
ICANN Transcription

Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP WG

Wednesday 17, July 2019 at 1700 UTC

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JULIE BISLAND:

Good morning, good afternoon, good evening, all. Welcome to the Review of All Rights Protection Mechanisms – RPMs – in all gTLD PDP Working Group call on Wednesday the 17th of July 2019.

In the interest of timer, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge at this time, could you please let yourself be known now?

Alright, and 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 background noise.

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With this, I will turn it over to Julie Hedlund. Please begin, Julie.

JULIE HEDLUND:

Thank you, Julie. I'll just quickly run through the agenda. Agenda item one is welcome and updates to statements of interest. Item two is a continuation from last week's discussion, that is review and discussion of TM claims subteam recommendations, starting with question three.

Last week, we covered the answers to the charter questions. This week now we will start with the preliminary recommendations and questions for community input followed by a review of question four and question five and just an update on where the subteam stood with respect to proposals one, five, six, 11 and 12.

Time permitting, we'll move on to the review and discussion of sunrise subteam recommendations. That's agenda item three, starting with question one. We will skip over the preamble question because that is one that takes into consideration inputs from all of the questions, so we'll save that until the end.

And then item four is Any Other Business. May I ask if anyone has Any Other Business? Seeing no hands, then let me ask, back to agenda item one, if anybody has any updates to their statements of interest. I'm not seeing any hands. Oh, there's a hand up. Kathy, please go ahead.

KATHY KLEIMAN:

I wanted to update my statement of interest. I've now moved from Princeton Center for Information Technology Policy to

American University Washington College of Law, where I am part of the IP clinic for the law school. So, thought I would share that, and still finding my way around here and my way around the new computers. Thanks, Julie.

JULIE HEDLUND: Thanks so much, Kathy. Very helpful. Appreciate that. And on to agenda item two, and let me now turn things over to Phil. Phil Corwin, please go ahead.

PHIL CORWIN: We have a full agenda today. By the way, congratulations, Kathy, and good luck with the new position. I believe the first order of business is to go through the preliminary recommendation for question three. Can staff confirm that I'm correct on that?

JULIE HEDLUND: Hi, Phil. Yeah, and indeed, we will start with the preliminary recommendations for question three and then move to the proposed questions for community input. Thank you.

PHIL CORWIN: Okay. So let's go through this. In the proposed answers, the answers are interesting. They're useful background for anyone reading our initial report. But the real meat of the report are the recommendations for modification of the RPMs.

And again, while in my personal view we should defer to the judgment of the subteam, but we certainly can make helpful

clarifications and other changes to this if anything isn't clear, or again if there's a strong and broad feeling in the working group that's against a particular recommendation, although I doubt we'll run into that, we had a fairly representative subteam.

With that preparatory remark, let me launch into reading this, and then we'll open the floor for comments on whether people want to suggest any clarifications or modifications of the recommendation.

So here, the overall question is, does the claim notice to domain name applicants meet its intended purpose? I think we're all familiar with the purposes for the notice.

The preliminary recommendation is as follows: the trademark claims subteam recommends that the trademark claims notice be revised to reflect more specific information about the trademark or marks for which it is being issued, and to more effectively communicate the meaning and implications of the claims notice, for example outlining possible legal consequences or describing what actions potential registrants may be able to take following receipt of a notice.

Continuing to assist the IRT that will be formed to implement recommendations from this PDP and redrafting the claims notice, the subteam has developed the following implementation guidance: bullet one, the claims notice must be clearly comprehensible to a layperson unfamiliar with trademark law. And now I'm going to ask staff to scroll so that I can continue reading.

Two, the current version of the claims notice must/should be revised to maintain brevity, improve user friendliness, provide

additional relevant information or links to multilingual external resources that can aid prospective registrants in understanding the claims notice and its implications.

A personal comment here, some of these additions are obviously going to be in some conflict with brevity, but the addition should be as brief as possible.

Continuing on, the subteam advises that ICANN Org considers input from external resources. Some subteam members suggested external resources including the American University Intellectual Property Clinic – that’s you, Kathy – INTA Internet Committee – of which I’m currently a member – Electronic Frontier Foundation, and Clinica Defensa Nombres de Dominio UCN. I’m not familiar with that one. Clearly, it’s in Spanish.

So that’s the sum of the first recommendations, and the floor is open for comments on that. And again, as last week, I’m scanning the comments in the chat to see if there’s anything relevant, but... David McAuley liked one part of this. And again, this is Zoom I believe and doesn’t move the hands up to the top, so you’ve got to go through the ...

I’m not seeing any hands up, so is everyone happy with this recommendation? If they are, we can move on. But if you have a comment, now is the time to raise your hand or chime in if you’re just on audio. And there are no hands up, so we’re going to take yes for an answer. And I think let’s continue – I think we scrolled too far, I think we have another subpart recommendation to read above this. Let me see.

Scroll down, please. Okay. No, I was wrong. So now we've got a recommendation. This is in answer to the subquestion of translations of the claims [inaudible] effective informing domain name applicant support, etc. And here's the recommendation.

The subteam recommends that delivery of the claims notice be both in English as well as the language of the registration agreement. In this regard, the subteam recommends changing the relevant language in the current trademark clearinghouse requirements on this topic to registrars must provide the claims notice in English and in the language of the registration agreement. So that's a recommendation that will carry over to our upcoming TMCH discussion.

And finally, the trademark claims subteam also recommends that where feasible, the claim notice include links on the ICANN Org website to translations of the claims notice in all six UN languages.

That's it for that recommendation, for that subquestion. Once again, I'm not seeing any hands up or hearing anyone, so we're going to take yes for an answer and move on. Let's scroll down, please. And this'll wrap up question three and the recommendations. We've still got a proposed question for community input to look at.

So this is the subquestion, should the notification only be sent to registrants who complete domain name registrations as opposed to those who are attempting to register domain names that match records in the TMCH?

And there was broad agreement in the subteam that the current requirements [of sending] the claims notice before a registration be maintained. The subteam also recognizes there may be operational issues, [which was any of the] claims notice to registrants who preregister domain names, [do the] current 48-hour expiration period of the claims notice and the subteam therefore recommends that the Implementation Review Team consider the way in which ICANN Org can work with registrars to address that particular implementation issue.

So overall, there was broad agreement in the subteam to maintain the current practice of providing the notice in the midst of the registration attempt rather than after the registration has been completed for – there are a number of reasons for that. Do we have comments on that?

I'm not seeing any hands or hearing anyone, so let's go back to that proposed question for community input. And this was some – this was not a broad agreement within the subteam, but there wasn't visceral objection.

[So] the proposed question [inaudible] some subteam members recommend that public comment be sought on the following questions: have you identified any inadequacies or shortcomings of the claims notice? If so, what are they? And he has suggestions on how to improve the claims notice in order to address the inadequacies or shortcomings. [This is really] asking the community to help give guidance particularly to the IRT down the road, assuming this recommendation's accepted [inaudible] more specific guidance on the redraft.

So, comments on that? Alright, well, then on question three, the full working group seems to be quite satisfied with the recommendations and proposed question relating to question three, and we can move on to the next recommendation.

Is there anything for question four? Okay, we have [inaudible] scroll back down so I can read it. I'm working off a small laptop, could you please bring it up a little? I've got the – no, I can't read the answer. This is very frustrating, not being able to scroll on my own. Staff, please bring it up so I can read. Now it's getting bigger.

I'm going to wait until the proposed recommendation is in the middle of my screen, which it's not now, because I can't read it until it is. You have to scroll up, please. I'll tell you when I can see it. Go [inaudible]. It's not scrolling up. You have to bring the document – move it upwards.

JULIE HEDLUND: It's just that the answer spans two pages. So if we scroll down –

PHIL CORWIN: Well, I'm beginning to see the answer, the recommendation. I can't read it. If staff wants to read it out, fine, but I'm not in a position to read it currently. I'm working off a small laptop with no scroll control for me. But trying to lead this discussion without seeing the language is extremely difficult.

JULIE HEDLUND: [inaudible]

PHIL CORWIN: There was no problem with the first one, but this is not working.

JULIE HEDLUND: Phil, I'm sorry, are you able to hear us? Because I've been trying to intervene to help, and doesn't seem like I was [inaudible]

PHIL CORWIN: Yes, Julie, I can hear you.

JULIE HEDLUND: Okay, great. So the problem with this particular question is it spans two pages, so we would have to scroll while you're actually speaking.

PHIL CORWIN: Right, but I can't see any of the text of the preliminary recommendation. I can't see either page at the moment.

JULIE HEDLUND: Okay.

PHIL CORWIN: I'm seeing Q4(a) and [then the document stops.]

JULIE HEDLUND: Yeah, we stopped sharing for the moment. We're back on. And what we're trying to show is the answer to Q4, which spans two pages. Right now, you should be able to see – which we've highlighted –

PHIL CORWIN: Are we doing the answer? I thought we were doing recommendations [for discussion.]

JULIE HEDLUND: Well, we have not covered any of the charter question answers for four.

PHIL CORWIN: Okay. My mistake then, I was trying to see the recommendation.

JULIE HEDLUND: Yeah, so we would have to start with the charter question answers. Usually, we've gone from the column to the left, the proposed answers to preliminary recommendations, and then the questions for input.

PHIL CORWIN: Alright. I apologize to the members, but I thought we had finished the proposed answers to all the questions last week around the recommendations.

JULIE HEDLUND: No, we finished them for three. We had not gotten to four yet.

PHIL CORWIN: Yeah. Okay, then scroll up so I can be reading this.

JULIE HEDLUND: Thank you.

PHIL CORWIN: Okay. Thank you. I apologize for the confusion. The question is, is the exact match requirement for trademark claims serving the intended purposes of the trademark claims RPM? In conducting this analysis, recall that IDNs and Latin-based words with accents and umlauts are not serviced or recognized by many registries. And the proposed answer is, the subteam had diverging opinions on whether the exact match requirement is serving the intended purpose of the trademark claims RPM.

So it just says there were diverging opinions. I don't know that there's much to add from the full working group to that statement. Does anyone think there is?

I'm not seeing any hands or hearing anyone, so ... Okay, and I want to say I appreciate the link to the Google doc, but if I use the Google doc, that's what I'll see on my screen and I won't be able to see any chat.

JULIE HEDLUND: Phil, Michael Graham has his hand up.

PHIL CORWIN: Okay. Michael, go ahead.

MICHAEL GRAHAM: I had a question. And I did not recall whether or not we had discussed this, and perhaps there's one under one of the subquestions of Q4. But that is whether or not we wanted to – because of the diverging opinions, whether or not this was something that we did want to attach a question for public comment on. I wasn't sure if we had discussed that and decided one way or the other.

PHIL CORWIN: Yeah, I don't recall, Michael. Why don't we hold that thought until we finish reviewing the other proposed answers? And then we can discuss whether we need to ask the community for some guidance. Would that be okay?

MICHAEL GRAHAM: Yeah, that sounds fine.

PHIL CORWIN: Okay. Alright. So 4(a), what is the evidence of harm under the existing system? And again, the subteam had diverging opinions on whether there was evidence of harm. So once again, this is just the subteam reporting a divergence of views. I don't know that we can change that at the full working group level, unless there's

broad agreement one way or the other in the full working group, which would surprise me.

I'm not seeing any hands up, so I'll continue. 4(b), should the matching criteria for notices be expanded? And the subteam had diverging opinions on whether the matching criteria should be expanded. We reached no wide agreement on any form of expansion, so it would continue to be an exact match. And let's continue with the answers to questions and we'll come back to this recommendation.

Should the marks in the clearinghouse be the basis for an expansion of matches for the purposes of providing a broader range of claims notices? And the proposed answer is that the subteam generally agree that if the matching criteria for the claims notice were to be expanded, the marks in the clearinghouse be the basis for an expansion for the purpose of providing a broader range of claims notice.

So we have agreement that if there was going to be any expansion, it should be keyed to what's recorded in the clearinghouse, but we couldn't get any agreement on whether there should be any expansion beyond exact match.

So, anything further on question four? No, we have more text. While there was no agreement that the matching criteria should be expanded, and most subteam members generally assumed that the clearinghouse would be the likely implementation for any expansion, because contracted parties are already integrated with the clearinghouse for the claims notice today, nevertheless the

subteam did not know how the implementation would technically work.

Personal comment, implementation is not our job. Policy recommendations is our job. [inaudible] that's just further explanation for the assumption that the clearinghouse would be the basis for any expansion.

Moving on to 4(b)(ii), what results, including unintended consequences, might each suggested form of expansion and matching criteria have? The proposed answer is the subteam did not agree on the expansion of matches. It didn't consider this question in detail.

And 4(b)(iii), what balance should be adhered to in striving to deter bad faith registrations but not good faith domain name applications? And subteam believed that the exact match criteria has already struck the [inaudible]. Is it current balance, or should that be correct balance? I'm just wondering out loud.

JULIE HEDLUND: Phil, current balance is the correct term.

PHIL CORWIN: Okay. Well, alright, current balance deterring bad faith registrations but not good faith domain name applications. The subteam believes that the current balance can be enhanced via well-crafted claims notices [inaudible] prospective registrants about potential problem with their chosen domain name, [employs]

clear, concise and informative language, and there's always a potential overflow of false positives.

So that's kind of expanding on the recommendation to the IRT for clarifying rewriting the claims notice. Do we have – we're still on 4(b), let's finish up and then we'll open it for comments. 4(b) is a long one.

[What is the] resulting list of non-exact match criteria recommended by the working group? The proposed answer, since the subteam didn't agree on expansion, it didn't consider this question in detail.

Next question, what's the feasibility of implementation for each form of expanded matches? And again, since they didn't agree on it, they didn't consider it.

If an expansion of matches solution were to be implemented, should the existing claims notice be amended? If so, how? Proposed answers, since the subteam didn't agree on expansion, it didn't consider the question.

A personal comment, I think it's clear that if we started generating claims notices for non-exact matches, that would have to be put forward in the claims notice language. It couldn't just say [an exact] match. But we don't have to deal with that at this point.

Finally, if an expansion of matches solution were to be implemented, should the claim period differ for exact matches versus non-exact? And once again, since they didn't agree on expansion, they didn't consider the question in detail.

So let's top there. That's a lot. But basically, the subteam couldn't reach any agreement on any of the proposals that were forwarded for generating claims notices for non-exact matches. Since they didn't agree on anything, they didn't get into any further detail on what the implications, consequences or modifications would need to be tied to that expansion.

Do we have comments, questions, whatever? Well, then we shall move on to – I believe we have at least one preliminary recommendation in question four, and that was in the absence of [wide] support for change to the status quo, the subteam recommends that the current exact match and criteria for the claims notice be maintained.

And of course, [if we don't] modify that recommendation, that'll become a full working group recommendation. Staff, are there any other recommendations for question four? Is that it?

JULIE HEDLUND: That's it. And just to note –

PHIL CORWIN: Okay.

JULIE HEDLUND: To Michael Graham's earlier question there, there are also currently no recommended questions for community input from the subteam.

PHIL CORWIN: Okay. So let's open it up. So the overall recommendation is keep exact matches for the generation of claims notice. Is there discussion on that? And also, let me open up for discussion. Should we ask the community for any further input related to any of the proposed answers to the questions or the recommendation?

[We've really only moved back] to the recommendation above that the claims notice be modified to be clearer and more effective in meeting its intended purposes. I see Rebecca Tushnet's hand up. Please go ahead.

REBECCA TUSHNET: Thank you. So I believe Kristine was really quite eloquent on this in the subgroup. Please correct me if I've got the attribution wrong. But the issue is clearly, we want feedback and we want to say that at the beginning of the document. But unless we have very specific questions, we're just going to get people saying, "Yes, it should be expanded," "No, it shouldn't be," in a way that is unlikely to help further the development of consensus.

So I would say that what we want is specific questions. And honestly, it might make sense to just say in the beginning we want very specific stuff. General support will probably not be super helpful, though of course everyone's free to offer it.

So yeah, unless there's something very specific you want to ask, I don't see a need. Thank you.

PHIL CORWIN:

Yeah. Thank you for your comment, Rebecca. I would just respond, of course just for myself, that you're correct. I think we already have discussed and agreed that there's going to be [inaudible] to the community to – and this is the purpose of the initial report – to comment on everything in the report. The community is free to comment on all the proposed answers if they think we got it right, wrong, or missed something. Same with the recommendations. And if a significant portion of the community wants to file comments saying “You got it wrong, there should be some expansion, you can do this and here's why it makes sense,” we're going to consider all those comments when we come back after the initial report is put out and decide whether to make modifications before turning it into a final report.

So, does anyone – Michael, your hand's up so I'm going to invite you to chime in. Please go ahead.

MICHAEL GRAHAM:

And I agree, and I guess this is something we've been focusing on, specific questions on these specific questions and comments that have been made. I think Rebecca's point is well taken, and it's something that we should consider after we get through all of these materials, and that would be in a preparatory statement in making our report public, available for public comment to emphasize that the comments would be most helpful and could only be fully considered if they are supported by information, evidence, data that can be provided with the specificity possible.

So I'd just put a pin on that for once we prepare how we want to present this report to have that request for the public comment. Thanks.

PHIL CORWIN:

Yes, Michael. Thank you for that, and I would agree. Personally, we want to be clear that if members of the community want to add to the report or disagree with it, we want more than opinions. So we don't need statistically significant studies, but we need at least some citation of data, real world experience to justify the feedback we get. And of course, it carries more weight when it's supported by some type of evidence, whether it's anecdotal or statistical.

And I guess one further thing I would say, there was one place already where we specifically asked for community input. So it seems like the rationale for specifically asking for community input on a particular subject is because it's so important that we don't want to just depend on general comments. We want to really highlight an issue and say we would like and could really use some further information from the community on this particular point.

So with that, are we through with question four, staff? I don't believe there was any [inaudible] question for the community.

JULIE HEDLUND:

Yeah, Phil, we are through with question four, ready to move to question five. Thank you.

PHIL CORWIN:

Alright. Well, [I'd observe] we're making good progress. We're 34 minutes into the call, we've gotten through questions three and four. So hopefully, we can maintain this pace.

Question five, should the trademark claims period continue to be uniform for all types of gTLDs in subsequent rounds? The proposed answer, the subteam generally agrees that where the registry operator has not obtained an exception – and it references the proposed answer to question 2(d) which related to a minority of specialized TLDs – continuing, the trademark claims period including for the minimum initial 90 day period where a TLD opens for general registration, should continue to be uniform for all types of gTLDs in subsequent rounds.

In addition, the subteam generally agree that registries should have a certain degree of flexibility based upon a suitable business model with the option to extend the claims period. Is that all the answer? There's nothing below? Okay, so that's the proposed answer. Subteam came out saying other than narrow exceptions for specialized TLDs, the claims period should continue to be at least a uniform 90 days with the registry having the option to make that longer, but not shorter.

Do we have discussion? No hands, so we'll continue. Are there subparts to question five?

JULIE HEDLUND:

Phil, there are no subquestions.

PHIL CORWIN:

Okay, so let's move on to preliminary recommendation, which is the trademark claims subteam recommends that the current requirement for mandatory claims period should continue to be uniform for all types of gTLDs in subsequent rounds, including for the minimum initial 90-day period when a TLD opens for general registration. And then in parenthetical, some subteam members asked for public comment on potential exemptions which would then not be subject to a claims period of any [inaudible] question [inaudible]. That's the answer to that.

I guess we could discuss whether that parenthetical is in the right place or whether [inaudible] propose questions, since if we leave it there – wherever it is, we're indicating a desire to get public comment on potential exemptions.

So, do we have – this is a preliminary recommendation, which is basically keep it the same, other than possible exceptions for a narrow range of specialized TLDs. Comments or questions?

Alright, well, I don't know whether the silence indicates that everyone's happy with what the subteam came out or they don't believe there's any point in suggesting changes, but that's where we are. Do we have more material to go through here on claims?

JULIE HEDLUND:

Phil, we can just note the status of where the subteam came out with respect to the individual proposals, as you see here on table three.

PHIL CORWIN: Okay. And the details of those proposals where there's links here, [inaudible] any detail on the initial report describing what they were?

JULIE HEDLUND: They would be in an appendix. There would be links. No detail, no.

PHIL CORWIN: Right, but there'll be a way for folks who want to dig down and find out what was discussed and didn't receive wide support what it was.

JULIE HEDLUND: Yes. That's correct.

PHIL CORWIN: Alright, so does this wrap up the discussion of subteam recommendations?

JULIE HEDLUND: Phil, yes, this does wrap up the TM claims subteam recommendations discussion, unless there are any further comments from anyone.

PHIL CORWIN: Okay. Any general comments on the subteam's work product? Well, with that, I want to thank the members of the working group

for completing [this review] in such a timely way, the claims notice. I want to thank the members of the subteam for their many weeks of hard work and dedication to the task at hand. And I believe – is Brian on? I believe he's supposed to take over and begin reading the sunrise discussion at this point.

JULIE HEDLUND: Brian is on the call. Brian, over to you. And we'll pull the document up momentarily.

PHIL CORWIN: It's all yours, Brian. Apologies to the subteam for my temporary confusion earlier, but I thought we had finished the proposed answers. But we wrapped up quickly anyway. So bye all, and handing off to Brian.

JULIE HEDLUND: And Brian, if you're speaking – I'm not actually seeing you speaking. I see that you're connected by phone.

BRIAN BECKHAM: [Sorry, Julie.]

JULIE HEDLUND: There were are. We hear you.

BRIAN BECKHAM: Just trying to [inaudible] with the document. Just maybe a question for Julie or the subteam. So we are on question 1(a), which is on my print off here I have table one which is the status of the subteam deliberation. And just to confirm, there's no need to go over that. Then we have table two, proposed answers, preliminary recommendations and proposed questions for community comment.

Did we want to start at preamble [QA] or just jump straight down to question Q1(a)?

JULIE HEDLUND: Thank you, Brian, and that is a good question. We had suggested starting with question one, which effectively means starting with Q1(a), because the preamble question really speaks to some overarching questions that will be better addressed after we've looked at all of the answers to the other charter questions. So we can run through to the 12 questions and then come back to the preamble, because the answers to those questions may have helped inform the subteam's answer to the preamble. Thank you.

BRIAN BECKHAM: Understood, and thank you for the explanation. Alright, so let's charge on. So this is again the sunrise subteam, and so I'll go ahead and read the question and the proposed answer, and then see if there's any comments. So question 1A is, should the availability of sunrise registrations only for identical matches be reviewed?

The proposed answer from the subteam is that the subteam ultimately concluded that the availability of sunrise registrations only for identical matches should be maintained, noting that members of this subteam had diverging opinions on this matter. Any questions, any comments?

Okay, hearing none, question 1(b), if the matching process is expanded, how can registrant free expression and fair use rights be protected and balanced against trademark rights? The proposed answer is the subteam ultimately concluded that the availability of sunrise regs only for identical matches should be maintained. The subteam did not consider this question in detail.

And I had a question for subteam or the full working group here. And I could be hazy here, but there was some possibility of adding records to the trademark clearinghouse for up to 50 labels for trademarks that had been found to be infringed either in the courts or through the UDRP. I just wanted to confirm that that was for the claims and not for the sunrise. If anyone recalls.

JULIE HEDLUND: I'm seeing there that David McAuley is saying he believes that that's correct in the chat. And Griffin is noting the TM Plus 50 service is only for claims and not for sunrise. And Kathy is saying, "I think so."

BRIAN BECKHAM: Thank you very much, everyone, for the refreshing of my memory. So the preliminary recommendation on questions 1A and B is that in the absence of wide support for a change to the status quo, the

subteam recommends that the current availability of sunrise regs only for identical matches should be maintained, and the matching process should not be expanded.

So again, any questions, comments, suggestions to adjust the text here? Okay. Hearing none, we can move on to question two. It says question two threshold. Is registry pricing within the scope of the RPM working group or ICANN's review? The proposed answer is that the subteam [inaudible] registry pricing is within the scope of the RPM PDP working group.

Some subteam members pointed to the registry agreement that registry pricing is not within the scope of the RPM working group due to the picket fence. Specifically, section 1.4.1 of specification 1 of the registry agreement, and section 1.12.1 of the consensus policies and [temporary] policies, specification of the registrar accreditation agreement respectively specify that consensus policies shall not prescribe or limit the price of registry services and registrar services. And there's a footnote to the reference sections [inaudible].

However, some subteam members express concerns about the interplay of registry pricing with RPMs, obligations, which are discussed further in the proposed answers to question 2(a) through (b).

Just a question [inaudible] whether that should be RPM plural or RPM. But just want to open up here for any questions or comments on the question two threshold.

Okay, hearing none, question 2(a)

JOHN MCELWAINE: Brian – sorry to interrupt. I can't tell because I can't see the footnote on my screen, but I think it would be important – I can't analyze it quickly enough either, but I think it would be important that we explain the picket fence reference above. It may be linked there, but I would just suggest that maybe instead of a link, that we kind of try to define that and include a link. Thank you.

BRIAN BECKHAM: Yeah. Thank you, John. And I'm just trying to see if there are any comments in the chat or hands raised. And I'm sorry, I don't see where the hand raising function is, so I'll just rely on people to speak up if they have their hands raised.

John, personally I think it's a good suggestion. I think I have a grasp on what the picket fence concept is meant to cover, but I think that could be a useful clarification maybe in a footnote somewhere in the initial report. I'm seeing some agreement in the chat that that could be a useful addition to provide a definition in a footnote maybe of what the concept of the picket fence is supposed to cover.

Okay, thanks, John. So moving on, question 2(a). Does registry sunrise or premium name pricing practices – maybe that should say “do registry sunrise or premium name pricing practices” – unfairly limit the ability of trademark owners to participate during sunrise?

The proposed answer from the subteam for our consideration was that the subteam generally agreed that some registry sunrise or

premium name pricing practices – and I'll just note that there's a footnote with a defined definition of the “premium name” term – that registry sunrise or premium pricing practices have limited the ability of some trademark owners to participate during sunrise.

The subteam is aware of cases where the registry operator practices may have unfairly limited the ability of some trademark owners to participate during sunrise when pricing set for the trademark owners was significantly higher than other sunrise pricing or general availability pricing.

Any questions or comments on question 2(a) here and the proposed answer? I just see a comment from David in the chat about the question about whether “does” in the beginning of the question should be “do.” I would also note that in the middle of the answer where it says the registry operator practices, [that perhaps should] say registry operator practices. But of course, [these types of things are going to come up in the pulling together] of the initial report.

Seeing no comments, no hands, I'll move on to question 2(b). If so, how expensive is this problem? So this refers back to the pricing during sunrise and how that could impact brand owners who are looking to participate in the sunrise.

The proposed answer is that the subteam noted this problem seemed sufficiently expensive that it may require a recommendation to address it. The subteam also noted that pricing is outside the picket fence. So I'll go to the preliminary recommendation, because the proposed answer there leads us to

the preliminary recommendation on this question of the interplay between registry pricing and sunrises and premium names.

So the preliminary recommendation for the full working group's consideration is that the sunrise subteam recommends that the registry agreement for future new gTLDs include a provision stating that the registry operator shall not operate a TLD in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN for restricting brand owners' reasonable use of the sunrise protection mechanism.

Any questions, any comments? I have a question if no one else does.

JULIE HEDLUND: Actually, Brian, Kathy Kleiman has her hand up. Michael Karanicolas also had his hand up, but I see that it seems to have disappeared, at least from my screen. So I don't know, Michael, if you still have a question. At least Kathy's hand is up.

BRIAN BECKHAM: I'm sorry, Julie, I don't mean to put this on you. Am I able to see the raised hands, or is that something that's just on your screen?

JULIE HEDLUND: You should be able to see the raised hand. There is in fact Kathy's hand if you look at the screen, it should show up right above [your name,] actually.

BRIAN BECKHAM: Okay, apologies for the stumbling here. Kathy, please.

KATHY KLEIMAN: Thanks, Brian. And thanks for leading us through sunrise. I'm actually circling back to the picket fence definition. I wasn't sure if we put into place just a little plan for how to get that. So I was going to propose – because it [is a] sophisticated concept and one we talk about a lot, often with very different definitions.

So I was going to propose that maybe staff can find us – can see if there's a nice definition of picket fence out there, and then circulate it to the working group so that everyone can see if they agree and also if they need to clarify or expand. And then as Michael Graham said, we include the link to the document where there's a picket fence as well in case people want more details.

So I just wanted to make sure that didn't slip and made it into an action item. Thanks, Brian.

BRIAN BECKHAM: Yes. Thank you, Kathy. I think that's a good suggestion. I see no need to reinvent the wheel. And I see Julie has put in the chat that that link may itself very well be a definition that ICANN has previously come up with, so we can certainly have a look at that.

Okay, so it seems that we agree to look at that definition of the picket fence. I see Michael Karanicolas has his hand up. Michael?

MICHAEL KARANICOLAS: Thanks. I wanted to suggest that 2(b) should start with “some subteam members” as opposed to “the subteam noted,” because I think that that’s more accurate as to reflecting the conversation. Thanks.

BRIAN BECKHAM: Sure. I suppose maybe there's a question whether there was a particular reason the subteam settled on this language in handing the draft answer up here to us. So let me, with that, see if there aren't any questions. I see Kathy. I don't know if that's an old hand. And then I see Susan Payne.

KATHY KLEIMAN: Apologies, it's an old hand. I'll take it down.

BRIAN BECKHAM: Okay. Susan Payne, please.

SUSAN PAYNE: Yeah, thanks. I'm sorry, but I thought as a subteam we did note that. I don't think it was – frankly, everything we did in the subteams was “some subteam members think this and some think that.” But generally speaking, we got enough support for that that we felt we could make that a subteam note rather than anything else.

We've had a lot of conversation on previous calls about relitigating wording, and I don't think we should start doing that here.

BRIAN BECKHAM: Yeah. Thanks, Susan. I wonder if there are other – and I don't know, Michael, if you were on that subteam. I apologize, I don't have the rosters in front of me. But are there maybe other people that were on this subteam that could help fill in on Susan's point a little bit?

JULIE HEDLUND: I see that David McAuley's hand is up, and he's of course one of the co-chairs.

DAVID MCAULEY: Thanks, Julie and Brian. I think Michael's point is a good one, and I think Susan's point is a good one. Michael's right, some said this and some said that, but I think Susan is also correct that there was a fairly extensive feeling here that the wording is appropriate for what we discussed and how it was discussed. It's a close call, but I think Susan has correctly stated it and said, yes, while Michael's right, this is the wording that we agreed. Thanks.

BRIAN BECKHAM: Okay. That's useful background, David. And I see Maxim in the chat saying the wording had no objections at least. Michael, I wonder, I suppose that maybe puts the question back to you if you feel that with that explanation from Susan and David, and then seeing some of the comments in the chat, if it's okay to leave the language or if we want to maybe continue this or come back to it at a later point. Michael?

MICHAEL KARANICOLAS: We were editing on the fly in Marrakech, and I don't remember agreeing to this specific language. I think that there were edits made, it went back and forth, and then it was going to be edited again and now we're reviewing that. That said, I don't want to die on the cross for this. If people don't want to change the language, don't change the language.

BRIAN BECKHAM: Okay. Thank you. And I see Julie putting a note that this language was agreed to before Marrakech. I would just maybe add one observation. I don't know if this is correct or not, but I noticed in some of the other questions, we had put out proposed questions for community input whereas with this one, we had an actual preliminary recommendation. So I wonder if the fact that there is a proposed recommendation doesn't speak to some level of support within the subteam. But I've also taken note, Michael, of your comment that this is something that you felt that was digging in too much – I don't mean to put words in your mouth, but that it was okay to move on here.

So with that, I'll move on – sorry, just bringing my self back up to speed. Sorry, just one question. And apologies if this is an unhelpful distraction. But the subteam recommends that the registry agreement include certain provisions. Is there any need to make reference to registrars also, or is it sufficient, the language that's been proposed here from the subteam?

JULIE HEDLUND: David McAuley's hand is up.

BRIAN BECKHAM: David, please.

DAVID MCAULEY: Thanks, Julie and Brian. We didn't discuss the registrars, as I recall, but there was discussion around this that there would have to be some work done [inaudible] there would have to be some perhaps extensive work to be done by the IRT at the implementation of this, because it needs to be somewhat specific. In other words, I think there was a discussion that this is the recommendation, but there was a recognition that more needs to be done at some point to make it more specific, more focused, that kind of thing. Thanks.

BRIAN BECKHAM: Okay, and I see Julie's putting in the chat that this question specifically speaks to registry practices. So, sorry, I didn't want to open up any unnecessary discussion, just wanted to make sure that we're covering all the bases, because of course, the registrars that have the contact with the clients, with the registrants. So it looks like because the question is directed at registries, then that's sufficiently covered here. And of course, it's been noted that there would be some sort of an implementation team looking at these proposed recommendations in any event.

With that, we'll move on to question three. Question 3(a) is, 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 a reserved name?

The proposed answer is the subteam noted that every Q3 subquestion covers both premium names and reserved names, which are very different. Premium names are not clearly defined as a registry operator can have multiple pricing tiers. The subteam had diverging opinions on whether registry operators should 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 name.

And the preliminary recommendation – maybe I'll hold off on that, maybe that goes to all of question three and the subparts. So the question 3(a) and the proposed answer, any comments or questions?

Okay. Seeing none, question 3(b), additionally, should registry operators be required to create a release mechanism in the event that a premium name or reserved name is challenged successfully so that the trademark owner can register that name during the sunrise period?

I suppose that that question would presuppose there being some sort of a challenge mechanism. So the proposed answer was since there was no wide support for a challenge mechanism within the subteam, the subteam did not consider this question.

Any questions, any comment on question 3(b) and the proposed answer? Okay, seeing none, question 3(c). What concerns might be raised yes either or both of these requirements? The proposed

answer is that some subteam members noted some possible concerns, but there was no wide support within the subteam for those concerns, hence the subteam did not develop an answer to this question.

So again, any questions, comments, thoughts on question 3(c)? So that takes us to the preliminary recommendation for – I'm sorry, [inaudible] page here. For question 3(a), (b), (c). So it says in the absence of wide support for a change to the status quo, the sunrise subteam does not recommend the creation of a challenge mechanism.

Okay. Any questions, comments, thoughts on that preliminary recommendation? Okay, seeing none, that takes us to question four, and there are three [subparts] there.

So question 4(a), are registry operator reserve name practices unfairly limiting participation in sunrise by trademark owners? The proposed answer is that some subteam members believe that certain registry operators' reserve name practices may be unfairly limiting participation in sunrise by trademark owners.

Question 4(b) – I'm sorry, any questions, comments, thoughts on question 4(a) or the proposed answer? Okay, seeing none, question 4(b), should section 1.3.3 of specification 1 of the registry agreement be modified to address these concerns? And then there's a footnote which is actually in the proposed answer, but that footnote is the text of section 1.3.3 of specification 1 of the registry agreement.

The proposed answer is that the subteam did not agree that there are concerns that should be addressed with regard to section 1.3.3 of specification 1 of the are yes agreement. Any questions, any comments on question 4(b) or the proposed answer?

Okay, question 4©, should registry operators be required to publish their reserved names lists? What registry concerns would be raised by that publication, and what problem or problems would it solve?

The proposed answer is that the subteam had diverging opinions on whether registry operators should be required to publish their reserve names lists. Some subteam members noted several possible registry concerns if registry operators were required to publish their reserved names list.

Other subteam members discussed possible problems that the publication of the reserved names list could [solve.] Interesting. So just a question here for the subteam or the working group, I wonder, did the subteam articulate in any detail what those possible registry concerns and/or how the publication of those lists could solve those problems?

In other words, if I'm picking up this initial issues report and I see this text, would it be helpful for me to know what are the concerns and what would publication of those lists solve? Any questions, comments, thoughts? Particularly for the members of this subteam, is that something that you all discussed in detail and considered putting in the text here, or am I raising a question that's not necessary?

I'm seeing – Maxim Alzoba says, “It was discussed in great detail, including commercial secrets, danger to security and stability, violation of civil laws in some jurisdictions,” etc. So that I think goes to the registry concerns, and then the [inaudible] that there was the idea that [public lists] should actually solve some problems. And I see Julie is writing that the details [will be] included in the summary table [inaudible] deliberations. So thank you, Julie. That’s a useful clarification.

Any questions, comments? Otherwise, I think I can read you the preliminary recommendations for question 4(c). In the absence of wide support for a change to the status quo, the sunrise subteam does not recommend the publication of the reserve names list by registry operators.

Okay. Any questions, any comments? Okay. And I'm just seeing [inaudible] Maxim [inaudible] chat, as we’re all of these questions, we’re including answers, preliminary recommendations and questions for input in this document, but the details are available for reference. Thanks, Julie, for that clarification.

So on to question 4(d), having seen no comments on question 4(c), should registry operators be required to provide trademark owners and the TMCH notice and the opportunity to register the domain name, should the registry operator [inaudible]? What registry concerns would be raised by this requirement?

And I have a note of my own on the margins here. I don't know if it's maybe that the punctuation or the particular words, but I personally don't have a complete grasp on what this question is asking, so I wonder if anyone on the subteam might be able to

help us, or at least help me understand what this question is asking, and then the proposed answer of course is that the subteam had diverging opinions on this matter.

So I don't know if others share my confusion about how this question reads or if maybe I'm just reading it in a slightly awkward way.

JULIE HEDLUND: Brian, I'm not able to raise my hand, but I think the subteam did comment that this is a particularly poorly worded charter question. But of course, we can't alter the charter questions, so they stand as is, unfortunately.

BRIAN BECKHAM: Sorry, Julie, I lost you. I could only hear some muffled sound. I don't know if other people could hear you. If so, no need to repeat the comment. I see David McAuley.

JULIE HEDLUND: Yeah, maybe David McAuley had – is noting that Greg had some insight into this, but unfortunately he couldn't be on the call today.

BRIAN BECKHAM: Maybe – looking at this again, I'm wondering if it might be some sort of a concept of a right to first refusal. I don't want to spend time on this if it's not necessary. I see Susan Payne has her hand up. Susan?

SUSAN PAYNE: Sorry, I stepped away, so forgive me if I'm answering the wrong question, but I think you're asking what question 4(d) is meant to be asking. And you're right, it's essentially that sort of notion of a right of first refusal. You probably recall that in the RPMs requirements document, there's a provision that if reserve names are released, they should be subject to the claims period, but they are not subject to a sunrise if they get released after the sunrise has ended.

So this question is asking whether something should be done to address that anomaly.

BRIAN BECKHAM: Okay. Thank you, Susan. And I see Kathy has her hand up.

KATHY KLEIMAN: Yeah. Agreeing with Susan that this was something outside the sunrise period. And I seem to recall – although correct me if I'm wrong – that the subteam talked about – that we're talking about something outside the sunrise period. So probably outside our bailiwick, if I recall correctly. And then as Maxim has raised in the chat, there were lots of concerns kind of about technical and implementation.

But the big thing I remember is this was outside the sunrise period issues we were talking about. Thanks.

BRIAN BECKHAM:

Yeah. Thanks, Kathy. And thanks, Susan. I wonder, in light of the clarification from Susan about the intended scope of the question, if people agree, no need to get to drafting here, but maybe just to note that when the initial report is pulled together, that this was meant to cover the concept of a right of first refusal.

And just to the comments of Susan and Kathy again, it could be that – and I'm seeing a comment from Griffin – this is not outside of scope because it was about pre-sunrise reservation and post-sunrise [inaudible] as a means of circumventing sunrise.

And I was going to add that it could be that this falls kind of more in the claims or more in the sunrise or a little bit of both. But in any event, to Kathy's point, perhaps that's something that could be kind of cleaned up when it's shifted over to the initial report, whether it falls under claims or sunrise or it somehow covers both of those in its own way.

Susan, is that a new hand?

SUSAN PAYNE:

Yeah. Thanks, Brian. It's not a claims question, it's absolutely about sunrise. It's about the point that Griffin made, which is, as I said, that there's this theoretical – or perhaps real – possibility that names could be reserved for the duration of the sunrise as a means of circumvention, and so when they get released after a sunrise period is over, they don't go on sunrise.

So it's absolutely a sunrise-related question, but as we've noted, as a subgroup, we couldn't reach agreement on the extent of the problem, whether it should be dealt with, whether it was an

appropriate question for us. Some people think it isn't. But it's not a claims question, it's absolutely a sunrise one.

Now, it may be that we need to explain better to the community why this question is even in there, because for that, they need to understand what the RPMs requirements say.

JULIE HEDLUND: And Brian, I'm unable to raise my hand. If I might just briefly comment on that. But before I do that, there is a number, there is somebody who joined on audio but is not in the Zoom room. That number starts 1215 and ends in 094. Could that person identify yourself, please?

STEVE LEVY: This is Steve Levy. I mentioned in the chat that I needed to jump to audio. Sorry.

JULIE HEDLUND: That's alright. Just checking. Thank you very much. And with respect to the charter questions, because this is certainly not the only charter question that would bear [some elucidating,] I think that again, while we can't alter the charter questions, I think that what we can do in the initial report is explain where this came from, and then where it's necessary, we could add some explanation such as to this question, a little bit more explanation as to what it's relating to. So I hope that's helpful.

BRIAN BECKHAM:

Yeah, that's helpful, Julie. And as I think David's rightly saying, we can say this is how we read the question. So I think that's a fair point. We can certainly – we don't have the kind of flexibility to change the questions. We can add our interpretation of them. I think particularly with this one, that could be useful.

Okay, I think that looks like we've wrapped up question four and all of the subparts. That takes us to question 5(a). So 5(a) is, does the current 30-day minimum for a sunrise period serve its intended purpose, particularly in view of the fact that many registry operators actually ran a 60-day sunrise period?

The proposed answer is that the subteam noted two types of sunrise period. One, a start date sunrise where the registry must give 30 days' notice before commencing the sunrise. Once the sunrise starts, it must run for 30 days at a minimum. Two, end date sunrise where the registry can announce the sunrise and [inaudible] the sunrise starts must run the sunrise period for 60 days at a minimum.

Then it goes on to say both types of sunrise periods require a total of 60 days at a minimum. And there's a footnote with a link to – it says ICANN Wiki, so that looks to be a definition of the sunrise period.

Then it goes on to say the subteam generally agreed that the current 30-day minimum after a start date sunrise period starts appears to be serving its intended purpose. And I don't know if it's necessary to ask whether the subteam agreed that – if there's agreement that the 30-day minimum [where you] have the 30-day notice and the 30 days running serves its intended purpose, if the

subteam also felt the same way about the option where they just run 60 days from the go.

The preliminary recommendation on this question is that the sunrise subteam recommends in general that the current requirement for the sunrise period be maintained, including for a 30-day minimum period for a start date sunrise and a 60-day minimum period for an end date sunrise. So that proposed preliminary recommendation seems to answer the question I had about whether the subteam also considered the 60-day period was serving its intended purpose. Any questions, any comments on question 5(a) and the corresponding preliminary recommendation?

Okay. Seeing none, question 5(a)(i), are there any unintended results? So I presume that that relates back to the two different sunrise periods, the 30- and 60-day. I wonder if it might be useful to add some text there to clarify that. But again, don't want to upset things if we don't have the leeway to adjust these questions. But that may be one thing for staff to think about in terms of pulling the initial report together.

So, are there any unintended results is the question. The proposed answer is some subteam members believe that there are unintended results, such as complication when many TLDs are launched simultaneously for the start date sunrise for 30 days. Other subteam members believe that the 30-day advance notice before they start the sunrise may help mitigate the administrative burdens on trademark owners.

Any questions, thoughts, comments on question 5(a)(i)? Okay, question 5(a)2, does the ability of registry operators to expand their sunrise periods create uniformity concerns that should be addressed by this working group? And I'm assuming when it says expand their sunrise periods, that's talking about time duration, not the scope. So the proposed answer is that the subteam generally agreed that the existing ability of registrar operators to expand [their] sunrise periods does not create uniformity concerns that should be addressed by this working group.

Any questions, thoughts, comments on question 5(a)(ii)? Okay, question 5(a)(iii). Are there any benefits observed when the sunrise period is extended beyond 30 days? The proposed answer is that the subteam had diverging opinions on whether there are benefits observed when the start date sunrise period is extended beyond 30 days?

And I see Susan Payne has put a link in the chat. It looks like that's to the working group charter. I don't know if it's necessary to explain the chat that's going on or if people are just following that independently. Any questions, comments on question 5(a)(3)?

Okay. Seeing none, question 5(a)(iv), are there any disadvantages? The proposed answer is some subteam members believe there are disadvantages when the sunrise period is extended beyond 30 days, but the subteam did not come to a conclusion on this point.

I don't know if it's necessary or useful to expand on which party would be seen as being disadvantaged. Again, I don't want to

create extra work or conversation here. Anybody, comments, thoughts on question 5(a)(iv) and the proposed answer?

Okay, and Julie's reminding me that these types of details would be available for reference. Question 5(b). In light of evidence gathered above, should the sunrise period continue to be mandatory, or become optional?

The proposed answer there is that the subteam had diverging opinions on whether the sunrise period should continue to be mandatory or should become optional. The preliminary recommendation – it looks like that goes to all parts, so I will actually wait to read that. Any comments, questions on question 5(b)?

Okay. Question 5(b)(i), should the working group consider returning to the original recommendation from the IRT and STI of sunrise period or trademark claims in light of other concerns, including freedom of expression and fair use?

The proposed answer is that the subteam considered this question but did not reach a conclusion. I had dotted a comment here for myself around the words "other concerns," and I'm going to assume that as Julie's been reminding me that those types of things would be somehow documented or referenced for people in [inaudible] reference document.

So, any questions, comments on question 5(b)(i) about returning to the recommendation of the IRT and STI in the proposed answer? And Julie is just articulating in the chat a kind of fuller

answer to the question about explanatory text and sort of background information.

So seeing no questions or comments, question 5(b)(ii), in considering mandatory versus optional, should registry operators be allowed to choose between sunrise and claims – that is, make one mandatory?

The proposed answer is that the subteam considered this question but did not reach a conclusion, and the preliminary recommendation for all of these question 5(b) and 5(b)(i) and (ii) is that in the absence of wide support for a change to the status quo, the sunrise subteam recommends that the mandatory sunrise period should be maintained. Any questions, comments, thoughts on question 5 and its subparts?

Okay. I'm just seeing that question 6, question 6(a) and the proposed answer, and in particular the preliminary recommendation seemed to be a little meatier than some of the ones we've been tackling so far, and we have six minutes left. I don't know if it's realistic to try to get through this one. I'm certainly happy to. I think I can stick around for a few minutes, or we can call it a day. I see Kathy is putting a comment to say "Save question six for next week." I think that seems sensible, unless we want to really test how fast I can read, and whether people could understand that here this evening.

So, in conclusion before I turn over to staff, any kind of final thoughts or observations on what we've covered so far today? And I'm seeing Julie just agreeing that it seems like a good place to stop. Okay, so it looks like we will pick up on question six next

time, and I don't know if we're at the same time next week, but of course, I think staff would remind us during the course of the coming days of the time of the next meeting and the plan for that particular meeting.

So if there are no other questions, I will turn over to – and Julie's just reminding me [it's] the same time next week. I'll turn over to see if staff has any final comments. Otherwise, we can wrap up.

JULIE HEDLUND:

I want to thank Phil and Brian for doing a wonderful job of leading the working group today and for making so much progress. And thank you all for your very helpful comments. We've noted them, and we'll be sure to either take note in the document where changes are suggested, or notes for how information should be put into the initial report when we get to that point. So thanks again, everyone. The next call is next week Wednesday on the 24th of July at 17:00 UTC, and we'll go ahead and adjourn now. and thank you, again, for your participation.

UNIDENTIFIED MALE: Bye, everyone.

[END OF TRANSCRIPTION]