

**Transcription ICANN61 San Juan
GNSO Rights Protection Mechanisms (RPMs) PDP WG Part 2
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Julie Hedlund: I'll ask our tech support staff to please go ahead and start the recording and give us a thumbs up once it's done.

I see the recording has started. So just to kick things off, this is Julie Hedlund from ICANN org and again, this is the session of the Rights Protection Mechanisms PDP Working Group and it is a working session for the data subteam of that group. And this is an open meeting. And today is the 10th of March. And we certainly do welcome community to observe but just noting that there will not be presentations during this session. It will be a working session for the subteam.

So at this point, I would like to go ahead and turn things over to Kristine Dorrain, who has graciously agreed to chair for today. And thank you so much, Kristine. We appreciate it. So over to you. Thank you.

Kristine Dorrain: Thanks, Julie. This is Kristine for the transcript. For our observers, we don't have an official chair for this subteam. We are very, very small. We've broken up the work into several different subparts, where we've each taken ownership of a small part. So we've basically taken it upon ourselves to serve as chair in turn. And given sort of our short supply of members today, I've just volunteered to chair. So I'm not typically the chair, just so you know.

Where we left off last week was we have a fairly short list of five or six questions that we have prepared for learning more about additional marketplace rights protection mechanisms. And we went through - we created all of these questions as a small group subteam that was chaired by Paul McGrady several months ago. And as a result of that, we ended up with these six questions.

We are now looking into how we are going to answer these questions so getting the type of data that we will need to continue answering these questions.

And so one of the things we've done today is we have asked Jon Nevett to join us and so Jon is here today to hopefully kind of walk through... Jon, you were part of the subteam with Paul where we kind of developed the questions so nothing on the list should be a big surprise to you.

Also, we know that Donuts and others answered a survey question or a survey questionnaire involving additional rights protection mechanisms. And so we definitely want to rely on that, and we don't want to sort of reinvent the wheel.

So one of our goals today is to see where we already have answers from you and to, you know, figure out if there's - sort of if we need to dive a little deeper, if we have any followup questions about how Donuts' DPML is run. We - like I said, now that you've acquired Rightside, there's not a whole lot of other people doing - using this service, which is why. So thank you so much for coming today.

Question one is not a question we're going to answer right now. That's a question for the subteam.

So we jump ahead to question three, where we talk about: Are registry operators relying on the results of the TMCH validation services or accessing

the TMCH database to provide additional marketplace RPMs and if so, in what ways?

And I know this was one of the questions that you had answered. All righty, that's correct, Jon. Yes, feel free - this is just a conversation. Feel free...

Jon Nevett: (Unintelligible).

Kristine Dorrain: I think - in your - so in the materials that I read before this meeting, you had said that you rely on the SMD file. Is that correct? Yes.

Jon Nevett: Yes.

Kristine Dorrain: Thank you. This is just a chat. (Susan) is on the subteam. You know, you're visiting. We have Kathy and (Phil) and I don't see any other regular subteam members. So this is really just a tiny little conversation.

So we know that you rely on the SMD file from the trademark clearinghouse. And is there any language in the current adopted TMCH policy or related documents that expressly permits, prohibits or otherwise addresses such use by registry operators?

Jon Nevett: Yes, and just to clarify the last question, we do not access the TMCH database.

Kristine Dorrain: Oh, okay.

Jon Nevett: It's just looking at an SMD based on the customer providing that evidence of an SMD, just like in the sunrise.

Kristine Dorrain: Okay. So would you say that that would be then relying on the results of TMCH validation services...

Jon Nevett: Yes.

Kristine Dorrain: ...by use of the SMD file?

Jon Nevett: Yes, absolutely right.

Kristine Dorrain: Okay, thank you.

Jon Nevett: And then the next question, you know, I don't recall specifically. But we've been doing it for - 2013, so five years almost. And we were certainly comfortable that we were permitted to provide the service and we've been providing it for five years. So I assume if Compliance had an issue, we would've heard from them by now.

Kristine Dorrain: Yes. Are registry operators able -- and this is maybe one of the questions that we didn't get out in the original survey, Jon -- are registry operators able to provide the same or similar service on their own?

Don't scroll up yet.

Jon Nevett: Absolutely.

Kristine Dorrain: Yes. But can you tell us more about what that would entail?

Jon Nevett: You know, we don't have to rely on an SMD. That was something new to this process. We could rely on a trademark.

Kristine Dorrain: Yes.

Jon Nevett: Someone could just present their trademark to us, and we could handle it that way.

Kristine Dorrain: So you could...

Jon Nevett: SMD was easier at the time...

Kristine Dorrain: Yes.

Jon Nevett: ...especially because we were all, you know, working with that for sunrise and as we were doing launches and stuff. But yes, there are a lot of other ways we could've used it.

Kristine Dorrain: Yes, go ahead, (Susan).

(Susan): Jon, I don't know if you can answer this or whether it's a reasonable question that we could ask even if you can't answer it now. But if you didn't use the SMD and trademark owners were providing you with details of their trademark rights, do you think it would be a sort of more complex process or a more expensive process that you can manage?

Jon Nevett: Yes, I mean, it's what every registry did before this round. They had their own system and their own process to accept trademarks and validate them in whatever way that they validated them. So sure, we could have done it. Yes, it would have been more complex and probably... I think the question is about cost. I don't know how much more it would have cost but it certainly would have cost more to do it that way.

Kristine Dorrain: This is Kristine. Do you think it would have been less accurate if you had to do it yourselves versus relying on the trademark clearinghouse?

Jon Nevett: You know, that - who knows? You know, it depends how you do it. If we did it differently or if we spent... You know, it goes to a cost issue, right? We - you could do site visits. Remember SSL used to go out and do site visits and take pictures at the location. So if someone wanted to go do that, they certainly could do that.

That's not what the clearinghouse did. The clearinghouse, to me, had a fine process. And I don't think we would do much differently than them, but I wouldn't say now, speculating whether we could do it better. Sure, there are certainly ways to do it - do anything better. Would it be cost effective or make sense? Probably not.

Kristine Dorrain: Okay. Anyone else. (Kurt), thanks for joining us, yay.

(Kurt): (Unintelligible).

Kristine Dorrain: No, it's okay. So just as a recap for you, (Kurt's) one of our members. And because we have just such a short list of people that actually do offer additional mechanisms, we -- and you know - as you know, we asked Jon to come talk to us. So this is just a chat. Feel free to ask him any questions that come up so that we can continue. Okay?

Anyone else?

Kathy Kleiman: I have a question.

Kristine Dorrain: Yes. Go ahead, Kathy.

Kathy Kleiman: Sure. Kathy Kleiman, not operating as a co-chair, just an active member of the subteam. So Jon, has Donuts ever thought about tying the blocking to the categories of goods and services, any kind of correlation to the GTLD itself? Because I understand the blocking is across 200 top level domains, right, for a trademark. And that trademark may be very closely tied to a particular category, a certain widget or a certain type of good or service, maybe even in one category of goods and services. So any - and this is, you know, a personal question. It's obviously not on the list, so you're not obliged to answer.

Jon Nevett: Yes. No, I'm comfortable not answering when I'm comfortable not answering but thank you. It's no different than a registration, in my eyes. So when someone - a trademark holder registers a name in sunrise, they don't do it for a certain class of good and service. It's - there's one domain name.

So there's no difference between registering a sunrise for one or blocking across all of our TLDs in that respect. So no, we don't do anything in a certain class of goods and service.

Kristine Dorrain: So Jon, it's fair to say that it's primarily sort of an economic advantage? You could get one trademark registered per one SMD file. And basically what you've done is you've said for the same SMD file, we're just going to save everyone time and block it across 200.

Jon Nevett: Two hundred thirty-nine, yes...

Kristine Dorrain: Thank you for that.

Jon Nevett: So far. And if there are any others, you can come talk to me after. So yes, that's exactly right. It's just a lower-cost way to register the name with the name not resolving. So totally agree with you.

Kristine Dorrain: Okay. No other questions on that yet.

Man 1: I have a question.

Kristine Dorrain: Yes, oh, sorry. Can you - go ahead.

Man 1: Did you contemplate in your business model at all trying to transition those who are blocking to registering a domain and using the block as sort of a mechanism for getting people more involved in the DNS?

Jon Nevett: Absolutely. You know, when we first rolled it out, we told - the way we brought it out was trademark holders should register the names that they want and use.

So if you're - I'll throw out an example. You know, I won't throw out a specific example because no one likes when they do that. So if your company is in shoes, then you should register .shoes, .clothing, you know, other related TLDs and you should block the rest.

And then at some point yes, I don't think Jimmy Choo probably wants .plumbing but - so they should block it. But if they move into that plumbing business, then sure, they should register it and use that name as well.

Kristine Dorrain: Okay. Good. Carrying on. Question - it looks like that's it for question three, what would this be to stakeholders along the value chain. Yes, we - you said you didn't know what the increasing cost would be. I think presumably everybody can assume that if there was an increase in cost, it would raise costs for everybody.

Okay. (Ariel), can you scroll up, please? What are each registry operators' rules for each type of additional marketplace RPM and offers, noting that some new GTLD registry operators offer more than one version of a protected marks list service?

I know that most of us on this group have gone through and reviewed sort of the information you provided on both your Marks DPML and your DPML Plus, indicating sort of how a potential registrant goes out and gets a domain name. You've already said on this - in this chat that you - they submit an SMD file to you - or to the registrar, I guess. And the registrar then performs the block, depending on the block that they've chosen. Is that correct? Yes? Okay.

All right. Is there anything else? Are there any other hoops that brand owners have to jump through or any other rules or requirements?

Jon Nevett: I think the terms and conditions speak for themselves. And if you guys have been through it, that's great. If you have any specific questions about them, I'm happy to answer. But I think they're - we lay them out pretty well.

Kristine Dorrain: Yes, thanks, Jon. It seemed really straightforward to me. Has anyone else reviewed the terms and conditions and had followup questions? Nope, I see no heads shaking, okay. All right, fantastic.

Where a trademark holder uses a protected marks list service, for example a blocking service for one class of goods and services, are they able to block another rights holder who holds the same trademark but for a different class of goods or services?

And the answer is yes. That's correct?

Jon Nevett: Generally, it's no...

Kristine Dorrain: Okay.

Jon Nevett: ...because DPML permits over-ride. So if you're another trademark holder in any class of goods and service, if one trademark holder blocks it and United blocks "united" - but United Airlines blocks the term "united" and United Van Lines wants to get united.trucking or something like that, they could override the block.

Kathy Kleiman: Can you talk about how that happens?

Jon Nevett: Sure. They just call their registrar. And the registrar provides the suitable command and we over-ride the block.

Kathy Kleiman: I hate to - sorry, Kathy Kleiman for the record. How does that happen? So Delta Faucets, you know, blocks "delta" across everything. And Delta Airlines wants to come in and get it in things that both apply directly to their trademark category of goods and services and things that don't. Let's say they want .xyz and they want... Who reviews the trademark? How is it done? Is that a registrar function or is that a registry function? Sorry, just trying to figure out how it all works.

Jon Nevett: Yes, it's the same system. They have to provide their SMD that they have a trademark in that term, and they could over-ride the block. That's why we said when we rolled this out that DPML is to protect trademark holders and, you know, against cybersquatting. And that was the point of it. So if someone else with the same trademark comes in and wants to get the name, we had permitted that as an over-ride. And then we saw very few over-rides over the five-year period.

Kristine Dorrain: (Susan), go ahead.

(Susan): Jon, I know I should know the answer to this, but does that over-ride happen only during the sunrise period or it's throughout the life?

Jon Nevett: It's throughout the life. So if - again to the trademark holders, when we - if you want the name and you'd be unhappy if someone came in and - with the same trademark and got it, register the name. I'll say that - you know, register the name. And then block the ones you don't care about.

And if another trademark holder comes in and, you know, with a trademark and over-rides and then still cybersquats, that's, you know, an unusual occurrence that I guess - I haven't seen it in the marketplace yet. I don't know if others have examples of that, but I think it's unlikely.

Kristine Dorrain: (Ariel)?

(Ariel): This is (Ariel) from staff. There's a comment from (Mary) from staff, if permitted. Can Jon clarify that over-rides are permitted for DPML but not DPML Plus without TM owner consent?

Jon Nevett: Yes, that's absolutely right. When we - we had DPML when we rolled it out. and then we got feedback from some of the trademark holders that said, we don't like that premium names aren't blocked. We don't like - we just want to lock down the name just like as if we actually registered it, no exceptions. So what would it take to have no exception DPML?

And that's what we offered in DPML Plus, based on requests from the trademark holders. So we have DPML Plus that doesn't permit premiums as exceptions, doesn't have over-rides without their consent. It's just like an actual registration.

Just like if they went out and registered the name, they would - someone else wouldn't be able to come in and over-ride. Someone else wouldn't be able - it wouldn't be exempt because it's "premium," or anything like that. Again, there were - I would say there were a nonmaterial number of DPML Pluses out there. It's for the most part just DPML. And that's why we're focused on terms and conditions for DPML, but there is that one exception. Whoever - the person who asked the question is absolutely right.

Kristine Dorrain: Thank you. Another question, (Ariel)?

(Ariel): Thank you. This is (Ariel) from staff. I think Rebecca Tushnet also wants us to read out her questions. First is, who's the "they" in that sentence? And I think she's referring to the second bullet point under question four, "would the registry operator impose as a condition for using." So that sentence I think she's referring to the "they" there.

And then the second question is, that is, who calls the provider? And then the third question is, does the TM owner need an SMD file or will a valid national registration do?

Jon Nevett: I'll answer the first - the last one first because I understood that. I'm not sure if I understood the first two. But the last one is yes, you need an SMD file because that's just the same system we use for the block itself. So to override the block, we will use the same SMD requirement.

What were - the "they" was "us," I think you said, in the first question.

Kristine Dorrain: I've actually asked Rebecca to clarify that, so she's typing right now.

Jon Nevett: Thanks. And the second one, I wasn't sure I followed the second question.

(Ariel): I think the second -- this is (Ariel) -- the second question is linked to the first one, and I think we can probably address it after Rebecca clarifies.

Jon Nevett: Great. Thank you.

Kristine Dorrain: Thanks, (Ariel). And welcome to Rebecca, who is a very active member of our subteam as well. So I'm glad that she can be on as we wait for her to clarify her question. And thanks, (Mary) also for yours. That was going to be my followup question as well about DPML Plus. So that's great.

Kathy Kleiman: Did you ask a trademark question of Rebecca?

Kristine Dorrain: Kathy, you have another question?

Kathy Kleiman: I think - unless people already asked, I think Rebecca asked earlier about the SMD - valid - okay, we got that.

(Ariel): Yes.

Kathy Kleiman: Sorry. I was... So I have a question about non-commercial use. So let's say my last name is blocked on the list, either on DPML or DPML Plus, but I want to use it in something that has nothing to do with the category of goods and services of the trademark, so Smith Farms we were talking about earlier... I don't know. Actually, sorry, SubPro was talking about .pig and Smith Farms and stuff like that. Can I come to you for an over-ride for non-commercial use? I want to use Kleiman and, dot-you know-whatever.

Jon Nevett: You would have the same rights you would have with someone who has a registration. So if you had - if your last name was McDonalds and you wanted to get McDonalds.family, you would - but it's registered to the McDonald's Corporation, you'd have to contact the McDonald's Corporation and ask if you could use it. Same idea.

Kristine Dorrain: Thank you, Jon. And I think Rebecca has responded in the chat with her clarification question. And so she was talking about how the over-ride was initiated. When the block is encountered, does the trademark owner get a message, you can over-ride this by doing x, and then they do it directly?

So I think she's thinking about your situation in which United Airlines has a block, United Van Lines realizes that they'd like to united.trucking, are they provided with information that there is a block but they can over-ride it? Or are they just supposed to know that?

Jon Nevett: Yes, I'm not sure how the registrars handle that. That'd be a question for a MarkMonitor type or Cum Laude or - I'll phone a friend, actually.

Kristine Dorrain: Please do. (Susan)?

(Susan): I - you know, I'm - I don't work day to day on the registrar business obviously. But I mean I would say, you know, no one really knows what's blocked. Yes, I

don't think you - maybe there's - maybe when you do a lookup, something shows, I'm not sure. Jon might be able to answer that part.

But I mean, generally speaking, you know, our clients would just come to us and go, I want x name. And so you - you know, you'd - the team would check whether it's available for them. And then they would come back to them and go, you know, no it's already registered or, you know, yes with an SMD file, we'll be able to get that for you. You know, it's blocked but we can - you know, but we can still get that one because you've got a valid trademark.

I mean, I don't think - you know, it's not like there's a big directory of all these names that are blocked that most people would be looking at.

Jon Nevett: It actually says it on whois. So if you could do a whois search, it says it's protected by a DPML block. And additional information could be found, you know, at a site and then they could contact the registrar if they want to over-ride.

(Susan): I think most registrants probably rely on their registrar to kind of tell them, you know, what to do. You know, they're not particularly well-informed and they - I don't think many of them go - you know, go looking up the terms and conditions.

Kristine Dorrain: Thanks. I'm looking around for additional hands. Kathy, go ahead.

Kathy Kleiman: Sorry if I missed it. Did we say that the terms and - oh, you said you were going to call somebody and find out whether the terms and conditions talk about how to do the over-ride or?

Jon Nevett: That's right. No, I was just using a reference to a popular game show, phone a friend. And (Susan) was my friend, and she answered it very well. So I'm good. Thanks.

Kristine Dorrain: This is Kristine again. And (George) just put in the transcript also what Jon just said and (Allen) just said, which is the actual language: The registration of this domain is restricted. It is currently protected by a DPML block. Additional information can be found at - and there's a URL. So yeah, that's right into the chat now, good.

Jon Nevett: Thank you, (George).

Kristine Dorrain: All right. We can always count on (George) for on-the-fly research. Let's see. Where are we on our question list? Where two registry operators impose a condition for using the protected marks list -- we just talked about that. That is the SMD file. And they all use a valid SMD file.

(Mary) kindly just put in the chat as well that (unintelligible) machines service is now being integrated with the trademark clearinghouse's RREx service. I'm so sorry, it's a TReX service, which means that all the additional voluntary RPMs this team is looking at require a TMCH validated entry or SMD file. So thank you, (Mary). That does answer that question.

(Kurt): Jon, this is (Kurt). So at the registry, does the name show as a blocked name sort of like a reserve name? Or is it more like a registered name?

Jon Nevett: What, are you saying in our system?

(Kurt): Well, at the - yes, at the registry. So, you know, you have - there's - names are either registered or not. So to make it unavailable...

Jon Nevett: In our proprietary system, they'll show up as a DPML block. We'll know that it's tagged as a DPML block.

Kristine Dorrain: Okay, good. Thank you. The last question - or last bullet on question four says: How much and what manner of use does each registry operator make

of data from the trademark clearinghouse or the trademark holder in providing the additional marketplace RPMs?

And I believe that we've answered the question multiple times. But just for clarity, because I know that we're taking notes, I believe the answer to this question is you use the SMD file and that is it.

Jon Nevett: Yes. I would say we don't use any data from the clearinghouse. A trademark holder will get an SMD file from the clearinghouse and then present it, and we act on that. We don't have a separate... I know folks had asked about agreement. We don't have a separate agreement with the TMCH or anything like that, not for DPML.

Kristine Dorrain: Go ahead, Kathy.

Kathy Kleiman: Okay. So Kathy Kleiman. So the SMD file is from the trademark clearinghouse, right? I mean, it's generated by the trademark clearinghouse. How would you know -- and I know it doesn't happen often -- how would you know if it an SMD file has been canceled?

Jon Nevett: We have a term and condition that's related to cancelation of SMD files. But at the time of purchase, we wouldn't know. It would be buying it at their own risk essentially.

Kristine Dorrain: This is Kristine. And I think the registrar checks the SMD file at the time of registration, so that's not even something the registry operator checks. And so at some point, the registrar gets updated TMCH - or sunrise - or SMD information. It gets refreshed periodically. And that's when the registrar would submit the SMD file and that would be - then that would, you know... You would either get a yes or a no, it's good or it's not.

Kathy Kleiman: Okay, so -- Kathy again. So I know that the registrar checks the SMD file at the time of registration during a sunrise period. But now we're talking about

things outside the sunrise period. So it's really the presentation - I'm not sure the registrar would be checking the trademark clearinghouse database on this unless there's some other procedure that's taking place. Go ahead.

(Susan): I'm not speaking from any personal experience, but I guess I don't really understand why they wouldn't. Sorry, it's (Susan). I mean, the registrar will have a contract with Donuts that basically says, you know, you can buy these blocks if you follow the rules. And so it's not really in the registrar's interest to be using an invalid SMD file. I mean, I think, you know, the whole point of it is that they would want to check that the SMD file was still valid.

Otherwise, you know, they know that they would be at risk of acquiring something for their client which was invalid and could be canceled. So both in relation to their relationship with their customer and their relationship with Donuts or other, it makes no sense for them not to check it. I would imagine it's a pretty standard thing to do every time you utilize an SMD file.

Kristine Dorrain: And perhaps I can further address your question. It seems like maybe you are misunderstanding the... An SMD file doesn't suddenly become invalid after a sunrise period. It's valid, you know, for that life of that SMD file, right, for the year that that's been purchased by the brand owner.

And a registry operator can say we want to have registrants show up with an SMD file in hand for the 30-day sunrise period or a 90-day sunrise period for perpetuity. Like a registry operator could in theory say we will only ever let people with SMD files register. And so it's never going to like time out or not be valid. A registrar will always be able to accept an SMD file if that is something that the registry operator has made a condition of sale. Did I summarize that accurately?

(Barry), go ahead.

(Barry Cobb): (Barry Cobb) for the record. In just looking at an SMD file that I think was sent to the list, it has not before and not after dates embedded into it. So a registrar I don't even think would need to communicate back to the TMCH. But if at the time that DPML transaction is after the not after date, then they would reject it and say go get a fresh one. So at least that's my interpretation.

Kristine Dorrain: Thanks, (Barry). And I think specifically one of the things this group has talked about is not just the - like the freshness sell by date but also why happens if the brand owner's mark gets canceled midway through. So that date is for 365 days, right?

If the brand owner's mark gets canceled either by court or because they want to cancel their registration four months in, there's a little tricky situation but it's not a registry operator problem. It's sort of a trademark clearinghouse problem, where it doesn't necessarily get perpetuated through the system very quickly. And so in that instance, an SMD file could conceivably work even if the mark underlying isn't valid.

And to Jon's point, if you're trying those sort of shenanigans, well you better be prepared to have your registration yanked. Right, Jon? Yes?

Jon Nevett: Correct.

Kristine Dorrain: Okay. Anything else? Anymore questions? This is good. Come on fellow subteam members, this is our chance. We can knock her out, we can get her done. All right. All right, seeing no further questions or hands, I guess we'll move on to question five.

For registry operators that extended the trademark claims service beyond the required 90 days, what has been their experience in terms of exact matches generated beyond the mandatory period?

Okay, now we're moving out of the DPML-type service, and we're talking about trademark claim services. I don't know - we haven't asked anybody to come talk about that, so we may need to draw a line there.

What's the next question, (Ariel)? Is there a sixth question? I don't remember. Oh, that's right, they're not in order because we don't do anything easily on this subteam. Okay. Let's skip question five for a second, (Ariel), put a pin in that and we'll come back.

The... Have you been blocked from registering a second level domain name matching your registered trademark at any of the GTLDs launched under the 2012 new GTLD program?

And I think that is one question that we were just wondering statistically -- and you might not have exact numbers -- but have you have complaints or issues with people saying that were blocked and couldn't get access to their domain name - the domain names they wanted to purchase?

Jon Nevett: Clarifying question. When you say - you're talking about blocked as in someone else has a DPML or another analogous blocking service, not a registration?

Kristine Dorrain: That's correct, thank you.

Jon Nevett: Because if you're - if you have a registration, obviously they're blocked from registering. And then in the case of Donuts' DPML, you would not be blocked if you have DPML other than the handful of people - handful of trademark holders that have DPML Plus. You would not be blocked. You could override.

Kristine Dorrain: Thanks, Jon. Anecdotally speaking, have you heard from any non-brand owner registrants who sort of think that they have some sort of rights to, you

know, a word that's on DPML that they should've gotten access to but they don't have an SMD file?

Jon Nevett: We haven't that I know of.

Kristine Dorrain: Thank you. Any other questions as we consider this? Kathy?

Kathy Kleiman: Yes, is this a question that we're going to be sending to trademark owners or asking that the survey that we worked on in other contexts include this question?

And I should point out by way of data, and maybe we pull it, John Berryhill has blogged on this, that there have been blocks on people who wanted to register, say, basic first names and stuff like that. And we should probably pull that blog and others because it's - you know, qualitative evidence, information about impact of the DPML on others. Thanks.

Kristine Dorrain: Thank you. Jon first then (Susan).

Jon Nevett: I would say it's the same with any kind of sunrise registration. It's no different between a DPML and a sunrise, that someone might have a legitimate interest in registering a name and they can't because it's been blocked someone with a trademark.

And, you know, on the other side of the hat, you saw some trademarks that were, in my eyes, somewhat I don't want to say questionable. But we went through it as a committee, as an RPM working group, that some of the examples of trademarks that are out there that people tried to get through the system that you would be surprised about. And, you know, we had to deal with those.

For DPML purposes, we made some of those names premium so DPML would not restrict the registration of those and they would not be blocked.

Oh, yes, I mentioned the - sure. If a name - under DMPL terms and conditions that you have seen, if a name is considered premium in a Donuts registry, that names would not be blocked. So someone registered, for example, in the TMCH the term "love," someone has a trademark in "love" somehow, right.

Kathy Kleiman: We know they do.

Jon Nevett: Yes, exactly. It's in there. So if we made the second level term "love" in one of our TLDs a "premium" name then it would not be blocked by a DPML.

Kathy Kleiman: In that TLD.

Jon Nevett: In that TLD, right.

Kathy Kleiman: Okay, but it would be blocked...

Jon Nevett: Ninety - there's - I think there's 98% of the time, they're standard price names. So almost all the SMDs that trademark holders have are fine. You know, if you have "verizon," it's going to be blocked at 100% of the time. You know, if you have "love," it might be blocked 10% of the time. But on average, it's something like 97, 98%.

And that's how DPML Plus started well after that. Some trademark holders said, you know, we don't want to worry about what's premium, what's not premium. We don't want to worry about over-rides. We just essentially want to have a lower price way of registering all the names. And that's DPML Plus. Again, very few of those were sold.

(Susan): Yes, really I was kind of just going to say what Jon was saying, which was just that, I mean, yes okay, the block may take certain names out of circulation, if you like. but it's in the nature of purchasing a second level name

that the moment someone purchased the name, it's out of circulation. And so there could always be someone else who wishes they had a name. But, you know, only one person can have an individual name.

And so it's no different to a registration. It's just a slightly more cost effective way of doing it. It's not different to people buying a second level name.

Kathy Kleiman: For policy purposes, I'll just put out, it might be, without arguing it. Thanks. As was discussed so extensively five, six years ago, it might be, because it was raised, it was discussed. So it's - but it's not - this is not the...

Jon Nevett: We could just leave it that the impact is the same essentially.

Kathy Kleiman: The impact.

Jon Nevett: You can't register whether it's blocked or registered by something else. It's not available.

Kathy Kleiman: So going back to the kinds of crazy examples that you were - it's really useful to hear, thanks. So "the," we know that "the" is in the SMD file. Just wondering not what you've done with it but kind of the idea of having it out there for every - you know, the bicycle, the this, the that. Is that - if you have - do you guys look - how might you handle something like that, where it's a strange registration?

Jon Nevett: We wouldn't look it as - if we learned that someone registered during sunrise a word like "that," we would look at our other TLDs and decide whether - see if they were premium or if they should be premium and try to protect ourselves that way and protect consumers that way essentially.

Kristine Dorrain: Okay. Seeing no other questions on this, the next question, five, goes back to the extended trademark claims service. And then question two are questions

involving the operation of the trademark clearinghouse on how we find out more of the types of things that the trademark clearinghouse is offering.

And we did, just to put a fine point on it because I know we're collecting notes and Jon has already said that you would not offer DPML or DPML Plus under any contract with the trademark clearinghouse, you're simply using the TMCH file - or the SMD file as it's intended to be used, just saving users money.
Okay.

So (Ariel), can you get those in the notes, please? Thank you. (Ariel), is there anything under question two? I don't think so. I believe question two...

Oh, there is a six. Ah, see, I thought there was a six. All right. What role does the TMCH provider on the front end play in servicing the additional marketplace RPMs? And that I think is a question for the TMCH again?

What services do you provide to the registry operators? Does it use data from the clearinghouse to provide these services and are they compensated? So I think that's not a question specifically for Jon but you're welcome to, you know, opine on any of these that you'd like to. Yeah, you as well, right?

Well thank you again so much to Jon and (Allen) as well, I guess, both of you. Moral support, (Allen), just take the compliment. Thank you both for showing up today and in putting up with our barrage of questions. It just figured a lot more friendly maybe than trying to send you a like written survey and have you fill in the blanks and all of that.

Any more questions that we want to ask? I think we've gone through everything we wanted from them, yes.

Jon Nevett: Thank you.

Kristine Dorrain: Wow, thank you so much. This has been immensely helpful, just extraordinary. I appreciate it very much. So thanks to Jon and (Allen). More questions. Kathy, go ahead.

Kathy Kleiman: Yes, I just wanted to say when we talked about the SMD file as intended to be used, Jon has every right to answer. But ultimately, I think it's a policy question for the working group. So I just wanted to flag that, that it comes back to us. Is the SMD file being used as intended to be used? You know, if we all agree, great. But I think that's a policy question.

Kristine Dorrain: Okay, very good, thank you. Okay, thanks, yes. We're just going to keep on keeping on. So to the extent that you're interested in...

Kathy Kleiman: Yes, feel free to stay.

Kristine Dorrain: Yes. You were a really great help in the original working group. Thank you.

All right. Thanks a lot. All right. Let's scroll back up and see where we left off, (Ariel). I think we left off on question five - yes, right there.

So I think what we wanted to do from here is think about the best way to get this information. So the next - question five it looks like is brought up twice, and that's a little confusing to me.

(Susan): Is that because we divided it up into - sorry, I'm not seeing this one, sorry. It's because we went through and went, who can answer this question. And so sometimes more than a one-person group could theoretically provide information to answer questions. So I think that's why it's more than once.

Kristine Dorrain: Thanks, (Susan), good reminder. This is a team effort here. Okay. So we're talking about - we have two questions related to the trademark claims service, which is extending trademark claims service beyond 90 days.

So we - so for any observers who are following along, essentially the trademark claims service is a notice that the registrar displays to a potential registrant, when they're going through the registration process, to tell them that the domain name that they're attempting to register is the subject of an SMD file or the subject of an entry into the trademark clearinghouse. And so they might want to be on warning that someone is claiming a trademark right to that domain name.

And then the registrar has - or the registrant has an opportunity to continue with the registration or to decline it and maybe do more investigation and maybe come back later or not.

Some registry operators have the option to extend that. And we have included this in our additional marketplace RPMs as being something above and beyond what registry operators are doing to try to protect trademark holders and to try to protect brand owner rights.

And so we want to know a little bit more about who's done it and what the impact of that process has been. So I don't know that we have a list of who's done it. Maybe I can call on (Barry) to let us know. Thanks.

(Barry Cobb): Thank you. This is (Barry). So staff did send a summary of who. If need be, it's - you know, we can actually provide the registry operators behind it in the TLDs. So my data is refreshed as of about the end of 2017. So there have been a few adjustments since then but it won't be major differences.

So of the generic TLDs -- and we've used this term kind of loosely in other data presentations. Basically, we've got geographics, we have spec 13 or brands, and then the rest are basically generics.

So of the generic TLDs that have greater than 90 days is about 246. And 37 of those have basically excluded a TMCH or claims close date, which implies that it's indefinite.

Then within the geographics that are greater than 90 days shows 6. And 3 of - and then an additional 3 show indefinite.

And then of the specification 13 TLDs, 14 show greater than 90 days. And then the next biggest number is 157 that show indefinite.

And I should qualify that out of all of those, there are still - there are 30 TLDs that have 91 days. And I think it was just really kind of a calendaring thing and it's not really anything to do with, you know, purposefully trying to hit 91. I think they are really just trying to make sure they got the 90 covered.

And then the other caveat to this summary data is there's still about 347 that have yet to post launch info onto the microsite. So outside of that summary data, if need be, then we can go in and provide the TLDs but, you know, hopefully that's helpful.

Kristine Dorrain: Kathy, go ahead.

Kathy Kleiman: Do we have that data in writing? Like do we have it like the bullet points or? Just wondering.

(Barry Cobb): I believe (Mary) sent it and posted it on the community Wiki last week, I believe. So it is out there published.

Kristine Dorrain: Thank you, (Barry). (George) has entered into the comment, perhaps also worth finding out if some did extend it indefinitely initially but then decided to terminate it at some point and why they terminated. And I think that's a - something interesting to think about as why they would possibly list an indefinite and then add a date.

I'm really interested -- and (Susan) and I exchanged a couple of glances here -- about all the spec 13 TLDs that are indefinite on the claims notice, so

they're getting themselves claims notices. Does ICANN staff have any sort of intuition as to why or what's going on there?

(Barry Cobb): So a couple of things. To (George's) comment in the chat, I mean, I've been tracking this since day one. So the only thing that I've ever seen is a registry operator will post their 90 day claim service and then at some point in time beyond that, then they decide to either extend it again or remove it again, which is implied indefinite.

So I - you know, without asking those registry operators specifically, I'm assuming that they're meaning that that is indefinite.

As for the brands, I thought that that was, you know, to - or the spec 13 TLDs, I did find that interesting. But I almost -- and I'm pure speculation -- but I'm assuming it's kind of a courtesy. Like if I'm .exxon and I wanted to register facebook.exxon that it's giving a notice to Facebook, hey we're going to have a short URL utilizing this name. That's the only thing that I can speculate on why they might do that, but it is interesting that they are doing that.

Kristine Dorrain: Go ahead, (Susan). No?

(Susan): (Barry), do you know who the back end registry service provider is for all of these? I mean, I'm - that might be a huge piece of information, maybe for the brand ones. I'm just - I have an inkling why this might be, but I'm not certain.

(Barry Cobb): We can get that, although -- and I can't speak for back end providers -- but I suspect that they don't really have much to do with that because what the registry operator will do is enter that information through the microsite portal or the registry's portal and, you know, perhaps some of the back ends manage that for the brands. But I suspect that if they're doing it, they're doing it because they were told to do it.

(Susan): I'm not sure it's worth you spending time on the brand ones, looking into it, if I'm honest because frankly the claims services is irrelevant to brands anyway. But yes, not to worry.

Kristine Dorrain: So this is Kristine. The reason I mentioned it only is as a sanity check because I was sort of questioning sort of is all - is - the number of indefinite trademark claims periods is a little surprising to me. And so to me it would be - the easiest thing to me would be to check the spec 13s. That's the reason, not any particular other reason than it might be the easiest sanity check to figure out why, only because I - we - I think we want to make sure that we're getting really active data.

And if people are just sort of inadvertently - it's maybe not a required field on the GDD portal when you go and upload all of your startup information, maybe people are just not entering it because they don't know what to put, in which case do they realize that they're actually extending their trademark claims? Or do they not? And so that's...

And then the other question that I had which is not really part of question five is does it - is the - when you - when they have an indefinite end to that, is it the trademark claims notice and the notice of registered names that goes to the brand owner? Is it both? Or is it just one? That would be my other question.

(Barry Cobb): So, this is (Barry). I guess, yes, just to make sure I re-answer, we can certainly provide the back end provider or at least what I've been able to collect that's publicly... I haven't asked ICANN staff or GDD staff if they have the most accurate list of who the back end providers are. I don't believe that is published. The only way that I know that it's published externally is when they noted who their back end provider would be in the application. Ever since then, I don't believe that it has been published. But we can get close enough, for government work anyway, as to who those providers are.

In terms of answering the second part of your question of who gets the notice on the extension, I believe that is a very interesting question because it does go to the - to Deloitte as well as are they using the ICANN version of the TMCH. Or if these registry operators are designating extended claims, are they failing over to this other system? And I'm not sure. So I think that would be something that we'd want to engage when we circle back to TMCH sunrise and claims, that would be a definite question we'd want to ask Deloitte.

And what was the - and whether it was a separate system and then whether they're making the distinction of whether it's going to the - to the potential registrant and to the provider? Or is it just going... I mean, I'm sorry, the brand holder. Or just to the brand holder? I suspect both, but I don't know for sure yet.

Kristine Dorrain: Thank you very much, (Barry). So then I'm going to propose for group discussion that one of the things we do next is we do take a look at the list (Barry) has put together of the TLDs affected - or the TLDs that have this unending trademark claims or indefinite trademark claims and group them by registry operator.

If it's possible that we can limit it to one or two registry operators or registry service providers and then reach out to them and just ask a little bit more -- is this just part of your practice? And I think that, you know, to the extent that they're willing to ask...

I mean, they're not really prying questions. We don't even need to necessarily, you know, dig into their business plans just, you know, was it intentional, those sorts of questions.

Does anybody have any objections to taking that as our next order of business for question five? (Susan).

(Susan): Not an objection at all. I think that makes sense. I think we did also take the view on our last call that this I think fell within the scope of the data - the work that's subjected to the RFP at the moment. So the specific question about experiences, what have you encountered, I think has gone into the questions for the RFP.

Kristine Dorrain: Good reminder. Thank you very much. Kathy, go ahead.

Kathy Kleiman: I apologize if the question has already been asked and answered. This is Kathy. So for the - going back to the extended trademark claims, (Barry), did I hear you say we don't know what that means in terms of notices to potential registrants versus notices to trademark owners, whether it's both or whether it's just one? Like is it and/or? Is that something that we agreed to find out?

Because that would be - you know, we've had issues about trademark claims notices so it would be interesting I think and important to find out if we can and if it's not too much work for (Barry).

Kristine Dorrain: Thank you.

(Barry Cobb): So yes, I think that is on the to-do list. Again - it's - I don't think we're going to get to it right away. But I'm hopeful that some of the data stuff we're doing now for URS slows down. Then I'm going to revert back to the TMCH side of things to get things in motion for when the group does circle back.

And so really there's two questions, just to make sure that it's on the record. One is, who's getting the notifications and, two, exactly which TMCH system is being used for these extended or indefinite claims.

And I suspect that it's probably still the ICANN TMCH system and both parties are being sent notices, but, you know, it's not definite. So we'll find out.

Kathy Kleiman: And just to that response about when things slow down, hope springs eternal.

(Barry Cobb): Hope is not a strategy.

Kristine Dorrain: Thanks, (Barry) and thanks for recapping that. You know, and just on that timing note, I note that we do have a couple other questions for the trademark clearinghouse at the end of this doc. So in the interest of making things most efficient for you, I'm going to suggest and let anyone else in the room disagree with me that you should hold off until we get you your full list, right?

Yes, everyone else seems okay with that. I'm not seeing any shaking hands. Okay, good. Yes, we don't (Barry) going off on wild goose chases every Tuesday or anything.

(Barry Cobb): And just to make an informed - you know, there's several other asks that we're queuing up with - to go with Deloitte, so yes, I'd like to go at one big package sectioned out on what parts we need, one of which is hopefully to get some data refresh from the analysis group report and that kind of stuff so.

Kristine Dorrain: Great. Thanks so much, (Barry). (Ariel), can you scroll down on this one? I don't think we - I think we're kind of - all right, there. Oop, a little too far. There we go. Back to question five.

For registrars who operated an extended trademark claims service beyond the required 90 days, what has been their experience in terms of exact matches generated beyond the mandatory period, for example in terms of registration volume and numbers of exact matches?

This question seems a little obtuse, but I think what we're getting at here is did registrars who were asked to operate an extended trademark claims service -- because it's the registry operator that decides whether to offer an extended trademark claims services -- so was there an impact to customers to end users registrants? Did they notice that some TLDs - that the TLDs that

offer the extended trademark claims service, were - did those TLDs seem to suffer a difference in sales from what they might have expected compared to TLDs that did not offer an extended trademark claims service?

And does everyone who participates regularly agree that that's a summary of the question? Yes, Kathy?

Kathy Kleiman: This is Kathy. It is, but it raises the same ambiguity that (Barry) and I were just talking about, which is, is the notice just going to the trademark owner or is it... There might not - or is it going to the... I'll leave you to phrase it properly. Thank you.

Kristine Dorrain: Oh, oh, not me. I'm not phrasing anything properly today. There's not enough coffee.

Yes, I think you're right. I think any place we see the word "trademark claims service," I think we need to substitute in our notes, you know, we need to understand, you know, what does that mean. Does that mean just the claims notice to the registrar? Or does it also mean the notice of registered name, what we're calling the norm to the brand owner?

But in this specific case, because I think we're talking about the impact at the moment of registration, I think we're mostly talking about the impact of the notice to the registrant not so much the notice to the brand owner, in this specific case. (Susan).

(Susan): Yes, hi. Sorry, I think I'm being a bit dumb, but I mean, registrars don't operate the extended claims service. Do they? I mean...

Kristine Dorrain: No, you're right. I think that was why I was paraphrasing. I think my paraphrase said, for registrars who are asked by a registry operator who have chosen to operate an extended claims service. And I know that we're not really charged with rewording the charter questions, but if staff could take

a note and make sure that we do clarify that phrasing because it isn't a registrar who operates. So good call, (Susan). Thank you.

So for this specific question, let's think more about how we could get this information. And I will turn off my mic and let people think and raise their hand. (Susan), you're prompt.

(Susan): Also, I think this might be another one that we put in the RFP questions because my recollection is question five was one of those that we felt was within scope because we were already in those questions talking about claims and extended claims. And we were asking questions to registry operators and registrars. So I'm pretty confident. And (Ariel) is nodding, so I hope that means she's agreeing with me, that we did put a place holder in to have that one...

Kristine Dorrain: And (Ariel) is also confirming that those questions are in the survey. And (Mary) is clarifying my wording, and I appreciate it, (Mary). Thanks for keeping me honest. These are not charter questions but were developed by an earlier subteam. And you know that's my mantra, so thank you for correcting me. Yes, these are not charter questions. These are subteam questions. Thank you.

All right, question two. Now before I read it - well no, I'll read it quickly and then remind me if this went into the survey so for the people on the - who were on the call where we talked about putting questions in the survey.

What information on the following aspects of the operation of the TMCH is available and where can it be found so either learning about the ancillary services offered by the trademark clearinghouse, which are not mandated by the ICANN RMPs, the post 90 days ongoing notification service, other services in support of registry specific offerings? With whom and under what arrangements does the TMCH share data and for what non-mandated RMPs purposes?

Did that go into the survey at all? No. (Susan), go ahead.

(Susan): (Ariel) is shaking her head too. No because we weren't addressing questions to the trademark clearinghouse in that process. I think we've already obviously had some conversations with the trademark clearinghouse and asked them a lot of questions in the past. And so we may find if we go back to that that we've asked them some of these questions before. I can't remember. But it didn't go in the survey because they weren't a recipient of questions for the survey.

Kristine Dorrain: Go ahead, (Ariel).

(Ariel): And this is (Ariel) from staff. If I may just clarify, I'm sorry, I should have color coded the ones that went into the survey. So the one that went into the survey is question five. There are two parts of that, and they both went into the survey. And then question four, I think the one that's on the top of this page, that went into the survey. So there's only three questions that went in there.

Kristine Dorrain: Thank you very much for that, (Ariel). I appreciate it. Kathy, go ahead.

Kathy Kleiman: Yes, so for question two, maybe we should send these to the providers. I don't - I think we were so busy kind of asking about the core trademark clearinghouse provider mission... I mean, I seem to recall a lot of time in Copenhagen on that. I'm not sure we got to ancillary services at all. But I could be wrong. We should check. But if we haven't asked these, does anybody - you know, should we? You know, should we sent it out to the providers? I'm sure they'd be happy to answer, well particularly Deloitte.

Kristine Dorrain: This is Kristine. I think that the subteam as chaired by Paul did discuss that. And I think that the answer - what we came out with at the end of the day was the ones that - the services we knew about were actually covered in the

questions regarding the extended claims and in covering the additional rights protection mechanism as being sort of the DPML type services.

Question two is getting at what are we not - what don't we know yet. I think that's where we're at, Kathy, is like asking the clearinghouse - because I think our big concern was, is there anything hidden that we don't know about yet. So all of the other questions I think do get to asking registries and registrars about things that we're aware of. I think question two was to the clearinghouse because we wanted to know if there were other things that we weren't aware of yet. So I think that maybe answers your question?

Kathy Kleiman: So are we going to send it to them and ask?

Kristine Dorrain: The clearing - yes, I think the point...

Kathy Kleiman: Oh.

Kristine Dorrain: ...is to send question two to the trademark clearinghouse along with sort of the work that (Barry's) putting together. But I don't think it's ready. In my opinion, we need to think a little bit about how we want to ask and make sure that we're asking, you know, specifically targeted questions. I'm not entirely sure that saying, you know, ancillary services that you offer that are not mandated by ICANN RPMS, including but not limited to, tell us more about the post 90 days ongoing notification service and other services in support of registry specific offerings, I just don't know that that would help get us to where we want to go.

And so I'm going to propose that maybe we won't get there today but in one of our calls we sort of wordsmith it. So that when (Barry) is ready to go to the clearinghouse, we have like the wording that we want to send. (Susan).

(Susan): I think that makes a lot of sense. I think maybe we should also just remind ourselves of what we have asked them already because I know I can't really

remember what we've asked them already. It was such a long time ago now. So it - we should probably just remind ourselves to make sure we aren't asking them the same questions twice.

And then I guess we could also - I think we could sensibly look at their - you know, their Web site and their terms and conditions. And, you know, if they've got a page that deals with the rules for something like the extended claims, I mean, you know, I think we can look at that first. And then we - you know, and then to the extent that we think it doesn't answer our question, we can ask them the question.

But I don't think we should just - you know, I think we can do some work ourselves. Can't we?

Kristine Dorrain: I support that. Anyone else? And then: With whom and under what arrangements does the trademark clearinghouse share data? I think that's all related. So I think our action item will be -- I know we - we're trying to plow through this so we don't meet anymore Fridays. I have a suspicion we're going to have to meet at least one more Friday to hammer through question two and word it in the way that we want to have it sent to the trademark clearinghouse so (Barry) is ready to go on that.

So staff can take a note that when we meet again, we will start with question two. And we will be working on wording for the trademark clearinghouse for question two.

And then, (Ariel), could you scroll down and just remind me again what question six was about? (Kurt), go ahead.

(Kurt): Yes, on a prerequisite, the question two, then we'll want to have easy access to whatever it says on the trademark clearinghouse site, the germane information and the previous questions we've asked them, right, so we're not trying to read through that on the call?

Kristine Dorrain: Yes, thank you. So staff, could you send around some of the appropriate links that you've identified? Yes? Awesome. Thank you. You guys do such a great job of sending us homework. We need to do a better job of doing the homework.

And then again, back to the trademark clearinghouse question: What other services are provided, do those services use any data? And how are they compensated for the provision of those services? I think in my mind those are really related. Actually, I'm looking at the Notes column which we kind of don't see very much, and it says, lump in with question two.

So I think we'll do all of that at our next call on the next Friday that we meet. And hopefully, we can just crank out the wording and get ready to go for the trademark clearinghouse.

We are not going to be able to answer question one until we have our data. And so there's nothing to do there.

Staff, are we missing anything? Have we promptly and swiftly marched through every single action item today? Wow. Nicely done, everyone.

All right. Well, excellent. We are done 15 minutes early. We will hopefully only have one more call and then we will consider ourselves adjourned for a while. Thanks so much, everybody, for participating and to all of our observers. And thank you very much to staff for all of your help and support today, specifically (Barry) for all the work you've done. Thanks, everyone. Have a great rest of your day.

END