
ICANN Transcription

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

Wednesday 13 February 2019 at 1800 UTC

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MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening. Welcome to the RPM Sub Team for Sunrise Data Review call on 13 February 2019.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge, would you please let yourself be known now?

Hearing no names, I would like to remind everyone to please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid any background noise.

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With this, I will hand the meeting back over to Julie Hedlund. Please begin.

JULIE HEDLUND:

Thank you very much, Michelle. On the agenda today, we have the updates to statements of interest and then really Items 2 and 3 will be combined in that we are going to look at the Charter Questions 1-12 and noting that Charter Questions 6-12 have some text that we did not get a chance to cover last week. And so we'll address that text, those comments which will be noted in green as we go through the charter questions against the data and including the analysis of the data sources that were homework for this week.

And then, may I ask if anyone has any other business? Then at this point, I'm going to go ahead and turn this over to David McAuley who as the co-chair of the sub team will be chairing today. David, please?

DAVID MCAULEY:

Thanks, Julie. Hello, everybody, and welcome to the call. As Julie said, we will combine Agenda Items 2 and 3 and simply go through the documents. And with respect to a good number of them, we'll be looking at the Analysis Group Independent Review plus two follow ups they did. And then with respect to 6-12, we'll be looking at previously submitted documents as indicated in green in the documents.

So why don't we go ahead and begin. I'm going to be toggling between the documents that I have up in my Internet browser and

the Adobe room, so bear with me if I fail to see your hand. I'll get to it as quickly as I can.

But I'm going to turn first to the preamble question. With respect to the Sunrise Preamble Charter question, I do see that perhaps along with 6-12 there are some comments that are in green, especially from Griffin that is, that relate to other sources of data. So you'll see when you go through that document that Griffin has indicated, yes, it's helpful with respect to sub questions a-c. And he has indicated in the third column just exactly how and where that happens.

And then following Griffin, I said possibly there may be some help in the Analysis Group's Independent Review. I should note parenthetically because it pertains to a lot of other documents inasmuch as the Sunrise portion of the Analysis Group Independent Review which is dealt with primarily in pages, I forget the exact number, but in the 30-37 range, somewhere in that. While there was helpful information, and there certainly was, it's also I think helpful to look at the Appendix I which is a summary.

And it sort of brings us back, I just want to make this one parenthetical note, it brings us back to the discussion we've had before of statistical validity versus anecdotal information. I wanted to just underscore that in Appendix I you will see that some of it is anecdotal. For instance, in one or two cases actually from an individual, such as a TMCH agent said this, a registry said that. So I just wanted to make that clear. It's useful information I think. We've had that discussion before. But just to be clear about what Appendix I is. And that actually is in the individual review as I recall from Pages 64-67. I thought it quite helpful.

So then following my comments, Greg has a series of comments pointing to potential helpfulness here with respect to sub question a, with respect to sub question c, d, a, b, d, etc., and Greg points out specifically in what sections.

And so I will now ask if anybody has a comment on that. If any, Griffin, myself, or Greg want to embellish on what we said. I see George's hand up. Let me just finish one thing, George, then I'll ask you to take the floor and go ahead and do that. And then we will move sequentially 1-12. Thank you. So first hand up and first to take the floor is George. George, go ahead.

GEORGE KIRIKOS: [It's nice] to see some new names on the Google doc this week, so hopefully everybody had a chance to [shine]. I still....

DAVID MCAULEY: George, could I interrupt just for a second and ask? I don't know if others are having this issue, and I do have a head cold. But could you speak up just a little bit?

GEORGE KIRIKOS: Yeah, I'll try. Thanks. Can you hear me better now?

DAVID MCAULEY: Yes, thanks.

GEORGE KIRIKOS: Yeah, in addition to the [nuggets] that other people were able to unearth this week, I would add Table 1 from Page 9 which shows the most frequently requested terms which were all very common words or acronyms, the top ten. And so the Sunrise impact of giving them first dibs is relevant to this question.

Also, on Page 35 there was a note about how the larger trademark holders make more Sunrise registrations. So that might be relevant to this charter question because one would think that the larger companies would be better positioned for enforcement outside outside Sunrise, but that's open to interpretation. Thanks.

DAVID MCAULEY: I was just speaking to a muted phone. Thank you, George. Next in the queue is Kathy. If you would please, go ahead.

KATHY KLEIMAN: Yeah, thank you, David. Can you hear me?

DAVID MCAULEY: Yes, I can hear you.

KATHY KLEIMAN: Terrific. I'm sorry to hear you're not feeling well. I just have a general question, which is I at least have when we do the preamble first, which is whether this document will stay open so that after we go through the more detailed questions we can come back to this kind of umbrella document and put in conclusions that

we may have gathered from the data that were analyzed. So the question is, is the document going to stay open? Thanks.

DAVID MCAULEY: Thanks, Kathy. I'll attempt to give that an answer. I recall your comment from a week ago or maybe two weeks ago asking that the preamble be considered at the end. I hadn't forgotten that, but I wanted to go through the document sequentially in this call. I think you do make a good point in that the Sunrise Preamble Charter Questions are sort of overarching questions. And I will take it up with Greg. I can't make a decision by myself, but I think you're making a reasonable point.

And having said that, I see that the next person in the queue is Susan Payne. So, Susan, why don't you go ahead and take the floor.

SUSAN PAYNE: Yeah, thanks, David. I just wanted to [say], firstly, I did also put a couple of comments in the table as well. But I think they're the ones after Greg's and so they go on to another page.

DAVID MCAULEY: I apologize for missing them.

SUSAN PAYNE: No worries. And then [inaudible] those who were on the claims call and have heard me already say this, I did just want to make an overarching comment about the analysis report which is that that

throughout the report they make numerous references to the lack of available data and the various assumptions and conclusions they've drawn many of which are based on no evidence whatsoever but are simply "it could be this, it could be that."

So, certainly, there is some data in there and we can certainly use it to help inform us, but we do have to be really careful when we're using the conclusions and the assumptions that Analysis Group have made because they are not data and they are quite often based on nothing more than possibility of the consultant.

So I'm going to try not to keep saying this every time we go on to a different question, but I just wanted to make that overarching comment. Thanks.

DAVID MCAULEY:

Thank you, Susan. Next in the queue is Greg. Greg, why don't you go ahead please.

GREG SHATAN:

Thanks. First, in answer to Kathy's question although you and I need to talk and we may need to talk to the co-chairs about it, I agree with what George said in the chat. It was we shouldn't put conclusions in this document because we also have a separate survey document. So I think this document is kind of the data gathering document, and analysis and conclusions should be living elsewhere. Ultimately, of course, in a report from the sub team. But just logistically, this is probably not the place they will be. But, of course, the documents will be reopened and [inaudible] that there's analysis that's been put in here to be transferred over

as a partial starting point or continuing point in the other document. And maybe staff has even been doing that along the way.

And with regard to what Susan said, I think what Susan said is, again, not all that different from what George has been saying about this too which is based both on the lack of data and on the Analysis Group's willingness to proceed fearlessly even with a lack of data, this is not a highly persuasive or predictive document. It's useful, but asterisks all around. So I don't think you'll have to keep on saying it, Susan. But I think if anybody relies too heavily on this saying this is the way it is as opposed to a policy argument that this is the way it should be, then I think we will revisit that point. Thanks.

DAVID MCAULEY:

Thank you, Greg. Fair points. Seeing no further hands in the queue, let's move on to Question 1. You'll see that there are new comments, the green comments, a number from Greg. Having a little bit of trouble scrolling there. One from Griffin that goes back to Deloitte. There's a comment by myself somewhere, I've lost track of it, and Michael Karanicolas. So you'll see that in each case, people have indicated where in the Analysis Group Independent Review where it can be found.

So I will open the floor to this. George, I see, has a hand up. I'll open the floor to this particular document in case anyone wants to build on what they've said or make a comment about the data source. So, George, go ahead please.

GEORGE KIRIKOS: Building on what my colleagues have suggested, I would also add from Page 28 and also on Page 3 where they talk about the costs for the registrars and the registries of expanded [batches]. Thank you.

DAVID MCAULEY: Thank you, George. Let me just refer back to something you said to the previous document too about Table 1. I would simply add to that Tables 11 and 12 in the Preamble document are also of interest from the Analysis Group, particularly on Sunrise. But these are good points, and hopefully they will be captured.

And, Maxim, your hand is next. So why don't you go ahead and take the floor on Question 1.

MAXIM ALZOBA: I just want to note about the not exact match item. As I understand, it was discussed and we ended up talking about the investigation of how much is it going to effect systems, including ICANN systems, registrar systems, TMCH, and it ended up with nothing. So we discussed, but we didn't come to any conclusion. So I believe it was talking about the so-called extended match. Again, we're going to come back to these investigations. Thanks.

DAVID MCAULEY: Thank you, Maxim. It's a fair point. I do think Greg made a good point in describing this document as a sort of a data gathering

tool. But you make a good point. I don't see any further hands with respect to this document, so we're going to move to Document 2. Griffin, myself, Michael, Susan, and Greg have added comments on this. This is the document dealing with Charter Questions 2a whether registry Sunrise or premium name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise and, if that's the case, how extensive is it.

Kathy, your hand is up first on this, so why don't you go ahead and take the floor.

KATHY KLEIMAN: Actually, David, I just wanted – my hand went up at the end of Question 1. I apologize.

DAVID MCAULEY: Whoops, sorry.

KATHY KLEIMAN: Can I just [inaudible] briefly there? Would that be okay? We don't have to go back to the document.

DAVID MCAULEY: Please do. Go ahead.

KATHY KLEIMAN: So Charter Question 1 is about the availability of Sunrise registration, should it be only for identical matches. I just wanted

to point out that Michael Karanicolas actually put in some quotes from the Analysis Group that address this directly and indicate that it would be of little benefit to the trademark holders to expand this. So I just wanted to point people to that data and the analysis that was done on that toward the end of the main report, like 37-38. Thanks.

DAVID MCAULEY:

Thank you, Kathy. This toggling that I'm doing sounds from a couple of comments like I'm not doing it well, so I may slow down just a little bit. And I will ask again one final time about Charter Question 2, the one about the registry Sunrise, premium name pricing, on that particular document if anyone wants to comment or enlarge on the comments that they made in the document.

Not seeing any hands, I will move on to the document dealing with Charter Question 3. I'll be a little bit more careful this time to make sure I get all the comments. this is the question that asks in three subparts, should registry operators be required to create a mechanism that allows trademark owners to challenge the determination that a second-level name is a premium name or reserved? Should registry operators, under question b, be required to create a release mechanism in the event that a premium or reserved name is challenged successfully so that the owner can registrar the name during Sunrise? And what concerns, under question c, would be raised by either or both?

So with respect to new comments here, we have comments from Griffin. Where he answers yes, he has an indication in the Analysis Group's report Page 65 where that would be found.

So I will then invite comments on this. Maxim's hand is up first. So, Maxim, why don't you go ahead and take the floor.

MAXIM ALZOBA: It's [not] about the previous question. The thing is that premium pricing is pricing, and pricing is outside of the remit of our group. So just notice because of so-called picket fence in contracts of registries and registrars. So even if we invent something, we can't do much. Thanks.

DAVID MCAULEY: Thank you, Maxim. So I will then ask if there are any comments on Charter Question 3. Maxim, your hand is back up so that must be a new hand. So go ahead and take the floor.

MAXIM ALZOBA: A new hand. It's about reserved names. As I mentioned before, the reserved names [first] it's not a static item. It's something we change dynamically. And it's not only for Sunrise period. It exists at any moment of time from the start of [inaudible] until the [death] of it. And it's something which allows [system] which works actually almost real time. And there is no way registry can say, "Okay, wait a second. We don't reserve this name. Yes, we have to [review] something. We have to establish [ourselves]." No. It's something which this is decided on a software level. It's [a least]. If it can pass through registration phase [or] not. And if we [find a way] to affect one of the most important mechanisms in software platforms and registries around the world, we might affect security

and stability of the system. And I do not believe it's in our remit to do so. Thanks.

DAVID MCAULEY:

Thank you, Maxim. Closing down then Sunrise Charter Question 3, we can move on to Question 4. This is the question. Are Registry Operator Reserved Names practices unfairly limiting participation in Sunrise by trademark owners? Should Section 1.3.3 of Spec 1 of the Registry Agreement be modified to address that? Third question, should Registry Operators be required to publish Reserved Names lists. What Registry concerns would be raised by that publication, and what problems would it solve? And finally, should Registry Operators be required to provide trademark owners in the Trademark Clearinghouse notice and the opportunity to register the domain name should the Registry Operator release it. What Registry concerns would be raised by this requirement?

So new comments in green, we have Griffin ICG no. I took the approach that that possibly is the case in Page 65 of Appendix I in the Analysis Group. Susan Payne also indicated limitations in data with respect to Question 4a and pointed to the Analysis Group report of Page 35.

So if anybody would like to build on their comments or make an observation about these as data sources, please do so. I'll look for hands for a second before we move on to Question 5a. I'm toggling madly, but I don't see any new hands.

And so I'll move on to Question 5a. This is the Sunrise Charter Question that dealt with, does the current 30-day minimum for a Sunrise Period serve its intended purpose, especially in light of the fact that many registry operators ran a 60-day Sunrise? Sub questions: Are there unintended results to this? Two, does the ability of Registry Operators to expand Sunrise Periods create uniformity concerns that should be addressed by the working group? Three, are there benefits observed when the Sunrise Period is extended beyond 30 days? And four, are there disadvantages to that?

Here in the new information in the green, we have Griffin and myself indicating no. Michael has indicated yes and pointing to Table 12 in the Analysis Group report and then also Page 36.

I will ask if anyone would like to comment on these data sources or enlarge on what they said. I shall wait a minute for any hands up. Susan, your hand is up. Why don't you go ahead.

SUSAN PAYNE:

Yeah, thank you. Oh, good. Michael [inaudible] hand up. It was actually a request because I didn't really understand Michael's point about Table 12. And I'm sure it's me rather than him, but I was wondering if he could explain it in more detail so perhaps I can understand what he's getting to. Thank you.

DAVID MCAULEY:

Thank you. Michael, you're next. Why don't you go ahead.

MICHAEL KARANICOLAS: Sure. Table 12 is actually on Page 37, not 36. So that's an error on my part. I think the general point is just to flag relatively low use of Sunrise period even among trademark holders that are aware of the Sunrise. And so I think that that tied to arguments that a longer Sunrise period wouldn't necessarily make a difference because if you look at the broader statistics there, you're finding that there's not a huge amount of uptick even among people that have awareness of the Sunrise. So fundamentally, I think that argues against extending it out as being of a lot of value.

DAVID MCAULEY: Okay, thank you. I don't see any further hands on this question, so we're going to move to 5b in just a second.

So doing that, moving on to 5b, this is the question, in light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional? There are two sub questions. Should the working group consider returning to the original recommendation from IRT and STI of Sunrise Period or Trademark Claims in light of other concerns, including freedom of expression? In considering mandatory versus optional, should the Registry Operators be allowed to choose between Sunrise and Claims, make one of them mandatory?

On this question in the new information, we have Griffin indicating no. I said possibly at Pages 34, 35, and 38 in the Analysis Group Independent Report. Michael also points to the report at the same pages, 34 and 35, and indicates, yes, this could be helpful. Susan also made comments again along with limited anecdotal input in both Analysis Group Page 34 and Page 6.

So those points being made, George's hand is first in the queue. I'll say, George, why don't you go ahead and take the floor.

GEORGE KIRIKOS: First off with regards to Griffin's answers that are in green, those are actually responses to last week's homework, not this week's homework. So you might want to take that into account.

DAVID MCAULEY: Thank you.

GEORGE KIRIKOS: We made that point in the chatroom, but you might have missed it because you're presiding.

As for this question, I found four additional data points that might be relevant to this question. On Page 3, it talks about there's a reduced need for trademark holders to utilize Sunrise registrations. On Page 16 and also on Page 18, it talks about the 0.3% dispute rate which would also tend to go to the answer to this question. Also, on Page 65, it talks about how registries are less convinced that Sunrise actually helps trademark owners. And on Page 66, it talks about a general lack of interest in Sunrises compared to the past rounds of TLDs like, I guess, .info, .biz, and .xxx, and so on. Thank you.

DAVID MCAULEY: Thank you, George. So we will make a note of that page. Let me just toggle back here. Page 3, Pages 16 and 18, and then also 65

and 66. Useful information on these questions for the reasons noted. Thank you.

So not seeing any further hands on 5b, we are going to move to Question 6. What are Sunrise – I'm sorry. Was that Kathy? Was that you?

KATHY KLEIMAN: It was. [I had my hand up.]

DAVID MCAULEY: [Okay, go ahead.]

KATHY KLEIMAN: Okay, so just wanted to point to some interesting data here that Michael posted. In the summary on Page 3, as George just said, and on 34 and 35 that seems to suggest kind of an optional model because trademark owners seem to be choosing among mechanisms. So “the trademark claims service may reduce the need for trademark holders to utilize Sunrise registrations.” I’m reading a quote. And also that the blocking services, using blocking services “trademark holders may feel less necessity to utilize a Sunrise period.” So the optimal combination of mechanisms may be ones that the registries choose. So I just wanted to share that 34 and 35 are interesting pages for this. Thanks.

DAVID MCAULEY: Thank you, Kathy. Susan's hand is now up. So, Susan, you're next. Go ahead.

SUSAN PAYNE: Hi, yes, thanks. I recognize that that's what [inaudible] say. [It is] one of these many examples of them basically speculating and drawing conclusions that aren't necessarily there.

Regarding the blocking mechanisms, I think it is important to bear in mind that obviously we don't have blocking mechanisms across every registry. There are registry specific mechanisms. And so if you were in a Rightside registry, to use an example, and you chose the blocking [version], then you didn't need a Sunrise registration because you blocked. But the block is effectively a cost-effective series of registrations, if you like, equivalent to doing a Sunrise.

But I don't think we can start saying trademark owners had a choice to have a blocking mechanism and therefore they didn't need the Sunrise. Unless you all want to start talking about let's have a block across [inaudible] registry. I'm very happy to have a conversation about that, but no one else seems to want to do that.

So that's all I wanted to say on that one. Thanks.

DAVID MCAULEY: Thank you, Susan. Next in the queue is Michael. Please go ahead, Michael.

MICHAEL KARANICOLAS: Yes, just in response to the first half of that. I think in both of the passages that I posted they are showing their work and they're mentioning how the results that they have are supporting or relating to the conclusions that they're drawing. So you may not agree with those conclusions and you may not agree that the data supports the conclusions, and that's a fine perspective to take. But they are in both of those instances [saying] here's the results that we got and we believe that it leads to this conclusion. So at the very least, it's not conclusions being drawn from no data because they are in both cases expressing why they believe the data supports those conclusions. Thanks.

DAVID MCAULEY: Thank you, Michael. Susan, come back, so you have the floor now.

SUSAN PAYNE: Yeah, but I don't think they're drawing a conclusion that this [is] a selection of one over the other, are they? I mean, it doesn't seem to me that they are. They are drawing various conclusions based on their assumptions, but they're not drawing that particular [inaudible] assumption. You are.

DAVID MCAULEY: Thanks, Susan. Michael, do you have any final comment on that before [inaudible]?

MICHAEL KARANICOLAS: [Sure.]

DAVID MCAULEY: Go ahead.

MICHAEL KARANICOLAS: Are you saying in terms of the conclusions [to] the actual charter questions?

SUSAN PAYNE: Yes.

DAVID MCAULEY: Okay, so, Michael, any comment?

MICHAEL KARANICOLAS: Well, in terms of whether it should be....

DAVID MCAULEY: [inaudible] on list.

MICHAEL KARANICOLAS: Yeah, sure, let's – sorry, I don't want to just monopolize this.

DAVID MCAULEY: Yeah.

MICHAEL KARANICOLAS: But I'll be happy to follow up on this.

DAVID MCAULEY: Okay, any further comments then on Question 5b or additions? If not, we're going to move to Question 6. This is the first one that we mentioned where there was some carryover from last week. So this is not simply limited now. New comments are not simply limited to the three sources, the Analysis Group report and follow ups. So on this question, what are Sunrise Dispute Resolution Policies (SDRPs), and are any changes needed? Are SDRPs serving the purposes for which they were created? If not, should they be better publicized, better used or changed?

We have comments in green from George, extensive comments indicating input from registry operator responses and Deloitte and other sources. We have Kathy, Griffin indicating helpfulness in certain respects. Myself, no with one possible indication to the [Analysis Group] Appendix I. And then Greg also said somewhat with a reference to Appendix I.

So my question with this, as you can imagine, is does anybody have a comment, they want to enlarge on their comments here, or otherwise make an observation in these respects? And Kathy's hand is up. She's first in queue. Go ahead, Kathy.

KATHY KLEIMAN: Yeah, David, let me just double check. We didn't hit this one last week, right? That's what you were saying?

DAVID MCAULEY: Yes, that's right.

KATHY KLEIMAN: Okay. So going back to the [inaudible].

DAVID MCAULEY: Kathy, you're coming through quite faint, so if you could just speak up a little bit.

KATHY KLEIMAN: Okay, is this better?

DAVID MCAULEY: Yes.

KATHY KLEIMAN: Sorry. Bad cellphone [inaudible].

DAVID MCAULEY: No, that's fine.

KATHY KLEIMAN: Okay, good. I just wanted to point to my comment where we had some really interesting answers on this one. Are the SDRPs serving the purposes for which they were created? Donuts requests hundreds of gTLDs, has not had a single Sunrise dispute policy. The same for PIR, which was probably a smaller Sunrise rollout. But the Sunrise Dispute Resolution Policy was really

premised on the openness of the Trademark Clearinghouse database and the ability to review and challenge trademark owners who [misuse] the Sunrise or someone who had the equal right to be in the Sunrise. And it can't serve it's purpose. You can't use it if you can't access it. So I think we're getting some pretty clear answers here. Thanks.

DAVID MCAULEY: Thank you, Kathy. Next in the queue is George. Please go ahead, George.

GEORGE KIRIKOS: Yeah, this was kind of answered by the Deloitte survey, but I think it's very important to note that let's suppose that a domain name is taken in Sunrise and you attempt to register that domain name. All that you're going to see is that the domain name is taken. You're not actually going to see a claims notice. You're not going to see anything related to which trademark was used to get that name. So Kathy's point is entirely correct. You won't actually see the registrant contact for the TMCH [inaudible] the jurisdiction, the goods and services, all that stuff is only visible if the domain name is available. In which case, it wasn't registered in Sunrise. So it's kind of a very weird thing that this database is not public. Thank you.

DAVID MCAULEY: Thank you, George. Does anyone else wish to make comment with respect to Question...?

BRIAN BECKHAM: David?

DAVID MCAULEY: Yes?

BRIAN BECKHAM: Can you hear me? I'm only on audio. I'm sorry.

DAVID MCAULEY: No, we can hear you. Go ahead, Brian.

BRIAN BECKHAM: Thank you. I just wanted to say actually we touched on this a little bit in the earlier call, and I think there was a question about – just to pick up on what Kathy said – whether it's right to say that a person doesn't have information about the trademark when a claims notice is triggered. So I just wanted to mention that. And then, depending on whether it is or not, that might help inform the discussion. Thanks.

DAVID MCAULEY: Thank you, Brian. So there's no one further in the queue right yet. And if not, we're going to move on to Question 7, which again is one of those that's carried over from last week in certain respects. The questions are, can SMD files be used for Sunrise Period

registrations after they have been canceled or revoked? And how prevalent is this as a problem?

We have comments from George referring to the Deloitte documents and extensive comments. Griffin also from registry operators and Deloitte has made some comments [inaudible] helpful. I indicated that the Analysis Group was probably not all that helpful.

With those comments being made about Number 7, I'm going to see if anyone has anything further they wish to say in this respect. And it appears not. Whoops, Kathy, your hand is up. So why don't you go ahead and take the floor.

KATHY KLEIMAN:

Hi, David. It's a question for those who posted answers, which is what's the answer? Can an SMD file be used for Sunrise period registrations – and I guess you would say globally protected marks registrations as well – after they've been canceled or revoked? If anybody has a quick answer to that, that would be great. Thanks.

DAVID MCAULEY:

Thanks, Kathy, for posing the question. Susan's hand is up next. So, Susan, why don't you go ahead and take the floor.

SUSAN PAYNE:

[inaudible]

DAVID MCAULEY: Susan, I'm sorry. I didn't hear that. George, your hand is up. Why don't you go ahead and take the floor.

GEORGE KIRIKOS: I'm not sure that Susan's answer is correct. It may be, but my interpretation of what Deloitte told [us] is that the onus is on the former trademark owner, i.e., the customer of the TMCH to actually tell Deloitte that the mark has been canceled. So if they don't actually go through and tell Deloitte that the mark has been cancelled or revoked, the SMD file is still valid. This actually would be [less] the case if the SMD file is generated dynamically, i.e., for every [inaudible] TLD launch it has to be generated for the TLD. But I'm not sure of the mechanics of that, whether that's actually being done. But from what Deloitte said in their documents, it still seems to be valid even if the underlying mark has been canceled. Thanks.

DAVID MCAULEY: Thank you, George. Susan has her hand up. So go ahead, Susan. You're next.

SUSAN PAYNE: Thanks. Sorry. Apologies. I may have misunderstood [Kathy's] question. I thought she asked if the SMD file could be used when it has been canceled. So if I answered the wrong question, then apologies.

DAVID MCAULEY: Thanks, Susan. That was my understanding as well. But George's hand is up. I was going to ask you, George, if you have anything further to say in light of what Susan just said, but you're the only hand up right now. So why don't you go ahead.

GEORGE KIRIKOS: Yeah, I was [inaudible] answer the question if the mark has been canceled or revoked. So maybe I was looking at it differently. So if the SMD file itself has been canceled, presumably not. But I was more answering the question if the underlying mark is canceled or revoked. Thanks.

DAVID MCAULEY: Thank you. Thanks, George. It was my impression that the question was relating to the revocation of an SMD file. I will wait just one second, Kathy, if you want to clarify in any respect. But otherwise, we are going to move to Question 8.

And I'm going to toggle now to Question 8. And it's another carryover. This question deals with limited registration periods, approved launch programs, and qualified launch programs. Three questions. One, are Limited Registration Periods in need of review vis a vis the Sunrise? Same question with respect to the other two. Second question, Are the approved launch programs and qualified launch program in need of review? And final question, what aspects of the limited registration periods are in need of review?

So we have new information from George from the Deloitte. You'll see where he points out specific information. Griffin was of the

opinion no. I was of the opinion no with respect to the Analysis Group report. And Greg Shatan also added information from the Appendix I of that Analysis Group report indicating some potentially useful information.

So I will come back and look for a hand up. I see George's. Go ahead, George. You're first in the queue.

GEORGE KIRIKOS:

I agree with Greg's point that he added, but he missed the second column so he might want to put a yes in that second column. In addition, from the Analysis Group report on Page 7 they do mention that 97% of the marks were Latin script. So that might have an impact on geographically oriented TLDs. Also on Page 7, it mentioned that there were only 1,700 users with the United States of America really dominating. And so that might affect geographical TLDs and local TLDs, for example, the .moscow example. You don't want to necessarily give American marks higher priority in Sunrise than local brands from Russia. Thank you.

DAVID MCAULEY:

Thank you, George. That's useful. Anything further on Question 8?

Not seeing any, we'll move on to Question 9. In light of the evidence gathered above, should the scope of Sunrise Registrations be limited to the categories of goods and services for which the trademark is actually registered and put in the Clearinghouse?

And recognizing this too as a carryover question, we have information from George, Deloitte responses; from Kathy, follow up questions from Deloitte. Griffin indicates yes. These are all indicating yes, Deloitte responses. I took a no with respect to the Analysis Group report. And Greg observed that there was some limited help. I believe that's from the Analysis Group report, Page 26.

And so I will come back to Adobe and see if anyone has a hand up or if there are any comments with respect to this. Kathy, your hand is up dealing with Question 9. So why don't you go ahead and take the floor.

KATHY KLEIMAN: Yes, can you hear me, David?

DAVID MCAULEY: Can. It's a little bit faint again but, no, I can hear that.

KATHY KLEIMAN: Okay, I will try to raise [my voice].

DAVID MCAULEY: That's better.

KATHY KLEIMAN: Great. Here we're going back to last week. We're going back to follow up questions from Deloitte. And we're looking at this

question of limiting the scope of Sunrise registrations to the categories of goods and services. When we [set] that question [out] in light of the fact that Deloitte has told us – and we’ve talked about this before, but it’s relevant here and we haven’t talked about it here yet – that Deloitte is now accepting much more than trademarks. They’re accepting European geographical indications, protected designations of origin, protected [appellations] of origin.

And so one way to – and so this was not anticipated when the Sunrise was created, these very broad, non-trademark registrations in the Trademark Clearinghouse. So one way to address the [inaudible] of the Trademark Clearinghouse is to limit Sunrise registration [is to] tie the categories and goods and services of the Sunrise registration to the categories and goods and services in the Trademark Clearinghouse. This would create fewer side effects and would have fewer – it would create fewer side effects. Thanks, David.

DAVID MCAULEY: Thank you, Kathy. Next in the queue is Greg. Go ahead please, Greg.

GREG SHATAN: Thanks. I’m having déjà vu because it seems like two years ago or so that we were discussing the issue of what was showing up in the database. Which to my mind, at least at that time, seemed to be a misinterpretation by Deloitte of the created by statute prong of what was supposed to go into the database. So I think we have to go back and look at why those things are going into the

database before we decide they should be in the database. And if we get further data on that, that will be helpful.

To the extent that we're dealing with data right now, I think there's some good discussion of the [inaudible] classifications and the difficulty when we get to the Analysis Group of their ability to work with them. So that just kind of goes to the larger point of limited utility and accuracy, if you will, of that type of data. And that's a discussion really more for the analysis point than the data gathering point. Thanks.

DAVID MCAULEY:

Thank you, Greg. There are no further hands in the queue, so I'm going to move on to Question – well, actually, it's an exhortation labeled Sunrise Charter Question 10. Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period.

This is another carryover question. We have information from George with respect to Deloitte, from Griffin also with respect to Deloitte, both indicating yes and there's helpful information to look at. I took the position from the Analysis Group that it was not that helpful with respect to this particular question.

And so I'm going to go back and see if there's anyone in the queue. Greg, your hand is up. Why don't you go ahead and take the floor.

GREG SHATAN:

Old hand.

DAVID MCAULEY: Whoops. Okay, if there's anyone else that would like to make a comment in this respect, not seeing any, I'm just going to come back real quick one more time. No, not seeing any.

I will move on to Charter Question 11. How effectively can trademark holders who use non-English scripts/languages be able to participate in Sunrise, including IDN Sunrises? And two, should any of them be further internationalize, such as in terms of service providers, languages served, that kind of thing?

So another carryover question. George, Griffin, and I all have said no, and that's it. Little explanation.

So I'm going to ask if anyone has any comment. George has hand up, so I'm going to give the floor to George. Go ahead please.

GEORGE KIRIKOS: The no was for the Deloitte responses.

DAVID MCAULEY: Thank you.

GEORGE KIRIKOS: For this question, I would cite those two same references that I stated before on Page 7. Namely, the 97% Latin percent and the 1,700 users with the United States dominating. They might be relevant pieces of data to help answer this question. Thank you.

DAVID MCAULEY: Thank you. That's useful. So no further hands on that.

I will move to Question 12. Should Sunrise Registrations have priority over other registrations under specialized gTLDs? And two, should there be a different rule for some registries, such as certain types of specialized gTLDs, for instance, community or geo TLDs, based on their published registration/eligibility policies? Examples include POLICE.PARIS and POLICE.NYC for geo-TLDs, and WINDOWS.CONSTRUCTION for specialized gTLDs.

And it's a carryover question. We have George indicating yes with respect to the Deloitte report. Kathy also saying, yes, Deloitte's detailed replies. And Griffin also points to the same source saying, yes. I said probably not so much.

And back I come to Adobe to see if there are any comments. George is first in the queue. Why don't you go ahead, George.

GEORGE KIRIKOS: Again, I would cite Page 7 of the Analysis Group report, that 97% Latin script and the 1,700 users with the United States dominating. So that might affect the geo TLDs and IDN for the Latin script. Thank you.

DAVID MCAULEY: Thank you, George. Maxim, you're next. Go ahead please.

MAXIM ALZOBA: As I mentioned during previous calls, the nonworking [ALP] mechanism which [especially] was designed to help geos to establish their way of [lifecycle] domains, the [inaudible] led to moments where registries, geo TLDs had to use reserved name [lists] for this, I mean, to deliver [geo] names to [monuments], public services, etc. So in absence of working mechanisms, which actually only one [all] geos decided to do to go through the process to the full extent and in few years [have] the cities themselves. They have loss of money for that, and they had loss of time. So that's it. So those items should be [inaudible]. The special rights [inaudible] Sunrise [inaudible] have to be in [ALP], but because of the nonfunctioning implementation geo TLDs couldn't use it. So please add [ALP] to this item, or just we need to review both items [inaudible].

DAVID MCAULEY: Thank you, Maxim. Kathy is next in the queue. Go ahead, Kathy.

KATHY KLEIMAN: Yeah, I'm going to ask Maxim to define at some point [ALP] for us because there are so many acronyms and when you look them up, they're still pretty broad. So if [ALP] has a special meaning, and I'm sure it does, if you could share it, Maxim, that would be great. That was not one that I could easily find.

Okay, so to the Sunrise Charter Question 12, should the Sunrise registrations have priority over other registrations under specialized gTLDs? I think we should think about timing here and our knowledge that local jurisdictions – and we also have to deal

with the Trademark Clearinghouse database the way it is, maybe not the way we would want it to be or the way we think it was structured.

So it does have trademarks, it does have geographical indications. In terms of priority, allowing the registration for a city [of] the local trademarks, the regional or the national trademarks, even if they're not in the Trademark Clearinghouse database. You know, the timing, would it be appropriate to have that kind of – I'll use it – mini-Sunrise before the main Sunrise which then opens up to these geographical indications? Especially in light of the data we have about Deloitte and, again, the very broad scope of what's going into the Trademark Clearinghouse database, should we be thinking about prioritizations that allow the local Sunrises to take place first? Thanks.

DAVID MCAULEY:

Thank you, Kathy. And we have three, probably a little bit less than three minutes left. And so it's probably at that point of the agenda that we'll ask about any other business. And I'd like to ask Julie if she has anything that she wants to note. Kathy, your hand is up. Is that an old hand?

KATHY KLEIMAN:

[inaudible]

DAVID MCAULEY: Okay, I take it that it is. So now George's hand is up. And then why don't I go to Julie first because I had called on her. Julie, if you could be very brief. And then to George. So go ahead, Julie.

JULIE HEDLUND: Thank you very much. Staff would just like to mention suggested homework for next week. We were going to suggest going onto the INTA survey as the homework. There are a couple of slides. And we also in response to requests from the trademark claims sub team meeting will also include the link to the survey results that had been provided to the working group back in August 2017. So we're going to suggest that unless anyone has any other suggestions for homework. And just to remind people that this sub team does now have [inaudible] the time to look at the previously collected data so that we'll continue during the meeting from the 20th and 27th of February. Thanks so much, David.

DAVID MCAULEY: Thank you. There's one more hand. George, this should be the last comment for the call. George, go ahead.

GEORGE KIRIKOS: I made this point before, but I still want to have a more reasonable deadline for the additional data to be submitted because having it today is kind of ridiculous given that it's not even going to be considered until two weeks from now. So having a deadline today would [inaudible] those 50 data sources that I posted [inaudible] last night. Volunteers have limited time, and I've already devoted more than ten hours this week to ICANN stuff. So this is stuff that

was assigned to ICANN more than 18 months ago and they delivered absolutely nothing. So I think the co-chairs and [the team] chairs should confer and adjust the timeline accordingly. Thank you.

DAVID MCAULEY: Thank you, George. We are right at the top of the hour. And I see two hands up. I think they're old hands. Julie, is your hand an old hand?

JULIE HEDLUND: Yeah, just very, very quickly, I forgot to mention that for anyone who has comments that they didn't have time or weren't able to add into the Google docs just to remind you they'll be opened back up. So please do so, add them in, because that way we can be sure they're accurately reflected. Thanks.

DAVID MCAULEY: Thank you, Julie. And thanks, everybody, for attendance and comments and interest. And we will close this call and see you all again next week. Thanks. Goodbye.

[END OF TRANSCRIPTION]