

**ICANN
Transcription
Rights Protection Mechanisms (RPMs) Sub Team for Sunrise Registrations
Friday, 12 May 2017 at 14:00 UTC**

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Coordinator: Recording has started.

Woman: Thank you. Good morning, good afternoon and good evening and welcome to the Subteam for Sunrise Registration on the 12th of May 2017. In the interest of time there'll be no roll call.

Attendance will be taken by the Adobe Connect room. Kristine Dorrain I already have you noted on audio-only. If there's anyone else please let us know at this time.

Hearing no further names I would like to remind all to please state your name before speaking and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll turn it back over to our Chair, Lori Schulman. Please begin.

Lori Schulman: Hello everybody. I think this is Meeting 5 for us and we have I think got through a lot of good work and progress. We've bunched names. We've had general comments and discussion about clarification.

We have identified data that we might need to move forward and we're at the point now where we are looking at should we do any further review of the

questions, and how does our suggested changes marry – how do our suggested changes marry up to the overall work plan for the work group in general.

So you'll see we have a new chart. ICANN staff very graciously consolidated the charts that we've been working on into more readable forms, and I've asked Amr if he wouldn't mind go throughing (sic) the chart with us once again so we can understand what the color coding is.

We can understand where we still may need information or what still needs clarification. So Amr if you wouldn't mind just for a few minutes sharing with us the state of the chart.

Amr Elsadr: Thanks Lori. This is Amr. Yes so the purpose of this chart was to have a presentable table to the broader working group on the outcome or deliverables of the Sunrise Registration Subteam.

So what you see in the left – the far left column are the original questions that the subteam started working with, and the column in the middle marked Proposed Final Updates/Refinements Made by the Subteam – those are where the subteam landed in and - at the end and there were a couple of iterations in between those.

The column between those, the Subteam Recommendations, highlights what the subteam did with the original charter questions and sort of how they ended up in their final form.

There is some color-coding and those – that – this was a request that I believe Maxim had made earlier. And the color-coding is just – it just indicates which questions were batched together but with the exception of maybe Questions 2, 3, 8 and 15.

Those – apart from being batched they were also consolidated into a single question, which is Question Number 2 in the Proposed Final Updates column. So the far left column, both the original form of the questions as well as the original numbering, is what you see there and the numberings obviously changed in the middle column.

So like I said the purpose here is really to be able to present to the broader working group what deliverables the subteam has provided. There's an empty column on Comments/Discussion towards the right side, and I will note that Susan has made some contributions – column and this is some – I guess we can discuss those but specifically Question 13 and possibly answering that question with Question 22 further down.

But – and eventually the staff's suggestion on this column was to – was once all the comments and discussions were taken into consideration and we do actually have a final update for all the charter questions, this would've filled this column with the rationale on the actions taken and just again to assist the subteam in presenting all of this to the broader working group.

And of course the column on the far right is the Subteam Suggestions on Data Collection. Mary did fill in a few of those and we could fill in more of those as more suggestions come in.

But I hope that that sort of explains why this table looks the way it does and what the idea is in terms of what we want to do with it. And I'd be happy to answer any questions on it. Thank you.

Lori Schulman: Thank you Amr. I will jump in and say I like the color-coding. It just to me makes it easy to see the bunched questions and then emerge in a block color in the middle.

That I think is super easy for people so I appreciate that innovation in terms of the chart. I don't see any hands so I'm going to share some thoughts. As

to comments and discussions per some offline email that we had earlier today, Amr's thoughts - and I tend to agree that the comments/discussion – we think it would – we would be well served to have it populated with the contextual information that we've already gathered so that people have a good frame of reference when they're looking at the entire chart.

But that being said, you know, the fact that Susan made the effort to insert a comment now – I think today we should certainly look at that comment and make an agreement as to whether or not we would like to see that comment, you know, see the comment remain, which I'm fairly reasonably certain we probably will.

And also as I said Subteam Suggestions on Data Collection – rather than going through and reinventing the – really would like staff to take our prior set of notes and where we've identified where we need data to please insert it.

I think that would go a long way to completing the chart. Anybody have any comments after that? No. Okay. So then Amr had asked another question and that is we've gone through all the charter questions related directly to sunrise, which I believe were 1 through 9.

Then there was some supplemental questions, Questions 10 through 15 that I believe we got through or did we get to all of them Amr? Did we get through 16 as well? I don't remember.

Amr Elsadr: Lori this is Amr.

Lori Schulman: Yes. And I apologize for not remembering it – just don't remember.

Amr Elsadr: No that's okay. I've gone through several versions – previous versions of the table and it does get a little confusing. So maybe we should be able – it's helpful to have these questions and that way it gives us an indication of where we can provide further clarification in this table.

I believe the subteam did begin discussions on Question 16 but I don't think – I'm not sure if it came up with any concrete suggestions and I don't believe it did.

But there were previous comments on this question in earlier tables and before we – before a final version where we would provide the rationale as you indicated in the column next to last on the right side, perhaps what staff could do is sort of fill in previous comments there just because there's obviously some context missing that would be helpful to the subteam's discussion now.

So apologies for not getting that done already but I'm – but it might be helpful in moving forward so I'll take that as an action item.

Lori Schulman: That would be great.

((Crosstalk))

Amr Elsadr: And before I hand over the mic also wanted to point out that Question 22 and – at the bottom is the question that was originally designated to be answered by the Claims Subteam.

But this subteam agreed that it – it's more fitting to do so here in the – on the Sunrise Subteam and so that's why we added it at the bottom. Thanks.

Lori Schulman: Okay so thank you. So I have a follow up question that's for 22 that – so does the – is the Claim Team – is the Claims Team aware that the Sunrise Team has agreed to tackle 22 in terms of suggestions and timing? So is that part clear?

Amr Elsadr: This is Amr again Lori. We had – staff had pointed that out to the Claims Team and as – I believe it was noted on this subteam that when the Claims

Subteam was going through its charter questions, it had also taken notice of this question and realized that it's likely not a question for that subteam.

And they were considering sort of asking the broader working group to consider this, but since Kristine is on this call maybe it would be a good idea to sort of coordinate between the two subteams and go ahead and make a decision that the Sunrise Registration Subteam will take on this question.
Thank you.

Lori Schulman: Thank you Amr. Kristine does that make sense to you if you're still on the bridge?

Kristine Dorrain: Yes it does. I think we just felt that the question was far more related to the sunrise specifically than the claims as a subset of sunrise basically. Amr I – were, you know, I'm happy to entertain any other alternative viewpoints.

Lori Schulman: No. I mean, it's specifically a reference to the sunrise period so I think there's, you know, logic in that assumption but I think I'd renumbered the question.

Is that part of this exercise? I keep relying on staff today and – but I want to make sure. So if this is an appropriately grouped sunrise question should it be renumbered, and do we think about bunching it with anything else?

That would be my two follow up questions. Should it become like a 9A or 9.1 or 10 or does it matter?

Amr Elsadr: Lori this is Amr again.

((Crosstalk))

Lori Schulman: Yes.

Amr Elsadr: Yes all the final versions of the questions have been renumbered so currently there are a total of 12 questions that the Sunrise Registration Subteam should be looking at or will be delivering to the broader working group.

So Question 22 at the bottom – at the far bottom is now Question 12 in terms of what the Sunrise Registration Subteam is looking at. And I do note that in Susan's comment that she added – on the Google Doc she did suggest sort of answering this question along with Question 13, which is Question 13 in the left hand – in the far left hand column, which is now Question 11 in the updated questions and you would find that on Page 4 on the – Page 4 I believe.

Lori Schulman: Okay I do see that. Okay. Okay. I don't think I – I don't think it matters. I just want to make sure that if things are – or are – if the intention is to group things by subject matter that this is in the right grouping that's all.

Whether you number it 10 or 50 I don't think that it's terribly important. And I do recall we discussed this in last week's call and there was agreement that this did make sense talking about the balance and interest between the registry and the brand owners. Do we need to look at this comment again?

Amr Elsadr: And Lori this is Amr. I just wanted to note...

Lori Schulman: Yes.

Amr Elsadr: ...that Susan does have her hand up in the Adobe Connect room so maybe she'd like to elaborate on this one as well.

Lori Schulman: Oh Susan, yes please. You know what? My screen expanded and the queue disappeared. So I – I'm not sure what I did and my apologies because I can't see the queue at the moment. Now I'm back. Now I know what I did. So yes Susan please go ahead.

Susan Payne: Hi. Yes thanks and yes I'm trying to swap between two different screens as well so apologies if I go quiet unexpectedly. But yes all I was – say in relation to – well in to – in relation to the two questions was that if you look at what was formerly 13 and is now 11 it – it's about sort of limiting scope to the context of the goods and services.

And then if you go to 22 it again is talking about dictionary terms and sort of the like, although obviously it's had – it's been sort of redrafted. And it just seemed to me that that's – well it's – and it also now appears to be Number 12 so, I mean, it just appeared to me that 11 and 12 fits naturally together.

Lori Schulman: Yes.

Susan Payne: And I just was trying to point out that in relation to 11 I think that when we were looking at those – this whole topic in relation to the Trademark Clearinghouse questions, we ended up in the Trademark Clearinghouse revised charter questions.

We ended up with the language that I put in the Comment section, which was, "Should the scope of the RPMs associated with the TMCH be limited to apply only to TLDs that are related to the category of goods and services, in which the dictionary terms within the trademark are protected?"

And we – I – we spent forever talking about this language and how it should be revised, and so it just seemed to me that having had that conversation extensively, you know, perhaps we could save ourselves some time and use the same language but, I mean, you know...

((Crosstalk))

Susan Payne: ...particularly given that we're not proposing to delete. We're just proposing to, you know, to propose alternative if you like.

Lori Schulman: Thank you Susan. I think that does make sense and I also think it brings...

Kristine Dorrain: Can I...?

Lori Schulman: ...the issue into focus. Yes I'm sorry. Kristine? Go ahead.

Kristine Dorrain: No I'm sorry. I'm just on the – I just want to get in the queue.

Lori Schulman: Yes. Go ahead.

Kristine Dorrain: Okay thanks. No I just...

Lori Schulman: Go ahead.

Kristine Dorrain: ...wanted to kind of Plus 1 Susan and say that I do think that we should wherever possible include the work of our previous working team. So we would - definitely do not want to reduplicate that. Thank you.

Lori Schulman: Thank you Kristine and that's a valid point and I would Plus 1 it as well. I think the whole idea is that we're trying to streamline things and get them moving in a good direction, so I think it's a very good suggestion.

Mary had put into chat that, "Susan wasn't Question 11 put on the TMCH list?" So the question is whether Question 11 is even needed here as several subteam members had noted in the past.

Mary if Q11 is on the TMCH list then I would agree that it's not needed here. I mean, that's the whole idea is to get rid of the redundancies. I see Susan's hand is up.

Susan Payne: Hi.

Lori Schulman: Susan please go ahead. Yes.

Susan Payne: I mean, it is on the TM – yes. Yes it is on the TMCH list, which is – yes it is and so I agree although there is this challenge that there are many big, you know, that you can't take – it's difficult to take the TMCH independently from their rights protection mechanisms that flow off it.

So, you know, the question is phrased as, "Should the scope of the RPMs associated with the TMCH." I mean, I, you know, frankly I don't mind because I think we've got 22 anyway so I don't think we're losing the discussion.

I think in all of the discussion when we talk about the sunrise I think we always need to be aware of whether we have already dealt with it in the extensive debate we've been having in relation to the TMCH. I guess that's what I'd say.

Kristine Dorrain: Lori can I respond?

Lori Schulman: So then Susan – yes sure. Go ahead Kristine.

Kristine Dorrain: Thanks. I would like – this is Kristine. I would like to just add that I think that in this case it's a little different. I think that the TMCH question – I think those are - because there are three completely separate questions.

The first one is, "Did – should the Trademark Clearinghouse accept or otherwise limit its entries on the basis of goods and services?" Then I think there's another question that says regardless of – let's say the Clearinghouse decides no it's not going to limit entries.

You can put any marks in for anything. Do – does there need to be any restrictions of the sunrise registration based on goods and services? And then what we did in the Claims Group is we just added like an ancillary question that said, "If the other groups get to this question where we are

limiting things based on goods and services, you know, if that happens then do we need to do anything different to the claims notice to address that?”

So I’m not entirely sure that the question was completely answered in the full working group yet, because they’re only talking about entry into the Clearinghouse right now.

They’re not talking about what happens so even if the group decides the mark should get in, I think there may still be another question about what happens at the point of sunrise registration. Thanks.

Lori Schulman: Thank you Kristine. I have a question because I think I’m missing a piece of this puzzle and I was not part of the TMCH discussion specifically. So if there is a decision to limitate (sic) – limit entry on goods and services and then at the point of the sunrise period is – I don’t understand how that works.

Is that the trademark owner buys the domain in a sunrise period but then have to make a clarification that it would only be used in relation to the goods and services that’s identified? What happens if it’s not? Like that’s...

Kristine Dorrain: Well Lori this is the thing...

((Crosstalk))

Lori Schulman: I don’t understand.

((Crosstalk))

Kristine Dorrain: ...and I don’t know that any – yes I don’t know that anyone’s necessarily answered that question, which is why we’re – it’s still under debate. But my – the point I guess I’m trying to make is that if the Trademark Clearinghouse is limited by goods and services, that might sort of make this question a moot point, right.

It maybe won't matter anymore because the trademark holder will only get, you know, might only get registrations for goods and services or might only get sunrise registrations for, you know, related to its goods and services.

I'm not sure but if we decide not to do anything, if we leave the Trademark Clearinghouse wide open and say, "You can get in for anything," there's a second question which then brings it down to the sunrise registration level that says, "So even if the mark is allowed in the Clearinghouse for any goods and services, is there any further restriction just at the point of registration?" So that – that's the point I guess I was trying to make. Does that clarify?

Lori Schulman: Yes it does. It also -- I have to be honest -- confuses me as a trademark practitioner because I would, you know, then we would be splitting it up into how it – what do we register?

Do I then only register my Web site for fruit if I'm selling fruit versus technology support, or is it a question about enforcing a claim that it could only go after a third party registrant?

You know, like if a claims notice is issued that the claims notice is limited – well the claims notice now I believe states goods and services, correct? It would only be...

Kristine Dorrain: Yes. Yes.

Lori Schulman: ...relevant if you were – okay so it would only be relevant if you were trying a question of fact under a UDRP or URS then, correct?

Kristine Dorrain: Well I think under the current system maybe but I think there's a proposal out there. I'm not saying I even agree with the proposal. I completely agree that the idea of trying to limit either the Clearinghouse or the sunrise registrations to goods and services is a hot mess. However I believe...

((Crosstalk))

Lori Schulman: Yes. Yes.

Kristine Dorrain: ...a proposal out there to do it so I think to the extent that there's...

Lori Schulman: All right.

Kristine Dorrain: ...still a proposal out there to do it – there's no sort of open-ended question that says - and if the working group goes that direction we have to then figure out what to do with sunrise.

Lori Schulman: Okay. I get it. I actually get it. Thank you and I think you're right. I think we have split out those questions very, very specifically and carefully. Otherwise it really creates in my mind a confusion of concept, the concept of registering versus the concept of enforcing and those are – and that's two very different things.

So I don't know. I'm going to ask that the question is given the complexity of the issue and the fact that it's been so - discussed very heavily is there a way here to just put an asterisk there and understand that this is something that is related to another discussion?

And I don't know – necessarily park it because, I mean, we want to get the questions answered. But perhaps there are questions that are so overlapped that a Sunrise Group specifically or a Claims Group specifically aren't going to solve the problem unless they're talking to each other. Does that make sense? Amr I see your hand.

Amr Elsadr: Thanks Lori. This is Amr but I'd be happy to defer to Phil to see what he has to say first if that's all right with everyone.

Lori Schulman: Yes I see both our...

((Crosstalk))

Lori Schulman: ...Co-Chairs had their hands up. So...

((Crosstalk))

Amr Elsadr: Yes so let's let them go first.

Lori Schulman: Yes I'll call on Phil and then Kathy.

Philip Corwin: Okay, Phil for the record. As I understand these – well the way I'm breaking this down if we were to go this way and I'm not sure I'm inclined to go this way because of the difficulty of administering, rights holder has a trademark.

A trademark – let's say the trademark's in the U.S. and the UK just for an example. Now I'm not a trademark practitioner. I imagine that all nations don't have exactly the same descriptions of goods and services for a trademark - that they may have different terms and I'll defer to the experts on that.

But – so the trademark is for certain goods and services and they might be the same in two jurisdictions or they might be described differently. And then you would need to determine among all – this restriction obviously would apply to general purpose TLDs like, you know, it's not a new one but COM is a general purpose whereas CARS and a new one would be a vertical.

So you'd have to decide okay what – the restriction doesn't apply to general purpose because anyone can register a domain for any purpose there. But which among the verticals correspond to the goods and services for which the trademark is registered?

So you'd need some decision-making body or I guess the Clearinghouse would be charged with somehow figuring out which verticals relate to which goods and services. And then the trademark owner would only have the right to Sunrise registrations in the general purpose TLDs and the verticals that correspond to the goods and services. And I presume that the claims notice would only be generated to registrations that are begun in either general purpose or corresponding verticals.

So I want to see if we're all on the same page of how this would operate if we went this way and then, you know, there would have to be some - I guess the clearinghouse would be charged with determining which verticals, you know, corresponded to the goods and services.

Now, you know, a registrant might register in a non-corresponding vertical and then the actual content of the Web site could be infringing on the mark depending on how it's used. So it wouldn't be - you'd have a situation where the registrant hadn't got a claims notice but did go on to infringe whether intentionally or unintentionally.

So I'll stop there rather than repeat myself. But are we all kind of on the same page for how this would work and what would need to be required in terms of the administration, the decision-making part of which, which would be to match particular verticals to corresponding goods and services for a particular mark? And I'll stop there. Thanks. And I hope that clarified rather than confused things.

Lori Schulman: Thank you Phil. Thank you Phil. I'm just going to - before I call on Kathy, I'm just going to make a note about something that Phil said in terms of my experience as a trademark practitioner.

Phil is correct. How things are described can vary jurisdiction to jurisdiction. Classifications are generally very broad. And while classifications are governed by international treaty, specifically the Paris Convention, even

within classifications there may be some countries that put some goods and services in different classes than others.

Although the idea is to make the system as uniform as possible, in reality it's not. But there's also a theory under the law that trademarks protections and classes also can (craft) into complementary classes of goods and services. And I'll end my remark there and recognize Kathy, then Kristine.

Kathy Kleiman: Hi Lori. Can you hear me? It's Kathy.

Lori Schulman: Yes. We can hear you Kathy.

Kathy Kleiman: Great. Apologies for joining late everyone. And Lori, thank you for chairing. So I'm trying to catch up on this. I think Kristine got the question right that - and so I agreed with what she said but this is a question that's coming back again.

So what we're talking about with both the Trademark Clearinghouse and now with Sunrise is an important question and trademark claims has been asked in all three categories.

Susan's briefing I thought was good, you know, to be something we can use prior phrasing that we did spend innumerable hours working on, great. Phil, I didn't quite follow. I think there might be many ways to implement. So I'm going to disagree respectfully.

That I think there may be many ways to implement a kind of - should the working group come to the conclusion that Sunrise or trademark claims or other kinds of protections or preemptive rights should be used by the trademark owner in the category of goods and services with which they have protection.

I'm not sure the enforcement would necessarily be or the matching would necessarily have to be at the trademark claims level. I'm not sure that would have to be Deloitte or IBM.

It could be something we put the trademark owner on notice of that, you know, if you (unintelligible) farms and you're selling hams all over the United States and now China, you know, maybe you shouldn't knock, you know, Smith off of a future dot name. I know that name is of course an existing - a legacy TLD.

But, you know, if we're talking about kind of a future TLD for last names, then maybe you shouldn't use it in Smith or McDonalds or, you know, areas that are kind of reserved for people's family names.

Similarly Delta. If you have it for airlines and somebody's got a fraternity about future.fraternity, you know, maybe she needs it there. But there could be many, many mechanisms of enforcement. And I'm not sure we're asking and I'm pretty sure we're not asking Deloitte to be kind of a trademark (office that's looking) at those categories of goods and services.

It could be a requirement we put into the rules and then create enforcement mechanisms afterwards. So I wanted to share that. But I'm glad, you know, we're dealing with this question. I agree with what Kristine said that this a question that we've been asked to deal with at the Trademark Clearinghouse database level and also at the implementation of Sunrise and the trademark claims level. Thanks.

Lori Schulman: Thank you Kathy. Kristine.

Kristine Dorrain: Hi. I'm in the chat now. This is Kristine. I wanted to say I agree - I am noting Phil's comment. To be clear, I was not proposing a particular implementation approach. And that's what I wanted to react to I guess.

I mean while I disagree with the implementation approach suggested by Phil or, you know, straw proposed by Phil, I think that I agree generally speaking that he did a fairly good job of capturing the complexities that would be involved in coming up with that sort of an implementation.

And I think that that - and I wanted to just echo Mary's suggestion. So I think that Susan has put the language in that we all agreed to into the - or somebody put it in there but Susan suggested it on the chart.

I think that the question comprises the concerns that everyone has about dictionary terms and about goods and services. And I think that we say hey, to the extent that the working group gets to it, you know, before the trademark - the Sunrise claims group gets to it, great.

I mean if somebody proposes something wonderful and everybody's onboard, fine. But if not, I do think that this should be - I don't - I think we're using the word park but I do think it should sit and be available in case a decision gets made in the broader working group with respect to the Trademark Clearinghouse so that we don't lose the question for Sunrise registrations.

We do need to know about the impact of Trademark Clearinghouse restrictions on Sunrise registrations. So my proposal is that we do take the new question and merge it in as something that we need to circle back to when we get to this point.

Lori Schulman: Thank you Kristine. Do other people - if you guys that are in the chat - do you agree with Kristine's approach incorporating the question that we already agreed upon and including the language that was agreed and further discussions as well and then deferring it to some point where the entire group, not just the sub-team, decides whether or not it's going to take it up?

Is that what I understand the proposal to be? If you agree with that approach, could you mark with a little green disk so we know? And I agree. Three, four. Four agree out of eight. So what does that mean when we have half? Five. Okay. Five agree out of eight. So we have, what, is this a rough consensus or majority under ICANN?

Phil, the question was this. In terms of changing to the approach with this particular question that we would incorporate Susan's new wording because it's clear and makes sense and actually it's agreed upon wording from prior discussions and couple it with what we have now and then basically park it. Does that make sense? Phil agrees too.

Well parking is deferring. If you don't want to use the word parking, what I would say use Mary's suggested word deferring. And deferring it to a greater group discussion as to whether this is a question we want to tackle rather than keep it inside the Sunrise group.

(Kathy), does that clarify your question? That's what we need because part of workgroup question is for this area. I think we put it in as a workgroup question but one that needs to be considered by the broad - it's beyond us. I think there's too many other components to it to call it typically a Sunrise question. Phil, I see you have your hand up and Kathy then you see you have your hand up.

Phil Corwin: Yes. My hand's up. Phil, for the record. And thanks Kristine for the clarification reminding me that the (claim) notice - part of this is with the claims subgroup. But, you know, I think we need to note that at some point if we're going to go down this road, we need to coordinate the treatment under both Sunrise registrations and claims.

So they need to be coordinated in some way if there's going to be some restriction of either of the RPMs to corresponding categories of goods and services.

But I guess, you know, the one thing I want to say a substantive thing and I don't want to get too deep in the substance is that thinking about an example we had came up in one of the prior conversations on this.

Let's say there's a company that produces footwear. And so they've got a trademark for their company name, which is I don't know what the goods and services category would be in a given nation. But it's for shoes; shoes, boots, footwear, whatever.

So, you know, how would this work? Would they be restricted to Sunrise registrations in clothing categories or footwear categories as well as general TLDs? And what if they wanted to register their market.horse because a particular boot they made had a big following in the equestrian community?

What if they made driving shoes and wanted to register their market.cars? Would that be permitted? Would they be able to do that? Would they have to ask permission? So I'm just, you know, we need to think about all the administrative aspects of this if we go down this road. Thank you.

Lori Schulman: Thank you Phil. And I think it's noted these are all good questions and they're complicated, which is why we believe this is sort of greater than we. Kathy, please go ahead.

Kathy Kleiman: Okay. Kathy Kleiman. And I don't get as complicated as Phil does. I think there are ways to ask the trademark owner to go into categories. To use the Sunrise only for the - only for top level domains that - to use that preemptive right only for top level domains that make sense to the trademark owner.

And then that could be challenged. So if the trademark owner does, you know, make racing shoes and there's a .race or .cars, that would make sense to me. So it has to - but now we're seeing - but that could prevent some of

the gaming that's going on (with the) and the idea that could (the) and I don't know what the categories of goods and services of the registration is.

But assuming it's narrow and I think it was when I took a look at it a while ago, you know, the idea that you wouldn't get to register (the) in every gTLD because not every gTLD would apply to the categories of goods and services even arguably.

So I think we can prevent the gaming while not throwing ourselves into an impossible situation. I don't know if that makes sense. But the word parking confuses me. Parking, tabling seems to be taking something off the table, kind of putting it in a different category.

You know, based on this discussion, I think it's very much a question to go in front of the working group. And I thought that was our job was not answering the questions but deciding the phrasing, the clarifying, the grouping to go in front of the working group. And I don't see any tabling or parking.

I can certainly see references, footnote reminding the group that we've already dealt with some of these issues but that this is a new instantiation of the issues. But I think this is very much wanting to, you know, front and center in front of the working group. This is a key issue. And just discussion shows the complexity of it. This seems like a perfect one to go in front of the working group. Thanks.

Lori Schulman: Thank you Kathy. I think it's a question of prioritization the way I understand that. That right now we're looking at specifically restricted questions to Sunrise (after chaining), which are redundant, which could be combined, which could be looked at perhaps in a different light or if we have any clarifications we want to ask. This classification issue to me supersedes that.

And so I don't - my own thought is I don't care what word is used. But I think there's probably a pot of questions that go to a greater set of issues than what we're looking at specifically at Sunrise and this is one of them.

So again, I don't think that I want to, you know, I have - as I said, I don't have a personal preference for saying deferred, parked, held over for a bigger group discussion but I don't think it's something that the Sunrise group itself at this point can do more than we've done. Kristine.

Kristine Dorrain: Okay. I have a proposed way forward. Let's just not even use the word parked or deferred. The fact of the matter is in the main Trademark Clearinghouse discussion right now let's say the proposal to get rid of Sunrise completely goes forward and we throw the baby out. We say we're not doing Sunrise registrations at all. Okay.

All of these questions become moot and I don't think we're going to start discussing them. So I don't even think we need a parking lot to say if X then Y. So I'm retracting my suggestion that we park it. And I'm going to say we'll just include the question as written and for the claims as Susan proposed.

And in the event that the question is asked and answered by the time we get there or it's obviated by the fact that we've gone a completely different direction, then we'll know that when we see it. Is that acceptable?

Lori Schulman: Works for me. I'm going to recognize Phil. Go ahead Phil.

Philip Corwin: Okay. I'll be brief. And I agree. You know, obviously if the main group decides that Sunrise should go, all of this stuff becomes moot. All I'm trying to get at with raising the questions I'm at is to however we wind up raising the question when we bring that to the main group, they're going to ask us probably two things.

What does this actually mean? What does restricting the registrations mean in terms of the - you know, how would that work? How would the restriction work? And what's the rationale?

Is the rationale because of a policy concern that allowing registration and verticals that don't match the goods and services? Is it undesirable expansion of trademark law? Or is it targeting specific abuses? And if so, is that the best way to target the particular abuse? So I'll stop there. I'm just saying that we bring the questions back, we're probably going to get some questions about what they mean. That's it. Bye bye.

Lori Schulman: Thank you Phil. I'm in (a editorial line here) and I said - and I think that's exactly the point. I mean what they mean needs to be sourced out by the entire group.

To your points about the complexities of classification and identification and how these are recognized by treaty and how they're treated in separate jurisdictions.

So that would be if there was a decision, you know, well how would that work, I think the idea is that you would create a model or maybe two or three models.

So to Kristine's point, yes, not our little puddle of nine people. That's what I think. We can highlight it and we can say, you know, this is worthy of a discussion. But the discussion would require, you know, more in depth work and modeling. And I would presume not one model. I would image there'd be many models to potentially be discussed based on your concerns. So we're going to (link on a diet). Phil, you're funny. Okay.

So we have seven minutes to go. I kind of feel like we're at excellent stopping point at this juncture. We know we have more data to be filled in by

the staff. It seems like we've come to some resolution about the disposition of this particular question and comment.

I'm going to ask the group is there anything burning on your minds right now that you'd like to use the last six minutes for? I'll ask (Jeff) as well if there's anything you think in the next six minutes we could advance. Otherwise I'm going to give people back six minutes of their time today. Mary, yes and then I see Kristine's hand. Mary, then Kristine.

Mary Wong: Hi. I'm going to try speaking again. Can you hear me?

Lori Schulman: Yes we can. Yes Mary, thank you.

Mary Wong: Excellent. Thank you. So just actually to follow up on some of those action items Lori. We did go back and look at the data collection suggestions from I think it must be two or three weeks ago now.

One challenge that I'll note here is that because some of the questions that we were discussing then have since been re-categorized or re-worded, not all of the data suggestions, you know, remain relevant I'll say.

So we're going to put in what we can into the Google document. But our suggestion is that if everyone can take a look at the proposed final refinements in this document with an eye to whether or not in view of this current wording, any of them require additional data.

And secondly, to follow up on another staff action item from last week, we were asked to look back at the document from the SCI, the IRT and others to find rationale or at least clearly explicit rationale for the Sunrise mechanism.

We did not find expressed statements that directly addressed this. But there's a couple of other documents including a rather early paper by WIPO on the Sunrise mechanisms and I'll send around some of those comments

that may be relevant as you think about Sunrise but did not, you know, directly come out of the foundational documents for the RPMs as direct quotes.

Lori Schulman: Okay. Thank you Mary. So it sounds like once that data is filled in, we're going to have to go back and review the data needs in light of the combination of the questions.

So we can mark that as a - actually I would love to see that as homework. That's where I think it can easily be done online. Kristine, I see your hand. And I also see Kristine's typing. So are you typing what you were going to say?

Kristine Dorrain: Thank you so much. No, I'm here. I was typing the same thing you were. So yes, this is Kristine. I just wanted to make a comment. You know, it's come up in the claims sub-team and it's come up here, you know, we're really doing a good job I think of focusing specifically on our mission to talk about Sunrise registrations and talk about claims.

And this discussion that we just had about the limitation of goods and services or the registration of dictionary words is really important and all encompassing.

I think I just want to draw the attention to this group and see if there was buy in on this. But when we're all participating in a large group discussion, I'm not hearing much of it.

But to the extent that the working group members saying oh, we'll defer that to talking about, you know, Sunrise or we'll defer that to talking about claims - the extent that we can solve - I think someone used the word modeling - maybe Susan. I think...

Lori Schulman: I did.

Kristine Dorrain: ...to the extent that you can use - okay - oh, good Lori. So to the extent that you can create - one of these people are putting forward proposals - to the extent that these proposals model out what it would look like at the clearinghouse, at the Sunrise and at the claims levels, I think that would be really good.

And I think that we should use our voices during those large calls if people start to say oh that's a question for the claims when we get to claims. Well no, no, no. If you're going to make a big proposal that turns the clearinghouse on its head, then you should also figure out how that's going to implicate Sunrise and claims.

I'm just going to throw that out there as a macro level suggestion to think about. Because otherwise we're going to end up making these big sweeping changes to the database and then when we get to the RPMs, we're just going to have to start over and all this work we've done to refine the charter questions will be completely irrelevant based on the fact that we now have a completely different mechanism to play with. So that's just I guess - I don't even know what that is. Thanks.

Lori Schulman: Thank you Kristine. I think that's a good suggestion is to again focus and clarify the work. And I think modeling at this stage - and then this would go to Phil's points.

You know, if we have some creative ideas and we want to show them and again, you know, force people to focus on thinking about these things in a different way, then people on the call definitely have to be ready to step up and say this is what a model could look like. This is what, you know, I would avoid the shoulds. I would start with coulds. This is what a model could look like at any of these levels.

And thank you Susan. Susan needs to go. And we are one minute to the top of the hour. So staff, what I'd like to do is, you know, mark the follow up items that we did. I know there's some open items from last week.

If we could put the data collection question to the list with the Google doc link, that could be the homework for people over the next two weeks, which I think would be very useful.

And I'm just going to ask one last call for any questions or comments and then I will adjourn the call. Okay. Then have a nice day. It's 4:59. See you guys in Barcelona those who are going.

Woman: Thank you. Once again, the meeting has been adjourned. (Marie), the operator, if you could stop all recordings. To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of you day.

END