
ICANN Transcription

Review of all Rights Protection Mechanisms in all gTLDs PDP WG

Wednesday, 04 December 2019 at 1700 UTC

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JULIE BISLAND:

Well, Good morning, good afternoon, and good evening everyone. Welcome to the Review of All Rights Protection Mechanisms (RPMs) and All gTLD PDP Working Group call on Wednesday the 4th of December 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge at this time, could you please let yourself be known now?

All right. Hearing no names, 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. With this, I will turn it over to our co-chair, Phil Corwin. You can begin, Phil.

PHIL CORWIN:

Yes. Well, welcome, everyone, to our post-Thanksgiving, pre-Christmas, New Year series of calls. Apologies that I couldn't join

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the last call. Thanks to Kathy for chairing that. I was on an out of town meeting.

Our agenda today ... Any changes in SOIs? Updates?

ZAK MUSCOVITCH: Phil, it's Zak Muscovitch. I got one. I joined the At-Large as an individual member. I saw that Greg Shatan and Justine were having so much fun, I thought I would join them as well. Thank you.

PHIL CORWIN: Well, have fun, Zak. Susan, I see your hand up.

SUSAN PAYNE: Yeah. Thanks, Phil. Just as a formality. It's not really a change but I was reelected as the IPC secretary for another year. So, formally, it's an annual thing. So, just a noting.

PHIL CORWIN: Well, congratulations and condolences, whichever is appropriate. Thank you for that. Our agenda today. We're going to complete discussions of the recommendations of the URS sub-teams that are going into the initial report just to ... We all know what these are but just to remind ourselves and give people a chance to express any views as to contextual language they might want to see in the initial report to flesh out these proposals.

Then, we hope to begin discussion of the individual URS proposals. We've got an order. The order is based, I think, on ... Maybe staff can chime in on the order. I know we go from one end to the other in terms of opposition and support and wind up in the middle.

JULIE HEDLUND:

Thank you, Phil. This is Julie Hedlund from staff. So, yes, the order of the individual URS proposals as proposed to the working group is to start with those that had the fewest numbers of ... From the survey, those that surveyed—I'm sorry. The proposal that had the fewest number of votes for, no, not to be included in the initial report. And then to that which had the ... So, that had the most support, essentially, and then the one that had [inaudible] support [inaudible] nos.

Then, to switch back and forth between those—those that had support, those that did not have support—until, yes, we meet in the middle. So, that's the order that [inaudible]. Phil, if you're speaking, you might be on mute.

PHIL CORWIN:

Yeah. Someone muted me. I don't know why. I heard some background noise that was coming from my end, but I'm now unmuted. I can speak again.

Yeah. Thanks for the explanation, Julie. Now, we had an open period where members of the working group could have proposed that individual ... And I'm still hearing some background noise.

Someone is chewing or drinking or something. Could you please mute yourself? Thank you.

We didn't get any by the deadline which was this past weekend. We did not get any proposals for any of the individual URS proposals to be considered as working group recommendations.

Now, as we address them, I think if it turns out that there's one or two where there's tremendous support within the working group, not just by call participants, but if that happens, we can take it to the list, where essentially something has a consensus level of support and individual proposals, we can consider whether it should become a recommendation. But short of that ... Yeah, I'm sorry, I'm still getting a lot of clicking background noise. Is it just me or is it others?

UNIDENTIFIED FEMALE: Phil, I'll go ahead and mute everybody who is unmuted at this time.

PHIL CORWIN: Okay, thank you. Yeah. There are quite a lot of comments in the chat. Others were hearing the same thing. Yes, the sound of silence much better.

So, with that, any comments on the agenda? Anybody want to note anything they want to raise for AOB? If not, we can get started on the agenda, on addressing it. By the way, do we have anyone who is just on audio? I guess Paul Tattersfield and Renee

Fossenn. Do we have a way that they can speak up or unmute themselves if they want to intervene?

UNIDENTIFIED FEMALE: They should be able to *6 or on their phone, they'll be able to— there's an option to unmute.

PHIL CORWIN: Okay. I see also Griffin Barnett is in the same position.

UNIDENTIFIED FEMALE: Right.

PHIL CORWIN: Okay. So, if you're just on audio and you want to speak, do *6. Otherwise, please stay on mute.

So, let's get into it. Is this the first one we're starting with from the provider's ST? I believe it is.

JULIE HEDLUND: Yes, Phil. I'm putting the link in the chat as well, so that people can go to it directly since I'll be scrolling through it on the screen here, but you will be able to scroll through it as well if you go to the link that I've just put in the chat.

PHIL CORWIN: Okay. Let me ask, we've got the first column in green and then we've got a heavily marked-up column. Which is the version we're using since I can't scroll here and see what the headings are for these columns?

JULIE HEDLUND: Thank you very much, Phil. Let me just remind people of the heading here. I'll move it up a little bit so you can see. So, what we're doing is we're reviewing the edits made to the document based on the working group discussion of the sub-team's recommendations. So, the red lines you see here are what staff captured from the meetings where the working group discussed the sub-team recommendations. So, for example, at ICANN 66.

So, we're just reviewing the edits staff has captured based on the working group's discussions and just making sure that there's no need for further clarification.

So, you see the original sub-team proposal in the first column. And this is, actually, we're starting on page four. We're starting from where we left off from the last meeting. Then you have the URS recommendation. The question for public comment endorsed by the full working group. So, we've changed the language there so that it's not the sub-team recommendation anymore because the working group has discussed it and this reflects the working group's recommended language. Staff has noted that then this is the working group's endorsed language for public comment as opposed to sub-team's. I'm happy to read through the text in the second column which is what we're looking here today.

PHIL CORWIN: Okay, Julie. Actually, if you would be so kind as to read through it because I'm kind of getting over an upper respiratory thing. I'm still a little raspy. So, if you can read each one and then I'll open the discussion. Since these are changes made by the working group meeting together, hopefully these are final but we'll provide an opportunity now if anyone wants to suggest any further final revisions of any of these, we can do that on this call. So, go ahead, please.

JULIE HEDLUND: Yes, thank you, Phil. Just to note, again, that this is ... These changes—these red-line changes—are based from staff's review of the recording and transcript of the working group's discussion of these recommendations.

So, not going to read the full recommendation ... Well, let me ask. Would you like me to read the policy recommendation, the text in the first column, or would you like me to just go ahead and read the revised, the red-line text, in the second column?

PHIL CORWIN: Yeah. My preference would be just the revised text. The other ones have historic interest but it's no longer relevant to today's discussion.

JULIE HEDLUND:

Thank you very much, Phil. Reading from the second column on page four. The working group recommended that the URS rule 3(b) be amended to clarify that a complainant must only be required to insert the publicly available RDDS data for the domain names at issue in its initial complaint.

Further, the working group recommends that the URS procedure paragraph 3.3 be amended to allow the complainant to update the complaint within two to three days after the URS provider discloses the registrant data related to the disputed domain name.

Then, there is a deleted paragraph that had read: the provider sub-team also recommends expert intermediary should conduct outreach and education efforts to increase awareness of the concept of DoH complaint which is allowed under the temporary specification for gTLD registration data. The working group agreed to delete that language. The working group also agreed to delete in the first paragraph "In light of GDPR and the permissible filing of a DoH complaint, specifically the provider sub-team." And that's the end of the text in the second column.

PHIL CORWIN:

Yeah. Thank you. So, this is one that relates to a lack of available RDDS or WHOIS data due to the GDPR situation. It allows the filing of an initial complaint with just the bare bones information that's available. And then amendment ... Once further information becomes available, of course the process for getting that further information is being worked out right now by the EPDP and they're about to put out an initial report for comment.

I wouldn't think this one is controversial but if anyone wants to speak to it and suggest any further revision, now is your chance. Kathy?

KATHY KLEIMAN: This is a procedural question, Phil. Can you hear me?

PHIL CORWIN: I can hear you.

KATHY KLEIMAN: Great. I thought that we were starting much further into the document. For some reason, I thought we had done a lot of this last week.

PHIL CORWIN: Well, Kathy, I believe ... I looked at your most recent email between the co-chairs from the other day and it said we were starting on the top of page four. I wasn't on the last call, so I have no idea how much progress you made.

KATHY KLEIMAN: Okay. That's fine. Thank you. I thought we had covered this, but if not, let's do it.

JULIE HEDLUND: If I may—perhaps it is a little bit confusing. We did ... The working group ... Kathy originally did discuss this item. So, really what

we're doing is just reviewing the red lines that staff captured based on that discussion, and according to our notes from the last call, this is the place that we are starting to just re-review the edits that staff has captured. And as Susan Payne notes as well in the chat.

PHIL CORWIN: Okay. All right. Well, if that's the case, we ought to be able to click through these pretty quickly because we're basically ... This isn't an initial review. This is review of the prior review. So, let's just click through them quickly and hopefully there will be no further comment on any of them. But let's just get through this and then we can get on to the individual proposals, hopefully starting on this call.

JULIE HEDLUND: Thank you, Phil. I'll just note that also commensurate with the changes made in column two, you'll see that there was an action item in column three that is deleted because it's no longer needed. It's been addressed. So, that is the red-line deletion in column three.

PHIL CORWIN: Okay, thanks.

JULIE HEDLUND: And if you'd like, I can go ahead and proceed then to the next item, and that's at the top of page five. It's the items under the

topic [B Notice]. One receipt by registrant, notice on feedback from complainant and respondent and an operational fix from the providers sub-team. And the new language, based on the working group discussion in column two, is the working group recommends that URS providers must comply with URS procedure paragraph 4.2 and transmit the notice of complaint to the respondent with translation in the predominant language of the respondent via email, fax, and postal mail. Then the action item in column three is accordingly deleted because it is addressed by the text in column two.

PHIL CORWIN:

Thank you, Julie. If the action items have been dealt with, there's probably no need to mention. It's only I think if there's any action item that hasn't been acted upon yet, let's look at that, but otherwise let's just presume it's been taken care of.

So, this one just says you've got to follow the rules and transmit the notice of complaint via the three methods that are set forth in the URS policy and rules. Any discussion?

All right. Let's move on.

JULIE HEDLUND:

Thank you, Phil. This is also a policy recommendation from the provider sub-team also relating to notice. The revised text is that the working group recommends that URS providers send notice to the respondent. Deleted is via its online registrant contact form if available. And then to the respondent by the required methods after the registry or registrar has forwarded the relevant

WHOIS/RDDS data, including contact details of the registered name holder to the URS providers.

PHIL CORWIN: Thanks. Any discussion on this one? Then let's continue.

JULIE HEDLUND: Thank you very much, Phil. Marie is asking if I can make my screen bigger. Let me see if I can zoom in. There, I've zoomed in a little bit. Let's see if that helps.

So, this next item is notice the affect on registry operator, notice requirements for registry operators. There are two items here that are operational fixes. One is from the working group and one is from the providers sub-team. And we have new language in column two which I'll read.

URS provider feedback indicates there may be some clerical issues concerning the registry operators including, first bullet, communicating from email addresses different from the context present in ICANN's repository. Bullet two, not responsive to requests for information from URS providers. Third bullet, delay in sending notifications to the URS providers regarding the completion of URS actions. Fourth bullet, not completing URS actions despite notifications and reminders from the providers resulting in a need for providers to report non-compliance to ICANN. Fifth bullet, due to GDPR, registries are inconsistent with respect to how they would like to either receive verification requests or how the provider should receive the verification from them, e.g. Dropbox zip file with password, web-based access. The

inconsistency adds a significant amount of time to case handling. A small number of registries do not respond within the required 24 hours.

Then, the recommendation there—and this has changed to working group recommendation. The working group recommends that the ICANN Org registries, registrars, and URS providers keep each other's contact details up to date in order to effectively fulfill the notice requirement set forth in the URS procedure paragraph four.

PHIL CORWIN:

Okay. So, thanks for that. That's essentially noting feedback from the providers on difficulties they had encountered primarily with the registries. And after listing those issues, a recommendation at the end. Comment on this one?

Then let us move on to page 7 of 22. So, we're a third through it.

JULIE HEDLUND:

And thank you, Phil. Second recommendation relating to this item is the working group and this is changed from document sub-team recommends that public comment be sought on the following question. Had registry operators experienced any issues with respect to receiving notices from URS providers, were these notices sent through appropriate channels? Did the notices contain the correct information?

I note that Maxim has his hand up.

PHIL CORWIN: Right. Okay. So, this one is about a specific question we're putting to the registry operators in the community hoping to receive comment on the initial report. That may help us make some further modifications and recommendations. Maxim?

MAXIM ALZOBA: Do you hear me?

PHIL CORWIN: Hear you fine.

MAXIM ALZOBA: It's about the previous item, about the complaints of URS providers that registries can tag them from the emails different from what they see in the compact forms. I don't think it's an issue because the compact emails, we need to ensure that registry is reachable but limit the registry to use only that particular email which mostly distribution lists where the legal department, the operations, are notified when URS provider writes something. It's a bit strange because it's not a single mailbox. So, I don't think that we can recommend changing this. So, the registries will be ... URS providers will be able to contact registries but limiting registries to use the particular mailbox is not feasible from [inaudible] perspective. Thanks.

PHIL CORWIN: So, Maxim, which part of the ... Could you scroll back up, Julie, so I can actually see the part that Maxim seems to be ... So, you're raising a concern about the first bullet point, communicating from email addresses different from the contacts present in ICANN's repository. Is that your concern?

MAXIM ALZOBA: Yes.

PHIL CORWIN: Okay. Well, I think if ... As a co-chair, I'm reluctant to delete something that registry operators have—I mean, that providers have communicated to us. I think it's probably more appropriate to keep this in. And since we're specifically asking for registries to comment on this list of concerns from providers, to get that in feedback and then consider changes for the final report would be the way I think we should approach this.

I'm not sure why a provider would be concerned if they've communicated to a registry to the listed contact address and they get a response from that registry but from a different address, say from the address of the attorney for the registry. I'm not sure why that would be a concern. But I think that's something that should be put out for public comment rather than stricken out of the language here. Do others have views on that?

All right. Well, if not, we should probably just move on.

JULIE HEDLUND: Thank you, Phil. And just to point to what Griffin had said in the chat, which is what I was going to say to staff, is that the only recommend pertains to—it's the one at the bottom here where the working group recommends that ICANN Org registries, registrars keep each other's contact details up to date. The other information is just context for the recommendation which we can include in the initial report but these aren't questions, per se. These are just the context of that recommendation and that is the feedback that we received from URS providers.

PHIL CORWIN: Okay. All right. Again, I'm not sure ... I would think, if you're a provider, as long as you get a response ... I'm not sure why getting it from a different email address would ever be a concern.

Let's move on to the next one, and this is standard of proof.

JULIE HEDLUND: Thank you, Phil. This is an operational fix from the petitioner sub-team. In reflecting the working group discussion, this is then presented as a working group recommendation. The working group recommends that a uniform set of educational materials be developed to provide guidance for URS parties, practitioners, and examiners in what is needed to meet the clear and convincing burden of proof in a URS proceeding. Deleted is the text "while ensuring consistency, precision, and completion of all steps in a URS proceeding."

And then following paragraph. As an implementation guidance, the working group recommends that the education materials be

developed in the form of an administrative checklist/basic template/FAQ. Specifically, the working group recommends that the education materials be developed with the help from URS providers, practitioners, panelists as well as researchers/academics who study URS decisions closely.

Next paragraph. The working group recommends that public comment be sought on the following questions. Deleted is the bullet “should any educational materials be developed for URS practitioners and examiners [that you have] suggestions for.

So, the first bullet becomes: what content and format should these educational materials have? Should these educational materials be developed? Who should bear the cost for developing these education materials? Should translations be provided? And that’s the end of the text in column two. And Phil, if you’re speaking, you might be on mute.

PHIL CORWIN:

Thank you. Forgot the mute. Now I’m unmuted. So, this recommendation addresses one of the fundamental differences between URS and UDRP which is a higher burden of proof on the complainant and suggests that some standard educational materials on that point be developed by a number of parties to assure uniformity in the application of that standard of proof. Then proposes to ask a number of questions to the community in the initial report regarding the development of those educational materials. Any comment on this one?

Seeing and hearing none, I believe it's accepted in its current form.

JULIE HEDLUND:

Thank you, Phil. Moving to the next item on page nine. Top of page nine, policy recommendation from the provider sub-team. The new text in column two reads: The working group recommends that all URS providers require their examiners to document the rationale in sufficient detail to explain how the decision was reached and all issue determinations. As an implementation guidance, the working group also recommends that URS providers provide their examiners a uniform set of basic guidance for documenting their rationale for determination. The purpose of the guidance is to ensure consistency and precision and terminology and format as well as ensure that all steps in a proceeding are recorded. Such guidance may take the form of an administrative checklist or template of minimum elements that need to be included for a determination.

PHIL CORWIN:

Okay, thanks. So, this recommendation was addressing the fact that we had found that for a relatively small percentage of decisions but more than just a handful, the examiners were simply stating that the burden had been met in ordering suspension without even any additional explanation of how they reached that conclusion. So this is trying to get to a result where examiners provide some rationale for how their decision was reached through a uniform guidance on how to get there and what should be included in that. I believe it was pretty non-controversial within

the working group and this is what we have now. Any comments before this language is locked in?

JULIE HEDLUND: There's a comment from Paul Tattersfield, or a question from Paul, in the chat.

PHIL CORWIN: All right. So, Paul's question is: is non-use and no response from a respondent a valid reason for successful URS determination? I defer to others. My view would be that it's not, in and of itself, determinative, but if you've got a situation where hypothetically the domain name is an exact match of a trademark and the domain is being used for commercial purposes that clearly are infringing on the activities of the owner of the trademark, you could reach a determination under this standard of proof regardless of the fact that there's no response. It would really depend on what's going on at the website.

My opinion—I don't know if others have a view on that—but I don't think ... Certainly, lack of response is not sufficient in and of itself to order domain suspension but it really depends on other factors. But we don't require ... And since there are many non-response cases, default cases, in URS as there are in UDRP, we don't require a response to get to a conclusion. Other thoughts on that or is that sufficient?

JULIE HEDLUND: There's some continued chat on that.

PHIL CORWIN: Right. Well, [inaudible] said no website. I don't know that we can answer these hypotheticals on this call, and the point of the recommendation is to develop a uniform guidance on how to apply the standard of proof in different situations. So, we could spend the next hour discussing different hypotheticals for domain names but that's not our job. What we're recommending here is to provide better guidance to the examiner so they act in a fairly uniform manner no matter which provider is used.

PAUL TATTERSFIELD: Can I quickly speak to this?

PHIL CORWIN: Sure.

PAUL TATTERSFIELD: The [CFA.club] I understand was a recent URS decision which the name was—

PHIL CORWIN: And this is Paul, right?

PAUL TATTERSFIELD: It is, Paul Tattersfield, sorry, for the record. [CFA.club] was taken under a URS determination a few weeks ago, and reading the outline of what's available is public, there was no website at all

and no reply. Now, that doesn't seem to me that that was what URS was intended for.

PHIL CORWIN:

Well, again, Paul, I fully respect your views on this but we can't on this call start getting into a group discussion on whether or not a particular URS decision was correctly made. The recommendation here is that in any URS determination, including one where there's no website, that the examiner lay out more something more than saying—and I've determined that the burden of proof has been met but has to add additional language, explaining how the examiner reached that conclusion. So, I think that would

For that case, I'm not sure what trademark CFA stands for, who brought the complaint. I mean, again, we can't get into discussing discreet cases. What we're talking about here with this recommendation is to make sure that where there is a suspension that it's properly explained and that there's guidance to examiners on how to provide that explanation.

PAUL TATTERSFIELD:

Right. My question is, is it possible just to have just no reply and something like a three-letter abbreviation? Which can be used for multiple uses and it can be taken under a URS decision. It seems that we need a mechanism to make sure that that cannot happen under any circumstances.

PHIL CORWIN: What if the three letters [inaudible] IBM and it was IBM.tech or IBM.computer? Again, I don't think we can start getting into multiple hypotheticals on this call. This recommendation addresses the fact that some URS decisions have not provided any rationale for how the examiner determined that the burden of proof had been met. It's basically a recommendation that they need to add some additional language and that guidance should be developed for what that language should contain.

So, while it's not fully addressing the situation you're bringing up, I think it would help alleviate concerns about decisions which are not, in the view of many, adequately explained at present. But I don't see the job of this working group as to try to promulgate a hard-and-fast, black-and-white rule and then, in a particular circumstance, you can't find that the burden of proof has been met.

PAUL TATTERSFIELD: Okay. What I'm trying to say is that the burden of proof isn't high enough because the examiner can simply just turn around and say that non-use stops the trademark owner from using his mark in that domain. So that's just as bad as not saying anything at all.

PHIL CORWIN: All right. Paul, I'm going to say one more thing and then we have two folks with their hands raised. You just said that burden is not high enough. Actually, it's quite high. The UDRP standard is preponderance of the evidence, which is basically just over the line. This is clear and convincing, which is a rather high burden of

proof in civil practice. The only burden of proof I know of that's higher, at least in U.S. law, is "beyond a reasonable doubt," which is standard for a criminal conviction. So the standard is quite high. Whether its being properly applied is a different question. The point of the recommendation is to get people to explain how they reached the conclusion – examiners – that the burden had been met so that others can decide whether they reached then proper conclusion.

With that, I'm going to call on Susan Payne and then David McAuley. Susan?

SUSAN PAYNE:

Thanks, Phil. Just quickly, Paul, this is really interesting and obviously it's something you feel very strongly about. But, if it's your own domain name, you clearly have your own avenues of appeal. If it isn't your domain name and it's just something where you feel that there's a problem, I think the time for that to come up now is during the public comment because, at the moment, what we're doing here is reviewing recommendations that we all as a group spent months working on. We're just literally fine-tuning the language of things we've all agreed to already. So starting to open up a discussion about what the standard of proof should be? This is not the time for it. Thanks.

PHIL CORWIN:

David McAuley?

DAVID MCAULEY: Thanks, Phil. I largely agree with what Susan just said. It's possibly that I'm not understanding Paul's concern. I just wanted to mention, in my support for the language that's on the screen now, that, with respect to the no-response issue – I'm not so sure about then no-website issue – default judgments under current rules have the possibility for potentially, right now, two subsequent reviews, both de novo. The period in which that can be sought I think can stretch up to a year. So it seems to me that, with respect to the no-response, there is sufficient remedy or protection for that. So I would think that, back to the issue on the screen, the language is good and, just like Susan said, it's something we agreed to. It seems like a good question to put out to then public: Should these examiners be more explanative of what their rule is? Thank you.

PHIL CORWIN: Okay. Is there any further discussion on this point? I think we're at the place where we take Paul's concern seriously and suggest he and others who have a concerns either want to suggest a burden of proof, whatever it might be ... I'm getting a lot of feedback as I speak. A lot of static. Basically, let's take comments on this – whether more needs to be done – to the public comment period. But there doesn't seem to be any objection to the language of the recommendation that we just reviewed. Thank you.

Julie, please proceed.

JULIE HEDLUND: Thank you, Phil. These are now recommendations under remedies.

PHIL CORWIN: Wait, Julie. Please suspend. Maxim just raised his hand. Let's see what he has to say. Maxim?

MAXIM ALZOBA: I will talk after Julie because my comment is related to this item.

PHIL CORWIN: Okay. Go ahead, Julie, then.

JULIE HEDLUND: Thank you. The only changes we've made here are to indicate in Column 2 that the recommendation is from the working group as opposed to from the Provider Sub-Team because the working group did review the recommendation and agreed to it. I'll read it again though, just so everybody has it in front of them.

"The working group recommends that the Implementation Review Team considers reviewing the implementation issues with respect to Registry Requirement 10 [and the URS high-level technical requirements registries and registrars], and amend Registry Requirement 10 if needed. The Provider Sub-Team discovered issues with respect to implementing relief awarded following a URS decision, settlement of a domain transfer at the registrar level, and complainant's request to extend the suspension. The working group recommends that the public comment be sought on

the following question. Should Registry Requirement 10 be amended to include the possibility for another registrar which is different from the sponsoring registrar elected by the URS complainant to renew the URS suspended domain name to collect the registrar renewal fee.”

PHIL CORWIN: Okay. Now let’s hear from Maxim.

MAXIM ALZOBA: Julie, could you scroll back so I can see the beginning? Yeah. There is an issue. In all three URS documents, there is no transfer. Effectively, the URS prohibits any transfers of the domain. The only thing that could be done is extension of the registration period, which is locked with the NS servers pointing at the page which says the domain was lost [inaudible], basically. There is no remedy as transfer. The question on the left contains something which is not factually true. So I’m not against the idea that the registrant might select another registrar, but another registrar has to be accredited with the registry because, without it, there is no way to transfer anything. The idea of transfer of domains is the result of URS. It’s not something we have in the procedure. It’s not for transfer. It’s for logging. That’s it. Thanks.

PHIL CORWIN: Julie, can you scroll down? Is the word “transfer” still in the revised language? Maxim referred to the language on the left, which is the old language.

JULIE HEDLUND: The working group did not change the language at all in Column 2, so the only change in Column 2 is just indicating that this is a working group recommendation. It does mention the word “transfer.” I’m looking at the final sentence—

PHIL CORWIN: Can you scroll down? Because I can’t see it.

JULIE HEDLUND: I will as I read it. “The Provider Sub-Team discovered issues with respect to implementing relief awarded following a URS decision, settlement of a domain transfer at the registrar level, and complainant’s request to extend a suspension.” That’s the only mention of transfer, as I look through the rest of the question for public comment.

PHIL CORWIN: Well, Maxim is correct that URS does not order transfer. But the word “settlement” there – is that referencing possibly the URS is settled by a voluntary transfer of the domain?

JULIE HEDLUND: I don’t have all of the deliberations as far as how this language is developed. Settlement of a domain transfer at the registrar level? I’m wondering whether or not this language that’s highlighted here should be deleted if it is not—

PHIL CORWIN: Before we delete anything, Kathy wants to hear intervene and then Maxim wants to speak again. But there seems to be some confusion. Transfer obviously is not a permissible result of a URS decision, so we're trying to figure out right now what that transfer is referencing.

Kathy?

KATHY KLEIMANN: Thanks, Phil. I think the transfer issue is transferring registrars for the purpose of extending the suspension. There seemed to be an issue, if I remember correctly, of currency and of certain countries that are not allowed by law to deal with other countries. So, if the registrar, for example, is in Iran, there may be issues with an American trademark owner extending the settlement, if I remember a conversation correctly.

So the issue was of transfer between registrars, not transfer of registrants, for the period of the suspension and then that one-year opportunity to extend, which was created originally just in case a domain name, for example, had a one-year period and was at the end and was going to expire while the URS was in proceeding. So I think we should just rethink that word "transfer" and maybe explain it as the transfer of the suspended domain name between registrars.

I also think – but I'll wait on this – that we need a little [inaudible] on the actual recommendation. But I will watch what Julie's putting in. Thanks.

JULIE HEDLUND: Phil, if you're speaking, you might be on mute. Maxim does have his hand up.

PHIL CORWIN: Actually, I was – by the way, “registrars” is not spelled correctly in there. You need to put an extra “r.” Maxim, does that sufficiently clarify things to address your concern?

MAXIM ALZOBA: I'm not—

PHIL CORWIN: I think that “transfer” connects to the next paragraph. We're talking about how sometimes, if the domain is suspended but the complainant wants to extend the period [to exert their right] by another year, they need to execute a transfer to a different registrar to facilitate that.

Maybe I might suggest that, if we can't agree on wordsmithing here, we let staff work on this and bring it back to us next week so we don't get bogged down in wordsmithing on the fly. The thought here is we're trying to address not transfer as the result of a URS determination that the burden of proof has been met, which results in domain suspension, but transfer at the option of the prevailing complainant who wants to exercise their permissible option to extend the registration by an additional year and, because of certain circumstances, needs to get that domain name transferred

to a different registrar to take advantage of that capability. I think that can probably be worked out with clear language, but maybe not right now on this call.

MAXIM ALZOBA: I think we should avoid the word “transfer” because all the text of URS says, “No transfer. Transfer is prohibited.” It’s on a technological level—

PHIL CORWIN: Maxim, I have to say we’re not talking about transfer as a result of a URS determination. We’re talking about post-suspension transfer by the prevailing complainant. That relates to the next recommendation, which is about including the [inaudible] for another registrar different from the sponsoring registrar. I think overall this language needs to be worked on by staff to reflect what we’re trying to address here, and it’d be best for time efficiency purposes to let staff have the opportunity to work on language after this call and bring it back to the working group on the next call. Otherwise, we could be bogged down on this for the next 10 or 15 minutes.

MAXIM ALZOBA: A few words. We should add “with the same registrant,” because it removes then possibility of the situation where the registrant would change as a result of such a transfer extension. Thanks.

PHIL CORWIN: Okay. All right. Well, I'm going to ask staff to work on language here that reflects Maxim's concern – I see Kathy's hand up; I'll let her speak in a minute – and touch base with Kathy and touch base with Maxim and see if we can bring back agreed-upon language to the working group in a subsequent call. We'll bookmark this recommendation as not fully completed until we bring back that language for further working group consideration.

Kathy, did you have further comment on that?

KATHY KLEIMANN: No. I was going to offer some minor changes to the language below in the next paragraph.

PHIL CORWIN: Okay. All right. Let's get that on the record and then leave all the wordsmithing for staff post-call. Go ahead.

KATHY KLEIMANN: That sounds like a good plan. I'm in the section that says, "The working group recommends that public comment be sought on the following question." I think what we're doing here is really hard to parse because it's a very long sentence, so let me off just a quick edit. "Should Registry Requirement 10 be amended to include the possibility for another registrar, which is different from the sponsoring registrar, be" – I'll add the word "be" – "elected by the URS complainant to renew the suspended domain name and to collect the registrar renewal fee." We're asking if it's even possible to do this because of the difficulties that have taken place. So I'll

post that language in the chat as well as soon as I figure out how to cut and paste. Thanks, Phil.

PHIL CORWIN:

Okay. All right. Well, staff, please take that under consideration as you work on this language after the call. We're talking here not about an inter-registrant transfer, which can be a result from a UDRP decision, but an intra-registrar transfer to facilitate the right of the prevailing complainant to extend the domain's life by a year if they choose to do that.

Let's move onto the next one. We'll look forward to staff bringing that back to us on the next call.

We're on Page 12 of 23 after an hour. It doesn't look like we're going to get to the individual proposals today, so I'm just trying to expedite things so hopefully we can finish up on these sub-team proposals today and clear the field. We don't want to get bogged down on wordsmithing or we will not make that goal.

Next one.

JULIE HEDLUND:

Thank you, Phil. This is an operational fix from the Provider Sub-Team, already discussed by the working group. Here is the new text in Column 2. "The working group discovered non-compliance issues with URS providers and registries. For example, one of the URS providers did not translate the notice of complaint into the predominant language used in the registrant's country or territory or transmit it via e-mail, fax, and postal mail per URS procedure,

Paragraph 4.2, and URS Rule 9. One URS provider did not list the backgrounds of all of their examiners, as required by URS Rule 6A. Some registries did not carry out their obligations relating to locking, unlocking, and suspension of disputed domains.” So that’s the context to the recommendations.

The first is, “The working group recommendations that public comment be sought on the following questions. What compliance issues have registries and registrars discovered in URS processes, if any?” Second bullet: “Do you have suggestions for how to enhance compliance of URS providers, registries, and registrars in the URS process?”

Then the further text is amended to indicate that this is a working group recommendation. So this next paragraph says, “The working group recommends that the ICANN org establishes a compliance mechanism to ensure that URS providers, registries, and registrars operate in accordance with the URS rules and requirements and fulfill their role and obligations in the URS process.” That text has not changed from the sub-team recommendation.

Just noting that the next paragraph that’s deleted is actually incorporated. The recommendation was to move that text as context above the recommendation. So that’s why it’s deleted. It’s actually included above the recommendation.

The second recommendation is, “The working group recommends that such compliance mechanisms should include an avenue for any party in the U.S. process to file complaints and seek resolution of non-compliance issues. As implementation guidance,

the working group recommends that the Implementation Review Team considers” – a first bullet – “investigating different options for a potential compliance mechanism, such as ICANN Compliance, other relevant departments in ICANN, a URS commissioner at ICANN org, or a URS standing committee, etc.” Second bullet: “Developing metrics for measuring performance of URS providers, registries, and registrars in the URS process.”

And then the last paragraph is deleted because I think that text is actually included in the recommendation above. David McAuley is noticing a type: “notice of complaint.” Let me find that so I can make sure that’s reflected ... Yes, I found it. Thank you.

Phil, over to you.

PHIL CORWIN:

Thank you, Julie. Well, that’s a long one, but basically it boils down to the working group to provide [inaudible]. Now the working group has found that certain parties – examiners, registries, registrars – were sometimes not complying with the rules. We want to make sure they do comply and we’re asking the community for comment on some ideas we had for how to improve compliance. Plus they’re free to suggest their own.

Any comment on that? I think there was generally a high level of agreement that this was a problem and needed to be addressed. This was not a controversial recommendation. Further comment?

MAXIM ALZOBA:

If I may.

PHIL CORWIN: Okay, Maxim.

MAXIM ALZOBA: Julie, could you slide one page more to the last part? Yes. Thanks. First of all, there is a compliance mechanism within ICANN to complain about registries and registrars. It's ICANN Compliance. Given that URS providers have some kind of agreements with ICANN, you can send e-mail to ICANN Compliance about their issues.

Also, the timing ... I don't think there is a need [for metrics] to assess how registries do because basically it's timing in the URS documents -- for example, 23 hours [until lock]. If you see that it's not followed, you just complain to ICANN Compliance. I don't think it's a good idea to make ICANN create a new department for something which can be resolved by the current methods. Thanks.

PHIL CORWIN: Maxim, let me suggest that the point you just made ... You did not propose any language change of what we're looking at. Your comments would be perfectly appropriate for the public comment period, saying, "Hey, you don't need this. They don't need to this. There's already a relevant compliance mechanism, if you would believe it would address compliance with the URS policy and rules. And there's already metrics." So I think, rather than considering changing this language, which has been developed and has a pretty high level of agreement within the working group,

that comments like that should be reserved for the public comment period. But others may agree or disagree on that.

Well, there's no further comments, so let's move on.

JULIE HEDLUND:

Thank you, Phil. The next recommendation relating to this item you see here on Page 15. "The working group recommends that public comment sought from the registries on the following question. What issues have you encountered with respect to implementing the HSTS pre-loaded domain suspension remedy, if any?"

Then there's a comment associated with this text that's highlighted here. This is actually the added text. The comment is from staff, and that is to double-check the definition with GDD, which we will do. But let me read the new text that's been added here. "HSTS pre-loading is a function built into the browser whereby a global list of hosts enforce the use of HTTPS only on their site. This removes the opportunity an attacker has to intercept and tamper with redirects over HTTP. The aforementioned remedy is to suspend the HSTS pre-loading function of a domain name.

PHIL CORWIN:

Okay. So this was new language. When was this added by staff – this new language. Might I ask that?

JULIE HEDLUNDL

Thank you, Phil. Yes. In response to the discussion, I think it was actually on the last call, where there was a request to provide a definition of what is the HSTS pre-loaded domain suspension remedy. As Kathy notes in the chat, we needed to know the definition of HSTS. So this is the definition that staff has added at that request. Staff also will check with GDD to make sure that this definition is accurate.

PHIL CORWIN:

All right. Let me say this. One, this language isn't final because you have to check with GDD that it's accurate. Two, when it is final, I want to suggest that typographically it be moved. Right now, it looks like it's part of the bullet point, which is the question to the community. I think, when you have final language that's been vetted with GDD, that we bring it back to the working group and that it be separate, that it'd be moved down and [added as] a bullet point with some introduction – something like “note” or “by way of explanation,” or something that delineates this from the question – so that, when we put this in the initial report, people don't get confused about whether they're being asked if they agree with the definition of the explanation of HSTS.

So I'm going to suggest we skip this one because the new language is not final. Staff has to vet it with GDD. Let's let them do that and bring it back to us at a subsequent call. It's probably going to be non-controversial, but there's no sense discussing language which is not final for our review.

Kathy and Maxim have their hands up. Go ahead, Kathy, then Maxim.

KATHY KLEIMANN: Thanks, Phil. As long as it's on the table, maybe, when it comes back, there could be an introductory paragraph or sentence or two reminding us why this is relevant to the URS because I don't remember and I think it would help us as we evaluate this. And we may want to do, assuming it is relevant – I think Maxim's hand is raised and he'll comment on that – a second bullet point in addition to "What issues have you encountered?": "How would you resolve them to ensure a smoother URS implementation?" Thanks.

PHIL CORWIN: Yeah. Kathy, let me say the language you just suggested I think might be better as contextual language for teeing up this section. There's going to be other language in the initial report beyond what we're looking at that explains what issue or what problem is being addressed by the recommendation or by the questions. But I agree this needs to be fleshed out. It's a very technical point and a lot of members of the community are not going to be able to answer this question without further explanation.

Maxim?

MAXIM ALZOBA: Actually, I don't think that this particular item is in our scope because this protocol has nothing to do with DNS. It's some third-party list of the web servers, which can be accessed via HTTPS, where the party has some certificates, not a registry, not registrars. We are not hosting providers. We are not [brother]

companies. We are not [CA certificate] authorities. We cannot do anything about. I don't think that this item belongs to what our group [writes] at all. It's between content of the site and the DNS. It's not DNS. Thanks.

PHIL CORWIN:

Thank you, Maxim. I'm going to say two things. One, I think we should put this recommendation aside until staff comes back with new language, where the definition of HSTS is vetted with and approved by GDD and where there's better contextual language that explains why this is relevant to implementing a URS suspension.

Then I would point out that the preamble says we recommend public comment be sought from registries. So, if other registries have the same view of Maxim, that would come out in then public comments.

But let's again, for the sake of expediency, put this one aside and wait for staff to come back with a more fully vetted and complete version of this for us to review.

Next?

JULIE HEDLUND:

Thank you, Phil. As requested, you'll see language in Column 2 with respect to this policy recommendation from the Document Sub-Team related to the appeals process. It's just that a note should be included in this column saying that the original language of then sub-team proposal has been incorporated into the

consolidated recommendation in Column 2 on Page 7. So this has been dealt with elsewhere and this is just a note to indicate that.

PHIL CORWIN: Okay. I wouldn't think there's any need to discuss that. It's simply noting that it's been moved.

JULIE HEDLUND: Correct. [inaudible] so that we're making a record of that, which we've done.

Then, moving on to policy recommendation also from the Document Sub-Team also relating to Section H, this is: G appealed de novo review. We are deleting the recommendation. Based on the working group discussion, it was agreed not to include the recommendation. You see the deleted text there. And to make a note that there is no working group recommendation at this time. This was relating to the Document Sub-Team recommendation. The full RPM Working Group assessed individual Proposals 8 and 36 and determined if any of them can rise to the level of a working group recommendation. So the working group noted in its discussion that, since individual Proposals 8 and 36 were going to be discussed, when the URS individual proposals are reviewed, there was no need for a recommendation at this time.

PHIL CORWIN: Okay, Julie. Let's move on. I'm noting we have 19 minutes left and we've got 6 pages left. Let's push forward as rapidly as possible

and see if we can wrap up these sub-team proposals today. And here's another one where no recommendation at this time. Or was that the one just discussed?

JULIE HEDLUND: It relates exactly to the same one discussed for the same reason.

PHIL CORWIN: Okay, then let's move on. No reason to get into that one.

JULIE HEDLUND: Then the next one is relating to the cost allocation model. Here the working group recommends that public comment be sought on the following question. Are then non-refundable late response fees paid by respondent reasonable? Then we added the note that, as requested, form has a flat fee for late response. AND, DRC, and MFSD have fees based on the number of domains and/or the type of respondents involved. [Forum] has never collected these fees for late response.

I'm not going to read all of this text. The text as you see scrolling here is really a description of what the different fees are for each of the providers. None of that text has changed. So the only change really is the explanation you see there.

PHIL CORWIN: All right. So the policies and rules permit a provider to charge a fee for late response, and they've got a reasonable fee and now they've actually implemented that in practice. We're asking the

community whether they think those fees, which are laid out in detail, are in fact reasonable.

Any discussion of this one?

Let's move on. That got us through several pages. Great.

JULIE HEDLUND: Thank you, Phil. The next one is under the languages issues, but I'm not that Maxim has a hand up. I'm not sure—

PHIL CORWIN: Okay, Maxim. Go ahead.

MAXIM ALZOBA: Do I get it right that the light response refers to the station where the respondent is just not on time with the comments? Because [formally] the URS policy, when the party has a time limit of certain days to do something and they don't use it, that's it. So it's up to the provider how much to charge for those. But effectively I'm not sure that the responses which are not on time prescribed by policy should be considered. Thanks.

PHIL CORWIN: Maxim, I'm confused. What are you proposing in regard to this? You made a comment, but I'm not sure what you're proposing. Are you proposing that language be changed in this or that this whole recommendation be dropped? What's the point of your comment? I'm missing it.

MAXIM ALZOBA: I think that this this whole bit we don't need because we might just refer to the fact that all sites participating in the URS should follow the timelines prescribed in the policy because, if you allow some party to pay money but to violate time, it's not a good idea. Thanks.

PHIL CORWIN: Kathy, go ahead.

KATHY KLEIMANN: Maxim, several things. First, the third column: The Provider Sub-Team recommended that the working group should discuss whether any of the late response fees create a burden for the respondent. I think, in a long but very informative way, that's what the second column does. But, because of the very rapid timeframes for the URS, which are more rapid than the UDRP, there were provisions created for de novo review and also for appeal. I think that's what particularly the de novo review ... If you haven't responded, there's a period that you can file that. That is per the rules. So I think that that's where we're looking at these late response fees. It is something built in to the URS rules. Thanks.

PHIL CORWIN: I'm going to suggest for staff to note that, for the initial report, again, there should be contextual language teeing up this recommendation, and the questions [inaudible] lay out what the

policy and rules permit. They really provide the context in which this recommendation is being made and the questions are being asked. So I think, with that, we can leave it in. The community can weigh in. They can say there should be no flexibility. They can say there should be flexibility and that these fees are fine. Or they can say there's flexibility and these charges are too high and then explain why. Then we can look at all those responses when we get back and decide what to have in the final report.

Moving on to the next one, there's another one where the language has been incorporated somewhere else. It's just a notation that it's been moved. We're not going to have any further discussion of these. There's no substance to them. They're simply administrative.

On Page 20 to 23, with 13 minutes left, go ahead, Julie.

JULIE HEDLUND:

Thank you. On this policy recommendation from the Document Sub-Team, after the discussion, the working group requested that a note be placed in this column that registries were not getting the same translation information as the registrars, so the providers don't know what language is used by the registrant until they get the verification back from the registries. That's when the translation of notices is implemented. However, the working group concluded that translation issues for registries and registrars are minor and recommended that the Document Sub-Team withdraw its original proposal. Hence, there is no working group recommendation at this time.

PHIL CORWIN: Okay. So this is not a recommendation. It's a note that we're not making a recommendation.

JULIE HEDLUND: Correct.

PHIL CORWIN: So we can move on. Next one.

JULIE HEDLUND: Policy recommendation from the Document Sub-Team: the working group recommends that, as an implementation guidance, the Implementation Review Team considers developing guidance to assist the URS providers – that is replacing “examiners” – in deciding what language to use during a URS proceeding and when issuing determination. Such guidance should take into account the impact of privacy shields.

That's it. We deleted the language “privacy shield.” GDR as providers may not be able to rely on the public WHOIS RDDS information to determine respondent's language. We didn't feel it was appropriate to include that based on the working group's discussion.

PHIL CORWIN: Let me ask. As a matter of grammar, shouldn't the last sentence be “the impact of privacy shields”?

JULIE HEDLUND: Yes.

PHIL CORWIN: Okay.

JULIE HEDLUND: Kathy is asking, “Privacy shields are proxy privacy providers?” Perhaps that term needs to be defined better. Kathy, we’ll address your question.

PHIL CORWIN: Something like “offered by privacy proxy providers.”

JULIE HEDLUND: Right.

PHIL CORWIN: Just a little bit of definition there. Would that satisfy you, Kathy?

KATHY KLEIMANN: Actually, I’m not sure that – that’s right. I think the privacy shield, looking at some of the context, have to do with the GDPR. Privacy shields ... We may want to correlate [inaudible] to whatever the PDP is doing on this. Thanks.

PHIL CORWIN: Okay. I'm going to ask staff to look into that, look at the prior discussions, to make sure that they understand what we meant by privacy shields and bring us back some final language on a subsequent call.

JULIE HEDLUND: Thank you very much, Phil.

PHIL CORWIN: I was [forcing] the Corwin "no wordsmithing on the fly" rule for today's call, unless it's quick and easy.

JULIE HEDLUND: Moving along, Section K: Abuse of process. Here the only change that was made to indicate that this is a working group recommendation as opposed to providers because the working group has agreed with the language as follows. The working group recommendations that public comment be sought on the following question. Are penalties for complainant or respondent who abuse the URS process sufficient? If not, should they be expanded? If so, how? Per Section 11.4 and 11.5 of the URS procedures, the penalties for abusive complaint are ... I'm not going to read out all that text because that's just pulling text [inaudible] those two sections. So nothing has changed here.

PHIL CORWIN: Okay. This one is simple. We're just asking the community whether the current penalties for either complainants or

respondents who have abused the URS process are sufficient. Then we lay out what the current ones are.

Any discussion?

Great. Now we're on Page 22 of 23.

JULIE HEDLUND:

Thank you, Phil. This is under Section L: Education and training. Policy recommendation from the Provider Sub-Team ... The only changes here is that this is now indicated as working group recommendations as opposed to sub-team recommendations. I'll just read them very quickly. The working group recommends that clear, concise, easy to understand information and material should be developed, translated into multiple languages, and published on the URS providers' websites to assist the complainants and the respondents in a URS proceeding. Such information/material should include but is not limited to 1) a uniform set of basic FAQs, 2) links to complainant response and appeal forms, and 3) reference materials that explain URS provider services and practices.

Second paragraph: The working group recommends that public comment be sought on the following question. Who has the responsibility of developing the uniform set of basic FAQs for URS complainants and respondents?

PHIL CORWIN:

Okay. So that one is pretty simple. We've recommended that, on each of the provider's websites, there be some uniform

information for the benefit of both potential complainants and respondents and that we're asking the community who should develop that.

Is there a discussion?

There is not, so let's move on to what I think is probably the last thing to discuss, which is just a notation that something has been incorporated somewhere else.

JULIE HEDLUND:

That's correct.

PHIL CORWIN:

So we are done. We have completed the review of the sub-team URS recommendation, either than that there are two or three items where staff is going to do some wordsmithing and checking with GDD on one of them and bring back final proposed language for us to look at on a subsequent call before issuance of the initial report.

We have seven minutes left, so I don't see any point to start the discussion of individual URS [proposals]. That's best left until next call to do that.

Does anyone have any final statements they want to make? Any Any Other Business to raise?

I'm not seeing or hearing anything. I do want to note that I will not be on the call next Wednesday because it conflicts with the annual holiday party for the Verisign law department, and I need to be at

that. But I know I'll be leaving the chairing in good hands for that one.

Thanks, everyone, for – oh, Rebecca, I see your hand up.

REBECCA TUSHNET: Thank you. Just very quickly. I had asked staff to answer the question of whether it was staff's position that AG violated their duty to confidentiality by disclosing the list of the top ten searched-for terms in the Trademark Clearinghouse. Staff promised to get back but haven't. I just want to resurface that. Thank you.

PHIL CORWIN: Okay. Thank you for raising that, Rebecca. Staff, I'm going to ask you to correspond with Rebecca on that and copy the Co-Chairs so we know what's going on with that concern. Hopefully it will be addressed satisfactorily.

With that, I'm going to gavel down and call this call to a conclusion and give you back the remaining five minutes to use in whatever way you wish. Have a good call next week. As stated, I won't be on. I will be on the final call of the month on December 18th. Have a great week. Next call: same time, same place, on Wednesday, December 11th. Goodbye.

[END OF TRANSCRIPTION]