ICANN Transcription

GNSO Review of all Rights Protection Mechanisms (RPMs) in all gTLDs

Tuesday, 11 August 2020 at 13:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the Review of All Rights Protection Mechanisms, RPMs, in all GTLDs PDP Working Group call on Tuesday the 11th of August, 2020. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room.

I would like to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise.

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I will turn it over to our co-chair, Brian Beckham. You can begin, Brian.

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BRIAN BECKHAM: Thanks so much, Julie. Welcome, again, everyone. So, it looks like we have our normal around 20 participants for the call, so I think that gives us a good basis to go ahead and start today. As you can see, we have a fair number of items to try to get through. I have scanned over these before the call and I think one or two of them may merit a little bit of discussion, so we'll see where we get.

Before I start, let me ask if there are any questions as regards the agenda, or any updates to statements of interest? Okay. Seeing none, I think we can go ahead and get started.

Let me also just say, as has been said in the chat, happy birthday, Greg. I think it's something of a badge of honor, I guess. We've all probably had an ICANN call on our birthday at some point over the years. So, congratulations, Greg.

So, we're going to start with Sunrise question three. This related to the three acronyms, the ALP, QLP, and LRP, the different types of launch programs. I think there is a definition down below if, Ariel or Julie, you don't mind scrolling down to that, just to maybe refresh people's memories.

So, Approved Launch Program, Qualified Launch Program, and Limited Registration Period. So, these were ways where registries, if they had specific reasons for wanting certain registrants to get certain registrations before the general public or at Sunrise, they had different ways they could try to accomplish that.

So, if you remember, we had reached out to mainly registry operators to see how those different launch programs worked in practice to see if we couldn't solicit feedback.

And I'll just mention briefly that Sunrise questions three and four relate together. So, Sunrise three, basically, was casting the net open to ask for feedback from registry operators, and then Sunrise question four was, basically, do you have any suggestions on how to address any issues that may have come up?

So, maybe, with that brief introduction, probably it makes sense … I don't know if anyone thinks it makes sense to briefly look at the questions. They're on the screen, there. Basically, the gist of it was, how did these different launch periods work in practice?

"Did you find," this is to [registry effort], "that they allowed you to accomplish your goals of getting" …?

Let's say it was … I think an example that came up a number of times over the years was "police." There is a sunglasses brand, at least here in Europe, called "Police." And so the question was, if a registry wanted to get "police.something" to the local law enforcement, could it accomplish that type of a goal? So, certainly, it's something that we had discussed along the way, during our deliberations.

So, the review of question number three was farmed out to subgroup A. I think that was David McAuley. We were reminded earlier, before we got started, that David had, maybe, some limited connectivity today. Yeah, he's on a limited Wi-Fi situation.

So, staff had said that might be able to help us walk through the deliberations of subgroup A and what they put on our plate as the full working group. So, maybe, Ariel or Julie, is that something that you might be able to quickly get us up to speed on for David? Sorry. Julie Hedlund, please.

JULIE HEDLUND: Yeah. Thank you, Brian. Happy to read through and remind everybody of the subgroup A deliberation summary. You would have seen this and we sent this around earlier, but just as a reminder.

So, the subgroup A recommended the full working group consider developing additional recommendations and/or implementation guidance as it sees fit to help make the ALP approval process smoother and ensure the registry operators who wish to adopt ALP along comparable grounds, like .madrid, the single approved ALP, can obtain approval from ICANN.

The subgroup suggested the working group review public comments that provided specific suggestions for improving the ALP, and that's Public Comment Review Tool rows 29 through 32. If you'd like, Brian, I could read through the summary. And then, if you wish, I can go to the Public Comment Review Tool to look at those particular rows.

BRIAN BECKHAM: Perfect.

JULIE HEDLUND: If that's helpful.

BRIAN BECKHAM: Perfect.

JULIE HEDLUND: So, subgroup A recognizes that public comments were limited because this question was directed to the registry operators. Nevertheless, the subgroup agreed that useful information can still be gleaned from the limited responses. In particular, subgroup A recommended that the working group focus on public comments concerning the issues and suggestions relating to the ALP.

Subgroup A agreed that most public comments were concerning the ALP and they overwhelmingly pointed to difficulty for registry operators to obtain ICANN's approval for ALP in a timely manner. One public comment mentioned that the 100 names for QLP were insufficient, but this would not be an issue of ALP was attainable.

The subgroup recognized that ICANN Org's implementation process for the ALP was clearly the real problem area. It has been the known issue, but the working group had not addressed it.

To follow up on the action deferred from Sunrise recommendation number one, subgroup revisited the "Spanning the Dot" public comment—that's Public Comment Review Tool number 33—in the context of ALP, QLP, LRP, but there was no further discussion or analysis. So, did you want me to go to the Public Comment Review Tool on, specifically, rows 29 through 32?

BRIAN BECKHAM: Please. That would be very helpful, thank you.

JULIE HEDLUND: All right. Very good. Let me get to those rows. Okay. All right. Here, you see rows 29 through 32. I have these up. Do you want me to highlight anything from these? Can everybody see them? I don't want to spend too much time reading things off, Brian.

BRIAN BECKHAM: Yeah. Thanks, Julie. I think, maybe, I can just summarize the gist of these, which was there seemed to be this lack of interplay between the—if I'm getting my acronyms right—the QLP, which allowed for 100 names, and the ALP, which was a custom-tailored proposal from a registry.

The long and short, when I look at these comments, was that there was one ALP that we know of done by .madrid, and that was seen as a positive way to bridge the gap between the ALP and the QLP, where there was a need to have more than 100 names allocated to registry-specific purposes.

But the takeaway was that, basically, for the QLP, that was something—and correct me, anyone, please, if I'm wrong—that didn't require any specific approval or dialog with ICANN. But with the ALP, that required some sort of an approval or dialog.

And so this, I think, is a good example of, really … What we're here to do is we asked a question to the community, we got feedback.

And so, let's say the ball is in our court to see if we want to take that feedback and turn it into a recommendation.

That could be a concrete recommendation at a textual level, or something … I'll just throw this out there. It could be more along the lines of a suggestion that ICANN work with new applicants to streamline the process for ALP approval.

So, for me, that was really the up-shot of this question. So, let me open it up to ask if anyone agrees with that assessment, has any different views on that, or has any questions or comments, generally. Paul McGrady, please.

PAUL MCGRADY: Thanks. Yeah. I mean, that makes sense. There are going to be things coming out of the public comment where we need to review the public comment, and then figure out from there how to react to it/bring back text as quickly as possible to the working group.

This looks, to me, like it's one of those. And so, should we spend some time on the call, now, trying to at least sketch out what a draft recommendation would look like, and then try to work on getting text back to the main group on the next call, or maybe the call after? Thanks.

BRIAN BECKHAM: Yeah. Thanks, Paul. I think that's exactly the question before us, and I'm in your hands, here. I think if we can, somehow, come to agreement—if not on a precise, textual level, at least on the concept—we could certainly work offline to come up with some

specific text and either seek approval of the working group over the e-mail list or in one of our subsequent calls.

I will note that there was some discussion around … In one of our earlier calls, I couldn't possibly remember the recommendation number, but there was the recommendation that launch policies shouldn't have the effect of circumventing the other RPMs, so that may be one footnote to this, if we're going to make a recommendation here. Thanks, Ariel.

Sunrise recommendation number two. Let me ask if anyone disagrees with the idea of forming the feedback, here, from the public comments, into a recommendation that the ALP process should, somehow, be streamlined. I don't know if it's necessary for us to opine on how that works, if that's some sort of a pre-application period or a parallel application.

I don't know how it worked in practice. Some of you who worked with applicants may know better. But does anyone disagree with the idea of making a recommendation that, somewhere, we recommend that ICANN and applicants look to a more streamlined process for these ALP processes in the future?

And so, seeing no objections, of course, I'll keep an eye on the chat and the list of participants. But if there are no objections to that, I guess the next question is, do people feel that that is a sufficient basis for us to take that offline and come back to the full working group at a later point with some more specific language, or do people feel that it's necessary to massage that a little bit here on the call today? Any thoughts? Okay.

So, I think, probably, unless anyone objects, what makes the most sense, just to keep progress going, in my view, would be to take that as an action item to come back to the working group at a later point. It seems that we all agree on the concept, here. And so, maybe we don't need to spend a tremendous amount of time. I'm mainly mindful of the fact that we have, still, some things to get through, but happy to defer to others. I see Paul has his hand up. Paul?

PAUL MCGRADY: Thanks. So, Brian, does it make sense, then, for something like this, to call for volunteers to work on this, rather than just hitting it back over the fence to the co-chairs? Was it David McAuley that introduced this? If it was, maybe we can "volun-tell" him. Maybe there are others that are on the call that would be happy to join so that whatever is brought back to the group has a good chance of survival, because it had more than one point of view? Thanks.

BRIAN BECKHAM: Yeah. Thanks, Paul. I think that's a great question/suggestion. I wonder if we could maybe start with, since this did come to the full working group from subgroup A, tossing that back over to subgroup A and/or volunteers that wanted to join?

I was thinking maybe along the lines of staff taking notes, but I think it's an equally good suggestion, or maybe a better suggestion, to have a small group of volunteers, whether that's from subgroup A or others, to …

I would hope, maybe by this time next week, we could come back with some language to, hopefully, take this forward. I don't know if that's a new or old hand but, Paul, since you've been raising the good suggestion, I'd be happy to hear if you think that works, and if we want to take volunteers on the call, here, or do that over e-mail.

PAUL MCGRADY: Yeah. I'm sorry to be consuming all the oxygen this morning. I see Susan is happy to volunteer. So is David. I'm happy to, as well. But I'm wondering if we might just spend a few minutes going through … It looks like the most developed comment was from CORE, and it might be nice if we could run through the CORE comment, just to make sure that none of those elements are objectionable to anybody, because that might be a good starting point for the small group, and maybe take just a few minutes on this call to do that so that the small group doesn't come back with something that the rest of the working group is going to hate.

BRIAN BECKHAM: Yeah. No, great idea. I appreciate the dialog and the suggestion, Paul. So, we have, I think we can all see on the screen, there, the CORE comments on the ALPs that they nicely … I don't know if they or staff did that for us, put those into five points.

So we have, "The ALPs should not be unreasonably denied or postponed into inviability." I think that probably means that they shouldn't be delayed to the point where they are no longer useful because the launch has passed.

"The ALP should not be limited in number of applications." I think that probably goes to the question of the QLPs were limited to 100, and I think the suggestion there is probably saying that the ALPs should not be limited to 100, otherwise registries could simply use the QLP process and there would only be one application for an ALP per registry.

The third point was that "priority rights in ALP should be defined in accordance to pre-existing rights in the community recognition for each specific TLD and not per the [charity] criteria." I take that to mean that, if we're using the Madrid example, if there were … Let's say the locality of Madrid recognize ... I'll just use a hypothetical, rights in street names. Those could be part of the ALP process. I'm doing my best to interpret these. If others feel I'm missing the mark, do please speak up.

The next point was specifically for GeoTLDs, or geo-oriented TLDs, local trademarks that … It's a little bit like point three, outside the TMCH. I think that may raise a question as to how those local trademarks would be defined and captured.

So that, maybe, is something for the small group that would look at this to keep an eye on, that those "local trademarks" would have the same priority as TMCH labels. I think that, frankly, fits with the theme of the ALP, that there could be registrations for local purposes that would overlap with marks, potentially, in the TMCH.

Number five, "TMCH registrants should be public. While trademark registrations are public and organizations and domain name registrations also are, SMD-holders are not. This creates unnecessary tensions and understanding the extent to which some

names should be registered and some policies must be restrictive, leading to excess in both cases."

If I understand this correctly, this goes to the whole issue of the Trademark Clearinghouse, more broadly, being public. I think we have tread that ground many times over the years, including in recent weeks.

I think this one may be a bit difficult for us to bridge the gap on, considering that we have closed off the discussion on the TMCH not becoming public. Maybe for the small group that looks at this to think about is, to the extent trademark registrations in the TMCH are not generally publicly available, that the local trademarks or strings that would be relevant to local applicants should still be allowed.

So, in other words, using this police example, the "police.madrid" would be available in the ALP. I think that, frankly, is the point of these processes ahead of, if you will, the Sunrise, or at least, if there is a conflict between an application during an ALP and a Sunrise, that there is a process for that.

I don't think it's really for me to decide that, but maybe this is something for the small group that's going to look at this and come back to the full working group just to keep an eye on in terms of a possible recommendation, or a conflict, or overlap, there.

I'm just seeing a few comments in the chat about recommendations from this working group becoming consensus policy, versus a binding, versus the Applicant Guidebook. Maybe that's another item that the small group could look at.

I'm going a little off-script, here, but I wonder … Maybe I can ask Mary, or David, or others to weigh in on that. Is there a need for this to become a consensus policy? In other words, if this were more of a guidebook recommendation, wouldn't that accomplish the goal?

In other words, is this something that is valid for a fixed moment in time, and there is no need for it to become a consensus policy? Because once these launch periods, whether that's the qualified, etc., the Sunrises are passed, then they're passed, if that question makes sense.

So, David says he expects that's something that the small group could discuss, so I think we can just note that as an action item, to have the small group that looks at this to discuss whether it's useful or necessary for this to be a recommendation that morphs into a consensus policy, or it's more implementation to find its way into the guidebook. I saw Mary raise her hand and then lower it. So I'm guessing, maybe, she was agreeing with the small group looking at that question.

Okay. I think there was … I'm just going to scroll back on my other screen. The subgroup A suggested we look at 29 to 33. So we've got 29, we did. 30 was the one that we've just covered. 32 and 33. So, I think those … I'm just looking quickly at 32. That seems to be restating it another way, as well as 31, the things that we have already covered, just to cover that base, here.

And just to the question, Paul, in the chat, "Will Sunrise be consensus policy when we are done?" I don't know the answer to that. I think it may be that it's not, because that's something that occurs at a fixed moment in time. Is that something that, Paul, or

Susan, or others, you think is best answered by the small group, or something that we ought to discuss here on the call as the full working group? Susan?

SUSAN PAYNE: Yeah, thanks. Well, I suppose it might be useful to just quickly discuss it, because we're responding, effectively, to what Mary has said. Obviously, I do understand that a couple of the questions we were asked as part of our charter was, "Should any of the RPMs become consensus policy?"

So obviously, it is at least envisaged that some or all of the RPMs could become consensus policy, but that, by that very token, then it presumably is also envisaged that they might not be.

And to the extent that we have discussed this so far, I don't think we have particularly discussed making the Sunrise consensus policy because it's, as you point out, a moment-in-time rights protection. And so, what would be the point in applying it to all gTLDs, even those that long since have launched?

And so, by that token, to my mind, I'm not sure why an ALP, which is essentially setting some rules for a launch phase that goes outside of, or would otherwise be in breach of, the Sunrise. If the Sunrise isn't consensus policy, then I don't really understand why the ALP suddenly becomes consensus policy. But I'd really like to understand what Mary was suggesting.

BRIAN BECKHAM: Thank you, Susan. Mary, maybe you can help us through this.

MARY WONG: Thanks, Brian. I apologize for bringing it up. One thing I will say is that the reason why we're bringing it up in the context of this particular discussion is, of course, that ALPs, QLPs, and similar periods and operations came out from implementation of the 2012 round. A number of other discussions that you are having in the working group came out of implementation, also, in the form of the Applicant Guidebook.

So, as I said in the chat, it may not make a difference in the end, in the sense that these still become obligations on contracted parties. There are different kinds, obviously. There is consensus policy, which, by virtue of, essentially, a catch-all term in all our contracts, all contracted parties have to abide by. There are also specific contractual obligations which may be standard across all contracts, as well.

In the case of the AGB and the 2012 round, of course, any would-be registry operator was also bound by all the rules of the application process and the AGB. So like I said, a lot of this may come out in the same place.

As Susan points out, there may be some differences down the road, for example if there are some recommendations that are meant to be one-offs, or that only apply for specific periods, perhaps such as this one. And this particular discussion, we can leave for when the small team comes back.

But Sue, I was just making a general observation because another potential distinction down the road is that, for consensus policies,

they really can only be changed by the GNSO, either by saying that there is a new consensus policy, or replacing the old one, or something like that.

That, again, may not have much practical effect on contracted parties or on the market. But in terms of it being a policy mechanism, it is, basically, a different method of getting to a particular place. I hope that's helpful, Brian.

BRIAN BECKHAM: Yeah. Thanks, Mary. I guess, maybe, at least when I look at this question, we're thinking in terms of we had, in the most recent past round, a distinct round, and I think that's probably what people expect may happen the next time around. But then again, there were conversations around, should there be distinct rounds in batches, or should the application for TLD process be more open-ended along the lines of a second-level domain name registration?

So, I think that, at least when I'm looking at it through the lens of, "Is it inconsequential whether it is consensus policy versus implementation of an Applicant Guidebook?" it may be coming through that filter of we're thinking of a single next round.

But if we look more often to the distant future where the application process may be different, that, again, I think, is something. It's good that it has been raised, and may be something for the small team that looks at this to opine on and make a suggestion when they come back to the full working group.

So, let me just ask if that strikes everyone as a good approach to take this forward, and if there are any other questions or

suggestions, or whether we think we've covered, sufficiently, the bases, to turn this over to a reformed subgroup A to come back to us, hopefully, I'll just say off the top of my head, in a week, if that gets pushed. I think we have a little bit of a buffer, but maybe we can say a week or so, just as a suggestion. Any objections to moving forward on that basis, for questions three and four?

Okay. So, we see there were … The volunteers so far were David, Susan, and Paul, and maybe we can recirculate. I don't recall who were the members of subgroup A but, if everyone agrees, we can maybe put out a call on the list for volunteers for this "reconvened subgroup A," so that people who aren't on the call have a chance to weigh-in on this – maybe people who are registry applicants. Maybe they have some specific feedback.

Okay. So, I'm not seeing any … I agree, Paul. The more voices, the better. I think there is comfort in numbers, certainly. The more and more variety of voices, that gives us a firmer foundation to proceed on. I couldn't agree more.

Okay. So, I think that's … Maybe we just look on this screen, here, at number four. I think we have … Let's see. Okay. So, I think, probably, here, we want to just run our eyes over this to make sure that, to the extent there was overlap or not with Sunrise question three, we cover anything that we may have missed, here.

So this is, again, looking at the questions to registry operators. Basically, how did these processes work in practice? Any concerns they have, suggestions they would have on … Just looking at the screen here, it seems that we have covered, especially when we have looked at, for example, the CORE and the Madrid comments,

both the questions and the feedback from the community of the registry applicants. But just to cover this off, maybe it's worth having a look on-screen?

Maybe just to note for … I think it was the last point that we came to on … I think it was number five, from the CORE comments. It's 4c-4, on the screen just now: "How would you have resolved conflicts between trademark holders that got their domains during Sunrise and had identical trademarks?" So, that's sort of a variation on the local police question. So, Ariel or Julie, do you want to, maybe—this is for question four—quickly run us through the subgroup deliberation and see if we have covered everything or if we still have a few lingering items?

JULIE HEDLUND: Yeah. Thank you, Brian. I can do that. So again, just looking at the summary here, the subgroup A recognizes that public comments were limited because this question was directed to the registry operators as question three.

Nevertheless, the subgroup agreed that useful information can still be gleaned from the limited responses. In particular, subgroup A recommended the working group focusing on public comments concerning the issues and suggestions related to GeoTLDs and the ALP.

Several comments suggested that there should be some processes available for reserving certain important local terms, which may also be TMCH-registered marks. So, that's Public Comment Review Tool rows 33 through 35. It seems to be a new material

perspective/solution that the working group had not considered in developing its Sunrise recommendations.

The subgroup agreed that these comments may help inform the working group if it wishes to develop additional recommendation and implementation guidance to address the difficulties of implementing ALP and reserving local terms.

And furthermore, the subgroup A agreed that the CPH proposal, that's Public Comment Review Tool row eight, of exempting registry operators who are exempt from Spec 9, including .brands/gTLDs/registry operators for Spec 13, when running a Sunrise period.

Ariel is noting that the second paragraph has been covered in a previous Sunrise recommendation, so it may not be the … The working group doesn't need to go through this.

And yes, as you noted, I think, Brian, this was covered in the context of Sunrise recommendation number five, and Sunrise recommendation number six. I'll just scroll down to see if there is anything missing.

And also noted that CPH made a similar proposal in response to TM claims recommendation number five and TM claims question two. Would you like me to go to the Public Comment Review Tool, rows 33 through 35?

BRIAN BECKHAM: Yeah. Thanks very much. That would be helpful, I think. It looks like, probably, we've covered this ground already, but let's just look on-

screen. Okay. So, it looks like—and I'm just paraphrasing here—32, 33, 34, and 35 …

Basically, this covers ground that we have been covering in the [call] comments for the prior question, three. I just want to make sure that everyone agrees with that. It's really talking about the potential conflict between local rights and trademarks in the Trademark Clearinghouse.

So, I think that probably puts us in a good position to consider this covered. I don't want to introduce any additional work or questions, here, but the one thing that I was a little unclear on was, if we go back to the other screen, where it says row eight, the Specification 9. It's Specification 13.

I don't want to confuse things, but just want to make sure that we cover this off. I know we discussed this on one of our prior calls and I think, basically, that the takeaway was that these were, basically, different. In other words, these didn't really apply because the nature of the registries under Spec 9, or Spec 13 … Just for the sake of carving this off, I want to make sure we're on the same page, here. Okay. So, let me ask if … Yeah, Paul McGrady.

PAUL MCGRADY: Thanks. So, this isn't meant to rehash what we already talked about on a prior call, about .brands, whether or not it's new that they would be exempted from the Sunrise, because they already are. I think that was just confusion somewhere along the public comment river that didn't get corrected by the subgroup.

And so, I don't think we need to readdress that. But did we ever come to a specific conclusion about Sunrise and Specification … No, I'm not talking about Specification 13 registries, .brands.

But did we come to a specific conclusion about Specification 9, registries? I.e., not .brands, but they have closed ecosystems, and whether or not that would exclude them from the Sunrise? Because I think that, here, the issue has popped up again, right? So, I think we need to sort of nail that down. Thanks.

BRIAN BECKHAM: Yeah. Thank you, Paul. I recall that we discussed … On one of our recent calls, people were recalling that there was a small handful of examples of these Spec 9 TLDs. I think "GE company" was one that was mentioned. I don't know if .bank and .pharmacy, or .pharma— I think there is one of those—would be examples of Spec 9 TLDs.

And again, we had the recommendation, I think it was number two, that the launch period shouldn't circumvent the RPMs, generally. So, let me ask … I have to say for myself, I'm a little fuzzy on that. I don't know if anyone else on the call, or staff, can help us refresh our collective memory on Spec 9 registries not having to go through the Sunrise process because those were, in effect, closed registries limited to certain types of applicants. Greg?

GREG SHATAN: Thanks. I'm pretty clear on this. At least, I think I am. So, as I recall, Spec 9, registries are exempt from Sunrise. They are literally a closed ecosystem, one-registrant ecosystems.

.Bank and .pharmacy are not Spec 9. They're restricted TLD with high levels of qualification to get in, but they are open to those who qualify, "GE company" as an example, because "GE company" is not a trademark but, in a sense, it's a somewhat pure example because it is run just like a .brand, except for the fact that its brand is not registered.

Off the top of my head, I don't know the other Spec 9s, but the point of Spec 9 itself is that it's an exemption from the code of conduct, which requires you to go out and have multiple registrars.

And by extension, if you're going out to multiple registrars, you need to be running Sunrises. But if you're not going out to the world but merely sitting in the comfort of your own home, running a Sunrise for yourself would seem rather absurd. So that, somewhat simplistically, maybe a little awkwardly, is my understanding. But the bottom line is that Spec 9, just as much as Spec 13, are exempt from Sunrise, because they're not selling domain names. Thanks.

BRIAN BECKHAM: Yeah. Thanks, Greg. I'm just in another screen looking at a summary of the code of conduct, and that seems to be right. If people agree that that's the case, that both for Spec 13 and Spec 9, those registries are exempt from operating a Sunrise, we can leave it there. But maybe that's something, equally, that we want either staff or this reformed subgroup A to clarify for us over the next week or so, and come back.

I'll just put in the chat, Paul, the link that I found very quickly. I don't know if this is authoritative or just some explanatory text on the

ICANN website, but it looks that the Spec 9 criteria are similar to the Spec 13, obviously with the exception that there is no requirement for it to be a brand. But basically, the registrations are limited to the registry operator or its affiliates. I don't know if Ariel or Paul had a hand up, first. Maybe I can call on Ariel, and then Paul, if that's okay?

ARIEL LIANG: Thanks, Paul. Thanks, Brian. So, this is staff's recollection of the discussion. It seems the working group is in general agreement that, if there is any exemption language, it should include the TLDs exempt from Spec 9, in addition to Spec 13 TLDs, so that Sunrise Recommendation 6 needs some potential revision to include that exemption language, perhaps in the implementation guidance. So, it's for staff to develop that draft language for the working group to review.

And we do note that one or more working group members are not really familiar with the definition of Spec 9 and asked to include more background materials in the revised draft language, so we can do that. And I think we can just … Staff can take this action item and develop this revised language for the working group to review.

BRIAN BECKHAM: Thanks very much, Ariel. That would be very helpful, just to draw a line under this. Paul, I'm guessing that that answers your question, since the hand went down. But of course, feel free to raise your hand again. So, we'll look for staff to confirm that exemption from Sunrise for Spec 9 registries.

Let's go back to the comment review for this question. I think that takes us to … I'm sorry. I'm just scrolling on my screen and looking at the staff-controlled screen. I just want to make sure we cover all of the public comment review rows that were flagged for our attention.

So, number eight, that [regard of] Spec 13 and Spec 9. I'm just seeing a few near number 22, 33, 34, and 35. So, just 35, that, we have covered. 34, we've covered.   33, we've covered.

22, I'm a little less clear on. "Pre-Sunrise should have been the RPM requirements document defined ALP." That was never put into practice. Let's see. I wonder if, maybe, there is a missing word there: "Pre-Sunrise should have been in the RPM requirements document."

I don't know if anyone else has any clarification on that, or if we can consider that … Especially because, basically, the core of our comments that we have been reviewing have been from CORE, the association, we can consider that this is somehow covered by other language from their five points that they've outlined that we looked at earlier.

I'm a little fuzzy on exactly what they mean here in cell number 22. Unless there are any suggestions to help clarify this, or any objections to considering that this is kind of already covered under the umbrella of the CORE comments that we have looked at previously, maybe we can consider, at least for the purposes of this call, covered.

And we can, again, just flag it for the small group, just for an extra set of eyes to confirm that we're on the right page there in terms of considering that covered by their public comments, the five points that they outlined in a little bit more clear detail for us.

So, I think that takes us through to Sunrise question five. Sorry to jump. I know you were taking notes, Ariel or Julie. Sunrise question five was for comments from people who had tried to participate in the Sunrise, which had marks using non-English scripts or languages.

So, to identify if that was an issue and, if so, if there were any suggestions on how to tackle that problem. So again, this was subgroup A. Julie, do you want to, again, walk us through the deliberations from subgroup A for David?

JULIE HEDLUND: Very brief. Subgroup A recommended that the working group consider all public comments for Sunrise question five across the board. Those comments may inform the working group's decision in developing any additional Sunrise recommendation and/or implementation guidance related to trademark owners' participation in the TMCH using non-English-script languages, should the working group choose. So, if you'd like, I can go to the question five Public Comment Review Tool.

BRIAN BECKHAM: That would be helpful. I must admit, I'm a little fuzzy on what that recommendation from the subgroup means for us here. So, I think

JULIE HEDLUND: No, go ahead. I'm sorry.

BRIAN BECKHAM: So, it looks like there were a few suggestions. First of all, people had affirmed that some brand owners had encountered problems here if they had, for example, an accent mark on their trademark. I'm guessing that's a typical example for a non-English trademark, non-Latin scripts.

It looks like there were some difficulties encountered at the TMCH for proof-of-use samples. I'm not sure if that had to do with forms on the TMCH webpage or the TMCH itself looking at those samples.

Another comment about TMCH is acceptance of proof of use. Some suggestions about translation issues. So, it looks like both proof-of-use samples and translation issues were issues that applicants, to get into the Trademark Claims, ran into.

So, let me ask if anyone has any particular thoughts that they would like to highlight in terms of the … I think we don't have Lori, who is the representative for INTA, here on the call. I believe she had a conflict. I think, some of the other comments, there are maybe some people here that can speak to those. Although, perhaps they are a little bit self-explanatory.

So, a little bit like with questions three and four, I think that lands us with, where do we go, here? Is this something that we want to try to coalesce around a recommendation on the full working group call, here, or maybe, again, farm this out to a small group who would want to propose a possible recommendation for the working group to consider?

Maybe I should have said first, do people agree that this is something …? I don't see any comments objecting to that. It seems like a fairly reasonable thing that, people with non-Latin scripts, if they encountered issues with the Trademark Clearinghouse or its application or proof-of-use review process, it's kind of a matter of fairness, if you will, that that would be addressed.

But let me ask if anyone has any concerns about the comments that have been submitted to address those questions about non-English scripts getting into the Trademark Clearinghouse being reviewed by a small group that would come back along the lines of questions three and four, with the possible recommendation for the full working group to think about?

Any objections to that approach, or any preference to discuss that on the call here, now? So, I'll take, hopefully, the lack of hands and chat as agreement that this is something … We do want to take the public comments on board and we do want a small group to come back with a recommendation for the full working group, as opposed to thinking about that on the call here.

I don't know if people have thoughts on whether that same group wanted to, maybe, look at this, or if, maybe, a different group of

people would want to look at this issue, if subgroup A wants to look at that.

Any thoughts on how we organize ourselves to take this forward in terms of a recommendation, a small group to look at this? Any volunteers on the call, here? Any agreement that this should be the same working group that's looking at questions three and four, or maybe another subset of the full working group that wants to look at this question? Paul McGrady, please.

PAUL MCGRADY: Thanks. Sorry for the delay in speaking. I've got myself double-muted today. Yeah. If the other people who raised their hand for the other item don't object, I think it makes sense. And of course, anybody can participate, and so we can put it out to the list. I think that, as I look at these things, there are going to be three or four potential recommendations that come out of the public comment.

And so, it would make sense to me to streamline them, and maybe feed them into that small group in the order that they were received from the review. Does that make sense? So, the small group, instead of saying, "Okay, all two, three, four, five things are due in a week," maybe we say, "these are a week out from assignment," so that it moves along but the work is rolling.

Now, those who volunteered for the first item may say, "Paul, you're nuts. I can't sign up for a month's work of work. I thought I was signing up for a week's worth of work," and I totally respect that. But that, to me, makes sense, and I'm happy to be an active part of that. Thanks.

BRIAN BECKHAM: Thanks, Paul. I think that's a great suggestion. So, whatever comes out of this call, that's on one track. And then, if subsequent calls have similar needs for small groups to look at comments to potentially form into recommendations, we kind of work in parallel timelines, according to the call that they come out of.

That, I think, makes perfect sense. And again, agree that, especially since we're under, broadly, the Sunrise umbrella, there is some substantive relation at a high level between three, four, five, etc.

So probably, it makes sense to have the same small group, if that's okay with the volunteers, since they'll have their mind tuned to Sunrise issues to tackle. At least for purposes of coming out of this call, questions three and four, those, I think, are grouped together, and then question five and anything else that comes out of this call.

So, any objections to proceeding on that basis? So, the small group would look at three, and four, and then number five. Okay. Thanks, Paul, for the suggestion and, of course, for volunteering, as well as a few others in the chat. I think that takes us to claims recommendation number one.

I have got a note here for myself that that also relates to claims question number one. And so, broadly, both of those went to the Trademark Claims notice and the possible idea … I think we have long ago agreed, probably two or three years ago, in fact, that there would be some need to re-write, to make a little more streamlined or plain-English, the claims notices. So, Claims Recommendation 1 and question one relate to that issue.

So, I think we all agreed previously—that is, of course, why it's call Trademark Claims recommendation number one, here—that the claims notice should be slightly re-worded to make it a little bit more user-friendly. That seems pretty non-controversial and makes good sense.

Julie, do you want to briefly walk us through the subgroup A deliberation, and then maybe … I'm wondering—I'm just thinking out loud—if it makes sense to also, then, quickly look at the Trademark Claims question one before we look at the specific public comments, the [round] numbers that have been flagged. Just an idea.

JULIE HEDLUND: Yes. Thank you, Brian. So, just briefly, on the subgroup A deliberation, this relates to the comments from INTA, IPC, and ICANN Org, and we can go to those after going through these summaries.

The subgroup A recommended the working group consider revising two aspects of the recommendation as follows: at the end of the first paragraph, replace "while decreasing any unintended defects of deterring good-faith domain-name applications" with "while decreasing any possibility of deterring good-faith registrations.

And one subgroup member noted that the current wording of the recommendation seems to make the assumption that the unintended effects of deterring good-faith registration has already happened.

And then, the second aspect was that the third bullet of the implementation guidance seems too prescriptive by adding unnecessary complexity. The subgroup recommended the working group consider revising this bullet to provide the IRT flexibility regarding who they should consult in redrafting the claims notice.

The IRT should be able to consult with a wide variety of resources, inside and outside of the ICANN community, both on trademark policy and expertise and clear communications.

And then, of course, the comments for TM Claims questions 1a through B, and also TM Claims Recommendation 1 across the board, that those comments may inform the working group's decision in developing revised language or implementation guidance for TM Claims Recommendation 1 or any additional URS recommendation, should it choose.

If you'd like, I will go onto question one. There were the questions that were asked. And then, that subgroup A recommended the working group consider public comments for the TM Claims question 1a and B, and, basically, what we just said.

But the subgroup also discussed the comments from CORE Association, row number 63, and noted that some registrars do offer registrations during the Sunrise TM Claims periods, due to the technical and operational complication and costs associated with the TMCH and the RPMs.

As a result, the registrars which do not offer Sunrise/TM Claims service return the registration queries for names subject to Sunrise/TM Claims as "domain not available." Subgroup agreed

that the registrars that do not offer Sunrise/TM Claims service should send a different message in response to registration queries to avoid confusion, and this issue should be hashed out between new gTLD registries and registrars, not by the RPM Working Group. If you'd like, I can go now to the TMCH Public Comment Tool.

BRIAN BECKHAM: Perfect. Perfect. Thank you.

JULIE HEDLUND: Sure. And perhaps, since the working group is to look at all of the comments in response to question one, I'm wondering if I should go to that, first.

BRIAN BECKHAM: That makes sense. I see we're back to our donuts.

JULIE HEDLUND: Yes, but we can ignore those if we rush.

BRIAN BECKHAM: Yeah, please. Sorry.

JULIE HEDLUND: It might be useful just to see the groupings of the comments that staff had tried to do to try to help us review them. The largest grouping was a response to inadequacies or shortcomings, that it was intimidating, confusing, spam-like, and not user-friendly. There

is a lack of transitions, issues reported by brand owners, registrar's lack of connection to the TMCH, other concerns, and then, really, quite a large number of "no responses."

BRIAN BECKHAM: Yeah. Thank you. And of course, a lot of non-responses, but for those that did respond, that fits generally with the suggestion here to make it a little more user-friendly. So, we're all swimming in the same direction, here.

JULIE HEDLUND: And again, it looked like the majority of comments related to that it was intimidating, confusing, spam-like, and not user-friendly.

BRIAN BECKHAM: Perfect.

JULIE HEDLUND: Do you want me to go back to Recommendation 1 or stay on this page for a little bit?

BRIAN BECKHAM: I think, if others agree … I see Paul McGrady has his hand up. I was going to say it seems that pretty much everyone is in this user-friendliness camp, but let me call on Paul, quickly. Paul?

PAUL MCGRADY: Thanks. Definitely in the user-friendly camp. As one of the co-authors of the original claims notice, I'm glad that it's getting criticism and improvement. But my question is, obviously, redrafting the claims notice is something that will be done by the IRT, not us.

And so, I would like to understand to the extent that we put any of these public comments that came in as implementation guidance, how binding is implementation guidance on the IRT from coming out of this PDP? Are we meaning for it to be pretty darned binding, and you'd better do it, or is it suggestion-only?

I think it's an important question, generally, as we look at the difference between recommendations and implementation guidance, but I think it's especially important for this question because any revisions to the claims notice will be purely an IRT function. Thanks. So, maybe that's a question for staff.

BRIAN BECKHAM: Yeah. Thank you, Paul. I was going to say the exact same thing, and I see Mary has her hand up to help us with that question.

MARY WONG: Thanks, Paul, and thanks, Brian. I will try. What I will preface my remarks with is to say that we are checking with our colleagues across the global domains division that work with a number of IRTs and that also, obviously, work with our contracted parties on consensus policy, to make sure that we are consistent across the board and that what I'm saying today will be consistent. So, if there is anything I need to update or correct, I'll come back to you.

What we will say from the policy staff perspective is that it is … And I don't even want to use the word "binding." But then, the sense that any recommendation that comes out of a PDP, however it's classified, if it's approved by the GNSO Council and adopted by the board, it is certainly something that has to be done in accordance with its terms during implementation. In other words, it's binding in that sense, in that the IRT cannot choose not to implement it and cannot choose to implement it in a different way.

Hence, we had raised previously the question about redrafting the AGB because, as Paul notes, that sort of thing is typically done by an IRT during implementation, and that is why, from the policy staff perspective, our suggestion is that, for PDP Working Groups, you have a policy recommendation that is as clear and as crisp as possible.

You can provide implementation guidance that says, for example, "Here are some situations that you could deal with," or that goes into further detail about what those policy principles could look like if implemented.

You can also provide suggested language for the ultimate policy, for the AGB, etc., which the IRT can look at. So, Paul, I hope I'm helping clarify it in the sense that the IRT must implement whatever has been approved by the council and the board, but actual drafting of language is typically done at the implementation phase.

BRIAN BECKHAM: Thank you, Mary. Can I ask, maybe, a follow-up question? I think it's, as you say, if there are specific things at a textual level that the

working group wants to have the IRT consider, that certainly is possible. Maybe another thing— I'm just thinking out loud—is if there are … I mean, we all agree it should be more user-friendly, and I don't know if this would come up, but if there is … Maybe the working group would also say, "Here are some parameters you should work within." In other words, to give something of a steer to the group that's going to be looking at the precise drafting.

MARY WONG: And Brian, just to follow up, yes, exactly. So, whether it's a framework or whether it's, "This is what you should not do," or, "these are examples of things that you could do, or that you should consider during drafting," all those different types of guidance, I think, will be very helpful in explaining to the IRT what you were trying to get at by your policy recommendation.

BRIAN BECKHAM: Perfect. So, let's just see where that leaves us. So, we're all very much on the same page: making it more user friendly. We would provide guidance to the IRT that would look at this. I'm just going back to the main document; that's the summary of the public comments referred to the working group.

I think, probably, we still want to look at … And I think this is above on the recommendation. There were three items flagged for review: rows 27, 30, and 38. I think we probably need to have a quick look at those. I think this was covered in the summary that Julie helped us through, and did not support the third bullet.

So, there were some public comments or … Sorry. The working group had previously given a list of some entities that could assist with the drafting. Let me ask, not so much in light of the INTA comments but more in light of the question that we have just asked and answered in terms of the fact that this recommendation to make the claims notices more user friendly would go to an IRT, do people …

And I see Rebecca, and maybe you can help with this as well as you probably have another question or comment. How do people feel about knowing that this goes to an IRT, reconciling that, if you will, with the prior suggestion that certain external groups be consulted, or asked to opine on, helping us make the claims notice a bit more user-friendly? Rebecca?

REBECCA TUSHNET: Thank you. Can you hear me?

BRIAN BECKHAM: Yes.

REBECCA TUSHNET: Thank you. Actually, I want to speak just to that. I think we should absolutely keep this in. It's not exclusive, it points the IRT to people who can be helpful, and I don't think anyone could read it fairly and say they are not allowed to consult anyone else, but they might not know about the groups, particularly the Latin-American group, which I think was actually news to many of us and would be very

helpful in internationalizing the issue. I actually just wanted to put a marker down.

I raised my hand to say we've gone through these comments. The subgroup referred this to the working group but did not actually say we should adopt these comments – just thought the full working group should discuss them. I have some things to say about the other one, but I will leave that for further discussion. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. So, let me ask you or others in terms of … So, we know this will go to an IRT. That's a group within an ICANN working group. Maybe that's the wrong terminology, but it would be a group along the lines of us convened here to work on redrafting this is a more user-friendly manner.

Certainly, I can't see there being any prohibition on that group reaching out, either as a full group or individually, to external parties. I don't know to what extent it is necessary to make a full or authoritative list of entities that could be consulted.

But let me ask, how do people want to answer this question of the comment from INTA, with Rebecca's comment, with the information that this would be covered by an IRT? How do we take this forward? Certainly, nothing stops an IRT from consulting third parties.

I guess—and this is my paraphrasing or summary—the question, maybe, before us is, to what extent do we need to point them to specific organizations, or do we just leave that to the IRT to say, "Some groups that have interests or expertise in this issue have

been identified for the IRT's consideration," and leave it there? Paul McGrady.

PAUL MCGRADY: Thanks, Brian. Yeah, I know. I think it makes sense. What Rebecca's saying makes a lot of sense, and I don't think we should tie the IRT's hands. I think it would be good to say something along the lines of, "In order to make sure that a claims notice does what it needs to do and not anything more …"

This could be implementation guidance, but we could say, "To make sure it does what needs to do, and not anything more, the IRT should reach out to third parties it believes may be able to help. You'll get the claims notice in the best [shape] possible."

This is fuzzy language, I apologize. And then we could say something like, "For example," and then we could put together a short list of groups that might have a voice that would need to be heard.

I also think that we might want to do a soft implementation guidance, if that's such a thing, suggesting that the IRT actually have to have an expert in communications take a look at it for readability. I saw there were several comments that it's hard to read, it's intimidating; it was written by lawyers about legal stuff. I mean, Kathy and I are lawyers and we wrote it that way. But as a result, maybe it comes across intimidating. I hope it doesn't, but some people think it does.

So, I think it's fine to encourage the IRT to go out and get other voices in than to have it actually reviewed, so that it's good. What

we don't want to do when we review it again is be in the same place where people think that the thing is intimidating and chills anybody. That's not what it was meant for. Thanks.

BRIAN BECKHAM: So, I think the suggestion is "no lawyers allowed." I'm just joking. No, I think it's—

PAUL MCGRADY: Or more voices than just lawyers, yeah.

BRIAN BECKHAM: Yeah. Yeah. And of course, the IRT will have to be mindful of there is … Sometimes, you run into the dilemma of too many chefs in the kitchen, or people say rafting by committee is the horse turned into the camel. I only mention that given that we are here where we are, namely that the original draft was, maybe, a little too technical, and there was a need to make it a little more user-friendly.

So, I think we all seem to be very much on the same page, here. We want to make it more user-friendly and we want whatever group looks at this to reach out for some different perspectives to make it as user-friendly.

You could even say "non-legal." I use that term not loosely, but to make it understandable to a non-lawyer, I think that's safe to say. We really steer the IRT to make that a focus of their work. Mary is just putting in the chat that the claims notice that comes out of an IRT could even be put out for public comment.

So, if there is some further fine-tuning that can be achieved, then that might be possible, as well. Any other comments on that? Otherwise, I think we had two more comments referred up to us from the working group, just to cover off. They may be things that we have already covered during our conversation, but probably we want to get through them just because they have been put to us from the sub-team.

The next one I had was row number 30, which was a comment from the IPC. So, the IPC say that they didn't believe there was evidence of unintended effects of deterring good-faith domain applications.

This reference in the first paragraph should therefore be amended to refer to decreasing … So, this is a little bit of wordsmithing on the principle behind what the claims notice is supposed to do.

So, a little bit different from the reworking of the claims notice itself. The IPC would revise the recommendation to more specifically note that either ICANN and IRT are tasked with implementing these proposals. So, that's what we have just covered. And then, the final paragraph from the IPC, there, is going, again, to the claims notice drafting.

So, let me just ask, does anyone have any thoughts on that first sentence from IPC comments from row 30? I'm sorry, it's on … Yeah. So, the specific language about unintended effects of deterring good-faith domain name applications. So, massaging that a little bit to, I think, instead of saying "unintended effects of deterring," to say "decreasing any possibility of deterring good-faith registrations."

It may be necessary to see the broader context in which that sits. At least for myself, I find it a little risky to agree to signing up to a change in the language in the abstract without seeing the full context from which that comes. I see a couple of hands from Rebecca and Susan. Rebecca, and then Susan.

REBECCA TUSHNET: Thank you. So, I'm opposed to doing this. I mean, frankly, it doesn't even make grammatical sense. You don't "decrease any possibility." So, we came to a hard-won agreement that everyone at least thought there was some chance. We disagree about how much the chance is and how much we see it has been realized.

So, let's stick with that, rather than inserting language that tilts in a direction that is really unnecessary. I think if we are agreed that there is some chance, we disagree about how much, and we agree that it should be changed. So, let's not get into this. Thank you.

BRIAN BECKHAM: Okay. Thanks, Rebecca. Susan? Susan? There we go.

SUSAN PAYNE: Yeah. Sorry, I was on mute. I mean, I suppose I would come to this from the other perspective to Rebecca, inevitably, and just say, given that this is a really minor change, and really it's just a change of … It's not a major difference. It doesn't change the outcome of the recommendation.

What it does do is just clarify the truth, which is that we don't know the extent to which the claims notice language itself has had any deterrent effect. We haven't done any kind of tests on it. This is not scientific.

On reflecting on the language, it seemed that this was making assumptions which are not proven. And therefore, what we should really be doing is addressing what we're really trying to achieve, which is that we think there might be an issue.

We don't know for sure. We don't know the extent of it, but we would like to address it, or at least we would like to minimize the prospect of it. So, I think this changes de minimis, and perfectly reasonable, and doesn't impact the actual recommendation. I'm not quite sure I understand why Rebecca opposes it so strongly.

BRIAN BECKHAM: Rebecca, I think that may be a new hand, and then Paul McGrady.

REBECCA TUSHNET: Thank you. It was a new hand. So, I'll just say what I put in the chat. We did do a survey. We asked people what they would do. We had substantial levels of misunderstanding, substantial levels of people who said, "I would give up." To the extent that it is tiny, then let's leave what we agreed to as a group alone.

For the same reasons, I don't really see why it's so important, except as to for people to be able to report, "Oh, the working group agreed it wasn't really a big deal."

But the working group has not agreed. Rather, we have agreed that we have a range of opinions. And so, I actually don't want the language to reflect that the working group has a consensus that there is only a tiny possibility that could be eliminated by change, the language of the notice, which by the way isn't true.

That's not how communication works. You can just do as well as possible, and I support trying do as well as possible. I don't think we're going to eliminate chances because I don't think that's possible. I don't think that would be the right goal. So, anyway, yeah, I really do think we got here, it was very painful to get here, let's not disrupt that, which did reflect a wide range of views within the working group. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. Sorry. If I can jump in really quickly, Paul? I apologize that this is … I realize there is a risk here but I wondered if, in hindsight, the text that's on the screen there, it ends with, "While decreasing any unintended effects of deterring good-faith domain name applications."

I think there were definitely different views on that. We know that some registries or registrants [pinged] that the TMCH … Or tried to see names that were available, so there were a range of reasons why some would-be registrations didn't go through.

Certainly, some of those could have been from the claims notice scaring people off, but I wonder, in hindsight, if we might have said, "While decreasing any potential unintended effects."

I realize there is a reluctance to change the recommendations, probably, at this point, but I only offer that as a possible compromise between the different concerns raised by Susan and Rebecca, and that just … Apologies. I have not been able to really keep up with the chat, but I am seeing Paul said that he covered his comment in the chat. Rebecca again, please.

REBECCA TUSHNET: Thank you. So, I dislike the idea that stuff that was a compromise, that includes stuff that certain constituencies didn't like, that acknowledged the range of views that we had, is open for revisiting, while things from other constituencies that were, at best, compromises, aren't open for revisiting. In fact, this language did reflect what, at the time, people argued was uncertainty.

So, it already acknowledges the … It doesn't attempt to put a range on it. it doesn't attempt to put a magnitude on it. And that itself was the product of a lot of discussion and compromise. It was, actually, pretty heavily wordsmithed. I think it's a mischaracterization to say we weren't paying attention. It was kind of the only thing we were paying attention to. And so, I've got to say I think this is a bad move. Thank you.

BRIAN BECKHAM: Okay, thanks. I just note that we're running a little close to time. If need be, myself, I can go a few minutes, or we can pick this up later. I see Zak Muscovitch, and then Greg Shatan.

ZAK MUSCOVITCH: Thanks, Brian. So, I'm just trying to understand what the issue is, here. I'm looking at the highlighted text on the screen and it says, "While decreasing any unintended effects." So, it seems to me that that word, "any," doesn't presuppose there were any unintended effects. And then, I see in the chat there is a suggestion to use the word "potential." Where would that word go? What does it replace?

BRIAN BECKHAM: Apologies, Zak. Just to jump in. I certainly didn't want to confuse things, but it was just my suggestion to add the word "potential" after "any," just trying to bring together the comments of Susan and Rebecca. So it would say "any potential unintended effects." If it further confuses things, I apologize. It was just an attempt to bridge that, here.

ZAK MUSCOVITCH: Yeah. Well, all right. So, I won't belabor. I understand Rebecca's position on this, not wanting to go over language already the product of a working group recommendation and compromises. However, if putting in the word "potential" makes everybody happy, aside from the principle of not adjusting it at this point, that would be satisfactory to me. Thanks.

BRIAN BECKHAM: Okay. Greg?

GREG SHATAN: Thanks. I would support the insertion of "potential" between "any" and "unintended." I don't read the word "any" as creating a possibility or communicating that there isn't "none." When you say, "Go out and get me any usual suspects," you usually expect to get some usual suspects back.

So I think this implies, as it is currently written, that there are actual unintended effects, not hypothetical, or those discussed in the survey but not shown to have existed in the wild. I think this is enough to acknowledge that they could exist.

Without the "potential," I think it implies that they did, in fact, exist, which was not where we landed after discussion. So, I think this is a tweak which brings things to the center on this point, without getting too semantic or changing the language too much. Thanks. I didn't see what Mary put in.

BRIAN BECKHAM: Yeah. So, I think Mary is saying that, maybe linguistically, it would have made sense to say "decrease the risk of any unintended."

GREG SHATAN: Yeah. I'm fine with what Mary's saying, as well, and I think that, again, it all follows the same theory that the language, as it stands now, essentially proves too much, or proves something that isn't proven. So, that's why it is troublesome.

I don't think that some of the grander principles that were cited of who was getting what change or what shouldn't be changed at this point are necessarily hard, for principles. We're trying to clarify and

communicate, and I think either what Mary had or some combination of that … And we can wordsmith further at some other point in time, but the sense, I think, is in the right direction. Thanks.

BRIAN BECKHAM: Okay. I just want to do something very quickly. I know we're past time. I just want to mention we had three comments to look at. The third one was row number 38. I just want to mention that that was from ICANN Org. That had to do with the matter that we have already discussed, relating to the IRT, and drafting, and balancing brevity with more text and information.

So, I just want to mention for the benefit of us here on the call that we have covered that in terms of our discussion of the IRT and reaching out to third parties. So basically, getting the balance right on making it user-friendly but getting accurate, good information in front of people. I just wanted to cover that off.

And in terms of the IPC comment, I … I mean, your hands here on the call. I see Rebecca has her hand up, and maybe we can take one final intervention from her, and either decide on this call if we want to, in light of the IPC comments, come back to this if we can agree on the call, or if we need to pick this up on the e-mail list or on a subsequent call. Rebecca?

REBECCA TUSHNET: Thank you. Look, if we want to change it so it talks about the risk of unintended consequences, I can live with that. What I don't like is "risk of any unintended possible consequences," which makes it sound like it is purely hypothetical, which is what Greg thinks but

which is not what the working group has agreed is true. Rather, again, we agreed there was a range of positions on how likely the unintended effects were.

So, what I really don't want is to encode in this some, "Here is a response to the hypothetical, theoretical possibility that somebody might not understand it and be deterred," because that is not where we came to.

"Risk of unintended consequences" is actually fine. It doesn't take a position on how risky it is now or how risky it would become when referred to. Just adding a whole bunch of qualifiers, I think, distorts the sense of the working group and the reasons that we're making the change. Thank you.

BRIAN BECKHAM: Okay. Thanks. I think, Greg, that's a new hand. Let me try to draw this to a close, and Greg, if you want to add something, by all means. I'm thinking what we can do here is, I think there was a suggestion from Mary in the chat that people seemed to think could work.

So, maybe we could have staff propose some language based on the chat and the conversation here to slightly update this to address the concerns raised by the IPC, and Susan, and Rebecca, and others, and see if we can't close that off, either over the e-mail list or on our next call. Let me ask if—Greg, you maybe have another comment—that way forward works for you and others, and remain mindful of the time here right now, Greg.

GREG SHATAN: Thanks. I just wanted to say that I think, the language that is developing, we don't need the "potential," or "possible" if we have the risk of formulation. So, I was not … I agree that there are a range of views as to whether it's somewhere between zero and a large number. Not intending to say that it has to be that it's only hypothetical, but it's hypothetical that it's not hypothetical.

So, I think that we're not seeing the very last comments about the word "may," but "decreasing the risk of unintended effects" or, I think, with just a word rather than "consequences," to me seems to make sense. So, I think that's along the lines of what Rebecca mentioned.

Of course, if it isn't, she should say so, but I think "decreasing the risk of unintended effects" would be fine, and I don't think we need the "possible" or the "potential," because I agree that's starting to hedge/gild the lily. I think we communicate enough lack of certainty with the "decrease the risk of unintended consequences." Thank you.

BRIAN BECKHAM: Okay, thanks. I think that we have agreement that we'll have staff help us with this better language than my suggestion. Apologies for that. But it looks like we'll land in a good place where we meet the IPC and other comments in the middle. So, we'll look for that on the e-mail list during the next call we have.

Thanks to the volunteers for looking at Sunrise questions three, four, five. If there is nothing else, we'll conclude here. And then,

everybody please look for the next call invitation in the agenda, there, and we'll see you on Thursday.

[END OF TRANSCRIPTION]