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## ICANN Transcription

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

**Thursday, 10 September 2020 at 17:00 UTC**

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ANDREA GLANDON: Good morning, good afternoon, good evening. Welcome to review of all rights protection mechanisms in gTLDs PDP working group meeting being held on Thursday the 10th of September at 17:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please let yourselves be known now?

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Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I will turn it over to John McElwain. Please begin.

JOHN MCELWAINE:

Welcome, everybody. Thanks for joining the call. I've been meaning to suggest that we should start numbering what calls we're on so we could see all the work that's gone into it. But appreciate everybody joining. I'm filling in today for the co-chairs, Phil Corwin, who has been chairing almost every meeting recently, due to scheduling conflicts. Both Brian and Kathy have had asked for a break, and I was happy to provide it.

as I mentioned earlier, I'm sure we'll stumble through this and will ask staff to help me along the way. But without further ado, I would ask folks to take a look at the agenda on your Zoom room screen currently. It's fairly light and it's all sort of interrelated with the sunrise and recommendations relating to that.

But before I go further on, I'd ask if there are any updates to folks' statements of interest. Okay, not seeing any hands up, I think I would here, we'll move on to the second agenda item which is an update from the small team on sunrise questions three through five. Julie, can you start us off with that?

JULIE HEDLUND: Yes. Thank you, John. It's extremely brief. There's nothing new to report. The small team is having discussions on their list. they don't have anything to bring up to the working group at this point. And if they do, then of course, we'll get that in front of the working group before it goes on the agenda for discussion. Thank you.

JOHN MCELWAINE: Okay. So with that, I guess we're moving on then to the third agenda item. These are relating to the sunrise final recommendations and implementation guidance, and I believe this is the proposal that Paul was working on. And I guess I would ask staff for a little help here. Is Paul going to go over this, or are we to read through it? What's the next steps with this?

JULIE HEDLUND: John, the small team that has been led by Paul McGrady did meet this morning and asked to have the discussion on this recommendation deferred to the next working group meeting, that's Tuesday the 15th of September, at which point they hope to have some language to be able to suggest to the working group. They're not quite there yet, but they did have a very productive call this morning. But it makes more sense, they think, that the working group holds off on discussing this recommendation until they can provide some possible suggested language.

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JOHN MCELWAINE: Okay, and when was that suggested language likely to be presented to us again?

JULIE HEDLUND: We'd like to get it in front of the working group ideally before next Tuesday's meeting, and then add this item as a discussion for the start of next Tuesday's meeting.

JOHN MCELWAINE: Okay.

JULIE HEDLUND: And I see Kathy has her hand up.

JOHN MCELWAINE: Yeah, Kathy, please come on.

KATHY KLEIMAN: John, thanks so much for chairing today. Really appreciate it. So I could be wrong, I think your question is also one of whether the subteam co-chairs have a role in today's document. And I wanted to suggest that maybe we ask staff. this is a new document. it's been out for less then 24 hours. So for those of us who taught classes all morning or had meetings and haven't had a chance to get our hands on it, it might be a great idea, as we've done with other documents, to ask staff to walk us through what these 16 pages are, where the language comes from, whether we've seen the language before, and what the purpose is of presenting it here

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now. Just a thought to kind of help us enter our next phase of review which this new document is designed to kick off.

I'd also love to ask staff to put in a note under what we're looking at, sunrise final recommendation number two, with the information, for those people who aren't on the call now, with the information that we didn't cover this today and we'll be coming back to this item. So that way anybody looking at the document can see it easily. But John, back to you. Thanks.

JOHN MCELWAINE:

Thanks. And just looking in the chat, it looks like Julie or someone from staff would be happy to walk through this document which is not new but I think given the agenda and the time we had allotted for it, that might be a good exercise to just refresh folks' memories in advance of our discussion on Tuesday. Someone from staff want to come on?

ARIEL LIANG:

Thanks, John, and thanks, Kathy, for the opportunity to walk through the general structure of this document. At this point, the working group is reviewing the draft final recommendation language after completing a review of the public comment. So that's exactly the purpose of the document, is to present you what the final recommendation language may look like, incorporating any changes that rise from the public comment review, and also, additional deliberation summary of the public comment review in the contextual language. So that's basically the staff's effort to put together this language for your consideration and see whether

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they're ready for incorporation in the final report. So that's basically a first chance to take a look at this proposed draft language for the final recommendations.

And then as Julie has noted in the chat, most of the language is not new, so what you're seeing in the box for example is the recommendation, and then the redline you see is the changes to the preliminary recommendation after the working group has reviewed the public comment. And these are the changed text agreed by the working group already in your previous meetings, and basically, staff just incorporate them in redline so that you can see how this preliminary recommendation has evolved into this final recommendation language. So that's the first part.

The context section under the box is basically the context language that we extracted from the initial report and that's to provide additional background to the origin of these recommendations, and mostly, they're not changed at all from the initial report and in maybe a couple of recommendations, if they have gone through some kind of extensive changes because of the public comment review, we have expanded the contextual language to include some of the points mentioned during the exercise of the public comment review and you're welcome to read all this contextual language in its entirety.

And on the third section of public comment review, that's basically a summary of the working group's deliberation of public comments related to these recommendations, and they're mostly based on what you're already seeing in the analysis documents that staff send out after each meeting, basically summarizing what the working group's understanding of the public comment and what

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they have noted in the public comments. And that's really not new information at all.

So all this text is to provide additional context and background to the recommendation, in particular if the recommendation has gone through some changes, we note where the changes come from, and mostly, they're from public comment. So that's the kind of rough understanding of this document, and the working group definitely had time to review this in detail during the meeting, after the meeting, and then after each meeting, if there's any text that needs to be changed, staff would do the revision and you will be able to review that again when we're doing the review of the final report, so you will have multiple opportunities to go through these documents. That's all I want to say at the moment. Mary and Julie, please feel free to chime in.

JOHN MCELWAINE:

Okay, Ariel, thanks. I note that Mary placed a comment into the chat that I think helps provide a bit more context to this. And I'll take a moment now to see if anybody in the working group has any questions for staff concerning the document we have up on the Zoom room. Okay, Kathy, over to you.

KATHY KLEIMAN:

Question for staff. This idea for multiple—it sounded like you have the opportunity to see this document multiple times. Could you clarify that? I know a number of people aren't here today, we're conflicting with the NamesCon event and other things. So if you

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could talk about that multiple review and when the document finalizes, I think would be helpful for everyone. Thanks.

ARIEL LIANG:

I'm not sure about what Kathy is asking specifically. Basically, in the meetings, we will go through every single recommendation text and then go through the context and public comment review text, and staff are happy to walk you through all this information and then provide you the summary of these and to facilitate the review. So that's the first pass, and then of course, if there's any disagreement on the wording we used in particular parts, you're welcome to point out and we can make that revision after the call, and then that will be sent through the working group mailing list to review.

It's basically in preparation of drafting the final recommendation with the contextual language, so of course, the working group will have a chance to review and provide input. And then when we present the final report to the working group, all this language will be reflected and you can see that again to make sure you agree with this language. So I guess that's the other chance for review, and I hope I answered your question. And I see Mary has a comment in the chat too.

JOHN MCELWAINE:

Thanks, Ariel. Yeah, I think we can also point folks to Mary's comment that this is a consolidation of previously drafted documents and this is sort of the going forward work. And I note in



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the comments that Kathy is saying great, so looks like that is understood.

Anybody else have any questions concerning the document? Okay, I don't see any hands. Well, this is very easy. I think we're at the end of our agenda, Any Other Business, so I'd ask, first check on that with staff, is there anything else that I need to be covering for our agenda today? Julie, over to you.

JULIE HEDLUND:

I'm not sure if I understood your question. So now that staff has walked through the structure of the document—and I think some people in the chat have already started looking at sunrise final recommendation, what was number six, these will be renumbered in the final report text so that's why there's the strikeout there.

As noted before, we're skipping sunrise final recommendation number two and deferring that discussion to Tuesday's meeting because at that point, it's possible that the small team two may have some updated text for the working group to consider in relation to that recommendation.

So I think there's already been a couple of ... So I think the next order of business is for the working group to just start looking at the text of these draft final recommendations, and you can see in this case that there's new text in green—at least on the screen it's in green—relating to the deliberations of the working group and reviewing the public comments. And I think there's already a couple of comments in the chat. Griffin says, "This seems like a pretty straightforward change that captures the spirit and intent of

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our earlier discussions. Personally, I think it should be supported.”  
And Lori Schulman says, “This is a change that INTA supports.”

So if it’s okay with you, John, we’re ready to help you and the  
working group start going through the recommendations.

JOHN MCELWAINE: Sure. That’s fine. How do we want to do that? Read it off?

JULIE HEDLUND: Thank you. Actually, I think Ariel’s happy to present the text, walk  
through it. I think it’s not necessary to read all of the text, that is  
the contextual and the working group deliberations text, but I think  
at least perhaps the text of the recommendation.

JOHN MCELWAINE: Okay. That sounds good. We’ll turn it over to Ariel to start that off.

ARIEL LIANG: Thanks, John. Thanks, Julie. I will start us off on page t wo,  
sunrise final recommendation XX, because we don’t know exactly  
where this will be placed in the final report yet. But the origin of  
this recommendation is from the preliminary recommendation six,  
that’s why the strikethrough is there.

So the proposed final recommendation text is as follows. In the  
absence of wide support for a change to the status quo, the  
working group recommends that the mandatory sunrise period  
should be maintained for all new gTLDs with the sole exception of

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those gTLDs who receive exemptions pursuant to Specification 13 and section 6 of Specification 9 of the registry agreement. And then there's a parentheses, (or their equivalent in the next new gTLD expansion round.) So that's the proposed final recommendation language.

And for the contextual language part, I would not read this word by word because it's completely the same as the one you have already seen in the initial report and I welcome working group members to check that, maybe after the call or so. So there's no change there, it's basically extraction of the contextual language from the initial report to provide additional background to this recommendation.

And then in the public comment review section, that's where we noted that the working group has noted there's wide support from public comment regarding the exemption of .brand TLDs from running a sunrise period as well as exemption related to the gTLDs that receive exemption pursuant to section 6 of specification 9 of the registry agreement. So that's where the change comes from, and we noted that it stems from the public comment review. So that's the gist of this recommendation.

JOHN MCELWAINE:

Thank you, Ariel. Is there anybody who wants to discuss or have any issues with the recommendation we just went over? Kathy, over to you.

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KATHY KLEIMAN:

Yeah. And again, the disclaimer that we're doing this in real time. I personally like documents that come out at least 24 hours before. So question about the context. Not a question about the recommendation, question about the context in the public comment review. Why the order here? And it seems to make sense to talk about the public comment review first, because it's actually the first time we get to an explanation. And even then, it's in the second paragraph of what specification 13 and section 6 of specification 9 is.

So, question for staff about the particular order here and whether public comment review can come first, putting straightforward, what it is, because we're not explaining it in the recommendation what specification 13 and specification 9 are, and I think we should for the public that's going to be reading this recommendation. So how do we move that up, that discussion?

JOHN MCELWAIN:

Okay. Julie, over to you.

JULIE HEDLUND:

Thanks so much. Actually, the format is the format that we've used in the initial report, and it's a format that we've used in other final reports to have the context for the particular recommendation first and then have the public comment review next. It's important that people see the context in which this recommendation was developed, and that would help inform them as they look at the public comment review summary.

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So there is a standardization here that we're following that we've done with other reports. And as Mary has noted, the context is likely to be particularly important for the IRT during the implementation phase. So another reason that we feel it should be up front. Thank you.

JOHN MCELWAINE: And really quick to maybe point Kathy to this because as she did say, we are dealing with this in real time. The footnote six does kind of drop that context to the reader as to what the Spec 13 is, I believe. So anyway, Kathy.

KATHY KLEIMAN: Can we drop footnote six into the recommendation itself? Again, just that ease of people who are skimming, I don't think they should have to go down six paragraphs to figure out what the basic terms in the recommendation mean. Call me too much of a professor now, that we need to explain all our terms the first time we use them.

So that recommendation. And then I wanted to dive into the context language a little bit and see if all of us think it's as comprehensive as it might be. I'm happy to wait [inaudible] as we go down there.

JOHN MCELWAINE: Susan Payne has her hand up, so let me go over to Susan.

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SUSAN PAYNE: Thanks. I just had a quick question about the context language. Apologies if staff already said this and I just missed it, but am I right in thinking that that context language is the same as the context language that we had in the initial report without amendment? Or if it has been amended, is there a way to identify what the changes are as a result of any discussions that we've subsequently had? Because I think that would be really helpful for us.

I think if that context language is identical to what we all agreed on after extensive arguments in the initial report, then really, we don't have to spend our time going over it again, surely.

JOHN MCELWAINE: Thank you, Susan, for those comments. Maybe we could have either staff come on the line or type in just to clarify for everybody how the working group can determine whether any language that was already previously approved has been revised. Is that possible?

ARIEL LIANG: Yes, it's possible, and perhaps staff just need to do some work offline to provide a document comparison to show you the context language, whether it's exactly the same or there's any amendment, but for this particular recommendation we're looking at, this context language hasn't gone through any amendments. So that's the same as the one we had in the initial report. But staff are happy to do a document comparison to perhaps detail the redlines so you can see what has been changed, if any.

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JOHN MCELWAINE: Thank you, Ariel. That sounds like would be a good idea if it's not too much trouble. I note that Kathy's hand is up. Kathy, is that a new hand?

KATHY KLEIMAN: Continuing hand. Would anyone have any objections to identifying the donuts?

SUSAN PAYNE: Yes.

KATHY KLEIMAN: So the donuts protected marks [inaudible] as a private blocking service. Again, for those who don't have the background that we do, that this is not what's being offered through our system. And also, some registry operators indicated they would prefer an option to choose between offering sunrise or trademark claims services. I thought our notes kind of confirmed that that was kind of the original way things were drafted, so as originally proposed, just by way of background to include that history. So two requests for changes of context, again to provide a little more context to the first sentence of paragraph two, and to identify that the working group also noted where these are offered by a registry operator, trademark and brand owners may view private blocking services, because these aren't offered through ICANN. So just to flag that in addition to the request. I don't know if it's been added because we're blocked from moving our screen. Adding that footnote with

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the definitions into the recommendation. Thanks, John. I will stop talking now.

JOHN MCELWAINE:

Thank you very much, Kathy. I think that one point I would have—and as Mary put it in the chat earlier, we really as a working group need to be focusing on the wording of the actual recommendations. If there is suggestions that folks want to make to wording that we've already approved as a working group, I think we run the risk of going down paths that we don't need to go down that have been well worn.

So I would probably assert that the working group should be focused on the recommendations part and not on wordsmithing things that we've already drafted. That being said, I know that were not exactly sure what, but as we go through this document, I believe Ariel has the internal knowledge to say that this is essentially what was put out in the initial report.

So with that, perhaps I'll hit pause to see if anybody has any comments about the process. Okay, and not seeing any hands, it looks like we can probably then move on if we feel like we've covered this recommendation. Jason, you have your hand up. Over to you.

JASON SCHAEFFER:

Thank you, John. Just trying to get a point of clarity here. I thought staff indicated they were going to try to provide us with a redline. Did I hear that correctly? That would help us quickly see what's



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been changed and what has not been changed. Did I mishear that?

JOHN MCELWAINE: Jason, you did not mishear that. We just do not have that ready for this call. Over to Mary.

MARY WONG: So as you said, for purposes of the call, we really appreciate it if the working group can focus on the draft proposed text of the recommendations, because that really is going to be the most critical key and we want to make absolutely sure that that is something that we got right. So obviously, we don't, whether during this call or when you've had more leisure to look at the whole document, please raise that. And certainly, when you've had more of that leisure to look at the context and the public comment review, again, if there's anything that is inaccurate that wasn't reflected, please let us know in comments to the text.

With respect to the redline, because this is an amalgamation of some documents and updates, in the last few minutes we've just kind of been conferring among ourselves, the three of us, we're not sure that a redline would be very helpful simply because it might just be one of those scary redlines. And I'm probably being unfair to Ariel here, but I believe that she being the most familiar with the document, as we walk through the document, is able to highlight where all the substantive changes may have been made to both the context as well as the review sections, if that helps.

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JOHN MCELWAINE: Yeah, Mary, I think that would be a good idea, and by no means am I trying to suggest foreclosing anybody making a comment concerning context or the public review at a later date, but I think to move things along, we should focus on the recommendation, the important thing, and we'll have time for folks to sit down, read this offline and raise any issues, maybe to the list.

Yeah, as Julie said, this is meant to be a review of the draft final recommendations, so let's stick to that task at hand, and again, not foreclosing anything. So Jason, sorry, there won't be a redline, but we will, through this process, try to identify any additions. And with that, if I don't see any hands, I think we can move on to the recommendation portion, or to the next recommendation.

So as you see here, sunrise final recommendation is that the working group recommends that the current requirements of the sunrise period be maintained, including for the 30-day minimum period for a start date sunrise and a 60-day minimum period for an end date sunrise. Ariel, is there anything you want to cover with respect to the context and the public comment review text?

ARIEL LIANG: Thanks, John. For this recommendation, I'm actually having the initial report open on my other screen, the contextual language should be identical with the initial report language. But of course, I would double check that after the call. But based on how I developed this document, I'm pretty confident there's no substantive changes at all to the contextual language.

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And as you can see in this recommendation, there's no change at all, it's a stay as is, so we didn't see any redline there. And then for the public comment reviews section, it's basically saying that ... So there's one suggestion in the public comment to eliminate the last used start day sunrise, so basically acknowledging there's a suggestion there that seems to be a new perspective, but then the working group has agreed to maintain the status quo, thus this recommendation be maintained as is. So this is basically kind of recap what the working group's conclusion is based on the public comment review.

JOHN MCELWAINE:

Thank you, Ariel. I'll pause here to see if anybody has any discussion about this basically unchanged recommendation. Okay, I'm not seeing any hands up. With that, I think we can agree that that recommendation not being changed is concluded, and move on to the next one, which I'll do the same thing, I'll sort of read it out and then turn it over to Ariel. So this is sunrise final recommendation. In the absence of wide support for change to the status quo, the working group recommends that the current availability of sunrise registrations only for identical matches should be maintained and that the matching process should not be expanded. Ariel, I'll turn it over to you to cover any changes or anything you want to point to in the context of the public comment review.

ARIEL LIANG:

Thanks, John. Similar to the previous recommendation, this one is maintained as is after the public comment review, the context

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language should be the same or identical to the one in the initial report. So definitely no changes or substantive changes at all. And then for the public comment review section, we basically just captured the working group's agreement that public comment didn't raise any new or material ideas and there's no widespread or substantial opposition to the recommendation that the working group hasn't considered. So that's why the working group agreed the recommendation be maintained as is. So that's all for this recommendation.

JOHN MCELWAIN:

Okay. Thank you. Any discussion on this unchanged recommendation as well? Please raise your hand. Okay, not seeing any on that, I think we can consider that one closed. And I'll move on to the next sunrise final recommendation and reading that. In the absence of wide support for change to the status quo, the working group does not recommend limiting the scope of sunrise registrations to the categories of goods and services for which the trademark is actually registered and put in the clearinghouse.

ARIEL LIANG:

I guess, John, you want to pass this to me.

JOHN MCELWAIN:

Yeah, go ahead.

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ARIEL LIANG:

Okay. Thanks. So, as you can see, in this recommendation there's really no substantive change at all. The only redline that staff made is basically wordsmithing, just minor change to make it more grammatically smooth. So definitely no substantive change, and it's maintained as is in general.

And then for the contextual language, it's basically the same as the one in the initial report, and if you have seen the initial report, the only thing staff made changes, also minor grammatical kind of adjustments, so we just put like "on the one hand, on the other hand" at the beginning of the second [inaudible] paragraph to show these are two different opinions. But it's really just minor grammatical, non-substantive updates. the general content is the same as the one in the initial report.

And then for the public comment review section, it's the same as the previous one stating there's no new idea raised in public comment and no substantial opposition the working group hasn't considered. So that's all for this recommendation.

JOHN MCELWAINE:

Great. Thank you. And I see comments in the chat that people like the grammatical changes, that it reads better. I will pause here to see if anybody has any concerns, issues, or wants to discuss this final recommendation for sunrise. Okay, I'm not seeing any here, and I think we can consider this one with a slight revision concluded. We'll move on to the next one, next sunrise final recommendation, which is in the absence of wide support for change to the status quo, the working group does not recommend the creation of a challenge mechanism relating to registry

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operators' determinations of premium and/or reserved names, with a footnote dropped there to a definition of premium and reserved name in footnote eight. Ariel, I'll turn it over to you to discuss the context and the public comment.

ARIEL LIANG:

Thanks, John. For this recommendation, the redline here is really just to clarify what the challenge mechanism applies to. That's relating to registry operators' determinations of premium and/or reserved names. That's what this recommendation is about. So in the previous preliminary recommendation, it only said no creation of challenge mechanism but didn't clarify what exactly this applies to, so we just added this particular sentence to clarify what the scope of the mechanism is. And then for the contextual language, it's essentially the same as the one in the initial report. The only I think grammatical adjustment or update we did is just I think put "however" in front of the third paragraph. I think that's all we did and there's no substantive changes.

For the public comment review, it's the same as the one before, just to summarize saying public comment didn't raise new ideas and no substantial opposition from parties that the working group didn't consider. So that's all for this recommendation.

JOHN MCELWAIN:

Great. Thank you. I like that we've dropped a definition via the footnote of premium name and reserve name so it makes more sense for the readers, and think that the context that we provided to the recommendation looked good. Does anyone have any

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comments or concerns they want to raise concerning this final recommendation? Just raise your hand if you do. All right, I am not seeing any hands, so we'll consider this one concluded and move on to the next.

This sunrise final recommendation reads as follows. In the absence of wide support for change to the status quo, the working group does not recommend mandatory publication of the reserved names list by registry operators. Don't see any changes there, and Ariel, I'll turn it over to you to cover the context and public comments.

ARIEL LIANG:

Thanks, John. As you noted, indeed, no change to this recommendation. For context, language is identical to the one in the initial report, so no change at all. The only substantive edits that staff made is regarding the public comment review section. So here, we basically point out that public comment did raise an information regarding some registry operators' operational practice that they review the information about whether a second-level string is reserved by the registry operator via a WHOIS lookup. So we just want to note that this is the information that's raised by public comment that the working group also considered, and then we captured kind of consideration that the working group agreed it's not a universal practice but the working group did recommend that in the future, trademark owners are welcome to contact those registry operators or registrars to understand whether any second-level string is reserved by the registry.

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However, this is not something the working group agreed to recommend as a mandatory practice, it's just operational, so that's why we have noted this particular information that was raised in public comment.

JOHN MCELWAINE: Thank you. Any discussion or comments concerning this unchanged recommendation? Please raise your hand if you want to raise any issues. Right, I'm not seeing anything, and so we can consider that one concluded and move on to the sunrise implementation guidance.

Okay, maybe if we could have Ariel or Julie explain the slight difference we have here now going from a recommendation to implementation guidance and the changes we see before we jump into it. Is that okay?

ARIEL LIANG: Sounds good. Thanks, John. I guess I can start and perhaps Mary can chime in as well. Basically, in staff's understanding, the recommendations the working group make generally fall into maybe three categories. One category is new policy recommendations that will implicate a change to a policy, basically, and the second type is status quo related recommendations, and that's a lot of the ones you just saw in sunrise, is keep the status quo of existing policy.

And then the third category is perhaps implementation guidance. They're not really policy recommendations per se but they do have implications to operational side of things and they have impact



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changes to for example registry agreement type of stuff. So that's why we have a third category here. So for this category, we're thinking maybe we're not going to call them recommendation, we'll just call them implementation guidance. But this is still up in consideration, we're still trying to figure out what's the right terminology to differentiate the categorical difference from policy recommendations. So that's why you're seeing this one here.

And then this one, if you recall, that was the original preliminary recommendation 7 related to a particular suggestion of text change to AGB and that's related to the SDRP, the sunrise dispute resolution procedure. So that's a particular recommendation related to that and then we think that's more implementation-related and were put in this category. But what we did for the redline part, as you can see at the top, that's basically to outline what this recommendation's trying to get, and that's some of the policy principles that we deduced from the original recommendation language, and then the second part, implementation guidance, that's what the IRT should consider and that's mostly language for suggested amendment to the AGB because as you know, the IRT, they are the one that are going to consider actual language update to AGB and where new language development, so what the working group suggests here will be something they will consider but may not be completely adopted word by word. So that's why we put it under the policy principle because the policy principle is something probably more important that the working group needs to agree on before pass this on to IRT to deliberate. But I will stop here momentarily and see whether Mary wants to chime in or add to what I just commented.

MARY WONG:

Ariel, I think you covered it very well and very comprehensively, and we hope that the working group recalls this discussion as to how to characterize different types of recommendations and why it would be for the IRT to draft the text of the applicant guidebook and for the policy working group to provide as clear guidance as we can as the IRT gets to it. So thank you, and thank you, John.

JOHN MCELWAINE:

Yes. Thank you, Ariel, for that explanation. It's very clear. So I suppose what we'll do, although it'll be a little bit lengthy, I'll read what has been added here as now it's replacing recommendation 7 from the initial report and it's now going to be sunrise implementation guidance. While I read through that, I'll give everybody on the call time to read along with me and we can have a discussion.

So the sunrise implementation guidance that we're proposing is first starting with agreed policy principles. The working group agrees that the TMCH dispute resolution procedure should be the primary mechanism for challenging the validity of the trademark record on which a registrant based its sunrise registration.

Consequently, the working group agrees that the sunrise dispute resolution policy—SDRP is not intended to allow challenges to sunrise registrations on the grounds of the trademark record on which the registrant based its sunrise registration is invalid.

The working group therefore agrees that once informed by the TMCH validation provider that a sunrise registration was based on

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an invalid trademark record, (pursuant to a TMCH dispute resolution procedure) the registry operator must immediately suspend the domain name registration for a period of time to allow the registrant to challenge such finding using the TMCH dispute resolution procedure.

Implementation guidance, the working group suggests that the Implementation Review Team consider incorporating the following requirements to amend the applicant guidebook to reflect the above noted policy principles. One, the new version of the AGB should include the TMCH dispute resolution procedure for challenging the validity of trademark records entered in the TMCH. This procedure is currently published at ... URL.

ICANN Org should ensure that its contract for the provision of TMCH services makes the publication and operation of the TMCH dispute resolution procedure a requirement of the TMCH validation service provider.

Recommendation 2, section 6.2.4 of the current trademark clearinghouse model of module 5 of the AGB be amended to remove the grounds (i and iii) for the SDRP. Three, the trademark clearinghouse model of module five of the AGB be amended to include a new section 6.2.6 with suggested language as follows. Registry operator will, upon receipt from the TMCH of a finding a sunrise registration was based upon an invalid TMCH record (pursuant to a TMCH dispute resolution procedure) immediately suspend the domain name registration for a period of time to allow the registrant to challenge such finding using the TMCH dispute resolution procedure. As a point of reference, registry operators in their applicable SDRPs will describe the nature and purpose of the

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TMCH dispute resolution procedure and provide a link to the relevant resources on the TMCH validation provider's site.

Note, registry operators should continue to have the option to offer a broader SDRP to include optional and additional sunrise criteria as desired. So that is the implementation guidance, and then I'll let Ariel cover any context or comments necessary.

ARIEL LIANG:

Thanks, John. I also note that Phil has his hand up too, but perhaps I can just quickly provide you an overview of the contextual language and public comment review section below this recommendation. So for this recommendation, it does have a bit of extensive update to the contextual language because there were, I guess, two points raised in public comments that the working group agreed on. There's one feedback, if you recall, from ICANN Org, is the recommendation needs to clarify the difference between SDRP and the TMCH dispute resolution procedure because this particular implementation guidance referenced both of them. So what we did is update the contextual language to clarify what they are and what each of them kind of encompasses in essence. So basically, paragraph one is to describe what SDRP is and then paragraph two is to describe what a TMCH dispute resolution procedure does and also note the sentence that the TMCH dispute resolution procedure was created in a time between when the AGB was written and the TMCH requirements were established, hence there was a gap kind of created the need for this implementation guidance.

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And then the third paragraph here is basically talking about grounds (i and iii) of section 6.2.4, and that was the same language in the initial report's contextual language for this recommendation, so no change there and it's basically just to clarify what these grounds cover. And then the paragraph following that is to provide additional clarification why these two grounds kind of do not really work in the SDRP procedure. That's basically saying the TMCH has the ultimate information regarding whether a trademark record is valid or not. It's not for the registry operators to address that issue, so basically clarify the origin of this implementation guidance recommendation and just clarify that point in this paragraph.

So following that, I think the last two paragraph in the contextual language is the same, was the one we had in the initial report, is basically saying in different ways why the recommendation is needed, is to get rid of the nonfunctional parts of the current SDRP requirements, and so basically, that's the update we made in the contextual languages to clarify there were two different procedures this recommendation is talking about, and just make it more kind of logically smooth to make that point. And then for the public comment review, here, besides making that distinction between the two dispute resolution procedures in question, that's one kind of comment from public comment that the working group agreed on.

There's another comment form public comment, is regarding what the registry operator should do when the TMCH validation service provider get back to a registry operator regarding domain name that's registered based on invalid trademark record. So I think one

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public comment is saying, instead of deleting it immediately, suspend it for a period of time in order to provide a fair opportunity for the trademark owner to challenge such finding. So that's what we captured, that's the working group's agreement, to adopt that suggestion, and so that's why you have seen in the recommendation language, point three, there was redline applied to that change. So that's all for this recommendation. I know Phil probably has a lot of questions.

JOHN MCELWAINE: Yeah. Thank you, Ariel. Phil, over to you.

PHIL CORWIN: Thank you, John. And John, thanks again for volunteering to chair today and giving me a break. If we could scroll up to the beginning paragraph of this new language, this is not a major point, but I'm thinking about someone reading the final report, and in the second paragraph, it says "Consequently, the working group agrees ...". And then it goes on, the SDRP is not intended ...

I was wondering if it would be helpful to the reader of the final report to add another short sentence to this paragraph saying that the SDRP is intended to allow, and then a quick description and something that [inaudible] more fully described in the context section below so that the reader will know that—someone might read this and say, "Well, they just told me what it's not intended to do. But what is it intended to do? And it would be helpful to add something further that references the further explanatory language in the context section. So it's a minor point, but I think it would be

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helpful to someone reading this report who might get stuck there and say, “Well, what is it for? I'm not familiar with the SDRP.” That’s all, John. Thank you.

JOHN MCELWAINE:

Thank you, Phil. I'll throw in another very minor comment, maybe in footnote ten, we use an awful lot of capitalized terms which I think are new words that I think are coming from the AGB, like trademark validation provider and trademark holder, maybe say something like the capitalized terms are taken from the module five of the applicant guidebook just so we can provide some context there to those new words, if I'm correct on that.

So with that, is there any other discussion or issues that folks have concerning this implementation guidance? Please raise your hand if you have anything. All right, I'm not seeing any, and I believe we can move on to the next recommendation. This one looks, again, like one that’s had very little done to it.

Now we've moved into trademark claims. Trademark claims final recommendation, the working group recommends that delivery of the trademark claims notice be both in English as well as the language of the registration agreement. In this regard, the working group recommends changing the relevant language in the current trademark clearinghouse rights protection mechanism requirements on this topic, section 3.3.1.2 to registrars must provide the claims notice in English and in the language of the registration agreement. Footnote cite there on 2.11. And the claims notice must—not should—include a link to the webpage on the ICANN Org website, which contains translations of the claims

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notice on all six UN languages. So with that, I'll turn it over to Ariel to cover any context or public comments.

ARIEL LIANG:

Thanks, John. For this recommendation, there is agreed change to the actual recommendation language is the second bullet point, change from should to must, so that's what we did in the redline. And then we just did a minor thing, like containing, that was the original word, we just made it into "which contains" translation. We hope this'll make it read a little bit more smooth. But the main change is to change "should" to "must," and that was what the working group agreed on based on public comment review.

And for the context language, also essentially, this is the same or almost identical to what was in the initial report, and I think what we did as a minor thing is just to add TMCH RPM before requirements before the original wording is "the current requirement." We just wanted to clarify what requirement that was. So we added this word here, and I don't believe there's any other substantive changes. This one isn't either.

So then for the public comment review part, we just captured a point about the working group's agreement to replace "should" with "must" in the second bullet point of the recommendation text. And now I've realized maybe I need to clarify that is the second bullet point in the final recommendation text, just to make it clear.

JOHN MCELWAINE:

Excellent. That'll be a good change to make. Thank you, Ariel. Any discussion or questions concerning this first claims notice



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recommendation? Right. Not seeing any hands, and I think we can then move on to the next one. This trademark claims final recommendation is as follows. The working group recommends that the current requirement for a mandatory claims period, including the minimum initially 90-day period when a TLD opens for general registration, be maintained for all new gTLDs with the exception of gTLDs who receive exemptions pursuant to specification 13 and section 6 of specification 9 of the registry agreement (or their equivalent in subsequent new gTLD expansion rounds).

The working group further recommends that if a registry operator offers a limited registration period, the registry operator must maintain the current requirement pursuant to RPM requirements section 3.2.5 and provide the claims service during the entire limited registration period in addition to the minimum initial 90-day claims period when the TLD opens for general registration, and then there is a cite to the RPMs requirement section. So I'll turn it over to Ariel for context and any public comment explanations.

ARIEL LIANG:

Thanks, John. For this recommendation, it did go through a couple of changes. The first change is clarify what TLDs are exempt from [running] the mandatory claims period, so that's the first part you see in redline, and then the second part is to clarify that the claims period should also run through the limited registration period as required by section 3.2.5 of the RPM requirements. And these two changes were agreed by the working group after reviewing the public comments, so that's why we captured it.

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And then for the contextual language, definitely no substantive changes at all. the only minor change is probably very minor. For example, we deleted the reference to trademark claims question two. originally, we kind of referenced and saying this preliminary recommendation is related to that question. But in this final report context, it doesn't seem important to note this in the contextual language, so that's the only thing we kind of deleted. And then for the public comment review, that's where we clarify where the changes come from, that's from public comments, because there are suggestions to clarify what TLDs should be exempt and then also the claims period should also run through the limited registration period. So we basically just captured agreement to adopt the suggestions raised in public comment. That's all for this recommendation.

JOHN MCELWAINE: Great. Thank you, Ariel. I see that Susan Payne has her hand up, so Susan, over to you.

SUSAN PAYNE: Thanks. Ariel, would it be possible to scroll back up to the recommendation? Thank you. Well, there you go. I was highlighting in the Google doc, so it looks as though you can see what I've highlighted, which maybe is helpful.

So whilst I want to make it absolutely clear that I'm not disagreeing with the recommendation or the content of the recommendation as such, but that part of the recommendation that I've highlighted is not a maintenance of the status quo. That is a new

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recommendation, because currently, registries that are subject to or that qualify for that exemption that's contained in that section 6 of specification 9 of the registry agreement are required to run a claims. And actually, sorry, so are specification 13 registries required to run a claims.

So I completely agree that they should be exempt, but they are new.

JOHN MCELWAINE:

Susan, thanks for pointing that out. That's great. Anybody have any concerns to raise related to this recommendation? Okay, I'm not seeing anything else. Again, Susan, thanks for pointing that out. I think with that, we can conclude that one and move on to the next one. Another trademark claims final recommendation. This one is that the working group recommends that the current requirement for a mandatory claims period should continue to be uniform for all types of gTLDs and subsequent rounds, including for the minimum initial 90-day period when a TLD opens for general registration, with the exception of those gTLDs who receive exemptions pursuant to specification 13 and section 6 of specification 9 of the registry agreement, or their equivalents in subsequent new gTLD expansion rounds.

As you can see, a very similar addition as to the last claims notice recommendation, and with that, I'll ask Ariel to cover any context or public comment received.

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ARIEL LIANG:

Thanks, John, and thanks very much, Susan, for pointing this out. So for sure, we will categorize this recommendation and the previous one as new policy recommendations instead of maintaining the status quo, and also update the contextual language or the part about public comment review to mention that under the current policy, they were required to still run the claims period, so we can include that information here as well.

And similar to the previous recommendation, as you can see, the only update is regarding the exemptions language, and the context language is identical to the one initial report, or almost identical if we made any update as to delete the mention of a related trademark question. But this is no longer relevant in the final report context, and then the public comment review section is to talk about where this exemption language comes from that's come from a suggestion from public comment. So that's what we captured here. That's all. Thank you.

JOHN MCELWAINE:

Great. I see that Kathy has her hand up, so Kathy, over to you.

KATHY KLEIMAN:

Thanks, John. I hate to wind us back a second, but can we go back to the prior recommendation which we pointed out was a change, and yet, am I reading the context correctly that the working group ultimately came to an agreement to maintain the status quo?

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JOHN MCELWAINE: Thanks, Kathy. I think that's exactly what Susan had just pointed out and Ariel mentioned she would have to go back into the context and address that. The status quo did not have those exemptions in it, in other words, spec 13 and spec 9 registries were still having to run a claims notice period.

KATHY KLEIMAN: John, let's look at this because there seems to be a disconnect. And again, like you, I appreciate Susan pointing it out, but let's look at the whole paragraph because this just seems something odd. The working group generally agreed that where there is a claims period, it should be mandatory. The working group generally agreed that the mandatory claims period should be neither extended nor shortened. The working group noted that many trademark and brand owners are in favor of extending the claims period while other stakeholders are opposed and in favor of shortening the claims period. The working group ultimately came to an agreement to maintain the status quo. It doesn't say anything about exceptions there. So if we're maintaining the status quo, then that seems to imply that we didn't create an exception in this particular case.

JOHN MCELWAINE: Yeah. I think that generally the statement the working group generally agreed with was basically saying, to the extent that claims periods were required, it should be mandatory, but we were under a mistaken impression that they were not going to be with the Spec 13 and Spec 9 is what I'm gathering.

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KATHY KLEIMAN: I think we should be thinking about some of this, and maybe not starting with the premise that context is not editable, because it probably should be. And I'm looking at this because the context doesn't jive with the recommendation. I'm not sure which one is right. Thanks.

JOHN MCELWAINE: Yeah. I see Susan has her hand up. Susan, over to you.

SUSAN PAYNE: Thank you. I think this might be one where if it's going to go forward in this form, then probably the context needs editing. I think the challenge is that this recommendation and then the next one, and they kind of overlapped in terms of one of them was really about a recommendation about the duration of the claims period, and that's this one, and then the next one was about, should any TLDs be exempted from the claims.

But when we got comments back and we discussed it in the working group and consequently the content of this text, the point about the fact that for some TLDs, there shouldn't be this 90-day requirement being mandatory, but picked up in both of these recommendations, and that's why it's now causing a bit of confusion.

But I think that is the issue, that really, when we drafted this and put it out to public comment, we as a group were seeking comment on, should there still be a claims period and should it be

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90 days? And then later in the next recommendation, we were seeking comment on, and should any particular TLD types not have to run it?

JOHN MCELWAINE: Paul, over to you.

PAUL MCGRADY: Thanks. I guess I have something more simple to say, which is I was reading the maintaining the status quo as relating directly back to the sentence immediately before it in relationship to extending or [inaudible] claims period rather than maintaining the giant status giant quo, if that makes sense. So that's how I was reading it. so I don't know that there is a problem with the document, for what it's worth. Thanks.

JOHN MCELWAINE: Thanks, Paul. I might ask a question of Susan, but make sure I understood her point. I think it is, Susan, that the comments and the addition of the exceptions to old recommendation four probably don't need to be in there because that was only a recommendation and then seeking comments with respect to whether the current requirements for a mandatory claims period be maintained. So I hate to put you on the spot, but am I understanding that correctly? Do you think maybe this should all be pulled out of the first one, which is old recommendation 4?

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SUSAN PAYNE: Thanks, John. So I actually think, yeah, we could address this really easily by saying we're going down to maintain for all new gTLDs except where there's an exception as referred to in recommendation, and whatever the number of the recommendation below it is. And I think that would totally address it, yeah.

JOHN MCELWAINE: Right. Kathy, over to you.

KATHY KLEIMAN: Thanks, John. Can I suggest that this go out for another redline and come back with a redline so we can see it? Because I'm not following the edits. The mandatory is vague. So maybe this should come back with a redline and we could read it again.

JOHN MCELWAINE: Kathy, I think that's a good idea, but I don't know if we know what the redlines ought to be in that regard.

KATHY KLEIMAN: Fair enough.

JOHN MCELWAINE: I think I'd like to put out there to see whether anybody has any objection to—and I'm just working on the fly here, Susan's suggestion that we actually remove any of the reference to exceptions for Spec 13 and Spec 9 from the recommendation



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which I'm going to refer to as old recommendation 4. And Ariel, Julie and Marie, if I'm getting this completely off base, just kick me, but I think that if I don't see any objections, that that may be what we ought to do. Obviously, it's not final set in stone, and that would be the redlines we'd be asking for. So I'm going to hit pause and see if anybody disagrees.

Okay, seeing some comments, people saying it sounds right. Excellent. All right, so I'm going to then briefly return to final recommendation for the claims notice number five, and likewise, see with that explanation if anybody has any comments or issues with respect to that one. And if I need to cover anything again, please raise your hand. Okay, looks like we've got a way forward on both of those.

Seeing no hands, I'm going to move on then to the next one.

KATHY KLEIMAN: John, Ariel has her hand up.

JOHN MCELWAINE: Sorry. Go ahead.

ARIEL LIANG: Thanks, Kathy, and thanks, John. My staff suggest perhaps we can move the old TM claims recommendation 5 before the TM claims recommendation 4, so basically just kind of make it more logical saying what are exempt and then the next, we address the [inaudible] so probably, that will flow a little better.

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JOHN MCELWAINE: Yeah, I agree that that would help it flow better. Any concerns?

ARIEL LIANG: Thank you.

JOHN MCELWAINE: Thank you. All right, I'm going to move on to the trademark claims final recommendation, which is old 6, which is in the absence of wide support for a change to the status quo, the working group recommends that the current exact matching criteria for the claims notice be maintained. Obviously no changes here. I'll turn it over to Ariel to quickly cover context and any public comments to mention.

ARIEL LIANG: Thanks, John. Definitely no change to this recommendation. Also, the context language is almost identical to the one in the initial report. The only revision or edits we did is just to note there was a Google doc that details the working group discussion about this particular question, and when we reviewed the sentence, it may cause some confusion what the Google doc is about, so we just point to the footnote. And that's the only edit we made.

And then for the public comment review section, it's saying that there's no new ideas raised and then no substantial oppositions the working group didn't consider. So that's why the recommendation maintained as is.

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JOHN MCELWAINE: Perfect. I'll pause there to see if anybody has any issues or questions they want to raise with respect to this recommendation. All right, not seeing any in the participants window, so lets move on to we have another trademark claims implementation guidance here. This one was trademark claims recommendation number three, and now it's being repurposes, shall we say, as trademark claims implementation guidance, which I'll read through again so that people have time to read through and consider it with me.

The working group agrees that the current requirement for only sending the claims notice before a registration is complete be maintained, implementation guidance, the working group agrees that the Implementation Review Team needs to recognize that there may be operational issues with presenting the claims notice to registrants who pre-register domain names due to the current 48-hour expiration period of the claims notice. For clarity, the working group notes that this implementation guidance is not intended to preclude or restrict registrars' legitimate business practice of preregistration, provided this is in compliance with the trademark claims service requirement.

The working group requests that the IRT uses appropriate flexibility and consider ways in which ICANN Org can work with registrars to address all relevant implementation issues (that is, possibly alter the 48-hour expiration period of the claims notice as the IRT deems appropriate) but which will continue to allow legitimate pre-registration programs compliant with RPM requirements to continue.

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So with that, I'll ask Ariel to cover any context and public comments.

ARIEL LIANG:

Thanks, John. As staff noted earlier, we believe this recommendation is really mainly focused on operational matters, that's why we put it into the implementation guidance category. So basically, the addition or the redline related to this implementation guidance is mainly talking about the intent of this recommendation is not to preclude or restrict pre-registration practice, and that's something we captured during the working group's deliberation of public comment.

The second paragraph relating to this matter is basically clarify that the IRT should exercise its appropriate flexibility to explore and consider operational issues related to the pre-registration. So one of the issues may be alter the 48-hour expiration period, and that's up to the IRT to decide whether that's appropriate or not. There may be other implementation issues with the pre-registration.

But then the goal is to ensure that this pre-registration program can continue by resolving some of these operational hurdles. So that's the basic kind of redline for this recommendation. And the context language didn't really have much change compared to the one we had in the initial report, and then the public comment review section is basically clarify that it's based on ICANN Org's public comments asking the working group whether the IRT have the flexibility to make decisions regarding pre-registration, so basically, it's asking for the working group's clarification whether

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it's within its remit and to make those decisions to explore these operational issues. So basically, for this paragraph we just captured, that's the agreement with the working group to let IRT decide and exercise its own flexibility and latitude. And then also another point is this is not to stop any pre registration program for this recommendation. So that's all for this one.

JOHN MCELWAINE:

Great. Thanks, Ariel. I'll hit pause there to see if anyone has any comments or questions or wants to discuss anything in this new implementation guidance for our old claims notice recommendation 3.

All right. Not seeing any. I know we've got three minutes left and one to go, I believe. So with that, I'm going to ask for folks' indulgence, I think, and let's try to finish this out. I'll try to read it quickly. This is trademark claims implementation guidance for what was recommendation 1. It states that the working group agrees that the language of the trademark claims notice be revised in accordance with the implementation guidance outlined below.

This implementation guidance aims to help enhance the intended effect of the trademark claims notice by improving the understanding of recipients while decreasing the risk of unintended effects or consequences of determining good faith domain name applications. Working group recommends that the trademark claims notice be revised to reflect more specific information about the trademarks for which it's being issued and more effectively communicate the meaning and implications of the

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claims notice, that is outlining possible legal consequences, describing what actions potential registrants may be able to take following receipt of the notice.

Implementation guidance is as follows. To assist the IRT that will be formed to implement recommendations adopted by the board from this PDP, in redrafting the claims notice, the working group has developed the following implementation guidance. Claims notice must be comprehensible to a layperson unfamiliar with trademark law. The current version of the claims notice should be revised to maintain brevity, improve user friendliness and provide additional relevant information or links to multilingual external resources that can aid prospective registrants in understanding the claims notice and its implications. The working group advises that the IRT uses appropriate flexibility and consider whether it believes it will be helpful to solicit input from resources internal and/or external to the ICANN community as the IRT deems necessary and appropriate.

Suggested external resources could include academic and industry sources such as the American University Intellectual Property Clinic, INTA Internet Committee, the Electronic Frontier Foundation, and Clinica Defensa Nombres de Dominio UCN.

The IRT may also, in its discretion, consider input from communications experts who can help review the claims notice for readability purposes and ensure it's understandable to the general public.

And I guess briefly, Ariel, hopefully, can you cover any context or public comments on this?

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ARIEL LIANG: Thanks, John. in the interest of time, I'll just quickly point out that the main redline is the third bullet under implementation guidance is basically giving IRT the flexibility to solicit input from external or internal resources as it deems appropriate rather than directing it to contact the resources noted in the working group's suggestion. But of course, the ones that already noted, it's still included there for their consideration. So that's the main change there. And then for contextual language, there was really no substantive change at all from the initial report, and the public comment review is just to note the part about giving IRT the flexibility and latitude to decide what resources it should contact.

JOHN MCELWAINE: Great. Thanks, Ariel. So, anybody have any issues or questions, comments about this implementation guidance which had been our recommendation 1? All right, I see some folks starting to leave, but no hands up right now. So I think we can consider this one concluded. And that takes us to the end of our meeting, I believe. I guess I'll ask Julie if we've covered everything, if there's any AOB that we need to cover or if we can consider this one done. Julie, over to you.

JULIE HEDLUND: Thank you, John. We have covered what we need to cover for today, noting that sunrise recommendation number two has been deferred to our meeting on Tuesday. And we also have the action item to provide some redline language for one of the

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recommendations as discussed today in a result of the notes that Susan made with respect to some corrections we need to make. So we'll turn around and provide text on that and also update the document based on today's discussion and some brief notes and action items following this call.

Thank you very much? John, for chairing at the last minute. We really do appreciate it. Thank you all for joining, and we hope you have a good morning, afternoon or evening.

**[END OF TRANSCRIPTION]**