

**ICANN  
Transcription ICANN64 Kobe  
GNSO – Review of All Rights Protection Mechanisms in gTLDs Part 2  
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Julie Hedlund: Thank you much and hello everyone and welcome to Session 2 of the Rights Protection Mechanism PDP Working Group. And this is the working session of the Sunrise Sub Team

And just for those who may have joined this session and had not been at the session just previous to this one, that session was a full working group meeting of the PDP Working Group. And there were a couple of people who were in a queue that we needed to cut off so that we could break.

So although this is the sub team meeting working session, we are going to recognize the couple of people who were in the queue. We're going to take five minutes to just let those people finish out their comments. And then we'll start into the work of the sub team. And I am seeing - in the queue I have Kristine Dorrain and George Kirikos. Kristine please.

Kristine Dorrain: Thanks. This is Kristine. I won't repeat what was said earlier but I wanted to support the notion that we not allow additional comments in or additional proposals in after the sub teams because of a data point that we haven't already brought up, which is that the very strong risk, that points that have been hotly litigated and resolved by the sub team would be reopened and re-litigated by these new proposals.

So those people submitting new proposals would not know which ideas were disregarded. They would only know which ideas were accepted from the report as it existed. And so we would possibly see duplicate proposals that had already been disregarded. So there's another data point for not allowing in proposals after the sub teams were done.

Julie Hedlund: And thank you very much Kristine. And George Kirikos. And then I do note in the chat that Griffin Barnett had been in the queue but he had gotten dropped from the queue. And if you did want to rejoin, you're welcome to do so Griffin. But we'll go next to George Kirikos please.

George Kirikos: George Kirikos. Are you able to hear me?

Julie Hedlund: You're a little faint George. If you could speak up please.

George Kirikos: Hi. George Kirikos. Can you hear me?

Julie Hedlund: Oh yes.

George Kirikos: Yes. If we go to the previous slide of what (Phil) was describing the situation with the sequence of the individual proposals and the sub team proposals. And I'm not sure that was accurately described.

I think he said something like the individual proposals would be after the sub team proposals. But the sub team proposals if you look at the deadline for

the individual proposals, currently that deadline is before the sub team recommendations are even presented to the working group.

And usually the individual proposals are made in order to fill up the gaps - the perceived gaps in the sub team proposals, for example in the URS there was the proposal on language that (Zach) and myself independently drive because we didn't see any proposal on that point.

And so, you know, it seems to make more sense to see what the sub team recommendations are before the development of those individual proposals because otherwise our people want to know what those gaps are. That was a point I made on the mailing list in the past.

I'll send a link to the actual deadline. The actual deadline is March 27. And the sub teams aren't going to have the completed development of preliminary recommendations until April 3 and those individual proposals aren't even going to be reviewed until April 10. Thank you.

Julie Hedlund: Thank you very much George. And Kristine, please go ahead.

Kristine Dorrain: This is Kristine. I guess I was unaware or maybe forgot that proposals were due March 27. Is anyone else at the concept of having to submit proposals before we even have a framework for what preliminary recommendations might be? I mean how would we even know what to submit?

Greg Shatan: This is Greg Shatan. Just to clarify, that's a deadline for submitting individual proposals. The working - the sub teams themselves will be working on proposals to come out of the sub team, which we're going to start essentially now.

So that March 27 deadline is for proposals that would come from individuals who, as I said, I would expect to be not those involved in the sub team

because they would have contributed their proposal ideas to the sub team starting now.

So it's basically a - kind of a second gate into the proposal - the preliminary recommendation process largely for those who aren't involved in the process that were taking place now.

So this is a different setup than the previous round and it's not intended to produce proposals as George Kirikos indicated. It's not what George said. It's a different process. Thanks.

Kristine Dorrain: Thanks. This is Kristine. I just want to follow up. So then - so just to be more clear. So what we're looking at is subgroup starts working. We start mulling, churning, discussing, drafting preliminary recommendations.

Meanwhile people not involved in that are preparing proposals and submitting them so that -- to the sub teams -- so that as part of the sub team's deliberations, we will then also review proposals but they will not be like a second subsequent bite at the apple for proposals?

Greg Shatan: That's my understanding. Correct.

Julie Hedlund: Kathy Kleiman, you have your hand up please.

Kathy Kleiman: Yes. This is Kathy. So there does seem to be a bit of a chicken and egg problem here, which is that the individual proposals are due before the sub teams report out, which means that those following what the sub team is doing are most likely to be the members.

So I'm not sure we should be excluding or have in our rules excluded individual proposals from sub team members who may be in the best position to do gap analysis. So I'm just - I'm saying according - from what I remember the rules, I don't think we've excluded that.

But certainly one of the reasons for having these face-to-face sessions and these full working group sessions is to let people know what's going on, where things stand, what the data and the anecdotes are saying and where things are leaning.

And so based on these sessions and what comes up in the next few weeks, hopefully the people will have a basis for, you know, for solid individual proposals that they submit.

The timing problem was an interesting one because we did want the individual proposals to come through the sub teams before they disbanded. And they disband upon delivery of their recommendations up to the sub team.

Also my sense is that the sub team is not a veto on an individual proposal but input on an individual proposal. And that input will be - but I can be corrected. I'm not sure - I'm not sure it's an absolute veto but rather informing and making sure that the full working group has the benefit of the insight and of the sub team. But we should go back to all the rules and I yield to my co-chair on that.

Julie Hedlund: And this is Julie Hedlund from staff. Just to just interject, we are getting past our five minute mark. I know people are going in queue. But we are also - this isn't meant to be a sub team working session.

And if it might help for staff to recall the proposed process that the co-chairs have developed and have submitted for the sub teams to work on is that the sub team proposals are supposed to be based on the data, the analysis and discussions and the individual proposals are meant to be individual working group members views based on their review of the data.

But I think to the point that Kathy has made, this is all meant to happen within the sub team process - the sub team discussions as opposed to the way it

happened under URS where individual proposals came after the sub teams had already made their recommendations.

And so just may I please ask if people can be very brief in their comments so that we can wrap this up and get into the sub team work. I'm still showing Kathy and then Susan and Kristine. Kathy, is that an old hand or a new one? Then Susan and Kristine and we'll wrap it up there. Thank you.

Susan Payne: Yes. Thanks. Hi. It's Susan. I understand the need to be quick and to get on with the discussion in the sub team. But essentially if we haven't had this discussion on how we're going to do the work, then we can't move onto the discussion in the sub team because we don't know what we're doing.

And, you know, (a bit of your own) in - which was actually in the previous session. I did say I didn't understand how the interplay between the sub team proposals and the individual proposals was working. And we've had I think three or four responses now and they all are slightly different. So I still don't know how they interplay.

I would say, you know, is there any reason why once the sub team has submitted a report to the working group why it disbands? I mean there seems to me to be no reason to disband it if there was an anticipation that something might come back to them. I don't know.

But I still am concerned that we are just setting these sub teams up to get dumped with, you know, 100 individual proposals because no one wants to lose the opportunity to shove them in by, you know, two week's time. And then what? You know, then we've only got three weeks supposedly to do this work. And I'm just now clear what we're doing.

Julie Hedlund: Kristine please.

Kristine Dorrain: Thanks. This is Kristine. Yes. I think that here and I'm going to just kind of paraphrase what I put in the chat is here to work. This is a working group. If you are in this working group, you should be on a sub team and contributing and participating.

Perhaps there's a mechanism for oh we missed something and collectively we would probably go oh, oops. We need to make sure we include that. But to have a whole separate process for yes, you know what, I don't want to be on the next three months of calls. So I'm going to sit back and put my proposals in at the end. That's not acceptable.

We're here to work. We are putting in the time. We're doing this now. Get the proposals in now. Be part of a sub team if you want your comments heard. And if there is an oops or a (unintelligible) later, we'll deal with it. But we're smart intelligent people; that we've done this before. We can put an oops in at the end if we have to.

Phil Corwin: This is (Phil). I'm going to suggest, and I admit to not being fully functional because it's 3:20 am brain time, that we have the sub teams do their work here in Kobe and that next week when there's no meetings, the co-chairs huddle with staff and review the procedures and get back to the sub teams and full working group to confirm that everyone's in agreement on a path forward.

I don't think we can do it right here. Most of us in this room physically are exhausted. We're jet lagged. And, you know, we're - I think if we all get some sleep and think about this and look back at the proposed procedures we put out, we can resolve this pretty easily. But I don't think we're going to resolve it right here and now in this minute.

That'd be better for the sub teams to just start talking about can we agree on what do we think needs to be changed if anything with these particular RPMs based on the work we've done so far. Brian.

Brian Beckham: Brian Beckham for the record. I want to build on what (Phil) just said and offer a suggestion. Maybe help break this logjam we ask staff to remind the full working group of the proposed (fast forward). Invite feedback on that during the course of the next week or so.

So then when we do get together to huddle on a way forward, we have feedback from everyone on a best way forward and we take it from there. Thank you.

Phil Corwin: And just to agree, I think my intent in what I just said was that the co-chairs should base what we're saying to the - we want feedback from the full working group to help inform the final decision here. I mean we've got proposal out. It's pretty much set.

But let's get the work done over the next day and a half. And then we'll get back to the full working group by email. And at the first session we hold after this, you know, we'll get it sorted out. Thank you.

Julie Hedlund: Thank you. Then staff will take the action to circulate the proposed process. And just to note, people generally are traveling the week following the ICANN meeting. So we might suggest for folks to have a little bit more time to look at that until the week after next.

We will get that out. And so can we go ahead and then I can perhaps turn things over to our two sub team co-Leaders, Greg Shatan and David McAuley? Which one of you would like to lead off for this session? Greg, thank you. Go ahead please.

Greg Shatan: Thanks. This is Greg Shatan for the record. And welcome to the Sunrise Sub Team portion of the meeting. But of course this is an open meeting. So you are welcome to be here and even to contribute. But this is the beginning of our discussion of preliminary recommendations.



We'll put aside these nuances of the process that we'll be repairing over the next week or two. But certainly this is the time to begin the mainstream work, which is, you know, for sub team members to begin formulating recommendations.

I will start by invoking of the (Neuman) rule, which is if it ain't broke, don't fix it. And I think that is a good rule for policy development generally and in this case specifically as well.

And that said, you know, we need - we have the agreed questions, which I think can form a beginning point for our work just to get us thinking. And I think maybe this is a case where we begin with the preamble questions just to whet our appetites as to what the work is in front of us.

But ideally, you know, folks have been thinking over time about what they might recommend. And so we'll start off with the Sunrise preamble agreed questions, which I don't have. I think I have them down here too. Okay.

So the preamble question, you know, the overall question is the Sunrise period serving its intended purpose. And is it having unintended effects? Is the TMCH provider requiring appropriate forms of quote unquote use? And if not, how can this be corrected? And have abuses of the Sunrise period been documented by trademark owners, registrants or registries?

Now we don't have to answer those questions per se. But they are the questions that kind of inform our work. So I think, you know, we go into kind of the more specific questions if we want to start at any particular one. But I'm actually kind of inclined to throw the door open to see if there is kind of a proposal that may start getting traction on the - within the subgroup.

You know, we have a variety of potential inputs. Of course we have the data analysis that we've done and will - we can make reference to that. But this is

not - we're not constrained by that information. We can be informed or inspired by it or potentially repulsed.

But whatever it is, that's just, you know, one part of our puzzle. So I think, you know, if you do have the summary table of inputs that was received, you know, that is, you know, a fair - add as a resource.

And so there is, you know, I have that open on my screen here. But, you know, that is, you know, only one piece of the overall puzzle. So, you know, we can dig down to the individual data and we can - but I think rather than, you know, starting from individual data points; I think like to see kind of more big picture of what people would like to propose as a potential preliminary recommendations coming out of the group and maybe just start taking notes on what people are thinking about as proposals.

I see there's a queue so I'll take George followed by Kristine.

George Kirikos: George Kirikos here. Can you hear me again?

Greg Shatan: Yes.

George Kirikos: Thanks. Yes. I'm a little bit confused on the process because I thought that part of the working group's mandate or, yes, the PDP Working Group's mandate is to answer the charter questions.

So are we actually going to answer the charter questions at some point? Do we do that - it seems odd to me that we would have the recommendations before we actually have the answers to the charter questions. But I'm open to ideas. Thanks.

Greg Shatan: Perhaps that's a chicken and egg question as well. But Kristine is going to tell us which came first, the chicken or the egg.

Kristine Dorrain: This is - and I have Heather here who is the expert who can probably correct me if I'm wrong. But the charter questions came from the Board. So we're going to put out an initial report. We're going to get some feedback from the community.

Then we are going to come up with a final report and we may get more feedback from the community. And at that point we will issue a report that will go to Council and the Council will vote on our report.

The Council is the one who asks the charter questions more or less. It's a little bit different in our situation. But for the purposes of this discussion, the - kind of the questions came from Council.

And so what will happen is the - we, our final report to Council will answer the questions asked of us. So this process of going through all of these initial reports is the process of getting community input so we can provide those answers to Council. That wasn't why my hand was up though, but just wanted to see if that was correct Heather.

Heather Forrest: Hi. This is Heather Forrest. Just to clarify, it's a very rare case that charter questions come from the Board. It's an easy mistake to make but it's not the case in this case. The charter questions did actually come from Council. That's the ordinary course of events. The charter questions were...

Kristine Dorrain: Provided by Council.

Heather Forrest: ...yes. There you go. Yes and that's - I had a feeling you...

Kristine Dorrain: Yes.

Heather Forrest: ...meant that. So just so everyone's clear and the record is clear and the way that Council derived those questions was in that feedback process from the preliminary work that had already been done up to that point. So just so

we're all absolutely clear, the charter questions did not come from Council.  
Love it.

Greg Shatan: This is Greg.

Heather Forrest: Charter questions did not come from the Board.

Greg Shatan: The questions came from the charter, right? Yes. By the charter of - so here's what it says in the charter before the charter questions, which are actually called list of potential issues for consideration in this PDP.

The issues that are listed here reflect the suggestions that have been made to date by the community regarding improvements or modifications to the RPMs in question and should form part of the discussions of the PDP Working Group. The Working Group may decide to address all, some or even additional issues to these.

Kristine Dorrain: Thanks. This is Kristine. Yes. And then to further backup for people who weren't following along, it was a very one sided list of questions. And so what - the first work that this working group did was to go through and neutralize the questions and try to make them broader and take them up a level.

So when I said it's a little more nuanced when we say that questions came from Council and I thank you for correcting my misspeak. The questions that came from Council are basically pulled from the report and were needed to be, you know, spiffed up a bit. So what we're looking at is the modified questions. So that was - that's what that is.

Greg Shatan: Thank you Kristine. Next in the queue is John McElwaine.

John McElwaine: And I think we're kind of getting to the point. Sorry. John McElwaine for the record. You know, I was going to suggest that we talk about the process. How are we going to develop these recommends?

I don't think many of us knew that the purpose of this meeting was to have a set of recommendations to discuss. I don't think it'll really do this group much good to just do that on the fly.

And so it might be a question for Kristine. The high level summaries of the charter questions is that what we're looking at here in the table? Okay. So I mean that could be a starting point to go over those.

In looking at those questions, I think there are a few words that we're discussing like abuse and there's one about done fairly, things like - stuff like that we could also discuss trying to understand a little bit better from a working group as well so we can help define those more controversial terms.

Kristine Dorrain: Thanks. This is Kristine. So the reason my hand was originally up was actually to the process point. I didn't know if Greg was super committed to discussing the preliminary issue first. But it is super amorphous and we've always thought it was kind of troubling in this group.

And in the event that we want to maybe pick something that we can latch our teeth into to discuss while we're here in Kobe, I actually propose something super concrete like the number of days of Sunrise, which might be Number 6. And I don't know if John that sort of also meeting with your do we want to discuss something more concrete.

I ask - I mention it only because we can sit here and start a conversation about these that will morph into some of the other questions without going to the nebulous intended, unintended like let's all get into telling our personal war stories. So that was my suggestion for the proposal because I wasn't entirely sure what we were expecting to discuss. Thanks.

Greg Shatan: Thanks Kristine. Kathy.

Kathy Kleiman: Kathy Kleiman just as a member of the sub team. I came in intending to discuss the charter questions. And in light of this detailed data and the detailed summary that we have and, you know, kind of the overall questions that we looked at with the URS, which is it working, is it not working, what needs to be fixed? That's where my starting point was.

Greg Shatan: Thank you Kathy. Griffin.

Griffin Barnett: Thanks. This is Griffin Barnett for the record. I've been hearing what- sorry, (speak into the microphone). Hearing what Kristine, John and Kathy just said, I tend to agree I think with the direction that it's going, which is that we should - our next kind of - procedurally our next discussion needs to focus on trying to answer the charter questions before we can start trying to develop recommendations, if you will.

I think they're two separate but related steps. And that the first step of those two would be to actually try and craft some kind of answers to the charter questions based on all the data collection that we've just done and then move to crafting recommendations based on what those answer say. Thanks.

Greg Shatan: Thanks Griffin. So I think, you know, we can start with the agreed questions, which are the revised versions of the charter questions. I don't think we necessarily have to take them in the order in which they were asked. And I think I agree with Kristine that starting with the most nebulous, which is the preamble, which is probably - is not the place to start, which is why we've always put it at the end of our discussions. Anyway, and so sorry for having read the preamble. Griffin.

Griffin Barnett: Sorry. It's Griffin Barnett again. One other comment that I meant to make before and forgot until just now was I also agree with the suggestion to maybe move to a - something other than the preamble question to start with.

I don't necessary have a preference in terms of the order of the other questions but it take Kristine's point earlier that, you know, there are some that maybe lend themselves to sort of a more concrete or discrete discussion than others.

I don't have anything to offer in terms of how we order which ones but I mean in my mind we could just start at Question 1 as opposed to preamble and move through in the order that they currently are.

Or if we want to take extra time to try and come up with a new order of the remaining non-preamble questions to see what might make sense in terms of ordering those for discussion, we could do that. But, yes, I tend to agree that we should move from the preamble to some other order of reviewing.

Thanks.

Greg Shatan: Thanks. Greg Shatan. So I think we can look at - I have no strong view on whether we should start with Question 1. And I think, you know, both Lori and George Kirikos have suggested or Kirikos have said that, you know, we should start with some low hanging fruit as opposed to a brain teaser.

I happen to actually think that Question 1 is kind of a brain teaser moving beyond identical matches. It's at least a medium difficulty question. So suggestions maybe the Question 7 on SMD files, Question 5a, which is the length of the Sunrise period or Question 6 on the Sunrise dispute resolution policies.

The SDRP - I'm a little concerned with starting there only because there are - I don't know if - I think (Claudio) had indicate he would have some fodder for a discussion on that. And I don't see him on the call.

So maybe we start with what I think is maybe real low hanging fruit, which is Question 7. Can SMD files be used for Sunrise period registrations after they have been canceled or revoked? And how prevalent is this as a problem.

So I'll take a queue on people who want to comment on this issue, which again may have more to do with the Trademark Clearinghouse than the Sunrise but then again, the law is a seamless Web and so it - so are RPMs. George Kirikos.

George Kirikos: Yes. George Kirikos for the transcript. I think the first part of this question, Part A, I think the answer is yes based on what we've seen. That because the onus is on the trademark holder to inform the Trademark Clearinghouse of the revocation or the cancellation then we can reasonably conclude that SMD files can be used for Sunrise periods even though they shouldn't.

Now as to how prevalent is this a problem? We don't really have much data on that unfortunately. How to fix that - it will probably require greater monitoring by the TMCH. I don't know how technically that would - how possible that would be to have the ongoing monitoring by the TMCH. But that's something that - those are my thoughts on the question. Thank you.

Greg Shatan: Thanks George. And that actually - I think that question - that raises a question to me in terms of interpreting the question, which is what does they refer to. Does they refer to the cancellation or revocation of the SMD file? Or does they refer to the cancellation or revocation of underlying trademark registrations? Which I don't think is the case particularly since revocation is not a term that I've ever heard used or if it is, not generally used with regard to things that happen to trademark registrations.

They may be abandoned. They may be cancelled. But they are not revoked. So I'm presuming that the question was intended actually to be about the SMD files themselves. But I'd like to see what other folks - I see a lot of heads in the room so I'll call on Griffin Barnett.

Griffin Barnett: Thanks. This is Griffin Barnett for the record. I mean just reading the sentence without considering perhaps other context, I read it and have read it



since the beginning the word they refers to the SMD files - after an SMD file is canceled or revoked, can somebody still use like an old SMD file to make a Sunrise registration? Do others share that same understanding?

Greg Shatan: Thanks Griffin. I have (Phil) next.

Phil Corwin: Yes. I wanted to - well, one on the question, I mean I was assuming the question was you've - you recorded a mark in the Clearinghouse and then subsequent of the recordation the SMD file has been cancelled or revoked. So you no longer have a mark filled. But the question's confusing.

But I want - really I wanted to say is that in this process I think we should when we find that there's an issue, that something is broken but that the fix wise and changing the rules for what can go into the Clearinghouse rather than the Sunrise process, which is simply bookmark that and take it up again when we get to the TMCH part of this working group's work.

Greg Shatan: Thanks (Phil). I've got Kristine. Then I have Maxim followed by Susan Payne.

Kristine Dorrain: Thanks. This is Kristine as one of the people that worked on the redrafting of the charter questions. I admit this may have been (in art) fully drafted. So apologies on behalf of the group.

But there was extensive discussion and it went all the way back to bringing the Clearinghouse people - (Vicki) came in to talk about this issue and we - extensive discussion about what happens if a trademark basically is abandoned.

Granted people chose to use words that were not correct. I get it. But that's okay. We tried to let that go. We're understanding the spirit of canceled or revoked.

So if a mark is abandoned or canceled or whatever, how do we ensure that people, that the brand owner or the former brand owner is not misusing that SMD file?

(Vicki) came up and basically explained to us that it's a theoretical, yes, as George pointed out, that could theoretically happen but it's for a tiny window. So every year the trademark holder has to re-up their mark.

So even if - so in order for the use case to happen that this would be a situation is the mark would have to basically become abandoned or canceled during the year that the SMD file was still valid. As soon as that year is up, that that SMD file's year term was up, they wouldn't be able - the brand owner wouldn't be able to affirm that that mark was in use and the SMD file would be revoked at that point.

And so theoretically there was a situation where there's a window where it could happen but the technical fix involves so much internal research that it was deemed to not a good, you know, use of time, money and resources to try to fix the theoretical problem when nobody has been able to point to the fact that this had been an actual problem yet. Does that help a little? Thank you. But Lori maybe can add on.

Greg Shatan: Thanks Kristine. I think that indicates that in fact we are talking about the SMD file - about the underlying trademark and not the SMD file. So that helps focus the discussion. I've got Maxim followed by Susan and Kathy followed by Lori.

Maxim Alzoba: Maxim Alzoba for the record. I think the - someone mentioned their revoked - yes, revocation list. Actually there is a set of documents, which are (ROCs) technical standards. We mentioned that in our notes for meeting of 14th November. And basically registries, registrars have to follow their technical standards according to their contract.

So the term is defined there. All we need is just to look into this document. That's it. Most probably it will release some of the questions. And the second (bout), yes. The document has description of how process goes when the registry checks something, when the registry change something so it will allow us to see simply what's going on and what, yes, what our feeling about that are - feelings are.

And I must underline that simply changing policies will not change technical side of things because ICANN policies do not change (ITF) standards. And according to contracts, registries, registrars have to follow those. So it's not that simple. Most probably we will need to go to (Francis) or (Iris) and (unintelligible) to check how we should be changed if we decide to change it. Thanks.

Julie Hedlund: Excuse me. You were very hard to hear Maxim. So just to remind everyone to be sure to speak close to the mic or at least as close as possible without distortion like I'm doing right now. Thanks.

Greg Shatan: Thank you Julie. I'll add to that note that because these mics are very directional that if you turn your head away, you will lose the mic even if your head is just the same distance from the mic as it was before. So you really need to speak into the mic but again backup enough so you don't pop.

Anyway, we have an Internet to run and we can barely use microphones. But we're going to be moving straight ahead to the next comment from Susan Payne.

Susan Payne: Yes. Hi. Thanks. It's Susan. And I would agree with Kristine in terms of what this charter question I think ended up being the understanding as how it was intended to be understood.

I think along the way we did also have some (doddle) to explore the natural meaning of that question as well in terms of, you know, initially there'd been a

ton of concern that SMD files might be - might have been canceled, revoked, whatever that is and the, you know, nefarious trademark owners would still be trying to use them.

And so we explore that as well and had some kind of technical conversations about what happens to an SMD file when it's no longer valid. So we did consider that and it was clear it was a non-issue. But I think there was also on some sites the concern that what they were really concerned about was what if the trademark was revoked and the SMD file didn't automatically fall away.

Greg Shatan: Thank you Susan. I think Kathy you're up.

Kathy Kleiman: Yes. Kathy Kleiman. And I agree with Susan. And I think we can parse it both ways and we still have an answer. And it's a good answer. So if the SMD files have been canceled or revoked, which they can do if you don't reregister with the Trademark Clearinghouse, then that's pretty quick. Those are - those go on a list and the registrars are supposed to check that list when the registrations are taking place.

And it's my understanding based on what we found that you can't use the SMD file for very long once it's been cancelled or revoked by the Trademark Clearinghouse.

Once the trademark has been canceled or revoked, there is a slightly longer period as Kristine noted. But at some point you're going to get to that one year period where you have to, you know, reaffirm your -- I forget what the wording is; I have it here -- where the annual revalidation is what the Trademark Clearinghouse calls it. And so - and if you don't do that, then you'll lose.

So how prevalent is the problem? I don't think we found that it was very prevalent at all. I still have a personal concern but it's a personal concern

about the SMD file being used for private protected marks list because it's not being revoked per se that they're not necessarily checking what the current status is. But that's a different question than what we're dealing with Sunrise.

So I think we've gotten good answers here and I don't seem to see a pressing problem. And so I don't see anything we need to correct.

Greg Shatan: Thank you Kathy. Before moving to Lori, I think we have a - well, I'll move to Lori.

Lori Schulman: Yes. This is Lori Schulman for the record. Kathy and I agree on this. I'd like to let this go and move on. I mean I just want to remind the group that the sub team that worked on this question worked on it two years ago and reached the conclusion.

So I appreciate you reiterating the process but perhaps we can close that out as done. That I think it would be helpful to move on.

Greg Shatan: Thank you Lori. I've got Kristine followed by John.

Kristine Dorrain: This is Kristine. I agree with all of that so I won't repeat it. The only thing I wanted to add was a self-correction because (Mary) and Kathy and Susan have all been so kind to gently remind me that it was a bifurcated conversation. So Griffin's understanding was correct that it was the SMD file but it was also the trademark. So I did want to note that correction and thanks to everybody for the team effort there. Thanks.

Greg Shatan: Thanks. I think what we should do and I tried to do it in the chat but maybe we can do it offline as to rephrase this question so we clearly have a question that we then clearly answer and move on from.

So it sounds like the question kind of is a combo question that needs to be picked into two about the SMD file and about the underlying trademark and then we can answer this and move on.

I also want to note in the chat an answer I think to something Kathy that you said. I think the provider of - providers of DPM, you know, private protected marks list or in that case it's Donuts protected marks list actually do check to make sure an SMD file is valid in the context of someone applying for that blocking service. But I would defer to those providers to confirm that.

And I also believe that it's actually a kind of a side business of the TMCH to provide, you know, live access to the DPMLs to - against the SMD files so that if - when they do indeed cancel or become revoked that they then - it then, you know, flows out and is also canceled that revoked at any other entities that's relying on the TMCH. At least that's my understanding. But if we want to ask about that, we can. But that's not really direct to this question.

So I think John you took your hand down. Kathy and (Lori), are those old hands? But John did not take his hand down. Okay.

John McElwaine: My Adobe keeps on crash...

((Crosstalk))

John McElwaine: I'm sorry about your Adobe. So not to belabor this point because it sounds like we can move on but I would also point out that the Trademark Clearinghouse dispute resolution process does say 1.2.3 that you can cancel a - or you can challenge a trademark record on the basis that it no longer has valid trademark information associate with it.

So there's already a process for getting rid of dead wood so to speak that is on the - we can get to that later. But I'm just saying there's already a solution to this problem.

Greg Shatan: Kathy, to answer your question, I think you would challenge if an instance came up where you believed that a trademark - for instance, a Sunrise registration had been made that was based on a invalid - a filing on an SMD file that should not have been valid at the time and should therefore, you know, was improperly registered. But I think that's, you know, just - well you raised the question so I've answer it. Let's see. So I think we have Kristine followed by George.

Kristine Dorrain: Thanks. This is Kristine. Mine is a procedural point. So we've heard that we have an answer to the question. Great. We can fill that in. As we're putting together our recommendation and thinking about what the actual recommendation text is going to say, do we want to include any supporting information? That was something helpful that I think sub-pro did where it could such as this part that John just recommended. I'm going to try to talk into the mic. Sorry.

So John McElwaine just literally cited to the provision where we know that this is really not an issue at least from the SMD file part. Right? So do we want to have a little bit more citation information in our preliminary recommendation? And should we be gathering that at this time as well or should we be asking staff to collect this stuff as we go? Thanks.

Greg Shatan: Kathy, I see you have a direct answer I think to that so I'm going to take you before George.

Kathy Kleiman: I'm concerned about adding information that we haven't seen, that we haven't vetted, that we haven't talked about. Some of this challenge process is based on the SMD - on the Trademark Clearinghouse being open.

It was - it has opened - a lot of the challenge processes were based on the openness of the Trademark Clearinghouse, which was the case before implementation. And so a lot of them are not as usable or even recognizable now. So I just I feel weird - the pending data that's not data yet.

John McElwaine: This is John McElwaine for the record. So your point is well taken on that but I think it's a separate issue. So I mean the visibility into the Trademark Clearinghouse not - is going to go to a number of different issues.

But there is the ability to challenge. And so it does sort of answer the question in that there is a solution to the question that was presented to us. That's just we're going to have to address that at a later time.

Greg Shatan: Thanks John. I think, you know, if the SDRP does exist and does have something that, you know, goes to this point, we should at least cite to it. It's just a clear kind of a fact. So I got George followed by Maxim followed by Kathy if that's a hand for a different reason and Susan.

George Kirikos: George Kirikos here. My point is somewhat related to Kathy's point, namely that transparency aspect. Do we actually have an example of an SMD file with the list of the fields that are contained in it?

In particular, is the country and the trademark registration number a part of the SMD file? Because if that's the case then at least the registry operator who's presented with that SMD file has the opportunity to do their own vetting in the case of a - like (to see) your questionable mark that is submitted.  
Thank you.

Greg Shatan: Thanks George. Maxim.

Maxim Alzoba: Maxim Alzoba for the record. Few points (this). SDRP is their TLD basically or maybe if a registry operator has bunch of TLD, for them it might be easy to



say that, okay, those few TLDs have this - they're the same as SDRP procedure. Yes. Because it's policy of the registry.

But they might decide that for example we have A and B, yes, multiple A, multiple B TLDs and we have one (ERP) procedure for the first and another for the second. So there is no universal team.

The second item. It's about terminology. Just small correction. The revocation list of SMDs is describing the document type (also to the chat) and it's (unintelligible) sender. And basically (Tim Sage) updates, informs registries twice per day, which marks (unintelligible). Yes.

So if the mark became (bad) right after the announcement of (UDC 00) then registry is not aware of it until the - about half of the day lost because it's not online process. It's from time to time and twice a day.

And then the same document shows that if the SMD file is not valid, there is no registration. But also I must remind you that registry do not track what happened to trademark. We (can't) do that. It's just this - it was valid that very moment from the perspective of the last set of (like) non-valid TMs.

So if some trademark was good I'd say in terms of TMCH at 1 o'clock, then registration was 1 o'clock and one minute and then 12 o'clock the file came that no it's not good anymore. We cannot do anything about. It's already registered.

So we have to understand that it's like time stamp process. It's not online or registries do not track what's going on in the surrounding world until they notify. They don't track online databases of trademarks or something. That's it. Thanks.

Greg Shatan: Thanks Maxim. I've got Susan Payne.

Susan Payne: Thanks. Hi. Actually I've noticed while I had my hand up that there's been some chat about this going on as well. But I think we - there's a bit of conflation of what John was talking about, which was the challenge process that TMCH is offering, which is very clearly available to challenge something where you feel that the - for example, as Sunrise registration is preceded because of the fact that actually, you know, the SMD file has been, you know, the trademark rights have been improperly verified.

That is the separate obligation that all registries had to have a Sunrise dispute resolution procedure or SDRP. They're two different things. And indeed it's the TMCH's own challenge process that gives the remedy on this. And just to be clear, it is something we've talked about before. But of course we talked about it so long ago because then we parked all of this.

Greg Shatan: Thank you Susan. Just to answer a question that had been asked earlier. What information does and SMD file contain? It says actually in FAQ on the TMCH Web page indicates the first five lines are human readable. The first line is the mark itself such as Example 1.

Next to the unique identifier for that SMD so it's EG SMD ID 1-2 or 47-39 or whatever the rubric is for establishing the unique identifier for each SMD file. The U label that you can use to register the domain name - so for example, example Example 1 would be both Example-1 and Example1, one word, as well as Example 1, two words. And the start date and the end date of the validity of SMD file.

And then after that is an encoded - there's a boundary so that begins the encoded SMD file after which follows a bunch of non-human readable stuff. The example is PD94BWWGDMVAC and so forth.

So the answer is that other than the mark itself the SMD file does not contain human readable information about the file. And the TMCH describes the

SMD file as essentially like a password that allows you to undertake certain activities if you hold that password or that key. So that's that.

So I think in terms of getting back to Question 7 itself we have asked the question whether an SMD file can be used to register a Sunrise - in Sunrise after the SMD file itself has become canceled or revoked.

And the answer to that seems to be pretty much no although there may be some, you know, some period of time - an asynchronous period of time where that might - the information hasn't flowed out because I think Maxim - maybe it's twice a day. Is that the - everything is synched up.

So until that information promulgates, there is some very short period of time...

((Crosstalk))

Greg Shatan: Well then I guess the second question is the trademark itself - the first question is if the SMD file itself is dead, can that dead - is there (safely) a dead (cat) bounce to a dead SMD file where a dead SMD file can be used to register even when the SMD file itself is no longer valid setting aside the trademark. The trademark might still be valid and the guy didn't pay.

So and then there's the second question, which is if a - if the trademark registration underlying an SMD file is abandoned or canceled ceases to be a trademark registration, can the SMD file associated with that now defunct trademark registration be used to do a Sunrise registration filing?

And I think the answer there at least theoretically seems to be for some period of time the SMD file will remain valid or does the SMD file expire when the trademark itself expires because the trademark expiration information is in the Trademark Clearinghouse? I don't know the answer to that question. Did we figure that out? Lori.

Lori Schulman: Yes. We figured it out and the answer is yes. When the trademark dies, the SMD file dies, 100%. I mean this is like - I'm having like PTSD. I'm sorry. From like the conversations two years ago we spent an enormous amount of time on this. And I - again, that's one of the things I'd like to consider it resolved.

Greg Shatan: That's the purpose for this wrap up here, which is to make sure this is the wrap up before we...

Lori Schulman: You're right.

Greg Shatan: ...call this a day or call this question a day. Maxim.

Maxim Alzoba: Just for clarity. Seems the registry at least what I meant that formally you have - or some other - (unintelligible) has a window of up to 12 hours when actually (unintelligible) trademark, which is like cancelled or something happened to it may be released because after the moment - is this (suspect party) is good with timing and they know when to register, they have a window of opportunity, which is like 12 hours to register using a good SMD file for that trademark. That's it.

So if the SMD file is bad, it can't be used for registration. But to make it bad, you have to make registries aware of that. And its revocation list and it's published twice a day. That's what I meant. Just for clarity. So formally the answer yes and no.

Greg Shatan: Griffin.

Griffin Barnett: It's Griffin Barnett for the record. Thanks. And I take Maxim's point but I want to recall that second part of this question is is this a prevalent problem and I think the answer that we're hearing is no. And I think if we go back to the

(Neuman) rule from earlier, then our answer to the question should be no and we can move on. Thank you.

Greg Shatan: Thank you. I think that wraps up Question 7. Lucky seven. We're going to move on to Question 1 and David McAuley is going to take over as your toastmaster.

David McAuley: Thank you Greg. And moving on to Question 1. And it'll be my suggestion - my personal suggestion that we move sequentially from here on because - and my thinking on that is we can disagree amongst ourselves whether something is low hanging fruit.

But the value in going sequentially is allows us to see what's coming and if we have an interest in that area and just sort of get prepared for it. But in any event, I'll go to Question Number 1.

And here it would be nice if someone has a proposal they want to throw on the table but otherwise to hear comments about what people think about this question.

And the question is should the availability of Sunrise registrations only for identical matches be reviewed. And there's a related question if we entertain the idea of saying yes.

And that related question is if the matching process is expanded, how can registrant free expression and fair use rights be protected and balanced against trademark rights. So oops. I've lost my screen. So I'm looking at Greg to see if there's a queue and if anybody has a comment they want to make. I see Brian first so I'm going to recognize Brian first.

Brian Beckham: Thank you David. Brian Beckham for the record. And I'm going...

David McAuley: Brian, you have to speak right into the mic.

Brian Beckham: Sorry. Yes.

David McAuley: Hold the mic in front of you.

Brian Beckham: Brian Beckham for the record. So just looking, which I can't do, because I have to face the microphone, at the questions that are up there - sorry, the data that's up there on the screen you can sort of infer what's behind these data points, right.

And I would submit that none of these data points actually go to answering the question. These are about topics that we've already discussed ad nauseam, right, the Sunrise dispute resolution policy, the nature of marks that are on the Clearinghouse, when do they get revoked from the Clearinghouse, et cetera.

So I would suggest a more appropriate dataset for this question would actually be looking at the types of typos and variations of trademarks that are reclaimed; for example, through the UDRP and URS processes. So I don't know. Apologies the process that led to this being in here. But I'm not sure it actually goes to the question that's being asked. Thank you.

David McAuley: Thank you Brian. Next in the queue is George. George, go ahead please.

George Kirikos: Yes. George Kirikos. Just responding to what Brian suggested. That's calling for another opening of the additional data, which is something that has already been controversial. So, you know, we should talk about that more - separately.

But going to the actual charter question, my position based on the data is that the answer to Part A would be no and then that doesn't require answering Part B at all. Thank you.

David McAuley: Thank you George. Kristine.

Kristine Dorrain: Thanks. This is Kristine Dorrain and I'm going to say something super awful and unpopular right now, which is that the reason this question is here is because of a proposal that was submitted to the full working group very early on called the Graham Shatan waterfall proposal.

And that was a proposal that was submitted for how we could technically implement having non-identical matches. And it was tabled and we created this charter question as a placeholder to analyze that proposal. And I hesitate to even say it but in fairness it may mean that it is now time to review that proposal. And I apologize and will not duck under the table.

David McAuley: Thanks Kristine. Griffin, do you want to comment?

Griffin Barnett: Thanks. This is Griffin Barnett for the record. It's been a long time since that proposal was floated. My recollection was that that was relating to possible expansion of matching for trademark claims and not necessarily Sunrise. So we might want to double check on that.

Julie Hedlund: Actually for a staff point of view, we voted as correct.

Kristine Dorrain: Then I withdraw my really awful comment.

David McAuley: Thanks Kristine and Griffin. I don't see anyone else in the queue. Maxim, go ahead.

Maxim Alzoba: Maxim Alzoba for the record. Yes. It was discussed well in detail with the particular like - yes, it was a suggestion of Greg as I remember and it was discussed in detail during the (Hansbrook) meeting and it's, yes, reflected in the transcript.

So basically there were a few issues, which might be caused by that including like all of us registrars going to (unintelligible) forever because for example you doing registration and they have, yes, loss of claims all over the place.

But in the end it was a suggestion to (unintelligible) on how it affect - if it affect the Trademark Clearinghouse, et cetera, et cetera because it could create (station) where there is no computing power to just do such large amount of operations. For example, next round is few thousand TLDs hypothetically, yes. And making such everywhere might cause issues. Thanks.

David McAuley: Thank you Maxim. Griffin and - Griffin, is that an old hand? Kathy, you're next.

Kathy Kleiman: And apologies for yawning everybody. It's not the company. Time. Okay. So going down into some of the data, I'm in the middle column on Page 10. It's the - I'm looking at the abuse labels. So and tell me if you think I'm totally off base.

But Deloitte TMCH report indicates relatively few abuse labels suggesting limited current use of expanded mass via abuse labels. But that possibility exists so that you can put - as I understand an abuse label it's - if you get a UDRP decision on something that's close to the trademark that you can put it into the Trademark Clearinghouse.

So a Deloitte TMCH report also indicates double the amount of domain name label/labels derived from the trademark record implying that there's already expansion of matches and Deloitte has not received any complaints regarding this process.

So this seems to indicate that some kind of expansion's already been built into the process a little bit that's being used in Sunrise. And, you know, I'm not hearing a pressing call for any further expansion.



Greg Shatan: I think we need some clarification on what the expansion is. Are they referring to the use of U labels, which are basically parsed versions of the trademark?

So that you - if you have a two-word trademark, the actual - there's a U label that is in the SMD file, which it has both the one word and two word and hyphenated version that all of those are considered to be a match. But I don't think that's - that's not the expansion that anybody's talking about here. But I don't know what...

((Crosstalk))

Kathy Kleiman: ...talking about TM plus 50.

Greg Shatan: Right. TM - right. So I don't know what the expansion (unintelligible).

David McAuley: Griffin is next in the queue.

Griffin Barnett: Thanks David. This is Griffin Barnett. And while my intervention is related to this point directly and I think it's what I'm hearing from John and others that the TM plus 50, the previously abused label services only relates to trademark claims.

It doesn't relate - it doesn't give the owner of that record on which the previously abused labels are based any ability to gain Sunrise registration for those additional labels. I believe it just relates to the trademark claim services. Thanks.

David McAuley: Thanks Griffin. Susan Payne. Susan, I'm sorry. Missed your hand.

Susan Payne: Yes. And consequently I'd like to suggest that this section in the table ought to be amended because we have something in the table that's suggesting

that there's data around the trademark plus 50 that's, you know, that goes to the Sunrise. And it doesn't.

David McAuley: Thanks Susan. I believe there's a comment in chat and...

((Crosstalk))

David McAuley: ...Julie.

Julie Hedlund: (Ariel).

David McAuley: No. (Ariel). I'm sorry. Sorry.

(Ariel): This is (Ariel) from staff. There is a remote comment from Michael Graham. Yes, the expanded matching proposals were proposed in connection with the TM claims. Notice there are three different proposals placed in (unintelligible).

David McAuley: Thank you for that. And I see two hands, Kathy and Griffin. I believe they're old.

Greg Shatan: So even if there are three separate proposals - this is Greg Shatan for the record. They were all about trademark claims and none of them were about Sunrise. And this is the Sunrise Sub Team so we shouldn't be talking about them at all.

Similarly trademark plus 50 or previously - is there anything in this question here now that's left to discuss with regard to Sunrise?

David McAuley: And I see no further hands in the queue. Don't see any in the room. I'm sorry. Sorry. I'm not seeing it. Okay. Kristine, go ahead.

Kristine Dorrain: Thanks. This is Kristine. Maybe there's a link. I - so then if we - in the interest of jumping out there, I agree that there is no need for anything beyond identical matches in Sunrises.

Would I then now procedurally speaking put forward a proposal that we - our preliminary recommendation is for Sunrises the TMCH should not extend beyond identical matches? That is our preliminary recommendation. Is this now an appropriate time to propose that language? Thank you.

David McAuley: Thank you Kristine. My take on that would be that's a fair proposal right now. I'm not sure I would call it a recommendation so much as an answer. But we can figure that out. But I think - thank you for putting that on the table. Maxim. Okay.

Maxim Alzoba: I just wanted to remind you that nobody was able to listen (toit).

David McAuley: I'm back on mic now. Apologies for not doing that correctly. (Phil), you're next.

Phil Corwin: Thanks. (Phil) for the record. Yes. Kristine, I agree with you. I don't think we have any - the only data we have on abuse in the TLDs and it's minimal is the URS data. And there's less than 1000 cases and we didn't really analyze it for was the domain a match to a TMCH registered mark or a variation of that.

But we don't have a lot of data demonstrating that there's been a lot of abuse that would justify trademark owners wanting to register not just an exact match or but some variation of the mark.

But beyond that, I was going to say procedurally if we're not recommending any change to current policies, you can only do a Sunrise registration for an exact match of a mark recorded in the Clearinghouse.

So I don't think we have to put forward a proposal to not change the current policy. We can note in our initial report that the issue was considered and the group decided to stick with current policy. But there's no reason to put forward a recommendation to keep things exactly as they are.

Kristine Dorrain: To the point, I support that.

David McAuley: Maxim, please go ahead.

Maxim Alzoba: Maxim Alzoba for the record. Just question for clarity. I was suggesting that even the implementation of TMCH needs to be like (unintelligible) for example, to include these (accent) letters for (European) languages because it was discussed at - I don't remember the meeting by (Armadeo) about station where some (European) trademarks they couldn't release them because of (unintelligible) equal signs, which are not letters in the trademarks.

David McAuley: Thanks Maxim. Thankfully that doesn't fall under this question. So we can put a pin in that. That may even fall under TMCH rather than Sunrise. So we can put a very long pin into it.

I think we need to answer the charter question, which - and I think the answer to the question is no, we should not be reviewing the availability of Sunrise registrations only for identical matches, which means there's no - we don't need to answer Question B and that there - and that there's no preliminary recommendation that comes out of this question. So I think that is the end result of this.

And it is now 6:20 pm. So I think that brings us to the time for close up, wrap up and get up. So I will actually turn to our fearless co-chairs to do the wrap up because I think we've reached the end of the sub team's work for the day and we can all pat ourselves on the back and have the drink of your choice. Oh, there's a hand from George Kirikos. George, please go ahead.

George Kirikos: Yes. George Kirikos here for the transcript. Sorry. One of the problems that might exist though if we don't make a recommendation is that somebody might come out with an individual proposal later on that it should be reviewed, that we have - we do have expanded matches.

So we actually might want to consider a proposal just like Kristine had mentioned before that we recommend that, you know, it not be reviewed as an actual recommendation. And so that would kind of have consensus that would override some future proposal made by somebody else. Just something to ponder. Thank you.

Greg Shatan: Yes. I think we'll think about the technicalities of that but whatever it is we want to make it clear that the will of the group is that this not be changed and whether it's a non-recommendation or a recommendation not to make a change, you know, either way we'll not it clearly so that the door is closed on this and not open to any, you know, kind of idea that because no recommendation was made that there's room - that there's a gap to be filled. Maxim.

Maxim Alzoba: Maxim Alzoba for the record. From the policy perspective it might be better to say we do not recommend to do that instead of just a meeting to prevent something from being changed after that. Thanks.

Greg Shatan: Thanks Maxim. Julie.

Julie Hedlund: Just to remind everybody of the meetings tomorrow very quickly. So this group, the Sunrise Sub Team will continue this work tomorrow at 12:15 in the Ruby Room, which is on this same B1 level and lunch will be provided. So there all the more incentive for you to be here. So we will feed you.

And then following that meeting at 1330 to 1500 will be the meeting of the Trademark Claims Sub Team. So we'll look forward to seeing you all tomorrow and we will release you a few minutes early before you fall asleep.

Woman1: But a quick question for our sub team chairs. Will we be starting with Question 2 at 12:15 tomorrow?

Greg Shatan: Good question. We had not considered that. What do you think? I haven't looked Question 2 to see whether it's - what level of hanging fruit it might be. While I take a look, I will suggest that the drink of choice should be a tequila sunrise for this.

So anyway, Question 2 is about registry pricing and premium name pricing practices. I think we can start with one just for a fair discussion on that. So let's start with Question 2.

Woman1: Thank you Greg. And I just want to note we are diamonds and rubies so I think that's very appropriate. My thanks to everyone here for attending both the people in the chairs and the audience and the people at the table. Thank you so much. And a round of applause for our sub team chairs. They did (great again). Thank you.

Greg Shatan: And thank you to our sub team team. We are now adjourned.

END