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**ICANN Transcription  
RPM Sub Group A  
Tuesday, 02 June 2020 at 13:00 UTC**

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**NATHALIE PEREGRINE:** Good morning, good afternoon, and good evening, everybody. Welcome to the RPM Subgroup A call on Tuesday, 2nd of June 2020. In the interest of time, there will be no roll call. We will be taking the attendance by the Zoom room only. If you are on the phone only and not in the Zoom room, can you please let yourselves be known now?

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

As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior. And with this, I'll turn it to David McAuley. Please begin.

**DAVID MCAULEY:** Thanks very much, Nathalie. Hello, everybody. Thank you very much for joining this group. It's the first meeting that we're having

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in which I'm chairing, and so I will do my best to keep us moving along and within task. Thank you all for that.

What I'd like to do is just, as we start, is remind us of our task and that is to consider the public comments. And the work of our subgroup is basically to advise the full working group whether a recommendation ought to be passed onto the full working group for inclusion in the consensus call process, either as it's originally stated or in a modified form. But a modified form would require some broad support.

So we're not determining ourselves whether the recommendation goes to the final report but we're going to report that out to the full working group.

What my plan is, as we move forward in our 90-minute meetings, is it's almost inevitable that we would have loose ends in a call that come from the previous call.

So what I would like to do is address the loose ends at the top of the agenda. And hopefully, my goal is that we will get started in the new items on the agenda no later than 15 minutes past the top of the hour. I'm going to try and [inaudible] to that.

So, I will also ... Some of you have been with me in other groups that I might have chaired. You'll hear me say something that I'm very highly appreciative of and that is let's use the list to our advantage—the email list. So I hope, from time to time, that whatever might be a loose end ... Or we can move our discussions along on the list. That's certainly possible.

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So, what I'd like to do now is turn to wrapping up items left from the previous meeting and I'd like to turn it over to staff—I believe it's going to be Ariel starting that process—so that we can get into TMCH recommendation #1. Thank you.

ARIEL LIANG: Thanks very much, David. This is Ariel from staff. I'm just going to share my screen, so bear with me for a second. Julie, can you confirm you can see my screen?

JULIE HEDLUND: Yes, we can.

ARIEL LIANG: Thank you. And I posted a link to the chat, which is the public comment review tool. The first tab, TMCH recommendation 1, the action item is for the subgroup to consider whether further clarification is needed to address item 3 in the original recommendation and language. I'm highlighting this on the screen here. Hopefully, you can see.

So, in anticipation of the subgroup's agreement to clarify this language is basically to state there's no change to the status quo here. Staff's suggestion is perhaps add after "changed" after "should be". So, the sentence will read as "whether where a trademark contains dictionary terms, the sunrise and trademark claims RPMs should be changed and limited in their scope, such as to be applicable only in those gTLDs that relate to the

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categories of goods and services for which the dictionary terms within a trademark are protected.”

The sentence originally stated—does anybody clarify what the status quo is? So we just want to clarify that what is written here is not the status quo, and then just add “changed” after “should be”. So, we’re wondering whether this is something acceptable to the subgroup, and if not, what would be alternative suggestions to help clarify the language? I’ll stop here.

DAVID MCAULEY:

Hi, everyone. While people consider what Ariel was just saying, let me respond to Paul’s chat message. Paul asks if ... You can see it in chat, his question about what my comment was. I may have misstated things, Paul.

I don’t mean to imply that we would hold back any of the recommendations from full working group consideration. That’s not something we can do. I think what our task is, is to consider the public comments and how they come to bear on the recommendations and whether the public comments, in our view as a subgroup, whether those public comments develop within our subgroup a recommendation that the standing recommendation, such as sunrise 2, sunrise 3, etc., be modified or simply be considered in its original form. And whether there’s something from the public comments that would indicate that that recommendation should not be in the consensus, in the final report. But the consensus call is up to the full working group, not us. Thank you.

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So, does anybody have a comment? Kathy, I see your hand is up.

KATHY KLEIMAN:

Hi, David. Thank you for chairing, David. I think we're just floating it around and I'd like to see it on our list, so everyone can comment. I think that clarification makes sense. And I think actually that a lot of what we might be doing today might be clarification. There seems to be some questions on this and some of the other recommendations that I was reviewing in preparation for today's meeting.

So, to the extent that we can help clarify or provide suggestions to the full working group to clarify, I think it's a good direction for us. Thanks, David.

DAVID MCAULEY:

Thank you, Kathy. Back to the point that Ariel was making, if there's no comments on it, then staff and I will come up with a proposed way to close that, just to confirm closure on that and bring it back to the list. And it should be something, a loose end that we could close in 30 seconds next week. Kathy, is that a new hand that you have?

KATHY KLEIMAN:

Sorry, David. Old hand. I'll take it down.

DAVID MCAULEY:

Okay, thanks. So, why don't we move to the next item of wrapping up from last week? Julie, I think that's you. Okay. Go ahead.

JULIE HEDLUND: Thank you, David. This is Julie Hedlund from staff. I'll ask Ariel to stop sharing and then I'll switch over to my screen. Thank you. One second while I share.

Just to go back to the agenda first, just to remind everybody what this next item is. On sunrise recommendation #1, there was a couple of action items. There was an action for staff to review the record to determine if the working group has previously discussed the Spanning the Dot proposals.

Then a second action item was then, based on whether or not there had been previous discussion on Spanning the Dot, determine whether it's necessary to prepare clarified questions for CORE.

So, I'm just going to go back and remind people what this pertains to, and I'm going to go to sunrise recommendation #1. I hope that that's what you can see on the screen here.

So, CORE association had a comment that, for community based TLDs and geographically oriented TLDs, the following [inaudible] should be allowed. SMD label 1 [equal 2], SLD plus TLD should be allowed, e.g. the SMD RealMadrid should be allowed for sunrise registration real.madrid or BBC Radio as sunrise registration for bbc.radio in the case that the relevant registry operators wish to allow such registrations.

So, the question was whether or not this was actually a new idea or whether or not this is something that the subteams—that would

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be the sunrise sub-team and the full working group had discussed previously.

We did find that ... If I go to the proposals that were submitted, that the subteams considered—in particular, the sunrise sub-team when we were reviewing individual proposals, there was a proposal #9 from Claudio DiGangi and that is on the Spanning the Dot issue. You can see it here on the screen. Some of the examples were Joe's Tattoo, so joes.tattoo.

So, as we found ... Actually, if we look at a summary of the work of the sub-team, the sub-team considered this proposal in some detail—in fact, over several meetings. We can see that there are several meetings here where this proposal was discussed. And in conclusion, on the 29th of May where the sub-team determined that there wasn't sufficient support to include the proposal in the initial report.

Also, the full working group considered the recommendations coming from the sub-team and also agreed after discussion about this proposal not to include it in the initial report.

So, the proposal and the Spanning the Dot issue were discussed by the sub-teams and also by the working group. So, from staff consideration, this doesn't appear to be ... The comment made by CORE does not appear to be a new idea or something that would change the recommendation—the sunrise recommendation #1. Phil, I see you have your hand up. Phil, if you're speaking, you may be on mute.

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PHIL CORWIN: I have to unmute myself on my end and on screen. Can you hear me now?

JULIE HEDLUND: Yes.

PHIL CORWIN: Okay. Let me start off, anything I say on these calls is of course personal view. I'm speaking on a personal capacity, not as a co-chair of the full working group.

It seems to me that this is one where we don't need to say anything, other than we're not prohibiting ... We're not being asked here by CORE to authorize a Spanning the Dot RPM for all TLDs. CORE is basically saying that, where a registry operator wants to allow an additional criteria for which a sunrise registration can be made, I think they're trying to ascertain that our lack of recommendation of expanding beyond exact match doesn't prevent that.

In my view, this is a private RPM. This is akin to something like DPML. It's not going to be used very much. There's going to be very few cases where the TLD, when you span the dot, fills out part of a complete trademark. But I don't know that anything we're doing prohibits—and I think maybe all our working group report needs to indicate is that, in recommending no change in the required RPMs, we're not prohibiting a particular registry operator from offering additional RPMs, which I believe has been our position throughout the working group exercise. When we looked



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at the DPML, we decided there was nothing in the gTLD program that prevented a registry from offering an additional RPM.

So, I think all we need to do here is maybe include some verbiage in the report that what we've done by leaving the required RPMs as is, an exact match does not prevent a particular registry operator from offering an additional RPM as a ground for a sunrise registration. Thank you.

JULIE HEDLUND: Thank you, Phil. I'm going to go ahead and turn things over to David if there are no other comments.

DAVID MCAULEY: Okay. Whoops, I see one more hand. Kathy, please go ahead.

KATHY KLEIMAN: Yeah. Similarly participating as an individual, and given that we have reviewed this and not accepted it, I'm wondering ... And there are very different views in the working group about private RPMs and we've kind of set them aside as out of scope. So, rather than expressly endorsing or supporting them, is there another way that we could phrase that this might fall under a different umbrella, like the ALP or the QLP or some of the other special allowances that we're working on to specifically allow community based TLDs and geographic TLDs to do something a little different? I think it might actually fall under existing roles and existing processes that we're trying to create. So that might be the

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comment that would kind of refer this and say it's possible, but through another mechanism. Thanks.

DAVID MCAULEY:

Thank you, Kathy. Seems like an idea worthy of consideration. I will recognize Susan in a minute, but I don't want to go down the rabbit trail of pursuing this. Susan's hand is down. What I might do with your suggestion, Kathy, is take a look at this with staff after the call and come to list to address the point that you just made. If that's okay, I'd like to move on to the new items. It's 18 minutes past the hour, which is fine. I set a 15-minute standard, not goal. I think we're doing fine. But I'd like to address that on list, and Julie and Ariel, I'll try and get with you and discuss this a little bit later this week and come to the list before the next meeting to address the suggestion that Kathy just made.

Now, having said that and seeing no other hands, I'd like to move on to sunrise recommendation #2. What my plan is going to be is to tee up discussion and I'm going to toggle between our meeting and some notes I made. So right now I'm on the notes and I'll [inaudible] chat in just a minute.

But what I intend to do is I'll actually read a recommendation if it's short, if it's brief. If it's not brief, I'm not going to read it. And then I'll give an indication of what was said in the comments. This brings up the point that we're all supposed to be doing our homework anyway, but this might help people that are on the phone only, if that's in fact the case. It's just to tee up the discussion. And it won't be exhaustive. It won't necessarily

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mention every comment, but it's just going to basically be a teeing up kind of thing.

So, sunrise recommendation 2, the working group recommends the registry agreement for the future, new gTLDs include [inaudible] stating that a registry operator shall not operate its TLD in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN or restricting brand owners reasonable use of the sunrise rights protection mechanism. Statistically, we have support as written just under 33%, we have support with some minor change just under 11%, and do not support essentially is 20%.

Amongst those supporting, we have ALAC, INTA, the Business Constituency, global brand owners and Consumer Protection Coalition, cum laude. And Mark has the association of European Trademark Owners, etc.

Amongst those supporting with minor change, [Ermay, Chanelle] and several others in that group. IPC, but actually theirs I thought looked like strong support.

Amongst non-support, Tucows, Electronic Frontier Foundation, Article 19, Domain Name Rights Coalition, Non-Commercial Stakeholder Group, a Yale law school group with Wiki Media, George Kirikos.

Amongst non-supporters, it struck me that the major issue was vagueness and that this already exists in contract obligation.

I hope that tees up the discussion and I would now invite individuals to comment. I'm sorry if my audio is fading in and out.

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Julie, could you let me know if it becomes so bad that I need to do something?

Mary, I see your hand, so I'll ask you to take the floor.

MARY WONG:

Thank you, David. Hi, everyone. It's Mary from staff. I just wanted to speak up briefly, because in going through the prep for this call, we realized that Susan had asked a question about the ICANN Org comment. Specifically, the question was about my response regarding that comment.

I just wanted to say on the record for everybody that if I was not clear with my comment last week, I apologize. The intention was to indeed say that the ICANN Org comment was to seek clarification or implementation guidance as to how this particular recommendation might work.

The point I was trying to make in that, in adding a provision to a future registry agreement, that provision obviously has to not contravene any of the other provisions including spec 7 and all the sections of spec 7. So, I just wanted to make that clarification, that we are seeking operational guidance on the ICANN Org side and it is with the view of making sure that all the [RO] provisions are consistent with one another and fully implement any adopted consensus recommendations out of a PDP. Thank you.

DAVID MCAULEY:

Thank you, Mary. Let me just do a reality check now. I've just been fiddling around with my headset. If someone feel that they're

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having a hard time hearing me, would you please note that again in chat? Otherwise, I don't see any ... Kathy, please go ahead.

KATHY KLEIMAN:

This one is an interesting one. Again, speaking as a member. I think we should spend some time looking at the CPH—the blue comments, the CPH comments—as well as civil society, academics, and Tucows. We're seeing kind of a stunning resonance, an echo of groups across multi-stakeholder model asking for more clarity in this question.

To that extent, I've gone ... I wanted to take a look at that but I also wanted to provide ... I've gone to the context and I'll post it. I went back to the context that we shared an hour ... Given this kind of ... Whether you say you support or you say you don't support, there's a whole bunch of groups saying you need to clarify.

What we wrote right underneath the suggested recommendation in our public comment outreach was context that we maybe should have included in the recommendation.

So, the context was the working group generally agreed that some registry sunrise or premium name pricing practices have limited the ability of some trademark owners to participate during sunrise. The working group is aware of cases where the registry operator practices may have unfairly limited the ability of some trademark owners to participate during sunrise when pricing set for the trademark owners was significantly higher than other sunrise pricing or general availability pricing. The working group noted the

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problem seemed sufficiently extensive, that it requires a recommendation to address it.

So, what some of the comments do is suggest that we put more of that context into our recommendation, so that it's kind of bounded to the specific acts that we're concerned about. And I think that might help across the board, but I particularly wanted to refer us to some of the blue comments and then the Turows comments and some of the civil society and academic comments.

I think, again, some people may have shaded it as disagreement. Some people may have shaded as agreement. But they're all asking for the same type of clarification.

Thanks, David. Back to you.

DAVID MCAULEY: Thank you, Kathy. Brian, please go ahead.

BRIAN BECKHAM: Yeah. Thanks, David. Also speaking not as a chair, just in a personal capacity. I think this is actually a really good example that we land on this one. I think, if I'm understanding Kathy, to build on what she said, to me this feels like a good test case to answer the question that Paul asked earlier, which is when you see ...

I'm scrolling through the red comments, do not support. Interestingly, there seems to be a lot of alignment, actually, in those different institutions who are signaling they don't support.

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But then when you actually look at what they're saying and then also some of the blue comments, it does seem that maybe do not support is maybe slightly overstating the case, whereas I think what Kathy was saying is that ... And I think I see the comment from Griffin—I actually think that this is reasonably well covered. But it seems to me that the recommendation itself may need a little fine tuning. So this is, in my view, really what these subgroups [inaudible] look at the public comments. We see a couple of groups here and there said some fine tuning would be in order.

So, I guess it's a question whether we take it upon ourselves to do that fine tuning and make a proposal up to the full working group or merely note that there seems to be a desire for some fine tuning. I think probably you can find efficiency in us doing that here, subject to the caveat that it's always subject to the full working group's approval. But I leave that for you, David, and for the rest of us to think about. Thanks.

DAVID MCAULEY: Thanks very much, Brian. Susan, your hand is next. Please, go ahead.

SUSAN PAYNE: Thank you. I'm not disagreeing with the notion of fine tuning.

DAVID MCAULEY: Susan, can I interrupt just for one second?

SUASN PAYNE: Sure.

DAVID MCAULEY: I guess it's hard for me to say this because I myself maybe have an audio issue, but if you could just get a little closer to the microphone, it probably would help.

SUSAN PAYNE: Hold on a moment. I will try.

DAVID MCAULEY: That's better.

SUSAN PAYNE: Is that better?

DAVID MCAULEY: Yes, it is.

SUSAN PAYNE: Okay, good. I was just saying I'm not disagreeing with the notion of fine tuning—and indeed it's something we touched on last week because we did briefly look at this recommendation last week as well.

I thought it would be just maybe helpful for us to also agree or discuss and reach an agreement on how the recommendations

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are handled when there's a final report. I was sort of slightly surprised by Kathy's comments about the fact that there's lots of information in the context and therefore maybe that needed to be captured in the recommendation.

I would have thought that surely the point of the context is that the people aren't meant to be reading the recommendations in isolation. The context is part of the whole.

So, my using would have been that, when we have a final report, there is all that context there and therefore people are reading recommendations with that context in mind and understanding that context.

From Kathy's comments, it seemed like she's viewing this a bit differently. And given that Kathy is one of the co-chairs, I would like to understand that and I think it would be beneficial for us as a group to understand that, because otherwise, our decisions on whether language of recommendations need fine tuning or not is very impacted by whether the context matters or not.

DAVID MCAULEY:

Thank you, Susan. So, I have a queue. I will go to Brian next. I believe Brian was the next hand up. Then I'd like to go to Kathy, Michael if that's okay with you, because Brian and Kathy already made comments. This might be in the nature of rebuttal. Then I'll come to you, Michael. So, Brian, please go ahead.

BRIAN BECKHAM:

I'm very sorry. Old hand, David.

DAVID MCAULEY: Oh, okay. I thought it was new. So, Kathy, why don't you go ahead?

KATHY KLEIMAN: Yeah. Thanks to Susan for the question. I'm going to echo what Brian said, what I understand he said, which is ... First, recommendations I think have to be clear on their face. But it's not just me saying that. We've got Tucos, a number of civil society and academic groups, as well as CPH and ICANN saying that this is really too broad and vague. Recommendations are often [inaudible] from their context.

And here, since there is a very particular context—and this may be the clarification position, since there is a very specific context that we talked about it in, it seems that when we release this to the general public, they didn't make that connection as well. They're saying it's too broad and too vague and we see that as a theme, that staff summarized as subgroup response, but I really think it's comment summary.

So, given this kind of—I don't know if it's called a ground swell of requests, if CPH says, if CPH supports recommendation principle, but the phrase ... However, the phrasing “effect of circumventing RPMs and restricting use of sunrise” is much too vague to be implemented.

So, there is this kind of call for clarification of the recommendation itself, and again noting that recommendations are often separated as they go forward from their context. I think there's a call for us to

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put some of that into this recommendation. That doesn't happen all the time, but it seems to be happening here. Thanks, David.

DAVID MCAULEY: Thank you, Kathy. Michael, you're next, please.

MICHAEL KARANICOLAS: Hi. I think I alluded to this last week as well. I just want to push back the children that this is a couple of people asking for a little bit of fine tuning. First of all, it's a large number of responses from different sectors of the community. But it's the people that are specifically going to be involved in these contracts on both sides that are saying, in its current form, it's not actionable. It's not implementable.

So, I do think that it's incumbent either on us as a sub-team or on the full working group to be looking at this, and if we're going to take it forward, we need to develop it into a framework which is actionable and which is clear. That, I think, goes beyond the level of just fine tuning and providing a few examples. I think it needs to be with this issue having been raised now, I think it needs to be clear and simple for both parties to understand. I think we should be going back to them with a modified framework in order to ensure that these concerns are fully addressed. Thanks.

DAVID MCAULEY: Thank you, Michael. Paul, I'll get to your question in chat in just a few minutes. Professor Tushnet, please go ahead. Rebecca, if you're speaking, we can't hear you.

REBECCA TUSHNET: Thank you. In terms of Susan's point, I understand exactly what she's saying, but I think in this case, it goes to actually what we're recommending. That is, they're not saying there's no context. They're saying that right now what we have is a pretty free-floating recommendation that arguably could be used by anyone, any trademark owner, aggrieved by the process as opposed to saying we should have a remedy for a particular use of the sunrise practice.

I think the issue is not that the context is not going to be presented along certain recommendations. The issue goes to the core of what the recommendation is and how specific it is. So, I support Kathy. Thank you.

DAVID MCAULEY: Thank you very much. I'm going to go first to Mary, then Phil, then Brian and then I think I'll draw a line under this. I'll make a few comments myself but I'd like to try and move on. Mary, please go ahead.

MARY WONG: Thanks, David. This is just, again, approaching it from the implementation side in terms of enforcement from ICANN Org compliance department. And we can't comment on other people's comments, obviously, but while ICANN Org understood the intent of the recommendation, implementation guidance that we were seeking really was to inform the work of the IRT.

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As I mentioned in the chat, we're certainly not asking for anything more detailed than some guidance. Certainly not asking for draft.

And just a reminder to the working group that once these recommendations go into implementation with ICANN Org and the Implementation Review Team, any policy language or new contractual text that emanates from the IRT normally will go through a public comment phase as well.

So, there is that check and balance at the end of the process as well if it would be helpful for you to know that, prior to something becoming a final policy. Thank you, David.

DAVID MCAULEY: Thank you, Mary. Phil, you're next. Please, go ahead. If you're speaking, Phil, we can't hear you.

PHIL CORWIN: Can you hear me now?

DAVID MCAULEY: Yes, we can hear you fine.

PHIL CORWIN: Yeah. I would ask of staff not continue to mute me. I'm muting myself at my end. It just means I have to unmute twice to speak.

I would say to my friends in the trademark community that there seems to be not unanimous, but broad, agreement in the

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comments that their support for the general principle that a registry operator shouldn't be allowed to circumvent mandatory RPMs.

That said, I think if you want to see this get consensus support in the full working group when that is considered, much less have a chance to get through council and ever get to the Board—and it has to surmount all those steps before there's any implementation—it seems clear to me you've got the counterparties to the contract, ICANN Org and the contract parties have, saying we need more clarification in the recommendation itself, and CPH is half of GNSO Council. You've got the NCSG saying, "We oppose it as presently written" unless there's more detail and it's made clear that we're only talking about a premium priced name, and that's a quarter of the council.

So, it seems to me that what we should be doing here is advising the full working group that, while there's pretty broad support for the principle that operators shouldn't circumvent mandatory RPMs, that it would be desirable to have some more clarification in the recommendation itself because, as I read things, I'm not sure that the recommendation in its current form can get consensus support in this working group, and even if it does, I think that without modification before being put in the final report, there's a substantial chance that it will not be approved by council and even get to the Board, much less to implementation. Thank you.

DAVID MCAULEY: Thank you, Phil. Brian, please go ahead.

**BRIAN BECKHAM:** Yeah. I wanted to agree with what John McElwaine put in the chat. And I guess to Phil's intervention, I guess maybe I'm sort of seeing something that's not there, but I find it somewhat odd that we had an agreement within the working group that this ... Remember, there was a certain threshold for a recommendation for an individual proposal. This made it through the working group to be a recommendation and yet we have comments from people who are members of this very working group suggesting that they don't support it. And then we have a question of does that mean that it can be adjusted or it needs to be thrown out?

If people's preference is to take it back to the full working group, I would have personally dealt with it here to give them a markup of a few small words, frankly, but if it's the preference of this subgroup to take it to the full working group, so be it.

But, I think it's noteworthy that the recommendations did achieve a certain level of agreement within the working group. So, to me, I guess I would say let's not throw the baby out with the bathwater. Let's make the little improvements that are needed, if they even are. Frankly, I don't see that. But I guess it's a question whether we do that here or in the full working group. Thanks.

**DAVID MCAULEY:** Thank you, Brian. I was going to close the conversation, but there's one more hand up. I'll let Paul speak, and Paul, please be brief. Then I'd like to make a [inaudible]. Paul and Kathy, then let's draw a line under it. Please be brief. Paul, go ahead, please. Phil,

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I might ask you to lower your hand unless it's a new hand. Thank you. Go ahead, Paul.

PAUL MCGRADY:

Thanks. I guess this goes back to my question in the text, David, which you indicated that you would answer at some point but you went to the queue, which is fine. I guess I keep asking the same question, which is: is this our role? Is it our role to mark up these recommendations as a small sub-team and then send them back to the working group to say, hey, we marked this up? We sure hope you like it. End of story.

Or is it our role to do what Phil said our role was, which was to go through these things, find situations where there is new arguments that have not been made before or new ideas that have not been considered before?

I think I heard overwhelming opposition to an idea from the public comment and if we find those things, then we send it back to the working group. I'm not sure that this particular item falls into any of those categories, but this notion that we have the ability to throw it out because one quarter of the council or somebody doesn't like it or that we have the remit to [inaudible] with it and send it back as if somehow that will stick, I'm not sure that's what was advertised last week.

So, I do think we all ... We need to figure out what we're doing here, because what we're doing here seems to shift sometimes over a week, sometimes even during a call. Maybe we can have some more guidance on what we're doing here. If what we're



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doing here is very narrow, great. If what we're doing here is much more than that, which I think is a new concept, then we need to put some guardrails around it.

Also, PS, whatever we do here, if we start tinkering with these instead of identifying issues to send back to the full working group, the full working group is going to tinker with them anyways. So, can we figure out what we're doing? Thanks.

DAVID MCAULEY: Thank you, Paul. Kathy, before I go to you, let me just respond to Paul because I said I would.

KATHY KLEIMAN: Sure.

DAVID MCAULEY: I was trying to wait for the queue to go through. Paul, it is my view ... This recommendation, by the way, by its very nature suggest that a provision be added to certain future contracts. It describes a provision but it doesn't state it, so it's not precise. So, the comment that it's not precise I think is self-evident from the recommendation itself.

I don't know that there is anything that prevents the subgroup from offering thoughts to the full working group when there seems to be some indication ... The do not support level was 20%. The comments seemed to beg for some clarity. I don't think there's

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anything to prevent us from offering thoughts on how this could be handled to the full working group.

I would agree, however, that it is the full working group's job to crack this nut. So, what I was going to suggest is that maybe a small number of us—and I would be happy to volunteer as a member and see if anyone else wants to help—would go off outside of a meeting and put our heads together and say, "Is there any way we can add some clarification that might be useful as an offer to make to the full working group?" If we can come up with one, great. If we can't, that's fine too. And we would bring that back to this subgroup and say, "What do you think of us offering this to the full working group?"

I don't know that that's out of bounds. If anyone does, please ... What I will do is suggest this on the list. Please make that thought known. Kathy, your hand is gone. I haven't been looking at the chat lately.

KATHY KLEIMAN: Only because I agree with you David. Thanks.

DAVID MCAULEY: Okay. Thank you. So, what I'd like to do in the absence of hands is move on to recommendation 3. But let me ask Paul first, where are you on this in light of what I just said?

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PAUL MCGRADY:

If I'm going to speak bluntly, I think that drafting and redrafting provisions is an expansion of what we were told these sub-groups were meant to be and I'm a little concerned that if we get in the business of drafting and redrafting, rather than saying, "Hey, look, the public comments said that we need to know what this proposed process will look like," the working group needs to come up with that and flag it as an issue that we're never going to get through these.

But, if the river is flowing [me] every way and people want to form a bunch of sub-teams and try to get all this done on time and put together a work product that goes back to the working group for them to look at, which they will certainly look at and dismantle and remanufacture, that's fine if that's our new remit. But we all need to just get on board with that I guess if we're going to expand the scope of what we were meant to do here. Thanks.

DAVID MCAULEY:

Thank you. I'm going to come to list, as I suggested, Paul, but I will note your concern in coming to the list and let's move forward. Let's go on to sunrise recommendation #3.

It says: in the absence of wide support for a change to the status quo, the working group does not recommend the creation of a challenge mechanism. The stats on this, support is written as roughly just under 33%. [inaudible] for significant change is just under 13% and do not support is 18.2%.

Absent any thought otherwise, it seems to me that we will simply pass this forward the way it is. Does anyone want to join the

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queue or make a comment in respect to sunrise recommendation #3? Kathy, your hand is up. Please, go ahead.

KATHY KLEIMAN:

Hereto there seems to be ... I don't know why we always hit some of the more difficult ones up front, but hereto we have a recommendation that's very broad and a context that's much more specific. So, the context is the working group had diverging opinions on whether registry operators should be required to create a mechanism that allows trademark owners to challenge a determination that a second-level name is a premium name or reserved name.

So, that's the challenge mechanism that we are not recommending that we discussed and debated. But I think what we're seeing is—sorry for the phone ringing in the background—a lot of groups that did not support the recommendation because, again, too broad, too vague and a call to ...

Brian, if I might, even the World Intellectual Property Organization says presumably this is intended to refer to a different type of challenge mechanism than the already existing SDRP.

So, there's confusion about challenge mechanisms and it seems that this could apply across the board or more broadly in sunrise, whereas our context was more limited. I think there's a wide callout there, not quite as wide as the prior one but significant. You can see a lot of red here and a lot of yellow. Significant call to make this just a little clearer. Back to you, David. Thank you.

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DAVID MCAULEY: I fumbled getting off mute. Thank you, Kathy. Susan, why don't you go ahead, please?

SUSAN PAYNE: Thanks. I'm not exactly disagreeing with Kathy. If you only read what the recommendation says, you can put your own spin on what the challenge mechanism is or your own—

DAVID MCAULEY: Susan, I'm sorry, we're still having problems hearing you.

SUSAN PAYNE: Hang on, then. How about now?

DAVID MCAULEY: The word "now" came through fine.

SUSAN PAYNE: Oh, good. Okay. Lots of technical challenges then. Sorry about this. I was just going to say I don't exactly disagree with Kathy, because I think if you just read the recommendation, it's a single sentence and you can put your own interpretation on what challenge mechanism you're talking about.

but I think what this really is an indication of is that a bunch of people never read the report and they chose to put in public comments without reading any of the context, because if you did read the context, it's not unclear.

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Now, this clearly is demonstrating that we can't rely on people to read reports and understand context, so perhaps we do need to give more information.

But I don't think if you read the report and the recommendation collectively, there's really that doubt that exists in people's minds. So, I think perhaps this is also something for staff to think about in terms of how they run these comment periods because this notion of a form that people can fill in may make things awfully easier, may help people put comments in. They make it easier for staff to collate the responses and so on. I totally get that. But it's not very satisfactory if it's been encouraging people to comment without basically doing any of the work.

Anyway, as I say, if there are people who aren't willing to read context and they need that bit of extra context to put in the recommendation, I don't have a problem with that. But I think that is what the issue is here. It's people who couldn't be bothered to do the homework.

DAVID MCAULEY: Thank you, Susan. Phil, please go ahead.

PHIL CORWIN: Thank you. Phil, for the record, responding in an individual capacity. With all respect, I'm not sure we can presume that all the folks who said they want more clarification in the recommendation didn't read the context. Parties who are familiar with the ICANN implementation process knows that, at that point, the staff has the lead role—not the community—when we get to the

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implementation stage. And without singling out any implementation process, there have been concerns from the past that the staff is taking implementation in a different direction than a working group intended with its recommendation.

So the desire for some more clarification, some more specificity in the recommendation itself, might simply reflect that concern about what happens in implementation of a very broad and somewhat vague recommendation than evidence of all parties not reading the report itself.

Having said that, I don't think it's ... These recommendations got in under a bar that was fairly high. It was broad support without a lot of opposition. But there's an even higher bar ahead to remain in the final report as consensus, and I don't see any harm when we've got useful contextual language to, again, as with the prior one, work toward .... Tell the full working group that it might be desirable, both for getting this through the working group and Council and having implementation that reflects our intent to flesh this out a bit for the final report. Thank you.

DAVID MCAULEY: Thanks, Phil. Brian, please go ahead.

BRIAN BECKHAM: I want to go out a little bit on a limb here and say the recommendation that we agreed on was basically that we couldn't agree, so that recommendation was the status quo remains. You look at the pie chart, you look at the comments, you can see that people have different views on this.

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So, for me, I feel like this one is actually pretty easy and the answer is that there's not agreement to either throw it out or make changes one way or the other. So we live with the current recommendation, which is that the status quo remains and we don't make a specific proposal for a change recommendation. Thanks.

DAVID MCAULEY:

Thank you, Brian. There's been a couple questions or comments in the chat about creating a subgroup. Kathy asks if Paul was—mentioned a concern about it.

I don't intend to ask for a subgroup on each and every recommendation where we run into this kind of discussion. I thought it might be appropriate in the previous sunrise recommendation 2, simply because that recommendation talked about adding a provision without specifying, rather than describing what that provision would be and to see if someone wanted to work with me perhaps off list to make a suggestion that this subgroup [inaudible]. That's all that was.

I'm not inclined to do that here. I'm sort of struck that ... I basically agree with what Brian was just saying. I think we need to move on on this one absent any other comments. So, let's move to sunrise recommendation #4. I'll read that.

In the absence of wide support for a change to the status quo, the working group does not recommend the publication of the reserved names list by registry operators. This recommendation was supported by 27.3%. Do not support was—I can't even read



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my notes—just under 11%. No response, no opinion was a very big number on this one, 60%. The non-support was from [Cum Laude], [inaudible] European Trademark Association, WIPO, etc. And the support with minor change, IPC.

So, let's cue this one up for discussion on this recommendation. The queue is open, if anybody would like to offer thoughts on this sunrise recommendation 4. This may be an easy one.

Okay, we can move on to sunrise recommendation ... Oops, sorry Susan, you have a hand up. Please, go ahead.

SUSAN PAYNE: Sorry. Thanks. Can you not hear me again?

DAVID MCAULEY: Yeah. It's the same issue.

SUSAN PAYNE: So, you can't hear me now?

DAVID MCAULEY: A little better.

SUSAN PAYNE: Okay, sorry. I didn't know what to do about this. Without logging out and logging back in, I can't make it better.

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I think our role is to look at whether, within the comments, there is anything that's a new suggestion. I would suggest that the IPC comment includes a new suggestion that we should at least consider, if that's possible.

DAVID MCAULEY: We could. That's one comment out of 55.

SUSAN PAYNE: Well, isn't that what the point of the comments is? Otherwise, why do any of us even bother putting them in?

DAVID MCAULEY: We can certainly consider it. Is there something that you would like to say about it?

SUSAN PAYNE: Well, there's a suggestion in there to propose. This is recommendation 4, yes, about public and reserve names?

DAVID MCAULEY: Yes.

SUSAN PAYNE: So, their suggestion is that there's a recognition that that's a difficult issue and a suggestion of a compromise so that, okay, you're not publishing reserve name lists, but at least there's a reflection when you do a lookup—a registry data directory

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services lookup—that the name has been reserved, so that when you’re trying to work out whether a second-level string is available, you can determine why it’s not available rather than in some cases being able to tell and in some cases not. That seems like reasonable suggestion, but I think it’s one we should consider.

DAVID MCAULEY:

Okay. Thank you. Just in order to make sure ... I don’t remember if anybody is just on the phone, but just in order to make sure that compromise language offered by IPC is specifically stated, let me just briefly read it.

Specifically, we propose ... Sorry, my screen just changed. Specifically, we proposed that second-level strings reserved by the registry operator prior to and during the sunrise period shall be reflected in some form as reserved in the registry data directory services system. This solution will enable trademark owners who are prevented from defensively registering domain names during sunrise because of the new gTLD registry has reserved the domain name to perform a lookup query, to identify the domain name as reserved by the registry without interfering with the ability of the registry operator to maintain a confidential list of all reserved strings.

So, that is what IPC offers. Susan has asked us to give this consideration. I will ask Brian to comment. He’s in the queue.

BRIAN BECKHAM:

Hi, David. I think what we were trying to say in our comments I think is similar to what the IPC was saying which was, basically, if

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you recall, we had just earlier discussed the idea of registries not having policies that circumvented RPMs.

So, our suggestion—and I think this is what the IPC is saying—is that this could go towards helping to flesh that out. In other words, what are the things you ought to look to, to see whether that circumvention may be in play? This could be one thing to help answer that question.

So, I don't know. It seems reasonably clear that there's not agreement to actually publish the list, but perhaps it could be that at least this is flagged as one way. I don't know if, for example, there could be a way for ICANN and the registries to communicate, given that their concerns raised about making these fully public

But again, it's just to show the idea that this could help answer the question of that circumvention recommendation that we looked at earlier. Thanks.

DAVID MCAULEY:

I'm sorry. Again, [inaudible]. Thanks, Brian. So, let me ask, Susan has asked that we consider it, other than there's been a few comments in chat, is there any support for flagging this comment to the full working group and say that the full working group should give this consideration?

It seems to me that what we ought to do here is simply ... Kathy, go ahead, please.

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KATHY KLEIMAN: Just a clarifying question. Can someone talk about how the reserve names are treated right now? So, specifically—sorry, it's so small. The second level strings reserved by the registry operator prior to and during the sunrise period shall be reflected in some form as reserved in the Registry Data Directory Services system. What specifically would be the change that would reflect this? How would it be done? Sorry if that's a really basic question.

DAVID MCAULEY: Thanks, Kathy. Griffin's hand is next. Go ahead, please.

GRIFFIN BARNETT: Yeah. Thanks. To respond I guess a bit to Kathy's question, our experience has been that sometimes certain registries basically provide that information in a WHOIS lookup. So, if you look for a registry reserve name in a particular registry that does this, you'll receive a response to the WHOIS lookup that says "registry reserved" or something to that effect. But that's not a universal practice and many other registry operators don't do that. So, if you performed a lookup for a domain name in a registry that didn't do that, you might not get any information back to a WHOIS query for that domain.

So, it's more about trying to have some ... As Susan mentioned and as discussed in these comments, I think it's about being able to discern whether a domain has been reserved by the registry without going so far as to require a full-on publication of that list by the registry because it would allow a trademark owner who is considering seeking a sunrise registration and maybe who has

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even attempted to make a sunrise registration and was denied, to be able to discern that the reason for that is it's been reserved by the registry.

DAVID MCAULEY: Thank you, Griffin. I think we can wind this up. I think I've seen enough support in the chat that we would flag the IPC's compromise language suggestion to the full working group when we send this one forward. I don't see any other hands, so let's move on then to sunrise. Kathy, go ahead, please

KATHY KLEIMAN: Yeah. David, when we send it up, can we send it with some of the background that Griffin provided? Because I think rather than waiting for the working group to ask for it.

Also, can I ask Griffin a quick follow-up question, which is what happen for those registries that don't flag the domain name as reserved? What do they put into the WHOIS? Thanks.

DAVID MCAULEY: So, Griffin, if you're going to answer that, please be brief.

GRIFFIN BARNETT: Yeah. So, my understanding is that there's basically nothing. It would just be a blank record, essentially, or essentially no record at all. Again, it's not required that they do that. It's just that some choose do that and some don't.

DAVID MCAULEY: Okay. Thank you very much. I hope I'm not muted. So, let's move on to recommendation 5, which—bear with me—recommendation 5, the working group recommends that the current requirement for the sunrise period be maintained, including a 30-day minimum period for a start date sunrise and a 60-day minimum period for an end date sunrise.

The levels of support here support as written is I believe 54.5%. Do not support, 9%. This one seems to be fairly clear, but I will invite comment if anyone would like to take up sunrise recommendation #5 and speak to it. And the support level here is pretty impressive. I'm going to go on mute for just a second. I don't think I made it.

Susan, please go ahead.

SUSAN PAYNE: Thanks, David.

DAVID MCAULEY: That's good.

SUSAN PAYNE: Yeah. I'm shouting at you. In a new window, I'm just scrolling down to just see if it looks like anything in the comments is new. There's a comment from the International Trademark Association. I don't really know if it's new or not but I thought it was worth us just considering whether it is or not. They're recommending that

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there should be just the end date, 60-day minimum sunrise and eliminating the 30-day start date sunrise entirely.

I don't think, when we were in the sunrise sub-team, that we ever really made the distinction between end date and start date in a really formal manner when we had our previous discussions on this, so in that sense, I'm not sure that we ever really did have that debate, but I think a rule, we came to a conclusion we should stick with the status quo.

I'm not particularly supporting or objecting to the suggestion, I just thought if there's anything in here that would be a new proposal, that's the only one I can see that might warrant some consideration.

DAVID MCAULEY:

Thanks, Susan. So, let me ask this group. Take a specific look right now at [inaudible] suggestion and give us your thought. If you feel that it moves the needle off of us simply sending this [inaudible] supported. It's our job basically to consider that. I don't see anybody wanting to speak to it, but I would suggest that we can draw a line under this particular recommendation. But it's a fair point you raise, Susan, and thank you for bringing it to our attention.

It looks like we're going to wind up a little bit early, so before I hand it over to staff for any other business or previewing the next meeting, is there any comment anyone wants to make? Phil, go ahead please.



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PHIL CORWIN: Yeah. Thank you. On this on, the [INTA] comment, I can't recall whether we had any discussion on saying there should be only one type of sunrise and eliminate the option that registries now have running two different types of sunrise, either 60 or 30 day.

So, I don't object to flagging this for further consideration by the full working group. I would just note that the [INTA] suggestion, if adopted, would make a very substantial change in the recommendation where it would change it to we would be recommending that there be required sunrise but only a 60-day ... That the 60-day minimum would be the only allowable option and a 30-day start date to sunrise could no longer be offered. So, it would be a very substantial change from what we have now. So, I say flag it for the full working group to note and consider and do with as they will. But realize that it would make a very substantial modification to the recommendation as it currently stands. Thank you.

DAVID MCAULEY: Thanks, Phil. That was my thought, too. It's a pretty big change. But in any event, let's go to Kathy. Her hand is up in the queue.

KATHY KLEIMAN: Sorry, coming off mute. I would not flag this. The reason why is—and I know it was a long time ago, but I do think we talked about it in the subgroup and talked about the importance of having this choice, these options, that go back to the beginning of time in the sunrise period.

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So, I think our recommendation in the subgroup as we looked at it—and we can go back and we can bring up the history—was that we did look at these options and different kinds of choices that registries can make and actively decided to keep both. So I think that this is a major change and I'm not sure I'm seeing a lot ... I don't think it's a new idea. Thanks.

DAVID MCAULEY:

Thank you, Kathy. Phil, I'm taking it that that's an old hand. It's piqued my interest. I think staff and I will go back and I'll mention to staff let's just take a look and see about the discussion in sunrise sub-team and whether this was ... I'm just interested.

On the question of flagging or not flagging, let's leave that as an open item for next week, one of the easy open items after—we'll take a look at it after we figure out how it was discussed, etc. So, thanks, Phil. Thanks, Kathy. Thanks, Susan on that.

So, I think I'm ready to hand it back to Julie for, if I believe the agenda is correct, for any other business. And I want to thank everybody for your participation in these discussions this morning. So, Julie, over to you.

JULIE HEDLUND:

Thank you very much. Thank you very much, David, for chairing today. I'll just briefly bring up the work plan, so that you can all see what we have scheduled for next week. Yes, here we are.

So, what we have here is next week would then start with the wrap-up of any open action items as we did for this week and

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then, for the 9th of June, we will be looking at sunrise recommendations 6, 7, and 8 and staff will send around that agenda with the links to those pages. The call will be at the same time as it is this week.

So, thank you, again, everyone for joining. We're glad that we're able to end a little early. Thanks again, David, for chairing. We will go ahead and adjourn this meeting.

DAVID MCAULEY: Thank you.

UNIDENTIFIED FEMALE: Thank you for joining. This concludes today's call. Have a great rest of your day. Goodbye.

**[END OF TRANSCRIPTION]**