
ICANN Transcription
Review of all Rights Protection Mechanisms (RPMs)
Wednesday, 22 January 2020 at 18:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Attendance and recordings of the call are posted on the agenda wiki page:

<https://community.icann.org/x/9wSJBw>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gnso.icann.org/en/group-activities/calendar>

JULIE BISLAND: Good morning, good afternoon, good evening. Welcome to the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP Working Group call on Wednesday, the 22nd of January, 2020.

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

Okay. I just want to remind everyone to please state your name before speaking for the transcription and please keep phones and microphones on mute when not speaking to avoid background noise.

With this, I will turn it back over to Brian Beckham. You can begin, Brian.

BRIAN BECKHAM: Thanks so much, Julie. Welcome, everyone. Before we start, let's do the usual housekeeping. Let's do a quick check to see if there

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

are any questions or comments on the draft agenda or any updates to statements of interest.

Seeing none, hearing none, what we thought might make sense to go today – what we had on the agenda – was to go over the deliberations of the working group. Just to refresh our memory, these are the recommendations that stemmed from the work of the sub-teams.

This is the text that we've seen on a number of different occasions in a different iteration than we're going to see on the screen. We've seen it in different spreadsheet-looking charts, where there where helpful comments and historical facts recorded. It has now been moved over to something that looks a little bit more like what we expect to see in the initial report. So we'll go through that shortly.

But before we get to the meat of that, we thought we could turn over to staff to just walk us through how that was migrated over and then take it from there. With that, I think it will be Ariel, but I could be wrong. So Ariel or Julie, please.

ARIEL LIANG:

Thanks, Brian. I can quickly run through the structure of the initial report for the working group's consideration. If you see any content that you're missing that you think is important to incorporate into the structure, please feel free to comment.

On the screen, I'm showing a document that's the table of contents for the initial report. There are several sections. The first six sections are basically the main body of the initial report. The

following sections after Section 7 are annexes. From the beginning, that's the executive summary. As you know, every report has that.

Next we go directly to the overview of recommendations and questions for community input. We want to make sure these recommendations and questions are in one single section at the very beginning of the report so the community can comment on them straightforward and can find them all in one place.

Following that is a section of overview of proposals. That's related to the non-recommendations the working group is putting forward. Basically, there are two parts. The first part is the TMCH proposals. You may recall there are not really recommendations but proposals in response to certain charter questions. The second part is the URS proposals [that can ringlead] the individual proposals that the working group just finished assessing. So that will be the third section for the initial report. It's mainly the proposals. Then we'll include a very brief rationale and a deliberation under each proposal to provide some background and context.

Following that is the fourth section. It's the deliberations of the working group. You've already seen the ones for sunrise and trademark claims. So that's one part of it. We're in the process of drafting the last part of the deliberations section, encompassing the other RPMs that the working group has deliberated on. You probably recall that, in the deliberation section, we also repeat the recommendations and questions for input. After that, we provide the context. So that's another opportunity for people to look at the recommendations and questions for input.

After this section is the conclusion and next steps. That will probably be very brief, similar to other initial reports [out of] other PDPs. After that is the background that provides a brief summary of the process of the working group and how it deliberates on all these various RPMs. Some kind of timeline or schedule we will include too.

The last main section is the approach taken by the working group. It's to provide a summary of how the working group works and how the sub-teams are formed and their wiki spaces and how the charter questions were developed and refined. So we'll provide some very high-level summary of these approaches.

After all these sections are the annexes. There are several annexes we think we must include, but if you think we should include more, please also let us know. Of course, there is the charter – we're going through that – and then also another annex of the charter questions and answers. That will also be a very simple, plain look at all the charter questions in one place. If they have answers, we'll put them there, too.

Following that is the working group documents. We think there's some working group documents that should be featured because they're critical in the deliberations stage of the working group, or they're the end result of a certain RPM deliberation. So we think it's helpful to include [these links] in this annex. Also in the deliberation section we will point people to think annex if they want to look at the details because some of the working group documents contain the links to transcripts and so on. So that's helpful.

After that, there's another two annexes. One is about the membership and attendance. The other is the community input. That's about the early input process.

So that's basically an overview of this structure. Julie, if I missed anything, please free to chime in, too.

JULIE HEDLUND: Thanks, Ariel. I think that was complete.

BRIAN BECKHAM: Thanks very much, Ariel. Before we get started, I didn't know if staff wanted to give us a super quick overview of where we are [today]. I think we're going to look at Section 4.3 of the draft initial report on our screens today. Of course, this document has been open for comment over the course of the past week. We've noted no comments or edits on the e-mail list, at least. So we wanted to go through this document here together and give it a onceover to make sure that there's nothing that's recorded inaccurately. Depending on how the call goes today, we can see if that's sufficient to draw a line under this or whether we need to leave a little bit more time for some traffic on the e-mail list.

I note that Kathy has her hand up. Kathy?

KATHY KLIEMAN: Thanks, Brian. It's good to be exploring the format and finally seeing our initial report.

A quick question for staff and then a comment about the order and a question about the order. Question to staff: has this been out since last week? I know it's been out to the Co-Chairs, but I thought it was posted to the working group on Monday. But I could be wrong. Could you tell us when it was posted?

ARIEL LIANG: Are you referring to the deliberations section for sunrise and claims, or you're referring to the table of contents?

KATHY KLEIMAN: Both.

ARIEL LIANG: Oh, okay. For the sunrise and claims document, that was circulated last week, I think immediately following then meeting on Wednesday. So it has been open for a while week for the working group to look at. The table of contents we just showed today as a proposal for how the initial report can be structured. It's basically a structure of the report. There is no meat in this yet. So we're happy to hear feedback from the working group on this.

KATHY KLEIMAN: Terrific. In that case, Brian, whenever it's appropriate, I do have some feedback on the table of contents.

BRIAN BECKHAM: Why don't we start with that?

KATHY KLEIMAN:

Okay, great. Thanks. A quick note to everyone. We decided – I don't know – at some point (I think Panama City, but I could be wrong) that the Co-Chairs would not hold the pen – Brian, tell me if I'm misremembering – for the initial report. So staff holds the pen. So we have not edited this separately. We may have seen it a few days before, and not the table of contents, either. But we may have seen parts of it a day or two before. But we're editing this all together.

So here I'm wondering about 3 and 4. It seems to me that, if we're doing the overview of recommendations, which I assume is the section we were putting out our recommendations directly for community input, that should be followed with the deliberations of the working group because here, at least from what we're seeing in 4.3, we're going to go from a recommendation of sunrise or claims to the discussion and the context of why we're making that recommendation.

So, before we muck everything up with individual proposals ... Sorry to use that word, but Individual proposals, as you know, are coming from all sorts of places. But it seems to me that 2 and 4 go together. Then we get to the non-recommendations and individual ideas. But 1, 2, and 4 follow the logic and the reasoning in the analysis of the working group as a whole, so they seem to flow in one thought to me. Thanks. Back to you, Brian.

BRIAN BECKHAM:

Thanks, Kathy. Speaking personally – of course, this is what we’re here for: to get feedback from everyone here – that sounds personally sensible to me. I would personally call it six to one half dozen. If it’s in the current format, that could work. If it’s in the slightly rearranged format, I think that could work equally well.

I see David McAuley in the chat saying that Kathy’s comment is a good point. I think that should be just a simple matter of cutting and pasting and moving things around from the staff perspective. So hopefully that’s not any kind of real burden. Unless there are any objections, we can take that as a decision here on the call now, unless people think it merits further discussion.

I see a comment from Griffin. “No strong feelings [either] way. It makes sense as is or it can be changed.” Personally, I feel similarly. It can work how it is. It can be changed. If the feelings are – and another comment from Cyntia.

So it looks like, unless there’s some real strong objection, we can take that as an action item: to rearrange the order when we start to finally pull this all together. In that case, we will take that as an action item. Thanks, Kathy, for the suggestion.

Ariel or Julie, did you all have one more comment to make before we start to dive into the document?

ARIEL LIANG:

From the structure point of view, I think no more comments from staff. But we’re happy to provide a quick summary on how the sunrise and trademark claims deliberations section is developed, if that’s helpful.

BRIAN BECKHAM:

Okay, good. Thanks. Why don't we do this, unless there are any objections? I've just noted that there are, in terms of the recommendations ... Those are the items that are in the boxes there you see. There are eight for the sunrise, seven for the claims, and then, in terms of questions where we're seeking public comment, there are five for the sunrise and two for the claims. What I propose to do here is that we quickly run through the document and focus in on the text of the recommendations. This is a 16-page document, which, as has been noted, was out for review on the working group e-mail list for the last week. I don't think it would be a good use of anyone's time to read 16 pages into the record. That said, perhaps we can focus in on the recommendations and the questions and leave the contextual supporting material for a review on people's screens. We can see, depending on how the call goes today ... What we really want to do here – again, I think this is the fourth time, possibly even more, that we've had this text in front of us in various formats, so it should come really as no surprise to anyone – is to give it a final pass to make sure there were no errors or omissions before we draw a line under it and move it into the initial report.

So, if that works for everyone, we can maybe start with Sunrise Recommendation #1, which, as you can see, says, "In the absence of wide support for a 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." If you remember, there were some different ideas about whether that

should include typos or additional words – that sort of thing – and we collectively recommended to leave things as they were.

I see David McAuley has his hand up. David?

DAVID MCAULEY:

Thanks, Brian. I'm a little bit late in putting my hand up. I want to go back to the approach that we're taking. One of the things I did – I haven't finished the document yet but I've been fairly well through it – is I've noted a number of typos. You just mentioned them. I thought, if I would be okay with staff, I would be happy to send those in on-list, but I think it might be tedious to go through things that amount to typos here on the call. So I just want to confirm if that would work with Julie and Ariel. I found not many but several just obvious typos that don't change substance. Thanks.

BRIAN BECKHAM:

That sounds like a perfectly reasonable way forward. I think that that sounds terribly uncontroversial and we can flag those on the list. So thanks for mentioning that, David.

Any comments on Sunrise Recommendation 1 – whether that captures the essence of the discussions, whether there are any glaring omissions or inaccuracies? Again, it's just to maintain the status quo.

Seeing none, Sunrise Recommendation 2 says that, "The working group recommends that the registry agreement for future new gTLDs include the provision stating that a registry operator shall

not operate its TLD in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN or restricting brand owners' reasonable use of the sunrise rights protection mechanism.”

That's a little bit compact there. Any questions, comments, or suggestions on Sunrise Recommendation #2?

By the way, if anyone is on audio or I missed your hand, please feel free to speak up.

Okay. No comments on Sunrise Recommendation #2. That takes us to #3, which says, “In the absence of wide support for a change to the status quo, the working group does not recommend creation of a challenge mechanism.”

Of course, there was an existing sunrise dispute resolution policy, so this looks to recommend not to create a different mechanism. Any questions or comments on the text here of Sunrise Recommendation #3?

Okay. Moving along, Sunrise Recommendation #4 was, “In the absence of wide support for change to the status quo, the working group does not recommend the publication of the reserved names list by registry operators.”

That obviously got a lot of discussion on the list. That is the recommendation that we came up with. Just to check if there are any concerns about how that is captured, if it's in any way inaccurate.

Okay. Moving right along to Sunrise Recommendation #5, it says, “The working group recommends, in general, that the current requirement for the sunrise period be maintained, including for a 30-day minimum period for a start-date sunrise and a 60-day minimum period for an ed-date sunrise.”

Just to recall – I see Griffin has his hand up – I think the two different options that you could provide 30 days’ notice and then a 30-day sunrise or just wrap it all into a 60-day period with notice, kicking the clock.

Any questions or comments on this? In the meantime, I will turn to Griffin.

GRIFFIN BARNETT:

Thanks. Just to say – maybe I just can’t recall the discussion – we have those words “in general” there and I wonder what purpose it serves to have the words “in general” there. That suggests that there are exceptions to things, which I understand there are. But I wonder if that could get confusing. Thanks.

BRIAN BECKHAM:

That’s a good question. Griffin. I must say, when I read over that, I paused and wondered something similar. I’m looking at the context and it says that the working group generally agreed. So I wonder if that’s not a carryover from the broader context.

What are people’s opinions on whether the text in general is a necessary textual element that captures our deliberations or whether it may be just a drafting oversight that was inserted at one

point because maybe the discussions were finding the reviews on different sides of a topic and it was left as a placeholder.

Greg?

GREG SHATAN:

Thanks. I think, read as a recommendation, it implies – I think incorrectly – that there are going to be some specific exceptions recommended or that there’s going to be some exception policy recommended. As far as I can tell, that’s not the case. I think this is just a vestigial carryover from the use of the word of “general” and “in general” and “generally” to characterize our deliberations.” We could say “Generally, the WG recommends,” but that’s true of everything in the sense that it doesn’t have full consensus. So I would just lose the “in general” because it just creates a gap where none exists. Thanks.

BRIAN BECKHAM:

Thanks, Greg. I’m just glancing over the context. There’s a line at the end that says, “Nevertheless, the working group generally agreed ...” So I wonder if it’s not just, as you say, a drafting carryover.

Kathy?

KATHY KLEIMAN:

Sorry. I’m coming off mute. I don’t think it’s a drafting carryover. We worked through every word of all of these recommendations four times, as you noted, or more. So I think what it is – maybe we

can make a note and hold it and come back – we have other types of sunrise periods that we’re putting out for public comment, particularly for the geos, if I remember correctly. So I think we were very careful in the wording here. Since we have it in two places – both in the recommendation and in the context – I think that’s what we meant: in general, we’re keeping the current requirement. But we all know that we’re putting out for question and comment some of the exception that may exist along the way and that we understood had some real problems in the first round. Thanks.

BRIAN BECKHAM:

Thanks, Kathy. I also wondered whether that wasn’t in some way a slight hedge for then qualified launch programs [and] the limited registration periods, which of course we’ll come to later. Off the top of my head, I don’t think that those operate in exclusion to each other.

I see Cyntia and Julie have their hands up. I was going to suggest, as picking up on Kathy’s comment, that maybe we park this and maintain some progress on this document and see if we can’t do a little bit of research and dig into that. But, before we decide, why don’t we see what Cyntia and Julie have to say? Cyntia?

CYNTIA KING:

Hi. I’ll be quick. I think “in general” is every recommendation that we have on here. I don’t think anything was 100% one way or the other. So you could put a qualifier in front of everyone. I don’t see the purpose, unless, inside of the description below it, there is

some specific circumstance mentioned that mitigates it. My opinion is that we should just remove it. Thank you.

BRIAN BECKHAM: Thanks, Cyntia. Julie?

JULIE HEDLUND: I think it's there to reflect what we have in the deliberations where it says, "and the working group generally agreed." But, since that language is in the deliberations – the context captures the fact that the working group generally agreed – it's the staff suggestion that we do not need "in general" in the recommendation. It doesn't add anything. In fact, it seems to beg for some additional specificity that we do not actually have. As Cyntia noted, all of these recommendations could really be "in general."

I don't know that we could say "except in specified circumstances," Greg, because I don't think we have examples of certain specified circumstances, per se.

So our suggestion from staff side would be to delete "in general" from the recommendation.

BRIAN BECKHAM: Thanks, Julie. The way I would read this, where we say, "The working generally agreed," is that that's a slightly different format than "in general," the former being, let's say, a level of agreement, and the latter – sorry – not falling into that category.

Maybe we can call on Kathy and see if can't wrap this up or whether it's better to park it and come back to it. Kathy?

KATHY KLEIMAN: I'm in support of the recommendation, Brian, to park it and come back to it, just in case we find out these words actually do have some very specific meaning, which I think they do. Thanks.

BRIAN BECKHAM: Okay, good. We will note the comments that this raises a question mark and take it as an action item.

That takes us to Sunrise Recommendation #6, which is, "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."

Any questions or comments on Sunrise Recommendation #6?

Okay. Moving right along to Sunrise Recommendation #7, this one is a little bit longer. "The working group recommends that the next version of the Applicant Guidebook for future new gTLDs be amended as follows. The new version of the AGB should include the TMCH dispute resolution procedure for challenging the validity of trademark records into the TMCH. This procedure is currently published (there's a link there). ICANN org should ensure that its contract for the provision of TMCH services make the operation of the TMCH dispute resolution procedure a requirement for the TMCH provider."

The second part goes on to say, “Section 6.2.4 of the current TMCH model of Module 5 of the guidebook must be amended to remove [Grounds] 2 and 3.” I’m assuming that Grounds 2 and 3 are mentioned in the context below. I’m just checking on a separate screen. Yes, they are.

Then it goes on to say, “The Trademark Clearinghouse model of Module 5 of the AGB must be amended to include a new section, 6.2.6, which would say that the registry operator will, upon receipt from the TMCH of a finding that a sunrise registration was based upon an invalid TMCH record” – in parentheses, “pursuant to a TMCH dispute resolution procedure” – “immediately delete the domain name registration. The registry operators in their applicable SDRPs will describe the nature and purpose of the TMCH [challenge] process and provide a link to the TMCH for reference.”

Finally, there’s a note that says, “Registry operators should continue to have the option to offer a broader SDRP to include optional/additional sunrise criteria as desired.”

Any questions or comments? Maybe it would be useful to also look, if it’s not too much trouble, Ariel, at the context in the middle, where we have Bullet Points 1 and 3, which are proposed to be removed, just to refresh people’s memories. Any questions or comments on Sunrise Recommendation #7, which deals with the dispute resolution process and the removal of a mark from the Trademark Clearinghouse database, which would, of course, flow on to the registry operator?

Okay, good. That should take us to Sunrise Recommendation #8. This will be the last one of the sunrise recommendations, which says, “In the absence of wide support for a change to the status quo, the working group does not recommend that the scope of sunrise registrations be limited to the categories of goods and services for which the trademark is actually registered and put in the clearinghouse.”

Of course, we had a lot of discussion around this topic, both on the e-mails and in the phone calls, and this is where we landed as a group in terms of a recommendation so that the sunrise registrations would effectively remain as they are.

Any questions, comments, or concerns that this somehow inaccurately reflects our deliberations?

Okay. That takes us to the trademark claims recommendations. Again, there were seven of these. The first is, “The working group recommends that the language of the trademark claims notice be revised in accordance with the implementation guidance outlined in the working group’s Trademark Claims Recommendation #2,” which of course appears below. “This recommendation aims to enhance the intended effect of the trademark claims notice by improving the understanding of recipients while decreasing any unintended effects of [deterring] good-faith domain name applications. Note this recommendation is related to Trademark Claims Question #2.” So this really goes to doing some improvement to the trademark claims notice.

Any questions or comments on Trademark Claims Recommendation #1?

I see in the chat that Ariel has her hand up. Ariel?

ARIEL LIANG:

Thanks, Brian. A question for the working group. When we put all the recommendations together, we noticed that Recommendation #1 and #2 are very similar. Specifically, #1 sounds more like a precursor to #2. So we're wondering whether the working group intends to keep these two recommendations separate or can consolidate them so that we only have one recommendation that's pertaining to the [improvement, not the] claims notice.

BRIAN BECKHAM:

Thanks, Ariel. That's a really good point. I'm just looking on a separate screen. Maybe for the benefit of the people on the call, we can scroll down and look at Recommendation #2. We can run through that. As you can see, there's a fair amount of overlap. So why don't we run through this and then come back to the question of whether it makes sense to combine those or leave them separate?

Remember, Trademark Claims Recommendation #1 was, in effect, to clean up the claims notice. #2 says, "The working group recommends that the trademark claims notice be revised to reflect more specific information about the trademarks for which it is being issued and to more effectively communicate the meaning and implications of the claims notice – for example, outlining possible legal consequences or describing what actions potential registrants may be able to take following receipt of a notice. To assist the implementation review team that will be formed to

implement recommendation from this PDP in redrafting the claims notice, the working group has developed the following implementation guidance. One, the claims notice must be clearly comprehensible to a layperson unfamiliar with trademark law. Two, the current version of the claims notice should be revised to maintain brevity, improve user friendliness, and provide additional relevant information on links to multilingual external resources that can aid prospective registrants in understanding the claims notice and its implications. Third, the working group advises that ICANN org considers input from external resources. Some working group members suggested external resources, including the American University Intellectual Property Clinic, the INTA Internet Committee, the Electronic Frontier Foundation, and Clinica Defensa Nombres de Dominio UCN.” I’m guessing UCN may be a university. “Note this recommendation is related to Trademark Claims Question #2.”

First, any comments or questions or concerns on either this specific text of Trademark Claims Recommendations #1 or 2, which go to the cleaning up and improving the trademark claims notice? What do people think about the question or suggestion of whether Trademark Claims Recommendations #1 and 2 ought to be combined? I guess one option would be to combine them. Another option would be to present them side-by-side or on top of each other without the context. In other words, you could move the context for #1 below and keep them in separate boxes. What do people think about combining Trademark Claims Recommendations #1 and 2?

That sounds like a sensible suggestion, Ariel. It seems like it may be easier for the reader. As you note, Recommendation #1 is something of a preamble.

I see Griffin is agreeing in the chat. Anybody else?

REBECCA TUSHNET: Can I get in the queue?

BRIAN BECKHAM: Yes, please. Just quickly, David McAuley in the chat is saying, "Some sort of joinder is warranted. Rebecca, please?"

REBECCA TUSHNET: Thank you. It's fine by me, but sometimes, when we've said "merger," there ended up being rewriting. I think that would be a very poor idea at this point. So "physical merger" sounds fine to me, but I don't think you should take this as approval for any sort of other rewrite. Thank you.

BRIAN BECKHAM: Thanks, Rebecca. So that sounds more like the idea of just moving the context from #1 below. Then you would have, let's say, 1.1 and 1.2 recommendations, followed by Context 1.1 and 1.2, if you will.

What do people think of the concern that, if we do merge this, this would require some rewriting and, at this point, although it may result in a cleaner end product, we have momentum and we want

to keep that and we don't want to spend too much time rewording the two of them?

It seems like there's support for the idea of keeping them separate, but just physically displaying closer together without the context getting in between. So, unless there are any objections to that, we'll take that as an action item. Thanks, Rebecca.

I'm seeing agreement from Susan Payne in the chat.

All right. That moves us along to Trademark Claims Recommendation #3, which says, "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, one, changing the relevant in the Trademark Clearinghouse rights protection mechanism's requirement on this topic to "Registrars must" – "must" is underlined in bold – "provide the claims notice in English and the language of the registration agreement" – so that's shifting that idea into a contractual requirement – "and, number two, where feasible, the claims notice include links on the ICANN org website to translations of the claims notice in all six U.N. languages."

Griffin?

GRIFFIN BARNETT:

Thanks, Brian. My comment relates to the use of the term "where feasible." Perhaps there's some additional context behind what feasible means as used here because it seems to be either you provide a link in then claims notice to the translations or you don't.

I guess I'm just wondering for more context about why we're including the word "where feasible," or if we should thanks.

BRIAN BECKHAM:

Thanks, Griffin. That's a fair question. Just looking at the context paragraph, it says, "The working group noted that some registrars do not translate the claims into all the languages." I wonder if that wasn't some sort of a deference to registrars' capability to translate the claims notice.

That said, in the way I read the recommendation itself, it points to the claims notice, including a link on a centralized webpage on the ICANN website with the translation. So it could be that "where feasible," if that was a nod to registrars' abilities to translate," would be overtaken by the fact the idea is to recommend that this be centrally coordinated and provided on the ICANN website.

Any thoughts on whether that's a sensible reading, whether we ought to [inaudible] the "must" language. Again, from the context, this is changing. There was a "should" to a "must." Any questions on whether "where feasible" should be removed?

Griffin, I think that's a new hand.

GRIFFIN BARNETT:

Yeah. Thanks, Brian. New hand. I guess, in response to your interpretation, my thinking here is that perhaps we included it as a hedge against a concern that it might be somehow cost-prohibitive to prepare translations in the U.N. six languages. But, as you pointed out, the claims notice itself would include a hyperlink that

claims notice language would be uniform. That would go to a website or a webpage on the ICANN website where those translations are available. So they would be translated once into those six languages and appear on that webpage for all time. So, again, I don't know that that would have huge cost applications to do that one-time translation.

So, again, I would support removing "where feasible," but, again, I don't want to disturb it if there's some kind of other major concern that I'm not seeing here. Thanks.

BRIAN BECKHAM:

Thanks, Griffin. I'll just note before I call on Greg that maybe we need the word "should" before the word "include" there. "The claims notice should include links." Greg?

GREG SHATAN:

Thanks. I'm wondering when it would be infeasible to include perhaps a single hyperlink in a notice that's electronic to begin with. So maybe "should" gives enough of a hedge if there's a reason not to. I would prefer perhaps to make it a "must" because people should get the benefit of the translations, but maybe "should," since the translations don't yet exist – we don't want to be prescriptive – be the midpoint. And get rid of the "where feasible" because the word "feasible" just implies some problem that doesn't exist.

I don't know if this falls into the David McAuley typo level of issues, but shouldn't be "include links"? Or maybe "includes a link" or "links to the ICANN org website," or, "leading to the ICANN org

website” because the link is not on the site. The link is on the note on the claims notice going to the site. Thanks.

BRIAN BECKHAM:

That’s a good question, Greg. It could be that the link would go to one ICANN website. Or you could have links to the six different languages. But, in any event, that could be cleaned up.

Let me ask if there are any other comments on the suggestion to remove “where feasible” in light of our conversation just now. Anyone have any concerns about removing “where feasible”?

I’m not seeing anyone. Of course, feel free to speak up. We can leave this open for final confirmation on the e-mail list. But that seems like an uncontroversial and indeed useful suggestion. So thanks, Griffin.

Let’s move on, in that case, to Trademark Claims Recommendation #4, which says, “The working group recommends that the current requirement for only sending the claims notice before a registration is completed be maintained. The working group also recognizes that there may be operational issues with presenting the claims notice to registrants who preregister domain names due to the current 48-hour expiration period of the claims notice. The working group therefore recommends that the implementation review team consider ways in which ICANN org can work with registrars to address this implementation issue.”

Any questions, comments, or concerns about how #4 is reflected?

Okay. It looks like this had to do possibly with preorders of new top-level domains. Any comments/last call for Trademark Claims Recommendation #4?

Okay. Moving on to #5, “The working group recommends” – here we: “in general” – “in general that the current requirement for a mandatory claims period be maintained, including the minimum initial 90-day period when a TLD opens or general registration.”

Griffin?

GRIFFIN BARNETT:

Thanks. Obviously, this is mirroring the recommendation language from earlier, where we use “in general.” Based on reading this one and then thinking about the previous one where we use “in general” language, I’m wondering if ... Again, this is something that I mentioned earlier, but I suspect that this is intended to acknowledge that there is some kind of exception to the current requirements – in this case, the current requirement for a mandatory claims period, including a minimum initial 90-day period. I don’t know what the exception for this one would be because I think, at least currently, all gTLDs have to run this claims period no matter what. Now, obviously, they can go above the 90-day period, but that’s why it says “the minimum.”

So I guess I’m just struggling again in what “in general means.” Staff says that it refers to generally agreed, in which case, if that’s all it means – if it’s only referring to general agreement – then it should be removed, just like in the previous one. But, again, if there’s some kind of exception or something to this that it is

referring to, we should not just say “in general.” We should specify what that exception would be, which, again, in this case, I’m not sure there is one. So [inaudible] in this context. Thanks.

BRIAN BECKHAM: Thanks, Griffin. In light of the prior conversations, it may be that we park this one and go back and do a little research. But, in the meantime, Julie, please?

JULIE HEDLUND: Actually, I’m raising my hand for Ariel, since she cannot do that. Ariel, please?

BRIAN BECKHAM: Ah. Ariel?

ARIEL LIANG: Thanks, Julie. Actually, there is an exception that the working group is identifying or [inaudible] asking for community input on that. [This is] related to Trademark Question #1, so I’m just going to quickly scroll down to show you what the question is.

I’ll just read the question. Is there a use case for exempting a gTLD that is approved in subsequent expansion rounds from the requirement of a monetary claims period due to then particular nature of the gTLD, such as highly regulated TLDs have stringent requirements for registering entities on the order of .bank and/or dot-brand TLDs, whose proposed registration model demonstrates that the use of a trademark claims service is unnecessary. If the

working group would recommend this exemption language, what kind of guardrails should ICANN use to grant such exceptions?

So I think that's the background for why "in general" is included in that recommendation: there is a question about exempting certain TLDs based on their particular nature.

BRIAN BECKHAM:

Thanks, Ariel. That's very useful. Just a thought off the top of my head. If we're going back up to Recommendation #5, if we wouldn't want to say something to the effect of, "The working group recommends, subject to possible exceptions enumerated in Trademark Claims Question #1," instead of "in general" ... Just a thought to make that a bit more of a meaningful use of the terminology "in general" there, noting that we did actually discuss some specific potential places where they could be an exemption from the mandatory claims period.

Any thoughts on whether that change to the text to add some specificity may be useful here?

Griffin?

GRIFFIN BARNETT:

Thanks, Brian. I would agree. Perhaps we can ask staff to go through the full document and flag each of those areas where—right now we're using the term "in general" – there is actually another question or something that that is intended to refer to and perhaps suggest some alternative text that is more specific along the lines that you suggested. Thanks.

BRIAN BECKHAM: Thanks, Griffin. Just in case, maybe it would be wise to say it as illustrative examples rather than any suggestion that this was covering all the possible examples of an exemption.

I have Kathy's hand up. Kathy?

KATHY KLEIMAN: That's just it, Brian. This is not all the examples. So let me just read. So I don't support that. I think we put these words in carefully when we did them. Also, this isn't the last time we're going to see these recommendations. They're coming back to us. We're putting them out for public comment.

So, to the trademark claims question that was just read, here's the context. And it's short. "Some working group members" – not the entire working group – "recommended that public comment be sought on this question" – the one of exempting gTLDs. "Some working group members believe that some future TLDs should be exempt from the mandatory trademark claims period and suggested seeking public comment on whether there is a use case for exempting a TLD due to the particular nature of the TLD, as well as any concerns about exempting those TLDs."

So what we have in the question is a few examples. What we have in the context is an open, broad-ended question. So that's why I think the recommendation keeps the general language and is the right wording pending what we get from the public comments. We don't want to close off what we're getting. Again, these comments, these recommendations, come back to the

working group with the comments, and we can lock up the language later if we so choose. But keeping it open now keeps open that possibility of input from the community that we might not even be envisioning right now. Thanks.

BRIAN BECKHAM: Sorry. Just so I'm clear, Kathy, you're suggesting, rather than saying, "For example, the illustrative examples in #1," as opposed to that more open reference to Trademark Claims Question #1, you would prefer to retain the "in general" language?

KATHY KLEIMAN: Right. So I wouldn't go through this whole document. I wouldn't flag all the "in generals." We put them in one purpose because we knew that we had questions that were going out to the community. So we have recommendations, but we also have questions because we had areas we need more information about or that we flagged that we need more information about. So I think all of this is carefully worded and I wouldn't go through and reword it. Also, I'm just saying it's not the last time we see it. So, if after all the comments we want to lock down the recommendation and remove "in general"s later, we can do that. But, you're right. My recommendation is we do not wordsmith this at this point. We keep the wording as it is. Thanks.

BRIAN BECKHAM: Thanks. I have Greg and then Phil.

GREG SHATAN: Thanks. I think we're getting more ambiguous rather than more clear. I think it's true that any of our recommendations could have exceptions at some future point in time. So, if the "in general" is referring to the idea that exceptions are possible, that's true of all of our recommendations. It may also be true that we're not recommending or asking for any exceptions in many cases. In those cases, the "in general" would be inappropriate. Where the "in general" is appropriate, it should be where there are specified areas in the document that are looking to ask questions about or to recommend exceptions. In that case, it would be much better for us to cross-reference to those, rather than having some ambiguous "in general" that just implies that there is just generally room for people to poke at exceptions because that's not what we're doing. These are supposedly in here because there's something somewhere else that is triggering the need to say "in general." So we need to point that, or else we're going to get less helpful answers than we would otherwise. Thanks.

BRIAN BECKHAM: Thanks, Greg. Phil?

PHIL CORWIN: Thanks. I hesitate to extend this discussion, but, in general, my view is that I presume that this initial report explains at some point our working method and the level of support that was required for all working group recommendations. So, if the term "in general" is referring to meeting that standard, it's duplicative and somewhat confusing and ought to go.

However, if the term “in general” is being used to say, “Well, this should be the general rule, but we’re asking the community for input on potential exceptions where we’ve asked questions about that,” then the contextual language immediately following should be more clear about pointing the community members to what those potential exceptions would be.

I hope that was generally clear. Thank you.

BRIAN BECKHAM:

Yeah, perfectly clear, Phil. I think what we’re seeing is two different uses of the clause “in general.” For the first one, we agreed to look and see if there was some particular reason. For this one, there seems to be a particular reason, and that’s a reference to some questions where we were hoping to have some feedback from the community.

I’m not sure where that leaves us in terms of what to do with this iteration of “in general.” I see Cyntia and then Julie, possibly for Ariel. Cyntia, please?

CYNTIA KING:

Hi. Could we ask staff to just take a look at every place in the document that says “in general” and see if that refers to a specific item? Perhaps the Co-Chairs could help with that. We’re hitting every one of these “in general”s and trying to determine what might be some follow-on language or some purpose behind it, whereas I think that some folks could just comb the document specifically and figure that out without us spending all day on this. Thank you.

BRIAN BECKHAM: Thanks, Cyntia. Julie?

JULIE HEDLUND: Thank you. I'm agreeing with Cyntia. Take will take the action. I think we actually already recorded that as an action earlier on when it was requested: to go through and note where "in general" refers to a specific instance or exception and where it is not in such reference.

What we have tried to do when there is reference to a specific exception or questions being directed to the community is indicate that in the context. We'll make sure that that's more clear if it needs to be clarified. Where there isn't a specific exception, then we'll suggest deleting the term "in general." Thank you.

BRIAN BECKHAM: Thanks, Julie. I have Kathy on again.

KATHY KLEIMAN: Great. Mostly to staff, I guess, at this point: the first "in general" that we referenced, which was Sunrise Recommendation #5, does appear to reference a sunrise question, very similar to the situation that we were just talking about. It seems to reference a sunrise question on Pages 11, 12, and 13 with a number of questions written by Maxim and Kristine on ALPs, QLPs, and RLPs – all the special launch programs. So I think the first one we were talking – the first "in general"s – are also referencing

possible exceptions or slightly different types of programs that we're questioning. So I just wanted to give you that reference. Thanks.

BRIAN BECKHAM:

Thanks, Kathy. So it looks like we at least have agreement that this use of "in general" references another set of questions and we can make a reference to that.

I think that probably means we can move on to Trademark Claims Recommendation #6, which is, "The working group recommends that the current requirement for a mandatory claims period should continue to be uniform for all types of gTLDs in subsequent rounds, including for the minimum initial 90-day period when a TLD opens or general registration. Note: some working group members asked for public comment on potential exemptions, which would then not be subject to a claims period of any length. See Trademark Claims Question #1," which is, of course, what we were just discussing.

Any questions or comments on this text of Trademark Claims Recommendation #6?

Kathy, is that a new hand?

KATHY KLEIMAN:

An old hand. I'll take it down.

BRIAN BECKHAM:

Oh, sorry. But Ariel has her hand up.

ARIEL LIANG: Thanks, Brian. Again, when staff looked at two recommendation -- #5 and #6 for trademark – we felt that these two sound very similar or could potentially overlap. But we’re not sure what’s the best approach: whether to combine them or just leave it as is. So we’d like to ask the working group for feedback. I scrolled the page so you can see both recommendations on the screen.

BRIAN BECKHAM: Thanks, Ariel. Any questions or comments on Trademark Claims Recommendation #6?

Just to pick up on Griffin’s comment in the chat, although there’s some overlap, he mentions there’s some nuances to #5 and 6 that support leaving them separate. Of course, that’s fine, if that’s what we think is best.

Seeing no hands raised or other comments, it seems we may be best off leaving Trademark Claims Recommendations #5 and 6 separate, which takes us to the last of the trademark claims recommendations, #7, 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.”

Any questions or comments on Trademark Claims Recommendation #7?

That, of course, takes us to the end of the sunrise and the claims recommendations. We next have respectively five and two sunrise

and claims questions for community input. Of course, we've touched on a couple of these during our chat already here, so that's been useful. We can maybe make quick work of these questions.

Sunrise Question #1 is, "What remedy or remedies would you propose for any unintended effects of the sunrise period that you have identified in your public comment?" So this is, in effect, asking people if they feel the sunrise has had some unintended consequences, how they would go about solving the questions that that unintended consequences raises.

Any questions thoughts on Sunrise Question #1?

Okay. Sunrise Question #2 is, "Have you identified abuses of the sunrise period? To the extent that you have identified abuses of the sunrise period, if any, please describe them and specify any documentation to substantiate the identified abuses." It seems like a reasonably straightforward question.

Any questions or comments?

Okay. Moving on to Sunrise Question #3, "The working group recommends that public comment be sought on Questions #3A to D, from registry operators. The working group asks registry operators to be specific about which questions – that is, the ALP, QLP, or LRP – that they are referring to in their responses to all questions and what the shortcomings of each of those mechanisms are."

#3A says, "If you did not attempt at one of these launch periods, what was the reason for not taking advantage of these programs

related to how they integrate with sunrise? Were you able to achieve your goals in a different way, such as by combining any or all of these programs?”

3B says, “If you did attempt one of these programs or in combination but didn’t successfully use any, what was the reason you did not take advantage of those programs related to how they integrate with sunrise? Were you able to achieve your goals in a different way? For instance, some registry operators may have used the QLP100 plus IDN variants in combination with the registry reserve names to obtain the names they needed. Did you do this? If so, were you able to reserve or allocate all the names you needed to?”

3C: “If you used one of the programs or in combination, did you experience any unanticipated trouble with integrating the sunrise period into your launch? Specifically, were you able to allocate all of the names you needed to allocate under those programs before the sunrise period?”

3D: “For each issue you have identified in your responses to the questions above, please also include a suggested mitigation path. What do you suggest the RPM Working Group consider to help alleviate the pain points and make those programs more useful and functional while still respecting the trademark protection goals of the sunrise period? How important is it to make changes to these programs before another round of new gTLDs? That is, are these issues worth “holding up” another round for, or are the workarounds tolerable?”

Then we conclude by saying, “The working group also recommends that public comment be sought on Question 3E from non-registry operators.”

3E is, “Did you experience struggles with the way that ALP, QLP, or LRPs or a combination integrated with sunrise, either as a registrar, as a brand owner, or as a domain-name registrant?”

A lot to take in there. Any questions or comments on Sunrise Question #3 regarding the different types of launch programs that registry operators could use in launching their new top-level domains?

Seeing none, Sunrise Question #4: “The working group recommends that the following guidance be sought from registry operators. These questions are related to Sunrise Question #3.”

4A: “If you had or have a business model that was in some way restrained by the 100-name pre-sunrise limit for names registries can reserve under the registration agreement or the practical problems with the ALP, please share your experience and suggest path to improvement. What was your workaround, if any? For instance, if you withheld names from registration “reserve names,” how well did that work?”

I see a comment in the document itself from Ariel that rightly flags that this part seems duplicative as to Sunrise Question #3D. So the question for us as a working group is whether we want to keep this or whether this redundant and may serve to confuse readers of the initial report.

Any thoughts on whether this is useful to keep or whether, insofar as it's duplicative, it may be worth thinking about whether it's necessary to keep here in this second appearance?

Not everyone all at once.

All right. Let me ask it this way. Are there any objections to combining these? That would mean doing away with this duplicative reference here to Question #3D. That may make it easier on registry operators to understand.

Kathy, please?

KATHY KLEIMAN:

Thanks. I'm trying to remember why we did it this way and separated it. My guess is that reserve names and the 100-name pre-sunrise reservation policy – that's a lot of registries – was supposed to be for operational and technical names largely, but it can be used for anything.

I think, Brian, we're trying to separate the reserve names questions and how it may impact things from the general problems that people have with the QLP, ALP, or LRP. I think here we're focusing on the special wrinkles of the reserve name policy, which does not come out of the ALP, QLP, LRP. It's something in the contract/the registry agreement itself.

So I think we did this separately. My guess is because it's separate variations. So I would keep it the way it is because people may see it in one place or the other place. It gives them

the opportunity to see it under whatever categories they're looking for in the questions. Thanks.

BRIAN BECKHAM:

Sure. Makes sense, Kathy. Thanks. Maybe, with that, we can move on to 4B, which is, "If the working group were to identify specialized gTLDs as a key concern that required changes to the way the sunrise period operates, are there other TLDs besides geos that did or will encounter the same problem? What suggestions do you have for workarounds or solutions that will not diminish the protections available from the sunrise period balanced with the need to finish this work in a timely manner?"

4C says, "Did you initially intend, prior to the implementation of sunrise rules in the original Applicant Guidebook, to offer a special sunrise before the regular sunrise that targeted local trademark owners? For instance, would the ability to offer a special pre-sunrise sunrise solve any problems? If so, would you have validated the marks in some way? How would you ever solve conflicts between trademark holders that got their domains during the first sunrise and trademark owners who had an identical trademark in the TMCH that was registered prior to sunrise?"

Any questions or concerns on the group here: Trademark Sunrise Questions for Consideration #4?

Okay. That takes us to #5. Sunrise Question #5: "The working group recommends that public comment be sought from trademark holders who use non-English scripts or languages on the following questions. A: Did you encounter any problems when

you attempted to participate in sunrise using non-English scripts or languages? B: If so, please describe problems you have encountered. C: Do you have suggestions on how to enable trademark holders who use non-English scripts or languages to effectively participate in sunrise?”

Not seeing any hands or comments in the chat. All right. That moves us along to ... I think that's the end of the sunrise questions. That brings us to Trademark Claims Question #1, which we looked at. We didn't read it out, so maybe just to maintain some consistency here, we can read it. I know there's some people on the phone only. "Is there a use case for exempting a gTLD that is approved in subsequent expansion rounds from the requirement of a mandatory claims period due to the particular nature of that gTLD? Such types of gTLD might include highly regulated TLDs that have stringent requirements for registering entities on the order of dot-bank and/or dot-brand TLDs, whose proposed registration model demonstrates that the use of trademark claims service is unnecessary. If the working group recommends exemption language, what are the appropriate guardrails ICANN should use when granting the exception? For example, simple registrant, highly regulated, or manually hand-registered domains? Something else?"

I'm not entirely clear what a manually hand-registered domain is, but maybe it's not necessary to get into that. Any questions or concerns about the way Trademark Claims Question #1 is captured here for us?

Okay. Trademark Claims Question – sorry, Greg?

GREG SHATAN: Thanks. Just to shed light on the manually hand-registered term, hand registration is a term that's used by domain investors when they don't use some form of automated process or drop-catching, or other things. In other words, they register things like normal people do: by going into a website and entering in by hand the information that they want to put in. So it's considered quite quaint in some circles. Thanks.

BRIAN BECKHAM: Thanks, Greg. That's useful. I was wondering if it wasn't some sort of a reference to a registry issuing some sort of an RFP, where there was some of a targeted industry for its TLD. But that's a useful clarification.

Of course, maybe we can – I hate to do this – ask staff if there might be some place where there's a discussion of that in the course of our working group deliberations that may help shed a little bit of light for [definition] purposes in that context section below.

Kathy, I see your hand went up and down, so I assume you may have had a similar comment.

That takes us to Trademark Claims Question #2. That's it for the document here. Thanks, Kathy. I see the agreement in the chat. #2A "How you identified any inadequacies or shortcomings of the claims notice? If so, what are there? B: Do you have suggestions on how to improve the claims notice in order to address the inadequacies or shortcomings?" Of course, a note that this

question is related to Trademark Claims Recommendations #1 and 2, which were, just to refresh your memory, the dual suggestions that the claims notice itself be revised to be a bit more user-friendly.

Any questions or comments or concerns on Trademark Claims Question #2?

Okay. Let me try to wrap up by asking this. I think there were one or two places where we had action items taken. There was the two different references to “in general.” I think, for the first, we were going to do a little bit of research. And there were a couple of places where we had made some notes along the way today.

How do people feel about the progress that we made today? Of course, we do have a small number of action items. Of course, we agreed on those on the call, so those shouldn’t present any new concepts or concerns for people.

Just thinking off the top of my head because I know earlier in the chat there was a mention that maybe some people may have been away and didn’t get the benefit of this past week to look at the document, one idea could be that, while we tackle the action items, we leave the document open for one last round of approval over the course of the next week. Then hopefully we can move on and draw a line under that.

Does that seem sensible? Does anybody have any concerns that we would be shortchanging anyone if we try to wrap this up over the course of the next week or so?

Paul McGrady?

PAUL MCGRADY: I don't think anybody will be shortchanged. Instead of saying let's leave the whole thing open, why don't we say let's leave it open for really urgent, important, last-minute tweaks? Just because we did make good progress here today. I'd hate for us to have a repeat of this call.

Anyways, I would try to phrase it as narrowly as we can. Thanks.

BRIAN BECKHAM: Thanks. That's a good suggestion, Paul. Maybe we can even call on people to specifically focus in on those few areas where we had some slightly open questions during the course of our call today.

I see a comment from David McAuley in the chat to leave it open for a short while, at least.

Okay. So I think that probably wraps our call up for today. Let me just conclude by first, of course, thanking everyone, especially the staff. As you can see, there's been a lot of work to bring the various discussions into charts and to move those charts into this document.

Let me turn over to Ariel and Julie to see if there aren't any last housekeeping matters before we wrap up today.

Julie?

JULIE HEDLUND: Thanks. I'll just note that we'll send around the notes with the action items and we'll get those actions done as quickly as possible so that, while the document is open, before any final corrections or clarifications, you'll be able to see that those actions have been completed.

Yes. As Ariel says, thank you very much to all of you for your review and feedback. Then we'll confer with the Co-Chairs as to next week's agenda. But I'll note that the Co-Chairs have reviewed the URS individual proposals, so we'll be soon sending to the working group the determinations on which ones are determined to be published and which ones are not. So that you will see, and that's something that we could conceivably have in a future agenda, perhaps on next week's call.

Thank you very much for chairing, Brian. I appreciate it. Thank you all for all of your good work.

BRIAN BECKHAM: Thanks, everyone. With that, I think we can end the recording.

[JULIE BISLAND]: All right. Thank you so much, Brian. Thanks, everyone, for joining. This concludes today's call.

[END OF TRANSCRIPTION]