
ICANN Transcription

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

Wednesday, 22 May 2019 at 1800 UTC

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TERRI AGNEW:

Good morning, good afternoon, good evening, and welcome to the RPM subteam for sunrise data review taking place on the 22nd of May 2019.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone audio, could you please identify yourselves now?

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Hearing no one, I would like to remind all to please state your name before speaking for recording purposes, 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.

JULIE HEDLUND:

Thank you very much, Terri. Very quickly, let me review the agenda. Item one is updates to statements of interest. Two is the review of the workplan and timeline, three is the development of preliminary recommendations, including discussing the agreed preamble sunrise charter question in conjunction with proposal three, and discussing the agreed sunrise charter question 5B in conjunction with proposals one, seven and eight, and item four is Any Other Business. May I ask if anyone has Any Other Business?

Seeing no hands, back up to agenda item one, may I ask if anyone has any updates to statements of interest? Seeing no hands, moving to agenda item two, I will ask my colleague, Ariel Liang to give us a brief update on the workplan and timeline. Thank you, Ariel.

ARIEL LIANG:

Thanks, Julie. As you can see, we have four meetings left for sunrise before ICANN 65, and that includes today's meeting. For today's meeting, the goal is to finish discussing all the agreed charter questions and the individual proposals, and then starting from the next meeting, the 29th of May, the subteam will start

reviewing the staff drafts of the proposed answers to the charter question and the preliminary recommendations.

And we will circulate two documents to the subteam. One is the summary table that we will update as usual, and then the other one is going to be called the status check document, and that document will organize all the proposed answers, preliminary recommendations, in a very clear manner, so we hope that document would be much easier for you to review, because it will be much shorter and you can just focus on [proposed] text where you'll provide your comment.

So that will be three more meetings to discuss the draft text, and the subteam probably has to move in a very aggressive, rapid speed, because we do have a lot of questions to address and agree on the text. And then staff will update the summary table and the status check table again after the subteam has discussed all these draft text.

An additional thing we want to mention is for the sunrise subteam, there are still some open discussion threads, and all the open ones will be extended to next Wednesday at the end of the day, and there will be two more discussion threads open today. One is for the preamble charter question, the other is for Q5B, and that will also be closed next Wednesday. So we want to keep the timeline consistent and so that the subteam members can provide all your comments if you didn't have the opportunity to provide during the call to put on the discussion threads. And that will be closed next Wednesday.

So that's all the points I wanted to raise now. Julie, do you have any additional comment?

JULIE HEDLUND:

No. I have nothing else to add. That was very thorough. Thank you, Ariel. And then at this point, let me go ahead and go to the next agenda item. As noted last week's call, Greg did chair the call except for the last 30 minutes, and David chaired that portion of the call.

Sometimes, we do have an update from the person who chaired the previous call as to how the previous call went, and just a quick summary. Let me ask you, Greg – and apologies if I'm putting you on the spot – if you have anything you would like to say about last week's call. Otherwise, we'll go ahead to David McAuley and have him start the discussion with respect to the preamble question.

GREG SHATAN:

Thanks, Julie. Just briefly about last week's call, we discussed question eight, which dealt with the ALP, QLP, etc., and basically hoped that Kristine and Maxim might come up with some sort of a factfinding exercise, or at least questions, because we felt like we were inadequately informed, and at that point didn't have a recommendation.

And I see Kristine just says in the chat, "Maxim and I literally just circulated some language." So that seems to be on track, so that is good.

We also discussed – question nine was brought up, but that discussion was then redirected to the mailing list. Question 10 was then discussed exploring the proof of use in relation to sunrise. And there's a discussion that took place there, and I don't believe we came to a conclusion, but obviously tried to.

And then I stepped out, and I believe at that point, the discussion moved to transliterations, translations and IDN and the like, which I believe is under question 12. Not question 12, but in any case, that was discussed. And I think at least question 12 was teed up at the end of the last call and discussed briefly, which is a question of priorities between sunrise and other things.

With that, I'll turn it over to David. Hope that that was more illuminating than befuddling. Thank you.

DAVID MCAULEY:

Thanks, Greg. Hi, everybody. And that was illuminating. And during the short portion that I was acting as chair, we did talk about those, and we had a brief discussion about the potential for joining questions 8 and 12, but we saw some merit and some drawbacks and didn't reach a conclusion on that.

I also want to state before we get into the preamble question, thank you, Ariel, for the timeline, and noting the threads that are open until next week. And it's important to recall on the threads that the time to make entries into the threads is basically now, because that would give folks the benefit of your thinking and a chance to respond, and hopefully there won't be – in other words, don't hold your entry until very late. Give folks a chance to react.

Having said all that, let's go and turn to the preamble question and proposal number three which is relating to it. What I'll do is what we've done in the past, is read the preamble question quickly and I'll note some portions of proposal number three, and then open the floor.

The preamble question, as it says, is intended as a level setting set of questions. There are six questions, and it begins as follows. 1A, is the sunrise period serving its intended purpose? B, is it having unintended effects? C, is the trademark clearinghouse provider requiring appropriate forms of use? (If not, how can this be corrected?) D, have abuses of sunrise been documented by trademark owners? I should say sunrise period. E, have abuses of the sunrise period been documented by registrants? And finally, have abuses of the sunrise period been documented by registries and registrars? That is the preamble question.

In conjunction with that, we have a proposal number three that George submitted, and in essence, he is saying in this proposal, if the sunrise procedure is retained, a separate proposal calls for its elimination, from George. Then the Uniregistry sunrise registration anti-hijack provisions shall be made standard for all future TLDs, and then he quotes what he's talking about per section three of that Uniregistry provision. And I'll go ahead and state them.

Part one of that says registered names obtained in accordance with the sunrise registration process shall be solely registered to the qualified applicant thereof who was the owner of the trade or service mark registration on the basis of which sunrise registration was allocated. Such registered names shall be restricted from transfer to any other registrant, etc.

Then the second section says, “Registrant names obtained in accordance with the sunrise registration shall not be maintained using a privacy or proxy registration service.

And in his rationale, George said the proposal would reduce gaming of the sunrise process.

So that, in essence, is teed up for discussion, and I'm opening the queue to see if anyone would like to make any comments, make any suggestions, proposals, etc. First hand up is Kristine. Kristine, you are the queue so far, so why don't you go ahead?

KRISTINE DORRAIN:

Hi. Thanks. You know what? If a registry operator wants to have some super restrictive transfer policy that offers an added benefit to people, I think they should be allowed to do that. We all have different business models, we cater to different target audiences, different clientele. That's great. I don't think there's any basis for which we should define to registries and registrars – in the absence of a problem, right? Invoking the Jeff Neuman rule, what's the problem we're trying to resolve here? I don't really understand what the problem is. I don't think anyone's raised an issue of trademark words being hijacked en masse from certain registrars or anything like that. So I don't understand why we would disrupt this. This adds a lot of technical complications to the way registries and registrars do business, and it adds a technical complication layer without adding any real benefit that I can see. But I don't propose that we forbid it. Certainly, registries can do this if they want to.

Secondly, I will just point out that number two probably is – I'm not a GDPR lawyer, but I'm going to go with number two is possibly not even allowed. Thanks.

DAVID MCAULEY: Interesting. Thank you, Kristine. Next in the queue is Kathy had her hand up. I think it's gone down.

KATHY KLEIMAN: No, it's still up, I just took it down when I unmuted.

DAVID MCAULEY: Oh, I'm sorry. Go ahead, Kathy. You have the floor.

KATHY KLEIMAN: Okay. Great. Thanks. I'm going to agree with Kristine that I'm not sure two is allowed under ICANN rules, which is barring the use of proxy and privacy.

But I think what George is trying to get to is indeed trying to prevent gaming. And we have found gaming. But as always, David, I was kind of hoping we could look at the questions in general. My personal view is that it's always good to see our own responses as a subteam to the questions and then look at the proposals to see if they help inform or tweak or provide insight or information.

So, may I request that we defer consideration of this proposal until after a review of the preamble questions?

DAVID MCAULEY: That's a very fair point, Kathy. Thank you. I guess I delivered that poorly. I didn't mean to, by mentioning the proposal, create it as a limitation by any means. So the proposal's on the floor and we can consider that, but I do think you have a good suggestion, and that is if anybody has a general reaction to the preamble question, which itself is very general and sort of sweeping as to what we're doing, those are certainly welcome to help us inform answers to these questions. So I think Kathy makes a very good point, and I would invite folks, please, come in and help us answer these very important questions, not least of which is, is the sunrise serving its intended purpose?

So having said that and agreeing conceptually with Kathy, put the proposal number three in the back of our minds for now. It's still on the floor, but so also is the preamble question generally. Maxim, your hand is up next .why don't you go ahead, take the floor.

MAXIM ALZOBA: Actually, I also would recommend not to go with this suggestion for multiple reasons. First of all, there's a thing called transfer policy, and it doesn't say that you cannot prevent transfers. I'm not sure it's possible to prevent it.

The only possibility is for some particular hypothetical TLD is to have special rules of eligibility, for example some highly regulated TLD which has demand for the particular license for being doctor

or pilot or something like that. And if you sell it to someone else who is not a doctor with this name, with this license, not eligible.

And the third thing, it will not work, actually, if we do not resort to attempts of regulating registrants. And I'm not sure we will be allowed to do that, because for example simple situation where we're hypothetically talking about some name which costs a lot of money, and just company sold with all the services they have, that's it. And without regulating registrants, you will not be able to prevent that. So I would not recommend to go in this. Thanks.

DAVID MCAULEY: Thank you, Maxim. Kristine, you're next. Why don't you go ahead, please?

KRISTINE DORRAIN: Thank you. I may have jumped the gun. I apologize. I was starting to answer the, "Is it meeting its intended purpose" question, because I thought proposal three was done. So I will wait until we get there. Thanks.

DAVID MCAULEY: No, you're welcome. Please, I think it would be good to address serving its intended purpose and the unintended effects question, that kind of thing. So please, go ahead. We can actually mix the discussion. I think I delivered it, set it up fairly poorly. I apologize for that. But both are welcome now. Maxim's comment just now is welcome, but so too would yours be on the overall question. So go ahead, please.

KRISTINE DORRAIN: Okay. Great. Thank you. And I do not have the document open in front of me, so I don't recall yet if we have any draft language on this. But I would propose if we don't have draft language that we do actually in this case have evidence of the sunrise for is it serving its intended purpose, I think that we have pretty good consensus, actually, between multiple groups that it is. Notably, I think brand owners said that they prefer sunrise, they don't want to see it go away, they think it's working. I think registries have said if ICANN removed the requirement, they'd probably do something like sunrise anyway, and in fact, sunrise was basically copied from something that dot-biz did and other TLDs. I believe that dot-Asia, dot-xyz – or xxx, I'm sorry. I think a lot of registries were already implementing sunrise periods. So I think it's something that registries already see and plan on using, registrars are already integrated with it. So I think we actually have pretty good consensus that it's serving its intended effect.

I think, for those people who were on the last call, possibility of a parenthetical here that, could it possibly be better in some ways? Maybe we'll get there. But I think the answer to the question to start with is yes. Thanks.

DAVID MCAULEY: Thank you, Kristine, and I'm looking at the queue. Next is Greg Shatan. Go ahead, Greg.

GREG SHATAN: Thanks. And I'll avoid the temptation to go to proposal three, and continue the discussion started by Kristine. And I tend to agree that sunrise is serving its intended purpose. I recall [dot-mobi] as being another one. Yeah, I think virtually all of the second generation and forward legacy gTLDs, most or all had a sunrise. So this was borrowed from current practice.

So I think that we do have question B where we get to the unintended effect, but in terms of its intended purpose, which is as a rights protection mechanism, that while it'd be better in some ways to not have to make purchases ahead of – that are essentially in many cases defensive registrations, or in other cases you may not have made otherwise, then – but that's hypothetical. The practical answer is that we instituted this RPM as a way of minimizing that concern, and I think it works. Thanks.

DAVID MCAULEY: Thank you, Greg. Next is Mitch. Please go ahead, Mitch. You have the floor.

MITCH STOLTZ: Thank you. I don't get a sense that we really do have consensus that the sunrise is serving its intended purpose. I look particularly to a lot of evidence that's been submitted about abuses of the system, particularly the registration of common words, which are in the broad sense [equally going to be] [inaudible] sorts of users who may not hold a trademark or have made a priority of getting their trademark into the trademark clearinghouse, but should really

have an equal shot at registering that name across all of the new gTLDs and potentially some of the legacy TLDs.

That's, to me, a strong showing that giving priority to the person who managed to get the word "the" into the trademark clearinghouse is not what was intended, and is distorting the landscape of domain registrations. So I really don't think that it's serving its intended purpose, and given the evidence that's on the record here, don't see internal consensus on that point either.

DAVID MCAULEY: Thanks, Mitch. And we will also discuss this partially with proposal number eight when we get to question 5B, but I take your point. And thank you. Next in the queue.

CLAUDIO DIGANGI: I'm sorry, David, can I get in the queue as well? I'm on audio only at the moment.

DAVID MCAULEY: Yes, Claudio. Thank you. The queue right now, Claudio, is Kathy, Maxim, and then you. And we'll do it that order. Kathy, why don't you go ahead, please?

KATHY KLEIMAN: Okay. Can you hear me, David?

DAVID MCAULEY: Yes.

KATHY KLEIMAN: Okay. So, I think in some ways, we're jumping the gun – forgive me for saying it – because we haven't done 5B yet and we're back in the preamble. In 5B, we have two proposals. Not one, but two proposals, [one and eight] individual proposals to actually eliminate the sunrise period.

And one of those proposals says, "Furthermore, sunrise represents an expansion of rights for trademark holders relative to their actual right in trademark law. As such, sunrise should never have existed in the first place." You can guess who wrote that.

I think we haven't looked at the data, so let's look at the data and then I'm going to propose an approach. But according to the Analysis Group, who looked at this more closely than anyone, not from the survey but in their initial report that they spent so much time and money on as requested by the GAC, going all the way back to our initial work.

And I'm just reading off of our summary table. "A sunrise period has served its intended purpose to some extent – and that's what Maxim put in the chat, let me read the rest of the line – but with significant limitations due to hurdles such as pricing, certain registry practice, and lack of transliteration support." Continuing by Analysis Group, "Sunrise period has unintended effects, including negative impacts on registries and registrars, issues of operating sunrise and qualified launch programs and approved launch programs. There is abuse – again, Analysis Group – of the sunrise

period by registries documented by trademark and brand owners. When we look at other types of data that we've collected, we find sunrise has served its intended purpose to some degree." It's always qualified.

And under additional data, which you can see and that we've talked about many times and as Mitch just talked about, there are anecdotes. But I would [add it goes beyond,] there are journalistic reports repeatedly about sunrise period having an unintended chilling effect on legitimate registrants.

So, here's my proposal. We will get through this question a lot faster, maybe if we do it after 5B, but also if we combine A and B together so that we don't have to – so, is the sunrise period serving its intended purpose, is it having unintended effects? If we put that all together, David, I think we might get to an answer more rapidly. Thank you.

DAVID MCAULEY:

Thanks, Kathy. Let me think about that for a minute and continue going through the queue. Next in the queue is Maxim. Maxim, why don't you take the floor? And then we'll have Claudio and then I may come back, raise my hand and come back just to talk about that. Thanks. Maxim, go ahead.

MAXIM ALZOBA:

Actually, there is a thing which actually prevents us from finding the solution here. It's impossible to distinguish a valid startup with few bright people having a business idea and some kind of prototype and trademark registered. To distinguish them from

[third-party registered] trademarks solely for the registration of the names and resale.

And most importantly, it's not possible to check which variety was it until the resale. And the name might not have been resold for years. To say more, the current registration system in general is not designed to track what happens to the contents, I'd say, of what's behind the domain name after the registration, with the exclusion of highly regulated TLDs. And I must remind you that if we say that all TLDs have to be highly regulated, we are going to severely damage mass market. It will affect customers, because if you add some additional kind of identification, verification to any mass market service, you just cut numbers significantly, and it will just affect customers. Thanks.

DAVID MCAULEY: Thank you, Maxim. Claudio, you are now up. Go ahead, please.

CLAUDIO DIGANGI: Thank you. Looking at this question, it almost requires understanding what the intended effect is of the sunrise period, and the way I would describe that would be that it is to provide an early opportunity to trademark owners to register a domain name before the domain is sold during general availability.

So when you look at it from that perspective, I think in a very large percentage of cases, it is having that effect. There are opportunities granted to trademark owners to register their domains before they're put up for general availability. I think that perhaps the one exception is – and I think Kathy mentioned this

point – if the domain name is being sold at a price point that is so high that it prevents the trademark owner from utilizing the sunrise period, then in that case, the intended effect might not come to fruition there.

But in some of the other points, I think I heard Mitch mention, I think even George potentially in his proposals, I think they're going to a broader issue as to whether there are unintended consequences, or philosophically, someone might not even agree with the contract of the sunrise period, they just think that all domains should be made available at the same time.

I would put those sort of concerns in a separate bucket. They're broader than really what the question is asking. The question is merely asking, is it having the intended effect [of why] the policy was created? The policy was created to protect trademarks. If you were to survey trademark owners – and I'm sure [inaudible] this – the sunrise period is extremely valuable to trademark owners for that reason.

So, that's my view on it. I would like to – if Mitch has a response, I'd welcome it. But again, I think that the concerns expressed there are a little bit broader than what this question is asking. Thank you.

DAVID MCAULEY:

Thank you, Claudio. I'm just going to make a comment or two here, then I'm going to go back to the queue, which is still forming, the queue right now being Michael Karanicolas and then Mitch. But the comment I'm going to make is Kathy' asked us to sort of

switch around the order, and what I'd like to do is sort of continue on with the agenda the way we have it structured. So I'm going to say sort of a soft no to that, Kathy, but I will mention to folks, we're going to get to question 5B. And I'm not going to read it now, I'll simply summarize it by saying it's that question that deals with whether sunrise should remain mandatory or become optional.

Keep those thoughts in mind, because obviously, as many of these questions are, they're related, and there's an interrelationship amongst a lot of these questions. So when we get to 5B n today's call, that doesn't mean we can't circle back to this question. It's an open conversation. That's my thought on handling it right now.

Having said that, I have two hands in the queue. Michael, why don't you go ahead, please?

MICHAEL KARANICOLAS: Hi. Thanks. Claudio actually touched on something that I was going to mention, which is that in trying to determine whether the sunrise period is serving its intended purpose, I think that there's disagreement within the group about what the intended purpose of sunrise is. And I think that that's sort of a challenge to finding an answer here insofar as I think that from my perspective, the purpose of sunrise is to ensure adequate protection and respect for legitimate trademark rights. But there are also arguments that the purpose of sunrise is to expand the applicability of trademark rules and essentially to create new rights. Certainly, that's been the effect of it.

so fundamentally, I think that it's problematic insofar as the impact of it would go beyond what I would consider to be the intended purpose, but I do think that that fundamental disagreement about what the sunrise is for has colored a lot of these discussions and likely will continue to do so. So I do want to flag that as I think coming to the heard of a lot of the disagreements that I'm hearing. Thanks.

DAVID MCAULEY: Thank you, Michael. Mitch, I take it that you – I believe you're in the queue, and I'm wondering if you had the same problem that Kathy did with the hand. Are you still in the queue, or should I go to Greg? Who's next?

MITCH STOLTZ: Please go ahead. Thank you.

DAVID MCAULEY: Thanks, Mitch. Okay, Greg, please.

GREG SHATAN: Thanks. I don't think anybody would say that sunrise is perfect, so whether we put some form of qualifier before it, both in terms of whether it could serve its purpose better or whether it has unintended effects, there's certainly room to discuss that. I don't think there is room for varying views on what the intended purpose of sunrise was, so I don't think there's disagreement so much as confusion. Sunrise is a rights protection mechanism which was

intended to give trademark owners a right to purchase domain names, register domain names to avoid cybersquatting, avoid UDRPs and URSes, and the like.

We can probably find some official statement about what sunrise was intended, and kind of funny we're this far into the subteam's work and don't have a mission statement-level statement of what sunrise is for, but hopefully, we can dig one up. But I don't think ultimately that there should be much variation on what the intended purpose was. And I don't think anybody would say the intended purpose was to expand trademark rights or create new rights, or the like. [I guess some people would] say it, but in terms of trying to factually state what the intent was in terms of the purpose.

So I see Michael saying "I'm describing the function." [No,] I'm talking about the purpose. The purpose was a rights protection mechanism to protect trademark rights on what we've been calling, I think, rather than a curative basis, a proactive basis, not unlike reserve names and other bases that are used other than dispute resolution mechanisms. That was what it was intended to offer.

So as to some of the issues about – and I think that we do have the trademark clearinghouse, so that, subject to discussions about any imperfections in the clearinghouse, is our definition of what are legitimate trademark rights for purposes of this? So I think that's covered. And again, there may be tweaks here and there that we need to discuss, but if you look at, I think, the main stream of what's happening here, it does serve its intended purpose. Thanks.

DAVID MCAULEY: Thank you, Greg. Next in the queue is Kathy. Go ahead, please.

KATHY KLEIMAN: Hi, David. I figured out what was confusing to me and why I thought we might need to go to 5B. But actually, I think it's a part of 5B needs to come to us. And that's proposal one and eight, which are currently classified under 5B, which calls, just to let you know, for elimination of sunrise.

Actually, I checked them out. Helpfully, I printed them out. David, they actually reference, in Q7, which is, what charter question would you apply to, they actually both reference sunrise question preamble.

So that's what was confusing to me as to why we weren't talking about these proposals to eliminate sunrise in this question. So I'd like to make the proposal that we bring one and eight, which by their own terms want to talk to preamble as well as 5B, forward, because – the reason why is if you want to eliminate sunrise, then those drafters of these two proposals on their face do not think sunrise is serving its intended purpose. You can agree or disagree with them, but that's what the essence of the proposals are. And these are detailed proposals that go on for a full two pages.

So I'd like to request that they move in, I'd like to again go back to our data where our own summaries qualified the sunrise having its intended purpose. Not a single of our summaries said yes outright. They were all qualified. So I think we have to be qualified as well.

And again, my idea that if we mix preamble question answers A and B, is it serving its intended purpose and is it having unintended effects, we can get to kind of a clear answer that for some it's serving its intended purpose but others see real problems and kind of fudge the point for lack of a better term so that we can get onto actually trying to solve the abuses in D, E and F which we actually know have gotten there.

We did something similar with trademark claims, the trademark claims notice for those who were in our former subteam meetings. Thanks, David.

DAVID MCAULEY:

Thank you, Kathy. And on that point, I can agree with you. I'm happy to bring forward proposals one and eight into this discussion, and I'll do it by summarizing them after I first recognize Mitch. He was in the queue, and I think can make his point before I make those summary statements about those two proposals. But I'm happy to do that part of it to keep this discussion going about the preamble question. So Mitch, why don't you go ahead now? You are the remaining hand in the queue.

MITCH STOLTZ:

Thank you. I'll be brief. I'm actually kind of surprised to hear that the folks were operating under the assumption that the intended purpose of sunrise was to [inaudible] to the benefit of one constituency, trademark holders, and not for the general good of the domain name system. That's kind of baffling to me.

I thought, and I thought this was sort of inherent in the way this process was constituted, that the intended purpose is to strike a balance between the interests of various participants in the domain name system.

So this may be moot if we are combining points A and B, which I agree with doing, but just want to register that. Appreciate that.

CLAUDIO DIGANGI: David, can I get in the queue to respond to what Mitch just said?

TERRI AGNEW: While we're waiting for David to respond, if I could just remind everyone to mute when not speaking. It seems we have some background noise.

DAVID MCAULEY: Thanks, Terri. Claudio, go ahead quickly, please, and then I'll make a point about the proposals, and then we'll go to Greg.

CLAUDIO DIGANGI: Yes. Thank you, David. I'll be very brief. I understand what Mitch was just saying. Maybe some of the way I phrased and some of the other comments came in gave him the impression that it was primarily something just for trademark owners to secure their domain names and extract value from them. But in reality, the reason the RPMs were developed and the new gTLD program is getting implemented and developed as policy is because of the risk to users, to consumers when registration abuse takes place.

And the concern when we're exponentially expanding the domain names, we're creating new opportunities for registration abuse where you can register the exact match of a domain. When you kind of do that in the legacy domains which were a very small number and trademark holders had their brands, in many cases the identical match of their brand is registered already. But when you expand the domain name system, there's countless opportunities to register a domain that exactly matches the trademark and then use that domain name for illegal purposes, for purposes that stem from the registration abuse.

So it's not something that's there just to prevent – to help trademark owners. It really was for the overall integrity of the domain name system, consumer trust, and ensuring that the expansion is going to take place in a safe way. So that's where this policy sprung from, and I think as Greg and Christine mentioned earlier, there was a track history of registries using this policy to accomplish those goals. So it then became applicable to all the new gTLDs.

But it's really for that much broader purpose than just one constituency benefiting from it. Thank you.

DAVID MCAULEY:

Thank you, Claudio. And before I go to the queue, let me go ahead and just mention proposals number one and number eight. Number one is from George Kirikos, and basically, his suggestion here is that sunrise along with trademark claims should be eliminated as mandatory policy for all subsequent new gTLDs. And his rationale was that the premise with the adoption of the

RPMs in new gTLDs was the prediction there'd be massive cybersquatting and new gTLDs, billions of dollars in costs for trademark owners due to an enormous number of new domain name registrations that were anticipated. But those predicted risks were incorrect and exaggerated.

George went on to say just as somebody would not buy a \$500,000 security system to protect a painting worth \$100, ICANN should not require mandatory RPMs that are disproportionate to the actual risks and whose benefits to a narrow group of stakeholders are outweighed by the costs on other stakeholders, etc. Furthermore, he said an expansion of rights for trademark holders relative to their actual rights in trademark law.

The other proposal, number eight was one that Mitch Stoltz submitted to the group. So Mitch, I'll certainly give you the floor if you want to summarize this for the group, or I'd be happy to if you would prefer me to do it.

MITCH STOLTZ: Please go ahead. Thank you, David.

DAVID MCAULEY: Okay. Thanks. Mitch's proposal number eight is similar. Basically the same thing. It's as proposal to eliminate sunrise registration period as mandatory policy for new gTLDs. The rationale was under domestic law anyone may use a word or phrase for noncommercial purposes, notwithstanding that the word or phrase may also be a trademark. Sunrise registration however allows rights holders whose marks are in the trademark clearinghouse to

preclude the use of words or phrases as domain names in the new gTLDs by other uses for non-trademark purposes.

The overreach is compounded by, one, the inclusion of design marks in the TMCH, two, the inclusion of generic terms such as “the,” “hotel,” “luxury,” “smart,” “one,” “love,” and “flower,” effectively allowing a rights holder to lock up domains unrelated to any good or service they sell, and three, the secrecy of the TMCH. Elimination of sunrise requirement is the simplest way to address these problems, the proposal goes on.

So those two proposals do relate, as Kathy indicated, to the preamble questions in a manner. So back to the queue. Maxim, your hand was next, so why don't you go ahead, please?

MAXIM ALZOBA:

Actually, I would just like to add some clarity. The current version of RPMs was not a multi-stakeholder based policy. It was a decision made on so-called strawman solution. So just for clarity.

So we're talking about the implementation, not about RPMs as policy. Thanks.

DAVID MCAULEY:

Thank you, Maxim. Kathy's hand is up. Kathy, go ahead, please.

CLAUDIO DIGANGI:

Can I get in the queue, David?

DAVID MCAULEY: Yes. You're after Kathy right now. Thank you.

KATHY KLEIMAN: Sorry, David. It's an old hand. I'll take it down.

DAVID MCAULEY: Okay. Well, Claudio, then you are the queue right now.

CLAUDIO DIGANGI: Okay. And we're discussing the two proposals that you summarized; correct?

DAVID MCAULEY: Yes. They relate to both preamble and to 5B.

CLAUDIO DIGANGI: Okay. So, just to quickly comment on what Maxim just said, there was a strawman solution presented at the 11th hour after the number of applications were revealed, because we were kind of operating in the dark and we didn't know how many new gTLDs there were going to be. The expectation was around 500. There ended up being more than triple that amount of applications. And that's where the strawman came into play, he's correct, in terms of the way things did take place during implementation for a large part.

But there was a recommendation in the new gTLD policy that stated that the rights of third parties would be protected in the new

gTLD program, and then it was left really for implementation in terms of how that policy was going to be put into place.

So there's a lot of history there with the applicant guidebook and how that all happened during the implementation period, but its root was in a multi-stakeholder policy development process originally, from my perspective at least.

But to [inaudible] proposals, when you were reading out some of the things that George had put in there, he has a certain perspective on it. From my view, it's actually the exact opposite of what some of those points said. The level of cybersquatting, I'm not sure if the subteam or the working group has hard numbers on this, but we've looked at it within the IPC, and when you look at at least the number of cases that had been brought for UDRPs, they are at a higher level percentage-wise when you compare the number of domain registrations in legacy and new gTLDs. There are a higher percentage of UDRP complaints brought in the new gTLDs.

So the level of cyber squatting is actually higher from that perspective. Of course, you would have to do a study looking at all domain names and how they're used, which might come up with a different result. But if you're just focusing on the number of UDRP policies, it reflects that there is in fact a higher level of registration abuse in the new gTLDs.

George, I think, was stating the exact opposite, that these concerns do not come to fruition, and therefore the sunrise policy is not needed. So that's where my views counter or differ from what George has put in his proposal. I didn't look exactly at what

Mitch wrote. I could do that, but I just wanted to get this out there for now. Thanks, David.

DAVID MCAULEY: Thank you, Claudio. I now have Mitch in the queue. Go ahead, Mitch, please.

MITCH STOLTZ: Thank you. What I'm hearing on the call and what I'm seeing on the chat is really a difference in how members of this working group are what value, what cost they are assigning to harms which – where they appear on the record are for the anecdotes that appear on the record. And to continue the use of the one that we've been using in the chat just here, mini.tattoo, the question is, which is more harmful if you replicate this at scale? Is it that a tattoo artist, maybe even an amateur, noncommercial tattoo artist or a club of tattoo artists, what have you, is unable to register mini.tattoo because they don't have trademark, they couldn't participate in the trademark clearinghouse, or is it more harmful writ large that BMW has to have an equal shot at registering mini.tattoo with the general public during general availability?

That's I think the question I'm not even sure the data answers here. It's sort of a question of fundamental values.

Now, since I made this proposal, it's my position that the loss of opportunity for noncommercial registrants, or even for smaller commercial registrants who are less sophisticated and may not be able to, practically speaking, participate in the clearinghouse, is greater than the harm that comes from having to – for major

brands like BMW and so on, I think like the sort of brands that have elite trademark counsel on retainer, is less. I think the harm to them is less, simply – and remember, very specifically, what we're talking about here. It's not that they go unprotected, it's they have the same opportunity as everyone else to register their domain names and they have UDRP available.

And that's the fallback here. It isn't a lack of protection, it's a fallback to the UDRP, which I think is not a subject of this working group, but it is the baseline of protection here. So that's why I think it makes sense to make sunrise optical, is to eliminate it as a mandatory requirement on new gTLDs.

I'd also like to point out, although this is less applicable to sunrise, is that we are not actually talking about policies that will only apply to new gTLDs going forward, because as I understand it, all of the rights protection mechanisms are one by one being imposed on the legacy gTLDs.

So it actually seems a little bit disingenuous to me to say that we are only talking about the new gTLDs. Now, obviously, sunrise only applies to gTLDs that are just coming online, but I have heard – happy to be proven wrong on this – that it's been proposed that there be some sort of sunrise opportunities for existing gTLDs as well.

So I think we need to keep this in mind. It appears that ICANN staff is one by one imposing all of the decisions that we make here on the entirety of the gTLD space, not just on the new ones. That's the stakes involved here. Thank you.

DAVID MCAULEY: Thank you, Mitch. And before I go to Kristine, you have introduced a subsidiary question for us all to ponder, and that is, what does one call a group of tattoo artists? I'm suggesting the word "tattle" along the lines of "gaggle." But a lame attempt at humor. Sorry about that. Kristine, you're next in the queue. Why don't you go ahead?

KRISTINE DORRAIN: Oh my gosh, you cracked me up, David. That's hilarious. A couple of things. I'll address Mitch's last point. I think that the whole idea of sunrise will be provided retroactively is a red herring, as you called out. Almost all TLDs are launched. Sunrise is only the first 60 days after launch. You could make that as retroactive as you want, but unless you fundamentally change what it is – and I don't think we have any support for that – ultimately, the period's ended for almost all TLDs. There are some brands, there are some generics that are still out there, but provided they launch before we finish, it won't be an issue.

I want to draw our attention – and I keep bringing this back up to the balance that was struck. Nobody created sunrise in a vacuum, right? Sunrise was created as part of a group rights. Brand owners were protesting vehemently against new gTLDs at all. They were like "leave dot-com, dot-org. We don't need new gTLDs. We're fine."

So the board went and said, "Well, if we allow you to create some ways to protect yourselves, then will you be okay with this going

forward?” So that was the whole reason why we went forward, is because the brand owners were like, “No, this is costing us a bazillion dollars as it is. How can we make it not cost a bazillion times however many new TLDs are coming out?”

So that’s where this came from. They took something that was already out there. There was absolutely zero rationale for saying that people wouldn’t do this anyway. And then quite frankly, if you’re a TLD right now and you remove the sunrise requirement in order to just let anybody in, I can’t imagine how that would be well-received anyway, but be that as it may, I think that we have to understand that this was already a balance. The purpose of sunrise was a counterweight to something else. If you remove sunrise completely, you remove the counterweight. You cost brand owners hundreds and thousands and millions of dollars in protections to say, “Well, you just queue up with all the cybersquatters, you’re good.”

And yeah, you know what? There’s a couple people that want to register love.something or mini.tattoo. You know what? It doesn’t cost them a dime not to register mini.tattoo. They can choose any other TLD, they can choose any other name. The dictionary is full of thousands of words. We’re not talking random strings here. We’re talking words, we’re talking even short words, we’re talking even really short words that can be registered.

Nobody has is severely prejudiced, economically or in other ways, because they can’t get mini.tattoo. The only people that are economically or other prejudiced against that is potentially Mini Cooper, BMW, because they have economic interest already.

So I think we have to be really careful about the balance here and go back to the fact that the sunrise balanced the fact that brand owners were already paying a high price for TLDs. Thanks.

DAVID MCAULEY: Thank you, Kristine. Before I go to Kathy who's next in the queue, I want to do a time check. We have 30 minutes left, five or six of which we'll need for admin and AOB at the end, and I do want to bring question 5B into this, so after Kathy, I'm going to go ahead and do that, and mention Scott Harlan's proposal. So Kathy, why don't you go ahead? Now you have the floor.

KATHY KLEIMAN: Wait, so David, quick question. For jumping to 5B, what does that mean about timing of our continued consideration of the preamble?

DAVID MCAULEY: I'm going to jump to 5B after you comment, and I see that two is related. I think it's a free flowing discussion, as we discussed, but I did want to segment. That's why I said a soft no to your original suggestion. But now we brought the [inaudible].

KATHY KLEIMAN: Okay.

DAVID MCAULEY: So that's my plan. I would like you to comment, then I'm going to go ahead and mention what 5B is, and remember too, there's always the threads. There's always going to be threads open on this, and the threads are important. And it's important, I think when we have spirited discussions like we have here and did, I think, the last two weeks, use the threads. Everybody should be looking at the threads. They'll come across your desk in the e-mail, and there's going to be some good thoughts in there. So thanks. Kathy, why don't you go ahead?

KATHY KLEIMAN: Sure, but I'd like to request that we come back and actually go through the preamble question, not just in the threads, because I think this is really important. I think it's a good discussion, although I do think we've gone into the philosophical.

So first, returning to the process that was created, the IRT was created – for lots of reasons that have been expressed here – by the board to ask what intellectual property owners wanted. When they returned to the meeting in Sydney, Australia with what they wanted, there were parts of it that were somewhat acceptable and parts of it that raised enormous concerns. I can only give you a visual image of many people in the queue at the public forum, including Robin Gross and Cheryl Langdon-Orr reading resolution, the first [joint] resolution ever by ALAC and the Noncommercial Users Constituency.

And then it went back to the GNSO council, chaired by Chuck Gomes, and that's when the [STI] was created to come up with kind of a version based on the ideas of the Intellectual Property

Constituency through the IRT. That was supported by everyone in the community in the GNSO at the time who was involved in it.

So that's where this comes from. So it was a community process. And we are asking a legitimate question. Is it serving its intended purpose? And again, I think our data gives us the answer, a "Yes, but ..."

But in terms of – because you really got me, that there's no disadvantage to a mini tattoo parlor, let's say specialized in mini tattoos, to not have mini.tattoo. And I'll just share – I mean, if we [put that] philosophy to the U.S. Trademark Office, it wouldn't matter how many trademarks people didn't get. It would just matter that some got some. It's really important that words be available to everyone who needs them, for both commercial and noncommercial purposes. It seems to be a key foundation of every trademark law I've ever reviewed, and it is a fundamental balance that we created in this process in 2009.

So I don't want to dismiss what trademark owners need, I don't want to dismiss what future businesses and entrepreneurs need who are now newly naming their companies and products and services or will name them in 25 years, and I don't want to dismiss what noncommercial people need. It's that balance. So I'll go back – I'll agree with you, Kristine, on the balance, but also that there is harm if someone doesn't get what they deserve, if someone else gets too much. Thanks.

DAVID MCAULEY:

Thank you, Kathy. So I'm going to wrap question 5B in the discussion now. I'll read it briefly and then mention the proposal number seven.

Question 5B states, "In light of the evidence that's been gathered, should the sunrise period continue to be mandatory, or become optional?"

Subquestion one, "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 subquestion two, "In considering mandatory versus optional, should are yes operators be allowed to chooser between sunrise and claims? That is, make one of the mandatory?"

And then Scott Harlan's proposal number seven, which also relates to the preamble question in the manner, is making an operational fix recommendation, and the recommendation is that a 90 -day notice period be required ahead of sunrise launch where information necessary for sunrise participants to make registration decisions is specified and easily accessible. This would include things like registration eligibility, pricing, and reserve name status. The notice requirement would then be reset for any names released from a reserve name list.

And his rationale says, "One of the major factors that made sunrise procedure ineffective was the imperfect and untimely information that registry operators provided to registrars and

potential sunrise applicants. This was exacerbated by the frequent and overlapping sunrise launches.”

So that’s on the floor now for comment, and Kathy’s point about going back to the preamble question through those questions is certainly on the floor still too.

So I’m inviting comment on those, on all of what we’ve been talking about. Don’t have anyone in the queue right now, so it’s probably an opportunity –

CLAUDIO DIGANGI: David –

DAVID MCAULEY: Claudio, I’ll pass to you. I’ll recognize –

CLAUDIO DIGANGI: [Don’t.]

DAVID MCAULEY: I’m sorry?

CLAUDIO DIGANGI: No, if you wanted to move ahead to something else, it’s fine.

DAVID MCAULEY: No, I don’t. I’m going to come to you in just one second. I was just going to remention threads, especially in light of the timing. We’re

getting close to the end [inaudible] becoming more and more important. But Claudio, why don't you go ahead? And then I'll go to Maxim.

CLAUDIO DIGANGI:

Yeah. Just a really brief point. If we're still talking about the charter questions, [listening] to the concerns of Mitch and Kathy, I do understand where they're coming from. I'm not sure if it helps to – I doubt it'll sway anyone's mind, but trademark owners generally do not want to register domain names during sunrise. And I feel that somewhat of the tenor of the comments have been this is something that they're gaining from doing, there's a tradeoff where the trademark owners are benefiting and the noncommercial registrants are losing out on the ability to use the names.

But if you look at it from the perspective that – and Kristine touched upon this, that the general view at the time from the trademark community was that they didn't even want new gTLDs to come out, let alone sunrise registrations.

So it might look to some like a power grab or a landgrab in a certain way, but in being involved in INTA and the IPC, this was really something that was produced to stem the harm that could take place.

And yes, the brand gets affected, the brand value, and all those things, but it's also to the consumers who are harmed from the registration abuse. It doesn't always have a direct corollary to the consumer harms, but in many cases, it does, because in many cases, there is a website and there is a scheme that's taking place

that relies upon the consumer trust of the trademark, and then they're able to exploit that trust, and consumers need up getting harmed [in a lot of ways.] It could be counterfeit products, it could be a whole list of issues, phishing and things like that.

So I just wanted to provide that perspective. I'm not sure if it's helpful to Kathy or Mitch at all, but that's really the framework, I think, that we should be looking at some of these questions from. Thank you.

DAVID MCAULEY:

Thank you, Claudio. Maxim, you're next. Why don't you go ahead, please?

MAXIM ALZOBA:

Actually, talking about additional 90-day period, we shouldn't forget that registries are not existing in vacuum. They have to pay considerable bills, and effectively, doing no business for additional few months is bleeding money. And someone has to pay for that. And it will lead just to high prices for every domain, all TLD offers. And it doesn't look like care of customers.

And the second thing is about aligning of periods between different TLDs. I'm not sure we're going to stop all businesses to measure it by the last one, because if we did it last time, no TLD would be launched, because the latest TLDs are still in the process. So we have to take reasonable view of what happens if we implement that. I would object to this suggestion. Thanks.

DAVID MCAULEY:

Thank you, Maxim. So there's no other hands in the queue right now, so I'm just going to mention – nuts, I'm almost losing my Zoom here. Bear with me just one second.

Okay. Here we go. Sorry about that. The importance of the summary table that the staff have very well put together and updated every week, and the subtable has not only the questions – as Kathy was asking that we go back to the preamble questions – but it also has what she was talking about, the Analysis Group survey results, with a link [and] summaries.

These are very valuable, so when you go to the threads, keep that summary table at hand. The summary table and what we're calling the status check document will be the operative documents over the next three weeks as we're trying to bring this effort home. So keep those at hand and keep them at the ready. We're entering a new phase after this call.

I don't see any further hands in the queue, and so we've gone through what we had on the agenda today, so my question is to – I'll give it back to Julie and the staff in just a moment, and I do see a hand up, Kathy, I'll come in just a minute, but if you have anything further to say on these topics, please get ready to jump in the queue and go ahead and do it. Kathy, go ahead, please.

KATHY KLEIMAN:

Thanks, David. So, is now a good time to talk about the 5B questions themselves in addition to the 5B proposals which we've now covered the three of them, and dive into some of the data on

5B and talk about the questions of 5B, since we've got about 15 minutes left?

DAVID MCAULEY: It is.

KATHY KLEIMAN: Okay. Good. So, 5B is, should sunrise be mandatory or optional? If we go and look in our data, it says, as I think we'd expect, and now I'm reading the Analysis Group survey results, trademark and brand owner respondents think the sunrise period should continue to be mandatory, but – and this is the next [inaudible] – there seems to be a need for the working group to consider returning to the original recommendation from the IRT and the STI long before the strawman that Maxim is talking about, which was a problem. So to return to the original recommendation from the IRT and the STI as there were concerns with the implementation of the ALP and the QLP, particularly as relevant to the geo TLDs.

Registry – and then a third data summary point in our table – registry operator respondents prefer sunrise and claims to be optional with a slight preference for sunrise to be mandatory and claims to be optional.

But we do have – and we can go into some of the concerns that we've talked about if Kristine wants me to go into some of the gaming, which there's a lot of data points in this one. It's one of the reasons I was [waiting,] Kristine, because I confused preamble and 5B.

But third column here in 5B under additional data submitted, there are many stories of journalists, reporters and bloggers who found some real gaming going on where someone who's not a trademark owner of a famous mark registered an ordinary word and then really, in anyone's sense, really abused it. So pizza, money, shopping are some of the examples. I think Mitch gave some other examples, but the Analysis Group found some as well.

So I really would love to have a discussion of, should sunrise be mandatory or become optional, and what some of the costs would be to become optional, to let the registries choose whether to use it, which would indeed go back to the old days as well, that registries choose whether they need this or not. Thank you.

DAVID MCAULEY: Very well teed up, Kathy. Thank you. And Mitch has got a hand up, so Mitch, why don't you go ahead, please?

MITCH STOLTZ: Thank you. I heard earlier in the call folks said that sunrise was adopted before it was a formal process by various gTLDs. If that's the case, it suggests that if sunrise were to be made optional for a new gTLD, that some of them would continue to opt to do it, or something similar, and others would not.

I think that'd be interesting to discuss, because it makes a problem space somewhat smaller if we're talking about some subset of new gTLDs going forward.

What that would look like – how that would distinguish gTLDs as commercial ventures, those that are sort of oriented towards brand protection and those that have other priorities. So a long-winded way of seconding Kathy’s last question there and say that’s, I think, good to focus on.

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

CLAUDIO DIGANGI: Can I get in the queue, David?

DAVID MCAULEY: Absolutely. You'll be right after Kristine.

CLAUDIO DIGANGI: Alright. Thanks.

KRISTINE DORRAIN: Thanks. I'm not going to belabor the point about leaving this up to registries and registrars, because there's already a lot of pushback in the GAC and other areas at the fact that registries and registrars are “better” and “worse” about stifling forms of DNS abuse. So how different registries would allow, endorse, permit or not forms of abuse other than [DNS] abuses, it would definitely, I think rain down fire and brimstone from the GAC.

But leaving that aside, the reason why the sunrise came out of the STI and the IRT was because as some of those – as I don't remember who did it, I think Greg mentioned it, the sort of second wave of domain names came about starting with dot-biz, dot-[mobi] and all the rest of those TLDs. What became apparent is that every single registry operator did it differently, and it was very fragmented. So every single time a brand owner wanted to apply for a new gTLD – a different one, I shouldn't say gTLD. That's confusing – a different TLD, a domain name on a different TLD, they had to first submit an expensive application fee so their mark could be validated, and then they had to go through this process of whatever that registry thought was relevant. So they might have said "You have to have a mark somewhere." They might have said, "You have to have a mark in this jurisdiction or had to have gone through this process."

Every single registry did it differently. In fact, down to the point of, "Was it paper, was it electronic? How many staples were in the application?" It was ridiculous and it was costing IP owners a ton of money to do this.

So what they were trying to do is make a very uniform, very cut and dry system, so that's why you have exact matches. That's why you have – and if you want TM plus 50, you send your UDRP decision in. There's no guesswork. Nobody's guessing, "Does this mark qualify, does that mark qualify?" It's designed to be as black and white as possible.

Are there jerks that are abusing it? Probably. There are jerks that abuse every single rule, law and statute out there. That's what

jerks do. But that doesn't mean that the process is bad, it just means that there's some jerks.

But the problem doesn't go away. If you completely remove the uniformity aspect of this and say to each their own, you now have potentially 1300 – that was the last application set – different types of sunrises that registered brand owners now have to jump through. It's not effective. It's not going to make the process smoother or helpful in any way, and it's just going to put us back into the dark ages. Thanks.

DAVID MCAULEY:

Thank you, Kristine. Next in the queue – and this is the end of the queue right now – is Claudio. Claudio, go ahead, please.

CLAUDIO DIGANGI:

Thank you, David. And yeah, I agree [with Kristine is what I'm trying to say,] and found her comments very entertaining and on point. But I wanted to answer a question [that Kathy agrees about the] IRT recommending one or the other. And I could see how if one were to look at that IRT report, one could come to the conclusion that Kathy did, which was to the IRT, it was an option that they could pick one or the other.

I was on the IRT, and this happens in all cases when committees are formed developing policy, is that there's a broader political reality surrounding the work that is produced, and at that time, the broader reality was that when the first applicant guidebook got published, there were almost no protections at all. So there was a big concern that if the IRT went too far – and the IRT really tried

not to do that even though the perception of it, which Kathy also mentioned, might have been different. But the IRT really tried to stay within its [means,] because there was a very big concern that the recommendations were not going to be approved. So [they were really kind of scalloping it down] as much as possible while still trying to protect the trademarks without really knowing how many applications were going to be received.

So that's kind of how that all came about. I agree with Kristine's perspective on the dangers of making it voluntary. And I think that's it. Thanks, David.

DAVID MCAULEY:

Thank you, Claudio. There is a hand in the queue. Kathy, go ahead, please.

KATHY KLEIMAN:

Thanks, David. Claudio, that was fascinating. I forgot that you were on the IRT. This background is very helpful. You were in the IRT, I was on the STI.

And as I think Kristine mentioned, the [inaudible] was a recommendation of the IRT it sounds like, because again, I wasn't there end of the STI. But going back to what Kristine said, I think – and I apologize if I'm wrong – that there had been a use of this process before that individual generic top-level domains had kind of created their own databases of trademarks, and then allowed those that pre-registration in the sunrise process. I think Neustar was the first to do this, but I'm not sure.

So what we're dealing with now is the first time this has all been centralized. And this was really where you have, one, the efficiency aspect that's been mentioned on this call, that one trademark clearinghouse for all trademarks applicable across all gTLDs. This has never happened before. It was very isolated, individualized. I believe for dot-biz, dot-info, but someone can check me.

So now is the first time anyone's been reviewing some of the gaming going on, that ability to use a trademark for Christmas or for cloud or for pen, or for "the", and have it registered. One category of goods and services, certainly not globally famous, in fact famous in its generic sense, and then misused, as the bloggers, reporters and journalists have shown us. We're looking at a new category of problems, this globalization, the centralization, this use across of trademarks far outside of their categories of goods and services.

Michael has a proposal in on this. We've got other types of corrections throughout. There are a number of proposals that have been submitted to try to correct where we've all seen this has maybe not gone off the rails entirely but gone off the rails in some cases. There are harms, there are unintended consequences. What do we do with those?

And one way to solve it is to make "and" into an "or" and have the sunrise or the trademark claims. But other ways have been suggested as well, but let's keep the big picture in mind. We're the first ever to look at the centralization of the trademark clearinghouse, and to look at trademarks in certain categories of goods and services, and we now know they will be used to

register in other categories of goods and services by bad actors. What do we do about that? And 5B is just one solution. Thanks.

DAVID MCAULEY: Thank you, Kathy. Good questions to lead us into the threads in the coming week. So we're going to go to staff in just a moment. There's no one else in the queue. I want to thank everybody for a spirited discussion. We are down a few folks, probably because of the INTA meeting this week, but it's very good discussion and I'm grateful.

Now, I just heard something. Claudio, was that you? Did you want to get in the queue or something?

CLAUDIO DIGANGI: No. [inaudible]. Thanks, though.

DAVID MCAULEY: Okay. Well, ten Julie, I'm going to turn it over to you for AOB.

JULIE HEDLUND: Thanks so much, David. We didn't have any AOB today, so what that means is that we can just welcome you all back –

GREG SHATAN: Kathy, I have a hand up. I mean Julie. I have a hand up.

JULIE HEDLUND: Thank you, Greg. Please go ahead.

GREG SHATAN: Sorry. Not really AOB, but maybe it's kind of tee up some of the discussion next week and some of the thoughts for next week. I think it would be helpful to think – certainly, I think there's a broader concern, a broad concern about bad actors, and pretextual trademarks and other such things before we get to points of [disagreement.]

And I think it'd be useful to think about maybe to look at the proposals that are aimed at trying more surgically to deal with gaming as we can commonly agree it exists. Again, I think there are broader definitions and narrower definitions, but somebody who gets pencils printed up that have the word “the” on them and decides – and somehow sells five dozen of them and can then get “the” in every new TLD, I don't think that's a – I don't think we have a lot of disagreement that that's something that if we can get control of it, we should.

I think where the issue starts to slip away is in the scope of what might be considered gaming or abuse or excessive right, and also, the issue of kind of – I saw somebody talk about not throwing the baby out with the bathwater in terms of trying to find some mechanisms – and maybe it's improving the SDRP where we can look to try to deal with gaming. And if the gaming is in the TMCH itself, maybe solutions relating to TMCH challenges or the like. So it seems like some of the [inaudible] elimination of the sunrise stops abuse of the sunrise. It also stops the intended purpose of

the sunrise and everything else. So that makes it a rather draconian solution.

I think – well, I'm not saying. We should discuss whatever we need to discuss, but I just think we might actually come up with something useful and actually get broad – or what's the word we're using? Wide support if we tried to focus our laser beams a little bit. Thanks very much.

JULIE HEDLUND: Thanks very much, Greg. I don't know if you want to reply to that all, David, but I don't see any other hands in the queue, so looks like we have two minutes before the bottom of the half hour, and I'm going to go ahead and thank David for chairing today's call and thank everyone for joining, and we will welcome you back next week at this time to further our discussions. Thanks so much. And this meeting is adjourned.

DAVID MCAULEY: Thanks all.

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]