
ICANN Transcription

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

Wednesday 03, April 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 the 3rd of April 2019. In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room, so if you happen to be on the audio bridge only today, would you please let yourself be known now.

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

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JULIE HEDLUND: Thank you, Michelle. This is Julie Hedlund from staff. While folks are still joining, let me go ahead and run through the agenda quickly.

We have, as item number one, reviewing the agenda and updates to statements of interest. Then we have the development of preliminary recommendations including the discussion of question three and a discussion on the remaining questions as time permits. Then any other business. May I ask if anyone has any other business they'd like to raise? Phil Corwin, please go ahead.

PHIL CORWIN: Yeah, thanks. I'll be brief. Most of you were on the last call. I'm going to make the same statement which is that the co-chairs held a regular planning call, co-chairs of the full working group, held a regular planning call last Friday, reviewed the timeline. The two subteams on trademark claims in sunrise are projected to wrap up their work on May 15th. The call on May 15th is the one where they should finalize whatever they're going to forward to the full working group in terms of subteam recommendations and their vetting report on individual recommendations. That's this call plus six more.

The last call, the call that was just held on the trademark claims subteam, we had a very robust and formative balanced discussion, but unfortunately no decisions were made about any preliminary recommendation. So, I want to urge Greg in his capacity today to try to drive the subteam toward reaching a

decision on at least one or two preliminary recommendations. If we don't start making progress on doing that, we're going to have to increase the length of the calls or schedule extra calls because blowing past the May 15 deadline is the option of last resort and something to be avoided at all costs. Thank you.

JULIE HEDLUND:

Thank you, Phil. Just going back to agenda item one, I'm just going to ask if anybody has any updates to their statement of interest? I'm not seeing any hands up, so I'm going to go ahead and I will turn to Greg Shatan. But before I do so, let me just remind everyone that when we're showing the summary table in the Adobe Connect room, that is the version dated March 8th. So, that is pre-Kobe and what staff will do is when the subteam completes its discussions on the preliminary recommendations, staff will update the draft summary table to reflect the captured suggestions for preliminary recommendations as well as the length to the various meetings where discussions took place.

As we did last week, which was very helpful for staff, is we would ask if you have suggested text for preliminary recommendations, if you can put them in the chat and identify them as such, then staff will pull those over into the brief notes and will then roll those up into the summary table. So, thanks again, everyone, and over to you, Greg.

GREG SHATAN:

Thank you, Julie, Michelle of course, and Phil. So, we are gathered here together. I guess we'll go to AOB and discuss the

times, but we'll do that at the end. I think we are launching back into question three. We'll put that up in front of you. I think the chart is un-synched, so you can put it wherever you want. That was not intended to sound disturbing. So, let's jump right into it and see what [you guys] have to say. I'll be looking for hands. Any thoughts? George Kirikos, please go ahead.

GEORGE KIRIKOS: Thanks, Greg. As I posted in the chat, we did a lot of this last week, so are we just coming to now trying to get to agreement on a path forward or how we would like to proceed? Thanks. I would also like to talk about last week.

GREG SHATAN: Thanks. Good question. I think, yes, if we could try to pick up where we left off, and I'm trying to put that in front of myself right now as well. We spent a fair amount of time on this question last week, and to the extent that we are going to have some recommendations jumping out of this question, now is the time to try to be more concrete. I don't think we really came up with a recommendation from last week. I see a hand from Julie and from Griffin. I'm sorry, I'm on a tablet, so I don't know who came first. But Julie, I'll take you for the good of the order.

JULIE HEDLUND: Thank you, Greg. I put in the chat there were a couple of tentative preliminary recommendations that folks had put in the chat last week, so you'll see those now also in the chat. We've copied them there if that helps to stimulate the discussion here.

I just see Maxim's question in the chat. We have weekly RPM meetings all the way through the 15th of May, so the 15th of May being, as Phil noted, the one where the subteam will complete, is expected to complete, the development of preliminary recommendations. Thank you.

GREG SHATAN:

Thank you, Julie. Griffin, you hand is down. I assume that means you're not going to speak. So, lets just take a look at the preliminary recommendations or potential, possible recommendations that are here in the chat.

The first one says if there's a challenge mechanism, it could be modeled on the passive holding doctrine test under UDRP. This would be an Implementation Review Team task. Again, we're talking about sunrise challenge. Griffin suggests ICANN should establish a mechanism that allows trademark owners to challenge the termination by a registry operator, that a particular name is a premium name or a reserve name. Mechanism could be a component of an SDRP sunrise dispute resolution procedure where the challenger brings the issue to the registry first and then appeals to a neutral party if the initial directory registration doesn't give them the desired result.

So, those appear to be kind of two recommendations. I see George mentioning A, B, and C. I'm not sure what you're referring to, George, as A, B, and C. Maybe rather than trying to piece this together, what George's proposal is, we should turn it up to George. Please go ahead.

GEORGE KIRIKOS: Thanks, Greg. I think, if I'm reading things correctly, Griffin and I seem to agree that there should be challenge mechanisms for trademark holders to challenge the designation that a second-level name is premium or reserved. Obviously, if you ... Well, not obviously. But it should have a relief mechanism if it's [inaudible] challenged. A and B are kind of linked. Otherwise, there is a potential for abuse, as we've discussed before, and the way that ... I think the appropriate task to look at is the registry is kind of putting themselves [inaudible] the domain holder by reserving it. So, they're a de facto domain holder. We already have this kind of issue solved from the point of view of the UDRP already, in terms of the passive holding test – I won't repeat the passive holding test because everybody here obviously knows it. It probably needs to be defined more rigorously, given that some of the ICANN – sorry, some UDRP panelists – kind of misinterpret the passive holding test. But if it was clarified, [or precisely] imbalanced, I think that's the way forward to implement A and B.

[inaudible] the concerns, but question 3C in terms of the charter questions. I don't have any concerns. That may become the registrars and registries, too, and if any of them are here, they might want to speak up. Thank you.

GREG SHATAN: Thanks, George. Maxim?

MAXIM ALZOBA: About the [inaudible] challenge reserve names or [inaudible] names, here we have a situation where hypothetically trademark owners can game the system. For example, there are lots of [inaudible] trademarks actually abuse words. Yes? And in some TLDs, abuse of words is forbidden. [inaudible] trademark owners will [inaudible] and successfully change them. [inaudible]. I'm not sure.

And also, during the situation where [inaudible] should be [inaudible] installed even if you develop something, some mechanism for challenging. It shouldn't be one way [inaudible]. We shouldn't [inaudible] rules, like some rules of services. [inaudible] from having trademark [inaudible]. Actually, I [inaudible] curious about the [growth]. Thanks.

GREG SHATAN: Thank you, Maxim. First, a technical note. You're kind of muffled or blown out, so I don't know if maybe you're too close to your mic, whatever adjustments need to be made, unfortunately. I'm not a sound engineer.

MAXIM ALZOBA: Is it better now?

GREG SHATAN: Much better, yeah. It's a bit better. Now you sound a bit distant.

MAXIM ALZOBA: Okay. I will ask someone to dial out to my phone.

GREG SHATAN: That's definitely better. You're still a little bit scratchy but I don't think that's going to get any better. I think that's just the quality of the line. But before I think you were booming which meant you were either too high up or your mouth was too close to your mic. But I think now is probably as good as you'll get under the circumstances.

MAXIM ALZOBA: Okay. I will start now.

GREG SHATAN: Yeah. I think people more or less were able to follow, and if not, we'll loop around. I'll turn to Kathy in a second, but what I take from your discussion is that we can't treat reserve names monolithically. We can't have one, a policy that just says every reserve name can be challenged and on the same basis of a trademark right, and that there are reserve names that are reserved for other reasons, technical reasons or policy reasons that should override, at least with [inaudible] to a reserve name any challenge mechanism. As with many of these things, the devil is in the detail, so if we come up with a broad policy, we're going to have to do some further [inaudible] so that we don't have unintended consequences and edge cases being caught up.

Now I see a whole bunch of hands but I do know that Kathy was next. Then, after that, because I'm on the tablet, [inaudible] sort yourselves out or I'll ask staff to follow. And Julie, is that a new hand or an old hand?

JULIE HEDLUND: It's old and I'm not even sure how it got there. Sorry about that.

GREG SHATAN: That's okay. It's the disembodied hand. Kathy, please go ahead.

KATHY KLEIMAN: Thanks, Greg. I was wondering, following up on that, is there something newer that could be done here both for reserve names and premium names? Let's say I'm a future gTLD ... So, what I'm worried about here was dictionary words. So, if my future gTLD is dot-fruit, I would want to ... I may well as registry want to put aside as a premium name. As a reserve name, maybe, but probably as a premium name orange, apple, pineapple all trademarks in some context but not in the category of goods and services that we think of as dot-fruit.

Similarly, if we have kind of a future dot-attorney, although I know that went out in the first round, there are various trademarks that are very popular last names but not for attorneys. So, is there more of a context and tailoring that we can give to what look like very broad recommendations? I think that's what you were saying as well, Greg. Thanks.

GREG SHATAN: Thank you, Kathy. I have Susan next.

SUSAN PAYNE: Hi. Yeah. I think [inaudible] supporting this notion as some kind of a challenge mechanism are really on the same page and in the kind of terms of the context. I don't think I ever envisaged or proposed that a challenge mechanism should be effectively as good a trademark, therefore you must give it to me. That might be the basis of your challenge, but it doesn't necessarily mean you'd win. We've been chatting about scenarios in the chat and I think everyone is pretty much in agreement that [inaudible] and it would need a bit of working on, that there is apple.fruit, then there is a legitimate reason why that might be reserved or premium, apple.computers there isn't. That's the scenario we're trying to address, not apple.fruit.

GREG SHATAN: Thanks, Susan. I do agree. It seems like we're beginning to converge on some relatively common principles of what might be in and out of such a method of challenge or process. George, you're next. Please go ahead.

GEORGE KIRIKOS: Yeah. I agree with Susan. I think Maxim has been pointing out various different reasons why the name should stay reserved or stay premium and those are good reasons and those would be raised by the registry, I would assume, should they defend the matter. So, I'm not clear what he's worried about because he obviously knows the reasons and would convince a panel. As Susan said, it's not going to be an automatic victory for the trademark holder. The trademark holder just can't show up. "Here's my little piece of paper from the Uganda trademark office."

I want that name.” The burden has to be relatively high, just like the passive holding test. And you could still have all these other reasons why you want to challenge it, why you can [inaudible] against the [inaudible]. You can say this is a swear word in Russian or in French and that’s the reason why we reserved it. A panel should be able to accept that. So, I assume that if we write the policy accordingly, that it shouldn’t be a problem. But I’d like to listen to Maxim’s thoughts some more to try to understand why he thinks that those would be automatic for the trademark holder. Thank you.

GREG SHATAN:

Thanks, George. I was taking from Maxim that those would be automatic against the trademark holder, or at least while he’s ... That what he’s suggesting really should be our [inaudible], even though raising this idea that if this were a free-for-all, these would be bad results. So, maybe look at those more as [inaudible]. I suggest that some of them might be things we could write into the policy such as something that is actually prohibited or required to be reserved in the registry agreement and that others could be potential defenses by the registry and we probably want to create some categories, recognize some potential defenses in creating the policy, rather than just leave it completely open. But we can get down to the nuts and bolts of [inaudible] prudence a bit later, but I think that’s kind of structure that would make sense – some specific [inaudible] and some general statements of defenses and methodology.

So, I think I’ve got Phil followed by Maxim.

PHIL CORWIN:

Yeah. Hi. Phil for the record and speaking in a solely personal capacity, sharing some thoughts. I think it's ... Well, first of all, I think the starting point, you have to differentiate between premium names and reserve names. From the viewpoint of the trademark owner, it's a completely different situation. Where they've got a mark in the clearinghouse, they want to do a sunrise registration. If it's a premium name, they say, "Well, gee, you've priced it at \$10,000. That frustrates my right to exercise sunrise registration right. I think that you're trying to gouge me because it's a famous trademark."

It's a reserve name, there's not a pricing issue. It's just unavailable and they might feel it's critical to have that for business reasons. Clearly not for defensive reasons, because if it's not available to them it's not available to anybody else at that time. So, we [can't] lump the two together.

On a mechanism, I'm dubious. If the registry operator is going to create it, they're the ones who made the initial decision on either the pricing of the premium name or the decision to reserve it and not make it available. So, they're going to have some built-in bias to say we made the right decision.

Now, I'm not saying that you shouldn't be allowed to ask them but there's got to be some fallback if we're going to create this and we have to create some standards.

My final ... Well, two final thoughts. One, if we're going to do this, I think doing it for ... A registry is a business. The operators have

paid their application fee and all the other associated costs. They're marketing. If they price something more than the market will bear, they will bear the loss of not being able to sell that premium name. And if the premium name is sold ... If the trademark owner passes and the name is sold to a third party and then used to violate trademark, they've got other recourse. They make a decision up front.

Well, \$10,000 is too much for that name. We'll just wait and if it's used for infringement we'll get our lawyers involved and do whatever necessary to stop the infringement. So, there's cost-benefit decisions on both side.

I think if we're going to think about this, we should think about restricting the mechanism to unique non-dictionary trademarks that are registered in the clearinghouse and I would illustrate that by if a registry wants to price the term windows, designate as premium at a high price, there's all kinds of reasons besides the software that someone might be willing to pay that price, particularly if it's a registry related to anything in the housing industry or in construction. But if they do the same with Microsoft, which is not a dictionary word, and is only of value to the company named Microsoft, that would be, seem to me, a right to a challenge.

Finally, with all respect, on the issue of passive holding, I don't think it's applicable or at least a [inaudible], it doesn't seem to fit what we're talking about. When you look at – and I posted the link in the chat. When you look at the factors that [inaudible] consider relevant – and this I think is a non-exclusive list – it's the degree of

[inaudible] or reputation of the complainant mark. Well, that might be looked at.

The failure of respondent to submit a response and provide any evidence of actual or [inaudible] good faith use, well, that's not applicable. The registry doesn't have to respond and their good faith use is they put it out for sale, if it's a premium name.

Similarly, consuming identity or use of false context doesn't fit a registry which is very public about its marketing strategy and what's premium and what's reserved.

Again, the last factor is implausibility of good faith use while putting something up for sale to the highest bidder or if someone willing to pay the premium price is a good faith use. It's a business decision.

So, I don't see how it fits this situation but others may differ. I hope some of those comments are useful but I think if we're going to do this, we need to have a fallback mechanism if the registry operator says, "I think my original decision was fine," and limit the range of marks that can be subject to such challenge, otherwise anything that's designated premium or reserved can be challenged. Thank you.

GREG SHATAN:

Thanks, Phil. A number of very good points for us to consider. I think that it seems like we're dividing, coming up with some divisions. Clearly, premium and reserve names, we can't discuss them as if they're the same. They're different and they would need different consideration. It seems like we have maybe at least three

potential ways to look at what marks to be used. One would be no limitation. Another would be “non-dictionary” words and we’d have to come up with a better definition than that for reality purposes but we can usually it obviously – for shorthand, we can use that now. And another might be what I’ll say dictionary words in context, apple.computer versus apple.fruit. Maybe another way to put it is terms that are generic in context, so that if a TLD creates a context such as fruit or computer, it’s clear or hopefully clear-ish whether you have something to be deemed generic in that context or not. So, rugby.sport versus rugby.clothing – or polo may be a better example. I think Ralph Lauren killed his rugby line.

In any case, I think we have Maxim and then either Phil again or that’s an old hand. Go ahead, Maxim.

MAXIM ALZOBA:

Actually, also, in the case of geo TLDs, I remind you that the [inaudible] which was intended to be working [inaudible] have special policies allowing them to run the sunrise [inaudible] protections [inaudible] local small businesses, etc. [inaudible] not be able to use [inaudible] not working, the only thing [inaudible] were a combination of reserve names which, for example, protected [inaudible] and it’s really important – I will describe why – because if [inaudible] is challenged, the [inaudible] situation where [inaudible] agreeing to issue some [inaudible] regulating the local registries, not Internet itself. [inaudible] situation where [inaudible]. And we will see situations where we might [inaudible] because it might [inaudible] in terms of how it’s regulated [inaudible]. Thanks.

GREG SHATAN: Thanks, Maxim. You were again somewhat difficult to listen to. We'll have to try to work that out, maybe a pre-test before next week's called. Julie has asked if you could post text in the chat if you have some language. Griffin notes in response to your thought that we understand why it is important for certain registries like geos to be able to ensure that local authorities get dictionary term domains that correspond to their specific function versus a trademark owner getting such a name. So, I think there are definitely ... Again, we're kind of heading. Rather than criticizing the entire process, I would look at your suggestions, Maxim, as things that need to be ... Lines that need to be drawn for this process to be appropriate.

I see Kathy asking: do Phil and Maxim have an overlapping suggestion? Not sure about that but I would certainly ask Kathy and Phil and Maxim, any of them, to comment on that. The next hand actually up is Griffin, so I will turn to Griffin.

GRIFFIN BARNETT: Thanks, Greg. I've been typing furiously in the chat to try and put my thoughts together in response to everything that I'm hearing, both from Maxim and others, and some things that were also written in chat. But I guess just to try and synthesize and perhaps summarize [inaudible], the suggestion for a challenge mechanism in this context – and to be clear, the context is where a trademark owner is encountering a problem registering an otherwise sunrise eligible name during a sunrise period and believes that the reason that it's encountering that issue may be because the name has

been designated either as premium or as a reserve name, that there should be some kind of uniform mechanism that can be an avenue for those brand owners to challenge that designation so that it can be available as it otherwise should be during that sunrise period.

Again, just to contextualize what we're talking about specifically, we're not talking about anything outside of sunrise or beyond sunrise or any kind of permanent challenge mechanism for the entire life of a TLD or anything like that. So, that's one point.

Again, people have been raising a number of basically carveouts or caveats or grounds for overcoming that type of challenge and I think the suggestion is not that it should be an absolute challenge, but again, it should be a nuanced mechanism that includes those various legitimate grounds for where there is a legitimate reason for either the premium name designation or for the reserve name status that the registry operator can come back and say, "Well, here's the basis for why we've done it that way and it's not to circumvent the protections afforded under sunrise, but it's because of X, Y, or Z other legitimate reason.

Now, my experience and understanding from some others is – and this speaks to what Kathy just put in chat about whether this was a big problem in round one. I don't know that we have any kind of large body of data but I have had firsthand experience and I've heard from others that this was a problem in some cases where folks attempted to register a name during sunrise which otherwise met all the eligibility requirements of sunrise, and for some reason, they encountered a problem, specifically the

attempt to register during sunrise. There was some indication that it was potentially reserved by the registry or otherwise unavailable.

So, what ended up having to happen is, in some cases, we attempted to correspond directly with the registry to identify the problem, and in some cases, they said, “Yes, we had reserved that name, but we recognize that it is otherwise sunrise eligible,” and in some cases they would release the name.

Again, all of that kind of took place on sort of an ad hoc basis. So, the issue that we’re trying to – or the problem that we’re trying to solve here is to provide sort of a uniform set of rules and requirements to avoid an ad hoc back and forth process like that that could be subject to issues of non-transparency and issues of discrimination or whatever you want to call it.

So, that’s where this idea kind of comes from and I understand that there are various implementation details and issues that need to be addressed, but I think from a policy standpoint, again I stand behind the proposal that I had made last week that this kind of mechanism is warranted and would actually help solve some of these issues. Thanks.

GREG SHATAN:

Thanks, Griffin, and appreciate that. A lot of [inaudible] things being discussed in chat. There are certainly a lot of war stories that I’ve heard. It seems like as a number of questions that come in, I don’t know that we’ll be able to come up with a recommendation on this this week, but I think we have a lot of fodder to come up with a recommendation, including safeguards

and exclusions and defenses and we clearly need to think about how this would work if this is a variation or even the heart of a sunrise dispute resolution policy issue, how that will work and we'll need to go to that.

I think the next person up was George, and just before you start, I see the note. Julie, it would be fabulous to staff to take all of these threads and [inaudible] them into a suggestion – if not the language of a recommendation, maybe first the key concepts and issues that we're talking about or however you want to express it but I think we have a number of levers here that could move in a different direction and we kind of need to get them all out in a single document that we can then bat around.

I believe George is next. Yes, I see George and then Maxim. Then, Griffin, unless that's an old hand. George, please go ahead.

GEORGE KIRIKOS:

Thanks, Greg. I do agree with Griffin's analysis and Greg had mentioned the safeguards and that's obviously a very important point as well. I don't want to speak for Maxim, but I think what Maxim's concern is that it could get out of control, that people will bring these cases for many different possible reasons and that the registries would not have an appropriate answer for all use case scenarios.

So, however [inaudible] that concern – and [inaudible] the UDRP, for example, where it might have been intended for one thing, but then complainants try to bring it for what it wasn't intended for. So, I think how that could be alleviated is you have to have a very

narrow use case, so it could only be used in very specifically defined circumstances.

However, to balance that, you'd have unlimited defenses, but you would lift some possible defenses, but it's not limited to just those. So, if a registry operator had a reasonable justification for why it's a premium or why it's a reserved name, they would be able to put that forth. So, it's not just an automatic challenge that they bring their trademark and they win. They have to have much more in terms of the evidence and the use case for the mechanism. Thank you.

GREG SHATAN:

Thanks, George. I think we don't need you to speak for Maxim, only because he is coming up next. Maxim, please go ahead.

MAXIM ALZOBA:

I read through the transcript. Also, [inaudible] premium actually is about pricing in particular [inaudible] because prices change every time. For example, some [inaudible] could be some [inaudible] that could be something called [inaudible] with high prices [inaudible] but everything is up to the particular registry.

Also, since the pricing, everything which affects it, [inaudible] and that resolution is not enforceable [inaudible] registries or registrars. They are not sure [inaudible] which is not [inaudible] to be used at all.

Secondly, I [inaudible] as registries because registrations are done in milliseconds. Registries can just [inaudible] and try to

understand who's the ones [inaudible]. It will [inaudible] without them because [inaudible] should work for registries. We should be extremely careful with this, because first we are trying to regulate pricing which might not be [inaudible]. And the second, we are trying to [inaudible] something which is a very different side of [inaudible] might cause serious security and stability issues. Thanks.

GREG SHATAN: Thank you, Maxim. I think I've got Phil next followed by Griffin.

PHIL CORWIN: Okay. Again, speaking in a personal capacity, not as co-chair of the full working group. I'm concerned we're spending a lot of time talking about a mechanism which will be used very infrequently because we're talking about a mechanism that seem to me more like the UDRP in terms of complication than the URS. It's [inaudible] very subjective value judgments. It's going to be expensive. Frankly, if a trademark owner is balking at paying \$5000 for their mark that's recorded in the clearinghouse because they think it's too high, are they going to bring an action that's going to cost them several thousand dollars in filing and legal fees with an uncertain result? They'd almost be better of just paying the price or walking away and monitoring the domain. [inaudible] propose something radical. And this is for premium names. Obviously, for reserve names, the concern that the trademark owner is not that it will be used for infringement because it's not available to anybody for purchase and development. It's simply

that they'd like to have that name at that TLD for business purposes.

Since we're talking about rights protections, trademark protections, should we put aside the creation of a rather complicated and what's going to be an expensive and subjective arbitration mechanism or dispute resolution mechanism and talk about making a recommendation to SubPro that in regard to names recorded in the trademark clearinghouse, that either they can't be designated premium or it's designated [inaudible] regardless of whether their premium price is that the trademark owner should, if they wish to, get them at a price no more than the [land rush] price or X times the general availability price.

This is a pricing issue and I think ... I'm not sure SubPro will do anything with it, but to create a complicated multi-part subjective mechanism that may never be used or used very infrequently isn't going to give a lot of relief to anybody. Maybe we should, in an advisory capacity to SubPro, just say, "Hey, we think some registries are setting prices so high on marks in the clearinghouse that it's [inaudible] the availability to the RPM and there ought to be a ceiling as an exception to ICANN's general position of not setting prices. I'm not advocating this. It's more of a devil's advocate. But I think it gets us back to the real issue and I don't want to see us spend a huge amount of time trying to develop a mechanism that, because of the subjectivity and expense, will be used little, if ever. Thank you.

GREG SHATAN: Thanks, Phil. Definitely something to chew on. I think I've got Kathy, following by George. And 10-minute warning.

KATHY KLEIMAN: Yes. I had a follow-up question for Phil. Phil, how does your proposal impact the discussion we were having of generic or dictionary words versus trademarks that clearly have the context within the gTLDs? So, changing the ceiling, making the premium names available, is that a proposal that we might give to the SubPro working group for all words or would you overlay it with some of that context issue that we were talking about, what the gTLD is dedicated for? Thanks.

PHIL CORWIN: Kathy, I'll answer with some hesitation because I haven't thought about this a lot, so it's an answer of first impression. I did say in my earlier personal statement that perhaps the challenge mechanism, if there's going to be one, should only be for unique non-dictionary words rather than any word on a differentiated between windows and Microsoft. On this one, I think if ... Only a trademark owner that has recorded a mark for a specific goods and services in the clearinghouse has a sunrise right of registration. So, I think if we're talking about pricing being the problem, then it should be for any mark, whether it's a dictionary word or a proprietary non-dictionary word.

KATHY KLEIMAN: Great. Thanks, Phil.

PHIL CORWIN: But I may change my mind, and again, it's mostly devil's advocacy to make us focus on the real problem.

GREG SHATAN: [inaudible] important. Yeah. I think it's good to have ideas out even people aren't necessarily [wedded] to them when they put them out there because it does [inaudible] to move the discussion along. Thank you for that, Phil. George, please go ahead.

GEORGE KIRIKOS: Thanks, Greg. Looking at what Phil talked about, another way to achieve the same goal perhaps is to place a numeric limit on the number of reserve names. That was I guess one of the other charter questions. So, there's kind of some interaction there. That allows you to totally eliminate the discussion of price, because if you had a numeric limit, say, 300-500 reserved or premium names, then you obviously can't have coverage of all the possible names that might be available, because [inaudible] if a registry wanted to, they could reverse engineer the entire Trademark Clearinghouse, the 40,000 to 50,000 names, and just make them all premium and that would [inaudible] the purpose of the policy. Of course, [inaudible] the elimination of the sunrise entirely. I'm assuming that it [inaudible].

But to Maxim's point, if you think about it, we're kind of arguing it based on the data from this past round of TLDs where [inaudible] wasn't that high. We have to look at it [prospectively] forward and say for the next round of TLDs, those might be less popular than

the [inaudible] ones, more niche. So, on Maxim's point, that would suggest you don't need it because fewer name are going to be required to be challenged because those are going to be – they're niche to begin with. Thank you.

GREG SHATAN:

Thanks, George. It would be helpful if there is some extrinsic evidence or data as people look to the next round as to what the characteristics of the next round might be. Obviously, it's all crystal ball gazing. I know you've said before that you think it's going to be more niche. I don't know if that's the case or not. So, just curious, without suggesting that I have an opinion on it, if there is anything that would be useful to look at in terms of the prognostications of experts recognizing that many of us are experts, that would be helpful in discussing that shape of the next table discussion.

I think we have Maxim and then five minutes which means we'll go briefly to AOB after Maxim.

MAXIM ALZOBA:

Also, [inaudible] we assume that only one trademark owner is going to challenge something. But in reality, there could be more than two, for example, for some work where they have different classes, like someone has this [inaudible]. Yeah. So, it seems [inaudible] because everybody comes from a perspective of [inaudible] challenge, but in reality, there are more than [inaudible] in each case. [inaudible] registrars and trademark owners. It's not just one registry and one trademark owner. Thanks.

GREG SHATAN: Griffin, I closed the queue but I'll give you 30 seconds.

GRIFFIN BARNETT: Sorry, Greg. Thanks. I just want to respond quickly on the point that Maxim raised and I put some comments in chat already, but just to quickly reiterate. On the point where there might be multiple trademark owners that have potential rights to a name that was reserved and there's a challenge mechanism, and presumably only one of those trademark owners challenges it, the regular sunrise will still apply. So, assuming that challenge is successful, the name is unreserved, then either first come, first served rules apply and whoever the first trademark owner to get it gets it, or the end date allocation rules apply. Again, it kind of just falls into the general pool of available names during sunrise as it originally should have been in theory. And then to Phil's point where a reserve—

GREG SHATAN: That's 30 seconds.

GRIFFIN BARNETT: Sorry, can I just continue for five more seconds?

GREG SHATAN: Five, yes.

GRIFFIN BARNETT: Thanks. Just to respond to Phil's point that he raised about, well, what's the problem if a name is reserved, because then no one can have it or use it, but the point that I made is that it can become unreserved later and the whole point of sunrise is to prevent a situation where it's reserved, a trademark owner doesn't get it during sunrise and then it's later unreserved and a third-party gets it and then uses it to infringe. We're talking about a preventative mechanism here and trying to avoid it at that circumvention situation. Thanks.

GREG SHATAN: Thanks, Griffin. A number of good points being made in the chat and encourage staff to capture all of these and somehow arrange them in a logical method. Just in the couple of minutes we have, I just wanted to raise the question about whether this time is good. We shifted essentially an hour later in the day due to the fact that we stuck with the UTC time even though Daylight Savings Time I think has now taken effect everywhere in the world that it does take effect. So, just want to see maybe by checks if you're good with this time. Crosses, exes if you prefer to move to an earlier time or back to our old time which would be an hour earlier. I see Susan. Okay, well, there's some discussion about the future of time changes. Susan, why don't you go ahead.

SUSAN PAYNE: Yeah. Thanks. I'm one of the people who's impacted by this. Obviously, Maxim is as well, or more perhaps I guess because of where I'm located. But I was [inaudible] previously. [inaudible] perspective of two hours between 6:00 and 8:00 PM every

Wednesday. I have better things to do with my evening. Nonetheless, we're in these subteams only for a few more weeks up until something like the 15th of May. So, to my mind, I'm willing to just suck it up and keep going. It would be great to move it, but you know what? Then we clash with other calls that are already scheduled in the time that we'd be moving these subteam calls into and we would potentially lose any registry participants. So, it seems to me it's not a conversation we can have. That's all the people who were scheduled in calls are also going to shift their calls back by an hour to accommodate us. It doesn't work. I'd love it but this is the time and I'm willing to live with it.

GREG SHATAN:

Thanks, Susan. I see Julie noting that the question has gone out to the list without any objections to the time, sticking with this time, and recognizing that if other groups have calls that are also just going with the shift—

KATHY KLEIMAN:

Did we just lose Greg? If anyone can hear me, I'd like to hand the call back to Julie.

JULIE HEDLUND:

I don't hear Greg. We are at the top of the hour.

GREG SHATAN:

Sorry. For some reason, my phone went out on me for a very odd reason. My phone should be perfectly normal. It decided that it

would no longer work and the call suddenly went away. Anyway, I was saying I think we're at the end of the call. A lot of good stuff still going on with chat. Thank you in advance to the staff for trying to sort all of that into a logical – something we can logically look at and recognizing we had some suggestions that were more incremental and some that were more significantly different including the suggestion that Phil made whether it would adopt [inaudible]. So, thank you.

It seems like we have, on the timing question, it seems like we'll stick with what we've got. The question has been circulated and there are too many other groups that are also sticking with what they've got. For us to be contrarian and move back would be problematic. So, I'll take that as [inaudible].

With that, then, I will call this meeting adjourned. Thank you all for your participation. Bye, all.

JULIE HEDLUND: Thanks, everyone. Have a great morning, afternoon, or evening.

[END OF TRANSCRIPTION]