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## ICANN Transcription

### IDNs EPDP F2F Workshop AM Session

**Wednesday, 06 December 2023 at 01:00 UTC**

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DAN GLUCK:

Good morning, good afternoon, good evening. Welcome to the IDNs EPDP call taking place on Wednesday, the 6th of December, 2023. No apologies for this meeting. All members and participants will be promoted to panelists. Observers will remain as an attendee and will have access to view chat only. Statement of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Cool. If you need any assistance updating your statements of interest, please email the GNSO Secretariat. All documentation and information can be found on the IDNs EPDP wiki space. Recordings will be posted shortly after the end of the call. Please remember to state your name before speaking for the transcript. During this session, it's requested that questions are asked verbally. To signal that you have a question or would like to speak, if you're here in the room or online, please use the hand raise function in the Zoom toolbar. If you're in the room, please join this meeting without audio. Or if

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you do join with audio, please mute your microphone and speakers as the audio is taken care of through our meeting AV support staff in the room. When called upon, you will be given permission to unmute your microphone. Kindly unmute your microphone at this time and please state your name for the transcript. As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior. Thank you. And over to our chair, Donna Austin. Please begin.

DONNA AUSTIN:

Thanks, Dan, and welcome everybody to our face-to-face meeting. And I guess thanks also go to our sponsors, ICANN, for managing to get us here in the room and also the GNSO Council for agreeing to the face-to-face meeting and supporting us in that regard as well. So the aim of this the next probably two and a half days, maybe we'll get through it quicker, is to complete our deliberations on the remaining charter questions in phase two. So that's a goal for this meeting. I think it's achievable. I don't see any reason why we can't do that. So if we do manage to do that, then we're in really, really good shape on phase two. So that's fantastic. What else was I supposed to do, Dan? Anything? Oh, right. That's right.

So what I'd like to do, so it's really great to have everybody around the table. We also have Farell and Maxim joining us at some horrible hour from Europe. But what I'd like to do is, if everyone could, we'll just go around the room, introduce yourself and let us know what airport you're left from to get here. So Nitin, if I can start with you. Hello, everyone.

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NITIN WALIA: I'm Nitin Walia. I represent ISPCP. Thank you.

MANJU CHEN: Hello, everyone. My name is Manju. I am the new GNSO Council liaison to this working group.

EMMANUEL AGBENONWOSSI: Hello. Good morning, everyone. My name is Emmanuel. I will present the Non-Commercial Stakeholder Group in ISPCP.

AMINA RAMALLAN: Hello, everyone. Good morning. My name is Amina Ramallan, and I'm representing GAC Nigeria. Thank you.

NIGEL HICKSON: Okay. Yes. Good morning. Nigel Hickson from the UK, UK GAC. Yeah. And I'm on with the government. Yes. I suppose that's all for this. And I flew from London, I think. Yes, it was London. Yes. Yes.

PITINAN KOOARMORNPATANA: Hi. Good morning. I am Pitinan Kooarmornpatana, ICANN staff.

SARMAD HUSSAIN: Good morning, everyone. Sarmad Hussain, ICANN staff.

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SATISH BABU: Hi. Good morning. I'm Satish Babu, ALAC member to the PDP. I come from South of India.

HADIA ELMINIAWI: Hello. Hadia Elminiawi, one of ALAC representatives to the EPDP, and I flew from Cairo, Egypt.

JENNIFER CHUNG: Hi, everyone. My name is Jennifer Chung. I'm one of the RySG reps on this working group, and I flew in from New York.

EDMON CHUNG: Edmon Chung from DotAsia, also serving as the board liaison to this working group. So I guess I'll state whether I talk personally or from that position. And I flew in from Hong Kong.

MICHAEL BAULAND: Hi. Michael Bauland. I represent the Registrar Stakeholder Group, and I flew in from Düsseldorf in Germany. Thanks.

MICHAEL KARAKASH: Hi, everyone. My name is Michael Karakash, and ICANN staff. Flew in from LA. Thanks.

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dAN GLUCK: Hey. Dan Gluck. ICANN staff as well. Flew in from Washington, D.C.

STEVE CHAN: Steve Chan. Also ICANN staff. Based in LA, but also by way of D.C.

ARIEL LIANG: Ariel Liang. ICANN staff. Based in D.C. and flew in from D.C.

DONNA AUSTIN: Thanks, everyone. Donna Austin, chair of this working group, and I flew from Brisbane, Australia, which was a nice short trip for a change. I just wanted to say thanks to Jennifer. Manju and also Steve, because I know that you've flown in on the back of the council strategic planning session. So not exactly a quiet end of the year. So thanks for making the time to be here. And I'll see you next time. So I'm going to hand back to Dan, and we'll run through some logistics for the next couple of days. And also it's an opportunity, if you have any questions about logistics that you're unsure about, let's try to get that out of the way now. But if something comes up during the next couple of days, just ask Dan, Steve, Ariel, and myself, and we'll help you out where we can. So, Dan, I'll hand it back to you.

dAN GLUCK: Thanks, Donna. Dan Gluck here. And I'm going to start with the important stuff, and that's what we're going to be eating and

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drinking over the next couple of days. So in between our sessions, which all last 90 minutes, there will be some snacks and drinks outside the room, I believe, on that side, far side of the room by the glass doors, coffee, teas, and other snacks. And then in the middle of the day, we'll grab lunch where we all just grab breakfast downstairs in the mosaic room. They'll have a table reserved for us. But if you've had it this morning, you know that it's pretty good. So we'll talk about our dinner after that. So today there is a team dinner, and we're all going to meet downstairs after a, I think, depending on what time we end, we'll have a quick break and then meet downstairs and we'll coordinate some—6:25 or so. Yeah, we'll coordinate some taxis over the restaurant. It shouldn't be too long of a drive, but it does seem like they have a doozy of a rush hour traffic here. So we'll figure it out and that'll be all good. I think that's all we need to take care of. There are tech support issues. As you can see, we're all currently troubleshooting the power bricks, but if there's anything you need, bring it to our attention and we'll bring it to our wonderful AV staff's attention. We have [Ned in the left corner, and I forgot your name, because I'm a really bad person. Yogi. So we got Ned and Yogi] in the corner and then they're fantastic. So I think we're good to go on logistics and I'm going to pass it back over to Donna.

DONNA AUSTIN:

Thanks, Dan. So Maxim and Farell, I'm really sorry I forgot you on the tour of the table. So if you're in a position to speak, would you mind introducing yourselves? Maxim, go ahead.

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MAXIM ALZOBA: Maxim Alzoba, I'm one of the registries representatives, and I'm speaking from a place which is a bit colder, way colder. Thanks. It's minus 17 Celsius. Not in the room, outside, but still.

DONNA AUSTIN: Okay. Thanks, Maxim. Farell, are you able to speak?

FARELL FOLLY: Hi, everyone. I'm Farell Folly, new vice chair of this EPDP. I'm speaking from [Munich.] Not that cold, but still minus 10.

DONNA AUSTIN: Okay. And I think we have Lisa also attending remotely. Lisa, are you in a position to introduce yourself? Seems not. Dan, you got your hand up?

dAN GLUCK: I just wanted to pop in to let everyone know that we do have the options to turn our video on if we want to do that. No pressure, anything like that. But if you're speaking, it might be nice to do for the folks back at home.

DONNA AUSTIN: Okay. That's an option if you want to do that. Okay. So I think that's all we have by way of introduction. So one thing I would like to note is that we have these sessions today, 90-minute sessions, and that's a long time to be sitting down. So what I hope to do at kind of the 45-minute mark of every session is just to get up and

stretch your legs. But what I'd also like to do is, I don't know where we'll start or how we'll do this, but if each of you could just I don't know, tell us a little bit about yourself, what's the last book you read, or the strategic planning session, apparently, talk about the last photo you have taken on your phone. But just to break up the day a little bit and learn a little bit more about one another, we'll probably do that as well. So we might spring something on you during the sessions. So with that, we'll get started, and I'll hand it over to Ariel. Thanks, Ariel.

ARIEL LIANG:

Hello, everybody. So as you have seen on the agenda, today our focus is with regard to the rights protection mechanism-related charter questions. There are four of them, F1, D6A, D7A, and F2. So we will go through some background stuff with each of these charter questions so that we're on the kind of same level field and we know what exactly we're talking about before we develop recommendations. So that's the purpose of my portion of some of the presentation, but feel free to interrupt me if you have questions or additional comments. I'm also not a super expert in this subject, although I did support the rights protection mechanism PDP, so I do have some background and knowledge about that, but I trust there are many people in the room that have our experiences, subject matter.

So we will start with F1. So this charter question, actually in the charter itself, it does have a long paragraph in the beginning to provide some context, but we will actually talk about the context in the following slides, and I would just pose the actual question on the slide. It says, are there any adjustments to the TMCH and its

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sunrise and trademark claims services needed? So it's kind of written in a very general way, just asking whether TMCH has to be changed and whether the services it provides need to be changed because we have variants for variants consideration.

So first, we'll quickly give folks a rundown what TMCH is, and it's actually an acronym, and the full name is the Trademark Clearinghouse. And what Trademark Clearinghouse is, it's a central repository for info to be authenticated, stored, disseminated, pertaining to the rights of mark holders. So it's basically a mechanism to provide additional kind of protection for trademark owners with respect to DNS. And what it does is it accepts and verifies actually marks, and then there are several types of marks it stores. So the first one is nationally, we're regionally registered trademarks. Second type is court validated marks, and third type is marks protected by statute or treaty, such as geographical indications or designations of origin. So we don't have to go into detail of these types of marks, but you just need to know a Trademark Clearinghouse is a repository for these type of marks.

And they also have two key components. The first one is called the Trademark Validator. It's an organization that's authorized by ICANN to authenticate and validate registrations in the trademark database, ensuring that the marks qualify for those services that Trademark Clearinghouse provides. So first is verifying the marks that's registered in the TMCH. Second is the Trademark Database. The acronym is TMDB. So it's basically a database that concentrates the information about the verified marks that's recorded in the Trademark Clearinghouse.

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And the purpose for Trademark Clearinghouse, as I mentioned earlier, is to provide protection for verify legal rights of mark holders. And there are, I guess, some major benefit of recording their marks with the TMCH, because it will provide some mandatory services that's actually mandated by ICANN to the mark holders. First one is sunrise service. It's basically provide mark holder access to priority registration before the general registration period if they wish to register there. If they wish to launch, for example, a domain name that contains their mark at the second level so they can use sunrise period to do that ahead of anybody else. So that's the first major service. And the second one is the Trademark Claim Service. So it's a notification from the TMCH when a domain matches a trademark that has been registered with TMCH. So it's basically if some registrant attempts to register a domain name that contains the trademark at the second level, then a notification will be sent to the mark holder to kind of alert them. Oh, someone's attempting to register something that is the exact match to your mark. So it could give them a heads up on that. So that's two major services that Trademark Clearinghouse provides. And I'll just quickly pause here and see whether there's any immediate questions or comments about this basics.

DONNA AUSTIN:

And I guess just to note, so sunrise and trademark claims are processes or things that registries do when they kick off their TLD. So that's how it's connected to the registry. So when a new registry kicks off, they have a sunrise period. And then the

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trademark claims process is also a requirement for a registry when they start off their business. So that's the connection.

MAXIM ALZOBA: Actually claims can run longer or maybe forever. It's up to the registry. So usually, it's not longer than like 90 days after the general availability, but it's up to a registry. Some run claims forever because it gives better protection for the trademark owners. Thanks.

DONNA AUSTIN: Thanks, Maxim. And Ariel, actually, we'll get to that on some slides that follow. Michael?

MICHAEL BAULAND: Additional information, those things are not just if a registry starts anew, but also if they, for example, introduce a new IDN table or some new scripts, then they also have to do the sunrise and claims period for those new characters available. So this might be also interesting in our context. Thanks.

DONNA AUSTIN: Thanks, Michael. That's helpful.

ARIEL LIANG: This is Ariel. Thanks, Maxim and Michael, for the additional information. And actually, this slide is to kind of expand on the two services that I mentioned earlier. So basically, sunrise and

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trademark claims, these are the two services mandated by ICANN because they're the mechanism that were developed for the 2012 round, and they're still going to be the mandatory services going forward. So that's why we want to kind of pay attention to these and also their title question. So just to expand on sunrise, it's allowed trademark holders an advance opportunity to register domain names corresponding to their marks that registered in the TMCH during the sunrise period for a TLD before names are generally available to the public. And then in order to be eligible to that service, the mark holder has to provide several documentations to the TMCH. One is the trademark record. So definitely that's a key. And basically, it has to justify, it cannot provide the justification where the trademark is registered, other information about the trademark, and also the class of goods or services associated with that trademark. So trademark record is the foremost evidence or record they need to provide to the TMCH.

And the second one is the proof of use. So basically, the mark holder has to declare that the trademark is actually being used, and then provide samples showing how it is being used. So it could be a branded product or advertisement. So the bar is a bit high for be eligible for sunrise because they have to provide these type of evidence.

And then for trademark claims, it's a little lower kind of standard because the mark holder doesn't need to provide the proof of use, like sunrise, but the required material is the trademark record. And as Maxim mentioned, the claims period is at a minimum 90 days. It could go on much longer or forever. And so, and another

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important thing I didn't mention earlier is in terms of the notification, the trademark claims notice that goes actually both ways. Once the potential registrant attempts to register a domain that corresponds to the trademark, then the registrant itself will be provided a notification as well. In addition to the notice that goes to the mark holder. So these are the expanded explanation of these two services. And I will pause for a moment, see whether there's any questions or comments, or if anything else that was incorrect.

Not seeing additional things. So I will keep going. And another thing I want to kind of quickly note at this stage is we will go through the background, but one thing that's important for folks to understand is in ICANN world, we had a PDP that's dedicated to rights protection mechanism, and they actually reviewed TMCH and sunrise and trademark claims and other RPMs that were launched as a result of the 2012 round. And we will look at their recommendations with regard to these topics and see what they recommend. But I think folks need to understand the context that they have already been reviewed by experts in RPMs. So with that context will be helpful for our deliberation.

Okay. The next slide, I just want to kind of expand a bit about the mechanisms, how sunrise and claims are kind of being used and how they work. So there are a couple of things that everybody should be aware of. So basically, once a trademark record is registered in a TMCH, the mark holder can provide domain name labels that correspond to the trademark. And with that label, it can use the sunrise and claim services. And another thing that's interesting in my actually research and study is that up to 10

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domain name labels can be generated corresponding to one trademark record. And that can be included in the initial cost of verification by TMCH. So it's not exactly one label correspond to one trademark. It can be up to 10 domain name labels corresponds to one trademark. And then those labels are compared against potential registrations, and they will have the capability of triggering the trademark claims notification. So these labels are very, very important. And then you may kind of wonder how come one trademark record can correspond to up to 10 labels. It is because there are some specific matching rules that TMCH use to generate these labels, but we will expand on that in the next slide. But I just want to quickly kind of mention there are two lists that includes these labels to be eligible for the sunrise and claim service. So the first list is called domain name label list, the DNL list. So basically, all the labels that are in that list, they can be used for trademark claim service. So any exact match to a label in that list will trigger the trademark claims notification. And then another list is called the sunrise label list, the SURL list. So it basically, if your label is in that list, then it's eligible for the sunrise period. And also, there's something that you may want to know is that the trademark owners will be provided with the signed mark data file. It's called the SMD file. So it has to use that file to participate in the sunrise period. And that has to correspond to the label that's in that sunrise label list too. Any questions, comments? We're good. Satish, please.

SATISH BABU:

Thanks, Satish, for the record. I was wondering about the first point that up to 10 labels are created. On what basis is this done?

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Is it some kind of permutation combination? Because I'm trying to connect it to variants. So I just wanted to understand how you derive this 10. Thank you.

ARIEL LIANG:

Yeah, thanks, Satish. So it's exactly the next slide. It's about the matching rule. So I will provide some explanation. And also, if Maxim and others who have participated in the RPM PDP have additional input or examples that you can share with the group, I will definitely welcome that help too. But with that question, I will go to the next slide. So this is some matching rules for the TMCH. And that's actually very important for us to understand the basics in order to kind of develop any potential recommendation on this topic. So in general, it's exact match. That's the standards that's used for derive the label corresponds to a trademark. So what that means is that when all and only the complete and identical texture elements exist in both the trademark and the label, then it means it's exact match. So if you look at an example on the slide here, ICANN, if ICANN is a trademark, then the ICANN.example, so ICANN that's at the second level label, that's an exact match to the trademark ICANN. So that's what it usually means at the general kind of standard.

But at the same time, there are something else that also applies to the matching rules. It's called transformations. So that means when certain elements that's contained in a trademark that cannot be represented in a DNS, they have to be transformed and accommodated for as a domain name. So there are some specific points I want to kind of go over here.

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The first type of transformation is that space contained within a trademark that can be transformed into either a hyphen or be omitted. So if we say ICANN TMCH, there's two words, a kind of phrase, that's the actual trademark itself, then a transformation rule will apply to the second level by replacing the space with a hyphen. So ICANN hyphen TMCH would qualify as a transformed, using transformation rules still can be a match in the TMCH. So that's how it works. And then the second transformation applies to only two special characters. It's the at character and the end. I think there's a word for the end. I don't remember how to call that, but you know what I mean. It's on the screen. So that can be replaced by the canonical translation of the word at and end. So for example, head and shoulders, that's a brand for shampoo and hair products. So that's a trademark. And then if you want to use the transformation rule to make that into a label that's eligible for TMCH services, then you will transform that into head and shoulders. So you spell out the end and put that in the label.

And also another thing I want to note is that this transformation rule for the two special characters are not only limited to English, it's actually in any official language of the jurisdiction from which the trademark right is protected and verified. So it already considered other languages and scripts that can be impacted by this rule as well. So it's not limited to English. It's definitely applied to other languages.

And the third transformation rule is with regard to punctuations or special characters. So there are two ways to deal with those because they cannot be part of a domain name. So one way is to omit it. And then another way is to replace it by space or hyphens

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or underscores. So for example, the brand Domino's, that's a pizza brand. It's a trademark. And then if you want to use this rule, then in the second level label, you just omit that punctuation before the S and after the O and then just say Domino's dot example. And also it can just be Domino's hyphen S. I don't know whether that would look good, but this seems more straightforward for me to understand. So these are some special rules that also Trademark Clearinghouse accommodate. And maybe because of this reason, one trademark record can correspond to up to 10 labels using these rules too, just to provide mark owners the flexibility, how they wish to record their labels in a TMCH and make TMCH be able to use these labels for the trademark claims and sunrise services.

Some final point I want to kind of mention here is the rules are still pretty strict. So means if you see like there's a trademark and then you just want to put an S after that, like make it a plural, that doesn't mean that's an exact match. And this is not a transformation rule that can accommodate that too. So no plurals. It has still to be exact match at a general sense. And there are also no marks contained. So I can kind of explain on that is, for example, if only ICANN is the trademark, but we know like ICANN Learn is a service that ICANN provides, you can't record the label ICANN Learn in the TMCH because ICANN is only part of ICANN Learn in that label and only ICANN itself is trademark, not ICANN Learn. It's a trademark. So no marks contained. That's not a matching rule that TMCH accepts. So those are the types that are not qualified for inclusion in a TMCH and qualify for these services. So I will stop here and see whether there's any questions, comments. Yes, Jennifer.

JENNIFER CHUNG: Thanks, Ariel. Just a quick note for your third hollow bullet on the punctuation special characters. I don't think space is a possibility. Is that correct?

ARIEL LIANG: Yeah, I will double check. Maybe there's a mistake, but good catch. I will double check. Yeah, thank you.

DONNA AUSTIN: So Nigel also has a question in chat. So could be more than 10, but that limit is chosen by the TMCH, I assume.

ARIEL LIANG: Yeah, this is Ariel. So in the previous slide, I think it says 10 is in the initial cost of inclusion. So my presumption, like my understanding is if they wish to include more labels, they could pay additional fees to include that, but still have to qualify based on the matching rules of TMCH. Satish, please go ahead.

SATISH BABU: Thanks. I had a question on who does the generation of these 10 or more than 10, who does it?

ARIEL LIANG: I believe it's the trademark owner. They have to provide the labels, but it has to qualify based on the matching rules and TMCH kind

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of determines. So they can provide the labels, but TMCH still have to say, yeah, this is eligible. This is not. And so, yeah.

HADIA ELMINIAWI: So can they apply for more than 10 for more fees? Like every 10 with a fixed fee. Thanks.

ARIEL LIANG: Yeah, up to 10 for inclusion in the initial cost. So I guess the presumption is you can pay more for more if it applies. Yeah.

DONNA AUSTIN: It just has to meet the requirements.

ARIEL LIANG: Yes. Correct. So this is research that actually ICANN Org did back in 2021. I can't remember, maybe 2022. I can't remember. It was a couple of years ago. They actually helped our group to look into the languages and scripts in the TMCH, just understand whether IDNs are also being considered. And then they also looked into the variant handling, if any, in the TMCH. So the information on this slide is basically from that research paper that our colleague did. And so it's slightly dated, but at the same time, it's fundamentally, it's very consistent information. If you look at TMCH now, you probably won't see a dramatic, dramatic change, but I think it's sufficient for our consideration for the child question.

So the TMCH, they have already considered languages and scripts and marks that are not in English. So they use the

standard that they will make sure to use globally accessible and scalable system so that multiple marks from multiple sources in multiple languages can be accommodated and then sufficiently cataloged. So what that means is that they accept trademarks from all over the world in both Latin and non-Latin scripts. And also in some cases, certain trademarks are having mixed scripts. For example, Chinese combined with Katakana or Hiragana in Japanese, sometimes it's like that, or Japanese, like Katakana, Hiragana was English. So sometimes trademark, they can contain more than one script. So they also take into account of that. And then they will verify trademark data from multiple global regions. So it's already set up in a way, it's global to accommodate different languages and scripts.

And another key point that folks need to know that it's not a straightforward analysis just by looking at a trademark by itself, because sometimes the trademark is a made-up word. It's not really a word in English or French or whatever. It can just be anything. So you really can just look at it at the surface level and say, oh, this trademark in the TMCH is in English. It's not always straightforward like that. So that when the ICANN Org team, they did the research, they actually communicated and consulted with the TMCH provider to get the information from them with regard to languages and scripts that are used.

Another important thing is that when a mark holder submit their trademark to the TMCH, language is not a field they provide information on. So basically, a deeper analysis has to be done. And also even they need to inquire with the trademark owner to understand language and scripts they use.

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The third point on the slide, I want to notice that if you recall earlier, we have these two lists of domain name labels that are corresponding to the trademark claim service and sunrise. And the number of labels on those lists do not equal to each other. And also the number of labels on those lists, they do not equal to the verified trademarks in the TMCH. So they're not a one-to-one match. And also you already understand that the mark owner could generate up to 10 labels in the initial cost corresponding to one mark. So that explains why this non-equal relationship between the number of labels on those lists. So I will stop here for a quick moment. Any questions or comments? Satish, yes.

SATISH BABU:

Thanks. So I see that we have at one level, we have the transformation rules and you can generate or you can try out many variations of the core label. Second level, you have the different scripts. And then with the different scripts, the transformation rules still apply and you can get an even larger number of variations. And at the third level, you have the variants also. And these will apply in a kind of multiplication style. So if you have five variants, the actual numbers may be much larger in terms of the various, when you apply these transformation rules and scripts on the variants. So are you going to cover variants separately? So you're going to come to that? Okay. Thanks.

ARIEL LIANG:

Yeah. Thanks, Satish. You're always the best man to help me get to the next slide. So thank you for asking the question. Oh, actually, just slightly before we talk about the variants. Okay. So I

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just want to provide some kind of high-level stats of what our ICANN or colleague helped us in terms of the number of labels in those two lists as well as the verified trademark in the TMCH. So you have a general sense how it is being used. And I think by November 2021, that's when the research paper was done, there are 47,058 trademarks that are recorded in the TMCH. But if you look at labels on the domain name label list that's used for trademark claims, it's only 1502 labels. And on the summarized list, there are only 1114 labels. So it's a huge pool of trademarks that's registered in the TMCH, but the labels that are actually kind of used to qualify for the two services are much, much fewer. So that's a kind of big picture thing. Maybe we can keep that in mind. And another thing I kind of want to note is that this is the data from 2021. And it's probably a very different picture at 2012 when the new gTLD program was launched. And it's very possible that the DNL and SURL lists have many more labels back in the day. And also just to keep their label in the list, I believe the owners, the trademark owners, they have to pay fees to qualify, to renew it. I don't know whether it's the annual basis or several years basis, there may be different options they can provide, but it's not like you put your label there and stay forever. So it could be that case that in the 2012 round, there are many, many more uses of summarized claims. But now as the years go by, the trademark owners feel it's probably not a huge, essential thing to use those services. So that's why the number of labels doing those on those lists. So that's one thing just for big picture understanding. And then also in terms of scripts and languages, so based on what the TMCH provider provided, there are 14 scripts that are kind of recorded for verified trademarks and then certain scripts for the

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DNL lists and 10 scripts for the SURL lists. The highlighted ones are basically the kind of differences that you see. For example, there are Bengali trademarks as verified trademarks, but you don't see that in the DNL lists or sunrise lists. It's probably because the mark owner of this Bengali script trademark elected not to use these services at the 2012 or 2021. So that could be the case. And so there are some unequal kind of match with regard to the scripts in those lists.

And another interesting thing I found is that there's also this mixed script categories. And now you can see the examples, for example, in the DNL lists, there are Cyrillic, Latin, and Han, Hiragana, Katakana. So these are the mixed script ones for the labels or the verified trademark itself.

Another kind of key statistics which should be also kind of aware of is that for among the 47,000 trademarks, the huge majority are Latin script trademarks, which is close to 97%. And then only slightly more than 3% are non-Latin trademarks. And then among the 3% something non-Latin trademarks, the majority of them are Han script trademarks. about 57%. So that's another understanding of the verified marks in TMCH. For the domain name list and sunrise list, the labels, it's a kind of a different picture, because only about one and a half of the labels on those lists, they are Latin script labels. So the other half are non-Latin. And among the other half, about 25% are Han script labels. So that means kind of for the trademark claims and sunrises, it seems to be that the mark owner of non-Latin script ones, they use these service much more kind of frequently, I guess, than the Latin

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ones. So that's general statistics on the slide. And any questions about this?

DONNA AUSTIN: So there's a bit of chat going on between Michael, Edmon and Steve about the numbers that are actually on this slide. So Michael, are you saying that 1,502 is actually more like 29,000 or something?

MICHAEL BAULAND: I was wondering that the 1,500 labels two years ago, it sounds a bit strange because I just checked the DNL and it was close to 30,000 labels on the list. And I doubt that in the last two years, the list increased that much. But I don't know. Maybe it did increase and we just don't know why.

DONNA AUSTIN: Okay. Thanks, Michael. I mean, I guess we can have a look into that and see if we can get to the bottom of it. But to some extent, it's not hugely relevant. Yeah.

ARIEL LIANG: But thank you for checking, Michael. We'll check with our colleagues and see where they get the information. But hopefully, yeah, if it's a huge discrepancy, we'll make sure to correct that. Okay. So that's the question. I think Satish asked about the variant handlings in the TMCH. And our research function, they did speak with the TMCH provider about this. What they understood is that



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TMCH does not calculate variants for its matching rules. So the matching rules that we talked about, the exact match and transformation, they do not, I guess, if it's just a variant, if they do not qualify for the exact match or the transformation rule, then they won't be taken into account in the TMCH. They won't be qualified to be a verified mark in the TMCH or qualify for these services.

So I guess there are a couple of points I want to mention on the slide. First is, the mark that register in TMCH, there has to be a mark. So no matter what languages or script it uses, it has to be granted for trademark rights to be eligible. So that's one key point. Just because it's a variant or RZLGR says it's a variant doesn't mean it will have trademark rights. And then the second point is basically just what I mentioned earlier. Alternative characters using the creation of variant labels will not experience matching rules or the transformation rules. So for example, if a trademark, it's in simplified Chinese, and that's verified trademark, and then we know it could have a traditional Chinese variant that calculated, for example, by RZLGR, this is a variant, this matching rule do not apply to that traditional one. Because if you have to be eligible for being recorded in TMCH, that traditional Chinese label has to also be a trademark too. Just because it's variant doesn't mean it's eligible. And also another thing that TMCH provider mentioned is that the registry operators, they actually have flexibility to handle variants. So basically, at the registry level, they have the responsibility for calculating variants based on their IDN tables. But whatever registry operators they do, those variants, they kind of do not really apply to TMCH itself. So that's some key points we learned. And I saw Maxim has his hand up.

MAXIM ALZOBA:                   Actually, TMCH presumed to be working all the time, all the times. And it's not necessary that it's going to work, because there were situations where they just didn't provide registries with access because of technical issues, etc., etc. So whatever we create, we need to take that into account. Thanks.

DONNA AUSTIN:                   Thanks, Maxim. And I think just to be clear, this is the Trademark Clearinghouse is providing a service for trademark owners, for those with IP rights. So this isn't necessarily about registry obligations or applicant obligations. This is quite specific about the protection of trademarks by the TMCH. So I guess the challenge for me in kind of working this through is what's the relevance of variants here in the conversations that we've been having? So there are specific matching rules that are required for the TMCH. And there are specific requirements around what the trademark needs to be and matching those. So I guess the question for us is, what's the relevance of variants here, if any? So that's the problem we're trying to solve here. So Edmon and then Satish.

EDMON CHUNG:                   Yeah, Edmon here. So just a clarification question. Ariel, you mentioned about the responsibility from the registry operator. I kind of agree that's what is happening, and I think that's probably right. But was there any study on whether or not the registry operators actually do calculate the variants and issue trademark claims or whatever in the previous round?

ARIEL LIANG: Yeah, this is Ariel. I do have a slide about that, but unfortunately, I don't think I have data on this. I just referenced the registry agreement, and there are some sections to talk about the flexibility registry operators have, but we can talk about that and then see whether folks in the room have any data or known examples they can share. Yeah, but thank you for the question.

DONNA AUSTIN: Satish, and then Hadia.

SATISH BABU: Thanks, Satish, for the record. So the question of, suppose you take HSBC as a Chinese string, traditional and simplified, the chances are that they would have registered both as variants in their own jurisdiction. So when that is taken into consideration here, what exactly happens? Are they completely independent labels that follow independent trajectories or is there a kind of logical clubbing of them together as a variant set? Thanks.

ARIEL LIANG: Yeah, thanks, Satish. So as what TMCH provider informed us is they don't have variant as a category. So if, for example, indeed, the trademark owner registered both simplified in Chinese trademark records, then they will be regarded as two individual ones. They won't say, oh, these are the variants. TMCH doesn't have that categorization.

DONNA AUSTIN: And I guess that's a question for us, Satish. Do we want to include that as a possibility in the TMCH? So Hadia and then Edmon.

HADIA ELMINIAWI: Thank you, Hadia, for the record. So as Satish mentioned, if the registry operator hadn't actually registered both the primary as well as the variants, then it won't exist, of course, in the Trademark Clearinghouse. And then I think the answer to the question then, what does the registry operator do? What is the relevance of variants in this case? I guess the only relevance here is that the registry operator will need to compare the variants against the existing lists, DNL lists in order to make sure it doesn't already exist. Otherwise, I don't see any other role for variants.

DONNA AUSTIN: Thanks, Hadia. So Edmon and then Nigel.

EDMON CHUNG: Edmon here. In response, actually, to Satish's question, I want to kind of help clarify one thing, is that for the Trademark Clearinghouse, they regard it as two separate entries in the Trademark Clearinghouse database, simplified Chinese and traditional Chinese. The key also is that for the Trademark Clearinghouse, they don't care about multiple applications for the same name. Even for trademarks like Delta or United, there could be multiple deltas, there could be multiple Uniteds in the TMCH. It only becomes a matter when the registration goes into a particular

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TLD and registry, and then it is either first come first serve or auction, some kind of a mechanism to see who gets the domain. So when we think about it, the issue of we might need to bring in the situation of the TMCH itself, that the database allows multiple identical entries versus the registry, which in the DNS, of course, you cannot have the same name for two registrants.

DONNA AUSTIN: Thanks, Edmon. Nigel.

NIGEL HICKSON: Yeah, thank you very much. So yeah, I think the penny has dropped on this for me just about, or perhaps not. And I was going to ask if we could have a Chinese example between the two different types of language here. But so I think I understand it in that although a variant might not be allowed in the sense that if the variant hasn't been registered in its own right, then it might not meet the rules for the TMCH. So it might not be allowed in that sense. But if the variants have been registered because the Chinese trademark holder wanted them registered in that sense, then they will be allowed. So that's the sense I'm getting. Thanks.

DONNA AUSTIN: Thanks, Nigel. Ariel, can you go back to the transformation bit? Okay. So this this might be the wrong way to think about this. I'm not sure. But these are the rules for the TMCH. It's an exact match. So that's your trademark. So it has to be the exact match of your trademark. So it could be, Satish, as you said, it could be simplified Chinese or traditional Chinese. And then the

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transformations are kind of the additional possibilities for that exact match. So to account for any peculiarities in the DNS that don't allow for exact match. So this is a way around it. So that the way that I'm thinking about this, and it could be the wrong way, is do we think it's valid to have an additional rule there that would allow for variants of the exact match. And that provides some protection during the sunrise period or the claims period for that trademark. But I'm not sure whether we're inadvertently getting into some trademark issues that might be a little bit sensitive that we don't want to get into. So that's what I'm uncertain about. So in my mind, that's a question we're trying to resolve here. So trademarks stand on their own. But the transformation bit is where you have a little bit of flexibility as to what the additional labels could be that you want protected in the DNS. And this is only through the sunrise process or the claims period. So it's a question of what are our thoughts on variants and whether that's a special case or not? Any thoughts? None. Edmon?

EDMON CHUNG:

Yeah, Edmon here and speaking personally. So the, I guess the preliminary thought is, and hopefully we will have discussion further, is that the sunrise process whereby it's an exact match and you have the rights to register domain, that doesn't seem to be need for any particular update with the IDN variants, because the IDN variants is much more of an assistive thing in the policy. But in the trademarks claims process, that's why I asked the clarification question earlier. If I recall correctly, this was discussed in 2012 as well, and I had a very long number of discussions with the board. And TMCH eventually did what Ariel explained and left

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it to registry operators to match or not match variants based on trademark claims. Now, I think this group might want to take a look at what actually was done. And perhaps weigh in a little bit on that to say that things, it's because when someone applies for a variant of a trademark to be registered during the trademark claims process, the trademark owner in principle should be notified because the principle being that the trademark owner will be barred from registering that same name in that registry, right? And they should be notified, even if it is a variant that is not what is their trademark, but their trademark, they will then not be able to register that name in the registry. Many examples exist, and the classic example is a therapist as one trademark and the rapist as another one. Then they are two completely different things, but they happen to be, the trademark owner should still be notified. And so that's the part I think we need to think through. And I was waiting for, Ariel said there was more information on that, and maybe we need to build on that.

DONNA AUSTIN: Thanks, Edmon. So Maxim and then Michael.

MAXIM ALZOBA: As it was said in RPMs a lot, we should not create more rights for trademark owners than they have in the real life, in the real world. If something is protected, we protect it. If not, there is no reason to do so. Thanks. Because even if a party has a trademark in one language or one script, they on full order will have the variants reserved for them. And there is no need for additional protection. Thanks.

DONNA AUSTIN: Sorry, Maxim, what was that last piece you said that if they have a trademark in another?

MAXIM ALZOBA: I meant we have three TLDs, one and string and two variants. And trademark owner has a trademark with in only in one of those scripts. Since we're going to grant right for registration only to the first who came for the whole variant set, there is no need to protect other, I mean variants of the first string, because they are going to be protected on the principle of a one entity for all variants. Thanks.

DONNA AUSTIN: Thanks, Maxim. So I think what you're saying is that you're talking about at the top level, there is protection if across the primary TLD and the two variants, once there is a registration of a trademark in one, is that what you're saying?

MAXIM ALZOBA: Basically, yes, because it's going to be protected on a language level without looking into trademarks. Thanks.

DONNA AUSTIN: Okay. Thanks, Maxim. Michael and then Satish.



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MICHAEL BAULAND: Just Michael for the record. I tend to agree with Edmon, at least for the sunrise part, I think the variants are of no concern because it works the way that in this sunrise phase, you have to have an exact match SMD file to prove that you are the owner of this trademark to be registered. And for that reason, only the exact matches should come into play here. If you have a variant of such a trademark, you won't be able to register it in the sunrise phase because only exact matches will work. So in that case, I think it's clear.

For the claims phase, I'm not 100% sure. I tend to agree more with Edmon than with Maxim. The claims phase is meant as a safeguard for trademark holders to be informed if something happens at a registry that could infringe their trademark, but it's not prohibiting anybody from registering anything. So even if a trademark exists, somebody could still register it. They would have to confirm to the registry that they are aware that someone else might have a trademark on that. And with variants in that context, maybe it makes sense to also inform the trademark holder that somebody registered a label that is a variant of their trademark. But then it would also mean that the one registering would have to confirm that a trademark exists, but it doesn't exist for the variant they try to register, but for the label they try to register, but just for a variant of that. So it might be complicated in that sense. So I'm not 100% sure here.

DONNA AUSTIN: Thanks, Michael. And Ariel, so with the trademark claims, it's the additional 10 labels where that comes into play, is it?

**ARIEL LIANG:** So based on my understanding, up to 10 labels that could be for either Sunrise or claims and so I think it's not have to be claims because sometimes in the SMD file can include more than one label, two, can be 10. So it really depends on whether those labels qualify based on the matching rule. And if it does, then it's fine.

**DONNA AUSTIN:** Okay. Right. Satish and then Jennifer.

**SATISH BABU:** So I am a little troubled by maybe I don't understand it fully well. In the hypothetical situation that there is one trademark label, which is already with the database, and there is a variant which is not registered and consequently is not in the database, which means someone else can register a string on that. And that would break our same entity constraint because the same label, the variants of the label are going to different parties. I don't know if it's a feasible situation. And also it's troubling that one part of the ICANN ecosystem recognizes variants and another part does not recognize variants and they are treated as independent variables. So there is a little bit of inconsistency according to me, but I may be wrong. Thanks.

**DONNA AUSTIN:** Actually, Satish, I wonder if the same entity principle at the second level does actually provide the protection for the variants, because previously, there was no same entity protection for second level

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registrations, whereas now with this policy, we're actually providing that. So maybe the protection of the, well, it's not really a protection, it just gives a first right to registration, I suppose, during the summarized period for the actual trademark string. And then because of the same entity principle, we're actually giving that protection at the second level anyway, because of the work that we're doing here. Maybe, anyway. So Jennifer, Maxim, and then Nigel.

JENNIFER CHUNG:

Thanks, Donna, Jennifer, for the record. I also tend to agree with Michael and Edmon regarding the sunrise period. I don't think there is too much for us to do here, but when we're getting to the claims period, which is the 90 days, minimum 90 days, and if not for forever, I think it's really important that we don't create a situation where the trademark owner is barred from being able to register, just because we have a different set of rules for variants. And I can't really quite reconcile right now what that means in implementation, because I am not an expert on TMCH and how the database is populated. If that is something the mark owner has to do is on their obligation and their rights, or there needs to be some kind of ongoing coordination with the registries, because the registries are the ones who deal with the variants and how to calculate such things, both at the top level and also the second level when we're looking at binding and tables. So I don't know what that's going to look like, but I do know what we want to avoid is the situation where they're barred from it. I think, at least I'm going to assume, and I agree with Maxim and also Nigel, we're not trying to expand the rights of the trademark owners. I think this is

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very much not what we're trying to do here, but just to look at that situation where there's some kind of tension between our rules and what is available to the mark owners.

DONNA AUSTIN: Thanks, Jennifer. Maxim and then Nigel. M

MAXIM ALZOBA: If I'm not mistaken, some other party can register the same string as a trademark in different class. For example, one company is selling fruits and another is making autos. Thanks.

DONNA AUSTIN: Yeah, thanks, Maxim. I think Edmon noted that previously as well. Nigel?

NIGEL HICKSON: Yes, thanks. I can see we're in a situation, it seems, where we have one set of rules which have been clearly defined in terms of the Trademark Clearinghouse and what isn't allowed. And we're not, as I understand in the scope of our exercise here, we're not, obviously, we're not changing those rules. But we do, when we look at those rules, we also have our own principles which we've laid down about entities and the same entity, etc., registering the different variants. So presumably we have to fit what we have, our principles, within these rules. But where there is a conflict, have we the scope, obviously not to change the rules, but presumably where there is a conflict which could be resolved in the future, we

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might be able to presumably say something about where this evolving policy that we're evolving on IDN variants is in some way incompatible or is being less useful because of the existing rules for the TMCH. Thanks.

DONNA AUSTIN: Thanks, Nigel. So Ariel's got a bit more to run through on this, so that might help our discussion.

ARIEL LIANG: Yeah, this is Ariel. So actually I do have quite a few more slides. And also I really want to show folks about what is the language in the registry agreement that gives registry operators the flexibility to provide extended protections, I guess, for market owners by taking into account variants. So I think for just understanding the full picture, we probably want to look at this first and then we can get into a deeper discussion and also know we have 12 minutes left before our first coffee break. So hopefully I can go through some more slides before we break.

Just for full context, I do want to note that the TMCH does provide other non-monetary services. They call them ancillary services, and these are the voluntary ones that TMCH provide. And ICANN doesn't require them to do that, but they do so because they feel like this is the right thing to do and also it's something they could provide.

So I just want to note there's one example. It's called ongoing notification. So basically following the trademark claims period, the TMCH can notify a market owner of potential infringement

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indefinitely beyond the 90-day claims period. And then in terms of the labels that qualify for this ongoing notification, the rules are a bit more relaxed. So the exact match, they definitely qualify for this. But then in terms of the trademark contained, that qualifies too. So if you look at the example here, Trademark Clearinghouse, that's the trademark. And there's a label called the Trademark Clearinghouse-db. So that would be a mark that contained in that label. So for that label, it also qualifies for the ongoing notification service and even partially contained. So for example, a label called clearinghouse.example. So it's not Trademark Clearinghouse, that's the full trademark, but it contains part of it. So that kind of label also qualifies. And the third one is the interesting one. It's called similar to trademark. So for this example, certain variants actually qualify too. So if you look at the label on the slide, there is the ones with diacritics, for example. And then there is one like trademark and then there's some misspelling and it does kind of look similar to that. It can be confusing, confusingly similar. So for this type, it also qualifies for ongoing notification. But there's one caveat is that the TMCH, they provide a specific acceptable variants list. And I'm just going to quickly click on this webpage so you can see. So these are the accepted variants for this ongoing notification. They're all Latin script characters with diacritics in particular. So it's not really helpful for non-Latin script marks and labels. So just for our kind of full understanding of what is out there that trademark owners can take advantage of, this is one type of ancillary service that they could potentially use. And that's provided by the TMCH. And there's also other voluntary services in the marketplace that provide that kind of protection by registry operators themselves,

as well as third parties. I think Mark Monitor is like one of them, I guess the third party, and they offer services like that. And there are many more. I just don't know the details, but I know this is a fact.

So another key point I want to notice that ICANN doesn't mandate those services. So they're outside the policy remit to review this. However, if those services are going to be provided, they do need ICANN's authorization to offer that. So they do need ICANN's approval to offer that. But they're just not really subject to policy review. So that's a key point I want to note here. And I see Hadia has her hand up.

HADIA ELMINIAWI:

Thank you. This is Hadia for the record. So like an initial thought, if we actually want to have some kind of like notification in relation to variants, then the ancillary services is, I think, the first thing that comes to mind. But as you mentioned, those are voluntary services offered by the Trademark Clearinghouse, and thus it's outside of ICANN's remit. And I was wondering, maybe, and I don't know if this is like a possible thing, that like registry operators would submit along with the labels and accepted variants list or something like that, that could be considered for notifications. But again, how do we do this? And if this whole thing is outside ICANN's remit?

DONNA AUSTIN:

So thanks, Hadia. So my assumption here is it's outside of ICANN's remit because it's not policy. So it wasn't a mandated

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requirement. And the TMCH have decided that they can offer these services as well. My question for Ariel, does this only kick in after the 90-day claims period? Or do they provide these services during the claims period as well?

ARIEL LIANG: Yeah, this is what I learned. For the ongoing notification, what TMCH said is following the claims period. But I don't know, so it kicks in after, that's what I understood. But it doesn't mean other ancillary services or voluntary services provided by other people, like other organizations, they cannot overlap. I just don't know the fact. So yeah.

DONNA AUSTIN: Okay. So during the specified 90 day claims period, none of these domain names in this slide have the same kind of protections?

ARIEL LIANG: Except for the exact match ones.

DONNA AUSTIN: Okay. All right. Got it. Michael?

MICHAEL BAULAND: Just Michael for the record. So for me, it seems that this traditional service is out of scope for us, because it's just a service some private company does for some other companies. And it just happens to be the TMCH, which also provides some services for



ICANN. But this is something they do out of their ICANN contract. And as you said, someone like Mark Monitor or whatever could provide similar services. And for that reason, we should stay out of these specific services here.

DONNA AUSTIN:

Okay. All right. Thanks for that, Michael. I think that's important. So Ariel mentioned Mark Monitor provides services for brands specifically in the domain namespace. So what you're saying is this is just really another one of those providers and this is what they can provide for. Yeah. Okay. All right. Okay. So it's good to have that clarity. All right. Any more slides, Ariel?

ARIEL LIANG:

Yes, I do. But we have four minutes left. And this slide is slightly dense, but I mean, I can kind of give a quick overview of that and we can pick up on this after the break. So this is the part that I think [inaudible] was curious about. And although I don't have the data or examples, but I could show what is the language in the registry agreement. So in the registry agreement, there's a specification seven that's specifically pertaining to rights protection mechanism. And requirement number one in the specification seven talks about TMCH related requirements. And so it's a reference basically, it's a separate document, but it's linked to the registry agreement. So in the TMCH requirement, it makes reference to how a registry may handle variants in a situation where the registry has implemented variant registration policy at the second level. So it's pertaining to those registry that allow activation of variant domains at the second level.

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So there's three sections maybe we want to take a look at in terms of extended protection. The registry may lack to provide that. So one is the 2.4.2. It says registry operator may allocate or register IDN variant labels generated from the label included in the valid SMD file during the summarize period. And then there are two specific conditions attached to that. One is the variant registration policy has to be based on the registry operator's IDN tables for that specific TLD. So it's based on the IDN table from the registry operator. And then second one is that policy has to be consistently applied in the different launch period. There's a summarize period, limited registration period, any other launch period or during general registration. So we're not going to look at all these periods because I think this is too much into the weeds, but it just says this policy has to be consistently applied. So that's the first kind of flexibility.

And the second flexibility is the section 4.1.2. Registries may implement additional matching rules at the TLD level provided that the claim services are still implemented for any claims registration satisfying such additional matching rules. So basically the registry have flexibility to go beyond the exact match and transformations and apply additional matching rules for second level labels registered under its given TLD.

And then the third flexibility is 4.1.3. It says during the claims period, if registry operator has established IDN variant policies for allocation of domain names in the TLD, the registry operator must check all labels in a variant set against the DNL list before any domain name in the set is registered. So it's basically saying check the set in the variant label set against the claims related

DNL list. So there are three possible flexibilities the registry operator can provide to protect the legal rights of a trademark owner by taking into account variants. So these are the language in the registry agreement and we can kind of expand on that and talk about how they work maybe from the next section and we have a break now. So, Donna.

DONNA AUSTIN: Yeah, thanks, Ariel. That's a lot to take in. And Satish mentioned the same entity principle. And when I read this requirement from the registry agreement, I'm wondering, well, what's the implication for the same entity principle here? Maybe there's none, but maybe there's some. So I think we should explore that as well. So I'd like to take in. So we've got a half hour break and then we'll come back and continue. Thanks, everyone.

DAN GLUCK: Great. I'm going to pause the recording, but we'll be back in a half hour. Welcome back to the IDNs EPDP face-to-face session two, day one. With that, I'll pass it back off to Donna.

DONNA AUSTIN: Thanks, Dan. Ariel's having a few technical difficulties trying to share her screen. So just to pick up the conversation where we were, I get a sense that there's no need to change or consider anything different for the sunrise period because sunrise is exact match for a trademark. And just to be clear, the sunrise period is just an opportunity for a trademark owner to register its name at the second level of a TLD during a specific window. And it is only

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exact match. So there's no, unless people have different ideas, I don't think that there's any need to change that. And so I think what we still need to discuss is any consequence for trademark claims and whether we want to try to accommodate variants in that part. So I think, okay, so Ariel's back online, which is good. All right. So where we left off, we were just having a look at the provisions that are currently in the registry agreement. And did you want to talk any more to that, Ariel? Yep. All right. So Ariel's going to pick that up and we'll see where we get to. Thanks, Ariel.

ARIEL LIANG:

Thanks, Donna. And I will try to explain the registry agreement, these sections, how they actually work. But I do have a question about 2.4.2. So I'm trying to explain based on my understanding how it works, but if it's wrong, please correct me because I'm not super confident about this. So 2.4.2, I think it's providing the trademark owners extended protection for the variant label in the sunrise period. And that is down at the registry level. So this is what I kind of got from an SSAC paper actually talked about this one. So I'm just trying to explain how it works. So step one is a trademark holder submits mark, which is example to the TMCH. So just for our purpose, example is a trademark and registered and it's in the TMCH. And then trademark record is verified and proof of use is accepted as SMD file for this label, example is generated. And then the trademark holder is eligible to register the domain name example.tld1 during sunrise period. And step three, a registry of tld1, it's a registry that allows activation of variant domains, uses an IDN table where the E was this diacritic on the top, I don't know how to call this diacritic, but it's a variant. And

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then in its IDN table, this is the allocatable variant to the ASCII E. Hence the E with the diacritic example is a second level variant label of example under tld1. And then step four, when presented with the SMD file for registration of example.tld1, the registry has the ability to activate the variant example.tld1 for the registrant of example.tld1 during sunrise. So even this variant example label is not in SMD file, but because the registry operator has the second level variant activation policy, it has the capability to even allow this variant to be registered during sunrise period, even if it's not in the SMD file. So I think that's how it works, but I'm not completely sure it's correct. So I'm happy to have Michael chiming in.

MICHAEL BAULAND:

Yeah. I think it's basically correct, except in the fourth step, I'm not sure about this because the sunrise period is, I don't know if it's always the case, but at least all the TLDs we've been running, the sunrise period is not a registration period, but it's an application period where you apply for a certain name, but it's not activated until the end of the period. So several entities can apply for several names and they might even apply for the same label or for variants of an existing label. And at the end of the period, there's some phase where you, where the registry decides which of the conflicting labels gets actually activated and which other labels get cancelled or refunded. And in that context, I think it makes no sense to activate any variants because no domain name is activated anyway. So for the registries we run, it was always the case that they apply for a certain label and at the end of the sunrise phase, that label might get allocated to them and then they can start activating variants. But since it's after the sunrise

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period, there's no SMD file or whatever necessary for the variants.  
Thanks.

ARIEL LIANG: Thanks, Michael. And I think that makes sense. Oh, so Hadia, yes.

HADIA ELMINIAWI: Thank you. This is Hadia for the record. And my question to Michael, but at the end of the period, the registry actually cannot allocate the variant to another registrant because of the same entity principle and thus it's either the same registrant takes it or no one, right?

MICHAEL BAULAND: Yes, right.

DONNA AUSTIN: Thank you. Sarmad.

SARMAD HUSSAIN: Thank you. If we can go back to the previous slide, please. So I'm just looking at 4.1.3 and just a clarification. So it says during the claims period, if registry operator has established IDN variant policies for allocation of domain names. I guess the question is, would this also apply if the policy is just blocking domain names and not allocating?

**ARIEL LIANG:** This is Ariel. I don't know the answer to the question because this is the exact language in the current TMCH requirement. So I think all these sections apply under the condition that the registry operator allows activation of variant domain names. So if it doesn't allow activation, I guess they're blocked.

**SARMAD HUSSAIN:** So maybe just to follow up on that, then perhaps we should also consider what would happen in case the registry operator does have variant, but they are blocking it, not activating it. Maybe the same conditions potentially could apply just to because if it's a must in this case, I guess I'm just wondering why it wouldn't be a must in that other case. Thank you.

**DONNA AUSTIN:** Edmon, do you have any insight into whether this accounts were blocked labels or not? And then Sarmad, I'm trying to understand the relevance of the reason for your question as well.

**EDMON CHUNG:** Edmon here. So if I understand correctly, I mean, it highly depends on, first of all, the sunrise program itself, whether it's start date sunrise or end date sunrise, right? I think what Michael mentioned is more of an end date sunrise where applications come in and then you go through. In those cases, then I think all variants will be identified for the contention set in that case. So it does include the blocked variants because you cannot

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disassociate them that way. But if it's for the start day sunrise, which is the first come first serve, then it's irrelevant. So whatever came in, the next one won't be accepted. And that also includes the block variants. So as far as I understand that, that would probably be the case.

DONNA AUSTIN: Sorry. And what Sarmad's referring to is specifically for the claims period. So 4.1.3 is about the claims period.

EDMON CHUNG: Yeah. Sorry. So for the claims period, I would guess it would be the same, right? What the registry agreement says is that the entire set and the entire set would, I guess in my interpretation would include the block ones. But again, speaking personally here, I would suggest that I was just actually trying to look up the SubPro report and stuff, how it handled TMCH recommendations. Because in the previous round, TMCH was an add-on after the policy process, right? So I think looking at these in the registry agreement, it seems like it does cover pretty much what we need to say. What we, however, should think about is whether this should now be considered at a policy level, because we don't have policy on this. Yes, it's in the registry agreement. Do we leave it with the registry agreement? Or do we say, given the TMCH, and again, if you have better knowledge of how the SubPro dealt with the question of TMCH, maybe we should take a similar approach and either to agree with it and make it a part of the policy level and just reiterate some of these things. So that's my thinking.



DONNA AUSTIN: Thanks, Edmon. So I don't know if Michael or Steve have any insight into the SubPro.

STEVE CHAN: This is Steve for the record. I do not, because I think that would be more relevant to RPMs, actually. So which in this case would be our friend Ariel here instead.

ARIEL LIANG: Yeah, this is Ariel. We have a slide about that, or a couple of slides about RPM PDPs handling of TMCH. So maybe we can talk about those when we get to those slides. And if no other comments, questions, I would just keep going through the examples to explain how these sections work. So it seems 2.4.2 is generally in line with what Michael explained, but Michael is explaining a more precise detail. But it basically just says it provides the opportunity for the trademark owner even to get a variant label allocated, even though that variant label is not in the SMD file. But I guess it basically provides some advantage, I think. But maybe not in that precise word, but it just shows there's flexibility there for registry operator to provide those extra protections.

And then this is the example about 4.1.3. That's exactly what Sarmad was asking how this one works. So this is what I, based on my understanding, how it works and explain these steps, but please correct me or provide timing if I'm saying anything not super correct. So step one is a potential registrant attempts to

register example.tld1. That's the blue label and the example is a kind of IDN label because the E is the one with the diacritics. And step two, this is the registry operator of tld1. It actually allows activation of variant domain names and it applies its IDN table and then find out that the example, this label, the blue one, has an allocatable variant label, which is the green one, example, the ASCII one. And then step three, the registry operator is required to query TMCH DNL list. That's the domain name list for claim service for both the green and the blue labels because there are the entire variant label set. This is just for our example. We only have two labels in the set to determine whether there's a match to a label in the DNL list.

And then step four, they find out that actually the green one, the ASCII one, is a match because example is recorded in the TMCH and its corresponding label is already in the DNL list. So as a result, the registry of tld1 will notify the sponsoring registrar that a claims notice should be shown to the potential registrant of the blue label. So even the blue label is not in the DNL list, but because its variant is in the DNL list, a claims notice should be shown to that registrant as well.

And then step five, the claims notice is shown to the potential registrant of the blue label due to the match found in the TMCH and the potential registrant can elect whether to proceed with registration or not. So that's how 4.1.3 may work. And Sarmad has his hand up.

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SARMAD HUSSAIN: Would it work the same way if the blue and the green labels were blocked variants of each other?

ARIEL LIANG: Yeah, this is Ariel. I think it will because it didn't say, if you look at the language for 4.1.3, it says the registry operator must check all labels in the variant set against the DNL list. So that includes allocatable and blocked. So as long as it's a variant, then it should be taken into account. That's my understanding.

SARMAD HUSSAIN: A quick follow up to that. So I guess this is something I guess we need to check. But when a registry is adding IDN tables in its exhibit A, they actually can pick and choose from the previous round at least. A variant policy, they could say that they do not have any variants or they are going to block all variants, or they would allocate variants. And if 4.1.3 is referring to only the third condition, then perhaps we should also see whether it should be considered under the second condition as well, where the registry is determining variant labels, but blocking them and not allocating them. So I guess that was my original question on whether 4.1.3 is referring to the variant allocation policy of the registry or actual allocated variants themselves. And it has, I guess, implications at both levels, but I do not understand how this contractual language is actually tied up to the rest of the contract. So that's why I'm saying we need to probably discuss that a little more as well internally as well as here.

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DONNA AUSTIN: Okay, Edmon and then Satish.

EDMON CHUNG: Yeah, Edmon here speaking personally. Just building on what Sarmad asked and what Ariel answered, then I guess point two of your later slide, the one that you just covered, maybe should be updated in not just allocatable variant, but the entire set. So you probably need to update point two here. And this goes on to my earlier comment about, so even if this is something that should be dealt with in the right protection mechanism group or wherever, maybe it is useful for us to have at least something to say about it, but pass it on to the appropriate group, especially on these few items. So I actually don't know how that would work. So it wouldn't be a recommendation to the board from this working group, but could be an output that could be an input to the right protection mechanism group. I don't know if that could work.

DONNA AUSTIN: Satish.

SATISH BABU: This looks good to me. Everything except the last point, number six, which says a potential registrant can elect whether to proceed with registration or not. So it is optional and the registrant can override this notice, but where does that leave us in terms of the same entity?

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DONNA AUSTIN: So maybe we need to think a little bit about what the claims period actually is. And it's just a flag in a system. And so it tells the trademark owner that somebody is trying to register this name. Then there may be no action or the trademark owner may decide that they want to take some course of action. I'm not sure what the options are, but it's just...

SATISH BABU: Yeah. So I think that's an important point, which I don't see here, that there is a notice shown to the trademark owner. Who should then take action for that? And it's not just left to the registrant.

MICHAEL BAULAND: I just wanted to respond to Satish, but I think Donna already said most of the things I wanted to say too. So the whole process of the claims period, it does not change the way domains are registered or activated. So the same entity principle, of course, is still active and holds. It's just that the one registering the domain gets a notification to tell him, be careful. The domain you're about to register, there may be a trademark you might infringe when you go on here, but it's still your decision. That's what point six says. You can still say, no, I want to go on. And maybe it's legally okay because the trademark holder has a trademark in a different area than you. And you also have a trademark, just not registered with TMCH, which is not mandatory. Or it could be an illegal registration, but this is not up to the registry to decide. They just inform that there might be a problem and the registrar and registrant then can decide whether they want to continue or not.

But this is not related at all to the same entity principle because that, of course, is checked and upheld by the registry. Thanks.

DONNA AUSTIN: Thanks, Michael. So are you okay, Satish? Yep. Okay, good.

ARIEL LIANG: Thanks for the discussion. I will move on to the next. So now we understand the relevant language in the registry agreement. And there's another document I want to note, or recommendation I want to note, is actually from SSAC. They issued this paper, SSAC 060, in 2013, if I'm not mistaken. And they actually studied variants. And they do have a recommendation I want to highlight. It's recommendation 10. It says the current rights protection regime associated with the TMCH process is susceptible to homographic attacks. The rules of involved parties especially registrars, registries, and TMCH related to matching must be made clear. So this is their recommendation. And that's relevant to our charter question because in the charter, we actually referenced this document. So I just, for the completeness of our discussion, I want to bring this up. And here is some additional detail regarding recommendation 10. And what the SSAC did is they did review the matching rule in the TMCH and did analysis of its advantages and downside. So it does understand the role of the TMCH is to record existing rights of mark holders and not to make determinations concerning the scope of rights and whether certain variant label qualify for the same rights. So it does understand the mission and limit of TMCH.

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And it did point out certain downside. I think it's with regard to the matching rules that we talked about. So it says registries have different IDN tables, which can be used to generate and register variant domains under different TLDs and cause security stability or resiliency concerns. So I guess it's not really related to the TMCH matching rules about just the potential risks associated with variant domains. And it says like, it does understand section 4.1.3 that we just talked about. So if a registry does have variant policy, it needs to track the entire variant set against the DNL list. So because of that transaction, they believe there may be a downside of a potentially large number of transactions between the registry and TMCH due to permutation issue of certain label in certain script. So they point out these two downside.

And then they're proposing an alternative method is basically recommending variant calculation be conducted via the TMCH, meaning the matching rules would also define if a variant of a registered label matches the label in the DNL. And then that could help trigger the claims notice. So I think based on discussion, we're not recommending anything to change to the sunrise, but maybe claims can be enhanced somehow. So SSAC in its recommendation, they're recommending that TMCH does the calculation and then taking to the variant into account and include those in the DNL list too, or for the consideration for DNL matching and then make sure claims notice are also triggered for these variant labels.

So I believe this method could potentially address the downside because that will remove the step of a registry to check with TMCH whether there is a match. So TMCH can do it directly. And

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then also if TMCH is the authority of calculating variants and determining which one qualifies, then the different IDN table situation can be resolved. So that's the advantage of this method. But then it does also recognize their downside here is because if TMCH start calculating variants and providing extended protections to those two, that means its role is expanded by making determinations regarding the scope of rights of trademark owners. And that could potentially conflict with local law or approved IDN tables. So it doesn't understand this is not a perfect solution either. So I just want to note about the discussion at asset level about this. And I see a few hands raised.

DONNA AUSTIN: Michael and then Jennifer.

MICHAEL BAULAND: I'm wondering if the SSAC understood the way this DNL works incorrectly because it's not that the registry, whenever a label is registered, contacts the TMDB or TMCH to query what is the status of that label and is it on the DNL. It's such that the registries regularly, once a day, I think, download the whole DNL list. The L of the DNL is already the list, right? So it's not DNL list, but DNL. Anyway, I don't know. So they download this list and then they check whenever there's a registration whether the label is on the list. So the downside, which is said here, a large number of transactions, that's actually not the case because the transaction between the registry and the TMCH is still just one, the downloading of the list. And that's also one of the disadvantages if you would have the TMCH calculate the variants, because then



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you would suddenly have to download a very, very large list of labels and it makes no sense because the registry can calculate that themselves. Also, that would mean that the TMCH would have to generate different sets of labels for different registries because different registries may have different IDN tables and therefore different variant rules. And I don't think it makes sense even though—No, it wouldn't make sense for the TMCH to calculate variant sets based on the different TLDs and then return those different lists to the different TLDs. Thanks.

DONNA AUSTIN: Thanks, Michael. Jennifer?

JENNIFER CHUNG: No, no, that's perfect. I actually really agree with what Michael was saying. I think, first of all, the second bullet of the downside of the current method is not as much of a downside as Michael has explained. And more importantly, I think the variant calculations should remain at the registry level. There is a lot of, I guess you already said on the downside in the other one, if we're having TMCH do it, it does expand the scope of what they do. The fees would probably then go on to the mark owners, which that's not under our current contemplation, but we are the ones who would be the experts on our own policies, the registry policy, how to calculate the variants. I am tripping over my words right now. I need more coffee. So I would still very much advocate for the current method. And I think you said it was rec 10, but I think looking at the report, I think that was recommendation 13 when they said that they wanted TMCH to add support for the ideal

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variant TLDs during the claim services. And it should be, and recommendation 12 includes improvement of the matching algorithm to include more than just ASCII. So I guess recommendation 10, 12 and 13 should probably be looked at together.

DONNA AUSTIN: Thanks, Jennifer. Thanks.

SATISH BABU: Just to say that I agree with Michael and Jennifer.

DONNA AUSTIN: Okay. So basically this is discretionary for the registries to decide what the variants are and the Trademark Clearinghouse doesn't really have a role here. And it would be beyond the intended scope of what they were put in place to do. Edmon?

EDMON CHUNG: Yeah. Edmon here, just adding a little bit, I guess the ASAC recommendations were quite relevant at the time, but a lot of the work that is, especially this group would have superseded a good part of it.

DONNA AUSTIN: Yeah. I think that's an important point to add to this discussion too, that this report was done in 2013 and things have moved on quite a bit since then. So, okay. All right. What else do we got?

ARIEL LIANG: Yeah. Thank you very much for the discussion. And also we noted recommendation 12 and 13, Jennifer, that noted, but we decided not to include it in the slides because this one seems to be the kind of overarching key one. But as everybody said, it's very old paper, so may not be relevant right now.

And here, this is the RPMs PDP, their deliberation. And I want to provide background on that and also highlight some relevant recommendations that's related to what we discussed. And I know that Edmon mentioned, is that possible to provide our input to that PDP? I think that ship kind of sailed for now because the group has finished its work a while ago and then the board actually already adopted their phase one recommendation. Yes, but phase two is for UDRP. Although if there are some remaining item from phase one, I don't know whether it's possible, but it's really up to GNSO council's discretion whether to add on additional topics for them to discuss. The IRT, it's ongoing. But anyway, but I was just saying it may be too late to provide input to the group for now because they finished their work in 2021 January, or actually 2020 November, and the board adopted their recommendation in January 2022. So it's in implementation phase for phase one. But I just want to give a quick background. In their phase one, they reviewed all the RPMs applicable to the new gTLD program 2012 round. So that includes TMCH, the Sunrise and trademark claim services, the URS, as well as TMP DDRP. So that's called trademark post delegation dispute resolution procedure. So they reviewed all these and then the UDRP is the longest standing

consensus policy developed by ICANN and that's for phase two. So that's their kind of slate of work.

And I want to quickly highlight a few recommendations that's relevant. So recommendation two for TMCH topic, the group, they considered the following aspect of the TMCH. I didn't include the full text, just as experts, aspects of the key component. So they considered whether the current exact match rules should be changed or maintained. And then the group's recommendation is that the status quo should be maintained. So they recommend not to change the exact match rule. And the associate recommendation is the Sunrise final recommendation number four. They said in the absence of wide support for a change to the status quo, the working group recommends that the current availability of Sunrise registration only for identical matches should be maintained and the matching process should not be expanded. So exact match for Sunrise.

And then trademark claims final recommendation number four. In the absence of wide support for a change to the status quo, the working group recommends that the current exact match criteria for claims notice be maintained. So also exact match for claims notice. And in the rationale, I just included some key points. They believe the exact match criteria strike the appropriate balance of deterring bad faith registrations without clear evidence that good faith domain name applications are substantially deterred. So just to note that in my experience supporting the group, I did observe a lot of debate about whether the exact match rule needs to be modified. And then the end result is that they believe they have to maintain the status quo because there is no clear evidence this is

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not working. So they put forward these recommendations and then just very quickly go through the next line. And I will stop is that they also have a final recommendation number one with regard to TMCH. And they talked about the TMCH provider, registry operator and other third parties may provide ancillary services to intellectual property rights holders. To the extent the TMCH validation provider validates and accept other forms of intellectual property in order to provide such additional voluntary services. These are other forms of intellectual property must be held in separate ancillary database. So, I mean, this recommendation didn't really talk about much, but it just said the group considered this, but they support the continuation of these ancillary services. And they understand this is outside their policy remit to recommend any change or enforce any change because it's outside the scope for policy working ICANN.

And finally, in their report, they made some, they noticed some agreement by the group is they agree not to develop any recommendation concerning additional marketplace RPMs, like the ones we talked about, like what Mark Monitor provides, for example, because they're outside scope. And they also agree not to develop any additional mandatory RPMs. So these are the outcomes of the RPM PDP phase one. And I see Michael has his hand up.

MICHAEL BAULAND: Yes, I'm a bit confused now. Could we go back one slide, please? The recommendation four said it's to not change the status quo and only do an exact match criteria for claims notice. But previously, and this was on slide 13, the section 4.1.3, it was that

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registry operators must check also all variants. So is the status quo now to check all variants or just do the exact match?

ARIEL LIANG: This is Ariel. I think the scope of this recommendation is pertaining to what TMCH does. So it's the claims notice and the claims trademark claim service that provides. So it doesn't concern what the registry operators do. They may have additional notice to variants too, like it doesn't concern them. That's my understanding.

MICHAEL BAULAND: But the TMCH does not check the claims labels, right? They just provide the claims labels and they do no check on their own.

ARIEL LIANG: Yeah, sorry. Yeah, that's what I meant. Yeah, it's just basically, I think what it says is what can go into that domain label list for the claims notice that has to meet the matching criteria of the TMCH, which is generally based on exact match with the exception of from transformation rules. So I think that's what this recommendation is saying.

MICHAEL BAULAND: Oh, okay. So it's just for the generation of the DNL, we just put the exact match in the DNL. Okay, thanks.

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DONNA AUSTIN: Thanks, Michael. Sarmad and Edmond.

SARMAD HUSSAIN: So I guess taking this in a slightly broader dimension, we have variants now at two levels. We have second level registrations, but we also have variant TLDs. I guess we've been talking about variants at the second level within a TLD. And I guess, I'm just wondering whether we'll come separately back to a discussion for what should happen, if anything, for variant TLDs at the top level as well. Or if we're not coming separately back to it, then maybe that's something we should look at now as whether there should be some additional checks and reporting by registries across variant TLDs as well, in case there is a hit, for example, or even for checks. Thank you.

DONNA AUSTIN: Thanks, Sarmad. Edmon and then Michael.

EDMON CHUNG: Edmon speaking personally. So just quickly in response to Sarmad's question, Sarmad raised, and it seems to me that our previous discussions about how registrations are regarding the TLD and the IDN TLD variants would apply. There isn't any special thing we need to add in terms of summarizing TMCH. That's my immediate feeling. But I put my hand to add to what Michael was saying earlier. So I assume that the rights protection mechanism group, when they talk about status quo, they have already taken into account the registry agreement provisions, especially 4.1.3 about IDN variants. I'm just assuming that they

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did. Or if they didn't, the effect would still be the same because the status quo is regulated by that as well. That being said, then I guess for us now, for this working group to consider, is probably doing something along the lines when I think some of the other recommendations that we did was that we simply agreed to what the SubPro say or we agreed to what some other people said. We should probably do something similar and agree to what the rights protection mechanism group said, but probably add an emphasis on the few items that were identified in the registry agreement because they form part of the status quo as well. Because to some people, it might slightly be different from an exact match, an under quotes point of view.

DONNA AUSTIN:

Thanks, Edmon. I think that's a good suggestion just to close the loop and make sure it doesn't look like we've missed something. Michael?

MICHAEL BAULAND:

I also quickly want to respond to Sarmad's points or questions. I think variant TLDs are not really affected by this because all this TMCH stuff, it works on labels and not whole domain names. It just says whenever such a label is registered under any TLD, whether you as a registry have a single TLD or two TLDs that are variants or you run two TLDs which are completely separate, it's no difference really. It just means that whenever such a certain label is registered and possibly also a variant of that label, but it's always the second level that is considered here, then you have to notify the TMCH about that registration and notify the registrant



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that there might be a trademark they infringed. So there's no special case to consider when there are variant TLDs, I think.

DONNA AUSTIN: Thanks, Michael. Hadia?

HADIA ELMINIAWI: Thank you. This is Hadia for the record and this is responding to what Edmon has just said. So basically recommendation 4.1.3 talks about what the registry operator needs to do in relation to variants and IDN variants. While the recommendation here, number four on the screen, refers to what the Trademark Clearinghouse has to do with regard to the IDN variants. My understanding that our policy provides recommendations to registries and registrars, but does it also provide recommendations to the Trademark Clearinghouse? That's the first question. And then the second one is a comment that we need to be clear on who does what. In putting together our policy, we need to be clear on how each party, how both parties complement each other in order to end up with a policy that is consistent, does not provide additional rights to trademark holders, while as well protecting those rights. Thank you. Existing rights.

DONNA AUSTIN: So thanks, Hadia. So this is my understanding. So the Trademark Clearinghouse came into being because of a policy recommendation around rights protection mechanisms back in 2012, whether it might have been a post-guide book when they

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had the rights protection mechanism. And I guess some of the rules, which Ariel said some are ancillary services, but those that are mandatory for the registry and what the Trademark Clearinghouse does, my understanding is that is containing policy and that's how come they're mandatory. So any policy recommendation that we come up with that would impact the way that TMCH does their stuff, then that would have to be part of implementation and the recommendation, I guess, would be that Trademark Clearinghouse has to do X, Y, Z to accommodate whatever the policy recommendation is. And I think that the TMCH is actually a contracted entity to ICANN to fulfill certain obligations that are in the policy. So it's the rights protection mechanism policies that give rise to the Trademark Clearinghouse, if that makes sense. Yeah. Sarmad.

SARMAD HUSSAIN: Thank you, Donna. So I'm looking at slide 13. And just coming back to the earlier point, which I had raised. So the language in the contract still, I think, refer to TLD in question and not TLD and its variant TLDs. So just wanted to sort of point that out that whether the registries should also look across variant TLDs which they're managing and not just that particular TLD under which that variant label is actually applied under. Thank you.

DONNA AUSTIN: Thanks so much. So I guess our recommendation at the top level that the primary and the variant TLDs be part of one registry agreement. So I guess there will have to be some consideration of this in that context. I guess the other unknown that we have is how

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those separate TLDs will be managed. Whether they're all going to launch at the same time and whatever. I guess thinking that through, there's stuff that we just don't know. So how this applies moving into that, I'm not really sure. So if we think about each of the TLDs as an individual TLD, then I don't think there's any problem applying the current rules. And the registration of names during the sunrise period, it could be that the one trademark is going to register across all three TLDs. We don't know that. So we don't, I guess there's a lot of unknown. So if there's an assumption that the primary and the variant TLDs in the set are going to operate somewhat individually, then I don't know that there's a problem with the sunrise rules. I also don't know that there's a problem. I don't see how they can operate as a joint. So I guess I kind of understand where you're coming from, Sarmad, but I don't know what we need to talk about what the possible implication is. Thanks.

SARMAD HUSSAIN:

So there is a SubPro recommendation, which takes the scope of a label registered as one and its variants under a TLD to all its variant TLDs as well for the same entity, for the same registrant. So there is, I guess, some implication from SubPro on that. And then there is also SAC 60 recommendation number 13, which talks about potentially extending this mechanism to variant TLDs. And I think that sort of a context, which is, I guess, motivating me to raise this. Thank you.

DONNA AUSTIN:

Okay, thanks, Sarmad. Nigel and then Michael.

**NIGEL HICKSON:** Sorry. Yes, thank you very much, Nigel, for the record. So I think we have to just perhaps take a step back, because I think what we're doing, we've got various processes in front of us. So we talked about the SAC recommendations, but they were just recommendations. But we, of course, we've got the SubPro, which were, as Sarmad rightly said, was something that was obviously agreed by council. We've got these recommendations that we've got from the RPM, the phase one report, which presumably were also agreed. So we have to take note of those. But presumably in our recommendations, if we do feel that there is some incompatibility between the various sort of policy recommendations that have been agreed, then presumably we can say that in the fullness of time, that a certain rules that TMCH works to at the moment do seem not to be completely compatible with other recommendations that are subsequently made. But yeah, I just think we need to be clear on the process as much as the substance. Thanks.

**DONNA AUSTIN:** Thanks, Nigel. Michael.

**MICHAEL BAULAND:** Yes, Michael, for the record. To come back to the discussion, Sarmad opened with different variant TLDs. I think it makes sense to have the policy that each variant TLD needs to have its own sunrise and claims phase, just as a main TLD has. If they are launched at the same time, those phases can and will run

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simultaneously. If they are launched at a different time, those phases will be independent of each other, with the exception, of course, that the same entity principle across those variant TLDs must be upheld all the time. But that's a technicality the registry has to take care of in the sense that if a domain name was already registered in TLD one and later TLD two starts with a sunrise period, then of course all variants of that already registered domain name will not be available during this sunrise of TLD two. But this is also something that already now kind of could occur because there's this qualified launch phase program in which registries are allowed to activate certain labels even before the sunrise. And in that context, there could also be, without variant TLDs, be the situation that a domain is already registered or variant is already registered during sunrise. So I think this is nothing too special, but each variant TLD should have their own phases and then everything should just work out fine.

DONNA AUSTIN: Thanks, Michael. So I guess that's a good suggestion to potentially overcome the issue Sarmad's raised, but I'd really like to hear from others. So Edmon?

EDMON CHUNG: Yeah, Edmon speaking personally. So I don't disagree with what Michael says, but I think that if a registry decides to do that, it's going to be very confusing for registrants. Launch different variant TLDs at different times. So in some sense, I think in the evaluation of the application itself, if the registry is thinking of doing this, they should include it in their application and we should evaluate

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whether that is acceptable, the processes that they put in place for such a launch. Because when you receive the application, you would already identify the different variants. And in the section where you explain how you would do the launch, the sunrise, and the rights protection mechanisms, perhaps the applicant needs to explain and there might be some evaluation that would be done by ICANN that says, okay, this makes sense. That's when what Michael said could be applied. But absent that, I think the assumption should somehow be that all the primary and the variants TLDs are launched pretty much at the same time in that sense. But if that's not the case, then the applicant should really identify how they're actually going to do it.

DONNA AUSTIN: So I understand your point about putting that in the application process, but I don't understand how that has any consequence further down the line or how that is evaluated.

EDMON CHUNG: In that sense, it does. Because if what is explained doesn't make sense, it's not under what Michael explained, then they're not competent as a registry operator. The point of asking applicants to provide the information about any part of how they're putting in policies, how they're running the registry, is to identify that, is to evaluate whether this is something that makes sense. So likewise, I guess, is something. So the consequence is if they come up with a process that makes no sense, then we should ask for clarification. It might come through in a clarification question in the application process or in some sort of process.

DONNA AUSTIN:

So my assumption through all the conversations that we've had has never been that the primary and the variants would launch at the same time. I don't think we've ever stated that that is a requirement. So I don't know that everyone's on the same page with that assumption. We do have existing IDN TLD operators out there at the moment that are likely to apply for the variants in the next round. So they will have separate sunrise and claims periods to the others. So I'm kind of wondering if we're complicating this unnecessarily. And if we think about the TLDs as individual TLDs and how the sunrise and claims would apply, then that's the easier way to consider the charter question. But I think we should perhaps do some investigation about the SubPro recommendations that Sarmad has mentioned and see if there is actually any implication moving forward. The other thing with the registry agreement and the fact that we've recommended that it be one registry agreement and how the individual TLDs are going to be captured within that, what would that look like might be something else that we need to have a look at. But my sense is that at a meta level, and I think this kind of goes back to what Nigel was saying, is that we have a set of processes. I think we can apply the sunrise and claims to the individual TLDs and not complicate that at the moment with what happens to the variants at the top level. So we can do it at a second level with the assumption that we're considering each TLD as a single TLD, but we perhaps need to have a further think about what the expectation is for the TLD operator if the entity happens to have variants. I think we probably are okay at an individual level, but we need to do a little bit more investigation about if there is any

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consequence across the variants at the top level. It's clear that our assumptions about how the variant TLDs would be introduced aren't the same. I don't know what we do about that because we've already submitted our phase one recommendations to the board. Michael, did you still have your hand up?

MICHAEL BAULAND: Yeah. I agree with Edmon in the sense that it probably complicates things if a registry would run the sunrise of one TLD and the sunrise of a variant TLD overlappingly such that the first sunrise ends after the second sunrise started. So they are not synchronous but overlapping. That certainly would make things complicated, but then I guess it's up to the registry if they really want to do that. I think in most cases when those TLDs are launched close to each other, it makes sense that the registry actually launches them at the exact same time. That makes life for the registry and the registrars and registrants easier, but we shouldn't force them. Also, like you said, it's probably not an uncommon case that a registry applies for a variant TLD at some later stage. In that case, those sunrise claims phases will have to be different from the ones of the already existing TLD. So if we just state that every TLD and variant TLD needs their own sunrise and claims phases and they need to be run under the normal standard same policy conditions and the same entity principles upheld, then I think we should be fine.

DONNA AUSTIN: Thanks, Michael. So I guess what we could do is have a recommendation that the sunrise periods are either run



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simultaneously or they don't overlap to take out that kind of—to eliminate the possibility that they will overlap. So we could potentially have that recommendation. Maxim and then back to Edmon.

MAXIM ALZOBA:

I think the issue of overlapping sunrises is actual for the end date sunrise where you collect all the applications and only then you decide who is the winner. But for the first come, first served, it's not a problem because the winner takes all variants at the same time, yeah, which are live. But what we need to recommend is that the registry uses the same method of making decision who the winner is in the sunrises. So if they decided to use auctions, use auctions, then it should be auctions in all TLDs or if they decided to use first comes, first served, it should be same in all TLDs in the variant set to avoid confusion and also to minimize the necessity of synchronization, which is not possible in overlapping sunrise periods in end date or auctions method. Thanks.

DONNA AUSTIN:

Thanks, Maxim. Edmon and then Hadia.

EDMON CHUNG:

Edmon, again, speaking personally here. Thinking through what Michael was mentioning, actually might want to even take it further. Subsequent launches of variant TLDs should not require an additional sunrise because there is no actual additional names that are released or made available. If we look at the same entity principle and the SubPro recommendation that talks about it

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across variant TLDs, then when a variant TLD is activated, there isn't any new names that were actually made available because it's made available kind of to the existing registrant so that they can activate the full domain with the variant TLD and maybe some additional variants as well. But conceptually, there isn't a release of additional names. Therefore, it should not trigger a requirement to go through the TMCH and sunrise again.

DONNA AUSTIN: So you're suggesting that there would only be one sunrise period?

EDMON CHUNG: Yeah, and maybe it could still be at the option of the registry operator. But in terms of requirement, and I'm thinking out loud as you can see, but the logic of it means that you cannot actually— What you can register has already been available before the IDN variant TLD was actually activated. I mean, the second level label that would have been acceptable would have already been there, been available.

DONNA AUSTIN: Thanks Edmon. So Michael, Samad and then Maxim.

MICHAEL BAULAND: Yeah, I tend to disagree here with Edmon, even though trademark holders could have had the chance to register their trademark already when the first TLD got active. It might be the case that the second TLD covers a different market, a different language area,

whatever, and that the trademark holders just weren't interested in the market of the first TLD. But in the second market, they say like, yeah, that's an important market for us. And now it becomes available. And now we want to make sure that in that market, we have our trademark. And with the first variant TLD, they maybe looked at it and said like, well, those are letters we don't even use. So they are really unimportant. And they would not think about registering or applying for the label to make sure that they have it available if and when if and when the variant TLD becomes active.

DONNA AUSTIN: Thanks, Michael. Sarmad?

SARMAD HUSSAIN: Yeah, thank you, Donna. So I was suggesting, going to suggest the same thing as Michael said, that actually, and I put a comment in the chat as well, that there are new names possible actually under variant TLDs, because the variant TLDs are potentially in a different language. And as Michael, I think very aptly put, focused on a very different market geographically. Example I put in the chat was Arabic language, which is very focused on the Arabic speaking world. But Arabic script is actually used in a lot of different countries. And so through an Arabic language IDN table, the particular trademark may not even be possible. But when the Urdu version of that variant TLD is actually released, it is focusing on, let's say, South Asia, and within second level Urdu IDN table, which is introduced under that variant TLD, it makes available many more strings, which were not available under Arabic

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language. And therefore, that may actually invoke a new trademark kind of requirement. Thank you.

DONNA AUSTIN: Thanks, Sarmad. To Maxim and then Ariel.

MAXIM ALZOBA: I think the situation where the trademark owner who has rights only in variants of the primary string, for some reason, it's up to them in which script to register the trademark, is going to be in worse position than those TM owners who are registered in the primary IDN. And it's the reason to recommend the sunrise for all added variants in the set. So the trademark owners have equal chances. And also, if the first trademark owner registered in all variant scripts, it's not an issue for them. So I don't see complications here. Thanks.

DONNA AUSTIN: Thanks, Maxim. So, Ariel.

ARIEL LIANG: Yes. Just kind of listening to the discussion, I had, I guess, similar question as Nigel maybe in the comment that I thought we were talking about second level, but now we're talking about top level. But I just want to have a quick reminder for the folks that in the phase one recommendation, we did have a recommendation pertaining to the delegation time frame for a gTLD and its variant TLDs. So we did have that recommendation saying it has to align

with what SubPro has recommended. It needs to stick to the same time frame for delegation. But the sequence, whether it's primary first or variant, doesn't matter as long as they're all delegated within the time frame and with the possibility for extension. But I believe when we talked about that recommendation, the group decided not to touch anything with regard to when the registry operator decided to launch a TLD and how to manage it. And I think it's a decision by the group not to go beyond delegation time frame. So it's just a kind of refresher on what we discussed in the phase one. But somehow we are in phase two, but we're talking about launch. But I just want to touch on that point. And then also a quick time check. We have 30 minutes left for this session. And I have only one slide left. It's about the high level discussion question. I was hoping maybe we can just look at the question and see whether we can reach any high-level agreement so that at least we kind of wrap up our morning discussion in a place that we feel comfortable with and then we can pick up whatever that's left in the afternoon.

DONNA AUSTIN:

Thanks, Ariel. So I'll just give Sarmad an opportunity to respond. I don't have a problem with discussing the top level. I know we're supposed to be talking about second level, but I've got no problem opening up the top level. I think it's reasonable to have this discussion and get it over and done with to see whether there's a problem. So I'm not too fazed about that. So, Sarmad.

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SARMAD HUSSAIN: Thank you. Just a comment that variant TLDs actually could be delegated years apart. The couple of examples are the existing gTLDs, which were delegated obviously in the previous round. Their variants will be delegated many years later. And then also it is not necessary for even a future gTLD applicant to request for variant gTLD in the same round. They can also do it in subsequent rounds. Thank you.

DONNA AUSTIN: Noted. Thanks, Sarmad. Okay, Ariel. Back to you.

ARIEL LIANG: Okay, sounds good. So the last slide. And it's a discussion question. So just a refresher of what F1 was. Are there any adjustments to the TMCH and its sunrise and trademark claims services needed? So the charter question only asked about TMCH and the sunrise and trademark claim services. It's not talking about sunrise period and those things, like a launch period, whatever. It's not touching that. So maybe we can just focus on this for now. So the first discussion question we have is, should the matching rules of the TMCH be expanded to include variant labels corresponding to a verified mark? And just based on what we discussed in the room, I think based on staff's understanding, we are not recommending any change. And also it's in line with what RPM PDP is saying, is preserving the status quo to exact match with the exception of transformation rules when it applies. So we're not recommending expanding the TMCH to include variant labels. And also the understanding is it's not the

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appropriate rule for TMCH to do that calculation due to conflict with trademark laws and etc.

And then the second discussion question, do the provisions in the Trademark Clearinghouse rights protection mechanism requirements? So that's the three sections we looked at in the registry agreement. Do you believe those provisions provide sufficient flexibility to registry operators for managing variant domain names registration during sunrise and trademark claims period? So I think based on the standing, it seems to be sufficient. But also, I heard some comments about maybe memorialize this in a policy recommendation to affirm this is the way going forward and maybe also taking into account variant TLDs, those also apply to those. But I will stop here and see whether there's comments. And I see Sarmad's hand.

SARMAD HUSSAIN:

For number two here, I'm not sure whether the discussion we had about allocatable variants versus blocked variants applies here. And if it does, was that one of the change which was being considered?

DONNA AUSTIN:

So I think what we've agreed is that the matching rules shouldn't be expanded. There's no a problem with sunrise period. There may be some changes that we want to recommend for the trademark claims part of it. But that would be a process thing, not about changing the rules. But then I also think that we've agreed that the same entity principle is going to capture any variants

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anyway as part of the registration process. So I'm not convinced that we need anything for the trademark claims either.

Sarmad, on your question about blocked and allocated, I don't know that there was any agreement one way or the other on that. So I'm not 100% sure there. So Steve?

STEVE CHAN:

So this is Steve from staff. For what it's worth, I captured an action item to validate whether or not the way that that part of the agreement would be interpreted would also apply in the event a registry operator only blocks variants. So I think there's just a little bit of investigation that needs to be done to examine whether or not that case is already covered.

SARMAD HUSSAIN:

Thank you. So if we can go back to slide 13, I think let me try to explain. So I think that's certainly one part of what we wanted to follow up with what Steve mentioned. But I think there was some language here which referred to allocatable variants and not blocked variants. And I was just wondering whether that's separate from what Steve was mentioning. So I was just wondering whether that also needs to be addressed. Thank you.

STEVE CHAN:

Thanks. This is Steve again. I think we're saying the same thing. So the language on the screen specifically says allocatable. And I think that's what your concern is. That would be only limited in case where a registry operator has allocatable only variants. And



sorry, that's not quite right. But in the event where a registry operator only has blocked, you're wondering if that would be excluded from this provision because it's not specifically allocatable. And so I think that's what we want to investigate in the event that a registry operator only blocks variants, whether or not it would still have this provision applied against them. So I think we're saying the same thing.

**SARMAD HUSSAIN:** Slightly different. So in case it blocks variants, that's something we need to evaluate. But in case it allocates variants, then should it only be looking at allocatable variants or also allocatable and blocked variants? So that's, I think, what I was referring to. Thank you.

**EDMON CHUNG:** I think you're talking about the other slide that Ariel prepared, which we mentioned that needs to be updated. So I think that's Ariel's typo, if you will, which needs to be updated.

**ARIEL LIANG:** Yeah, this is Ariel. So in the language itself, the registry agreement language itself, it didn't mention anything about allocatable or blocked. It just says if the registry operator implements variant registration policy, then these sections apply. It didn't really say it can only kind of check allocatable variant label or such. And then it's my example. I included the word allocatable that potentially confused everybody, but it wasn't in the language. But I think I understand your concern. Maybe what, Sarmad, what

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you want to check is whether, for example, section 4.1.3, for example, if registry only blocks variant labels, does it still use this rule to check the entire set against the DNL list or it only check like label being applied for? So I guess maybe you are curious about that, if I'm understanding correctly.

DONNA AUSTIN: Okay, we've only got three minutes left and then we can go and have lunch, which I believe is downstairs where you all have breakfast. Okay, so are we starting on a new topic when we come back?

ARIEL LIANG: And this is Ariel. So unless we want to keep talking about the launch periods, then we could continue with that in the afternoon. And then we do have three more questions under RPM topic that we can start with and go back to the launch period discussion. So up to the group, what do you feel like? We can start new-ish or we can continue.

DONNA AUSTIN: Okay, we'll have a chat during the break, but I think it makes sense to just continue rather than change subjects. Okay, only two days to go. Alrighty, go and have some lunch, enjoy and we'll see you back here at 2:00.

**[END OF TRANSCRIPTION]**