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**ICANN Transcription**  
**Review of all Rights Protection Mechanisms (RPMs) Sunrise Data Review Sub**  
**Team Call**  
**Wednesday, 12 June 2019 at 18:00 UTC**

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JULIE BISLAND:

Good morning, good afternoon, good evening all. Welcome to the RPM subteam for sunrise data review call on Wednesday the 12th of June 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please let yourself be known now? And I know Claudio is on audio only. Anyone else? And Maxim's having coffee.

Hearing no names, I'd like to remind all to please state your name before speaking for recording purposes and please keep your phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to Julie Hedlund. You can begin, Julie.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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JULIE HEDLUND:

Thank you very much, Julie Bisland. This is Julie Hedlund from staff, and I'll just run through the agenda very quickly. First item is the update to statements of interest. Next is workplan timeline. The third is the discussion of the proposed answers and pulmonary recommendations and you see those in front of you in the screen. And the fourth item is any other business. May I ask if anyone has any other business?

Going back to Agenda Item one, may I ask if anyone has any updates to statements of interest? Not seeing any, and Greg Shatan is asking if we can hear you. No, Greg, we cannot hear you. Let me go to agenda item two, and just to briefly say that the workplan timeline is really dependent on what the subteam is able to complete today, after which the subteam co-chairs will meet with the working group co-chair to determine the plan for ICANN 65 and the four sessions there, and also, the subteam co-chairs will use today's discussions and all the discussions thus far to draft some proposed – to capture the proposed answers to questions and preliminary recommendations.

With that, let me turn over to Greg Shatan, if we can hear you, Greg, if you'd like to give a brief update from last week's meeting. And Greg, we cannot hear you. let me see if you are –

DAVID MCAULEY:

Julie, it's David.

JULIE HEDLUND:

Yes, David. Please go ahead.

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DAVID MCAULEY:

I think you meant for me to give just a brief update from last week's meeting, and I'm happy to do that. Just a very brief summary, so let me just go ahead and state that last week, we started reviewing question three and individual proposals ten and 11 both from Susan, dealing with challenge mechanism, and commitments to [not trying to] work around the RPMs.

We got on to question four and then 5A. During those discussions around that time, Greg came up with a very good phrase that we're testing protraction now, and it sort of underscored comments that were in the closing stages, looking for wide support where wide support might exist, and that coincides, Julie, with what you just said, that we will be meeting with the working group co-chairs and then Greg and I will be working with staff on coming up with some initial ideas.

We talked about question six and proposals two and four. I saw from the mail that that is still on the table, and we briefly noted question seven, but that's roughly what we did last week. So back over to you, Julie.

JULIE HEDLUND:

Actually, then I think we can turn over to Greg, if we can hear Greg.

GREG SHATAN:

Can you hear me now?

JULIE HEDLUND:

We sure can. Thank you.

GREG SHATAN: Okay. Having some headset problems, and now I'm not having a headset. In any case, let us go. I think we are going to Q6. So we have a proposed answer here, and I came back into the call but late into David's comments. I think we need to finish discussing Q6. We're kind of in the middle of it, though I'm not sure how to join it in the middle.

So there was the Uniregistry suggestion, which is in the preliminary recommendation column, in light gray. I don't think we have had wide support for that. So I guess the question is whether in terms of the proposed answer in the first column, whether there are further comments on what is now there, which should be the latest version of the proposed answer.

I see David. Go ahead, and then Kristine.

DAVID MCAULEY: Greg, thanks. That was an old hand. Sorry about that. But let's go to Kristine.

GREG SHATAN: Okay. Kristine, please go ahead.

KRISTINE DORRAIN: Thanks, Greg. I am just asking a procedural question, because I literally just joined in now. We're on question Q6A, which is what I see on the screen. Are we discussing column one or column two? I'm sorry. Thanks.

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GREG SHATAN: We're discussing both column one and two. I perhaps rushed to judgment on column two, but let's start with column one and see if there are any comments on what we currently have there. Somewhat lengthy, so I'll give everyone a moment to read it.

CLAUDIO DIGANGI: Greg, is it possible for Ariel to scroll down if I'm looking at the right spot? Thank you.

GREG SHATAN: Ariel's put in chat the note that the green text is another version of the proposed answer suggested by one subteam member. So I take it those are mutually exclusive alternatives, although something could be made of the two together as well.

CLAUDIO DIGANGI: Greg, so, is this answer basically saying [not to start working,] we're recommending to just keep the status quo? Is that the gist of what this is saying here?

GREG SHATAN: As I read it, the first proposed answer begins with a fairly objective statement of what the SDRP was intended to be, and then there's a paragraph that proposes a result of the subteam, although it's not necessarily exactly what I recall us discussing.

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So the subteam recognizes that it's not within the scope of the RPM PDP working group to recommend changes to any customizable portions of the SDRPs that registry operators should determine on their own. However, some subteam members believe that changes to the minimum standards of SDRPs are needed, which doesn't, in my mind, form a complete answer.

And then the second, the green, just seems to be a statement of the current status quo without actually – it just answers the question of what are SDRPs, and I don't believe it says that no changes should be needed, but I think that probably needs to be added if that's what is being said. So I've got Kathy followed by Kristine.

KATHY KLEIMAN:

Great. Thanks, Greg. Let me propose some language to the text that we're looking at, because just overall, we did find out that SDRPs are very troubled because nobody is using them and there may be real reasons why they're not using them. However, can we say – it's hard to identify where these sentences are, and I don't have the printout in front of me. So where we're looking, "However, some subteam members believe that changes to the minimum standards for SDRPs are needed," I don't think that's what any of the proposals say.

So let me give some different language. "However, the subteam recommends that some supplemental support to the SDRPs is needed." Let me read that again, "However, the subteam recommends that some supplemental support to the SDRPs is needed." And that's where the proposal comes from. I don't want to say the [inaudible] supports it, but

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that we worked on together to try and come up with a very targeted way to request information that would facilitate a challenge by a trademark owner or appropriate organization. And that language is circulating. But just for that black language, I think that should do it, Greg, the supplemental support. Thanks.

GREG SHATAN: Kristine, please go ahead.

KRISTINE DORRAIN: Thanks, Greg. Yeah, I reviewed both the Q6A and then the preliminary recommendation in gray, and I can limit my comments to the proposed answer and we can go to the preliminary recommendation in a minute.

I am one of the people that brought up the SDRP. It wasn't because the SDRP is somehow bad or ineffective or whatever. I realize some people might believe that. It's the wording of it that puts the onus on the registry operator to know whether or not at the time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect. That is something that the trademark clearinghouse is doing.

It's more for me about the process of it, so I don't know that that second – I think the first paragraph seems fine, but I don't know that the second paragraph, even with Kathy's suggestion, gets there, because it's not changes to minimum standards, and it's not supporting the SDRP. It's recognizing that the applicant guidebook requires registry operators

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to do something that they cannot do, and something that the clearinghouse, by the nature of its function, is already doing.

So it's more a matter of cleanup. If we're going to churn on this for months, I would just withdraw my suggestion and say leave it, all the registries will do like we have been doing. We tick a box and say, "Sure, we have an SDRP." It's a nonissue because nobody can actually bring one because this is a trademark clearinghouse thing and there's already a trademark clearinghouse dispute policy to deal with this thing.

So if we're going to just churn over it, I could just withdraw it, but the point is just purely procedural. It isn't substantive at all. Thanks.

GREG SHATAN:

Thanks, Kristine. I've got Susan followed by Kathy. But first, I'm not sure that your objection is entirely procedural, because implicitly, I think it says that what's there as a sunrise regarding the underlying trademark registration is severely misplaced and makes no sense, which to my mind seems at least partially substantive, if not, at the least substantial. Susan, please go ahead.

SUSAN PAYNE:

Thanks. Thanks for this, Kristine. I think the challenge is that if you're a potential registrant in a particular registry and you feel that your ability to register that sunrise name has been kind of taken from you, for want of a better term, because someone scooped up the name in sunrise in that particular registry. I think the reason for imposing this kind of dispute process on the registry operator was to be able to address that



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scenario rather than the sort of [wider] scenario which the TMCH operating, where someone just feels that a mark is in the TMCH [wrongly.]

But I think you're right that effectively, it's the same grounds for challenge, and perhaps – but I think, to expect the kind of aggrieved registrant to only deal with this via the TMCH may be unfair to them, or at least once they've challenged it in the TMCH, there's no kind of connection back to what that means for the sunrise registration that they didn't get.

Maybe we do need a sort of side by side comparison of the two and to work out whether there's a scenario that the registry operator should legitimately be covering and that still needs to be in there. And if there isn't anything, then we could be content with having this challenge process at the TMCH level, provided that there's some mechanism built in for registry operators to then kind of honor it and address it at the single domain name level later if the registrant –

And I see in the chat what you're saying, you don't think it was intended to get a sunrise registration to a brand owner to challenge a wrongful registration. I agree, but I think the scenario where it's likely to come up, not necessarily a brand owner, I just think the scenario where it's likely to come up is someone who wanted that name and is aggrieved because it got given to a brand owner, they feel, improperly.

Presumably the remedy is cancel, if it wasn't an eligible sunrise registration, then it ought to be cancelled. I'm going to stop talking and mute myself, because there's lots of hands.

CLAUDIO DIGANGI: Greg, can I get into the queue?

GREG SHATAN: Sure. You're in the queue after Kathy. And before Kathy is Kristine and John. But before that, there's a number ending in 232. Need to know who that is.

BRIAN BECKAHM: Greg, that's Brian Beckham. I didn't realize it was necessary to identify. I'm sorry.

GREG SHATAN: Yeah, we just don't know who – it could be a spy. Although I would have to question the sanity of anybody who'd spy on us. But Susan, I thought you were going to get to suggesting that proof for a sunrise dispute action could be a disposition of a trademark clearinghouse dispute, basically knocking the trademark clearinghouse registration out of that registry, and that would raise the question to me of whether that should automatically result in sunrise registrations being rolled back, or whether then it'd have to be enforcement on a TLD by TLD level. But you didn't suggest that, but something to think about. Kristine, please go ahead.

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KRISTINE DORRAIN:

Thanks. I'll first answer Kathy's question in the chat, which is, can I clarify the SDRP rules in the guidebook if they are broader than we are describing? Essentially, what is written in the middle column number one there is what it says in the guidebook. It's pretty basic, and it was written really before the clearinghouse fully had all its rules and everything in place.

So the idea was that we knew that there was going to be some sort of a sunrise, and as I understand it – obviously, I was not part of the IRT – the point was that if somebody were to inadvertently or intentionally get a sunrise registration for a name that they weren't actually entitled to because their mark was not actually valid or it had been abandoned or whatever, then that name should be canceled at the registry level, or there should be a remedy for that. There should be a way to fight with the registry operator about that.

Then along came the trademark clearinghouse, and that sunrise decision making was not with the registry. What happens is the mark goes under the clearinghouse, the clearinghouse says yes or no, it's vetted. Basically, it sends that one or a zero to the registry operator. Brand owner shows up during sunrise, yes or no, it's all vetted, you're good to go. Yes, give that brand owner the domain name.

So none of the decision making that's happening in subpoints one, two, three or four as far as the trademark on which the sunrise registration is based, none of that decision making happens at the registry. So if you want to challenge the fact that there was a sunrise registration based on a bad trademark, you have to go back to the trademark clearinghouse,

because the registry just got a one or a zero. So you have to go to the trademark clearinghouse.

Once you go to the trademark clearinghouse – and this is a different point that I think Kathy brings up later, but then you say, “Well, yeah, the mark was not really valid, we need to challenge that.” And then at some point -and I think this is the point Susan might have been making, at some point then you need to fast forward to the registry and say, “Okay, we’ve shown that that mark was invalid. Now that registration should also be invalidated, and you should do something about that.

Now, when I wrote the rules for forum back many years ago when I was there, one of the things I suggested at the time to my customers was you have to think about what you want your remedy to be. Do you just want to cancel the mark and be like, oops, mea culpa that sunrise registration’s invalidated, domain goes into the general pool? By that point the sunrise is over in most cases. Or do you say, “And I as a registry operator will decide that I want to give that brand owner that contested the sunrise registration, by getting that domain name because they would have qualified but for bla bla?”

Completely optional. I do not think that it is in our place – and this is what the first text in the black says – I do not think it is our place to dictate to registry operators what those remedies should be. I think it’s up to the registry operator’s business model as to how it allocates the domain names. But I think the point I’m trying to make is the sub applicant guidebook provision here just didn’t anticipate that the clearinghouse would solve this problem, so it puts the onus on the registry operator to do something it kind of can’t do. Thanks.

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GREG SHATAN: Thanks, Kristine. Susan, is that an old hand now? I think it is, so I'll go to John McElwaine.

JOHN MCELWAINE: Okay, so I'm a little confused by Kristine's statement and the statement that says registry operators do not have access to the information to make the substantive decisions concerning SDRP. I'm looking at the dot-bot SDRP policy, and there are a set of rules that are put forth, but those decisions, this gets kind of handled like an arbitration proceeding, I believe, in that the decisions are made by NAF, so I presume that the aggrieved party that meets standing has to submit evidence for instance that at the time that the domain name was registered, that the registrant did not hold a trademark registration of national effect. Happy to be corrected on that, but that's how I thought it worked.

So I think the discussions we're having right now are more one of judicial economy or whatever. Why have this litigated both at the SDRP level when it isn't also in effect for a – whether something should be in the trademark clearinghouse?

That being said, we do need to look at the very last part of the SDRP section from the applicant guidebook 6.2.4, [inaudible] five, which I think would have to be handled on a registry level. And then I'd say furthermore, there may be some specialized TLDs that want to have additional requirements that there could be some challenge about, but otherwise, I think I agree with everyone, I just want to make sure that my understanding is correct, it's that not the registry operators don't

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have access to this, we're really talking about sort of a judicial economy thing. So I'll be quiet and let myself be corrected perhaps. Thanks.

GREG SHATAN:

Thanks, John. We'll go on to Kathy Kleiman.

KATHY KLEIMAN:

Cool. Thanks, Greg. And I think I'm going to be supporting John, which is we have to dive a little bit farther into the sunrise service in the applicant guidebook. And John, maybe I'm looking at an old one, but I'm also in 6.2.4, and let me read some of the language, and then we're almost there, but John's right, there's another section. So the proposed SDRP must allow challenges based on at least the following four grounds. Three of those four grounds, Kristine's right, they're existing trademarks. But the fourth ground, at least in the version I'm looking at, is the trademark registration on which the domain name registrant based its sunrise registration did not issue on or before the effective date of the registry agreement, and was not applied for on or before ICANN announced the applications received.

We've made no effort to change that language, and that's some of they key language. I don't think this affects brand owners at all, but it does affect some of these people who are going out there to get trademark registrations on ordinary words and use them to game the system.

So in order to file an SDRP challenge, you need some more information. So none of this is about a challenge in the trademark to the trademark clearinghouse, it's about most of these proposals are about information

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requests to the TMCH so that a legitimate challenge under the SDRP can be brought. And it's in that context that we're talking about these kind of new trademarks that are filed very quickly and solely for the purpose of gaming sunrise.

And I think we're floating something that's very narrow, very targeted, very informational and would all these legitimate SDRP challenges to be filed. Thanks.

GREG SHATAN: We'll go to Maxim.

CLAUDIO DIGANGI: Greg, [was I next?]

GREG SHATAN: Oh yeah, you're right, Claudio was first, and then Maxim.

CLAUDIO DIGANGI: Thank you. No worries. Yeah, I think I would join the chorus a little bit with what's been said. One way I'm also looking at it – I'm not sure if we've really discussed this aspect – is – and I think Kathy is right there about the [last] requirement relating to the timeliness of when the registration was completed in terms of when the registry launched.

But I guess I'm not really seeing what the problem is, because in these types of cases, there is the SDRP policy. I'm not sure if there's really a need to go back to the clearinghouse to have them invalidate the mark.

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And I could be wrong about this, but I don't think there's any cost involved in filing an SDRP. That might be up to the registry operator ,but I haven't seen that there's an actual cost for a registrant to bring a claim. So in that type of scenario, the registrant, if they have a suspicion that the trademark is registered a week before the registry launched, [inaudible] it's not in compliance with the [inaudible] in the policy, that they can bring a claim to the registry and say – there could even be a technical error, something with the [SDRP file,] that that specific string should not have been registered during sunrise, there is no trademark in the clearinghouse for example for that string and there was some technical mistake made or some other violation of the SDRP policy, and they go to registry and file their complaint.

I don't think they're losing anything in the process by doing that. Again, subject to whether there is a [inaudible] following the complaint, they don't really need to have any additional information in order to do that. So that's my perspective, and I'm interested if Kathy or anyone has a response. Thank you.

KATHY KLEIMAN: May I respond?

GREG SHATAN: Sure. Since it's a direct response, why don't you come in before Maxim?

KATHY KLEIMAN: Sure. So Claudio, you can't see the chat, but we're not trying to invalidate anything. It's my understanding – and there may be other



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proposals, but – not trying to invalidate anything in the clearinghouse, trying to get information so somebody can file a legitimate SDRP complaint. So it's very targeted for information and to allow legitimate use of the clearinghouse and of the SDRP process, but no one's trying to invalidate anything.

So access to the trademark clearinghouse [would be for information or supplemental support of the SDRP.] Thanks.

CLAUDIO DIGANGI:

Right. If I may, Greg, Kathy, I wasn't suggesting validating anything, I'm just suggesting that there's no additional real value getting the information from the clearinghouse when you could just challenge the registration at the registry level. If the registrant feels something looks awry and this domain should not have been registered, then they could just bring the claim at no cost.

KATHY KLEIMAN:

How do you prove the challenge without confirming the information? That's where [inaudible] to the clearinghouse would come in.

CLAUDIO DIGANGI:

You would support the claim within the SDRP policy that you felt was – there's only a couple of reasons that you could bring the dispute, and you put forward your information and belief that the registration was not in conformity.

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The proof really lies with the registry. It's going to be the registry's determination, and they should have access to the [SMD] file, which I think is something that John mentioned, and they'll have the information to assess. They could look over the registration and say, "You know what? You're right. This should not have been registered. We looked at the criteria, there was a mistake made here."

KATHY KLEIMAN:

I'm not sure the [SMD] file's that readable. Maybe Kristine can show us, but we're not getting challenges filed now, and in part, there's a strong reason to believe that's for lack of the ability to have the information. Nobody wants to file a challenge unless they're pretty certain. It takes time, it takes energy. We can span that gap very easily and imply for these very targeted -and John McElwaine, help me make it a much more targeted proposal.

And that way, you don't get any of the speculation, Claudio. You've got the information in front of you. You can say this is a problem, it does not meet the following criteria, I'll therefore file the SDRP. Thank you.

GREG SHATAN:

Thanks. We'll probably pick this up in a moment. I'll go to Maxim. Please go ahead.

MAXIM ALZOBA:

Actually, at the time of sunrise registrations, registry doesn't know anything about the registrants. Just if they have [inaudible] from TMCH, they're allowed to participate in the sunrise. And in startup sunrises, it's

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a real-time thing, so registries do not check things manually. They trust TMCH, so it creates few options. I'd say first it's quite poor evidence of use provided to TMCH, but TMCH decided to say okay. Second, it's just mistake in TMCH, maybe manual or something, and the third is violation of policies of a TLD. For example, particular TLD says we announced our initial plans in year 2020, so all trademarks which registered prior to that date are valid for sunrise. Just an example.

And in cases where sunrise is going on, registry can – anyway, with domains, it should be a special procedure like cancellation or something, because deletion doesn't help, it adds many days because of lifecycle of domain. But it's just limited to situations – I believe it's limited to those three options. Thanks.

CLAUDIO DIGANGI: Greg, could I get in the queue?

GREG SHATAN: Let's see. I've got Kristine first, and then you, Claudio.

CLAUDIO DIGANGI: Alright, thanks.

KRISTINE DORRAIN: Hi. Thanks. Yeah, I think we're starting to kind of tease out my concerns. So if you guys map out what the things you're talking about are, I'm hearing people say, "Well, someone will just file a complaint with the

forum, if the registry has chosen the forum, and then they're just going to make a statement and panelists will decide.”

Well, if you've read UDRP cases, you know that doesn't end well for the brand owner if they just say, “Hey, on information and belief this happened.” UDRP panelists want proof. SDRP panelists are going to want proof also.

So ultimately, I don't know who made the point a few minutes ago, but the brand owner is going to have to go. Or it doesn't even have to be the brand owner, it could be anybody challenging it as sunrise registration. That person's going to have to somehow get information that the trademark upon which the domain name was based was fraudulent or was not supposed to be in the clearinghouse at the time. The registry doesn't get that, this is not a dispute necessarily against the registry. The registry gets a yes or a no. if the clearinghouse says go ahead, it goes ahead.

There is a charge if parties use the forum. If you look at some of the dispute policies that forum has, registries have done more. So it's not about the do more. If the registry, to quote section [IV] on improper registrations, if the registry has set a date where in order to participate in our sunrise your mark had to have been registered by X date, that's obviously a registry restriction, so obviously, a sunrise and SDRP would apply to that.

So the point isn't to throw out the SDRP. They should be there, they should be optional, any sunrise policies that the registry promulgates,

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they should be on the hook for SDRP. Optional, not within the scope of this group.

The point here is just the fact that a sunrise registration is being challenged on the basis of a trademark that should not have been in the clearinghouse, in order to make all this happen, you've got to go back and challenge it at the clearinghouse. I'm really dubious, given my previous role, that any panelist is going to say, "Well, the clearinghouse screwed this up." Unless it's so completely blatantly obvious that the clearinghouse made just a brazen, almost negligent mistake, I can't see that a panelist is going to reinvent the clearinghouse. A registry won't either. A registry can't get that information anyway. So the registry operators that have a sunrise policy that don't use somebody like the forum, or whoever else is doing it, I don't know. I think ADNDRC might, I'm just using "forum" because I know they have one.

They're just on their own. If somebody like me sitting there going, "Gee, I wonder if the clearinghouse did their job, I'm trying to bring up – and I take, is it Greg's point, that this might be more than procedural. But my point is – and John made the point earlier, this is a bit of a judicial economy issue, but it's also a, who has the information to make a decision? The only entity that can make any sort of decision about whether or not the registrant had a trademark registration of national effect is the clearinghouse. Thank you.

GREG SHATAN:

Thanks. I'll go to Claudio.

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CLAUDIO DIGANGI:

I agree in most part with everything Kristine said. I think the one variation is in the case when – and I think this was the last requirement that Kathy read out, that the sunrise registration did not issue – or had to have issued before the launch date. So in other words, this presumably is to address the scenario where a registry is launching and because of that, somebody sees that the registry is launching, they run to a trademark office somewhere [inaudible] can expedite registrations, they get a registration, and they then put it in the clearinghouse.

As far as I understand, the clearinghouse is just checking whether the mark is a nationally registered mark. They're not analyzing it at the level of when did the registry sign its contract with ICANN. So in that scenario where that last provision would apply, there could be a potential hook there for somebody to say, "Yes, the clearinghouse, based on the criteria, if they're submitting a mark into the clearinghouse, this is validly submitted to the clearinghouse, but the mark issued after the date that the registry signed its agreement with ICANN, and therefore it's not valid for sunrise purposes."

In that case, either the registry – whoever's administering the SDRP policy, the panelists or the registry would need to look at the date of when the mark was issued and compare that to the date when the registry agreement was signed with ICANN.

And this is what I was saying earlier, this could be put forward on information and belief, or what happens in the real world in these cases, you would check if a registrant thought this domain name doesn't look – for some reason they have maybe an inkling or a feeling that the domain was registered to game the system, maybe there's a website up

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that doesn't look like the brand owner, something along those lines. They could look in the publicly available trademark office databases and see, "Oh, I just saw a trademark was registered three weeks ago." That's going to give them some basis to come forward and claim that it's a violation of the SDRP policy.

And finally, I agree generally – I think the point that Kathy was making, that having more information would help, the way I thought that could be accomplished – and I would put a big caveat on it, because it would really need to be approved by INTA, this is something that really affects them, but – and I saw in some case that the registry published the list of names that were registered during sunrise.

So it's either they're violating the rules and they weren't supposed to do that, or they're allowed to publish which domain names were registered during the sunrise period, and that could help registrants [inaudible] but again, it goes to the issue with confidentiality, and this is the concern, Kathy, I mentioned [inaudible] which is that you're basically opening up the trademark clearinghouse [inaudible] forward on a one shot basis [inaudible] trademarks were recorded on a confidential basis in the clearinghouse, there was a [inaudible] confidential, so that's the flip, and that's the cost of what your proposal is [inaudible] trying to accomplish what it is, that is the flip end of it, that you're opening up the clearinghouse on a confidential basis.

It's possible that the publication of the list of names during sunrise might not cause as much concern, but that was just a thought I had [inaudible] get some more information in there. Thank you.

GREG SHATAN: Thanks, Claudio. I've got Susan Payne next.

SUSAN PAYNE: Thank you. Before I come on to the reason I've put my hand up, just to give you a bit of an explanation, Claudio, of the information about domains that are registered within a registry, whether within the sunrise or thereafter, all of the new gTLD registry operators have to give access to the centralized zone file data system. Effectively, they have to make the zone files available to anyone who requests it, subject to extremely narrow grounds for refusal.

So anyone who registers through that system and requests access to the zone file data can get it, and that would give them a list of all of the domains registered at the date that they asked. It doesn't give them the registrant details, but it gives them the list of the names.

So there is no confidentiality in that information. It's an extremely simple process. So just to allay your concerns about that, if you like. That information can be available simply by querying the zone file. Maxim is slightly correcting me that the names have to have been deployed. So yes I suppose In theory, there are some names which many to have had nameservers attached to them, but what that registry operator was doing was not fundamentally a breach of confidentiality, I don't think.

But the reason I've put my hand up is because I do agree with you, Kristine. I do agree with the concerns you're expressing, and the fact

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that generally speaking, the people who have done the validation, the verification of the trademark rights, they're the TMCH, and therefore they are the ones who know and they are the ones who did the validation. But the specific grounds for the challenge that happen at the registry level relates specifically to the time that specific domain name was registered. So it's perfectly feasible for a name to be in the TMCH validly but at the time of the domain name registration in a particular registry, it wasn't a valid TMCH record for some reason.

Now, that might still be a failure of the TMCH in some way, so I'm not necessarily suggesting that it's a registry-level challenge automatically, but I do think – on the one hand, we could just all say, hey, no one's actually using the SDRP, so what does it matter? Let's just keep the rules as they are. But I think if we really wanted to create something that made sense and worked for people, I think as a group, we ought to be looking at these provisions, and identifying where the correct place for the challenge is. And in some cases, it might still be correct to make a challenge at the registry level, or at least to have them be a party to that challenge, because otherwise, the TMCH doesn't know the [dates in question,] but I don't think we can just assume that none of this is relevant at the registry level, because I think sometimes, they're involved too in the sense that it's a specific name, it's the date of a specific name registration that's the relevant date for the date of the challenge, not the record in the TMCH per se.

GREG SHATAN:

Thanks, Susan. I'll go to Kathy Kleiman.

KATHY KLEIMAN:

Okay. I think Susan said it well, but let me recap what I'm hearing. One is that Claudio laid out the case study nicely that the gaming that could take place, and for those of us who've been around way too long, we remember it did take place years ago, and records – and now we're seeing gaming and some of the reports and blogging that we're seeing.

So Claudio laid out the case study nicely. Kristine shared that the burden of proof is on the person filing the SDRP complaint. They really have to have some information. And the shortest and easiest way to get that information is from the trademark clearinghouse. I don't understand why we keep coming back to and validating a mark there, because I don't think that's what's happening.

It is what Susan said, and I hope I'm not taking it out of context, Susan, that we're trying to find the dates of the registration, and so that a legitimate SDRP complaint can be filed. And I don't think it's a breach of confidentiality, because this is really a very narrow proposal to get information, very much analogous to the release of information in a trademark claims notice. So it's kind of a one-shot deal. With John, we worked out language that this is about businesses and organizations or individuals having the same name as a domain name registered, or associations that work with business, organizations and individuals with the same name. So this could be an INTA function.

But this seems kind of narrowly tailored to make the SDRPs usable, which they're not right now, and I agree with Susan, and I think that's a problem. Thanks.

GREG SHATAN: Thanks, Kathy. I'm feeling a little frustrated, not with anybody on this call, and maybe more with myself because we've been on for nearly an hour and I feel like we're maybe close to several different answers, but not on any one of them. Kathy, when you were saying we're just looking for dates, I'm not sure exactly what you're referring to, because I thought the idea of going to the single shot into the TMCH was to get the full record of what was registered. Not just the date.

KATHY KLEIMAN: Very briefly, it is for the purpose of proving the conditions under 6.2.4(iv) which has to do with the dates, but you probably need the other information also.

GREG SHATAN: Right. So it's the date of the underlying mark or registration that was submitted to the TMCH, and not the date of the TMCH issuing its registration. So yeah, so it's only going to iv though, it's not going to i, ii or iii.

KATHY KLEIMAN: I don't think so. I think it would just be iv.

GREG SHATAN: And that leaves us with the question which I think Claudio was getting to, of how does one commence a claim under one, two or three at the

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SDRP level? It sounded like Claudio was suggesting that basically, reversing the burden of proof and that basically, you could just kind of have a phishing complaint without any kind of proof, and then the registrant would have to come back and show what they had in order to maintain their sunrise registration.

And that may not be what Claudio suggested, but it was kind of the end result maybe of his suggestion. I find myself uncomfortable with that for the same reasons mentioned before, that UDRP requires a provable statement, or at least a developed case to be presented, and we think the SDRP does too. We don't want people shooting in the dark. I don't think anybody who thinks they're going to be sued wants that either, if I'm not mistaken.

And then we also have the problem that the sunrise – SDRP was written essentially before TMCH, so it doesn't really take TMCH or TMCH dispute policy into account. To my mind, I think the SDRP is far more broken than just minor fixes, because really, it's a relic, and I'm not sure what sense it makes. But that's for us I guess in total to decide. And I was asked in sidebar whether we should just suggest that we stick with the status quo. And we could, and if we can't come up with anything better, that's kind of what we end up with. But that assumes that the status quo which was created under different circumstances makes sense under the current circumstances, and I kind of think the answer is no, but again, we need to decide where this is going, and again, the difference between making a challenge at the SDRP level as opposed to the TMCH level if we did retain one through three. Thanks. Sorry for the soapbox. Maxim, please go ahead.

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CLAUDIO DIGANGI: Can I get in the queue to respond?

GREG SHATAN: Yeah. I've got Maxim and Kathy first though.

CLAUDIO DIGANGI: Okay. Thanks.

MAXIM ALZOBA: Actually, hypothetically, information about all kinds of dates could be combined from TLD startup information website. For some reason, they don't allow me to download some files. Actually, there are sunrise policies, etc., which contain dates, and yeah, basically, it's a source of information which is available.

And in general, registries are not fans of being dragged to the court, so SDRP is a good thing because it's a method of resolution of potential conflicts on this stage, but since it's highly relevant to the sunrise policies of particular TLD, the particular version should be left for the TLD to decide. Thanks.

GREG SHATAN: Thanks, Maxim. I think that brings us to Claudio.

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CLAUDIO DIGANGI:

Just to clarify, first I should say I empathize with your frustration, because this is something that is not as simple, as straight forward question for us to come up with a solution to, but I think we're doing our best. And just to clarify sort of what I was putting forth there, I don't think the registrant [inaudible] prospective complainant under the SDRP is really operating completely in the dark. Number one, they have the domain name itself, which in some cases, Kathy circulated some I believe earlier today, which she believes [inaudible] prima facie not appropriate for sunrise. So you have the domain name, you can also see whether there's a website associated with the domain that may provide some information. It could be either it's not being used, or it's being used in a way that is inconsistent with the goods and services upon which the mark is based.

And then on top of that, you also have the ability to go to the trademark offices, you might uncover that the mark has been cancelled, that there is no mark for that domain, or you could find the marks and see when they were registered, see to her things that's in the registration information about the marks that might inform your decision on whether to proceed.

So I don't think they're fully in the dark. Obviously, the more information that you have to bring a claim, the better, but again, this does arise even in the UDRP, and I'm hesitant to even make that analogy [inaudible] process, but even in the UDRP, you don't have all the information, and you sometimes have to put forward things [inaudible]. In the UDRP, of course, there's a substantial cost of bringing the claim. In this case, I'm not aware of filing fees for bringing these claims. It could be maybe just a very simple process, maybe something

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[inaudible] come up with a form or a checklist that a registrant might use to submit their claim. But again, I just wanted to clarify, don't think that they are operating fully in the dark, and they could do research [inaudible] that information that would help them assess the situation. Thank you.

GREG SHATAN: Thanks, Claudio. I see Kristine saying in the chat, "Agree with Maxim, we need to get out of the way of success on this." Kristine, could you clarify what you mean? And then after that, I'll go to Kathy.

KRISTINE DORRAIN: Thanks. I was just echoing Maxim's sentiments that the pieces of the SDRP that are within a registry's power, Maxim was saying that the SDRP is a good thing because registries don't want to have to go to court for everything. So yeah, to the extent that we put in our policies, "you should do this, you should do that, here are the hoops you have to jump through to get a sunrise from us," absolutely, we should require the registries or at least allow them to have some sort of policies that let them adjudicate those issues in the way that they see fit.

In this case, I'm just saying get out of the way of what's already being handled by the TMCH. Thanks.

GREG SHATAN: Right. Okay, so I think then that kind of goes back to what I think was your earlier suggestion, that basically grounds one, two and three should be removed from the SDRP, or that if they're there, they should

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be only essentially an enforcement mechanism for a TMCH decision, but not kind of a separate dispute mechanism. I've probably gone further than what you were suggesting, but something along those lines, so definitely not the status quo.

So the success is basically on the registry operator, which is kind of number four, plus any custom policies as well, but not one, two or three.

KRISTINE DORRAIN: That's a correct statement of what I was thinking at this point, and not having heard anything to dissuade me from that yet. Thank you.

GREG SHATAN: Yeah. And I'm actually feeling the same way, which is, what is the reason to have one, two and three at the sunrise level, when they really all relate to issues at – whether the SMD file was earned, if you will, incorrectly or not. basically, it goes to the validity of the token, as Maxim phrased it. Kathy, please go ahead.

KATHY KLEIMAN: If someone could circulate the trademark clearinghouse challenge policy, I think that would be useful, because I think some people know it well and some people don't. So that might be very useful to the current conversation.

But per the current conversation, again, trying to summarize, I think we've heard that the SDRP is a useful tool. We've also heard it said that



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the SDRP is broken. And I would add that it's barely being used. So what Claudio is positing, really the existing system that a trademark owner, an organization with the same name could go out and look at every country's trademark database in the world, they're not doing that.

So the easiest way to make the SDRP useful so that people can file valid challenges, which will of course fall to iv generally for our conversation, having to do with the dates of registration and kind of try to eliminate some of this gaming that we've now seen for the last several years throughout the Analysis Group report and some of the other data, and reports and anecdotes we've collected, would be to allow a very narrow one shot access to information in the trademark clearinghouse for the purpose of evaluating and filing an SDRP complaint.

It somehow kind of makes the whole system work, and it makes it useful, and it makes the SDRP function. Thanks.

GREG SHATAN:

Kathy, a question for you is if what's being challenged is essentially the validity of the SMD file, whether that should have been issued in the first place, why should that be challenged at the individual sunrise level?

KATHY KLEIMAN:

No, it is completely possible that a trademark has been put in – it's not the SMD file at all. And by the way, the only thing visible, as our research has shown, in the SMD file, is the string itself. The rest of it is encrypted, is our understanding. But again, number iv of 6.2.4, the trademark registration on which the domain name registrant based its

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sunrise registration did not issue on or before the effective date of the registry agreement and was not applied for on or before ICANN announced the applications received.

GREG SHATAN: Okay. That one, I think we're agreed on iv.

KATHY KLEIMAN: Okay.

GREG SHATAN: And perhaps on any other registry-specific policy. But it's really the one, two and three, and why should they be here at all? And maybe you weren't saying that they should.

KATHY KLEIMAN: No, I'm still thinking of how you get the information to prove iv and why – it looks like – I'm reading iv, and I know [this isn't the question you're asking,] like you can be okay for some sunrises and not okay for others.

GREG SHATAN: Yeah, I think that's right. The readable stuff in the SMD file is the string and the U-labels which are transliterations of the string, and also the validity dates of the SMD file itself, but nothing about the underlying registration other than the string.

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So yes, I think you're right on number four that if you wanted to prove something about being kind of out of time, you'd need to get the underlying [inaudible]. And I think there's at least general agreement that number four is a valid way to go forward, and then I think we have differing opinions – maybe we can try to solve that – on whether if you're bringing a claim under number four, or perhaps another registry policy that you can get this one shot access, and maybe it's not a question for you as to whether i, ii or iii should continue to exist at this level as opposed to the TMCH level.

CLAUDIO DIGANGI: Greg, can I get in the queue?

GREG SHATAN: Yes. I don't know if Kathy has anything further on that.

KATHY KLEIMAN: You're right, I don't think i, ii and iii are my questions for right now. I need to look at the links Kristine said. Thanks.

GREG SHATAN: That's fine. Okay, so I've got Kristine followed by Claudio.

KRISTINE DORRAIN: Thanks. So I can answer that question for you, Kathy. Number iv is not something that the TMCH handles, which is why it's eliminated from this list of things that I think are duplicated.

If a registry operator wants to establish a date by which their domain names or the registrations should have been made, then it needs to figure that out on its own.

Now, I think it's my understanding that it could call up the TMCH and say, "Hey, for our TLDs, for our domains for this TLD, run a date check and don't give us a yes or a no." And if the date wasn't before X date. I don't know for sure, but I think the TMCH offers that as an add-on service. I would have to go back and check.

Additionally, the registry could run its own filter, for instance if it were offering an end date sunrise or something, it would take the applications, it would look at them and it would make sure that the registry or the brand owner at that time would be required to submit additional information. But much as it is true – and like Maxim pointed out in the chat, if there's a community TLD that says [in order] to register in the sunrise, you also must be a member of the community, well, that's an additional check that the TMCH doesn't do.

So any additional checks that the registry wants that the TMCH doesn't provide are on the registry, which is why item four is perfect for the SDRP, because it's something the registry decides and the registry has the – it's on the registry to make a decision based on the criteria it establishes. Thank you.

GREG SHATAN:

Thanks, Kristine. I've got Claudio and then John.

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CLAUDIO DIGANGI:

Thanks, Greg. I fully agree with what Kristine just said. The only thing that I would add is that – I think Greg, you mentioned this earlier, I think Susan did, is that there needs to be a hook to enforce what the clearinghouse is doing, so if the clearinghouse, for i, ii or iii somebody goes to the clearinghouse, Susan mentioned this earlier that the domain is already registered at that [point,] and that would need to come back to the registry. Doesn't have to be in the SDRP policy itself, but there would need to be some insurance that when that happens, the registry is notified and the registry can decide on the remedy as it chooses.

So I think that's the reason why [one is] in there, for essentially enforcement purposes of the actual registration of the sunrise registration. And then just on a separate point, Kathy, I sent a note to the list earlier asking if you had any data about to what extent this is a problem for that proposal that you submitted, because you said it hasn't been used, and I think it's largely correct. I don't have the numbers in front of me, but that doesn't mean that that is a sign that the entire process is broken. There just may not be registrants that sought to register the domain names that had been allegedly [inaudible].

So it's hard to really [weigh] why it's not being used and to what extent this is a problem. I'm not aware of even anecdotal information that somebody tried to register the name and it came back as registered during sunrise.

What I think we're seeing are blog articles describing names that are registered during sunrise that do not appear famous, but that doesn't necessarily mean that there is gaming going on. Even the "the"

example, that could be an acronym, it could be a brand that a company owns, of course the vast majority of trademarks are common words or ordinary words, and so you're going to see ordinary words registered during a sunrise period.

So I think that's the challenge, and if you have more on that, that would help [inaudible]. Thanks a lot.

GREG SHATAN:

Thanks, Claudio. Before going to John, I just also posit that the fact that there have been few, if any, claims brought under grounds i through iii, is proof that the TMCH is working and the SMD file system is working, because basically, you'd have to have an error somewhere in that process for there to be grounds for a complaint. And it may be there are some at the fringes, but again, that's probably a TMCH issue.

So if i through iii are really intended to be enforcement mechanisms for a TMCH problem, or at least remembering, as Kristine said, that this was drafted before the TMCH existed, if now the only reason to have i through iii is to enforce something at the TMCH level and there's no kind of separate path through, that would seem to me that we should clarify that and get rid of i through iii as such, and I'm still having trouble figuring out the difference between i and iii. I've only read them 100 times.

So anyway, just a thought. If things are working as they should, there should be no claims under i through iii, because those only go really to very basic issues about the trademark, or a mismatch between the string and the domain. John, please go ahead.

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JOHN MCELWAINE:

Thanks. I just realized – I've been taking some time here while folks have been trying to drill into the part that had not commented on that Kathy and I talked about was section C of her proposal, but what I've just realized is that seeking this information from the trademark clearinghouse is sometimes going to be overbroad, because there can be multiple identical match trademarks in the trademark clearinghouse.

So if you request this information for data for a more common name, then there's possibility that you're going to get information on one, but oftentimes it could be two, three, four, five different marks, particularly if we're talking about dictionary terms.

So it might be a question for Maxim or for Kristine, and what I was typing out is that if this information is provided to – a submission is made and it does trigger that some of this information needs to be provided, as Kathy set forth. I think then the TMCH needs to query the registry operator as to what SMD file was used to register the sunrise registration being challenged.

So I'll be quiet and I'll be curious to get any comments on that. I think that that's going to be required. If not, we're going to have all sorts of privacy challenges, and probably even some GDPR issues. Thanks.

GREG SHATAN:

Thanks, John. I see no further hands at the moment. So I'm not exactly sure what we've decided here. It seems there's certainly some support for getting rid of one, i, ii and iii in terms of are changes needed, and

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then number iv seems to be pretty much acceptable to everybody. So I'm not sure if we have support for that.

Then we have the question of the proposal about getting data out of the TMCH, which is a suggestion that Kathy was working on and John made some contributions to. So let's take – we don't have much time left. We should take a look at 6B I think, although if we could – is there anybody who objects or wants to reserve the question at least? Because they have to think it through, about eliminating grounds one through three, or in the alternative – and replacing them perhaps with an enforcement mechanism for a TMCH invalidation.

I've got a bunch of hands. I've got Kristine, I've got Kathy, and I've got Claudio. Kristine?

KRISTINE DORRAIN:

Hi. This is not in response to your question ,my hand's been up for a few minutes. I wanted to go back to just the point – because I guess John had sort of asked that. Honestly, I don't know what the solution is. I think that we've got two distinct problems. One is we've got this problem of the applicant guidebook has this kind of oddball requirement that the TMCH is kind of taking ownership of in that it'll allow for you to challenge the registrations and the validations in its database. That's a thing, and it's its own individual problem.

Whether we do anything with that or not – you could leave the SDRP section as written, whatever it is, you could do whatever you want with that information. Notwithstanding, you still have, how do you get at the



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data that you need to have to make a successful challenge to some variation of this? Which is I think Kathy's proposal.

And I think it's very important that we draw a line between the two, because while I've identified that there is an issue, I don't actually support Kathy's proposal, because I think that there's a huge problem with gaming and just people being able to drill into the clearinghouse very easily. It's already relatively easy to figure out what's in the clearinghouse, and I think the solution just kind of opens the door right up, so that's sort of my take on it.

But I admit that there is a problem with getting the data. Whether you're going to bring a complaint to the registry or the clearinghouse, I acknowledge there's an issue, and I cannot think of a better solution, but I just wanted to throw that out there, that I have a problem with the proposal that's put forward, but I sadly have nothing better to offer.

GREG SHATAN:

Thank you, Kristine. I see Kathy's hand is down. Maybe she got dropped from the call entirely, because I don't see her name here. Now she's back. Kathy, come back. Please go ahead.

KATHY KLEIMAN:

I'm still here, but happy to wait for Maxim, because I've done a lot of talking on this call.

GREG SHATAN:

I think you were ahead of Maxim before.

KATHY KLEIMAN: Okay. So, I've put in chat I'm with John on not removing i, ii and iii at this point, because we're just evaluating it for the first time, and I think Claudio made some really good points about how invalidating it in the TMCH may not take it down in the sunrise. But in terms of number four, in terms of Claudio's question, we found the SDRPs are not being used as even we try and struggle for how one would file a legitimate SDRP complaint, we find ourselves without information. So I think we know why legitimate complaints aren't being filed, it's almost impossible to do it. So we're just trying to solve a gap problem. Thanks.

GREG SHATAN: Kathy, when you say a legitimate SDRP claim, what are you thinking of as being such a claim?

KATHY KLEIMAN: Here, I'm just reading from the proposal, and maybe – my recommendation to staff was maybe we could replace kind of the gray text, unless anybody objects, with the proposal that John and I worked on, so at least when we come back to it, we've got it. So we're looking at a business, organization or individual having the same name as the domain name registered during the sunrise or in association, working with them, or someone with strong proof of violation during the sunrise service and providing that a violation of the applicant guidebook, so number four, and providing that to the TMCH and then getting information on the mark that was used during sunrise, including the date on which it was registered.

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So I'd like to recommend that that be included now and the gray side maybe replace different other variations of that proposal. Thanks. Did that answer your question, Greg?

GREG SHATAN: Yeah. So I think what you cited as a valid grounds for a claim doesn't sound to me like i, ii, iii or iv, so I'm still struggling with that, but we'll talk about that later, because we have very little time. We have hands up, and I think staff is going to substitute the Kathy and John language for what's currently there.

Susan Payne, please go ahead.

CLAUDIO DIGANGI: Greg, I think I was next.

GREG SHATAN: Oh yeah. Sorry, Claudio, I see you had an oral. Go ahead.

CLAUDIO DIGANGI: No worries. To your question about removing them, again, if there's a way that the clearinghouse can collaborate with the registry, then it seems that it is somewhat duplicitous, but again, that would just need to be formalized in some way, and then Kristine made a comment about not agreeing with Kathy's proposal and she wished she had some other solutions. I'm in the same boat as Kristine, and I think there are other potential solutions to help people bring the claims without opening up

the TMCH records, which are confidential. And that could include publishing the list of domains that are registered during sunrise so that's clear to prospective registrants. Susan mentioned that it's accessible through the zone file access system, but of course, the registrar would have to know about that, and navigate that. So those domains are already essentially being published. Perhaps we could make it easier for registrants in having that information more readily accessible for them. We could also make sure the policy is more accessible to them on the registry website. I think it's already a requirement that they have this.

GREG SHATAN:

Claudio, those are things that are discussed later on in the subparts, so let's get those when we get to those.

CLAUDIO DIGANGI:

I will. And then finally, Kathy, it wasn't about the lack of complaints, I was asking about the extent of the problem. Something I had sent to the list earlier was that 99.994% of registrations take place outside of sunrise. So you're talking about 6/1000ths of a percent of all current registrations have been registered during sunrise. And the majority of those, vast majority, are legitimate. So we're spending a lot of work and time on addressing how many domain names fall into this category that you're concerned about. That's really what I'm trying to ascertain, not how many complaints have been brought, but how many are subject to the complaint. Thank you.

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GREG SHATAN: Thanks. So this may be a remedy in search of a violation in many ways. Susan, please go ahead.

SUSAN PAYNE: Thank you. Yeah, I just wanted to flag when staff are talking about inserting the language that came from Kathy and John, obviously, I guess that's being inserted as a proposal, it's certainly not something that's got agreement yet. And I did flag in an e-mail fairly late on before this call started that certainly in relation to the category C, it's not at all clear to me what's being suggested, and I think it would warrant some further discussion, but I'm looking at the time and also the number of other people who got hands up. And this probably isn't the time to have that discussion, but it certainly was not clear to me what that strong proof of violations is, and if you have it, why you even need to be going to the TMCH to get more information. And also, I would note what John has said in the chat, which was that he was proposing some revisions. So to some extent, this is not entirely language from Kathy and John, because John has not reviewed some of it.

But perhaps I'm assuming we'll come back to this either by e-mail or I guess we'll have to talk about it again next week. But that's what I wanted to say. I'll stop.

GREG SHATAN: Thanks, Susan. Whatever is put in from Kathy's proposal is just going to be in there in gray or whatever signifies that it's just a balloon that's being floated and does not have – yet at least have – any wide support. John, please go ahead.

JOHN MCELWAINE:

Thanks. Yeah, I didn't want Kathy to be upset, but I had suggested that – and I think I put this in an e-mail that went to the list, that my contribution was to take out “similar” and get it to an exact match, because I thought that was fundamental for it all to make sense. But I had not been able to dive in to the section C of that, and as I said, I've been kind of typing it out and a few more things are occurring to me. I'm up to now a section E on the proposal, but I wanted to assure folks that I'm willing to work with anybody on this call, and help them with their ideas to the extent I think it makes sense, but I have not yet gotten much past being able to do more than looking at A and B. And like I said, I will have an e-mail going out to the list very soon with my proposed revisions. I just wanted that to be clear. Thanks.

GREG SHATAN:

Thanks, John. We're up against time here, but I think Kathy did send around at 10:11 this morning one that I think took the thing about similar into account. But I do note that it talks in A about a party associated with a business, organization or individual having the same name to or as the domain name. I guess that doesn't really go to the issue of a conflicting trademark, since the trademark is often not the name of the business. But again, as a question goes first to what is the claim for which this proof or this submission is being made, and I also have to say that, Susan, I just don't understand what C is getting to at all, but if we were to eliminate i, ii and iii and just have iv, or replace i, ii and iii with just a simple enforcement mechanism for TMCH decisions at

the registry level, I'm not sure, again, where this proposal is going. So I'll leave that semi-formed thought with all of you.

I think, Maxim, the question is not whether i, ii and iii hurt anybody, the question is whether they have any purpose, and whether they are in a sense misleading, misleading. Well, [it goes to the SDRP.] Well, the SDRP was written before the TMCH challenges, so again, what is it gutting, what do we need those claims for? We shouldn't have just remedies hanging around, waiting for violations.

Anyway, I think that brings things to a close, so apologize that we didn't get through all of the sections we were going to get through today, and come to great answers, but I think we have some important work to do. Right, Kathy, I see your remark there because removal from the trademark clearinghouse does not remove the sunrise registration, which is why I suggested that i, ii and iii be replaced by an enforcement mechanism basically to say, "Okay, a TMCH decision has been made, now here's how you get the particular mark, particular domain invalidated." But not a separate claim.

So in any case, I'll turn it back to staff to wrap us up and take us away.

JULIE HEDLUND:

Thank you, Greg. And thank you so much for chairing, Greg, really appreciated. Thank you, everyone, for joining. Just a reminder, there is no call next week. The subteam co-chairs will work with the working group chairs to determine the schedule for ICANN 65, so you'll be seeing that shortly, but there will be no call next week. Thank you all, and thanks again for joining. Bye.

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GREG SHATAN: Thanks, and bye all.

JULIE HEDLUND: This meeting is adjourned.

**[END OF TRANSCRIPTION]**