
ICANN Transcription

Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP WG

Tuesday, 01 September 2020 at 13:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP Working Group call on Tuesday, the 1st of September, 2020.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room.

I would like to remind everyone to please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid background noise. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior.

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With this, I will turn it over to Kathy Kleiman. Go can begin, Kathy.

KATHY KLEIMAN:

Thank you so much, Julie. Welcome, everyone. Just by way of introduction, I can believe it is September 1st, and I can't believe my son just left for graduate school in Massachusetts. How does time fly so quickly?

Quick question. Let's ask if there are any updates to statement of interest. Then we'll review the agenda and ask for any items for AOB (Any Other Business). Any statements of interests? Any updates?

Okay. Seeing none, a quick overview of the agenda. We're going to have a brief update from the sub-team that's working on Sunrise Questions 3 to 5. We're going to have a quick update and suggested text but not a full discussion, maybe some clarifying questions, on the new TMPDDRP recommendation. Then we'll do our usual work on URS Recommendations 6 through 8 with the corresponding questions.

Let me ask. Is there anything for Any Other Business?

I'm going to pause because I think Maxim has something for Any Other Business. Maxim, do you want to speak to that?

Maxim may have lost the connect. Is he still with us, Julie?

MAXIM ALZOBA:

It's Maxim. Do you hear me?

KATHY KLEIMAN: Yes.

MAXIM ALZOBA: I'd like to propose a minority statement to URS Comment #4 if we have time in Any Other Business.

KATHY KLEIMAN: Okay, Maxim. About how much time do you think you need?

MAXIM ALZOBA: I think less than ten minutes.

KATHY KLEIMAN: Okay. Julie Hedlund, could I ask for a heads up when we get to about ten minutes before end time?

JULIE HEDLUND: Yeah, sure. We'll do that.

KATHY KLEIMAN: Terrific. Then Maxim will introduce, although may follow at a different time.

To Paul McGrady, thank you. It is an exciting time, and hard.

Okay, let's go ahead with our first agenda item, which is the brief update from the sub-team regarding Sunrise Questions #3 to 5.

Good, I'm glad someone is going to remind us what Sunrise Questions 3 to 5 are. It's easy to lose track of these things at this point in time. Julie Hedlund, can I turn this over to you?

JULIE HEDLUND:

I'll just give a very, very brief update. A small team was set up to look at Sunrise Questions 3, 4, and then Sunrise Question 5 to see if there was any recommendations that could arise relating to these questions. Just as a reminder, Questions 3 and 4 ... In fact, it'd be easier if I can just give you a link to this document because then you have it to reference to yourself so I don't have to read through the questions. But Questions 3 and 4 related to the ALP process, so the sub-team was considering whether there was a recommendation that could pertain to streamlining the ALP process. With respect to Question 5—I'll just scroll down to that—that was respect to developing a possible recommendation—a streamlined recommendation—pertaining to trademark owners' participation in the TMCH using non-English script/languages.

The sub-team had an abbreviated meeting yesterday. They had not, during that meeting and previously to that meeting, developed any suggested recommendation language for Questions 3, 4, or 5. We did note, however, that Susan Payne was on vacation and not able to attend yesterday, and we're not sure if she might have some recommendation language to contribute. So, when she returns, we're going to check back with her—staff will do that—to see if she has anything she would like to contribute. If not, it's likely that this sub-team will not provide any recommendation language for the working group to consider with respect to Sunrise Questions 3 and 4 and 5.

KATHY KLEIMAN: Terrific, Julie. Thank you for the update on that. Does anyone have any questions for Julie? Can we also find out who was on that sub-team in addition to Susan Payne, if that's easy to get?

JULIE HEDLUND: Yes. Well, one of the people was Paul Tattersfield. Actually, I see he has his hand up. The others are David McAuley, Paul McGrady, and Scott Austin, if I'm remembering correctly.

KATHY KLEIMAN: Terrific. Thank you, Julie. Paul Tattersfield, go ahead, please.

PAUL TATTERSFIELD: On the ALP, there was some concern, I think, from AFRINIC and [CORE]. They've not been able to negotiate an ALP scheme with ICANN prior to a launch of a local gTLD. I'm wondering if there's anything that we can put in the report to aid this negotiation process. I don't have specific knowledge of this matter, so I was wondering if the working group could quickly revisit it. Thank you.

KATHY KLEIMAN: That's a good question, Paul. Is there anyone ... Paul, you're on the small group. I'm wondering if there's anyone who should be joining the small group who could bring the kind of expertise.

Mary Wong, go ahead, please.

MARY WONG: I'm just sticking up my hand for Julie, Kathy, since she's a host and she can't raise her hand. So, Julie?

KATHY KLEIMAN: We're going to have to do a fix on that one, I think, [with] the Zoom rooms.

MARY WONG: Right.

KATHY KLEIMAN: Go ahead, and then we have Brian Beckham in the queue. Julie, go ahead, please.

JULIE HEDLUND: Actually, let me go to Brian first so you can come back to me. It might be that he's raising the same issue that I will.

KATHY KLEIMAN: Terrific. Brian, go ahead, please.

Brian, if you're speaking, we can't hear you.

BRIAN BECKHAM: Hello?

KATHY KLEIMAN: Yes, now we can. Great.

BRIAN BECKHAM: Sorry. I'm not sure it's necessary to spend time on Paul's question just now. We covered this on a call a few weeks ago I was chairing. Unless it's pertinent to the items that are on our agenda today, perhaps it's best to discuss that over the list. But I do recall we discussed and covered and agreed on these different ALP and QLP programs, and we agreed on recommendations to those. So it feels like we're going back to work we've already completed, but maybe I'm missing something.

KATHY KLEIMAN: Brian, I think it has something to do—let me ask you a question—with the small group taking the questions to the side. So something still seems to be alive. Do you know what that is? It sounds like Paul's question is relevant to that.

BRIAN BECKHAM: I would have to defer to staff (on having a better memory) on if there's anything left to resolve. Perhaps I'm misremembering, but I thought we had covered these topics on a call a few weeks ago, and the question of that basically we recommended to streamline the process. So when I hear the question about if we should discuss Paul's suggestion, it feels to me very much a topic we've already discussed and in fact agreed on.

KATHY KLEIMAN: Interesting. Thanks. I think I must have missed that meeting during one of my short vacations.

Paul, I'm assuming that's an old hand. Julie, Hedlund, go ahead, please.

JULIE HEDLUND: Thank you. With respect to Paul's question, if that is a recommendation—that the working group should develop a recommendation concerning how registries negotiate with ICANN—then that actually would be out of scope for this working group. Conceivably, we could add an observation about the difficulty that some have indicated in their comments as part of the deliberations. But, from a staff point of view, we don't believe the working group would be able to make a recommendation about how the registries would negotiate with ICANN.

KATHY KLEIMAN: Okay. Sounds like we're going to be revisiting this when the small group gets back, so a suggestion to Paul Tattersfield is to take this back to the small group, maybe with a registry or registrar from [CORE or] AFRINIC, if they're members of the working group, and for staff to please highlight this issue that was just raised here in the discussion so that we don't lose it in the summaries that exist of this material. But it sounds like we've already discussed this and that, because of the small group, we'll be revisiting it again. So there's still some opportunity to work on these ALP negotiations. We've heard about the difficulty of them for several years now in the working group.

Brian is saying we should definitely go back—oh, sorry. Per Brian's comment, we should definitely go back and take a look at the discussions that took place when we reach these questions in the working group.

Anything else on this agenda item?

JULIE HEDLUND:

I'll just note that we did, in the action items from yesterday's small-team call, ask the small team if they had any recommendation language to [suggest to] the small team so it could be considered. If indeed there is recommendation language from the small team, we certainly will bring it before the working group. Thank you.

KATHY KLEIMAN:

Terrific. Thanks so much, Julie. Thank you for that brief update on the sunrise questions.

Now let's move on also to a fairly brief update and some suggested text from the small group that's working on the trademark PDDRP recommendation. As I understand it, this is not designed for a full-blown substantive discussion but to introduce what the small group is doing and to ask some clarifying questions and that we will reintroduce this after the working group has had a chance to review in their own time. Julie Hedlund, is that your understanding as well.

JULIE HEDLUND: Sorry. Coming off mute slowly. Yes. The idea would be that Paul McGrady would introduce the text that you see before you and then give the working group a chance to consider it with perhaps a small starting discussion here today with some context to frame the discussion.

KATHY KLEIMAN: Okay. So it sounds like I'm turning this to Paul McGrady. Paul, let me start with the initial question, which is that the redline are the changes (?) the small group is offering to the existing text of 6.2. Over to you.

PAUL MCGRADY: Thanks, Kathy, very much. Let me answer Kathy's question first, and then let me explain what the document is that we're looking at here. The short answer is no: the small group hasn't really had a chance to look at a specific text. This text came out of a really good conversation yesterday. We're basically bringing it here today to get additional reactions. But, while I would hope that ultimately the small group will support this, we can't say that this is done yet, if that makes sense. So it's very much in flux. But I think it makes sense to air it out here.

Then let me talk mechanically what the document is about. These are the sections of the TMPDDRP that would be changed in the event that the changes coming out of our discussion a small group were adopted. I didn't include the entire policy in my redline because there is so much of it that is not [affected]. So that's why we're only looking at a couple sections of the document.

KATHY KLEIMAN: Paul?

PAUL MCGRADY: Yes?

KATHY KLEIMAN: Sorry to interrupt. Before you launch in, for those of us who are acronym-impaired or forget because it's the end of summer and we might be on a beach, can remind us what the PDDRP is? It's been a little time since we revisited it.

PAUL MCGRADY: Sure. It's a dispute policy that applies only to new gTLDs. Basically, the trademark PDDRP was meant to allow brand owners to have some method to address systematic abuse. It has not been heavily utilized, I think partially because of some the things these suggestions are meant to correct ... This working group did look at it early on, but these changes that are being proposed came out of public comment, where we had the IPC and the BC suggesting that the policy could be tweaked slightly to address concerns about sunrise abuse, which this working group has already acknowledged are a problem. That's why we have Sunrise Recommendation 2, which basically is anti-abuse as well and calling for a clause in the contract. So that's where this came from.

KATHY KLEIMAN: Thanks. Great. Then I'll have some clarifying questions later. Go ahead. Thanks so much. Just to make sure everybody is with us.

PAUL MCGRADY: Terrific. And I see Phil's note that this should be a light-touch conversation today because of all the other things on the agenda. So I will do my very best to keep it brief, Phil.

So what we're looking at here came out of yesterday's conversation. The initial proposal I put forward created a new cause of action related to sunrise abuses. It suggested all kinds of things like clarifying the evidentiary standards. It had some other tweaks like breaking up some "ands" and "ors" that were in there.

Essentially what came out of our small-group conversation was that there may be a way forward here to deal with concerns about sunrise, but many of the things that I had included were just bridges too far. So I was tasked with trying to make minimalist changes to the policy, and that is what we had here.

Let me just walk through the proposed changes. You'll see the first one, I believe—I'm relying on staff to scroll ... Instead of having a unique cause of action, what we did was we just put in what I think are good clarifying languages. In 6.2B, we see, "Th registry operators' bad-faith intent to profit from the systematic offering for sale or registration of domain names within the gTLD that are,"... and so on into the rest of the policy. I think one of the reasons why this particular policy has not been used to address sunrise abuses in the past is because it talks about systematic registration but you could argue that that is somehow also offering

presale. But I think that making that clear—that the sunrise activities, the presale activities, would be considered part of the policy—does it and does away with the need for an independent cause of action.

The other changes are down a bit further and in 3. Essentially, those changes in 3 are additional safeguards for registries about what will and will not be considered to be an activity for which you can get hauled in front of a PDDRP-neutral. For example, if you comply with the sunrise RPMs that cause higher prices without something more, it's not something you can get hauled in for. Listing an otherwise generic name at a higher price, unless it's specifically targeted ... For example, if I'm running the dot-food registry and I list apple.food for a million dollars, apples are food, right? But, if I have the dot-computer registry and I list apple.computer for a million dollars, then that would be an issue. So those safeguards are meant to clarify to keep overexcited trademark lawyers from filing something that they shouldn't file and to provide comfort to registries that this is not a phishing expedition or a witch hunt just because a price might be higher.

The next change is at the bottom. It's just a clarifying statement for clarity: changes to the policy after August 1 2020 are not meant to create any new rights but merely clarify how a complainant might use the existing policies and procedures. In other words, we're not trying to really change the policy. We're just trying to make the policy clear that it can be used for sunrise abuses.

I think there may have been one more change down at the bottom. At my age—here we go. 21.3: just, again, a safeguard for second-level registrants, actually. I almost said a safeguard for

registries, but I really think it's more about second-level registrants. In the event a registry operator loses a proceeding under the dispute resolution mechanism, ICANN must implement a remedy, but ultimately ICANN retains discretion as to whether the remedy chosen by the expert is appropriate. So, say, for example, a trademark owner was upset about a sunrise price or a sunrise condition, like, "Oh, yeah, you've got to be a founding member to get this, and we get to use your logo to promote our business," or whatever. There's all kinds of abuses that may have nothing to do with pricing. That trademark goes out, finds five or six other examples of brands that are being treated the same way, files a complaint under this thing, and the expert comes back and says, "Yeah, there's a violation here. The registry should be shut down forever." Well, okay, that's going to affect some second-level registrants, right? So we want ICANN to be able to say, "Whoa." You know what I mean? We want the remedies to be in proportion to the harms. So this is a [savings] clause, like a steam pressure valve. So that's why I put that in there.

So that is a tour of what I hope are considered to be minimalist proposed changes to this. Most of the changes, as you can see, actually are safeguards for registries and registrants. The one change at the very top was meant to clarify that the policy can be used to address sunrise abuses. So that's the tour.

I'm happy to answer any questions. I do see Maxim's comment that price regulation is not in ICANN's remit and outside of the picket fence, but I will stress that the trademark PDDRP as it exists today has references to pricing issues in it. So, again, nothing in here is requiring ICANN to set a price or requiring

ICANN to put a ceiling or a basement on a price. This is about whether or not brands are being taken advantage of. That concept already existed in the trademark PDDRP, so there's nothing revolutionary in terms of how this policy relates to pricing. In fact, this policy provides more comfort on the pricing issue if we take up these amendments than it does currently now. So, from a registry standpoint, I would think they would be for this.

Anyways, that's a commentary on the end of my tour. Thanks.

JULIE HEDLUND:

Kathy, if you're speaking, you might be on mute.

I see Kathy is having trouble with audio. I'm going to note we have two hands up. We have Maxim and Phil. Hopefully, we can get Kathy back at that point. Maxim?

PAUL MCGRADY:

Why don't I just run the queue until Kathy comes back, if that's okay. Maxim, please go ahead.

MAXIM ALZOBA:

Could you scroll up a bit to the previous edit? No. Then back. In the text, it says "higher." Formally, "higher" means one dollar more. It's not an [insane] amount of money. Then I suggest, if we go this way with this edit, it should be significantly higher because, for example, sunrise, which is offered at \$30, is not a big deal. If the generic price is \$12, it's still higher. It means every trademark owner will be able to file a formal complaint. In a situation where

we will see many complaints, it's going to be systematic. So it should be significantly higher because, if we're talking about a situation which will be used, and this particular DRP is quite deadly for registries and it's not a business which you can [bring up for, like, \$20, and which you can bring down using this text, it should have some safeguards. That's why I suggest we use "significantly higher." Thank you.

PAUL MCGRADY:

Thanks, Maxim. Just to respond to that, if I may, the idea of the slightly higher price coming out of sunrise is meant to be handled in the parenthetical just before that, where it says "other fees collected incidental to the registration process for value-added services such as enhanced registry security or complying with a sunrise RPM."

All of that said, I have no problem with including the word "significant" before "higher" in both places that "higher" appear here because I think you're right: if something is offered for \$30 more, who cares? If something is offered \$30,000, then we care.

So, Maxim, that is a great suggestion, and we will take that on board in the next draft.

Next up is—Maxim, your hand is still up. Did you want to reply to me, or should I move to Phil?

All right. Thanks, Maxim. Phil—I see Kathy's hand is up. Kathy, do you have audio again? Because, if you do, I'm happy to turn over the hat to you.

KATHY KLEIMAN: You're doing a great job, Paul. I do have audio again. Why don't you just keep going? Because my hand is up, too.

PAUL MCGRADY: Okay, great.

KATHY KLEIMAN: Great.

PAUL MCGRADY: Perfect. All right, Phil, you're up next. Please go ahead.

PHIL CORWIN: Paul, briefly, I wanted to thank you and the small group for bringing this back to us. I think you're going in the direction of helpful clarifications of the policy and hopefully something that is not so new and so material that the Co-Chairs would have to think about whether we need 21 days of public comment on it.

But, as I put in the chat, I already have one very specific question about the new language, but I'm going to post it on the list. I would urge others who have questions about this language, anything about it or anything they think should be added, to post it to the list for ... If I understand it, this is not a final text. The small group is going to meet again. So I urge everyone who has questions or suggestions to put them on the list in the next 24-48 hours so the small group can consider them when they meet again. Then, of

course, we'll have a full discussion when we have a final proposal back from the final group.

But I do want to note that we're one-third through today's time and we haven't begun on today's agenda, so I would hope that we could wrap up the oral commentary and questions and move on to the regular agenda and just put the questions and comments on list. Thank you very much. And thank you again for taking the initiative on this.

PAUL MCGRADY:

Thanks, Phil. I appreciate that. I appreciate all comments on the list. And I appreciate the constructive comment from both Phil and Maxim.

Kathy, you were the last hand, so I will turn this back over to you. Then, as Phil suggested, perhaps we could get on with the rest of the agenda. But I really do appreciate the airtime. This was given by the Co-Chairs. Thank you.

KATHY KLEIMAN:

Terrific. Paul before you leave, mine are actually just some timing questions on this. When can we expect a final version for discussion? Could you float that at least 48 hours before a meeting? Let me just stop there with that question.

PAUL MCGRADY:

Kathy, thanks. The short answer for that is I don't know exactly when our next call would be or if we believe we could work this out

on the list together. But your comment is taken on board and we will move as quickly as we can to get you guys something. Thank you.

KATHY KLEIMAN:

Terrific. So that we can know where the ball is in play. Is it still in the subgroup? When you report out the final version for our discussion, just let us know and then we'll officially move it into the full working group. And I share Phil's hope that we do not have to go out for another public comment on this because that will change our timing significantly.

So thank you to the small group. Thank you to Paul for the presentation and for running the queue.

Next item on our agenda, please, unless there are any other comments on this.

Okay. Now we go into—

JULIE HEDLUND:

Excuse me. I'm sorry, Kathy.

KATHY KLEIMAN:

Julie, you would like to identify a phone call. Go ahead, please.

JULIE HEDLUND: Yeah. Actually, I'm not seeing that number here now. I think it may have been identified. Julie Bisland, can you confirm whether or not we were able to identify the number?

JULIE BISLAND: We were not able to identify, but they either dropped or renamed themselves.

JULIE HEDLUND: Oh, okay. Very good. Thank you. Sorry about that, Kathy. Over to you.

KATHY KLEIMAN: Great. It's our job to know everyone on the call. Terrific.

Now back to our regularly scheduled program. We are on URS Recommendation #6. I'll just read it briefly and then turn it over to Paul or Zak—whoever would like to work through the comments with us. So URS Recommendation #6: The working recommends that a uniform set of educational materials be developed to provide guidance for URS parties, practitioners, and examiners on what is needed to meet the “clear and convincing” burden of proof in an URS proceeding. As implementation guidance, the working group recommends that the educational materials be developed in the form of an administrative checklist, basic template, and/or FAQ. Specifically, the working group recommends that the educational materials be developed with help from URS providers, practitioners, panelists, as well as researchers/academics who study the URS decisions closely.

Note this recommendation is related to URS Question #4, so we may want to review those together. I know also there's a summary of URS Question #4 in the subgroup deliberations.

Should I turn this over to Zak or to Paul McGrady for reviewing?

ZAK MUSCOVITCH:

This is Zak. I'll give Paul a little break for a few minutes. He's been busy. Paul, of course feel free to jump in where necessary.

So we have the deliberations summary in front of us, and it's quite a lengthy deliberations summary. Thanks to staff for putting this all together. If I can just try to summarize the summary without touching upon all the points included in the deliberations summary, basically Subgroup B agreed to maintain this recommendation as is but wanted the working group to consider possible revisions to the implementation guidance to provide some further flexibility to the IRT to decide on specific implementation issues, such as the nature, contents, and format of those educational materials.

So you saw that there was a reference to URS Question 4 as well. URS Question 4 was the one that said, "What content and format should educational material include? How should these educational materials be developed, etc.? Who should bear the cost of developing these educational materials? And should translations be provided?" So, with this one, we're going to have to jump back and forth a little bit between Question 6 and 4.

I'll draw a couple other highlights from the summary for you. Based upon the public comments—there was fairly high support

for this from the public comments based upon the donut and the analysis of those comments for Recommendation 6—Subgroup B noted the underlying desire/common sentiment that the broader multi-stakeholder community, including providers and experts in support of ICANN Org—e.g., the IRT led by ICANN staff—should develop those educational materials, and ICANN Org should bear the cost, and translation should be provided.

We also took note that there's a relationship between URS Recommendation 6 and not just Question 4 but also URS Recommendation 10, so I'll just briefly touch on URS Question 10 to remind us what it is. Opening up another a screen. Bear with me.

KATHY KLEIMAN:

Although, Zak, I'm going to note that URS Recommendation #10 was not included in our agenda. So it's not one that people have prepped, so I'm not sure it's one we can put to bed yet. But please remind us. Thank you.

ZAK MUSCOVITCH:

Okay. Fair enough. URS Recommendation 10, just to remind us, was to provide clear, concise, easy-to-understand, and informational materials translated into multiple languages and published on the URS providers' websites to assist parties in URS proceedings. That's what URS Recommendation 10 is.

At the very end of this deliberation summary, I'll highlight one other provision. Subgroup B agreed that the nature, content, and

format of the educational materials are better left to the future IRT to work through.

If I can take a stab at characterizing where the deliberations left off, the theme seems to be, subject to other's input or feedback or characterizations of it, that the recommendation stand as is but some greater emphasis or attention be looked at by this working to provide greater flexibility to the IRT in terms of the nature, content, and format of these materials. Thanks.

KATHY KLEIMAN:

Great. Thanks so much, Zak. I appreciate the walkthrough across two recommendations and a question.

Staff, could you show URS Question #4 and that third paragraph that we were looking at in the deliberations summary? I'm going to note, because we're going to see it again in Recommendation 6, the paragraphs starting, "Based on the public comments and response to URS Q4B-D and how unusual it is, often in the questions we've gotten a wide array of responses. Here Subgroup B noted a convergence/cross-community support[] a sentiment that, one, the broader stakeholder community, including provider/experts, and with support of ICANN Org—the IRT led by ICANN staff—should develop these educational matters, two, ICANN Org should bear the cost, and, three, translation should be provided."

Can we go back to Recommendation #6? Because we're going to see that the same paragraph has been carried over there in Paragraph 2 of Recommendation 6. As Zak said—let's go back up

to the top—the subgroup agreed that the recommendation be maintained as is but then noted— could you highlight; yes, exactly—that summary from Question 4 into URS Recommendation #6 of that based on the comments. These three points are guidance that can go and should go the IRT (Implementation Review Team) that will be developing the details of these educational materials.

Again, thanks to Zak and thanks to Subgroup B on this. Let's open this up for discussion and whether these additional three points should be included as part of our recommendation going forward per the Subgroup B idea.

Yeah, when we get to Recommendation 10, let's look backwards to see whether it's completely comprehensive. But, since I did go back to the agenda, I checked that it hadn't been assigned yet. So I think we should deal with—tell me if you disagree— Recommendation #6, Question #4, and then, after we have our recommendation, see if it's complete overlap with Question #10 when we get to it.

Does anyone disagree with the inclusion of these details, as Zak and the subgroup have recommended? Anybody else want to add anything on this important topic of educational materials?

Zak and Paul McGrady, as Subgroup B Co-Chairs, do you want to add anything? If not, I guess we move forward with this language that's highlighted as additional detail for the recommendation as implementation guidance, which will be very helpful to the IRT. The more they know about what we're intending, the better they can implement.

Terrific. I don't see any hands raised.

Next item. URS Recommendation #7. The working group recommends that all URS providers require their examiners to document their rationale in sufficient detail to explain how the decision was reached in all issued determinations. As in implementation guidance, the working group also recommends that URS providers provide their examiners a uniform set of basic guidance for documenting the rationale for determination. The purpose of the guidance is to ensure consistency and precision in terminology and format as well as ensure that all steps in a proceeding are reported. Such guidance may take the form of an administrative checklist or template of minimum elements that need to be included for a determination.

Zak/Paul McGrady, back to you for a walkthrough of the subgroup discussion.

ZAK MUSCOVITCH: I'm happy to do it.

KATHY KLEIMAN: Thanks, Zak.

ZAK MUSCOVITCH: Once again, Paul, please jump in if needed.

This has a rather brief summary. That reflects the fact that there was extremely high levels of support for URS Recommendation #7 based upon the public comments. You don't necessarily need

to bring it up in front of you, but this was basically an all-green-and-gray-for-the-most-part donut, green supporting this recommendation. So that's reflected in the brief deliberations summary: to maintain it as is. But there was a recommendation from Subgroup B to tighten up the language slightly to clarify that the determination includes all the required elements of a proper decision, namely the facts, rationale, tests, conclusions, etc., and specifically that the relevant facts are spelled out in each of the three URS elements as listed in the original language and addressed in the determination.

Just to contrast that sentiment with what exists in the current recommendation, you'll see in the first line that the URS provides require examiners to document their rationale in sufficient detail to explain how the decision was reached.

So that's broadly the sentiment, and Subgroup B suggested that it be specified more to not just say that in sufficient detail but to list the exact elements. Thank you.

KATHY KLEIMAN:

Terrific. Thank you, Zak. Staff, is there a way to show both the recommendation box and the first paragraph of Subgroup B's deliberation? Good. Thank you.

Zak, if I understand correctly, you're saying Subgroup B recommends that we include a little bit more detail as to what ... The recommendation is going to be accepted as is, but it says the working group recommends that all URS providers require their examiners to document their rationale in sufficient detail. What

Subgroup B is urging us to consider as a full working group is the last sentence of the paragraph starting, “Subgroup B agreed that the recommendation be maintained as is,” but then specifically that the relevant facts are spelled out and each of the three URS elements is listed in the original language and addressed in the determination.

ZAK MUSCOVITCH: That’s right, Kathy. One way that this working group could decide to integrate that additional specific language could be that, if we look at the first line of the text of Recommendation 7—“require their examiners to document their rationale in sufficient detail to explain how the decision was reached in all issues/determinations, namely setting out,”... and then you’d repeat: “including all facts, rationale, tests, conclusions, etc.” That could be one way to address Subgroup B’s conclusions.

KATHY KLEIMAN: Terrific. Thank you, Zak, and thank you again to Subgroup B for bringing things together.

Does anyone have any comments or any objections to the Subgroup B expansion clarification that’s been suggested that Zak has shared with us?

David McAuley says, “Interpreting “sufficient detail” to at least mean commenting on each element of what constitutes a registration violation of URS seems a good idea to me.” And to me as well.

Absent any objection, we'll ask staff to include the highlighted text as additional detail, perhaps with the wording that Zak suggested, after the first sentence of Recommendation #7—"namely setting out and including all facts, rationale, tests, conclusions"—and then the next line.

Thank you, Julie Hedlund. Absent any comments—I don't see any hands raised on this—let's keep moving forward. URS Recommendation #8: The working group recommends that the implementation review team consider reviewing"—ah, we got a technical one—"the implementation issues with respect to the Registry Requirement 10 in the URS high-level technical requirements for registries and registrars and amend Registry Requirement 10 if needed. The Providers Sub-Team discovered issues with respect to implementing the outcomes of a URS proceeding—e.g., relief awarded following a URS decision, or where the parties settle the case prior to determination, or where a complainant requests to extend a suspension.

Note the recommendation is related to URS Question #5, so we've got a twofer here. Back to Zak and Paul McGrady please. And if someone could tell us what Registry Requirement #10 is, that would be useful as well.

PAUL MCGRADY:

I was voluntold to take this one. Oh, man. Let's see if I can remember what this is. Maybe what we should do to answer Kathy's first question is to go take a look at Requirement #10 [inaudible] so that we have the full context for this.

JULIE HEDLUND: Thanks. It looks like actually Zak has very helpfully pasted Requirement #10 into the chat, which is fortunate because staff didn't have it ready.

KATHY KLEIMAN: Terrific. Thank you, Zak.

PAUL MCGRADY: All right. So Requirement #10 is, "In cases where a URS complainant as defined in the URS rules has prevailed, a registry operator must offer the option for the URS complainant to extend the URS suspended domain name registration for an additional year if allowed by the maximum registration policies of the TLD." In other words, you can't get an 11th year if the TLD only has a ten-year registration period maximum. "Provided however that the URS-suspended domain name must remain registered to the registrant who was the registrant at the time of the URS suspension, the registry operator may collect the registrar renewal fee if the URS complainant elects to renew the URS-suspended domain with a sponsoring registrar." In other words, it's a mechanism to keep a suspended domain name alive.

Subgroup B agreed that the recommendation should be maintained as is but recommended the working group consider expressly stating that this recommendation is not intended to create any transfer remedy for the URS. This suggestion intends to address the Namebright.com concern from public comment, which seems to misapprehend what the recommendation is

designed to do. The working group noted that the suspension can be extended for one year, but ownership of the domain name never transfers to the winning complainant.

Then we got some more stuff here. In addition, as URS Recommendation #8 alluded to the action suggested in URS Question 5, the subgroup suggested that the working group consider addressing the implementation issue where winning complainants are unable or unwilling to use a one-year registration extension that URS has always permitted. The subgroup recommended the working group take into account the subgroup's discussion of public comments [for] URS Question 5.

Furthermore, the subgroup noted Tucows' concerns regarding that the URS should not allow the inter-registrar transfer policy to be bypassed and asked ICANN staff to reach out for additional information/ clarification by the working group. Tucows confirmed that its response was intended to provide a rationale for its answer to URS Question 5. The subgroup also noted that Tucows' other comments regarding removal of a registrar because the URS applied to registries is incorrect.

So the subgroup noted that, although the Contracted Parties House appear to have selected do-not-support-recommendation in response to URS #8, its comments seem to actually support the recommendation. David McAuley volunteered to reach out to the CPH on whether or not they clicked the wrong button. I don't know that David has heard back from the CPH on that or not.

KATHY KLEIMAN: David's hand is raised.

PAUL MCGRADY: Oh, great. So, David, if you could jump in from here, thank you.

DAVID MCAULEY: Thanks, Paul. Thanks, Kathy. I'm hoping you can hear me.

KATHY KLEIMAN: Yes, David.

PAUL MCGRADY: Yeah, we can. You sound great.

DAVID MCAULEY: Great. Thank you. On this, I had promised, I guess, to go back to the CPH on a couple of issues. Frankly, on this one I have to say I neglected to do this. I completely lost sight of this. I apologize to this group. I can take steps to do that today and come back, but I don't have an answer now. Again, I apologize.

PAUL MCGRADY: Thanks, David. To a certain extent, it'd be nice to know if they simply clicked the wrong button, but their comments did seem supportive. I don't want to rule out an entire house, but I do think that this was one where there was significant support for. So maybe you could just supplement our understanding with an e-

mail to the list or something. But I think that we shouldn't consider this one knocked out for that reason.

So the bottom line on this one—Zak, please, if you're here, if I'm being too simplistic—is that, upon reading the recommendation, there were enough people who raised the question of, "Oops. Are we accidentally creating a right to transfer here?" So, for me on this, the big takeaway should be that there is no new right to transfer under the URS and that none of the transfer policies should be bypassed a result of this recommendation.

So I think that's it. I may give it back to Kathy to see if Kathy thinks we should be maybe tweaking the language of the recommendation a bit or—

ZAK MUSCOVITCH:

Yeah, I agree with you. I feel that this recommendation got overcomplicated. As Phil pointed out in the chat, this Requirement #10 is really just focused on the implementation issues with the extended registration period. So it had a high level of support, even discounting CPH. As has been pointed out, CPH did seem to support it generally anyhow. So I wouldn't over-examine this particular recommendation.

KATHY KLEIMAN:

Makes sense, but I do think we have to take a look at URS Question #5 because it does seem to address an issue that's been floating around in the working group for some time. Let me just read it quickly and then I'm happy to hand it over to Zak or

Paul McGrady or read through some of the comments—whatever is good.

So URS Question #5, which is related to this recommendation question, is, “Should Registry Requirement 10 be amended to include the possibility for another registrar which is different from the sponsoring registrar but accredited by the same registry to be elected by the URS complainant to renew the URS-suspended domain name and to collect the registrar renewal fee?”

And it notes that is related to URS Recommendation #8, which is what we’re discussing. Here I noticed that things did start getting complicated.

I can turn it over to you, Paul McGrady and Zak, or we can read through some of the questions raised by the subgroup.

PAUL MCGRADY:

This is where it got a little more interesting because there seemed to be a legitimate concern that the winning complainant in a URS shouldn’t be forced to do business with a registrar that they think is shady. There’s also the real-life problem that there are a handful of places where the U.S Treasury Department, for example, doesn’t like it very much if you engage in contracts. So, [thinking of] an attempt to deal with those issues, that’s where this question came up, if I remember.

That having been said, there was no clear—I hate to use the word “winner”—direction from the public comment on whether or not this is something that should be allowed. Within the subgroup itself, if I recall, there was no clear consensus that this right to

transfer to a different registrar is something that should be allowed. When you move a domain name out of the account of a registrant—even a registrant that has lost a URS—then something happens. That registrant can't affirmatively agree to a contract with the new registrar, so the registrar's registration contract would be between the winner who would be allowed to move it and the new registrar. But the winner isn't the registrant of the domain name, and registrars are supposed to have agreements with the registrants of domain names, not the winners of the URS proceedings.

So this is a really interesting idea. If we had, like, six more months to work this out, I think we could get there. But, as it is now, what I'm remembering from the public comments in the Subgroup B conversation is that having a right to change registrars, while solving some problems, would cause many, many other problems. So there was no agreement to adopt the mechanism that is being discussed in the question, if that's helpful.

I know—

KATHY KLEIMAN:

I just wanted to read the [second] bullet point that's on the top of now Page 24, which seems to [inaudible] exactly what you're saying. So now we're in the questions. As with so many questions, we got such an array of answers on [inaudible]. There's a lot of background noise. The circumstances that warrant the transfer are narrow and not terribly common. There is a very narrow event of a registrar not honoring and not being able to honor a complainant's legitimate request for an extension of a one-year

suspension but also that the problems are not clearly defined. We can see whether the transfer ambiguity in URS Recommendation #8 came through because we are talking about transferring not registrants but registrars. So we can see where that ambiguity came in.

Let me just check, Paul McGrady, that what you're saying is that, for the question here, there's no prevailing answer that came up.

PAUL MCGRADY:

That's right, Kathy. We can read these bullet points if it would be helpful because there were some for, some against, and some just raising questions on how it would even work. I don't think we even need to add up the bullet points and see who was more for or against it. This is just an interesting idea but no consensus—I can't use the word "consensus," but no clear trend emerged from the public comments or from Subgroup B's deliberations. What do you do? If you transfer the domain name from one registrar to another under current ICANN rules, that automatically adds a year. Who pays for the year? Who owns the year? You get an extra year of suspension by moving it. Well, maybe.

So those are all things that might be addressed if we weren't at the very end of our process, perhaps. But, as it is now, with the time we have left and with the trends in the public comment and the discussion of the subgroup, I just don't think there's enough there for the subgroup to recommend that the larger group adopt any mechanism or any recommendation for a mechanism coming out of this particular question. And I'm kind of sad about it because I'm sure that there are a lot of brand owners that would

love to see something like this get worked out. But, if we're going to sit with our process, then we have to say that there really wasn't the momentum.

KATHY KLEIMAN:

Okay. Terrific, Paul. As I read the chat, I'm seeing people—Zak, Paul Tattersfield, and David—agreeing with you. And Mary is sharing with us, “At any event, under the current inter-registry transfer policy (IRTP), only registered name holders can initiate a requested domain name transfer.”

So, unless anyone disagrees—Paul McGrady, especially you—I think we can leave behind URS Question #5—thank you for walking us through it—and return to URS Question #8.

So URS Question #5 is not giving us much guidance, but URS Question #8, requesting that the working group agree to add some guidance then that—Paul, help me out here—this recommended that the working group—thanks, Julie—consider expressly stating that this recommendation does not intend to create any transfer remedy for the URS ... Do we need to make that even clearer that, maybe further, the suspension can be extended for one year but ownership of the domain name never transfers to the winning complainant? So include both the first sentence and the last sentence of Subgroup B's deliberation summary.

PAUL MCGRADY:

I see no harm in adding a sentence in the recommendation at the end that says, “For clarity, this could result in a suspended registration being extended for one year but should never result in

a transfer of the domain name to the winning complainant.” I don’t think that would be a controversial change. But there were just enough people coming back to us in the public comment who read this URS Recommendation #8 that didn’t understand that the recommendation wasn’t meant to effectuate a transfer. Right? So it’s one of those things that, when you write something, it might seem ultra-clear to you, but if enough people come back to you and ask the same question, then that means that, as a writer, you’ve got to do some revision. So I think an extra sentence doesn’t hurt anything and could help.

KATHY KLEIMAN: Paul, let me ask a follow-up question. In light of our discussion of the question, should be clarify that it’s not a transfer to the winning complainant or a transfer to another registrar?

PAUL MCGRADY: Again, I think that’s fine because, again, whatever ambiguity we can stamp out of the process makes sense.

KATHY KLEIMAN: Terrific. Does anyone want to add, object, clarify, or edit? If not, a question to staff: is there enough guidance on this?

Julie says yes. Terrific.

PAUL MCGRADY: For the record, this makes me very sad. When we all get together in five years and review the URS again, we should bring this back up. Thanks.

KATHY KLEIMAN: Thank you, Paul. We'll know a lot more when we do it the next time, right? But I thought we're retiring and we're just going to drink and kibbutz in the future. I don't know.

I think that wraps up what was on our agenda for today, which is extraordinary. Staff, please correct me if I'm wrong.

JULIE HEDLUND: We do have the Any Other Business item from Maxim, and staff is ready to pull up that e-mail of his if you would like.

KATHY KLEIMAN: Terrific. Thanks for the reminder. And thanks to everyone for reviewing so many items so quickly of our recommendations and questions. And thanks, as always, to Zak and Paul McGrady for leading us through it and for Subgroup B for the detailed analysis of the URS recommendations.

Maxim, go ahead, please. You've circulated something just before the meeting, and I have to admit I didn't have a chance to read it. So if you could walk us through and tell you what you're thinking, please.

MAXIM ALZOBA: It's a minority statement to Item #5 (URS). There is no need to make additional edits to the text of the registry agreement and registry accreditation agreement due to the existing provisions requiring compliance with URS. The particular provision for registries is RA Specification 7'Article 2A for registrars via the registrar accreditation agreement with a particular registry where each new gTLD registry must include provisions for compliance with the relevant URS procedures and mechanisms. And a reference to URS high-level technical requirements for registrars and registries, Articles 4 and Article 5. The mechanism of such enforcement is simple and already existing. It's a [complaint] sent to the ICANN Compliance department. Thanks.

KATHY KLEIMAN: Maxim, thank you. Can someone remind us about URS Recommendation #4, please.

JULIE HEDLUND: I can bring that up.

KATHY KLEIMAN: Good.

JULIE HEDLUND: One moment. Let me ...

KATHY KLEIMAN: Maxim, can you remind us what the action was that ... A minority statement is an objection of sorts, right? Can you remind us, as Julie is finding that—it's a fairly extensive recommendation—of your understanding of where ... Well, let's hold on a second. We'll wait for it to come up. I know a lot of documents are out there.

JULIE HEDLUND: Just one moment while I stop sharing on the e-mail and start sharing on the document. One moment. Sorry about this. It just can be a little bit tricky to do. One moment, please. Sorry about that.

Okay. Can everyone see that?

KATHY KLEIMAN: Yes. So URS Recommendation #4: The working group recommends ICANN Org establish a compliance mechanism to ensure that URS providers, registries, and registrars operate in accordance with the URS rules and requirements and to fulfill their roles and obligations in the URS process. That makes sense. The working group recommends that such compliance mechanisms should include an avenue for any party in the URS process to file complaints and seek resolution of non-compliance issues. Then there's some implementation guidance.

Let me ask staff, if they could, to walk us through because this may become more and more relevant. Maxim, I see your hand is raised. How do we want to hand minority statements. For those people who have participated in this process before, what's a good way to do this if you object to something?

Mary Wong, go ahead, please.

MARY WONG:

Thanks, Kathy and [inaudible]. I'm speaking for staff, obviously. Two issues. I guess one is the process question about minority statements, and the other is the substance of URS Recommendation 4. With respect to the second question on the substance of Recommendation 4, I did put a question in the chat for Maxim because, when staff looked at the recommendation and his e-mail, we were not sure whether they were actually referring to the same thing because Recommendation 4 really does not seem to contemplate changing any contractual text or obligation or requirement in either the RA or the RAA. So we just want a point of clarity there because obviously it's out of scope anyway to change contracts that are negotiated between ICANN and the contracted parties. So one question therefore, Maxim.

With respect to the process question, I think, as a couple people have noted or have asked, minority statements are sought at the end of the process, and it is minority statements that are generally in opposition to a consensus or full consensus designation of a final recommendation.

So it seems to be more appropriate if Maxim is opposing Recommendation 4 that it be described for our current purposes as one clear opposition by a member of the working group which the Co-Chairs can take into account when you get to the point of designating consensus levels for each of the various recommendations. I hope that helps.

KATHY KLEIMAN: Mary, before you leave, that means that we can take Maxim's statement—Julie, I hate to ask you to go back to it, but I see Maxim is in the queue—we'll just spend just a few more minutes on this because I think it's useful—and can include that as part of the report—Maxim's new statement—not as a minority statement but, as you said, a clear opposition to an interpretation of where we're going with the recommendation so that we can review it all when it comes up for the consensus call.

MARY WONG: Kathy, I'll just point out that that's always been true for all the working group recommendations, whether opposition is voiced on a call or an e-mail to the mailing list. So this would be considered one of those exchanges and not a formal minority statement because, as we noted, that comes at the end of the consensus process.

KATHY KLEIMAN: At the end of the consensus process. Great.

Maxim and then Phil. Thanks, everyone, for the timing for discussing both substance and mostly procedure because we're going to be addressing minority statement-type issues probably going forward. Maxim, go ahead, please, and then Phil.

MAXIM ALZOBA: Is it possible to remove the first of the sentence: “Until the registry agreement”? to change it to “registrar agreement and registry accreditation agreement already contains provisions requiring compliance with URS”?

KATHY KLEIMAN: Maxim, you’re back in the original recommendation language, right?

MAXIM ALZOBA: I mean the change to this bit, which I thought I was a minority statement: to change the first sentence to say, “Registry agreement and registrar accreditation agreement already contain provisions requiring compliance with the URS.” Thanks.

KATHY KLEIMAN: Why don’t you recirculate that? That would be great?

MAXIM ALZOBA: Okay. I will do that right now.

KATHY KLEIMAN: And maybe as a statement of opposition or concern or clarity and not necessarily as a minority statement, given that that’s a term of art.

Phil then Lori Schulman. Phil, go ahead, please.

PHIL CORWIN:

Thank you, Kathy. Can staff please put the text of Recommendation 4 back on the screen? Okay. On the first statement, Maxim, every member of this working group has a right to file a minority statement in regard to anything in the final report, but it's premature to submit it now. When we get to the final report and review it and it's really final, we give everyone a reasonable period of time to file minority statements. The wording of your minority statement on this recommendation or any other is completely in your control. It's not something the working group has any control over: what an individual minority statement says.

Now, when we look at Recommendation 4, we note that the first paragraph that that references not just registries and registrars who are covered by the agreements that Maxim referenced in his draft minority statement but also providers. So I think that's new and is different.

Then on the second paragraph, on the inclusion of an avenue for any party to file complaints (complainants, registrants—or I guess there might be others—I'm not sure what happens today if a third party writes to ICANN and says, "This registry (or this registrar) is not complying in full with their agreement under the applicable registry or registrar agreement." I think the point here is to make sure that there's something that's identified to the public where, if you take a provider or a registry primarily has not done what they're required to do under the URS rules, you have a way to bring that to Compliance's attention and make sure that there's some process that's going to be followed. But how that works is up to the implementation team. Nothing in the paragraph referenced would require any amendment to the existing registry

or registrar agreements. It's simply adding providers and making sure that participants in the URS process have a clearly defined path to seek resolution of complaints against any of those three parties. Thank you very much.

KATHY KLEIMAN: Phil, before you leave, since I believe the discussion of this recommendation took place last Thursday when I was out of town for a family emergency, are you and Maxim suggesting there may be some room for some additional clarity here?

PHIL CORWIN: I'm not. I believe we've closed out this recommendation. I would not want to set the precedent of reopening closed issues unless we have missed something really important and the working agreed that, as a matter of carrying out our responsibility, we had to revisit something because it had been brought to attention that we missed a vital point. But other than that, we discussed it, we agreed on it, and I'm not in any way moving that we reopen the text of this recommendation for discussion. Thank you.

KATHY KLEIMAN: Okay, great. Thanks so much. Lori, then John McElwaine. Lori, go ahead, please.

LORI SCHULMAN: Hi. I want to support what Phil says, although I'm not sure that I agree about not revisiting it, simply because Maxim has been part

of the group and, if this lack of clarity is there for Maxim, perhaps it would be there for the public. That is distinguishing the fact that the URS providers are not under a contract in the same way as the registrars and registries are. So, while as a group understand that there are ... What we're trying to say is perhaps the public would not.

And then it might be a very good idea to somewhere—I'd have to go back into the summary if we've already done it; I just don't remember—say that we're very clear about recognizing that there is an existing contract with registrars and registries and that providers exist under a different regime vis-à-vis their memoranda. I think it just has to be that clear. If it's not clear, then we should revisit and clarify it. Thank you.

KATHY KLEIMAN:

Thank you, Lori. I think that makes sense. I think, at this point, provided we're not changing the recommendation, clarity, particularly for those providing the services and implanting them, is very important. So thank you for opening the door for that.

Maxim, maybe you could work with Lori or others for some additional clarity on the wording that's consistent with the recommendation but answers some open questions.

John, I think the last comment is for you—oh, and Julie has a hand up, too.

JOHN MCELWAINE: Thanks. I completely support the discussion that's going on here. One thing that Phil said that I wanted to check is that it looks like, from looking at the GNSO operating manual, looking at when minority views will be submitted after, as Mary said, a consensus determination was made, it needs to more than just one person. It needs to be a small number of people. It says "supporting the recommendation," but I suppose it could be supporting or in opposition to the recommendation. Phil said they'll take any individuals, and I think that just runs the risk of a lot of work, overwhelming the system here. So I think we will, as leadership group, be providing some guidance on the consensus determination area, but I think it would be a mistake to allow just the submission of minority view statements by individuals. Just my personal opinion there.

And I will say that there is a note in the manual as well that allows for an individual not to have their name associated with a full consensus or consensus view position. So that perhaps is where an individual could ask for their name to be removed. Thanks.

KATHY KLEIMAN: Terrific. Thanks, John. Just a note here. I think we moved from minority statement to a lack of clarity, as Lori shared and Maxim shared.

Phil is asking, "Could staff instruct us on the rules for minority statements?" We can do that or we could do that at a later point and really outline it with regard to the GNSO rules. I was hoping to give everybody ten minutes back of their time, but I'm happy to pause for Phil's question.

Staff can do that at a later point. Terrific because minority statements are intricately tied with the call for recommendations in consensus. So here we have a clarity issue. Thank you for the additional discussion of substance and procedure.

Unless there's any objection—I think those are old hands from Lori and John—I'm happy to give you back ten minutes of your time. Thanks again to Subgroup B and its Co-Chairs. Take care, everyone. Thanks so much.

[END OF TRANSCRIPTION]