

ICANN
Transcription ICANN Johannesburg
GNSO Review of all Rights Protection Mechanisms (RPMs)
in all gTLDs PDP Working Group
Thursday, 29 June 2017 at 09:00 SAST

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J. Scott Evans: Good morning, everyone. I think we have some speakers going up here. I'm J. Scott Evans from Adobe and I'm one of the three Co-Chairs of this working group, which is the Rights Protection Working Group, Review of Rights Protection Working Group. I'm also Co-Chair with Kathy Kleiman who's to my right, and to her right, Phil Corwin.

Today we are going to break this into -- it's a three-hour session -- and we're going to break it into three different parts. The first part of the meeting will be considering the subteam's work with regards to narrowing down and clarifying the charter questions and identifying the data collection we need to do for the sunrise mechanism that comes out of the Trademark Clearinghouse.

The second hour will be spent discussing the same type of work that's been done by another subgroup with regards to the trademark claims notice that goes out.

And then the third hour I believe we're going to have some discussion. And we hope it will be an open, honest, frank and transparent discussion with some registries and registrars just about how the rights protections mechanisms are used in the system and how they use them and how they

interface with the Trademark Clearinghouse so that we can get a better understanding of just how the mechanics of the whole system work as we begin to decide if possibly there needs to be any sort of adjustments to the system. So we need to sort of understand the practical realities of using the system.

So that's our day today. And we hope that if you are not a member of the working group, you are - you may come and speak and ask questions. If you're a member of the working group of course, you feel free.

I do believe we have several people on the telephone and they will be monitored. If you have a question in the Adobe Connect room, you can raise your hand and we'll monitor. And we'll try to ask that question live here so that everyone will know. And you're allowed to robustly participate even if you're not here in Johannesburg with us. So that's our day today. Are there any questions?

Kathy Kleiman: I actually have a question.

J. Scott Evans: Sure.

Kathy Kleiman: Kathy Kleiman. I'll open up the questions and hopefully everybody will actively participate. But let me ask staff, do we have a standing microphone or a moving microphone so that all the people who are sitting down can join us at any time when they want to talk or ask questions or provide input?

Amr: Good morning. This is Amr from staff. I'll check in the back. We should have a couple of those. Thanks.

J. Scott Evans: So for those of you that may not be familiar with our work, we are part of the review of the round of - last round of names that were released, domain names that were released. And like the Subsequent Procedures Working Group, we are looking at the rights protections specifically.

And our charter, our overall charter, is to look at the rights protection mechanisms, to determine if they are functioning as they are designed and if the answer to that question is no, then why not and if any changes or revisions to those need to be made.

We've divided our work into two phases. So we are currently in phase one. And the idea is that we are going to deal with all the rights protection mechanisms so the PDDRP, the trademark claims notices, the sunrise period and the Trademark Clearinghouse and the URS, the Uniform Rapid Suspension system.

And we're going to review all of those and make a recommendation and a report that will come. And that will be drafted. It'll be put out for public comment. We'll take in the public comment. We'll review the public comment. I'm sure there will be robust discussion about those public comments and then a final draft will come out.

But when that first draft comes out on our phase one work, the idea is that we will begin phase two. And that is to look at the Uniform Dispute Resolution Policy, the UDRP, that has been in place since around 1999. And it has, to my knowledge, never been reviewed. And that will be the second phase of our work.

And then we'll do a report based on that work. That report will then be incorporated into a final report. It will be out for public comment. There will be robust community discussion.

So that's where we are. So we are in the midst of working on phase one. We have dealt with the Trademark Clearinghouse as a database and how we've learned and we've asked questions about that. Now we've drilled down to the mechanisms that come out of the Trademark Clearinghouse. And it's the sunrise registrations and the trademark claims notice.

So we decided, because we had so many charter questions from the community, that we needed to review these because some of them were repetitive. Some of them weren't very clear. So we developed two subteams, one working on sunrise, one working on trademark claims.

So we are going to today discuss the refined work of the sunrise subteam. And we're going to be looking at the questions that they have decided that we need to answer in this work and what data or what information we need to collect from various parties in this system in order to answer these questions.

And so with that, I'm going to ask Lori Schulman, who chaired the subteam that worked on this, if she will give a report on their work and their progress for us so that we can...

And our hope is that at the end of this hour, this - these documents, this document that we will then - will be put to bed. And then we will begin using this document to actually proceed with our work, that we won't have any further discussion on what's in this document.

This document will then be an outline for how we proceed and what questions we're asking and what data we're gathering from the community.

I think Phil Corwin would like to say one thing and then I'm going to ask Lori if she will be gracious enough to tell us about the hard work that her group did.

Phil Corwin: Thank you, Mr. Co-Chair. Phil Corwin for the record. I just wanted to add very briefly to what J. Scott said, two things.

One, he didn't mention the first RPM we looked at was the Trademark Dispute Resolution Procedure which is the only RPM that applies at the top level. That's if a registry is alleged to have directly infringed on a mark or is it encouraging its registrants to infringe. It was a difficult task to review it

because it's never been used. And we may recommend one or two modest tweaks to that.

And then the other thing I wanted to add is that, as J. Scott mentioned, we're in two phases. Phase one is the one that needs to be completed before the next round of TLDs. And we are aware of that. We're monitoring in liaison with the Subsequent Procedures Working Group as both of us need to wrap up our work before a next round can launch. So there is a bit of not time pressure but aware of the linkage of the completion of phase one to the launching of any subsequent round.

And then the second phase, the UDRP, there's not that kind of time pressured because that is a consensus policy. And whenever we finish our work, any recommendations we make that are adopted by council and the board will apply to all TLDs.

So that's it and I look forward to Lori's remarks.

Lori Schulman: Good morning, everyone. Lori Schulman for the record. First of all, I want to thank my team. We had a really active core of people. And what was really nice, for most calls we had at least two or three of the co-chairs, I mean our main co-chairs, which I thought was extremely helpful to the dialogue generally.

What you'll see in front of you is the final work product which I think is in pretty good shape, folks. We took 22 questions that we were asked to consider, including general questions about the RPMs in general but then we narrowed them down to sunrise-specific issues where things would be relevant.

We did eventually change the questions, as I'm looking at this chart. If you want to go back to the original questions, I would say to go back and look at the Wiki and prior iterations of our charts. And you'll see the questions.

Although we don't feel empowered to change the questions, we did feel empowered to propose this set in this form as the way to move forward.

And so what you'll see is we either condensed questions into thematic topics. So where we had 22 questions and maybe five were surrounded around a particular issue, we took those five and combined them. We also, where we could, eliminated redundancies. And we created what we call a preamble set of questions.

One of the challenges that we had was, looking at the document we were presented, is that, as you are well aware, the questions that were presented in the charter were basically taken verbatim from community input.

So no one had sifted through them yet to figure out okay, where are the problem points in terms of redundancy, are these questions that have already been answered, do we have sources and reports already that may help us.

Some - but there was a deep dive into the questions. The first question on the charter was very, very specific as to exact match. So it seemed a little strange and out of context.

So we created a group of questions that we're calling preamble questions that go to the context of all the questions you'll see next. And we went from, again, 22 to seven multi-part questions.

And I'm going to ask the chairs, do you want me to go through the substance of the document or stick to the rationale? How would you like me to proceed in terms of the ease of the group?

J. Scott Evans: Well, I also want the group - if you'll notice, we're hoping that we can - one of the reasons is listed. You see there are several subparts under a question. We're hoping that that will guide us that like we're going to deal on our call

with group one. And so that we know that that's our agenda. So that's the whole idea of the way we've organized this is to sort of help us push through the work.

I do think we need to go through the document just so that people who are not familiar with this... And I think there have been some nuances to it and so that - I just want to make sure that everyone has an opportunity to know what we're doing, to know what we're asking.

And if you have a concern or you don't think we've asked the right question, this is your time to speak up and tell us. And we want to hear from you. We are truly doing the best we can to ask all the right questions.

And I do realize and I have heard some grumbling in the community that we're a little behind schedule. But the problem is when you start diving into this, you learn a lot of things that no one's had time to ask, when you start doing the analysis. And you learn things and the discussions go down away because we learn new things.

And so - but we are trying to stick to our timeline. We're doing as best we can. We've elongated our calls to an hour and a half. And the subteams were also doing an hour call. So we were doing, between the co-chairs doing our call, subcalls and our main call, about five hours of calls a week.

Lori Schulman: I'm going to add the follow-up because I want to give kudos to the staff, Marianne, Amr and particularly Amr because what we did in real time so you understand the process, we would go through each question, ask the questions, get some sort of consensus about where we thought to go and Amr would, within hours, have a new version of the work.

And then there was - there were times when we couldn't have consecutive calls and work was done on a list. And so there was a real effort here. We had nine calls in total over the course of I think 12 weeks. And I think given

the complexity of the issues, we got to a good point. And I think it's important to point that out.

J. Scott Evans: Okay, if we'll just - quickly let's go. We started a little late and I would like to keep us on time.

Lori Schulman: All right. I'm going - if I speak too fast, please let me know. It's the New Yorker in me. But I know there's non-English speakers. And if I am going too fast, please feel free to cue me on that.

First of all, I want to go through the preamble questions. I'll read them aloud. I'll pause and if you have questions about these questions, please ask. And then I'll go through group one, two, three, four, five, six, seven.

I'll go through each group. I will take a pause. And if you have questions, that would be the time. And I'm going to ask, J. Scott, you to moderate the list because I've got my full screen open so I can't see the queue. Do you have the queue?

J. Scott Evans: The guy from Adobe is having Adobe Connect problems so if Amr, if you could, if you could moderate the list.

Lori Schulman: All right. Yes, Amr, can you moderate?

J. Scott Evans: You know, I was telling someone yesterday, I work at a high-tech company. Every time an exec gets up and hasn't had a rehearsal, none of the tech works. So here you go. I'm at an international meeting and I can't get my product to work on my computer.

Lori Schulman: Well, it's working perfectly on mine, if that's any consolation. Amr, can you moderate the list then, please? Thank you.

Okay, so we decided that there are five overarching questions that inform the followed bunched groups. The first one is: Is the sunrise period serving its intended purpose. Two: Is it having unintended effects. Three: Is the TMCH provider requiring appropriate forms of use. If not, how can this be corrected? Have abuses of the sunrise period been documented by trademark owners? Have the abuses of the sunrise period been documented by registrants? Also clarifying that registrants may be trademark owners.

So does anybody have any thoughts? I know this is a quick read. My thought is let's get our initial thoughts down and then if we have clean-up or follow-up questions, we can take them to the list. Okay. Amr, anybody in the queue? Okay.

Oh, Amr has his hand up.

Amadeo Abril: Amadeo.

Lori Schulman: Amadeo.

Amadeo Abril: Hi. Yes, I'm Amadeo Abril from CORE. A couple, I mean we manage, we are the register provider for three IDN TLDs in Arabic and Cyrillic scripts. The only way I can describe sunrises for IDNs is nonexisting at least for these scripts. I think that there are something like 19 or 20 Arabic trademarks in the Trademark Clearinghouse. You may imagine what the final (unintelligible) is. Beyond that, I think that's been useful.

But as we also manage lots of geo TLDs, well the problem we have is that lots of people has enterprises because, you know, if you are the, you know, a hotel in Barcelona, you are interested in Barcelona and perhaps the hotels but nothing else. You don't see the purpose to have global protection.

So probably the idea of the Trademark Clearinghouse was overkill for the vast majority of trademark owners and would-be registrants that approach it as registry operators.

Then one quick failure in the design of the system that doesn't lie in the Trademark Clearinghouse but on the ICANN side is the question of how you do the labels for words that have IDNs, that is umlaut or accents in Latin language for instance. So you have Telefonico with an accent. That's the name of your company, that's your trademark. You get only the (unintelligible) dash because you have an accent.

So you go to a TLD that doesn't do IDNs. You cannot register that because it's not a variant. So - and the reverse is also true.

So I think that for the next time we should take into account that for most languages like Spanish, French, German, etcetera that use the Latin script, there should be the equivalent in the Trademark Clearinghouse of a trademark that has an accent without the accent because for trademark purposes that are grammatically graphical, you will not view misspellings.

But in most of the registrars that offer IDNs, then you're completely lost and you cannot register so you register something in the Trademark Clearinghouse that doesn't serve any purpose. And you will own that protection.

J. Scott Evans: Thank you, Amadeo. That's exactly the type of information we're looking for. I'm glad we've got you on the record because there's so much of that that people just don't know and the frustrations that registry operators in the new innovative TLDs face is something that we need to fix because that is what the whole system is supposed to be supporting.

I think I saw Jon Nevett's hand go up.

Jon Nevett: Yes, thanks. Jon Nevett. Quick request, Lori. Could you add a bullet in the preamble for in the last - after the last bullet saying: Have abuses of the sunrise period been documented by registries and registrars?

Lori Schulman: Absolutely.

Jon Nevett: Thank you.

Lori Schulman: Excellent point. And I apologize for the omission because it's a glaring one so thanks. And to (Amadeo's) point, we do address this further down - we address your concerns further down in the groupings.

I think what I'd like to do though is to go through the groupings and look at the quality of the questions instead of approaching the answers right now. I think that may be faster in terms of solidifying what we think the questions are going to be. Would you agree?

J. Scott Evans: Well, my only comment about that, Lori, is there are people in this room that are not part of the working group. And we need to have their input because that's the value of a face to face, is to get their input and hear from the community in a way that we don't when we're sort of siloed in our call.

So if there's someone that wants - if it's a working group member, I would ask that you hold your comments and we can handle those during our call. If you're a nonworking group member, this is your time for us to hear from you.

And I'm not trying to cut anyone off, I'm just trying to move us along efficiently, understanding that working group members will have plenty of time to give us their view.

Lori Schulman: Okay. I think that's a very good distinction and I appreciate it. And I will note it.

Oh, Rubens has his hand up. Rubens?

Rubens Kuhl: Thank you, Lori. Rubens Kuhl. One of the perceived abuses which are not direct qualified as abuse or not that there are some trademark owners that have marks that apply to a sector, let's say airport as in electronic devices. And sometimes they try to register those marks in other contexts like geo TLDs where nobody would expect an airport to be an electronic device but instead an actual airport with airplane you could fly to.

So we should probably direct trademark owners to exercise care in their trademark marks and not trying to register trademarks that doesn't have a meaning in that specific context. So we could add some context as possible factor allowing trademark registrations or - sunrise registrations or not. Thank you.

Lori Schulman: Thank you very much. I appreciate that intervention. Does anybody have any other interventions?

Amr: Lori, there's a remote participant.

Lori Schulman: I'm sorry?

Amr: We have a remote participant.

Lori Schulman: Oh, we have a remote participant. Would you mind reading the question, Amr?

Amr: Thank you. This is Amr from staff. And there's a remote question from George Kirikos who is a working group member. His question is: I don't see anything in the right hand column on data collection where registrants are being surveyed to identify...

Lori Schulman: Excuse me, Amr, sorry. Some participants are saying they can't hear you.

Amr: Oh, apologies. Okay. So this is a question from George Kirikos who is a working group member. And his question is: I don't see anything in the right hand column on data collection where registrants are being surveyed to identify abuses of the sunrise. Where will this be done, especially if this is going to be considered the final document for data collection?

Lori Schulman: Oh, I - George, thank you for your question. For those who are not on the working group, George is a frequent contributor. And my thoughts on this are we're looking at the finality of the questions. In terms of the data collection, that's open. I think as we go through, we're going to be adding more.

We didn't really focus on the preamble questions but if you go through the rest of the document, there may be answers to your question there, George. If not, this is what I would welcome you to do. The document will be posted on the Wiki. And fill in the boxes.

I mean, that's what we need. We need every member of every interest making sure that the data they think is important is put into the box. And then as we go through our work, we can again narrow it down and figure out a way to make it logical.

One of the things we did discuss about data collection is whether it would make sense to gather the data for claims and sunrise at the same time or whether we do it separately. And I think these are administrative issues that the chairs should be discussing with the staff in terms of what would make the most sense in terms of the sequencing of data collection and not to overburden the community with too much data gathering at any particular point in time.

All right, keep going. Move it along, Lori. Okay, so we've gotten through the preamble. Here we are in group one. Yes? Sorry.

Amr: Yes, sorry. I just wanted to flag that Greg Shatan has his hand up and there's still another question from a remote participant.

J. Scott Evans: Okay, let's go ahead. Let's ask the remote - is Greg in the room? So let's ask the remote participant and then we'll go to Greg.

Amr: Okay, thank you. This is Amr from staff again. And this question is from Michael Graham. In the preamble who is being identified as the registrants? And do we intend to refer to applicants?

Lori Schulman: Thank you for the question. The word registrant here is -- we were discussing it in the group in terms of frame of reference -- is anybody registering a domain name. I don't think we narrowed it any further than that. If the group thinks it should be narrowed, then that's something to discuss.

J. Scott Evans: Great, thank you. Greg?

Greg Shatan: Thank you. Greg Shatan for the record. Just briefly in response to Rubens' intervention, I think that whether in sunrise or anywhere else, unless it's in the rules of the registry, each registrant in sunrise or otherwise should have the ability to make their own choices about why they're registering in a particular TLD. So I don't - I just have to take exception to that conceptually.

Sadly, there are a lot of so-called defensive registrations being made by trademark owners and that may well be the reason. I think we all wished there was no need for such things but that's just not where we are. Thanks.

Lori Schulman: Okay. Is there anyone else before I move? Okay. Group one: Should the availability of sunrise registrations only for identical matches be reviewed? If the matching process is expanded, how can registrants' free expression and fair use rights be protected and balanced against trademark rights?

Anybody in the queue?

Amr: No.

Lori Schulman: Okay. Group two: Threshold question: Is registry pricing within the scope of the RPM Working Group or ICANN's review? Is there evidence that registry sunrise or premium name pricing limits trademark owners' ability to participate during sunrise? If so, how extensive is this problem?

In terms of data gathering, we had some questions and some possible sources.

Is there evidence that registry sunrise or premium name pricing limits trademark owners' ability to participate. I'm sorry, that's a duplicate. This is the first time I'm seeing the chart in this form, I apologize.

Sources: INTA has done a survey which I have alluded the group to. And we do have some anecdotal evidence from trademark holders and registries about how the system's working. We also have some cost data that is not directly relevant to this review but that we did in relation to CCTRT.

Going to post our impact study to the list after this meeting. The reason it wasn't posted before is we have launched it internally to our own membership and we wanted to make sure our own membership had an opportunity to review it before we posted it to this list. But it will be posted at Johannesburg.

J. Scott Evans: I see (Mary) and then Jeff.

(Mary): Thank you. And I believe Rubens Kuhl had his hand up as well. This is (Mary) from staff.

Not to respond on substance but just to clarify for folks who are looking at this document, what we've tried to do and the reason why there may be duplication on the right hand column is that for the subteam, the sources that

they're suggesting for data may have gone to one specific bullet point on the left hand side. And where that's been the case, we're replicated that specific question on top of the data source being suggested.

Lori Schulman: (Mary), thank you so much. Although this chart in this form we agreed upon, we hadn't - I hadn't seen this piece of the puzzle. So I appreciate the clarification.

J. Scott Evans: Jeff.

Jeff Neuman: Thanks. Jeff Neumann. Just a question about the first question. This document's intended to be answered by I guess the full working group. But the first question, it seems a little odd to me to ask the working group itself as to whether registry pricing is within the scope of the working group or ICANN's review.

Isn't that question normally given to either the council for what's in the scope of the group and/or general counsel of ICANN to determine? Usually that's where that question is answered.

Lori Schulman: I'm going to give you a big I don't know. I mean, I think that's something... (Mary) has her hand up. (Mary)?

Jeff Neuman: And just to follow up, it doesn't - I think we can spin a lot of cycles within the working group talking about that first question and never have a definitive answer and get 100 different viewpoints.

I think - I guess my recommendation is that we treat that question like we treat that question normally when we're drafting an initial report where one of the required elements is for the ICANN staff, through the general counsel, to answer that question.

That's not a question I think that the working group should spin its cycles on. Otherwise, we'll be here for months and talk about existential philosophical issues.

J. Scott Evans: Okay. I'm going to go to (Mary). I think she has a response. And then I'm going to go to Rubens whose hand is up. And is it Amadeo's hand?

(Mary): Thank you, Jeff, Lori and J. Scott. This is (Mary) from staff. So Jeff, you are right. If there is a question as to scope of the charter of any PDP working group, that question can go back to the council. And in some cases, it may be appropriate for the council to ask ICANN legal counsel if that's appropriate, not appropriate, within or without.

However, it would be very helpful to the council if the working group itself could suggest that something is or perhaps is not or ask the question of the council because the substantive work is being done within this working group and specifically on this set of questions because the starting point was a list of numerous community questions that the council essentially forwarded without editing to the working group. And the subteam's remit was to reorganize and refine those questions.

And so it may be helpful in this case to provide account of the context and possibly even a view and then ask if that view is correct or not.

J. Scott Evans: Jeff, I don't want to drill down into a huge debate here. I'm going to let you respond and then I've got Phil.

Jeff Neuman: Sure. My quick response and recommendation is that this question not be for the working group because we can already predict what the answers are since it's been discussed, that it immediately be referred to the council and not waste time within the working group on this particular question.

J. Scott Evans: Thanks, Jeff. Phil wanted to respond to this. And I see that I've got Rubens, I've got Amadeo and I've got Kurt.

Phil Corwin: Yes, Jeff, thanks for the point. And I just want to state my personal view on this which is - you know, the working group can do whatever it wishes. But I think we are aware that in the first round ICANN took the position it would not set any pricing rules. And we've seen a wide range of pricing by new TLDs from very low pricing to rather substantial pricing.

My view would be that this working group, if we hear from mark holders that pricing of sunrise registrations has impacted their ability to take advantage of that RPM, we could note that. But I think probably since that - changing that is not really a change in RPM. It's really more of a Subsequent Procedure question. So ultimately the answer I think is going to be whether anything should be done about that if that's their conclusion.

It should be something we would share with your group and go to council. But I don't foresee - as we're considering changes in the RPMs, pricing is not within the RPMs, as far as I'm concerned.

J. Scott Evans: No. I mean, I - it's duly noted what your position is, duly noted what his position is. And what we're going to do is we'll take a record and we'll take it offline.

I'm going to go to Rubens.

Rubens Kuhl: Thank you. Rubens Kuhl. I just want to read something from the registry agreement that say that in addition to other limitations on consensus policies, they shall not proscribe or limit the price of registry services. So anything that goes in that direction, it still become an academic exercise of what should be done or not because it's not enforceable due to the picket fence.

But there is something that there is in the limits of consensus policies which are the prohibitions on warehousing of or speculation in domain names by registries or registrars. So we - if that could be turned around to the warehousing and speculation side of it, that can possibly be addressed.

But when it comes to proscribed pricing limits, that will seem to have no effect on contracted parties that don't have to follow policies prescribed in those limits. Thank you.

J. Scott Evans: Thanks, Rubens. I think it was Amadeo then Kurt. Is there - and Denise.

Amadeo Abril: Okay, Amadeo Abril from CORE. Rubens and Jeff are completely right. And how the - and Jeff's completely right. How the question is phrased is very strange. Probably the question that this group has some legitimacy to ask is whether pricing or other procedures have been a deterrent against using the sunrise.

That - then if you go into that, there are many solutions. One is that we devolve the question of pricing in general, even for the TLDs, to the Consumer Protection Working Group that exists somewhere because that's not exactly a mechanism but a fact that happens that made - as a deterrent.

The second one is that if you want to go for discussion of the pricing as a deterrent or not, my advice to take that as how many times or not the GA price is because we are managing TLDs that range from \$5 to 200 euros in general availability. So what's the... And sometimes the sunrise price is exactly the same, 200 euros, but that's a high price for some people, right?

Now, finally, it's not completely a joke but if you really want to use the pricing from registries as a deterrent or not as a deterrent here, why not include in the fees of IP attorneys as a deterrent or not?

J. Scott Evans: Thank you. I would say that I appreciate the way you - because I think the question the way you phrased it, Amadeo, is in our remit. And that is to ask whether pricing has been a deterrent on the use.

Man 1: (Unintelligible).

J. Scott Evans: Right, as a general deterrent. Okay. I saw (Kurt) and then haven't been seen, Denise and then Jon. And Amr, do we have something from?

(Kurt): So Rubens and Amadeo put this a lot better than I. But I think this set of questions doesn't necessarily, once answered, necessarily lead us to a recommendation. But changing is there evidence to is there - is pricing a deterrent might.

And then the sort of things that Rubens brought up later as, you know, what are the countervailing considerations having to do with this, you know, our pricing policies, you know, the market value of dictionary terms that would naturally increase the price of a sunrise name into premium, those sorts of things. But I think those other two guys put it better than I.

J. Scott Evans: Okay. Denise, Jon and then we've got someone online that Amr will read. And then I see Georges' hand is up.

Denise Michel: Thank you. This is Denise Michel with Facebook. I'd like to agree with the last two comments. I think it's important to separate data and data analysis as it relates to pricing from setting pricing, which is of course not within the team's scope.

There's a whole range of issues that for which I think there's a strong correlation with pricing, be it the Trademark Clearinghouse or registry/registrar prices overall and the strong correlation we have seen in abuse of trademarks and generally abusive registrations.

So I would support tightening up or revising the wording on this and also adding from a general collection of data on pricing. Thanks.

J. Scott Evans: I think next was Jon Nevett.

Jon Nevett: Jon Nevett. Thanks. Yes, I agree with Denise and the prior speaker, I guess it was Rubens and (Kurt). This question's not going to give us any useful information.

Is there evidence that registry sunrise or premium name pricing limits trademark owners' ability to participate during sunrise? Absolutely. If you put one name in reserve and that's a trademark, then yes.

So you'll get the answer, we'll get the answer back that says yes there is evidence of that, not was it justified, was it used abusively or something like that. We need some more qualification. Otherwise, we're not going to get useful information.

In Rubens' example about the airport dot geo TLD, if they reserve police, airport, a couple of others, yes, those people who have trademarks in those dictionary terms did not be - they were not able to participate in the sunrise. So yes, there will be evidence for that, probably in every GTLD.

J. Scott Evans: I think we have someone online. And, Kathy, is your hand up? Okay. Amr?

Amr: Thanks, J. Scott. This is Amr from staff. And this is a comment from another working group member participating remotely, Justine Chew. She's saying that for consistency between the sunrise subteam document and trademark claims subteam documents, perhaps ICANN staff could propose or highlight requisite standardization in use of terms such as registrants versus applicants. That's the end of her comment.

But to clarify, this is something that goes to the Trademark Claims subteam's work and we'll get to that in a while. But for reasons on that document to not ascribe intent during the registration process, registrants are referred to as domain name applicants. So I believe that's what Justine is referring to here. So thanks.

J. Scott Evans: And we are going - the chairs have tried to, because we understand that in various cultures when you talk about trademarks and types of trademarks, there are different types of trademarks, and so we're trying to come up with our own working group set of definitions that we will just use within this working group, whether it's relevant outside of this working group. So just so when we say X, everybody understands what X is.

It doesn't matter - we're just going to pick one term, define it and move on. But we are trying to get a nomenclature that everyone can understand when we talk about something substantively what we're talking about when we say a particular term. And we're going to try to do that as often as possible to help this group have effective communications.

Kathy, I believe your hand was up.

Kathy Kleiman: Kathy Kleiman. And this is to Jon Nevett. Not to put you on the spot but to put you on the spot and to help us move forward. Do you have any thoughts on how'd you rephrase so that the question might fall within - capture the kind of data that's probably one or two steps farther than the question is now? But you know the problem, you know what we're trying to capture. What would you offer?

Jon Nevett: Jon Nevett. Yes, I suggested using it as a were they abused? Or was it - I think (Kurt) said deterrent. Yes, it's a deterrent for that single one. So I think you need more than just deterrent. Abusive would be the word I'd be looking for.

J. Scott Evans: Okay, great. And then there's Georges, I'm sorry.

Georges Nahitchevansky: Hi. Georges Nahitchevansky for the record. So I agree that in terms of the questions we need to like perhaps flush it out a little bit more to get this data.

But I think that this data is very useful in the end because it really touches on question three and the question of whether or not you should have a mechanism in place that would allow a trademark owner to challenge a premium name.

And I think the data on the pricing would be very helpful to be able to ascertain whether or not there's in fact abuse of the system in terms of pricing that prevent people from getting their trademarks because they're considered to be premium names and then have a mechanism to be able to challenge that premium classification for those names.

J. Scott Evans: Okay. What I hear and, Lori, is that grouping two needs to have a little bit more work. So I would ask that Jon, (Kurt), Lori, Georges, Denise, if you all could sort of on the list help Lori figure out how to better focus this because I really do, within the next two weeks, want to have this document closed out.

I think the points that have been raised are very relevant and I do think it needs some refining. And I've seen you shaking your head...

Lori Schulman: I agree.

J. Scott Evans: ...so I think you agree as well.

Lori Schulman: Completely.

J. Scott Evans: So if we could just put a pin in it. We're going to go, we're going to work on two to get to the relevant question that we can answer.

And then let's move on quickly through this document. We've got about 15 minutes, 15 or 20 minutes.

Lori Schulman: All right. I'm going to jet through then. I'm going to read the questions. I'll take a brief pause after each group.

I also want to ask the staff for something, please, talking about definitions. One of the remits of this group was to create common understandings around three terms -- premium names, reserve names and premium pricing. We came to a consensus on what we thought would be fair and representative definitions that the entire working group could use. I don't see it in the chart. It didn't make the chart.

If one of you could e-mail me those three, I'd like to present it to the group. Or if you have the report that has the definitions. For you all, I - we posted a report to the list that had sort of an introductory note that I prepared on behalf of the team. Inside that note are the definitions. If there's any way, when I get through these list, to post those definitions for a minute.

I really would like the rest of the community to see what we came to because I think that's going to be very important and it goes to this whole issue of speaking a common language.

Okay, so we're going to move along. We're going to go to group three which I think Georges just mentioned. So what I might do is read it again quickly and then I'm going to get to four.

Should registries be required to create a mechanism that allows trademark owners whose marks have been accepted into the TMCH to challenge a premium name for the purpose of requiring its release so that the trademark owner can register it during the sunrise period? And what concerns might be raised by that requirement?

And I'm going to take the comments that we heard for question two and I'm going to lump them here with three. And I'm going to move on to four. If anybody...

J. Scott Evans: Got a question. We've got a question.

Lori Schulman: Oh, we do? Okay. Sorry.

J. Scott Evans: We still need to pause.

Lori Schulman: I don't see the list.

J. Scott Evans: That's all right.

Lori Schulman: Yes, okay.

J. Scott Evans: Okay, Jon.

Jon Nevett: Yes.

J. Scott Evans: Is there anyone else have a hand up? I saw Jon Nevett.

Jon Nevett: Yes. Jon Nevett. Real quick, you need a standard in here like what - you have to balance the interests somehow and there's no standard. So I would try to add a standard in question three.

Lori Schulman: By standard, can you be explicit?

Jon Nevett: Yes, just going back to Rubens' example...

Lori Schulman: Okay.

Jon Nevett: ...airport or police dot geo TLD. If you have a trademark in police and you say, well, you put it on a reserve list and I want to get it, what standard of review... Is it appropriate for the registry to do that or not?

Lori Schulman: Got it. Okay. Thank you.

J. Scott Evans: I'm sorry, I don't know this gentlemen's name.

Lori Schulman: And Maxim has a hand too, I see and Susan.

J. Scott Evans: And Susan.

Maxim Alzoba: Maxim Alzoba for the record. I think we shouldn't mix premium names and reserve names because premiums usually reserve names. But also for example, geo TLDs reserve names according to the letters of the city, yes. And most probably situations where those names reserved taken from the city will end up in situations which put these particular trademark owners in very unpleasant situation and bet there are court hearing lost, damage to the business. Thanks.

J. Scott Evans: Okay, thank you very much. Susan Payne?

Susan Payne: Yes, thank you. Susan Payne here. I just wanted to come back to you, Jon. Just really briefly, I mean, I think that was implicit. When it suggests a dispute mechanism, it wasn't suggesting that it's a given that if you dispute it, the name gets released. I mean, I think that's what we thought we should be talking about, was - is should there be some kind of a dispute process.

Jon Nevett: Right but - just to reply. Jon Nevett. I think Maxim was right. This is not a premium name issue. It's a reserve name issue. So that should be changed there.

Susan Payne: I think it's both.

Lori Schulman: Let me interject and say maybe that we need to modify it for both and put the standards that Jon has recommended. That's what I would note to staff, that I think we have to address both. We have to have that question look at premium names and reserve names.

Man 2: I completely (unintelligible).

J. Scott Evans: I see that Georges had his hand up.

Georges Nahitchevansky: I was just going to - I join with Lori. I think that it's both. I think the premium name issue is just as much an issue as the reserve name issue. And so we should consider both.

J. Scott Evans: Okay, great. Lori?

Lori Schulman: Okay.

J. Scott Evans: Excuse me. We have a remote question or comment.

Lori Schulman: Oh, I'm sorry.

Amr: Yes, thank you. This is Amr from staff. And we have a couple of remote comments and questions.

One is from Ben Anderson. And he asks: Should we also be asking whether the list of trademarks in the TMCH are being used in an abusive way to create premium name lists in some registries?

Another question by Paul Tattersfield is: Is differential pricing between sunrise and open registrations impacting registrations?

And finally a comment by (Christina Lanke): From the point of trademark owners, sunrise periods should not be more expensive.

Lori Schulman: Okay, thank you. I'm going to ask staff to note all of that because I heard all of it and I think there's a lot of merit to what was being said there.

I'm going to move on then to - I think we're at group four. No, we're at group five, correct? No, we're in group four, I apologize.

Are registry operator reserve names practices effectively reducing the availability of sunrise for trademark owners? Should Section 1.3.3 of specification one of the registry agreement be modified to address these concerns? Should registry operators be required to publish their reserve names lists? What registry concerns would be raised by that publication and what problems would it solve? Should registries be required to provide trademark owners whose marks have been accepted in the TMCH notice and the opportunity to register the domain name should the registry release it? What registry concerns would be raised by this requirement?

J. Scott Evans: Okay, I saw Maxim's hand go up. And I think Amadeo has - oh, okay.

Maxim Alzoba: Okay, some things here. Yes, it affects. But the problem is that it does affect because most geo TLDs and all community TLDs have to use reserve names to protect things that were not allowed, by ICANN refusal to accept the mechanism that they are in the trademark requirements document. That is, for instance, the so-called Approved Launch Product. I think we will talk about that later today. So I don't go forward.

Let me say what we do as a practice. The promise that when you reserve names, I don't think that there is a need to notify. You should notify perhaps when you release names. And this is our consistent practice.

When we release reserve names, we check the sunrise list to see whether there is a master. And we individually notify any of them 30 days in advance that this will be released, at least 30 days because 30 days for everybody so probably before. And we simply tell them, look, if you have this trademark, this name will be released. And you know, we just wait for them to tell us something.

Even if we have no mandate on that because, you know, if that was through sunrise, that's it. And it's over. Okay? But yes, I think that in some cases should be considered a different way.

Regarding the - given the prior question on the release and the premium, etcetera, I think that there is a difference between open and unrestricted TLDs and community-based TLDs.

For open and unrestricted TLDs, reserve names that match trademarks in the Trademark Clearinghouse should not be premium names period. I think this is defeating the system.

For community-based TLDs, there may be a reason. You may have the trademark Barcelona for fireworks in France. It does exist. But you cannot grant this fireworks in France priority over the city hall in .Barcelona. It will make no sense. So you probably need to reserve that to prevent this going on sunrise. Okay?

So I think that the rules here are a little bit different. But you cannot have one size fits all answer.

Lori Schulman: Thank you. Is there any other?

J. Scott Evans: There's a gentleman right here.

Lori Schulman: Okay.

J. Scott Evans: And Maxim was first. I thought he was going to let... So you go and then we'll go over here to this gentleman.

Maxim Alzoba: Maxim Alzoba for the record. I'd like to underline that in geos, most reserved names in the test period before sunrise were done to support public interest because public services such as police, firefighters, etcetera or metro if it's owned by the city. They reserved for public interest because cities, they were - they had, yes, governments elect somehow and thus they represent population somehow. Thanks.

J. Scott Evans: Thank you. Yes, sir.

Brian Cimboric: Brian Cimboric, PIR. I think that the first question in group four, I think that the question isn't really do they effectively limit. I think the heart of the matter is do they unfairly limit participation in sunrise because there may be -- and some have been articulated here -- a number of totally legitimate concerns where something's on a premium list - or on a reserve list that also is a trademark. So I think the question should be: Does it unfairly limit participation?

J. Scott Evans: Thank you very much. That's a good point.

Lori Schulman: Okay, I will move along to group five.

Does the current 30-day minimum for a sunrise period serve its intended purpose? Are there any unintended results? Does the ability of registry operators to expand their sunrise periods create uniformity concerns that should be addressed by the working group?

This was Q7 in the... It's just a little bit - I'm sorry, this is Q7 in the original document. The note is still there.

Are there any benefits observed when the sunrise period is extended beyond 30 days? Are there any disadvantages? In the light of evidence gathered above, should the sunrise period continue to be mandatory or become optional? Should the working group consider returning to the original recommendation of the sunrise period or trademark claims in light of other concerns, including freedom of expression and fair use? In considering mandatory versus optional, should registry operators be allowed to choose between sunrise and claims, that is make one mandatory but not both?

Going to six: What are sunrise dispute resolution policies and are any changes needed? Issues that the work group might evaluate include are SDRPs serving the purpose for which they were created. If not, should they be better publicized, better used or changed?

And then question seven: Can SND files be used for sunrise period registrations after they have been cancelled or provoked? How prevalent is this as a problem?

J. Scott Evans: I think Kathy had a question.

Kathy Kleiman: Yes, I'm sorry.

Lori Schulman: Yes.

Kathy Kleiman: Kathy Kleiman. For question six, I was actually wondering if anyone in the room had any experience with Sunrise Dispute Resolution Policies? Just we're heard that they haven't been used and so...

(Omamru): (Unintelligible).

J. Scott Evans: Sorry, could you please use the mic?

Lori Schulman: Amr, could you turn your mic? (Omamru), I'm sorry. Could you turn your mic on, please?

(Omamru): I'm sorry. It was sort of a joke. Our only experience is approving need and publishing on the Web site. And that's the end of the experience.

Lori Schulman: Thank you. I'm going to move to question eight. I'm sorry, I do see Jon. Go ahead.

Jon Nevett: Jon Nevett. Quick question on five. Yes, there's a 30-day minimum but I'm wondering if we should ask about the practice. I think the vast majority of registries did a 60-day sunrise and not the 30-day notice, 30-day sunrise. So it's really a 60-day period in the vast majority of cases or in all cases because you had to have the 30-day notice period. So I'm wondering if we could reformat that question to take that into account.

Lori Schulman: Absolutely. Okay, I'm going to go to question eight. And this is the subject of a great debate. And again, I think I'm going to remind people in the room, if you're on the working group, I would ask that you, in the interest of time, perhaps cede to people who are not in the working group and are here today.

I think that'll help because this is the LRP/ALP/QLP question. These are the Limited Registration Periods, Approved Launch Programs and Qualified Launch Programs.

Are the Limited Registration Periods in need of review vis-à-vis the sunrise, Approved Launch Programs, Qualified Launch Programs? Are the ALP and QLP periods in need of review?

Okay.

J. Scott Evans: Amadeo. And we're going to go with Amr first, Amadeo, because he's got a remote participant. And then we'll go to you.

Amr: Thanks, J. Scott. This is Amr from staff. There's no remote comment now.

But I just wanted to remind folks to always state their name before speaking, especially for the benefit of remote participants who may not know who's in the room and also for the transcripts. So please, before speaking, always state your name. Thank you.

J. Scott Evans: All right. I'm not - this is J. Scott. The chair isn't going to do that because I'll just be saying my name the whole time. Amadeo and then Kathy I think had questions.

Amadeo Abril: Now? Yes. Amadeo Abril from CORE. There's a sum(Mary) here because I was asked to specifically address this question after (unintelligible) or for something. I don't know whether we will come back or I should explain everything now.

The short answer is that QLP has - I mean, the 100 names -- which is the Qualified Launch Program that many registries call pioneers or something like that -- this I think has worked to general satisfaction and not much problem. But there was not enough.

Then there were other things, that is Approved Launch Programs. And this has been a complete failure and a complete fraud because ICANN staff has not been willing to approve anything else than the one as a test. And that one has not been yet - been carried out.

And it took one year to - one year. I just - to be more precise, 360 days so five days short of one year -- I was exaggerating, sorry -- to never sit down with the ICANN staff, okay? So it has not worked.

And ICANN has been asking for conditions which are not in the policy. And IPC has been opposing everything with arguments that had nothing to do with what's in the requirements. So this needs a very profound rethought.

And there's another one, the third one, regarding special clause for the geos that has never even been attempted. So yes, those two, 4.5.2 and 4.5.3 in the Trademark Clearinghouse requirements are complete failures.

J. Scott Evans: Okay.

Amadeo Abril: Complete failures in the difference sense that you ask it. That is, sunrise has been always there because the other things that were, you know, feared as to, you know, blocking sunrise or having a conflict with sunrise have never been attempted or authorized.

J. Scott Evans: Okay. Kathy?

Kathy Kleiman: Kathy Kleiman. Just wanted to add a few notes. One is that if you're looking for definitions of the Limited Registry Period, Approved Launch Program and Qualified Launch Program, they're in the footnotes. So people who don't read footnotes, take a look at those.

And to Amadeo, we will have time - to Amadeo? Over here, hi. Okay. We'll have a lot of time in the third hour to talk about this. So please stay and share more stories. Thank you.

J. Scott Evans: Okay, Rubens and then Jeff. Jeff.

Jeff Neuman: Yes. Just a - sorry, just a quick point. Jeff Neuman. Is the question whether something needs to be reviewed or what aspects of the program need review? Is it? Because it's not asking for details. It just says, does this need to be reviewed. It's a simple yes/no question. Shouldn't we ask things like what aspects of the program need to be reviewed?

Lori Schulman: I mean, we can. Lori Schulman for the record. This is, you know, basically the consensus as a team came to, is we're not even sure if the need review. I don't know how else to say it.

But if there are aspects that are troublesome to any of the communities in the room, I think we need - to your point, they should be identified although we didn't identify them on the calls. So that would be something we would really welcome input into the document for at this point. Okay. But thank you for the point.

J. Scott Evans: All right. Let's - we're going to be breaking for coffee in just a few minutes so if we can try to get through before our break so that we can move to our next hour.

Lori Schulman: I'm going to ask for some help on my subteam - from my subteam if there's any questions. I'm looking at nine and maybe because it's been about a week that I haven't seen these questions, I'm not sure I even understand it.

But in the light of the evidence gathered above, should the scope of the sunrise period be limited only to GTLDs that are related to the categories of goods and services in which the dictionary terms within the trademarks are protected?

I think that means should sunrise only - actually, I don't... I hate to be confused by this but I don't recall. There's something about this wording that doesn't seem familiar to me.

J. Scott Evans: Susan?

Lori Schulman: Susan Payne.

Susan Payne: Yes, Susan Payne for the record. It's this topic that we've talked about extensively already. I think we talked about it for hours in Copenhagen. It's for, should you limit the scope of the RPMs to their categories of goods and services for which the trademark is actually registered and put in the Clearinghouse.

Lori Schulman: Okay. I apologize. I know we had these discussions. But I'm looking at the wording, and I'm wondering if we can clear it up and to make a note about that.

J. Scott Evans: Right. I mean...

Lori Schulman: Okay.

J. Scott Evans: I personally think, as this is the first time I've seen it and I've practiced trademark law for 25 years... Susan, would you - the question, the way you just phrased what this is is much clearer. So can you get that wording to Lori because I understood what you said then? I don't understand that.

Lori Schulman: Yes, exactly. And to the - just to the group in general, we worked through these, actually by ICANN standards, at a pretty quick pace. So we probably understood what we were talking about when we did this. But again, now I've had some space. And we will work on the wording.

Ten: Explore the use and types of proof required by the TMCH when purchasing domains in the sunrise period.

And I'm going to qualify there and just say, you know, are those adequate, does that work, to number ten.

Number eleven: How effectively can trademark owners who use non-English scripts -- which I believe was referenced before -- and languages participate

in sunrises, including IDN sunrises? And should any of them be further internationalized, such as in the terms of service or languages served?

And finally 12: Are there certain registries that should not have a mandatory sunrise based on their published registration/eligibility policies?

We have examples here. And I believe it was already mentioned by Maxim and Amr as well that you could have things like Police.Paris, Police.NYC for geo GTLDs and Windows.Construction for specialized TLDs. And it may not make sense to have a sunrise period there when there are many, many uses.

Amadeo Abril: It does make sense, sorry. Amadeo Abril from CORE. It does make sense to have a sunrise. The question is whether the sunrise should have absolute priority in that concrete TLD or some (unintelligible) could have same or higher priority. But a sunrise is still justified. Trademarks are trademarks. And a write-in must be protected against people don't have any claim.

So the question is just priority and top priority. It's not existence of sunrise. Yes, absolutely in favor of having sunrise for all TLDs that are open to third-party registrations.

Lori Schulman: Thank you. Thank you. Susan, yes?

Susan Payne: Yes, I - what Amadeo said is entirely what I was about to say, which was actually within the group, we had agreed that this question wasn't a yes/no question. It was meant to be more nuanced than this of, you know, do some registries need to have a slightly different rule rather than, you know, do you either have a sunrise or not a sunrise. It was much more nuanced than that.

Lori Schulman: Yes. I think there's something lost in translation between the last version and this version. And we'll correct that, no worries.

J. Scott Evans: Maxim.

Maxim Alzoba: Sure. Maxim Alzoba for the record. Actually talking about geos, we even had to invent special sunrises for local trademark owners because we thought that they needed protection. So we created special limited periods for them then for local licensed media.

And it gave them priority and ability to register a name before the general availability because unfortunately, due to lack of transliteration in Trademark Clearinghouse historically, for example in Russia, since .Re was Latin script - companies, translated badly into badly into English their names, trademark names and all company names. And people used to understand that yes, it reminds me the name of the company so it must probably be their site.

So we had to offer them possibility to register what reflects their company name or trademark name.

Also for small businesses and, I'd say, sometimes even the price of TMCH entry is deterrent. If you talk about small businesses like family-owned bakery or something, they count each dollar. So, yes, we thought that they are in need of protection. Thanks.

J. Scott Evans: Great. So what I have taken away from this is we have a little bit of work on clarification on about probably five parts of this. So I would ask that the people who have identified issues would get their comments to staff and Lori so that we can get this document cleaned up for presentation to the working group with the final document.

I would also like to take this opportunity to thank Lori for her incredible leadership in leading this subteam and for all the members of the subteam who participated.

I would also ask that if the registries and registrars that are going to participate in the - help us discuss in our third hour if you could look this over

and if you've got some additional questions or some points you want to make in that third hour, it's a time for us...

Use this as a jumping off point. You see what we're trying to find out and what we're trying to learn about. And let's use that to help frame some of our discussions because we have learned some very valuable things in this last hour just in crafting these questions. Lori and then Phil.

Lori Schulman: Yes, I have a request of the chairs. I really do think it's important to go over the definitions. And I realize that it's time limited. Can we defer it to hour three? Would that make sense? Or just start right with that for five minutes after the coffee break?

J. Scott Evans: We'll start with that.

Lori Schulman: Okay, thank you. So if staff could get those ready for posting, that would be awesome.

Phil Corwin: And Phil Corwin for the record. One, I want to echo the thanks to the subteam and to the staff for this excellent job.

And just to reiterate a point that J. Scott made in his opening remarks. What - we're trying to stick to the schedule but if you never - if you don't ask the right questions, you'll never get the right answers. And here's an example of where it took nine calls over 12 weeks to get the questions to this state and they're still not quite right. And that may be the easy part, easier than answering the questions.

So it just illustrates the complexity of what we're dealing with here and the care. And while we're trying to move with all deliberate speed, this review isn't going to happen again for many years, if ever.

So it's very important that we do it very carefully and ask the correct questions and then try to get the correct answers. And if it takes a few more weeks to get to that point, it's important that we do it right. Thank you.

J. Scott Evans: Thanks, Phil. So we are now going to take a break. Come back in 15 I think. And then Kathy's going to chair the second hour. And we will start with the questions - the definitions so that we can get a common understanding.

And I want to thank everyone for their participation this morning and especially to those folks who are on the phone and are sitting in their bedrooms or their living rooms or their offices at odd hours for participating. We really appreciate your dedication to this work.

END