
**ICANN
Transcription**

**Review of all Review of all Rights Protection Mechanisms (RPMs) Sunrise Data
Review Sub Team call Wednesday, 29 May 2019 at 18:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<https://icann.zoom.us/recording/play/9PrBflKgcVIEDLslzRJKuXbPKI-EVWT-BevKpA3iO9cSzjkhmikDum82KoLnvXvT>

Zoom Recording (includes visual and rough transcript. To access the rough transcript, select the Audio Transcript tab): <https://icann.zoom.us/recording/play/H5PmMSblQpMkhcxgHcH0VRakkfQcGnbMz6CQhB4YIMDuzrsNEs5feb1hKgLNlh0o>

Attendance is on wiki agenda page: <https://community.icann.org/x/Z4SjBg>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

JULIE BISLAND: Great. Well, good morning, good afternoon, good evening, everyone. Welcome to the RPM Sub-Team for Sunrise Leader Review Call on Wednesday, the 29th of May, 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 at this time, could you please let yourself be known now?

UNIDENTIFIED MALE: [inaudible]

JULIE BISLAND: I think I heard somebody, but I'm not so sure. I'll move forward. I would like to remind also, please state your name before speaking

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.

for recording purposes and please keep your phones and microphones on mute when not speaking to avoid background noise. And with this, I'll turn it back over to you, Julie. You can begin.

JULIE HEDLUND:

Thank you very much, Julie. And just I will quickly run through the agenda. The first item is updates to Statements of Interest. Next will be a brief review of the work plan and timeline. Third is the discussion of the proposed answers, implemented recommendations and concluding the review of related individual proposals, and I won't read the list there. You can see it in the Zoom room. And the last item is any other business. [Inaudible] ask if anyone has any other business.

Seeing no hands, going back to agenda item one, may I ask if anyone has updates to Statements of Interest?

Seeing no hands, I will go to agenda item two and ask Ariel Liang to put up the work plan timeline and give us a briefing on it.

ARIEL LIANG:

Thanks, Julie. We have the three calls including today's before ICANN 65, so as Julie mentioned, today's task is to try to finish reviewing the draft text for half of the charter questions. So I believe that's seven of them. That's a very aggressive kind of plan but we will give it a try, as much as we can because the time is limited.

And then for the next call, there is a similar plan that's to review the remaining agreed charter questions that are not addressed today, and then hopefully, the last call is for the sub-team to look at the updated text from staff. So we will incorporate the comments from the discussions throughout [inaudible] and the meetings and produce the next version so you will be able to see the new proposed answers and preliminary recommendations incorporating your input. And that's the plan for now. That's it for me.

JULIE HEDLUND:

Thank you very much, Ariel. And the static is coming from my line, so I'm going to drop now and dial back in, and now I'm going to go ahead and I don't know, David, if you wanted to give a briefing from last week's call before turning it over to Greg. I'll leave it to you to do that and I will drop off and get back on. Thanks, all.

DAVID MCAULEY:

Thanks, Julie, Hi, everybody. I'll just give a brief review of what we did last week. We looked at the preamble question and basically, is Sunrise serving its intended purpose, and obviously, there were views on a number of sides. We also looked at George Kirikos's Proposal #3 that was to incorporate part of the uni-registry approach to reducing gaming, as George put it, and talked about that.

And then we also folded in discussion about Question 5B which is the question dealing with whether Sunrise should remain

mandatory or become optional. Excuse me. And there was a lot of discussion about that.

We had a debate, a discussion, about the intended purposes of the Sunrise. There was some disagreement over what the intended purposes might be, whether to protect trademark rights and not to create new rights for trademark holders, whether it was for the good of the DNS, whether it was simply to tamp down abuse to consumers and users, etc.

And we also looked at Scott Harlan's Proposal #7 about a 90-day notice private launching Sunrise, and we had a very spirited discussion. That was a good meeting and I thank everybody that participated. And now I'd like to turn it over to Greg. Thank you.

GREG SHATAN:

Thank you very much, David. Thank you, staff, for getting us all ready, and thank you all for coming. So we have pretty good attendance today, which is great, or better than pretty good.

So let's launch right into where it says we are, which is going to Q1 and the Related Proposal #9 for a review of where this stands. Q1 is, or at least Q1a, Should be availability of Sunrise registrations only for identical matches be reviewed? And the proposed answer is that it should not be reviewed. However, we do have Proposal #9 which is a proposal that would review it and expand it in a way that, at least arguably, is not an identical match because it utilizes, as I said, a domain hack or expanding the dot for the part of the mark, although the mark itself is reconstructed across the dot.

So the question we have here on Q1a, and that will inform us whether we need to spend any time on Q1b, is whether, what level of support we have for individual Proposal #9, the spanning the dot proposal, which also relates to a reference from the Sub-Pro PDP Working Group. So we've had limited attendance at the last couple of meetings, I think, and so we have something approaching [inaudible] if we're a quorum, but we have a bunch of people here so it would be good to see what people think of this approach in #9 and whether there is some interest in it as a proposal or a concept to be brought further, or whether this essentially is just a proposal that does not make it out of committee, so to speak.

Kristine, your hand is up. Please go ahead.

KRISTINE DURRAIN:

Hi. I will just kick things off by saying I do not support Proposal #9. I think that it improperly expands the balance that was struck with Sunrise. I think Sunrise hits the right balance without asking for too much, and so you'll see me not championing its removal even though I represent a registry and a registrar, and as well as an IP owner. But I also think that we don't need to expand it as well, so I will kick off with that viewpoint. Thank you.

GREG SHATAN:

Thanks, Kristine. Claudio, your hand is up. Please go ahead.

CLAUDIO DIGANGI:

And I put this in some of the e-mails to a list. When I presented the proposal, there were some questions about, you could even say, might be implementation related. There were some policy questions raised as well. And what I aimed to do was to modify the proposal in an effort to provide more clarity, answer those questions, address some of the concerns that were raised. And in the process of doing that, I realize that, one, it's somewhat of a complicated process and I wanted to reach out to some of the stakeholders to get input and some of the feedback that I got back was that it would help to put some of those issues out for public comment, and in part because the Sub-Pro PDP put forward a similar recommendation. I was a little concerned about making changes that could affect what they had in mind and I also thought it would help to just get some input from, perhaps, the contracted parties on implementation issues. So that's kind of where I left off.

I understand, for example, Kristine just made a comment. She's not in support of the proposal. I don't know if there's changes I can make that could garner her support. But that was the effort I was trying to undertake and so I specifically would be interested in hearing if that is something that we could do to sort of help the consensus building process to use the public comment period in that way. So it would have to be clearly indicated in the initial report. This is not a policy recommendation that was going out, something we discussed, there were issues and concerns raised, and that we were seeking input on that. And that's it. Thanks, Greg.

GREG SHATAN: Thank you, Claudio. I'll respond to that in a minute, but first, let's go to the queue. I've got Susan followed by Mitch.

SUSAN PAYNE: Hi. Thank you, and thanks, Claudio, for this. And apologies. I haven't really read your latest language in detail. I've been sort of quickly skimming it. I am a supporter of the notion of spanning the dot, but in fairly limited circumstances and I suspect them more limited than the circumstances you're proposing. I do think that where the TLD string in question is comprised within the trademark itself as a standalone word, then I think it makes sense and I don't think it does expand the trademark rights being granted in the Sunrise.

I'm trying to think of a decent example and I can't think of a really live one, but we always use Apple. So let's just assume for the sake of argument that Apple has a trademark that is Apple Computer and the TLD string is dot-computer. Then I think it makes perfect sense that a trademark registration for Apple Computer could be used for a Sunrise registration of apple.computer, and in that limited sort of circumstance, and not for example, splitting words, I personally think that that doesn't in any way expand the trademark rights, the legitimate expectation of a trademark holder to be able to register Sunrise registrations. Indeed, it gives them the exact protection that I think the Sunrise was intended to give. And so I would support that.

But I don't necessarily go further than that in supporting things, some of the proposals we talked about when we first discussed this with things like splitting Walmart to wal.mart. I think probably

taking Kristine's balance, I suspect that's going too far. Although others probably disagree with me.

GREG SHATAN: So Susan, just to clarify, it's your thought that it should just be essentially whole word splitting, like Canadian.club would be okay but wal.mart would not?

SUSAN PAYNE: Yeah.

GREG SHATAN: Thanks. I think that brings us to Mitch.

MITCH STOLTZ: Thank you. I share Kristine's concern. Regardless of whether this proposal would, in a sense, expand trademark right, and I believe that it does, it certainly expands what is available under the Sunrise period and that is of concern, and not very well supported here.

It sounds like these are fairly limited circumstances that could, because of that, almost certainly be handled through UDRP proceedings. We're not working in a vacuum here. UDRP is always going to be the backstop. So yeah, I don't support this proposal.

Also, I think we should be careful to treat the various proposals in a similar way with regard to do we act where a problem is

identified, how much of a problem justifies action here, and sort of what is the default. So with regard to some of the other proposals, and there has been some conversation on the list about these, I think this question has come up and people have come down differently. But just taking this one for sake of a consistent approach, there hasn't been much evidence presented of a significant problem. Thanks.

GREG SHATAN: Thanks, Mitch. It looks like we have John followed by Phil, Claudio and Susan. John, please go ahead.

[JOHN MACCLOIN]: I would say there is a significant problem and you can just determine that by thinking about how frequently there are business names that end with a descriptive term such as corporation, or inc, or bank, or computer. So really, it was quite a common occurrence.

It's not an expansion of trademark rights because it's going to require there to be an Apple Computer trademark registered within the Trademark Clearinghouse. As I have mentioned to folks before, it was very common problem in dot-bank because there were many banks that had a trademark ending, like First National Bank and they didn't want FirstNationalBank.bank.

Lastly, to point out, I think this is going to be a benefit for registrars. I think they will want this because it's going to allow them to sell more domain names that people really want in the

Sunrise period. So I think it is an advantage to registrars and a benefit to Sunrise in general.

That being said, it would be fine for it to be maybe an elective thing for registrars. I think that's something, really, that the finer details of all this could be worked out in public comments. And by that, I'm getting at a more creative top-level domain, such as "guru". It's not as applicable to then something more plain or common like "bank". Thanks.

GREG SHATAN: Thanks, John. We'll go to Phil.

PHIL CORWIN: Yeah, thank you. I want to speak to the substance and then the operational procedures.

On the substance, I am personally okay with the idea. I believe it's a very incremental approach to a Sunrise registrations. If Walmart wants to register Wal.mart and the complete right and left to the dot combined is an exact match to their registered recorded trademark, and the clearinghouse, I think that's consistent with the purpose of the clearinghouse. If they don't get it in Sunrise, they're probably going to go for it in landrush or at the opening of general availability if somebody else doesn't beat them to it, and if somebody else does, then tries to cyber squat with it and infringe, they'd incur unnecessary expense in bringing a litigation or a curative rights process. But so that's on the substance.

On the idea of not demonstrating strong support for proposal, and I'm not saying I like Claudio's if that's the situation or not – we'll decide that – but just generally, I would not support explicitly soliciting community comment on proposals which didn't receive strong support within the sub-team, and subsequently, the full working group and make it into the initial report as formal recommendations for community comment.

That doesn't prevent anyone in the community from commenting on it. My understanding is that all proposals that were discussed by sub-teams and by the full working group on other subjects are going to be noted somewhere in the initial report. Members of the community are free to comment on them and say this should have been a recommendation, you missed the boat, you should reconsider for the final report. Or they could say something was never discussed that should be considered.

But I think we should only be explicitly soliciting comment on proposals which have received strong support. Again, that doesn't bar anybody from commenting on anything else that was considered by the sub-team or the full working group, but didn't gain strong support. So I'm okay on the substance, but if it doesn't garner strong support, I would be in favor of explicitly inviting community comment on it. Thank you.

GREG SHATAN:

Thanks, Phil, and that's probably a good a cue as any for me to weigh in with, I guess, at least a quasi-chair's view, which is largely aligned with what Phil just said, and that what is not, recommendations that go out will have wide support. I think that

was the adjective we were using. At least, it's wide support for it to be put out as a recommendation. One could say that they support putting it out even if they don't support it in the end because they believe it deserves public comment and that they're supporting it on that basis. But that would still have to be support.

Something that does not get wide support for whatever motivation will be in an appendix and be referred to there, and conceivably, could be dealt with in a minority statement, at least in the final report, maybe not in the preliminary report.

But the point is that we're not fishing to kind of resuscitate proposals that don't get wide support. I don't mean to use pejorative terms. It's just that if there's a lack of support, there's a lack of support. Kristine notes that the airing of all possible proposals in WT5 is exhausting and the approach in the URS has a lack of filter or judgment attached to it as well. But what's done is done, both in the past.

But in this case, what we agreed to on the way in and I think we've been consistent throughout is that what is going to be put out for public comment will be the recommendations and the recommendations are those that get strong support and that really is. All the other text is basically going to be supporting those recommendations, other than whatever discussion we have of the deliberations as deliberations and of a mention of those things that did not get strong support. So there is not kind of a side door to publish a recommendation as such. That isn't one that gets strong, wide support.

Conceivably, and I don't mean to open the door a crack here, but conceivably, if we wanted to ask a question that was not phrased in the form of a [inaudible] recommendation, we could do that and it could relate to this or anything else for that matter. But again, there would have to be wide support for asking the community that question, and that the question is not just a reframing of a proposal, but it would have to be something more particular where we are essentially looking for data or, at least, responses that could be viewed by some as data. And that is, I think, the approach we're taking.

I do think, for that reason, it's important to understand the level of support that we have and that's why I'm being more painstaking here and will be more painstaking with every proposal as we go by them in order to have as clear an idea of the level of support as possible.

So let us now go back to the queue, and to Susan Payne followed by Kathy and Michael.

SUSAN PAYNE:

Sorry, hi. Sorry, I didn't realize it was my turn. Yeah, I wanted to [inaudible] really briefly to something Mitch said which was just that he felt this would be limited circumstances and could be handled through the UDRP and I'm probably going to regret saying this, but I mean, one could say that about everything. Couldn't one?

One could say you don't need the Sunrise at all because you could always bring the UDRP. I mean, that was the whole point of

putting in place additional RPMs was because it was recognized that you can't open a massive additional sort of real estate and then just expect that brand owners have to deal with that by incurring significant additional costs in multiple additional UDRPs.

GREG SHATAN: Susan, we've lost you.

JULIE BISLAND: Susan, do you want to try dropping your audio and then reconnecting it? It looks like we lost you.

GREG SHATAN: Let us go on to Kathy and Susan will hopefully reconnect.

KATHY KLEIMAN: Coming off mute, okay. Hopefully you can hear me. Echoing, in some ways, what Kristine and others have said and Mitch have said, so I think, first, I don't see the data on this. I don't see how this is a data-driven recommendation and what problems it's coming out of arising from our data. And we talk to a lot of trademark owners so I don't see this.

Technically, I'm not sure how it would be implemented. If we have Apple Computer and we're going to allow, I mean, the technical mastering of this just sounds like something we haven't even begun to fathom but if we're putting, just if it's Apple.computer, again assuming that Apple Computer is a single mark, then would

Apple Computer then also get Apple.Food? How are we going to do that matching?

We've got unanswered questions. This came from a proposal, as I understand, that's based on something from uni-registry with a Sunrise too, which the public is not even going to know. I just don't think this is right to go out and I don't think it's based on any data that we have. So I'll join those in saying I wouldn't go with this one right now. Thanks.

GREG SHATAN: Thank you, Kathy. We have Michael Karanicolas next.

MICHAEL KARANICOLAS: Hi. Thanks. Yeah, just to follow-up on the sort of evidence discussion a little bit, yeah, in terms of evidence of abuse, I don't think, or evidence of need for this, I don't think that the hypotheticals cut it and this idea that, well, we know that people have trademarks that could potentially apply to that stuff. The fact that it would be utilized is not an argument for its necessity. I would like to see evidence of some kind of problematic registrations. Has Canadian.club been registered by some nefarious actor who is using it to sell moonshine whiskey or something like that? So I don't think the fact that there is scope for its use it, itself, an argument for going down this road.

And I do think that this does play into this idea that we do have other trademark mechanisms or rights protection mechanisms that could suit that need as well. To me, it's less about the fact that there is potentially something there or it could apply and more

about the fact that there is evidence presented of some problem or abuse that needs to be resolved, and I haven't seen that. Thanks.

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

GREG SHATAN: Yeah. Before you go, I just wanted to point out some of the chat that was kind of responsive. They're kind of a Greek chorus in the chat to the commentary, so I thought it would make sense to read some of them out.

Kristine Dorrain says, "@Kathy, we have data. There are literally half a dozen or more IP people on this call. They are telling you what they see every day."

Kristine says, "I think we're all participating on the assumption that we didn't need to fill out the survey because our views would be heard on the calls."

Mitch Stoltz says, "Kristine, the plural of anecdote is not data."

Kathy says, "I forgot to mention, there seem to be fingerprints of Claudio's proposal in the SDRP question."

Maxim says, "Could we check if bloodbank is a good idea for registry.bank domain?" And the answer for that is I think it's a restricted TLD and it has to be a financial services bank.

Kristine says, “Mitch, the survey isn’t data. It’s a collection of anecdotes. If we’re going there, then let’s go all the way there.”

I will note, somewhat ad hoc in my personal capacity, that I don’t want to see the entire stakeholder community and all working group members reduced to the level of mere anecdotes. That just seems to dismiss all of us, whatever our POV.

John notes there are UDRP proceedings involving spanning the dot, and Mitch says, “@Kristine, I’d like to, but maybe we’re too far down that road. It does counsel for a cautious approach now.”

Michael Karanicolas says, “These aren’t even anecdotes. It’s opinions.”

And David McAuley suggests a new word, just like Shakespeare did, neologism anecdota. So that catches us up on the chat.

Claudio, was that you who wanted to get into the queue?

CLAUDIO DIGANGI: Yes.

GREG SHATAN: Okay, and then I have Kristine with a hand.

CLAUDIO DIGANGI: Okay, thanks. And thanks, everyone, for the input.

My informal assessment of where we are as a group is that there is support across some of the stakeholder groups. There is also

opposition across some of the stakeholder groups, so we don't seem that we're at the wide support level, which is similar, I think, to when the proposal was initially presented.

Some of the concerns raised, I think, are more philosophical or conceptual which I don't think I would be able to address or satisfy those people with those concerns. Others, I think, can be addressed. I think modifications could be made, potentially, to address some of the concerns. I don't know if that would get us over the wide support bar or not.

But part of this is, perhaps it's just an organizational issue or a process issue. But I find that we're somewhat backtalking about the substance, which is still very helpful and I'm eager to hear all these comments as the person who put forward the proposal. But I, again, was looking at it from the standpoint that there are some issues that need to be worked out and that's what led me to suggest the public comment approach.

On that particular issue, I think Phil provided comment on this, and Greg, you did as well, the way I'm looking at it is in these types of cases where there is some support across different groups for a proposal, and the fact that we are putting these proposals into the report and so it kind of makes me dizzy a little bit interpreting what's really going on because we're saying these proposals are going to be published, people are free to comment on them, but at the same time, we're saying that there's this threshold for putting things in the report for public comment. And I understand the distinction where proposals that have a lot of support go in as recommendations with the presumption that we may adopt them

and they might become consensus policies. So I understand that's the threshold we're looking for.

I was trying to find a middle ground, really, for consensus-building purposes. I think the process document is somewhat silent on this. I don't think we really envisioned this scenario when we were coming up with the standards for what goes out. Maybe someone could argue that we did and wide support is necessary for anything that goes into the report. But again, I was not suggesting putting it as a policy recommendation, but something that we're talking about, we're considering and that I would be willing to list some of the issues, the concerns that have been raised to see if we could solicit input on that.

That was really what I wanted to propose for today. I did have just, I'm still a little confused on if we're using wide support at the plenary level or if it's the consensus standard because I'm assuming that what comes out of the sub-team is going to go up to the plenary for consideration. But I still have somewhat of an open question about that, but I defer to everyone on this call and to the co-chairs to how you want to proceed. Thanks.

GREG SHATAN: Thank you, Claudio. I do think this was a contemplated and I'll go to Kristine next, and Phil. And let's keep it brief. Thanks.

KRISTINE DURRAIN: Thanks. So I wanted to get a couple things because I think my chat, I've made some extensive comments in the chat but I wanted to kind of pull them together.

First of all, there are a lot of people on this list who have day-to-day lived experiences of daily data of spanning the dot type abuse, so let me be clear that that is happening. We know it is happening and to tell people, look people in the eye and say it's not happening because some third party didn't report it on a survey is not the purpose of this group. I think that it's a real thing.

To the extent that we're documenting rationales for why we do or do not support the proposal, my rationale is that I think that the Sunrise already strikes a proper balance. I get that there's pain. I get that the Sunrise isn't perfect. We know that and I'm okay with imperfection. I think we've struck a balance of imperfection that works in that we protect the most valuable, the crowned jewels, whatever it is, we protect that and then we let the substantive evaluators and the curative rights mechanisms work out the rest of the details and the gray areas because otherwise, what you end up with is machines and formulas and spreadsheets and string comparisons that don't get the substance right, and you end up having more false positives or more wrong that has to be righted later.

And so I think that the error rate, I know that there are a few people on this call that are pointing to the "abuse" of Sunrise as being a big issue but I have the same quote for you, which is it is not a ginormous problem. Mostly Sunrise is working. We have to deal with abuses on both sides. I just don't see a lot of way to fix the problems that aren't going to introduce a whole bunch of other new gray areas or ambiguity. So that's my point. I don't know if staff is summarizing, but I just wanted to be really clear that I'm

not saying there isn't a problem. I'm saying it doesn't rise to the level of an overhaul. Thanks.

GREG SHATAN: Thank you, Kristine, and that was a 1:56. I'm keeping a timer here, so it was perfect. Phil, go ahead.

PHIL CORWIN: Yes, Greg, thank you. I'll be brief. I really have a procedural question for staff and even though I'm a full working group co-chair, I'm not sure I know the answer so let's put the question out there. Again, I'm looking at process here.

My perception is that this proposal by Claudio at this point has support, but not wide support. There's also some significant opposition even from some folks who were strong trademark rights advocates. So if the issue is lack of data at this point in the sub-team, my understanding is that the sub-team when it completes its work just prior to Marrakech hopefully, is going to forward its proposals to the full working group and then the full working group will discuss those in Marrakech, see if they agree.

So this isn't the final word on the sub-team. The final word on Sunrise and claims notice is going to come from the full working group, although they'll give very serious weight to the sub-team recommendations. So I guess the question is, one, if something doesn't have wide support at this level but if proponents develop further arguments and data for full working group consideration, is the door still open for revisiting the subject, not forever, but when the full working group discusses the sub-team recommendations?

And number two, which is I think the area where I'm less clear, is if something doesn't make it into the initial report as a proposal, but its discussion is noted in the initial report and then there's very strong community input on the initial report indicating very broad support for doing something about the issue in the final report, I believe the full working group can revisit an issue and add something. It's rare, but there's a possibility of adding something if it gets consensus in the final report which wasn't a recommendation in the initial report. Is that correct or incorrect? So I'll stop there and welcome any clarification from staff. If they can give it now, that would be great. If not, they can give it on the e-mail list for the sub-team. Thank you.

GREG SHATAN: thank you, Phil. That was two minutes and 30 seconds, so good, but not perfect. Does staff want to answer the question?

JULIE HEDLUND: Yeah. Greg, I can try to answer that. I'm hoping I'm not generating static. Are you able to hear me okay?

JULIE BISLAND: We can hear you, Julie, but there is some static at times.

JULIE HEDLUND: Okay, thank you. So to the first question, Phil, per the procedures and I won't quote them because I don't have them directly in front of me but per the procedures, it was anticipated that only those

proposals that received wide support would go to the full working group for consideration. If, however, the working group disagreed with a determination of the sub-team and I think there needs to be a strong commitment to override the sub-team's recommendation, then the working group could consider including a recommendation or a proposal in the initial report.

But the presumption is no, that without wide support, the proposal would not be then considered by the full working group as to be considered in the initial report either as a formulation of questions or as a recommendation.

If, however, the working group did decide to override the work of the sub-team or a determination of the sub-team on a particular individual proposal because there is additional evidence or additional support at the working group level, then it may do so. But again, the presumption is that it would not do so because the point of having a sub-team was that the sub-team was meant to be the filter so that proposals and recommendations that answered questions would not then be reallocated at the working group level.

GREG SHATAN:

Thank you, Julie. That's my understanding as well and for anything for to be revisited at the full working group level, I think there would need to be pretty much an instantaneous idea that there was wide support, essentially already gelling, not just a second bite at the apple. So the proposals wouldn't get presented again. There would have to be, essentially, some form of a

massive tsunami of “You guys got it wrong” coming from a wide variety of people in the plenary, really, really wide.

And I see that as being the exception, not the rule, and I think a sub-team would have to be pretty far off-base to miss a proposal that would be widely supported in its plenary.

So far, we’ve had, essentially, eight people weigh in on the substance of this and I would say that roughly it’s been evenly split. We have about 20 people on the call but that may be counting staff and co-chairs. So at this point, I do not see wide support for this. I do not see, if we’re using consensus levels, its divergence. This is not moving forward in the proposal to the plenary.

I’d like to put aside any discussion of data versus experience versus expertise versus anecdotes and whether anecdotes is or is not a pejorative term relative to data, and what data is, so that we can stick to the substance. And I think that we’ve taken care of Q1 and Q1b because Q1b is a “what if” and we don’t reach that proposal. That is an “if it’s going to be expanded” and it’s not going to be expanded. So I think that moves us, finally, to Q2.

The Q2 threshold question, “Is registry pricing within the scope of the RPM WGR ICANN sort of view?” The proposed answer, the sub-team has differing opinions on whether the registry pricing is within the scope of the RPM PDP Working Group. Some sub-team members stated firmly that registry pricing is not within the scope of the WG. Registry pricing may be within the scope of another ICANN working group.

So I'll take comments on that answer, which seems a little choppy but not far off from what I recall being the general state of affairs. Kristine, please go ahead followed by Maxim and Kathy.

KRISTINE DURRAIN: Thanks. Just a slight modification that I think kind of draws in that data component we're talking about, which is I would propose just a modification. The sub-team has differing opinions on whether the registry pricing is within the scope of the RPM PDP Working Group. Some sub-team members point to registry agreements that state registry pricing is not within the scope of the RPM Working Group. That's just a fact, so I want to make sure that that's in there. Thanks.

GREG SHATAN: Thanks, Kristine. Could you supply, either now or in the e-mail list, the section of the registry agreement and Maxim notes, registrar agreement, as well, that you're pointing to? I'm not sure it's that. It's certainly not that granular. So in any case, without the stuff in front of us, we can't really discuss what exactly the import of that section is.

Maxim, please go ahead.

MAXIM ALZOBA: Just a note. Even if we decide that it's in our scope, it's not enforceable and we might set a precedent of creation of policy which is not applicable and not enforceable and not usable. That's my comment. Thanks.

GREG SHATAN: Thanks for that view, Maxim. We go to Kathy.

KATHY KLEIMAN: The very last sentence, registry pricing may be within the scope of another ICANN working group's review. For clarity, I assume we're talking about the Subsequent Procedures Working Group since I can't think of another working group that would be in scope. So does anybody disagree? Would this make sense? Registry pricing issues may be within the scope of the Subsequent Procedures PDP Working Group, and if we do that, then what we can do as co-chairs – and Phil or Brian, tell me if you disagree – then we throw this to Geoff and Cheryl Langdon-Orr, and as they gave us something, we give them something and say, "We'd like this to be considered by your working group." Thanks, Greg.

GREG SHATAN: Thank you, Kathy. We'll go to Susan and then back to Maxim.

SUSAN PAYNE: Hi. Thanks. I think if we're going to answer that. If we're going to answer as the [inaudible] has currently specified, don't we also need to be presenting the other side, which is that some sub-team members have expressed concern that registry pricing at an extreme level has the capacity to circumvent the rights protection mechanisms that registries are required to offer?

GREG SHATAN: Thanks, Susan. I think that's a fair suggestion. Let's see what others think. But certainly, we're trying to represent the differing viewpoints, should represent them. Maxim?

MAXIM ALZOBA: Actually, I don't see the situation where something is called a violation without actually pointing out what precisely was violated because if something wasn't regulated and then it's out of scope of the registry agreement and it cannot be enforced and effectively, saying that some particular company is doing something very wrong, actually it might lead to some kind of litigation. Thanks.

GREG SHATAN: A queue building. Although Kathy and Susan, are those old hands? I believe they are, so I'm going to go to Kristine.

KRISTINE DURRAIN: Thanks. Yeah, I put this in the chat and there's a little bit of a discussion going. So Q2 is just a threshold question about is it within scope, and my proposal just said it's not and here's the citation. That's all it says.

I think we get to Susan's point which I think is valid in Q2a, as far as do the practices sort of cause a problem, and I think that's probably where we address that, not in Q2 in this point. Excuse me. Although, I think that other, possibly you could say, "But people have problems," and refer to the sub-questions, I guess, if

you think that people aren't actually going to, by default, read through the sub-questions. Thanks.

GREG SHATAN:

Thanks, Kristine. I guess the way I read the threshold question, if we were to say it's not within the scope, then we would not even be able to answer Q2a and b, or at least, they would be just kind of chatter. So that's why I think Susan has some credibility in saying that if it rises to the level of actual abuse of the RPM or whatever you want to call it, that you may be within the scope in that particular instance.

And I also, I'll take off my Chair's hat here, my personal view is that the picket fence doesn't provide an absolute bar to this type of discussion, even this kind of recommendation. To some extent, it is not binding. We had a similar issue in the Jurisdiction Working Group, Jurisdiction CCWG Sub-Group, where we made recommendations about changes to the registry and registrar agreements on some fairly narrow issues, but nonetheless were going in there, not on pricing but were changes. So we, essentially, kind of, we could recommend them but we couldn't enforce that they be done is my recollection of that. It's a nuanced question. We certainly don't have time to go through a full discussion of the picket fence, and if we do, I want Becky Burr here. So I will go back to the queue and to Phil Corwin.

PHIL CORWIN:

Yeah, thanks. Let me ask a question here that may clarify this whole discussion. If we were to advise Sub-Pro that we have

found that high pricing at some new gTLDs has been a significant deterrent or barrier or however we want to characterize it to the exercise of Sunrise registration rights, does Sub-Pro have the authority in the next version of the applicant guidebook to put in a provision that says we're making a limited exception to the general approach of the new TLD program that ICANN will not set prices, a low threshold or a high threshold but for Sunrise registrations, we're either prohibiting or suggesting as a best practice that Sunrise registrations never exceed \$X. Do they have that authority or not? I don't know what the answer is, but if they don't have it, we probably shouldn't pursue this discussion much longer. Thank you.

GREG SHATAN:

Thanks, Phil. There has been some discussion in the chat as well. I think, clearly, we don't have our preliminary recommendation here on the threshold question and some variety of views, and whether what we're discussing is regulation or would be regulation if we proposed it or not and why they would have a remit that would allow them to do things that we don't, not really sure about any of that.

So I think maybe within our limited mandate, I think we should give a limited answer to the threshold question and then go on to the subsidiary questions as if we at least have the right to answer them. At least, that's my view. Maxim, I think you're next.

MAXIM ALZOBA: Actually, PDPs, the [output] of PDPs, it doesn't have direct power. We've got to go through, I mean, GNSO PDPs, they have to go through GNSO Council, just a note to Phil's comment. Thanks.

GREG SHATAN: Thanks for that reminder, Maxim. I don't see any hands up. I saw a comment from Kathy, "I'm not sure if Q2 umbrella is the spot, maybe Q2a," and a question of airing a grievance and not a question of setting prices per se. Although, I will note that some legacy groups at least set legacy contracts have been setting price caps.

CLAUDIO DIGANGI: Greg? Oh, I'm sorry.

GREG SHATAN: No. Go ahead.

CLAUDIO DIGANGI: Yeah, I just wanted to, and I've been trying to read the chat as well. I was just going to quickly say that in terms of the pricing issue, if Phil is requesting that we get more input from compliance – I'm not sure if that's what he said – but I would be interested in doing that if that's possible.

Just because I'm looking at it from the perspective that if there's something in the contract, in the registry agreement that requires the registries to implement a Sunrise and then in the implementation of that, their prices are set at an extreme level

where it's frustrating, the purpose of that clause that says you must implement a Sunrise, I'm not looking at that as necessarily a pricing regulation. It's just enforcing the contract and it's just ensuring that the implementation of the contract is being done in a way that fulfills its intended purpose. So that was just my thoughts on it, just wanted to mention it. Thanks.

GREG SHATAN: Thanks, Claudio. I've got Susan, Kristine, and Maxim, and we're kind of shading in to question Q2a at this point. Go ahead, Susan.

SUSAN PAYNE: Yeah, thanks. And apologies. I raised this. I didn't really mean to derail the conversation and send us off down the path of 2a and the subsequent questions.

I just felt that the answer in that preamble question just reads like only half an answer, but that was all my point was. It was a question about is it within scope, and then it says some members think it isn't.

But I think a suggestion in the chat made quite some time ago was something like that we come onto that, and maybe the answer is we just say, "However some working group members have raised concerns which are dealt within the subsequent sub-questions below," or something like that just so that it feels like a full answer rather than a half-answer and then we get onto the discussion about circumvention.

But you know, to be clear, I don't think any of us in the course of our discussions have been talking about trying to set rigid pricing for new gTLD registries. We've been talking about the interplay between pricing and the other obligations that are also in the registry agreements, which is to offer genuine rights protections. Thanks.

GREG SHATAN: Thanks, Susan. Kristine, please go ahead.

KRISTINE DURRAIN: I wanted to present just a short hypothetical and I promise it'll be short because I think people get locked into a mindset that domains are only offered under one paradigm, which is the one that we all know and love with dot-com, and so there is a domain name that gets sold and a person can do whatever they want with it.

Some new gTLDs are trying to do something different. And so when you think about the cost of a domain name, there's a lot that goes into it. And if you tell people you can't charge more than X for Sunrise, or a percentage of X or I want to limit it – just not even list a number, just I want to limit it – you're not taking into account all of the effort that's going into building that TLD.

Let' say, for instance, the TLD offers more than just a domain name. There is a service or a device or some other thing that goes along with the purchase of that domain name. You're now forcing registries with unique, innovative business models that are trying to use the DNS creatively to sort of really rig up their pricing in

such a way that they can only charge separate for the domain name because then they don't want to follow whatever policy this is. You have to be thinking more broadly, especially as the next round is coming up. You shouldn't assume that a registry operator is going to be just selling a domain name to some random person to be used for SEO or whatever ads or whatever their little website is. There is a lot going on behind the scenes.

So as we think about this question and grapple with concepts of pricing, there is a reason why it's outside the picket fence because there's so much more that goes into it than just the sale of a single domain name. So I just want to encourage people to think about that. Thank you.

GREG SHATAN:

Thanks, Kristine, and I think, if I can put in my two cents very briefly, I think any proposal that does not look at Sunrise pricing as proportionate to the various forms of regular pricing, including premium pricing and other early adopter pricing, whatever they may be, is clearly doomed to failure because the whole point, if somebody is going to charge \$10,000 for every domain name at every point or for some serious amount of them, then you can't limit Sunrise to \$500. That would be ludicrous. So, I think anything would have to be a question of proportionality. If every domain is selling for a buck except Sunrise is \$500,000 each, then I think that's a different question. I'm not saying that's the proportion we'd have to reach but I think that's kind of, to my mind, where any proposal like this would have to live in that kind of disproportionate and essentially punitive to the point of not passing the red face

test pricing, as in, “We have a very special price for you.” Maxim, please go ahead.

MAXIM ALZOBA: Just a note. If we in the end come to the point where I can regulate the prices in some particular industry, [we’re making ICANN a target and multiple] committees all around the world, and I’m not sure that it’s an intentional thing. Thanks.

GREG SHATAN: Thanks, Maxim. Let’s move more firmly into Q2A, sitting there as a possible answer. Q2A is does registry sunrise or premium name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise? The proposed answer says registry sunrise or premium name pricing practices in general limit the ability of trademark owners to participate during Sunrise. However, based on the limited data and due to subjectivity concerns, the subteam could not determine whether premium name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise.

Any comments on that answer? Okay, Claudio, you can get in the ... Kristine’s hand went up before you. I’m assuming Maxim’s hand is old. So, Kristine, please go ahead.

KRISTINE DURRAIN: Thanks. Just a clarifying question because I don’t think I saw this before. The registry sunrise or premium name pricing practices in general limit the ability of trademark owners to participate. Is the

answer ... A ton of background noise. Holy cow. Sorry. Is the answer there trying to get at the fact that brand owners have to pay at all is limiting or that it was sort of a widespread and pervasive problem? Meaning, out of 1300 live TLDs, 1000 of them had egregious pricing? I'm not sure where that came from and I don't know if it's staff that could clear it up or what. But I wonder if we just need to be a little bit more clear here about what that means before we say it's a general concern. Thanks. I mean, I can't agree or disagree at this point because I don't know what it means.

GREG SHATAN: Susan, please go ahead.

SUSAN PAYNE: Yes, thank you. Like Kristine, I don't recognize this language. I think it's going much too fast to say in general. I think we did discuss examples and examples have been flagged for the list and were gathered during the data gathering, but situations where brand owners flagged issues with the pricing. So, I think one could say something that didn't include the words in general, that said something like, in the case of some registries or some TLDs or something that says something like have the capacity to use, but I don't think that we could say in general.

But then moving on to the second sentence, I do take issue with the use of the words "due to subjectivity concerns". I don't believe we ever had a conversation about anyone's subjectivity concerns, and if we had that concern, we have it in relation to all of the data

in every single question that we've answered for this subgroup and the claims one. And I'm not quite sure why subjectivity concerns are raised in particular in this answer and not elsewhere.

Clearly, the only people who are going to be coming on this are the ones who are engaged directly in the transaction. Those who have no knowledge of pricing and aren't buying names during Sunrise or aren't [sending] during Sunrise are not going to have any input to give on this topic that would be non-subjective. So, I take strong issue with that and I think that terminology should be deleted. Thank you.

GREG SHATAN: Thank you, Susan. I see Claudio's hand in the chat. Go ahead. Claudio, we're not hearing you.

CLAUDIO DIGANGI: Are you hearing me?

GREG SHATAN: Now we do.

CLAUDIO DIGANGI: Okay, sorry. I was saying that I agree with everything Susan said and also Kristine about the word generally. I think it's the opposite. I think in some cases it can, the pricing can interfere, but it's certainly not across the board. It's not a general thing. Thank you.

GREG SHATAN: Mary, we're not hearing you. Found a hand but lost the mouth.

[MARY WONG]: Oh, sorry, we didn't realize that we were on. We've just noted the proposed language from Kristine in the chat and from the staff. That probably does capture much more accurately what this proposed answer was trying to get at, and it really was because of the discussion around the effects of different types of pricing on registering in Sunrise. It wasn't meant to be something across the board. It certainly wasn't meant to insinuate that anyone, much less trademark owners, have a right to domains.

To Susan's point about subjectivity concerns, again that reflects the discussion that the subteam had and it really goes back to the discussion over the [what] unfairly in the question itself.

So, we do take the point about it jumping out because of where it is in this question, but our suggestion is that Kristine's proposed language is the one that probably more accurately reflects what the situation is. Thank you.

GREG SHATAN: Thank you, Mary. I don't know, Claudio, if that's an old hand or a new hand. I do see a hand from Kristine, has something to share with the TM wonders in the group.

KRISTINE DURRAIN: I was just going to read my proposal into the record, so that people could discuss if they wanted to. Again, people are seeing it

on the fly but it's just proposing a friendly amendment as a place to start.

My suggestion is that we change this to registry, sunrise, or premium name pricing practices have limited the ability of some trademark owners to participate during Sunrise. However, the subteam. However, the subteam could not agree to the extent to which premium name practices unfairly limit the ability of some trademark owners to participate in Sunrise. So, just throwing that out there as a straw person for some people to throw daggers on. Thanks.

GREG SHATAN:

Thank you, Kristine. I have a question of a point of information. Is premium name pricing used during the Sunrise or is that only in the general availability? I'm having a brain jam on that point. David, I see a hand and then Kristine.

DAVID MCAULEY:

Thank you, Greg. Just with a question about Kristine's proposal. If we say we could not agree to the extent to which premium name practices unfairly limit, then we have agreed that we do unfairly limit, to some extent. We just don't know what that extent is. I'm wondering, Kristine, did you mean to state that? Have we gotten to that point? Thank you.

GREG SHATAN:

Kristine is next.

KRISTINE DURRAIN: Oh, I did not take my hand down and I am really sorry, I stepped away for a second. David, could you repeat your question?

DAVID MCAULEY: Certainly. My question, Kristine, simply had to do with the language that said the subteam could not agree to the extent to which premium name practices unfairly limit, etc. If we use that language, we then are stating that we do agree that there is an unfair limitation. We just don't know what that extent is. I'm asking: was that your intent? Thanks.

KRISTINE DURRAIN: Thanks for clarifying, David. That's not necessarily my intent to say that we agree. I meant to say that we could not determine whether they did unfairly limit. Maybe I wasn't clear. So, we have not made a decision whether or not the premium pricing practices [inaudible] an unfair limitation or to the extent to which there's a limitation. So, I would welcome some sort of friendly amendment to make sure that we correctly capture the views of the group. Thanks.

GREG SHATAN: Thanks, Kristine. I note, by the way, that at least dot-sucks used a Sunrise premium name but then rebranded that to market premium. So, for what that's worth. I think we're getting closer to the answer. I'm still a little concerned but I think we're getting closer. Maxim, please go ahead.

MAXIM ALZOBA: Actually, it was up to a particular TLD to make premium names [inaudible] during the Sunrise or not, and which level of prizes to [inaudible] during the TMCH Sunrise. It's the first idea. The second is since the group hadn't agreed about the language that the ability to [inaudible] was damaged, it should be something like might have been violated or might have been breached, the levels of ability to participate. Thanks.

GREG SHATAN: Thanks, Maxim. Claudio?

CLAUDIO DIGANGI: Thanks, Greg. Yeah. I put this in the chat, that there was ... I think Susan Kawaguchi who was at the time working with Facebook, she made some comments at an ICANN meeting about how they were targeted by certain registries. I think it was a limited number. But their brand was priced at a very, very high level. I think she said like \$27,000 or something like that. I'm just going off of recollection. So, there was some of that going on. I just wanted to say that that can be incorporated somehow in the answer and we'd have to do precise language, but there's certainly more cases like that. I just didn't want that to get lost in the text.

GREG SHATAN: Thanks, Claudio. Susan?

SUSAN PAYNE: Yeah. Actually, I was going to make a point somewhat similar to Claudio. I think if we're going to start watering the language down from what Kristine originally proposed, some of the suggestions have come up subsequently, then I do think we need to capture as well [inaudible] that we are aware of genuine, real-life examples that have been raised with the working group where the pricing in the Sunrise to a particular brand owner was significantly higher than other Sunrise pricing potentially or than general availability pricing.

So, something just to the effect that we're aware of pricing concerns. And even if we can't categorically say that it's [inaudible] brand and we're going forward with this, [inaudible] sunrise registration. Otherwise, I just don't think we're properly reflecting what we discussed.

GREG SHATAN: Thanks, Susan. I feel like this is still a work in progress. I have Claudio and Maxim's hand up. I don't know if those are new. I think they are. We're getting close to the bottom of the hour. Maxim, I think your hand is still up.

MAXIM ALZOBA: Actually, I would recommend to avoid words like significantly higher because, for example, in our case it was \$50 for Sunrise, and in general availability, after that [land rush process] where the prices were way more higher than that, it became something like \$5. But again, always say that, okay, \$50 is significantly higher than \$5, neglecting the fact that both are just nothing compared to

what you can see in the market. Thanks. So, we should be extremely careful not to try to mark as [inaudible] players, registries who just had to make a small difference in the absolute numbers.

GREG SHATAN:

Thanks, Maxim. So, staff, I know, has been noting all of this. and will somehow magically turn this into a next draft of the answer. [inaudible] thinking it will be the last draft.

I'm going to bring up Q2B, although I don't think we really have time to discuss it, and clearly timing is an issue. If so, how extensive is this problem? The subteam noted this problem seems sufficiently extensive that it may require a recommendation to address it, although the data is limited. The subteam also noted that pricing is outside the picket fence. The subteam made a recommendation relating to the situation where, as a result of a registry operator's way of operating its TLD such that it circumvents the mandatory RPMs. Brand owners will be more likely to seek enforcement by the PIC DRP instead of relying on ICANN compliance.

And there is a preliminary recommendation here, that the Sunrise subteam suggests the RPM PDP Working Group communicate the pricing concerns that have been identified to SubPro and asks SubPro for their views regarding pricing discrimination reference and the registry agreement, e.g. spec 11 sections 210C and 3C, information and insight from the SubPro PDP may assist the RPM PDP in developing a potential policy recommendation on this topic. The sunrise subteam recommends that the registry

agreement include a provision stating that a registry operator shall not operate a TLD in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN or restricting brand owners reasonable use of the sunrise RPM. So, that's kind of a mouthful. Any comments on all of that? Susan, please go ahead.

SUSAN PAYNE:

Yeah, thanks. I did note. I agree that we did talk about SubPro but honestly I can't [inaudible] in this document [inaudible] making recommendations to the SubPro. The timing of these two working groups is so far out of whack now that there's no realistic prospect that any recommendation we make in a final report being worthwhile to the SubPro [inaudible].

So, that is a waste of effort. Really, it's just passing the buck. So, we either make a recommendation or we don't, but I don't see how [inaudible] SubPro has any value or purpose whatsoever. Thanks.

GREG SHATAN:

Thanks, Susan. I see a plus-one in the chat on that from Kristine. I tend to feel, in my personal capacity, aligned with that thinking. But the meat really is the recommendation, the circumvention recommendation. The language of Q2B definitely needs at least some smoothing out. But any comments on the preliminary recommendation regarding circumvention and how that's phrased? I'm not seeing any hands. In part, that may be because it's now 3:25 but nobody is jumping up and down saying this is

misconstrue to the work that we have so far, so [inaudible] a fairly positive result.

Apologies that we did not get to Q3, 4, 5, A, 6, and 7. We're clearly going to have to work on pacing and then other things, and then figure out how we're going to deal with this and with the many open threads, and yet try to avoid turning Marrakech into subteam meetings. So, we'll see.

At this point, I'll turn it to AOB and see if we have any AOB. I understand it's only 3:26 here in New York in the afternoon, [inaudible] time, almost time for tea. I know other people are working in less [inaudible] time zones for which I apologize on behalf of the Earth.

Any other comments on this? Any other business? I'll turn it back to staff to bring us home. Thank you.

JULIE HEDLUND:

Thank you so much, Greg. We did not note any AOB, so we want to thank you very much for chairing today's call and we want to thank everyone else. I see a hand is up. Kristine Durrain?

KRISTINE DURRAIN:

Thank you. Maybe I'm the lone idiot on the call. What are the next steps here? I know that we have the list ongoing. But will staff then summarize what we've talked about today and make some changes to these docs in time for us to continue the discussion? I see in the chat that we're going to continue the discussion, but what are we discussing? Are we going to just move forward

starting with question three or are we going to go back and talk about the stuff and wordsmith the stuff that's there? I just want to make sure I get my homework right this week. Thanks.

JULIE HEDLUND: Thanks. I'm actually going to turn to Ariel Liang for that question. Thanks, Kristine. Ariel, please.

ARIEL LIANG: Thanks, Kristine and Julie. The homework for next week's meeting is to keep going to the next question and staff will take back all your inputs, started [inaudible] and look at the discussions [inaudible] and then update a text because there's a lot of questions left. We only did two and there are twelve more, so the priority is to keep going to the next question, so starting from questions three in the next meeting.

I see Kathy has a question about the threads. We did send an email to the subteam asking which threads should be open and we asked folks to nominate and we did receive some feedback on the limited time for responding. I think we can go back to Greg and David on that question about the thread.

JULIE HEDLUND: Thanks so much, Ariel. I see it's one minute before the end of the call. Again, thank you everyone for joining. This call is adjourned.

KRISTINE DURRAIN: Thanks, Julie.

GREG SHATAN: Thanks, all. Bye.

[END OF TRANSCRIPTION]