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## ICANN Transcription

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

Thursday, 08 May 2019 at 1700 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<https://audio.icann.org/gnso/gnso-rpm-review-trademark-claims-08may19-en.mp3> [audio.icann.org]

Zoom Recording:

<https://icann.zoom.us/recording/share/laFeJogCAj0HNG1deBqpwalhDMOKLxv777R4w4zZI2wlumekTziMw?startTime=1557334958000> [icann.zoom.us]

Attendance is on the wiki page: <https://community.icann.org/x/J4mGBg>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page: <https://gnso.icann.org/en/group-activities/calendar>

UNIDENTIFIED FEMALE:

I would like to welcome everyone. Good morning, good afternoon, good evening, and welcome to the review of all rights protection mechanisms subteam for trademark claims data review call on the 8th of May 2019. In the interest of time, today there will be no roll call. Attendance will be taken via the Zoom room, so if you're only on the audio bridge, would you please let yourself be known now?

Thank you. And as a reminder to all participants, if you would please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid any background noise.

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Also, as a reminder, to view today's documents being shared during the meeting, if you would please direct yourself to the top of the shared screen, you'll see an option that says view options in black. Please click on the dropdown arrow, and you will then direct yourself between Julie Hedlund and Ariel Liang's documents today. With this, I'll hand the meeting back over to Julie Hedlund. Please begin.

JULIE HEDLUND:

Thank you very much. Just to run through the agenda, I'll ask if there are any updates to statements of interest. We will remind everybody of our work plan. That's not listed on the agenda, but that will be a standing agenda item from now on just to remind people where we are in the workplan and timeline, and then we'll go into the development again of preliminary recommendations. We'll be continuing the discussion on charter question four, and time permitting, we will begin discussion of charter question five, and then there's time for Any Other Business. May I ask if anyone has Any Other Business?

CLAUDIO DIGANGI:

Julie, it's Claudio, I just wanted to announce I'm on the line [inaudible].

JULIE HEDLUND:

I didn't quite get that. I guess you were noting that you were on audio, right?

CLAUDIO DIGANGI:

Yeah, exactly. I'm on audio only.

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JULIE HEDLUND: Okay. Very good. Thank you. We've noted that. So let me go back to agenda item one and ask if anyone has any updates to statements of interest. Not seeing any hands, let me go to – just remind people where we are on the timeline. I don't know, Ariel, if you could bring that up, or let me see if I can get it up here very quickly. And I'm sorry I don't have it queued. Hold on.

ARIEL LIANG: Actually, it's on my screen right now, so if you switch over to me on the top, you will see it on the screen.

JULIE HEDLUND: Very good. Thank you so much, Ariel. And let me actually stop sharing, because I can't otherwise see it. And I don't know, Ariel, would you like to speak to it just as far as where we are right now? Or ICANN, whichever you prefer.

ARIEL LIANG: Sure. I can speak to it. So if you look at the timeline, we're May 8th, and for today – so basically, we need to wrap up the discussion of question four, and then following that, we're actually slightly ahead of schedule, so from next week, the team is expected to discuss a question five. Maybe today we can get to that as well if we can pick up the speed.

And then remaining item, the last one is proposal number 11, so that proposal was submitted, and then the proponent actually said it's

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related to both sunrise and claims, but then for claims, it wasn't specifically related to a charter question, but it's because it was mentioned it's related to claims. The subteam is expected to review that proposal as well, so we only have three items left for the subteam, and then I think after that, the subteam should review the draft answers that we have captured during the call and the preliminary recommendations, and the format, we imagine, would be one single document to facilitate the review of the subteam.

So we think the task will be all wrapped up before ICANN 64 for the trademark claims subteam. So that's a quick overview of the timeline, and back to you, Julie.

JULIE HEDLUND:

Thank you very much, Ariel. Really appreciate it. And I'll go ahead and bring the agenda back up. So if you all wanted to switch to my screen, then you'll see the agenda, and let me go ahead and turn to agenda item two on development of preliminary discussions and just continue discussion of question four, and let me go over to Martin. Martin, please. Thank you.

MARTIN SILVA VALENT:

Thank you very much, Julie. I know you have been working on question four last call, so let's pick it up on there. Before that, just a quick reminder, we had the threads open, and they don't seem to be active. We don't have almost any activity on those threads as well, so just a friendly reminder that the threads are there, and if we don't have any comments on them, we can only assume that there are no objections

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for instance. So do beware that it's a good place to leave your comment, and that's on the record. We will have to address it if you put it on the thread. So it's a good way if you cannot make it to the call, or during the call, you forget about something, use them. Because if not, it's an approval of what we're doing, because there's just not an objection in a useful channel to do so.

So let's move to question four from where we left last week. Does anyone want to continue their debate, anyone who has any specific comment on this? I'm looking in the chat to see if someone has their hand raised. And for those that are on the phone, just interrupt me.

No one has any comments to add on question four?

UNIDENTIFIED MALE: Martin, could you read this out loud? Because I'm only on audio, I'm not sure what the text is a proposal for.

MARTIN SILVA VALENT: Of course. I'm sorry. I was assuming everyone was with the text in front of them. Question four, is exact match requirement for trademark claims serving the intended purposes of the trademark claims RPM? In conducting this analysis, recall the IDNs and Latin-based words with accents and umlauts are currently not services or recognized by many registries. And then [we subdivide that] in A, what is the evidence of harm under the existing system? B, should the matching criteria for notices be expanded? And then goes into B1, should the marks in the trademark clearinghouse be the basis for an expansion of matches for

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the purpose of providing a broader range of claims notices? Two, what results, including unintended consequences might each suggested form of expansion of matching criteria have? Three, what balancing should be adhered to in [inaudible] to deter bad faith registration from not good faith domain name applicants? Four, what is the resulting list of non-exact match criteria recommended by the working group, if any?

Then C, what is the feasibility of implementation for each form of expanded matches? D, if an expansion of matches solution should be implemented, one, should the [inaudible] trademark claims notice be amended? If so, how? And two, should the claim period be deferred for exact matches versus non-exact matches?

And if you want, I can repeat any of them, or we can go specifically into one of them. I think this is a very interesting question. I've read the transcript from the last call since I couldn't attend, and I know there were some comments from that, so maybe – again, if no one has any comment, we can move to question five. But I want to make sure that you all have a chance to put your input.

I have Kathy Kleiman with her hand up. Kathy, go ahead.

KATHY KLEIMAN:

Thanks, Martin. Hi, everybody. This is Kathy. So, question for Martin, for Julie, for Ariel. Is there any draft recommendation from last meeting that we should be looking at? I don't see any, but I thought I'd ask. Thanks.

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JULIE HEDLUND: Martin, I have my hand up, but I can't physically raise my hand up.

MARTIN SILVA VALENT: [Julie, you were] going to answer. Yes, go.

JULIE HEDLUND: Yeah. To answer Kathy's question – I see Rebecca has her hand up too – yes, indeed, staff have captured what was discussed last week from the transcript, and we've summarized them. We've not had a chance, because the transcripts only released yesterday, we haven't had a chance to provide that to the subteam co-chairs, but we could verbally summarize it if you think that's helpful, Martin. But before we do that, since there are a couple other hands up – I see Rebecca and I see Greg as well, maybe let me go back to you and then you can listen to what you'd like us to do after you recognize Rebecca and Greg. Thanks.

MARTIN SILVA VALENT: Yes, Rebecca, go ahead.

REBECCA TUSHNET: Thank you. So, I think we have been over this a bunch. We have good evidence about what expanding exact match would do to people like anyone who wanted to register a hotel name or a cloud name incorporating cloud in it because of those prominent matches.

We also have really useful data from the URS cases coding that [inaudible] carried out, and I commend to you again. And actually, what

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it really shows is if you go through and you look at the non-exact match, there's just a bewildering variety that I don't think expanded match could usefully capture. And in fact, a lot of the things have uses that at least in the US would be presumptively non-infringing, like there's a case called Toyota vs Tabari about how the domain name buyalexus.com is actually not infringing, incorporating buy plus trademark, if you have the thing to sell, is a completely legitimate use. And I don't think we want to go down that road of starting to assert that trademark law applies in places where it's pretty clear that it doesn't. Thank you.

MARTIN SILVA VALENT:

Thank you very much, Rebecca. Greg, you are next. Go.

GREG SHATAN:

Thanks. I think we have in fact discussed in the past – and I think should be discussing now – proposals that have come up for non-exact match in this system. And I think that if you take things out to every possible non-exact match, you may come up with a bewildering variety, I don't think that we need to empower every possible type of non-exact match in order for something effective in terms of either defensive registrations or getting to registrations before cyber squatters get there, which is basically a defensive registration. But at least getting legitimate registrations you may want to use. And I think obviously, we should look back at UDRP and URS. I think they can be instructive. I do think that while the ends of the curve may be of a variety of oddball situations, I think if you go more to the middle, there are several endemic types of



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match plus domain names that tend to be found to be troublesome under UDRP and URS that could be potential sunrise registration candidates. So I think we need to dig into those things now and see if there is a usable way to go forward in this area, otherwise, I think the sub-questions in question four really get down quite granularly, and I think they are looking for – certainly, it’s an invitation to see if something satisfactory can be worked out here. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. I have Susan Payne next in the queue.

SUSAN PAYNE: Hi there. Thank you. Yeah, I know we did talk about this somewhat last week, and we obviously have differences of opinion within this group. I suppose I wanted to come back to a point that Cynthia has made on previous calls, and I don’t think she's on the call today, which is why I'm raising it. And Cynthia works with a number of smaller companies and the like, and she has repeatedly made the point that if we can get the notice right, this claims service is meant to be – obviously, it’s a help for a brand owner, but it’s also meant to be a protection and a help for a domain name registration or potential registrant in flagging to them when there might be an issue.

But that doesn’t mean that they then can't go forward in the scenario that Rebecca is envisaging around hotel or cloud, it just means that it’s bringing to their awareness the possibility that there's an issue. But the recipient of a claim notice, Marriott receiving the claim notice for hotel,

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they are not going to think, “Oh my goodness, I can't register the domain name Marriott.hotel.” That would be ludicrous.

And obviously, we need to get our claim notice right to remove the ludicrous scenarios. But I think it would be helpful for us to think about the claims notice as being something which could be a benefit to the registrant as well in heading them off from going down a path where if only they'd know better, they wouldn't have done it. And again, Greg mentioned the granularity, but I think I said on last week's call that I found it really difficult to talk about this generally, treating all non-exact matches the same. And there may be some people who feel that we should be expanding this to all non-exact matches. I think that probably goes too far. I think that makes it too complex and gives rise to some of the concerns that people have been raising when we've discussed this previously, but I think there are ways to expand the matching to something like match plus industry keyword or match plus industry keyword that's within the scope of the trademark registration where we're not expanding this so widely as to capture scenarios which are clearly non-infringing, but we're trying to capture scenarios where there's at least a pretty good chance that it might be a programmatic registration and that the registrant would benefit from being made aware.

MARTIN SILVA VALENT:

Thank you very much, Susan. I have staff raised their hand up.

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JULIE HEDLUND: Thank you, Martin. And just back to the suggestion staff made about summarizing where we were last week, maybe that is not necessary at this point because it seems that we've now gotten a number of people engaged in the discussion, but I would like to note that staff will be going through a status check with the subteam co-chairs next week, and then after that, the subteam co-chairs will be able to let the subteam know what draft recommendations and answers we already have and where we might be needing additional discussion. Thank you for turning to me for that point, Martin, and let me let you get back to the queue. And I'm noting that Phil has his hand up. Thank you.

MARTIN SILVA VALENT: Thank you, Julie, for the clarification. Phillip, you're next.

REBECCA TUSHNET: Yeah. Since we're on question four and subpart B is, should a matching criteria for notices be expanded, I just want to note I'm not necessarily advocating it but noting for the record that Michael Graham, who couldn't join us today, sent a proposal to the list about an hour ago, and I believe we're treating it not as an individual proposal because the deadline for that has passed, but as something he would have said if he'd been able to join this call. His particular proposal – and let me read it just to get it out here for discussion purposes – is that – let me find the exact language. Oh, that the trademark clearinghouse rule should be revised to require trademark claims notices to be issued not only for domain names that consist of the exact string of trademark clearinghouse trademarks but also any domain name that includes

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anywhere in the string the exact string of the trademark clearinghouse trademark.

And this is, again, not advocating it, just getting it out for discussion. That was Michael's proposal. I wanted to add that – because I think it's relevant to this discussion – in the past week, dot-club introduced a new private blocking service called Trademark Sentry, which is similar to this. It will allow a mark to be blocked across dot-club, not only for an exact match, but for any combination, any proposed string for registration that contains the registered mark, and it could be their requirement for US PTO registration.

They're not [keying] this to the trademark clearinghouse, but they do make exceptions for it. They do not permit the service for labels of fewer than five characters, so IBM wouldn't be eligible. They do not allow it for dictionary words or common phrases. They wouldn't allow it for premium names, which is a whole side discussion, and so those are their restrictions, and even with that, they are marketing this with the marketing language that potentially it could block trillions of different variations.

I think trillions may be hyperbole, but I wanted to get that out there, but just to get Michael's proposal on the record for a group discussion and to point out that something similar has been launched by one of the new gTLDs with some restrictions that are not in Michael's proposal, for example under dot-club, Apple couldn't buy this service for any string containing the word "apple" because it's a dictionary word. Microsoft could.

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And because of the large number of potential registrations they claim would be blocked by this new Trademark Sentry service which is relevant to any concerns about false positives.

So again, just wanted to get that out there for discussion. I'm not taking a position pro or con at this point, but I thought since Michael had gotten [that] out, we should get it out for discussion in today's call since it's relevant to question four. Thank you very much.

BRIAN BECKHAM: Julie, can I respond to Phil?

MARTIN SILVA VALENT: Yes. I'm chairing. And yes, Brian, you can. Please go ahead.

BRIAN BECKHAM: I'm sorry, Martin. I just wanted to pick up on Phil's mention of this dot-club promotional idea on some blocking opportunities and to say – and this is a comment made in a personal/professional – i.e. not in a chair capacity. But I want to just flag for us the potential risks of private registries making determinations on such matters that look only at one jurisdiction's trademark law.

For those of you who were involved in some of the discussions around these RPMs in the earlier IRT days, this was an area that a number of stakeholders, notably the GAC paid close attention to, this was why we ended up with the proof of use concept in the trademark clearinghouse as opposed to unexamined versus certain types of examined trademark

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registrations. I just want to flag that potential pitfall in using this dot-club concept as a basis for discussion where it only looks to one trademark jurisdiction. Thank you

MARTIN SILVA VALENT: I think [inaudible] for both interventions. [inaudible]. I do want to stress that the document is titled proposals. These are not. [inaudible] cannot accept proposals at this point. These are just comments from a member and we are going to address comments from a member, not a formal proposal we need to specifically answer which is very interesting, of course.

I have next in the queue, unless it is an old hand or new hand, Philip?

PHILIP CORWIN: Sorry, that's old. I'll take it down.

MARTIN SILVA VALENT: Good. Then we go to Kathy. Kathy, you have the floor.

KATHY KLEIMAN: Thanks, Martin. So, let's go back to the questions and see whether we even get to 4B. So, question 4A, what is the evidence of harm under the existing system? I think we have to say, given the way – I hope [Christine] won't mind if I borrow some of her phrasing – given some of the way the whole system has been laid out and the balances that were put in in 2008, 2009, 2010.

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So, do we have evidence of harm that is not factored in anywhere in our system? Do we have any evidence of harm that isn't taken into account by the sunrise registration of exact matches, by the trademark claims that exist now on exact matches? By the URS that of course is not exact match and the UDRP that is not exact matches?

I don't see it because we're not seeing any kind of pattern, something jumping out at us. I think we could be here from now until the end of time trying to find it or look for it. But we're not seeing ... I've gone through the data. I'm not seeing any pattern of one certain type of problem that is jumping out. We do know that there are harms against the registrant by the current system and that expanding them will increase that in that just writing the best notice in the world still will not solve that.

So, the existing system is working, so I don't understand how we even get to ... So, the answer of should the matching criteria for notices be expanded for B? Seems the answer would be no and we know from the data we have collected that registrars oppose it, registries oppose it, and registrants oppose it.

So, without that clear evidence of harm, without a specific pattern that we're trying to address and with clear opposition, I think the data-driven way to get through this question – of course, I'm speaking not as a co-chair but as an active member of the sub-team – is we go forward, that the current system seems to be working very well. Thank you.

MARTIN SILVA VALENT:

Thank you very much, Kathy. I have next Rebecca. Go ahead.

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REBECCA TUSHNET: Thank you. I agree completely with Kathy. If the evidence of harm is that cybersquatting continues, then we should actually just not have new gTLDs at all. There is literally nothing that we could do in the notice system that would stop claims of cybersquatting from continuing without evidence of something specific.

I wanted to actually go to the earlier point about brand-specific keywords. Frankly, I went back and took a look at the URS cases and it's not actually a pattern. I'm sure you can find anecdotes but in these 800, nearly 900, domain names, that's not the pattern of the winning cases or even of the [broad] cases. So, I just don't think the evidence even for that is there.

I would also just say what I said in the chat which is you can't hope that the notice will be fixed while you're proposing to expand the system. Let's get the notice right first and see if that works. Thank you.

MARTIN SILVA VALENT: Thank you, Rebecca. I have Greg next. Greg?

GREG SHATAN: Thanks. A couple comments. First, since we are working on a single project basis, I think we certainly can assume that we're going to revise the notice and hopefully fix it and rely on that in making other changes. If we want to flip around how we're discussing things and we want to draft a revised notice – but then again the question is whether we're drafting a notice or is that an implementation thing. But I don't think



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that the fact that the notice, that we all agree that the notice needs to be improved somehow gets parlayed into the idea that we can't make any other changes or adjustments.

With regard to registry and registrar data that we had was [thin], I think it's a stretch to say that we have shown registrant harm from what we actually have.

So, I think that there are ... Certainly, what I see across URS, UDRP and domains that get challenges through other processes, I think it's quite possible to isolate a limited number of exact, non-exact matches which will be quite sensible to add to the trademark claims process.

We have Michael's proposal which I think was already made in the working group, so it really is before us as much as any proposal would be and as much as any suggestion would be if it was made in the course of our discussions. Specifically, suggesting that include any domain name that includes anywhere in the string the exact string of TMCH trademarks. I'll also remind people – I'm sorry I didn't dredge it up in advance – that a suggestion or proposal that I made earlier in our work which was based more on specific types of exact match plus and not on anywhere in the string proposal.

So, I think both of those deserve consideration. I think we do see ... It's relatively – I wouldn't say it's rare, but it's certainly not the overwhelming number of UDRP and URS cases that have only the trademark and no other matter in the domain name. Therefore, by sticking to exact match, we are really not covering the problem and I think we do need to cover the problem. Thanks.

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MARTIN SILVA VALENT: Thank you very much, Greg. I would like staff to know that the chat has been very active with [inaudible] there. So, please take note of what's going on in the chat for the later work. I don't have any other hands up. I'll give you [inaudible] up to the mic. Fair enough. Do remember that we have the thread up for those who are [inaudible] later. The reminder also goes to you. We have [inaudible]. We can keep this [inaudible]. We still have that channel to keep debating and just trying to come to a more core agreement so staff can have a better notion of what to [inaudible]. I see a little [inaudible]. Scott, you're next.

CLAUDIO DIGANGI: Can I get the queue? It's Claudio. I'm sorry, I was on mute.

MARTIN SILVA VALENT: Sure, Claudio. You'll go after Phil.

CLAUDIO DIGANGI: Alright, thanks.

PHILIP CORWIN: This is Phil.

SCOTT AUSTIN: Scott Austin. I didn't know if I was being recognized or if not.

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PHILIP CORWIN: No, go ahead, Scott. I'll go next.

MARTIN SILVA VALENT: Yes, it was for Scott. Scott, please continue.

SCOTT AUSTIN: Thank you. Just a comment that I've raised with some of my colleagues in the IPC. One of the things we've seen in a number of the UDRP cases over the years – I believe you'll find that a lot of issues have arisen over the addition of business descriptors as a means to cybersquat and that is adding something like inc or corp in other jurisdictions. In Europe, for example, GMBH or SARL, to a trademark and that's frequently occurring and I don't have the statistics but I think that might be one consideration for another extension or expansion of the match that should be considered.

The other issue that came through a thread from one of our colleagues was discussing a recent issue with GoDaddy apparently was the registrar of record and it was in a URS proceeding I believe and there were some back and forth that we were shown of what the registrant was saying and one of the things the registrant brought up was, "I'm not allowed to own this domain, why did you sell it to me?" I thought that was a very interesting insight into what happens sometimes with registrants that may not be aware of trademark law but may be very well aware of this is someone that sold me a domain name, and if I wasn't allowed to own it, why did you sell it to me? I thought that's something to give some consideration to. Obviously, we don't have blocking but by the same token, it is in effect on registrants and perhaps there would be some

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benefit if there was an expansion to the extent that someone would end up with something that then is suddenly taken away from them through a UDRP proceeding or a URS. And no, I don't think it's a basis for us doing away with URS or UDRP, but it points up the issue of without this expansion there are people that suddenly are caught off guard by buying something they thought that was acceptable.

MARTIN SILVA VALENT: Thank you very much, Scott. Philip, [inaudible].

PHILIP CORWIN: This isn't the reason I was raising my hand but just responding to Scott, I'd want to look at the cases but I think suing the registrar because you subsequently infringed with the domain is kind of like suing an auto manufacturer saying that they should have known that you were going to drink a bottle of whiskey and drive at 100 miles an hour and get in an accident. I don't see how a registrar could know what conduct is going to be made with a domain.

But the reason I raise my hand, I just want to understand where we are [inaudible]. It seems to me that we're about to leave question four but we really haven't resolved question four. There are some members of the sub-team have seemed to have put various proposals on the table for some type of expansion of a matching criteria. If those are going to be on the table, then we ought to have the further discussion at some point, not necessarily now, about whether it's a reasonable or unbalanced approach. What would the impact be? Can it be feasibly implemented? And of course we need to know before we tackle with

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the broadly agreed-upon rewriting of the trademark claims notice, we have to know what's going to generate the claims notice.

So, my question here is procedurally – and I asked if Martin could answer or if staff could answer. If we're about to move on from question four, when and how are we coming back to decide on these several proposals – we just heard another one – to generate a notice when mark is combined with inc, or I guess inc, or corp, or gmbh or some business designation like that because we're going to have to ... At some point, we need to address that and resolve it one way or the other. Not arguing for which way we should go at this point, but I'm just trying to understand procedurally when we're coming back to resolve those suggestions if we're not doing it now. Thank you.

MARTIN SILVA VALENT: Thank you, Phil. I completely understand where you're coming from. I have Julie who seems to want to answer. Julie, go ahead.

JULIE HEDLUND: Thank you, Martin. So, as sub-team members may have noted, staff did actually open a discussion thread last week on charter question four and that discussion thread will be open through the 15<sup>th</sup> of May unless the sub-team co-chairs decide that it needs to be open for longer.

We do have scheduled for today the discussion on question four. So, this call will end at five minutes to the top of the hour, so we've got approximately a little over ten more minutes left at which point we'll shift the discussion to the thread and extend the thread if necessary if

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there does not appear to be agreement on answering the charter questions or on the development of the preliminary recommendations. Thank you.

MARTIN SILVA VALENT: Thank you very much, Julie, to move forward and have everyone some time on the mic, Claudio, you're next.

CLAUDIO DIGANGI: Thank you, Martin. I wanted to agree largely with what Greg and Susan were saying. Rebecca and Kathy mentioned some points that I wanted to address in terms of the harm and the way the [harms] are handled through the RPMs.

I think, conceptually, one way of looking at it is whether the Rights Protection Mechanisms function in either a post-entry or a pre-entry manner. So, to look at it from the perspective of whether – and to use an example of the UDRP as a post-entry mechanism or [UDRS] where the domain name is registered and essentially before the trademark owner can bring it on [inaudible], the harm needs to occur. So, there might be a phishing website. There might be other criminal activity. It might be more of a consumer confusion issue. Then, at that point, the trademark owner can bring a complaint and recover the domain name. But again, at that point, the harm has already taken place.

So, it's very valuable to a trademark owner to have those mechanisms in place for enforcement purposes, but from a [inaudible] perspective, they are incurring a lot of costs because they have to bring the

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complaint to a very [inaudible] have council working on it, on the human resource [inaudible] complaint and the harm has already taken place, so phishing site has already been up, people have [inaudible] at that point.

With pre-entry protections, you're preventing the harm from taking place to begin with. So, to some of [inaudible] is something along those lines where you're allowing the trademark owner to protect their trademark before somebody taking it [to heart].

So, when we're looking at this issue with the claims service, I think Kathy pointed – or it might have been Rebecca – to the fact that the UDRP and URS do offer a level of protection, post-entry protection. So, the harm already has taken place at that point. So, I think the [inaudible] for us to consider is whether there should be additional protection beyond that to address the harms.

And in terms of the data, in the new gTLDs, we've seen a level of cybersquatting that is equal to or above the level of cybersquatting in [inaudible] names. When you look at the fact that you have the sunrise mechanism, you have registries who offer the private RPMs where the entire trademark is locked, the only remaining pieces [inaudible] not block their strain, there are going to be cases where there are additional terms, misspellings, or other terms added to the trademark.

So, while they might not be in the URS cases that [inaudible], we haven't [inaudible] UDRP. And if you just think about it from a logical perspective, that if they've used sunrise, they've used the [blocking]

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mechanisms, so really the only strengths that are left essentially is to be cybersquatted on.

So, I think there is a level of harm there and I just wanted to mention those points. Thanks.

MARTIN SILVA VALENT:

Thank you very much, Claudio. There is no easy way to say that there's a core agreement here, but [inaudible] if we go back to the transcript and we listen to [inaudible], maybe staff can put something – we can start reading [or looking up]. I have Greg with a new hand. Greg, please, go.

GREG SHATAN:

Thanks. Just briefly. I also support what Scott was saying about exact match with plus limited number of extensions. I think anywhere in the string, while it's kind of convenient in its simplicity perhaps could register oddball false positives and the like but I think it is definitely possible to identify a limited universe and I think somebody else said words that are – products or services related to the business of the trademark owner and the like as well. Seems to me we have a fairly ... Some sort of a congealing or cohering proposal here. It at least makes sense to try to move it forward, even if it doesn't have obviously total consensus in the group which we'll probably never have. Thanks.

MARTIN SILVA VALENT:

Thank you very much, Greg. We are almost running out of time, so I don't think we should go into question five even if we don't have any other comment. Question four, unless anyone has anything to add, I



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will leave the mic open for a few seconds [inaudible] anyone else has any other business as well at the end. Maybe staff wants to use the opportunity to address something we had on the agenda.

JULIE HEDLUND:

We don't have anything to add as any other business. I guess just to remind people to again look at the open discussion rights, particularly for question four, and please do add your comments there. I think the intention is to then move on to question five for the next call.

MARTIN SILVA VALENT:

Thank you very much, Julie. Yes. We've been saying like an excessive mantra, let's use [inaudible]. But yes, in questions like these that have a lot of [inaudible], definitely it's [inaudible] in the sense of we have different positions going around. The more we can talk about [inaudible], the better staff can give us something to give us [inaudible] to work with.

If no one else has any other intervention or comment, if you're in the cell phone, you can just speak up. We can give you back four minutes.

JULIE HEDLUND:

Thanks, everyone. Thanks so much for joining. Thank you very much, Martin, for chairing the call. We'll look forward to talking with all of you next week. We'll go ahead and adjourn the call. Thank you.

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UNIDENTIFIED FEMALE: Thanks, Julie. The meeting has been adjourned. Have a great day everyone.

[END OF TRANSCRIPTION]