
ICANN Transcription

RPM Sub Group A

Tuesday, 26 May 2020 at 1300 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. Attendance and recordings are posted on the agenda wiki page: <https://community.icann.org/x/tQldC>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page: <https://gns0.icann.org/en/group-activities/calendar>

NATHALIE PEREGRINE: Good morning, good afternoon, good evening everybody, and welcome to the RPM subgroup A call on Tuesday, 26th of May 2020 at 13:00 UTC.

In the interest of time, there'll be no roll call. We'll be taking attendance via the Zoom room only. If you are on the audio bridge, therefore on the phone and not the Zoom room, could you please let yourselves be known now?

Hearing no one, I'd like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

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.

As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with expected standards of behavior. With this, I'll turn the call to Julie Hedlund. Please begin.

JULIE HEDLUND:

Thank you very much, Nathalie. We have somebody who's on audio only with a number ending in 759, and I think that now has changed. Looks like that has gone away. So thank you, whoever that was.

Thank you all for joining the first meeting—thank you, Rebecca. So that is Rebecca. So welcome to the RPMs PDP working group meeting of subgroup A, the first meeting of this group. Given that we do not have a chair yet for this group, staff will lead this call until we have a chair to take over, and hopefully, that will be soon. I'll lead the meeting at least at the start here.

Let me first go over the agenda here. I see that I left off an important [inaudible], and that is the statements of interest. So before we start anything here, let me ask if anybody has any updates to their statements of interest.

And I'm not seeing any hands, so let me then just go over the rest of the agenda. We're going to talk a little bit about the membership of the subgroup and the method of operation, and then we're going to go into also the working plan, and then we're going to go into the TMCH individual proposals.

What I'll do is I'll walk us through the first part of this agenda, and then I'll turn over to Ariel to take over when we start with the spreadsheet of the TMCH recommendations and questions.

So let me go ahead and start with the subgroup and how it will be operating. For that, what I'd like to do is bring up the working group guidelines, as I think that that will be helpful, just the excerpts of the sections of the working group guidelines that pertain to subgroups. And I see we have a few more people arriving.

Welcome to those who have arrived in the last minutes. we're just starting the call, and we're starting out with the methodology of how the subgroup will operate.

So from the working group guidelines, you'll see section 2.2.1, and that is noting that—and I see, Phil, that you have a comment to make after the introduction, before we get into substance. Thank you, Phil. Let me just quickly run through the sections of the working group guidelines, and then I'll turn things over to Phil and his comments.

So the subteams, [we note] under the working group guidelines 2.2.1, chair, it's often acceptable to have a small subteam that's not totally representational performing an initial role that will later be reviewed by a broader, more representational group. In this case, to emphasize that the work of this subgroup will be reviewed by the full working group. So this subgroup will review the comments received on the initial report relating to TMCH, TM claims, sunrise and TM [PDV RP,] will help summarize those comments, and then the working group will take over and review the summaries provided by the subgroup.

Brian is asking if anybody else has lost my audio. I hope people can still hear me. And then section 2.3 talks about the use of

subteams, that the working group may decide to employ subteams as efficient means of delegating topics or assignments to be completed, and subteam members need to have a clear understanding of issues they work on as well as the results to be achieved. The members of the subteam report their results to the full working group for review and approval. So again, that's just emphasizing that the full working group will be then reviewing the summaries provided by the subgroup.

And then finally, with point 3.3, process integrity, working group members should be mindful that once input comment periods have been closed, discussions or decisions should not be resurrected unless there's group consensus, that the issue should be revisited in light of new information that's been introduced. So new information resulting from the comments.

Let me go back to the agenda here, and I'm going to go ahead to Phil who has some comments, and then we'll come back to noting that we need to be looking for volunteers for a chair for this group, please.

PHIL CORWIN:

Thank you, Julie. Hello, everyone. Thank you for participating in this subgroup. I wanted to say something about working methodology. And these are purely personal comments. I haven't discussed this with the other co-chairs. But I've used the very useful links yesterday and reviewed those three portions of the comment tool relating to our work today, what we're scheduled to do, and here are my thoughts.

One, on today's agenda, we have three different recommendations to review. That's a lot. That's 30 minutes each. So we're not going to have time. Hopefully everyone did their homework and looked at these, read the links over the weekend and read the comments. But what struck me is that if we're going to stick to our timeline and not go horrendously over, what we should be looking for in the comments, keeping in mind that we're not supposed to be relitigating closed issues, is whether members of the community who commented on this, introduced any new thoughts or new information that wasn't considered rather lengthy and robust debates on these issues, for example, the first issue is the recommendation that nothing change in terms of trademark was [50] rules, the exact match rules, and limiting dictionary terms to TLDs that relate to the term, whatever, editorial comment, whatever that means, because that could be argued about what—

But I have to say personally, I didn't see in the comments other than suggestions for perhaps refinement of the existing rules and some clarity on how to apply them. Anything that hasn't been brought up by members of this working group and robustly debated when we addressed these issues in the course of our work over the last four years.

So my view—and it's up to the subteam—there's two ways to go here. We can either—some members feel for example that sunrise shouldn't even exist, others feel that sunrise and trademark claims notices should be generated by more than exact matches, and then we have all kinds of suggestions for what going beyond those exact matches.

We had those debates. So if you want to revisit the same debates and relitigate these issues. I can't stop you. But I think we're going to wind up in the same place. So I would urge working group members to focus on what has the community imparted to us through their comments that is a new viewpoint or new information, and urge members not to resurrect issues that were robustly debated where we couldn't get agreement on change, and I'm not sure there's any reason to believe that the result would be different if we engaged in those debates again now.

So thank you for tolerating my thoughts, and for whatever worth you think they have, but as we start out, we're going to have to decide whether we're going to really just be looking at new input or whether we're going to revisit issues that were debated, and doing so means throwing the timeline out the window. Thank you.

JULIE HEDLUND:

Thank you very much, Phil. With that helpful additional information, let me now pause and ask if we have any volunteers for someone who would like to chair this subgroup. We can also ask again after this call for volunteers, but thought I would ask if there's anybody who might want to volunteer while we're on the call.

And it might be too that people want to see how the work progresses so we could dive right into the work and staff can help lead until we have a chair. And then people will have a sense of the work. But David McAuley, I see you have your hand up. David McAuley, you have your hand up.

DAVID MCAULEY: Hi Julie. Thanks. I had not considered doing this. If we don't have volunteers, I may volunteer at the next meeting. I just haven't prepared, frankly. I have prepared for the three recommendations we have on the plate today, but honestly, I wasn't even thinking about chairing the group. So if we don't have volunteers, people that are interested in doing this, I would be happy to volunteer probably on list. I just need to give it some thought so that we have someone by the next meeting. But to be honest, I hadn't thought about chairing this meeting, and I'd just need to give it some thought. But I'm happy to consider it. Anyway, that's it. Thank you.

JULIE HEDLUND: Thank you very much, David. And I think actually, that might be helpful for everyone to see how the subgroup is going to be conducting its work before we have any volunteers for chair. So that is perfectly fine, and we're happy as staff to just help facilitate the work here today and then see if we have chair volunteers in time for the next call. And I see there's support for you, David, if you do decide to volunteer.

So why don't we go ahead and turn the screen over to Ariel? And we're going to start with the first tab. And I'll put the link here. Actually, never mind, Ariel has of course already put the link in.

So what you'll see here is this is the first tab, TMCH recommendation number one, and maybe I'll let Ariel just explain

again the way the information is organized, so you get a better sense of what's here.

We did introduce this on the last working group call last week, but I'm not sure if everybody was on that call, so it probably doesn't hurt to remind everybody how these sheets are organized. Ariel, please.

ARIEL LIANG:

Thanks very much, Julie. As you see, we changed the first tab of the spreadsheet as workplan plus table of contents so you can quickly jump to the respective recommendation that we're covering for each call. And now we're looking at TMCH recommendation 1, the first one on the chart that you see is reflecting the answers folks give us during public comments. It's the multiple choice question asking for their level of support or nonsupport.

And as you can see, about two thirds of the 55 contributors have provided opinions, and about one third of them are supporting and there's one contributor has some minor suggestions with changes, but still support the recommendation. And about another one third have significant changes. So we have captured their concerns and clarifications, basically in the common highlight table right on the right. But that's kind of a high-level summary, the type of things we have seen in the comments. And of course, you have seen the actual comments right below.

And I just want to note that we also noted the rationale for not supporting the common highlight table, and they are pretty much

overlapping with the concerns and clarification right above. The reason we kind of singled them out is because these are kind of strong reasoning for them to not support the recommendation. So we just want to highlight them so you know why they do not support these recommendations. but yes, their concerns are kind of overlapping with some of the ones right above.

And when you go through each of the comments, you see with e have highlighted some of the common themes that were things that jump out to us in Green for the support recommendations and then some of them have very similar reasons that they stated in the support and for a significant change required, that's even more kind of—we think it will help the group to review because we put some of these comments that have similar concerns or clarifications together. And when you scroll through, you see the top ones are basically asking for the exact match rule to be changed to expand to include others, and then if you scroll down, you'll see some of the concerns regarding limiting the dictionary terms, limiting the sunrise only to match the categories of goods and service. So we see these similar comments, and we've grouped them together.

And at the bottom are the ones that do not support the recommendation. And their rationale is also highlighted in the comment. So that's our general organization for this tab, and it's similar to almost every other tab for recommendations. So I will stop here. I see Kathy and Brian have their hands up. And I know Julie, you also would like to have a comment too.

JULIE HEDLUND: No, actually, Ariel, I'm fine. Why don't we go to Kathy and then to Brian?

ARIEL LIANG: Okay. Thanks.

KATHY KLEIMAN: Hey everyone. When we initially did this recommendation—I'm going to make a procedural suggestion, and that's that when we initially did this—this is an umbrella question. It's one that's really overarching on our work, and it's a really hard place to start.

If we want an easier place to find our subgroup sea legs, so to speak, and to learn to work our way through, we could start with sunrise recommendation 1. It's a much narrower, smoother question without the wrinkles that we're going to get to on this one. So I just wanted to throw that out, that if we want an easier starting point, we'll do sunrise recommendation number one, which is of course the next recommendation that we're supposed to look at, and then circle back to this one either after sunrise recommendation 2 or after sunrise recommendation 1. But this is a hard place to start. Thanks.

JULIE HEDLUND: Thank you, Kathy. ANd just before we switch to Brian, there is a reason that we're organized in this way. staff has organized the recommendations in the way that we have asked for for comments on them, and there really is just the one TMCH recommendation, and that is a logical place to start.

I would hesitate to suggest that any particular one of these recommendations is easier than the others. And because we have this on the workplan and because we have asked people to prepare today to discuss this recommendation, staff will go ahead and start with this recommendation, unless there are other concerns expressed. This is the logical place to start and where people are expecting to start.

Brian, and then Phil.

BRIAN BECKHAM:

Yeah. Hi. Thanks. And sorry if it's better to do this offline, that's fine as well. but I just wanted to ask Ariel. The way you've been scrolling through it, you sort of see the blue banner and the pie chart and the recommendations, and you can scroll through them and see quite a bit on the screen. For some reason, when I have the Google doc open—I have tried different browsers—basically, the blue banner takes up about half the screen and I only see—the part I can scroll is limited to one inch at the bottom of the screen. so I really can't read anything. I don't know if it's possible to shrink that blue area. Normally in an Excel doc, you can kind of expand and collapse the cells.

So if it's better to answer that offline, that's fine. I just wanted to mention that I was struggling a little bit with seeing the actual text on the screen.

JULIE HEDLUND: Thanks for raising that, Brain. I'm going to turn over to Ariel because it looks like she's already shown how we can shrink that. Go ahead, Ariel.

ARIEL LIANG: I just did that on the Google spreadsheet. If folks feel it's not really necessary to see the text of the recommendation, I can shrink for every single tab to make it readable. And I know that perhaps from your side, you can't do that because everyone has view access. But if that's the request from the subgroup, to just basically shrink the text, I will do that for every single tab after the call.

JULIE HEDLUND: Thanks very much, Ariel. That's helpful. And I see Phil and then Kathy.

PHIL CORWIN: Thank you. I think all of these recommendations represent different challenges. I think this is a good one to start with because I think it's going to define our working methodology. By the way, I had no problem with the comment tool reading the full text of everything. So I understand others may have technical issues. I didn't have those.

But I have to say on this one, this recommendation covers a lot. These are dicey issues. But when I look at the comments and where I see that some commenters want to expand matching rules to cover singulars and plurals or to cover mark contains, or mark plus variations, or limit sunrise registrations only to TLDs

which somehow relate to the goods and services, or open the trademark clearinghouse database, or eliminating the clearinghouse—my recollection is all of these proposals were put forward by members of this working group in the course of our work. They were all robustly debated. None of them could reach the necessary level of support within the working group to become recommendations.

And if we're going to debate any or all of them now—any change from exact match, well, is that change going to be just for generating, just for sunrise, or just for generating claims or both? I think we're going to go down a rabbit hole with no different result in the end, other than burning a lot of time. So I'm open to hearing from others, but I can't see anything new in these comments that wasn't brought up in our prior debate.

I believe reopening any of these suggestions would be relitigating closed matters, and I have no reason to believe that the outcome will be different and that any of these proposals for expanding the protection or contracting the protection will be able to receive consensus support at the end of our process. So I'm not going to move it now, but I would believe the proper way to deal with these comments is to stick with our original decision, because I don't see any new facts or new thoughts that weren't brought up when we debated all of this. Thank you.

JULIE HEDLUND:

Thank you, Phil. Kathy, please, and then Rebecca.

KATHY KLEIMAN: Let me pass to Rebecca since mine is a procedural comment. Thanks.

JULIE HEDLUND: Thank you. Rebecca, please.

REBACCA TUSHNET: I actually largely agree with Phil, but I did want to highlight one thing, which I don't actually recall discussing. I don't think I support it, but there is this issue a couple commenters raised about the TM+50 program, and wanting it to not require a registration. And I just don't recall discussing that. I don't think it's a good idea, but if anyone wants to talk about that, that does strike me as somewhat different. Please let me know if I've forgotten, because it has been a while. Thank you.

JULIE HEDLUND: Thank you, Rebecca. Yeah, Ariel's going to talk a little bit more about the various suggestions or new ideas that we've received here and that have come up in the comments. So thank you for highlighting that, and we'll speak to that as well. Kathy, please.

KATHY KLEIMAN: Two procedural questions. Sorry to keep doing this, but we are kicking all this off. One is that I, like Phil, was one of the people who was able to see that blue banner, although I sympathize with Brian and Rebecca and those who couldn't. But now I can't see the recommendation at all. So I fear that if—Ariel, I can see why

you would want to collapse it. I'm on the main Google doc, not within the Zoom room. I fear that if we collapse this completely, we will not be able to see what the recommendations and questions are.

So I wonder if there's a way to set that upper section up to scroll so that those who want to read the recommendations or upcoming questions can see them the first time they hit the sheet, and then collapse it as we go back to review.

The other thing I wanted to ask about was the column, and we don't have to do it right now, subgroup response, and wondered where that came from. It might be better as a subgroup summary since we haven't come up with a response yet.

But to the substance, I would agree that most of this appears to be well-traveled territory. And except for the point that Rebecca raised, which may be a new point, I'm seeing well-traveled ground and well-debated issues. Thanks.

JULIE HEDLUND:

Thank you, Kathy. You'll see that the text is back up for the recommendations. At any time, you can click into one of the boxes. So even if something has collapsed, you can click in the box and see the text. But we have it showing up now.

I'd like to go ahead and turn things over to Ariel who's going to run through the comments. And you mentioned the subgroup response column. So what we found in SubPro is that in some instances, it was necessary for the subteam or the subgroup to go back to the commenter and ask a clarifying question if for instance

the comment wasn't clear. For example, if there was a comment that was in an area of support but it was clearly not support, then if the representative of that group wasn't on the call, then we might go back and ask that commenter to clarify the comment.

So that's where there might be a working group response. So it's not a working group response on the overall recommendation necessarily, but it's more of a clarification. But if there's clear terminology, happy to make that change as well. And I know [inaudible] yeah, subgroup response, I see. And I hope that's helpful. Rebecca, I see your hand is up. Please go ahead.

REBACCA TUSHNET:

Thank you. Given Phil's concerns, which it sounds like we're willing to go with, I don't really want to spend half an hour listening to summaries of the comments. I've read them. I take it everybody here has read them. And I would think that we will go much faster if people can surface their concerns for what they found new in the comments. I'm just not sure what, given our limited time—here we are nearly 35 minutes in—why is staff going to tell us what the comments are? It just doesn't seem all that efficient. Thank you.

JULIE HEDLUND:

Thank you, Rebecca. Yeah, I think that you're getting to how we were hoping to proceed anyway from the staff side, and that is that we're not going to go through and read out all the comments. As you say, you've read them. the idea is that everybody is supposed to have come prepared for this meeting and to have

reviewed the comments, so there's no sense in reading through all of them.

I think what staff would do is to highlight areas where there seems to be high-level agreement or where there are new issues. And then to ask the subgroup members, as you have noted here, to raise any new issues that we should pay attention to that were captured in the tool.

And if there's nothing that anybody sees that's important to raise or to discuss in the subgroup, then we'll move along quite quickly, and particularly in areas where you can see that there's substantial high-level agreement or support for a recommendation or there may not be agreement on a change to a recommendation.

So thank you for that suggestion. I think that is largely what we're going to try to do here. So without further ado, let me go ahead and turn things over to Ariel. Ariel, please.

ARIEL LIANG:

Thanks, Julie. So the new suggestion that jump out to staff is basically the comment from Tucows family of registrars. They have one particular suggestion. They said it is unclear whether the third item in the recommendation represents a change or not. It could be awarded more clearly or a reference to the existing requirement provided. So that's their more substantive suggestion for the actual wording of the recommendation, and then they have another point, is trademark holders ought not to be able to restrict the use of dictionary words beyond their realm. And that's their

other point. But we think the only point that is maybe an actual change to the recommendation is to clarify whether the third item represents a change or not. So that's the only thing, I guess, I will highlight here. And I see, Phil, you have your hand up.

PHIL CORWIN:

Yes. Thank you, Ariel. I believe what Tucows is referencing is item number three and trademark clearinghouse recommendation where it says we considered the following aspects of the trademark clearinghouse, and then number three is whether where a trademark contains a dictionary term, so sunrise and trademark claims RPMs should be limited in their scope, such as to be applicable only in those gTLDs that relate to the categories of goods and services. I have to scroll a bit here to read this. Sorry. For which the dictionary terms within that trademark are protected.

That's what we considered. We did not recommend any change. We robustly rebated, we have proponents who made strong arguments for limiting the use of sunrise and trademark claims notices only to TLDs which somehow related to the dictionary word. We had a lot of disagreement on how that would be interpreted. We heard from trademark owners saying that they needed to protect their terms in some TLDs where it wouldn't be obvious why, but there was a marketing and a trademark protection reason for making a sunrise registration in certain TLDs that wouldn't seem at first related to the dictionary word. And in the end, we couldn't agree on any change. So I don't believe we have to clarify anything, because we didn't recommend changing anything. Thank you very much.

JULIE HEDLUND: Thank you, Phil. Brian, and then Susan.

BRIAN BECKHAM: I think I largely agree with Phil, it seems that maybe they misunderstood that number three was actually a recommendation when it was really just capturing how we had looked at the questions. I think it doesn't quite work or they say that it represents a change when in fact that's not what's proposed. Thank you.

JULIE HEDLUND: Thank you, Brian. Susan, please.

SUSAN PAYNE: Thanks. Hi. I think I've been kind of assuming that that comment was that they feel it's sort of unclear what the status quo is to people, and that perhaps this could be better expressed so that that's more clear to people. I must say, obviously I know what the status quo is, I'm very clear on it, but I do think number three is incredibly awkwardly worded. And could be simpler. Not that I'm going to suggest we wordsmith on the fly, but I do think it's actually quite difficult to read and comprehend. But I'm not obviously suggesting a change in substance.

JULIE HEDLUND: Thank you very much. Kathy, please.

KATHY KLEIMAN:

Agreeing with Susan, I think, that we should be clarifying this as we go forward. Probably more clarifying that [inaudible] the working group considered the following aspects of the TMCH. We can probably expand on that, “This is what we debated, this is what we reviewed, and then we decided not to change for the following reasons.” There are ways to clarify that, because if a group like Tucows doesn’t understand or is asking, others probably have the same question.

What I did want to edit was the subgroup response based on the last sentence that Ariel read. The fourth column, which I know is not labeled in the version we’re looking at, but the subgroup response would seem to put Tucows—I don’t think we’re acting on it, and that’s fine. We seem to put their concern under limiting the dictionary term only to related categories and goods and services. They seem to be echoing something that we see below about trademark owners ought not to be able to restrict the use of dictionary words beyond their realm. So after we put support in the next column, I think there is some concern about limitation here that echoes things below just so that’ll be sufficient. But I don’t think this causes us to revisit our recommendation. Thanks.

JULIE HEDLUND:

Thank you, Kathy. Then over to you, Ariel. In here, I see Paul saying Q3, maybe could do some clarity, but become moot since the question’s for public comment purposes. What is very clear is the recommendation that was put forward, which is that the status quo holds. Thank you. Ariel, over to you.

ARIEL LIANG: Thanks, Julie. I'm not sure whether there are others I'd like to highlight here, because most of the concerns we have, we're seeing in the public comment, are arguments already made during the working group deliberations. I don't see something very clearly about a new idea or something in that nature. And I see that Brian had his hand up.

BRIAN BECKHAM: Thanks, Ariel. Just picking up on what you said, I know we're still waiting for someone to raise their hand to run this subgroup, but I think the way I had kind of understood this was when you see the donut there with the different levels of support, for me, the place where I sort of jump to is the yellow or orange part there where I look at what are people saying in terms of changes they would propose to support this recommendation.

And when you look through those, frankly, those are all things that we discussed at pretty good length in the working group meetings. So to me, it's pretty clear that none of these would rise to the level of meriting our time, discussing amendments to the recommendation. So that takes us back to basically there's no support for making recommendations to this which would likely reach a level of consensus in the working group, which places us in the position of basically taking the temperature and saying there's no consensus to amend this recommendation of the working group, and that's the sort of resolution on this issue.

I hope I'm sort of seeing that correctly, and curious what other people think. Thanks.

JULIE HEDLUND:

Thank you, Brian. Yeah, that is the staff understanding. It does seem that the comments support the status quo, and that is the recommendation as it stands, although we've noted that there might need to be further clarification on number three. Paul, please go ahead.

PAUL MCGRADY:

Thanks. I hope I don't regret this question,, but I think it's important that we understand what the different categories mean then. For those who support or support with minor change, those seem to be support, they're green. What do we do with support but with major changes necessary? If we look through these and we say, okay, thank you for submitting your major change but that's already been discussed so we're not going to discuss it again, then do "support with major change necessary" then become "not support" because their major change wasn't made, or they become "support" and their major change requirement is just not going to be part of the discussion anymore?

I think it's a question we have to answer. We should answer it in here at the very beginning, because we're going to encounter that question a lot. What does it mean to be yellow and your proposed change is not going to be considered? Thanks.

JULIE HEDLUND: Thank you very much, Paul. I'm going to let Ariel speak to how this was set out in the survey, but essentially, significant change required doesn't necessarily mean that that's supporting. It could be a support or it could be a nonsupport. But Ariel, please.

ARIEL LIANG: Thanks, Julie. Actually, you said what I wanted to say. So when people select significant change required, it doesn't really mean they support the recommendation. They can also be a nonsupport but they just didn't select that particular option there. This is just reflecting they have significant concerns regarding the recommendation, and for sure they can't support the way it's worded, but it doesn't mean they're actually supporting it, it's just they want to express they feel the recommendation needs a lot of work for them to actually provide support. So that's our understanding of that, and I see Phil has his hand up.

PHIL CORWIN: Thank you. Responding to Paul, I have to say I think it's irrelevant in the sense that the existing RPMs are the default, and unless there's broad support within the working group at this point for a change in them, and for that modified RPM being considered for consensus call, the default position is that things stay the same unless there's significant support for moving it in one direction or the other. And frankly, it's easy for me to scroll through the link to this portion of the comment tool, but when I look at the commenters who said significant change required, and I respect all of them, all their viewpoints. They all make well founded arguments.

INTA wants to expand the matching rules for claims to all mark contained variations. The Global Brand Owner and Consumer Protection Coalition wants to expand the matching rules for claims for all mark contained variations. Cum Laude wants to expand the matching rules to mark plus and mark contained.

But then we've got a series of commenters, Brandeis, Yale Law School, Ethics in Technology, who want to limit—we just saw a number of commenters who want to expand the scope of the RPM, then we get to a group of comments that want to narrow the scope of the RPM to only related categories of goods and services for dictionary terms. And there's quite a number of those.

We've got an ICANN constituency, or stakeholder group, the NCSG, wanting to limit the scope for sunrise only for related categories and goods and services. So when I review it, I see a bunch of very sincere, articulate members, groups within the community, making well founded arguments. Some for expanding the scope of the RPM, some for narrowing the scope of the RPM, and illustrating that any change to either expand or narrow is probably not going to get broad support within this working group and we'll have a very difficult or impossible time getting consensus call support. And all these suggestions are things that were brought up by members of this working group and debated robustly.

So I think in the end, it doesn't matter because they say support only with significant change, and half want to expand and half want to narrow. None of them are new. We wind up with the status quo, which is the default position for every existing RPM unless

this working group can reach consensus support to recommend change to council and the board. Thank you.

JULIE HEDLUND: Thank you, Phil. And I see Paul's thanking Phil and staff for the clarification, and Brian is saying that that's correct. So I think unless there are other—Oh, and Brian, you have your hand up. Please go ahead.

BRIAN BECKHAM: Yeah. I wasn't going to speak—I think I said what I wanted to say, which is that there's no consensus on making changes here. So sort of agreeing with what Phil said.

I did want to raise just a question. Several people mentioned a desire to sort of amend the text of number three. Maybe I'm looking at this the wrong way, but first of all, the recommendation itself, that number three isn't actually part of the recommendation. The recommendation for these three questions is that the status quo should be maintained.

So frankly, maybe I'm misunderstanding something, but I didn't really understand that there was scope to go back and rewrite the text of the questions that were part of the recommendation that we discussed some time ago. Thanks.

JULIE HEDLUND: Thank you very much, Brian. That's a very helpful point. Please go ahead, Paul.

PAUL MCGRADY:

Thanks. I guess a follow up question—I do appreciate what Phil and staff had to say. That’s helpful. So then a follow-up question is, since the status quo is the default, and anytime that we see support but with major change necessary and the major changes don’t all line up, then our default setting will be status quo. I get that and I’m for it.

What’s then the purpose of this exercise, a line item by line item looking at these, if what we’re really looking for are any situations where all the public comments came back the same way saying, “No, you didn’t get it right, here’s what needs to happen,” and the public comments are essentially in unison, and/or the lightning strike new idea that none of us thought of?

Because it seems to me that we’re going to spend a lot of time looking at these when really, the analysis is, did all the public comments come back one way suggesting a change? And/or did the public comments contain a lightning strike idea none of us knew about? And I suspect that the public comments that came back that way are somewhere between zero and zero. There’s some very small data set approaching zero where those would be the case.

What are we doing in terms of efficiency with our time by going through these one at a time, applying the standard that Phil set forward? This seems to be more form over substance, right? Why couldn’t staff just bring us the one, two, three or zero of these that fit the mold of actually going to be looked at substantively?
Thanks.

JULIE HEDLUND: Thank you, Paul. Before I go to Brian, perhaps staff can answer your question, Paul. There's a couple points. I'll make one, and I think Mary has a point to make as well. The point of the exercise is that the working group does have to consider all the comments. That doesn't mean that we have to sit here and read through all the comments line by line. That's why we're asking for subgroup members to do their homework and read through the comments and get a sense of where there might be new ideas or whether there's support for the status quo.

And so the review is important, and then pulling out possible new ideas or noting where there's areas of high-level agreement is important. And that's the exercise that the working group and subgroups are doing, then to be more efficient, to ensure that all comments are considered.

And so let me go to Mary for another point, and then we'll go to Brian.

MARY WONG: Thanks, Julie. Hi everyone. Julie, I think you covered it very well, and the emphasis here is again to see if in reviewing the comments, the subgroup in this case sees any new substantive arguments, data or new points that they had not considered before. But more broadly, in terms of the recommendation like this—and in a way, this isn't even necessarily a recommendation in the way that we would normally understand consensus policy recommendations. this is simply the working group saying we are

not recommending any change to the situation as it currently is, we think the situation as it currently is should apply to future new gTLDs.

So in that sense, it may have been a little hard for some commentators to grasp it. It's almost like a double negative, if you like. So for purposes of a status quo type of recommendation, the question of significant changes is probably less important than a recommendation that you'll come to in the course of this exercise where the working group is actually recommending a change to the status quo, if that makes any sense. Thank you.

JULIE HEDLUND:

Thank you, Mary. That's very helpful. And Brian, please.

BRIAN BECKHAM:

I think we're all sort of rowing in the same direction. I think to Paul's question, agree, it's not useful to read these line by line, but we come in and do that. The way I had personally described it when we had our leadership call with staff preparing for this was sort of a sanity check on exactly the points you raised, Paul. Are all of the public comments aligned in their saying something that takes us in a different direction from the recommendation, or is there simply some new idea that we hadn't considered?

I think that this is hopefully a good example where you can, I think, quite readily see, if you start from the percentage of the significant change required, we do our homework, we look at these, we say, yeah, we've covered A, B and C and we agreed not to go there in terms of a recommendation. And then my hope or thought was

that we would come to these subgroup calls and say we've looked at this and we don't see either A or B there, so then we sort of do a quick poll amongst ourselves to say, are we all in alignment there? if so, yes, the status quo is maintained and we move on to the next. Hope that helps. Thanks.

JULIE HEDLUND: Thanks very much, Brian. That's very helpful. I see Phil and then perhaps we can move on to sunrise recommendation 1 and 2 to see if we can complete our tasks for the day. Phil, please.

PHIL CORWIN: Thank you for that great segue, Julie, because I think it's important that this subgroup have an extensive discussion of how it's going to approach the public comments. But we've been on this first recommendation for an hour now. I think the discussion has indicated, there's broad agreement that the community comments have not surfaced any new suggestions that weren't raised within the working group and robustly debated, and that I would say for those members of the trademark community who advocated expansion of the RPMs, still be disappointment that we're not recommending that, but there'll also be relief that they're not being narrowed and vice versa for those members of the community who advocated for narrowing the RPMs. They'll be disappointed that they weren't narrowed but happy that they weren't expanded. So everyone's equally happy and unhappy, but there's no reason to believe that we're going to move from the status quo, and I think we've come to the point where I don't know what the proper procedure is to move that we stick with that

recommendation of no change in these aspects of the RPMs. I think there's probably some agreement that our final language of a recommendation for the final report should be reviewed and clarified somewhat so it's clear what we did and what we're recommending. But beyond that, I think we've exhausted this topic, and unless there's objection, we should confirm our support for our original recommendation and move on to the next one. Thank you.

JULIE HEDLUND:

Thank you, Phil, and that is indeed what staff will capture in a summary document that we'll prepare and also will be something that the subgroup can review. We'll be compiling this as we go. Thanks again, and let me turn things back over to Ariel, and we'll move on to sunrise recommendation 1.

ARIEL LIANG:

Thanks, Julie. So as far as recommendation number one, we saw more than 60% of commenters support the recommendation, actually as written, and there's only one hat has a minor change suggestion. And only a very small minority that have a significant change required that they expressed that opinion, and only two do not support.

And in the comment highlight table, we highlighted some of the concerns, clarification and rationale for nonsupport here. I guess the one that I'd like to highlight is from CORE Association. They mentioned SMD label when equal to SLD plus TLD should be allowed. So I'll just quickly scroll to the actual comments they have

here. That's something that we see that seems kind of new, or something haven't been debated to death by the working group. So that's why we kind of highlight here. And then the other concerns are kind of arguments already made in the working group. So we're not going to reiterate here. So that's the only thing I want to comment here.

JULIE HEDLUND:

Thank you very much, Ariel. And then over to subgroup members for any comments or issues you wish to raise. And I see David saying support, no response or no opinion are about 87% on sunrise recommendation 1. Anybody want to make any comments about the item that staff highlighted as a possible new idea? Phil, please.

PHIL CORWIN:

Yeah. Thanks for calling on me. Let me just go to the link. Yeah, I note that the core comment was limited in scope in that their comment about allowing SLD plus TLD, I'm not quite sure what that means. I think we need more of an explanation to know what that means. They've put examples like real.madrid or bbc.radio. Their comment was limited to community-based TLDs and geographic TLDs, not all TLDs. So it was a narrow comment in terms of its scope. I'm not commenting on the merit. I'd have to think about it. But if members of the subgroup want to discuss it, I think that's certainly in order.

I don't recall discussing this item. Other than that, I would note that there was broad community support, over 60% for the

recommendation, and so the basic recommendation seems to be in good shape. The only question is whether we want to discuss this narrow suggestion from CORE for certain types of TLDs. Thank you.

JULIE HEDLUND: Thank you very much, Phil. Any further comments from anyone? Is there any action that we need to take? Do we need to try to get further clarification from CORE Association, or does it seem to be fairly clear that they're making that suggestion specifically for community-based TLDs and geographically-oriented TLDs as it notes there? I have Brian and then Susan.

BRIAN BECKHAM: And sometimes we see this in UDRP cases, and I believe even some new gTLD registries offer this as a possibility. I'm not sure under what exact scheme, but what we would call spinning the dot cases. It sounds to me like this is something that may be one to take back to the full working group to say this recommendation—which I'm surprised we hadn't considered this, but I guess we hadn't—came in, and what do people think about it? And I don't know if it's—I guess it's sort of a question about our role here. I guess we could take the temperature here to see if people thought it was even appropriate to take to the full working group. But I think this is the type of thing, exactly that idea that we hadn't considered that Paul mentioned earlier, which is really what we're here to identify and see if we want to, as a full working group, amend the recommendation to accommodate these types of ideas. Thanks.

JULIE HEDLUND: Thank you very much, Brian. I have Susan, Rebecca and Kathy.

SUSAN PAYNE: Thanks. Hi. I'm not entirely sure what we're supposed to be doing here in terms of this proposal from CORE, but I'll just make a quick comment on—what they're proposing is perfectly clear to me. What's not so clear to me is why they suggest that this is appropriate for community-based TLDs and geographically oriented TLDs, apart from the fact that those are the only TLDs they care about. But it seems to me that if this proposal has merit—and I personally think it does—it has merit for all TLDs. There's no particular reason why it should be limited to those particular types. CORE certainly haven't explained a reason for limiting it in that way. I think it is entirely limited in that way because that's their own area of interest, and nothing further.

So I'm happy to debate it further, but in respect of all TLDs.

JULIE HEDLUND: Thank you, Susan. Rebecca, please.

REBACCA TUSHNET: Thank you. I think, actually, I see why it's limited in that way. It's because this basically only comes up when you have a term where it's basically geographically descriptive. So Madrid is fine, it's just Real Madrid actually has a particular meaning. And I think that to me, that generates some operational concerns that,

because it's coming up here, I just don't know the answer to. So, how would this be implemented? Is it technically feasible to say, okay, you're in the TMCH as Real Madrid. What's the mechanism for translating that? And it just won't happen to Apple Computer for various reasons.

So although I don't want to reject it out of hand, I'm concerned that I just don't know how it works with the TMCH we have. Thank you.

JULIE HEDLUND: Thank you very much. Kathy, and then Phil.

KATHY KLEIMAN: I just want to note that I think we have talked about this issue. I think it was raised for all gTLDs. We're seeing it in the context, as others have mentioned, of community TLDs and geographically oriented TLDs. But I recall talking about this, maybe with the subgroup, maybe it was the full working group, for all gTLDs and the kinds of questions that Rebecca just raised were raised as well, because, how would you do it? How would you work with the TMCH? Would you want to? And in that context, let's take a look at the support. The support recommendations as written include a number of comments that actually raise concerns that the exact match standard is too broad, and you can see one comment after another on that, including from EFF and Yale, but there are others.

So we have to keep that in mind as we're looking at what is effectively an expansion. Thanks.

JULIE HEDLUND: Thank you, Kathy. Phil, please.

PHIL CORWIN: Yeah. Thank you. As I look at this CORE proposal more closely, it seems it's even more nuanced than I first thought. Not only is their comment limited to community and geographic TLDs, but then they add the caveat, "In case the relevant registry operator wishes to allow such registration." So it seems to me that their concern is not that the existing limitation to exact match be expanded to all TLDs but that it might prevent a registry operator that wished to allow for a broader sunrise registration rule from doing so. And that raises the question of whether a broader sunrise registration approach would be akin to a private RPM which we looked at and decided we have no ...

So the question is not whether this should be allowed by the RPM but whether it shouldn't be blocked by the RPM in the sense—so I would suggest here that staff should prepare an inquiry to CORE raising some questions on the aspects of their comment that's been raised in this discussion, see what kind of response we get, and that while we're waiting for a response, staff should review the record of our prior discussions, because I can't remember whether we ever discussed this kind of spanning the dot type registration where when you combine the domain name with the TLD name, it's an exact match for the registered trademark. I don't recall if we ever discussed that.

So I think we should probably, given the level of community support, stick with our recommendation, but on this one narrow aspect, make inquiry to CORE to get some clarification while having staff look at the record of our discussion to see if this spanning the dot issue was ever raised and discussed to any significant extent. Thank you. And to make sure this is not revisiting old ground but is actually something new. Thank you very much.

JULIE HEDLUND:

Thank you, Phil. And I'll note in the chat with respect to your question as to whether this was discussed, Mary Wong notes that the working group had a discussion with ICANN GDD in November 2018 where they talked about how the TMCH deals with spanning the dot. And staff also note that we did have a spanning the dot proposal. That proposal did not rise to the level of support to be included as a proposal for public comment. But we'll go back and gather a little bit more information. It may well be from our recollection that this issue had been dealt with in the working group and may indeed be an old issue. And we may also ask for suggestions from the working group as far as questions for CORE Association as well. So we'll work on that as an action item.

But otherwise, we'll note too that there seems to be general support from the community, from the comments for the recommendation as it stands. But we have captured the action item as well. Maybe go back to Ariel for sunrise recommendation number two.

ARIEL LIANG:

Thanks, Julie. So this recommendation does have more number of non-support. I just wanted to note 20% of the contributors didn't support the recommendation. But then we still have about one third that support as written, and about 10% that support with minor change. And I do want to quickly run through the comment highlight table because we did see some new ideas or clarification that was proposed by the commenters.

The first one is from Global Brand Owner and Consumer Protection Coalition, and they mention that this recommendation seems to require amendment to the base gTLD registration agreement, a specific challenge mechanism and ICANN Compliance powers to address the behaviors. And then they also mention that PIC DRP could be used to address such behavior from registry operators. So that's their comment, but they still support the recommendation.

And then from CPH and ICANN Org, they didn't directly select whether they support or not support the recommendation. They didn't choose that multiple choice question. But they did mention some concerns and clarification in their comment. And I think what they're kind of overlapping here is they both mentioned the specification 7 of the base registration agreement may be impacted by this recommendation, and they also mentioned that the specific phrase, effect of circumventing RPMs or requesting use of sunrise is Appeal Board it vague to implement so they would like to see how to precisely set forth—basically to clarify this phrase, and also, they'd like to see a non-exhaustive list of conduct that clearly demonstrates such a behavior from registry

operators. So they want to see some examples included in the recommendation. So I think basically, CPH and ICANN Org, they kind of have similar type of concerns and clarification for this recommendation.

And then for the rationale for nonsupport, a lot of them felt the recommendation is a bit broad and vague. But we did see in NCSG and America University's comment that the recommendation would be acceptable if limited to premium names. So they did mention this particular point. So that's the highlight we like to provide for all these comments. Phil, please go ahead.

PHIL CORWIN:

Thank you, Ariel. What struck me when I reviewed the comments, when you look at the people who commented and looking forward on the process, anything we recommend by consensus has to go to council, the Contracted Party house, the registries and registrars, said they support it in principle but that it's too vague, they need more precise language as to what this means. So they know what conduct is acceptable and what isn't. So that's half the GNSO council, the Contracted Party House, saying it needs clarification.

Then we see that—I notice the IPC who has two seats on council, they support it as is, but the NCSG which is one quarter of council does not support it, but they want it to be more precise, might be acceptable for premium names, and then we had ICANN Org weigh in saying that they've already got—contracted parties have to comply with this under Spec 7 of the registry agreement, and

then they raise other issues. They say there may be challenged for enforcing the requirement as written. So it seems to me we've got half the council supports but wants clarity and another quarter opposes unless there's clarity, and ICANN Org saying, to be enforceable, it has to be more clear.

I'm seeing the clear message that people don't want contracted parties, registry operators, circumventing the RPMs but that we need to go—if we're going to include this recommendation in the final report, we have to be much more precise about what conduct we're talking about. I'm not sure we can get that precision on this call, in this subgroup. This may be an issue that has to be brought back to full working group. But the message I'm getting from the comments is that this recommendation, unless it's made significantly more clear, is going to face a hostile reception if we send it to council. Thank you.

JULIE HEDLUND:

Thank you, Phil. I'd just like to go to Mary Wong from staff for a clarification, and then I'll go to the rest of the queue.

MARY WONG:

Thanks, Julie. I think the comments that ICANN Org made here are pretty clear, and I just wanted to follow up on something that Griffin said in the chat and I think that Phil's comments also reflect that a lot of this seems to be asking for implementation guidance. And certainly on the Org side, and we were coming at it not as contracted parties as Phil just described but as ICANN Org that has to enforce the contracts. So we are just concerned if the

recommendation goes forward that there's no enough precision and clarity such that if you're talking about contractual obligation, contractual provision, it's really hard for us to enforce something like this.

so I think what we're seeking, like with other commentators, is implementation guidance from this group or the working group.

JULIE HEDLUND:

Thank you, Mary. I have Susan, Kathy and Michael, and we have a little bit less than ten minutes left on the call.

SUSAN PAYNE:

Thanks. So I think Mary sort of clarified one of the things I was going to say, which is that it seemed to me that what we are being asked for here is, as Mary just said, to provide implementation guidance.

The recommendation may be too vague as it currently stands, but putting that into practice would be an exercise for the implementation team. So maybe we just need to give some more examples of the kind of behaviors that as a group we talked about and agreed might form the basis for some kind of action needing to be taken.

I did also just want to comment that the IPC, we put in a recommendation in relation or a comment about—a suggested recommendation in relation to the [TM PDDRP] and so in our comment, we cross refer to that. But in fact, because of the size of the boxes, part of the text for our suggestion actually was included

in an overarching comment at the very end of the comment submission form. So it's captured in the tab for the PDDRP but it's not captured in this tab. And it was a suggestion that perhaps another way to address this problem is by tweaking the PDDRP. And we tried to suggest some things like guardrails in that comment, which you can see in the relevant tab for the PDDRP, but you can't see here.

JULIE HEDLUND: Thank you very much, Susan. Kathy, and then Michael, and then Rebecca.

KATHY KLEIMAN: I think it's interesting what Susan just said, that there may be some insight on this or commentary on this in other places. I'm going to agree empathically with Phil that I think, whether it's under support or nonsupport, we're seeing the same comment, which is that the recommendation itself is too vague, that the registry agreement should include a provision stating that the registry operators shall not operate its TLD in such a way as to have the effect of circumventing the mandatory RPMs.

So I wonder what we can do to clarify that, and I wonder what we can do to clarify that without recreating the wheel. And that's why I asked for the context. I haven't had the time—obviously, we're talking and following the discussion—to follow the link. But I seem to recall that there was some significant content explanation of this recommendation and of the working group's discussions and examples on this. And maybe before next week, staff could

circulate that link, the e-mail, and we could take a look at it and see what the examples were that the working group was looking at, because I seem to recall we had some very specific examples here, and see if we can bring those examples and that clarity into a more clear discussion of some tweak to the recommendation that might make all these commenters happier. Thanks.

JULIE HEDLUND: Thank you, Kathy. I have Michael, and then Rebecca, and we have just five minutes left.

MICHAEL KARANICOLAS: Thanks. Yeah, I think it's noteworthy that we have both ICANN Org and the contracted parties, so essentially, the people that are going to be on both sides of this contract, both expressing concern about how they're going to implement or enforce this. I don't think this is just a question of throwing it over to the implementation team and leaving them to figure it out. I also don't think this is just a matter of more brainstorming on our end to throw out a bunch more ideas. I think if this is going to be taken forward, there needs to be robust engagement with both ICANN Org and the contracted parties in how to craft the final recommendation. I think there need to be direct discussions before this is finalized on what a workable standard might look like or if a workable standard is possible.

So I think that we should be talking to the people that are actually going to have to figure this out and be on the front lines of this. I think that we should be talking to them to make sure that we're not throwing them something that they can't deal with. Thanks.

JULIE HEDLUND: Thank you, Michael. Rebecca, please.

REBACCA TUSHNET: Thank you. I just wanted to say I think there's a big difference between little details that could be worked out in implementation and the comments we're hearing, which is this is sort of free flowing versus something that would be acceptable if limited to premium names. I don't think that's actually an implementation detail. So I support the idea of working toward greater clarity. Thank you.

JULIE HEDLUND: Thank you very much, Rebecca. And Mary, please.

MARY WONG: Thanks, Julie. So real quick, because we're running short on time, I know. From ICANN Org's perspective, we are certainly aware of the role of a policy development working group and an Implementation Review Team. So while we are seeking more clarity and precision, we are certainly not suggesting that the working group should write or rewrite a contractual provision. It's more asking, give us some detail about how you think this recommendation will work in the specific context of Spec 7, particularly section 1 of Spec 7, because it's possible that some could read this as being contrary to section 1.

So again, implementation guidance, but not requesting that the group take upon itself to draft or redraft the clause. Thank you.

JULIE HEDLUND:

Thank you, Mary. I think that's a very helpful clarification. And I'm recognizing that we have just three minutes left, so I think we'd like to warp up this meeting for now. We have a few action items relating to this particular recommendation as far as providing some context, and so we'll put that into the actions from this call and perhaps we can revisit this briefly at the next meeting and then still manage to stick with our workplan as well for our next topics, the topics for our next meeting.

Our next meeting will be at the same time next week, and so that will be on Tuesday, June 2nd at 13:00 UTC. Thank you, everyone, for joining, and I want to congratulate you all for joining because every single member of the subgroup joined the call today. I think that might be a record. Thanks, all, and we'll look forward to talking to you next week. This meeting will be adjourned. Thanks again.

NATHALIE PEREGRINE: Thank you all for joining today's call. This concludes it. Have a great rest of your day.

[END OF TRANSCRIPTION]