ICANN Transcription

The Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims Data Review

Wednesday, 15 May 2019 at 1700 UTC

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TERRI AGNEW: Good morning, good afternoon, good evening, and welcome to the RPM Sub Team for Trademark Claims taking place on the 15th of May, 2019. In the interest of time there will be no roll call. Attendance will be taken by the Zoom Room. If you are only on the telephone bridge, could you please identify yourselves now?

Hearing no one, I would like to remind everyone to please state your name before speaking for recording purpose and to please keep your phones and microphones on mute when not speaking, to avoid any background noise. With this, I'll turn it back over to Julie Hedlund. Please begin.

JULIE HEDLUND: Thank you, Terri, this is Julie Hedlund from Staff, and I'll just quickly go through the agenda which you see on the screen. We have the updates to Statements of Interest. Number two is a very brief review of the timeline and work plan. Then we got to #3, the development of preliminary recommendations and that will be a discussion of Question #5, and if time permits, the individual proposal on #11. And Item #4 is any other business. May I ask if anyone has any other business?

I'm not seeing any hands. Then I'm going to go back to Agenda Item #1 and ask if anyone has any updates to their Statements of Interest? Also not seeing any hands, them I'm going to go to Agenda Item #2, the review of the timeline and work plan. That is what Ariel has brought up in the Zoom Room, and let me go ahead and go to Ariel, please.

ARIEL LIANG: Thanks Julie, this is Ariel from Staff. As you can see, the Sub Team has two items left for discussion during the meetings. One is Charter Question Q5, that is what the Sub Team is going to discuss today, and then it's the individual Proposal #11. That was identified related to the trademark Claims agreed charter questions, but it wasn't specified which one, but for the comprehensiveness of the process, the Sub Team will still review that. As you can see, we are ahead of schedule, so most likely we should be able to wrap up the meeting discussions by the end of this month.

Also, we want to let you know that Staff has discussed with the Sub Team Co-Chairs about the way we capture the proposed answers, preliminary recommendations, and review of individual proposals, so there will be a single document to be shared with the Sub Team at the end of the process for you to review what has been captured so far and to help identify gaps that need to be addressed in order to wrap up this work. That's all I have. Julie, do you have anything to add?

JULIE HEDLUND: No, this is Julie, I don't have anything to add. So, let me then suggest that we go ahead turn things over to Roger, to move to the discussion of the preliminary recommendations. And I see that Ariel has brought that document up onto the screen. Roger, please.

ROGER: Thank you, this is Roger. It looks like a nice, short, easy question here. Let's see if we can get through this. I'll read it through, anyone that has not got access to it right now, Question #5 is, "Should the trademark Claims period continue to be uniform for all types of GLTs in subsequent rounds?" I know that this [AUDIO BREAK]

TERRI AGNEW: Roger, this is Terri, it sounded like you cut out just for a moment towards the end.

ROGER CAREY: Oh, I'm sorry about that. I think everybody has the question, so I just open it up. My one comment was I think we've talked a lot about this when we were trying to answer Question #2, but we didn't answer specifically this, so I'll open it up for comments please. Kristine, please go ahead.

KRISTINE DORRAIN: Hi, thanks, this is Kristine Dorrain. So, I think you're right, we have talked about this before, and I believe where we landed was that we believe that the trademark Claims period should continue to more or less be uniform, with the exception that if registry operator business models were such that extending the Claims notice, which would be nonuniform in the sense that it would be extended longer, that that would be something that would be permitted on a case by case basis. So, sort of the minimum is uniform, but the registries could do more. I think that's where we left it. So I'm going to throw that out into the ethos and see what people think about that. Thanks.

ROGER CAREY: Great, thanks Kristine. Kathy, I see you have your hand up, please go ahead.

KATHY KLEIMAN: Yeah, can you hear me Roger? This is Kathy.

ROGER CAREY: I can hear you great, thank you.

KATHY KLEIMAN: Okay, happily now in, so thanks for whoever sent the new link, much appreciated. Okay, so where I think we left it, and apologies if I'm thinking across both Sub Teams, is that there is an open question in the Sunrise Sub Team whether this should be an 'or' rather than 'and', "Sunrise or Trademark Claims," and whether the registry based on their business model should be allowed to decide that. We've also heard, and I think it's captured in #2, that some of the gTLDs, some of the noncommercial gTLDs may not need or want a trademark Claims period.

So, I thought we had built in more flexibility based on, in general, the trademark Claims period seems to be serving its purposes, but we certainly found problems with it, and we're certainly hearing from registries and registrars that they want more flexibility in the models that they have. Thanks.

ROGER CAREY: Great, thanks Kathy. One comment and maybe a question to you, Kathy, is the Sunrise Sub Team trying to answer the 'or' question, either "Sunrise or Claims?" I know that this group talked about it briefly, but it wasn't in any of the charter questions. So is that something that the Sunrise Sub Team is trying to answer?

KATHY KLEIMAN: Good question, Roger. I don't think the Sunrise team can answer the 'or' fully, because they would need the trademark Claims. So, I think it's a question, and maybe someone else can correct me, since I don't have that particular spreadsheet in front of me, or

table, but I think it's a question that may get taken to the working group. Again, in light of this business model, because as Kristine mentioned, and I know she was referencing it for something else, there is this kind of desire for more flexibility that we've seen in responses to our surveys by registries. Thanks.

ROGER CAREY: Great, thanks Kathy. Alright. Susan, please go ahead.

SUSAN PAYNE: Thanks, hi, it's Susan. So, my recollection is a little bit different to Kathy's and it would be that I know that there is certainly a charter question in relation to should there be an item, I'm not sure to what extent we really discussed that in the Sunrise group yet. But to the extent that we have, certainly it's come up when we were gathering the data, and so on. I mean, there really isn't any data that suggests that some particular registry models such as GOs feel that a claim isn't appropriate.

There may be somewhere there should be models who raised some considerations in relation to Sunrise, and particular with spending a ton of time in the Sunrise group talking about launch programs, you know, ALPs and QLPs and so on, and that is the area which goes to that specific concern that GOs and sort of city type TLDs have. But it's just a Sunrise one, it's not a Claims one, it doesn't seem to me that there is any particular rationale for a TLD that is telling names commercially, not [inaudible] because of the TLD model. We haven't seen anything from that, we haven't

heard from anyone suggesting that, we haven't discussed it in the Sunrise group.

What we did discuss earlier when we were talking about Question #2 in the Claims Sub Team was the fact that that question was should all TLDs to run the Sunrise, and we've already obviously talked about this, and we identified that there might be some TLDs such as .brand, where the trademark claim is certainly important. But in this particular question, it sort of overlaps with that, but I think this is more about is there any reason why some TLDs or some registry might run a Claims of a different period of time than some others.

And I would agree with what Kristine says, you know, I thought we had agreed that we thought they all should run something that is uniform, save that we've never felt that we should be removing the allowance that allows any registry to go further than the minimum. So if the registry wants to run a permanent Claims, I don't think any of us have ever suggested that they should not be allowed to, if they think that that's appropriate and something that they want to do.

ROGER CAREY: Okay, great. Susan, one question for you, if you could clarify for me. You mentioned a brand maybe not running Sunrise, are you suggesting that they may not run a Claims or are you thinking that they should still run a Claims even for a brand, a dot brand?

SUSAN PAYNE: Sorry, I think I misspoke. Brands already don't run a Sunrise, sorry. What I was meaning to say was that when we were talking about, I think you said it was Question #2, we did identify the possibility that brands might not need to run a Claims, because it serves no real purpose. And that's already captured.

ROGER CAREY: Okay, great. Thank you, Susan. Just a couple comments about the chat, if people are reading it or not, it seems to be Griffin agrees with what Susan was just saying, so I won't go through his detailed message to the group, but please go ahead and read it if you want. I think that's the bigger one. Kathy, you got your hand up, please go ahead.

KATHY KLEIMAN: Thanks Roger, always fun coming off mute, still learning Zoom. So, I have the Sunrise table in front of me, Question #5(b). So, I just want to read it, and forgive me for reading some of it, but you should see what it is that we're discussing in Sunrise. So, Question 5(b), "In light of evidence gathered, should the Sunrise period continue to be mandatory or become optional?

And then sub-question, "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? And in considering mandatory versus optional, should registry operators be allowed to choose between Sunrise and Claims, that is, make one mandatory?"

And in the analysis group survey results, in the summarized Sub Team, is that there seems to be a need for the working group to consider returning to the original recommendation of the IRT and STI. As there are concerns, as Susan noted, with the implementation of ALP and QLP particularly as relevant for goTLDs e.g. issues with notice on ALP allowed number of goTLD strings under QLP, wow, that's written in Greek. And that registry operator respondents, and I know they weren't here, but we went out to get data, right?

So registry operator respondents prefer Sunrise and Claims to be optional with a slight preference for Sunrise to be mandatory and Claims to be optional. Thanks for letting me put that input in, Roger. I think there's a note also, the permanent Claims, wow, if we're creating a baseline, I think we're creating a baseline. So it looks like we're looking at both extremes, the optional versus mandatory and also this idea of permanent Claims, how far can you go. Thanks.

ROGER CAREY: Great, thanks Kathy. I think Staff has their hand up. Mary?

MARY: Yes indeed, thanks Roger. Hi everyone, it's Mary from Staff. So, if it helps, just to bring everybody back to where this team is, two observations. One is that in relation to these questions, I think as you said Roger, there is a little bit overlap with Question 5 and some earlier questions, but what the Staff has captured to date is that this Sub Team believes that there should continue to be a

mandatory minimum claims period, it should not be shortened. But due to business flexibility or the needs of the dot brand gTLD, there might need to be some flexibility, for example, as Kristine said, perhaps some registry operators due to their business models, could extend the Claims period. So, that is what the Staff has captured in relation to this topic so far.

On the question of the Sunrise discussion, as Kathy notes, that is a question that is coming up for the Sunrise Sub Team. The Sunrise Sub Team I believe hasn't got there yet. So, one thing that Roger, you might want to take back to the other leadership teams, is where that discussion should take place in one or both of the Sub Teams or at the working group level. Thank you.

ROGER CAREY: Great, thanks Mary. Alright, Susan, you have your hand up, please go ahead.

SUSAN PAYNE: Thank you. Just briefly, I just wanted to flag, actually it looks as though it has been flagged in the chat, as well, Kathy very correctly identified that we have had Question 5(b) in relation to the Sunrise, which is obviously a challenging question that we have been tasked with answering. In the Sunrise group, we haven't discussed that yet. So, none of that is anywhere close to being something that we are recommending, we haven't started the debate on it. I wanted to flag that, just to make sure that that is clear on the record for anyone who hasn't been on the call, and I didn't want anyone to be confused about that.

And then I just wanted to say, again, Kathy very helpfully identified some data. I agree with her that we got almost no data from registry operators and despite spending an enormous amount of time doing our expensive data gathering or attempting to gather data exercise, we had almost no responses, and the ones that Kathy has identified really show how little use the registry responses were, if I could put it that way. Because on the one hand we supposedly have one, I think it was, registry who raised some issues with launch programs, QLPs, ALPs and so on.

Those are issues relating to Sunrise. They are not issues relating to Claims. If one understands how those launch programs operate, it's very clear. However, then Kathy has also identified that registries to the extent that there was a preference identified, we're identifying a preference for having Sunrise rather than Claims. So, those two things are completely contradictory to each other and really are just going to demonstrate how of little use that anecdote that we gathered really is for us.

ROGER CAREY: Great, thanks Susan. Okay, so it looks like, maybe, okay, I was just going to ask Rebecca, Rebecca please go ahead.

REBECCA TUSHNET: Rebecca Tushnet, thank you. So, yeah, I guess my sense is anything beyond the lowest common denominator that I posted in the chat sounds basically premature, or requires answering a bunch of other questions which I don't think there is consensus on. So at least for our purposes, I guess I would say let's stick

with the lowest common denominator, recognizing that there are questions on which people may have different opinions that are related, but just not answered. Thank you.

ROGER CAREY: Great, thanks Rebecca. So, I think what I'm hearing in the group is that the baseline everybody keeps going back to is the 90 day claim that is uniform for gTLDs with some outlying questions, possibly, is that correct? I will let you ponder that and Kathy, you have your hand up, please go ahead.

KATHY KLEIMAN: Yeah, Roger, I have a question for Mary, actually, about Staff summary now includes kind of what you were saying, that there is no consensus on change at this point but that a number of concerns have been raised about trademark claims that aren't necessarily applicable to all types of gTLDs. And so there is no consensus on permanent trademark claims and we have heard, to the extent we have gathered data and we went out and we spent a lot of time and a lot of money getting it, we have heard concerns about both Sunrise and Trademark Claims, so I don't think we're in the position yet, I think it would be a working group decision, and I say that, not as Co-Chair, but as a member the Sub Team, to make that either/or decision, but that we certainly heard that not every registries have concerns about trademark claims. Sorry, that's not concise, but I wanted to go back and see, again with Mary, if the summary is now changed. Thanks.

ROGER CAREY: Okay, great, thanks Kathy. If I can call on Mary?

MARY: Yes, indeed. Thank you Roger, and thanks for the question, Kathy. So this may be a good opportunity of the Sub Team to clarify. So to summarize what I said above, there is no draft recommendation, we heard no support for a Permanent Claims service from the Sub Team. What we did hear from the past few weeks was agreement first that there should continue to be a minimum mandatory claims service, second, that it should not be shortened, but that thirdly, in certain circumstances, those claims periods could be extended, and that takes into account some of the concerns we heard from the surveys that were collected.

So I hope it's clear that that's what we captured and based on the group's discussion over the last few weeks, it did seem that there was wide support as is required by the process even if that is not unanimous, as I believe what we're hearing today. Thank you.

ROGER CAREY: Great, thanks Mary. Susan, you have your hand up, please go ahead.

SUSAN PAYNE: Thank you, yes. Certainly what Mary has just summarized is in accordance with what I think we all discussed and the sense that we reached in previous calls. And I just did want to circle again to this idea that Kathy has raised that there have been registries who have expressed concerns with the operation of the Claims in the

context of their business model. And I simply don't agree that that is the case.

The registries with particular business models who expressed concerns were expressing concerns about Sunrise. The ALP and QLP processes are about trying to get names to particular individuals, companies, classes of registrants in advance of Sunrise. They have no impact whatsoever on Claims, as far as I can see, and I don't believe anyone raised a concern with Claims in that context.

ROGER CAREY: Okay, great, thanks Susan. Kathy, you have your hand up, please go ahead.

KATHY KLEIMAN: Yeah, so to Susan, I read directly off the sheet that this was a summary table, so obviously registries did raise issues on this. And some of those issues I think have to come back to this Sub Team because they're not all Sunrise. They did express preferences to have Sunrise over Claims, just reading our summaries that we agreed to.

To Mary, I don't think there is cross stakeholder group agreement on the summary that you've provided and I'll ask again for more to be included. I do believe that our answer to Question 2 included that some gTLDs, future and new gTLDs, might not need trademark claims, and it might inappropriate to have trademark claims for them, and that we were willing to consider and probably put out for public comment what subgroup that might be. Thanks.

ROGER CAREY: Thanks, Kathy. Kristine, please go ahead.

KRISTINE DORRAIN: Yeah, this is Kristine. I just wanted to support what Susan said, which is that the Sunrise table that you're reading from, Kathy, really was related to registries' concerns about Sunrise, not about Claims. I put this in the chat, but registry operators might find that Claims are kind of a pain in the ass because it's another thing we have to plug into. It's the sort of thing where you give, you know, people are chugging along merrily, dealing with whatever obstacles are placed in their path, and then you're given, well, you have a choice to remove this slight minor speed bump hindrance, yeah sure, you know, you were asked, if you had your druthers, would you have Claims or Sunrise, people said sure.

I don't think the fact that people have a slight preference of an either/or means that we have to upend an entire system that seems to be balanced and working. I think we have decided on both Sub Teams that Sunrise and Claims are both working. So, to the extent that they are both working, I don't understand why we would remove them. Registries expressed concerns about Sunrise for the reasons Susan mentioned. Registrars expressed concerns about Claims because it is a little bit more of a pain in the ass for registrars to integrate with the Claims service.

So, yeah, some registrars don't like it, it presents a bit of a hurdle for them. But this is a balancing test. We are not here to remove every single barrier in every single person's path. We are here to

make sure that there is a balance between protecting intellectual property interests and making things not super cumbersome for registries and registrars. Registries and registrars today integrate with Sunrise and Claims, and do so relatively painlessly now, because the kinks are worked out.

So, to the extent that we don't add anything new that's going to screw them up, stuff will just keep on chugging. And so I don't think we need to come in and now upset the apple cart, change the way we plug into trademark clearing house, mess up the whole system, because a couple of registries or registrars said gosh, my life would be slightly easier if I didn't have to do both. We have a balancing test and this is a substantive balancing test, not a would my life be less of a pain in the ass balancing test. Thanks.

ROGER CAREY: Okay, thanks Kristine. So it seems like the group likes the idea of a 90-day Claims, but I think people are tripping up on the comment that we made in answering #2, in that some TLDs may not have a claims period, and I think we've said that multiple times today, as well. Some, maybe brands, and something else it doesn't make sense to have claims on.

So, I think maybe we're tripping over the fact that we're saying it's a mandatory claims period, but we're not actually saying that it's a mandatory claims, we're saying if you run claims, you have to run it for 90 days. Is that summary accurate to everyone? Alright, great, thanks for joining, please go ahead.

GREG SHATAN: Thanks, it's Greg Shatan for the record. I guess, while the summary the you said sounds right as far as it goes, I think where it gets interesting or perhaps the agreement would fail to proceed is which, if any, TLDs would not have claims? Brands is given as the example because they don't have outside registrants, and therefore there is no point to it. But besides that, I can't think of any example that gained wide acceptance or maybe even modest acceptance of a type that shouldn't have a claims period.

And it obviously makes sense to have no claims period where you have no registrants other than the registry, but other than that, I think we don't want to express a general exception when there is only really a very specific exception, and the general rule really is still everybody has a claims period. Thanks.

ROGER CAREY: Thanks, Greg. And from my standpoint, I think I see what Greg is saying, and the only one that I can think of as brands, and maybe others can think of why others wouldn't have it, but maybe that is a good point, if we're going to call it out and we know it's a limited set, that we actually call it out for the set. But, I'll go to the list. Phil, you have your hand up, please go ahead.

PHILIP CORWIN: Yeah, Phil for the record. I think there seems to be general consensus on standard 90-day claims for most TLDs. The only ones I can think of where it wouldn't make sense to have a claims period would be one, the dot brands, because every registrant is a

person or a business entity within, controlled by the registry operator, they're not going to infringe against themselves, and certain TLDs like dot bank who use substantial vetting of their registrants, so they're making sure that not only is the domain they're registering one that they're entitled to, but that they're a regulated financial institution, et cetera.

So, maybe the way to get it is to say the general rule should be 90 days with an exception made those TLDs that do not permit registrations by all members of the general, I think that would cover both the dot brands and the specialized vetted ones like dot pharmacy, dot bank, et cetera. I'm not wed to that, I'm just trying to give a suggestion that gives flexibility to the ones that deserve it, while it maintains the claims period for the vast majority of TLDs where infringing registrations are a real possibility. Thank you.

ROGER CAREY: Great, thanks Phil. Alright, Kristine, you have your hand up, please go ahead.

KRISTINE DORRAIN: Thanks, this is Kristine. So a practical suggestion and also an echo, I was going to say something similar to what is going to say, so I'm not going to repeat all that. But essentially the idea of a dot bank or a dot pharmacy, or someone like Uber, that they're registrants, and so it's such a high bar to get in and so many hurdles that you have to jump through, it's probably unlikely that there is any sort of trademark infringement going on.

But what I wanted to say is again, I'm thinking more procedurally and practically here, what the Sub Team did was they would make some recommendations and then they would have followup questions. So we can make our recommendation and I'm not going to rephrase it, because I'm going to say it wrong, I think we've agreed on what it's going to be, but basically we say we think that, for instance, brands fall into this category. It is also possible that highly regulated, I think they're calling themselves highly regulated TLDs, so I think that's a thing, like dot bank or dot pharmacy, might also fall into this category.

We ask an open question to the community, are there other categories or classifications of TLDs that might also apply, for which this exemption might also apply. If so, what are those, and if you have concerns about this, like this could be gamed in some way, what concerns do you have? So, like, getting that out there to the community in our initial report so we can say we think we have this recommendation, this is what we think it looks like, poke holes in it, let us know where we're right or where we're wrong.

ROGER CAREY: Great, thank you. Maybe I'll call on Greg to see, since he kind of started this path, maybe see what his thoughts are on that. Greg, do you have anything?

GREG SHATAN: Sure, I think that we're definitely heading in a good direction, including with regard to a followup question idea. I think we all need to think about whether the highly regulated domains really

do deal with the issue of potential trademark infringement in another fashion, such that there would be no need for a notice to either party, and it may not be true across the board because the high regulation may be of one or another sort.

But that's not to say that it couldn't be, I just don't think we can say that there is just kind of a one to one concordance between the two, and then we have to think about how this would actually be implemented, if there is a review, to see whether the need for the need has been obviated. The only one where it seems to be kind of self evident, at least to me, is where there are no third party registrants and it's basically a glorified second level domain in a sense. But that's the no-brainer, but the other ones might actually be brainers, so to speak. Thanks.

ROGER CAREY: Great, thanks Greg. Kristine, you have your hand up, is that an old hand or a new hand? Thank you. Okay. Anymore comments, suggestion on this question? There's still some chat going on, so please read the chat. If nothing else, then I'd like to move on to individual proposal #11 and maybe take the last 15 minutes to talk about this, if it's needed. This was submitted by Susan, I don't know if Susan wants to talk to it, and I know it probably applies more to Sunrise, but I think there may be some leaning over to the Claims. If Susan would like to talk to this, please go ahead.

SUSAN PAYNE: Yeah, I guess I can. It took me a while. I was at my computer and I saw this on the agenda, because I kept thinking I was sure

we had already talked about this. But, of course, the reason is because we talked about this in the Sunrise Sub Team and not in the Claims one. And so with apologies to the people who are in both Sub Teams and therefore had this already.

But I do recognize that I did suggest that it might address both, because although I think it really does mostly go to perceived issues or concerns with the Sunrise, and the operation of certain registry practices with the Sunrise, I don't see a reason why it couldn't theoretically apply in relation to some registry activity that interplayed with the Claims process, which I think is why I said both.

But yes, the nature of what I was suggesting was that we had spent a lot of time talking about some practices of registries that obviously brand owners in particular had raised, some concerns they had around things like perceptions that they were being disadvantaged by pricing in particular, by things like the setting of Sunrise pricing at a very significantly higher level than the pricing would be in general availability and the conceivable outcome of that, that if the pricing goes to a certain point, then it becomes not just a disincentive to registering a Sunrise registration, but conceivably is sort of undermining the rights protection that we granted to brand owners by effectively making the Sunrise so unpalatable that it's no longer really a genuine right that they are being given a advantage being allowed to access.

So, as I say, my idea was therefore we had a lot of conversation in the Sunrise Sub Team and we had conversation in Kobe, I think it was, about the concerns about the extent to which ICANN can or should be imposing restrictions on pricing. And I was trying to

come at this from a different way. So, this is not to say registry operator, you must charge X or you can only charge no more than Y, no more than X number of times the price of the general availability in the Sunrise.

I was trying to take it away from that kind of concept and just introduce something which was basically a commitment by a registry in the form of a mandatory public interest commitment that go in the spec level or whatever number that spec is in the new world. It just says if there are registry practices which application to be calculated to circumvent the rights protection mechanisms, then that's an avenue for a brand owner to seek a remedy by the DRP effectively, because there is a commitment from the registry that they will not operate their registry in a manner which circumvents the rights protections.

And as I say, I think it seems to be mostly that this is relating to issues that we've been talking about in the Sunrise, but conceivable, I suppose, that it might come into play in relation to something that impacts on the Claims. I can't think of an example, but you know, I'm trying to kind of legislate the future, I guess.

ROGER CAREY: Great, thanks Susan. Just a comment on my part and I would say that as I read it, I thought the exact same thing as you were saying, it does seem to apply to Sunrise, and I couldn't come up with a way or an example in Claims, but that was just me. So, I think I'll leave it open and let anyone provide comments on this. Please go ahead, with anybody.

LORI: Hi this is Lori, I can't find my hand.

ROGER CAREY: That's okay, go ahead Lori.

LORI: Sorry, I'm still not used to Zoom. This is a public interest commitment that is supportive, as you can imagine, buy INTA and others in the IP community. We've given this a lot of thought. We've actually suggested other public interest commitments in other contexts that would also by brand owners, not in the rights protections, but we've put forth similar ideas when it comes to protecting geographical terms on the other side, making sure that trademark owners aren't overstepping or creating confusion with usage of particular geographical names.

And I think this is kind of the reverse of that, where in good faith we are trying to work out issues around what is fair, and I think it is fair, given the experiences we had with particular registries that would jack up prices on registered trademarks, trademarks that were in the clearing house for tens of thousands of dollars, which is not what was intended by RPMs in any stretch of the way. And I believe that this kind of public interest commitment addresses that without getting into the whole, are we setting a price or fixing a price, or just asking for fairness in pricing, and I believe that this achieves that objective.

ROGER CAREY: Okay, great, thanks Lori. Again, on that, I think that's valid, but I just don't know that it applies to Claims in that instance, but again, I feel it's still valid. One question for Susan or Greg, or even Staff is, Susan you mentioned this was discussed in the Sunrise team, do you want to share the outcomes of that discussion? Susan go ahead.

SUSAN PAYNE: Yeah, I'm really sorry because I'm not in the relevant summary document for Sunrise for this call. I know we talked about it, we had a wide ranging conversation over quite a long period of time during at least one call. I've got to be honest, I'm not sure where we came out on it. I think it's something that undoubtedly we may need to further communication back and forwards on the email list, though I'm not sure that there has been a great deal to date. But, if you don't mind me jumping the queue, I noted that there was some comment, Rebecca you pointed out in the chat that there is not really the data to support this for Claims. You know, being completely frank, I agree with you, and I'm not trying to suggest that there is.

What I was thinking when I was making this proposal was that one was crafting the kind of pick as being something about not circumventing the rights protection mechanisms, one could craft it in that way and in that sense there would be the capacity for it to be relied upon in the event that some registry did adopt a practice which in some way undermines the ability to advantage of plays.

Now you may disagree that that's appropriate and you're certainly entitled to do so, but it seemed to me if what we were talking

about was crafting a pick that was trying to address not circumventing the rights protection mechanisms, then that was my point, rather than specifically not circumventing the Sunrise, because to my mind it makes no real difference in terms of what the pick looks like. But as I said, you may well have a different view on that.

ROGER CAREY: Okay, great. Thanks Susan. Kristine, you have your hand up, please go ahead.

KRISTINE DORRAIN: Hi, thanks, this is Kristine Dorrain. And I may have mentioned this in the Sunrise group also when we talked about this, but just for getting on the record here, I don't necessarily oppose the concept that Susan is proposing here generally as a principle for this entire PDP. But one thing I wanted to add was sort of add a different procedural take on it. I actually oppose the idea of a pick. I think that we have mechanisms in place that just need to be tweaked, that could include this sort of protection.

For instance, and try not to lob any stones at me yet, but for instance, the TMPDDRP, I know we discussed it very early on, I think there was universal agreement that it wasn't used, just because really registries weren't generally abusing their position to take advantage of trademark holders, which if you read the TMPDDRP in depth, that's really intact. There's a lot of minutia like to prove this element or that element, they were very specific about the types of abuse that the TMPDDRP was for, but I think

you could almost make it better, because if you a pick DRP, you enter it as a whole bunch of other problems into the mix, such as who has standing to enforce and the bring the claims, and how those claims get adjudicated.

If you use the TMPDDRP and just tweak the elements of what constitutes really just abusing trademark holders as a registry operator, then you have a process already in place, you have providers already in place, you have a system that already includes at least forms decisions, I don't know if the other providers do, but essentially it's a looser pay system, so both parties who want to participate in the PDDRP put out money, loser forfeits and the winner gets their money back.

So there are a lot of advantages to taking something that exists for the purpose for which it was created, and kind of making it a little bit better to address actually instances of maybe perhaps what we might be considering to be registry operator abuses, I'm not going to do so far as to say they have been abusive, but in the event that people think they are. I think we have tools and I don't think we have to add new ones. Thanks.

ROGER CAREY: Thanks, Kristine. I think we'll take Greg as the last voice here. Please go ahead Greg.

GREG SHATAN: Thanks Greg Shatan for the record. To some extent I think this is a drafting philosophy issue which is whether we draft narrowly for the problem or more broadly taking into the account of the future

ingenuity of those who might try to gain or registries who might try to disenfranchise an RPM. It may be that if we have a broad rule, it's too broad, maybe if we have a narrow rule that somebody does figure out a way to disadvantage Claims to the point where it's no longer working and then we have to come back the next time this group reconvenes in 2025 to figure out what to do about it then.

So, I think it's a philosophical question. I am intrigued by what Kristine has said, too, because I think that the PDDRP is something that I work on a bit in creating it and I think it has more applicability and I think we should look at it for that. If we create a pick, then we're driving the ultimate compliance on hand toward compliance, the other hand toward the picked DRP. So, I think the question both of whether there is a problem or a potential problem, and how to best go about it, and certainly not creating new processes, and anything we can to make old processes more viable, I think is definitely worth a look. Thanks.

ROGER CAREY: Thanks Greg. Alright, I think we're about out of time, so I will turn it back over to Staff.

JULIE HEDLUND: Yes, thanks Roger, this is Julie Hedlund from Staff. Thank you all for joining, we'll go ahead and adjourn, so that there is time for folks who are on the next call to be able to transition and thank you very much for chairing, Roger. We hope you have a great day. This meeting is adjourned.

ROGER CAREY: Thanks everyone.

TERRI AGNEW: Thank you everyone, once again, the meeting has been adjourned. Thank you very much for joining and please remember to disconnect all remaining lines. Have a wonderful rest of your day.

[END OF TRANSCRIPTION]