

---

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

Thursday, June 27, 2019 – 10:30 to 12:00 WET

ICANN65 | Marrakech, Morocco

JULIE HEDLUND:

Welcome, everyone who has joined so far. This session is listed as the RPM’s PDP full working group meeting, but at least at the beginning of the meeting, we will continue the work of the Sunrise Sub-Team until that work includes, at which point we will revert to the original agenda for the full working group meeting. In the meantime, we’ll start with the Sunrise Sub-Team working session. Thank you for joining. We’ll focus on the Sunrise Sub-Team members and their work, although working group members are welcome to comment as well and to sit up at the table. Thanks, all, and we’ll start in a few minutes.

Again, welcome, everyone. This is the fourth and final session of the RPM PDP Working Group, here at ICANN 65. We’ll start in about, I’d say, two minutes. Note that we will continue with the working session of the Sunrise Sub-Team that just ended. Once that work is complete, we will revert to the agenda for the full working group meeting. Working group members are welcome to join, but this will be a working session of the Sunrise Sub-Team until that work is completed. Thank you.

---

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

Thank you, everyone, for joining. This is Julie Hedlund from staff. We'll go ahead and getting started. This is the fourth session of the Rights Protection Mechanisms PDP Working Group. Although this is a session scheduled for the full working group meeting, we are continuing the working session of the Sunrise Sub-Team that had been meeting in session three just prior to this one. When the Sunrise Sub-Team completes their work, we'll revert to the original agenda for the full working group meeting. In the meantime, this will be a working session of the Sunrise Sub-Team. We do ask Sub-Team members to come up to the table, and working group members may as well. The focus will be on the Sub-Team's work.

At this moment, then, let me go ahead and turn things over to our Co-Chairs, Greg Shatan, who's in the room, and David McAuley, who's co-chairing remotely. We're currently on Question 6. I will go to Greg Shatan. Greg, please?

GREG SHATAN:

Thank you, Julie, and thank you, sub-team, and thank you, members of the working group who've arrived and perhaps been unpleasantly surprised to find out that they'll be listening to the sub-team rather than participating in the plenary, in which they would have listened to the reports from the sub-teams.

---

As Kristine Dorrain summarized before we left for coffee, there is new language proposed for Question 6’s various subparts. I think, at this point, it would make sense to read the new language.

Kathy?

KATHY KLEIMAN: Greg, as a procedure note – Kathy Kleiman with my Co-Chair hat on – did you announce to the people who may be participating remotely that it is within the realm of possibility that we may get to the trademark claims summary?

GREG SHATAN: [inaudible]

KATHY KLEIMAN: Oh, okay. You did. Good. Good, good. As long as that was done, great.

GREG SHATAN: Yes. We will continue with the plenary. In the plenary, the trademark claims summary will come first, and the Sunrise Sub-Team will not. And just not.

So, Question 6A. I’m going to skip directly to the new text since the idea is to consider whether Kristine and Susan have spun gold

---

out of straw and found some more constructive answers or more meaty answers.

Question 6A. According to Section 6.2.2 and 6.2.4 of the Trademark Clearinghouse model of Module 5 of the Applicant Guidebook, which will be footnoted, an SDRP is a mechanism that a registry operator must provide to resolve dispute regarding its registration of sunrise registrations. It allows challenges to sunrise registrations related to registry operators' allocation and registration policies on non-exhaustive grounds, including on the grounds that the domain name that was registered does not identically match the trademark record on which the sunrise-eligible rights holder based its sunrise registration.

In the time between when the AGB was written and the TMCH requirements were established, the TMCH dispute procedure was created. This procedure allows for challenges to the recordal of marks in the TMCH that underlie sunrise registrations. As a result, two of AGB requirements for registry operators' SDRPs are moot. In any event, the registry operator is not the best place/party to adjudicate these challenges due to the fact that the registry operator is reliant on trademark eligibility information provided to it by the TMCH. We propose a resolution that codifies the current practice with no changes.

---

Then the preliminary recommendation that goes with this says, “The sub-team recommends that the next Applicant Guidebook be amended as follows. One, we recommend the new version of the AGB should include the TMCH dispute resolution procedure for challenging the validity of trademark records entered into the TMCH. This procedure is currently published at” – there’s a citation. “ICANN org should ensure that its contract for the provision of TMCH services makes the operation of the TMCH dispute resolution procedure a requirement for the TMCH provider.”

“Two, we recommend what is current Module 5 (Trademark Clearinghouse model Section 6.2.4) be amended to remove 1 and 3. We recommend the AGB Module 5 6.2.4 be amended to include 6.2.6. The registry operator will, upon receipt from the TMCH of a finding that a sunrise” – scroll down please – “registration was based upon an invalid TMCH record pursuant to a TMCH dispute resolution procedure, immediately cancel the domain name registration. Note: Registry operators should continue to have the option to offer a broader SDRP to include optional/additional sunrise criteria as desired.”

I will take a queue on this. I’d like at least at first to go to substance and not to wordsmithing. There may be some wordsmithing that’s a little bit more substantive than just finding

---

missing prepositions. I'd like to see if we can work at the broad picture and whether we're in the right ballpark.

Maxim, please go ahead.

MAXIM ALZOBA:

We don't have a definition of "cancel" for the domain in the registry agreement. There is a thing called the domain life cycle. We might either recommend to delete it. It locks in a certain amount of days in the status of being deleted. Or we might recommend to deem it void or something to recommend that the registration is deemed ineffective or something. But the word "cancel" just doesn't refer to anything from the technical end, the operational end, and the policy side of things for registries and registrars.

GREG SHATAN:

I assume we can find a better word, but, Maxim, overall do you think we're in the right place? That's the first question I wanted to ask: whether, setting aside the question of whether we somehow have managed to use a technically correct or incorrect word, is this answer generally one that people can feel satisfactorily about?

Let's see. I have no other hands in the queue. I see Kathy's hand in the room. We should continue to use the Zoom room since

---

David is – and there are other remote participants who are only getting more tired.

KATHY KLEIMAN:

Thank you to everyone in the Zoom room. The friendly amendment – in addition to that everything is referenced, because there are lots of sections here people would want to look at – is that the registries in their SDRP would provide a description and link to the TMCH dispute resolution procedure so that people will know that it exists and will know that this kind of alternate challenge that we’re pulling out of the SDRP exists in another place and have easy reference to that and clear knowledge that it exists and that it’s available.

I proposed the language, but I bet staff is going to – Ariel and Julie will do a much better job writing it up, if the suggestion is clear. Is that?

ARIEL LIANG:

Kathy, just to confirm, you want to add that language to Q6A at the end?

GREG SHATAN:

To the recommendation.

---

KATHY KLEIMAN: To the recommendation.

ARIEL LIANG: Oh.

GREG SHATAN: Kristine has a hand.

KRISTINE DORRAIN: Thanks. I was actually going to suggest that, too. I think it goes in our Point #3 in the recommendation, where we add 6.2.6 and we give direction to the registry operator to then, as Maxim pointed out, delete the domain name, because he's absolutely right: "cancel" is the wrong word. So we say delete the domain name, and the registry operator shall also include in there, applicable as sunrise policies, a link to the TMCH dispute resolution mechanism. It goes in #3 as an amendment to the guidebook. 6.2.6 I think is where we want to put that. thank you.

GREG SHATAN: Thank you, Kristine. That seems highly logical. Any other comments on what I read out so far, which is the 6A proposed answer and recommendation? And we can take what I'll call substantive wordsmithing.

---

UNIDENTIFIED FEMALE: [inaudible]

GREG SHATAN: Well, we can non-substantive wordsmithing very far offline. If there's something that you think actually obscures the meaning, where something isn't ... I just have a question about the last sentence of the answer, not the recommendation. It just seems a little unclear to me where it says, "We propose a resolution that codifies the current practice with no changes." The "with no changes" makes it sounds like we're not suggesting changes, and then we go ahead and suggest changes. So maybe we should just end with "current practice."

KRISTINE DORRAIN: Yeah, I noticed that, too. I think that would be okay. It's codifying what's currently existing. I would mention an additional challenge because I'm not even sure we can say it's current practice that a registry would delete the name because I don't know that we've ever gotten far enough. I don't think we have any instances that say a registry has ever had this situation happen. So I think you're right. Just "codifies what's currently in existence" is good enough. Thanks.

---

GREG SHATAN: I see no other hands. We can – I see a hand, but only in the room. It's Kathy Kleiman.

KATHY KLEIMAN: I put in some wording changes so that whatever's in the SDRP covers the entirety of ... it's not just a link but a little more information so that people know that there are two challenge processes, that there's a description in the SDRP. Does that make sense? There's some text. So a suggestion to Ariel that it would go beyond the wording that's there right now. We can work on it offline.

JULIE HEDLUND: You mean the wording on 3?

Thank you very much, Kathy. We will double-check to make sure we get that correct. Thank you.

GREG SHATAN: [I know]. Sorry. I'm on the microphone now. "Our SDRPs serving the purposes for which they were created?" New language. "The sub-team had difficulty determining whether SDRPs are serving the purposes for which they were created, as each TLD has its own SDRP and there is hardly any data or analysis of the SDRP decisions across all new gTLDs. Some sub-team members have

---

proposed a solution in Q6A that will eliminate the non-functional parts of the SDRP requirements and codify the current practice. Some sub-team members believe that, in general, SDRPs do not seem to serve the purposes for which they were created. Another sub-team member believes that the limited access to the TMCH and the lack of trademark information to identify whether a complaint is well-grounded makes it difficult to challenge a registration via the SDRP. Nevertheless, one sub-team member believes that the SDRPs are generally serving the purposes for which they were created, despite their low usage.”

I will take a queue on this language. Kristine?

KRISTINE DORRAIN:

Thanks. One thing that was in the e-mail that didn’t make it in here was that, if this sub-team likes 6A answer, much of what’s in 6B can probably go away because it’s just documenting the problems that we had. So, if we believe that 6A generally solves the problem, Susan and I proposed the second sentence about some sub-team members because we didn’t want to be too presumptuous.

But the part about that we have proposed a solution in 6A that eliminates the non-functional parts and codified current practice, the only thing in this whole description that would be not addressed by the answer that we’ve provided in Q6A is, I believe,

---

Kathy’s submission, the second-to-last sentence, which is the limited access to the clearinghouse. Whether or not we believe that goes in this section is a different matter, but that one sentence is not actually obviously addressed by the proposal in Q6A. So we could shorten this. That’s my point. Thank you.

Kathy just asked, “Where would you shorten it?” The point would be that I think we could eliminate or reduce the first sentence, move the second up to the first sentence, get rid of the third sentence, and get rid of the last sentence. From there, we would only have to discuss the proposal that there’s no access to the clearinghouse, where that goes and how we address that. That’s my suggestion. But again, only – and Ariel has just put that in the live doc, so you can see what that would look like. That’s one suggestion that we thought of. Susan, correct me if I’m wrong.

GREG SHATAN:

Kristine, can you just go over that again in saying “the sentence beginning”? Because I’m not sure that your referring to sentences by first, second, may have communicate accurately.

KRISTINE DORRAIN:

Yeah, I can do that. I’ll just read out the text as Ariel has edited it. “The sub-team had difficulty determining whether SDRPs are serving the purpose for which they were created, as each TLD has

---

its own SDRP and there's hardly any data or analysis of the SDRP decisions across all new gTLDs. Some sub-team members believe that, in general, SDRPs" – okay, no. That's wrong. Ariel, we want to keep the next sentence. "Some sub-team members have proposed a solution in Q6A." I would propose that we just say, "We have proposed a solution in Q6A that will eliminate the non-functional parts of the SDRP requirements and codify current practices." So we would keep that sentence.

Then we would delete, "Some sub-team members believe that, in general, SDRPs do not seem to serve the purpose for which they were created." We would delete that because that's answered in Q6A.

Then we would keep, "Another sub-team member believes that the limited access to the TMCH and the lack of trademark information to identify whether a complaint is well-grounded makes it difficult to challenge a registration via the SDRP." That would be a keep.

A delete would be the last sentence. "Nevertheless, one sub-team member believes that the SDRPs are generally serving the purposes for which they were created, despite their low usage." That would, I think, shorten it up and still keep in mind that we've proposed some changes in Q6A and we haven't addressed the sort of access issue that we discussed.

---

Does that clarify? Thanks.

GREG SHATAN:

Yeah, I think that clarifies it. Any comments on what we would now have?

I see no hands, other than Kristine, so I think there's either stunned silence or silent assent. I'm going to say it's the latter and pray and move on to Question 6C, unless there's anything from staff or any questions. Sounds like we're all clear, so let us move on then to 6C.

Question 6C. "If not, should they be better publicized, better used, or changed?" New proposed answer: "Some sub-team members have proposed some useful changes in Question 6A. One sub-team member commented that whether SDRP should be better publicized is contingent on whether they are serving their purposes for which they were created. However, it is not harmful to registry operators to periodically remind registrants of the existence of SDRPs. One sub-team member believes that is not within the scope of the RPM PDP Working Group to recommend how SDRPs can be better used. It is up to the registry operators and challengers to decide."

I will take a queue on that as well.

---

KATHY KLEIMAN: Not in the queue, but I think David may be trying to say something.

GREG SHATAN: Okay. David, please join in.

DAVID MCAULEY: Thanks, Greg. No, I've just been struggling with mute. I don't have a comment right now. Thank you.

GREG SHATAN: I'll ask Kristine or Kristine and Susan if you think there's any of this language that, if we are in fact accepting the recommendation, we could lose some of this deliberative language and what your thoughts or what anybody else's thoughts are on whether any "less is more" can be done here or whether we need to keep all of these comments.

SUSAN PAYNE: I think you asked the question. I think we feel comfortable with that language being in there because it's talking about a slightly different issue, with is about publicity of the availability of the service or the offering. So we think it's probably helpful.

---

GREG SHATAN: I'll probably change the first sentence that says, "Some sub-team members have proposed some useful changes." If we're in fact adopting that, it's no longer ... We can say, "The sub-team has proposed," or, "has a preliminary recommendation."

The other language is a bit process-y, but again, the big picture is, if it doesn't dis-reflect what we're trying to get at, we probably would leave it at this point.

Kristine?

KRISTINE DORRAIN: Thanks. I guess a friendly amendment to our own text, recognizing Kathy's friendly amendment. Actually, that's kind of what Kathy's amendment did: publicize and get it in. So one thing we might say that we attempted to address this in our answer to Q 6A. So we could reference that we've tried to do that, and then I don't know if people would feel strongly about reducing some of the dialogue in the long wordy bit below. But if we did try to address it? Yay. Maybe we get it in there.

GREG SHATAN: Yeah. I think a "yay for us" addition, which sounds like Paul McGrady – he occasionally says "yay for us" and wasn't listening so now is completely distracted. But I agree. I think, for purposes of plenary review, we can just leave it the way it is because

---

nobody is going to be shocked that there were deliberations in the sub-team.

Kathy?

KATHY KLEIMAN: Hi. Question from staff. I'm having trouble following these changes in real time. Would it be possible to show the deletions? The original text – a lot of is being taken out.

UNIDENTIFIED MALE: [inaudible]

KATHY KLEIMAN: I don't know. We seem to be losing whole sections, unless I'm missing something.

ARIEL LIANG: When we produce this clean version, we can do a version comparison just to show the redlines. You can see, compared to the previous version, what has been changed.

GREG SHATAN: Okay. Thank you, Ariel. I think that brings us to Question 7, which I will turn back to David for and rest my voice and figure out how to get this stickiness off my hands. Thank you.

DAVID MCAULEY:

Thanks, Greg. Hello, everybody, again. Question 7 has two parts. I'll read the questions and proposed answer. Hopefully we can get through this one fairly quickly.

Question 7A. "Can signed mark[ed] data files be used for sunrise period registrations after they have been cancelled or revoked?"

Our proposed answer: "The sub-team noted that, after an SMD file or its underlying trademark record has been cancelled or revoked, the SMD file cannot be used for sunrise period registrations. However, theoretically, an SMD file might still work for an asynchronous, short period of time due to the registry process."

7B. "How prevalent is this as a problem?" Proposed answer: "The sub-team generally agreed that the problem does not seem to be prevalent. No preliminary recommendations or proposed questions for community input."

Let's just take a look and see if there's a queue if anybody wants to comment on this. Otherwise, we can confirm what the next question would be.

I see, Greg, you have your – whoops. That was quick. I don't see any hands – I see Greg's hand. Go ahead.

---

GREG SHATAN: Sorry. That was a shaky hand. With my sub-chair hat mostly off, one, I wonder whether we want to footnote or show somewhat what an SMD file looks like when we report this. We don't have to do that, but there are some examples; I think one of the TMCH website.

On "How prevalent is this as a problem?" this may not be a case where turning the question around and turning it into the answer works because "prevalent" is really just a synonym for "widespread." Did we find that there was any instance, in fact, of this in any evidence or data? Because it seems like it was raised as a theoretical possibility, but I don't know that we've found any anecdote, evidence, or allusion to it having occurred. So I would suggest that, rather than saying "how prevalent," just say it's not prevalent. Just say that we did not find any evidence of the problem having occurred and leave it at that.

DAVID MCAULEY: That would be fine with me, Greg. Sounds like a good idea. I see no other hands except yours in the Zoom room. If there's anyone waving in the room, if you would kindly manage that.

GREG SHATAN: Susan's either drowning or waving. Susan, please go ahead.

---

SUSAN PAYNE:

Sorry. I couldn't remember how to raise my hand in zoom, I guess because I'm in a different window and I just couldn't find it. Sorry.

To be honest, Greg, I kind of agree with you in terms of that we didn't find any. I'm not sure there is any. But I think the answer we've got is probably fine because, to be honest, we didn't exactly go on an exhaustive search for an issue. I feel like I'm slightly arguing against myself, but it seems like that's a better reflection of where we really sit, rather than us knowing that there's no issue. I can't remember now what your language was, but ...

GREG SHATAN:

Well, we could make it less definitive. It appears that the issue has not occurred. I'd say that we found no evidence that it had occurred. Anyway, I just don't want to give the impression that it was only not widespread. In any case, I don't want to beat this horse.

DAVID MCAULEY:

Thanks, Greg. I think that there is no queue left, so we can move on. I know that Question 8 is not on the agenda, but I see that there's language, a proposed community input question from Kristine and Maxim, so let me ask Julie if she would just let us know if we're supposed to be touching on 8 or moving onto 9.

---

GREG SHATAN: We did 8 and 12 in the previous meeting, so that’s done.

DAVID MCAULEY: Good, Greg. So you get Question 9.

GREG SHATAN: Number 9? Number 9, which of course comes directly after Question 12.

Question 9 proposed answer and question. Question: “In light of the evidence gathered above, should the scope of sunrise registrations be limited to the categories of good and services for which the trademark is actually registered and put in the clearinghouse?” Proposed answer: “The sub-team had widely diverging opinions on whether the scope of sunrise registrations should be limited to the categories of goods and services for which the trademark is actually registered and put in the clearinghouse.”

I will take a queue on this. I see “widely” has been crossed out because I think we had a general agreement to get the “widely”s out. So it’s really “diverging opinions.” We’re not measuring the breadth of divergence.

I see a hand from Maxim Alzoba.

---

MAXIM ALZOBA:                    Could we make it shorter as we did with one of the previous items? Because we repeat the same thing, actually.

GREG SHATAN:                    Kristine?

KRISTINE DORRAIN:            I was going to actually say something similar. I know we're really trying to answer the call of the question here, but I think the question and the answer are going to be fairly juxtaposed. I believe that what we had said before – this was going to be my comment to maybe Ariel. Were we going to say, as our general static answer, “The sub-team had diverging opinions and therefore did not reach consensus”? Or there was something that we came up with that was going to just be in therefore – no, it didn't come to a conclusion. Yeah, I think that was it. So it's not just answering the call of the question but “and didn't reach a conclusion,” just so it's crystal clear and makes it shorter, I think.

GREG SHATAN:                    Thanks, Kristine. I certainly have no objection. I don't see an objection in the room. I see no hands, so I think we can move on to Question 10, which I will throw back to David.

---

DAVID MCAULEY: Thanks very much, Greg. We're in the homestretch. Question 10. "Explore use and the types of proof required by the Trademark Clearinghouse when purchasing domains in the sunrise period." Our proposed answer: "While the sub-team recognized that this question has a genesis, the sub-team did not formulate a response due to disagreements on what the question is asking."

Anybody have any comments or concerns about this?

I don't see hands in Zoom. Julie – whoops. Kristine has a hand up. Go ahead, Kristine.

KRISTINE DORRAIN: Thanks. I know we're not wordsmithing, but those quotation marks have got to go. Thanks.

DAVID MCAULEY: Thank you. I think we can handle that. I don't see any other hands in Zoom. I'll ask Greg is there's any hands waving or people drowning in the room.

GREG SHATAN: No.

---

DAVID MCAULEY: Okay, thanks. We can move on to Question 11. Greg, I'll give that one to you.

GREG SHATAN: Thank you, David. Question 11 reads as follows. “How effectively can trademark holders who use non-English scripts/languages able” – or probably “be able.” Well, anyway: “able to participate in sunrise, including IDN sunrises?” Proposed answers: “Some sub-team members believe that trademark holders who use non-English scripts and languages generally cannot effectively participate in sunrise.”

Then we have, in gray text, a proposed question for community input, but let me read Question 11 B first. “Should of any them be further internationalized, such as in terms of service providers, languages served?” Proposed answer: “The sub-team did not address this question, as the question was unclear.”

Going back to the proposed question for community input, “One sub-team member suggests that public comment be sought from trademark owners who use non-English scripts and languages on questions such as, “Did you encounter any problems when you participated in sunrise using non-English scripts and languages? If so, describe problems have you encountered.” “Do you have suggestions on how to enable trademark holders who use non-

---

English scripts and languages to effectively participate in sunrise?”” That is Question 11.

We can take a queue on that.

I see a hand from Griffin Barnett.

GRIFFIN BARNETT: Thanks, Greg. Just to add, perhaps, in the questions here, “Did you encounter any problems when you attempted to participate in sunrise?” might be more accurate because I think we’re discussing a situation where they couldn’t effectively participate because of these issues.

GREG SHATAN: Thank you, Griffin. Kristine?

KRISTINE DORRAIN: I support Griffin’s change. I just wanted to generally support these questions. I don’t remember who the member was, but I’m glad we’re asking these. I think it fits the purpose we’ve set out for asking questions. We don’t have any good data on this, and therefore our benchmark for when we decide to ask questions – I believe that this set of questions meets that bar. Thanks.

---

GREG SHATAN: Any other comments on this, Question 11, or any of the answers or the proposed public comment question?

Kathy Kleiman?

KATHY KLEIMAN: Just that, if we're all going to ask it together, we would delete "One sub-team member suggested."

GREG SHATAN: We could say, "One sub-team member said and others agreed"?  
No.

UNIDENTIFIED FEMALES: [No].

KATHY KLEIMAN: Greg, the whole preamble can go away.

GREG SHATAN: Yes. We can just go into the question itself.

UNIDENTIFIED MALE: "All sub-team members agreed, except for one, who asked the other sub-team members,"

---

GREG SHATAN: I think we need a semi-colon in there somewhere.

That is Question 11. Any comments on the answer? It seems good. I think we want to take a quick look at the table of status of individual proposals review.

KATHY KLEIMAN: [No, we don't]

GREG SHATAN: Yes. We're done with all the questions and answers and things.

UNIDENTIFIED SPEAKERS: Woo!

GREG SHATAN: Standing between us and the plenary is just a question of whether there's anything in the table of status of individual proposals review that should be changed. Long story short, only one proposal that came out of the individual proposals got wide support or had some support, enough to be mentioned: Proposal 11. So let's take a look at Proposal 11.

The part of the proposal regarding the implementation of an obligatory public interest commitment did not receive wide

---

support from the Sunrise Sub-Team for inclusion in the initial report. However, the sub-team generally agreed to adopt the language of part of the proposal regarding, “other contractual provision that the registry that the registry is not to act in a manner calculated to circumvent the RPMs as its preliminary recommendation related to Q 2A.” So that was up in Q 2A. I’m not even sure if we need this length of description, but I think, again, it’s a wordsmithing issue at this point, and I don’t want to wordsmith.

Kathy?

KATHY KLEIMAN:

For people who are in the room, Q 2A was registry sunrise or premium name pricing and questioning whether it unfairly limits the ability of trademark owners to participate during sunrise. This was a proposal addressing that.

GREG SHATAN:

So one small part of Proposal 11 did survive, and this is duly noted. That brings us to the end of this document. It brings us to Michael Karanicolas’s hand. We’re in your hand, Michael.

---

MICHAEL KARANICOLAS: Given that we've had a lot of discussions about the language in #2, I think that connecting it explicitly to the proposal is not the ideal way to spin it because I think that that implies potentially language that wasn't agreed upon within the proposal itself. So I would suggest that they all just uniformly note that the proposals did not receive wide support. And that the discussion under 2A will be had under 2A.

GREG SHATAN: Any comment on this from anybody else?

SUSAN PAYNE: [inaudible]

GREG SHATAN: Susan, you can use the mic.

SUSAN PAYNE: I'll just it was my proposal. I don't care, so take it out. Whatever.

GREG SHATAN: Well, part of the proposal did survive, but I think, in the interest of comity, we can just leave it with the same, since the proposal as a whole did not get wide support, and parsing the proposal is something we can do over drinks.

---

I think, with that – drink at noon. Yes, why not. With that, unless there's any general comment, I believe that the Sunrise Sub-Team has completed its work. Staff has, in real time, been incredibly ably recording what we have. Julie and Marie are indicating that, by staff, I'm really talking about Ariel Liang. So I think Ariel Liang, in particular. The flying fingers of Ariel Liang.

And I'd like to thank my remote Co-Chair, David, who has been on the phone for 4+ hours I believe, or at least three or four hours. It's now, I think 6:10 A.M. where he is, which means he has basically blown his entire night by spending it with us, which I'm sure was very, very wonderful for him. Certainly, we appreciated it, and I appreciate having the Co-Chair here as well.

So I want to thank all members of the sub-team for a very productive session and thank those who are not members of the sub-team for their patience and thank the Co-Chairs for allowing us to proceed and turn the rest of this meeting over to the Co-Chairs. Thank you very much.

UNIDENTIFIED FEMALES: [inaudible]

GREG SHATAN: And Paul McGrady is trying to say something.

---

PAUL MCGRADY: Yay us!

KATHY KLEIMAN: Is Brian Beckham still in the room? I don't see him.

JULIE HEDLUND: Just for those who are not in the physical room but are in the Zoom room, we are now resuming the full working group meeting of the RPMs PDP, so we will resume that agenda as has been posted. Staff have posted the slides now in the Zoom room, and we'll follow through with the slides. Staff will send a quick note to the list, also alerting working group members to the fact that we have resumed or reverted to the full working group meeting.

With that, I'll turn it over to Kathy Kleiman. Thank you.

KATHY KLEIMAN: Hi, everyone. Kathy Kleiman. I'm one of three Co-Chairs of the review of all Rights Protection Mechanisms Working Group. Just noting to people in remote that we have a number of people, both from the sub-team, from the working group, and from the public because we are now in an open face-to-face session, where we will be sharing with you work that has come out of sub-teams, although we'll only be covering one sub-team. The full working

---

group divided the last number of months into two sub-teams, one looking at the data and analyzing for trademark claims, and the other looking at sunrise. So two very important rights protection mechanisms created for new gTLDs.

We've just extended and wrapped up our sunrise work, but on Tuesday, we wrapped up our trademark claims work. I'll be turning this over to one of our two Co-Chairs, Martin Silva Valent. Roger Carney, who's not with us today, was also a Co-Chair of the sub-team, and they did amazing work. Let me turn it over to Martin to provide you with an overview of our data analysis recommendations and questions for the public. We're really talking about what will be going into our initial report on this issue.

Thank you, and feel free to participate and to come to the table and talk to us.

MARTIN SILVA:

Thank you very much, Kathy. I'm very happy we got to finish the work that we were set to do in the sub-group [inaudible]. We set forth five agreed trademark claims charter questions, and we had five integral proposals. We agreed on a standard for accepting the answers and the proposals with what we call wide support. We completed discussions that took place during these meetings, and both in the e-mail list and in Zoom and in person in Kobe and

---

here. I don't remember if we had even a previous meeting with everyone, face-to-face.

We reviewed the draft language that the proposed answer allow us to extract. We got to preliminary recommendations in the cases we could, and in the cases we couldn't arrive to a preliminary recommendation, we got at least two an answer of what the subgroup was standing on on that specific question. We even tried to propose questions for the community in the eventual case of community input. So maybe we could find a way of finding something that this subgroup can find.

Basically, we tried to find not consensus because it was not what we were after, but, yes, agreement towards the different proposals or ideas that were brought and evidence as well because, as the Council mandated in our charter for us, there was supposed to be an evidence-based decision that we're making for every RPM review. This was not the exception. So we also gathered evidence in order to answer the different questions and to try to persuade each other into what direction was correct.

I think I'm very happy with the results in general. We got almost all of the preliminary recommendations towards the questions, except for some of them. We can go to the first question if you want so we can start reviewing the final result we have. This is the first time that the full working group is seeing this, but if you have

---

been following by any chance the subgroup e-mail list or the calls, maybe some of this you've already seen before.

We tweaked them and touched them several times. We went over the questions many, many times in different rounds with different goals. The first one was to understand them, to gather what evidence should we put there or go after to present the evidence and discuss the weight the evidence and to eventually try to have some sort of agreement on the answer that we were given, eventually that answer becoming a draft and then debating the draft and then reviewing the draft. We have what we have now here.

Staff very wisely put into the slides each question with each preliminary recommendation. I'm going to read the questions and the preliminary recommendation, and, in the case that we don't have a preliminary recommendation, the proposed answer. In the case we don't have neither, we might have in some cases a proposed question to the eventual public comment. So let's go.

Question 1 was, "Is the trademark claim service having its intended effect?" This was sub-divided into different questions. Question 1A: "Is the trademark claims service having its intended effect of determining bad faith registration and providing claims notice to domain name applicants?" Q 1B: "Is the trademark claims services having any unintended consequences [inaudible]"

---

good faith domain name registration applications?”

I’m skipping the proposed answers because they are just tools to get to the actual preliminary recommendations. So, if we have the goal, I think we can skip the means.

The preliminary recommendations for these questions are, “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. See 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.”

Let’s go to Question 2. Question 2A: “Should the claims period be extended? If so, for how long? Up to permanently.” Question 2B: “Should the claims period be shortened?” Question 2C: “Should the claims period be mandatory?”

The preliminary recommendations we extracted from the proposed answers were – the sub-team generally agreed to these – “The Trademark Claims Sub-Team recommends in general that the current [inaudible] for a mandatory claims period be maintained, including the minimum [inaudible] 90-day period when a top-level domain opens for top-level registration.”

---

Question 2 wasn't exactly unanimous in all of them, so Question 2D said, "Should any top-level domains be exempt from the claims RPMs? If so, which ones and why?" Question 2E was, "Should the proof of use requirements for sunrise to be extended to include [inaudible] of Trademark Clearinghouse notices?"

As you can read in the proposed answers, sub-team members have divergent opinions toward this, so we couldn't actually get to one preliminary recommendation for the working group to consider, but we did draft a proposed question for community input that we think could help eventually to get to a preliminary recommendation.

The proposed question is, "Some sub-team members recommend that the public comment be sought on the following questions. Is there a use case for 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? Such type of gTLD might include, one, highly-regulated TLDs that have [inaudible] requirement for registering entities on the [order] of the bank and/or.brand. Two, .brand TLDs whose proposed registration model demonstrates that their use of claims services is unnecessary."

The second question is, "If the working group recommends exception language, what are the appropriate [guardrails] that

---

ICANN should use when granting the exemption. In example, single-registrant, highly-regulated or [inaudible] registered domains, something else.”

If anyone has any specific comments on this, you can jump in or jump in at the end. I’m just starting to go through all of these, especially because of time constraints.

Question 3. In Question 3A, we have a preliminary recommendation. “Does the trademark claims notice to domain names applications meet its intended purpose?” We actually got to agreement on this. The preliminary recommendation is, “The Trademark Claims Sub-Team recommends that the trademark claims notice be revised to reflect more specific information about the trademarks for which it is being issued and to more effectively communicate the meaning and implications of the claim notice. In example, outlining possible legal consequences or [inaudible] what actions potent registrants may be able to take following receipt of a notice. Does this implementation review team that we formed to implement recommendations from this PDP in redrafting the claims notice – the Trademark Claims Sub-Team has developed the following implementation guidance. The first one is the claims notice must be clearly comprehensible to a lay person unfamiliar with trademark law. Second, the current version of the claimants notice should be revised to maintain [inaudible] and provide additional relevant information

---

or link to multi-lingual external resources that can aid prospective registrants in understanding the claims notice and its implications. Three, the sub-team advises that ICANN org considers input from external resources, including the American University [intellectual] property, the INTA [inaudible] committee, the [inaudible] Foundation, and the Clinical Defense [inaudible].” That name I think – is it a correct name, that one? Clinical Defense [inaudible].

UNIDENTIFIED FEMALE: [inaudible] Can you read it?

MARTIN SILVA: Yes. In Spanish that we clearly wrong. Clinical Defense [inaudible] from UCN. UCN? No, UNC.

KATHY KLEIMAN: [inaudible] what Humberto had typed.

MARTIN SILVA: It’s just a Spanish wrong place of wording.

KATHY KLEIMAN: Let’s pause on that for a second. I don’t know if anybody wants to comment on this, but this is a big recommendation. We spent a

---

lot of time developing it, that the trademark claims notice needs a lot of work and that everyone would benefit but particularly registrants and potential registrants would benefit from a clear, stronger, better-worded, more accurate claims notice.

MARTIN SILVA: Thank you, Kathy. If anyone has any other question, please just raise your hand and wave at me or whatever. If not, then moving on, we – ah, yes. Greg, please go.

GREG SHATAN: Truly wordsmithing but I think “advices” at the beginning should be “advises.”

MARTIN SILVA: Yes. Just as a reminder, staff actually did this on the fly while we were debating this, so it’s amazing that we have all of this. These are really, really minor, minor, minor details. No one is worried about them. Thank you for all the work. These small typo errors are clearly the consequence of amazing work, not [otherwise].

We have now Question 3, just like Question 2. It’s not unanimous in everything. In Question 3A1. “[If not] – this is intimidating, hard to understand or otherwise inadequate, how can it be improved?” Here the proposed answer said, “The sub-team

---

generally agreed that [inaudible] actual [inaudible] respondents, the claims notice is intimidating, hard to understand, or otherwise inadequate.” So they made preliminary recommendation to [inaudible] down.

In Question 3 A2: “Does it inform domain name applicants of the scope and limitation for trademark holder rights? If not, how can it be improved? Some sub-team members believe that the trademark claims notice does not adequately inform domain name applicants of the scope and the limitations of the trademark holder rights. The sub-team made preliminary recommendations that we’re going to read next.”

Question 3A3: “Are translations of the trademark claims notice effective in informing domain name applicants of the scope and limitation of trademark right holder rights?” This is the preliminary recommendation that captures the last three read questions. “The Trademark Claims Sub-Team recommends that the 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 notice sub-team recommends changing the [inaudible] language in the current Trademark Clearinghouse requirements on this topic to, “Registrants must provide 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 U.N. languages.”

We have now Q 3B: “Should claim notifications only be sent to registrants who complete domain name registration as opposed to those who are attempting to register domain names that are matches to entries in the Trademark Clearinghouse?” The preliminary recommendations says, “The Trademark Claims Sub-Team recommends that the current requirements for only sending the claims notice before a registration is completed be maintained. The Trademark Claims Sub-Team also recognizes that there may be operational issues with presenting the claims notice to registrants who pre-register domain names due to the current 48-hour expiration period of the claim notice. The Trademark Claims Sub-Team therefore recommends that the Implementation Review Team considers ways in which ICANN org can work with registrars to address these implementation issues.”

Now, we have Question 4. This is a question that really didn’t get an agreement. This was probably the least agreed-to question of all. Let me see ... yeah, we have no preliminary recommendation in Question 4. We only have proposed answers that mainly say that we didn’t get into an agreement but to have some more information on that.

---

Question 4: “Is the exact match requirement for a trademark claims serving the intended purposes of the trademark claims RPM? In conducting this analysis, recall the IDNs and [inaudible] with accents and umlauts are currently not serviced or recognized by many registries.” Of course, sorry for any mispronunciations. I’m not an English speaker.

“The sub-team has widely divergent opinions on whether the exact match requirements is serving the intended purpose of the trademark claims RPMs.” I think this thing reflects just the generality of this question.

Question 4A just goes into the specifics of the different pieces of that question. “What is the evidence of harm of under the existing system? The sub-team has widely divergent opinions on whether there’s evidence of harm under the existing system of exact match.”

Question 4B: “Should the matching criteria for [inaudible] be expanded? The sub-team has widely diverging opinions on where the matching criteria for the [inaudible] be expanded.”

Question 4 B1: “Should the marks in the Trademark Clearinghouse be the basis for an expansion of matches for the purpose of providing a broader range of claims notices? The sub-team generally agreed that, if the matching criteria for the claims notice were to be expanded, the marks in the Trademark

---

Clearinghouse should be the basis for an expansion of matches for the purposes of providing a [inaudible] range of claims notices.”

Question 4B2: “What results including unintended consequences might each suggested form of expansion of matching criteria have? Since the sub-team did not agree on expansion of matches, the sub-team did not consider this question in detail.”

For Question 4B3: “What balance should be [inaudible] striving to the [inaudible] registration but not good faith domain name applications. The sub-team believes that the exact match criteria has already struck the current balance of the [inaudible] bad faith registration but not good faith domain name applications. The sub-team believes that the current balance can be [inaudible] by a well-crafted claims notice that [inaudible] notified prospective registrants or potential [inaudible] with their chosen domain name employs clear, consistent [inaudible] language and avoids potential [inaudible] false positives, something we address in Question 2 and Question 3.”

Question 4 continues. Question 4 B4: “What is the resulting list of non-exact match criteria recommended by the working group if any?” Since we didn’t, we actually don’t have this.

---

Question 4C: “What is the facility of implementation for each form of expanded matches?” Same as before. We didn’t get to consider this [inaudible] because [inaudible] question before this wasn’t agreed on.

Question 4D 1: “If expansion of matches solutions were to be implemented, should the [existing internal] claims notice be amended? If so, how?” Same thing. We did not agree on the expansion of matches. Therefore, we do not have an answer for this question.

For Question 4D 2: “If an expansion of matches solution were to be implemented, should the claims period defer for exact matches versus non-exact matches?” Again, we did not agree on the general answer that would have triggered this one, so we have nothing else to add there.

As a final question, we have Question 5. “Should the trademark claims period continue to be uniform for all types of gTLDs in subsequent rounds?” We do have an agreement here, and we have a preliminary recommendation. “The Trademark Claims Sub-Team recommends that the current requirements 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.”

---

“As a note, some sub-team members asked for public comment on potential exemptions, which would then not be subject to a claims period of any length. See Question 2D to understand that note.”

I think we are it. This is just the general or official reading where we present our preliminary recommendations and proposed questions to you. I’ll just open the floor for any sort of comments. I hope the working group considers [inaudible] on these results. Thank you all.

KATHY KLEIMAN:

And comments are open to both sub-team members and working group members and the public.

JULIE HEDLUND:

We’ll just note, with respect to the next steps for these preliminary recommendations and answer to charter questions and questions for community input – and this is the case of both sub-teams following today’s meetings – staff will finalize the status check document. That will go back out to the sub-team because all of this has happened very quickly [so] the sub-teams get a last chance to look at the text and just make sure that we’ve captured everything accurately.

---

Then the final status check document will become the deliverable to the full working group. It will go to the full working group prior to its meetings that resume on July 10<sup>th</sup>.

Anyway, just so you know, there could possibly be some additional changes to the preliminary recommendations, answers, and so on here. I'll pause there. Thank you.

KATHY KLEIMAN: Huge thanks to Martin for both leading us, and Roger, for leading ...

MARTIN SILVA: Special thanks to Roger, who couldn't be here because he's going around, I think, [inaudible] right now. He was just an amazing Chair, and I personally want to thank him. It was an amazing experience to share the work with him. I hope I can continue to work with him in the future.

KATHY KLEIMAN: And to everyone, we divided into the sub-teams to allow us to work in parallel and to move everything forward more quickly. So it's our sub-teams Chairs that have accomplished that across two sub-teams.

---

Does anyone want to comment? That was a lot of material delivered very quickly. If anyone would like to comment, feel free. As Julie noted, the sub-team will be reviewing this one more time. Julie, it looks like.

JULIE HEDLUND: I'm just noting that Phil Corwin has his hand up in the Zoom room.

KATHY KLEIMAN: Thank you. Phil, go ahead please. Phil is our Co-Chair.

PHIL CORWIN: Hello everyone in Marrakech. Greetings from Alexandria, Virginia, where it's 6:30 A.M. I just wanted to thank the sub-team Co-Chairs and all the members of the sub-team for a job well done and congratulate them for delivering very thoughtful reports to the full working group. Thank you.

KATHY KLEIMAN: Thanks, Phil, and thanks for spending all night with us. We appreciate it. I guess you and I and Brian will have to resume our chairing. We're going to have to put our chairing hats on again after all these months. So thank you guys for the relief for a while. This was great.

---

Comments in the room or any comments remotely? I will look for hands. Otherwise, we may be giving people back a little bit of their time.

As Julie noted, we will be taking a week off next week. We won't be holding any working group meetings. Then it looks like we will be resuming the full working group.

Julie, back to you.

JULIE HEDLUND:

Just a question. We did have – not to belabor this meeting, but just to ask – a few intro slides to this presentation that gave a little background on what the working group had been doing and how it got to where we are right now. I know we wanted to focus on the trademark claims report to make sure that we could get through that. But I do ask whether or not you want us to quickly go back through the initial slides in case you think they might be helpful.

KATHY KLEIMAN:

If you think they would be helpful, let's take a fast look at them, absolutely.

---

JULIE HEDLUND: Just in case, for the edification of people who aren't in the sub-team and who might just be in the community who don't know. Anybody have any objections? I don't think it'd be more than five minutes or so.

Thank you. I'll go back.

GREG SHATAN: In the meantime, I'll suggest that, if anybody wants to have working group meetings next week, we do it at a BBQ at Paul's house. Paul McGrady, I think you'll—

PAUL MCGRADY: All are welcome.

GREG SHATAN: Thank you very much. Paul says all are welcome. Somehow it was off mic so he wouldn't be heard, but I'm just repeating it for him. Thank you.

JULIE HEDLUND: I'll just go ahead and read through these slides. Let me just move the things out of the way so I can see what I'm doing here.

This is just an introduction to the RPMs PDP Working Group and how we got to this place. This was a two-phased PDP. We're in

---

Phase 1. The working group was chartered in March of 2016. It has completed a preliminary review of several of the RPMs (the Rights Protection Mechanisms), including the trademark post-delegation dispute resolution procedure, the structure and operations of the Trademark Clearinghouse, the uniform rapid suspension, which was just through last fall, and a rapid suspension dispute resolution procedure –

KATHY KLEIMAN:

Julie, I think we haven't quite finished our review of the structure and operations of the Trademark Clearinghouse and certain things are being punted from one or both sub-teams as we return to that after the [inaudible].

JULIE HEDLUND:

Thank you for that clarification, Kathy. That's very helpful. Just a little bit of background, ICANN org commissioned Analysis Group at the request of this working group to develop and administer surveys on sunrise and claims right protections mechanisms in coordination with a sub-team of this working group, the Data Sub-Team. This happened by the 6<sup>th</sup> of September and the 5<sup>th</sup> of October.

Then the sub-teams, the teams that were working today – Sunrise Sub-Team and Trademark Claims Sub-Team – we formed to

---

analyze all of the data that's collected, not just the survey data but previously collected data and additional sources, to help to answer the sunrise and trademark claims questions. So those answers to the charter questions that you heard today that we're being formulated by the Sunrise Sub-Team and as reported by the Trademark Claims Sub-Team were the result of the analysis of quite a bit of data. So that's part of how we got to where we are today: through that review and analysis of the data.

That data review was completed prior to ICANN 64 and was reported by the sub-teams there. At this meeting, as you heard, the sub-teams are reporting on their development of the charter questions, preliminary recommendations, and questions for community input. The Sunrise Sub-Team has now completed its review and Trademark Claims has also. Trademark Claims has reported at least the status of that review, but both of those sub-teams, as we noted earlier, will have a chance to look at the final draft of their deliverable for the working group, which we're calling the status check document.

Then that deliverable will be submitted to the full working group or consideration at its meetings. Its meetings begin on the 10<sup>th</sup> of July. I believe in the workplan there are four meetings set aside for the working group to consider the deliverables from the two sub-teams.

---

With that in mind, this is an overview of the timeline. You'll note what has been completed so far, but if you look at where we are right now, as of July, the Trademark Claims and Sunrise Review will be complete. Then we will move on, as Kathy noted, back to the TMCH and some of the operational structural considerations there. That will be completed in October.

Then, by January 2020, the initial report will be released for public comment. So that intervening time period will be the time for the working group to develop the initial report.

Then the public comment will end in February, so between February and April the public comments will be reviewed. That timing will of course be dependent on how many comments are received. Then the goal is to send the final report to the GNSO Council by April of 2020.

KATHY KLEIMAN:

Thank you, Julie. I'll just say that that's a great overview. I'll just note for people that have been following us that you have seen us jump around a little bit. We did start with the Trademark Clearinghouse and then stopped and moved to uniform rapid suspension for a number of months while we were trying to gather the data that we thought we needed on trademark claims and sunrise and the Trademark Clearinghouse. So we've been working in parallel and on multiple issues for several years now.

---

It's an incredibly hardworking working group, and a special thanks to the people who served on one and in some cases two sub-teams, dedicating an enormous amount of time to analyzing the data. I think we've been true to our goal of trying to be data-driven and looking closely at how the first round was conducted, what we found, what the issues were, and some fixes that we can propose going forward.

Does anybody want to say anything?

Then I will add my special thanks to Ariel, Julie, and Mary for just an enormous amount of work, tracking two sub-teams as they worked back to back, once a week for months now with a huge amount of information and data and recommendations. Thank you.

Going once ... going twice ... Then thank you for Martin for a great overview. Thank you to Greg for more than two sessions. And thank you to everyone. Meeting adjourned.

GREG SHATAN:

And thank you to our Co-Chairs for bringing us home, almost literally.

**[END OF TRANSCRIPTION]**