user-friendliness, and provide additional relevant information or links to multilingual external resources that can aid prospective registrants in understanding the Claims Notice and its implications.

“To assist the Implementation Review Team (IRT) that will be formed to implement recommendations from this PDP in redrafting the Claims Notice, the Trademark Claims Sub Team has developed the following Implementation Guidance:

“The Claims Notice must be clearly comprehensible to a layperson unfamiliar with trademark law;

“A suggestion was made that ICANN org consider partnering with external resources that have already indicated an interest in helping redraft the Claims Notice (e.g., AUIP clinic).”

Then I’ll move forward to the next one. So maybe we could cut here. this was according to Q3(a)(i) and 13(a)(ii). I have two hands up. First Kristine then Greg.

KRISTINE DORRAIN:

Thanks. I may have missed this discussion, but I don’t recall hearing anything about a suggestion that ICANN org partner with external resources. That sounds a little ominous because I don’t know what that means. It seems like a blank check for anybody who is outside the org and doesn’t understand all of the moving

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parts of the community to weigh in. Secondly, I have no idea what AUIP stands for. Thank you.

ARIEL LIANG:

This discussion actually happened in one of the sub team meetings, and I think Kathy and Rebecca had that suggestion. I think the AUIP was one of the organizations that probably Rebecca worked with. And I think there's a submission of a redraft of the claims notice that was related to that. Probably Kathy can provide more details on this.

KATHY KLEIMAN:

Okay, AUIP is shorthand for – I don't know where the got the short – but American Universities Intellectual Property Clinic which did submit a redraft that had been done by students to make it more comprehensible. Humberto does not know I'm about to draft him in his intellectual property clinic in Chile because the idea that we had talked about was focus groups. Do people understand it? Do registrants understand? So just whether it's redrafting or refloating this so that we get some feedback from groups that actively work with registrants and potential registrants.

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MARTIN SILVA: And remember, this is just a guidance for the implementation team. So this is not a blank check, but this is just almost a suggestion.

KRISTINE DORRAIN: Thanks. Then my wording suggestion would be to remove “partnering” and maybe something like “referencing” or “discussing with.” Something a little less formal than partnering. I think this needs to be a community effort, and then whatever the IRT is can find good resources such as the ones mentioned. But I don’t think we want to imply that there’s some sort of partnership or people from external making decisions. Thanks.

MARTIN SILVA: Yeah, I don’t think anyone wanted a bonding word like partnering. It’s just they were thinking that. Yeah, I think you’d have total agreement on that specific change.

GREG SHATAN: Thanks. I would suggest instead of partnering, “accept input from.” And I would not put an example in the actual question or Preliminary Recommendation. Because clearly, this is a forward-looking recommendation, so AIUP Clinic is free to resubmit or to continue the submission forward. But if we’re going to actually seek or accept input from others, it should not be just kind of a

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first past the post sort of thing. I'm sure there are others who would want to give.

Also, I would suggest that the paragraph immediately above where we have our recommendation, I think we should bring down in addition – I don't know, maybe it's overkill – but into the Implementation Guidance which we're kind of setting aside under capital "I"/capital "G" the thing about maintaining brevity, improving user-friendliness, and providing relevant information or links. I think that should go into the Implementation Guidance itself, even if it's duplicative because I think we want the Implementation Guidance to be somewhat self-sufficient.

MARTIN SILVA:

Okay, [inaudible] [for the first part]. I think we have two comments. Griffin first.

GRIFFIN BARNETT:

Yeah, thanks. Just a further refinement to Greg's first suggestion on the change in wording. Perhaps rather than saying "accept from," "consider input from." I think the gist is the same. We're accepting the input. But I don't want to perhaps give the impression that that input will be accepted in terms of....

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MARTIN SILVA: Mandatory.

GRIFFIN BARNETT: Yeah.

MARTIN SILVA: And Kathy?

KATHY KLEIMAN: No problem with “consider input from.” But concerned about deleting. I think we should make it clear what some of the examples are. Like flushing out American University Intellectual Property Clinic, I don’t think we should delete them because I don’t think ICANN org is going to be able to make them up. So we’re talking about outreach, and I wanted to include also [USN Domain Name Dispute Clinic] which is taking place. Humberto, could you? So I’d like to include [UCN Domain Name Defense Clinic] as an example of a group working with Spanish registrants. And again, that question that we’ve all had which is, do registrants understand this notice? So again, I think putting in some examples, we’re not saying they have to. We’re saying for example these are two clinics you can reach out to that do this kind of work. I’ll put the name in the chat.

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MARTIN SILVA: I have Julie, you? Okay, and I have Lori maybe?

UNIDENTIFIED FEMALE: Yeah, hi. As I said, I think I'm going along Greg's line. I don't have a problem necessarily with putting in examples as long as they're neutral and as long as they're nonbinding. So what we're trying to avoid is [nonbinding] language, which I think solves everybody's problem. So you're listed as a resource, but concerns about community input are balanced that way. So, yeah, advice. We advise the IRT to look to these resources, among others. And then it would be up to the IRT then to figure out among others, who are the others?

MARTIN SILVA: Yeah, I think that's the intention from everyone that this is not a [inaudible] list. Greg?

GREG SHATAN: Along those same lines, we should also take out the "that have already indicated an interest in helping" because we're not excluding those that have not already indicated an interest. So we just should be taking "external resources." What if somebody didn't already indicate [an interest]? And I think it would be appropriate to throw the INTA Internet Committee on the list as well.

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LORI SCHULMAN: Yeah, okay, this is Lori Schulman speaking in her capacity from INTA. We certainly would be happy to be listed as a resource. For those who don't know, we have a 175-person Internet Committee that works on a variety of Internet governance issues, so if you want to put us down as a potential helper in drafting. And we have multilingual membership.

UNIDENTIFIED FEMALE: [inaudible]

LORI SCHULMAN: INTA. Us.

UNIDENTIFIED FEMALE: No, INTA, which committee?

LORI SCHULMAN: Oh, the INTA Internet Committee specifically.

UNIDENTIFIED FEMALE: Internet Committee? Okay.

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MARTIN SILVA: Yes, I mean, I think in the text we can drop the part that says “that have already indicated interest” in the sense that this is an open list and these are examples. The fact that the AUIP Clinic is there is a way of saying [they already did]. Please, Michael, first.

MICHAEL KARANICOLAS: Well, if we’re including advocacy groups, then why don’t we include the EFF as well?

MARTIN SILVA: Fair enough. EFF actually has [reached to] RPMs more than once and they created documents. I don’t want to do a [inaudible] list. [inaudible] examples. I think we have a few.

UNIDENTIFIED MALE: Cut it off at 20.

MARTIN SILVA: Go, Kathy.

KATHY KLEIMAN: But before we delete everything about “have indicated an [external] interest” can we replace it with have a record of working with registrants or some kind of something about why it is that we’re reaching out to them?

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UNIDENTIFIED MALE: Yeah, I mean, we could just say have interest in the subject matter. But I don't think we need to specify who they work with: registrants, applicants, potential registrants, trademark owners, registries, registrars.

KATHY KLEIMAN: Registrants.

UNIDENTIFIED MALE: Why specifically registrants?

KATHY KLEIMAN: Because [inaudible].

UNIDENTIFIED MALE: Well, but I don't think we need to say that they have. That is not a qualification. That should not be. Now we're saying we should limit this list. If we're going to put together a minimum qualification standard, maybe we should also indicate that they have to have a significant amount of knowledge of trademark law.

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MARTIN SILVA: Let's remember, this is just a suggestion that is nonbinding. It's just a good idea for [inaudible]. Go.

KRISTINE DORRAIN: How about something to the effect of “some members have experience with organizations, such as blah, blah, blah”? Just referencing that's where the list came from. Members in this group have suggested INTA and EFF, and that's where the list came from. These are the best we can do and start there and go from there.

MARTIN SILVA: Yeah, because it's not a certification. They're not there for other reasons.

GRIFFIN BARNETT: Yeah, I agree with the gist of what Kristine is saying. I think we can perhaps go with as part of the guidance approach to what we're crafting here just say, “The following list is some examples of organizations that members identified as being relevant to this exercise” or something along those lines.

MARTIN SILVA: Julie, I saw you mumbling.

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JULIE HEDLUND: There was a comment from Michael relating to this, but he does say that with all of this discussion his comment has been covered. So there you are.

MARTIN SILVA: Thank you very much to both Michael and Julie. I will move to the next part of the recommendation. I think here we have some sort of agreement on how to do. “The Trademark Claims Sub Team recommends that delivery of the Trademark Claims Notice be both in English as well as the language of the registration agreement. In this regard, the Trademark Claims Sub Team recommends changing the relevant language in the current Trademark Clearinghouse Requirements on this topic to ‘...registrars MUST provide the Claims Notice in English and in the language of the registration agreement.’ The Trademark Claims Sub Team also recommends that, where feasible, the Claims Notice include links on the ICANN org website to translations of the Claims Notice in all six UN languages.”

I will stop there just so we can comment specifically on this piece of text. Kristine, please?

KRISTINE DORRAIN: I don’t have the Trademark Clearinghouse requirements in front of me, but I think what we should do is reference what it currently

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says so that people don't have to look it up and know what it should be changed to. My guess is Ariel's going to answer that, and my guess is that it says registrars "should" and that we want to change it to registrars "must."

I think we just need to make it clearer because now what's going to happen is we're going to ask all of the commenters to go find the requirements to see what it currently says. Well, you now, don't just tell me what you want to change it to. Tell me what you want to change it from. Thanks.

MARTIN SILVA: Yes, Ariel?

ARIEL LIANG: Actually, we noted that original language in the answer to 3(a)(iii). So if you see the second sentence, that was the original language.

GREG SHATAN: May I suggest a live link?

MARTIN SILVA: Thank you. Moving forward: "The Trademark Claims Sub Team recommends that the current requirement for only sending the Claims Notice before a registration is completed be maintained. The Trademark Claims Sub Team also recognizes that there may

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be operational issues with presenting the Claims Notice to registrants who pre-registered domain names, due to the current 48-hour expiration period of the Claims Notice. The Trademark Claims Sub Team therefore recommends that the Implementation Review Team consider ways in which ICANN org can work with registrars to address this implementation issue.”

I do remember this call. Any specific comment toward this part of the recommendation? I see noddings and agreements and everything. Good. In the chat, do I have anything? No. Okay, fair enough.

And that’s it. Woo! If anyone has any other comment to do, this is the moment to do so. Because this is the last call session. Speak now or just don’t. And don’t look at Greg.

But thank you, everyone. This was my first chairing at ICANN, and it has been a pleasure. Thank you, especially staff, Roger that is in some part of Ireland right now and all the members that really actually did the work. So thank you all.

We’ll be presenting all this in the Thursday session with the full working group. Kathy, please, the co-chair of the full working group?

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KATHY KLEIMAN: Not commenting on any substance, but turning to staff to tell us where our next meeting is and where we'll be and what time, please?

JULIE HEDLUND: Thank you very much. The next meeting will be in this room, and it will be at 1:00 local time. So you do get a chance to have some lunch. And that's going to be the Sunrise Sub Team first session. So actually, that will be co-chaired by Greg and David. So we look forward to seeing those of you who are interested in that exciting meeting to join us here.

And thank you, everyone. This meeting is adjourned early, and I will indicate that also in the chat to those who have joined remotely. But thank you all very much.

**[END OF TRANSCRIPTION]**