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## ICANN Transcription

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

Wednesday 06, February 2019 at 1800 UTC

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

<https://audio.icann.org/gnso/gnso-rpm-review-sunrise-registrations-06feb19-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p6upnchfpvy/>

Attendance is on the wiki page: <https://community.icann.org/x/5J8WBg>

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<https://gnso.icann.org/en/group-activities/calendar>

MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening. Welcome to the Sub-Team for Sunrise Data Review Call on the 6<sup>th</sup> of February 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're only on the audio bridge today, would you please let yourself be known now?

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

JULIE HEDLUND:

Thank you very much, Michelle. This is Julie Hedlund from staff. I'll just note we have a couple of unidentified numbers, one ending in 9333, one ending in 7518. If you're in the chatroom and you can type in and identify yourself, we would appreciate it.

So, just to quickly run through the agenda, we will start with statements of interest and then we will go into the brief discussion of comments. Actually, I think this first item, the sunrise questions already discussed, I think we had actually covered that. So, we're actually going to then go into ... I'm thinking there's an error here. We're going to go into the analysis of the data sources on previously collected data. Then we're going to go into I guess all of the questions here. You can see we have quite a bit here. And we will focus on just the new input received, which when we [inaudible] the documents will be in green. Then we'll move to any other business.

May I ask if anyone has any other business? George Kirikos, please go ahead.

GEORGE KIRIKOS:

This isn't going to be a surprise for anybody who was on the first call but obviously we need to talk about extreme workload and

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also what is the current work plan. This past week we were assigned 25 or 27 pages of homework which was reasonable. I'd be able to do that in under four hours. We have about 250-plus more pages remaining and according to the work plan, which some say is a proposed work plan – others see it as a work in progress. It's unclear what actually is the workplan. Identifying what actually is the binding workplan would be useful. We're supposed to be finished by next week and I don't see more than myself, Kathy, Kristine, and Griffin actually filling out this Google Doc. And I'm not going to be a slave doing 250 pages worth of work which will take 20-plus hours over the next week. We should talk about what is the realistic work plan and let the co-chairs and the sub-team chairs know what is reasonable and what can be done. Adjust that timeline. Thank you.

JULIE HEDLUND: Thank you very much, George. Seeing no other hands up, I'll just go to the first item on the agenda which is updates to statements of interest. Does anybody have any updates? Brian, you have your hand up. Brian Beckham, please.

BRIAN BECKHAM: I just want to check first, Julie, that you can hear me.

JULIE HEDLUND: Yes, we can.

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BRIAN BECKHAM:

Okay, thanks. I wanted to just respond briefly to George's comment. I don't think it's worth getting into too much but the request for your adjusting the timelines and looking at the work load has been certainly noted and is being discussed amongst the co-chairs and the sub-team co-chairs.

Just wanted to give by way of parallel to the [RS] sub-teams which I don't think, George, you participate on. Certainly, it wasn't the same workload but there was a lot of work going on, I know, I was listening in on and participating in a lot of the calls and there were a tremendous amount of calls going on in rapid succession and a lot of work going on.

So, I think, just to bear in mind – and I don't mean to dismiss your concern about the workload. But I can almost by definition [inaudible] work out in the sub-teams means [inaudible] a little bit more. So, I just wanted to provide a little bit of context, that I think there's some [inaudible] expectation that moving work into sub-teams means that there's a little bit more heavy lifting going on and [inaudible] full working group. So, thanks.

JULIE HEDLUND:

Thank you very much, Brian. I didn't get any updates from statements of interests. I didn't note any. Then let me go ahead and turn things over to Greg Shatan to continue onto agenda item two which is to move into the analysis of the data sources and collected data. But first I see a hand up from Kathy Kleiman. Kathy, please?

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KATHY KLEIMAN: Yeah. And apologies to people who were – for crossing over into the trademark claims session that met just before. But I’ve heard several different things about the homework for next week and it seems like a good time to discuss it. There are three or four major documents left and there’s some question about whether we’re going to do all of them or whether we just want to do the next two documents on the list, which is the INTA survey. I think we’re looking at two sets of slides. As well as the Analysis Group’s original report that we got when we started the working group and then they updated it, so we’re looking at the updated one that was 2017.

If you look collectively at those – but it’s a slide, so it’s big print. It slides for the INTA. It’s the summary that they present that I think [Rory] presented to us in a meeting. It’s about 163 pages. If we’re going to go all the way through the last documents – I think Greg at one point in a different discussions said it’s 250 pages. It might be worth asking what the expectation is for next week because I’d say agree to it if [inaudible] is way too much.

JULIE HEDLUND: Thank you, Kathy. Let me go ahead and defer to Greg Shatan as one of sub-team co-chairs. Thank you.

GREG SHATAN: Thanks. I thought we were going to bump this over to AOB, but I would say that typically we’ve decided after each call what the homework will be for the next call. Workload issues are heard loud and clear. I went through all of the resources yesterday and

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looked at both number of pages and density of information to try to figure out what makes sense. So, I think at this point the homework is not yet assigned for next week. My personal view is [inaudible] all 250 pages. That would be silly. Then we have to figure out how to deal with that with our timeline and overall workload. But as I said, it's been our method to assign the homework after each session, part based on what took place in each session. And also taking a look at what we have ahead of us. Thanks.

JULIE HEDLUND: Thanks very much, Greg. Let me go to start up the discussion of the data sources versus the charter questions and staff is pulling up the relevant first document right now.

GREG SHATAN: Thanks. Kathy, is that a new hand or an old hand? Old hand. Now we have in front of us the first document. It would be the preamble charter question. Is that where we're at or are we at question 11? I'm looking at the agenda on the side here. I'm a little perplexed myself.

JULIE HEDLUND: We're just checking that out now. I think perhaps that the incorrect agenda is up. I think we should be taking off from where we left off last week. I'm just checking now with staff. I think you're correct that that is question 11. In the meantime, I see as we're checking on this for you, George Kirikos, you have your hand up.

GEORGE KIRIKOS: Maybe I could be of help. Greg wasn't here last week. What happened was the homework assignment was changed last Tuesday. Two documents that nobody actually even attempted doing. So, it was agreed to go back to do the first four questions this week. So, we really haven't started, to be honest. Last week was a complete disaster if anybody wants to look at the recording. We haven't really done anything. Thanks.

JULIE HEDLUND: Thank you, George. Yes, based on staff's just quick check, you are correct. We are going back to the beginning, so the preamble charter question is correct.

GREG SHATAN: Very good. Okay. Well, then, here we are. Just quickly, so we remember what the sunrise preamble charter question is. Subpart A, is the sunrise period serving its intended purpose? B, is it having unintended affects? C, is the TMCH provider requiring appropriate forms of us, and if not, how can this be corrected? Have abuses of the sunrise period been documented by trademark owners, by registrants, or by registries and registrars? So that's the refresher there. I think, with that, we can leap directly into the questions themselves.

I think, George, you have the first submission, so if you want to talk to that. No point in me reading what you wrote. It's probably better if you read what you wrote or some variation on that. Thanks. Go ahead.

GEORGE KIRIKOS: Yeah. I kind of talked about this in the mailing list, but I think it's very bad to simply read what's on the screen. I assume everybody has read this before this call. I'm happy to answer questions that people have a question about something I've already written. This should be prep time. People should have read all this before the call and be able to interact rather than just simply reading what's on the screen. I did note [inaudible] text something that I pointed out last week, but everything else people should already be aware of. Thank you.

GREG SHATAN: Thanks, George. I did note that. However, I think we need to ... Until we institute a different style [inaudible] to do something to catch up or is this [inaudible] University of Chicago? I don't know. In one place, they go over the homework. In the other one, they expect that you already did all the work, and if you didn't, you're a fool. So, both are valid.

So, what we had here initially is [an identification] of the phase one and two of the registry operator responses with that showing the number of sunrises per TLD. Various ones, different ones, of the sunrise. And as well, a discussion of which records are and are not sunrise eligible with the vast majority being eligible, implying that Deloitte is accepting the proof of these 96% of the time. I'm not sure that that conclusion makes sense or is direct, but we don't know whether [inaudible] active TMCH records, whether proof of use was submitted or not.



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Then, we have statement question 20 regarding that there's not been any formal TMCH disputes from third parties on trademark record. Then, the data – showing that, again, the 4% figure I think. Although that seems to be unsuccessful [inaudible] successful, so maybe those are instances where in fact proof of use was not accepted as opposed to was not submitted in the first place.

Moving on in the same cell, I think this is previous stuff, so I'll move quickly through it and get to the green stuff which is new. More stuff that we've discussed in the past regarding gaming.

Then, there's a discussion here about something from trademark use. That's not data from our previously collective sources, so I guess that's a gloss on the issue and a question of whether certain marks in the database are not validly registered. If we have data that goes directly to that, it would be helpful. I don't know if anybody has identified any such data.

Who was next in line? I do not have them come up in the right order on the tablet.

JULIE HEDLUND: Thank you. The order is George, Griffin, and then Kathy.

GREG SHATAN: Alphabetical order. That is the way it comes up on my tablet. Wonderful. Thank you. George, please go ahead.

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GEORGE KIRIKOS:

It just happened to be alphabetical, but I was on top first. At the beginning of what you were saying, you said there's two different styles of approaching [inaudible] assume that everyone is [inaudible] in advance and [inaudible] to discuss. There are people who come unprepared and you have to reread everything. Then, you just went into the [inaudible] approach where you assume that nobody has read anything in advance, people are seeing this for the first time.

Why don't we just take five minutes and say how people want to proceed with all of the future sub-team calls? Are we to assume that nobody has read anything in advance or are we to assume that people have spent an hour or two to get the document – to read the document and are prepared to actually discuss them so you don't have to reread them, in which case your job is much easier because everybody would have read it already and just have to talk about the areas where people have different opinions and want to reconcile. I think that for people who come prepared, it's obviously much better for you, much better I think for the working group because you don't have to read what's on the screen, focus on interactivity which I think is the goal of meetings. I don't know how other people feel, but I spend 90 minutes to two hours preparing before the calls and I'm ready to discuss differences. I would hope that other people are doing the same thing, but I can't speak for everybody. Maybe people should use that little mark and say how they want to proceed, assume that nobody has read anything or assume that everybody has already everything and are prepared to discuss? Thank you.

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GREG SHATAN:

Thanks, George. Griffin?

GRIFFIN BARNETT:

Thanks, Greg. Just to reiterate what I said in chat on the point of George's question. I think it's just taking up more time. It's [inaudible] level set by reading what's there. But [important] to not take up any more time on the issue.

My hand was raised in order to try and walk through or at least briefly summarize the input that I intend to submit on the preamble question. Again, apologies for not having the opportunity to actually submit it before this call, before the document was [locked]. I need to get my internal deadlines squared away, apparently, so that I [do that] more consistently.

But I tend to agree with some of the data that George had highlighted in connection with the registry operator responses on this question, which basically summarized how many sunrise registrations they received in their particular TLDs. I thought that was relevant to answering this question.

I also wanted to note the point that Donuts made in their response that said that they did have a handful of registrants wanting to participate in sunrise but they were not able to get their SMD file on time. Again, without commenting on necessarily what we can infer or what the meaning of that may be, I think it is relevant in terms of the data here going to the first sub-part of this question which is whether sunrise period is serving its intended purpose.

Then, I also thought that there was some relevant data for this question from the first set of Deloitte response that we looked at.

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In particular, in the event that a specific trademark method does not meet the requirements, the trademark record will not receive any services, such as sunrise services or trademark claims services [inaudible] the status invalid. Again, I think that goes to show just how the sunrise system is working, whether it's meeting its intended operational requirements in terms of being granted the ability to use the service.

The other thing I wanted to point out from those responses was the number of invalid trademark records is on average 8% of the total number of mark records submitted to the clearinghouse. Again, I think that goes towards a similar point.

Again, the other data point there, at this moment an average of 4% of the active TMCH records are not sunrise eligible. We have not received any complaints regarding the sunrise eligibility requirements in our verification process.

So, again, I think that goes to how sunrise is working. Again, I'm not getting to the point yet of trying to suggest one response or outcome that we might be able to draw from this data, but just to highlight that these are some data elements that might be useful in answering this question.

I also thought that it was some useful data from the 2013 to 2017 report that we looked at. Again, it's mostly in the nature of summarizing how many records were verified and very just basic statistical data about what is in the clearinghouse and how many records have been successfully verified for sunrise eligibility. Again, that just speaks to the efficacy of operationally how sunrise validation is going, which I think is again relevant here.

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Then, finally, in the follow-up responses from Deloitte, they note that when a trademark holder informs the TMCH that a mark has been cancelled, the mark will be deactivated and the sunrise and claims services will be cancelled within 24 hours. Again, I think that speaks or is relevant to the question of operationally how sunrise is working, at least in connection with eligibility and whether something that is no longer eligible or should no longer be qualified for sunrise service is being deactivated so it can't be. I'll stop there. Thanks.

GREG SHATAN:

Thanks, Griffin. I think that brings us to Kathy.

KATHY KLEIMAN:

I'm going to speaking to some text that is not in green because I was not here last week. I apologize. I had a meeting with the Director of Innovation of New Jersey and it ran over because it was a group discussion. So, I would like to speak to that.

But briefly, I'd love to recommend that this preamble question be put last instead of first as an umbrella question. That would be much better served once we've gone through the detailed questions. So, I'd like to put that recommendation on the table that we deal with it last, in the future, instead of first as we [do] with new documents.

That said, I thought the four documents this week were interesting and shed light on the preamble question. So, we have the two documents from Deloitte, questions and follow-up questions. We

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have Deloitte's Trademark Clearinghouse report, 2013-2017, and a compilation of [three] registry responses from 2016.

So, I thought, in terms of data, that they did shed light on A and B, is the sunrise period serving its intended purpose and is it having unintended affects?

So, here, I'm referring to some of my questions on page five, that there are unintended effects because the Trademark Clearinghouse is secret. We can't see what's in it. So, no wonder there's no [SDRP] or any other kinds of disputes, except for very limited circumstances because half the people who were intended to use it can't access the data. So, we're going to see ... But we have the data here and it's clearly, in these comments, because Deloitte [would be candid] with us. Great.

GREG SHATAN:

[inaudible], please. Do you have the actual data? Because right now, we're really just ... The primary purpose here is to identify specifically where the data is so that we can then refer to it when making recommendations. Now is not the time to primarily debate what the recommendations are and I don't see this in the source name and page [inaudible] reference, if I'm looking correctly at what you have here. I don't see any actual sources. Is that correct?

KATHY KLEIMAN:

No. I must have [inaudible] here and not put them in. I will add that. Assuming the government remains open, those references will be added.

GREG SHATAN: So, the document will be re-opened, so maybe it's better to talk about these after you have the actual [inaudible] so we can look at the underlying data.

KATHY KLEIMAN: Okay. So, let's move on to the next point.

GREG SHATAN: The purpose here is the data.

KATHY KLEIMAN: Well, there was data. I wouldn't have put it in.

GREG SHATAN: Yes. And [we can] have that data in front of us, because none of us can take a look at the data you're citing to, so it doesn't make the discussion useful.

KATHY KLEIMAN: Okay. Well, the second one was the low rates of registration in sunrise is very clearly in the fourth document, the complication of registry responses—

GREG SHATAN: Where? Can you tell me where? If not, I think we need to move on.

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KATHY KLEIMAN: Yes. Compilation of registry responses to question—

GREG SHATAN: I know what document you're talking about. We need to note where in the document. It doesn't help to cite an entire document.

KATHY KLEIMAN: Document A, in A. [TIR] says they've only had 35 registrations for each TLD during its respective sunrise. Quote. Donuts, we register 125 sunrise names per TLD on average. AFNIC was the one that was of great interest in [inaudible] in part because they had a follow-up sunrise period for local – what appears to be for local Parisian mark holders in an [LRP]. So, we're seeing low rates of sunrise. What does that mean? Is the sunrise serving its intended purpose, their low rate of use?

The third thing is – and I do reference it. Donuts. In the same document, the compilation of registry responses. Donuts. And the question ... And these are very poorly labeled, actually. Page 3B, question for gTLDs offering blocking mechanism services and Donuts is very clear about the use of the SMD file to facilitate its globally protected marks list which is ... So, that's very important to know and to see whether that fits into the balances of the types of ... Whether that helps sunrise.

So, if you're in sunrise and yet you're registering a mark that's already been blocked, what does that mean? Would sunrise be serving its intended purpose in that case? That's just one example



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of questions that are brought up under this preamble charter question, pursuant to data that we've been given in these four documents. Thank you, Greg. Back to you.

GREG SHATAN: Kathy, I think I'm seeing a question here about the weight of sunrise registration in the chat. How can a number be a rate? We need to be able to compare the sun registrations to another number to have a rate or decide if it's a low rate. What is your ... Is there data that goes to that?

KATHY KLEIMAN: Are you asking me or John?

GREG SHATAN: I'm asking you because John was remarking on your depiction on things as commenting on a rate and characterizing it, so I'm trying to understand how you got to that characterization, from the data or otherwise?

KATHY KLEIMAN: So, is the sunrise serving its intended purpose for dot-NGO and dot-ONG which are done by the Public Interest Registry and many, many – if not most – of the registrations in there will be non-profit organizations which may or may not qualify as use in interstate commerce because of the non-commercial use? The low rate of registrations, the low numbers, physical, actual numbers, may show that. If you want to talk about how we can

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use the data – and I was stopped from doing that in the last subteam – then [rate here can refer to] physical numbers. And does this sunrise, should the Public Interest Registry be applying it to nonprofit organizations where it doesn't really seem to fit, people didn't seem to use it, people registered [in the] Trademark Clearinghouse did not seem to use it?

And then we can link it to other data. In the recent Analysis Group data, we saw registries and registrars leaning towards trademark claims or sunrise. So one of the things we're looking at here, if you want to talk about it, is the sunrise period serving its intended purpose? Where the vast majority of your registrants are not trademark owners, it may not be. So that's first page of this compilation of registry responses. Thanks for the question, John. I hope I answered it, but if not, follow up.

GREG SHATAN: I think we have David McAuley next. David, please go ahead.

DAVID MCAULEY: Thanks, Greg. Hello, everyone. I'll make this quick, because it's on a process point, not on these questions. But I wanted to talk briefly to the question that George asked about assumptions. I think – and I'm speaking now as a participant, I'm not offering a decision as a co-chair, I'm speaking of an opinion I have as a participant – that it would be wrong to make assumptions. We shouldn't operate on assumptions. But [inaudible] to the idea of expectations.

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In my view, the staff has done a very good job putting out homework e-mails, and we could maybe sort of restate those, that there's an expectation that everyone will have read this. I actually think people are doing that. I think Maxim made a very good point earlier that the fact that a comment hasn't been entered by someone doesn't mean they haven't read it.

My hat is tipped to the people that are regularly contributing, George, Kathy, Maxim. I'm forgetting people, I'm sure. But especially George with perditious amounts of work which is very helpful to all of us. I think if we set the expectation, we don't need to worry about the assumptions.

I'll use myself as a good example. I've done the homework every week until this week. I had a particularly difficult schedule this week and I have not made it all the way through the homework. I think as a team, if we expect that we all do as best we can, we will get a lot of work done. So, I'm against the idea of assumptions like the idea of expectations and would urge us to proceed on that. Thanks very much.

GREG SHATAN: Thanks, David. I think that brings us to Susan Payne. Or Susan, have you taken your hand down?

SUSAN PAYNE: Yeah, I've taken it down. I don't feel I can add much to what David was just saying. So, thanks.

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GREG SHATAN: Thanks. That takes us to Claudio.

CLAUDIO DIGANGI: Thanks, Greg. Yeah, just wanted to respond to, I think, a point that Kathy was making. And it's based on the fact that I typed this in the chat, that when you look at the number, how often the sunrise procedure is used, you need to basically look across all the new gTLDs that launched, and it's really reflective of the point that trademark owners budget a certain amount of money that they have available to spend on their domain portfolio and enforcement work.

And that number, what ends up happening if there are a large number of new gTLDs that are introduced, the total amount that is available to protect their brands needs to be spread across all the different gTLDs that are related to the brand in some sense or there is a risk of registration abuse taking place.

For example, with the PIR example, there might have been several other TLDs that in addition to the ones that PIR launched where this trademark owner also registered their brand through the sunrise process and had to essentially spread out their brand protection efforts across multiple new gTLDs.

So, [we're going to] get the wrong impression if we just look at each individual gTLD and draw conclusions based on those numbers. We really need to look across the entire universe. Thank you.

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GREG SHATAN: Thank you, Claudio. I see George's hand is up. Please go ahead.

GEORGE KIRIKOS Yeah, I tend to agree with Kathy's viewpoint on this. I understand what Claudio's saying, but as I pointed out, a couple of years ago, [we have seen] like a 99% [plus reduction in sunrise,] which tends to reinforce what Kathy is saying.

I think one of the purposes of the gTLD program itself was supposed to be a huge expansion in choice. So, what people are saying is if the number of sunrise registrations is low is that there hasn't been this huge expansion that we were expecting to expand it by plus 500 where effectively, we're expanding it by much less than what people are [planning.] But I think that's just kind of looking at it after the fact. People were expecting a much greater utilization rate of sunrise. That's why they're arguing for [inaudible] I think it supports Kathy's view that to some extent, it's failed. It's an incorrect assumption that – people who were predicting that have been proven wrong by the data, and Kathy is kind of recognizing that, and I believe we're trying to interpret it differently, but I think Kathy's interpretation is more supportable. Thanks.

GREG SHATAN: Thanks, George. That 99% drop, is that something that was in this data, or something that you've calculated or seen calculated elsewhere?

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GEORGE KIRIKOS I don't think it was in this document itself. These four documents didn't talk to that. It was talked about on the mailing list. Thank you.

GREG SHATAN: Thanks. I guess maybe when we get to the other data section of our data gathering exercise, [we'll have that supported.] Susan Payne, please go ahead.

SUSAN PAYNE: Thanks. Hi. Yeah, we just seem to have a bit of an inconsistency here, because one minute, we have people claiming that sunrise is being abused, there's lots of people picking up evidences of abuse, and yet here we are with [inaudible] numbers, and suddenly the sunrise is not worthwhile and there's no need for it.

Now, it can't be being abused and be unnecessary. Surely, the fact – if one chose to put a different interpretation on this – and this isn't the time for the interpretation, but everyone else is doing so. If one chose to put a different interpretation on it, it's that there are relatively modest numbers of sunrise registrations, and therefore, it's not being abused by brand owners. It's being used in a very targeted and responsible manner, something that, I think a week or two ago, brand owners were being accused of being incredibly irresponsible.

So, I think let's not just make assumptions based on – also, [inaudible] registries data. Claudia made a very good point, that we have to look at all the data we've got, not just one lot of data.

GREG SHATAN: Thank you, Susan. A follow-up question. And again, maybe we're not supposed to be analyzing data, but once we get kind of halfway down the road. Can you explain the basis for your conclusion that a low rate of sunrise kind of leads to the conclusion there's a lack of abuse, without looking at the particular registrations that are being used to register in sunrise? I'm not sure that I see how you get to that conclusion. Thanks.

SUSAN PAYNE: No, I agree, because we don't know the actual registrations, we don't have all of that information, and indeed, we couldn't possibly start going through all of that. All I was trying to say was that one minute, there are a lot of people arguing that brand owners are gaming the system to get registrations they shouldn't be getting and abusing the sunrise process for that purpose and yet if we look at the numbers, we're now suddenly having people making the argument that there's [inaudible] because no one's using it.

So I'm just saying, how is it being abused and no one's using it?

GREG SHATAN: Thanks, Susan. I think part of the problem is we have data points that maybe don't actually say a lot. Off the top of my head, I'm not finding the number of total registrations in ONG and NGO, so can't conclude necessarily— if there is a relationship between the total number of sunrises and total number of registrations, whether that's even a useful ratio, and if that is a useful ratio, does that indicate that the rate is low, medium or high? And of course, I

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think [people's total] expectations about registrations in new gTLDs have not been met. So, this perhaps could be a further part of that. So, I think what would be helpful is to try to – if we're interpreting data that assumes other data or the assumptions or statements that are being made are empirical, something is high, something is low, something's abused, I think we need to try to look for specific data that can show an abusive registration in the TMCH or a low or a high rate of registration. That would be much more helpful in terms of using the data.

Not sure if George or Kathy is next, but I assume if one of them is looking at a computer rather than a tablet, they will know who's next.

GEORGE KIRIKOS

I'm first. Just to go to Susan's point, how you can have a low number of registrations but also have high abuse, well, the low number of registrations is based on the absolute value. So the data we saw was DONUT registered 125 sunrise names on average, AFNIC registered 796 [dot-paris.] Generally, they're all a relatively low number in the absolute sense compared to past sunrises.

Now, when we talk about how we can have abuse that's significant, we know the hotel, hotels, all those kind of marks that are questionable that probably had token use de minimis, had there been 10,000 sunrise registrations, that would represent only a small proportion of those sunrise registrations, and we could say that the legitimate users of sunrise, the benefits to them were substantial, and then the cost on other parties was less.



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But when we see these less legitimate marks, they represent a higher proportion of the actual sunrise registrations, and so on a relative basis, the abusive ones become more visible relative to the rest. So I think that's the point we're trying to make, that you can have abuses that are significant when you have a relatively low number of sunrise registrations in total.

So, that's why – well, we can talk about [inaudible] conclusions later but I want to point it out. Thank you.

JULIE HEDLUND: And Greg, if you don't mind my interruption, we're getting some requests in the chat – and I'm not sure if you're able to read the chat – that we move off of this particular point and perhaps move on to the next charter question. Obviously, people will open up the document again for any additional comment as people want to add to the preamble charter questions.

KATHY KLEIMAN: Greg, I'm in the queue.

GREG SHATAN: Kathy, go ahead, but I do agree with what Julie said, and the people in chat. Go ahead.

KATHY KLEIMAN: Well, it was my chat. It was my recommendation that we actually return to the preamble later. Again, it's a broad question. After we look at the detailed questions, I'd actually like to recommend we

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come back and discuss this, not just put comments into the document but come back and discuss it, because this is really important.

Susan point out to me the comment in the doc from Michael that low rates of registration sunrise, he says, "Does this suggest that trademark owners do not need this service because they're not choosing to take advantage of it?"

So, I thought I'd respond rather than type a response and say it's not binary. That's my sense here, is that we're looking at the data, and that we should be looking at the data, so there is evidence of abuse, there is evidence in some cases of low rates of registration in gTLDs to which the sunrise may not apply. It may not be a binary question of sunrise or no sunrise across all new gTLDs, but sunrise or no sunrise in certain gTLDs. But the data's suggesting that some, it's much more successful than others, and also there is data of abuse. So, not a binary choice at all, Susan. Thanks, back to you.

GREG SHATAN:

Thanks, Kathy. I think maybe you misunderstood which chat people were commenting about. I think people were commenting on the desire to get back to discussing the isolation and identification of data rather than the analysis and advocacy portion of our work. So, I'd like to move on, unless there's anything else in this survey tool for this particular item. Then we should move on to the next question.

Brian, I see your hand is up.

BRIAN BECKHAM: Yeah. Thanks, Greg. I just wanted to make an observation, and feel free to [inaudible] everyone. So, I think [inaudible] identifying data, and it sounds like a lot of that has already been done. We've heard a lot about [inaudible] sunrise and so on, and then we started to sort of veer into discussing the substance of what that means depending on your [inaudible] data.

So, I wanted to suggest that it may be – and this is a comment made in light of the concerns about timelines and homework, etc. It seems to me we have a fairly comprehensive set of data in front of us, and people already have really strong held views on what that means. So, it feels that we're already in a position to start seeking proposals and solutions. Sorry for the difficulties on audio. Thanks.

GREG SHATAN: Thank you, Brian. It feels that way to an extent, but I think we're still jumping the gun. I think we'll get to the discussion of analysis and positions and conclusions more quickly if we can just stick narrowly to the question of whether we have questions about the data. And I'm beginning to feel more sympathetic to George's suggestion in terms of how we do this part of the call.

So I guess the question is here, do we have – I don't see anything green, but I'm not sure if that means, staff, that there's anything. There's just a new brief comment that some [inaudible] question 16 [inaudible] January 17 document are also relevant and a couple of new references were added. So I guess that's all that's

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new here, there's no real reason to discuss this question, we can move on to the next one, unless there's other data, or, I don't know, Griffin, if you had other things for this one that you didn't put into the doc.

GRIFFIN BARNETT: Hi, Greg. Yeah, just a comment quickly. Are you talking about the preamble questions still, or question one?

GREG SHATAN: Question one.

GRIFFIN BARNETT: Yeah. In that case, I would just note that I will input just one point, which was drawn from the Deloitte report discussing the number of [abused labels] that have been added, and just to note that those abuse [labels] are not exact matches of marks in the TMCH, and so that speaks to the issue of whether availability of sunrise for identical matches should be reviewed. That's the only other relevant data point that I've identified that might [be to] these questions. Thanks.

GREG SHATAN: Thanks, Griffin. So I think we can move on to question two then.

KATHY KLEIMAN: Wait a sec. I wanted to comment.

GREG SHATAN: Yes, is there something about the [inaudible] data gathering itself?

KATHY KLEIMAN: Yes. [inaudible]. Yes, I've put things into the document. Can we go back to it? Thank you. Several things. One of [inaudible] too many questions in my head. So, should the availability of sunrise registrations only for identical matches be reviewed? And so what we have is some questions that indicate the ability of the Trademark Clearinghouse, of Deloitte, to actually go the other way and go farther where you can have both identical matches and look at the use of the trademark, the categories of goods and services to which a trademark is registered so that we may be able to go farther and have a sunrise for dot-bank that's narrowed so it can be both identical match and a bank, and it looks like question 17 of the December 5th 2016 Deloitte questions indicated that that was a capability that was available in the database, which I thought was really interesting.

Also, deep in the questionnaire, question 15, same document, we have not received any complaints regarding the sunrise eligibility requirements and our verification process. And I just wanted to note that that's because you can't see it. So, they're answering the question of kind of, "Can you use the rules?" And then saying, "No, we're not using them." So, it's the data confirming that there's kind of a lack of an ability to monitor what's going on here. Thanks.

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GREG SHATAN: Yeah. Thank you, Kathy. Let's move on to question two. Let's see, is there a hand up? Brian, is that a new hand? Brian's hand is gone. Okay. So here, I guess, did we discuss any of the data on this one last week? George, your hand is up.

GEORGE KIRIKOS Yeah, Greg, initially, we were assigned [all the] questions for a subset of the charter questions, all the documents for a subset of the charter questions, but I quickly realized that it was far too much and I posted on the mailing list that I've just done documents one through four and then had used up so much time, and Kristine and Griffin also kind of realized that it was too much, and Kathy also chimed in. So, we kind of semi-agreed that we should limit [inaudible] first four documents. So, some of us have had this done for last week, that's why it's in black, because it hasn't changed since last week. But then last Tuesday, the co-chairs to the subteam said that we should focus on the INTA document and some other document, which none of us ended up looking at at all. So, there's no input for that, we basically gave up and said, go back and do questions one through four. So even though it's black, we didn't really cover these last [inaudible]. People were supposed to do it for this week. Thanks.

GREG SHATAN: Got it. So, I think in that case, then some of the things that are black are still kind of new input. But I guess, again, rather than going over the input, the question is whether there's any – so we've identified a certain amount of data that appears to answer this question here, and so that's all we – and unless there's a

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reason – if anybody has any additional data on this, they could supply it. But again, I've come to agree with George that if what we're doing here is identifying the data and then we'll come back and discuss how we'll make recommendations and advocacy and yada yada from the data, there's no point in kind of reading the submission. We just assume that it's germane, or that when we get to it later, we may find it's not germane. So, I would suggest we move on to the next question.

[inaudible] that was rather pithy in first sunrise question three, no, at least for the first four documents. And as we get to the remaining documents, this may change. So, we can go to the next question.

So we're up to Q4. We can take a moment to note what Q4 is about, and then we have data here that at least arguably goes to Q4 that's been submitted by George, and only by George. So, I think we can move on from this. Question five.

Question five, [similar to 15,] not yet, so I'll move on to question six, or at least 5B [or whatever.] 5B, a little more meat here on the bone. George found nothing. Kathy identified some – again, we don't have a section of the response, so it would be good if you could put in where in the compilation of registry responses you found pertinent data so that we can all use that data for our discussion later. But that can just be added to the document when it's opened up again. That seems to be all that's here.

KATHY KLEIMAN:

I don't know if you can see it, my hand is raised.

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GREG SHATAN: Oh, yeah, I see your hand is raised. Which section does this come from in the compilation?

KATHY KLEIMAN: It comes from [inaudible].

GREG SHATAN: Okay. That's all we really need to know now.

KATHY KLEIMAN: No, I don't think so. May I?

GREG SHATAN: Yes, if it tells us why this – I think at this point, we're trying to identify data, so I think we succeeded. Have we not?

KATHY KLEIMAN: [May I?]

GREG SHATAN: Yeah.

KATHY KLEIMAN: I'd like to explain it so that [people see it.] Because I went to the University of Chicago and I transferred out because I didn't like their way of approaching things, went to Harvard instead. So, let



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me give this a try, if I might. We got the question because we were dealing [with the] preamble and we dove into it. We have the sunrise charter question 5B. "In light of evidence gathered above, should the sunrise period continue to be mandatory or optional?"

And here we have data that says PIR and DONUTS shared that they had low levels of sunrise registrations. Now, of course, we should combine this with whatever we found in the analysis group survey of registries and registrars where we had a slightly larger number, not huge, but a large number.

And so again, we're looking at PIR telling us 35 registrations each for dot-NGO and dot-ONG. So, again, this could be data that runs directly to the question, and it had been characterized one way when we're looking at the preamble, but here, it's phrased another way. [It's a] charter question. Should this continue to be mandatory, or become optional? And we have data leaning into it and helping us look at it. So I just wanted to express that, because this is very small print. Thanks.

GREG SHATAN:

Thanks. I guess when we look back at the data, we'll see if PIR actually characterized that as low in their response. But let's move on to the next question.

JULIE HEDLUND:

Excuse me, I'm sorry. We do just have one minute to the top of the hour.

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GREG SHATAN:                   Okay.

JULIE HEDLUND:               And we are scheduled for 60 minutes. And there was a request to extend, but we really cannot extend calls on the fly. We can consider whether or not to extend next week, or for following meetings.

GREG SHATAN:               Yeah. I think we can stop here. We do have the AOB. We did discuss somewhat the AOB at the beginning, and I think the point is that clearly, looking at the timeline and the number of pages and documents left, there needs to be an adjustment made to the homework for next week, and figuring out how to do that, whether it's more meetings or more weeks, and that requires a discussion with the co-chairs of the overall working group [as] in a sense of they're running the train, I'm just running this particular dining car.

But we do hear you, George and others who've noted the [RGM] tables that seem to be awaiting us between now and our next meeting. I think we at least we want to make the pile of what you find in the [RGM's] tables smaller for the next meeting, and we'll need to figure out how to do that.

Any further comments on that point? I would say I have no comment on the other deadlines at this point. Doesn't mean that there's no consideration being given, but that's in terms of something – homework management, that's my comment there, that I would not expect that you should be reading all 250 pages or whatever it is for next week.

JULIE HEDLUND: So thanks, everyone. Thank you, Greg. We're a minute after the top of the hour, and I see people are dropping off. Thanks all for joining, and we'll go ahead and adjourn the call. Thanks again, Greg, for chairing.

GREG SHATAN: Thanks, all. Bye, all.

JULIE HEDLUND: Thank you so much. Meeting has been adjourned.

**[END OF TRANSCRIPTION]**