ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Thursday, 13 August 2020 at 17:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms, RPMs, in all GTLDs PDP Working Group call taking place on Thursday the 13th of August, 2020.

In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please identify yourselves now? Hearing no one, I would like to remind all to please state your name before speaking for transcription and recording purposes, and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to our co-chair, Kathy Kleiman. Please begin.

KATHY KLEIMAN: Terri, thank you so much. Welcome, all, and thank you for joining us during this late summer. Especial thanks if you're joining us from someplace unusual or fighting for Internet connection.

So, we have an ambitious agenda for today but a good chance we might make it through. But first, let me check for any updates to statements of interest. Does anybody have anything to share as an update to statement of interest or anything they'd like us to schedule for at the end for any other business, AOB?

Seeing none, we will go ahead and start our agenda. Before we do, I just wanted to note—because I know people, like me, are coming in and out of vacations and other things, other breaks—we'll be doing trademark claims, Recommendations 2, 3, 4, and 5 today, looking at question number two.

And if we can get to recommendation number six, as well as some of the wording for the TMPDDRP, recommendation number one, that Paul McGrady was kind enough to circulate.

So, lots of things to talk about, today. And again, thank you for joining us. Julie, I think we should go ahead and start with Trademark Claims recommendation number two. David, I see that you're with us – David McAuley. Is this a discussion you would like to lead?

DAVID MCAULEY: Thanks, Kathy. First let me ask, can you hear me?

KATHY KLEIMAN: Absolutely.

DAVID MCAULEY: Thanks, Kathy and Julie. I would like to go ahead and try and work, as I am away from my normal connection and I may have some difficulties. I've had some intermittently this week. But why don't I go ahead and start? I will be toggling between the Zoom room and the summary regarding the recommendations on the web. So, that's where I am now. Let me just mention the … Thanks, Kathy. Kathy, I will expect that you'll manage the queue. Is that right?

KATHY KLEIMAN: Yes, I'd be happy to. And also, if you drop off, if it's okay with you, I'll continue the discussion. And then, when you come back in, you can jump back in and take over. Is that okay?

DAVID MCAULEY: Okay. Thank you very much. So, starting with Trademark Claims recommendation number two, since it's a short one, I'll briefly summarize what the recommendation was, and then I'll get into what the report says about what subgroup A did with it.

So, the recommendation number two, "The working group recommends delivery of the Trademark Claims notice be both in English as well as the language of the registration agreement."

And then, the recommendation noted that changing the relevant language in the current Trademark-Clearinghouse-protected mechanism on this topic would be to, "Registrars must provide

Claims notice in English and in the language of the registration agreement." And there should be a link to a webpage on the ICANN Org website that contains translations of the claims notice in all [six different] languages.

Subgroup A, when we met, we agreed that this should be maintained as-is, but we wanted to point to the working group some comments that we thought might be new or interesting. Anyway … I got thrown off onto another page. Sorry about that.

We wanted to point to the IPC's comments and we wanted to point to the BC's comments. I will skip that middle paragraph that talks about one person's comment. It was a bit of tweak and I don't think it's a compelling comment in the context in which we are right now.

The IPC said that they believe that the Trademark Claims notice can only effectively fulfill the intended function of notifying applicants of potential conflicts with trademarks if they are clear and understood.

And I think it's in the context of "understood" that we said that reasonable steps should be taken to ensure that applicants understand the notice. We believe requiring notices be provided in the language of the registration agreement is a reasonable and necessary step to do that.

We can move down, then, to other comments. ICANN Org indicated they thought this would be feasible to implement, but they thought that there might be cost considerations for registrars to be mindful of.

KATHY KLEIMAN: David, we have kind of lost you. We can hear you just a little bit right now.

DAVID MCAULEY: I apologize. Kathy, if you would continue on, I'm going to dial in. I apologize.

KATHY KLEIMAN: Okay. Terrific. So, let's read ICANN Org. ICANN Org believes that this recommendation is feasible to implement. However, providing a Trademark Claims notice in English, which is a service already provided by the TMDB, as well as translating it into languages of the registration agreement may be a cost or operational consideration for registrars.

I just want to read one more comment before I call on Susan. It was Tucows which had an interesting comment in our original comment [material] that said, "We note that the local language may not be one of the six UN languages, and the registrar ought to be provided the opportunity to do their own translation with, perhaps, a note that the English version controls."

So, ICANN Org is worried about translations, but at least one major registrar kind of wants to embrace that opportunity and make sure that they can translate into some of the languages of the registration agreement. Susan, go ahead, please.

SUSAN PAYNE: Yeah. Thank you. So, I just wanted to take us back to the actual comment from the IPC, the part that David … I think we missed as he was cutting in and out. But the IPC specifically had suggested that they felt that, or we feel that, the final bullet in that recommendation should also refer to "must," as opposed to "should."

And if you wouldn't mind scrolling back up so we can see what the recommendation is, that would be super-helpful, I think. Yes. So, you'll see that the recommendation has made a change in bullet one, so that registrars "must" provide the claims notice in English and the language of the registration agreement.

And then, in bullet two, it says the claims notice "should" include a link to the webpage and the other translations, and we felt that, actually, that ought to be "must," as well. It doesn't seem to me that that's terribly controversial but, obviously, that's for this group to decide.

KATHY KLEIMAN: Susan, thank you for walking us through that. I agree, in a personal capacity, that that doesn't seem to be terribly controversial at all, but let's see if anyone disagrees. Let's speak just to the change that Susan is proposing through the IPC language, that "should" should be changed to "must" in the second, now highlighted, bullet point of TM Claims recommendation number two. Any objections? Okay.

And I notice both co-chairs are with us, Brian and Phil, which is great. Okay. So, no objections there. Any comments on the

recommendation as a whole, both bullet points? David, are you back with us? No, I see that David is looking for a dial-out. Okay.

So, the language of the registration agreement, as well as a link to the six UN languages, as well as English. That looks to be the supported recommendation. Is there anything else? Let me defer to members of the subgroup A who worked on this.

Is there anything else we should be discussing on this? David, are you with us? I hear someone on the phone. He says, "Not yet." Okay. Any objection to moving onto Trademark Claims recommendation number three? Julie, do you want to give us a quick overview of this, as we're waiting for David to come back?

JULIE HEDLUND: Sure.

KATHY KLEIMAN: If not, I'm happy to do it, too.

JULIE HEDLUND: Sure. So, you see here Trademark Claims recommendation number three, which says that the working group recommends that the current requirement for only sending the claims notice before a registration is completed be maintained.

And the working group also recognizes that there may be operational issues with presenting the claims notice to registrants who pre-register domain names due to the current 48-hour expiration period of the claims notice. The working group therefore

recommends that the Implementation Review Team consider ways in which ICANN Org can work with registrars to address this implementation issue.

I'm noting, though, however, in the staff, Susan Payne is asking, "Did we change bullet two to 'must,' or keep it as-is?" She asked. She missed the outcome. Okay. And Ariel is responding, "No objection to changing bullet two for IPC's public comment." Great.

Then, moving down to the summary of the subgroup A deliberation. Subgroup A agreed that the recommendation be maintained as-is, but the comments from ICANN Org, IPC, and INTA, a slide below, should be referred to the full working group for possible consideration of its recommendation. If you'd like, I can go down to those comments.

KATHY KLEIMAN: Sure.

JULIE HEDLUND: So, IPC agrees with both parts of this recommendation. If the IRT cannot identify a method by which the pre-sale implementation issue may be addressed whilst still meeting the requirement for the claims notice to be presented and accepted before registration, then presale of names will not be possible. Would you like me to just read all of the comments for consideration, or do you want me to stop with that one, Kathy?

KATHY KLEIMAN: No, I think it looks like we're … Do we have David back on the line, please? Because I didn't participate in—

JULIE HEDLUND: I believe we do. I think I saw him being accepted. David, are you with us? I see he's on a telephone number. I can unmute you. David, are you with us?

DAVID MCAULEY: Okay. Can you hear me now?

JULIE HEDLUND: Loud and clear.

KATHY KLEIMAN: yes. And one of the questions, David, is whether to take the comments one at a time and discuss them as we go through.

DAVID MCAULEY: Well, I think that would be fine. These are comments that we wanted to flag to the working group, so that sounds reasonable to me. I missed the discussion about it, but that sounds fine.

KATHY KLEIMAN: Okay. Well, we went ahead and accepted Trademark Claims recommendation number two. Thank you very much. And now, we're just starting on recommendation number three, and the first issue appears to be from the IPC.

Julie read that comment to us—we haven't read the other comments yet—about, if I understand correctly, some kind of ban on pre-sale registrations. I see that Maxim has raised his hand. First, David, do you want to say anything about this issue, or should we just open to comments?

DAVID MCAULEY: Let's open to comments and I'll try and get back into the context.

KATHY KLEIMAN: Terrific. Maxim, go ahead, please.

MAXIM ALZOBA: I'm speaking in the capacity of registrar because we are in cross-control with [couple]. The thing is that pre-sale is a mechanism for a company, including the trademark owner, to ensure that … For example, they have trademark rights for some super [boots], I'd say, and they're not sure that a couple of registrars will be fast enough, etc., so they populate their request not to one registrar but to a few, to ensure that one of those will register.

It has nothing to do with the price because it's more or less the same. It gives opportunity to a company to ensure that the order for registration will be fulfilled. And if you remove such ability, you will punish trademark owners, too. So, please be sure that … For example, during Sunrise, only those in TMCH are eligible, but they can use multiple registrars. It's their choice. Why should we limit them?

Also, it's not final sale. It's always like a bid. So the registrar says, "Okay. I will try to register this thing for you and, if we don't succeed, you will have full money back because, yeah, no luck."

So, there is no strong explanation why one of the quite popular mechanisms should be eradicated. Even if you forbid presale, it's going to be changed to pre-order, or something, and with a slightly different mechanism. So you will, in reality, have the same but in different [wrappin.] Thanks.

KATHY KLEIMAN: Maxim, before you leave, do I remember correctly that Volker Greimann also came to talk with us about this? Do you remember anything about that?

MAXIM ALZOBA: I cannot talk right now but I think we might need to put it offline to e-mail and to action list and maybe to notify Volker. That's my thinking. Thanks.

KATHY KLEIMAN: Well I think, in the past, he came to kind of explain the mechanism of pre-registration to us. Susan, go ahead, please. Thank you, Volker. I mean thank you, Maxim. Susan.

SUSAN PAYNE: Yeah. Thank you. So, I think we just need to remind ourselves what this recommendation is about. It's about ensuring that the RPMs requirements, as they relate to Trademark Claims, are actually

followed. That requirement is for the Trademark Claims notice to be presented to the registrant at the appropriate point in the registration process.

And the recommendation, in particular, suggests that the IRT works to try and find a way to make sure that this process, this presale process, can still continue but still continue in a manner which complies and doesn't cause issues for a registrar with issues such as the claims notice expiring in a certain period of time after it has been issued.

So, the whole of this recommendation is about trying to find a way in which registrars can continue to do this presale process but also to comply with their obligations under the RPMs' requirements. And so, all of the comment that the IPC has said—and indeed, I believe INTA has said something similar—is if the IRT cannot find a way to fix this then, fundamentally, if those registrars cannot do presale and comply with the RPMs' requirements, then they clearly cannot do presale.

We're not trying to outlaw this. We're actually just saying this is trying to find a fix for a business practice of some registrars. But if a fix is not possible to be found and they cannot find a way to do this process and still meet their obligations, then they can't do this process.

KATHY KLEIMAN: Hi. I'll wait for David, I've put myself in the queue, and then Maxim has a new hand up. David, is there anything you'd like to comment on?

DAVID MCAULEY: Well, not so far, Kathy. I do agree that … I think Susan's point that this is also largely what the INTA recommends is a fair observation, but I think we should press on in the queue. When we worked on this in subgroup A, I was not a particular participant in this discussion.

KATHY KLEIMAN: Okay. So, I put my hand in the queue without my co-chair's hat on. Just by way of a kind of point of information, actual background, which … If I remember correctly, because I remember both publicly with the working group and privately speaking to Volker Greimann on this, the fact is, as I understand it, not that the registrars weren't complying, but they were double-complying with the claims notice, and it was tripping them up a bit.

So, they were providing the claims notice as required within, I believe, 48 hours of the pre-registration, but then they were also required to get the confirmation at the time of registration, and some of the clients weren't quite turning it around in the 48 hours, perhaps because they thought they had already completed this obligation – some of the registrants. So, it was more a double-compliance, not a lack of compliance, if I remember correctly. I look forward to hearing what Maxim says. Maxim, go ahead, please.

MAXIM ALZOBA: I must remind the group that RPMs are for registration. Pre-registration is outside of our remit. It's between registrar and a

potential registrant, and it doesn't affect the claim notice or anything because registration happens after that [point of view].

The situation is, sometimes TLDs are going to be launched, and registrant wants to be sure that the registration will happen, even if the launch is in six months. So, they pay in advance. It's like paying in advance in hopes that the registration will happen.

But it doesn't prevent claim notice. It doesn't prevent all mechanisms of RPMs to work. It's a huge misunderstanding of the work of registrars and practices. So, basically, it's [analog] of payment in advance. Are we going to forbid registrars to collect money or something? I don't see the way to distinguish between the [fill in] balance, and place an order for potential registration and pre-registration. I remind you, pre-registration is outside of registration cycle. It's just a business process. Thanks.

KATHY KLEIMAN: Thank you, Maxim. Susan, go ahead, please.

SUSAN PAYNE: Thanks. I just think we're all talking as cross-purposes, here. No one is trying to forbid presale. They don't care whether the registrar takes money in advance or not. No one is trying to stop that, Maxim.

All we are saying is, if there is an issue that has meant that presale has not allowed a registrar to present the claims notice at the time in which they are required to do so, and a fix for that cannot be found, then they can't proceed and do it.

But if, in fact, they are managing to perfectly well present the claims notice at the right time, or even they are presenting it twice and they don't like that, well, that's fine from my perspective. But the fix for this is not to say there is no need to provide the claims notice at the time when the registration happens.

So we appear, in fact, Maxim, to be in entire agreement. We both think that presale is fine, provided that the registrar presents the claims notice when the RPMs requirements require them to. And if they have to do it more than once because they can't work out a way to do it in some other way, then so be it.

KATHY KLEIMAN: Agreement sounds great to me. Maxim, are you comfortable with …? Go ahead.

MAXIM ALZOBA: Yeah. The thing is, the language I currently see is quite wild. We don't know how it's going to be interpreted. If there is no clear language saying that, if the process of potential pre-registration doesn't include all the steps required by RPMs, it should be forbidden. It's the good version, because you have the idea of making sure that RPMs work, even for those cases.

But if you say that, if something is not prevented, then we forbid all pre-registrations, it's going to be misunderstood and used in a strange way. So, all we need is to ensure that the clear, direct language is there. Thanks.

KATHY KLEIMAN: Maxim, are you comfortable with the language highlighted on the screen, which was the original recommendation number three language that went out to the working group? I'll ask Susan the same question.

MAXIM ALZOBA: Yeah. I think the more clear language saying that, if something prevents RPMs to work properly for pre-registration, such pre-registration should be forbidden. So, we don't limit to 48 hours each, or something else. We just say, if pre-registration stops all RPMs [phases] to act, it's not about [just claims]. And then, it should be forbidden. So, we remove the thing we don't like and we just clear and narrow. Thanks.

KATHY KLEIMAN: Maxim, I'm sorry to ask this. But if you could put that in chat, I think that would be useful. Susan, are you happy with the language that we're seeing on the screen? David, feel free to jump in any time you want, because you're much more familiar with this.

SUSAN PAYNE: I'm fine with that.

DAVID MCAULEY: Thanks, Kathy. I think I'll come in after Susan.

SUSAN PAYNE: Thanks. Hi. So, I'm fine with the language on the screen, but I would support the amendment that the IPC had proposed, which is … And I now can't see it. To address the issue that the IPC identified so that there should be something in addition that says, if presale cannot be … If a solution cannot be found whereby presale takes place but also the claims notice is presented at the time required, then presale should not be possible. I can propose some wording if you want.

KATHY KLEIMAN: —Maxim would agree to that wording.

SUSAN PAYNE: I don't understand what language Maxim is disagreeing with. And so, I'm struggling to understand what his issue is.

KATHY KLEIMAN: I think he may be disagreeing with the language that you're proposing to put in. But if both of you are agreeing on the current language, then it becomes an operational issue that we send to the Implementation Review Team, which I think may have been the original intent of the recommendation in the first place. But feel free to use chat, and I will try to follow it. David, I think you're in the queue. Rebecca is also in the queue.

DAVID MCAULEY: Thanks, Kathy. I think you're right. My recollection is that we thought this could, hopefully, be put into terms of an operational issue that

could be addressed by the IRT. On the other hand, the ICANN comment asked that very question. And so, let's hear from Rebecca.

But one of the things that strikes me—and frankly, this is one of the reasons we passed on these comments to the full working group, for the very reasons that we're discussing now; the inability to come up with a clear decision in this respect—now is that when we have been discussing in the open Trademark Clearinghouse database, we have not agreed to that.

But we have agreed, I believe, that we might investigate some very narrow exceptions to that. If that's the case, if I'm correct in that, and if one of those narrow exceptions could be that in cases of presale there be some ability to check whether there might be a trademark issue, that might be food for the IRT to work with. That would be based on my having a correct supposition of what we agreed. Having said all of that, I think we should turn to Rebecca, now, in the queue.

KATHY KLEIMAN: Actually, Rebecca, do you want to comment, or should we read the ICANN Org comment first?

REBECCA TUSHNET: I'm fine with waiting.

KATHY KLEIMAN: Okay. Julie, could you take us through the ICANN Org comment, since David just referenced it and it seems relevant to the discussion?

JULIE HEDLUND: Sure, Kathy. So, "ICANN Org notes that the 48-hour expiration period for reporting claims notices to the TMDB has remained in the TMCH functional specifications to ensure that the claims notice to be displayed to a potential registrant reflects the most recent and relevant trademark information."

"The reasoning for the 48-hour acceptance period is to avoid situations where a registrant is unaware that their pre-ordered domain name registration was based on an acknowledgment of a claims notice containing trademark information that may no longer be up to date."

I'm going further. "ICANN Org understands that the working group has discussed operational issues with presenting the claims notice to registrants who pre-registered domain names. As such, does the working group envision a shorter or longer expiration period for the claims notice?"

"In addition, ICANN Org would like to point out that the 48-hour acceptance period is specified only in the TMCH functional specifications. However, such requirements for future gTLDs should be set by the policy and should be specified in the RPM requirements."

KATHY KLEIMAN: Okay. So, looking for a little more clarity, as David said, ICANN Org. Rebecca, assuming you're no ... You're welcome to respond to the ICANN Org comment but I know you're picking up the earlier thread. Go ahead, please.

REBECCA TUSHNET: Thank you. So, I guess a couple of things. I mean, it really does sound like these are issues where we need a lot more technical detail. For example, the possibility of updating the information and what is technically possible and administratively feasible.

I think the language that we have adequately shows the level of detail at which we understand the problem. If there was more to be added, I think we should probably say that we understand that pre-registration is a perfectly legitimate business practice with completely legitimate justifications.

So, the attempt should not be to make it give way but to do something else, and that might involve changing the technical specifications. So, I would just … If we want to say something like this I think, actually, we might want to say something like what Susan says. We might suggest to the IRT that it has a lot of flexibility on the other side to figure out what is the right response. Thank you.

KATHY KLEIMAN: Sorry, all. Coming off mute. It's fun with all these screens. Okay. So, Rebecca is suggesting that the IRT be given expressly a lot of flexibility in trying to help handle the pre-registration business practice. I'm trying to go through—and David, I'd love your help, or

anyone's help—and find what language Maxim and Susan put into the chat, and now we have Rebecca's language, as well.

And part of the question, and I raise it to the other co-chairs, is how long do we want to spend on this type of discussion of adding to a recommendation that has considerable support? David, I will yield to you first, if you'd like to comment. Rick, is that a new hand? David, go ahead, please. We may have lost David. Go ahead, David, if you're there.

DAVID MCAULEY: It looks like I was muted by the host. Can you hear me now?

KATHY KLEIMAN: Yes.

DAVID MCAULEY: This is interesting. Maxim language as I saw it said, "If the pre-registration prevents all mechanisms of RPMs to work as intended, such pre-registration should be forbidden." Other than … I don't see Susan's language right now. I can't seem to find it, Kathy. But it is what it is, as we thought this should be presented to the full working group.

KATHY KLEIMAN: Okay. Susan didn't write anything. Rebecca says, "I'm not convinced we need to change language but, if we are going to, we should be clear that the solution we envision is not to bar pre-registrations but to change other requirements. "Maxim's language

appears to be far more restrictive than currently proposed language. Am I missing something?" Okay. So, now I'm going to—

DAVID MCAULEY: Kathy, I suggest that go to Mary in the queue, and then Susan.

KATHY KLEIMAN: Okay, go ahead. Mary, go ahead, please.

MARY WONG: Thanks, Kathy and everybody. This is just a follow-up on your comment, Kathy, that ICANN Org was seeking more clarity in our public comment, because that indeed is the case. We had raised, for example, this notion of the 48-hour period. What would be ideal is if the working group can say that, if the 48-hour period needs to be changed, that is something within the realm of the IRT.

The second thing that I'll say is with respect to Susan's and Rebecca's comments. It may also be helpful to clarify that nothing in this recommendation is intended to prohibit the practice or business of presale.

So, in that regard, it's almost like, for the working group, the question is, are you going to give the latitude to the IRT working with ICANN Org, in implementation, to do things like change the 48-hour period and anything else so that presale can continue?

On the other hand, at the other extreme, if we find that anything that we try to do that's feasible will result in barring presale, that that's a consequence that is acceptable. I think what we're looking at is a

framing that can go within these two extremes, and maybe a starting point is to say that the working group does not intend to prohibit, or have its recommendation have the effect of prohibiting, the practice of presale.

And then, if you can address the 48-hour period, that's fine. If you're comfortable saying that really looking at the 48-hour period is one of the things that the IRT may choose to look at, that may also be helpful. Thanks, Kathy.

KATHY KLEIMAN: Mary, before you leave, this is very helpful, and thank you for some guidance, here. So, two things. Nothing in this recommendation is intended to prohibit the practice of presale is something we might consider. And also, the idea that the 48-hour period may need to be changed, that the IRT has some ability to work with the 48-hour period … And would it be appropriate to add, "Especially when it involves a presale where the potential registrant has already seen and agreed to the notice"?

MARY WONG: Kathy, I think that's going to be within the discretion and decision of the working group. I see Susan and Jason have their hands up. I'll just clarify that, in regard to the 48-hour period, our comment was specifically in relation to this particular recommendation and my last comment was meant to use that as an illustration, a non-exhaustive example, if you like, of one of the things that the IRT might have the flexibility to work with. Thanks.

KATHY KLEIMAN: Terrific. Thanks, Mary. Susan, and then Jason. Let's see if, maybe, we can take this to the finish line. Susan, go ahead, please.

SUSAN PAYNE: So, I think if we're intending to include language that says nothing in this recommendation is intended to prohibit presale, we must also say, "Provided that any presale process still complies in full with the RPM's requirements to deliver the claims notice before registration." And precisely what the what RPM's requirement says will, obviously, need to be quoted. I don't have it in front of me. But we can't say the one without the other because this is the whole point of the recommendation.

KATHY KLEIMAN: Okay. Thanks, Susan. What do you think about Mary's idea of some flexibility for the IRT in the period on which a potential registrant can see that claims notice in a pre-registration situation, where they might be seeing it for the second time?

SUSAN PAYNE: I think that's what we talked about when we came up with this recommendation. Didn't we give that discretion to the IRT?

KATHY KLEIMAN: Apparently, ICANN is asking for more clarification on that. So, if we agree that the IRT has that flexibility, that's great. Feel free to come back into the queue. Let's see what Jason thinks, because I know it's a lot to think about. I just happen to have written down the

language that Mary was talking about, and maybe Mary can put that in the chat. Jason, go ahead, please.

JASON SCHAEFFER: Hi. Thank you, Kathy. Can you hear me?

KATHY KLEIMAN: Yes.

JASON SCHAEFFER: Okay.

KATHY KLEIMAN: Absolutely.

JASON SCHAEFFER: I believe Mary presented something that seems to provide a workable solution. I agree, and I want to go on record cautioning that I don't think anybody … We're not going to be in a situation … I'm not going to support something that eliminates the practice, and we have to be very clear on that. I don't think the recommendation does that, but let's not do something that eliminates the business practice of pre-registration.

I also want to note that Maxim put in the chat that the parties that this impacts are really not … We may need to loop them in, here. I understand how we function as a working group, but to the extent

we are doing something to expand or adjust a valid business practice, I think we have to be very careful.

So, you just mentioned, Kathy, I believe it was you, that said, how do we feel about the additional claims notice presentation? I think, again, conceptually, this works. But I think, given the IRT, the leeway to do something provided it doesn't do something that conflicts with the practice might be the workable solution, but I don't know. So, I'm not sure if we can conclude today, but that's where I think I would be in support of that.

KATHY KLEIMAN: So, you'd be in support of some of the flexibility that [inaudible].

JASON SCHAEFFER: Yeah, I think so. There has to be some clarity, and clarification, and certainty that we're not suggesting that the practice be eliminated.

KATHY KLEIMAN: So, it sounds like you like both of Mary's recommendations.

JASON SCHAEFFER: Yes.

KATHY KLEIMAN: [Something clear] nothing in this recommendation is intended to prohibit the practice of presale, and also some express support in the recommendation for some flexibility of the 48-hour period with

the IRT, to kind of work with the operational issues. Okay. Thank you. Phil, do you see a way through? We have spent an hour and 42 minutes. What do you think? Phil, you are still muted. Still muted, Phil. Let's see. Phil, we still can't hear you.

TERRI AGNEW: Phil, just to let you know, it doesn't look like you … Oh, there you go. I unmuted your telephone, Phil. Is that …?

PHILIP CORWIN: All right?

TERRI AGNEW: There you go.

PHILIP CORWIN: I was unable to do it on-screen.

TERRI AGNEW: Perfect. Thank you, Phil.

PHILIP CORWIN: In the hope of bringing us to a conclusion, I think if we're going to add anything—and I'm not sure we need to add anything—it's just something very general, like the IRT should be permitted to exercise substantial flexibility to preserve free registration so long as the meaningful notice is given to the registrant of possible infringement.

There is nothing sacrosanct about a 48-hour expiration period. I guess, theoretically, you can get the notice and, 72 hours later, suddenly a trademark that matches your domain name goes into the database, is registered with the TMCH, but that's going to be a very rare occurrence.

But those considerations, here, of business practices, of how long before final registration the pre-registration is permitted, about whether the registrant is bound to the pre-registration even if they later find out there is a trademark issue, things like that that are not appropriate for this policy-making group and are just going to bog us down.

So, I think we just need one sentence that gives the IRT sufficient flexibility to deal with this in a reasonable manner, so that new registries that want to do pre-registration are permitted to do so, so long as the registrant gets some meaningful notice.

KATHY KLEIMAN: Phil, before you leave, let me read you Paul's.

PHILIP CORWIN: I'm looking at the chat.

KATHY KLEIMAN: Yep. So, Paul McGrady's language is, "Nothing in this recommendation is meant to preclude legitimate presales that are compliant with all RPMs. The IRT is requested to work out all relevant implementation details." And perhaps, consistent with what

Mary has said and what I understand you said, maybe with some flexibility …

PHILIP CORWIN: Yeah. I would add to the end of that sentence, “Using appropriate flexibility.”

KATHY KLEIMAN: For some flexibility of … And we should say, “The 48-hour period”?

PHILIP CORWIN: I wouldn’t even get into detail. The IRT is going to deal with all the relevant issues, or if there are any relevant … The 48 hours is a relevant issue and we’re not preventing the IRT from saying, “Well, with pre-registration, it can be somewhat longer.”

KATHY KLEIMAN: Okay. Rebecca’s suggestion: “Since the 48 hours is already in there, might be worth putting it in again to be clear,” since we have worked through this. And Maxim says, “48 hours is one of the issues. There may be some others.”

PHILIP CORWIN: Well, I’ll leave it to the group. I think, with an addition of one, single sentence, we can wrap this issue up and move on. Thank you.

KATHY KLEIMAN: Okay. Thank you, Phil. It looks like we're converging, everyone. We've got the language from Paul with the language from Phil. Rebecca, others, do you want to propose [and express] addition of the 48 hours? In which case, perhaps, good to raise your hand. Otherwise, I think we move forward. Rebecca, go ahead, please.

REBECCA TUSHNET: Yeah. So, I think we should put it in, just to make clear. Because, to the extent that it is encoded in the requirements for the current RPMs, but maybe nobody thinks that it absolutely has to be 48 hours for pre-registrations, we should probably make it clear that what we mean by "complying with the RPMs" means complying with the idea that they get the notice, not that it has to be exactly the way that it has been before.

So, that's my suggestion. It's probably okay but, given the reference to the current RPMs, it might make sense to say what we care about is the receipt of the notice, not the current implementation.

KATHY KLEIMAN: Rebecca, before you leave, can we put that in just a few words, and see if …

REBECCA TUSHNET: Yeah.

KATHY KLEIMAN: Mary suggested, once in, the 48-hour period may need to be changed with … 48-hour period flexibility? Mary, tell me if I'm

adding too many … 48-hour period flexibility is within the realm of the IRT, or something like that.

REBECCA TUSHNET: That certainly sounds fine to me. It could be just part of the sentence, “The IRT has requested.” Yeah.

KATHY KLEIMAN: “The IRT has provided …” Mary, do you want to help?

MARY WONG: Kathy, I think that, just to help things along, the staff … We’ve taken our notes, and we can certainly go back to this transcript, as well as the chat, and we can come back to the group in writing with what we think is the consolidation of the suggestions that seem to get the most agreement on this call.

KATHY KLEIMAN: Perfect, and answering some of the specific requests of ICANN Org. Great. Let’s move forward. Thank you very much. David, are you still on the call, and do you still have good connection, and would you like to take us through Trademark Claims recommendation number four? Staff will read recommendation number four. Over to you, Julie.

JULIE HEDLUND: Oh. Thank you, Kathy. Yes, I’ll read the recommendation and can pull out some of the comments flagged by subgroup A for the

working group, and David could chime in when we have the discussion.

Trademark Claims recommendation number four: “The working group recommends in general that the current requirement for a mandatory claims period be maintained, including the minimum initial 90-day period when a TLD opens for general registration.”

“Note some working group members asked for public comment on potential exemptions, which would then not be subject to a claims period of any length. See Trademark Claims question two.”

And then, moving down to the subgroup A deliberation summary. “The subgroup agreed that the recommendation be maintained as-is, but two new material perspectives/facts raised by public comments, as flagged below, should be referred to the full working group for possible consideration of its recommendation.” RPMs requirement section 3.25 will be expressly referred as part of the TM Claims recommendation number four, to confirm that.

“Where there is a limited registration period after Sunrise and prior to general availability, TM Claims must operate throughout, in addition to the first 90 days of general availability.”

And item two, “.Brand TLDs be exempted from the TM Claims period requirement.” The subgroup noted that this perspective was also raised in the public comments for TM Claims question two. And so, the public comments that are referred to the working group, as you see here, was row 31, which …

Pertaining to that comment, the working group does not specifically refer to RPMs requirement section 3.25, which is quoted there. And,

"While this requirement is clearly unchanged by the recommendations of the working group, it would be helpful for this to be expressed for clarity as part of Trademark Claims recommendation number four."

And then Public Comment Review Tool, row 32, regarding the recommendation as written: "This should be clarified to confirm that there is a launch phase after Sunrise and prior to GA. TM Claims must operate throughout, in addition to the first 90 days of GA. This is current position under the RPMs requirements and is not changed by the working group recommendation in this regard."

And row 33, moving on down. This is an IPC comment. "Although many IPC members favor a longer claims process, ideally one that runs indefinitely, we can accept as a compromise that the claims period continues to be mandatory for all TLDs, except .brands—see response to claims question number two—and that it should operate for a minimum of 90 days from the start of TLDs general availability, and this be a minimum requirement."

"There is a potential ambiguity in the recommendation where a TLD commences one or a series of limited registration periods for specific classes of registrants after the Sunrise but before general availability. The current RPMs requirements make it clear that Trademark Claims must operate throughout such LRPs and then continue for the first 90 days of GA. This current requirement is unchanged by TM Claims recommendation number four."

And then, Public Comment Review Tool number 34: "We support in general the status quo on the 90-day minimum mandatory for all gTLDs. However, we would support exempting .brand TLDs from

the claims period requirement given limitations in who can register domain names in .brands TLDs." Thank you.

KATHY KLEIMAN: Great. Thank you, Julie. David, over to you, and I note Maxim has his hand raised.

DAVID MCAULEY: Thanks, Kathy. I'm hoping you can hear me. I did put in chat an indication of what those … And thank you very much, Julie. That was very kind of you to read that. It was unfortunate that the PCRT rows didn't show who the comments were coming from. But in chat it shows, from top to bottom, 31 to 34. They came from INTA, [they have cum laude], then IPC, and then from the Global Brand Owners and Consumer Protection organizations.

Now, the working group thought that this recommendation should be passed on as-is but wanted to flag these four specific comments to this group to see if anybody would like to comment. And so, I think it's time to open it to the queue. Maxim's hand is up. So, Maxim, why don't you go ahead and speak and then, Kathy, I'll give you management of the queue? Thanks.

KATHY KLEIMAN: Thanks, David.

MAXIM ALZOBA: Actually, there is nothing bad even for GeoTLDs in the situation where claims are available during the limited periods; where, for

example, only [mayor's office entities are eligible]. It's just, example, relevant to GeoTLDs. Because even if someone tries to challenge that, most probably it will end up in the court and [city], obviously, will win. So, it's not a big deal for Geos. Thanks.

KATHY KLEIMAN: Maxim, I'm sorry. You spoke very quickly. Let me park. Are you saying that you would agree that, under current LRPs, these limited registration periods, having the Trademark Claims process operate during them is a problem or is not a problem, is a current practice or is not a current practice? I apologize. I must have had some noise on the line.

MAXIM ALZOBA: Since the claims notice period should start with the beginning of Sunrise and should end no faster than 90 days into general availability, and all [unlimited] periods are between those dates, it means that the current practice is the same, like claims notice are active during the limited periods. And I think it's an issue for GeoTLDs and, yeah, nothing bad in the situation where the trademark owner is notified that some party is trying to register. Thanks.

KATHY KLEIMAN: Great. Thank you. So, it sounds like there is agreement on the period that the Trademark Claims, again, runs from Sunrise through the 90 days of general availability and includes the periods in between the limited registration and similar types of periods. It runs concurrent with all of them.

Given that, is there any other comment, anything else to offer? Subgroup A agreed—I'll just go back up to the top—that the recommendation be maintained as-is, and then asked us to review these comments. Does that take us to anything, or are we in agreement? Can we move forward?

I'm looking at … Okay. So, it sounds like agreement. I agree, David. Okay. Terrific. Trademark Claims recommendation number four done, with thanks to subgroup A for lining it up for us so nicely. Trademark Claims recommendation number five. I'll just—

SUSAN PAYNE: Sorry, Kathy. Sorry. So, what have we agreed? Sorry. Please, can you clarify?

KATHY KLEIMAN: I think we have agreed on the trademark recommendation number five as-is, and understood what that meant collectively.

SUSAN PAYNE: Fine.

KATHY KLEIMAN: Okay. Thanks, Susan. Trademark Claims recommendation number five. Let me flag to everyone that it has an accompanying Trademark Claims question, number two. Sorry. We're on number five, right? Oh, yeah. So, we stated the group's agreement, which was number four.

LORI SCHULMAN: Yeah, that's what … I'm sorry, jumping in the middle. Right. You're saying we have agreed to four as written, and now we're onto five. Just for clarification, because it's confusing.

KATHY KLEIMAN: It is. It is. Thank you. Thanks, Lori. So again, what I do want to flag is that there is a Trademark Claims question number two and a question to David about whether we want to address … Sometimes, we found that, addressing the question at the same time or even before the recommendation is very useful. Otherwise, sometimes we found that we're doubling back. So, David, do you want to take us through Trademark Claims recommendation number five and the order that you'd like us to address Trademark Claims question number two? David, if you're speaking, I cannot hear you.

DAVID MCAULEY: Kathy, can you hear me now?

KATHY KLEIMAN: I can, thank you.

DAVID MCAULEY: Thanks. I'm sorry. I think the best way to approach this … I would ask if Julie could help again—she mentioned that she could—and to take on question first, and then back to the recommendation, and put them together for comment. Thanks.

KATHY KLEIMAN: That sounds good. Julie, can you take us through it? Thank you.

JULIE HEDLUND: Thank you very much. Beginning with Trademark Claims question number two. 2a, "Is there a use-case for exempting a gTLD that is approved and subsequent expansion rounds from the requirement of a mandatory claims period due to the particular nature of that gTLD? Such a type of gTLD might include, one, highly regulated TLDs that have stringent requirements for registering entities in the order of .bank, and/or two, .brand TLDs whose proposed registration model demonstrates that the use of a Trademark Claims service is unnecessary."

And 2b, "If the working group recommends exemption language, what are the appropriate guardrails ICANN should use when granting the exception? Eg. single registrant, highly regulated or manually hand-registered domains, something else. Note that this question is related to Trademark Claims four and five."

And then, moving onto the subgroup A deliberation summary. "Subgroup A recommended the working group consider public comments for Trademark Claims question two, together with those for Trademark Claims Recommendation 5 across the board. Those comments may inform the working group's decision in developing any revised language and/or implementation guidance for Trademark Claims recommendation number five."

"The subgroup noted that there seems to be broad community support for a uniform claims period, as well as exempting

Specification 13 registry operators/.brand TLDs from the claims period."

"There was also community support for exempting highly regulated TLDs, but it did not appear as widespread as that for Spec 13 brand registry operators. Subgroup A noted that Contracted Parties House's proposal, PCRT row number 36, of exempting registry operators who are exempt from Specification 9 from partaking in the Trademark Claims period should be referred to the full working group."

"Staff noted that the CPH raised a similar proposal in the context of Sunrise recommendation number five, Sunrise recommendation number six, and Sunrise question number four."

"Other than CPH's comment, subgroup A agreed that the public comments have not raised any new or material perspective, facts, or solutions which the working group had not considered in making this recommendation."

KATHY KLEIMAN: Great. Thanks, Julie. David, did you think that we should stop here or go ahead back to Trademark Claims recommendation number five? Actually, let's stop here and see if anyone wants to comment on this issue of, is there a use-case for exempting a gTLD from the mandatory claims period? And certainly, we heard about .brand, Specification 13. This seems to be an even broader inquiry. Does anybody want to comment on this, or should we use it to inform our discussion? David, go ahead, please.

DAVID MCAULEY: Kathy, hi. Thanks. I think it's all related to Recommendation 5. And in fact, we were talking about this in the last meeting, as I recall. But it is my recollection that our subgroup wanted to pass this along, basically, and asked the group to specifically look at exempting—

KATHY KLEIMAN: Did anyone else just lose David?

TERRI AGNEW: I do believe David dropped. I'm redialing out to him. Just give me one moment on the telephone. Thank you.

KATHY KLEIMAN: Okay. So Julie, why don't we go back? Why don't we circle back, then, to a page before, in the summary, and talk about the Trademark Claims recommendation number five? So, now that we have the questions seeking additional information, if you could read this, and then anything in the summary you think is relevant. It sounds like David wants us to consider it all together. Over to you. Thanks.

JULIE HEDLUND: Thanks very much, Kathy. Reading Trademark Claims recommendation number five. "The working group recommends that the current requirement for a mandatory claims period should continue to be uniform for all types of gTLDs in subsequent rounds, including for the minimum initial 90-day period when a TLD opens for general registration."

"Note some working group members asked for a public comment on potential exemptions, which would not be subject to a claims period of any length. See Trademark Claims question number two."

Again, back to the subgroup A recommendation summary, what we just read, which was the public comments for Trademark Claims question two … Okay. I think we actually had read through this previously. So, I'm just looking again at … Yeah. So, the summary is, essentially, the same for question two and question five, more or less.

DAVID MCAULEY: Julie, I'm back. Do you want me to make …?

JULIE HEDLUND: Please do. Thank you.

KATHY KLEIMAN: Yes, please.

DAVID MCAULEY: Thank you. Apologies. I'm getting involuntarily muted and thrown out of the meeting. I'm not sure exactly why. But in any event, what I believe that the subgroup wanted to do was for this full working group to look at the two potentially broad categories of exemptions from the Trademark Claims. One was Spec 13, was the brand operators, and the other was those who are exempt from the code of conduct in Spec 9.

I think it was Greg Shatan that made this in a recent meeting, a comment in a manner that I thought was very clear at the time. It's

basically exempting those who are not registering domains beyond their corporate family, in even any one instance. And so, I think that's the proposal that's really before the floor—should we do something to explicitly make that the case?—and open that to a queue. Thank you.

KATHY KLEIMAN: Terrific. Thank you, David. Thank you, Julie. So, Jason, go ahead, please.

JASON SCHAEFFER: Thank you. I agree with what was just stated in terms of I would support exemptions for brands or Spec 9, section six. But I did want to say I thought we were, I believe on question four, also looking to address those TLDs that are highly regulated or have a special registration policy. I don't know why we would remove that from the discussion.

I think that, especially in practice in the next round, we can all opine on what we think will happen, but I'm sure we would want to see interesting use-cases that are actually quite beneficial for certain communities and groups. And provided there are safeguards in place that protect at IP, we shouldn't discourage such TLDs from going live. So, I want to know why we are now taking that out of the discussion.

KATHY KLEIMAN: Jason, I have to tell you, I didn't follow what you said, in part because we don't have the language of Trademark Claims recommendation number four in front of us.

JASON SCHAEFFER: Yeah. Maybe [inaudible] that.

KATHY KLEIMAN: I recommend that we take one at a time. Let's take—

JASON SCHAEFFER: Right. So, let's go back to [inaudible]—

KATHY KLEIMAN: Number five. And staff, could you help me put a pin in going back to Trademark Claims recommendation number four? Because it does appear to have a relation to the question that Julie read. Jason, would that be okay? We'll take them one at a time?

JASON SCHAEFFER: Yes, that's great.

KATHY KLEIMAN: Okay. So, that leaves us, still, in Trademark Claims Recommendation 5. So, based on the discussion, the questions, the answers, is there a call to change or modify recommendation number five? If you're in chat and there is a way to come into the discussion/raise your hand, please go ahead and do so.

JASON SCHAEFFER: Are you talking to me, Kathy? Okay.

KATHY KLEIMAN: Jason, you're more than welcome to comment, sure. Absolutely.

JASON SCHAEFFER: Well, no. I mean, I think if we were going to focus on five, there's just … Can you pull it down a bit? I can't see it on one screen, here. This discusses … Right. So, this would impact four. That's all. So, I have no issue with five. As a matter of principle, it seems fine. But the issue is how that impacts four, that's all. So, we can address it however you'd like.

KATHY KLEIMAN: Okay. Does five need to change or be modified? David, let me send this to you, and I'll just read it again out loud. "The working group recommends that the current requirement for a mandatory claims period should continue to be uniform for all types of gTLDs in subsequent rounds, including for the minimum initial 90-day period, when a TLD opens for general registration. David, go ahead, please.

DAVID MCAULEY: Kathy, thank you. It is my recollection that the working group essentially passed this on as-is, with the request that these comments be examined. I understand and I appreciate what Jason just said, but my recollection of the discussion in the context of

Recommendation 5 and question two was strictly with respect to Specs 9 and 13, considerations around those. That is that someone is exempt from the code of conduct in 9, or that someone has the Spec 13 in their agreement.

And so, in my personal opinion, they made great sense, but the subgroup didn't pass them on. It might have been with the expectation that, maybe, the group would recommend that that happen. But since that doesn't seem to be the case, I'm thinking that the recommendation is simply to keep the Recommendation 5 as-is, unless somebody now would speak up and say, "Why don't we make this explicit?"

I'm personally in the middle on it. I don't feel strong enough to make that recommendation. But I would ask if anyone wants to, in the queue now, and I'm afraid I can't address Jason's point right now. But anyway, that's my comment. Thanks.

KATHY KLEIMAN: Thanks, David. Susan, go ahead, please.

SUSAN PAYNE: Yeah, thanks. My sense from the subgroup, and just as we have been going through all of this, is that if we felt that something was worth consideration by the full working group, then we referred it onto them for consideration. And so, that's what was done here with exempting Spec 13 and, possibly, the code-of-conduct-exempt TLDs.

And sort of noting accordingly … And perhaps not going so far, generally, as to say, "And we think the working group should make that recommendation … But I think, recognizing that it is for the working group to make the recommendation, obviously, not for the subgroup, it seems to me that there is a lot of support for making this recommendation to exempt single-registrant TLDs from the claims notice, because they're not publicly selling names, effectively.

And so, that makes a lot of sense. I think there is support from the public comment, and I think there is probably, if we discuss it here, support from this working group, as well.

I think the highly regulated TLDs is a sort of different class of TLD. They do, obviously, have eligibility restrictions, or they have registration criteria attached to them, but they're not quite so uniform. And I think it's safe to say that they're not single-registrant TLDs; they are TLDs which do allocate names to multiple different parties, albeit that they may be meeting some kind of eligibility or other criteria.

So, I don't think they fall into the same camp. And consequently, I think that is the distinction between them and why the subgroup noted that there was a great deal more support for exempting the single-registrant TLDs.

KATHY KLEIMAN: Susan, may I ask you a question?

SUSAN PAYNE: Sure.

KATHY KLEIMAN: Okay. The term “single-registrant gTLD,” is that the same thing as saying “registry operators operating under Specification 13 or under Specification 9, section six”?

SUSAN PAYNE: Yeah, effectively. I was just trying to use short-hand, rather than keep saying “Spec 13 and code-of-conduct-exempt TLDs.”

KATHY KLEIMAN: Okay. But it’s an exact set? There is nothing … I mean, it’s a completely overlapping set of those, there is nothing else in consideration? More for my information, and perhaps others. I think so.

SUSAN PAYNE: I don’t know.

KATHY KLEIMAN: [inaudible] how you’ve described singe-registrant gTLD. It’s just not a free—

SUSAN PAYNE: So, I suppose what I was trying to say was that’s the reasoning behind the exemption, the fact that they’re not commercially … That names are not being allocated to the world at large. They are

generally being allocated to the registry operator itself and to a very narrow class of the registry operator, and its affiliates, and, in some cases, trademark licensees.

They tend to be, as a short-hand called single-registrant TLDs. But to be clear, we shouldn't refer to them as that. I think we should refer to them … So, the exact TLDs we're talking about exempting, if, indeed, that is what we decide.

KATHY KLEIMAN: Great. Thank you much, Susan. David, go ahead, please.

DAVID MCAULEY: Thanks, Kathy. I just wanted to say something that I put in chat. It's in response to what Susan just said. I think she has made a very fair statement about what the discussion in subgroup A was.

The only additional thing: I would note that, in addition to what looked like a fair of support, was I don't recall any opposition to an exemption for those who have Spec 13 who are exempt from Spec 9, the code of conduct. And like Susan, this comment that I'm making now is not with respect to the highly-regulateds that Jason mentioned. Thanks.

KATHY KLEIMAN: Okay. So it sounds like—and here, we're just talking about recommendation number five— I'm hearing that there is a proposal on the table to acquire the mandatory claims period for all types of gTLDs in subsequent rounds, except those who will receive

exemptions from the registry operator code of conduct pursuant to Specification 13 and Specification 9, section six. Is that right? Susan, go ahead, please.

SUSAN PAYNE: Sorry, old hand.

KATHY KLEIMAN: Okay, thanks.

SUSAN PAYNE: But it sounds right.

KATHY KLEIMAN: Okay. And Griffin says, "I stated it." Well, great. Let me ask if there are any objections or any comments that people—pop quiz—would like to make on this? And then, I'd like to recommend that we close by going back to Trademark Claims recommendation number four for the same discussion, pursuant to … Wait, wait, wait. Hold on. Let's not leave Recommendation 5 quite yet. Going, going, going, gone on recommendation number five. Thanks.

Now, over to number four. Let's read it again with that same thought about creating a narrow category of exception. So, now back to recommendation number four: "The working group recommends in general that the current requirement for a mandatory claims period be maintained, including the minimum initial 90-day period when a TLD opens for general registration."

Does it make sense? And David, let me give this to you. It's my understanding that a similar set of exceptions were raised in the comments and that, now, the subgroup A would like the full working group to consider that same set of exceptions. A question for David.

DAVID MCAULEY: Kathy, I have to go and refresh my memory, to be honest with you. I'm just getting back there, now. I would prefer not to answer right now.

KATHY KLEIMAN: Okay. Is there someone in subgroup A that could tell me if I'm way off base or if … Jason, actually, let me ask you if you can speak on this, because you're the one who sent us back. So, I feel like we're on the monopoly board and we've gone back three spaces. What would you like us to consider, here?

JASON SCHAEFFER: No, Kathy. I was just referring to … I don't know where it was on the screen before, but we had the subcategories and considerations, and one of them mentioned this, the highly regulated TLD, as a possibility. I don't know where that is, but staff had that on screen. It looks … Oh, maybe there it is.

KATHY KLEIMAN: Okay. Can you walk us through this from the beginning? Just kind of from the beginning of your argument, or whatever issue you'd like

us to consider for number four, because I think our heads were in number five by the time you mentioned it a few minutes ago.

JASON SCHAEFFER: Right.

KATHY KLEIMAN: So, walk us through what it is that you're looking for.

JASON SCHAEFFER: I'm happy to do so. I do understand what Susan mentioned, and others in the chat, regarding the distinction between a Spec 13 and a Spec 9-6 exemption from a highly regulated—

KATHY KLEIMAN: Can you clarify that for others who might not know?

JASON SCHAEFFER: Okay, well, let me just explain that the idea is that a Spec 13 brand is going to only have domains that are under management of the brand, and, in that case, they're not selling domains to the general public. And in the other case, you're also restricted and you're not selling domains out to the general public.

In the case of a highly regulated, as what we're talking here, it's contemplated that the operator would have registration requirements, policy requirements, content and use requirements, and other restrictions, similar to a .bank in today's world, where you

envision a safe namespace and they have a purpose and intent behind the registration so that not anyone and everyone can go register a domain, and nor would they be interested in doing do.

My point was that, in round two, as we call it, I would expect and hope that there are going to be more use-cases that are highly regulated and help improve the namespace and do good things in so doing.

So there is a reason for a highly regulated TLD, and they aren't … I don't put them in the same class as straight, open TLDs, and they are certainly not going to be falling to the class of those open TLDs that we all should have concern on in terms of high levels of cybersquatting and high levels of bad behavior. One would expect that a highly regulated TLD has ...

Again, I guess we get at the issue of how to define it. But when you get into a community, for example, or when you get into other highly regulated spaces, there are some differences. So, if we had some safeguards in and some clarity of what that meant, then perhaps we could move forward with that.

So, the first two categories, as you asked to define them, the Spec 13 and Spec 9 situation, I think we all have agreement on that. So really the issue is, do we have this next class of highly regulated, and do they get to do some special things in the next round or not?

KATHY KLEIMAN: Are you proposing, Jason, that we consider creating an exception for highly regulated TLDs, which you've now helped us understand much more clearly?

JASON SCHAEFFER: Well, yes. I'm for having a Spec 13, Spec 9, and a highly regulated exemption.

KATHY KLEIMAN: Okay. Let's open the discussion for that. People who support, people who oppose? Griffin, go ahead, please.

GRIFFIN BARNETT: Yeah. Thanks, Kathy. I have put comments in chat, but just to express them again, I agree with the characterization of the highly regulated TLDs, as Jason put it, and I agree that they are sort of in their own class, so to speak, separate and apart from generally open TLDs. And I think the risk as, again, Jason described it in terms of potential for cybersquatting and things like that, is certainly more limited in this sort of highly regulated category.

However, I don't think that they are sufficiently closed in the same way that Spec 13 or Spec 9-exempt TLDs are to warrant the exemption that we are discussing from the mandatory claims period.

I still think, because you're registering domains to third parties in those highly regulated TLDs, even if they are being vetted to meet certain … Whether it be industry criteria or what have you, I still think they are still not sufficiently low risk in terms of the potential for potential trademark issues, here, that we would want to also include an exemption for them from the claims period recommendation. So, that's my view. Thanks.

KATHY KLEIMAN: Great. Griffin, thank you very much. Jason, it sounds like you have a response. Thanks.

JASON SCHAEFFER: Sure. Thank you, Kathy. I understand Griffin's point. To that point, I think the issue is … Perhaps we can frame the issue slightly differently and look at this from the perspective of, okay, we're balancing IP rights against what we hope is the public interest, and we figure that, is there a way to thread this needle?

I think there is but, again, it requires thoughtful discussion on, what are we trying to accomplish, here? Are we going to just, as a working group, continue to just protect IP rights at all costs and not balance it against the public interest and other reasons, or are we going to have a more balanced approach? It depends on where you fall on that spectrum, obviously.

So, I agree with Griffin in concept, in principle, that, yes, you do open up and there is more risk. If you're only looking from an IP lens, there is more risk. You are having a situation where other registrants are coming in, third parties, and they are registering domains. So yes, you do increase risk to an IP holder.

However, I would hope that, as a group, we could use our collective minds and figure out what is an acceptable risk and how we can find safeguards that would provide balance so that a TLD or new registry operator could do things.

For example, if you have a TLD that's going to have verification, and if you have a TLD that is going to have content and use restrictions, and if you have a TLD that's going to have engagement with the IP community at large, there are ways this can be done.

Now, we certainly don't have the time for that now, but throwing this out wholesale, I think, is not a good idea, but I do understand the arguments against it.

KATHY KLEIMAN: Thank you, Jason. It would be great to see something in writing. I don't know about the timing. Susan, go ahead, please.

SUSAN PAYNE: Yeah. Thanks. I understand what you're saying, Jason. I work for a company who worked extensively with validated TLDs, or verified TLDs, in the last round. And so, I'm wholeheartedly in favor of those TLD models.

But the types of business model operated, and the manner in which they verified or validated the registrants, or indeed the restrictions that were in place, varied tremendously from TLD to TLD. There were some that were doing really strict trademark verification – processes as they were registering names, for example, and you had to get verified before you could have the name allocated to you.

But there were any number of them that only do some kind of verification process, which may not be a trademark process, after the event. And so, they are not uniform. It is, consequently, that much more difficult.

But I think we also need to remember that we have tried, in this working group, to come up with some improvements to the Trademark Claims process to address some perceived concerns that it is off-putting and could potentially discourage what you might call a "legitimate registrant," who ought not to be a problem.

And so, isn't that good enough? If we have a situation where it's … If we're talking about … Let's use "bank" because it's a known TLD and we already have it. If you're a bank, and you're applying for a name in .bank, and you did get a claims notice, but it relates to a trademark that's outside of the banking sphere, and we've had an improvement to the claims notice language, and the other things that we've talked about, then how much of the problem is that, really?

It's not going to prevent the registrant. It is only the notice of the existence of a trademark in a different sphere. They quite possibly even already of the trademark in a different sphere. They'll carry on with their registration. I don't see the claims process as being tremendously problematic in this context.

KATHY KLEIMAN: Great. Thank you, Susan. And that's one of the issues, of course: is it problematic in this context? Jason, it looks like you get the last word for today, and then we should think about, very quickly, whether we put a pin in this and continue it on the next call. It looks like Paul says we should. Jason, over to you.

JASON SCHAEFFER: Okay. Thank you, and thank you, Susan. I do hear you. As you were speaking, it jumped out at me that what you are articulating is … And I don't know if there is a way to do this right. Short of having a full exemption, is there a way in the future rounds … Because we're really talking in hypotheticals, here. So, in the future round, if there is a highly regulated TLD [inaudible].

KATHY KLEIMAN: Jason, I don't know about others. Your last few sentences were garbled for me.

JASON SCHAEFFER: Oh, okay. Sorry about that. No, what I was just thinking as Susan was speaking was, yes, not all of them will be created equal. So, is there a way to have a vetting process that they would meet certain standards? That's one way around it. But I understand the complexities, there.

On the other end, I do think that the example of .bank, while simple and easy, is not probably the best example, simply because .bank involves highly sophisticated registrants, whereas, again, not all are going to be created equal.

I think there will be, in other scenarios, a highly regulated TLD where you do not have such a highly sophisticated registrant who wouldn't understand the nuance or the understanding of what the effect and import of the claims notice is. So, you could have that argument on the other side. So, we're going to continue—

KATHY KLEIMAN: Jason? Can I propose … And sorry to interrupt you, and tell me if you want to keep going. We're at time, now, and there appears to be some interest in hearing a little bit more about this. Would you like to come back next week and circulate on the list some kind of definition of highly regulated gTLDs, and what the exception is that you're seeking?

JASON SCHAEFFER: I'm happy to have that … [As actually agreed], we're going to continue the conversation. I'm not sure I want to just make a blind presentation without input from others, but we can talk about that offline.

KATHY KLEIMAN: I'm going to recommend that we do have some specific language to work from because of the time constraints that the working group is under. With my co-chair hat on, to the extent that anything can be circulated during the week – well, before Thursday. No, before Tuesday. I apologize. What day is it? Before Tuesday, it would be very useful.

JASON SCHAEFFER: Yeah, of course. But is there anyone else to work with?

KATHY KLEIMAN: [inaudible]. Is there anyone who would like …? Maybe, can we chat to some of the people who are part of this discussion today? So,

again, apologies for cutting you off. Is there anything else you want to say very briefly?

JASON SCHAEFFER: No, not at all. We're good. Thank you.

KATHY KLEIMAN: Terrific. And it looks like Griffin is happy to weigh-in on the list, or maybe off-list, as well. Everyone, thank you. To David McAuley, who did backflips to be with us today, thank you so much, David. It's really hard to do this when you're on vacation. Thank you to everyone for joining us in the dog days of summer. I hope you have a good weekend and a good vacation, if you're on vacation. Take care. Thanks, all. Thanks, staff. Bye-bye.

JULIE HEDLUND: Thanks so much, Kathy, for chairing, and thank you everyone for joining. This meeting is adjourned.

TERRI AGNEW: Thanks, all.

[END OF TRANSCRIPTION]