

---

**ICANN Transcription**

**Review of all Rights Protection Mechanisms (RPMs) Sub Team for Trademark Claims  
Data Review**

**Wednesday, 17 April 2019 at 1700 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://audio.icann.org/gnso/audio-rpm-trademark-17apr19-en.mp3>

Zoom Recording:

[https://icann.zoom.us/recording/play/bD5qujE\\_1SUQx3HnlKS3rUQDA4AyzH\\_bGhmQaFpnQ1dPk6xTbVhNilZJCcWghlGe?continueMode=true](https://icann.zoom.us/recording/play/bD5qujE_1SUQx3HnlKS3rUQDA4AyzH_bGhmQaFpnQ1dPk6xTbVhNilZJCcWghlGe?continueMode=true)

Attendance is on the wiki page: <https://community.icann.org/x/EAB1Bg>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gnso.icann.org/en/group-activities/calendar>

ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the RPM Subteam for Trademark Claims Data Review call, held on Wednesday, the 17<sup>th</sup> of April at 17:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for recording purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I will turn it over to Julie Hedlund. Please begin.

---

*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.*

---

JULIE HEDLUND: Thank you very much, Andrea. This is Julie Hedlund from staff. I'll just run through the agenda quickly. We'll have the updates to Statement of Interest and then we're going to do a brief introduction to Zoom, then we'll move on to the development of preliminary recommendations, continuing the review of trademark claims charter question #2 and the related individual proposals #1 and #12, and then also discuss the agreed trademark claims charter question #1 in conjunction with individual proposals #5 and #6, and then to Any Other Business. May I ask if anyone has any other business? I'm not seeing any hands.

KATHY KLEIMAN: This is Kathy. Can you hear me?

JULIE HEDLUND: Oh, sorry, Kathy. I didn't see you hand. Please go ahead.

KATHY KLEIMAN: Sorry. I'm still trying to get into the room. But yes, I wanted to ask an Any Other Business question at the end.

JULIE HEDLUND: Okay. We'll put you on for Any Other Business. Thank you, Kathy.

Then let me go ahead and ask if anyone – let's go back to item 1 and ask if anyone has any Statements of Interest? Not seeing any hands.

---

Then let me go ahead and turn things over to Andrea Glandon for brief overview of an introduction to Zoom. Thank you. Go ahead, Andrea.

ANDREA GLANDON:

Thank you, Julie. We'll just go for a few things for the new Zoom room so that you guys can get used to it. Upon joining, you're going to select whether you want the computer audio or if you want the Zoom to call you. The computer audio has proven to be very clear and stable, so we do recommend that if you are able.

Each time you enter a Zoom room, please bring up the Chat and Participant windows. You'll hover your mouse over the bottom portion of the Zoom room until the menu bar appears. Click the Participant icon that is needed for the hand raise and the Chat icon. Please remember that chat will only appear once you log in. You will not see any chats that occurred prior to you joining the room. But at the end of the call, you will receive an entire chat transcript that is sent with the attendance e-mail by the staff.

Please mute your mic, of course. There are three ways to mute. You can hover your mouse at the bottom of the screen and click the mute icon to the far left side. In the Participant window, you can hover your mouse over your name and select "Mute" and under the hand raise, yes/no go slower bar, there is a button "Mute" or "Unmute me."

At this time, Julie has the agenda and the notes up. Ariel is sharing any necessary documents. You can choose what you

---

would like to be showing on your screen and any time you can change to the other person.

To switch what will show on your Zoom screen, hover your mouse over the top portion of the Zoom room, click “View Options” and select the name of the person sharing the screen that you would like to see. Once staff begins sharing documents, you may want to exit your full screen by hovering your mouse at the top of the screen.

Click the down arrow next to the “View Options” and select “Exit Full Screen.” If you want to stay in full screen but also want to see the chat and the participants, hover your mouse at the bottom of the screen, click “Participants” twice, and click “Chat” twice, and the windows will appear to the right.

Thank you very much and have a successful meeting.

JULIE HEDLUND:

Thank you very much, Andrea, that’s very helpful. Let me just quickly ask if anybody has any questions about the Zoom and how it works and/or is having any difficulties with any of the aspects that Andrea has described? Not seeing any hands up. Then thank you again and let me go ahead and turn the meeting over to Martin Silva Valent to take us onto agenda item 3 and sub items under 3. Over to you, Martin.

MARTIN SILVA VALENT:

Thank you very much, Julie. Today we’re going to be reviewing the draft text of question #2 along with any other comments you

---

may have with the individual proposals. And then we're going to move to question #1 and it's the new draft text. I hope we can get further on that to question #3 but I don't think so.

So, let's start with question #2. Last time we finished or at least we almost finished unless anyone wants to add something with the two individual proposals. Today we're going to see here, if you go to Ariel's screen. If you go upstairs to view option, there you can choose either Ariel or Julie's screen. Go to Ariel's and there we have the draft text that was sent over the week. Let's give it a quick reading if you want.

Question 2(a). Well, I don't know if it makes sense to read the whole questions and the whole answers but let's just go with the answers. Question 2(a) answer: "Registries should have the option to extend the claims period. The subteam noted, however, that there is data indicating an extension will not be advisable as a matter of policy."

Does anyone have any comment on this draft text? I see that Susan Payne has her hand up. So, Susan, please.

SUSAN PAYNE:

Yes. Thanks very much, Martin. Yeah. I mean I'm hoping that staff will point out to me where this language has come from or correct me if I'm misunderstanding. But the way I read the answer to 2(a), particularly the language that says that we've got data indicating an extension will not be advisable as a matter of policy, to me that seems to go much further than we discussed or indeed that I thought we had data for.

---

I think that we discussed as a subteam that there are limitations in the data and that we discussed that to the extent that we have data which is limited. There's data which both supports an extension and data which supports and groups of people who do not support an extension, depending on the different parts of the community that we were asking the question off. But I don't think that that rises to the level of that being a matter of policy that would advise against an extension. That seems to me to go to far.

I think what we have is, as I say, potentially we have a lack of data one way or the other and to the extent that we have data, it's people in support and people who are not in support. But as I say, if this is something that we did as a subteam agree, I'd be happy to be corrected but I don't believe we ever had that sort of level of discussion.

MARTIN SILVA VALENT: Julie, go.

JULIE HEDLUND: Yes. Martin, sorry. Let me note that Ariel has her hand up and let me just also let you all know so you understand how we're doing this. Staff as host cannot raise their hands, so we'll put in chat that our hand is up when we are raising our hands, so a virtually hand raised. Ariel, please.

ARIEL LIANG: Thanks very much, Julie. Thank you very much for the clarifications, Susan. When staff develops the draft language, we

---

reference the transcript and then we try to summarize the discussions as what you see now on the screen. And if we have mischaracterized certain points or missed anything, we will make sure to check the transcript and recording and to make sure we compile the input and revise the language. So, I just want to let everyone know that for today, the call's transcript we'll also reference and update the language. So, what you see now is draft. We really appreciate all the clarifications.

MARTIN SILVA VALENT: Thank you very much, Ariel. I have Kristine with her hand up. Kristine.

KRISTINE DORRAIN: Hi, thanks. This is Kristine Dorrain and I did put my comment in the chat but in the interest of furthering the discussion, I have a feeling that the problem here is simply just use of the passive voice. The question is, should the claims period be extended? If so, for how long?

I think we need to answer the question directly. Yes or no. I think the answer here is no, we should not change the policy to extend the claims period – mandatorily extend the claims period. However, registries should have the option to extend the claims period if it suits our business model or whatever we want to put. It's my understanding that that is what we decided and so I think it's simply a wording issue here but I could stand corrected if need be.

---

MARTIN SILVA VALENT: Thank you, Kristine. Without taking any position, that does sound reasonable. Does anyone else have any follow-up comment on this?

Kathy supports Kristine on the chat. Okay. Then we're going to have staff probably redoing that part. [Inaudible] also supports. Thanks, Kristine.

Let's move to question 2(b): "The claims period should not be shortened." Anyone has any comment on this? Yeah. It's pretty straightforward I think here.

Let's move to the next one. Q2(c): "The claims period should be mandatory and be consistently applied to all TLDs. However, registries should have certain degree of flexibility to create a suitable business model in carrying out the claims period."

I'm opening the floor again unless someone wants to comment.

UNIDENTIFIED FEMALE: I do.

MARTIN SILVA VALENT: I see also Kristine. So, Kathy, your [info]. Do you want to go first, and then Kristine?

KATHY KLEIMAN: Oh, I'm happy to follow Kristine.

---

MARTIN SILVA VALENT: Okay, Kristine, you go ahead then.

KRISTINE DORRAIN: Thanks. This is Kristine. Oh, bad echo.

MARTIN SILVA VALENT: Kathy, is your mic open?

KRISTINE DORRAIN: Okay, echo's gone. Thanks. In this one, I think the first bit of a little contradictory. So, if we say the claims period should not be extended as a mandatory option but that registries may have some flexibility to extend it and then we say, "Should the claims period be mandatory?" and we say the claims period should be mandatory, that answers the question. The claims period should be mandatory.

We say that and be consistently applied to all TLDs, which I think contradicts the statement in Q2(a), that we would allow some flexibility in how each registry implements it. So, that little phrase I think needs to be stricken unless we mean something different as in it should – because the second sentence then says, "Registries should have a certain degree of flexibility to create a suitable business model and carry out the claims period," which I think is what we're actually trying to say.

I think the next question which goes, "Do some TLD should be exempt from the claims RPM?" I think those questions the answers are not in alignment. I think that's the short answer.

---

That's what I'm trying to say. We need to fix that so the answers are consistent across the board and that might mean adding a little bit more explanation to those four answers so that we can finesse out the details there.

MARTIN SILVA VALENT: Thank you very much, Kristine. And, Rebecca, I know that you want to be on the queue as well. [Inaudible]. Kathy, you're next if you can speak.

KATHY KLEIMAN: Yes. Can you hear me, Martin?

MARTIN SILVA VALENT: Perfect.

KATHY KLEIMAN: Okay. Great. I'm with Kristine. I don't think these answers are in alignment. I actually thought that for Q2(c), that registries should have some flexibility to create a suitable model in carrying out their claims and that it says in 2(d), some TLDs should be exempt from the claims RPM, which means that the claims period should be mandatory and be consistently applied to all TLDs is not consistent with kind of the data and the nuances that we found. I'm not quite sure how to phrase it but I think there is some work in here to do. Thanks.

---

MARTIN SILVA VALENT: Thank you, Kathy. Susan lowered her hands. So, Rebecca, you're up.

REBECCA TUSHNET: Thank you. I think this is a slightly different problem and maybe it just means that we just need to get rid of this first clause or first sentence. But I would expect people reading this cold to read the reference to all TLDs as legacies, too. At the very least, it seems to introduce some pretty serious ambiguity there as well. Thank you.

MARTIN SILVA VALENT: Thank you very much for the comment. Susan, you have your hand up again. Is that correct? Go ahead.

SUSAN PAYNE: I do. Thank you. And actually, since I'm speaking, yeah, I agree with Rebecca on that. I haven't read it with that interpretation at all but I can see that it could be interpreted in that way and like I said, I think we need to fix that. But I think I'm more or less going on to 2(d) which was something that, Kathy, you were commenting in relation to and there was some data that we have that indicated that there should be more nuance in terms of who the claims was applied to. I just wonder if you could clarify that because I don't think there really was any data that suggested that the claim should be more nuanced.

Say for a conversation that we had on one of our calls about the lack of relevance of the claim service to .brand registries. We

---

didn't have data from the wider community that talked about the inapplicability of the claim process to other types of registries. I think there may have been some responses in relation to Sunrise but I don't think some in relation to claims.

KATHY KLEIMAN: This is Kathy. I'd like to join the queue.

MARTIN SILVA VALENT: There's no one on the queue and she directly asked you, so go ahead, Kathy.

KATHY KLEIMAN: Right. Thanks, Susan, for the questions. Since we are overlapping knowledge, many of us are participants in both working groups, does come to bear and that we do know that registries – and I believe registrars – I'm not sure registries did respond to some of the Sunrise questions where it was an either/or with the idea that they'd like to pick Sunrise or trademark claims. We have those responses and we could certainly dig down and come up with why we've came up with this answer the way we did.

But I do think it should be as accurate and then you have to dig down into – and I'm looking at the data now where we're seeing registrars. Yeah, we're seeing the responses of the registry operators and registrars, so the majority of registry operators and registrar respondents believe the claims period should be shortened. Registrants would experience fewer problems with the shorter claims including fewer good [inaudible] registrants turning

---

back when they encounter the claims notice or confused. Data shows substantial confusion and uncertain data – you can read it too. It's all on page 11, first column of our summary table. I do think we've got evidence of exemptions and also variations in the claims RPM. Thanks.

MARTIN SILVA VALENT: Thank you very much, Kathy. I see Kristine has her hand up. Kristine.

KRISTINE DORRAIN: Hi. Thanks. My understanding is a little different. I don't think that some TLDs should be exempt from claims RPM. I don't recall that it was necessarily the either/or question. I guess I can see what Susan put in the chat that maybe it was discussed in Sunrise and, yeah, they've got it aligned.

My question here is really if you dive down two more sections to the Recommendation section, we sort of have open questions. We really think the claims RPM should exist generally in its current form. I think that's our general recommendation. I think we have more or less agreed that not everybody who filled out a survey is going to get what they want, so even as a registry operator, I might not get to choose between Sunrise and claims because I think that there's sort of the tapestry as they called it back then, sort of the balancing of interest generally weighs in favor of the RPMs being largely effective. But I don't know that we can definitively say some TLDs should be exempt from the claims because we say there should be some flexibility.

---

Then our recommendation question goes to, “We need more information.” We specifically ask for use cases for exempting TLDs. So, I think we can’t say some TLDs should be exempt and then follow that up with, “Well we need more information.” We’ve heard that some TLDs have said that the claims were overly draconian or that they caused a problem in some way, and so we want to hear your rationale for why some TLDs might be exempt. I mean as of now, the basic baseline is don’t change it. It’s kind of going to stay the same. So, [give] community come forward with some actual use cases where we can talk about it, not just one or two registry operators. They’re like, “God, we really like to not implement claims.” So I don’t think we can say some TLDs should be exempt here. Thanks.

MARTIN SILVA VALENT: Thank you very much, Kristine. I don’t see any other hands up, no chat activity. So, let’s move to the next one. Question 2(d).

KATHY KLEIMAN: Wait. Martin, before we get there, in line of what Kristine just said about Q2(d), do we want to change Q2(a)? So, registries should have the option to extend the claims period but also perhaps to shorten the claims period in line with the various needs, and then Q2(c), flexibility with the business model and also with their experiences.

---

MARTIN SILVA VALENT: That could make sense. In any case, we still need to address point by point just so it matches their questions. Maybe staff can [inaudible] together. Kristine, I saw your hand up. Yeah, go ahead.

KRISTINE DORRAIN: Thanks. I don't recall any discussion in which we kind of thought about the claims period being shorter than 30 days, right? After 30 days, at this point even some registrars won't implement claims because they don't want to. It's just not worth it. They just sort of don't register domain names for so many days, right? I think the thing is not that we've decided to shorten it but if we're going to do away with it for certain TLDs, that's fine. But we just don't have any use cases that support that. We have a couple of hunches.

I think what we're saying for Q2(a) is no mandatory extension, optional for Q2(b). Not we don't think that the period should be shortened, however, Q2(c), it should be mandatory but the registries might be able to have some flexibility. And then Q2(d) says should any claims be exempt, we don't know we're seeking more information, that's where we fill in that recommendation bit and bold. That's how I'm imagining it right there. But it looks like other people have their hand up, so I'll stop now.

MARTIN SILVA VALENT: That's okay. Your contribution has been very good, so you can keep talking. Susan, you're next.

---

SUSAN PAYNE: Yeah. Thank you. And I largely agree with what Kristine just said and particularly in terms of how she structured those answers. But I am a bit confused about 2(c) and this reference to flexibility. My assumption had been that when we were talking about flexibility that we were talking about it in the context of the claims is mandatory and should be consistently applied, but we already said in 2(a) that it could be optional to extend it further and say that's the flexibility. I wasn't understanding that flexibility to mean that some people may have a shorter one or might be able to dispense with it or whatever unless we specifically identify any TLDs that don't need to apply it.

MARTIN SILVA VALENT: Thank you, Susan. Kathy, do you want to add something during you cannot raise your hand?

KATHY KLEIMAN: Yes. I can't raise my hand because I'm calling in through a phone and I called in directly, so I'm not using voice through Zoom right now. Apologies. We have to learn how to use all these new systems.

I think what's happening is that the questions as drafted combine responsiveness to registries, registrars, registrants, and trademark owners, and I think somehow we're revising them to be responsive to trademark owners. The data is – in pages 10 and 11 – talking about the majority of registry operators and registrar respondents. I know it wasn't a huge number but majority believed that the claims period should be shortened, that registrants would

---

experience fewer problems. We've talked about registrant problems at length. Data shows substantial confusion and certainly about the meaning of the trademark claims notice that we're working on.

As phrase, we captured some of that flexibility in here. I like the idea of going out for comment but I wouldn't write it all out because I'm not sure that would make the recommendation responsive to the data that we gathered. Thanks.

MARTIN SILVA VALENT: Thank you very much, Kathy. I see some response from Graham at Kathy: "The number of respondents was so low that I don't think we can rely upon them. If this is something we think the responses are suggesting, we need to deeper dive."

Again, guys, if you want to add something, you can also jump to the queue. If not, I'm not going to be on the chat.

Kristine, go ahead.

KRISTINE DORRAIN: Sorry. I'm typing because I'm actually eating. Sorry about that. Yeah, I want to be respectful of the people on the phone who can't read the chat too.

I think here one of the concerns that I have is that we do have some data from people, trademark owners, registries, registrars, and probably registrants that don't care for the claims. Although some people do, some people don't, they don't care for different

---

aspects that trademark owners wanted to be forever, in perpetuity. The registry operators are like, “Nah, whatever, because we’re already there,” but the registrars are like, “Gosh, this is a pain in the ass.” Some registrants are kind of confused. I mean I think that we have a lot of people who have said various things about it but I don’t think there’s been any – to go back to the Jeff Newman rule – clear indication that the system is so broken, it requires a change.

We have a very carefully balanced claims notice. It’s 30 or 60 days or however long it is, 90 days I guess. We have this pretty carefully balanced system and people might not like components of it and everybody ended with the STI and the IRT, equally irritated and everybody got a little something.

I think our job was to look at it and look at the data and see, “Is everybody sort of equally a little bit irritated and everybody got a little something?” Yeah. We found some fixes. We got some fixes. We got some data. The data generally supports, everybody is a little irritated, everybody got a little something. I don’t think we see anything in the data that clearly and overwhelmingly says, “Good Lord, there’s a problem. Something must be changed.” What we do know is the claims notice itself must be changed. That I think we have some pretty clear evidence on, and that’s our own common sense as well.

But I think here, we’re generally recommending stay with the status quo, let’s get similar information about places that we might not have thought about, some edge cases to make sure that we’ve considered all the edge cases. But generally speaking, I

---

think we're with the status quo, and I think if we just reword these questions to basically summarize that, I think we'll be there.

MARTIN SILVA VALENT: Thank you, Kristine. I see Greg Shatan next.

GREG SHATAN: Thanks. Sorry about that. You can't unmute if you have a chat open, at least on the tablet. So [inaudible] what have been said before but I think the fact that we have some data, we're not beholden to the data. Obviously, we should consider it for what it's worth. But overall, it's not like we somehow have to use all the data because we have it like some sort of a kit that if you don't use all the pieces, somehow you've made a mistake. So while we can consider it, we don't have to somehow accommodate it and of course we also bring a lot of our own knowledge and at least anecdotal data to this.

When I see what Kristine is saying, overall the data supports our general understanding. I'll stop there. Thanks.

MARTIN SILVA VALENT: Thank you very much, Greg. Cyntia, you're next.

CYNTIA KING: Hi. I agree with Kathy that we need to consider the history of how these decisions came up. There were lots of discussions before we got here that should inform us but I do want to say that I think a prime consideration should be what benefits the ultimate

---

consumer, the registrant, if knowing that there's a potential for a claim against them would be helpful to them, I think we have to weigh that in our consideration in addition to the other factors that obviously come to bear on this question. But what is best for the claimant – is it better for them to know, to get the information or not? Of course that updating the claims notification is going to be key to how helpful that information is going to be to them.

So I just think we need to shift our thinking a little bit to what's going to be the ultimate benefit of the average registrant. Thank you.

MARTIN SILVA VALENT: Thank you very much, Cyntia. Does anyone in the telephone lines wants to step in? If none, we are going to move to the next one.

REBECCA TUSHNET: This is Rebecca Tushnet. May I go ahead?

MARTIN SILVA VALENT: Please.

REBECCA TUSHNET: Thank you. I have to admit, at this point I've somewhat lost track of where we are. I understand the impulse to say, "Okay, everybody gets a little unhappy." I'm concerned that if we foreground something like extending the period is okay, then that actually doesn't take a particular neutral position. So, are we making policy recommendations or not? And I admit, my judgment

---

may change when I see the whole thing together. I just want to [apply] that. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. Unless no wants to step in, let's go to Question 2(e). Okay, fair enough.

The subteam agreed that this is an issue for the full working group when discussing the Trademark Clearinghouse. The subteam also needs to review George Kirikos's individual proposal regarding extended proof of use requirements for Sunrise to include the issuance of Trademark Clearinghouse notices.

The queue is open if anyone wants to step in. Oh, Cyntia, I thought that was an old hand. Is it still a current hand? Go ahead. Yeah, old hand I suppose.

I think we can scroll because we are not [inaudible] the document but the literal screen of Ariel. Anyone in the lines?

KATHY KLEIMAN: Martin, this is Kathy. Have we discussed proposal #2? I apologize. I don't remember which one that is.

MARTIN SILVA VALENT: Last call if I recall and stuff – you can correct me – we did review both of them. I don't know if anyone has any extra comment on them. Julie or Ariel, someone can correct me if I'm wrong.

---

KATHY KLEIMAN: I thought we reviewed the proposal from George to eliminate the trademark claims. But again, it was a little while ago.

MARTIN SILVA VALENT: Ariel, you had your hand up. Go ahead.

ARIEL LIANG: Thanks, Martin. This is Ariel. The subteam reviewed proposal #1 and #12. If you scroll the document on your own, you can see we have included the summary of discussion and #2 hasn't been reviewed yet.

MARTIN SILVA VALENT: Thank you very much, Ariel. I see Susan's hand is up. Susan, go ahead.

SUSAN PAYNE: Thank you. Thanks, Ariel, for that clarification. It may well be that we haven't discussed George's actual individual proposal but we definitely have discussed this notion of whether the proof of use should be extended, which I guess we did when we had a general subteam discussion on this charter question, too. I think my recollection of whether a conversation came out was that – obviously there are some people who are in favor and some people who are very against them and we had a discussion about the distinction between the nature of the Sunrise and the nature of the claims, with the Sunrise giving you to some extent an actual right, i.e. the right to first refuse if you like to pay your money and

---

acquire a name. Consequently, it seems that was the reasoning behind the expectation that there should be an actual proof of use for Sunrise registrations and that wasn't carried over to the claims process as well, where the claims process obviously is not giving the brand owner a right really. It's the notice period or rather notification that goes to the registrant and after the event, the trademark owner gets a notification as well. But there's a sort of fundamental distinction between those two rights which was I think is what justifies the distinction between having a proof of use to Sunrise and not having one for claims.

MARTIN SILVA VALENT: Thank you, Susan. I have Kristine now.

KRISTINE DORRAIN: Thanks. I want to pick up where Susan left off on the substantive discussion, but I'll preface that with I noticed Mary said in the chat, "The document includes potential recommendations and suggested answers up to where the subteam stopped. I hope that's helpful."

I was just going to suggest that, honestly, because this looks like a punt. There's not an answer. I think this is something that staff put in here as a placeholder that said, "This is where we left off on this conversation."

I'm going to object to this, not staff's characterization of it but I don't think the subteam should punch to the full working group. I think it is our job to come up with recommendations, even if it's painful and we disagree and the full working group can disagree

---

with them. But I don't think that we can say, "We can't agree so we're just going to punch it to the full working group."

I think as Susan pointed out, there's a lot of balancing reasons why Sunrise requires proof of use. It's a pretty big hurdle, it's an onus on the trademark owner, and it gets them a lot more. Sunrise gets them a whole lot more than a claims notice does.

So I can see why there's a balance there and to me, I have not yet seen any data that would suggest that we should disrupt that balance. So I'm happy to continue on with the substantive discussion but I don't think we should punt here.

REBECCA TUSHNET: Should I get on the queue? This is Rebecca.

MARTIN SILVA VALENT: Rebecca, you're next then.

REBECCA TUSHNET: Thank you. I would like to actually defend this proposal. It's either real right or it isn't. We know from both the data about what the majority of notices are for and from the reporting about the [Swiss] trademarks, the several organizations that seem to just be [sitting] on a couple pros in the TMCH that there is a gaming of the system, and it's either right or it isn't. If it's going to cause somebody to sit back [inaudible] what we [inaudible] is going to do then it should be only done for a real right and it should be

---

triggered when somebody has enough use that it could actually interfere with someone else's use.

So it is true that the Sunrise gets you more but the notice is not nothing, which is I think what everybody else has been saying about the notice is that it is moment for people to step back and do a real legal analysis. It should only be sent when there's a real right behind it. So the proof of use serves to be a significant function for Sunrise. It should serve the same function for notice. Thank you.

MARTIN SILVA VALENT: Thank you very much, Rebecca. Ariel says on the chat, "When George submitted this proposal, he said it was related to agreed Sunrise charter questions."

I have Greg next on the queue. Greg, go.

GREG SHATAN: Thanks. I think that while there is obviously something to the claims notice, it is different in kind from the Sunrise right. No need to worry about whether the word "right" makes sense or not. Because there's a difference in kind, there's certainly a real right behind it if there is a valid registration. So I think the proof of use is an extra added requirement but beyond merely providing a valid registration which recognizes the heightened power or really the power it all that is behind the Sunrise right.

Again, probably a bit of a compromise but one that I think splits the difference appropriately. Overall, I think punting anything to

---

the full working group without making a decision here is abdication of our duty, so it's our job to come up with recommendations whatever they may be to bring to the full group. Thanks.

MARTIN SILVA VALENT: Thank you for that.

KATHY KLEIMAN: This is Kathy. May I join the queue?

MARTIN SILVA VALENT: Of course, Kathy. Go ahead.

KATHY KLEIMAN: Okay. Greg, I'm not sure what the compromise was so let me put a note then. And also note that I got thrown out of the Zoom. This is going to be fun with this new system.

Okay, so the proof of use that we use in Sunrise and not a lot of trademark owners are filing, it doesn't seem that there's that much burden in the percentage that hasn't thought the proof of use to file a proof of use will make their Sunrise work easier. It also addresses very clearly the key problem that that we saw. It started with the Analysis Group, we saw it two years ago which is the use of ordinary words like "cloud" and "hotel." The proof of use at a minimum creates a requirement that the term is out there, that it's not an intent to use if people are going to be registering very ordinary words in the Trademark Clearinghouse. These are not famous marks, at least not what we're seeing in the top ten words

---

that are used to generate trademark claims and which the Analysis Group gave us. I think there really is some usefulness to this proposal and I don't think it imposes a very high burden but it does address, but clearly it's a very big problem. I think it deserves to go out for public notice. Thanks.

MARTIN SILVA VALENT: Thank you very much, Kathy. I see that Graham said in the comment, "I believe the question whether to require evidence of use may be premature. Revision of the notice should include consideration of the purpose of the notice."

In answer to Rebecca and Kathy: "If there a proof of use requirement, how often would this have to be affirmed? Also, would this place additional burdens on any party – trademark owners, registrars, Trademark Clearinghouse – that could have a financial/effort effect?"

I'm going to jump a little bit myself on the queue for one second. Ariel did post the proposal back in the chat for anyone that wants to reopen it again. I don't want to move forward and leave something this big open. I agree that we need to have some sort of agreement at least even if it's a bigger recommendation that we want it to be. I don't want to get stuck here. We still have 10 minutes but if you want to come up, please come up because that will help staff try to draft something that really reflects more what this group thinks.

Cyntia, you're next.

---

CLAUDIO DIGANGI: Hey Martin, can I get in the queue? It's Claudio.

MARTIN SILVA VALENT: Oh, Claudio. Of course. Cyntia, do you mind waiting?

CLAUDIO DIGANGI: I'm the only one waiting? Okay. Thank you. Just to answer Kathy's question, during the development of the Rights Protection Mechanism during the New gTLD Program, the proof of use issue was actually something that was quite intensely debated and in fact became a sticking point at certain points. In previous Sunrise periods, there was never a requirement to have proof of use. So this is something that was completely new. There was a lot of concerns about the requirement because I believe as Greg noted, it essentially puts an extra requirement in where in fact most jurisdictions throughout the world do not require use to obtain a registration, whereas in the U.S., you do. So there was a concern that this was basically a U.S.-focused issue where it's somewhat U.S.-centric in the way the recommendation came out because you end up in a situation where you have valid registrations that are not eligible for protection unless you can [inaudible] such [requirement].

So it really [inaudible] recollection something that was a compromise that was ultimately accepted by the trademark community. So I just I wanted to provide that context. Thank you.

REBECCA TUSHNET: This is Rebecca. Can I get on the queue?

---

MARTIN SILVA VALENT: Give me one second. First Cyntia, then Rebecca, and then I'm going to try to hand it over to staff because they do have something that is very important. So if you could be very brief so staff have some time to go over. Thank you.

CYNTIA KING: Absolutely. Thank you. I guess I'm confused about why. First, I'm confused that we say that this is a very big problem. I'm not sure where we're getting that characterization that this is a very big problem, so I'd love to understand that a little bit more fully, where we're getting that characterization from. But beyond that, getting really far afield with proof of use and stuff like that, this is a courtesy notification to registrants that there may be an issue. We should be giving them general information to let them understand that there is a trademark and then directing them to resources where they can look this up on their own. We are not the be-all, end-all of what's a valid mark, whether use is required or not in this country, that country, the other.

This was my point when I spoke about the Canadian laws changing at a couple of meetings ago. Things do change. Are we going to have to go back and revisit how we do the claims notice? Every time there's a change in the laws in a couple of different countries, this should be a very general notification which registrants should receive as a courtesy and then the responsibility falls on them to find out whether or not this would affect whatever particular thing they have in mind for the domain that they wish to register.

---

We can't be the be-all, end-all informational source of what trademarks are valid, what use means, does it mean in this country or that country. We need to keep it simple, keep it consistent, and give them the big picture and then direct them to where they can get their own information. That's my opinion anyway. Thank you.

MARTIN SILVA VALENT: Thank you, Cynthia. Rebecca, same for you, brief if you can.

REBECCA TUSHNET: So this is a classic problem of false positives. If we send out a notice to everyone, then everyone will do whatever it is they do to check but a lot of them will be more likely to get it wrong because we're sending it out too often. If anything, the need for proof of use is more important for the notice where somebody should be doing, we think, a check if and only if there's a serious chance that there's a conflict.

Frankly, the cybersquatting problem as far as I can tell is not a problem with people who have a bunch of registrations that are valid but not used. It's a problem of Xerox, Apple, and Microsoft. Those are not marks with proof of use issue. To the extent that we're worried about cybersquatting, which seems like is a primary focus, then proof of use should not be a problem and is even more significant to avoid the over deterrence problem, which is substantial as Kathy pointed to the evidence with we've already [inaudible]. Thank you.

---

MARTIN SILVA VALENT: Thank you very much, Rebecca. I would like to keep open the queue for more people. I don't want to give the negative stuff. We only have four minutes left. So, Julie, Ariel, whoever want to pick it up, go ahead.

ARIEL LIANG: This is Ariel with some staff. We just have a AOB regarding the discussion thread that Julie just mentioned earlier. I'm going to share with you a template that we're going to use to facilitate the subteam's discussion offline about the charter question and the proposals. You can see this is the e-mail for the TM claims charter question too that we're going to send out and that will include the tentative answers and preliminary recommendations that we have captured up to last week's meeting. Basically, that's the text that we just circulated this morning in this e-mail.

Then also for the individual proposal it's saying that – I just want to draw your attention to the questions that we're trying to answer for the individual proposal. Whether this proposal should be recommended to the full working group to consider the inclusion in the initial report, whether there's any modification to be made to the tentative preliminary recommendation and whether there should be any additional recommendation to be made in relation – in light of these proposals. So we'll try to enter this kind of questions when we put together the text for the individual proposal. So using this discussion thread then the subteam members can continue your discussion about the text for the preliminary recommendation and not be a review for the individual

---

proposal. And if you haven't set certain things during the call, you're welcome to put that in the mailing list and if you want to reemphasize anything, I already said you're also welcome to do so and staff will reference both the thread and to the transcript when we compile the text and then produce the next version of the preliminary recommendation and answers to the agreed charter questions.

Also, we have a tentative deadline to close the discussion thread. It's 15 [of] May. So if any commenting provided after that date or outside the discussion thread through the mailing list, staff won't be able to take that into account when we compile the input. So I just want to note this.

Julie and Mary, do you have any additional comments regarding the discussions thread?

JULIE HEDLUND: No additional comments from me. Back to you, Martin.

MARTIN SILVA VALENT: No way. Back to you. We have to close this.

JULIE HEDLUND: This is Julie Hedlund from staff. I'll just note that we are at five minutes to the top of the hour which is when we do need to close this meeting to allow transition time to the next meeting on which some of you will also be attending. So at this point, thank you all for joining. We do appreciate it. This meeting is adjourned.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

**[END OF TRANSCRIPTION]**