
MARRAKECH – GNSO Review of all Rights Protection Mechanisms in gTLDs (Session 3 of 4)
Thursday, June 27, 2019 – 08:30 to 10:15 WET
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JULIE HEDLUND:

Good morning, everyone. It's time for the RPM PDP Working Group again. This is the sunrise sub-team working session. This is your one-minute warning. We kindly ask you to finish up your conversations and sub-team and working group members if you would gather at the table, then we will get started in one minute. Thank you.

Good morning, everyone. The recording has started, so we're going to go ahead and get this meeting started.

This is the RPM PDP Working Group Sunrise Sub-Team Working Session here on Thursday, 27th of June at ICANN 65. I will just note that leading the session today is Greg Shatan who is in the room, and David McAuley who is remote. Also here today we have one of the full working group co-chairs, Kathy Kleiman, and we may be joined by Phil Corwin remotely and perhaps Brian Beckham may also join us.

Thank you, all, to the sub-team members who have joined and working group members. We'll just ask you to sit at the table for this working session and we'll ask those who are not in the working group or sub-team, you're certainly welcome to observe

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but this is a working group session, so priority will be given to comments and the work of the sub-team in particular. Thank you, all, and I'm going to go ahead and turn things over to Greg.

GREG SHATAN:

Good morning, all. It's 8:35 which is well after sunrise, but we will nonetheless pursue sunrise. A couple of opening notes. I would like to focus us not on wordsmithing text where we appear to have substantively captured the end result of our discussions and avoid quibbling and restating of positions where is unnecessary because we did not get yesterday's – the previous session's agenda – done, so we're basically stuck with two-thirds of the agenda for today. But clearly, what we should and need to focus on where we've substantively not expressed ourselves appropriately or clearly or accurately where's been movement and progress, hopefully, in our thinking since the question was last visited. So, if the text stands well enough for where we stand, we should spend the minimum of time on it, so that we can hopefully get through the entire agenda this time. Kathy?

KATHY KLEIMAN:

So, quick question. Does that mean that there will be an opportunity to do the wordsmithing that you don't want us to do here?

GREG SHATAN:

Yes, I would think so. I think it would be a last, another chance either to see some wordsmithing or do some wordsmithing and get approval on a final text as such. If somebody sees something egregious, you can mention it but I don't want to spend 20 minutes. We didn't, necessarily, but if we can just avoid non-substance. Any notes are helpful as we pass by but not at the expense of failing to get to the end.

JULIE HEDLUND:

Just an administrative thing. Please use the Zoom room to raise your hand. Only the Zoom room. Because we're trying to do co-chairing with David and Greg, and since David is only in the Zoom room, and because we also do have other remote participants who are from the sub-team, please do raise your hand in the Zoom room and we'll recognize you there. Thanks so much.

GREG SHATAN:

Here's an overview of what we have to cover, so you can see the landscape. No coffee, so I can't think of my own words yet, so thank you, Kathy.

Basically, we have question – this is going to be a very dry coverage – but we have question two which consists of a

threshold question and two sub-questions which I think may have some substance left to discuss in it.

Question 3ABC, question 4ABCD and that's ten sub-parts right there out of the 26 left for the day. Then comes question 5A 1-4 which if we can get all the way through that in the first hour we will be in good shape. That will leave us with only 11 sub-parts left, 5B and C. Question 6 will take some time because we have a lot of new text to consider. Not necessarily new thinking but new text. So, it's a combination of new thinking and new text, clearly. But that will certainly take some time. I wouldn't want to try to be there in the last half-hour.

That's their proposed answers there and there's a proposed recommend that really need to be reviewed.

Question 7, I think there may be some minor stuff that goes slightly past wordsmithing. We've already done question 8, so we'll be on question 9, 10, 11 A and B. We already did question 12. Then we can take a look at the table at the end if we actually get past question 11.

So, that is essentially the line of march. Sorry not to have actually gotten into the substance of what each of those things is but at least it kind of gives you a shape of where we're going and which questions have sub-parts. So, why don't we start with question 2. I'll also give David the lead on some of these. Maybe David can

take the lead on question 3, so we'll all be raising hands in the room. And if you could watch the room for me, that would be helpful because I'm still multi-tasking here.

Question 2A is a little on the verbose side, but let's just say it's wordy. Question 2, threshold. Is registry pricing within the scope of the RPM Working Group or ICANN's review? Proposed answer. The sub-team had diverging opinions on whether registry pricing is within the scope of the RPM PDP Working Group. Some sub-team members pointed to the registry agreements that state that. Registry pricing is not within the scope of the RPM Working Group due to the picket fence. Specifically, section 1.4.1 of the Registry Agreement and section 1.4.1 of the Registrar Accreditation Agreement, respectively, specify that consensus policies shall not prescribe or limit the price of registry services or registrar services. However, some sub-team members expressed concerns about the inter-play of registry pricing with RPM's obligations which are discussed further in the proposed answer to questions 2A and B.

So, before taking comments on that, just to look at questions 2A and B, question 2A is whether registry sunrise or premium name pricing unfairly limits the ability of trademark owners to participate during sunrise, and 2 B is, if so, how extensive is the problem? Do we have any hands up yet?

Let me go through and read the rest of it, so we just have a holistic sense. Think about what you just heard and think about whether these tie in together because I think the three parts of this have a little bit of tension between them which is more than wordsmithing.

Does registry sunrise or premium name pricing practices unfairly limit the ability of trademark owners to participate during sunrise? The sub-team generally agree that registry sunrise or premium name pricing practices have limited the ability of some trademark owners to participate during sunrise. The sub-team is aware of cases where the registry operator practices unfairly limited the ability of some trademark owners to participate during sunrise when pricing set for the trademark owners was exponentially higher than other sunrise pricing or general availability pricing.

Question 2B, if so, how extensive is this problem? Proposed answer. The sub-team noted this problem seems sufficiently extensive, that it may require a recommend to address it, although the data is limited. The sub-team also noted that pricing is outside the picket fence.

We do have a preliminary recommendation here. The sunrise sub-team recommends that the registry agreement include a provision stating that a registry operator shall not operate its TLD

in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN or restricting brand owners' reasonable use of the sunrise rights protection mechanism. There's a staff note to check the registry agreement and see where this recommend can be applied.

JULIE HEDLUND: We have in the queue Kristine and then Maxim.

KRISTINE DORRAIN: Thanks. Two suggestions here. For Q2A, I'd like to propose that we please add the word "some" in front of registry sunrise or premium name pricing practices because it's been we've only pointed to one or two examples out of 1400 applicants. So, I don't think we can say definitively that [inaudible] said that our practices have been bad.

Secondly, I will note, as far as the recommendation goes, I don't know how to word this because the sub-team can recommend that the registry agreement be amended. Council might recommend that the registry agreement be amended. But unless you get the contracted parties to negotiate these amendments, they have to agree. So, I don't think it's useful to put in a recommendation that the parties go to the table and negotiate,

so I don't understand what that recommendation is trying to say.
Thanks.

GREG SHATAN: Thanks. Maxim?

MAXIM ALZOBA: It's about [inaudible] exponentially. Just from a mathematical point of view to say that something is exponentially, you need [inaudible], yes? And if you have average price, I mean general availability and some other price. Just two [points]. It might be changed to significantly because it reflects the idea that the price is not the same and it's too different. Yes? But we don't use words which doesn't suit it from the mathematical point of view.

And the second item, yeah, it was about support of [putting] some registries because, for example, in our case, during sunrise all prices were set to \$50 but comparing to general availability of \$5, yes, it's an extreme difference. But in reality, \$50 for the sunrise registration is nothing which kills you. Thanks.

GREG SHATAN: Susan, please go ahead.

SUSAN PAYNE:

So, just for the record, my hand is up for me and also for Lori because she's not in the Zoom.

I note what Kristine has said about the amendment of the registry agreement but I think certainly we're reviewing the RPMs as they have applied to the current round but I think what we're also attempting to do is make recommendations for the next round. So, yes, we can't amend an existing contract that parties have already signed without obviously those parties having agreed that, but I don't think that's what we're trying to here. I think we're trying to look at a next round and say, okay, if we did it again, what would it have been helpful to have in the registry agreement to try to at least coattail what we perceive to be some bad practices from the last round.

So, I don't think that there's quite the same concern about suggesting something that we would like to see in the next round's registry agreement, albeit recognizing that even that is probably – there's probably a degree of negotiation about that but we're not talking about amending the current registry agreement. So, maybe we just need to say for a future TLD round.

GREG SHATAN:

Lori and then Michael.

LORI SCHULMAN:

I want to support Susan’s points. Kristine, I got that same impression, too, that it would not necessarily bring people back to the table from the last round. It would be, going forward, how would this look in the next round? So, I’d support that comment.

Then, secondarily, to Maxim’s point – and perhaps I might ask for some clarification on the exponentially – but you’re saying, well, even from \$5 to \$50, \$50 is not much but there were instances of tens of thousands of dollars being requested. So, I think it’s important to note that. I don’t want that to get lost that even if something is ten times more but it’s only ten times five, not a problem. It’s a problem because, exponentially speaking, depending on the registry – and we know who – we’re talking tens of thousands of dollars per domain.

JULIE HEDLUND:

Excuse me if I might. Would the word “significantly” be acceptable? Because exponentially has a specific mathematical meaning which I think is what Maxim was trying to say and we want to try to avoid that.

LORI SCHULMAN:

Yeah. I think “significantly” would capture it. Yes.

JULIE HEDLUND: Thank you.

GREG SHATAN: Michael?

MICHAEL KARANICOLAS: Hi. I'd suggest that the word "unfairly" be removed because I think that we can agree that the ability to participate is limited by pricing but I don't think we all agree – I certainly don't – that those limitations are unfair. Similarly, are we on to 2B yet or are we just sticking with 2A?

GREG SHATAN: Why don't we stick with 2A and the preliminary recommend for the moment? Because we've kind of been crossing between the two of those. Let's see if we have any further comments or responses on that point.

Just a thought for myself. In the jurisdiction subgroup of the accountability work stream 2, which I had the pleasure of chairing or rapporteuring – we had a similar issue where we're making a recommendation regarding the choice of law provisions in the registry and registrar agreements and recognized that we could not make a recommendation that if the board passed it would then become a consensus policy. So, we might have used the

word consider or we might have phrased it in a certain way but it's clear that what we're doing is just recommending that it be put on the table [inaudible] clearly the actions take place in the course of amending the agreement through the provisions that cover how the agreements are amended. I might look back at the wording that we had there just so we don't use the word recommend in a way that implies that somehow this becomes consensus policy if our recommendation is accepted. So, a note there and a little bit of comparison.

I have Michael. Is that a new hand? Maxim?

MAXIM ALZOBA:

Yes. It's going to be recommendations of the working group in the end of the – yeah, when we do everything. Then, it's approved and passed to the board. So, I am in support of what Greg said.

GREG SHATAN:

Before we get off of this point, Michael had recommended losing the word “unfairly”. We've taken “exponentially” down to “significantly” which to my mind is a less emphatic word. I recognize exponential has a mathematical meaning. So, I want to see if anybody has thoughts on whether Michael's suggestion should be taken or not. And for that matter, if there's another word besides significantly or substantially – I see now there's

another suggestion up there. I said we wouldn't get into wordsmithing but what I think what we're looking for is trying to set the appropriate level and tone here. So, to my mind, that's a substantive question.

I see Maxim. Maybe an old hand. Susan as well.

LORI SCHULMAN: Susan as Lori's proxy. I'm not in Zoom. I'm having problems with my app.

GREG SHATAN: Lori, please go ahead.

LORI SCHULMAN: I object to removing the word "unfairly" clearly. From a [inaudible] perspective. As I said, some of these charges were clearly [inaudible] around the RPMs and we absolutely view them as unfair trade practices and I don't agree with removing the word.

GREG SHATAN: Thanks. I would say maybe the point, also, is that some of the changes that were significant were not unfair, so we don't want to say all significant differences. That was also what Maxim was saying is that not every significant difference was an unfair

difference but there were also some differences either significant or exponential. We're going really quickly. [inaudible] deemed unfair.

LORI SCHULMAN: If you want to do it that way, perhaps we say “may have unfairly”. That might be acceptable but I am not in favor, and my constituency is not in favor, of removing “unfairly”.

GREG SHATAN: Kathy?

KATHY KLEIMAN: Since we are being data-driven, I don't think we've analyzed a lot of these cases, so “unfairly” is our characterization of something that I'm not sure we've seen the data on. Which TLDs are we talking about and where is the data in our set of materials? Sorry, but ...

GREG SHATAN: I think we've discussed cases of this in our work. I don't recall which ones were ... I think dot-[top] was one. There were definitely a few that we heard here, if we want to. But at this point, we're not putting out the evidence in our status check document.

The question is whether we're making this up or not and whether there's a basis for this.

JULIE HEDLUND: I note in the queue we have Phil, Maxim, and Michael.

GREG SHATAN: Okay. Why don't we go to Phil? Phil, we're not hearing you yet. Phil, we're still not hearing you, so I'm going to go to Maxim and hopefully you can figure out where the problem occurs. Maxim?

MAXIM ALZOBA: Actually, just a small note about the pricing because it's not just general availability where there could be some premium things. It depends on a particular TLD. Not all TLDs have it. Also, in the general availability, the usual thing is having so-called land rush where for all participants the price goes down greatly. So, it's not just [inaudible] choice. Thanks.

GREG SHATAN: Thanks, Maxim. I think Michael is next.

MICHAEL KARANICOLAS: Just pointing out that we had a lot of conversation yesterday about the need for neutral language and about the fact that

anecdotes are not data or documentation. That was said again and again yesterday. So, I would ask that a consistent standard should be applied. The language should be treated the same as the language was yesterday. Hearing just one instance of a case that people aren't happy with is not evidence of a problem. Two days ago, sorry.

GREG SHATAN:

Actually, I think it might have been yesterday because I don't recall us having that discussion two days ago about evidence anecdote battle. Well, neutral language we're expressing a neutral outcome. If we're identifying problems, there's either a problem we're identifying which we then identify as a problem or a possible problem or likely problem or not, but you can't fail to identify a problem just because we're striving for neutral language. So, I guess the question is do we agree there's a problem or not. Susan? I mean, Lori?

LORI SCHULMAN:

I'm sorry. I feel it's important to stress a point here. When we talk about from one point of view a few examples of trademark registrations that may be issued in jurisdictions that have fewer requirements, that's somehow a problem. But then when we mention 2, 3, 4, 5 gTLDs that are charging thousands of dollars

targeting trademark owners, somehow that's not a problem. That's more anecdotal.

So, I think we have to balance here what we're talking about. As I said, I remain strongly in objection to removing the word unfairly, but what I'm perfectly happy to say is "may have" and I think "may have" opens the door. It opens the door to comments for people to say, "Hey, it's only three. No big deal," or to say, "It's a really big deal and here's more examples."

So, I think if you use the "may have" language and keep the "unfairly" in, it keeps the door open for the public to respond in the way the public will respond.

GREG SHATAN:

Thanks. Two quick notes on the chat. If you're in the room we're not going to read your chat out, so if you have something to say, then say it. And if you're not in the room and you want something read in chat, put "question" or "comment" around it. Otherwise, it's just going to stay in chat. Let's see if Phil Corwin has been able to dial in and then we'll go to Kathy. Phil?

PHIL CORWIN:

Yes. Can you hear me now?

GREG SHATAN: Yes.

PHIL CORWIN: Oh, good. I'm not going to get into the "unfairly" debate. I'm not sure it's a major point if we say that it may have [inaudible]. But on whether this recommendation would require negotiation, I'd ask a point of information. My understanding was that ICANN Org developed a standard registry contract for the new TLD program based on the community's development of the Applicant Guidebook and that negotiations only took place when registries wanted variations from standard contract. If that's correct, then I would assume that ICANN Org would modify the standard contract based upon recommendations primarily from Subsequent Procedures Working Group but they can consider [inaudible] as well. So, I'm not sure requiring individual negotiations between ICANN and registries to modify the standard agreement for round two, but I'll defer to staff on that technical question. Thank you.

GREG SHATAN: Thanks. I think I saw Kathy's hand next.

KATHY KLEIMAN: I support the “may have unfairly” language and I do think we’ve got the ability to put stuff into the base registry agreement for new rounds.

GREG SHATAN: Thanks, Kathy. That sounds Solomonic to me. I think Lori had agreed to that. Michael, are we good there? Solomon didn’t actually split the baby. Okay. Sorry, for some reason my hands are getting cut off in the way my screen is being set up. So, who’s next? The chat is blocking the ... Kristine, please go ahead.

KRISTINE DORRAIN: Thanks. I removed my hand because we were now agreed on “may have unfairly” so I’ll just stop with my defense. I’ll just not that I agree. Thanks.

GREG SHATAN: Thank you, Kristine. Let’s see. I think we have 2B – or not 2B. Okay. An actual question question. Please read it out.

JULIE HEDLUND: This is a question from Paul Pattersfield. Start question: “As a non-sub-team member, would putting in a role that said the sunrise prices must always be at or below any general release price help solve the problem?” End question.

GREG SHATAN: That sounds to me like a picket fence – glowing picket fence problem. Maxim?

MAXIM ALZOBA: Actually, as I noted before, the pricing is not limited to general availability. General availability is after everything ended. Doing business as usual moment of life. There are things called land rush which are for everybody, not limited to – limited to those who fall under the rules of the particular TLD. For example, [inaudible] owners. I don't know. Saying that it should be even below the land rush price or something doesn't sound good. It's like having benefits for a particular community. I'm not sure council will support this. Thanks.

GREG SHATAN: Do we have any support in the room for that suggestion? I don't want spend time on it unless there are two sides in the sub-team on this. Looking around, I'm not seeing any support, so I'll thank Paul for his suggestion and for joining us. Anything on 2B? I'll read 2B again since it's been a bit of time since we got there.

Question 2B. If so, how extensive is the problem? Proposed answer. The sub-team noted this problem seems sufficiently extensive, that it may require recommendation to address it,

although the data is limited. The sub-team also noted that pricing is outside the picket fence.

JULIE HEDLUND: No hands.

GREG SHATAN: I see a hand from Kristine.

KRISTINE DORRAIN: Thanks. I think between what we've just said for Q2A and this, I think it kind of sums up where we're at and doesn't probably need any additional color. We're asking people to comment. I think we have enough information between A and B taken together to get the type of comments we're looking for. So, I'm happy with it as it is. Thanks.

GREG SHATAN: Thanks, Kristine. Maxim, did you have a hand up? Okay, that was a passing hand. I see no other hands, so I think that is, in this case, silence is assent to keeping 2B as it is, which moves us on to question three. Oh, staff has lots of hands waving. Please go ahead.

ARIEL LIANG: I just wanted to confirm for the preliminary recommendation the change we have is just to add “for future new gTLDs”. Do we need to change any other wording for the recommendation part?

GREG SHATAN: I don’t think that we do at this point. I think we’re okay, especially since this is coming out of the sub-team. So, the wordsmithing around the word “recommend” I think is not something we need to worry about but just only for the preliminary report to capture whatever ... Where we decide we are in terms of our superpowers. So, I think that brings us to question 3.

Question 3 A, B, and C reads: Should registry operators be required to create a mechanism that allows trademark owners to challenge the determination second-level name is a premium name or reserved name?

Proposed answer. The sub-team had diverging opinions on whether registry operators should be required to create a mechanism that allows trademark owners to challenge the determination that a second-level name is a premium name or reserved name. The sub-team noted that this question covers both premium names and reserved names which are very different. Premium names are not clearly defined as a registry operator can have multiple pricing tiers.

Question 3B. Additionally, should registry operators be required to create a release mechanism in the event that a premium name or reserve name is challenged successfully, so that the trademark owner can register that name during the sunrise period?

Proposed answer. Since there was no wide support for a challenge mechanism within the sub-team, the sub-team did not consider this question.

Question 3C. What concerns might be raised by either or both of these requirements?

Proposed answer. Some sub-team members noted some possible concerns but there were, or was, no wide support within the sub-team for those concerns. Hence, the sub-team did not develop an answer to this question.

So, that is question 3 and we can take a queue. I see Kristine's hand. Kristine?

KRISTINE DORRAIN:

Thanks. My suggestion is it might sound like wordsmithing, but for Q3A there's a clarification note at the bottom of it and I think that should be moved to the top because it says – I'll read it. "The sub-team noted that this question covers both premium names and reserve names which are very different. Premium names are not clearly defined as a registry operator could have multiple

pricing tiers.” I think it would be helpful to put that caveat at the beginning of all of the answers, because again, A, B, and C are kind of read together in their entirety and to note that there’s sort of a weird definitional issue at the outset seems to me that it makes more sense, rather than sort of answering the question and then saying, “Oh, and by the way, these terms are not really well-defined and it’s kind of confusing.” So, that’s my suggestion. I don’t mean to wordsmith but I think it makes more sense to move it up. Thanks.

GREG SHATAN:

Thanks, Kristine. Not to be troublesome, especially as chair, but it occurs to me that wouldn’t that then mean we should answer the question twice, once for each? Not that I’m necessarily encouraging that but what’s your thought on that, Kristine?

KRISTINE DORRAIN:

Thanks. I don’t know that we have to because I’m really in favor – and staff can let me know about that – but the way SubPro did it was they sort of lumped some questions together, and I don’t know it’s going to look, but if you’re going to queue up Q3 A, B, and C kind of in a row in the report, then I don’t think you need to. But if there’s going to be multiple pages in between, then you probably do. So, I think it’s more of a formatting issue. You don’t need to repeat it three times on the same page, as you know. But

you get far enough down the line and you need to define “it” again. I think it’s really just a matter of formality, so maybe staff can weigh in on how it’s going to physically look.

JULIE HEDLUND: Yeah, absolutely. I think we said previously on another point about collating questions, we can certainly put them together and then just have this as a statement at the outset, so that it’s clear it applies to all of them.

GREG SHATAN: Thank you. That sounds reasonable. Any other comment or question on this point? Somehow I managed to close my Zoom room by accident. Or is it this tiny thing over in the corner? Oh, there it is. I see no hands which I think means that we’ve reached at least a tolerance point on this question and can move on to question 4. That’s why they call it the Zoom room, because we’re zooming. I realize I ran over my thought of having David handle the question 3, so maybe I’ll hand question 4 over to David, so that we can at least somebody else’s dulcet tones. David, can you lead us through question 4? David, we’re not hearing you, so maybe you and Phil Corwin had the same problem dialing in the first time and need to redial.

DAVID MCAULEY: Can you hear me now?

GREG SHATAN: Oh, yes. You are loud and you are clear.

DAVID MCAULEY: Thanks. There's a mute on the phone but there's also one on Zoom that I forgot about. But thank you and good morning, everybody. We have a lot remaining to get through, so let's dive into question 4.

4A, are registry operator reserve name practices unfairly limiting participation in sunrise by trademark owners?

And the proposed answer. Some sub-team members believe that certain registry operators reserve names practices may be unfairly limiting participation in sunrise by trademark owners, but the sub-team did not come to a conclusion on this point. Let's go to 4B.

Section 1.3.3 of spec 1 of the registry agreement be modified to address these concerns. The sub-team could not agree that there are concerns that should be addressed with respect to spec 1.2, section 1.3.3. Then, we'll also go through question 4C and 4D, before we get to Maxim and the rest of the queue.

Should registry operators be required to publish their reserve names list? What registry concerns would be raised by that publication and what problems would it solve? The proposed answer is that we had diverging opinions on this and some sub-team members noted that several registry contracts – possible registry concerns of registry operators were required to publish reserve names and others, discuss possible problems that the publication of reserve names list could solve.

4D, should registry operators be required to provide trademark owners in the Trademark Clearinghouse? Notice and the opportunity to register the domain name should the registry operator release it. What registry concerns would be raised by that? The sub-team did not discuss the question due to consideration and it's more appropriate for the Trademark Clearinghouse discussions not within the scope of sunrise.

So, the queue. Maxim, your hand was up first, as I saw it, so why don't you take the floor?

MAXIM ALZOBA:

About 4A, recommended to move. The sub-team didn't come to a conclusion on this point. And then the comments. The other way, it's just saying doing something, not having other say in something. It looks strange from the perspective that some members have one idea, then you don't deliver the ideas of other

members and then you say that there is no conclusion. Just move, no conclusion to the beginning. Thanks.

DAVID MCAULEY: Thanks, Maxim. Next I see is Kathy. Go ahead, please.

KATHY KLEIMAN: I was going to move on to a different point, so if anybody has any comments on Maxim, if you don't mind, David, then it might be worth delving into first.

DAVID MCAULEY: That's fine. I can't see the room, so if there's any hands waving around, just let me know.

KATHY KLEIMAN: Griffin.

GRIFFIN BARNETT: Yeah. I just put my hand up in the Zoom room but it was delayed. I'm just wondering in doing the [inaudible] sense at all? Because some sub-team members believe ... Is it sufficient to say for our proposed answers some team members believe that certain registry operators reserve name practices may be unfairly limiting participation in sunrise by trademark owners and just

leave it at that? Do we need to even say the sub-team did not come to a conclusion on this point? I mean, that's sort of a conclusion.

DAVID MCAULEY: Thanks, Griffin. I take your point. I think the reverse could also be true, that we simply did not come to a conclusion. Are there any other thoughts on this point?

GREG SHATAN: I see Susan's hand.

SUSAN PAYNE: This might be wordsmithing, but maybe the sub-team didn't come to an agreement on this point. It's slightly better if we're having at the beginning, so then we go on to say that some people believe, but overall, we're recognizing that, within the group, we didn't all agree on that. I don't know.

DAVID MCAULEY: Thanks, Susan.

GREG SHATAN: Any other comments directly on this point? Looking around the room. I don't see any, David.

DAVID MCAULEY: Thanks. Kathy, go ahead, please.

KATHY KLEIMAN: Thanks. This is to Q4B and it's got nothing to do with substance. It's just that I think we should drop a footnote for the actual text of section 1.3.3 of specification 1 of the registry agreement, so that we don't have 100 or 1,000 readers having to look it up. It's one of my pet peeves when people reference things and don't give it to us. So, just a footnote. Small characters. Thanks.

DAVID MCAULEY: Thanks, Kathy.

GREG SHATAN: I just wanted to interrupt and just say we should do that for all the ... I think there was citation 1.4.1 earlier, so we should do either footnotes or live links or both.

DAVID MCAULEY: Thank you, both. Kristine, you're next.

KRISTINE DORRAIN: Thanks. My comment goes to 4D. I've got to switch my screen here. My comment here was that the proposed answer to Q4D

says the sub-team did not discuss this question and that's probably fine, but I disagree with the rationale. So, it says due to the consideration that it is more appropriate for the TMCH discuss, it's not within the scope, I don't necessarily think it's a TMCH discussion. Once the registration is in the clearinghouse, it's in the clearinghouse and that's it as far as the clearinghouse goes.

What the registry operator does with that file, whether there's an additional claims, whatever happens with that is actually not part of the Trademark Clearinghouse consideration.

So, I agree that we didn't discuss it. I agree there was a lot of divergence. I strongly oppose a recommendation that we would have to provide some sort of a release of the name to the sunrise owners first, but I'm actually just contesting the accuracy of that statement. It's inaccurate to say that this is a TMCH issue and not a sunrise issue. So, that's my point. I don't know what we would stay instead, but I'll think about it. Thanks.

DAVID MCAULEY:

Thanks, Kristine. That's a fair point. Greg and I will take that under advisement for granting. Maybe it will be simply be that we did not reach agreement – there was no wide support. Something like that. Susan, I think your hand is next. Why don't you go ahead, please.

SUSAN PAYNE: Yes, hi. Thanks. I'm sure we did discuss it. I don't recall it. It was probably a call I missed. But I completely agree with Kristine. I don't agree with ... We're on opposite sides of this camp, so I don't agree with that part. But I completely agree that I don't think this is a TMCH issue and it's absolutely in scope for the conversation on sunrise, but we just, as a group, don't agree with me and I find that astonishing, but hey.

DAVID MCAULEY: Thanks, Susan. We're all astonished. Maxim, go ahead, please.

MAXIM ALZOBA: Actually, the [inaudible] release of the reserve names in favor only in TMCH owners was discussed, and as I remember, the issue is all [current geo-TLDs] besides [inaudible] might finish [inaudible] use reserve names for delivering the domain names for the public services of the cities, like police, [inaudible], firefighters, names of the monuments, streets and the requirements to give the ultimate priority to TMCH owners would cause real issues because the registry – [inaudible], registries, usually geo-registries, established in the same country and they would be directly regulated by the local regulation which they will have to change a bit in favor of the ... [inaudible] doing this will have to

deliver this and that, so it will cause lots of issues. And given [inaudible] geo-registries will not be able to deliver what was promised to local governments. Thanks.

DAVID MCAULEY: Thank you, Maxim. Greg, go ahead.

GREG SHATAN: Thanks. Just on this last point, I think there's probably a definitional issue because I think that for those in the camp that Susan is in, we're not thinking that those are the names that should be going through sunrise, like police, fire, and sanitation but the more general reserve names, if somebody reserves business or sex or Procter & Gamble or something like that. So, maybe the fact is that everything is lumped together as a reserve name [inaudible].

That said, all that we're saying now is that there were diverging opinions, and perhaps unless the text itself is unfairly characterizing where we're at, we can discuss the deeper issues over coffee. Just a suggestion.

DAVID MCAULEY: Thanks, Greg. Next hand was Susan.

SUSAN PAYNE: Thank you. I think what Maxim says is really relevant, and indeed that's kind of the information that we talked about on Tuesday is some of the information that we're seeking from people when we were asking about ALPs and QLPs and whatever the other one is.

I suppose, ultimately, if we finish – when we're coming to the final report, if we've ended up coming up with a different solution on that, this might – potentially there might be less of an issue on this, although I recognize that probably they'll never be agreement on this.

DAVID MCAULEY: Thanks, Susan. Back to Maxim who raised his hand as Greg was speaking. Maxim, go ahead, please.

MAXIM ALZOBA: Short comment to what Greg said. Actually, words like hotels, taxi, business might be requested by the governments. In our case, it was requested because some activities they require local license with the municipal entity. I know at least one other geo-TLD which used taxi. It was some kind of Yellow Pages for approved taxi services which were approved, like quality of service, etc., by the municipal entity.

Business, for example, might go to the business development of the city. In our case, a few items went to departments of the city

which are in charge of supporting the small business and hotels, for example.

So, it's not necessarily the generic words that city, mayor's offices, are not interested in generic words where they want to promote the city. For example, they want to have some kind of catalog of trusted services for some particular area. It doesn't mean they want to sell it. They want to ensure that this area associated with this city stays in reasonable limits.

GREG SHATAN:

I think point is taken but you don't want to use up your own time for later. Anybody else have anything on this that comments to whether the text is inaccurate, hopefully? Kathy, if you could raise your hand in the ... Kristine has her hand up in the room, so we go to the room first.

KRISTINE DORRAIN:

Thanks. I wanted to support the language that staff has added up until the last sentence. I like everything to release it. I do not like ... I am one of the several sub-team members that did list some registry concerns. But in all fairness, I think that statement is very ambiguous. If I were reading that, as a non-RPMs member, I would like, "Oh! Where's that list? Why can't I see that list?" I don't think it adds anything to the discussion to say that we talked

about it, we made a list, and we refuse to tell you what it is. So, I just like the first sentence and be done with it. That's my proposal. Thank you.

GREG SHATAN: Kristine, I think they were just trying to answer the second half of the question, but you're right, it leaves kind of a dangling film at 11 sort of thing. Kathy?

KATHY KLEIMAN: Could somebody explain to me how this would happen? How do you provide trademark owners in the Trademark Clearinghouse notice of the release? How do you know who they are?

GREG SHATAN: Kathy, do you have a suggestion change in the text? I'm asking Kathy if she has a suggested change to the text.

KATHY KLEIMAN: Yeah, a comma at the end, if this is feasible.

GREG SHATAN: Do we need to discuss the feasibility? I assume it would just be a general notice to the entire TMCH or a general notice of sunrise that it was public, as sunrises would be. But that only TMCH

owners could participate. So, maybe the problem is the way the question is structured. Griffin, let's stick to the room if we can.

DAVID MCAULEY: Greg, I'm going to jump back in for a quick second. To Kathy's point, maybe we could say something like "to the extent feasible" and simply leave it at that. But I also want to pick up on what Phil said in chat and that is the substantive discussions have been held, so we are down to a drafting exercise. So, thanks, Kathy.

KATHY KLEIMAN: Old hand. But still, I think we [impose] sunrise now, right?

DAVID MCAULEY: Okay. If it's an old hand, then Griffin?

GRIFFIN BARNETT: Thanks. I think maybe, Kathy, your concern is – because we're thinking about this maybe too broadly. I think this is to address a very specific type of issue which is where a registry has reserved a name prior to sunrise that would otherwise had been eligible for a sunrise registration. And then following the conclusion of that sunrise has decided to release that name.

So, the issue here is has that practice of the registry reserving that name during sunrise – again, in the context of some of the other

issues that we were talking about before unfairly prevented that. Otherwise, sunrise eligible trademark owner from getting a name during sunrise when it otherwise should have been available. So, this idea was intended to potentially address that type of situation. But again, I don't know that we need to go into detail about—

GREG SHATAN: Are you okay with the “to the extent feasible” at the end? Because at this point we're—

GRIFFIN BARNETT: No, I don't think it's necessary because I think we don't ... Again, we're not saying we should do this because, again, we've captured divergent opinions which is, if that's what has been captured, that's fine but I don't think we need to discuss the feasibility of it in the context of our proposed answer here. I think if we had said, yes, registry operators should be required to do this if feasible, that would make sense. But because there's diverging opinions, I don't know why it's necessary to say that.

GREG SHATAN: I'm going to turn to staff.

JULIE HEDLUND: Yeah, [inaudible] the queue. What I'm seeing in the room is Maxim, Susan, and Kathy. Maxim, is that a new hand?

MAXIM ALZOBA: Yes, it's a new hand.

JULIE HEDLUND: Please go ahead.

MAXIM ALZOBA: Actually, this language, would it be approved, opens the door allowing anyone to register a trademark equal to some thing in the reserve list of a particular TLD and then saying, "Hey, guys, it's the rule. I have the right. Release it. Or when you release it, it's mine.

So, first of all, we [should] be limited, even if for some reason it's approved. It should be limited to them, actual contents, and [term limited], because for example, some registries have requirements that preventing gaming from some search parties saying that we do see ... We publish, for example, some list and then we see everything happened before that date is not so good.

GREG SHATAN: Let's try to suggest text. Just to leap frog things, I'm wondering, most of this answer just reiterates the question and we're arguing

about whether we should reiterate the question when we haven't come to an agreement on an answer at all. So, maybe we should just say that the sub-team had diverging opinions on this matter, period. Kathy, is that an old hand now? Why don't we move on?
David?

DAVID MCAULEY:

Greg, thanks. I think that basically wraps up question 4, but I put my hand up to say that I wanted to thank everybody for your patience while I'm doing remote cochairing. It is much more challenging than I expected, so it's disjointed. I've asked Greg to handle the queue from here on in and I would like to remain alternating questions and teeing them up but thank you for your patience during this time. Over to you, Greg.

GREG SHATAN:

Thank you. Start of question 5A and we're at the end of the first hour and I said to myself if we reached question 5A at the end of the first hour we will be behind schedule, so we're behind schedule. I will read question 5.

Does the current 30-day minimum for a sunrise period serve its intended purpose, particularly in view of the fact that many registry operators actually ran a 60-day sunrise period.

Proposed answer. The sub-team generally agreed that the current 30-day minimum for a start date sunrise period appears to be serving its intended purpose.

Question 5A1. Are there any unintended results?

Proposed answer. Some sub-team members believe that there are unintended results, such as complications when many TLDs are launched simultaneously for the start date sunrise for 30 days. Other sub-team members believe that the 30-day advance notice before the launch of a start date sunrise may help mitigate the administrative burdens on the trademark owners.

Question 5A2. Does the ability of registry operators to expand their sunrise periods create uniformity concerns that should be addressed by this working group?

Proposed answer. The sub-team generally agreed that the ability of registry operators to expand their sunrise period does not create uniformity concerns that should be addressed by this working group.

Question 5A3. Are there any benefits observed when the sunrise period is extended by 30 days?

Proposed answer. The sub-team generally agree that there are benefits observed when the sunrise period is extended beyond 30 days and noted that most registry operators have already run a

60-day end date sunrise. Extending beyond 30 days provides more time for trademark owners to decide whether to participate in the sunrise period.

Question 5A4. Are there any disadvantages?

Proposed answer. Some sub-team members believe that there are disadvantages when the sunrise period is extended beyond 30 days but the sub-team did not come to a conclusion on this point.

We'll take a queue, or if everybody believes that actually summarized where we ended up. It's a fairly coherent-sounding answer. Michael?

MICHAEL KARANICOLAS: Thanks. I would suggest that there are divergent opinions on whether or not there are benefits from the sunrise period is extended beyond 30 days. I say that because I don't see benefits when it's extended.

JULIE HEDLUND: So, your suggestion would be instead of generally agreed, it would be the sub-team had diverging opinions on whether there are benefits.

MICHAEL KARANICOLAS: Yes.

GREG SHATAN: Are there others who agree with Michael? That they disagree with having sunrises that were longer than 30 days or that there were benefits from the longer sunrise periods? I guess the question ... General agreement doesn't mean complete agreement. We have one person saying that they have a diverging opinion, so the question is whether there are in fact diverging opinions which would mean that there were multiple diverging opinions and ...

JULIE HEDLUND: And we have a queue. After Michael, we have Maxim, Kathy, Zac, and Kristine.

GREG SHATAN: Maxim?

MAXIM ALZOBA: Actually, it was a reason for mentioning a 60-day end date sunrise, because in general public, I'm not sure people understand the difference between [inaudible] start date, sunrise which is 30, and 30 days before that, you have to notice. You have to notify everyone that you will have in 30 days the sunrise. So, in total, it's still 60 days. It was added to prevent confusion first.

The second, yes, we had diverging opinions because extension of sunrise effectively is the extension of period where a registry cannot conduct any business because all the registry does is waiting for the current sunrise registration in the case of the end date or providing registrations to the TMCH, those who have TMCH [interest]. Thanks.

GREG SHATAN: Thanks, Maxim. Kathy?

KATHY KLEIMAN: It's hard to follow the edits in real-time, so if I'm repeating something you've already put in the text, forgive me. For 5A, I think that's right, that we generally agree that the 30-day minimum appears to be serving its intended purpose. Let me share that someone who's not with us now who is a member of the sub-team, [inaudible], submitted a proposal to eliminate the sunrise completely. So, I think we can put him in on divergent opinion alongside Michael.

So, 25A1, are there any unintended results? Still working on that one. This is fairly new text, guys. So, 5A2. Is that where we put in the divergence question to staff, that there's a divergent opinion on 5A2?

GREG SHATAN: No, 5A3 I believe it was.

KATHY KLEIMAN: I think 5A2 raises concerns about expanding the ... I don't think there's any agreement on expanding the sunrise beyond the 30 days. So, that gets us to 5A3 which is ... I thought that what we talked about was that there are two different ways to do the current sunrise and that we're not giving a blanket "we agree to extend beyond 30 days" but that there might, arguably, support for the two variations.

One, I believe – and Griffin correct me if I'm wrong, please – is that there's a 30-day notice and then a 30-day period. And the other is the 60-day end date sunrise. So, the notice comes out and then it stays open for 60 days.

I don't think there's agreement – Michael, correct me if I'm wrong – that we extend beyond the existing system.

GREG SHATAN: I have Zac next on the list.

ZAC MUSCOVITCH: Thank you. If we could just scroll up just a touch there, Ariel.
Thank you so much. I'm going to go to my Word document.

I'm not sure that there's diverging opinion because it certainly helps some parties to extend the sunrise period. I can see that regardless of my position on the merits. It puts other parties to a disadvantage, whether it's the registry operators or just the average registrant. So, maybe there's agreement that extending it helps certain parties and disadvantages others, rather than characterize it as a divergence. Thanks.

GREG SHATAN: Thank you, Zac. Kristine?

KRISTINE DORRAIN: Thanks. Maybe what we're missing here is the idea that nobody is recommending that the working group extend sunrise, either start date or end date sunrise. I think the point here is that we are leaving it to the discretion of the registry operator's business model.

So, we've agreed that the minimum sunrise, as stated in the current guidebook, will stay the same – 30 days for start date, 60 days for end date. But as a registry operator, if your business is such that extending the sunrise has some sort of a bigger impact on your business because of the way your registry business is set up. Remember, not every TLD is trying to sell via lowest price to the most number of registrants. You can think of restricted TLDs

like dot-bank or something. There's a lot of business models at play here and we can't write a recommendation that favors one business model.

So, I think we need to keep in mind that we're not recommending a change but we're allowing registries to be flexible as needed. And I think we did have pretty general agreement that the registries should be able to do what they need to in this area. I do recognize that Mitch disagreed, but I think overall, as far as the participants on the call, I thought we actually did have fairly general agreement and that one or two people were going to maybe be able to put in a diverging viewpoint if they wanted. Thanks.

GREG SHATAN:

Thanks, Kristine. Susan Payne?

SUSAN PAYNE:

I think one of the issues that we have here is that the charter questions, even after we revised them, failed to properly understand and explain the difference between the two types of sunrise, and consequently, all of the conversation we have. Then, the responses that we have and potentially the responses and the feedback we might get from the community also fails to understand that.

So, it seems to me that actually we need somewhere in this and probably in the beginning of the answer to question 5A, something that just says the working group noted that the charter questions in this area were not as clear as they could have been and recognized the two different types of sunrise. The start date sunrise, which is the following, and the end date sunrise which is the following. And that in both cases, the total duration of a sunrise was effectively 60 days because one had 30 days' notice plus 30 days' operation and one had 60 days operation.

But I just think we need to put some kind of context in there that isn't in the charter question because we're having this conversation because I think some people in this group still don't understand the difference between the two. We had almost all registry operators chose to do the 60-day version. So, there are clearly some benefits perceived by the people who are running the sunrise, that the 60-day version is better. But the charter questions, and frankly our answers, just don't reflect that difference in the two types.

GREG SHATAN:

I'm going to interject because I think we're talking about something that's actually factually troublesome. The facts aren't right so I think we need a factual predicate that the sub-team wishes to clarify. I'm reading off of – I know it's not an

authoritative source – but ICANN Wiki. End date sunrise and this type of sunrise, the registry can announce the sunrise as late as the day the sunrise starts but must run the sunrise for 60 days or more. Start date sunrise, in this type of sunrise the registry must give 30 days’ notice before commencing the sunrise. Once it starts, it must run for only 30 days or more.

So, the whole question about extension doesn’t even seem to imply something longer than the statutory minimum. The extension beyond 30 days only applies to the start-date sunrise and the extension of the end-date sunrise would go past 60 days. If that’s not the case, then the word extension doesn’t make any sense, in which case the question doesn’t really make any sense. It seems to me that we’re asking more ... The question is trying to ask what Kristine framed which is are there benefits to extending the sunrise beyond its minimum, whatever that minimum is. And it was inartfully phrased, focusing on the 30-day which is really only the start-date sunrise for which anything beyond 30 days would be an extension.

So, I don’t know if I’ve muddied the waters or cleared the waters but I think we do have to begin with some sort of text that sets the factual predicate for the answer to this question because the questions don’t make the factual predicate clear.

JULIE HEDLUND: Staff is endeavoring to do that right now, so that's what Ariel is doing, frantically typing away. I have Maxim and Kathy in the queue.

MAXIM ALZOBA: I would support what Susan said because I'm not sure if we can say that the subgroup identified general confusion. We saw it in the answers. Between two types of sunrise. Also, I would like to remind that the end-date sunrise might not be suitable for some registries because, for example, the current legal practice. In our case, it was [inaudible] where we had to choose the start-date sunrise because we were not sure if the [inaudible] committee sees something good, where instead of some kind of predicted prices you have auctions. Thanks.

GREG SHATAN: Kathy?

KATHY KLEIMAN: It's hard to follow all this language change so early in the morning. I just want to say that. So, for 5A1, are there any unintended results? I think we need to change ... Thinking back to Claudio's proposal, if I remember correctly, he was talking about the future and envisioning a future where we're launching many TLDs at the same time. And I share his concern about that.

But, the way I think we would phrase it is not in the present but in the future. So, some sub-team members believe that there may be unintended results, such as complications when many TLDs are launched. We're talking about the future. Will be launched simultaneously. I don't think we were talking about problems in the past.

UNIDENTIFIED FEMALE: Yeah, we were.

KATHY KLEIMAN: I don't ... His proposal was about the future. So, I'd like to propose this as language. Some sub-team members believe that there may be unintended results such as complications when many TLDs are launched simultaneously.

JULIE HEDLUND: What if we said some sub-team members believe that there were, and may be, unintended results? What if we tried to capture both points of view, that there were and may be?

GREG SHATAN: One concern I have is trying to speak for members who aren't here. I do recall a discussion of problems in the current sunrise, that some people felt that they came too fast and too many. Other

people say, “Well, tough nuggets.” I think the fact that we ... I think we’re muddying the language. So, unless nobody thinks that there was a problem with sunrise in the past in terms of too many at once, we should probably just keep the language the way it is or if Claudio wants to weigh in when he wants to weigh in. But I don’t think ... I don’t recall what Claudio’s suggestion was but I don’t recall it being predicated out of the idea that there weren’t any problems in the past. So, without Claudio here, we can’t really go one way or the other on Claudio’s language.

JULIE HEDLUND:

Pardon me. There’s just some notes in the chat that may be helpful, nothing that this was a review of RPMs, so inherently the sub-team and the work group is looking at the past. And I think the question is asking about the past, so at least in that respect, we would be noting that.

GREG SHATAN:

At this point, we’re only talking about some sub-team members, so some team members believe that there were ... I think there were sub-team members who believed that there were unintended results. Was it intended to overwhelm people with the number of sunrises?

KATHY KLEIMAN: No, it was future-facing. His proposal was about the future.

GREG SHATAN: But we're not talking about a proposal. We're talking about the answer to this question.

KATHY KLEIMAN: Then put in divergent.

GREG SHATAN: Well, can we say that other sub-team members believe that there were no unintended results and that no TLDs were launched simultaneously.

JULIE HEDLUND: Susan has her hand up in the queue.

GREG SHATAN: Please, go ahead.

SUSAN PAYNE; Kathy, this was a reflection that some sub-team members. So, that already indicates divergence because if it's only some, it means not everyone. But it was an indication that there certainly had been some who had referred to experience where they or

their clients found it a big challenging when they were all launching at the same time and they were trying to keep on top of multiple sunrises.

But you're absolutely right, in terms of what we're doing here. We're talking about the future. We can't say, "Oh, in the future, there might be a problem, but there wasn't a problem in the past." We're saying the reason why we're saying there might be a problem in the future is because people had that experience in the past and we talked about it.

Honestly, I don't even know why we're having this conversation because we only got some sub-team members. We're making no recommendations whatsoever on any of this. It's all a waste of time.

GREG SHATAN: Kathy, is that a new hand?

KATHY KLEIMAN: Request for two minutes to actually read the text that's now in the current Google Doc in lieu of what Susan just said.

JULIE HEDLUND: We didn't change anything in the text.

GREG SHATAN: Does anybody support changing the text other than Kathy?

JULIE HEDLUND: To the extent that staff have made changes, they've been red-lined. There are no changes to this answer.

GREG SHATAN: Any other comments on question five? Kathy?

KATHY KLEIMAN: Q5A2. The sub-team generally agreed that the ability of registry operators to expand their sunrise periods does not create uniformity concerns that should be addressed by this working group. I think there's divergence on that. The reason I'm pausing is to look at everything in context. I can understand what Susan is saying for the earlier part but I don't think there's agreement on ... I mean, there's not agreement on keeping the sunrise, much less expanding it.

GREG SHATAN: This question is very specifically about the uniformity concerns.

KATHY KLEIMAN: I think there's divergence on the proposed answer of Q5A2. I don't think we generally agreed on expansion, and here I'll invoke

Kristine who will not be happy that I'm invoking here, that the original sunrise periods were carefully negotiated, that these were balances between trademark owners and registrants. So, to broadly suggest expansion doesn't raise concerns.

GREG SHATAN: It does not broadly suggest that. It only suggests uniformity concerns. Can you [inaudible] uniformity concern ...

KATHY KLEIMAN: What is a uniformity concern?

GREG SHATAN: I didn't write the question. Griffin?

KATHY KLEIMAN: I didn't write the answer.

KRISTINE DORRAIN: Since I've been invoked, that is my general premise, Kathy. But here – and I've said this before already today – I think what we're talking about is the ability of registry operators to adjust their personal per-TLD sunrise period for their own business needs does not create a general community-wide problem. There are

lots of tools out there to notify brand owners when sunrises are stopping and starting, etc., and that was what we had discussed.

When I go back to this point that the idea of mandating a static sunrise period is a problem. We talked a lot about maintaining the minimum. So, expanding doesn't mean that we are recommending an expansion. It means that we are allowing the registry operators to expand to meet their business model and that allowing registry operators to do that is not generally going to be a uniformity problem across the community process. So, perhaps there's a way to clarify again so that we're not implying that we're recommending an expansion but that we're allowing an expansion and we don't believe that that's going to be a uniformity problem. Thank you.

To be clear, as is the status quo, Greg just read start date is 60 days – well 30 plus 30 – or more, end date is 60 or more. That is not a uniformity problem in the current guidebook. It is not going to be a uniformity problem in the future. That is I think what we have general agreement on. Thanks.

GREG SHATAN: I see Phil Corwin next. Phil, we're not hearing you.

PHIL CORWIN: Can you hear me now?

GREG SHATAN: Yes.

PHIL CORWIN: Good. Just some general comments. Our answers are based on the past, what happened in the first round, and recommendations where we have any are about the future, what we are suggesting would be changed in a subsequent round. Our answers should be as short as possible to accurately reflect our discussion – not today’s discussion, which is simply about whether the answers and any recommendations reflect what we actually did when we discussed the substance of this.

And on the substance of this question, we’re not recommending any change in the approach on sunrise. We’re just saying that registry operators should be permitted, if they wish, to volunteer as they could do in the first round to have a longer sunrise period which in no way negatively impacts the efficacy of the RPM. In fact, it probably enhances it. So, I think we should move on as quickly as possible. I think we’re in agreement and should be spending time re-litigating past discussions. Thank you.

GREG SHATAN: Thank you, Phil. Michael?

MICHAEL KARANICOLAS: I think that given that there is confusion about whether or not there's an expansion coming from this recommendation and diverging opinions on—

GREG SHATAN: We don't have a recommendation.

MICHAEL KARANICOLAS: It's the preliminary recommendations under—

GREG SHATAN: Right, well—

MICHAEL KARANICOLAS: What I was going to say is can we be a bit more explicit that we're not recommending an expansion?

JULIE HEDLUND: We're not recommending expansion.

GREG SHATAN: Does the language generally accurately ... We're never going to get through this if we are nitpicking and trying to somehow tilt the text five degrees one way or another. Question six has some real

actual work to be done on it because there is new text being suggested there. So, I suggest that we try to stick to whether we captured – where we ended up. Any further comments on this? Kristine took her hand down. Phil and Michael, I think those are old hands. Anything further on question 5? I see no hands in the chat, in the Zoom room. I'll have David take questions.

KATHY KLEIMAN: How has this discussion been summarized now in any revisions to Q5, please?

GREG SHATAN: I don't believe we had any revisions to Q5.

ARIEL LIANG: I think the only part is 5A. We will add clarification what sunrise period we're talking about – there are two kinds – and then we'll add the reference and links to clarify that. Then, I think for Q5A3, we will say the sub-team had diverging opinion on this question, basically. That's what we'd have captured.

GREG SHATAN: On 5A3, we're talking about extension beyond 30 days. That's only referring to the start date sunrise. So, we may want to clarify that in the answer because I think that's what was clarified before

but now that text has been taken out because there is no such thing as an extension beyond 30 days for the end date sunrise.

JULIE HEDLUND:

This is a question really to the sub-team co-chairs and the full working group co-chairs. We're three minutes to the top of the hour. This session is due to end at 15 minutes past the hour at 10:15. It seems unlikely that the sunrise sub-team will complete its work in roughly that amount of time. So, the question is, as we have all of us here, and we seem to have momentum, should we continue into the next session that's reserved for the working group until the sunrise sub-team completes its work? Otherwise, it would have to be extended to meetings following ICANN 65.

GREG SHATAN:

I'll take a queue on this. I have Kathy's hand. I, for one, as co-chair would appreciate the ability to roll through and see if we can actually get through the whole thing rather than summarizing it to the rest of the team which to me doesn't seem to be as substantive in terms of developing policy. But that's my opinion. David?

DAVID MCAULEY:

Thanks, Greg. My phone cut out a little bit so I didn't hear all of what Ariel said. Have we also addressed 5C? And then with

respect to the comment or suggestion Julie just made, I tend to agree with Greg, somewhat reluctantly and my reluctance comes from the fact that I'm participating remotely and it's extremely not good. I'm not holding up my end of it but I think it's a good suggestion if we can. I recognize that the full working group co-chairs may have different opinions, given the agendas that we set. Anyway, that's my thought. Thank you.

GREG SHATAN:

Any other comments? Especially since, to my mind, giving away the fourth session is more a decision of the full team co-chairs. We do have Kathy and Phil available. Now I see a hand from Phil. Thank you.

PHIL CORWIN:

Yeah. Given the existing momentum, I think it's much better to go another 15 or 30 minutes into the next session and wrap this sub-team's work up than to stop an artificial deadline and try to pick it back up in two weeks. I support moving on into the fourth session to conclusion of this sub-team's work. We'll have plenty of time after Marrakech to present all the results of both sub-teams to the full working group and move on. Thank you.

GREG SHATAN:

Thank you, Phil. Kathy?

KATHY KLEIMAN: With my co-chair’s hat on, if there’s general agreement on continuing, then I think we just make it very clear when we start the next session and thank anybody who came on from the full working group because we had announced it, for one thing, and we may have people waking up in the middle of the night in North America. I’m happy to do that.

GREG SHATAN: I’ll note that, on David’s behalf, that it’s now 5:00 AM in America which means we’re now asking him to, instead of finally go to sleep, maybe to stay up.

KATHY KLEIMAN: Sorry, David.

JULIE HEDLUND: And I just received an email from Brian Beckham. He says, “Continue with sunrise, please.”

GREG SHATAN: So, for David, literally continuing with sunrise. I think we’re seeing what we can do. Q5B.

DAVID MCAULEY: Greg, I have a question. So, is it time to address 5B or are we going to skip past that? I didn't hear what Ariel said.

GREG SHATAN: We're going to address 5B. We have 15 minutes left in this session and then coffee which will be desperately needed to continue with the next session.

DAVID MCAULEY: Okay.

GREG SHATAN: So, let us do 5B.

DAVID MCAULEY: Okay. Let me queue up 5B. Thank you. What I'll do, question 5B has basically one overarching question, two sub-parts. I'll through the questions and proposed answers and then I'll come back to the preliminary recommendation.

Question 5B. In light of the evidence that we've gathered, should sunrise period continue to be mandatory or become optional?

The proposed answer we have for that is sub-team had widely diverging opinions.

On 5Bi, the question is should the working group consider returning to the original recommendation from the IRT and STI of sunrise period or trademark claims in light of other concerns, including freedom of expression and fair use?

The proposed answer is the sub-team considered this question but did not reach a conclusion.

Then, finally, 5Bii, in considering mandatory versus optional, should registry operators be allowed to choose between sunrise and claims? That is, simply make one of them mandatory.

Proposed answer. Sub-team considered the question but did not reach a conclusion. We came up with one draft preliminary recommendation and that is that sunrise sub-team recommends that the mandatory sunrise period should be maintained.

Open to the queue and I see Michael's got a hand up. Go ahead, Michael.

MICHAEL KARANICOLAS: Yeah. This really jumped out at me because I see the discussion is saying that we have widely divergent opinions on whether the sunrise period should be mandatory or optional and I'm not sure how you get from there to a consensus recommendation that the mandatory sunrise period should be maintained. To me, if there

is widely divergent opinions and there's no consensus, I don't understand how we get a recommendation out of that.

DAVID MCAULEY: Thanks, Michael. I frankly am not surprised by it because I don't see any wide support [from a change for where we are]. But in any event, Kristine's hand is up, so go ahead, Kristine.

KRISTINE DORRAIN: Yeah. That's exactly right. This is true for all the PDPs in the absence of support for change. The default is status quo. It's what we have today. It's what's going on. Unless we can get a community to rally around a change, that is the recommendation that we change nothing. Thank you.

DAVID MCAULEY: Okay, thanks. Susan's hand is next and then I'll give the queue management over to Greg. Thank you.

SUSAN PAYNE: Thanks. I realize this is kind of wordsmithing but this is a sort of yes/no question. Do we really need the word "widely"? It seems to me that the sub-team had diverging opinions but what does "widely" add? It really is just like you either think yes or you think no. What else is there?

GREG SHATAN: Thanks, Susan. I think we have Maxim next.

MAXIM ALZOBA: I would support the point of view Kristine in that we need to maintain status quo, and even if by some reason the sunrise removed, then registries will have to invent something like that because we don't want to stand in the courts like against the brand owners. We will have to mimic that to resolve this issue. So, it's a bit pointless. Thanks.

GREG SHATAN: Michael?

MICHAEL KARANICOLAS: Yeah. Maybe the reason why this was so ... I understand your point, that in the absence of consensus for change, the status quo survives. But I guess the reason why this was a bit confusing to me is because we don't have those recommendations for all of the other questions saying in the absence of agreement, the working group ... And reading it this way sounds like there was consensus in favor of the status quo which is not quite the same thing as the absence of consensus leading to the status quo.

So, I assume that this is going to be made uniform throughout the document, if for every question where there's no consensus we are recommending the status quo. But I would propose – and maybe this is wordsmithing – but I would propose something along the lines of in the absence of consensus for change, the working group adopts the status quo or something along those lines just to note that there is not consensus [in] support of this policy. Thanks.

GREG SHATAN: I have Philip Corwin next.

PHIL CORWIN: Yeah. I understand Michael's concern but maybe something like we're not recommending any change in the mandatory requirements for sunrise period and the two options presented to registry operators which is referencing to 30 and 60 days. So, we're really not recommending any change from prior practice. Whether that's a recommendation or simply [inaudible] to the default position is an interesting philosophical question. Thanks.

GREG SHATAN: It sounds like you're suggesting rather than stating in the positive, state it kind of in the negative, that we do not recommend the change, rather than we recommend no change. I think that at

least meets the idea, meets the concern that somehow there's a positive step being taken.

PHIL CORWIN: Yeah. Greg, just to respond, generally we're making a recommendation as a sub-team. We're recommending some change from first round, [inaudible] really haven't agreed on any recommendation for change. I don't know if it's necessary to say it but the default – we go back to the default which is that nothing changes and the first round [inaudible] continues for subsequent rounds. I don't know if we have to state that but that's the effect.

GREG SHATAN: We should look at this maybe as a broader uniformity question because the question is: how do we say nothing? Griffin?

GRIFFIN BARNETT: Thanks. And not to beat this to death but I think we do want to look globally at how we address this because there's obviously other scenarios like this, as Michael suggested. So, I don't know that we even need text here in terms of preliminary recommendation but perhaps we just capture it globally as in the absence of a working group recommendation. The status quo remains in place or something.

GREG SHATAN: Not to dance on the horse you just beat but I think the only reason this was done is that there's some sunrise questions that ask whether change should happen and others are more thought questions that don't really go to whether or not a recommendation should be made. But at this point, it's how many angels can dance on the head of a pin?

JULIE HEDLUND: Just a note from a staff point of view. We'll make sure this is uniform, as requested. And to Greg's point, where there is an absence of recommendations, it's usually because the question didn't really ask for any positive action.

GREG SHATAN: David, I'll turn it back to you.

DAVID MCAULEY: Thanks, Greg. If we're done with the queue, then I guess we're going to move on to question number six. Is that right? If you want to [inaudible], I would be happy to. My plan would be to turn to Kristine and/or Maxim to discuss the new language.

GREG SHATAN: Is the question six new language from Kristine and Maxim again? Okay. Let me just queue it up in terms of reading it out, although we're six minutes before the coffee break, so hopefully people can remember this after they've had their coffee. I guess the question is whether we should read the current language or the new language – or both. I guess both. Yes, David?

DAVID MCAULEY: I was just going to suggest that we simply indicate the questions and then people can read what we had proposed and then turn the floor over to Kristine and/or Maxim. As I said, it's hard for me to do this remotely, so I'm going to defer to you and thank you for your queue management.

GREG SHATAN: At this point, we'll just read out the questions and then ask that people read the prior proposed answer and the new proposed language in green.

Question 6A, what are sunrise dispute resolution policies and are any changes needed?

Question 6B was are SDRPs serving the purposes for which they were created?

Question 6C, if not should they be better publicized, better used, or changed?

Those are the three questions.

We had a previous proposed answer and then we have new proposed answers from Kristine and Maxim. Maybe in the few minutes left, Kristine can kind of set us up.

KRISTINE DORRAIN: Thanks. To be fair, this is Kristine and Susan language. Maxim and I worked on a different [inaudible]. I don't want to blame Maxim. You throw all the tomatoes this way. Maxim is innocent of all charges.

GREG SHATAN: You can still take credit, Maxim, if it works.

KRISTINE DORRAIN: Up to him. He can decide afterwards. So, essentially, what we – Susan and I – tried to do is, after the last call, we thought ... Even though the text really characterized a lot of divergence, we thought at the end of the call that there was a lot more divergence than the text suggests. More consensus than the text suggested. Thank you, sorry.

So, we thought there was a way to try to document that consensus a little bit and we thought the easiest way to do that would be for us to put some straw text out there to let people take a whack at.

So, I'm just going to summarize what we heard the consensus to be on the last call. Basically, if you look at the proposed answer, we highlight the text out of the guidebook that just talks a little bit about what the SDRP is for. Then, we recommend a three-fold approach, which you'll see in the preliminary recommendation.

So, we generally heard that we agreed that points one and three in the Applicant Guidebook have been completely subsumed by the Trademark Clearinghouse. So they were not the type of activities that registries could even deal with because it had to do with the entry of the mark and that's not something that registries can do anything about.

So, we heard some agreement with that, but what we heard people say was, "Well, golly, since the TMCH dispute process was not even contemplated at the time the Applicant Guidebook was written," we need to go back and include that.

So, the first step is to codify the TMCH dispute process. So, first of all say if we're going to take out subs one and three in the Applicant Guidebook, you need to put in a replacement. So, we're

not losing one and three. We're just shifting them over to where they currently exist as of today. So, this captures the status quo.

So, today you have to go the Trademark Clearinghouse if you want to challenge SDRP numbers one and three, or Applicant Guidebook section 622 and 624. You have to challenge those at the Trademark Clearinghouse.

So, first recommendation says, "Okay, go to the Clearinghouse. Let's get that in the guidebook."

Second recommendation is then to remove those duplicitous references in the Applicant Guidebook, one and three.

Then, the third recommendation, which we heard a lot of call for on the call, which was then put a hook in the guidebook so that registry operators can act on it because we understood that it's all great to go challenge the mark at the Clearinghouse, get that yanked out. It's all well and good for the registries to have disputes over the things they can control. But there was a disconnect between now what do you do if you get a mark taken out of the Clearinghouse but there's still a registration based on that. And I'm not going to say invalidated but a mark that was pulled out of the Trademark Clearinghouse.

So, you have to be able to take that dispute resolution finding from the TMCH, bring it to the registry operator and say, "Sorry,

you accidentally issued a domain name registration that was on the result of an invalid Trademark Clearinghouse entry. Therefore, you need to now delete that from your [rules].” Then the mark was deleted at the registry.

Now, we did hear some other suggestions there but the points that we captured in this recommendation, we think received pretty wide support on the call. So, if we got it wrong or people have questions or concerns, now is your chance. And I know Kathy just popped over here a minute ago to say: could we include a recommendation that the registry operator in its links and information direct people? Well, here’s our SDRP, and by the way, if you want to complain about a Trademark Clearinghouse record, here’s a link to go do that. And Susan and I would agree with that friendly amendment. Send them to the right place to get their problem solved and we’d be fine with that.

So, questions, thoughts, concerns? Did we get it right or did we get it wrong? Thanks.

GREG SHATAN:

It’s coffee time. Kathy, do you have something quick to bring us into coffee or to keep us away from coffee?

KATHY KLEIMAN: Just general agreement with Kristine and a request to staff per earlier things to make this all crystal clear for people who are reading, that the references are in the footnotes. Not just links, but text, so that no one has to parse it, that it's all right there for them to read. But otherwise, general agreement. Thanks for the friendly amendment.

JULIE HEDLUND: Thank you very much, Kathy. This session will adjourn. So, thank you, all, for joining. And for those who joined remotely, this session will close. We ask you to rejoin in about 15 minutes. That is scheduled to be the full working group session but the sunrise sub-team will continue its work at that point. Thank you very much.

[END OF TRANSCRIPTION]