
ICANN Transcription

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

Wednesday 30, January 2019 at 1800 UTC

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MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening and welcome to the RPM Sub-Team for Sunrise Data Review Call on the 30th of January 2019. In the interest of time today, there will be no roll call. Attendance will be taken via the Adobe Connect room. So, if you happen to be only on the audio bridge today, will you please let yourself be known now?

Thank you. Hearing no names, I would like to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I will turn the meeting over to David McAuley. Please begin.

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JULIE HEDLUND: Actually, Michelle, I'm sorry. I'll go ahead and at least take it through the agenda and get some things queued up for David.

Just a review of the agenda. We start with the statements of interest. We'll have a brief discussion, then move on to the discussion of the [inaudible] from the questions that were remaining from last week but which there should be no new comments as those were closed off last week.

To the heart of today's meeting which is the analysis of previously collected data – and staff will lead that off with some background on the data sources and also a description of the tool as well. May I ask if there is any other business? George Kirikos, please?

GEORGE KIRIKOS: This is probably a repeat from the other sub-team call, but there's that document that's due for review by Thursday which needs to be a very short amount of time. It took staff five days to prepare. It's unreasonable to expect everybody to drop everything and review that document in just two days. [inaudible] we have the weekend to review that.

The other elephant in the room is the amount of workload that was assigned last week. They've kind of beaten it to death on the other sub-team, but for people that weren't on that call, they might want to listen to that call. You can't just assign dozens of hours' worth of work to volunteers and expect it to be done. As you can see from the documents that Ariel sent earlier today, nobody did the

[inaudible] homework at all. We should talk about the workload at some point. Thank you.

JULIE HEDLUND: Thank you, George. Let me go back to the top of the agenda and ask if there are any updates to statements of interest. I'm not seeing any hands raised. Let me go to item two and ask here, David, would you like staff to push these to do a little brief overview of the data sources and the tool for the reviewing of the previously collected data? Go ahead, David, I'm sorry.

DAVID MCAULEY: That's alright. Thanks for that question. I had expected to insert ... Thanks to George for the questions. But to insert something on the workflow. I do expect Kathy is going to call in. In fact, I heard a call just click in. So, if there's anyone that's now on the line that's not in Adobe, would they please identify themselves?

Okay, hearing none. I had expected to go to a brief work flow discussion as a second item after the admin and SOI, but what I'd like to do, Julie, is take you up on your offer of giving some brief information on the previously collected data, and if Kathy has called in by that time, we'll ask her to talk about workflow briefly. So, why don't you go ahead, Julie?

JULIE HEDLUND: Thank you very much, David. Actually, I'm going to turn it to my colleague, Mary Wong, to give us a short few words on the data sources. Actually, I did not see Mary. It looks like Mary is just

joining. While Mary is joining, let me instead turn to my colleague, Ariel Liang. Oh, now I see Mary's microphone is coming up. Mary, please go ahead. Pardon me. Mary, if you're speaking—

MARY WONG: No worries, Julie. Hi, everybody.

JULIE HEDLUND: Sorry, Mary. Please go ahead.

MARY WONG: I'm speaking. [inaudible]. I was on the call, but I had not turned on my microphone.

Just to take [inaudible] of everyone's time, it really is just a refresher or reminder of where those documents that the group was asked to review came from. Essentially, we're talking about quite a lot of data and previous information that the two big documents would be [inaudible] survey and the review of the Trademark Clearinghouse that was carried out by the Analysis Group.

Before I describe each of these two group leads, staff thinks it's important for everyone to remember that whether we're talking about these two documents, some of the other information that came into our working group that most, if not all, of these were either responses to specific questions that the working group had at the time or were, like the Analysis Group report, like the INTA

Cost Impact Survey, not responses to questions or specific investigations carried out by the [CDP].

So, what the hope is that many, if not all, of these sources will provide, first of all, useful information and, second of all, provide useful information that we can see is relevant to helping us answer the agreed charter questions. Staff still thinks it's important to note that where they came from in some cases was separate work from the PDP.

So, in going through this document, you may find that some of them may not seem to be directly relevant to the agreed charter questions or may not have very clear information to yield in answering those questions, this is one of the reasons why.

In relation to the Analysis Group's report on the Trademark Clearinghouse as well as the INTA Impact Survey, these documents had been shared previously with the full working group for the Analysis Group report. This was published in early 2017 and you may recall that the working group did meet with the Analysis Group to discuss aspects of that report. The working group had the opportunity to ask quite specific questions and sent some follow-up to the Analysis Group and they provided some answers around mid-2017.

In August 2017, Lori Schulman, INTA, presented the result of the INTA Cost Impact Survey to the working group, and again our working group had the chance to interact with Lori and ask some questions.

The INTA survey was carried out amongst all of INTA's members and it was focused on the potential cost, actual cost, to trademark owners of the RPMs.

And of course, the Analysis Group's review focused on the working of the Trademark Clearinghouse. They did have access to data and information provided by the Trademark Clearinghouse validator, which is Deloitte, as well as the provider and the maintainer of the trademark database, which is IBM.

This particular exercise that was done by the Analysis Group before the Analysis Group was contracted to conduct the more recent surveys for our PDP came out of an initial request to ICANN Org from the Governmental Advisory Committee and that's why the date of that review was early 2017.

So, that's really in a nutshell where those documents came from, how they originated, and when our working group had then opportunity to first review them.

So, Julie, on that note, I think it's best if I hand over to you or Ariel to then describe how that was translated into use for the sub-team.

JULIE HEDLUND:

Thank you very much, Mary. Let me now turn to Ariel for a description of the spreadsheet and how staff reviewed the data and filled out the spreadsheet.

ARIEL LIANG:

Thanks very much, Julie and Mary. This is Ariel from staff. Just a very quick overview how long it took staff to develop the spreadsheet. It took us about three business days to review all the [inaudible] documents that are listed on the first half of the spreadsheet and then logging the relevant information we saw in the document and match against the charter questions for both trademark claims and sunrise. That's about the times that staff spent developing the spreadsheet.

So, as you have seen, the first task lists all the documents that the sub-team should review in the download link. Then the second and third [inaudible] is basically excerpts and quotes from the documents that staff identified and then we synch some information or data in the document. It may be helpful in answering the charter questions. So, we basically copy/paste the paragraph or sentences into the spreadsheet and also indicate which page or slide number this information comes from in case you want to check the source itself.

And because there's a lot of [inaudible] seems overwhelming, we tried to summarize the information in column B, the staff summary column, just to help you speed up the review. But, as my other colleagues mentioned earlier, too, this is not staff's attempt to capture all the information. We just had to facilitate the review and the sub-team should review the documents yourself and identify relevant information that would be helpful in answering the charter questions. That's [inaudible]. Thank you.

JULIE HEDLUND: Thank you very much, Ariel. David, unless there are any questions, we'll go ahead and turn things back to you to continue. Thank you.

DAVID MCAULEY: Thank you, Julie. Thanks, Ariel. And thanks, Mary. I had been in touch with Kathy Kleiman prior to the call, and as members of this group have probably, I'm certain, have seen, some correspondence from Kathy on behalf of the co-chairs of the full working group regarding the work process, and while we have a big agenda today with many questions, I think it would be appropriate to go over that. I understand that's what happened on the trademark claims call just prior to this call, but there are some members of this call, this group, that are not members of that, including myself, and it's not a perfect coverage.

So, I was hoping that Kathy would speak to this. She is not on the call at this time. I have spoken briefly with Phil and I think he would be willing to make some comments about it. So, Phil, if you could address it, it would be helpful to the folks on this call, I believe.

PHILIP CORWIN: Sure, David. This is an updated version of the proposed process which we're following as of now, updated as of Monday, the 28th, published for information for working group and sub-team members.

The main changes are the section five which addresses additional data, this is not a new homework assignment. This is simply that if

a request for crowdsourcing. If any members of this sub-team or the full working group are aware of any domain sector publication, trademark publication, any other source of data that is in addition to data we've already received that you think is credible and relevant, inviting you to bring it to our attention under a bullet point. Just a quick summary of what specific information, either new data or evidence-based conclusion, it's been forwarded for and how you think it's relevant to our work and anything else you want to say about it. We were opening the window for that on Monday, two days ago, and keeping the window open for their submissions until the end of next week, Friday the 8th.

Then as a result of discussions among the co-chairs on our last call, we decided for a number of reasons to move back and somewhat enlarge the window for submission of individual proposals. So, that window opens on 30th of January which is today and remains open for about three weeks for folks who want to submit individual proposals.

Those are the major updates. For the sake of brevity, I'll stop there and see if there are any questions. Thank you.

DAVID MCAULEY:

Thanks, Phil. I see that George has a hand up. Before we go to George, I just want to mention to staff that when we get into the documents I'm going to be toggling between the Adobe and the Google docs because I'm only working on a laptop today. My monitor is on the fritz, so I may ask for help on watching the chat. George, you are first in the queue. Why don't you go ahead?

GEORGE KIRIKOS: [inaudible] something called – we’re given basically less than two weeks, nine days from now, to submit work that really was assigned to ICANN staff before Christmas. Then they come back to us on January 9th saying that it’s a huge task. Working with a significant amount of working group time would be needed. And now you’re saying it’s going to be crowdsourced. But really it’s only a small number of people that are going to go through and try to collect that data and submit it in the format that the co-chairs have decided upon. This all goes to [inaudible] not enough time to do a proper job. You don’t want to have the data [inaudible] to say that we’d have nine days to do it and it’s really not sufficient. Thank you.

DAVID MCAULEY: I’m sorry. I was talking to a muted phone. Mary’s hand is up, so I’m going to go to Mary. Thank you, George, for your comments. Mary, you are next in the queue, so why don’t you go ahead?

MARY WONG: Thank you, David. And thanks, George, for the comments. Again, I apologize for taking time on a call when the team doesn’t have very much time. But George and I did engage on this a little bit in the previous call as well.

[inaudible] the record and to remind everyone and echo what Phil said, by crowdsourcing it is not the intention to have working group members do what was originally asked of staff. Staff had already been asked to go to 30-something blogs as well as do a

general search for news articles on specific topics that had been identified by the group early on.

What is happening now is that given the work that has been done by the working group between the time of the original data suggestion and now – and in particular, given the surveys that were done by the Analysis Group, working group members are being asked to leverage on their expertise and their knowledge, such that if there is additional information or data out there that we don't already have, to please submit it at this point. So, it is a very, very different task. Thank you, David, for allowing me to speak on this because staff does believe it's quite important to set the record straight and it certainly is not staff trying to ask the working group members to do work that staff had been asked to do, and some of that is likely to [inaudible] by this point. Thank you.

DAVID MCAULEY:

Thank you, Mary. I don't see any other hands in the queue, so we can move on to the charter questions. Let me mention that as we get on to this – and I'm sorry that we're not having ... Apologies were sent by Kristine Durrain and Susan Payne, two of our [inaudible] members and I'm sorry they're not on the call – but understand the scheduling problems.

You probably saw this week that we changed things up for the call a little bit. There was some concern expressed about it. But, as I saw – and I think George made a fair point in an e-mail this week about the level of the homework assignment and Kristine followed up with a comment and a suggestion, and the suggestion was basically that we pick two data sources. I think the suggestion

from her, from someone else, was that they be Analysis Group and INTA, the INTA data and try and review all of the charter questions with that in mind.

The sub-team co-chairs, Greg and I, met with staff and we decided that was a good suggestion and we took it up on that. But then subsequently, there was a concern noted.

So, I just want to say that, on this call, I intend to be somewhat generous on people commenting on the charter questions and the data sources. We have asked to look at INTA and Analysis Group, but if you have something else you want to say, without getting too deep into the substance of the issue – remember, we’re looking for data sources that can help address these questions, all with a view toward seeding people, coming up with proposals that they want to suggest that the sub-team take up as a sunrise, sub-team proposal or recommendation.

All that being said, as I dive into – I see there’s one more hand in the queue. George. I’m going to go to George and then we’ll wrap this up and get into the questions. George, go ahead, please.

GEORGE KIRIKOS:

Just to correct what you said, Kristine didn’t say that we should do the INTA or Analysis Group report. There were twelve documents listed on the first tab of that document [inaudible] the data. And when I first posted about this earlier in the week, I said I had gone through the first four and realized that the work load was very high and miscalculated. So, I started off with the first four, which were

registry operator responses, Deloitte responses, and stopped at that because I had enough.

Kristine did the same and I think Kathy looked at those as well. So, if you look at Kathy's response, she said the revised homework has no relation to what we were actually working on. And if you look at the actual document that Ariel sent to the mailing list earlier today, there are no comments at all with relation to the INTA study or the Analysis Group report. So, I don't know what documents you're looking at. You might be looking at the ICANN staff prepared document, but there's no other apparent work done by any of the sub-team members with relation to the INTA work or the Analysis Group document. I know I didn't read it. If anybody wants to volunteer that they actually did read it, I'd like to see it because they didn't put any comments on the Google Doc. Thanks.

DAVID MCAULEY:

Thank you, George. So, if I indicated that Kristine made the suggestion to go to INTA and the Analysis Group – thank you for the correction. I can't recall, frankly, who made the suggestion. It might have been the staff's suggestion. I don't really recall. But, in any event, I'd like to get into the questions, and as I said, be generous with the data source people want to note.

I did go into the Analysis Group myself, but I think that – and I went to the Deloitte and some of the other as well. Unlike you, George, I found Deloitte not quite as helpful.

But, in any event, lets dive into the questions and just start going through them, and people, if they have data sources that they think could be helpful in answering some of the sunrise questions, please go ahead and note them. As I said, we can be generous on that score.

So, now, I'd like to turn to the sunrise preamble charter question. I will toggle back just to see if there's anyone in the queue. I don't see anyone. So, I'm going to go ahead, go over to the document and read the question in the Sunrise Preamble Charter question. It's a series of six questions.

A, is the sunrise period serving its intended purpose?

B, is it having unintended effects?

C, is the Trademark Clearinghouse provider requiring appropriate forms of use? If not, how can this be corrected?

Then, the next three questions have the same premise question, which is have abuses of the sunrise period been documented by? Question D, has it been documented by trademark owners? Question E, has it been documented by registrants? The final question, such abuse has been documented by registries and registrars?

I note that there has been input from George, Kristine, and Kathy into the table. So, that question is now on the floor and if anyone would like to comment, make some additional notations or comments with respect to the data and how it might be helpful to us, please go ahead now and I will wait for a short amount of time to see if any hands come up in the queue. I don't see any coming.

So, I'm going to toggle over to the next question, Sunrise Charter question one. Is there someone that wanted to speak?

UNIDENTIFIED FEMALE: Yes, David, I'm sorry—

DAVID MCAULEY: I'm sorry. I see George's hand. Go ahead, George.

GEORGE KIRIKOS: I posted a couple of supplemental notes on the mailing list earlier today with regards to the proof-of-use issue on Deloitte and how they might be insufficient, so those might be relevant in terms of use in commerce, [needs to be] the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark. So, I posted that to the mailing list and I'll perhaps revise my comments. I'll resubmit it later, but I think that's the big question, whether Deloitte's proof of use is sufficient because hotel, hotel, I don't think those were legitimate marks. It was token use at best or [inaudible] use, and put to any scrutiny, I don't think they would survive that scrutiny. I'll post the link to the comment I made to the mailing list and [inaudible] trademark applications that [inaudible] making if people are following that [inaudible] thousands of trademarks with no real proof of use for [inaudible] that would survive scrutiny, but Deloitte was probably [accepting] them based on minimum actual proof that they're bona fide. Thank you.

DAVID MCAULEY:

Thank you, George. That's exactly the kind of comment we need that could be helpful to others. And thank you, I think you posted your e-mails in the chat. So, Julie, it might be worth making a note in the meetings notes that George made that point, because actually, as we're trying to do is gather data and pointers to tools that can help people along the way.

So, I will move then to sunrise charter question one. I'm out of the Adobe room for a moment. Not out, but I'm on another screen for a moment and I'll read through that.

Sunrise charter question one has two parts. First, should the availability of sunrise registrations only for identical matches be reviewed? Secondly, if the matching process is expanded, how can registrant free expression and fair use rights be protected and balanced against trademark rights? I'm sorry, let me get back there. We have comments from George, from Kathy. And I'm going back into Adobe now. I don't see any hands. Mary, I see you have a hand up. I will give you the floor.

MARY WONG:

Thank you, David. I just had my hand up to try to further elaborate on George's comment. Hopefully, this will help the sub-team in its deliberation [inaudible].

The marks that Deloitte sets into the Trademark Clearinghouse – and to use an example, if you look at registered marks, it simply is they have been registered as a trademark in a jurisdiction and Deloitte has told us previously that they cannot and they do not engage in an analysis of whether the mark is a valid mark under

trademark law. So, as long as a trademark is registered, that's eligible for entry into the Trademark Clearinghouse.

And having said that, in terms of use, it may be helpful to distinguish between the types of use that we're talking about here. George is absolutely right, of course, that [both] for the US and many other jurisdictions, you get a trademark if you use it in the course of trade and that is the very essence of a trademark.

But it may be important to remember that, for purposes of say sunrise claims and so forth, in the Trademark Clearinghouse, there was a rule that was developed subsequently in the implementation of the [inaudible] round that trademark owners could submit and could rely on proof of use. But my recollection is the use that is spoken of here and the rule that proof of use actually goes to is not the same as the kind of use that would make for a valid trademark under any kind of substantive law.

So, hopefully, making this distinction is helpful for the working group and for the sub-team. I just thought [inaudible] might want to put it on the record. Thanks, David.

DAVID MCAULEY:

Thank you, Mary, and thanks to George for those points. I imagine that we will come back to those if and when a proposal for a sub-team recommendation is made along these lines, along with proof of use lines. But these are exactly the things we need, to point to areas of data that can help the conversation to come.

So, I'm going to go over and check the next document which is sunrise charter question two. It, too, has two parts following a

threshold question. The threshold question is registry pricing within the scope of the RPM Working Group or ICANN's review. And the two questions are, first, does registry sunrise or premium named pricing practices unfairly limit the ability of trademark owners to participate during sunrise? And secondly, if so, how extensive is the problem? And so far, in the previously – like the data worksheet we have comments from George in that respect wanting certain data. So, I will come back over to look in the queue. I don't see any hands. If there's anyone that wishes to speak to this, [inaudible] data from another source, please go ahead and speak. I don't hear anyone, so I'm going to move ... I'm sorry, Michael Karanicolas has a hand up, so I'm going to give – Michael, you have the floor now.

MICHAEL KARANICOLAS: Hi, thanks so much. Just a quick note. Something to think about which is I think it's important to consider the potentiality that [inaudible] feature of the system insofar as it might incentivize the more selective use of the process and to incentivize people to only pick domain names that they have a glitch in them or a significant interest, beyond [inaudible]. So, just a food for thought on that point. Thank you. David, are you muted again?

DAVID MCAULEY: I apologize for that. Thank you, Michael. I was muted and I was going on and on. My apologies. I don't see any additional hands in the queue. I'm going to move on to sunrise charter question three. This is one of those questions that Julie mentioned as a holdover from last week. I don't see any data in it. Now I'm going to read

the question, just for record purposes, to try and incentivize folks to look at data sources for whether they could be helpful in answering these three questions.

One, should registry operators be required to create a mechanism that allows trademark owners to challenge the determination that a second-level name is a premium name or reserve name?

Two, additionally, should registry operators be required to create a release mechanism in the event that a premium name or reserve name is challenged successfully, so the trademark owner can register that name during the sunrise period.

And C, what concerns might be raised by either or both of these requirements?

Coming back into Adobe to take a look. As I expect, there's no hands up. So, that's on the record. Please take a look at that and we can see if there's data sources that could help.

On the next question, sunrise charter question four, this too is a question that is a holdover from last week, so we'll treat it similarly. It has four parts.

Are registry operator reserved names practices unfairly limiting participation in sunrise by trademark owners? Secondly, should section 1.3.3 of spec one of the Registry Agreement be modified to address these concerns? Third, should registry operators be required to publish the reserved name lists? What registry concerns would be raised by that publication and what problems would it solve? And finally, D, should registry operators be required by trademark owners in the Trademark Clearinghouse

notice and the opportunity to register the domain name should the registry operator release it? What registry concerns would be raised by this requirement?

So, coming back into Adobe, again no questions. It's just really an [inaudible] – whoops, George, hand up. You have the floor.

GEORGE KIRIKOS:

I just wanted to note that – well, I submitted the comment, but we're talking really about a limited number of pieces of data that we're trying to glean from the documents. If you notice a mark, I tried put to put anything that's even tangentially related to the things. If you look at Kathy's comments and Kristine's, they're trying as well to bring forth gems that are somewhat related to the charter question. Sometimes we're really striving to find things and it's something [inaudible] in a prior document. It's probably because we didn't find anything, not because we've [inaudible] the questions. But that was related to those first four documents. Thank you.

DAVID MCAULEY:

Thank you, George. So, I will move on to charter question 5A. This is not one that's a holdover from last week.

Sunrise charter question 5A is a question with four sub-parts. Does the current 30-day minimum for a sunrise period serve its intended purposes, particularly in due of the fact that many registry operators actually ran a 60-day sunrise period? Sub-question one, are there any unintended results?

Two, does the ability of registry operators to expand their sunrise periods create uniformity concerns that should be addressed by this working group?

Three, are there any benefits observed when the sunrise period is extended beyond 30 days?

Finally, are there any disadvantages?

So, I will come back into Adobe. I'm sorry about all the toggling. Looking for hands, I see Ariel, you have a hand up. Why don't you go ahead?

ARIEL LIANG:

Thanks, David. [inaudible] this morning, there's no more comments from slide A and onward, so I'm wondering whether we should switch over to the leftover Analysis Group survey data and Google Docs because there's no more new comments on the previously collected data analysis, [inaudible].

DAVID MCAULEY:

Okay. I did notice. You're correct. There are no further comments on the subsequent documents. So, Ariel, could you put on the screen the document that you're talking about?

ARIEL LIANG:

Yes, I shall. Just one moment [inaudible] Analysis Group [inaudible]. That's a leftover from last call. So, just give staff one moment.

DAVID MCAULEY:

Okay. While you do that, others in the group have seen that my practice has been to read the question, just to have it as a matter of record. Is everyone okay with switching the way we're switching now or would you prefer me to continue on and at least read the questions into the record? I'm really flexible on this. If anyone has an opinion one way or the other, I'm happy to entertain it. I don't see any hands. I don't hear anyone. Okay. So, we're looking at the survey results. I'm just trying to size this correctly, so I'll take a question.

I have no concern with what Ariel's suggestion is and I'm going to go ahead and take it up in the absence of any concern. What we're doing here is getting back to looking at survey results. Same exercise we've been doing. Do the survey results help? Just as we've been looking whether previously collected data helps.

First up is ... These are some of the holdovers. So, sunrise question three. I think I've already read it but I will just quickly review. Should registry operators be required to create a mechanism that allows trademark owners to challenge the determination that a second-level name is a premium name or reserve name? Secondly, additionally, should the registry operators be required to create a release mechanism in the event that a premium name or reserved name is challenged successfully, so the trademark owner can register the name during sunrise period? Finally, what concerns might be raised by either or both of these requirements?

And we do have comments from the survey data, from George and Griffin and Maxim. So, I'm going to open the queue on this. If anyone would like to comment on sunrise charter question three and whether the survey data is helpful, and if so, how, in answering the charter question.

I don't see hands. I don't hear anyone. Ariel, I don't have these queued in my own file, if you could go ahead and queue up the next one. I see that Kathy is now on the call. Hi, Kathy. Thank you for being here. We briefly touched on work flow earlier. We have 15 minutes left on this call, and perhaps in the last five minutes we will come to you, Kathy, and ask you if you have any further comments in that respect. Phil spoke to it briefly.

ARIEL LIANG: Excuse me, David.

DAVID MCAULEY: Yes?

ARIEL LIANG: I'm sorry. Maxim has his hand up.

DAVID MCAULEY: Oh, I'm sorry. I didn't see it. Sorry, Maxim. Please go ahead.

MAXIM ALZOBA: Just a comment on my comment. What I wanted to reflect here is that [affecting] ability to registries to work with the reserve, please, to allow [inaudible] block registrations will lead to destruction of the current mechanics of which registries implement their policies.

So, the question seems to be quite simple. Yes, [inaudible] hypothetically challenged [inaudible], but in reality it will lead to [inaudible] where not registry, not ICANN will be able to control a situation in terms of [reserved lists] from technical perspective. For example, those lists of [inaudible] registrations, etc.

Okay, [inaudible] registration. For example, technologically dangerous names and things important for work of the registry and [inaudible], effectively they will not be able to cope anymore with the limits, [100 names], and with ineffectively implemented [ALT] because it [destroyed] the method they used in the last round. You have to give something in exchange.

DAVID MCAULEY: Thank you, Maxim. Thanks for the comment. If there are no further comments, then we can move on to the next holdover question that Ariel mentioned, which if I'm not mistaken, will be question four. So, bear with us just one moment. I see Kathy Kleiman has a hand up. Before I go ahead and get us started on question number our, let me turn to Kathy. You have the floor. Thanks.

KATHY KLEIMAN: Great. Thanks and sorry to be late, everybody. It actually was about the ... I was actually going to ask Griffin a question about

the data that was posted that just went down. So, Griffin, I'm going to summarize, but it's going to be a paraphrase and tell me if I'm wrong.

But when a group can't – when a brand owner or a trademark owner can't register during the sunrise period, it could be because it's a reserved name. Could it also be that it's on a protected marks list, like [inaudible] protected marks list? I mean, can there be a variety of reasons that would block a sunrise that go beyond reserved names? Thanks.

DAVID MCAULEY: Thank you, Kathy. Griffin, you are up. Your hand is up. You're next int eh queue.

GRIFFIN BARNETT: Yeah, thanks, David, and thanks for the question, Kathy. Yeah. I suppose it's possible that a name could be ... Well, let's say a brand owner can be prevented from registering a name during sunrise for several reasons, one of which would be it's on the registry operators reserved names list. I would have to go back and double check this. Specific mechanics of, say, the [DPML] that I think it is possible for this type of block could be in effect and effectively prevent a sunrise registration from another brand owner who might have an identical trademark but some other third party has already ... Or maybe even a party itself has [DPML] or similar blocking service on that mark.

Again, I would have to go back and double check the specific mechanics of the [DPML] or the other blocking mechanisms to see

if they do block during the sunrise as well. I don't know off the top of my head. I think it's possible. I hope that answers your question.

KATHY KLEIMAN: It does. Thanks.

DAVID MCAULEY: Thanks, Griffin. Thanks, Kathy. We can move on to sunrise charter question four. I don't have it in front of me. There we go. So, sunrise charter question four. This is the one in [inaudible] looking. We're looking at ... The new comments are in green.

So, a registry operator reserved names practices unfairly limiting participation in sunrise by trademark owners. That's the first part.

Secondly, should section 1.3.3 of spec one of the Registry Agreement be modified to address these concerns?

Next, should registry operators be required to publish their reserved names list? What registry concerns would be raised by that publication and what problems would it solve?

And finally, should registry operators be required to provide trademark owners in the TMCH notice? And the opportunity to register the domain names, should the registry operator release it? What registry concerns would be raised by this requirement?

And the newest comments are in green and I'm toggling down there. You'll see them from the sub-team discussion. Maxim has made a comment. And if I'm not mistaken, that's it.

So, any hands up? No? There's no hands up. I don't hear anyone to say anything further on this. Phil Corwin has a hand up now. Phil, go ahead.

PHIL CORWIN:

Yeah. I just want to raise ... I don't have the answer, but maybe staff can look into this and enlighten us. It seems to me these types of questions raise two issues regarding the scope of our ability – that is, this working group's ability – to change certain things in a subsequent round of the TLD.

One is what's in our bailiwick and what's in the jurisdiction of the SubPro Working Group? We've had past discussions that there's been a recognition that, in some cases, pricing. We've heard anecdotal reports from trademark owners that they were interested in a sunrise registration, but then when they saw the price, they decided not to, that they would either wait and see if they could get the domain in general availability or just monitor and use URS or UDRP or some other remedy if they thought a domain register that they were interested in registering in sunrise and someone else got it later on was being used for infringing purposes to deal with it.

The issue is, on pricing, the overall ICANN policy, for the new TLD program, is not to say anything about pricing. Have no rules. And we've seen TLDs with prices ranging from close to zero to quite high on an annual basis. Also, recognizing that pricing was more – well, it's related to the exercise of the RPM. It's probably more of a SubPro issue and more in their ballpark.

The other issue is to the extent the answer to any of these questions would suggest changing the rules, I'm not suggesting we should or shouldn't recommend anything but the general approach in the new TLD program is here are the rules from the Applicant Guidebook and as long as you follow the rules and nothing you do is prohibited, as a registry operator, you pretty much have carte blanche for how you want to run your registry and if people want to buy the domains under the rules, you probably won't get a fine. And if not, they don't register them.

So, there's two questions here. Do any of these questions raise issues that are more in SubPro jurisdiction than our jurisdiction? And do any of them raise issues which registries in general with regard as not proper for a GNSO working group because they go to the contractual relationship between them and ICANN. That is, which wouldn't present anyone from GNSO generally to suggesting a contract change. It would just mean that we couldn't affect that change through a working group policy recommendation.

I don't know the answer to these questions, but when we look at some of these questions, I think they're implicated and I don't know if staff can provide any guidance now or can get back to us, but I just think we should be on – have a firm idea of those demarcations before we get too deep into some of these questions. Thank you.

DAVID MCAULEY:

Thank you, Phil. We have four minutes left and there's some administrative things to tie up at the end of the call. So, I do note

that the remaining questions that Ariel was referring to are sunrise charter questions 5B and 6. So, I would encourage folks to look at those with respect to the survey data. Then what I'm going to do is turn to Julie to sum up what we should be thinking about or looking for in the homework assignment because I know there's been some concerns expressed, so let's talk about that briefly and I'll give the floor to Julie. Julie, go ahead.

JULIE HEDLUND:

Thank you, David. Actually, I'll start a comment and then I'll pass on to my colleague, Ariel, and give a little bit more detail. But first I just wanted to note something that came up in the chat.

The chatroom, it should be clear and I thought we do include this note every time we send out very brief notes and action items. The notes that staff take are not meant to be a transcript. They also aren't meant to duplicate what's being said in the chat. The chat is actually captured and it is posted to the Wiki and it is a definitive record of the chat. So, it doesn't really make sense for staff to duplicate what's in the chat in the notes. In fact, the notes are really just very high level, just for some general guidance, and we instead recommend that people refer to the chat, the recording, and the transcript.

But on the homework, as some of you know the trademark claims decided that they did need more time on the homework and decided to go back to looking at the first four data source documents, but to look at them against all of the charter questions. So, document by document against each charter question.

And to be consistent, and it may also be helpful that we're on the same page with the two groups that there's any crossover. So, that's what we're suggesting and my colleague, Ariel, is noting that I think I've captured everything. As usual, when we send the homework, we'll have links to documents and also instructions as well to make it easier for you all to reference. Thank you, David.

DAVID MCAULEY:

Thank you, Julie. We are just about out of time. Thank you for what you just mentioned. If there's anything that we can do to capture the fact that there are many people on trademark claims on this sub-team, too, to take advantage of that would be well done, as George mentioned in one of his e-mails.

So, we're out of time. I want to thank everybody for participating in this call and look forward to seeing you all again next week. That's it. I think we can stop the recording. Thanks very much, everybody.

MICHELLE DESMYTER:

Thank you. This concludes today's conference.

[END OF TRANSCRIPTION]