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ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs) and all gTLDs PDP Working Group
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JULIE BISLAND: Good morning, good afternoon, good evening, all. Welcome to the Review of All Rights Protection Mechanisms (RPMs) and All gTLDs PDP Working Group call on Wednesday, the 24th of July, 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. I just want to remind all to please state your name before speaking for transcription purposes. Please keep your phones and microphones on mute when not speaking to avoid background noise.

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

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JULIE HEDLUND: Thank you, Julie Bisland. Thank you all for joining. I'll just quickly run through the agenda. Item 1 is welcome and updates to statements of interest. Item 2 is the continued discussion from last week on the review and discussion on the review and discussion of Sunrise Sub-Team recommendations and beginning with Question 6, going to 7, 8, and 12 (because those two are related) then 9, 10, 11, and the preamble question. We'll get as far as we can today. We do have a meeting scheduled next week. If we don't finish today, whatever we don't finish we'll cover next week. Then the last item is Any Other Business.

Does anyone have any other business?

Seeing no hands, back to Agenda Item 1. Does anybody have any updates to their statement of interest?

Michael Karanicolas, please go ahead.

MICHAEL KARANICOLAS: Hi. Just a brief update. I'm now employed at Yale Law School.

JULIE HEDLUND: Awesome. Thanks so much, Michael. I appreciate it. Then onto Agenda Item 2. Let me now turn things over to Brian Beckham, who did a very admirable job of getting us through so much of the sunrise recommendations last week. He has graciously agreed to chair again this week.

Thanks so much, Brian, and over to you.

BRIAN BECKHAM: Thanks, Julie. Welcome, everyone. Hopefully we can get through this. If it's okay with everyone else, we'll just crack on with Question 6, which is where we left off. Again, because I'll be doing a lot of reading – there's some long answers here – Julie and anyone, feel free to interrupt me if I don't see a hand raised.

Question 6A says, "What are sunrise dispute resolution policies (SDRPs)? And are any changes needed?" The proposed answer is, "According to this section, 622 and 6224 (the TCMH module of Module 5 of the AGB), SDRP is a mechanism that a registry operator must provide to resolve disputes regarding its registration of sunrise registrations." There's a footnote which provides the text of that provision in that guidebook. "It allows challenges to sunrise registrations related to registry operators, allocation, and registration policies on [inaudible] non-exclusive grounds, including on the ground that the registered domain name does not identically match the trademark record on which the sunrise-eligible rights holder based its sunrise registration. In the time between when the AGB was written and the TMCH requirements were established, the TMCH dispute procedure was created. This procedure allows for changes to the recordal of marks in the TMCH that underlie sunrise registrations. As a result, two of the AGB requirements for registrar [inaudible] SDRPs are moot in any event the registry operator is not the best place/party to adjudicate these challenges due to the fact that the registry operator is reliant on the trademark eligibility information provided by the TMCH. Hence, the sub-

team proposed a preliminary recommendations, as noted in the column on the right, that codifies the current practice."

"The preliminary recommendation is that the Sunrise Sub-team recommends that the next version of the AGB for future new gTLDs be amended as follows. 1) The new version of the AGB should include the TMCH dispute resolution procedure for challenging the validity of trademark recordals entered into the TMCH. This procedure is currently published at (they provide a link). ICANN org should ensure that its contract for the provision of TMCH services makes the operation of the TMCH dispute resolution procedure a requirement for the TMCH provider. Section 624 of the current Trademark Clearinghouse model of Module 5 of the AGB must be amended to remove grounds 1 and 3. The Trademark Clearinghouse model of Module 5 of the AGB must be amended to include a new section, 626. The registry operator will, upon receipt from the TMCH of a finding that a sunrise registration was based upon an invalid TMCH record pursuant to a TMCH dispute resolution procedure, immediately delete the domain name registration. The registry operators in their applicable SDRPs will describe the nature and the purpose of the TMCH challenge process and provide a link to the TMCH for reference. Note, registry operators should continue to have the option to offer a broader SDRP to include optional/additional sunrise criteria as desired."

I had jotted a few questions in the margins here but maybe before I ask those, I'll see if there are any questions or comments from any of the working group members.

I'm not seeing any hands raised. I had a question on Preliminary Recommendation 1. There's a reference to the dispute resolution procedure being a requirement for the TMCH provider. I just wanted to confirm that that's instead of the registry operator. Or, if I recall correctly, there may be even some other third parties like the forum who was providing sunrise dispute resolution services.

Then, in Part 3 of this preliminary recommendation, at the very bottom of my page – I don't know how it reads here; it's the sentence beginning with "Registry operators in their applicable SDRPs will describe the nature" – I just had a question about if that's the right way to phrase that because the registry operator would have the policy and the contractual [hub] but it would be administered by the TMCH. So I just wonder if that is right: to say that the SDRP is that of the registry operator.

On the removal on Grounds 1 and 3, I wondered if the sub-team considered if retaining those wouldn't be useful as a backstop against a mistake by the TMCH. But maybe that's too much of a detail or that's something that's considered unlikely to happen in practice.

Again, I open it up for questions, comments, reactions.

Okay. I'm not seeing any.

JULIE HEDLUND: Brian, Maxim has a question in the chat. I'm not entirely sure that I know the answer to it. He's asking, "Do I understand it right? That the situation for the TMCH is not working properly and results in not issuing

claims is going to be reviewed in the TMCH part?" I assume, Maxim, you mean when the work group is looking at the TMCH, although what we have coming up is the open questions pertaining to the TMCH and the deferred questions. I'm not sure either of those deal with that instance.

I see there's a couple hands up for you, Brian. There's Greg Shatan and Susan Payne.

BRIAN BECKHAM: Greg, go ahead, please.

GREG SHATAN: Thanks. Can you hear me?

BRIAN BECKHAM: Yes.

GREG SHATAN: Great. I'll try to answer some of your questions and maybe can think about the others. In terms of keeping the sunrise DRP alive in case of a mistake by TMCH, I think mistakes by TMCH would be dealt with by the TMCH dispute resolution procedure. To have a second bite of the apple under a second procedure doesn't seem appropriate. I think there are particular causes of action under the sunrise DPR that are being proposed, and some registries have added their own specific causes of action based on their business model or other views. But the generic

SDPR provisions predated the whole TMCH model, so I think it has essentially been overtaken by events. Thanks.

BRIAN BECKHAM: Thanks very much, Greg. That's exactly why we're here. Myself and others who weren't falling all of these sub-calls [inaudible] to get that background from you. I think that makes my question on the 1 and 3 answered.

Susan Payne, please?

SUSAN PAYNE: Apologies, Brian, but there quite a lot of questions in there. I lost them. I was going to make the point that Greg made, which is that what we were trying to address was this scenario where it felt like we were putting a responsibility on registry operators which developed at a time where we didn't quite know how things were going to come out in the wash. It wasn't really the registry operator who could deal with it. If there's a scenario where the mark shouldn't have been in the Trademark Clearinghouse for some reason – because it fails for some reason – and was being used for a sunrise, it didn't feel, firstly, that it was the right place for it to be challenged at the registry level because, of course, it's an issue that goes across registries. It's not just a single registry issue. But also the registry operator didn't seem like they were the right place to challenge it because they aren't the ones with the information. It's the TMCH. So that was how we ended up where we did.

But what we wanted to do is ensure that, obviously, the challenge process that the TMCH had adopted was something that TMCH operator had done themselves, if you like, voluntary, rather than it being mandated in the RPM requirements that they should do that. So we also felt that, if we were going to removing that obligation from a registry operator or from all registry operators, then we needed to codify what the TMCH operator was doing because otherwise in theory the TMCH operator could decide not to provide those challenge mechanisms anymore and we wouldn't have addressed it.

So one of your questions was about other operators offering SDRPs, and I think that's where the distinction comes because there's other operators like the forum who are providing services to you registry operators to allow them to meet their obligations for running and SDRP. I think those obligations may have been narrowed down a little, but they haven't been removed all together. So those relationships could still continue, but those were effectively bilateral relationships between particular dispute resolution providers who were working with individual registry operators to allow them to meet their obligations. So I don't think we needed to address that aspect.

As I say, I can't remember what your other questions was. Sorry.

BRIAN BECKHAM: It's related. Thanks, Susan. That's very useful. The gist of it that I understand is that it's not the registry operator that's best placed to manage this and there could be third parties to provide that service, but at minimum, there should be, as a mandatory backstop, the TMCH that

should provide that service. So maybe, if we wanted, we could state there that that wouldn't prevent other third parties from offering those services.

That relates to the other question or comment: when we referred to the registry operator in their applicable SDRP. So I think it's just a matter of language. I don't want to spend time on that. I think maybe when we're moving this [issue to] the initial report with staff, we'll just make sure there's no confusion about if it's not the registry operator that's offering it. Then the language referring to their SDRP is a little confusing.

Greg, just checking that that's an old hand. Otherwise, I'll just do a final call to see if anyone else has any questions or comments.

Okay. Seeing none – I see Greg's hand is down – Question 6B. "Are SDRPs serving the purposes for which they were created?" The proposed answer is that "The sub-team had difficulty determining whether SDRPs are serving the purposes for which they were created, as each TLD has its own SDPR and there is hardly any analysis of the SDRP decisions across all new gTLDs. The sub-team has proposed a preliminary recommendation in relation to Question 6A (which we just covered) that will eliminate the non-functional parts of the SDRP requirements and codify the current practice. Some sub-team members believe that the limited access to the TMCH and the lack of trademark information to identify whether a complaint is well-grounded makes it difficult to challenge a registration via the SDRP."

Any questions? Any comments?

If there are none, when I read this – again, this is as someone who wasn't necessarily following every sub-team call – is there actually a place where we could go? Can we find any SDRP challenges and see how those played out? Or was that part of the problem: that we weren't aware of any?

I see Greg raising his hand again. Thanks, Greg.

GREG SHATAN: Thanks. If I recall correctly, the conclusion of our discussions was that these were maintained individually at each registry without doing a house-to-house search. We weren't aware of any, and there was no single place to go to find any. It may be that, to the extent that we're getting support from the forum or others, they might have been there was well, but there is no system or method by which these are aggregated. Maybe somebody could have a business plan and go public with that idea. Thanks.

BRIAN BECKHAM: Thanks, Greg. I saw Michael's hand go up and down, and I'm wondering if he wasn't going to make the same comment. I'll assume so unless he wants to speak up to clarify.

I think maybe we do a call for any thoughts, questions, comments, or concerns on Question 6B and the proposed answer.

I'm not seeing any hands. Just looking at the chat, I see David agreeing with Greg. Thanks again, Greg and David.

Question 6D – this refers back to "Are the SDRPs serving the purposes for which they were created?" – "If not, should they better publicized, better used, or changed?" The proposed answer is, "The sub-team attempted to address this question in its proposed preliminary recommendation in relation to Question 6A. One sub-team commented that whether SDRPs should be better publicized is contingent on whether they are serving the purposes for which they were created. However, it is not harmful for registry operators to periodically remind registrants of the existence of SDRPs. One sub-team member believes that it is not within the scope of the RPM PDP Working Group to recommend how SDRPs can be better uses. It is up to the registry operators and challenges to decide."

Any questions? Comments?

Not seeing any chat going on. Not seeing any raised hands. Moving on to Question 7A. "Can SMD files" – I believe that stands for Signed Marked Data – "be used for sunrise period registrations after they have been cancelled or revoked?" The proposed answer is, "The sub-team noted that, after an SMD file underlying trademark record has been cancelled or revoked, the SMD file cannot be used for sunrise period registrations. However, theoretically, an SMD file might still work an asynchronous, short period of time due to the registry process."

Any questions? Any comments? I think it may make sense, in any event, to also read 7B, which is tied to this, which is, "How prevalent is this as a problem?" The proposed answer is that, "The sub-team generally agreed that the problem does not seem to be prevalent."

For me – I'll try to keep my eye on the chat and the hand-raising – that introduces the question of, "Is there any evidence that it ever happened (what seems to be a lag between the TMCH and the registry process)?" Just curious if there was any evidence unearthed of this or if this is something that maybe someone with a registry perspective had simply raised as a technical possibility. [They'll know] that it's too important to spend time discussing that.

Any questions? Any comments?

Not seeing any chatting or hands being – oh, sorry, Greg. Is that a new hand?

GREG SHATAN: Yeah. Just briefly, I don't recall that we had any actual instances of this last issue, but I think it was important to focus on the process and to confirm that there weren't, in essence, zombie SMD files that could be used for significant periods of time. In fact, the gap in time when there might be one that has been revoked but still would be valid would be very short and really just has to do with promulgating the revocation information out to the necessary places. So that was basically our fact discovery, such as it was: helpful in determining that the process is working properly and that SMD files are shut down very quickly after their TMCH underlying registration is shut down. Thanks.

BRIAN BECKHAM: Great. Thanks. That's useful, Greg. It sounds like something that is a minimal risk and we're not talking about months and months of delay.

So that obviously goes to minimizing the possibility of that problem arising.

Seeing no other hands raised, let's move onto Question 8A. "Are limited registration periods in need of a review vis-à-vis the sunrise period (and approved launch programs and qualified launch programs)?" The proposed answer is, "The sub-team discussed this question but was unable to conclude whether the limited registration period, approved launch programs, or qualified launch programs are in need of review."

I'm wondering if it makes sense to do [inaudible] A, B, C, and then we can look at the proposed question, which I think covers all of them. Question 8B: "Are the ALP and QRP periods in need of review?" The proposed answer is, "The sub-team discussed this question but was unable to conclude whether either were [inaudible] review." "What aspects of the [LRPR] need a review?" The proposed answer is, "The sub-team discussed this question [inaudible] are in need of review." So the proposed [inaudible]. I think that may be Michael in the background. The proposed question for community input is that the RPMs Working Group has received [inaudible] not integrate smoothly with the concept of sunrise. For instance, some geo-TLDs struggle to ensure that words needed for operation of their TLD – i.e., required by the governments that approve them – were all able to be allocated or reserved for later registration before sunrise. They words may have been recorded in the TMCH but needed to be reserved to the governments. One example is the term "police," which is both a word for local law enforcement and a brand.

It goes on to say, "Notably, many registry operators did not use the ALP or QLP options, and only a few used LRPs. In order to develop potential recommendation related to this agreed charter question, the Sunrise Sub-Team recommendation that the following guidance be sought from registry operators. The Sunrise Sub-Team asked registry operators to be specific about which programs – i.e., ALP, QLP, and/or LRP – they're referring to in their responses to all questions and what the shortcomings of each of those mechanisms are. 1) If you did not attempt either of these three mechanisms, what was the reason for not taking advantage of those programs related to how they integrate with sunrise. We're you able to achieve your goals in a different way, such as by combining any or all of these programs? If you did attempt an ALP, QLP, or LRP or a combination but didn't successfully use any, was the reason you did not take advantage of those programs related to how they integrate with sunrise? Were you able to achieve your goals in a different way? For instance, some registry operators may have used the QLP [inaudible] as a reference to RA Section 3.2 plus IDN variants in combination with registry serve names to obtain the names they needed. Did you do this? If so, were you able to reserve or allocate all the names you needed to? If you used an ALP, QLP, or LRP, or a combination, did you experience any unanticipated trouble with integrating the sunrise period into your launch? Specially, were you able to allocate all the names you needed to allocate under those programs before the sunrise period?"

So it seems we're covering the same question in different ways. #4: "For each issue you have identified in your responses to Questions 1 through 3, please also include a suggested mitigation path. What do you suggest

the RPM Working Group consider to help alleviate the pain points and make those programs more useful and functional while still respecting the trademark protection goals of the sunrise period?"

I'll just add here that there was a question that we covered last week which related to the concept of work around undermining the spirit of RPM [applications].

It goes on: "How important is it to make changes to these programs before another round? Are these issues worth "holding up" another round for, or are the workarounds tolerable? The Sunrise Sub-Team also recommends that public comment be sought on the following question [for] non-registry operators. Did you experience struggles with delay with ALP, QLP, LRPs, or a combination, integrated with sunrise either as a registrar, a [inaudible], or a domain name registrant?"

Any questions? I'm not seeing any. I'm just checking the chat. Let's see. There's a note that Question 12 related to Question 8. I have on my notes here that we were going from 6 to 12, so thanks for that reminder. Maybe, in the absence of any questions, we can move on to Question 12. Question 12 asks us, "Should sunrise registrations have priority over other registrations under specialized gTLDs?" The proposed answer is that "The sub-team discussed this question but was unable to conclude whether sunrise registrations should have priority over other registrations under specialized gTLDs."

The proposed question for community input on Question 12 is, "The RPMs Working Group has received information that the 2012 Applicant Guidebook did not foresee that some TLDs, specifically geo-TLDs" –

there I'll just interject a question or a comment. In the proposed answer, we refer to specialized gTLDs here. We reference geo-TLDs. I don't know if specialized if something that should be defined or if somehow this concept should be unpacked a little bit.

Then, "The Applicant Guidebook did not foresee that some TLDs might need more than 100 domain names to allocate prior to the launch of the TLD and prior to sunrise. For geo-TLDs, one example is the potential need to register city, county, office, official, etc., websites in advance of sunrise. For example, the business of the TLD may make it critical that police thought geo is allocated to the police department, not to a brand. We have limited information about the impact of this situation and do not know how many and to what extent registry operators were affected. For instance, if you withheld names from registration, reserved names, how well did that work? Hence, the Sunrise Sub-Team recommends that the following guidance be sought from registry operators. These questions are the following questions asked related to Question 8."

I don't think we need to repeat those since we've just read those in going over Question 8. So it sounds like this is really asking for some feedback from registry operators in terms of how some of these policies might have impacted their launch and allocation of names, and we're asking them for feedback on that. That seems to make sense.

Are there any questions, thoughts, or concerns on this question asking registry operators and in fact a few other parties for feedback on this issue of interplay between sunrise and the different qualified launch periods, for example?

Greg, please?

GREG SHATAN: Thanks. Speaking personally and not as the Co-Chair of the sub-team, looking at it from this perspective as proposed to the perspective within the sub-team, where we were very task-oriented, I'm wondering why this is on our plate and not on the plate of SubPro because, if we found that there was an issue, it's not a sunrise issue. It's a launch program issue, which I don't think we are tasked with dealing with. Of course, we know that, like ourselves, SubPro is overwhelmed, but it seems like, at some point – we can carry through on our idea of seeking out information – this really needs to be lateral to SubPro if there is actually any changes that should be made to launch programs unless I'm wrong and we are supposed to be handling launch programs. Thanks.

BRIAN BECKHAM: Thank you, Greg. Any other questions? Comments? I would just note by way of – I suppose you could call it agreement, or I think Greg raises a fair question. We're asking for feedback. In fact, one of the parts of the proposed answer asks registry operators to opine on whether this is something that, in their view, would hold up [in] the launch of subsequent rounds. So it does seem to place the issue in front of SubPro. Of course, we can work through the working group liaisons and staff to make sure that this question is on their radar. I frankly would be surprised if it's not.

Just to add to what Greg said – I'm sorry. I'm trying to do this on the fly. I'm not finding the exact question, but if you remember, I mentioned

last week that we touched on the concept of certain practices here. It's referred to as a workaround, undermining the spirit or the intent of RPMs.

I don't know, Greg, if that sort of concept covers for you maybe more of this concept within [the remit of] this working group, and then maybe the concept of asking for feedback certainly to me sounds more like a SubPro question. Having had the sub-team gone through the effort of discussing this, I suppose you could say there's no harm in asking it here because it does relate to RPMs.

I'm curious if anyone else has any thoughts on whether this is something that we feel falls outside of our remit and we shouldn't be asking whether we think it's okay for ask to feedback. Certainly, we can refer it to SubPro.

Greg, please?

Greg, you may be on mute. I'm not hearing anything?

GREG SHATAN: Indeed I am. Or was. I understand why we got this. It was consensually a question of interaction between the launch programs and reserve name programs and the sunrise. So it's a combination that fell across the line, so to speak.

The question is, if we were to get feedback – we would, I hope, if we ask for it – what could we do with it? I think it's clear we can't change, within this group, the launch program. So it seems to me that what we should do is liaise sooner or later with the SubPro group and find a way

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to transition this, not to lose the work we've put in so far, including the formulation of questions. Even if we were to ask the questions, the answers really need to go back to SubPro to work with them as they see fit because we don't have a handle that's able to make a solution in this area unless we were to change sunrise, of course. But again, that hasn't been proposed. That doesn't seem to be part of the questions. Thanks.

BRIAN BECKHAM: So we have a proposal from Greg. I guess the proposal is to strike these and ship it over to SubPro.

Kathy, please?

KATHY KLEIMAN: Can you hear me, Brian.

BRIAN BECKHAM: Yeah. Loud and clear.

KATHY KLEIMAN: Okay. Hi, everybody. I participated in the sub-team. In fact, these questions have been part of our charter since the very beginning. For whatever reasons, the GNSO Council sent these types of questions to us about the approved launch programs, the qualified launch programs. I'm going to urge that Maxim raise his hand and tell us a little bit about the background to share with the working group.

We've been talking about this now for months and also probably for years because we're the only working group that's actually gone out and tried to gather data about this. I don't know if you remember – since all of our ballrooms look the same, I can't remember what city it was in – but we heard from geos that it had some real problems with conflicts between the sunrise period and some of these other special registration periods. So we're really the only ones who've dived in on this question. Are they in need of review vis-à-vis these limited registration periods? Are they in need of review vis-à-vis the sunrise period?

What we're talking about is suggestions – I refer to #4 under the proposed questions for community input – that would alleviate the pain points. We know there were pain points out there, real problems, that it's part of our job to make better, respecting these limited registration programs vis-à-vis the sunrise periods.

So I think we're still the experts here. Lord knows Subsequent Procedures is very busy. They're looking at thousands of questions. I wouldn't punt this one. I think we're the right place. I think we've drafted the questions. I think we're the right place to handle this borderline issue right now. We certainly spent a lot of time and energy on it. Thanks.

BRIAN BECKHAM: Thanks, Kathy. I'm not seeing any other hands just checking the chat. I wanted to just recall for everyone, Kathy. You mentioned the charter questions. I don't want to sidetrack us too much but I think it's worth

remembering that the charter questions were a grab bag of opinions and questions that didn't go through the kind of traditional cleanup process, if you will, so they were just handed over to us wholesale. Personally, I think we should be a little circumspect about placing too much weight in the fact that something [inaudible] question simply because they were never cleaned up. I don't mean to suggest that it's not useful to look at, but maybe what I'm saying is that they shouldn't be treated as [inaudible], if you will. Certainly we can explore the concepts that we're asking us, but we shouldn't be too fussed about the exact language because we never did go through that cleanup process.

I again want to remind us – maybe I can do this by way of asking the sub-team. I just looked back to the preliminary recommendation for 2A, which says that it should be clear that registry [practice] shouldn't undercut RPMs. We speak of workarounds here. To me, a workaround almost by definition undercuts – so we're recommending on the one hand that that shouldn't be allowed, and then we're asking how registry operators did that. It seems to me there's a little bit of a tension there.

I'm wondering. Greg, given that the sub-team did produce these questions and that Kathy has had a different reaction than you, I want to see if anyone disagrees with the idea of making sure the SubPro is aware of these questions and the work that we've done and make sure that's on their radar. I would imagine that's fairly unobjectionable. I wonder, Greg, just trying to make progress here, I think there's something to what you're saying. At the same time, I wonder if, in light of the fact that we are here with these, there's a way we can maybe retain the work that's been done in some fashion and ask these questions.

Now, of course, you mentioned, what are we supposed to do with the feedback? Of course, that may be something that's more for SubPro. Or, if you recall, there would be implementation work on any of these recommendations.

I see, Maxim, your hand is up, and Rebecca and Greg. I don't know which order they came in, so maybe we'll just do Rebecca and then Greg last since they may have some information to address the question.

Maxim, please?

MAXIM ALZOBA: Actually, I don't think we say that using limited periods is undercutting RPMs, especially by registries (in plural). It's not clear to me why [inaudible] now because the question was about the sunrise, and limited periods are after sunrise. It was explained that, due to poor implementation or ALP, basically one of the action methods to use a reserve list for geos and then to release it to the mayor's office (the governmental items).

I have a question for Brian. Why do you think we state here that the registries are circumventing RPMs? Why are you showing those questions? Thanks.

BRIAN BECKHAM: Thanks, Maxim. I can maybe, if it's okay, Rebecca, just answer that. To me – maybe I'm misreading this somehow – when I see the concept of a workaround, that's a somewhat synonymous with circumventing.

Maybe it's just a matter of work choice because, as you say, these come after the sunrise.

Rebecca?

REBECCA TUSHNET: Thank you. I actually want to support Maxim's comment, I think, and contest your framing. If the problem as described that there is overriding non-trademark, non-infringing concerns, which is the police's concern in a particular jurisdiction, which seems to me it's quite likely to be, then it doesn't make sense to say that doing something to deal with the legitimate interests of the police is somehow an [evasion] or undercutting system, which has a specific purpose, which is not to present the police from having a registration in a geo domain.

So I'm concerned with the framing, which seems to prioritize any possible trademark owner interest over anything that is even orthogonal as opposed to even a contesting trademark right, where it wouldn't be orthogonal, it seems to me. Thank you.

BRIAN BECKHAM: Thank you. Greg?

GREG SHATAN: Thanks. Just to respond to your earlier question, I don't see a problem with us asking these questions since we developed them and we have a report going out, hopefully, before SubPro does. SubPro would be a final report in any case. So I think there's no point in standing on

ceremony. We should ask the questions. We should collect the information. But if the solution is to change ALPs and QRPs or reserve names or whatever, I just, again, feel that scope creep for us to get that at the very end. We'd be saying basically to change not RPMs but to change these aspects of the New gTLD Program, which to my mind sounds like it's completely out of our hands. Thanks.

BRIAN BECKHAM: Thank you, Greg. Thank you for agreeing to – and it sounds like you've issued us a challenge: to finish us before SubPro. Thank you for the willingness to go along.

Susan?

SUSAN PAYNE: Thanks. I guess I'm just a bit confused about why we're having the conversation. We've worked on these questions to try and elicit more information because, although there's a perception that there's an issue here, we really had almost no data or anything else to help us reach a proper decision on this.

In terms of scope, I think our scope is, insofar as these registrations periods, impact on the sunrise and not beyond that. if we somehow manage to elicit information that suggests some different issue, then that's outside our scope and that's something we'll have to throw at SubPro if it still exists. I think the whole purpose of these questions is about how they interplay with sunrise and the fact that sunrise is a priority period for brand owners. There is a perceived problem from

some people that that interplay between the sunrise is an issue insofar as certain local authorities/governmental groups might want their own advance registration. In fact, there are some measures in place, as we know, in terms of the QLP and the ALP, to allow them to do that. Some people feel that's not good enough. We're trying to elicit more information. I don't really see what the problem is.

BRIAN BECKHAM:
Thanks, Susan. I just had a quick look at the chat, and it looks like there's general agreement to both refer this to SubPro and leave the question in here.

Maxim?

MAXIM ALZOBA:
Just to shed some light on these discussions about ALP – which was a proper vehicle? – or QRP, it was discussed a lot in the subgroup. The theme was that the only geo-registry who was brave enough to go with ALP was .madrid. They lasted more than one year. I think it was two or three years. They didn't have the luxury of doing nothing, paying all the bills for years. The limit of 100 – I must remind you that the biggest geo-TLDs are present cities which have more than a few hundreds of city names. 100 is not enough, definitely. The solution was to use a reserve list for the items requested by governmental entities and wholly-owned subsidiaries of mayors' office because they wanted names of [inaudible], public services.

To say more, the registration where the police.city is presented as a circumvention of RPMs, the answer from geos is going to be – but the attempt to grab at least .city is undermining public interest because local governments to represent the public and its millions of citizens. So we have to be careful here. Thanks.

BRIAN BECKHAM: Thank you, Maxim. Not seeing any other hands. I think, generally, Maxim, that you intervention supports what Greg has now agreed to to lead this question and get specific feedback from the community, particularly registry operators.

Seeing no other questions, I think we've agreed to leave this and also refer it to SubPro and make sure that we're aware of the preliminary recommendation in 2A.

That takes us to Question 9, which is, "In light of the evidence gathered above, should the scope of sunrise registrations be limited to the categories of goods and services for which the trademark is actually registered and put in the clearinghouse?" The proposed answer is that, "The sub-team had diverging opinions on this matter, and the sub-team did not come to a conclusion." The preliminary recommendation is, "In the absence of support for [inaudible], the sub-team does not recommend that the scope of sunrise registrations be limited to the categories of goods and services for which the trademark is actually registered and put in the clearinghouse."

Any questions or thoughts on Question 9, the proposed answer, and the preliminary recommendation?

Not seeing any hands raised. I'm not seeing anything in the chat. I think that one speaks for itself. Seeing no questions or comments, that takes us to Question 10. The question is, "Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period."

"Explore use and the types of proof required …" I wonder if that's referring to the proof of the use required by the TMCH. The proposed answer is, "While the sub-team has recognized that this question has a genesis, the sub-team did not formulate a response to a disagreement on what the question is asking." So I stand supported by the proposed answer that the question isn't entirely clear.

I had made a note here to myself that the preamble QC, which we'll come to later, goes to the concept of proof of use. I think we can move on from Question 10.

Question 11A is, "How effectively can trademark owners who use non-English scripts or languages able to participate in sunrise, including IDN sunrises?" The proposed answer is, "Some sub-team members believe that trademark owners who use non-English scripts or languages generally cannot effectively participate in sunrise." The proposed question for community input is, "The Sunrise Sub-Team suggested that public comment be sought from trademark holders who use non-English scripts or languages on the following questions. Did you encounter any problems when you attempted to participate in sunrise using non-English scripts or languages? If so, please describe problems encountered. Do you have suggestions on how to enable trademark holders who use non-English scripts or languages to effectively participate in the sunrise?"

I had a question on this for the sub-team and the working group, which was, does this relate to the offering of IDNs by the registry operator? In other words, it may be an issue, but it may be one that the registry operator wouldn't have facilitated use of IDNs in their particular TLD [with].

Any questions or comments on the proposed answer and the questions for community input?

I'm not seeing any chatting or hands raised on this. That takes us to 11B. "Should any of them be further internationalized, such a in terms of service providers' languages served?" I think this seems related to the question that I was curious about. The proposed answer is that, "The sub-team did not address this question, as the question was unclear." I agree. The question is not entirely clear. I wonder if it didn't relate to that concept of whether the registry itself [inaudible] the ability of IDNs' registration, but no need to spend any time on 11B.

I think that takes us over to the preamble questions. Preamble Question A. "Is the sunrise period serving its intended purpose?" The proposed answer is, "The sub-team noted that the intended purpose for sunrise service is as follows. Sunrise services allow trademark holders an advanced opportunity to register domain names corresponding to their marks before names are generally available to the public." There's a footnote to the TMCH's FAQs. "The sub-team generally agreed that the sunrise period is serving its intended purpose as stated previously." So it sounds like there was agreement on the sub-team.

Any questions or comments from working group members to the sub-team or to each other?

I'm not seeing any hands raised. I'm not seeing any chatting on this particular topic. Preamble Question B. "Is it having unintended effects?" That would be the sunrise period, I'm assuming. The proposed answer is, "Then sunrise team generally agreed that the sunrise period is having an intended effect. However, the sub-team was uncertain about the scope and extent of the unintended effects." The proposed question for community input on this is, "The Sunrise Sub-Team recommends that public comment be sought on the following question. What remedy or remedies would you propose for any unintended effects of the sunrise period that you have identified in your public comments?"

Any questions or comments on this? This is asking people to provide us with information on any unintended effects of the sunrise period.

Seeing no hands raised, I'll have a quick look at the chat. Okay. Preamble Question D. D, E, and F are grouped together, so maybe I can read those in succession. "Have abuses of the sunrise period been documented by trademark owners? Have abuses of the sunrise period been documented by registrants? Have abuses of the sunrise period been documented by registries and registrars?"

The proposed answer is, "The sub-team interpreted these questions as follows. Have abuses of the sunrise period been documented? The sub-team generally agreed that the sunrise period is having unintended effects, but it was uncertain about the extent and scope of abuses of the sunrise period." The proposed question for community input is that,

"The Sunrise Sub-Team recommends that public comment be sought on the following questions. Have you identified abuses of the sunrise period? To the extent that you have identified abuses of the sunrise period, if any, please describe them and specific any documentation to substantiate the intended abuses."

Any questions or comments on this? This is, again, given that we had some sort of anecdotal evidence, I think, through some reporting and some blogs that there were different abuses documented, this is really asking for help from the community to identify specific instances of any abuse to help us understand how we could address those at a policy level.

Seeing no hands raised, that takes us to Preamble QC. Preamble QC: "Is the TMCH provider requiring appropriate forms of use? If not, how can this be collected?" The proposed answer is that, "The sub-team generally agreed that the TMCH provider is requiring appropriate forms of use."

Any questions or comments?

Not seeing anything in the chat. Michael?

MICHAEL KARANICOLAS: Hi. It just strikes me, looking at this, that there's different ways to interpret that. Should we clarify that, because it's my understanding reading the answer, when we say it's requiring appropriate forms of use, that's according to the enumerated rules? Just because otherwise there's an implication that it's an endorsement of aspects that I think

have been left open regarding things – for example, like the potential problematic examples that have been brought up and gaming of the system.

So, basically, my understanding of that, of the answer, is we're saying that the TMCH provider is following the rules that they're supposed to, not that the rules around use are appropriate. If that's the case, then that should be clarified. Thanks.

BRIAN BECKHAM: Thank you, Michael. Michael, just a question for you. I agree that that's a useful clarification: let's say we agree that we're applying the rules that they're supposed to. When you talk about the appropriate forms of use, because we did cover it – for example, the SDRP challenge process and whether that should be enhanced somehow – is it that the use is not somehow up to a certain standard, or is that, with the actual underlying trademark registration, there's a problem with that? If I remember, there was somebody who had [inaudible] some registration [inaudible] in the jurisdiction. So is the question more about the underlying trademark registration or about the proof of use?

MICHAEL KARANICOLAS: I think it's potentially both aspects, but I'm also not looking to reopen that debate here at this juncture. I am just seeking to clarify at the moment the specific answer that's being offered here.

BRIAN BECKHAM: Okay. Thank you, Michael. Any questions or comments? Maybe a last call? I think that takes us through the work that we had tasked ourselves with today. Anyone, any final concerns, questions, or thoughts? Otherwise, it looks like I can maybe turn it over to Julie to see if there are any other items left on our agenda.

JULIE HEDLUND: Thank you, Brian. I don't know if you can hear me. I'm on computer audio. [inaudible]. Greg Shatan has his hand up.

BRIAN BECKHAM: Oh, I'm sorry. I didn't see that. Greg?

GREG SHATAN: Thanks. If there was a wave to frantically wave my hand, because all the time you're talking about there being no hands up, my hand was up.

BRIAN BECKHAM: Oh.

GREG SHATAN: So you may want to check your system. In any case, we had no agreement in the group on what constituted "gaming" of the TMCH. There were a number of things discussed, but ultimately we didn't really come to a conclusion. I know that's not being suggested to be added here, but I think, when we were talking about [forms] of use, the discussion was pretty clearly around the proof of use and whether what

was being submitted to the TMCH was as far as we can ascertain [and] appropriate to use the use that was indicated in the trademark registration that was being registered in the TMCH. Nothing more than that. According to the enumerated rules, this is a highly abstract statement. So I'm not sure rules exactly there were around proof of use, but if – I guess we could see, if there were rules in the TMCH, then we could say according to the TMCH is the rules. And wherever these rules are enumerated, maybe we should at least cite to where these rules are because, if they are enumerated that by definition means they are somewhere and may even mean that they're numbered.

So I think we should be a little bit more concrete here. Maybe we need to clarify because the question – Michael is right – could be read a number of different ways. This clearly was about what you submitted as your proof of use – a candy bar wrapper or a roll of tape or a website or whatever it was – and did not touch on larger, more contentious issues of whether they should be limitations relating to sunrise, which we did not agree on. Thanks.

BRIAN BECKHAM: Thank you, Greg. David and Maxim, if I could just try to tie this together a little bit before Maxim and David, this is exactly the reason I asked the question to Michael, Greg, which is that what we're landing on is: if you remember, back in the days when we were looking at the Applicant Guidebook iterations, there was a question about different trademark registration systems in different jurisdictions, the U.S. being a notable standout that required use for a trademark registration, and that the majority of jurisdictions around the world don't require that. The

compromise that was made was there would be some sort of a proof of use required by the TMCH. Then there was, of course, challenge processes built in there. So I think we could spend a lot of time retracing well-worn ground that a lot of spent many years already on.

So I'm not sure quite where to go with this. It seems that, on the one hand, we're saying that the TMCH is doing what it's been tasked to do, but, from what I'm hearing, we're questioning whether that's the right standard. Obviously, if we all agree, we can revisit this but just to find ourselves, that this was a topic that was discussed at some length in the leadup to the New gTLD Program.

Maxim and then David.

MAXIM ALZOBA: About making rules of proof of use stricter, actually this is a big issue because, before the sale of the domain that was registered during the sunrise, there is no way to distinguish the good-but-small startup, which made the prototype of the product, had some crowdfunding program running, the trademark for the future product. [inaudible] we need everything for the sole purpose of gaming of the registration of the particular string and then selling it off. Since [inaudible] system works as we checked something at some moment in time and then we cannot do anything if the particular TLD doesn't have special rules like .banks, where each registrant has to have an active banking license, and, if they lose it, they lose the domain. So we have to be careful not to suffocate startups and actually [have] valid reasons. Thanks.

BRIAN BECKHAM: Thank you, Maxim. David?

DAVID MCAULEY: Thanks, Brian. Hello, everybody. I just wanted to go back if I could to the proposed – I had a hard time getting on the phone because my phone wasn't charged – answer that said, "The sub-team interpreted these questions as follows. Have abuses of the sunrise period been documented?" I co-chair the group, along with Greg and Mike. It's possibly my memory is faulty. This was at the end of the whole process. I thought that what we had done was to … I've lost it now. I thought that what we had agreed on was that the sub-team interpreted these questions as follows. Have abuses of the sunrise period by trademark owners, by registrants, or by registries and registrars been documented?

In other words, we were making the distinction that the registrars, the registrants, etc., weren't the ones documenting abuse. They were ones – were they seen as sources as abuse? I may be wrong in that, but I thought that was agreed on. I think that would perhaps make that proposed answer a little more clear. I don't think it's a big issue one way or the other. Thank you.

BRIAN BECKHAM: Thank you, David. I just noticed in the chat that there was a suggestion from Greg of putting the words "proof of" before "use." Michael, I don't know if you saw that comment in the chat. I wonder if that might address your question.

MICHAEL KARANICOLAS: I have no objection to that change. I don't know that it necessarily addresses my question. Apparently, the word "enumerated" is problematic. My suggestion is to clarify that this answer is not a whole-hearted endorsement of this approach. Basically what I'm trying to say is that they have a standard and they're following it and that's not necessarily to say that the standard is correct, which is what I think the conclusion was.

I'm just reading what Greg has put in there. I see Greg's hand is up.

BRIAN BECKHAM: Thank you. Greg?

GREG SHATAN: Thanks. Just in terms of what's being corrected there, it should be requiring appropriate forms of proof of use, rather than crossing out "forms," because basically the section that's there says, "What do you need to submit? A signed declaration of use, a single sample of proof of use." Then there are various things enumerated under either of those, and numbers are in fact used. So I'm fine with "enumerated."

In terms of the issue of endorsement, it was essentially irrelevant to the question about whether the concept of scope of the trademark registration should be related to the scope of the sunrise right. So I'm fine with the language here. Maybe we just leave it at that. Thanks.

BRIAN BECKHAM:	Thank you, Greg. Maybe just to try to draw this to a close, I'm wondering if Michael – if we had something like, "The sub-team generally agreed that the TMCH provider is requiring appropriate forms of proof of use as established in X (whatever the governing document was)." That way, maybe it's a little bit more clear that it's not endorsement but it also doesn't paint the picture that the TMCH providers are making this up as it goes along. Would that be a useful clarification, Michael? To avoid the concept of endorsing the practice?
MICHAEL KARANICOLAS:	The language there right now looks fine to me. Is that okay?
BRIAN BECKHAM:	Perfectly fine with me. I was just trying to find a way through this. So it looks like – with Greg's suggestion without the extra verbiage "after use." We can leave it at that. So that brings us back to—
MICHAEL KARANICOLAS:	Sorry. Just to clarify, when I said it's fine, I meant including that little green thing that had just been—
BRIAN BECKHAM:	Oh yeah.

MICHAEL KARANICOLAS: Sorry. So that's being left as is. That's fine. Apologies.

BRIAN BECKHAM: Okay, good. Greg, I've discovered the problem, which is I have to actually use the arrow button. I'm seeing the [zone main] case. It's useful for others to know. I can only see on my screen so many of the participants. Then you have to actually scroll down, unlike in Adobe, where the raised hands rose to the top. So, sorry for the oversight.

Okay. I think that brings us to a close for today. I see – sorry, Julie – I hand up from staff. And then Kathy—

JULIE HEDLUND: Sorry, Brian. Before I turn it over to Ariel, who had a few points, I see Kathy's hand is up.

KATHY KLEIMAN: Great. I just wanted to thank the sub-team and the sub-team Co-Chairs, Greg and David, for months of really hard work. Lots and lots of questions and sub-questions and a lot of data analysis. So I wanted to thank the, Brian, and thank you for guiding us through this.

BRIAN BECKHAM: Thank you, Kathy, and a huge thanks to the sub-team Co-Chairs: Roger, Greg, Martin, and David. It's been a huge help. I know I speak for all of the three of us – Kathy, Phil, and myself – and the staff, that you guys

chipped in over the last few months. So thank very much to you guys and to the sub-team members.

Julie and Ariel?

JULIE HEDLUND: Thanks, Brian. Let me just go to Ariel for a moment. She had a few points she wanted to make based on some of the suggested edits from last week's call. Ariel, please?

ARIEL LIANG: Thanks, Julie. I just wanted to quickly mention one thing, that the Sunrise Sub-Team also received individual proposals and reviewed them. The outcome is very similar to that in the Claims Sub-Team. None of the proposals received wide support from the sub-team. There's one proposal, and part of it was incorporated into a sub-team recommendation. So that's a quick mention of the individual proposal there.

After lats week's meeting, staff did some editing to the document. It's a very small part. It's [essentially] to add this footnote about the picket fence. So we just want to quickly point that out to the working group members. That's on Page 6. The part you're seeing in green on the screen is basically the footnote that we included that provides some description about what the picket fence. We linked to this PowerPoint slide. Actually, it was recommended by sub-team members to provide more details on the picket fence. So we added that. We welcome the

working group members to take a look at it and see whether you're happy with the language there.

So that's pretty much the additional comment I wanted to provide here. Thank you.

HULIE HEDLUND: Thank you, Ariel. Just so the working group members know, we'll go ahead and circulate these: the Sunrise Sub-Team recommendations and the Trademark Claims Sub-Team recommendations final documents. If anybody notices anything we might have missed or any glaring errors, you'll have the opportunity to do that. We certainly do appreciate that as well.

Thank you, everyone. Thank you, Brian, for chairing today. Thank you all for all of your tremendous amount of work on that, the sub-team's as well as the working group.

Since next week's meeting was going to be a continuation of the review of the Sunrise Sub-Team recommendations, we don't see a need for next week's call. We do also have a couple of Co-Chairs who will be on vacation, too. So we're going to suggest that, unless the working group members think otherwise, we will cancel next week's call, and then we will pick up on the 7th of August with the TMCH open questions. We'll have some guidance for you on that prior to that meeting.

Thank you all.

BRIAN BECKHAM: Thank you, Julie.

JULIE HEDLUND: Julie Bisland, I think we can go ahead and adjourn this call a little early. Thanks again, everyone.

[END OF TRANSCRIPTION]